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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 160126052-6052-01]

RIN 0648-BF72

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 19

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 Amendment 19 to the Atlantic Sea Scallop Fishery Management Plan, which the New England Fishery Management Council adopted and submitted to NMFS for approval. Amendment 19 would establish a specifications process outside of the current framework adjustment process to implement management measures that are typically adjusted on an annual or biennial basis and change the start of the scallop fishing year from March 1 to April 1. This amendment is intended to streamline the development and implementation of annual specifications and reduce the administrative burden.

DATES: Comments must be received by *[insert date 30 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 Amendment, the EA, and the Regulatory Impact Review (RIR) 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-2016-0028, 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-2016-0028, 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 Amendment 19 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).

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

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 Atlantic Sea 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 has had to rely on the framework adjustment process to set scallop fishery measures, often referred to as specifications, that occur annually or biennially. Typically, these specifications include annual catch limits, days-at-sea (DAS), rotational area management, possession limits, access area trip allocations, individual fishing quota (IFQ) allocations, and allocations for vessels with Northern Gulf of Maine permits. These framework adjustments often include other management measures to the FMP and are often implemented 2 to 3 months after the March 1 start of the scallop fishing year (March 1 through February 28/29).

Amendment 4 to the Scallop FMP (59 FR 2757, January 19, 1994), was a major shift in scallop fishery management. It established a limited access permit and effort control program and the new permits and effort control became effective on March 1, 1994. Framework Adjustment 1 (59 FR 36720, July 19, 1994) formally adopted March 1 as the start of the scallop fishing year. There was no biological or economic rationale for originally selecting this date as the start of the fishing year: Framework 1 codified the March 1 Amendment 4 effective date as the start of the fishing year so that allocations for 1994 spanned a 12-month period in order to ensure a reduction in fishing effort the first year of the DAS effort-control program. This fishing year has remained in place since that time, even though specifications have become increasingly

more complicated with the development of the scallop access area rotation program in 2004 and IFQ fishery in 2010.

In the last 16 years following Framework 11, there have been 12 actions that set annual scallop specifications. Four of those actions set specifications for 2 years, which ensured that the second year's specifications for each of those actions were implemented on March 1. Aside from these biennial frameworks, we have only been able to set specifications by March 1 on two occasions, both involving special circumstances (i.e., the proposed rule was waived for one framework action and Council took final action 2 months earlier than usual for the other action).

Typically, the Council begins developing a specifications-setting framework in June. Scallop biomass estimates are provided through scallop surveys conducted by NMFS and other research institutions in the spring and summer. These estimates are not generally available for consideration until the early fall, at which point the Scallop Plan Development Team (PDT) develops and analyzes fishery allocation alternatives for Council consideration. In order to incorporate the most recent available scallop survey information into these alternatives, which has proved essential in setting appropriate access area catch levels, the Council has been taking final action in November and NMFS has typically implemented allocations in May or June.

In 2013, the Council began developing specifications on an annual basis via frameworks at the request of the industry to avoid biennial specifications that resulted in the second year specifications being out of sync with what the most recent annual surveys indicate should be harvested in a given area. However, this meant that the annual specifications were likely to be late every year due to availability of relevant data. To address this problem, the Council has been specifying "default" specifications for the year after annual specifications are set to fill the

gap between the end of the fishing year and the setting of new specifications for the next fishing year. Implementing these “default” specifications every year is an administrative burden to NMFS staff and can result in complex inseason changes in fishery specifications. In addition, default specifications lead to confusion and uncertainty for the fleet, as well as potentially negative impacts on the resource and fishery if effort shifts into areas or seasons that are less desirable as a result of delayed measures.

The Council initiated Amendment 19 to develop an alternative to the framework adjustment process to implement specifications closer to the start of the scallop fishing year. To address these timing issues while still supporting the current timeline for integrating the best available science in to the management process, Amendment 19 proposes to:

- Establish a more timely and less complicated specification process that is limited in the types of measures that can be implemented and is not bound by the procedural requirements of the amendment and framework processes; and
- Adjust the scallop fishing year to April 1 through March 31.

These proposed measures are further described below.

Proposed Measures

Establish a New Specification Process

Establishing a separate process for implementing specifications in the Scallop FMP instead of a framework process would help ensure that such specifications go into place on or about the start of the scallop fishing year, in part because the Council would not be required to discuss measures over the course of two Council meetings, as is required under a framework. In addition, by limiting the specifications process to implementing only certain types of measures,

other types of management measures that typically get added to specifications frameworks would not be included, thereby simplifying the development and rulemaking for specifications.

The Scallop PDT would meet at least every two years to assess the status of the scallop resource and to develop and recommend specifications for up to 2 years, as well as second or third-year default measures, for the Atlantic Sea Scallop Oversight Committee and the Council to consider. The types of measures that could be implemented through the specifications process are limited to the following: overfishing limit (OFL); overall annual biological catch (ABC)/annual catch limit (ACL); sub-ACLs; sub-annual catch targets (ACTs); DAS open area allocations; possession limits; modifications to rotational area management (e.g., schedule, rotational closures and openings, seasonal restrictions, modifications to boundaries, etc.); access area limited access poundage allocations and Limited Access General Category (LAGC) Individual Fishing Quota (IFQ) fleet-wide trip allocations; annual incidental catch target total allowable catch (TAC); and Northern Gulf of Maine (NGOM) TAC.

The Council would review these recommendations and, after considering public comments, recommend appropriate specifications for 1 or 2 years, as well as second or third-year default measures, to NMFS. NMFS would approve, disapprove, or partially approve the specifications recommended by the Council and publish the approved specifications in the **Federal Register**.

In addition, the PDT would update the Stock Assessment and Fishery Evaluation Report at least every 2 years that provides the information and analysis needed to evaluate potential management adjustments.

The PDT would meet at least once during the interim years to review the status of the stock relative to the overfishing definition if information is available to do so. If the Council determines that the approved specifications should be adjusted during the 2-year time period, it can do so through the specifications process.

The Council could set scallop allocations through a specifications action in conjunction with a framework to develop more robust management measures, but the more complicated an action is and the more management measures under consideration generally means the action will take longer to complete, be approved, and be effective.

Changing the Start of the Fishing Year to April 1

Although developing a specifications action would save some time in the development of allocations, it would not guarantee allocations would be in place by March 1 of each year because of the timing of data becoming available that are necessary to set the specifications. It is more likely that allocations could be implemented on April 1, a month after the current start of the fishing year. Therefore, the Council is also recommending that the fishing year be changed to April 1 through March 31. Pushing the fishing year back 1 month would increase the likelihood that NMFS would be able to implement simple specifications actions at the start of the scallop fishing year on a more consistent basis and not need to implement default measures at all.

To give the industry time to account for this change in its business planning, the Council recommends and NMFS proposes that this measure not be effective until fishing year 2018. Because the current fishing year began on March 1, 2016, fishing year 2016 would be unaffected by this change. Fishing year 2017 would need to be 13 months long, running from March 1, 2017, through March 31, 2018. The Council intends to prorate allocations appropriately for

2017 to account for this additional month. On April 1, 2018, the scallop fishing year would officially change for fishing year 2018 and beyond.

Amendment 19 would also adjust the scallop permit year so that it continues to match the official fishing year (i.e., scallop permits would need to be renewed by April 1 of each year). This change would also be effective beginning in fishing year 2018.

In addition, NMFS and Council staff discussed other, non-regulatory streamlining initiatives that will result in time-savings in implementing final allocations. These include preparing a decision draft of an EA immediately following the Council's final action on a framework and publishing a proposed rule prior to NMFS' formal review of the EA. These measures will assist in implementing simple, non-controversial specifications actions on a quicker timeline than typical frameworks.

The Council adopted Amendment 19 on December 3, 2015, and submitted it to NMFS on July 14, 2016, for review and approval. The Council has reviewed the Amendment 19 proposed rule regulations as drafted by NMFS and deemed them to be necessary and appropriate as specified in section 303(c) of the MSA. A Notice of Availability (NOA) for Amendment 19 was published in the **Federal Register** on July 20, 2016 (81 FR 47152). The comment period on Amendment 19 NOA ends on September 19, 2016. Comments submitted on the NOA and/or this proposed rule prior to September 19, 2016, will be considered in NMFS's decision to approve, partially approve, or disapprove Amendment 19. NMFS will consider comments received by the end of the comment period for this proposed rule [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] in its decision regarding measures to be implemented. Under the Magnuson-Stevens Fishery Conservation and

Management Act (Magnuson-Stevens Act), NMFS is required to publish proposed rules for comment after preliminarily determining whether they are consistent with applicable law. The 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, plan amendment, the Magnuson-Stevens Act and its National Standards, and other applicable law.

Regulatory Adjustments and Corrections under Regional Administrator Authority

NMFS removed the annual specifications from the regulatory text and reorganized the layout of the regulations to help streamline the approval of future specifications actions. As a result, this proposed rule includes revisions to the regulatory text that would reorganize and condense references to annual scallop allocations and possession limits. These adjustments do not make any substantive changes to the implications of the current regulations and would allow future specifications-setting actions to be implemented sooner by avoiding the need to make extensive regulatory changes for each specifications-setting action. In addition to saving time during rulemaking, this adjustment also avoids the need to develop follow-up correcting amendments when NMFS inadvertently and incorrectly updates regulations. NMFS proposes 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.

To accommodate the specifications process and simplify the scallop regulations NMFS proposes the following changes to regulatory text: revising the definitions in section 648.2 to remove the unnecessary distinction between Rotational Closed Areas and Scallop Access Areas;

consolidating all of the allocations into a single table in section 648.53; condensing the explanations of OFL, ABC, and ACL into section 648.53 which creates a single section dedicated to all of the catch limits (the current regulations have this information repeated again at § 648.55 which we removed); removing sections 648.57 and 648.58 and integrating them into sections 648.59 and 648.60 to describe the scallop access area program and remove the unnecessary distinction between Rotational Closed Areas and Scallop Access Areas; and moving access area program requirements currently in § 648.60 to § 648.59 to provide a dedicated section to access area program requirements (§ 648.59) and a dedicated section to listing all of the scallop access areas (§ 648.60).

Under this same section 305(d) authority, this action also proposes the following revisions to the regulatory text, unrelated to the addition of a specifications process, to address text that is unnecessary, outdated, unclear, or NMFS could otherwise improve: revising §§ 648.14(i)(2)(vi)(B) and 648.14(i)(3)(v)(E) to clarify in the prohibitions a requirement currently in § 648.58(e) that vessels cannot transit the Closed Area II Rotational Area, the Closed Area II Extension Rotational Area, or the Elephant Trunk Closed Area unless there is a compelling safety reason for transiting the area; adding back in text, at § 648.53(c), regarding limited access accountability measures that was unintentionally removed during Framework Adjustment 27 to the Scallop FMP (81 FR 26727, May 4, 2016); updating a reference in section § 648.54 regarding the state waters exemption program that was unintentionally overlooked in Framework Adjustment 26 to the Scallop FMP (80 FR 22119, April 21, 2015); revising § 648.56(f) to reflect a change that scallop research set-aside (RSA) can be harvested to accommodate the proposed change in fishing year (changing from May 31 to June 30 of the fishing year subsequent to the

fishing year in which the set-aside is awarded); revising § 648.62(c) to clarify that NGOM vessels must declare either a Federal NGOM trip or a state-waters NGOM trip on their VMS units when declaring a scallop trip.

Finally, due to the extensive regulatory changes in this action we are updating references throughout the scallop regulations that will change based on the proposed regulatory adjustments. We have included a summary of all of the proposed regulatory changes in this proposed rule in Table 1.

Table 1. Summary of Proposed Regulatory Changes to 50 CFR part 648

Section	Current Title	Proposed Title	Type of Changes	Summary of Changes
648.2	Definitions.	Same	Amendment 19 & Regulatory Streamlining	Changes address the new scallop fishing year and remove the unnecessary distinction between Rotational Closed Areas and Scallop Access Areas.
648.10	VMS and DAS requirements for vessel owners/operators.	Same	Regulatory Streamlining	Changes update references that will change based on proposed regulatory adjustments to other sections.
648.14	Prohibitions.	Same	Regulatory Streamlining & Corrections	Changes update references that will change based on proposed regulatory adjustments to other sections. Clarification that vessels cannot transit the Closed Area II Rotational Area, the Closed Area II Extension Rotational Area, or the Elephant Trunk Closed Area.
648.51	Gear and crew restrictions.	Same	Regulatory Streamlining	Changes update references that will change based on proposed regulatory adjustments to other sections.
648.52	Possession and landing limits.	Same	Regulatory Streamlining	Changes update references that will change based on proposed regulatory adjustments to other sections.
648.53	Acceptable biological catch, annual catch limits, annual catch targets, DAS allocations, and individual fishing quotas.	Overfishing limit, acceptable biological catch, annual catch limits, annual catch targets, DAS allocations, and individual fishing quotas.	Amendment 19, Regulatory Streamlining, & Corrections	Changes address Amendment 19 specifications process, condense allocations into a single table, and condense the explanations of OFL, ABC, and ACL in to a single section. The current regulations have this information repeated again at § 648.55. Also, we add back in text, at § 648.53(c), regarding limited access accountability measures that was unintentionally removed during scallop Framework Adjustment 27.
648.54	State waters exemption.	Same	Corrections	The change to this section updates an old reference that should have occurred during scallop Framework Adjustment 26 rulemaking but was inadvertently overlooked.
648.55	Framework adjustments to management measures.	Specifications and framework adjustments to management measures.	Amendment 19 & Regulatory Streamlining	Changes to this section address Amendment 19 changes, but also fine-tune previous regulations and remove repetitive regulations that are now consolidated into § 648.53, specifically the explanation of OFL, ABC, and ACL.

648.56	Scallop research.	Same	Amendment 19 & Regulatory Streamlining	Changes update references that will change based on other proposed regulatory adjustments and support the Amendment 19 alternative to change the fishing year to April 1. Changes would push back the 90-day RSA carryover timeframe by a month (from May 31 to June 30) to accommodate the change in fishing year.
648.57	Sea scallop area rotation program.	Reserved	Amendment 19 & Regulatory Streamlining	Changes remove unnecessary distinction between rotational closed areas and scallop access areas, clarifying that rotational areas can be open or closed as determined through the specifications or framework process. Consolidates the regulations formerly in this section in to § 648.59.
648.58	Rotational Closed Areas.	Reserved	Amendment 19 & Regulatory Streamlining	Changes remove unnecessary distinction between rotational closed areas and scallop access areas clarifying that rotational areas can be open or closed, as determined through the specifications or framework process. Consolidating the regulations formerly in this section in to §§ 648.59 and 648.60.
648.59	Sea Scallop Access Areas.	Sea scallop rotational area management program and access area program requirements.	Amendment 19 & Regulatory Streamlining	There are no substantial changes to current regulatory text in this section; portions of this section are reorganized to incorporate regulations formerly in §§ 648.57 and 648.58. Also, the access area program requirements were moved to this section from § 648.60 for clarity.
648.60	Sea scallop access area program requirements.	Sea scallop rotational areas.	Amendment 19 & Regulatory Streamlining	There are no substantial changes to current regulatory text in this section; portions of this section are reorganized to incorporate regulations formerly in § 648.58. Also, the access area program requirements were moved from this section to § 648.59 for clarity.
648.62	Northern Gulf of Maine (NGOM) Management Program.	Same	Amendment 19, Regulatory Streamlining, & Corrections	Changes to this section support the specifications process and update references that will change based on other proposed regulatory adjustments. Also, changes clarify that NGOM vessels must declare either a Federal NGOM trip or a state-waters NGOM trip.
648.63	General category Sectors and harvesting cooperatives.	Same	Regulatory Streamlining	Changes update references that will change based on proposed regulatory adjustments to other sections.
648.64	Yellowtail flounder sub-ACLs and AMs for the scallop fishery.	Same	Amendment 19	Changes to this section are proposed to support the Amendment 19 alternative to change the fishing year to April 1.

648.65	Windowpane flounder sub-ACL and AM for the scallop fishery.	Same	Amendment 19	Changes to this section are proposed to support the Amendment 19 alternative to change the fishing year to April 1.
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Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, 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.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration’s (SBA) current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *Id* at 81194.

The Council conducted an evaluation of the potential impacts of the proposed measures in conjunction with this EA. There were 313 vessels that obtained full-time limited access permits in 2015, 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 limited access general category (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).

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 affected by the proposed 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.

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 2014 permits and contains average gross sales associated with those permits for calendar years 2012 through 2014. When adjusted for calendar year, there were 166 distinct ownership

entities for the limited access fleet and 106 distinct ownership entities for the LAGC IFQ fleet in 2014. All of the entities directly regulated by this regulatory action are shellfish commercial fishing businesses. Under the NMFS size standards, 159 of the limited access distinct ownership entities and 104 of the LAGC IFQ entities were categorized as small. The remaining 7 of the limited access and 2 of the LAGC IFQ entities were categorized as large entities.

Amendment 19 proposes to establish a specification process so that allocations would not be tied only to actions that tend to have longer development and implementation timelines (i.e., frameworks or amendments) and change the start of the fishing year from March 1 to April 1. Developing a specifications process would eliminate the need for a framework adjustment to set annual allocations for the scallop fishery. This will reduce the delays in implementation and make it possible to integrate the updated survey data into allocation estimates. Similarly, changing the start of the fishing year from March 1 to April 1 would reduce the time lag between the fishing year and the time when the survey data become available. This would improve accuracy of catch limits for the access areas, and align the implementation time better with the fishing year, thus reducing the uncertainties for the small businesses in the scallop fishery in making their business plans for the fishing year.

Adjusting the fishing year back 1 month will, however, require a change in the business plans of the scallop fishermen. Currently, the fishing year begins on March 1, at a time when meat-weight of scallops begins to increase and a higher yield per unit effort could be obtained from scallop fishing. If the landings are postponed to the following March (i.e., the last month of the fishing year, under this alternative) because of the change in the start of the fishing year to April 1, and if the resource and market conditions turn out to be less favorable than they were

expected a year ago--for example, because of a decline scallop prices or a decline catch per-unit effort-- the scallop fishermen will incur a loss from not using them in earlier months. This loss is not expected to be high, however, taking into consideration that some of the effort normally occurred in March could be shifted to other months when meat weights are even higher.

For example, starting the fishing year in April could lead to increased effort in this month if fishermen would want to postpone a smaller proportion of their allocations to the following March due to uncertainties. However, an increase in scallop landings in April (compared to the earlier years when the start of the fishing year was in March) could also have some beneficial impacts compared to No Action because meat weights are larger in April compared to March. Although the average price of scallops could decline somewhat with increased landings in April, the higher prices associated with larger size scallops are expected to outweigh negative impacts on average prices and revenues.

In addition, present regulations allow a vessel to carry over 10 days-at-sea to the next fishing year, and this provision could be used if it turns out that the market conditions are not optimal or if there are vessel breakdowns in the following year in March. Other factors, such as constraints on labor due to some crew members working on multiple boats with the reduced landings, especially in the last couple of years, also help spread the effort throughout the fishing year.

In summary, starting the fishing year a month later will require some change in business planning and will create some risks due to reduced predictability of the resource and market conditions in March, a month when yields start improving. Negative impacts associated with this change are expected to be minimal and also are expected to decline over time as the vessel-

owners gain experience with the new fishing year and learn to adjust their business plans more efficiently to the new conditions. The proposed measures are expected to result in positive economic impacts on regulated entities by improving scallop yield over the long-term, increase revenues, and reduce the business costs associated with constantly changing regulations outweighing any negative impacts associated with the change in fishing year.

Because this rulemaking will not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 10, 2016.

Paul Doremus,
Deputy Assistant Administrator for Operations,
National Marine Fisheries Service.

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

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. Amend § 648.2 by:

a. Revising the definitions of “Fishing year”, “Open areas”, and “Permit year”;

b. Removing the definitions for ““Rotational Closed Area” and “Sea Scallop Access Area”; and

c. Adding definitions for “Sea Scallop Access Area, Scallop Access Area, or Access Area” and “Sea Scallop Rotational Area, Scallop Rotational Area, or Rotational Area” in alphabetical order.

The revisions and additions read as follows:

§ 648.2 Definitions.

* * * * *

Fishing year means:

(1) For the Atlantic deep-sea red crab fishery, from March 1 through the last day of February of the following year.

(2) Beginning in 2018, for the Atlantic sea scallop fishery, from April 1 through March 31 of the following year (for 2017, the Atlantic sea scallop fishing year will be from March 1, 2017, through March 31, 2018).

(3) For the NE multispecies, monkfish and skate fisheries, from May 1 through April 30 of the following year.

(4) For the tilefish fishery, from November 1 through October 31 of the following year.

(5) For all other fisheries in this part, from January 1 through December 31.

* * * * *

Open areas, with respect to the Atlantic sea scallop fishery, means any area that is not subject to restrictions of the Sea Scallop Rotational Areas specified in §§ 648.59 and 648.60, EFH Closed Areas specified in § 648.61, or the Northern Gulf of Maine Management Area specified in § 648.62.

* * * * *

Permit year means:

(1) For the Atlantic deep-sea red crab fishery, from March 1 through the last day of February of the following year;

(2) Beginning in 2018, for the Atlantic sea scallop fishery, from April 1 through the last day of March of the following year (for 2017, the Atlantic sea scallop permit year will be from March 1, 2017, through March 31, 2018);

(3) For all other fisheries in this part, from May 1 through April 30 of the following year.

* * * * *

Sea Scallop Access Area, Scallop Access Area, or Access Area, with respect to the Atlantic sea scallop fishery, means an area that has been designated under the Atlantic Sea Scallop Fishery Management Plan as a sea scallop rotational area that is open to the scallop fishery in a given fishing year.

* * * * *

Sea Scallop Rotational Area, Scallop Rotational Area, or Rotational Area, with respect to the Atlantic sea scallop fishery, means an area that has been designated under the Atlantic Sea

Scallop Fishery Management Plan as part of the Sea Scallop Rotational Management Program.

A rotational area may be closed or open to the scallop fishery in a given fishing year. A rotational area open to the scallop fishery is termed a Sea Scallop Access Area and has area-specific management measures that are designed to control fishing effort and mortality on only the portion of the scallop resource within the area. Such measures are not applicable in Open Areas defined above.

* * * * *

3. In § 648.10, paragraph (b)(2), the first sentence to the introductory text of paragraph (f)(4)(i), the introductory text to paragraph (h), and paragraph (h)(8)(ii) are revised to read as follows:

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

* * * * *

(b) * * *

(2) A scallop vessel issued an Occasional limited access permit when fishing under the Sea Scallop Area Access Program specified under § 648.59;

* * * * *

(f) * * *

(4) * * *

(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 § 648.59(b)(9), and trips accompanied by a NMFS-approved observer. * * *

* * * * *

(h) *Call-in notification.* The owner of a vessel issued a limited access monkfish permit who is participating in a DAS program and who is not required to provide notification using a VMS, and a scallop vessel qualifying for a DAS allocation under the occasional category that has not elected to fish under the VMS notification requirements of paragraph (e) of this section and is not participating in the Sea Scallop Area Access program as specified in § 648.59, and any vessel that may be required by the Regional Administrator to use the call-in program under paragraph (i) of this section, are subject to the following requirements:

* * * * *

(8) * * *

(ii) A vessel issued a limited access scallop and LAGC IFQ scallop permit that possesses or lands more than 600 lb (272.2 kg) of scallops, unless otherwise specified in § 648.59(d)(2);

* * * * *

4. Amend § 648.14 by:

a. Revising paragraphs (i)(1)(vi), (i)(2)(ii)(B)(7), (i)(2)(iii)(B), (i)(2)(iii)(C), (i)(2)(iv)(B), the introductory text to (i)(2)(vi), and paragraph (i)(2)(vi)(A);

b. Add paragraph (i)(2)(vi)(B); and

c. Revise paragraphs (i)(2)(vi)(D), (i)(3)(iv)(A), (i)(3)(v), and (i)(4)(i)(A).

The revisions and additions read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(1) * * *

(vi) *Closed area requirements* — (A) *EFH Closed Areas*. (1) Fish for scallops in, or possess or land scallops from, the EFH Closed Areas specified in § 648.61.

(2) Transit or enter the EFH Closure Areas specified in § 648.61, except as provided by § 648.61(b).

(B) *Scallop Rotational Areas*. (1) Fish for scallops in, or possess or land scallops from, the Scallop Rotational Areas closed to the scallop fishery through the specifications or framework adjustment processes specified in § 648.55.

(2) Transit or enter the Scallop Rotational Areas, except as provided by § 648.59(a) or (b).

* * * * *

(2) * * *

(ii) * * *

(B) * * *

(7) Fish in a Sea Scallop Access Area, as described in § 648.60, 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.

* * * * *

(iii) * * *

(B) Fish for, possess, or land more than 50 bu (17.62 hL) of in-shell scallops once inside the VMS Demarcation Line on or by a vessel that, at any time during the trip, fished in or transited any area south of 42°20' N. lat; or fished in any Sea Scallop Area Access Program specified in § 648.59, except as provided in the state waters exemption, as specified in § 648.54.

(C) Fish for, possess, or land per trip, at any time, scallops in excess of any sea scallop possession and landing limit set by the Regional Administrator in accordance with § 648.59(b)(3) when properly declared into the Sea Scallop Area Access Program as described in § 648.59.

* * * * *

(iv) * * *

(B) Combine, transfer, or consolidate DAS allocations, except as allowed for one-for-one Access Area trip exchanges as specified in § 648.59(b)(3)(ii).

* * * * *

(vi) *Scallop rotational area management program and scallop access area program requirements.* (A) Fail to comply with any of the provisions and specifications of § 648.59.

(B) Transit the Closed Area II Rotational Area or the Closed Area II Extension Rotational Area, as defined § 648.60(d) and (e), respectively, or the Elephant Trunk Closed Area, as defined in § 648.60(b), unless 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.

* * * * *

(D) Possess more than 50 bu (17.6 hL) of in-shell scallops outside the boundaries of a Sea Scallop Access Area by a vessel that is declared into the Area Access Program as specified in § 648.59.

* * * * *

(3) * * *

(iv) * * *

(A) Fail to comply with any of the VMS requirements specified in §§ 648.10, 648.59, or 648.62.

* * * * *

(v) *Scallop rotational area management program and scallop access area program requirements.* (A) Fail to comply with any of the requirements specified in § 648.59.

(B) Declare into or leave port for an area specified in § 648.60 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 § 648.59.

(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 § 648.60, unless declared into the Sea Scallop Access Area Program.

(D) Fish for, possess, or land scallops in or from any Sea Scallop Access Area without an observer on board, unless the vessel owner, operator, or manager has received a waiver to carry an observer for the specified trip and area fished.

(E) Transit the Closed Area II Rotational Area or the Closed Area II Extension Rotational Area, as defined § 648.60(d) and (e), respectively, or the Elephant Trunk Closed Area, as defined

in § 648.60(b), unless 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.

* * * * *

(4) * * *

(i) * * *

(A) Fish for or land per trip, or possess at any time, in excess of 600 lb (272.2 kg) of shucked, or 75 bu (26.4 hL) of in-shell scallops per trip, or 100 bu (35.2 hL) in-shell scallops seaward of the VMS Demarcation Line, unless the vessel is carrying an observer as specified in § 648.11 and an increase in the possession limit is authorized by the Regional Administrator and not exceeded by the vessel, as specified in §§ 648.52(g) and 648.59(d).

* * * * *

5. In § 648.51, paragraphs (b)(1), (b)(3)(i), the introductory text to paragraph (c), and paragraph (f)(1) are revised to read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(b) * * *

(1) *Maximum dredge width.* The combined dredge width in use by or in possession on board such vessels shall not exceed 31 ft (9.4 m), measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section, in § 648.59(g)(2), and the scallop dredge exemption areas specified in § 648.80. 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 such that no more than one complete spare dredge could be made from these component's parts.

* * * * *

(3) * * *

(i) Unless otherwise required under the Sea Scallop Area Access program specified in § 648.59(b)(6), the ring size used in a scallop dredge possessed or used by scallop vessels shall not be smaller than 4 inches (10.2 cm).

* * * * *

(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 § 648.59 may have no more than eight people aboard, including the operator, when not docked or moored in port, except as follows:

* * * * *

(f) * * *

(1) A vessel issued a limited access scallop permit fishing for scallops under the scallop DAS allocation program may not fish with, possess on board, or land scallops while in possession of a trawl net, unless such vessel has been issued a limited access trawl vessel permit that endorses the vessel to fish for scallops with a trawl net. A limited access scallop vessel issued a trawl vessel permit that endorses the vessel to fish for scallops with a trawl net and general category scallop vessels enrolled in the Area Access Program as specified in § 648.59,

may not fish for scallops with a trawl net in the Closed Area 1, Closed Area II, Closed Area II Extension, and Nantucket Lightship Rotational Areas specified in § 648.60.

* * * * *

6. In § 648.52, paragraphs (d), (f), and (g) are revised to read as follows:

§ 648.52 Possession and landing limits.

* * * * *

(d) Owners or operators of vessels with a limited access scallop permit that have properly declared into the Sea Scallop Area Access Program as described in § 648.59 are prohibited from fishing for or landing per trip, or possessing at any time, scallops in excess of any sea scallop possession and landing limit set by the Regional Administrator in accordance with § 648.59(b)(5).

* * * * *

(f) A limited access vessel or an LAGC vessel that is declared into the Sea Scallop Area Access Program as described in § 648.59, 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 § 648.60.

(g) *Possession limit to defray the cost of observers for LAGC IFQ vessels.* An LAGC IFQ vessel with an observer on board may retain, per observed trip, up to 1 day's allowance of the possession limit allocated to limited access vessels, as established by the Regional Administrator in accordance with § 648.59(d), provided the observer set-aside specified in § 648.59(d)(1) has not been fully utilized. For example, if the limited access vessel daily possession limit to defray the cost of an observer is 180 lb (82 kg), the LAGC IFQ possession limit to defray the cost of an observer would be 180 lb (82 kg) per trip, regardless of trip length.

7. In § 648.53, the section heading and paragraphs (a), (b), (c), (d), (e), (g)(1), the introductory text to (h)(2), paragraphs (h)(2)(i), (h)(2)(v)(B), (h)(3)(i), (h)(3)(ii)(A), (h)(5)(i), and (h)(5)(ii)(A) are revised to read as follows:

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

(a) The following determinations and allocations for the sea scallop rotational areas are defined as follows and shall be established through the specifications or framework adjustment process:

(1) *OFL*. OFL shall be based on an updated scallop resource and fishery assessment provided by either the Scallop PDT or a formal stock assessment. OFL shall include all sources of scallop mortality and shall include an upward adjustment to account for catch of scallops in state waters by vessels not issued Federal scallop permits. The fishing mortality rate (F) associated with OFL shall be the threshold F, above which overfishing is occurring in the scallop fishery. The F associated with OFL shall be used to derive specifications for ABC, ACL, and ACT, as defined in paragraph (a) of this section.

(2) The specification of ABC, ACL, and ACT shall be based upon the following overfishing definition: The F shall be set so that in access areas, averaged for all years combined over the period of time that the area is closed and open to scallop fishing as an access area, it does not exceed the established F threshold for the scallop fishery; in open areas it shall not exceed the F threshold for the scallop fishery; and for access and open areas combined, it is set at a level that has a 75-percent probability of remaining below the F associated with ABC, as

defined in paragraph (a)(3) of this section, taking into account all sources of fishing mortality in the limited access and LAGC fleets of the scallop fishery.

(3) *Overall ABC/ACL.* The overall ABC for sea scallop fishery shall be the catch level that has an associated F that has a 75-percent probability of remaining below the F associated with OFL. The overall ACL shall be equal to the ABC for the scallop fishery, minus discards (an estimate of both incidental and discard mortality). The ABC/ACL, after the discards and deductions specified in paragraph (a)(4) of this section 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 defined in paragraphs (a)(5) and (6) of this section, after the deductions outlined in paragraph (a)(4) of this section.

(4) *Deductions from ABC/ACL.* Incidental catch, as defined in paragraph (a)(7) of this section, shall be removed from ABC/ACL. One percent of ABC/ACL shall be removed from ABC/ACL for observer set-aside. Scallop catch equal to the value specified in §648.56(d) shall be removed from ABC/ACL for research set-aside. These deductions for incidental catch, observer set-aside, and research set-aside, shall be made prior to establishing sub-ACLs for the limited access and LAGC fleets, as specified in paragraphs (a)(5) and (6) of this section.

(5) *Limited access fleet sub-ACL and sub-ACL--* (i) *Limited access fleet sub-ACL.* After applying the deductions as specified in paragraph (a)(4) of this section, the limited access scallop fleet shall be allocated a sub-ACL equal to 94.5 percent of the ABC/ACL.

(ii) *Limited access fleet sub-ACL.* The ACL for the limited access fishery shall be set at a level that has an associated F with a 75-percent probability of remaining below the F associated with ABC/ACL.

(6) *LAGC IFQ fleet sub-ACL and sub-ACT--* (i) *LAGC IFQ fleet sub-ACL*. After applying the deductions as specified in paragraph (a)(4) of this section, the LAGC IFQ fleet shall be allocated a sub-ACL equal to 5.5 percent of the ABC/ACL, so that 5 percent of ABC/ACL is allocated to the LAGC fleet of vessels that do not also have a limited access scallop permit, and 0.5 percent of the ABC/ACL is allocated to the LAGC fleet of vessels that have limited access scallop permits. This specification of sub-ACLs shall not account for catch reductions associated with the application of AMs or adjustment of the sub-ACL as a result of the limited access AM exception as specified in paragraph (c)(1) of this section.

(ii) *LAGC IFQ fleet sub-ACT*. The LAGC IFQ fishery sub-ACT shall be equal to the LAGC IFQ fishery's sub-ACL. The sub-ACT for the LAGC IFQ fishery for vessels issued only a LAGC IFQ scallop permit shall be equal to 5 percent of the ABC/ACL specified in paragraph (a)(3) of this section, after applying the deductions as specified in paragraph (a)(4) of this section. The sub-ACT for the LAGC IFQ fishery for vessels issued both a LAGC IFQ scallop permit and a limited access scallop permit shall be 0.5 percent of the ACL specified in paragraph (a)(3) of this section, after applying the deductions as specified in paragraph (a)(4) of this section.

(7) *Scallop incidental catch target TAC*. The annual incidental catch target TAC is the catch available for harvest for vessels with incidental catch scallop permits. This incidental catch target will be removed from the ABC/ACL defined in paragraph (a)(3) of this section prior to establishing the limited access and LAGC IFQ sub-ACLs and sub-ACTs defined in paragraphs (a)(5) and (6) of this section.

(8) The following catch limits will be effective for the 2016 and 2017 fishing years:

SCALLOP FISHERY CATCH LIMITS

Catch Limits	2016 (mt)	2017 (mt)*
Overfishing Limit	68,418	68,418
Acceptable Biological Catch/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

* The catch limits for the 2017 fishing year are subject to change through a future specifications action or framework adjustment.

(b) *DAS specifications and allocations.* DAS specifications and allocations for limited access scallop trips in open areas are defined as follows and shall be specified through the specifications or framework adjustment processes defined in § 648.55, as follows:

(1) *DAS allocations.* DAS allocations shall be determined by distributing the portion of the limited access ACT defined in paragraph (a)(3) of this section, as reduced by access area allocations defined in § 648.59, and dividing that amount among vessels in the form of DAS calculated by applying estimates of open area landings per unit effort (LPUE) projected through the specifications or framework adjustment processes used to set annual allocations.

(2) *Assignment to DAS categories* – (i) Limited access vessels shall be categorized as full-time, part-time, or occasional. Allocations for part-time and occasional scallop vessels shall be 40 percent and 8.33 percent of the full-time DAS allocations, respectively.

(ii) Subject to the vessel permit application requirements specified in § 648.4, for each fishing year, each vessel issued a limited access scallop permit shall be assigned to the DAS

category (full-time, part-time, or occasional) it was assigned to in the preceding year, except as provided under the small dredge program specified in § 648.51(e).

(3) The DAS allocations for limited access scallop vessels for fishing years 2016 and 2017 are as follows:

SCALLOP OPEN AREA DAS ALLOCATIONS

Permit category	2016	2017*
Full-Time	34.55	34.55
Part-Time	13.82	13.82
Occasional	2.88	2.88

* The DAS allocations for the 2017 fishing year are subject to change through a future specifications action or framework adjustment.

(c) *Accountability measures (AM) for limited access vessels.* Unless the limited access AM exception is implemented in accordance with the provision specified in paragraph (c)(1) of this section, if the limited access sub-ACL defined in paragraph (a)(5) of this section is exceeded for the applicable fishing year, the DAS for each limited access vessel shall be reduced by an amount equal to the amount of landings in excess of the sub-ACL divided by the applicable LPUE for the fishing year in which the AM will apply as projected by the specifications or framework adjustment process specified in § 648.55, 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 limited access fishery's sub-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 for 2012 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 paragraph (b)(2) of this section. 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 limited access fishery's sub-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.

(1) *Limited access AM exception.* If NMFS determines 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 (c) 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.

(2) *Limited access fleet AM and exception provision timing.* The Regional Administrator shall determine whether the limited access fleet exceeded its sub-ACL defined in paragraph (a)(5) 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 sub-ACL for the limited access fleet was exceeded, and the amount of landings in excess of the sub-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.

(d) *End-of-year carry-over for open area DAS.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused open area DAS on the last day of February of any year may carry over a maximum of 10 DAS, not to exceed the total open area DAS allocation by permit category, into the next year. DAS carried over into the next fishing year may only be used in open areas. Carry-over DAS are accounted for in setting the sub-ACT for the limited access fleet, as defined in paragraph (a)(5)(ii) of this section. Therefore, if carry-over DAS result or contribute to an overage of the ACL, the limited access fleet AM specified in paragraph (c) of this section would still apply, provided the AM exception specified in paragraph (c)(1) of this section is not invoked.

(e) *Accrual of DAS.* All DAS fished shall be charged to the nearest minute. A vessel carrying an observer and authorized to be charged fewer DAS in Open Areas based on the total

available DAS set aside under paragraph (g) of this section shall be charged at a reduced rate as specified in paragraph (g)(1) of this section.

* * * * *

(g) * * *

(1) To help defray the cost of carrying an observer, 1 percent of the ABC/ACL defined in paragraph (a)(3) of this section shall be set aside to be used by vessels that are assigned to take an at-sea observer on a trip. This observer set-aside is specified through the specifications or framework adjustment process defined in § 648.55.

* * * * *

(h) * * *

(2) *Calculation of IFQ.* The ACL allocated to IFQ scallop vessels, and the ACL allocated to limited access scallop vessels issued IFQ scallop permits, as defined in paragraph (a)(4) of this section, shall be used to determine the IFQ of each vessel issued an IFQ scallop permit. Each fishing year, the Regional Administrator shall provide the owner of a vessel issued an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii) with the scallop IFQ for the vessel for the upcoming fishing year.

(i) *Individual fishing quota.* The IFQ for an IFQ scallop vessel shall be the vessel's contribution percentage as specified in paragraph (h)(2)(iii) of this section and determined using the steps specified in paragraph (h)(2)(ii) of this section, multiplied by the ACL allocated to the IFQ scallop fishery, or limited access vessels issued an IFQ scallop permit, as defined in paragraph (a)(4) of this section.

* * * * *

(v) * * *

(B) For accounting purposes, the combined total of all vessels' IFQ carry-over shall be added to the LAGC IFQ fleet's applicable sub-ACL for the carry-over year. Any IFQ carried over that is landed in the carry-over fishing year shall be counted against the sub-ACL defined in paragraph (a)(6) of this section, as increased by the total carry-over for all LAGC IFQ vessels, as specified in this paragraph (h)(2)(v)(B). IFQ carry-over shall not be applicable to the calculation of the IFQ cap specified in paragraph (h)(3)(i) of this section and the ownership cap specified in paragraph (h)(3)(ii) of this section.

* * * * *

(3) * * *

(i) *IFQ scallop vessel IFQ cap.* (A) Unless otherwise specified in paragraphs (h)(3)(i)(B) and (C) of this section, a vessel issued an IFQ scallop permit or confirmation of permit history shall not be issued more than 2.5 percent of the sub-ACL allocated to the IFQ scallop vessels as described in paragraph (a)(6) of this section.

(B) A vessel may be initially issued more than 2.5 percent of the sub-ACL allocated to the IFQ scallop vessels as described in paragraph (a)(6) of this section, if the initial determination of its contribution factor specified in accordance with § 648.4(a)(2)(ii)(E) and paragraph (h)(2)(ii) of this section, results in an IFQ that exceeds 2.5 percent of the sub-ACL allocated to the IFQ scallop vessels as described in paragraph (a)(6) of this section. A vessel that is allocated an IFQ that exceeds 2.5 percent of the sub-ACL allocated to the IFQ scallop vessels as described in paragraph (a)(6) of this section, in accordance with this paragraph (h)(3)(i)(B), may not receive IFQ through an IFQ transfer, as specified in paragraph (h)(5) of this section. All

scallops that have been allocated as part of the original IFQ allocation or transferred to a vessel during a given fishing year shall be counted towards the vessel cap.

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

(ii) * * *

(A) For any vessel acquired after June 1, 2008, a vessel owner is not eligible to be issued an IFQ scallop permit for the vessel, and/or a confirmation of permit history, and is not eligible to transfer IFQ to the vessel, if, as a result of the issuance of the permit and/or confirmation of permit history, or IFQ transfer, the vessel owner, or any other person who is a shareholder or partner of the vessel owner, will have an ownership interest in more than 5 percent of the sub-ACL allocated to the IFQ scallop vessels as described in paragraph (a)(6) of this section.

* * * * *

(5) * * *

(i) *Temporary IFQ transfers.* Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit may temporarily transfer (e.g., lease) its entire IFQ allocation, or a portion of its IFQ allocation, to another IFQ scallop vessel. Temporary IFQ transfers shall be effective only for the fishing year in which the temporary transfer is requested

and processed. IFQ, once temporarily transferred, cannot be temporarily transferred again to another vessel. IFQ can be temporarily transferred more than once (i.e., re-transferred). For example, if a vessel temporarily transfers IFQ to a vessel, the transferee vessel may re-transfer any portion of that IFQ to another vessel. There is no limit on how many times IFQ can be re-transferred in a fishing year. The Regional Administrator has final approval authority for all temporary IFQ transfer requests.

(ii) * * *

(A) Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit may transfer IFQ permanently to or from another IFQ scallop vessel. Any such transfer cannot be limited in duration and is permanent as to the transferee, unless the IFQ is subsequently permanently transferred to another IFQ scallop vessel. IFQ may be permanently transferred to a vessel and then be re-transferred (temporarily transferred (i.e., leased) or permanently transferred) by such vessel to another vessel in the same fishing year. There is no limit on how many times IFQ can be re-transferred in a fishing year.

* * * * *

8. In § 648.54, paragraph (e) is revised to read as follows:

§ 648.54 State waters exemption.

* * * * *

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

* * * * *

9. Amend § 648.55 by:

- a. Revising the section heading and paragraph (a);
- b. Removing and reserving paragraph (b);
- c. Revising paragraph (c);
- d. Removing and reserving paragraph (e);
- e. Revising the introductory text to paragraph (f) and paragraph (f)(38).

The revisions read as follows:

§ 648.55 Specifications and framework adjustments to management measures.

(a) *Specifications.* (1) The Scallop Plan Development Team (PDT) shall meet at least every two years to assess the status of the scallop resource and to develop and recommend the following specifications for a period of up to 2 years, as well as second or third-year default measures, for consideration by the New England Fishery Management Council's Atlantic Sea Scallop Oversight Committee and Advisory Panel: OFL, overall ABC/ACL, sub-ACLs, sub-ACTs, DAS open area allocations, possession limits, modifications to rotational area management (e.g., schedule, rotational closures and openings, seasonal restrictions, modifications to boundaries, etc.), access area limited access poundage allocations and LAGC IFQ fleet-wide trip allocations, annual incidental catch target TAC, and NGOM TAC.

(2) Based on the PDT recommendations and any public comments received, the Atlantic Sea Scallop Oversight Committee shall recommend appropriate specifications to the New England Fishery Management Council.

(3) The Council shall review these recommendations and, after considering public comments, shall recommend appropriate specifications for up to 2 years, as well as second or third-year default measures, to NMFS. NMFS shall approve, disapprove, or partially approve the specifications recommended by the Council and publish the approved specifications in the Federal Register in accordance with the APA.

(4) The PDT shall prepare a Stock Assessment and Fishery Evaluation (SAFE) Report at least every two years that provides the information and analysis needed to evaluate potential management adjustments. The preparation of the SAFE Report shall begin on or about June 1 of the year preceding the fishing year in which measures will be adjusted.

(5) The PDT will meet at least once during the interim years to review the status of the stock relative to the overfishing definition if information is available to do so. If the Council determines, based on information provided by the PDT or other stock-related information, that the approved specifications should be adjusted during the 2-year time period, it can do so through the same process outlined in paragraphs (a)(2) through (4) of this section during the interim year.

(6) Rotational area management guidelines. The Council's development of rotational area management adjustments shall take into account at least the following factors: General rotation policy; boundaries and distribution of rotational closures; number of closures; minimum closure size; maximum closure extent; enforceability of rotational closed and re-opened areas; monitoring through resource surveys; and re-opening criteria. Rotational closures should be considered where projected annual change in scallop biomass is greater than 30 percent. Areas

should be considered for Sea Scallop Rotational Areas where the projected annual change in scallop biomass is less than 15 percent.

(7) Second and Third-year default specifications. The specifications action shall include default specifications that shall be effective in the second year after 1-year specifications and the third year after the 2-year specifications expire until replaced by the measures included in the next specifications action. If the specifications action is not published in the **Federal Register** with an effective date on or before April 1, the following year's default specifications shall be effective beginning April 1 of each fishing year until any new specifications action is implemented and made effective during the second or third year, or for the entire fishing year if the specifications action is not completed or is not implemented by NMFS during the following year. The specifications action shall specify the measures necessary to address inconsistencies between specifications and default allocations for the period after April 1 but before the specifications action is implemented for that year. The default specifications, if implemented, shall remain in effect until they are revised through a subsequent specifications action.

* * * * *

(c) *OFL, overall ABC/ACL, sub-ACLs, and sub- ACTs.* The Council shall specify OFL, ABC, ACL, and ACT, as defined in § 648.53, for each year covered under the specifications.

* * * * *

(f) *Framework adjustments.* The Council may at any time initiate a framework adjustment to add or adjust management measures within the Scallop FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the FMP. The Council shall develop and analyze appropriate management actions over the span of at least two Council

meetings. To address interactions between the scallop fishery and sea turtles and other protected species, such adjustments may include proactive measures including, but not limited to, the timing of Sea Scallop Access Area openings, seasonal closures, gear modifications, increased observer coverage, and additional research. 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. The Council's recommendation on adjustments or additions to management measures may include specifications measures specified in paragraph (a) of this section, which must satisfy the criteria set forth § 648.53(a) in order to prevent overfishing of the available biomass of scallops and ensure that OY is achieved on a continuing basis. Other measures that may be changed or implemented through framework action include:

* * * * *

(38) Adjustments to aspects of ACL management, including accountability measures;

* * * * *

10. In § 648.56, paragraphs (a), (d), (f), and (g) are revised to read as follows:

§ 648.56 Scallop research.

(a) At least biennially, in association with the biennial framework process, the Council and NMFS shall prepare and issue an announcement of Federal Funding Opportunity (FFO) that identifies research priorities for projects to be conducted by vessels using research set-aside as specified in paragraph (d) of this section and § 648.59(e), provides requirements and instructions for applying for funding of a proposed RSA project, and specifies the date by which applications must be received. The FFO shall be published as soon as possible by NMFS and shall provide

the opportunity for applicants to apply for projects to be awarded for 1 or 2 years by allowing applicants to apply for RSA funding for the first year, second year, or both.

* * * * *

(d) Available RSA allocation shall be 1.25 million lb (567 mt) annually, which shall be deducted from the ABC/ACL specified in § 648.53(a) prior to setting ACLs for the limited access and LAGC fleets, as specified in § 648.53(a)(3) and (4), respectively. Approved RSA projects shall be allocated an amount of scallop pounds that can be harvested in open areas and available access areas. The specific access areas that are open to RSA harvest shall be specified through the framework process as identified in § 648.59(e)(1). In a year in which a framework adjustment is under review by the Council and/or NMFS, NMFS shall make RSA awards prior to approval of the framework, if practicable, based on total scallop pounds needed to fund each research project. Recipients may begin compensation fishing in open areas prior to approval of the framework, or wait until NMFS approval of the framework to begin compensation fishing within approved access areas

* * * * *

(f) If all RSA pounds awarded to a project cannot be harvested during the applicable fishing year, RSA TAC awarded to that project may be harvested through June 30 of the fishing year subsequent to the fishing year in which the set-aside is awarded.

(g) Vessels conducting research under an approved RSA project may be exempt from crew restrictions specified in § 648.51, seasonal closures of access areas specified in § 648.60, and the restriction on fishing in only one access area during a trip specified in § 648.59(b)(4). The RSA project proposal must list which of these measures for which an exemption is required.

An exemption shall be provided by Letter of Authorization issued by the Regional Administrator. RSA compensation fishing trips and combined compensation and research trips are not eligible for these exemptions.

* * * * *

§ 648.57 [Removed and reserved]

11. Remove and reserve § 648.57.

§ 648.58 [Removed and reserved]

12. Remove and reserve § 648.58.

13. Revise § 648.59 to read as follows:

§ 648.59 Sea Scallop Rotational Area Management Program and Access Area Program requirements.

(a) The Sea Scallop Rotational Area Management Program consists of Scallop Rotational Areas, as defined in § 648.2. Guidelines for this area rotation program (i.e., when to close an area and reopen it to scallop fishing) are provided in § 648.55(a)(6). Whether a rotational area is open or closed to scallop fishing in a given year, and the appropriate level of access by limited access and LAGC IFQ vessels, are specified through the specifications or framework adjustment processes defined in § 648.55. When a rotational area is open to the scallop fishery, it is called an Access Area and scallop vessels fishing in the area are subject to the Access Area Program Requirements specified in this section. Areas not defined as Scallop Rotational Areas specified in § 648.60, EFH Closed Areas specified in § 648.61, or areas closed to scallop fishing under other FMPs, are governed by other management measures and restrictions in this part and are referred to as Open Areas.

(1) When a Scallop Rotational Area is closed to scallop fishing, a vessel issued any scallop permit may not fish for, possess, or land scallops in or from the area unless the vessel is transiting pursuant to paragraph (a)(2) of this section. A vessel may fish for species other than scallops within the rotational closed areas, provided the vessel does not fish for, catch, or retain scallops or intend to fish for, catch, or retain scallops. When a Scallop Rotational Area is open to scallop fishing (henceforth referred to as an Access Area), a scallop vessel may not fish for, possess, or land scallops in or from the area unless it is participating in, and complies with the requirements of, the Scallop Access Area Program Requirements defined in paragraphs (b) through (g) of this section or the vessel is transiting pursuant to paragraph (a)(3) of this section.

(2) *Transiting a Closed Scallop Rotational Area.* No vessel possessing scallops may enter or be in the area(s) specified in this section when those areas are closed, as specified through the specifications or framework adjustment processes defined in § 648.55, 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 Scallop Rotational Area or the Closed Area II Extension Scallop Rotational Area, as defined § 648.60(d) and (e), respectively, or the Elephant Trunk Closed Area, as defined in § 648.60(b), 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.

(3) *Transiting a Scallop Access Area.* Any sea scallop vessel that has not declared a trip into the Scallop Area Access Program may enter a Scallop Access Area, and possess scallops not caught in the Scallop Access Areas, for transiting purposes only, provided the vessel's fishing

gear is stowed and not available for immediate use as defined in § 648.2. Any scallop vessel that has declared a trip into the Scallop Area Access Program may not enter or be in another Scallop Access Area on the same trip except such vessel may transit another Scallop Access Area provided its 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 Scallop Rotational Area or the Closed Area II Extension Scallop Rotational Area, as defined in § 648.60(d) and (e), respectively, or the Elephant Trunk Closed Area, as defined in § 648.60(b) 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.

(b) A limited access scallop vessel may only fish in the Scallop Rotational Areas, defined in § 648.60, when the areas are open (i.e., Access Areas), as specified through the specifications or framework adjustment processes defined in § 648.55, subject to any additional restrictions specified in § 648.60, provided the vessel complies with the requirements specified in paragraphs (b)(1) through (b)(9), and (c) through (f) of this section. An LAGC scallop vessel may fish in the Scallop Rotational Areas, defined in § 648.60, when the areas are open (i.e., Access Areas), as specified through the specifications or framework adjustment processes defined in § 648.55, subject to any additional requirements specified in § 648.60, provided the vessel complies with the requirements specified in paragraph (g) of this section.

(1) *VMS*. Each vessel participating in the 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 (b)(9) and (f) of this section.

(2) Vessels participating in the Scallop Access Area Program must comply with the trip declaration requirements specified in § 648.10(f) and vessel notification requirements specified in § 648.11(g) for observer deployment.

(3) *Scallop Access Area Allocations*—(i) *Limited access vessel allocations and possession limits.* (A) Except as provided in paragraph (c) of this section, the specifications or framework adjustment processes defined in § 648.55 determine the total amount of scallops, in weight, that a limited access scallop vessel may harvest from Scallop Access Areas during applicable seasons specified in § 648.60. A vessel may not possess or land in excess of its scallop allocation assigned to specific 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 (b)(3)(ii) of this section. A vessel may harvest its scallop allocation on any number of trips in a given fishing year, provided that no single trip exceeds the possession limits specified in the specifications or framework adjustment processes defined in § 648.55, unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section. No vessel declared into the Scallop Access Areas may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Scallop Rotational Area boundaries defined in § 648.60.

(B) The following access area allocations and possession limits for limited access vessels will be effective for the 2016 and 2017 fishing years:

Fishing year	Access Area		Permit category		
			Full-time	Part-time	Occasional

2016	Mid-Atlantic Access Area	Allocation	51,000 lb (23,133 kg)	20,400 lb (9,253 kg)	4,250 lb (1,928 kg)
		Possession limit	17,000 lb (57,711 kg)	10,200 lb (4,627 kg)	1,420 lb (644 kg)
2017*	Mid-Atlantic Access Area	Allocation	17,000 lb (57,711 kg)	10,200 lb (4,627 kg)	1,420 lb (644 kg)
		Possession limit	17,000 lb (57,711 kg)	10,200 lb (4,627 kg)	1,420 lb (644 kg)

* The limited access fishery's access area allocations and possession limits for the 2017

fishing year are subject to change through a future specifications action or framework adjustment.

(ii) *Limited access vessels' 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 Scallop Access Area. These exchanges may only be made for the amount of the current trip possession limit, as specified in paragraph (b)(3)(i)(B) 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.

(4) *Area fished.* While on a Scallop Access Area trip, a vessel may not fish for, possess, or land scallops in or from areas outside the Scallop Access Area in which the vessel operator has declared the vessel will fish during that trip, and may not enter or exit the specific declared Scallop Access Area more than once per trip. A vessel on a Scallop Access Area trip may not enter or be in another Scallop Access Area on the same trip except such vessel may transit another Scallop Access Area as provided for under paragraph (a)(3) of this section.

(5) *NE multispecies possession limits – (i) Maximum possession limit of NE Multispecies combined.* A vessel owner or operator of a limited access scallop vessel issued a valid NE multispecies permit as specified in § 648.4(a)(1), that has declared into a Scallop Access Area and fishes within the open Scallop Rotational Area boundaries defined in § 648.60, may fish for, possess, and land, per trip, up to a maximum of 1,000 lb (453.6 kg) of all NE multispecies combined, excluding yellowtail flounder, subject to the minimum commercial fish size restrictions specified in § 648.83(a)(1), and the additional restrictions for Atlantic cod, haddock, and yellowtail flounder specified in paragraphs (b)(5)(ii) through (iv) of this section.

(ii) *Atlantic cod*. Such vessel may bring onboard and possess only up to 100 lb (45.4 kg) of Atlantic cod per trip, provided such fish is intended for personal use only and cannot be not sold, traded, or bartered.

(iii) *Haddock*. Such vessel may possess and land haddock up to the overall possession limit of all NE multispecies combined, as specified in paragraph (b)(5)(ii) of this section, except that such vessel are prohibited from possessing or landing haddock from January 1 through June 30.

(iv) *Yellowtail flounder*. Such vessel is prohibited from fishing for, possessing, or landing yellowtail flounder.

(6) *Gear restrictions*. (i) The minimum ring size for dredge gear used by a vessel fishing on a Scallop Access Area trip is 4 inches (10.2 cm) in diameter. Dredge or trawl gear used by a vessel fishing on a Scallop Access Area trip must be in accordance with the restrictions specified in § 648.51(a) and (b).

(ii) Vessels fishing in the Closed Area I, Closed Area II, Closed Area II Extension, and Nantucket Lightship Scallop Rotational Areas defined in § 648.60 are prohibited from fishing with trawl gear as specified in § 648.51(f)(1).

(7) *Transiting*. While outside a Sea Scallop Access Area (i.e., in open areas) on a Scallop Access Area trip, the vessel must have all fishing gear stowed and not available for immediate use as defined in § 648.2, unless there is a compelling safety reason to be transiting open areas without gear stowed. Regulations pertaining to transiting Scallop Rotational Areas are provided for under paragraph (a)(3) of this section.

(8) *Off-loading restrictions.* The vessel may not offload its catch from a Scallop Access Area trip at more than one location per trip.

(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) *Scallop Access Area scallop allocation carryover.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, 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 Scallop Access Area is open, unless otherwise specified in this section. 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 through the specifications or framework adjustment processes defined in § 648.55, if a Scallop 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.

(d) *Increase in possession limit to defray costs of observers*—The Regional Administrator may increase the sea scallop possession limit through the specifications or framework adjustment processes defined in § 648.55 to defray costs of at-sea observers deployed on area access trips subject to the limits specified § 648.53(g). An owner of a scallop vessel shall be notified of the increase in the possession limit through a permit holder letter issued by the

Regional Administrator. If the observer set-aside is fully utilized prior to the end of the fishing year, the Regional Administrator shall notify owners of scallop vessels that, effective on a specified date, the increase in the possession limit is no longer available to offset the cost of observers. Unless otherwise notified by the Regional Administrator, vessel owners shall be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit.

(e) *Sea Scallop Research Set-Aside Harvest in Scallop Access Areas.*—Unless otherwise specified, RSA may be harvested in any access area that is open in a given fishing year, as specified through a specifications action or 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.

(f) *VMS polling.* For the duration of the Sea Scallop Area Access Program, as defined in this section, all sea scallop vessels equipped with a VMS unit shall be polled at a minimum of twice per hour, regardless of whether the vessel is enrolled in the Sea Scallop Area Access Program. Vessel owners shall be responsible for paying the costs of polling twice per hour.

(g) *Limited Access General Category vessels.* (1) An LAGC scallop vessel may only fish in the scallop rotational areas specified in § 648.60 or in paragraph (g)(3)(iv) of this section, subject to any additional restrictions specified in § 648.60, subject to the possession limit and access area schedule specified in the specifications or framework adjustment processes defined in § 648.55, provided the vessel complies with the requirements specified in paragraphs (b)(1), (b)(2), (b)(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, Closed Area II Extension, and Nantucket Lightship Scallop Rotational Areas specified in §648.60, when open, provided the vessel complies with the requirements specified in § 648.59 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 Scallop Rotational Areas specified in § 648.60 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, Closed Area II Extension, 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 Scallop Rotational Areas defined in § 648.60 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 Scallop Rotational Areas specified in § 648.60 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. All LAGC IFQ access area trips must be taken in the fishing year that they are allocated (i.e., there are no carryover trips). The total number of LAGC IFQ trips in an Access Area is specified in the specifications or framework adjustment processes defined in § 648.55.

(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, defined 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 defined in this section or the vessel is transiting pursuant to § 648.59(a)(3).

(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):

Point	Latitude	Longitude
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.

(v) The following LAGC IFQ access area allocations will be effective for the 2016 and 2017 fishing years:

Scallop Rotational Area	2016	2017*
Mid-Atlantic Access Area	2,068	602
Nantucket Lightship North	485	0

* The LAGC IFQ access area trip allocations for the 2017 fishing year are subject to change through a future specifications action or framework adjustment.

(4) *Possession limits*—(i) *Scallops*. A vessel issued a NE multispecies permit and a general category scallop permit that is fishing in an approved SAP under §648.85 under multispecies DAS, and that has not declared into the Scallop Access Area Program, is prohibited from possessing scallops. An LAGC scallop vessel authorized to fish in the Scallop Rotational Areas specified in § 648.60 may possess scallops up to the possession limit specified in § 648.52(a).

(ii) *Other species*. Unless issued an LAGC scallop permit and fishing under an approved NE multispecies SAP under NE multispecies DAS, an LAGC IFQ vessel fishing in the Closed Area I, Closed Area II, Closed Area II Extension, and Nantucket Lightship Rotational Areas specified in § 648.60, and the Nantucket Lightship North Sea Scallop Access Area specified in paragraph (g)(3)(iv) of this section is prohibited from possessing any species of fish other than scallops and monkfish, as specified in § 648.94(c)(8)(i). Such a vessel may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided that it has not declared into the Scallop Access Area Program. Such a vessel is prohibited from fishing for, possessing, or landing scallops.

14. Revise § 648.60 to read as follows:

§ 648.60 Sea Scallop Rotational Areas.

(a) *Mid-Atlantic Scallop Rotational Area.* (1) The Mid-Atlantic Scallop Rotational Area is comprised of the following scallop access areas: The Delmarva Scallop Rotational Area, as defined in paragraph (a)(2) of this section; the Elephant Trunk Scallop Rotational Area, as defined in paragraph (a)(3) of this section; and the Hudson Canyon Scallop Rotational Area, as defined in paragraph (a)(4) of this section.

(2) *Delmarva Scallop Rotational Area.* The Delmarva Scallop Rotational 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.

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

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

(b) *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.

(c) *Closed Area I Scallop Rotational Area.* (1) The Closed Area I Scallop Rotational 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' N.	69°01' 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).

(d) *Closed Area II Scallop Rotational Area.* (1) The Closed Area II Scallop Rotational 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°18.45' 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°18.45' N. lat. and the U.S.-Canada Maritime Boundary, approximately 41°18.45' N. lat. and 66°24.89' 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.

(2) *Season.* 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 Sea Scallop Rotational Area, defined in paragraph (d)(1) of this section, during the period of August 15 through November 15 of each year the Closed Area II Access Area is open to scallop vessels, unless transiting pursuant to § 648.59(a).

(e) *Closed Area II Extension Scallop Rotational Area.* The Closed Area II Extension Rotational 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.	(¹)	(²)
CAIIE5	40°30' N.	(³)	(²)
CAIIE1	40°30'N	67°20' W.	

¹The 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.

²From Point CAIIE4 to Point CAIIE5 following the U.S.-Canada Maritime Boundary.

³The intersection of 40°30' N. lat. and the U.S.-Canada Maritime Boundary, approximately, 65°44.34'W. long.

(f) *Nantucket Lightship Scallop Rotational Area.* (1) The Nantucket Lightship Scallop Rotational 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.

15. In § 648.62, paragraphs (a)(3), the introductory text to paragraph (b), paragraph (b)(3), and (c) are revised to read as follows:

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

(a)* * *

(3) Scallop landings by all vessels issued LAGC IFQ scallop permits and fishing in the NGOM scallop management area shall be deducted from the NGOM scallop total allowable catch specified in the specifications or framework adjustment processes defined in § 648.55. Scallop landings by IFQ scallop vessels fishing in the NGOM scallop management area shall be deducted from their respective scallop IFQs. Landings by incidental catch scallop vessels and limited access scallop vessels fishing under the scallop DAS program shall not be deducted from the NGOM total allowable catch specified in paragraph (b) of this section.

* * * * *

(b) *Total allowable catch.* The total allowable catch for the NGOM scallop management area shall be specified through the framework adjustment process. The total allowable catch for the NGOM scallop management area shall be based on the Federal portion of the scallop resource in the NGOM. The total allowable catch shall be determined by historical landings until additional information on the NGOM scallop resource is available, for example through an NGOM resource survey and assessment. The ABC/ACL as defined in § 648.53(a) shall not include the total allowable catch for the NGOM scallop management area, and landings from the NGOM scallop management area shall not be counted against the ABC/ACL defined in § 648.53(a).

* * * * *

(3) If the annual NGOM TAC is exceeded, the amount of NGOM scallop landings in excess of the TAC specified in paragraph (b)(1) of this section shall be deducted from the NGOM TAC for the subsequent fishing year, as soon as practicable, once scallop landings data for the NGOM fishery is available.

(c) *VMS requirements.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have declared a trip under the scallop DAS program, a vessel issued a scallop permit pursuant to § 648.4(a)(2) that intends to fish for scallops in the NGOM scallop management area or fishes for, possesses, or lands scallops in or from the NGOM scallop management area, must declare a NGOM scallop management area trip and report scallop catch through the vessel's VMS unit, as required in § 648.10. If the vessel has a NGOM permit, the vessel must declare either a Federal NGOM trip or a state-waters NGOM trip. If a vessel intends

to fish any part of a NGOM trip in Federal NGOM waters, it may not declare into the state water NGOM fishery.

* * * * *

16. In § 648.63, paragraph (b)(2)(iii) is revised to read as follows:

§ 648.63 General category Sectors and harvesting cooperatives.

* * * * *

(b) * * *

(2) * * *

(iii) A sector shall not be allocated more than 20 percent of the ACL for IFQ vessels defined in § 648.53(a)(4).

* * * * *

17. In § 648.64, paragraph (e) is revised to read as follows:

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

* * * * *

(e) *Process for implementing the AM*—(1) *If reliable information is available to make a mid-year determination:* On or about January 15 of each year, based upon catch and other information available to NMFS, the Regional Administrator shall determine whether a yellowtail flounder sub-ACL was exceeded, or is projected to be exceeded, by scallop vessels prior to the end of the scallop fishing year. The determination shall include the amount of the overage or projected amount of the overage, specified as a percentage of the overall sub-ACL for the applicable yellowtail flounder stock, in accordance with the values specified in paragraph (a) of this section. Based on this initial projection in mid-January, the Regional Administrator shall

implement the AM in accordance with the APA and notify owners of limited access and LAGC scallop vessels by letter identifying the length of the closure and a summary of the yellowtail flounder catch, overage, and projection that resulted in the closure.

(2) *If reliable information is not available to make a mid-year determination:* Once NMFS has compiled the necessary information (e.g., when the previous fishing year's observer and catch data are fully available), the Regional Administrator shall determine whether a yellowtail flounder sub-ACL was exceeded by scallop vessels following the end of the scallop fishing year. The determination shall include the amount of the overage, specified as a percentage of the overall sub-ACL for the applicable yellowtail flounder stock, in accordance with the values specified in paragraph (a) of this section. Based on this information, the Regional Administrator shall implement the AM in accordance with the APA in Year 3 (e.g., an accountability measure would be implemented in fishing year 2016 for an overage that occurred in fishing year 2014) and notify owners of limited access and LAGC scallop vessels by letter identifying the length of the closure and a summary of the yellowtail flounder catch and overage information.

* * * * *

18. In § 648.65, paragraph (c) is revised to read as follows:

§ 648.65 Windowpane flounder sub-ACL and AM for the scallop fishery.

* * * * *

(c) *Process for implementing the AM—*(1) *If reliable information is available to make a mid-year determination:* On or about January 15 of each year, based upon catch and other information available to NMFS, the Regional Administrator shall determine whether the

SNE/MA windowpane flounder sub-ACL was exceeded, or is projected to be exceeded, and if an accountability measure was triggered as described in § 648.90(a)(5)(iv), by scallop vessels prior to the end of the scallop fishing year. The determination shall include the amount of the overage or projected amount of the overage, specified as a percentage of the overall sub-ACL for the SNE/MA windowpane flounder stock, in accordance with the values specified in paragraph (a) of this section. Based on this initial determination in mid-January, the Regional Administrator shall implement the AM in the following fishing year in accordance with the APA and attempt to notify owners of limited access and LAGC scallop vessels by letter identifying the length of the gear restricted area and a summary of the SNE/MA windowpane flounder catch, overage, and projection that resulted in the gear restricted area.

(2) *If reliable information is not available to make a mid-year determination:* Once NMFS has compiled the necessary information (e.g., when the previous fishing year's observer and catch data are fully available), the Regional Administrator shall determine whether the SNE/MA windowpane flounder sub-ACL was exceeded and if an accountability measure was triggered as described in § 648.90(a)(5)(iv), by scallop vessels following the end of the scallop fishing year. The determination shall include the amount of the overage, specified as a percentage of the overall sub-ACL for the SNE/MA windowpane flounder stock, in accordance with the values specified in paragraph (a) of this section. Based on this information, the Regional Administrator shall implement the AM in accordance with the APA in Year 3 (e.g., an accountability measure would be implemented in fishing year 2016 for an overage that occurred in fishing year 2014) and attempt to notify owners of limited access and LAGC scallop vessels

by letter identifying the length of the gear restricted area and a summary of the SNE/MA windowpane flounder catch and overage information.

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