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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No.: 151210999-6348-02]**

**RIN 0648- BF59**

**Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 27**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS approves and implements through regulations the measures included in Framework Adjustment 27 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 27 is to prevent overfishing, improve yield-per-recruit, and improve the overall management of the Atlantic sea scallop fishery. Framework 27 sets specifications for the scallop fishery for fishing year 2016, including days-at-sea allocations, individual fishing quotas, and sea scallop access area trip allocations; creates a new rotational closed area south of Closed Area 2 to protect small scallops; opens the northern portion of the Nantucket Lightship Access Area to the Limited Access General Category fleet; transfers 19 percent of the Limited Access General Category access area trips from the Mid-Atlantic Access Area to the northern portion of the Nantucket Lightship Access Area; and implements an accountability measure to the fishing

year 2016 Northern Gulf of Maine Total Allowable Catch as a result of a fishing year 2015 catch overage.

**DATES:** Effective [*INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

**ADDRESSES:** The Council developed an environmental assessment (EA) for this action that describes the action and other considered alternatives and provides a thorough analysis of the impacts of these measures. 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. The EA/IRFA is also accessible via the Internet at:

<http://www.nefmc.org/scallops/index.html> or

<http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/scallop/>.

Copies of the small entity compliance guide are available from John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930-2298, or available on the internet at:

<http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/scallop/>.

**FOR FURTHER INFORMATION CONTACT:** Travis Ford, Fishery Policy Analyst, 978-281-9233.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Council adopted Framework 27 on December 3, 2015, and submitted a draft of the framework to NMFS on December 22, 2015, that presented Council recommended measures, rationale, impacts for review, and a draft EA. NMFS published a proposed rule, including a

reference on how to obtain the framework and the draft final EA, for approving and implementing Framework 27 on February 24, 2016 (81 FR 9151). The proposed rule included a 30-day public comment period that closed on March 25, 2016. The Council submitted a final EA to NMFS on March 14, 2016, for approval. This annual action includes catch, effort, and quota allocations and adjustments to the rotational area management program for fishing year 2016. Framework 27 specifies measures for fishing year 2016, and includes fishing year 2017 measures that will go into place as a default should the next specifications-setting framework be delayed beyond the start of fishing year 2017. NMFS has approved all of the measures recommended by the Council and described below. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) permits NMFS to approve, partially approve, or disapprove measures proposed by the Council based only on whether the measures are consistent with the fishery management plan, the Magnuson-Stevens Act and its National Standards, and other applicable law. We must defer to the Council’s policy choices unless there is a clear inconsistency with the law or the FMP. Details concerning the development of these measures were contained in the preamble of the proposed rule and are not repeated here.

*Specification of Scallop Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limits (ACLs), Annual Catch Targets (ACTs), and Set-Asides for the 2016 Fishing Year and Default Specifications for Fishing Year 2017*

Table 1 outlines the scallop fishery catch limits derived from the ABC values.

Table 1. Scallop Catch Limits (mt) for fishing years 2016 and 2017 for the limited access and Limited Access General Category (LAGC) individual fishing quota (IFQ) fleets.

	2016	2017 (default)
OFL	68,418	68,418

ABC/ACL (discards removed)	37,852	37,852
Incidental Catch	23	23
Research Set-Aside (RSA)	567	567
Observer Set-Aside	379	379
ACL for fishery	36,884	36,884
Limited Access ACL	34,855	34,855
LAGC ACL	2,029	2,029
LAGC IFQ	1,845	1,845
Limited Access with LAGC IFQ	184	184
Limited Access ACT	18,290	18,290

This action deducts 1.25 million lb (567 mt) of scallops annually for 2016 and 2017 from the ABC and sets it aside as the Scallop RSA to fund scallop research and to compensate participating vessels through the sale of scallops harvested under RSA projects. As of March 1, 2016, this set-aside has been available for harvest by RSA-funded projects in open areas. Framework 27 allows RSA to be harvested from the Mid-Atlantic Access Area (MAAA), but prevents RSA harvesting from access areas under 2017 default measures. Of this 1.25 million-lb (567-mt) allocation, NMFS has already allocated 3,393 lb (1.5 mt) to multi-year projects it previously funded as part of the 2015 RSA awards process. NMFS reviewed proposals submitted for consideration of 2016 RSA awards and announced project selections on April 7, 2016. Details on the 2016 RSA awards can be found on our website here:

<http://www.nefsc.noaa.gov/coopresearch/news/scallop-rsa-2016.html>

This action sets 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-aside is 379 mt for fishing year 2016 and 379 mt for fishing year 2017. In fishing year 2016, the compensation rates for limited access vessels in open areas fishing under days-at-sea (DAS) is 0.11 DAS per DAS fished. For access area trips, the compensation rate is 175 lb (79 kg), in addition to the

vessel’s possession limit for the trip for each day or part of a day an observer is onboard. LAGC IFQ vessels may possess an additional 175 lb (79 kg) per trip in open areas when carrying an observer. NMFS may adjust the compensation rate throughout the fishing year, depending on how quickly the fleets are using the set aside. The Council may adjust the 2017 observer set-aside when it develops specific, non-default measures for 2017.

*Open Area DAS Allocations*

This action implements vessel-specific DAS allocations for each of the three limited access scallop DAS permit categories (i.e., full-time, part-time, and occasional) for 2016 and 2017 (Table 2). Fishing year 2016 DAS allocations are higher than those allocated to the limited access fleet in 2015 (30.86 DAS for full-time, 12.94 DAS for part-time, and 2.58 DAS for occasional vessels). Framework 27 also sets a 2017 DAS allocations equal to fishing year 2016 as a default measure in the event the 2017 specifications action is delayed past the start of the 2017 fishing year. The 2016 level default measure is expected to be more precautionary than the 2017 projected level. The allocations in Table 2 exclude any DAS deductions that are required if the limited access scallop fleet exceeded its 2015 sub-ACL. In addition, these DAS values take into account a 0.14-DAS per vessel reduction necessary to compensate for a measure implemented in Framework Adjustment 26 to the FMP (80 FR 22119; April 21, 2015) that allows vessel to transit to ports south of 39°N Lat. while not on DAS.

Table 2. Scallop Open Area DAS Allocations for 2016 and 2017.

Permit Category	2016	2017
Full-Time	34.55	34.55
Part-Time	13.82	13.82
Occasional	2.88	2.88

*LA Allocations and Trip Possession Limits for Scallop Access Areas*

For fishing year 2016 and the start of 2017, Framework 27 keeps all three Georges Bank Access Areas (i.e., Nantucket Lightship, Closed Area 1, and Closed Area 2 Access Areas) closed and keeps the MAAA open to the limited access fleet. This action closes a new area, the Closed Area 2 Extension, to protect small scallops located south of the current Closed Area 2 boundary. The Council will reconsider opening this closure area to scallop fishing in a future framework action when the scallops are larger and ready for harvest.

Table 3 outlines the limited access allocations that can be fished from the MAAA, which each vessel can take in as many trips as needed, so long as the trip possession limits (also in Table 3) are not exceeded.

Table 3. Scallop Access Area Limited Access Vessel Poundage Allocations and Trip Possession Limits for 2016 and 2017.

Permit Category	Possession Limits	2016 Vessel Allocation	2017 Vessel 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)

*Additional Measures to Reduce Impacts on Scallops*

1. Delayed Harvesting of Default 2017 MAAA Allocations. Although the Framework includes default access area allocations for the 2017 fishing year (see 2017 allocations in Table 3), vessels have to wait to fish these allocations until April 1, 2017. This measure is precautionary to help 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 2016 scallop access area allocation in fishing year 2016, it may still fish the remainder of its allocation in the first 60 days of 2017 (i.e., March 1, 2017, through April 29, 2017).

2. 2017 RSA Harvest Restrictions. This action prohibits vessels participating in RSA projects from harvesting RSA in access areas while default 2017 measures are in place. If default measures are in place at the start of 2017, RSA can only be harvested from open areas. The Council will re-evaluate this measure in the framework action that would set final 2017 specifications.

#### *LAGC Measures*

1. *ACL for LAGC vessels with IFQ permits.* For LAGC vessels with IFQ permits, this action implements a 1,845-mt ACL for 2016 and an initial ACL of 1,845 mt for 2017 (see Table 1). The Council and NMFS calculate IFQ allocations by applying each vessel's IFQ contribution percentage to these ACLs. IFQ allocations for each vessel assume that LAGC IFQ fleet does not trigger any accountability measures (AMs). The AM dictates that if a vessel exceeds its IFQ in a given fishing year, its IFQ for the subsequent fishing year is reduced by the amount of the overage.

Because Framework 27 will go into effect after the March 1 start of fishing year 2016, the default 2016 IFQ allocations went into place automatically on March 1, 2016. This action implements IFQ allocations greater than the default allocations. NMFS sent a letter to IFQ permit holders providing both March 1, 2016, IFQ allocations and Framework 27 IFQ

allocations so that vessel owners know what mid-year adjustments will occur now that Framework 27 is approved.

2. *ACL for Limited Access Scallop Vessels with IFQ Permits.* For limited access scallop vessels with IFQ permits, this action implements a 184-mt ACL for 2016 and a default 184-mt ACL for 2017 (see Table 1). We calculate IFQ allocations by applying each vessel's IFQ contribution percentage to these ACLs. IFQ allocations for each vessel assume that the LAGC IFQ fleet doesn't trigger any AMs. The AM dictates that 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 27 allocates LAGC IFQ vessels a fleetwide number of trips in the MAAA and a fleetwide number of trips in the northern portion of the Nantucket Lightship Access Area (NLSN). This action does not grant the limited access fleet access to the NLSN.

Framework 27 allocates 2,068 and 602 trips in 2016 and the same default amounts for 2017, respectively, to the MAAA. Under default 2017 measures, LAGC IFQ vessels must wait to fish these trips until April 1, 2017. It also allocates 485 trips to the NLSN for fishing year 2016. The total number of trips for both areas combined (2,553) for fishing year 2016 is equivalent to the overall proportion of total catch from access areas compared to total catch. Framework 27 does not allocate any trips to either fleet category in NLSN for the 2017 fishing year.

4. *NGOM Total Allowable Catch (TAC).* The Framework 27 proposed rule proposed a 70,000-lb (31,751-kg) annual NGOM TAC for fishing years 2016 and 2017. However, the year-

end analysis of the fishing year 2015 NGOM fishery shows a 2,546-lb (1,155-kg) overage in the NGOM TAC. The regulations implementing the Scallop FMP require that we implement an AM that reduces the NGOM TAC by the amount of the overharvest. Therefore, as a result of the fishing year 2015 catch overage, this action implements that AM, reducing the fishing year 2016 NGOM TAC to 67,454 lb (30,597 kg).

5. *Scallop Incidental Catch Target TAC.* This action allocates a 50,000-lb (22,680-kg) scallop incidental catch target TAC for fishing years 2016 and a default target TAC for 2017 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.

Despite the comments opposing the action, we find that the justification and analysis support the Council's recommendations, and that the Council process, in adopting Framework 27, followed up by the proposed and final rulemaking process, provided Council members and the public sufficient analysis to consider the proposed alternatives, including opening NLSN to LAGC vessels only, and adequate opportunity to comment on such alternatives. We have determined the Council's recommendations are consistent with law and we intend to approve all measures. Under the Magnuson-Stevens Act we can only disapprove a Council measure if it is not consistent with all applicable law. Otherwise, we give deference to the Council's policy recommendations.

#### *Regulatory Corrections Under Regional Administrator Authority*

This action includes several revisions to the regulatory text to address text that is unnecessary, outdated, unclear, or NMFS could otherwise improve. NMFS proposed these

changes consistent with section 305(d) of the Magnuson-Stevens Act, 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 Magnuson-Stevens Act. The first revision, at § 648.14(i)(2)(ii)(B)(7), clarifies that the crew member restrictions, specified in § 648.51(c) and § 648.51(e)(3)(i), apply in all access areas. The second revision, at § 648.14(i)(3)(v)(C), clarifies that LAGC IFQ vessels must be declared into the Sea Scallop Access Area Program if they fish for, possess, or land scallops in or from any Sea Scallop Access Area. The third revision, at § 648.51(e)(2), clarifies that vessels participating in the small dredge program may carry component parts on board the vessel such that they do not conform with the definition of “dredge or dredge gear.” The fourth revision, at § 648.52(f), clarifies that LAGC IFQ vessels are permitted to possess no more than 75 bu (26.4 hL) of in-shell scallops outside of the Access Areas. Finally, the fifth revision, at § 648.60(g)(2), clarifies that LAGC IFQ vessels may fish with trawl gear in the MAAA.

### **Comments and Responses**

NMFS received several comments on Framework 27 after the Council voted to submit the action but prior to the publication of the proposed rule. The majority of these comments objected to the alternative to allow exclusive LAGC effort in the NLSN, but we also received comments supporting this alternative. We considered these comments when preparing the proposed rule, but they did not present sufficient legal concerns that would require us to discuss possible disapproval of the measure in the proposed rule. Because these comments were mostly mirrored in comments on the proposed rule, we have not summarized them here.

We received 17 comment letters on the proposed rule during the public comment period, including letters from 14 individuals; the Associated Fisheries of Maine (AFM); the Virginia Department of Environmental Quality; and Fisheries Survival Fund (FSF). The following summarizes the issues raised in the comments and NMFS's responses.

*Comment 1:* Thirteen individuals wrote in support approving of the measure that allocates LAGC trips in the NLSN. These commenters were LAGC IFQ vessel owners and/or operators from New England. They believe that access to the NLSN will be extremely beneficial to their businesses and will allow them to fish closer to their homeports. They urged NMFS to approve this measure.

*Response:* NMFS has approved all of the measures recommended by the Council, as supported by these commenters.

*Comment 2:* Regarding the measure that allocates LAGC trips in the NLSN, AFM highlighted that the biological and economic analysis could not identify any negative impacts to the scallop resource or human communities because the amount of proposed harvest would be very small. It also highlighted that the Council has moved LAGC access area trips from Closed Area 2 to areas closer to shore in previous actions. AFM views the alternative to provide LAGC access to NLSN as a similar accommodation for a fleet comprised primarily of small vessels.

*Response:* NMFS agrees that accommodating one specific fleet, whether the Limited Access fleet or LAGC fleet, with area-specific allocations is consistent with the Scallop FMP and with prior Council actions.

*Comment 3:* The Virginia Department of Environmental Quality commented that it has no concerns with the proposed rule, and it believes the action is unlikely to have adverse impacts on fisheries resources under its jurisdiction.

*Response:* We appreciate Virginia Department of Environmental Quality's comment.

*Comment 4:* An individual was concerned that Framework 27 will adversely affect the income of the fishermen involved. He stated that the open area cannot withstand the increased effort due to an increase in the LAGC ACL. He asserts that vessels will target small scallops and prices will drop as a result of this increase. He also stated that the IFQ fleet will have a large amount of carryover because of poor catch rates in fishing year 2015, and that the LAGC fleet was caught off guard by this unforeseen anticipated increase.

*Response:* We disagree with the commenter's concern about small scallops. Scallop dredges are required to have 4-inch rings that are designed to allow smaller scallops to pass through the gear, which should reduce the ability of vessel operators to target small scallops. Further, because larger scallops draw a higher price per pound there is generally an incentive to target larger scallops. Therefore, it is not likely to be in a vessel's best interest to target small scallops. In any event, because this substantial increase is only applicable to 5.5 percent of the fleet, analysis shows that it would not have a meaningful effect on price. The estimated ex-vessel price for the preferred alternative is \$11.50, which is equal to or similar to the ex-vessel price in all of the other viable alternatives. Regarding carryover, LAGC IFQ vessels are limited to carrying over 15 percent of their available catch from fishing year 2015. However, despite this additional 15 percent that the LAGC fleet could carry over into fishing year 2016, that 15 percent carryover is unlikely to cause unexpected negative impacts resulting from additional

catch on top of an already-increased sub-ACL. Finally, we projected an increase in the LAGC IFQ ACL during the fishing year 2015 specifications process in Framework 26. Because the LAGC ACL is formulaic, the magnitude of this increase was dependent on the result of the 2015 summer surveys. Once the surveys were completed, Council staff presented the potential increase in the LAGC ACL to the public in September of 2015. Therefore, this increase was not unforeseen. The quota allocations for fishing years 2016 and 2017 are based on the best scientific information available and are consistent with the control rules outlined in the ACL process established under Amendment 15 to the FMP.

*Comment 5:* FSF, which represents a majority of the limited access scallop fleet, commented generally in favor of the Framework 27 measures, but, in a comment, recommended we disapprove the measure that allocates only LAGC effort in the NLSN. FSF stated in its comment its opinion that approval of this alternative is not legally permissible because of procedural flaws by the Council and NMFS. FSF contends that because the analysis was not included in the draft Framework until the day the Council voted on preferred alternatives (December 3, 2015), we cannot approve this measure because approval would violate the National Environmental Policy Act (NEPA) and the Administrative Procedure Act (APA). In support of this comment FSF notes, that, “alternatives considered by the Council must be *‘encompassed by the range of alternatives discussed in the relevant environmental documents,’*” citing NEPA and Agency Planning regulations at 40 CFR 1501.1(e).

*Response:* FSF conflates the Council process with legal requirements on NMFS mandated by NEPA and APA. The legal adequacy of the relevant documents subject to NEPA and APA are not the draft documents considered by the Council at the December meeting

because the Council is not a federal agency subject to these laws. Rather, the relevant documents are the final EA prepared after the December Council meeting and the proposed rule proposing to adopt the framework. The final EA encompasses a range of alternatives, including the NLSN measure, which are thoroughly analyzed for environmental and socioeconomic impacts and address the concerns raised by FSF. Further, the proposed rule provided ample opportunity for the public in general, and FSF in particular, to comment on the Framework, the EA analysis completed after the December Council meeting and referenced in the proposed rule, and the NLSN measure in particular.

*Comment 6:* FSF cites 50 CFR 648.55(f) and states that the biological analysis for the measure allowing only LAGC vessels in the NLSN was conducted during the December Council meeting and not prior to, as required by law, and that the Council did not “provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second Council meeting.” FSF cites the regulations at § 648.55(f) which state: “*After considering the PDT's findings and recommendations, or at any other time, if the Council determines that adjustments to, or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings... The Council shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second Council meeting...*” FSF comments that any public notice deficiencies or, procedural irregularities at the Council level cannot be remedied by this rulemaking process. FSF goes on to state that the addition of the NSLN alternative could not be approved as a “logical outgrowth” of other alternatives.

*Response:* We disagree with FSF's comment that we cannot approve the NLSN alternative because it is inconsistent with § 648.55(f) by failing to provide sufficient public notice and analysis before the Council voted on the alternative. First, there was sufficient public notice, analysis and full discussion before the Council voted to adopt the alternative. Although this specific alternative was not explicitly incorporated into the draft EA for Framework 27 at the beginning of the Council meeting, the public, and FSF in particular, were aware of this alternative well before the Council meeting and at the very least it is a logical outgrowth of measures that were being considered by the Council during the development of the framework. The Council initiated Framework 27 at its June 18, 2015, meeting and developed alternatives over several meetings including its September and December meetings, as well as the September 17, 2015, and the November 19, 2015, Scallop Oversight Committee meetings. Based on a Committee motion from its September 17, 2015, meeting, the concept of an alternative to allow fishing by all scallopers in NSLN was first included in a draft framework document for the September Council meeting. Members of the Scallop Advisory Panel, on which members of FSF sit, first suggested limiting scallop fishing in the NLSN to LAGC vessels only as an alternative at their meeting on November 18, 2015. The Advisory Panel suggested this alternative only after the Advisory Panel suggested a new alternative, created and raised by FSF, which proposed to have all access area effort in the MAAA. The next day, the Committee, in its meeting attended by representatives of FSF, requested that the Scallop Plan Development Team (PDT) analyze both the restricted NSLN alternative and the FSF sponsored alternative for the December Council meeting. Once analysis was complete, the PDT held a conference call on December 1, 2015. The notice for this call was posted on the Council website on November 23,

2015, and an automatic email was sent out on November 24, 2015, to anyone who registered to be informed on Council scallop issues. Members of the public, including representatives from FSF, attended the call. The next day, the Council summarized the details of that call in a PDT memo dated December 2, 2015, and made the memo available to the public at the Council meeting prior to the scallop discussion on December 3, 2015. The PDT memo provided both a biological and an economic analysis of the alternative.

The Council heard public comment during the discussion of this measure both against and in support of this alternative, including comments against the measure from different representatives of FSF. The analyses included in the PDT memo, in combination with the public comment solicited at the meeting, and other analyses in Framework 27, allowed the Council to make an informed decision on this alternative. While this timing was tight, the process was consistent with the intent of the cited regulation in that it gave advance notice and analysis to the public over the course of two meetings (the November Committee meeting and the December Council meeting) before the measure was adopted. The Council frequently adjusts specific management alternatives that are logical outgrowths in the actions it is considering at or just before the final Council meeting. This provides the Council with the flexibility to consider sensible solutions or adjustments to these logical outgrowth alternatives without postponing action. Indeed, FSF was pushing for the adoption of its own sponsored proposed alternative even though it was subject to the same sequence of events and given the same analysis and consideration as the NSLN alternative. Therefore, we conclude that the Council and the public, including FSF, had more than adequate opportunity to consider and comment on the NLSN measure. Further, the adoption of this measure by the Council was consistent with the Council's

procedural requirements to ensure that measures it adopts are sufficiently analyzed and the public is sufficiently aware of the analysis and propose alternatives before it adopts such a measure. Even if the Council’s activity marginally infringed its established procedures because of the tight timing, courts, including those cited by FSF, have held that if there were procedural irregularities, they would not necessarily invalidate a regulation if such irregularities resulted in only “harmless error,” or there is no evidence that our decision to approve the alternative was materially affected by the Council’s procedural irregularities (for which there is no evidence in this instance). Indeed, the Ninth U.S. Circuit Court of Appeals has held that “[i]f the Secretary has followed the appropriate rulemaking procedures and has established a rational basis for this action in promulgating regulations based on the submitted amendment, procedural challenges for irregularities at the Council level will not provide a justification for invalidating the regulations.” *Atlantic Factory Trawler Association, et al. v. Baldridge, et al.*, 831 F. 2d 1456,1464 (9<sup>th</sup> Cir. 1987). FSF’s comments that there was not adequate or sufficient understanding of and discussion about the alternative at the Council meeting is not supported by the facts as discussed above. There can be no doubt that there was a rational basis for the Council and NMFS adopting this alternative and nothing in the Council process materially affected our decision regarding this framework. Therefore any inconvenience FSF or the public may have experienced was at worst “harmless error,” which has been cured through notice and comment rulemaking.

*Comment 7:* FSF alleges that the alternative that allocates LAGC trips in the NLSN violates the Scallop FMP access area guidelines, claiming that Amendment 10 to the Scallop FMP (69 FR 35194; June 23, 2004), “describes access area policies in terms that plainly anticipate that such areas are either open proportionally to both fleets or to neither.” FSF also

cites a section of Amendment 11 to the Scallop FMP (73 FR 20090; April 14, 2008) referring to access area allocations for LAGC vessels that states that once an area is designated as controlled access, *"it is understood that a specific percentage of the TAC per access area would be allocated to the General Category fleet."* FSF further contends that the Scallop FMP does not provide for decoupling of limited access and LAGC access to access areas, and the Council has never embarked on this path before. Finally, FSF quotes the Regional Administrator, who commented at the December Council meeting that he was concerned this alternative, "[takes] a chink out of this rotational closure and allows one group in early."

*Response:* There is nothing in the guidelines or policy underlying the Scallop FMP that prohibits this type of measure. Granting increased access area allocation to one part of the scallop fleet and not the other is not only contemplated by the Scallop FMP, it has been done in the past. The Environmental Impact Statement (EIS) to Amendment 11 acknowledges the possibility of differential allocations of area access specifically where it was determined that *"it may not be effective to allocate the same percent per access area to the general category fishery. About 2 percent of the total TAC has been allocated to the general category fishery in previous access programs, but it was noted during this process that it may be most effective to consider variable percents for different access areas. For example, the 2 percent allocated in Closed Area 2 has never been caught by the general category fishery. It was discussed that these decisions are best considered in future framework actions that set specifications and allocations for the access area program and there is nothing in current regulations to prevent different percentages from being considered."* (EIS for Amendment 11 to the Scallop FMP; pg. 65). FSF's citation to Amendment 11 action comes from the description of a considered but rejected

alternative. The rationale for rejection provides the same analysis as stated above that “*it was discussed that it may not be effective to allocate the same percent per access area to the general category fishery.*” FSF’s reference to Amendment 10’s intent is not specifically documented, and, in any event, Amendment 11 clearly allows for variable allocations among the Limited Access and LAGC fleets. Framework Adjustment 25 to the Scallop FMP (79 FR 26690; May 9, 2014) serves as the most recent example of the Council deciding to differentially allocate harvesting opportunities to one group of scallopers and not the other without any objection from FSF. In that framework, the Council allowed access to Closed Area 2 to the limited access fleet only, while permitting the LAGC fleet trips to another area based on a determination of equivalency of the LAGC fleet fishing in Closed Area 2. The fact that the Regional Administrator both spoke and voted against this measure at the December Council meeting does not by itself justify disapproval of the measure. The Regional Administrator’s comments expressed policy, but not legal, concerns about the measure. Under the Magnuson-Stevens Act, even though the Regional Administrator may not be in favor of this measure on policy grounds, we can only disapprove a Council measure if it is not consistent with all applicable law, which is not the case here.

*Comment 8:* FSF was concerned that the alternative that allocates LAGC trips in the NLSN differentially affects LAGC vessels homeported in New England differently than those homeported in the Mid-Atlantic, and the Council did not hold any meetings or hearings on this issue in the Mid-Atlantic region.

*Response:* The Framework 27 EA discusses that this alternative may have a different impact on vessels regionally. Analysis in the EA suggests that allowing LAGC access to the

NLSN may reduce the number of New England vessels traveling to the MAAA to fish, therefore increasing the total number of MAAA trips available to the Mid-Atlantic LAGC fleet.

Furthermore, industry members from all regions had an equal opportunity to comment on the proposed rule, and there are members of the Advisory Panel, the Committee, and the Council that have LAGC and/or Mid-Atlantic interests. The fact that meetings were not held in an affected region does not mean that the framework is invalid, particularly when there was adequate opportunity for different regional fishers to comment.

*Comment 9:* FSF asserts that “required analyses were inadequate or entirely lacking both prior to and at the meeting during which the Council took its vote.” It goes on to cite NEPA requirements for an EIS and they extend these requirements to the EA that the Council prepared for Framework 27.

*Response:* NEPA regulations at 40 CFR 1508.9 state that an EA, “*Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.*” The final EA includes these requirements. As stated above, the Council is not required to have a completed EA during the development of an action because it is not a Federal agency. In fact, it is impossible to analyze the action as a whole until after the Council selects preferred alternatives. While this regulation imposes a requirement ultimately of NMFS, the Council uses a draft EA as a means to present and analyze alternatives, and, in turn, submits that as part of the Council’s recommendation to NMFS on the action. NMFS adopts the draft document prepared by the Council and works with the Council to finalize it. Nevertheless, we disagree with FSF’s comment that there was inadequate analysis at the Council meeting before

the Council took its vote. The analysis of the alternative that allocates LAGC trips in the NLSN that was available to the Council at the December meeting (the December 2, 2015, PDT memo) before any vote was taken was on par with other alternatives in the document. This analysis contained detailed images describing where fishing would occur and the condition of the resource in that area, both biological and economic projections of the impacts of the alternative, and a comparative analysis of those impacts compared to alternatives already in the document. This analysis found that the allowing LAGC access into the NLSN had the highest total benefits of any alternative in 2016 and no noticeable biological impact. Once the Council chose preferred alternatives, Council staff worked with NMFS to fully analyze all the alternatives and meet NEPA requirements for Framework 27.

*Comment 10:* FSF believes that Framework 27 failed to sufficiently analyze economic impacts such as regional variation in lease prices.

*Response:* FSF is incorrect. Framework 27 includes an economic and social analysis of all of the considered alternatives in Section 5.4 and it specifically analyzes regional variation in leasing in Section 5.4.3.12.3. Framework 27 concludes that “*the distribution of access area allocations could have some impacts on (lease) prices, however, those impacts would be uncertain given that not only the size of scallops but several other factors, including the distance to each area from the homeports of IFQ holders, the fuel and trip costs, total amount of IFQ available, distribution of IFQ holdings among the active vessels, relative price of scallops by market category have an influence on lease prices.*” Furthermore, as stated above, the PDT analysis available to the Council during its December meeting found that the allowing LAGC access into the NLSN had the highest total benefits of any alternative in 2016.

*Comment 11:* FSF also claims that the alternative that allocates LAGC trips in the NLSN is an allocative measure and requires an amendment, as opposed to a framework, and also an EIS versus an EA. They cite NMFS' Operational Guidelines that limit a framework action, by definition, to “*a mechanism for implementing recurrent, routine, or foreseeable actions in an expedited manner.*”

*Response:* This measure is not fundamentally allocative in the way suggested by FSF. The NLSN provision is only a one year specification that does not increase total allocations or take away any allocations from the limited access fleet. The provision merely shifts around how LAGC scallopers can harvest their allocations based on their particular circumstances, not the amount they are allocated. This type of specification is a regular annual action that is foreseeable and consistent with the Scallop FMP, as discussed in the response to comment 7, which allows for differential access to access areas for the limited access and LAGC fleets depending on the annual needs of each fleet. Thus, although controversial, this action was a routine specifications action that is appropriate for a Framework. 50 CFR 648.55(f) describes the types of measures that the Council can decide to adjust. It allows for adjustments to area-specific trip allocations, specifications for IFQs for limited access general category vessels, and any other management measures currently included in the FMP. The controversiality of a measure in terms of its desirability is not justification to conduct an EIS. Only when the analysis of an action is controversial in terms of its validity is an EIS required. Finally, there is no law or provision of the Magnuson-Stevens Act that requires an amendment for allocative issues. Nor does NEPA require an EIS because of significant economic impacts as suggested by FSF.

*Comment 12:* FSF says that the Council made the decision that NLSN was not ready to be opened as a biological matter. FSF states that the alternative that allocates LAGC trips in the NLSN violates National Standard 2 requiring that “*conservation and management measures shall be based upon the best scientific information available.*” FSF asserts that the Council made their decision to allow LAGC effort in the NLSN area based on politics and not the best available science.

*Response:* This is not true as even acknowledged by FSF. In fact, alternatives in the document considered access to NLSN. The PDT determined that the NLSN area could handle a small amount of limited access effort (52 trips at 17,000 lb (400 mt)) and this alternative was included in Framework 27. Allowing the LAGC trips in the NLSN included in this final rule will result in approximately 132 mt of harvest. The Council’s non-selected alternative to open the NLSN to both fleets at a very limited level would have resulted in approximately 400 mt of scallop harvest. The reason the broader NLSN alternative was not selected was not biological, but rather it was not supported by the limited access fleet because only 16.6 percent of the full-time limited access fleet would receive a trip in NLSN.

The best available science shows that allowing access to the LAGC fleet will not harm the resource. Indeed, the analysis in the draft and final EA and the PDT memo concludes that the alternative allowing three times more access (400 mt) by limited access vessels and LAGC vessels would not jeopardize sustainability of the scallop resource. The decision was a policy decision of how much to allocate between the two fleets. The Council has the right to make these types of decisions, and we can only disapprove if it is inconsistent with Magnuson-Stevens Act requirements and the applicable law, not on whether we disagree with the policy underlying

the measure. The Council made its decision based on the scientific analysis provided in the December 2, 2015, PDT memo, public and Council member testimony, and other analyses in the Framework 27 EA. FSF has not offered any other science or biological analysis to contradict the scientific information upon which the Council made its decision. FSF even notes that the PDT analysis in the memo could not identify negative biological impacts to the scallop resource because the amount of proposed harvest would be very small. Also, the draft and final EA concluded that there would be overall positive economic impacts for the scallop fleet, with relatively higher positive economic impacts for LAGC vessels homeported in the New England states. The Advisory Panel, including members of FSF preferred access to MAAA over NSLN in part because it allowed the entire limited access fleet into the area. It was only when the limited access fleet requested this alternative, that members of the LAGC fleet requested that 19 percent of their MAAA trip allocation be moved into the NLSN.

*Comment 13:* FSF claims that the alternative that allocates LAGC trips in the NLSN violates National Standard 8 because it analyzed only impacts on the LAGC fleet that fished from ports closer to the access area rather than how it affects the entire LAGC fleet.

*Response:* National Standard 8 requires that “Conservation and management measures shall...take into account the importance of fishery resources to fishing communities by utilizing economic and social data ... in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.” (16 U.S.C. 1851, Sec 301(a)(8)). The final version of the Framework, the expanded draft EA available when the proposed rule was published, and the final EA specifically analyze the differential impacts and conclude that because fewer northern vessels

will go down to the MAAA, the Mid-Atlantic vessels, i.e., those farther from the NLSN, may have more quota to fish. While this analysis was not specifically available at the time the Council approved the NLSN measure there was a general mention of possible differential impacts in the PDT report that was available during the Council meeting and a self-evident understanding by Council members and the public that area-based allocations are, by their very nature, going to have more benefits to regions that are closer to areas open to fishing. As discussed above, the public had additional opportunity to comment on the draft EA which was made available for review at the time of the publication of the proposed rule. Ultimately, the adequacy of the NEPA analysis is determined by the final EA not the draft NEPA analysis available at the Council meeting. This level of analysis alerting the public and FSF to the differential impacts to communities as required by National Standard 8, followed up by more complete analysis in the draft and final EA is consistent with Magnuson-Stevens Act and NEPA requirements.

#### *Changes from Proposed Rule to Final Rule*

We included changes to the regulatory text to § 648.62 to implement an AM due to the overage of the NGOM TAC.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, the ESA, and other applicable law.

The Office of Management and Budget (OMB) has determined that this rule is not significant pursuant to Executive Order (E.O.) 12866.

This final 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 action does not contain any collection-of-information requirements subject the Paperwork Reduction Act (PRA).

The Assistant Administrator for Fisheries has determined that the need to implement these measures in an expedited manner in order to help achieve conservation objectives for the scallop fishery and certain fish stocks constitutes good cause, under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness and to make the Framework 27 final measures effective upon publication in the **Federal Register**.

Because Framework 27 has not yet been approved and implemented, certain default measures, including access area designations and DAS, IFQ, research set-aside and observer set-aside allocations, are automatically put into place. These default allocations were purposely set to be more conservative than what would eventually be implemented under Framework 27. Under default measures, each full-time vessel has 26 DAS and one access area 17,000-lb (7,711-kg) trip in the MAAA. We have good cause to waive the 30-day delay in effectiveness because this action provides full-time vessels with an additional 8.55 DAS (34.55 DAS total) and 34,000 lb (15,422 kg) in access area allocation (51,000 lb (23,133 kg) total) into the MAAA. Further, LAGC IFQ vessels will receive an additional 330 mt (2,029 mt total) of allocation and 1,466 trips into the MAAA (2,068 trips total) and 485 trips in the NLSN. Framework 27 could not have been put into place sooner to allow for a 30-day delayed effectiveness because the information and data necessary for the Council to develop the framework was not available in time. We received the final submission of the EA from the Council on March 14, 2016. We

published the proposed rule on February 24, 2016, and the comment period did not close until March 25, 2016. Delaying the implementation of Framework 27 for 30 days would delay positive economic benefits to the scallop fleet and could negatively impact the access area rotation program by delaying fishing in access areas that should be available. There are no new measures that implement additional burdens on the fleet, and we do not expect that any members of the scallop industry will be aggrieved by waiving this delay.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has completed a final regulatory flexibility analysis (FRFA) in support of Framework 27 in this final rule. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, a summary of the analyses completed in the Framework 27 EA, and this portion of the preamble. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in Framework 27 and in the preamble to the proposed and this final rule, and is not repeated here. All of the documents that constitute the FRFA are available from NMFS and a copy of the IRFA, the Regulatory Impact Review (RIR), and the EA are available upon request (see **ADDRESSES**).

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

There were no specific comments on the IRFA. The Comments and Responses section summarizes the comments that highlight concerns about the economic impacts and implications of impacts on small businesses (i.e., comments 4, 8, 9, 10, and 13).

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

The regulations affect all vessels with limited access and LAGC scallop permits. The Framework 27 EA provides extensive information on the number and size of vessels and small businesses that will be affected by the regulations, by port and state (see **ADDRESSES**). There were 313 vessels that obtained full-time limited access permits in 2014, including 250 dredge, 52 small-dredge, and 11 scallop trawl permits. In the same year, there were also 34 part-time limited access permits in the sea scallop fishery. No vessels were issued occasional scallop permits. NMFS issued 220 LAGC IFQ permits in 2014 and 128 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 million 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 this action. Furthermore, multiple permitted vessels and/or permits may be owned by entities with various personal and business affiliations. 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.

Ownership data from 2014 result in 166 distinct ownership entities for the limited access fleet and 106 distinct ownership entities for the LAGC IFQ fleet. Of these, and based on the Small Business Administration (SBA) guidelines, 152 of the limited access distinct ownership entities and 102 of the LAGC IFQ entities are categorized as small. The remaining 14 of the limited access and 4 of the LAGC IFQ 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*

This action contains no new collection-of-information, reporting, or recordkeeping requirements.

*Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes*

During the development of Framework 27, NMFS and the Council considered ways to reduce the regulatory burden on, and provide flexibility for, the regulated entities in this action. For example, they opened the NLSN to LAGC vessels to provide vessels homeported in Massachusetts an opportunity to fish in an access area without traveling to the MAAA. This measure addresses safety and economic concerns for smaller northern LAGC vessels when fishing in an access area. Final actions and alternatives are described in detail in Framework 27, which includes an EA, RIR, and IRFA (available at **ADDRESSES**). The measures implemented

by this final rule minimize the long-term economic impacts on small entities to the extent practicable. The only alternatives for the prescribed catch limits that were analyzed were those that met the legal requirements to implement effective conservation measures. Catch limits are fundamentally a scientific calculation based on the Scallop FMP control rules and SSC approval, and therefore are legally limited to the numbers contained in this rule. Moreover, the limited number of alternatives available for this action must be evaluated in the context of an ever-changing fishery management plan that has considered numerous alternatives over the years and have provided many mitigating measures applicable every fishing year.

Overall, this rule minimizes adverse long-term impacts by ensuring that management measures and catch limits result in sustainable fishing mortality rates that promote stock rebuilding, and as a result, maximize yield. The measures implemented by this final rule also provide additional flexibility for fishing operations in the short-term. This final rule implements measures that enable small entities to offset some portion of the estimated economic impacts. These measures include allocating about 19 percent of LAGC IFQ access area trips (or 300,000 lb (136 mt)) to the NLSN which is open to LAGC vessels only. Because of the proximity of the LAGC vessels, which are smaller in size and homeported in Massachusetts to NLSN, this option will reduce fishing costs and have positive impacts on their profits; and allowing about 1.5 million lb (680 mt) of the total LAGC allocation of 4.4 million lb (1,996 mt) to be harvested from access areas.

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

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 28, 2016

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

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

**PART 648—FISHERIES OF THE NORTHEAST UNITED STATES**

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

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

2. In § 648.14, paragraphs (i)(2)(ii)(B)(7) and (i)(3)(v)(B) are revised, and paragraph (i)(3)(v)(C) is added to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(i) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(B) \* \* \*

(7) Fish in a Sea Scallop Access Area, as described in § 648.59, 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.

\* \* \* \* \*

(3) \* \* \*

(v) \* \* \*

(B) Declare into or leave port for an area specified in § 648.59(a) through (d) after the effective date of a notification published in the **FEDERAL REGISTER** stating that the number of LAGC trips have been taken, as specified in § 648.60.

(C) Fish for or land per trip, or possess in excess of 40 lb (18.1 kg) of shucked scallops at any time in or from any Sea Scallop Access Area specified at § 648.59, unless declared into the Sea Scallop Access Area Program.

\* \* \* \* \*

3. In § 648.51, paragraph (e)(2) is revised to read as follows:

**§ 648.51 Gear and crew restrictions.**

\* \* \* \* \*

(e) \* \* \*

(2) The vessel may not use or have more than one dredge on board. However, component parts may be on board the vessel such that they do not conform with the definition of “dredge or dredge gear” in § 648.2, i.e., the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and no more than one complete spare dredge could be made from these component's parts.

\* \* \* \* \*

4. In § 648.52, paragraph (f) is revised to read as follows:

**§ 648.52 Possession and landing limits.**

\* \* \* \* \*

(f) A limited access vessel or an LAGC vessel that is declared into the Sea Scallop Area Access Program as described in § 648.60, may not possess more than 50 bu (17.6 hL) or 75 bu (26.4 hL), respectively, of in-shell scallops outside of the Access Areas described in § 648.59(a) through (e).

\* \* \* \* \*

5. In § 648.53, paragraphs (a), (b)(1), (b)(4), and (g)(1) are revised, and paragraph (h)(5)(iv)(D) is removed and reserved 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 (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 2017 fishing year is subject to change through a future framework adjustment.

(1) ABC/ACL for fishing years 2016 through 2017, excluding discards, shall be:

(i) 2016: 37,852 mt.

(ii) 2017: 37,852 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 2017 fishing year are subject to change through a future framework adjustment.

(i) The limited access fishery sub-ACLs for fishing years 2016 and 2017 are:

(A) 2016: 36,884 mt.

(B) 2017: 36,884 mt.

(ii) The limited access fishery ACTs for fishing years 2016 and 2017 are:

(A) 2016: 18,290 mt.

(B) 2017: 18,290 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 2016 and 2017 for LAGC IFQ vessels without a limited access scallop permit are:

(A) 2016: 1,845 mt.

(B) 2017: 1,845 mt.

(ii) The ACLs for fishing years 2016 and 2017 for vessels issued both a LAGC and a limited access scallop permits are:

(A) 2016: 184 mt.

(B) 2017: 184 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) 2016 fishing year: 2,316 lb/DAS (1,051 kg/DAS).

(ii) 2017 fishing year: 2,690 lb/DAS (1,220 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**

<b>Permit category</b>	<b>2016</b>	<b>2017</b>
Full-Time	34.55	34.55
Part-Time	13.82	13.82
Occasional	2.88	2.88

\* \* \* \* \*

(g) \* \* \*

(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 379 mt in fishing year 2016, and 379 mt in fishing year 2017.

\* \* \* \* \*

6. In § 648.58 paragraphs (b), (c), and (e) are revised to read as follows:

**§ 648.58 Rotational Closed Areas.**

\* \* \* \* \*

(b) *Closed Area II*—(1) *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):

<b>Point</b>	<b>Latitude</b>	<b>Longitude</b>	<b>Note</b>
CAIIA1	41°00' N.	67°20' W.	
CAIIA2	41°00' N.	66°35.8' W.	
CAIIA3	41°18.45' N.	( <sup>1</sup> )	( <sup>2</sup> )
CAIIA4	41°30' N.	( <sup>3</sup> )	( <sup>2</sup> )
CAIIA5	41°30' N.	67°20' W.	
CAIIA1	41°00' N.	67°20' W.	

<sup>1</sup>The intersection of 41°18.45' N. lat. and the U.S.-Canada Maritime Boundary, approximately 41°18.45' N. lat. and 66°24.89' W. long.

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

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

(2) *Closed Area II Extension Closed Area.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Closed Area II Extension Closed Area. No vessel may possess scallops in the Closed Area II Extension Closed Area. The Closed Area II Extension 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
CAIIE1	40°30'N	67°20' W.	
CAIIE2	41°00' N.	67°20' W.	
CAIIE3	41°00' N.	66°35.8' W.	
CAIIE4	41°18.45' N.	( <sup>1</sup> )	( <sup>2</sup> )
CAIIE5	40°30' N.	( <sup>3</sup> )	( <sup>2</sup> )
CAIIE1	40°30'N	67°20' W.	

<sup>1</sup>The intersection of 41°18.45' N. lat. and the U.S.-Canada Maritime Boundary, approximately 41°18.45' N. lat. and 66°24.89' W. long.

<sup>2</sup>From Point CAIIE4 to Point CAIIE5 following the U.S.-Canada Maritime Boundary.

<sup>3</sup>The intersection of 40°30' N. lat. and the U.S.-Canada Maritime Boundary, approximately, 65°44.34'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 an IFQ LAGC vessel participating in, and complying with the requirements of, the IFQ LAGC area access program described in § 648.60(g)(3), or the 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),

<b>Point</b>	<b>Latitude</b>	<b>Longitude</b>
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.

\* \* \* \* \*

(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 or the Closed Area II Extension 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.

\* \* \* \* \*

7. In § 648.59, paragraphs (a)(1), (b)(1), (c)(1), and (d)(1) are revised and paragraph (a)(2)(i) is removed and reserved to read as follows:

**§ 648.59 Sea Scallop Access Areas.**

(a) \* \* \*

(1) Beginning March 1, 2016, through February 28, 2018 (i.e., fishing years 2016 and 2017), 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 or the vessel is transiting pursuant to paragraph (f) of this section. 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.

\* \* \* \* \*

(b) \* \* \*

(1) From March 1, 2016, through February 28, 2018 (i.e., fishing years 2016 and 2017), 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) \* \* \*

(1) From March 1, 2016, through February 28, 2018 (i.e., fishing years 2016 and 2017), 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) \* \* \*

(1) From March 1, 2016, through February 28, 2018 (i.e., fishing years 2016 and 2017), 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 the vessel is an IFQ LAGC vessel participating in, and complying with the requirements of, the IFQ LAGC area access program described in § 648.60(g)(3), or the vessel is 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.

\* \* \* \* \*

8. In § 648.60, paragraphs (a)(3)(i), (a)(5)(i), (c), (e), and (g)(1), (g)(2), and (g)(3) are revised to read as follows:

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

(a) \* \* \*

(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)(i)(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 2016, 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 2017 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, 2017.

(C) *Part-time scallop vessels*. (1) For the 2016 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 2016 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, 2017.

(D) *Occasional scallop vessels.* (1) For the 2016 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 2017 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, 2017.

\* \* \* \* \*

(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
2016	17,000 lb (57,711 kg)	10,200 lb (4,627 kg)	1,420 lb (644 kg).
2017	17,000 lb (57,711 kg)	10,200 lb (4,627 kg)	1,420 lb (644 kg).

\* \* \* \* \*

(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 Mid-Atlantic Access Area at the end of fishing year 2016, that vessel may harvest 7,000 lb (3,175 kg) from its 2017 fishing year scallop access area allocation during the first 60 days that the Mid-Atlantic Access Area is open in fishing year 2017 (March 1, 2017, through April 29, 2018). 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.

\* \* \* \* \*

(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 2016 and 2017 are:

- (i) 2016: The Mid-Atlantic Scallop Access Area, as specified in § 648.59(a).
- (ii) 2017: None.
- (2) [Reserved]

\* \* \* \* \*

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

(2) *Limited Access General Category Gear restrictions.* An LAGC IFQ scallop vessel authorized to fish in the Access Areas specified in § 648.59(b) through (e) must fish with dredge gear only. The combined dredge width in use by, or in possession on board of, an LAGC scallop vessel fishing in Closed Area I, Closed Area II, and Nantucket Lightship Access Areas may not exceed 10.5 ft (3.2 m). The combined dredge width in use by, or in possession on board of, an LAGC scallop vessel fishing in the remaining Access Areas described in § 648.59 may not exceed 31 ft (9.4 m). Dredge width is measured at the widest point in the bail of the dredge.

(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) or in paragraph (g)(3)(iv) of this section 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 2016 and 2017 are:

<b>Access area</b>	<b>2016</b>	<b>2017</b>
Mid-Atlantic Access Area	2,068	602
Closed Area 1	0	0
Closed Area 2	0	0
Nantucket Lightship	0	0
Nantucket Lightship North	485	0

(ii) Scallops landed by each LAGC IFQ vessel on an access area trip shall count against the vessel's IFQ.

(iii) Upon a determination from the Regional Administrator that the total number of LAGC IFQ trips in a specified Access Area have been or are projected to be taken, the Regional Administrator shall publish notification of this determination in the **Federal Register**, in accordance with the Administrative Procedure Act. Once this determination has been made, an LAGC IFQ scallop vessel may not fish for, possess, or land scallops in or from the specified Access Area after the effective date of the notification published in the **Federal Register**.

(iv) *Nantucket Lightship North Sea Scallop Access Area*. (A) From March 1, 2016, through February 28, 2018 (i.e., fishing years 2016 and 2017), a vessel issued an LAGC IFQ scallop permit may not fish for, possess, or land scallops in or from the area known as the Nantucket Lightship North Access Area, described in paragraph (g)(3)(iv)(B) of this section, unless the vessel is participating in, and complying with the requirements of, the area access program described in this section or the vessel is transiting pursuant to § 648.59 (f). 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.

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

<b>Point</b>	<b>Latitude</b>	<b>Longitude</b>
NLNAA1	40°50' N.	69°00' W.
NLNAA2	40°30' N.	69°00' W.
NLNAA3	40°30' N.	69°30' W.
NLNAA4	40°50' N.	69°30' W.
NLNAA1	40°50' N.	69°00' W.

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

**§ 648.62 Northern Gulf of Maine (NGOM) Management Program.**

\*\*\*\*\*

(b) \* \* \*

(1) *NGOM annual hard TACs*. The annual hard TAC for the NGOM is 67,454 lb (30,597 kg) for the 2016 fishing year and 70,000 lb (31,413 kg) for the 2017 fishing year.

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