

APPENDIX A: SUMMARY OF ACCEPTABLE DECISIONS—Continued

End-use	Substitute	Decision	Comments
Household Refrigerators and Freezers .....	Ikon® B for CFC-12 ...	Acceptable .....	EPA expects that manufacturers, installers and servicers of refrigeration and air-conditioning systems will follow all applicable industry practices and technical standards, including but not limited to standards issued by the American Society of Heating, Refrigeration and Air-conditioning Engineers (ASHRAE), and that exposures will be kept within all applicable American Industrial Hygiene Association (AIHA) and American Conference of Governmental Industrial Hygienists (ACGIH) occupational exposure limits.
<ul style="list-style-type: none"> <li>• Commercial Comfort Air Conditioning .....</li> <li>• Industrial Process Refrigeration and Air Conditioning</li> <li>• Cold Storage Warehouses</li> <li>• Refrigerated Transport</li> <li>• Retail Food Refrigeration</li> <li>• Vending Machines</li> <li>• Water Coolers</li> <li>• Commercial Ice Machines</li> <li>• Household Refrigerators and Freezers</li> </ul>	Ikon® A for CFC-12 ...	Acceptable .....	EPA expects that manufacturers, installers and servicers of refrigeration and air-conditioning systems will follow all applicable industry practices and technical standards, including but not limited to standards issued by the American Society of Heating, Refrigeration and Air-conditioning Engineers (ASHRAE), and that exposures will be kept within all applicable American Industrial Hygiene Association (AIHA) and American Conference of Governmental Industrial Hygienists (ACGIH) occupational exposure limits.
Commercial Comfort Air Conditioning .....	HFC-245fa. for CFC-11 (new only).	Acceptable .....	Building owners and operators should evaluate refrigerants from a technical standpoint to determine which option is superior for their specific application.
Small auxiliary power units which include an engine, electrical alternator, water pump, air conditioning compressor and a heat exchanger used in tractor trailers in conjunction with passenger compartment climate control systems that already use an acceptable substitute refrigerant.	CFC-12 in motor vehicle air conditioners.	Acceptable .....	EPA anticipates that installers and servicers of refrigeration and air-conditioning systems will follow all applicable standard industry practices and technical standards.

Foam Blowing

Polyurethane Appliance Foam .....	Vacuum panels .....	Acceptable.	Analysis of toxicity data available suggest an acceptable exposure limit of 350 ppm (8-hour Time Weighted Average).
Rigid Polyurethane and Polyisocyanurate Boardstock.	2-chloropropane .....	Acceptable .....	

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000531162-0162-01; I.D. 042800B]

RIN 0648-AN49

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery, Framework Adjustment 13; Northeast Multispecies Fishery, Framework Adjustment 34

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement measures contained in Framework Adjustment 13 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and Framework Adjustment 34 to the Northeast Multispecies FMP. This final rule implements the 2000 Sea Scallop Exemption Program (Exemption Program), creates Sea Scallop Exemption Areas (Exemption Areas) in portions of multispecies Closed Area I (CA I), Closed Area II (CA II), and the Nantucket Lightship Closed Area (NLCA) and includes the following management measures: A possession limit of up to 10,000 lb (4,356.0 kg) of scallop meats per trip; a maximum number of trips for each area; an

automatic minimum deduction of 10 days-at-sea (DAS) for each trip; a minimum mesh twine-top of 10 inches (25.40 cm); a yellowtail flounder total allowable catch (TAC) of 725 metric tons (mt) for CA I and CA II combined, and 50 mt for the NLCA; and an increase in the regulated species possession limit from 300 lb (136.1 kg) to 1,000 lb (435.6 kg) per trip, among other measures. In addition, this action modifies the scallop dredge gear stowage requirements and corrects and clarifies the “end of the year DAS carry-over” provision for vessels participating in the limited access scallop fishery. The primary intent of this action is to provide a continuation and an expansion of a short-term strategy to allow scallop dredge vessels access to multispecies closed areas without

compromising multispecies and sea scallop rebuilding or habitat protection.

**DATES:** Effective June 15, 2000, except for § 648.57 introductory paragraphs (a) and (b), which becomes effective June 15, 2000, through March 1, 2001, and § 648.58(c)(3)(i) and (c)(3)(ii), which becomes effective June 14, 2000.

**ADDRESSES:** Copies of Framework Adjustment 13/Framework Adjustment 34 to the Atlantic Sea Scallop/Northeast Multispecies FMPs, its Environmental Assessment (EA), and regulatory impact review are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, One Blackburn Drive, Gloucester, MA 01930-2298, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** David M. Gouveia, Fishery Policy Analyst, 978-281-9280.

**SUPPLEMENTARY INFORMATION:** Based on results from the 23rd Stock Assessment Workshop and information obtained from a cooperative experimental research fishery conducted from August through October 1998, the Council developed, and NMFS approved, Framework Adjustment 11 to the Atlantic Sea Scallop FMP and Framework Adjustment 29 to the Northeast Multispecies FMP in June 1999, which implemented the 1999 Georges Bank Sea Scallop Exemption Program and provided sea scallop fishermen access to CA II. This action helped to reduce fishing effort in other scallop areas where the stock is dominated by smaller scallops by shifting effort into CA II where the scallop biomass and average individual size have increased dramatically since 1994, while maintaining conservation neutrality.

During the course of the 1999 Georges Bank Sea Scallop Exemption Program implemented under Frameworks 11/29 (June 15 through November 12, 1999), additional cooperative research was conducted by NMFS and the industry in CA I, CA II, and the NLCA. This research involved mapping the distribution and estimating the abundance of Atlantic sea scallops; determining the rate and distribution of finfish and invertebrate bycatches in the

sea scallop fishery; testing new gear designs to reduce finfish bycatch rates; providing information on the potential habitat effects of the use of scallop dredge gear; and evaluating changes in catch-per-unit-effort. To the extent that the data from these research projects have been analyzed, this new information was incorporated into the development of Frameworks 13/34 and builds on the data obtained from the 1999 Georges Bank Sea Scallop Exemption Program.

To provide an additional year of access to areas of high scallop biomass, this action allows sea scallop dredge vessels access to portions of CA I, CA II, and the NLCA during the period from June 15, 2000, through December 31, 2000, and establishes a sea scallop TAC of 8,664 mt to be distributed among the three closure areas. To help fund the cost of observers, an additional 87 mt above the TAC together with another 87 mt set aside from the TAC, for a total of 174 mt, is available. In addition, 87 mt is set aside from the sea scallop TAC to help defray the cost of sea scallop research. After deducting the two 87 mt set asides, the resulting commercial scallop TAC available is 8,490 mt (2,934 for CA II; 2,445 mt for the NLCA; and 3,111 mt for CA I).

As in Frameworks 11/29, this action opens only certain portions of the closed areas to minimize the impact on finfish bycatch and habitat. The Council's Habitat Committee recommended that, based on current essential fish habitat (EFH) considerations, only areas south of 41°30' N. lat. in CA II, only areas north of 41°07' N. lat. in CA I, and only areas north of 40°30' N. lat. and east of the 13900 loran line in the NLCA should be considered for opening to scallop dredge vessels. This action adopts the Habitat Committee's recommended area openings for all three areas.

To minimize yellowtail flounder bycatch, this action implements a Georges Bank yellowtail flounder TAC of 757 mt (a combined TAC for CA I and CA II), and a Southern New England yellowtail flounder TAC of 50 mt for NLCA. Once these yellowtail flounder TACs are projected to be reached, scallop fishery access to the respective closed areas will be terminated. The yellowtail flounder TAC is estimated using the information obtained from observed trips in the Exemption Program. One percent from each yellowtail flounder TAC is set aside to account for yellowtail flounder incidental catch that may occur on vessels conducting sea scallop research activities. This will allow sea scallop research activities to continue, should

the Exemption Program be terminated due to the harvest of the overall yellowtail flounder TAC.

This action expands upon the mechanism in the 1999 Georges Bank Sea Scallop Exemption Program to conduct sea scallop research utilizing the TAC set aside for this purpose by adopting a more flexible design to provide applicants more options in conducting their projects. For example, this action will allow sea scallop research activities and commercial trips to be conducted separately, rather than on the same trip as implemented under the 1999 Georges Bank Sea Scallop Exemption Program. In addition, this action requires that specific elements be included in proposals submitted in response to the Request for Proposal and a report of the project results submitted to the Council and NMFS. Successful applicants will receive grant awards to help defray the costs of the sea scallop research. Grant awards will be made consistent with Department of Commerce grant policy and procedures. Amounts over the trip limits for sea scallop meats to be allocated for defraying project costs shall be limited by area up to 30 mt for CA II, 25 mt for the NLCA, and 32 mt for CA I.

All limited access scallop vessels, including vessels that hold a scallop "Confirmation of Permit History," are eligible to fish for the sea scallop TAC specified for each Exemption Area. Full-time and part-time scallop vessels are allowed up to three CA II trips, two CA I trips, and one NLCA trip. Vessels permitted in the Occasional permit category are allocated only one trip in the area of their choice. All scallop vessels are allowed to possess up to 10,000 lb (4,356.0 kg) of scallop meats per trip. Note that the 10,000 lb (4,356.0 kg) of meats per trip is a possession limit, rather than just a landing limit, to help ensure the enforceability of this measure.

All scallop vessels fishing in the Exemption Program must have installed on board an operational Vessel Monitoring System (VMS) unit that meets the minimum performance criteria as specified in the regulations (Occasional permitted vessels are the only limited access scallop vessels not currently required to have a VMS.). Scallop vessels planning to fish in an Exemption Area must so declare by notifying the Administrator, Northeast Region, NMFS (Regional Administrator), through the VMS. For each trip declared, a minimum of 10 DAS will automatically be deducted.

Each vessel operator is required to inform NMFS of his/her intention to fish in the Exemption Areas at least 15

days prior to the opening of each Exemption Area season through the VMS e-mail system to facilitate placement of observers. This, along with the following information, must be reported at least 15 days prior to the opening of each Exemption Area season: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for the Exemption Area in question. In addition, vessels must provide notice to NMFS as to the time and port of departure at least 5 working days prior to the beginning of any trip on which it declares into the Exemption Program. Vessels will be provided additional information by mail regarding all notification requirements.

Because of the late publication of this final rule implementing the 15-day advance notification requirement, there is insufficient time to provide for the 15-day advance notification for Closed Area II, which is scheduled to reopen on June 15th. Therefore, NMFS is waiving the 15-day advance notification for Closed Area II, only. NMFS requests that vessel operators intending to fish in Closed Area II provide notification to NMFS as soon as possible.

Each vessel participating in this Exemption Program is required to report information on a daily basis through the VMS. On all trips to an Exemption Area, vessels must report their daily pounds (kg) of scallop meats kept and the Fishing Vessel Trip Report page number corresponding to the respective Exemption Area trip. In addition, vessels on observed trips must provide a separate report of the daily pounds (kg) of scallop meats kept and the pounds (kg) of yellowtail flounder caught on tows that were observed.

Measures are included to improve the enforceability of this program. One measure is an increase in the VMS polling frequency. For the duration of the Exemption Program implemented by this action, all limited access scallop vessels equipped with a VMS unit will be polled twice per hour, regardless of whether the vessel is enrolled in the Exemption Program. Based on the increase in polling, the Council recommended and NMFS approved a decision to eliminate the buffer zone that was put into place last year. In addition, the openings of the closed areas will be sequential rather than concurrent. The seasonal openings for this year's Exemption Areas are as follows: June 15 through August 14 for CA II; August 15 through September 30 for the NLCA; and October 1 through December 31, 2000, for CA I.

After taking into account data on the number of eligible vessels participating

and the total number of trips taken, the Regional Administrator may adjust the sea scallop possession limit for the NLCA and/or the CA I Exemption Areas during January 2001 for full-time and part-time limited access sea scallop vessels and/or allocate one or more additional trips, if a sufficient amount of the sea scallop target TAC and yellowtail flounder TAC remains to warrant such an adjustment or allocation, given the likelihood of exceeding the sea scallop TAC. Occasional permitted vessels would not be allocated an additional trip.

At the discretion of the Regional Administrator, scallop vessels may be allocated an additional amount of sea scallops, not to exceed a cumulative total of 60 mt in CA II, 64 mt in CA I, and 50 mt in the NLCA, respectively, for each trip on which an observer is taken, to help fund the cost of observers. The vessel owner will be responsible for paying for the cost of the observer, regardless of whether any scallops are caught on the trip.

This action also increases the regulated multispecies incidental catch allowance from 300 lb (136.1 kg) to 1,000 lb (453.6 kg) per trip for scallop vessels when fishing under the Exemption Program and authorizes the Regional Administrator to make in-season adjustments, if necessary, to reduce regulatory discards. Because vessels are expected to catch more groundfish (especially yellowtail flounder) in the Exemption Areas than outside those areas, increasing the allowance of regulated species will help reduce discards. In addition, vessels that have an observer on board will be allowed to retain all regulated species caught, provided the fish caught in excess of the possession limit are donated to a bonafide charity.

Vessels that have declared a trip under the Exemption Program are prohibited from possessing more than 50 U.S. bushels (400 lb (181.4 kg) of meats) of shell stock when outside of the designated Exemption Area specified in this framework. This 400-lb (181.4-kg) scallop meat limit for shell stock is considered part of the 10,000-lb (4,536.0-kg) meat weight possession limit. A limit on the amount of sea scallops landed in the shell is a necessary enforcement tool for purposes of monitoring the 10,000-lb (4,536.0-kg) meat weight possession limit requirement. Allowing vessels to retain a relatively minor amount of shell stock will help satisfy a market for large, live scallops, yet not compromise the enforceability of the possession limit.

All scallop vessels, including those currently fishing with nets, that are

fishing under the Exemption Program, must use scallop dredge gear that conforms to the current sea scallop dredge vessel gear restrictions specified in § 648.51, with the exception of the twine top mesh size restrictions. For vessels fishing in the Exemption Program, twine tops must have a minimum mesh size of 10-inch (25.40-cm) square or diamond mesh. The purpose of increasing the minimum twine top mesh size measurement from 8 inches (20.32 cm) outside the closed areas to 10 inches (25.40 cm) inside the closed areas is to reduce bycatch of groundfish and other finfish. Recent research demonstrates that the 10 inch mesh size may significantly reduce bycatch of certain species, especially flatfish species.

In response to safety concerns raised by industry, this final rule also implements a mechanism for the modification to the current stowage provision for dredge gear vessels and will allow the Regional Administrator to authorize other methods of gear stowage. This modification allows scallop dredge gear to be stowed in a safer manner while not compromising enforcement. This provision will remain in place beyond the closure of the Exemption Program. In addition, gear stowage provisions previously contained in §§ 648.57 introductory paragraphs (a) and (b), 648.80(a)(2)(iii), (b)(2)(iii), (b)(6)(i)(C), and (b)(9)(i)(E), 648.81(d) and the removal of paragraph (e), 648.82(k)(1)(iv)(A), 648.86(b)(3), (b)(4), (d)(1)(i), (d)(1)(ii), and (d)(1)(iii), 648.87 introductory text to paragraphs (a) and (b), 648.89(a), 648.91(c)(2)(ii), and § 648.94(e) have been consolidated and are now contained in § 648.23.

The Northeast multispecies and monkfish regulations contain a provision that restricts vessels that held a Confirmation of Permit History for the entire fishing year preceding the carry-over year, from carrying over unused DAS from one year to the next. However, NMFS inadvertently omitted this restriction in the end-of-the-year DAS carry-over provision. This final rule corrects and clarifies the end-of-the-year DAS carry-over provision for vessels participating in the limited access scallop fishery to make it consistent with the DAS carry-over provisions contained in the Northeast multispecies and monkfish fisheries.

Finally, vessels fishing under the Exemption Program are prohibited from off loading their scallop catch at more than one location. This measure will help in monitoring the TAC, as well as aid enforcement in tracking landings and in enforcing the trip limit.

**Disapproved Measure**

The framework document for this action proposes to allow General Category permitted vessels to fish for scallops in portions of the NLCA and CA I. The General Category fleet would have been allocated 5 percent of the total scallop TAC and would have been authorized to retain no more than 400 lb (174.2 kg) of scallop meats per Exemption Program trip. Retention of regulated multispecies would have been prohibited. In addition, General Category vessels would have been required to obtain and operate a VMS unit and would have been restricted to one dredge no larger than 10.5 ft (3.2 m) with 10-inch (25.40-cm) mesh twine top.

Because this measure would create significant enforcement and administrative concerns, it violates section 303(a)(1)(A) of the Magnuson-Stevens Act and national standard 7. National standard 7 requires that

conservation and management measures minimize costs where practicable. The General Category permit, an open access permit, was originally developed by the Council to allow vessels not qualified for a limited access scallop permit to retain an incidental catch of scallops. As an open access permit, there is no limit on the number of vessels that could obtain this permit, thus creating an enforcement burden due to the potential of greatly expanding the number of boats that may fish in this program. In addition, monitoring of a separate TAC for these vessels would be extremely difficult. Therefore, NMFS disapproved this measure.

**Abbreviated Rulemaking**

NMFS is making these revisions to the regulations under the framework abbreviated rulemaking procedure codified at 50 CFR part 648, subpart F. This procedure requires the Council, when making specifically allowed adjustments to the FMP, to develop and

analyze the actions over the span of at least two Council meetings. The Council must provide the public with advance notice of both the proposals and the analysis, and an opportunity to comment on them prior to and at a second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Regional Administrator that the measures be published as a final rule if certain conditions are met. NMFS may publish the measures as a final rule, or as a proposed rule if additional public comment is needed.

The public was provided the opportunity to express comments on allowing access by scallop vessels into the multispecies closed areas at numerous meetings. The following list includes all meetings, including plan development team meetings, at which this action was on the agenda, discussed, and public comment was heard:

Date	Meeting
1999 .....	
May 20 .....	Invertebrate Assessment Sub-Committee
June 2 .....	Scallop Program Development Team (PDT)
June 21-25 .....	Stock Assessment Review Committee
July 7-8 .....	Scallop PDT
July 29-30 .....	Scallop PDT
August 24 .....	Scallop PDT
September 9 .....	Scallop Advisory Panel
September 16-17 .....	Scientific and Statistical Committee
September 10 .....	Scallop Oversight Committee
September 22 .....	Council
September 28-29 .....	Scallop Oversight Committee
October 6-7 .....	Scallop PDT
October 6 .....	Habitat Technical Team
October 18 .....	Scallop PDT
October 19 .....	Habitat Committee
November 8 .....	Research Steering Committee
November 10 .....	Multispecies Oversight Committee
November 12 .....	Scallop Oversight Committee
November 15 .....	Gear Conflict Committee
November 15 .....	Enforcement Committee
November 17 .....	Council
December 7-8 .....	Multispecies PDT
December 13 .....	Multispecies Oversight Committee
2000 .....	
January 10-11 .....	Scallop Oversight Committee
January 14 .....	Multispecies Oversight Committee
January 20 .....	Council

Documents summarizing the Council's proposed action, and the analysis of biological and economic impacts of this and alternative actions, were available for public review one week prior to the final Council meeting, as is required under the framework adjustment process. Written and oral comments were accepted up to and during that meeting.

**Comments and Responses**

*Comment 1:* Several commenters stated that this action should remain conservation neutral, i.e., there should be no net increase in fishing mortality rate (F) for sea scallops.

*Response:* Conservation neutrality means that F for the sea scallop resource should not rise above the annual F set by Amendment 7 to the Atlantic Sea

Scallop FMP. The framework analyses demonstrate that total F will not increase, except in the unlikely event that a large portion of inactive vessels, including vessels that hold a Confirmation of Permit History, begin fishing.

*Comment 2:* Several comments were received that viewed the reopening of the closed areas as shortsighted, in that

several important fishery resources will be negatively impacted by this action.

*Response:* Although no specific fishery resource was identified by the commenter, NMFS has concluded that the action does not negatively impact any other resources. The EA concludes that there will be no net increase in F for scallops. One of the more critical groundfish stocks, Georges Bank yellowtail flounder, has recovered considerably from its once highly depleted condition. Still, continued rebuilding of the Georges Bank yellowtail flounder stock is necessary and there is a high level of concern over the low stock size of the Cape Cod and Southern New England yellowtail flounder stocks. This action takes the necessary steps to protect these valuable resources through implementation of TAC levels, which, when reached, will terminate the Exemption Program. The action also promotes fishing effort reduction in areas where scallops are depleted, and increases meat yield. The selection of the areas to be reopened under the Exemption Program addresses habitat concerns by keeping some of the more complex bottom areas within the groundfish closed areas closed. Additionally, this action promotes rebuilding of the scallop resource by reducing effort on small, fast-growing scallops.

*Comment 3:* Several commenters noted that the closed areas were closed to scallop dredge gear partly because this gear disrupts spawning activity of groundfish.

*Response:* This action restricts access by scallop dredge vessels into the closed areas to a time when groundfish spawning activity is considered to be minimal (i.e., June 15 through August 14 for CA II; August 15 through September 30 for the NLCA; and October 1 through December 31, 2000, for CA I).

*Comment 4:* Some commenters stated that any economic gain derived from scallop fishing in the groundfish closed areas will be offset or lost by the setback to cod, yellowtail flounder, and other recovering species.

*Response:* This action sets yellowtail flounder TAC levels for Exemption Area fisheries, which, when reached, trigger the termination of the respective Exemption Area fisheries. The yellowtail flounder TAC levels will ensure that the Exemption Area fisheries do not cause a setback to that species' rebuilding schedule. Cod and haddock do not appear to be vulnerable in any significant way to scallop fishing with dredges within the Exemption Areas during the specified fishing seasons. Furthermore, the minimum

mesh twine-top size and the expected effort transfers from areas now open to scallop fishing will limit the impacts on other species. Suspending the fisheries when certain thresholds are met and requiring more restrictive fishing gear when fishing in the Exemption Areas will mitigate the negative impacts on all species, particularly yellowtail flounder, even though an insignificant net increase in mortality is expected.

*Comment 5:* Because scallop fishers harvested significant amounts of yellowtail flounder in the 1999 Georges Bank Sea Scallop Exemption Program, as evidenced by the termination of the fishery when the yellowtail flounder TAC was taken, several commenters stated that the Council's analysis of the likely significant impact on overfished groundfish stocks is insufficient.

*Response:* The yellowtail flounder TAC levels are designed to ensure adequate protection of the yellowtail flounder stocks. Provided each respective Exemption Area fishery is terminated when its TAC level is reached, as required by this action, the stocks should receive adequate protection.

*Comment 6:* Opening the closed areas to scalloping and maintaining scallopers' DAS at current levels will undercut current and proposed protections afforded EFH in New England waters. In its Omnibus EFH Amendment (64 FR 19503, April 21, 1999), the Council noted that the year-round groundfish closed areas and proposed reductions in scallop DAS protect and conserve EFH. The Council relied on these measures in the Omnibus EFH Amendment to satisfy its duty under the Magnuson-Stevens Act to minimize adverse effects of fishing on EFH.

*Response:* This action re-opens only portions of the closed areas where habitat is less likely to be adversely impacted by scallop gear. The benthos of the re-opened portion of CA II primarily consists of sand and shell in a high energy environment. The habitat in this area is not as complex and diverse as the habitats to the north, which will remain closed to scallop fishing. The reopened portion of CA I, based on the information available to the Council, is believed to be comprised primarily of sand, with no known areas of hard bottom. This type of habitat is less sensitive to the impacts associated with scallop fishing than the gravel and hard-bottom habitats south of the area that will not be opened to scallop fishing. The re-opened portion of the NLCA, based on the information available to the Council, is believed to

be primarily comprised of relatively flat sand.

Although this action will increase habitat impacts in the areas to be opened for scallop fishing, the compensating effect will be to reduce scallop fishing effort in areas that are now open. The action is expected to reduce overall scallop fishing time by 22 percent. Some of the areas currently open to scallop fishing have significantly more complex and diverse habitat than that in the portions of the groundfish closed areas to be reopened to scallop fishing. The biological impacts of this trade-off are discussed in the EA and, on balance, this action was determined to be consistent with EFH objectives and to minimize the impacts of fishing on EFH to the extent practicable.

Additionally, NMFS is recommending to the Council who will conduct the initial review of the research proposals that a portion of the scallop TAC set aside for sea scallop research be considered to fund experiments to help identify more selective fishing gears or gears that have less habitat impacts.

*Comment 7:* The absence of habitat data from research conducted during last year's opening of CA II limited the Council in properly evaluating the environmental impacts of this proposed re-opening. Therefore, the Council continues to be unable to answer fundamental questions necessary to assess properly the EFH and environmental impacts of the last year's partial opening of CA II.

*Response:* Under National Standard 2 of the Magnuson-Stevens Act, the Council and NMFS are required to use the best scientific information available. During last year's CA II opening, additional cooperative research was conducted by NMFS and industry in CA I, CA II, and the NLCA. From the research conducted, information was gained on the potential habitat effects of the use of scallop dredge gear. However, since this action was developed at the same time the habitat research was being conducted, and a substantial amount of time and resources were needed to adequately analyze the data, the data analysis associated with the habitat studies was not completed in time to be incorporated into this action. The Council's Habitat Committee did, however, use the best available scientific information available in developing the action within the time period for developing the action. The Habitat Committee utilized sidescan sonar information to develop the Exemption Area alternatives chosen by the Council. The Council intends to use the habitat data generated from last

year's opening, along with any new habitat information, when developing a more permanent rotational scallop fishing strategy in Amendment 10 to the Atlantic Sea Scallop FMP.

*Comment 8:* If the Council allows scalloping fishing in these areas, significant environmental impacts can be expected, not just proximate to, but actually in "ecologically critical areas." In fact, the Council has already identified particularly ecologically important areas within EFH located in CA II and designated such areas as a habitat area of particular concern (HAPC) for juvenile cod.

*Response:* The term "ecologically critical areas" is not defined, nor does it have any meaning analogous to "HAPC" or "EFH." There is no reference to this term in the Council's Omnibus EFH Amendment, as implied by the comment. The HAPC in CA II is not near the area where scalloping will be allowed.

*Comment 9:* Some commenters expressed concern regarding the destruction to the ocean floor that could be caused by scallop dredge vessels in the closed areas. In particular, scallop dredging has a significant effect on gravel and hard bottom habitats.

*Response:* See the response to Comment 6.

*Comment 10:* Opening the closed areas and failing to reduce scallop DAS without additional scallop closures or measures with equal habitat benefits increases fishing effects on EFH, an environmental impact that must be analyzed pursuant to National Environmental Policy Act and the EFH Omnibus Amendment. The Council has not sufficiently analyzed the likely significant impact on EFH.

*Response:* These impacts are analyzed, to the extent possible, in the EA and, pursuant to the EFH interim final rule (62 FR 66531, December 19, 1997), in the EFH Assessment. The EA estimates a 22-percent reduction in bottom time needed to harvest the same amount of sea scallops within the current closed areas as compared to no access to closed areas. See also the response to Comment 6.

*Comment 11:* Little is known about the habitats within the portions of CA I and the NLCA scheduled to be re-opened. Limited sampling creates a real risk that hard-bottom habitats, not identified, exist in these areas. Little is known about the benthic and pelagic ecosystems that rely on these habitats and how they are affected indirectly by scallop dredging. The Council should have considered postponing scallop access to the closed areas until it can

collect and analyze reliable data and accurate geological surveys.

*Response:* The Council based this action on the best scientific information available, as required by National Standard 2 of the Magnuson-Stevens Act. All relevant sources of scientific information were used in the Council's deliberations, including a review of available sidescan sonar information reflecting bottom types in CA I. Other considerations and determinations were made as discussed in the response to Comment 6.

*Comment 12:* The EA must consider reasonable alternatives to the proposed action, including the no-action alternative, that have the potential to mitigate the potential negative impacts of the action. At a minimum, the Council and NMFS should consider the no-action alternative, allowing scallop fishers to fish only in certain areas, rather than in all closed areas; for example, the Council should have considered allowing scallop fishing only in areas where sufficient data exist to demonstrate that they contain EFH that is less severely affected by scallop dredging (such as soft sediments and high energy environments).

*Response:* The Council did consider all these alternatives. In effect, it chose not to open all the areas, and to open areas with habitat less severely affected by scallop dredging by limiting the exempted areas within the overall closed areas.

*Comment 13:* The Council should have considered requiring slower towing speeds and full stops before hauling the dredge of the bottom to minimize bycatch of groundfish and other species.

*Response:* During the course of last year's CA II opening, as part of a cooperative research project, tow speed, haul-back speed, and tow scope were studied. According to industry advisors who participated in this research, preliminary tests indicated that those measures would be ineffective. The measures also would be unenforceable. However, industry did employ voluntary fishing practices in last year's Exemption Program that reduced its yellowtail flounder catch and is expected to repeat this practice again this year.

*Comment 14:* The Council should have considered requiring at least 25-percent observer coverage on scallop vessels fishing under the Exemption Program.

*Response:* The Council did adopt a goal of 25-percent observer coverage for each area, to be funded by the participants through a TAC set aside. Both the Council and NMFS agree that

this program should have the maximum observer coverage practicable. However, due to the high costs of observer programs, the additional administrative burden that would be placed on NMFS, and the uncertainty of NMFS' ability to provide 25-percent observer coverage, the level of observer coverage was expressed as a goal, rather than as a requirement.

*Comment 15:* Many industry participants suggested that the Council should only consider access to the closed areas in the context of a comprehensive rotational area management strategy.

*Response:* The intent of this action is to provide a continuation and an expansion of a short-term strategy to allow scallop dredge vessels access to multispecies closed areas. Amendment 10 to the Atlantic Sea Scallop FMP, which is currently under development by the Council, will recommend a long-term sea scallop rotational harvest strategy. The scallop fisheries in the re-opened areas will provide information necessary to make this strategy possible.

Furthermore, this action meets the goals of conservation neutrality and of increasing yield per recruit in terms of managing scallops for any future area rotation strategy and therefore is fully consistent with the objectives of the Atlantic Sea Scallop FMP. To delay this action until the implementation of Amendment 10 to the Atlantic Sea Scallop FMP would deprive the public of substantial economic benefits: An estimated \$22 million in consumer surplus and an estimated \$26 million in producer surplus.

*Comment 16:* General category vessels should be allowed to retain more than the 400-lb (181.4-kg) scallop possession limit. The limit makes it economically unfeasible for them to fish in the closed areas, and it is unfair that limited access vessels have a much higher, 10,000-lb (4,356-kg) possession limit.

*Response:* NMFS has disapproved the provision that would have allowed General Category vessels access to the closed areas because it would create a significant enforcement and administrative burden and thus violate National Standard 7.

In deliberating about whether to increase the possession limit for General Category permit holders, the Council considered the original reason for establishing a General Category permit and 400-lb (181.4-kg) scallop possession limit. This permit was designed to meet the needs of fishermen who catch scallops in small-scale fisheries and/or in combination with other fisheries. For this reason, General Category permit holders are exempt from the DAS

restrictions to which limited access scallop vessels are subject.

*Comment 17:* Some industry members commented that the sea scallop management measures proposed for the Exemption Program are too restrictive and that fishing effort, consequently, will remain in the open areas.

*Response:* The Council has accounted for the benefits, costs, and risks associated with the closed area fisheries in this action. The EA shows that it would be more economical for scallopers to fish in the Exemption Program than in the existing open areas, due to lower fishing costs and higher prices for large scallops.

*Comment 18:* Several industry members commented that the yellowtail flounder TAC will likely force an early closure of the Exempted Area fisheries.

*Response:* An experimental fishery conducted in CA I and the NLCA in 1999 showed very low yellowtail flounder catches in the scallop fishery. Using these rates, the analysis indicated that a closure in the NLCA fishery due to the yellowtail flounder TAC being exceeded is not likely. The combined CA I and CA II yellowtail flounder TAC is about 80 percent higher than the limit in 1999 due to improved yellowtail flounder resource conditions. Additionally, this action includes a minimum twine-top mesh size requirement for scallop dredge vessels that declare into the Exemption Program, which is expected to reduce incidental catch of yellowtail flounder substantially.

*Comment 19:* Scallop industry members commented that the groundfish closure areas comprise about one-half of the Georges Bank scallop grounds, by area, and that scallop vessels should be able to regain access to these areas.

*Response:* Under current conditions, the biomass within the closed areas on Georges Bank includes much more than one-half of the scallop biomass of the Georges Bank stock. This imbalance has arisen mainly due to the combination of very high fishing mortality on scallops within areas that have remained open to scallop fishing, while closed areas designed primarily to protect groundfish also protected sea scallops because of the prohibition on use of dredges.

The Council is considering under Amendment 10 to the Atlantic Sea Scallop FMP the extent to which scallopers should be allowed into the closed areas if it does not jeopardize the rebuilding schedule for groundfish or scallops and does not cause substantial adverse impacts on habitat. This action allows access to a portion of the closed

areas under a program that meets these conditions.

*Comment 20:* Industry commented that gear research for the purposes of reducing bycatch should be encouraged and suggested that a portion of the TAC be used to fund this.

*Response:* This action sets aside 1 percent of the scallop target TAC (87 mt) as a means to fund projects to examine new gears and/or gear modifications that would reduce incidental catch/bycatch by scallop dredge vessels.

*Comment 21:* Due to the potential for gear conflicts, lobster industry members requested that the reopened areas be modified to exclude areas with concentrations of lobster pot gear.

*Response:* Since their inception in 1994, the closed areas on Georges Bank and Nantucket Shoals have become viewed as prime lobster fishing grounds. The closed areas provide a place for lobster fishing with little danger of losing gear to mobile fishing gears. In the spring of 1999, the Council's Gear Conflict Committee held a meeting to identify the areas and time periods most valuable to lobster trap fishermen in the NLCA and CA II. The Committee did not ask for industry input on CA I because at that time, the opening of CA I was not being contemplated by the Council. However, during the development of this action, the Council consulted with the Atlantic Offshore Lobstermen's Association (AOLA) concerning lobster activity in CA I. As was the case with the NLCA and CA II, the boundaries within CA I were selected by the Council to avoid the highest concentration of lobster gear in each of the proposed closed area.

*Comment 22:* Concern was expressed that the Exemption Program would encourage a "derby-style" fishery, especially with an inseason adjustment.

*Response:* This was not a significant problem in the 1999 Georges Bank Sea Scallop Exemption Program and is less likely to be a problem in fishing year 2000 because of the limited period (January 2001) and area (CA I and the NLCA) for which additional trips may be authorized. However, if a derby-style fishery does ensue, the scallop possession limit to some extent addresses this concern.

*Comment 23:* The high biomass of scallops in the groundfish closed areas represents an important opportunity to learn how to manage an essentially rebuilt stock for optimum yield, as required by National Standard 1 under the Magnuson-Stevens Act.

*Response:* Additional data collected during the Exemption Program could be an important source of information in developing an area rotation management

strategy, contemplated for Amendment 10 to the Atlantic Sea Scallop FMP.

*Comment 24:* Some commenters felt that early access to the CA II is necessary to avoid adverse fall weather and corresponding safety issues, as well as to improve scallop yield.

*Response:* This action allows access for scallop fishing in Closed Area II starting June 15, 2000. Although full-time scallop vessels generally fish year-round, part-time and occasional vessels, which tend to be smaller and less seaworthy, would benefit from this early opening since it allows them to take all of their trips during the summer months when weather is usually more favorable and scallop meat yields are high. Smaller vessels also would have access to CA I and the NLCA, which are much closer to shore, later in the year when weather conditions may be more of a concern.

*Comment 25:* Some individuals noted that illegal transfers of scallops caught in CA II reportedly occurred with regularity.

*Response:* The enforceability of this action is strengthened by the increase in VMS polling frequency to twice per hour for all scallop vessels fishing under a scallop DAS, whether or not they participate in the Exemption Program, and by staggering access to the closed areas so that only one area is open at one time.

*Comment 26:* Area closure boundaries should be straight north-south and east-west, using latitude and longitude, and the areas should be as large as possible.

*Response:* The Council carefully considered this. However, habitat, bycatch, and potential gear conflict concerns constrained the configuration of the Exemption Area boundaries.

### Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that, because public meetings held by the Council to discuss the management measures implemented by this final rule provided adequate prior notice and opportunity for public comment, further notice and opportunity to comment on this final rule is unnecessary. Comments were received from members of the public and are responded to in the preamble of this final rule. Also, because the technical amendments to this final rule merely remove outdated regulatory text and add cross-references to the gear stowage requirements that were revised by the Regional Administrator due to safety concerns expressed by industry, they do not effect a substantive change to the existing regulations; thus, prior notice and opportunity for public comment are

unnecessary. Therefore, the AA, under 5 U.S.C. 553(b)(B), finds good cause exists to waive prior notice and additional opportunity for public comment.

It is unnecessary and contrary to the public interest to delay for 30 days the effective date provisions for a possession limit of up to 10,000 lb (4,356.0 kg) of scallop meats per trip; the maximum number of trips for each area; an automatic minimum deduction of 10 DAS for each trip; a minimum mesh twine-top of 10 inches; a yellowtail flounder TAC of 757 metric tons (MT) for CA I and CA II combined and 50 MT for the NLCA; and an increase in the regulated species possession limit from 300 lb (136.1 kg) to 1,000 lb (435.6 kg) per trip among other measures. On March 3, 1999, NMFS implemented Amendment 7 to the Atlantic Sea Scallop FMP (64 FR 14835). This amendment, which addressed the new Sustainable Fisheries Act requirements, substantially reduced the level of fishing for scallops through the year 2008 by revising the current fishing effort reduction schedule. Although a less severe reduction was implemented in Framework Adjustment 12 to the Atlantic Sea Scallop FMP (65 FR 11478, March 3, 2000) for fishing year 2000, failure to allow scallop vessels access to Closed Area II on June 15, when finfish bycatch concerns would be mitigated to the largest extent possible, will increase costs to scallop vessels fishing in currently open areas where scallop biomass is low and where the stock is dominated by small scallops. Furthermore, an earlier opening date will allow more time for smaller vessels to fish their allotted trips during good weather. For these reasons, the AA finds, under 5 U.S.C. 553(d)(3), good cause not to delay for 30 days the effective date of these provisions.

Because the revised Sea Scallop Exemption Program limits in § 648.58 and related prohibitions in § 648.14(a)(38), (a)(40), (a)(90) and (h)(27), and the revisions to §§ 648.17(c), 648.51(b)(2)(i) and (b)(2)(ii), 648.52(c), and (b)(9)(i)(E), 648.81(a)(1), (b)(1), (c)(1), 648.86(a)(2)(iii), and 648.88(c) relieve restrictions, under 5 U.S.C. 553(d)(1) they are not subject to a 30-day delay in effectiveness.

Implementation of the "end of the year DAS carry-over" provision for vessels participating in the limited access scallop fishery contained in § 648.53(d) clarifies the intent of previously issued regulations to make the DAS carry-over provision for the scallop fishery consistent with those provisions contained in the Northeast multispecies and monkfish regulations.

This classification does not effect a substantive change in the management of the fishery; therefore, prior notice and opportunity for comment and delay in the effectiveness of § 648.53(d) are not required under 5 U.S.C. 553.

In addition, the implementation of the revised stowage provisions for dredge gear vessels will allow scallop dredge gear to be stowed in a safer manner while not compromising enforcement. These provisions are contained in § 648.23(b) and (b)(1) through (b)(4) and related provisions containing cross references to the stowage provisions contained in §§ 648.57 introductory paragraphs (a) and (b), 648.80(a)(2)(iii), (b)(2)(iii), (b)(6)(i)(C), and (b)(9)(i)(E), 648.81(d) and the removal of paragraph (e), 648.82(k)(1)(iv)(A), 648.86(b)(3), (b)(4), (d)(1)(i), (d)(1)(ii), and (d)(1)(iii), 648.87 introductory text to paragraphs (a) and (b), 648.89(a), 648.91(c)(2)(ii), and 648.94(e). Because this revised stowage provisions relieve restrictions and will remain in place beyond the closure of the Sea Scallop Exemption Program, under section 553(d)(1) they are not subject to a 30-day delay in effectiveness.

Because a general notice of proposed rulemaking is not required under 5 U.S.C. 533, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. While a regulatory flexibility analysis is not required and none has been prepared, the economic impacts on affected fishers and alternatives to mitigate such impacts were considered by the Council and NMFS. The primary intent of this action is to allow scallop vessels an opportunity to remain economically viable, while ensuring that the fishing mortality for the entire sea scallop stock does not exceed the F target of 0.34 in the FMP for fishing year 2000. A copy of the analysis for Frameworks 13/34 may be obtained from the Council (see **ADDRESSES**).

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

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act. These requirements have been approved by

OMB. The OMB Control numbers and estimated response times are as follow:

1. Reporting of intention to fish in the Exemption Program through the VMS e-mail messaging system (§ 648.58(c)(3)(i)) approved under 0648-0416 at 2 minutes/response.

2. Notice requirements for observer deployment (§ 648.58(c)(3)(ii)) approved under 0648-0416 at 2 minutes/response.

3. Daily reporting of sea scallops kept and Fishing Vessel Trip Report page number and, for observed trips, sea scallops kept, Fishing Vessel Trip Report page number and yellowtail flounder caught on observed tows, through the VMS e-mail messaging system for vessels fishing in the Scallop Exemption Program (§ 648.58(c)(10)) approved under 0648-0416 at 10 minutes/response.

4. VMS polling frequency (§ 648.58(h)) approved under 0648-0307 and 0648-0416 at 30 seconds/response.

5. Installation of a VMS unit on board the vessel (§ 648.10(b)) approved under 0648-0307 and 0648-0416 at 1 hour/response.

6. Declaration into the Exemption Program through the VMS prior to leaving the dock (§ 648.58(c)(3)(iii)) approved under 0648-0202 at 2 minutes/response.

7. Transit notifications (§ 648.86(b)(3)) approved under 0648-0202 at 1 minute/response.

The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 14, 2000.

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, 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 (a)(38), (a)(40), (a)(90) and (h)(27) are revised to read as follows:

**§ 648.14 Prohibitions.**

(a) \* \* \*

(38) Enter or be in the area described in § 648.81(a)(1) on a fishing vessel, except as provided by § 648.58, during the time and in the portion of Closed Area I specified in § 648.58, or § 648.81(a)(2) and (d).

\* \* \* \* \*

(40) Enter or be in the area described in § 648.81(c)(1) on a fishing vessel, except as provided by § 648.58, during the time and in the portion of the Nantucket Lightship Closed Area specified in § 648.58, or § 648.81(c)(2) and (d).

\* \* \* \* \*

(90) Use, set, haul back, fish with, possess on board a vessel, unless stowed in accordance with § 648.23(b), or fail to remove, sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)), in the areas and for the times specified in § 648.87(a) and (b), except as provided in §§ 648.81(g)(2)(ii) and 648.87(a) and (b), or unless otherwise authorized in writing by the Regional Administrator.

\* \* \* \* \*

(h) \* \* \*

(27) Enter or be in the areas described in § 648.58(b)(1), (b)(2), or (b)(3) when fishing under the Sea Scallop Exemption Program specified in § 648.58, with a net, net material, or any other material on the top half of the dredge with mesh size smaller than that specified in § 648.58(c)(7).

\* \* \* \* \*

3. In § 648.17, paragraph (c) is revised to read as follows:

**§ 648.17 Exemptions for vessels fishing in the NAFO Regulatory Area for Multispecies vessels.**

\* \* \* \* \*

(c) When transiting the EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in § 648.23(b); and

\* \* \* \* \*

4. In § 648.23, paragraph (b) introductory text, and paragraphs (b) (1) through (b) (4) are revised to read as follows:

**§ 648.23 Gear restrictions.**

\* \* \* \* \*

(b) Definition of “not available for immediate use.” Gear that is shown not to have been in recent use and that is stowed in conformance with one of the following methods is considered to be not available for immediate use:

(1) *Nets.* (i) *Below deck stowage.* (A) It is stored below the main working

deck from which it is deployed and retrieved;

(B) The towing wires, including the leg wires, are detached from the net; and  
(C) It is fan-folded (flaked) and bound around its circumference.

(ii) *On-deck stowage.* (A) It is fan-folded (flaked) and bound around its circumference;

(B) It is securely fastened to the deck or rail of the vessel; and

(C) The towing wires, including the leg wires, are detached from the net.

(iii) *On-reel stowage.* (A) It is on a reel, its entire surface is covered with canvas or other similar material, and the canvas or other material is securely bound;

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

(C) The codend is removed and stored below deck.

(iv) *On-reel stowage for vessels transiting the Gulf of Maine Rolling Closure Areas, the Georges Bank Seasonal Area Closure, and the Conditional Gulf of Maine Rolling Closure Area.* (A) The net is on a reel, its entire surface is covered with canvas or other similar material, and the canvas or other material is securely bound;

(B) The towing wires are detached from the doors; and

(C) No containment rope, codend tripping device, or other mechanism to close off the codend is attached to the codend.

(2) *Scallop dredges.* The towing wire is detached from the scallop dredge, the towing wire is completely reeled up onto the winch, the dredge is secured and the dredge or the winch is covered so that it is rendered unusable for fishing.

(3) *Hook gear (other than pelagic).* All anchors and buoys are secured and all hook gear, including jigging machines, is covered.

(4) *Sink gillnet gear.* All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck or rail, and all buoys larger than 6 inches (15.24 cm) in diameter, high flyers, and anchors are disconnected.

\* \* \* \* \*

5. In § 648.51, paragraphs (b)(2)(i) and (b)(2)(ii) are revised to read as follows:

**§ 648.51 Gear and crew restrictions.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \* (i) For vessels not fishing under the scallop DAS program, the mesh size of a net, net material, or any other material on the top of a scallop dredge in use by or in possession of such vessels shall not be smaller than

5.5 inches (13.97 cm) square or diamond mesh.

(ii) Unless otherwise restricted under § 648.58, the mesh size of a net, net material, or any other material on the top of a scallop dredge possessed or used by vessels fishing under a scallop DAS shall not be smaller than 8-inch (20.32-cm) square or diamond mesh.

\* \* \* \* \*

6. In § 648.52, paragraph (c) is revised to read as follows:

**§ 648.52 Possession limits.**

\* \* \* \* \*

(c) Owners or operators of vessels with a limited access scallop permit that have declared into the Sea Scallop Exemption Program as described in § 648.58 are prohibited from possessing or landing per trip more than the sea scallop possession limit specified in § 648.58(c)(6).

7. In § 648.53, paragraph (d) is revised to read as follows:

**§ 648.53 DAS allocations.**

\* \* \* \* \*

(d) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(j) for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of February of any year may carry over a maximum of 10 DAS into the next year. DAS sanctioned vessels will be credited with unused DAS based on their DAS allocation minus total DAS sanctioned.

\* \* \* \* \*

8. In § 648.57, introductory paragraphs (a) and (b) are revised to read as follows:

**§ 648.57 Closed areas.**

(a) *Hudson Canyon South Closed Area.* Through March 1, 2001, no vessel may fish for, possess, or retain sea scallops from the area known as the Hudson Canyon South Closed Area or possess sea scallops in this closed area or transit this closed area unless all scallop dredge gear on board is properly stowed and not available for immediate use in accordance with the provisions of § 648.23(b). Vessels fishing in this closed area for species other than scallops must stow scallop dredge gear in accordance with the provisions of § 648.23(b). The Hudson Canyon South Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

\* \* \*

(b) *Virginia Beach Closed Area.* Through March 1, 2001, no vessel may

fish for, possess, or retain sea scallops from the area known as the Virginia Beach Closed Area or possess sea scallops in this closed area or transit this closed area unless all scallop dredge gear on board is properly stowed and not available for immediate use in accordance with the provisions of § 648.23(b). Vessels fishing in this closed area for species other than scallops must stow scallop dredge gear in accordance with the provisions of § 648.23(b). The Virginia Beach Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

\* \* \*

\* \* \* \* \*

9. Effective June 14, 2000, § 648.58(c)(3)(i) and (ii) are revised to read as follows:

**§ 648.58 Sea Scallop Exemption Program.**

\* \* \* \* \*

(c) \* \* \*

(3) *Declaration.* (i) The vessel must submit a report through the VMS e-mail messaging system at least 15 days prior to the opening of each Sea Scallop Exemption Area season, as specified in paragraphs (b)(1) through (b)(3) of this section, of its intention to fish in the respective Exemption Areas, along with the following information: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for the Sea Scallop Exemption Area in question.

(ii) In addition to the requirements described in paragraph (c)(3)(i) of this section, and for the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS, as to the time and port of departure at least 5 working days prior to the beginning of any trip on which it declares into the Sea Scallop Exemption Program.

\* \* \* \* \*

10. Effective June 15, 2000, § 648.58 is revised to read as follows:

**§ 648.58 Sea Scallop Exemption Program.**

(a) *Eligibility.* All scallop vessels issued a limited access scallop permit may fish in the Sea Scallop Exemption Areas, as described in paragraphs (b)(1) through (b)(3) of this section, for the times specified in paragraphs (b)(1) through (b)(3) of this section, when fishing under a scallop DAS, provided the vessel complies with the requirements of this section. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(b) *Sea Scallop Exemption Areas—(1) Closed Area II Sea Scallop Exemption Area.* During June 15, 2000, through August 14, 2000, eligible vessels may fish in the Closed Area II Sea Scallop Exemption Area, which is the area defined by straight lines connecting the following points in the order stated:

**CLOSED AREA II SEA SCALLOP EXEMPTION AREA**

Point	N. Lat.	W. Long.
CI11	41°00'	67°20'
CI12	41°00'	66°35.8'
G5	41°18.6'	66°24.8'(on U.S./Canada Maritime Boundary)
SC1	41°30'	66°34.8'(on U.S./Canada Maritime Boundary)
SC2	41°30'	67°20'
CI11	41°00'	67°20'

(2) *The Nantucket Lightship Sea Scallop Exemption Area.* During August 15, 2000, through September 30, 2000,

eligible vessels may fish in the Nantucket Lightship Sea Scallop Exemption Area, which is the area

defined by straight lines connecting the following points in the order stated:

**NANTUCKET LIGHTSHIP SEA SCALLOP EXEMPTION AREA**

Point	N. Lat.	W. Long.
G10	40°50'	69°00'
SC7	40°30'	69°00'
SC8	40°30'	69°14.5'
SC9	40°50'	69°29'
G10	40°50'	69°00'

(3) *The Closed Area I Sea Scallop Exemption Area.* During October 1, 2000, through December 31, 2000,

eligible vessels may fish in the Closed Area I Sea Scallop Exemption Area, which is the area defined by straight

lines connecting the following points in the order stated:

**CLOSED AREA I SEA SCALLOP EXEMPTION AREA**

Point	N. Lat.	W. Long.
SC3	41°04.5'	69°1.2'
SC4	41°09'	68°30'
CI4	41°30'	68°30'
SC5	41°30'	68°35'
SC6	41°08'	69°4.2'
SC3	41°04.5'	69°1.2'

(c) *Requirements.* To fish in the Sea Scallop Exemption Areas under the Sea Scallop Exemption Program an eligible vessel must comply with the following requirements:

(1) *Season.* The vessel may only fish in the Sea Scallop Exemption Areas under the Sea Scallop Exemption Program during the respective times and areas specified in paragraphs (b)(1) through (b)(3) of this section, unless otherwise specified by notification in the **Federal Register**.

(2) *VMS.* The vessel must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b) or as modified in § 648.9(a).

(3) *Declaration.* (i) The vessel must submit a report through the VMS e-mail messaging system at least 15 days prior to the opening of each Sea Scallop Exemption Area season, as specified in paragraphs (b)(1) through (b)(3) of this section, of its intention to fish in the respective Exemption Areas, along with the following information: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for the Sea Scallop Exemption Area in question.

(ii) In addition to the requirements described in paragraph (c)(3)(i) of this section, and for the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS, as to the time and port of departure at least 5 working days prior to the beginning of any trip on which it declares into the Sea Scallop Exemption Program.

(iii) On the day the vessel leaves port to fish under the Sea Scallop Exemption Program, the vessel owner or operator must declare into the Program through the VMS, in accordance with instructions to be provided by the Regional Administrator prior to leaving port.

(4) *Number of trips.* (i) *Full and part time vessels.* Unless otherwise specified by notification in the **Federal Register**, full and part time vessels will be restricted to the following number of trips depending on the Exemption Area fished:

(A) When fishing in the Closed Area II Sea Scallop Exemption Area, as defined in paragraph (b)(1) of this section, vessels are restricted to no more than three trips.

(B) When fishing in the Nantucket Lightship Sea Scallop Exemption Area, as defined in paragraph (b)(2) of this section, vessels are restricted to no more than one trip.

(C) When fishing in the Closed Area I Sea Scallop Exemption Area, as defined in paragraph (b)(3) of this

section, vessels are restricted to no more than two trips.

(ii) *Occasional scallop vessels.* Occasional vessels may only fish one trip under the Sea Scallop Exemption Program. This trip may be conducted in any one of the Sea Scallop Exemption Areas during the respective seasons, as described in paragraphs (b)(1) through (b)(3) of this section.

(5) *Area fished.* A vessel that has declared a trip into the Sea Scallop Exemption Program must not fish for, catch, or harvest scallops from outside of the specific Sea Scallop Exemption Area fished during that trip and must not enter or exit the specific Exemption Area fished more than once per trip.

(6) *Possession limits.* (i) Unless otherwise authorized by the Regional Administrator as specified in paragraph (e) of this section, a vessel declared into the Sea Scallop Exemption Program may possess and land up to 10,000 lb (4,536.0 kg) of scallop meats per trip, with a maximum of 400 lb (181.4 kg) of the possession limit originating from 50 bu (176.1 L) of in-shell scallops.

(ii) The vessel may possess and land up to 1,000 lb (453.6 kg) of regulated multispecies, unless otherwise restricted under § 648.86(a)(2)(i) or (b), or the vessel is carrying a NMFS approved sea sampler or observer on board the vessel. A vessel carrying an approved sea sampler or observer may possess all regulated multispecies caught, provided the regulated multispecies in excess of 1,000 lb (453.6 kg) are donated to a bonafide charity. A vessel subject to the 1,000-lb (453.6-kg) possession limit must separate all regulated multispecies onboard from other species of fish so as to be readily available for inspection.

(7) *Gear restrictions.* The vessel must fish with or possess scallop dredge gear only in accordance with the dredge vessel restrictions specified under § 648.51(b), except that the mesh size of a net, net material, or any other material on the top of a scallop dredge in use by or in possession of the vessel shall not be smaller than 10.0 inches (25.40 cm) square or diamond mesh.

(8) *Transiting.* When transiting to and from the Sea Scallop Exemption Areas, all gear on board must be properly stowed and not available for immediate use in accordance with the provisions of § 648.23(b).

(9) *Off-loading restrictions.* The vessel may not off-load its sea scallop catch at more than one location.

(10) *Reporting.* The owner or operator must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared in

the Sea Scallop Exemption Program. The reports must be submitted in 24-hour intervals no later than 0900 hours of the preceding day, beginning at 0000 hours and ending at 2400 hours each day, and include the following information:

(i) Total pounds/kilograms of scallop meats kept; the Fishing Vessel Trip Report log page number; and

(ii) For each trip that the vessel has a NMFS approved observer on board, the total pounds/kilograms of scallop meats kept, Fishing Vessel Trip Report log page number and total pounds/kilograms of yellowtail flounder caught on tows that were observed by a NMFS approved observer.

(d) *Accrual of DAS.* A scallop vessel that has declared a fishing trip into the Sea Scallop Exemption Program of this section shall have a minimum of 10 DAS deducted from its DAS allocation, regardless of whether the actual number of DAS used during the trip is less than 10. Trips that exceed 10 DAS will be counted as actual time.

(e) *Adjustments to possession limits and number of trips—*(1) *Adjustment process for sea scallop possession limit and number of trips for Closed Area I and the Nantucket Lightship Closed Area.* If the scallop and yellowtail flounder catch in the Nantucket Lightship and/or the Closed Area I Sea Scallop Exemption Areas is less than the scallop TAC and yellowtail flounder TAC specified under paragraphs (f)(1) and (f)(2) of this section, the Regional Administrator may adjust the sea scallop possession limit, and/or allocate one or more additional trips for full and part-time limited access sea scallop vessels for the Nantucket Lightship and/or the Closed Area I Sea Scallop Exemption Areas during the month of January 2001. This adjustment may be made if the Regional Administrator determines that such adjustment will likely allow the scallop TAC to be reached without exceeding it. Notification of this adjustment to the possession limit and/or trip limit will be provided to the vessel through a permit holder letter issued by the Regional Administrator. Occasional permitted vessels would not be allocated an additional trip.

(2) *Increase of possession limit to defray costs of observers—*(i) *Defraying the costs of observers.* The Regional Administrator may increase the sea scallop possession limit specified under paragraph (c)(6) of this section for a vessel, subject to the limit on the cumulative amount of sea scallops allocated to defray costs of observers by areas as specified in paragraph (e)(2)(ii)(A) of this section, that has

declared a fishing trip into the Sea Scallop Exemption Program if a NMFS approved observer is on board the vessel. Notification of this increase of the possession limit will be provided to the vessel through a Letter of Authorization issued by the Regional Administrator. The amount of the possession limit increase will be determined by the Regional Administrator and the vessel owner will be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip.

(ii) *Observer set-aside limits on increases of possession limits by area.* (A) The cumulative amount of scallops authorized under this part to be taken by vessels in excess of the possession limits specified under paragraph (c)(6) of this section to defray the cost of an observer shall not exceed the following for each sea scallop exemption area:

- (1) Closed area II—60 mt
  - (2) Nantucket Lightship—50 mt
  - (3) Closed area I—64 mt.
- (B) [Reserved]

(iii) *Notification of observer set aside limit.* NMFS shall publish notification in the **Federal Register** of the date that the Regional Administrator projects that the observer set aside limit will be caught.

(3) *Adjustments to possession limits and/or number of trips to defray the costs of sea scallop research—(i) Defraying the costs of sea scallop research.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (c)(6) of this section or allow additional trips into a Sea Scallop Exemption Area, subject to the limits on the cumulative amount of sea scallops and yellowtail flounder allocated to defray costs for sea scallop research as specified in paragraph (e)(3)(ii) of this section.

(ii) *Sea scallop research set-aside limits on adjustments to possession limits and number of trips by area.* (A) Sea scallop set aside for sea scallop research. The cumulative amount of scallops authorized under this part to be taken by vessels in excess of the possession limits specified under (c)(6) for purposes of defraying the cost of sea scallop research shall not exceed the following for each sea scallop exemption area:

- (1) Closed area II—30 mt
- (2) Nantucket Lightship—25 mt
- (3) Closed area I—32 mt.

(B) Yellowtail flounder research set aside. The cumulative amount of yellowtail flounder catch authorized under this part to be taken by vessels in excess of the possession limits specified in (c)(6) for purposes of defraying the

cost of sea scallop research shall not exceed the following for each sea scallop exemption area:

- (1) Closed areas I and II—7.25 mt
- (2) Nantucket Lightship—0.5 mt.

(C) NMFS shall publish notification in the **Federal Register** of the date that the Regional Administrator projects that these set aside limits will be caught.

(iii) *Adjustment procedure.* (A) Determinations as to which vessel may be authorized to take more than the trip limits specified at (e)(3)(i) of this section or to take additional trips for the purposes of defraying sea scallop research costs shall be made by NMFS, in cooperation with the Council. At a minimum applicants shall submit a scallop proposal under this program and a project summary that includes: the project goals and objectives, relationship of sea scallop research to management needs or priorities identified by the Council, project design, participants other than applicant, funding needs, breakdown of costs, and vessel(s) identified to be authorized as specified under paragraph (e)(3)(iii)(B) of this section.

(B) NOAA will make the final determination as to what proposals are approved and which vessels are authorized to take scallops in excess of possession limits or additional trips. Authorization to increase possession limits and/or number of trips will be provided to the vessel by Letter of Authorization issued by the Regional Administrator.

(iv) *Project Report Procedure.* Upon completion of its sea scallop research, the researcher of approved projects must provide the Council with a report of its findings, which includes:

(A) A detailed description of methods of data collection and analyses;

(B) A discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; and

(C) A detailed final accounting of all funds used to conduct the sea scallop research.

(f) *Termination of the Sea Scallop Exemption Area Fisheries—(1) Termination of sea scallop exemption area fisheries when the scallop TAC is exceeded—(i) Closed Area II Sea Scallop Exemption Area.* NMFS shall terminate the Closed Area II Sea Scallop Exemption Area fishery as of the date the Regional Administrator projects that 2,934 mt of Closed Area II sea scallops will be caught by vessels fishing in the Sea Scallop Exemption Program described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(ii) *Nantucket Lightship Sea Scallop Exemption Area.* NMFS shall terminate the Nantucket Lightship Sea Scallop Exemption Area fishery as of the date the Regional Administrator projects that 2,445 mt of Nantucket Lightship sea scallops will be caught by vessels fishing in the Sea Scallop Exemption Program described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(iii) *Closed Area I Sea Scallop Exemption Area.* NMFS shall terminate the Closed Area I Sea Scallop Exemption Area fishery as of the date the Regional Administrator projects that 3,111 mt of Closed Area I sea scallops will be caught by vessels fishing in the Sea Scallop Exemption Program described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(2) *Termination of sea scallop exemption area fisheries when the yellowtail flounder TAC is exceeded—(i) Closed Area II and Closed Area I Sea Scallop Exemption Areas.* NMFS shall terminate the Closed Area II and Closed Area I Sea Scallop Exemption Area fisheries as of the date the Regional Administrator projects that the 717.75 mt of Georges Bank yellowtail flounder will be caught by vessels fishing in the Sea Scallop Exemption Program described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(ii) *Nantucket Lightship Sea Scallop Exemption Area.* NMFS shall terminate the Nantucket Lightship Sea Scallop Exemption Area fishery as of the date the Regional Administrator projects that the 49.5 mt of Southern New England yellowtail flounder will be caught by vessels fishing in the Sea Scallop Exemption Program described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(g) *Transiting.* (1) *Closed Area II.* Limited access sea scallop vessels may not enter, fish, or be in the area known as the Closed Area II Sea Scallop Exemption Area described in paragraph (b)(1) of this section unless the operator has determined that there is a compelling safety reason and the vessel's fishing gear is stowed in accordance with the requirements of § 648.23(b).

(2) *The Nantucket Lightship Closed Area and Closed Area I.* Limited access sea scallop vessels fishing under a scallop DAS that have not declared a trip into the Sea Scallop Exemption Program may not enter, fish, or be in the areas known as the Nantucket Lightship and Closed Area I Sea Scallop Exemption Areas described in

paragraphs (b)(2) and (b)(3), respectively, of this section, unless the vessel's fishing gear is stowed in accordance with the requirements of § 648.23(b).

(h) *VMS Polling*. For the duration of the Sea Scallop Exemption Program, as described under this section, all sea scallop limited access vessels equipped with a VMS unit will be polled twice per hour, regardless of whether the vessel is enrolled in the Sea Scallop Exemption Program.

11. In § 648.80, paragraphs (a)(2)(iii), (b)(2)(iii), (b)(6)(i)(C) and (b)(9)(i)(E) are revised to read as follows:

**§ 648.80 Multispecies Regulated mesh areas and restrictions on gear and methods of fishing.**

\* \* \* \* \*

- (a) \* \* \*
- (2) \* \* \*

(iii) *Other restrictions and exemptions*. Vessels are prohibited from fishing in the GOM/GB Regulated Mesh Area except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(3), (a)(4), (a)(6), (a)(8) through (a)(13), (d), (e), (h), and (i) of this section, if fishing under a NE multispecies DAS, if fishing under the small vessel exemption specified in § 648.82(b)(3), if fishing under the scallop state waters exemptions specified in § 648.54 and (a)(10) of this section, if fishing under a scallop DAS in accordance with paragraph (h), or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

\* \* \* \* \*

- (b) \* \* \*
- (2) \* \* \*

(iii) *Other restrictions and exemptions*. Vessels are prohibited from fishing in the SNE Regulated Mesh Area except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (c), (e), (h), and (i) of this section, if fishing under a NE multispecies DAS, if fishing under the small vessel exemption specified in § 648.82(b)(3), if fishing under a scallop state waters exemption specified in § 648.54, if fishing under a scallop DAS in accordance with paragraph (h), or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

\* \* \* \* \*

- (6) \* \* \*
- (i) \* \* \*

(C) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(6)(i)(B) of this section must be stowed as specified in § 648.23(b).

\* \* \* \* \*

- (9) \* \* \*
- (i) \* \* \*

(E) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(9)(i)(D) of this section must be stowed in accordance with one of the methods described under § 648.23(b) while fishing under this exemption.

\* \* \* \* \*

12. In § 648.81, the section heading, introductory paragraphs (a)(1), (b)(1), and (c)(1) and paragraph (d) are revised and paragraph (e) is removed and reserved as follows:

**§ 648.81 Closed areas.**

(a) *Closed Area I*. (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area I (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (a)(2) and (d) of this section, or unless exempt under the Sea Scallop Exemption Program specified under § 648.58 during the time and in the portion of Closed Area I described in § 648.58(b)(3):

\* \* \* \* \*

(b) *Closed Area II*. (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(2) of this section, or unless exempt under the Sea Scallop Exemption Program specified under § 648.58 during the time and in the portion of Closed Area II described in § 648.58(b)(1):

\* \* \* \* \*

(c) *Nantucket Lightship Closed Area*. (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as the Nantucket Lightship Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (c)(2) and (d) of this section, or unless exempt under the Sea Scallop

Exemption Program specified under § 648.58 during the time and in the portion of the Nantucket Lightship Closed Area described in § 648.58(b)(2):

\* \* \* \* \*

(d) *Transiting*. A vessel may transit Closed Area I, the Nantucket Lightship Closed Area, the GOM Rolling Closure Areas, the Cashes Ledge Closure Area, the Western GOM Closure Area, the Georges Bank Seasonal Area Closure and the Conditional Cashes Ledge and Gulf of Maine Rolling Closure Areas (if applicable), as defined in paragraphs (a)(1), (c)(1), (f)(1), (g)(1), (h)(1), (i)(1), (n)(1) and (o)(1), respectively, of this section, provided that its gear is stowed in accordance with the provisions of § 648.23(b).

\* \* \* \* \*

13. In § 648.82, paragraph (k)(1)(iv)(A) is revised to read as follows:

**§ 648.82 Effort-control program for multispecies limited access vessels.**

\* \* \* \* \*

- (k) \* \* \*
- (1) \* \* \*
- (iv) \* \* \*

(A) During each fishing year, vessels must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year. The spawning season time out period required by § 648.82(g) will be credited toward the 120 days time out of the non-exempt gillnet fishery. If a vessel owner has not declared and taken, any or all of the remaining periods of time required by the last possible date to meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies or non-exempt species harvested with gillnet gear, and from having gillnet gear on board the vessel that is not stowed in accordance with § 648.23(b), while fishing under a multispecies DAS, from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable.

\* \* \* \* \*

14. In § 648.86, paragraphs (a)(2)(iii), (b)(3), (b)(4), (d)(1)(i), (d)(1)(ii) and (d)(1)(iii) are revised to read as follows:

**§ 648.86 Multispecies possession restrictions.**

\* \* \* \* \*

- (a) \* \* \*
- (2) \* \* \*

(iii) Except for vessels fishing under the Sea Scallop Exemption Program,

from July 1 through December 31, 2000, as provided in § 648.58(c)(6)(ii), or unless otherwise authorized by the Regional Administrator as specified in paragraph (f) of this section, scallop dredge vessels or persons owning or operating a scallop dredge vessel that is fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock, provided that the vessel has at least one standard tote on board. This restriction does not apply to vessels issued NE multispecies Combination Vessel permits that are fishing under a multispecies DAS. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

\* \* \* \* \*

(b) \* \* \*

(3) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraph (b)(1) of this section, and is, therefore, subject to the requirement to remain in port for the period of time described in paragraph (b)(1)(ii)(A) of this section may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator (see Table 1 to § 600.502 of this chapter) either at the time the vessel reports its hauled weight of cod or at a later time prior to transiting and provides the following information: vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.23(b) and may not have any fish on board the vessel.

(4) *Exemption.* A vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (b)(1) of this section when fishing south of a line beginning at the Cape Cod, MA coastline at 42°00' N. lat. and running eastward along 42°00' N. lat. until it intersects with 69°30' W. long., then northward along 69°30' W. long. until it intersects with 42°20' N. lat., then eastward along 42°20' N. lat. until it intersects with 67°20' W. long., then northward along 67°20' W. long. until it intersects with the U.S.-Canada maritime boundary, provided that it does not fish north of this exemption area for a minimum of 30 consecutive days (when fishing under the multispecies DAS program), and has on board an authorization letter issued by the Regional Administrator. Vessels exempt from the landing limit requirement may transit the GOM/GB Regulated Mesh Area north of this

exemption area, provided that their gear is stowed in accordance with one of the provisions of § 648.23(b).

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) *Vessels using mesh size smaller than 2.5 in (6.35 cm) and vessels without a letter of authorization.* Owners or operators of vessels fishing for, in possession of, or landing small-mesh multispecies with, or having on board except as provided herein, nets of mesh size smaller than 2.5 in (6.35 cm) (as applied to the part of the net specified in (d)(1)(iv) of this section), and, vessels that have not been issued a letter of authorization pursuant to paragraph (d)(1)(ii) or (d)(1)(iii) of this section may possess on board and land up to only 3,500 lb (1,588 kg) of combined silver hake and offshore hake. This possession limit on small-mesh multispecies does not apply if all nets with mesh size smaller than 2.5 in (6.35 cm) have not been used to catch fish for the entire fishing trip and the nets have been properly stowed pursuant to § 648.23(b), and the vessel is fishing with a mesh size and a letter of authorization as specified in paragraphs (d)(1)(ii), (d)(1)(iii) and (d)(2) of this section. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(ii) *Vessels authorized to use nets of mesh size 2.5 in (6.35 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 2.5 in (6.35 cm) or greater, may fish for, possess, and land small-mesh multispecies up to only 7,500 lb (3,402 kg) combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 2.5 in (6.35 cm) (as applied to the part of the net specified in (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 2.5 in (6.35 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.23(b) for the entire trip. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and

any other applicable provision of this part.

(iii) *Vessels authorized to use nets of mesh size 3 in (7.62 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 3 in (7.62 cm) or greater, may fish for, possess, and land small-mesh multispecies up to only 30,000 lb (13,608 kg) combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 3 in (7.62 cm) (as applied to the part of the net specified in (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 3 in (7.62 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.23(b) for the entire trip. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

\* \* \* \* \*

15. In § 648.87, introductory text to paragraphs (a) and (b) are revised to read as follows:

**§ 648.87 Gillnet requirements to reduce or prevent marine mammal takes.**

(a) *Areas closed to gillnet gear capable of catching multispecies to reduce harbor porpoise takes.* All persons owning or operating vessels in the EEZ portion of the areas and times specified in paragraphs (a)(1), through (a)(4) of this section must remove all of their sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)), and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.23(b), sink gillnet gear or other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnet gear (as described in § 648.81(g)(2)(ii)) in the EEZ portion of the areas and for the times specified in paragraphs (a)(1) through (a)(4) of this section. Also, all persons owning or operating vessels issued a limited access multispecies permit must remove all of their sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)), from the areas and for the times specified in paragraphs (a)(1) through (a)(4) of this

section, and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.23(b), sink gillnets or other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)) in the areas and for the times specified in paragraphs (a)(1) through (a)(4) of this section.

(b) *Areas closed to gillnet gear capable of catching multispecies to prevent right whale takes.* All persons owning or operating vessels must remove all of their sink gillnet gear and gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)), from the EEZ portion of the areas and for the times specified in paragraphs (b)(1) and (2) of this section, and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.23(b), sink gillnet gear or gillnet gear capable of catching multispecies, with the exception of single pelagic gillnet gear (as described in § 648.81(g)(2)(ii)) in the EEZ portion of the areas and for the times specified in paragraphs (b)(1) and (2) of this section. Also, all persons owning or operating vessels issued a limited access multispecies permit must remove all of their sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)), from the areas and for the times specified in paragraphs (b)(1) and (2) of this section, and, may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.23(b), sink gillnet gear or other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)) in the areas and for the times specified in paragraphs (b)(1) and (2) of this section.

16. In § 648.88, paragraph (c) is revised to read as follows:

**§ 648.88 Multispecies open access permit restrictions.**

(c) *Scallop multispecies possession limit permit.* Except as provided in § 648.58(c)(6)(ii) for vessels fishing under the Sea Scallop Exemption Program, a vessel that has been issued a valid open access scallop multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53,

provided the vessel does not fish for, possess, or land haddock from January 1 through June 30 as specified under § 648.86(a)(2)(i), and provided the vessel has at least one standard tote on board.

17. In § 648.89, paragraph (a) is revised to read as follows:

**§ 648.89 Recreational and charter/party restrictions.**

(a) *Recreational gear restrictions.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, are prohibited from fishing with more than two hooks per line and one line per angler and must stow all other fishing gear on board the vessel as specified under § 648.23(b).

18. In § 648.91, paragraph (c)(2)(ii) is revised to read as follows:

**§ 648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.**

(c) \* \* \*

(2) \* \* \*

(ii) All other non-conforming gear must be stowed as specified in § 648.23(b).

19. In § 648.94, paragraph (e) is revised to read as follows:

**§ 648.94 Monkfish possession and landing restrictions.**

(e) *Transiting.* A vessel that has declared into the NFMA for the purpose of fishing for monkfish, or a vessel that is subject to less restrictive measures in the NFMA, may transit the SFMA, provided that the vessel does not harvest or possess monkfish from the SFMA and that the vessel's fishing gear is properly stowed and not available for immediate use in accordance with § 648.23(b).

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No. 991221344-9344-01; I.D. 121099A]

RIN 0648-AN44

**Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Hawaii-based Pelagic Longline Area Closure**

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

**ACTION:** Emergency rule; extension of expiration date.

**SUMMARY:** This action extends an emergency rule, now in effect, that closes certain waters to fishing by vessels engaged in the Hawaii-based pelagic longline fishery. The rule was published in the **Federal Register** on December 27, 1999, in response to the Order Setting Terms of Injunction issued on November 23, 1999, by the U.S. District Court, District of Hawaii, (Court). The area closure is intended to reduce adverse impacts to sea turtles by restricting the activities of the Hawaiian longline fishery while an environmental impact statement (EIS) is being prepared for the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP). Extension of the emergency rule will maintain the temporary area closure until December 23, 2000, or until new time and area closures, as imposed by the Court, are implemented by NMFS.

**DATES:** This emergency rule is effective 12:02 a.m., local time, June 26, 2000, through 12:01 a.m., local time, December 23, 2000.

**ADDRESSES:** Copies of the environmental assessment prepared for the emergency rule may be obtained from Dr. Charles Karnella, Administrator, Pacific Islands Area Office (PIAO), NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI, 96814-4700.

**FOR FURTHER INFORMATION CONTACT:** Alvin Katekaru or Marilyn Luipold, PIAO, 808-973-2937.

**SUPPLEMENTARY INFORMATION:** NMFS is extending an emergency rule promulgated on December 23, 1999 (64 FR 72290, December 27, 1999), which otherwise would expire on June 26, 2000. Extension of this rule is authorized under section 305(c)(3)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.