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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 648

[Docket No. 141125999-5195-01]

RIN 0648-BE68

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery and Northeast Multispecies Fishery; Framework Adjustment 26; Endangered and Threatened Wildlife; Sea Turtle Conservation

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to approve and implement through regulations measures included in Framework Adjustment 26 to the Atlantic Sea Scallop Fishery Management Plan, which the New England Fishery Management Council adopted and submitted to NMFS for approval. The purpose of Framework 26 is to prevent overfishing, improve yield-per-recruit, and improve the overall management of the Atlantic sea scallop fishery. The Framework 26 proposed measures would also: Close a portion of the Elephant Trunk Access Area and extend the boundaries of the Nantucket Lightship Access Area to protect small scallops; adjust the State Waters Exemption Program; allow for Vessel Monitoring System declaration changes for vessels to steam home with product on board; implement a proactive accountability measure to protect

windowpane flounder and yellowtail flounder; align two gear measures designed to protect sea turtles; and implement other measures to improve the management of the scallop fishery.

Aligning the gear designed to protect sea turtles involves modifying existing regulations implemented under the Endangered Species Act; therefore, this action would be implemented under joint authority of the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Comments must be received by **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The Council developed an environmental assessment (EA) for this action that describes the proposed measures and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of the Framework, the EA, and the Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

You may submit comments on this document, identified by NOAA-NMFS-2015-0002, by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2015-0002*, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on Scallop Framework 26 Proposed Rule.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Greater Atlantic Regional Fisheries Office and by e-mail to OIRA_Submission@omb.eop.gov or fax to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, 978-281-9315.

SUPPLEMENTARY INFORMATION:

Background

The scallop fishery's management unit ranges from the shorelines of Maine through North Carolina to the outer boundary of the Exclusive Economic Zone. The Scallop Fishery Management Plan (FMP), established in 1982, includes a number of amendments and framework adjustments that have revised and refined the fishery's management. The Council sets scallop fishery specifications through framework adjustments that occur annually or biennially. This annual action includes allocations for fishing year 2015, as well as other scallop fishery management measures.

The Council adopted Framework 26 on November 20, 2014, and submitted it to NMFS on February 17, 2015, for review and approval. Framework 26 specifies measures for fishing year 2015, but includes fishing year 2016 measures that will go into place as a default, should the next specifications-setting framework be delayed beyond the start of fishing year 2016. NMFS will implement Framework 26, if approved, after the start of fishing year 2015; 2015 default measures concerning allocations have been in place as of March 1, 2015. These default measures are more conservative than the Framework 26 proposed allocations and would be replaced by the higher Framework 26 allocations if this action is approved. The Council has reviewed the Framework 26 proposed rule regulations as drafted by NMFS and deemed them to be necessary and appropriate as specified in section 303(c) of the MSA.

Specification of Scallop Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limits (ACLs), Annual Catch Targets (ACTs), and Set-Asides for the 2015 Fishing Year and Default Specifications for Fishing Year 2016

The proposed allocations incorporate new biomass reference points that resulted from the Northeast Fisheries Science Center's most recent scallop stock benchmark assessment that was completed in July 2014. The assessment reviewed and updated the data and models used to assess the scallop stock and ultimately updated the reference points for status determinations. The scallop stock is considered overfished if the biomass is less than half of the biomass at maximum sustainable yield (B_{msy}), and overfishing is occurring if fishing mortality (F) is above the fishing mortality at maximum sustainable yield (F_{msy}). The assessment continues to find that the scallop resource is not overfished and overfishing is not occurring, but the estimates for F_{msy} and B_{msy} have changed. A comparison of the old and new reference points is outlined in Table 1.

Table 1. Summary of old and new scallop reference points from the last two benchmark scallop stock assessments in 2010 and 2014

	2010 Assessment	2014 Assessment
F_{msy}	0.38	0.48
B_{msy}	125,000 mt	96,480 mt
$1/2 B_{msy}$	62,000 mt	48,240 mt

Due to these reference point updates, the fishing mortality rates that the Council uses to set OFL, ABC, and ACL would be updated through this action. The proposed OFL was set based on an F of 0.48, equivalent to the F threshold updated through the 2014 assessment. The proposed ABC and the equivalent total ACL for each fishing year are based on an F of 0.38, which is the F associated with a 25-percent probability of exceeding the OFL. The Council's Scientific and Statistical Committee recommended scallop fishery ABCs for the 2015 and 2016 fishing years of 55.9 M lb (25,352 mt) and 70.1 M lb (31,807 mt), respectively, after accounting for discards and incidental mortality. The Scientific and Statistical Committee will reevaluate an ABC for 2016 when the Council develops the next framework adjustment.

Table 2 outlines the proposed scallop fishery catch limits that are derived from the ABC values. After deducting the incidental target total allowable catch (TAC) and the research and observer set-asides, the remaining ACL available to the fishery is allocated according to the fleet proportions established in Amendment 11 to the Scallop FMP (72 FR 20090; April 14, 2008): 94.5 percent allocated to the limited access (LA) scallop fleet (i.e., the larger "trip boat" fleet); 5 percent allocated to the limited access general category (LAGC) individual fishing quota (IFQ) fleet (i.e., the smaller "day boat" fleet); and the remaining 0.5 percent allocated to LA scallop vessels that also have LAGC IFQ permits. These separate ACLs and their corresponding ACTs are referred to as sub-ACLs and sub-ACTs, respectively, throughout this action. Amendment 15

to the Scallop FMP (76 FR 43746; July 21, 2011) specified that no buffers to account for management uncertainty are necessary in setting the LAGC sub-ACLs, meaning that the LAGC sub-ACL would equal the LAGC sub-ACT. As a result, the LAGC sub-ACL values in Table 2, based on an F of 0.38, represent the amount of catch from which IFQ percentage shares will be applied to calculate each vessel's IFQ for a given fishing year. For the LA fleet, the management uncertainty buffer is based on the F associated with a 75-percent probability of remaining below the F associated with ABC/ACL, which, using the updated Fs applied to the ABC/ACL, now results in an F of 0.34.

Table 2. Scallop Catch Limits for fishing years 2015 and 2016 for the LA and LAGC IFQ Fleets.

	2015	2016
Overfishing Limit	38,061 mt	45,456 mt
ABC/ACL w/ discards removed	25,352 mt	31,807 mt
Incidental TAC	22.7 mt	22.7 mt
Research Set-Aside (RSA)	567 mt	567 mt
Observer Set-aside (1 percent of ABC/ACL)	254 mt	318 mt
LA sub-ACL(94.5 percent of total ACL, after deducting set-asides and incidental catch)	23,161 mt	29,200 mt
LA sub-ACT (adjusted for management uncertainty)	19,311 mt	23,016 mt
LAGC IFQ sub-ACL (5.0 percent of total ACL, after deducting set-asides and incidental catch)	1,225 mt	1,545 mt
LAGC IFQ sub-ACL for vessels with LA scallop permits (0.5 percent of total ACL, after deducting set-asides and incidental catch)	123 mt	154 mt

This action would deduct 567 mt of scallops annually for 2015 and 2016 from the ABC and set it aside as the Scallop RSA to fund scallop research and to compensate participating vessels through the sale of scallops harvested under RSA projects. As of March 1, 2015, this set-aside was available for harvest by RSA-funded projects in open areas. Framework 26 would

allow RSA to be harvested from the Mid-Atlantic Access Areas that is proposed to be open for 2015, once this action is approved and implemented, but would prevent RSA harvesting from access areas under 2016 default measures. Of this 1.25 M lb (567 mt) allocation, NMFS has already allocated 397,470 lb (180.3 mt) to previously funded multi-year projects as part of the 2014 RSA awards process. NMFS has reviewed proposals submitted for consideration of 2015 RSA awards and will be selecting projects for funding in the near future.

This action would also set aside 1 percent of the ABC for the industry-funded observer program to help defray the cost of scallop vessels that carry an observer. The observer set-asides for fishing years 2015 and 2016 are 254 mt and 318 mt, respectively. The 2016 observer set-aside may be adjusted by the Council when it develops specific, non-default measures for 2016.

Open Area Days-at-Sea (DAS) Allocations

This action would implement vessel-specific DAS allocations for each of the three LA scallop DAS permit categories (i.e., full-time, part-time, and occasional) for 2015 and 2016 (Table 3). Proposed 2015 DAS allocations are almost identical to those allocated to the LA fleet in 2014 (31 DAS for full-time, 12 DAS for part-time, and 3 DAS for occasional vessels). Fishing year 2016 DAS allocations are precautionary, and are set at 75 percent of what current biomass projections indicate could be allocated to each LA scallop vessel for the entire fishing year. This is to avoid over-allocating DAS to the fleet in the event that the framework that would set those allocations, if delayed past the start of the 2016 fishing year, estimates that DAS should be less than currently projected. The proposed allocations in Table 3 exclude any DAS deductions that are required if the LA scallop fleet exceeded its 2014 sub-ACL. In addition, these DAS values take into account a slight DAS reduction necessary for the implementation of

another proposed measure discussed later on in this rule (See *Adjustment to Vessel Monitoring System (VMS) Declaration Procedures for Some Open Area Trips*). If this measure, which would allow for vessels on specific trips to end their open area trip and DAS accrual sooner than they can under current regulations, is not approved, the DAS allocations in Table 3 would increase by 0.14 DAS and 0.06 DAS for full-time and part-time vessels, respectively (there would be no change for occasional vessels, and there are currently no vessels issued the occasional permit type in the LA scallop fleet). In addition, the Council requested that DAS allocations now be specified to the hundredth decimal place, rather than rounding up or down to whole DAS. This is consistent with DAS accounting as vessels use DAS throughout the year.

Table 3. Scallop Open Area DAS Allocations for 2015 and 2016.

Permit Category	2015	2016
Full-Time	30.86	26.00
Part-Time	12.94	10.40
Occasional	2.58	2.17

On March 1, 2015, full-time, part-time, and occasional vessels received 17, 7, and 1 DAS, respectively. These allocations would increase as soon as Framework 26 is implemented, if approved.

LA Allocations and Trip Possession Limits for Scallop Access Areas

For fishing year 2015 and the start of 2016, Framework 26 would close all three Georges Bank Access Areas (i.e., Nantucket Lightship (NLS), Closed Area 1, and Closed Area 2 Access Areas) and open all three Mid-Atlantic Access Areas (i.e., Elephant Trunk, Delmarva, and Hudson Canyon Access Areas). This action proposes to extend the boundaries of the NLS Access Area that would close to the scallop fleet to include a concentration of small scallops near

the existing boundary along the southeast corner, currently considered part of the open area.

This proposed closure area, which would increase the NLS Access Area boundary by 158 square miles, would be reconsidered in a future framework action when the scallops are larger and ready for harvest.

As for the Mid-Atlantic Access Areas, this action proposes that all three access areas be open to both the LA and LAGC IFQ fleet, and be treated as one single area, which this rule will now refer to as the Mid-Atlantic Access Area. Scallop vessels would be able to fish across all three areas in a single access area trip. There is one the exception: This action proposes six 10-minute squares (i.e., 549 square nautical miles) in the northwest corner of the Elephant Trunk Access Area be closed to protect small scallops. This area constitutes roughly 35 percent of the current Elephant Trunk Access Area. The closure would allow for the small concentrations of scallops in this portion of the access area to be protected as they grow to a more harvestable size. This action proposes that no transiting be allowed across this small area due to its small size and the incentive to fish in the area is relatively high due to the high abundance of scallops.

Table 4 outlines the proposed LA allocations that can be fished from the Mid-Atlantic Access Area, which could be taken in as many trips as needed, so long as the trip possession limits (also in Table 4) are not exceeded. These proposed access area allocations for 2015 represent a 112-percent increase in access area allocations compared to 2014.

Table 4. Scallop Access Area Poundage Allocations and Trip Possession Limits for 2015 and 2016.

Permit Category	Possession Limits	2015 Allocation	2016 Allocation
Full-Time	17,000 lb (7,711 kg)	51,000 lb (23,133 kg)	17,000 lb (7,711 kg)
Part-Time	10,200 lb (4,627 kg)	20,400 lb (9,253 kg)	10,200 lb (4,627 kg)

Occasional	1,420 lb (644 kg)	4,250 lb (1,928 kg)	1,420 lb (644 kg)
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This action also proposes to modify access area trip reporting procedures by requiring that each LA vessel submit a pre-landing notification form through its VMS unit prior to returning to port at the end of each access area trip, including trips where no scallops were landed. These pre-landing notifications would replace the current broken trip and compensation trip procedures. Vessels would no longer be required to submit a broken trip notification form if they are unable to land their full possession limits on an access area trip. Vessels would also no longer need to apply to NMFS to receive, or wait for NMFS to issue, a compensation trip to fish their remaining access area scallop allocation.

For example, under Framework 26 access area allocations, a full-time vessel receives 51,000 lb (23,133 kg) in the Mid-Atlantic Access Area, which can be landed on as many or as few trips as needed, so long as the 17,000-lb (7,711-kg) possession limit is not exceeded on any one trip. The vessel may choose to fish its full allocation over the course of three trips, landing the maximum allowance of 17,000 lb (7,711 kg) on each trip, or it can choose to fish its full allocation over the course of four, five, or more trips, landing less than the trip possession limit on each trip. Regardless, the vessel must submit a pre-landing notification form prior to returning to port for each access area trip, and would not have to wait for NMFS to issue a compensation trip prior to starting its next access area trip.

This action would also modify the procedures for when scallop access area allocation can be carried over to the next fishing year. Under the current regulations, vessel may fish for a previous year's unharvested scallop access area allocation in the first 60 days of a fishing year if the vessel broke a trip in the last 60 days of the previous fishing year or open season for an

access area. In many cases, vessels in the last 60 days of the fishing year simply crossed the VMS Demarcation Line, submitted a broken trip report through their VMS unit, and returned to port. This caused confusion and created a high number of cases for NMFS to review as the fishing year came to an end. Under the proposed measures, each vessel would automatically carry over unharvested access area allocation that the vessel could fish in the first 60 days of the subsequent fishing year, as long as the access area is open for scallop fishing during that time. This change would result in little change to the amount of carryover NMFS expects from year to year because most vessels took advantage of the broken trip provisions. Also, Framework 26 accounts for the uncertainty associated with carryover by setting the LA fishery's ACT lower than the fishery's ACL. This ensures that carryover would not cause an ACL to be exceeded from year to year.

Although vessel owners would ultimately be responsible for tracking their own scallop access area landings and ensuring they do not exceed their annual allocations, NMFS would match dealer-reported scallop landing records with access area trip declarations and make that information available on Fish-On-Line.

Additional Measures to Reduce Impacts on Small Scallops

1. Crew Limit Restrictions in Access Areas. Similar to the crew limit restrictions NMFS implemented in Delmarva in 2014, this action proposes crew limits for all access areas. Currently, LA scallop vessels have crew size limits when fishing in open areas: Vessels are limited to seven individuals when fishing on a DAS, or five individuals if the vessel is on a DAS and participating in the small dredge program. These limits have been in place to restrict the shucking capacity of a vessel to help reduce landings per unit effort while on DAS. In an effort

to protect small scallops and discourage vessels from high-grading (discarding smaller scallops in exchange for larger ones), Framework 26 would impose a crew limit of eight individuals per LA vessel, including the captain, when fishing in any scallop access area. If a vessel is participating in the small dredge program, it may not have more than six people on board, including the operator, on an access area trip. These crew limits may be reevaluated in a future framework action.

2. Delayed Harvesting of Default 2016 Mid-Atlantic Access Area Allocations. Although the Framework would include precautionary access area allocations for the 2016 fishing year (see 2016 allocations in Table 4), vessels would have to wait to fish these allocations until April 1, 2016. This precautionary measure is designed to protect scallops when scallop meat weights are lower than other times of the year (generally, this change in meat-weight is a physiological change in scallops due to spawning). However, if a vessel has not fully harvested its 2015 scallop access area allocation in fishing year 2015, it may still fish the remainder of its allocation in the first 60 days of 2016 (i.e., March 1, 2016, through April 29, 2016).

3. 2016 RSA Harvest Restrictions. This action proposes that vessels participating in RSA projects would be prohibited from harvesting RSA under default 2016 measures. At the start of 2016, RSA could only be harvested from open areas. This would be re-evaluated for the remainder of 2016 in the framework action that would set final 2016 specifications.

LAGC Measures

1. *Sub-ACL for LAGC vessels with IFQ permits.* For LAGC vessels with IFQ permits, this action proposes a 1,225-mt ACL for 2015 and an initial ACL of 1,545 mt for 2016 (Table 2). We calculate IFQ allocations by applying each vessel's IFQ contribution percentage to these

ACLs. These allocations assume that no LAGC IFQ AMs are triggered. If a vessel exceeds its IFQ in a given fishing year, its IFQ for the subsequent fishing year would be reduced by the amount of the overage.

Because Framework 26 would not go into effect until after the March 1 start of fishing year 2015, the default 2015 IFQ allocations were automatically triggered. These default 2015 IFQ allocations are lower than those proposed in Framework 26. If approved, this action would increase the current vessel IFQ allocations. NMFS sent a letter to IFQ permit holders providing both March 1, 2015, IFQ allocations and Framework 26 proposed IFQ allocations so that vessel owners know what mid-year adjustments would occur if Framework 26 is approved.

2. *Sub-ACL for LA Scallop Vessels with IFQ Permits.* For LA scallop vessels with IFQ permits, this action proposes a 123 mt ACL for 2015 and an initial 154 mt ACL for 2016 (Table 2). We calculate IFQ allocations by applying each vessel's IFQ contribution percentage to these ACLs. These allocations assume that no LAGC IFQ AMs are triggered. If a vessel exceeds its IFQ in a given fishing year, its IFQ for the subsequent fishing year would be reduced by the amount of the overage.

3. *LAGC IFQ Trip Allocations and Possession Limits for Scallop Access Areas.* Framework 26 proposes that LAGC IFQ vessels would receive a fleetwide number of trips that could be taken in the Mid-Atlantic Access Area. Framework 26 would allocate 2,065 and 602 trips in 2015 and 2016, respectively, to this area. Under default 2016 measures, LAGC IFQ vessels must wait to fish these trips until April 1, 2016.

These trip allocations are equivalent to the overall proportion of total catch from access areas compared to total catch. For example, the total projected catch for the scallop fishery in

2015 is 20,865 mt, and 8,700 mt are projected to come from access areas, roughly 41.7 percent. If the same proportion is applied to total LAGC IFQ catch, the total allocation to LAGC IFQ vessels from access areas would be about 600 mt, roughly 44.5 percent of the total LAGC IFQ sub-ACL for 2015 (1,348 mt).

4. *NGOM TAC*. This action proposes a 70,000-lb (31,751-kg) annual NGOM TAC for fishing years 2015 and 2016. The allocation for 2015 assumes that there are no overages in 2014, which would trigger a pound-for-pound deduction in 2015 to account for the overage.

5. *Scallop Incidental Catch Target TAC*. This action proposes a 50,000-lb (22,680-kg) scallop incidental catch target TAC for fishing years 2015 and 2016 to account for mortality from this component of the fishery, and to ensure that F targets are not exceeded. The Council and NMFS may adjust this target TAC in a future action if vessels catch more scallops under the incidental target TAC than predicted.

Adjustments to Gear Modifications to Protect Sea Turtles

This action proposes to adjust season regulations for the sea turtle deflector dredge (TDD) and area regulations for the sea turtle chain mat to make them consistent. Currently, turtle chain mats are required in the area south of 41°9' N. lat. from May through November, and the TDD is required west of 71°W. long. from May through October. When used together, chain mats and TDDs are thought to increase the conservation benefit to sea turtles, because chain mats help reduce the impact to turtles from interactions occurring in the water column, and the TDD helps reduce the impact to turtles from interactions with the dredge frame on the sea floor (DuPaul *et al.* 2004; Smolowitz *et al.* 2010). By making the area and season for these two gear modifications consistent, west of 71°W. long. from May through November, the conservation

benefit of the current chain mat and TDD requirements is maintained, while reducing the regulatory complexity of differing seasons and areas. Any reduction in the size of the area that chain mats would be required (east of 71°W. long. and south of 41°9' N. lat.) is balanced by an extension of the season that TDDs would be required (the month of November). In addition, this action also proposes a very slight modification to the TDD gear regulations for safety purposes. When the Council first approved the TDD, it included the allowance of a flaring bar to ensure safe handling of the dredge. At the time, the Council specified that this flaring bar should only be attached to the dredge frame on one side. Since the TDD's implementation, there has been some interest to attach the flaring bar in a "u" shape, which could be attached on the inside or outside of the bale bar, but the current regulations unnecessarily prohibit this. This action proposes to adjust this regulation to allow for a bar or "u"-shaped flaring mechanism to support safety at sea. Allowing a u-shaped flaring mechanism should not have an impact on sea turtles and the effectiveness of the TDD because the flaring bar or mechanism would still be prohibited from being attached within 12 inches (30.5 cm) of the "bump out" of the TDD and not between the bale bars. This change would require that each side of the bar or mechanism be no more than 12 inches (30.5 cm) in length.

This action would not change any other regulatory requirements for the use of chain mats and TDDs.

Adjustment to Vessel Monitoring System (VMS) Declaration Procedures for Some Open Area Trips

This action would enable a vessel to declare out of a DAS trip at or south of Cape May, NJ (specifically, at or south of 39°N. lat.), once it goes inside the VMS demarcation line, and

then, with scallops on board, steam seaward of the VMS demarcation line to ports south of Cape May, NJ, without being charged DAS. This measure does not apply to vessels that intend to land scallops in ports north of Cape May, NJ. Once this change in declaration to “declare out of fishery” has been made, vessels would be required to submit a scallop pre-landing notification form through VMS, return directly to port and offload scallops immediately, and stow all gear. In addition, such vessels would be prohibited from having on board any in-shell scallops.

The purpose of this measure is to help increase incentive for vessels to land scallops in the southern part of the mid-Atlantic by reducing some of the steaming time to return to those more distant ports. Due to the location of the access areas in the mid-Atlantic, which were at one point primary traditional open area fishing grounds, vessels from Virginia and North Carolina fishing on open area DAS trips have to steam for a long period of time to reach productive open area fishing grounds. Vessels are currently allowed to start their open area DAS trip landward of the VMS Demarcation Line, but not necessarily from port, but are required to accrue DAS when harvested scallops are on board, so their return steam from an open area trip counts against their DAS allocation. Over time, as DAS have been reduced dramatically and with increased fuel costs, vessels have more incentive to land near these primary fishing grounds (i.e., in New Bedford, MA, or Cape May, NJ) to avoid being charged for DAS steaming back to southern ports farther away that would most impact their DAS allocations. This decrease in landings to particular states over time has had a great impact on shoreside businesses that depend upon a stable stream of landings.

Because this change in when some vessels may “clock out” of their DAS could impact overall DAS allocations to the fleet, this action also proposes an overall DAS deduction to each

LA scallop vessel. The proposed DAS adjustment (which has already been calculated into the DAS allocations proposed in Table 3) would be a decrease of 0.14 DAS for full-time vessels and 0.06 DAS for part-time vessels. This entire measure, including the appropriate DAS deductions, was supported by the Council's Advisory Panel.

Adjustments to the State Water Exemption Program to Include Northern Gulf of Maine (NGOM) Management Area Exemptions

Framework 26 proposes to modify the State Water Exemption Program to include a new exemption that would enable scallop vessels to continue to fish in state waters after the NGOM hard TAC is reached.

The current State Water Exemption Program has been in place since Framework 2 to the Scallop FMP (November 21, 1994; 59 FR 59967). At that time, the purpose of the program was to allow Federal permit holders to compete in the state waters fishery on a more equitable basis where Federal and state laws are inconsistent and to encourage vessels with general category permits (open access, at the time) to fish under the exemption program and continue to submit catch and effort data. This program specifies that a state with a scallop fishery may be eligible for state waters exemptions if it has a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. If a state is found to be eligible for the State Waters Exemption Program, federally permitted scallop vessels fishing in that state's waters may be exempted from a limited number of Federal scallop regulations: LA scallop vessels could fish in state waters outside of scallop DAS, and LA and LAGC scallop vessels could be exempt from Federal gear and possession limit restrictions.

This action proposes to expand the exemptions to include this new measure related to the NGOM. Specifically, states within the NGOM management area (i.e., Massachusetts, New Hampshire, and Maine) could request an exemption from the regulations requiring that scallop vessels must stop fishing in the state waters portion of the NGOM once the Federal TAC has been reached. States would have to apply for this exemption and specify to which vessels this would apply (i.e., vessels with NGOM permits, IFQ permits, incidental permits, and/or LA permits).

Currently, a vessel issued a NGOM or IFQ permit can declare a state-only NGOM scallop trip and fish for scallops exclusively in state waters without those landings being attributed to the Federal TAC, but must cease scallop fishing entirely for the remainder of the year, along with all other scallop vessels, once the Federal TAC is reached. To date this has not been an issue because the Federal NGOM catch has been well below the TAC. However, total catch in both Federal and state waters in this area is increasing, and Maine permit holders are concerned about their ability to fish in state waters when the state season is open in the winter if the NGOM TAC is reached. This measure would alleviate those concerns by giving the state the ability to apply for an exemption through the State Water Exemption Program. Because the NGOM Federal TAC is set based only on the Federal portion of the resource, NMFS does not expect this measure to compromise the FMP's limits on catch and mortality.

The process for applying to the State Waters Exemption Program, as outlined in the regulations, would remain the same. In order for NMFS to make a determination of whether or not a state waters exemption is warranted for a particular state's waters, a state must submit a request for the exemption so that we can fully evaluate the scope of the potential fishery in

the state's waters. Such a request would need to include the following information: A complete description of scallop fishing regulations in state waters; the number of vessels and trips that could be expected in state waters; the average landings per trip for vessels fishing in state waters; and the average per-pound value of scallops landed by vessels fishing for scallops in state waters. If the information provided supports a conclusion that a particular state's scallop fishery is consistent with the FMP relative to the State Waters Exemption Program, NMFS would then publish the requested exemptions from DAS, gear, and possession limits, and NGOM closures, in a notice in the **Federal Register**, consistent with the Administrative Procedure Act.

Proactive Accountability Measures (AMs) for Flatfish Protection

Currently, all scallop vessels (i.e., LA and LAGC) fishing for scallops with dredges in open areas west of 71° W. long. are required to have their dredges configured so that no dredge has more than seven rows of rings in the apron (i.e., the area between the terminus of the dredge (clubstick) and the twine top) on the topside of the dredge. The twine top helps finfish (flatfish in particular) escape from the dredge during fishing and the maximum number of rows of rings prevents fishermen from making the twine top small and ineffective in reducing bycatch. Framework 26 proposes to extend this proactive accountability measure to all areas where scallop fishing occurs (i.e., all access and open areas). This increased spatial coverage may further reduce flatfish bycatch by preventing dredge configurations using more than seven rows of rings, which is currently required east of 71° W. long. for some scallop vessels fishing in open areas. This is considered to be a proactive AM because it may help the fishery stay below the sub-ACLs for flatfish (yellowtail flounder and windowpane flounder, currently). Additionally,

this measure would enable vessels to voluntarily fish with an even shorter apron (less than seven rings), to proactively reduce flatfish bycatch in any area or season.

Regulatory Corrections Under Regional Administrator Authority

This proposed rule includes several revisions to the regulatory text to address text that is unnecessary, outdated, unclear, or otherwise could be improved. NMFS proposes these changes consistent with section 305(d) of the MSA which provides that the Secretary of Commerce may promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the MSA. Two revisions clarify how to apply and measure gear modifications to ensure compliance. The first revision at § 648.51 would clarify where to measure meshes to ensure twine top compliance. The second revision at § 648.53 clarifies an example on how the hanging ratio should be applied and measured if the windowpane reactive AM implemented through Framework 25 (June 26, 2014; 79 FR 34251) is triggered.

This action would also modify the VMS catch report requirements at § 648.10(f)(4)(i) to only include the information actually used by NMFS to monitor flatfish bycatch. The form currently requires that the amount of yellowtail flounder discards be reported daily. This requirement has been in place since Amendment 15 (76 FR 43746; July 21, 2011), which established the yellowtail flounder AMs in the FMP. However, since Amendment 15, the scallop fishery now has other bycatch sub-ACLs and AMs (e.g., SNE/MA windowpane flounder) which are not captured in this form. In addition, current bycatch monitoring relies solely on observer reports to determine bycatch discards for these species. In order to minimize confusion and because this information is not necessary for bycatch monitoring, we propose to

remove the reference to reporting yellowtail discards. Instead, the vessels will report daily scallop catch and the amount of all other species kept.

In addition, this action would adjust the regulations at § 648.53(a) to clarify that the values for ABC/ACL stated in the regulations reflect the levels from which ACTs are set, thus they do not include estimates of discards and incidental mortality. This regulatory clarification is at the request of the Council and would more accurately reflect the process for establishing ABCs and ACLs in the scallop fishery.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the FMP, other provisions of the MSA, and other applicable law. In making the final determination, NMFS will consider the data, views, and comments received during the public comment period.

This proposed rule does not contain policies with Federalism or “takings” implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

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

An IRFA has been prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA consists of Framework 26 analyses, its draft IRFA, and the preamble to this action.

Statement of Objective and Need

This action proposes the management measures and specifications for the Atlantic sea scallop fishery for 2015, with 2016 default measures. A description of the action, why it is being

considered, and the legal basis for this action are contained in Framework 26 and the preamble of this proposed rule and are not repeated here.

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

The proposed regulations would affect all vessels with LA and LAGC scallop permits. The Framework 26 document provides extensive information on the number and size of vessels and small businesses that would be affected by the proposed regulations, by port and state (see **ADDRESSES**). There were 313 vessels that obtained full-time LA permits in 2013, including 250 dredge, 52 small-dredge, and 11 scallop trawl permits. In the same year, there were also 34 part-time LA permits in the sea scallop fishery. No vessels were issued occasional scallop permits. NMFS issued 212 LAGC IFQ permits in 2013 and 155 of these vessels actively fished for scallops that year (the remaining permits likely leased out scallop IFQ allocations with their permits in Confirmation of Permit History). The RFA defines a small business in shellfish fishery as a firm that is independently owned and operated and not dominant in its field of operation, with receipts of up to \$5.5 M annually. Individually-permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different fishery management plans, even beyond those impacted by the proposed action. Furthermore, multiple permitted vessels and/or permits may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships, or economic dependency. For the purposes of this analysis, “ownership entities” are defined as those entities with common ownership as listed on the permit application. Only permits with identical ownership are categorized as an “ownership entity.” For example, if five permits have the same seven persons listed as co-owners on their permit applications, those seven persons would form

one “ownership entity,” that holds those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement would be considered a separate “ownership entity” for the purpose of this analysis.

On June 1 of each year, ownership entities are identified based on a list of all permits for the most recent complete calendar year. The current ownership dataset is based on the calendar year 2013 permits and contains average gross sales associated with those permits for calendar years 2011 through 2013. Matching the potentially impacted 2013 fishing year permits described above (LA and LAGC IFQ) to calendar year 2013 ownership data results in 172 distinct ownership entities for the LA fleet and 115 distinct ownership entities for the LAGC IFQ fleet. Of these, and based on the Small Business Administration (SBA) guidelines, 154 of the LA distinct ownership entities and all 115 of the LAGC IFQ entities are categorized as small. The remaining 18 of the LA entities are categorized as large entities, all of which are shellfish businesses.

Description of Projected Reporting, Recordkeeping, and other Compliance Requirements of the Proposed Rule

The proposed action contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). Two requirements will be submitted to OMB for approval under the NMFS Northeast Region Scallop Report Family of Forms (OMB Control No. 0648-0491).

Under the proposed action, all 347 LA vessels would be required to submit a pre-landing notification form for each access area trip through their VMS units. This information collection is intended to improve access area trip monitoring, as well as streamline a vessel’s ability to fish

multiple access area trips. Although this is a new requirement, it would replace other reporting procedures currently required for breaking an access area trip and receiving permission to take a compensation trip to harvest remaining unharvested scallop pounds from an access area trip.

The proposed action also includes a new requirement for some LA vessels to report a pre-landing notification form through their VMS unit before changing their open area trip declaration to a “declared out of fishery declaration,” which is expected to add a burden to a very small portion of the fleet. This requirement would only apply to a few vessels that intend to land open area scallops at ports south of Cape May, NJ, and want to steam to those ports while not using DAS. This new pre-landing requirement is necessary to enforce a measure intended to assist shoreside businesses in southern ports by providing an incentive for vessels to steam to ports far away from popular open area fishing grounds.

Notification requires the dissemination of the following information: Operator’s permit number; amount of scallop meats and/or bushels to be landed; the estimated time of arrival; the landing port and state where the scallops will be offloaded; and the vessel trip report (VTR) serial number recorded from that trip’s VTR. This information would be used by the Office of Law Enforcement to monitor vessel activity and ensure compliance with the regulations.

The burden estimates for these new requirements apply to all LA vessels. In a given fishing year, NMFS estimates that for access area reporting, each of the 313 full-time LA vessels would submit a pre-landing report 5 times (1,565 responses) and each of the 34 part-time LA vessel would submit a pre-landing report up to 3 times (102 responses), for a total of 1,667 responses. Public reporting burden for submitting these pre-landing notification forms is estimated to average 5 minutes per response with an associated cost of \$1.25, that includes the

time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Therefore, 1,667 responses would impose total compliance costs of \$2,084. While this is a new requirement, it would replace current trip termination and compensation trip reporting procedures, which were estimated to cost a total of \$300 annually, so the additional burden for this new pre-landing requirement would be \$1,785 (\$2,085 - \$300), or \$5.14 per vessel. This is likely an overestimate, but would account for the potential of higher access area scallop allocations in future fishing years. For the new DAS pre-landing requirements, NMFS estimates that this would likely impact 30 vessels and result in each of those vessels reporting one time a year. Public reporting burden for submitting these pre-landing notification forms is also estimated to average 5 minutes per response with an associated cost of \$1.25. Therefore, the total cost of this would impose total compliance costs of \$38 (30 vessels x \$1.25). The total additional burden from both of these new pre-landing requirements would be \$1,823.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Regional Administrator (See **ADDRESSES** above), and e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. All currently approved NOAA collections of information may be viewed at: http://www.cio.noaa.gov/services_programs/prasubs.html.

This action contains no other compliance costs. It does not duplicate, overlap, or conflict with any other Federal law.

Federal Rules which may Duplicate, Overlap or Conflict with this Proposed Rule

The proposed regulations do not create overlapping regulations with any state regulations or other federal laws.

Description of Significant Alternatives to the Proposed Action

The preferred alternative for LA allocations, which would allocate includes 30.86 DAS and 23,133 kg of scallops to be harvested in access areas to full-time vessels, as well as close a portion of the Elephant Trunk Access Area and extend the NLS closure, is expected to positively impact profitability of small entities regulated by this action. The estimated revenues and net revenue for scallop vessels and small business entities under all considered allocations alternatives, including the preferred alternative, are expected to be higher than both the No Action alternative (i.e., 2015 default measures conservatively set through Framework 25) and status quo levels (i.e., assuming same level of access as 2014). There are four different LA allocation alternative in Framework 26. Alternative 1 is the no action alternative which would allocate scallops based on the conservative default measures in Framework 25. Alternative 2 is the basic run alternative and it would have allocated the fleet access area trips similar to past

years (one access area per trip; split trips for the fleet). Alternative 3 (preferred alternative) combines all three Mid-Atlantic Access Areas and allows vessels to fish their trips in the combined area. Under Alternative 3 there are multiple options for closures to protect small scallops. The preferred alternative includes the options for a closure inside the combine Mid-Atlantic Access Area and an extension of the NLS. Finally, Alternative 4 would have set allocations similar to the basic run alternative, but reduced the overall F. The preferred alternative would have the largest revenue compared to all other alternatives in the 2015 fishing year, which would translate to higher profits (Table 5).

Table 5. Estimated fleet revenue and revenue per limited access vessel in 2014 dollars

Fishing year	Alternative	Fleet scallop revenue (*) (\$ million)	Revenue per FT vessel	Change from No Action	% Ch. from SQ levels
2015	ALT1. No Action	263.0	748,731	0%	-45%
	ALT2. Basic Run	557.8	1,592,242	113%	17%
	ALT3.NL+ETA (Preferred alt.)	578.1	1,650,451	120%	21%
	ALT3. 3 new closures	567.1	1,618,858	116%	19%
	ALT3. CA2+NL	570.3	1,627,986	117%	20%
	ALT4. Reduced F	557.6	1,591,748	113%	17%
	SQ. Status quo	477.2	1,361,611	82%	0%

Overall LAGC IFQ allocations for the preferred alternative will be 5.8 percent higher than the No Action (i.e., 2015 default allocations) and is 23 percent higher than the 2014 fishing year allocations. As a result, the preferred alternative is expected to have positive economic impacts on LAGC IFQ fishery. There are no other alternatives that would generate higher economic benefits for the scallop fishery as a whole, including the small business entities in the LAGC IFQ fishery. As for LAGC IFQ access area allocations, the preferred alternative would provide proportional access for LA and LAGC IFQ within the Mid-Atlantic Access Area (i.e., the LAGC fishery is projected to catch roughly 6.5 percent of the total 2015 projected catch of

the fishery, so roughly 6.5 percent of the total access area catch available to the entire fishery could be landed on IFQ fleetwide trips), which should have positive impacts on the small business entities of the LAGC IFQ fishery by increasing flexibility and lowering costs. The preferred alternative would have higher economic benefits than No Action and compared to the 2014 access area fleetwide IFQ trip allocations, but would have lower allocations than the alternative that would have increased the number of fleetwide trips to 10.4 percent of the total access area catch.

Because the NGOM and incidental TACs are unchanged from previous years, those proposed allocations are not expected to directly impact small business entities.

Literature Cited

DuPaul, W. D., D. B. Rudders, and R. J. Smolowitz. 2004. Industry trials of a modified sea scallop dredge to minimize the catch of sea turtles. Final Report. November 2004. VIMS Marine Resources Report, No. 2004- 12. 35 pp.

Smolowitz, R., H. Haas, H.O. Milliken, M. Weeks and E. Matzen. 2010. Using Sea Turtle Carcasses to Assess the Conservation Potential of a Turtle Deflector Dredge. North American Journal of Fisheries Management 30: 993-1000.

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 6, 2015.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 223 and 648 are proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

AUTHORITY: 16 U.S.C. 1531-1543; subpart B, §223.201-202 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for §223.206(d)(9).2.

2. In § 223.206 paragraph (d)(11) is revised to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(11) *Restrictions applicable to sea scallop dredges in the mid-Atlantic—(i) Gear Modification.* During the time period of May 1 through November 30, any vessel with a sea scallop dredge and required to have a Federal Atlantic sea scallop fishery permit, regardless of dredge size or vessel permit category, that enters waters west of 71° W. long., from the shoreline to the outer boundary of the Exclusive Economic Zone must have on each dredge a chain mat described as follows. The chain mat must be composed of horizontal (“tickler”) chains and vertical (“up-and-down”) chains that are configured such that the openings formed by the intersecting chains have no more than four sides. The vertical and horizontal chains must be hung to cover the opening of the dredge bag such that the vertical chains extend from the back of the cutting bar to the sweep. The horizontal chains must intersect the vertical chains such that the length of each side of the openings formed by the intersecting chains is less than or equal to 14 inches (35.5 cm) with the exception of the side of any individual opening created by the sweep. The chains must be connected to each other with a shackle or link at each intersection point. The measurement must be taken along the chain, with the chain held taut, and include one shackle or link at the intersection point and all links in the chain up to, but excluding, the shackle or link at the other intersection point.

(ii) Any vessel that enters the waters described in paragraph (d)(11)(i) of this section and that is required to have a Federal Atlantic sea scallop fishery permit must have the chain mat configuration installed on all dredges for the duration of the trip.

(iii) Vessels subject to the requirements in paragraphs (d)(11)(i) and (d)(11)(ii) of this section transiting waters west of 71° W. long., from the shoreline to the outer boundary of the Exclusive Economic Zone, will be exempted from the chain-mat requirements provided the dredge gear is stowed in accordance with § 648.2 and there are no scallops on-board.

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

4. In § 648.10, paragraphs (e)(5)(iii) and (f)(4) are revised, and (f)(6) is added to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(e) * * *

(5) * * *

(iii) DAS counting for a vessel that is under the VMS notification requirements of paragraph (b) of this section, with the exception of vessels that have elected to fish exclusively in the Eastern U.S./Canada Area on a particular trip, as described in paragraph (e)(5) of this section, begins with the first location signal received showing that the vessel crossed the VMS Demarcation Line after leaving port. DAS counting ends with the first location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port, unless the

vessel is declared into a limited access scallop DAS trip and, upon its return to port, declares out of the scallop fishery shoreward of the VMS Demarcation Line at or south of 39° N. lat., as specified in paragraph (f)(6) of this section, and lands in a port south of 39° N. lat.

* * * * *

(f) * * *

(4) *Catch reports.* (i) The owner or operator of a limited access or LAGC IFQ vessel that fishes for, possesses, or retains scallops, and is not fishing under a NE Multispecies DAS or sector allocation, must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished, including open area trips, access area trips as described in § 648.60(a)(9), and trips accompanied by a NMFS-approved observer. The reports must be submitted for each day (beginning at 0000 hr and ending at 2400 hr) and not later than 0900 hr of the following day. Such reports must include the following information:

(A) VTR serial number;

(B) Date fish were caught;

(C) Total pounds of scallop meats kept;

(D) Total pounds of all fish kept.

(ii) *Scallop Pre-Landing Notification Form for IFQ and NGOM vessels.* A vessel issued an IFQ or NGOM scallop permit must report through VMS, using the Scallop Pre-Landing Notification Form, the amount of any scallops kept on each trip declared as a scallop trip, including declared scallop trips where no scallops were landed. In addition, vessels with an IFQ or NGOM permit must submit a Scallop Pre-Landing Notification Form on trips that are not declared as scallop trips, but on which scallops are kept incidentally. A limited access vessel that

also holds an IFQ or NGOM permit must submit the Scallop Pre-Landing Notification Form only when fishing under the provisions of the vessel's IFQ or NGOM permit. VMS Scallop Pre-Landing Notification forms must be submitted no less than 6 hours prior to arrival, or, if fishing ends less than 6 hours before arrival, immediately after fishing ends. If scallops will be landed, the report must include the vessel operator's permit number, the amount of scallop meats in pounds to be landed, the number of bushels of in-shell scallops to be landed, the estimated time of arrival in port, the landing port and state where the scallops will be offloaded, the VTR serial number recorded from that trip's VTR (the same VTR serial number as reported to the dealer), and whether any scallops were caught in the NGOM. If no scallops will be landed, a vessel issued an IFQ or NGOM scallop permit must provide only the vessel's captain/operator's permit number, the VTR serial number recorded from that trip's VTR (the same VTR serial number as reported to the dealer), and confirmation that no scallops will be landed. A vessel issued an IFQ or NGOM scallop permit may provide a corrected report. If the report is being submitted as a correction of a prior report, the information entered into the notification form will replace the data previously submitted in the prior report. Submitting a correction does not prevent NMFS from pursuing an enforcement action for any false reporting.

(iii) *Scallop Pre-Landing Notification Form for Limited Access Vessels fishing on Scallop Access Area Trips.* A limited access vessel on a declared Sea Scallop Access Area trip must report through VMS, using the Scallop Pre-Landing Notification Form, the amount of any scallops kept on each access area trip, including declared access area trips where no scallops were landed. The report must be submitted no less than 6 hours before arrival, or, if fishing ends less than 6 hours before arrival, immediately after fishing ends. If scallops will be landed, the

report must include the vessel operator's permit number, the amount of scallop meats in pounds to be landed, the number of bushels of in-shell scallops to be landed, the estimated time of arrival, the landing port and state where the scallops will be offloaded, and the VTR serial number recorded from that trip's VTR (the same VTR serial number as reported to the dealer). If no scallops will be landed, a limited access vessel on a declared Sea Scallop Access Area trip must provide only the vessel's captain/operator's permit number, the VTR serial number recorded from that trip's VTR (the same VTR serial number as reported to the dealer), and confirmation that no scallops will be landed. A limited access scallop vessel may provide a corrected report. If the report is being submitted as a correction of a prior report, the information entered into the notification form will replace the data previously submitted in the prior report. Submitting a correction does not prevent NMFS from pursuing an enforcement action for any false reporting. A vessel may not offload its catch from a Sea Scallop Access Area trip at more than one location per trip.

(iv) *Scallop Pre-Landing Notification Form for Limited Access Vessels on a Declared DAS Trip Landing Scallops at Ports Located at or South of 39° N. Lat.* In order to end a declared Sea Scallop DAS trip and steam south of 39° N. lat., a limited access vessel must first report through VMS, using the Scallop Pre-Landing Notification Form, the amount of any scallops kept on its DAS trip. Upon crossing shoreward of the VMS Demarcation Line at or south of 39° N. lat., the Scallop Pre-Landing Notification form must be submitted. The report must include the vessel operator's permit number, the amount of scallop meats in pounds to be landed, the estimated time of arrival in port, the landing port and state where the scallops will be offloaded, and the VTR serial number recorded from that trip's VTR (the same VTR serial number as reported to

the dealer). Prior to crossing seaward of the VMS Demarcation Line for the transit to a southern port at or south of 39° N. lat., the vessel must declare out of the scallop fishery. A limited access scallop vessel may provide a corrected report. If the report is being submitted as a correction of a prior report, the information entered into the notification form will replace the data previously submitted in the prior report. Submitting a correction does not prevent NMFS from pursuing an enforcement action for any false reporting.

* * * * *

(6) *Limited access scallop vessels fishing under the DAS Program and landing scallops at ports south of 39° N. Lat.* If landing scallops at a port located at or south of 39° N. lat., a limited access vessel participating in the scallop DAS program may end its DAS trip once it has crossed shoreward of the VMS Demarcation Line at or south of 39° N. lat. by declaring out of the scallop fishery and submitting the Scallop Pre-Landing Notification Form, as specified at paragraph (f)(4)(iv) of this section. Once declared out of the scallop fishery, and the vessel has submitted the Scallop Pre-Landing Notification Form, the vessel may cross seaward of the VMS Demarcation Line and steam to a port at or south of 39° N. lat., to land scallops while not on a DAS. Such vessels that elect to change their declaration to steam to ports with scallops onboard and not accrue DAS must comply with all the requirements at § 648.53(f)(3).

* * * * *

5. In § 648.14, paragraphs (i)(2)(ii)(B), (i)(2)(iii)(C), (i)(2)(v)(D), (i)(3)(iii)(C), (i)(3)(iii)(D), (i)(4)(i)(C), (i)(5)(iii) are revised and paragraphs (i)(2)(iv)(F) and (i)(2)(v)(E) are added to read as follows:

§ 648.14 *Prohibitions.*

* * * * *

(i) * * *

(2) * * *

(ii) * * *

(B) While under or subject to the DAS allocation program, in possession of more than 40 lb (18.1 kg) of shucked scallops or 5 bu (1.76 hL) of in-shell scallops, or fishing for scallops in the EEZ:

(1) Fish with, or have available for immediate use, trawl nets of mesh smaller than the minimum size specified in § 648.51(a)(2).

(2) Fail to comply with any chafing gear or other gear obstruction restrictions specified in § 648.51(a)(3).

(3) Fail to comply with the turtle deflector dredge vessel gear restrictions specified in § 648.51(b)(5), and turtle dredge chain mat requirements in § 223.206(d)(11) of this title.

(4) Fish under the small dredge program specified in § 648.51(e), with, or while in possession of, a dredge that exceeds 10.5 ft (3.2 m) in overall width, as measured at the widest point in the bail of the dredge.

(5) Fish under the small dredge program specified in § 648.51(e) with more persons on board the vessel, including the operator, than specified in § 648.51(e)(3), unless otherwise authorized by the Regional Administrator.

(6) Participate in the DAS allocation program with more persons on board the vessel than the number specified in § 648.51(c), including the operator, when the vessel is not docked or moored in port, unless otherwise authorized by the Regional Administrator.

(7) Fish in the Mid-Atlantic Access Area, as described in § 648.59(a), with more persons on board the vessel than the number specified in § 648.51(c) or § 648.51(e)(3)(i), unless otherwise authorized by the Regional Administrator.

(8) Have a shucking or sorting machine on board a vessel that shucks scallops at sea while fishing under the DAS allocation program, unless otherwise authorized by the Regional Administrator.

(9) Fish with, possess on board, or land scallops while in possession of trawl nets, when fishing for scallops under the DAS allocation program, unless exempted as provided for in § 648.51(f).

(10) Fail to comply with the gear restrictions described in § 648.51.

* * * * *

(iii) * * *

(C) Fish for or land per trip, or possess at any time, scallops in the NGOM scallop management area after notification in the **Federal Register** that the NGOM scallop management area TAC has been harvested, as specified in § 648.62, unless the vessel possesses or lands scallops that were harvested south of 42°20' N. lat. and the vessel only transits the NGOM scallop management area with the vessel's fishing gear properly stowed and unavailable for immediate use in accordance with § 648.2 or unless the vessel is fishing exclusively in state waters and is participating in an approved state waters exemption program as specified in § 648.54.

* * * * *

(iv) * * *

(D) Fail to comply with any requirements for declaring out of the DAS allocation program and steaming to land scallops at ports located at or south of 39° N. lat., as specified in § 648.53(f)(3).

(E) Possess on board or land in-shell scallops if declaring out of the DAS allocation program and steaming to land scallops at ports located at or south of 39° N. lat.

(v) * * *

(D) Once declared into the scallop fishery in accordance with § 648.10(f), change its VMS declaration until the trip has ended and scallop catch has been offloaded, except as specified at § 648.53(f)(3).

(E) Fail to submit a scallop access area pre-landing notification form through VMS as specified at § 648.10(f)(4)(iii).

* * * * *

(3) * * *

(iii) * * *

(C) Declare into the NGOM scallop management area after the effective date of a notification published in the **Federal Register** stating that the NGOM scallop management area TAC has been harvested as specified in § 648.62, unless the vessel is fishing exclusively in state waters, declared a state-waters only NGOM trip, and is participating in an approved state waters exemption program as specified in § 648.54.

(D) Fish for, possess, or land scallops in or from the NGOM scallop management area after the effective date of a notification published in the **Federal Register** that the NGOM scallop management area TAC has been harvested, as specified in § 648.62, unless the vessel

possesses or lands scallops that were harvested south of 42°20' N. lat., the vessel is transiting the NGOM scallop management area, and the vessel's fishing gear is properly stowed and unavailable for immediate use in accordance with § 648.2 or unless the vessel is fishing exclusively in state waters, declared a state-waters only NGOM trip, and is participating in an approved state waters exemption program as specified in § 648.54.

* * * * *

(4) * * *

(i) * * *

(C) Declare into the NGOM scallop management area after the effective date of a notification published in the **Federal Register** stating that the NGOM scallop management area TAC has been harvested as specified in § 648.62, unless the vessel is fishing exclusively in state waters, declared a state-waters only NGOM trip, and is participating in an approved state waters exemption program as specified in § 648.54.

* * * * *

(5) * * *

(iii) Fish for, possess, or land scallops in state or Federal waters of the NGOM management area after the effective date of notification in the **Federal Register** that the NGOM scallop management area TAC has been harvested as specified in § 648.62, unless the vessel is fishing exclusively in state waters, declared a state-waters only NGOM trip, and is participating in an approved state waters exemption program as specified in § 648.54.

* * * * *

4. In § 648.51:

a. Paragraphs (b)(4)(iv) and (v), (b)(5)(ii)(A) introductory text, (b)(5)(ii)(A)(3), and (c) introductory text are revised;

b. Paragraph (c)(1) is removed and reserved; and

c. Paragraph (e)(3)(i) is revised.

The revisions read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(b) * * *

(4) * * *

(iv) *Twine top restrictions as a proactive accountability measure for bycatch.* In addition to the minimum twine top mesh size specified in paragraph (b)(2) of this section, limited access and limited access general category IFQ vessels may not fish for scallops with a dredge having more than seven rows of non-overlapping steel rings unobstructed by netting or any other material between the terminus of the dredge (club stick) and the net material on the top of the dredge (twine top) (a copy of a diagram showing a schematic of a legal dredge with twine top is available from the Regional Administrator upon request).

(v) *Measurement of twine top mesh size.* Twine top mesh size is measured by using a wedge-shaped gauge having a taper of 0.79 inches (2 cm) in 3.15 inches (8 cm) and a thickness of 0.09 inches (2.3 mm), inserted into the meshes under a pressure or pull of 17.64 lb (8 kg). The mesh size is the average of the measurements of any series of 20 consecutive meshes for twine tops having 75 or more meshes, and 10 consecutive meshes for twine tops having fewer than 75 meshes. The mesh in the twine top must be measured along the length of the twine top,

running parallel to a longitudinal axis, and be at least five meshes away from where the twine top mesh meets the rings, running parallel to the long axis of the twine top.

(5) * * *

(ii) * * *

(A) From May 1 through November 30, any limited access scallop vessel using a dredge, regardless of dredge size or vessel permit category, or any LAGC IFQ scallop vessel fishing with a dredge with a width of 10.5 ft (3.2 m) or greater, that is fishing for scallops in waters west of 71° W long., from the shoreline to the outer boundary of the EEZ, must use a TDD. The TDD requires five modifications to the rigid dredge frame, as specified in paragraphs (b)(5)(ii)(A)(1) through (b)(5)(ii)(A)(5) of this section. See paragraph (b)(5)(ii)(D) of this section for more specific descriptions of the dredge elements mentioned below.

* * * * *

(3) All bale bars must be removed, except the outer bale (single or double) bars and the center support beam, leaving an otherwise unobstructed space between the cutting bar and forward bale wheels, if present. The center support beam must be less than 6 inches (15.24 cm) wide. For the purpose of flaring and safe handling of the dredge, a minor appendage not to exceed 12 inches (30.5 cm) in length may be attached to each of the outer bale bars. If the flaring bar is attached in a u-shape, none of the three sides of the flaring bar shall exceed 12 inches (30.5 cm) in length. The appendage shall at no point be closer than 12 inches (30.5 cm) to the cutting bar.

* * * * *

(c) *Crew restrictions.* A limited access vessel participating in or subject to the scallop DAS allocation program may have no more than seven people aboard, including the operator, and a limited access vessel participating in the Sea Scallop Area Access Program as specified in § 648.60 may have no more than eight people aboard, including the operator, when not docked or moored in port, except as follows:

* * * * *

(e) * * *

(3) * * *

(i) A vessel participating in the Sea Scallop Area Access Program as specified in § 648.60 may have no more than six people, including the operator, on board.

* * * * *

5. In § 648.53, paragraphs (a), (b)(1), and (b)(4) are revised, paragraph (f)(3) is added, and paragraph (g)(1) is revised to read as follows:

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

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

The ABC/ACL for the 2016 fishing year is subject to change through a future framework adjustment.

(1) ABC/ACL for fishing years 2015 through 2016, excluding discards, shall be:

(i) 2015: 25,352 mt.

(ii) 2016: 31,807 mt.

(2) *Scallop incidental catch target TAC*. The annual incidental catch target TAC for vessels with incidental catch scallop permits is 22.7 mt.

(3) *Limited access fleet sub-ACL and ACT*. The limited access scallop fishery shall be allocated 94.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a)(3). ACT for the limited access scallop fishery shall be established through the framework adjustment process described in § 648.55. DAS specified in paragraph (b) of this section shall be based on the ACTs specified in paragraph (a)(3)(ii) of this section. The limited access fleet sub-ACL and ACT for the 2016 fishing year are subject to change through a future framework adjustment.

(i) The limited access fishery sub-ACLs for fishing years 2015 and 2016 are:

(A) 2015: 23,161 mt.

(B) 2016: 29,200 mt.

(ii) The limited access fishery ACTs for fishing years 2015 and 2016 are:

(A) 2015: 19,311 mt.

(B) 2016: 23,016 mt.

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

(i) The ACLs for fishing years 2015 and 2016 for LAGC IFQ vessels without a limited access scallop permit are:

(A) 2015: 1,225 mt.

(B) 2016: 1,545 mt.

(ii) The ACLs for fishing years 2015 and 2016 for vessels issued both a LAGC and a limited access scallop permits are:

(A) 2015: 123 mt.

(B) 2016: 154 mt.

(b) * * *

(1) *Landings per unit effort (LPUE)*. LPUE is an estimate of the average amount of scallops, in pounds, that the limited access scallop fleet lands per DAS fished. The estimated

LPUE is the average LPUE for all limited access scallop vessels fishing under DAS, and shall be used to calculate DAS specified in paragraph (b)(4) of this section, the DAS reduction for the AM specified in paragraph (b)(4)(ii) of this section, and the observer set-aside DAS allocation specified in paragraph (g)(1) of this section. LPUE shall be:

(i) 2015 fishing year: 2,594 lb/DAS (1,171 kg/DAS).

(ii) 2016 fishing year: 2,715 lb/DAS (1,175 kg/DAS).

(iii) [Reserved]

* * * * *

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

SCALLOP OPEN AREA DAS ALLOCATIONS

Permit category	2015	2016
Full-Time	30.86	26
Part-Time	12.94	10.40

Occasional	2.58	2.17
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(i) [Reserved]

(ii) *Accountability measures (AM)*. Unless the limited access AM exception is implemented in accordance with the provision specified in paragraph (b)(4)(iii) of this section, if the ACL specified in paragraph (a)(3)(i) of this section is exceeded for the applicable fishing year, the DAS specified in paragraph (b)(4) of this section for each limited access vessel shall be reduced by an amount equal to the amount of landings in excess of the ACL divided by the applicable LPUE for the fishing year in which the AM will apply as specified in paragraph (b)(1) of this section, then divided by the number of scallop vessels eligible to be issued a full-time limited access scallop permit. For example, assuming a 300,000-lb (136-mt) overage of the ACL in 2011, an open area LPUE of 2,500 lb (1.13 mt) per DAS in 2012, and 313 full-time vessels, each full-time vessel's DAS would be reduced by 0.38 DAS (300,000 lb (136 mt)/2,500 lb (1.13 mt) per DAS = 120 lb (0.05 mt) per DAS/313 vessels = 0.38 DAS per vessel). Deductions in DAS for part-time and occasional scallop vessels shall be 40 percent and 8.33 percent of the full-time DAS deduction, respectively, as calculated pursuant to this paragraph (b)(4)(ii). The AM shall take effect in the fishing year following the fishing year in which the overage occurred. For example, landings in excess of the ACL in fishing year 2011 would result in the DAS reduction AM in fishing year 2012. If the AM takes effect, and a limited access vessel uses more open area DAS in the fishing year in which the AM is applied, the vessel shall have the DAS used in excess of the allocation after applying the AM deducted from its open area DAS allocation in the subsequent fishing year. For example, a vessel initially allocated 32 DAS in 2011 uses all 32

DAS prior to application of the AM. If, after application of the AM, the vessel's DAS allocation is reduced to 31 DAS, the vessel's DAS in 2012 would be reduced by 1 DAS.

(iii) *Limited access AM exception.* If NMFS determines, in accordance with paragraph (b)(4)(ii) of this section, that the fishing mortality rate associated with the limited access fleet's landings in a fishing year is less than 0.34, the AM specified in paragraph (b)(4)(ii) of this section shall not take effect. The fishing mortality rate of 0.34 is the fishing mortality rate that is one standard deviation below the fishing mortality rate for the scallop fishery ACL, currently estimated at 0.38.

(iv) *Limited access fleet AM and exception provision timing.* The Regional Administrator shall determine whether the limited access fleet exceeded its ACL specified in paragraph (a)(3)(i) of this section by July of the fishing year following the year for which landings are being evaluated. On or about July 1, the Regional Administrator shall notify the New England Fishery Management Council of the determination of whether or not the ACL for the limited access fleet was exceeded, and the amount of landings in excess of the ACL. Upon this notification, the Scallop Plan Development Team (PDT) shall evaluate the overage and determine if the fishing mortality rate associated with total landings by the limited access scallop fleet is less than 0.34. On or about September 1 of each year, the Scallop PDT shall notify the Council of its determination, and the Council, on or about September 30, shall make a recommendation, based on the Scallop PDT findings, concerning whether to invoke the limited access AM exception. If NMFS concurs with the Scallop PDT's recommendation to invoke the limited access AM exception, in accordance with the APA, the limited access AM shall not be

implemented. If NMFS does not concur, in accordance with the APA, the limited access AM shall be implemented as soon as possible after September 30 each year.

* * * * *

(f) * * *

(3) *Limited access scallop vessels fishing under the DAS Program and landing scallops at a port located at or south of 39° N. Lat.* If landing scallops at a port located at or south of 39° N. lat., a limited access vessel participating in the scallop DAS program may end its DAS trip once shoreward of the VMS Demarcation Line at or south of 39° N. lat. by declaring out of the scallop fishery. Once declared out of the scallop fishery, the vessel may cross seaward of the VMS Demarcation Line and steam to ports at or south of 39° N. lat., to land scallops while not on a DAS, provided that the vessel complies with the following requirements:

(i) The vessel must submit a Scallop Pre-landing Notification Form, as specified at § 648.10(f)(4)(iv);

(ii) The vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2;

(iii) The vessel must return directly to port and offload scallops;

(iv) The vessel must land scallops at a port located at or south of 39° N. lat.; and

(v) The vessel may not possess in-shell scallops.

(g) *Set-asides for observer coverage.* (1) To help defray the cost of carrying an observer, 1 percent of the ABC/ACL specified in paragraph (a)(1) of this section shall be set aside to be used by vessels that are assigned to take an at-sea observer on a trip. The total TAC for observer set aside is 254 mt in fishing year 2015, and 318 mt in fishing year 2016.

* * * * *

6. In § 648.54, paragraphs (a)(4) and (b) through (g) are revised and paragraph (h) is added to read as follows:

§ 648.54 State waters exemption.

* * * * *

(a) * * *

(4) The Regional Administrator has determined that the State of Maine has a scallop fishery conservation program for its scallop fishery that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. A vessel fishing in State of Maine waters may fish under the State of Maine state waters exemption, subject to the exemptions specified in paragraphs (b) and (c) of this section, provided the vessel is in compliance with paragraphs (e) through (g) of this section.

(b) *Limited access scallop vessel exemption.* Any vessel issued a limited access scallop permit is exempt from the DAS requirements specified in § 648.53(b) while fishing exclusively landward of the outer boundary of the waters of a state that has been issued a state waters exemption under paragraph (a)(4) of this section, provided the vessel complies with paragraphs (f) through (h) of this section.

(c) *Gear and possession limit restrictions.* Any vessel issued a limited access scallop permit, an LAGC NGOM, or an LAGC IFQ scallop permit is exempt from the minimum twine top mesh size for scallop dredge gear specified in §§ 648.51(b)(2) and (b)(4)(iv) while fishing exclusively landward of the outer boundary of the waters of the State of Maine under the state

waters exemption specified in paragraph (a)(4) of this section, provided the vessel is in compliance with paragraphs (d) through (g) of this section.

(d) *NGOM closure exemption.* Any vessel issued a Federal scallop permit may be exempt from the regulations specified in § 648.52(b)(2) requiring that once the NGOM Federal hard TAC is reached, no vessel issued a scallop permit may fish in the NGOM area. This exemption, which a state must apply for through the process specified in paragraph (a) of this section, would allow vessels to continue to fish for scallops within a state's waters inside the NGOM. A state applying for this exemption must clarify to which scallop permit types this exemption would apply.

(e) *Notification requirements.* Vessels fishing under the exemptions specified in paragraph (b) and/or (c) of this section must notify the Regional Administrator in accordance with the provisions of § 648.10(e).

(f) *Restriction on fishing in the EEZ.* A vessel fishing under a state waters exemption may not fish in the EEZ during the time in which it is fishing under the state waters exemption, as declared under the notification requirements of this section.

(g) *Duration of exemption.* An exemption expires upon a change in the vessel's name or ownership, or upon notification through VMS by the participating vessel's owner.

(h) *Applicability of other provisions of this part.* A vessel fishing under the exemptions provided by paragraphs (b) and/or (c) of this section remains subject to all other requirements of this part.

7. Section 648.58 is revised to read as follows:

§ 648.58 Rotational Closed Areas.

(a) *Closed Area I Closed Area*— No vessel may fish for scallops in, or possess or land scallops from, the area known as the Closed Area I Closed Area. No vessel may possess scallops in the Closed Area I Closed Area, unless such vessel is only transiting the area as provided in paragraph (e) of this section. The Closed Area I Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request), and so that the line connecting points CAIA3 and CAIA4 is the same as the portion of the western boundary line of Closed Area I, defined in § 648.81(a)(1), that lies between points CAIA3 and CAIA4:

Point	Latitude	Longitude	Note
CAIA1	41°26' N.	68°30' W.	
CAIA2	40°58' N.	68°30' W.	
CAIA3	40°54.95' N.	68°53.37' W.	(¹)
CAIA4	41°04.32' N.	69°01.27' W.	(¹)
CAIA1	41°26' N.	68°30' W.	

¹From Point CAIA3 to Point CAIA4 along the western boundary of Closed Area I, defined in § 648.81(a)(1).

(b) *Closed Area II Closed Area*— No vessel may fish for scallops in, or possess or land scallops from, the area known as the Closed Area II Closed Area. No vessel may possess scallops in the Closed Area II Closed Area. The Closed Area II Closed Area is defined by straight lines, except where noted, connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude	Note
CAIIA1	41°00' N.	67°20' W.	
CAIIA2	41°00' N.	66°35.8' W.	
CAIIA3	41°18.6' N.	(¹)	(²)

CAIIA4	41°30' N.	(³)	(²)
CAIIA5	41°30' N.	67°20' W.	
CAIIA1	41°00' N.	67°20' W.	

¹The intersection of 41° 18.6' N. lat. and the U.S.-Canada Maritime Boundary, approximately 41°18.6' N. lat. and 66°25.01' W. long.

²From Point CAIIA3 connected to Point CAIIA4 along the U.S.-Canada Maritime Boundary.

³The intersection of 41°30' N. lat. and the U.S.-Canada Maritime Boundary, approximately 41°30' N. lat., 66°34.73' W. long.

(c) *Nantucket Lightship Closed Area*— No vessel may fish for scallops in, or possess or land scallops from, the area known as the Nantucket Lightship Closed Area. No vessel may possess scallops in the Nantucket Lightship Closed Area, unless such vessel is only transiting the area as provided in paragraph (e) of this section. The Nantucket Lightship Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request),

Point	Latitude	Longitude
NLAA1	40°50' N.	69°30' W.
NLAA2	40°50' N.	69°00' W.
NLAA3	40°33' N	69°00' W
NLAA4	40°33' N	68°48' W
NLAA5	40°20' N	68°48' W
NLAA6	40°20' N.	69°30' W.
NLAA1	40°50' N.	69°30' W.

(d) *Elephant Trunk Closed Area*— No vessel may fish for scallops in, or possess or land scallops from, the area known as the Elephant Trunk Closed Area. No vessel may possess scallops in Elephant Trunk Closed Area. The Elephant Trunk Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request).

Point	Latitude	Longitude
ETCA 1	38°50' N.	74°20' W.
ETCA 2	38°50' N.	73°40' W.
ETCA 3	38°40' N.	73°40' W.
ETCA 4	38°40' N.	73°50' W.
ETCA 5	38°30' N.	73°50' W.
ETCA 6	38°30' N.	74°20' W.
ETCA 1	38°50' N.	74°20' W.

(e) *Transiting*. No vessel possessing scallops may enter or be in the area(s) specified in paragraphs (a) and (c) of this section unless the vessel is transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Closed Area, as described in paragraph (b) of this section, or the Elephant Trunk Closed Area, as described in paragraph (d) of this section, if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(f) *Vessels fishing for species other than scallops*. A vessel may fish for species other than scallops within the closed areas specified in paragraphs (a) through (d) of this section as allowed in this part, provided the vessel does not fish for, catch, or retain scallops or intend to

fish for, catch, or retain scallops. Declaration through VMS that the vessel is fishing in the LAGC scallop fishery is deemed to be an intent to fish for, catch, or retain scallops.

8. In § 648.59:

a. Paragraphs (a), (b) introductory text, (b)(1), (c) introductory text, and (c)(1) are revised;

b. Paragraph (c)(2) is removed and reserved;

c. Paragraphs (d) introductory text and (d)(1) are revised; and

d. Paragraphs (d)(2) and (e) are removed and reserved.

The revisions read as follows:

§ 648.59 Sea Scallop Access Areas.

(a) *Mid-Atlantic Scallop Access Area*—(1) Beginning March 1, 2015, through February 28, 2017 (i.e., fishing years 2015 and 2016), a vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Mid-Atlantic Access Area unless the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. The Mid-Atlantic Access Area is comprised of the following scallop access areas: The Delmarva Scallop Access Area, as described in paragraph (a)(2) of this section; the Elephant Trunk Scallop Access Area, as described in paragraph (a)(3) of this section; and the Hudson Canyon Scallop Access Area, as described in paragraph (a)(4) of this section.

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

Point	Latitude	Longitude
DMV1	38°10' N.	74°50' W.

DMV2	38°10' N.	74°00' W.
DMV3	37°15' N.	74°00' W.
DMV4	37°15' N.	74°50' W.
DMV1	38°10' N.	74°50' W.

(i) *Season.* A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Delmarva Sea Scallop Access Area, described in paragraph (a)(2) of this section, during the period of March 1, 2016, through March 31, 2016.

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

Point	Latitude	Longitude
ETAA1	38°30' N.	74°20' W.
ETAA2	38°30' N.	73°50' W.
ETAA3	38°40' N.	73°50' W.
ETAA4	38°40' N.	73°40' W.
ETAA5	38°50' N.	73°40' W.
ETAA6	38°50' N.	73°30' W.
ETAA7	38°10' N.	73°30' W.
ETAA8	38°10' N.	74°20' W.
ETAA1	38°30' N.	74°20' W.

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

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

(b) *Closed Area I Scallop Access Area*—(1) From March 1, 2015, through February 28, 2017 (i.e., fishing years 2015 and 2016), a vessel issued a scallop permit may not fish for, possess, or land scallops in or from, the area known as the Closed Area I Scallop Access Area, described in paragraph (b)(3) of this section, unless transiting in accordance with paragraph (f) of this section. A vessel issued both a NE multispecies permit and an LAGC scallop permit may not fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, unless it complies with restrictions in paragraph (b)(5)(ii)(C) of this section.

* * * * *

(c) *Closed Area II Scallop Access Area*—(1) From March 1, 2015, through February 28, 2017 (i.e., fishing years 2015 and 2016), a vessel issued a scallop permit may not fish for, possess, or land scallops in or from, the area known as the Closed Area II Access Area, described in paragraph (c)(3) of this section, unless transiting in accordance with paragraph (f) of this section. A vessel issued both a NE multispecies permit and an LAGC scallop permit may not fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, unless it complies with restrictions in paragraph (c)(5)(ii)(C) of this section.

* * * * *

(d) *Nantucket Lightship Scallop Access Area*—(1) From March 1, 2015, through February 28, 2017 (i.e., fishing years 2015 and 2016), a vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Nantucket Lightship Access Area, described in paragraph (d)(3) of this section, unless transiting pursuant to paragraph (f) of this section. A vessel issued both a NE multispecies permit and an LAGC scallop permit may not fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, unless it complies with restrictions in paragraph (d)(5)(ii)(C) of this section.

* * * * *

9. In § 648.60, paragraphs (a)(1), (a)(3), (a)(5)(i), (a)(9), (c), (e)(1), (g)(3)(i) are revised to read as follows:

§ 648.60 Sea scallop access area program requirements.

(a) * * *

(1) *VMS*. Each vessel participating in the Sea Scallop Access Area Program must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10, and paragraphs (a)(9) and (f) of this section.

* * * * *

(3) *Sea Scallop Access Area Allocations*—(i) Limited access vessel allocations.

(A) Except as provided in paragraph (c) of this section, paragraphs (a)(3)(i)(B) through (E) of this section specify the total amount of scallops, in weight, that a limited access scallop vessel may harvest from Sea Scallop Access Areas during applicable seasons specified in § 648.59. A vessel may not possess or land in excess of its scallop allocation assigned to specific Sea Scallop Access Areas, unless authorized by the Regional Administrator, as specified in

paragraph (d) of this section, unless the vessel owner has exchanged an area-specific scallop allocation with another vessel owner for additional scallop allocation in that area, as specified in paragraph (a)(3)(ii) of this section. A vessel may harvest its scallop allocation, as specified in paragraph (a)(3)(B) of this section, on any number of trips in a given fishing year, provided that no single trip exceeds the possession limits specified in paragraph (a)(5) of this section, unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section,

(B) *Full-time scallop vessels.* (1) In fishing year 2015, each full-time vessel shall have a total of 51,000 lb (23,133 kg) of scallops that may be harvested from the Mid-Atlantic Access Area, as defined in § 648.59(a).

(2) For the 2016 fishing year, each full-time vessel shall have a total of 17,000 lb (7,711 kg) of scallops that may be harvested from the Mid-Atlantic Access Area, as defined in § 648.59(a), starting on April 1, 2016.

(C) *Part-time scallop vessels.* (1) For the 2015 fishing year, each part-time scallop vessel shall have a total of 20,400 lb (9,253 kg) of scallop that may be harvested from the Mid-Atlantic Access Area, as defined in § 648.59(a).

(2) For the 2015 fishing year, each part-time scallop vessel shall have a total of 10,200 lb (4,627 kg) of scallop that may be harvested from the Mid-Atlantic Access Area, as defined in § 648.59(a), starting on April 1, 2016.

(D) *Occasional scallop vessels.* (1) For the 2015 fishing year, each occasional scallop vessel shall have a total of 4,250 lb (1,928 kg) of scallop that may be harvested from the Mid-Atlantic Access Area, as defined in § 648.59(a) .

(2) For the 2016 fishing year, each occasional scallop vessel shall have a total of 1,420 lb (644 kg) of scallop that may be harvested from the Mid-Atlantic Access Area, as defined in § 648.59(a), starting on April 1, 2016.

(ii) *One-for-one area access allocation exchanges.* The owner of a vessel issued a limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another vessel's unharvested scallop pounds allocated into another Sea Scallop Access Area. These exchanges may only be made for the amount of the current trip possession limit, as specified in paragraph (a)(5) of this section. For example, if the access area trip possession limit for full-time vessels is 17,000 lb (7,711 kg), a full-time vessel may exchange no less than 17,000 lb (7,711 kg), from one access area for no more or less than 17,000 lb (7,711 kg) allocated to another vessel for another access area. In addition, these exchanges may be made only between vessels with the same permit category: A full-time vessel may not exchange allocations with a part-time vessel, and vice versa. Vessel owners must request these exchanges by submitting a completed Access Area Allocation Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Access Area Allocation Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has enough unharvested allocation remaining in a given access area to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the allocation exchange has been made effective. A vessel owner may exchange equal allocations up to the current possession limit between two or more vessels under his/her ownership. A vessel owner

holding a Confirmation of Permit History is not eligible to exchange allocations between another vessel and the vessel for which a Confirmation of Permit History has been issued.

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(5) *Possession and landing limits*—(i) *Scallop possession limits*. Unless authorized by the Regional Administrator, as specified in paragraph (d) of this section, after declaring a trip into a Sea Scallop Access Area, a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, scallops, up to the maximum amounts specified in the table in this paragraph (a)(5). No vessel declared into the Access Areas as described in §648.59(a) through (e) may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Access Areas described in §648.59(a) through (e).

Fishing year	Permit category possession limit		
	Full-time	Part-time	Occasional
2015	17,000 lb (57,711 kg)	10,200 lb (4,627 kg)	1,420 lb (644kg).
2016	17,000 lb (57,711 kg)	10,200 lb (4,627 kg)	1,420 lb (644kg).

* * * * *

(9) *Reporting*. The owner or operator must submit scallop catch reports through the VMS, as specified in § 648.10(f)(4)(i), and limited access scallop access area pre-landing notification forms, as specified in § 648.10(f)(4)(iii).

* * * * *

(c) *Access area scallop allocation carryover*. Unless otherwise specified in § 648.59, a limited access scallop vessel operator may fish any unharvested Scallop Access Area allocation from a given fishing year within the first 60 days of the subsequent fishing year if the Access

Area is open. For example, if a full-time vessel has 7,000 lb (3,175 kg) remaining in the Hudson Canyon Access Area at the end of fishing year 2013, that vessel may harvest 7,000 lb (3,175 kg) from its 2014 fishing year scallop access area allocation during the first 60 days that the Hudson Canyon Access Area is open in fishing year 2014 (March 1, 2014, through April 29, 2014).

Unless otherwise specified in § 648.59, if an Access Area is not open in the subsequent fishing year, then the unharvested scallop allocation would expire at the end of the fishing year that the scallops were allocated. For example, if a full-time vessel has 7,000 lb (3,175 kg) remaining in Closed Area II Access Area at the end of a given fishing year, and that access area would not open the subsequent fishing year, the 7,000 lb (3,175 kg) of scallops would expire on the last day of the fishing year.

* * * * *

(e) *Sea Scallop Research Set-Aside Harvest in Access Areas*—(1) *Access Areas available for harvest of research set-aside (RSA)*. Unless otherwise specified, RSA may be harvested in any access area that is open in a given fishing year, as specified through a framework adjustment and pursuant to § 648.56. The amount of scallops that can be harvested in each access area by vessels participating in approved RSA projects shall be determined through the RSA application review and approval process. The access areas open for RSA harvest for fishing years 2015 and 2016 are:

(i) 2015: The Mid-Atlantic Scallop Access Area, as specified in § 648.59(a)

(ii) 2016: None.

* * * * *

(g) * * *

(3) *LAGC IFQ Access Area Trips.* (i) An LAGC scallop vessel authorized to fish in the Access Areas specified in § 648.59(a) through (e) may land scallops, subject to the possession limit specified in § 648.52(a), unless the Regional Administrator has issued a notice that the number of LAGC IFQ access area trips have been or are projected to be taken. The total number of LAGC IFQ trips in a specified Access Area for fishing year 2015 and 2016 are:

Access area	2015	2016
Mid-Atlantic Access Area	2,065	602
Closed Area 1	0	0
Closed Area 2	0	0
Nantucket Lightship	0	0

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10. In § 648.64, paragraph (a) is revised to read as follows:

§ 648.64 Yellowtail flounder sub-ACLs and AMs for the scallop fishery.

(a) As specified in § 648.55(d), and pursuant to the biennial framework adjustment process specified in § 648.90, the scallop fishery shall be allocated a sub-ACL for the Georges Bank and Southern New England/Mid-Atlantic stocks of yellowtail flounder. The sub-ACLs are specified in § 648.90(a)(4)(iii)(C) of the NE multispecies regulations.

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10. In § 648.65, paragraph (b)(3)(ii) is revised to read as follows:

§ 648.64 Windowpane flounder sub-ACLs and AMs for the scallop fishery.

* * * * *

(b) * * *

(3) * * *

(ii) The maximum hanging ratio for a net, net material, or any other material on the top of a scallop dredge (twine top) possessed or used by vessels fishing with scallop dredge gear does not exceed 1.5:1 overall. An overall hanging ratio of 1.5:1 means that the twine top is attached to the rings in a pattern of alternating 2 meshes per ring and 1 mesh per ring (counted at the bottom where the twine top connects to the apron), for an overall average of 1.5 meshes per ring for the entire width of the twine top. For example, an apron that is 40 rings wide subtracting 5 rings one each side of the side pieces, yielding 30 rings, would only be able to use a twine top with 45 or fewer meshes so that the overall ratio of meshes to rings did not exceed 1.5 ($45 \text{ meshes} / 30 \text{ rings} = 1.5$).

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