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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 180202111-8353-02]

RIN 0648-BH56

Fisheries of the Northeastern United States; Framework Adjustment 29 to the Atlantic Sea Scallop Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: NMFS approves and implements measures included in Framework Adjustment 29 to the Atlantic Sea Scallop Fishery Management Plan that establish fishing year 2018 and 2019 scallop specifications and other measures. The measures in this rule are in addition to the Northern Gulf of Maine management measures of Framework 29 that were published in a separate final rule on March 26, 2018. This action is necessary to prevent overfishing and improve both yield-per-recruit and the overall management of the Atlantic sea scallop resource. The intended effect of this rule is to implement these measures for the 2018 fishing year.

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

ADDRESSES: The New England Fishery Management Council developed an environmental assessment (EA) for this action that describes the measures, other considered alternatives, and analyzes the impacts of the measures and alternatives. Copies of Framework Adjustment 29, the EA, and the Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The EA/IRFA is also accessible via the Internet at:
<https://www.nefmc.org/library/framework-29-1>.

With regard to new access areas that will become available to scallop fishing through the Omnibus Essential Fish Habitat Amendment 2 (see the final rule for the Omnibus Habitat Amendment published on April 9, 2018 (83 FR 15240)), additional documents are available via the internet at: <http://www.nefmc.org/library/omnibus-habitat-amendment-2>.

Copies of the small entity compliance guide are available from Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930-2298, or available on the internet at: <http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/scallop/>.

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

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council adopted Framework Adjustment 29 to the Atlantic Sea Scallop Fishery Management Plan (FMP) in its entirety on December 7, 2017; submitted an advance decision draft of the framework and draft EA to NMFS on December 21, 2017; and submitted a draft of the framework, including a draft EA, to NMFS on January 25, 2018, for review and approval.

On March 26, 2018, NMFS published a separate final rule to approve and implement the measures in Framework 29 that address the Northern Gulf of Maine (NGOM) management program measures in Framework 29 (83 FR 12857); the NGOM measures were addressed separately to ensure that they were in place prior to April 1, 2018. Additional information on the NGOM measures is provided in the March 26, 2018, final rule and is not repeated here. This action addresses only the remaining portions of Framework 29.

This action approves and implements the portion of Framework 29 that establishes scallop specifications and other measures for fishing year 2018. This includes default fishing year 2019 measures that would go into place should the next specifications-setting action be delayed beyond the April 1 start of fishing year 2019.

This action includes catch, effort, and quota allocation adjustments for fishing year 2018 and default specifications for fishing year 2019. The Council submitted a final EA to NMFS on March 14, 2018, for approval. NMFS published a proposed rule for the non-NGOM measures in Framework 29 on March 15, 2018 (83 FR 11474). The proposed rule included a 15-day public comment period that closed on March 30, 2018. NMFS has approved all of the measures in Framework 29 recommended by the Council,

as described below. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) allows NMFS to approve, partially approve, or disapprove measures proposed by the Council based on whether the measures are consistent with the fishery management plan, the Magnuson-Stevens Act and its National Standards, and other applicable law. We defer to the Council’s policy choices unless there is a clear inconsistency with the law or the FMP. Details concerning the development of these measures were contained in the preamble of the proposed rule and are not repeated here.

Specification of Scallop Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limits (ACL), Annual Catch Targets (ACT), Annual Projected Landings (APL), and Set-Asides for the 2018 Fishing Year, and Default Specifications for Fishing Year 2019

Table 1 outlines the scallop fishery catch limits derived from the ABC values and the projected landings of the fleet.

Table 1. Scallop Catch Limits (mt) for Fishing Years 2018 and 2019 for the Limited Access and Limited Access General Category (LAGC) Individual Fishing Quota (IFQ) Fleets.

Catch limits	2018 (mt)	2019 (mt)*
Overfishing Limit	72,055	69,633
Acceptable Biological Catch/ACL (discards removed)	45,950	45,805
Incidental Catch	23	23
Research Set-Aside (RSA)	567	567
Observer Set-Aside	460	458
ACL for fishery	44,900	44,757

Limited Access ACL	42,431	42,295
LAGC Total ACL	2,470	2,462
LAGC IFQ ACL (5 percent of ACL)	2,245	2,238
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	225	224
Limited Access ACT	37,964	37,843
Closed Area 1 Carryover	743	n/a
APL	25,451	(*)
Limited Access Projected Landings (94.5 percent of APL)	24,051	(*)
Total IFQ Annual Allocation (5.5 percent of APL)	1,400	** 1,050
LAGC IFQ Annual Allocation (5 percent of APL)	1,273	** 955
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL)	127	** 95

*The catch limits for the 2019 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2019 that will be based on the 2018 annual scallop surveys.

**As a precautionary measure, the 2019 IFQ annual allocations are set at 75 percent of the 2018 IFQ Annual Allocations.

This action deducts 1.25 million lb (567 mt) of scallops annually for 2018 and 2019 from the ABC for use as the Scallop RSA to fund scallop research. Participating vessels are compensated through the sale of scallops harvested under RSA projects. Of the 1.25 million lb (567 mt) allocation, NMFS has already allocated 133,037 lb (60.3 mt) to previously funded multi-year projects as part of the 2017 RSA awards process. NMFS is reviewing proposals submitted for consideration of 2018 RSA awards and will be selecting projects for funding in the near future.

This action also deducts 1 percent of the ABC for the industry-funded observer program to help defray the cost to scallop vessels that carry an observer. The observer set-aside is 460 mt for 2018 and 458 mt for 2019. In fishing year 2018, the compensation

rates for limited access vessels in open areas fishing under days-at-sea (DAS) is 0.12 DAS per DAS fished. For access area trips, the compensation rate is 225 lb (102 kg), in addition to the vessel’s possession limit for the trip for each day or part of a day an observer is onboard. LAGC IFQ vessels may possess an additional 225 lb (102 kg) per trip in open areas when carrying an observer. NMFS may adjust the compensation rate throughout the fishing year, depending on how quickly the fleets are using the set aside. The Council may adjust the 2019 observer set-aside when it develops specific, non-default measures for 2019.

Open Area Days-at-Sea (DAS) Allocations

This action implements vessel-specific DAS allocations for each of the three limited access scallop DAS permit categories (i.e., full-time, part-time, and occasional) for 2018 and 2019 (Table 2). Framework 29 sets 2019 DAS allocations at 75 percent of fishing year 2018 DAS allocations as a precautionary measure. This is to avoid over-allocating DAS to the fleet in the event that the 2019 specifications action is delayed past the start of the 2019 fishing year. The allocations in Table 2 exclude any DAS deductions that are required if the limited access scallop fleet exceeded its 2017 sub-ACL.

Table 2. Scallop Open Area DAS Allocations for 2018 and 2019

Permit Category	2018	2019 (Default)
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.5

Limited Access Allocations and Trip Possession Limits for Scallop Access Areas

For fishing year 2018 and the start of 2019, Framework 29 keeps the Mid-Atlantic Access Area (MAAA) open as an access area and includes what is now the Elephant Trunk Flex Rotational Area as part of the MAAA. Framework 29 also reverts some areas previously managed in scallop rotational management program back to open areas. These areas include the Delmarva portion of the MAAA, the Nantucket Lightship Extension, and the Closed Area 2 Extension. Vessels will still be able to access these areas while fishing in the open area. In addition, this action closes the northern portion of Nantucket Lightship, but it allocates trips into the southern portion of Nantucket Lightship in an area referred to as Nantucket Lightship-South (NLS-S). Further, this action allocates effort into new access areas (Closed Area I (CA1) and Nantucket Lightship-West (NLS-W)) that became available to scallop fishing through the Omnibus Essential Fish Habitat Amendment 2 (Omnibus Habitat Amendment). We published a final rule for the Omnibus Habitat Amendment on April 9, 2018 (83 FR 15240). This rule made areas that are now contained in CA1 and NLS-W available to scallop fishing.

Table 3 provides the limited access full-time allocations for all of the access areas, which could be taken in as many trips as needed, so long as the vessels do not exceed the possession limit (also in Table 3) on each trip.

Table 3. Scallop Access Area Full-Time Limited Access Vessel Poundage Allocations and Trip Possession Limits for 2018 and 2019

Rotational access area	Scallop possession limit	2018 Scallop allocation	2019 Scallop allocation (default)
Closed Area 1		18,000 lb (8,165 kg)	0 lb (0 kg)

Nantucket Lightship-South	18,000 lb (8,165 kg) per trip	18,000 lb (8,165 kg)	0 lb (0 kg)
Nantucket Lightship-West		36,000 lb (16,329 kg)	0 lb (0 kg)
Mid-Atlantic		36,000 lb (16,329 kg)	18,000 lb (8,165 kg)
Total		108,000 lb (48,988 kg)	18,000 lb (8,165 kg)

Table 4 provides the limited access part-time allocations for three of the access areas, which could be taken in as many trips as needed, so long as the vessels do not exceed the possession limit (also in Table 4) on each trip. There is no part-time allocation in NLS-S.

Table 4. Scallop Access Area Part-Time Limited Access Vessel Poundage Allocations and Trip Possession Limits for 2018 and 2019

Rotational access area	Scallop possession limit	2018 Scallop allocation	2019 Scallop allocation (default)
Closed Area 1	14,400 lb (6,532 kg) per trip	14,400 lb (6,532 kg)	0 lb (0 kg)
Nantucket Lightship-West		14,400 lb (6,532 kg)	0 lb (0 kg)
Mid-Atlantic		14,400 lb (6,532 kg)	14,400 lb (6,532 kg)
Total		43,200 lb (19,595 kg)	14,400 lb (6,532 kg)

For the 2018 fishing year, an occasional limited access vessel is allocated 9,000 lb (4,082 kg) of scallops with a trip possession limit of 9,000 lb of scallops per trip (4,082 kg per trip). Occasional vessels are able to harvest the 9,000-lb (4,082-kg) allocation from only one of three available access areas (CA1, NLS-W, or MAAA). There is no

occasional vessel allocation for NLS-S. For the 2019 fishing year, occasional limited access vessels are allocated 9,000 lb (4,082 kg) in the MAAA only with a trip possession limit of 9,000 lb per trip (4,082 kg per trip).

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 access area. These exchanges may only be made for the amount of the current trip possession limit (i.e., 18,000 lb (8,165 kg)). In addition, these exchanges may only be made between vessels in the same permit category. For example, a full-time vessel may not exchange allocations with a part-time vessel, and vice versa.

Limited Access Unharvested Closed Area I Allocation from Fishing Years 2012 and 2013

Framework Adjustment 25 to the Scallop FMP (79 FR 34251; June 16, 2014) allowed unharvested pounds associated with fishing years 2012 and 2013 CA1 trips to be harvested by those vessels in CA1 when it reopens in the future. 1,638,604 lb (743,258 kg) of CA1 allocation went unharvested from fishing years 2012 and 2013, distributed across 130 permits. Using the dealer records and broken trip data, Framework 29 allocates this unharvested allocation to those permits in fishing year 2018. All amounts of outstanding limited access unharvested CA1 allocation will be made available in addition to fishing year 2018 allocations to that access area. For example, if a full-time limited access vessel has 2,000 lb (907 kg) of unharvested 2012/2013 CA1 allocation, and the CA1 trip limit is 18,000 lbs (8,165 kg), the vessel would be able to land a total of

20,000 lb (9,072 kg) from CA1 in fishing year 2018. There will be no change to specified trip limits through Framework 29, i.e., vessels must still abide by the 18,000-lb (8,165-kg) per trip limit. Therefore, the vessel would have to harvest its allocation in multiple trips (e.g., two 10,000-lb trips). Unharvested 2012/2013 CA1 allocation may only be harvested from CA1. Once allocated for the 2018 fishing year, these allocations will not be eligible to carry over into future years (i.e., available only for fishing year 2018, plus the first 60 days of fishing year 2019). This additional harvest in CA1 is not included in the fishing year 2018 APL established in Framework 29, because this catch is specific to those vessels that have unharvested 2012/2013 CA1 allocation and is not applicable to the entire fleet. However, the additional scallops harvested from CA1 will not cause the limited access fleet to exceed its ACT, because the APL is far below the ACT.

Nantucket Lightship Hatchet Scallop Rotational Area

The Omnibus Habitat Amendment makes available to scallop vessels several areas that were previously closed to the scallop fishery. However, these areas remain closed to scallop fishing until they are opened by a scallop action. The bulk of these areas are encompassed in the NLS-W and CA1 Rotational Areas, which Framework 29 opens to scallop fishing. Framework 29 does not open the area west and north of NLS-W (Table 5). We are calling this area the “Nantucket Lightship Hatchet Scallop Rotational Area,” and it remains closed to help minimize flounder bycatch due to uncertainty about catch rates in the area.

Table 5. Nantucket Lightship Hatchet Scallop Rotational Area

Point	Latitude	Longitude
NLSH1	40° 50' N	69° 30' W
NLSH2	40° 43.44' N	69° 30' W
NLSH3	40° 43.44' N	70° W
NLSH4	40° 20' N	70° W
NLSH5	40° 20' N	70° 20' W
NLSH6	40° 50' N	70° 20' W
NLSH7	40 50' N	69 30' W

Adjustments to Flatfish Accountability Measures

This action adjusts the scallop fleet's accountability measures for two different flatfish stocks (Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder and Georges Bank yellowtail flounder) and develops an accountability measure for northern windowpane flounder. This action changes the existing Georges Bank yellowtail flounder and the SNE/MA yellowtail flounder accountability measures from closed areas to gear restricted areas, and it develops a gear restricted area accountability measure for northern windowpane flounder.

For SNE/MA yellowtail flounder, this action adopts the same gear restricted area that is already in place for southern windowpane flounder, i.e., the area west of 71° W. Long. and creates the Mid-Atlantic Accountability Measure Area. For Georges Bank yellowtail flounder and northern windowpane flounder, this action creates the Georges Bank Accountability Measure Area (Table 6).

Table 6. Georges Bank Accountability Measure Area

Point	Latitude	Longitude	Note
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GBAM1	41°30' N	67°20' W	
GBAM2	41°30' N	(¹)	(²)
GBAM3	40°30' N	(³)	(²)
GBAM4	40°30' N	67°20' W	
GBAM1	41°30' N	67°20' W	

¹ The intersection of 41°30' N. lat. and the U.S.-Canada Maritime Boundary, approximately 41°30' N. lat., 66°34.73' W. long.

² From Point GBAM2 connected to Point GBAM3 along the U.S.-Canada Maritime Boundary.

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

When the fleet is subject to any of the flatfish accountability measures in a gear restricted area, vessels will be required to fish with scallop dredge gear that conforms to the following restrictions already in place for the southern windowpane flounder accountability measure:

- (1) No more than 5 rows of rings in the apron of the dredge;
- (2) A maximum hanging ratio of 1.5 meshes per 1 ring overall; and
- (3) A prohibition on the use of trawl gear.

For Georges Bank yellowtail flounder, this action changes the existing accountability measure to a requirement to use the accountability measure gear in the Georges Bank Accountability Measure Area. The requirement to use this gear in the area would remain in effect for the period of time based on the corresponding percent overage of the Georges Bank yellowtail flounder sub-ACL, as follows:

Table 7. Georges Bank Yellowtail Flounder Accountability Measure Duration

Percent overage of sub-ACL	Duration of Gear Restriction
20 or less	November 15 through December 31

Greater than 20	April through March (year round)
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For northern windowpane flounder, this action creates an accountability measure that requires the use of the accountability measure gear in the Georges Bank Accountability Measure Area. The requirement to use this gear in the area would remain in effect for the period of time based on the corresponding percent coverage of the northern windowpane flounder sub-ACL, as follows:

Table 8. Northern Windowpane Flounder Accountability Measure Duration

Percent coverage of sub-ACL	Duration of Gear Restriction
20 or less	November 15 through December 31
Greater than 20	April through March (year round)

For SNE/MA yellowtail flounder, this action changes the existing accountability measure to a requirement to use the accountability measure gear in the Mid-Atlantic Accountability Measure Area. The requirement to use this gear in the area would remain in effect for the period of time based on the corresponding percent coverage of the SNE/MA yellowtail flounder sub-ACL, as follows:

Table 9. SNE/MA Yellowtail Flounder Accountability Measure Duration

Percent coverage of sub-ACL	Duration of Gear Restriction
20 or less	April
Greater than 20	April through May

LAGC Measures

1. ACL and IFQ Allocation for LAGC Vessels with IFQ Permits. For LAGC vessels with IFQ permits, this action implements a 2,245-mt ACL for 2018 and a default ACL of 2,238 mt for 2019 (see Table 1). These sub-ACLs, which have no other associated regulatory or management requirements, provide a ceiling on overall landings by the LAGC IFQ fleet with a payback requirement the next fishing year. If the fleet were to reach this ceiling, any overages would be deducted from the following year's sub-ACL. The annual allocation to the LAGC IFQ-only fleet for fishing years 2018 and 2019 are 1,273 mt for 2018 and 955 mt for 2019 (see Table 1). Each vessel's IFQ is calculated from these allocations based on APL.

2. ACL and IFQ Allocation for Limited Access Scallop Vessels with IFQ Permits. For limited access scallop vessels with IFQ permits, this action implements a 225-mt ACL for 2018 and a default 224-mt ACL for 2019 (see Table 1). These sub-ACLs, which have no associated regulatory or management requirements, provide a ceiling on overall landings by this fleet with a payback provision for next fishing year. If the fleet were to reach this ceiling any overages would be deducted from the following year's sub-ACL. The annual allocation to limited access vessels with IFQ permits for fishing years are 127 mt for 2018 and 95 mt for 2019 (see Table 1). Each vessel's IFQ is calculated from these allocations based on APL.

3. LAGC IFQ Trip Allocations for Scallop Access Areas. Framework 29 allocates LAGC IFQ vessels a fleetwide number of trips in the CA1, NLS-S, NLS-W, and MAAA for fishing year 2018 trips and default fishing year 2019 trips in the MAAA

(see Table 10). The total number of trips for all areas combined (3,426) for fishing year 2018 is equivalent to the 5.5 percent of total catch from access areas.

Table 10. Fishing Years 2018 and 2019 LAGC IFQ Trip Allocations for Scallop

Access Areas

Access Area	2018	2019 (<i>Default</i>)
CA1	571	-
NLS-S	571	-
NLS-W	1,142	-
MAAA	1,142	571
Total	3,426	571

4. Scallop Incidental Catch Target TAC. This action implements a 50,000-lb (22,680-kg) scallop incidental catch target TAC for fishing years 2018 and 2019 to account for mortality from vessels that catch scallops while fishing for other species, and to ensure that fishing mortality targets are not exceeded. The Council and NMFS may adjust this target TAC in a future action if vessels catch more scallops under the incidental target TAC than predicted.

Research Set-Aside Harvest Restrictions

This action allows all vessels participating in RSA projects to harvest RSA compensation from all available access areas and the open area. A vessel is prohibited from fishing for RSA compensation in the NGOM unless the vessel is fishing an RSA compensation trip using NGOM RSA allocation that was awarded to an RSA project, as

described in the separate rule for the NGOM portions of Framework 29. In addition, Framework 29 prohibits the harvest of RSA from any access areas under default 2019 measures. At the start of 2019, RSA compensation can only be harvested from open areas. The Council will re-evaluate this measure in the action that would set final 2019 specifications.

Regulatory Corrections Under Regional Administrator Authority

This final rule includes three revisions to address regulatory text that is unnecessary, outdated, or unclear. These revisions are being implemented consistent with section 305(d) of the Magnuson-Stevens Act, which provides authority to the Secretary of Commerce to promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the Magnuson-Stevens Act. The first revision, at § 648.10(f)(4), clarifies that scallop vessels no longer need to send in daily catch reports through their vessel monitoring system for trips less than 24 hours because these reports are no longer useful for monitoring purposes. The second revision, at § 648.11(g)(2)(ii), removes the limitation that an LAGC IFQ could be selected for observer coverage no more than twice in a given week. This revision is necessary because, due to an update to our pre-trip notification system, we will no longer be able to accommodate the limit of two trips per week. Because of the change, vessels may be selected more than twice in a given week, but we expect that this would be a very rare occurrence. The final revision, at § 648.14 (i)(4)(ii)(A) and (B), is a correction to the regulations that should have been made as part of Framework Adjustment 28 to the Scallop FMP (82 FR 15155; March 27, 2017). This correction clarifies that owners of

IFQ vessels cannot have an ownership interest in vessels that collectively are allocated more than 5 percent of the total IFQ scallop APL, and that they may not have an IFQ allocation on an IFQ scallop vessel of more than 2.5 percent of the total IFQ scallop APL.

Changes from Proposed Rule to Final Rule

We added prohibitions at § 648.14 (i)(4)(v) and (vi) to clarify that the flatfish accountability measures also apply to the LAGC IFQ fleet. We changed § 648.53(d) and (h)(2)(v) to update the carryover provisions and clarify that the scallop fishing year ends in March. We included changes to the regulatory text in the § 648.64(b) to describe the area west of 71° W. Long. as the Mid-Atlantic Accountability Measure Area. We more formally described this area for consistency between the accountability measure areas. This led to citation changes throughout § 648.64 and in § 648.14(i)(2)(ix) and (x). We changed § 648.64(c)(3) to clarify that vessels may not use trawl gear in any of the accountability measure gear restricted areas. We included changes to § 648.14(i)(3)(v)(E) to remove unnecessary references to the Elephant Trunk Flex and Closed Area 2 Extension Scallop Rotational Areas, which are now part of the open area. Finally, we included changes to the Closed Area 1 boundary at § 648.60(c) to correct an error in the proposed rule.

This rule also includes three minor revisions to address errors in the published regulatory text for the Omnibus Essential Fish Habitat Amendment (83 FR 15240; April 9, 2016). Regulatory text in § 648.58 was issued in error; that section should have been removed in the final rule because we did not approve measures in Closed Area II on Georges Bank. Therefore, § 648.58 is removed and reserved in this final rule. The

coordinates for the Western Gulf of Maine Closure Area (§ 648.81(a)(4)) and the Restricted Gear Area II (§ 648.81(f)(4)) were incorrect and this final rule issues the correct coordinates for these two areas.

Comments and Responses

We received two comments on the proposed rule during the public comment period: one that was unrelated to the proposed measures, as it was focused on worldwide air pollution; and one comment letter from the Fisheries Survival Fund (FSF) in support of the action. We are not addressing the unrelated comment in this final rule. FSF represents a majority of the limited access scallop fleet. The FSF comment letter is generally supportive of Framework 29, but raises three issues regarding implementation, as described and discussed below.

Comment 1: FSF encourages NMFS to implement Framework 29 as soon as possible because the fleet is operating under default measures. FSF contends that operating under default measures presents difficulties for the fleet and associated shore-side entities regarding business planning. FSF notes that measures implemented through Amendment 19 to the Scallop FMP (81 FR 76516; November 3, 2016), which changed the start of the fishing year to April 1 and established a mechanism to speed up the approval and implementation of annual measures, should prevent us from delaying past April 1.

Response: FSF correctly points out that the intent of Amendment 19 was to “increase the likelihood that NMFS will be able to implement simple specifications actions at the start of the scallop fishing year on a more consistent basis.” While we

agree that a simple specifications action should be implemented by the beginning of the fishing year, there were several extenuating circumstances regarding Framework 29 as a whole that pushed it beyond the scope of a simple specifications action. Prior to its approval of Framework 29 at its December meeting, the Council raised concerns that the complexity of Framework 29 could jeopardize efforts to meet the timeline for implementation in the NGOM. Specifically, the Council was concerned that if the NGOM measures in Framework 29 were not in place by April 1, 2018, the limited access fleet could exceed its portion of the total allowable catch proposed in Framework 29, potentially undermining the sustainability of the NGOM fishery in the short term. To help prevent excessive fishing in the NGOM, we separated out and expedited implementation of the NGOM measures in Framework 29.

Framework 29 contains other measures that are beyond the scope of a simple specifications setting action. Specifically, Framework 29 adjusts the scallop fleet's accountability measures for two different flatfish stocks and develops an accountability measure for a third stock. In addition, to accommodate the industry's preference for adopting measures for this framework that would be dependent on NMFS' approval of the Omnibus Habitat Amendment, the Council developed four different specifications scenarios in Framework 29 accounting for all the possible approval outcomes of the Omnibus Habitat Amendment. This considerably increased the complexity of Framework 29. Further, because the final preferred alternatives were dependent on NMFS' decision on the Omnibus Habitat Amendment, the Council and NMFS had to delay the development of the EA and the proposed rule, respectively, to incorporate the

relevant analyses and regulations into the final documents for this action. Because the fishing season has already opened, we intend to waive the 30-day delay in the date of effectiveness required under the Administrative Procedures Act, so that this final rule will be effective upon the date of publication (see the **Classification** section below). This should help ease any burden on business planning activities in the industry resulting from implementation of this action after the opening of the fishing season.

Comment 2: FSF commented that it supports the approach to rotational area management in Framework 29. Specifically, it supports focusing fishing effort in areas for biological and economic reasons and a more targeted approach to habitat protection.

Response: NMFS also supports the Council's approach to rotational area management within the limitations of the FMP. The intent of area rotation is to increase meat yield and yield-per-recruit and to minimize collateral adverse impacts on other fisheries and the marine environment. Area rotation is limited to those areas available to the scallop fleet; habitat closed areas or areas closed to scallop fishing under other FMPs are not available.

Comment 3: FSF commented that the benefits derived from work by the Council and NMFS on Framework 29 and the Omnibus Habitat Amendment will be in vain if renewable energy planning by other Federal agencies creates large-scale closed areas in ways that are not carefully coordinated with the Scallop FMP's spatial management structure.

Response: The New England and Mid-Atlantic Fishery Management Councils have each passed motions to write letters to the Secretary of the Interior and the Secretary

of Commerce urging the Federal government to consider impacts on fisheries when developing wind energy projects. NMFS and both Councils are providing data and science to inform the Bureau of Ocean Energy Management (BOEM) of the Department of the Interior as it develops renewable energy areas. NMFS will continue to provide information and will coordinate with BOEM as appropriate. Both Councils will be commenting on BOEM proceedings regarding renewable energy areas off the east coast as they develop.

Classification

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

OMB has determined that this rule is not significant pursuant to E.O. 12866.

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

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

The Assistant Administrator for Fisheries has determined that the need to implement the measures of this rule in an expedited manner are necessary to achieve conservation objectives for the scallop fishery and certain fish stocks, and to relieve other restrictions on the scallop fleet. This final rule relieves restriction and constitutes good cause, under authority contained in 5 U.S.C. 553(d)(1) and (3), to waive the 30-day delay

in the date of effectiveness and to make the Framework 29 measures in this final rule effective on the date of publication in the *Federal Register*.

Framework 29 could not have been put into place any sooner. The information and data necessary for the Council to develop the framework and forward it to NMFS was not available in time for this action to be implemented by either April 1, 2018, the beginning of the scallop fishing year, or by 30 days prior to April 1. NMFS published the proposed rule as quickly as possible after receiving Framework 29 from the Council. We received the final submission of the EA from the Council on March 14, 2018, and published the proposed rule on March 15, 2018, with a comment period closing on March 30, 2018. We are publishing this final rule as quickly as possible after the close of the comment period.

Because Framework 29 had not yet been approved and implemented on April 1, 2018, certain default measures, including access area designations, DAS, IFQ, RSA, and observer set-aside allocations that were developed in Framework Adjustment 28 to the Scallop FMP (82 FR 15155; March 27, 2017) have already been put into place automatically. These default allocations were purposely set to be more conservative than what would eventually be implemented under Framework 29. Under the default measures, each full-time vessel has 21.75 DAS and one access area trip for 18,000 lb (8,165 kg) in the MAAA. In contrast, this final action provides full-time vessels with an additional 2.25 DAS (24 DAS total) and 90,000 lb (40,823 kg) in access area allocation (108,000 lb (48,988 kg) total). Further, LAGC IFQ vessels will receive an additional 554 mt (1,400 mt total) of allocation and 2,855 access area trips spread out across 4 access

areas (3,426 trips total). Accordingly, this action relieves the more restrictive aspects of the default measures already in place. Thus, we have cause to waive the 30-day delay in the date of effectiveness under 553(d)(1), because this final rule effectively relieves the restrictions of the more conservative default allocations. Delaying the implementation of this action for 30 days would delay positive economic benefits to the scallop fleet and could negatively impact the access area rotation program by delaying fishing in access areas that will become available under this final rule. This final rule contains no new measures that implement additional burdens on the fleet, and we do not expect that any members of the scallop industry will be aggrieved by waiving this delay. Therefore, the Assistant Administrator for Fisheries has concluded that we have good cause under 5 U.S.C. 553(d)(3), and has waived the 30-day delay in the date of effectiveness requirement of 5 U.S.C. 553(d).

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has completed a final regulatory flexibility analysis (FRFA) in support of Framework 29. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, a summary of the analyses completed in the Framework 29 EA, and the preamble to this final rule. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in Framework 29 and in the preambles to the proposed rule and this final rule, and is not repeated here. All of the documents that constitute the FRFA are available from NMFS and/or the Council, and a copy of the

IRFA, the Regulatory Impact Review (RIR), and the EA are available upon request (see **ADDRESSES**).

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

There were no specific comments on the IRFA.

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

These regulations affect all vessels with limited access and LAGC scallop permits, but there is no differential effect based on whether the affected entities are small or large. Framework 29 provides extensive information on the number and size of vessels and small businesses that are affected by the regulations, by port and state (see **ADDRESSES**). Fishing year 2016 data were used for this analysis because these data are the most recent complete data set for a fishing year. There were 313 vessels that obtained full-time limited access permits in 2016, 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 225 LAGC IFQ permits in 2016, and 125 of these vessels actively fished for scallops that year. The remaining permit holders likely leased out scallop IFQ allocations with their permits in Confirmation of Permit History. In 2016, there were 27 NGOM vessels that actively fished.

For RFA purposes, NMFS defines a small business in shellfish fishery as a firm that is independently owned and operated with receipts of less than \$11 million annually

(see 50 CFR 200.2). Individually-permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different fishery management plans, even beyond those impacted by this proposed rule. 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 2016 permits and contains average gross sales associated with those permits for calendar years 2014 through 2016. Matching the potentially impacted 2016 fishing year permits described above (limited access permits and LAGC IFQ permits) to calendar year 2016 ownership data results in 161 distinct ownership entities for the limited access fleet and 115 distinct ownership entities for the LAGC IFQ fleet. Of these, and based on the Small Business Administration guidelines, 154 of the limited access distinct ownership entities and 113 of the LAGC IFQ entities are categorized as small. The remaining seven limited access and two LAGC IFQ entities are categorized

as large. There were 27 distinct small business entities with NGOM permits and active NGOM vessels based on 2016 permits.

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

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

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

During the development of Framework 29, NMFS and the Council considered ways to reduce the regulatory burden on, and provide flexibility for, the regulated entities in this action. For instance, Framework 29 contains consistent gear restricted areas for three of the scallop fleet's flatfish accountability measures. This provides flexibility to the fleet compared to a closed area because it allows vessels to continue fishing with the accountability measure gear when an accountability measure is in effect. In addition, this action develops consistent gear restricted areas for each region (i.e., Georges Bank and Mid-Atlantic) to reduce confusion and regulatory burden on the fleet. Alternatives to the measures in this final rule are described in detail in Framework 29, which includes an EA, RIR, and IRFA (see **ADDRESSES**). The measures implemented by this final rule minimize the long-term economic impacts on small entities to the extent practicable. The only alternatives for the prescribed catch limits that were analyzed were those that met the legal requirements to implement effective conservation measures. Specifically, catch limits must be derived using SSC—approved scientific calculations based on the Scallop

FMP. Moreover, the limited number of alternatives available for this action must also be evaluated in the context of an ever-changing fishery management plan, as the Council has considered numerous alternatives to mitigating measures every fishing year in amendments and frameworks since the establishment of the FMP in 1982.

Overall, this rule minimizes adverse long-term impacts by ensuring that management measures and catch limits result in sustainable fishing mortality rates that promote stock rebuilding, and as a result, maximize optimal yield. The measures implemented by this final rule also provide additional flexibility for fishing operations in the short-term.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency will publish one or more guides to assist small entities in complying with the rule, and will designate such publications as “small entity compliance guides.” The agency will explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as a small entity compliance guide was prepared. Copies of this final rule are available from the Greater Atlantic Regional Fisheries Office, and the guide (i.e., permit holder letter) will be sent to all holders of permits for the scallop fishery. The guide and this final rule will be available upon request.

List of Subjects 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 13, 2018.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEAST UNITED STATES

Subpart A—General Provisions

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

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

2. In § 648.11, revise paragraph (g)(2)(ii) to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(g) * * *

(2) * * *

(ii) *LAGC IFQ vessels*. LAGC IFQ vessel owners, operators, or managers must notify the NMFS/NEFOP by telephone by 0001 hr of the Thursday preceding the week (Sunday through Saturday) that they intend to start any open area or access area scallop trip and must include the port of departure, open area or specific Sea Scallop Access Area to be fished, and whether fishing as a scallop dredge, scallop trawl vessel. NMFS/NEFOP must be notified by the owner, operator, or vessel manager of any trip plan changes at least 48 hr prior to vessel departure.

* * * * *

3. In § 648.14:

- a. Revise paragraphs (i)(1)(vi)(A); (i)(2)(vi)(B) and (C); and (i)(2)(ix);
- b. Add paragraph (i)(2)(x);
- c. Revise paragraphs (i)(3)(v)(E) and (i)(4)(ii)(A) and (B); and
- d. Add paragraphs (i)(4)(v) and (vi).

The revisions and additions read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(1) * * *

(vi) * * *

(A) *Habitat Management Areas*. (1) Fish for scallops in, or possess or land scallops from, the Habitat Management Areas specified in § 648.370.

(2) Transit or enter the Habitat Management Areas specified in § 648.370, except as provided by § 648.61(b).

* * * * *

(2) * * *

(vi) * * *

(B) Transit the Closed Area II Scallop Rotational Area, as defined in § 648.60(d), 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.

(C) Fish for, possess, or land scallops in or from an access area in excess of the vessel's remaining specific allocation for that area as specified in § 648.59(b)(3) or the amount permitted to be landed from that area.

* * * * *

(ix) Fish for scallops in the Mid-Atlantic Accountability Measure Area, described in § 648.64(b)(2) with gear that does not meet the specifications described in § 648.64(c) during the period specified in the notice announcing the Southern New England/Mid-Atlantic Yellowtail Flounder or the Southern Windowpane Flounder Gear Restricted Area described in § 648.64(e) and (g), respectively.

(x) Fish for scallops in the Georges Bank Accountability Measure Area described in § 648.64(b)(1), with gear that does not meet the specifications described in § 648.64(c) during the period specified in the notice announcing the Georges Bank Yellowtail Flounder or the Northern Windowpane Flounder Gear Restricted Area described in § 648.64(d) and (f), respectively.

* * * * *

(3) * * *

(v) * * *

(E) Transit the Closed Area II Scallop Rotational Area, as defined in § 648.60 (d), 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) * * *

(ii) * * *

(A) Have an ownership interest in vessels that collectively are allocated more than 5 percent of the total IFQ scallop APL as specified in § 648.53(a)(8).

(B) Have an IFQ allocation on an IFQ scallop vessel of more than 2.5 percent of the total IFQ scallop APL as specified in § 648.53(a)(8).

* * * * *

(v) Fish for scallops in the Mid-Atlantic Accountability Measure Area, described in § 648.64(b)(2) with gear that does not meet the specifications described in § 648.64(c) during the period specified in the notice announcing the Southern New England/Mid-Atlantic Yellowtail Flounder or the Southern Windowpane Flounder Gear Restricted Area described in § 648.64(e) and (g), respectively.

(vi) Fish for scallops in the Georges Bank Accountability Measure Area described in § 648.64(b)(1), with gear that does not meet the specifications described in § 648.64(c) during the period specified in the notice announcing the Georges Bank Yellowtail

Flounder or the Northern Windowpane Flounder Gear Restricted Area described in § 648.64(d) and (f), respectively.

* * * * *

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

4. In § 648.53 revise paragraphs (a)(8), (b)(3), (c) introductory text, (d), and (h)(2)(v) to read as follows:

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

(a) * * *

(8) The following catch limits will be effective for the 2018 and 2019 fishing years:

SCALLOP FISHERY CATCH LIMITS

Catch limits	2018 (mt)	2019 (mt)¹
Overfishing Limit	72,055	69,633
Acceptable Biological Catch/ACL (discards removed)	45,950	45,805
Incidental Catch	23	23
Research Set-Aside (RSA)	567	567
Observer Set-Aside	460	458
ACL for fishery	44,900	44,757
Limited Access ACL	42,431	42,295
LAGC Total ACL	2,470	2,462
LAGC IFQ ACL (5 percent of ACL)	2,245	2,238
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	225	224
Limited Access ACT	37,964	37,843

Closed Area 1 Unharvested Allocation ³	743	n/a
APL	25,451	(¹)
Limited Access Projected Landings (94.5 percent of APL)	24,051	(¹)
Total IFQ Annual Allocation (5.5 percent of APL) ²	1,400	1,050
LAGC IFQ Annual Allocation (5 percent of APL) ²	1,273	955
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) ²	127	95

¹The catch limits for the 2019 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2019 that will be based on the 2018 annual scallop surveys. The 2019 default allocations for the limited access component are defined for DAS in paragraph (b)(3) of this section and for access areas in § 648.59(b)(3)(i)(B).

²As a precautionary measure, the 2019 IFQ annual allocations are set at 75 percent of the 2018 IFQ Annual Allocations.

³One-time allocation in 2018 of unharvested Limited Access allocations to Closed Area I from fishing years 2012 and 2013.

(b) * * *

(3) The DAS allocations for limited access scallop vessels for fishing years 2018 and 2019 are as follows:

SCALLOP OPEN AREA DAS ALLOCATIONS

Permit category	2018	2019 ¹
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.5

¹The DAS allocations for the 2019 fishing year are subject to change through a future specifications action or framework adjustment. The 2019 DAS allocations are set at 75 percent of the 2018 allocation as a precautionary measure.

(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 Year 1, an open area LPUE of 2,500 lb (1.13 mt) per DAS in Year 2, and 313 full-time vessels, each full-time vessel's DAS for Year 2 would be reduced by 0.38 DAS ($300,000 \text{ lb (136 mt)} / 2,500 \text{ lb (1.13 mt) per DAS} = 120 \text{ lb (0.05 mt) per DAS} / 313 \text{ vessels} = 0.38 \text{ DAS per vessel}$). 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 Year 1 would result in the DAS reduction AM in Year 2. 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 Year 1 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 Year 2 would be reduced by 1 DAS.

* * * * *

(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 March 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.

* * * * *

(h) * * *

(2) * * *

(v) *End-of-year carry-over for IFQ.* (A) With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(ii)(L) for the entire fishing year preceding the carry-over year, LAGC IFQ vessels that have unused IFQ on the last day of March of any year may carry over up to 15 percent of the vessel's original IFQ plus the total of IFQ transferred to such vessel minus the total IFQ transferred from such vessel (either temporary or permanent) IFQ into the next fishing year. For example, a vessel with a 10,000-lb (4,536-kg) IFQ and 5,000-lb (2,268-kg) of leased IFQ may carry

over 2,250 lb (1,020 kg) of IFQ (i.e., 15 percent of 15,000 lb (6,804 kg)) into the next fishing year if it landed 12,750 lb (5,783 kg) (i.e., 85 percent of 15,000 lb (6,804 kg)) of scallops or less in the preceding fishing year. Using the same IFQ values from the example, if the vessel landed 14,000 lb (6,350 kg) of scallops, it could carry over 1,000 lb (454 kg) of scallops into the next fishing year.

* * * * *

§ 648.58 [Removed and Reserved]

5. Remove and reserve § 648.58.

6. In § 648.59, revise paragraphs (a) introductory text, (a)(2) and (3), (b)(3)(i)(B), and (b)(3)(ii), (c), (e), and (g)(3)(v) 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, Habitat Management Areas specified in § 648.370, 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.

* * * * *

(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, as defined in § 648.60(d), 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, as defined in § 648.60(d), 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) * * *

(3) * * *

(i) * * *

(B) The following access area allocations and possession limits for limited access vessels shall be effective for the 2018 and 2019 fishing years:

(1) *Full-time vessels*—For a full-time limited access vessel, the possession limit and allocations are:

Rotational access area	Scallop possession limit	2018 Scallop allocation	2019 Scallop allocation (default)
Closed Area 1	18,000 lb (8,165 kg) per trip	18,000 lb (8,165 kg)	0 lb (0 kg)
Nantucket Lightship-South		18,000 lb (8,165 kg)	0 lb (0 kg)
Nantucket Lightship-West		36,000 lb (16,329 kg)	0 lb (0 kg)
Mid-Atlantic		36,000 lb (16,329 kg)	18,000 lb (8,165 kg)
Total		108,000 lb (48,988 kg)	18,000 lb (8,165 kg)

(2) *Part-time vessels*—For a part-time limited access vessel, the possession limit and allocations are as follows:

Rotational access area	Scallop possession limit	2018 Scallop allocation	2019 Scallop allocation (default)
Closed Area 1		14,400 lb (6,532 kg)	0 lb (0 kg)

Nantucket Lightship West	14,400 lb (6,532 kg) per trip	14,400 lb (6,532 kg)	0 lb (0 kg)
Mid-Atlantic		14,400 lb (6,532 kg)	14,400 lb (6,532 kg)
Total		43,200 lb (19,595 kg)	14,400 lb (6,532 kg)

(3) *Occasional vessels.* (i) For the 2018 fishing year only, an occasional limited access vessel is allocated 9,000 lb (4,082 kg) of scallops with a trip possession limit at 9,000 lb of scallops per trip (4,082 kg per trip). Occasional vessels may harvest the 9,000 lb (4,082 kg) allocation from only one available access area (Closed Area 1, Nantucket Lightship-West, Nantucket Lightship-South, or Mid-Atlantic).

(ii) For the 2019 fishing year, occasional limited access vessels are allocated 9,000 lb (4,082 kg) of scallops in the Mid-Atlantic Access Area only with a trip possession limit of 9,000 lb of scallops per trip (4,082 kg per trip).

(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 18,000 lb (8,165 kg), a full-time vessel may exchange no more or less than 18,000 lb (8,165 kg), from one access area for no more or less than 18,000 lb (8,165 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.

* * * * *

(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 2017, that vessel may harvest 7,000 lb (3,175 kg) from its 2018 fishing year scallop

access area allocation during the first 60 days that the Mid-Atlantic Access Area is open in fishing year 2018 (April 1, 2018, through May 30, 2018).

* * * * *

(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. The access areas open for RSA harvest for fishing years 2018 and 2019 are:

(1) 2018: Closed Area 1, Nantucket Lightship-West, Nantucket Lightship-South, and Mid-Atlantic.

(2) 2019: No access areas.

* * * * *

(g) * * *

(3) * * *

(v) The following LAGC IFQ access area allocations will be effective for the 2018 and 2019 fishing years:

Scallop access area	2018	2019¹
Closed Area 1	571	0
Nantucket Lightship-South	571	0
Nantucket Lightship-West	1,142	0
Mid-Atlantic	1,142	571

Total	3,237	571
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¹The LAGC IFQ access area trip allocations for the 2019 fishing year are subject to change through a future specifications action or framework adjustment.

* * * * *

7. In § 648.60:
 - a. Revise paragraphs (a)(1);
 - b. Remove and reserve paragraph (a)(2);
 - c. Revise paragraph (a)(3);
 - d. Remove and reserve paragraph (b);
 - e. Revise paragraphs (c), (e), and (f); and
 - f. Add paragraphs (g) and (h).

The revisions and additions 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 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.

* * * * *

(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°50' N	74°20' W
ETAA2	38°10' N	74°20' W
ETAA3	38°10' N	73°30' W
ETAA4	38°50' N	73°30' W
ETAA1	38°50' N	74°20' W

* * * * *

(c) *Closed Area I Scallop Rotational Area.* 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):

Point	Latitude	Longitude
CAIA1	41°30' N	68°30' W
CAIA2	40°58' N	68°30' W
CAIA3	40°54.95' N	68°53.37' W
CAIA4	41°04' N	69°01' W
CAIA5	41°30' N	69°23' W
CAIA1	41°30' N	68°30' W

* * * * *

(e) *Nantucket Lightship South Scallop Rotational Area.* The Nantucket Lightship South 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
NLSS1	40°20' N	69°30' W
NLSS2	40°33' N	69°30' W
NLSS3	40°33' N	69°00' W
NLSS4	40°20' N	69°00' W
NLSS1	40°20' N	69°30' W

(f) *Nantucket Lightship West Scallop Rotational Area.* The Nantucket Lightship West 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
NLSW1	40°20' N	70°00' W
NLSW2	40°43.44' N	70°00' W
NLSW3	40°43.44' N	69°30' W
NLSW4	40°20' N	69°30' W
NLSW5	40°20' N	70°00' W

(g) *Nantucket Lightship North Scallop Rotational Area.* The Nantucket Lightship North 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
NLSN1	40°50' N	69°30' W

NLSH2	40°50' N	69°00' W
NLSN3	40°33' N	69°00' W
NLSN4	40° 33' N	69°30' W
NLSN1	40°50' N	69°30' W

(h) *Nantucket Lightship Hatchet Scallop Rotational Area*. The Nantucket Lightship Hatchet 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
NLSH1	40° 50' N	69° 30' W
NLSH2	40° 43.44' N	69° 30' W
NLSH3	40° 43.44' N	70° W
NLSH4	40° 20' N	70° W
NLSH5	40° 20' N	70° 20' W
NLSH6	40° 50' N	70° 20' W
NLSH7	40° 50' N	69° 30' W

§ 648.61 [Removed and Reserved]

8. Remove and reserve § 648.61.

9. Revise § 648.64 to read as follows:

§ 648.64 Flounder Stock sub-ACLs and AMs for the scallop fishery.

(a) As specified in § 648.55(d), and pursuant to the biennial framework adjustment process specified in § 648.90, the scallop fishery shall be allocated a sub-ACL

for the Georges Bank and Southern New England/Mid-Atlantic stocks of yellowtail flounder and the northern and southern stocks of windowpane flounder. The sub-ACLs for the yellowtail flounder stocks and the windowpane flounder stocks are specified in § 648.90(a)(4)(iii)(C) and (E) of the NE multispecies regulations, respectively.

(b) *Accountability Measure Areas--(1) Georges Bank Accountability Measure Area.* The Georges Bank Accountability Measure 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
GBAM1	41°30' N	67°20' W	
GBAM2	41°30' N	(¹)	(²)
GBAM3	40°30' N	(³)	(²)
GBAM4	40°30' N	67°20' W	
GBAM1	41°30' N	67°20' W	

¹ The intersection of 41°30' N. lat. and the U.S.-Canada Maritime Boundary, approximately 41°30' N. lat., 66°34.73' W. long.

² From Point GBAM2 connected to Point GBAM3 along the U.S.-Canada Maritime Boundary.

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

(2) *Mid-Atlantic Accountability Measure Area.* The Mid-Atlantic Accountability Measure Areas is defined as the area west of 71° W. Long., outside of the Sea Scallop Access Areas.

(c) *Gear restriction.* When subject to an accountability measure gear restricted area as described in paragraphs (d) through (g) of this section, a vessel must fish with scallop dredge gear that conforms to the following restrictions:

(1) No more than 5 rows of rings shall be used in the apron of the dredge. The apron is on the top side of the dredge, extends the full width of the dredge, and is the rows of dredge rings that extend from the back edge of the twine top (i.e., farthest from the dredge frame) to the clubstick; and

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

(3) Vessels may not fish for scallops with trawl gear when the gear restricted area accountability measure is in effect.

(d) *Georges Bank Yellowtail Flounder Accountability measure.* (1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Georges Bank yellowtail flounder sub-ACL for the scallop fishery is exceeded and an accountability measure is triggered as described in § 648.90(a)(5)(iv), the Georges Bank

Accountability Measure Area, described in paragraph (b)(1) of this section, shall be considered the Georges Bank Yellowtail Flounder Gear Restricted Area. Scallop vessels fishing in that area for the period of time specified in paragraph (d)(2) of this section must comply with the gear restrictions specified in paragraph (c) of this section.

(2) *Duration of gear restricted area.* The Georges Bank Yellowtail Flounder Gear Restricted Area shall remain in effect for the period of time based on the corresponding percent overage of the Georges Bank yellowtail flounder sub-ACL, as follows:

Percent overage of sub-ACL	Duration of Gear Restriction
20 or less	November 15 through December 31
Greater than 20	April through March (year round)

(e) *SNE/MA yellowtail flounder accountability measure.* (1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the SNE/MA yellowtail flounder sub-ACL for the scallop fishery is exceeded and an accountability measure is triggered as described in § 648.90(a)(5)(iv), the Mid-Atlantic Accountability Measure Area, described in paragraph (b)(2) of this section, shall be considered the SNE/MA Yellowtail Flounder Gear Restricted Area. Scallop vessels participating in the DAS, or LAGC IFQ scallop fishery for the period of time specified in paragraph (e)(2) of this section must comply with the gear restrictions specified in paragraph (c) of this section when fishing in open areas. This accountability measure does not apply to scallop vessels fishing in Sea Scallop Access Areas.

(2) *Duration of gear restricted area.* The SNE/MA Yellowtail Flounder Gear Restricted Area shall remain in effect for the period of time based on the corresponding percent overage of the SNE/MA yellowtail flounder sub-ACL, as follows:

Percent overage of sub-ACL	Duration of Gear Restriction
20 or less	April
Greater than 20	April through May

(f) *Northern windowpane flounder accountability measure.* (1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Northern windowpane flounder sub-ACL for the scallop fishery is exceeded and an accountability measure is triggered as described in § 648.90(a)(5)(iv), the Georges Bank Accountability Measure Area, described in (b)(1) of this section, shall be considered the Northern Windowpane Flounder Gear Restricted Area. Scallop vessels fishing in that area for the period of time specified in paragraph (f)(2) of this section must comply with the gear restrictions specified in paragraph (c) of this section.

(2) *Duration of gear restricted area.* The Northern Windowpane Flounder Gear Restricted Area shall remain in effect for the period of time based on the corresponding percent overage of the Georges Bank yellowtail flounder sub-ACL, as follows:

Percent overage of sub-ACL	Duration of Gear Restriction
20 or less	November 15 through December 31
Greater than 20	April through March (year round)

(g) *Southern windowpane accountability measure.* (1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the southern windowpane flounder sub-ACL for the scallop fishery is exceeded and an accountability measure is triggered as described in § 648.90(a)(5)(iv), the Mid-Atlantic Accountability Measure Area, described in paragraph (b)(2) of this section, shall be considered the Southern Windowpane Flounder Gear Restricted Area. Scallop vessels participating in the DAS, or LAGC IFQ scallop fishery for the period of time specified in paragraph (g)(2) of this section must comply with the gear restrictions specified in paragraph (c) of this section when fishing in open areas. This accountability measure does not apply to scallop vessels fishing in Sea Scallop Access Areas.

(2) *Duration of gear restricted area.* The SNE/MA Windowpane Flounder Gear Restricted Area shall remain in effect for the period of time based on the corresponding percent overage of the SNE/MA windowpane flounder sub-ACL, as follows:

Percent overage of sub-ACL	Duration of Gear Restriction
20 or less	February
Greater than 20	March and February

(h) *Process for implementing the AM—*(1) *If there is reliable information to make a mid-year determination, that a flounder stock sub-ACL was exceeded, or is projected to be exceeded, the Regional Administrator shall determine, on or about January 15 of each year whether an accountability measure should be triggered as described in § 648.90(a)(5)(iv). 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 specific*

flounder stock. Based on this determination, 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 catch, overage, and projection that resulted in the gear restricted area.

(2) *If reliable information is not available to make a mid-year determination*, after the end of the scallop fishing year the Regional Administrator shall determine whether the flounder stock sub-ACL was exceeded and if an accountability measure was triggered as described in § 648.90(a)(5)(iv). The determination shall include the amount of the overage, specified as a percentage of the overall sub-ACL for the specific flounder stock. Based on this determination, 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 flounder stock catch and overage information.

§ 648.65 [Removed and Reserved]

10. Remove and reserve § 648.65

Subpart F—Management Measures for the NE Multispecies and Monkfish Fisheries

11. In § 648.81, revise paragraphs (a)(4) and (f)(4) to read as follows:

§ 648.81 NE multispecies year-round and seasonal closed areas.

(a) * * *

(4) *Western Gulf of Maine Closure Area.* The Western Gulf of Maine Closure Area is defined by straight lines connecting the following points in the order stated:

Western Gulf of Maine Closure Area

Point	N Latitude	W Longitude
WGM1	43° 15' N	70° 15' W
WGM2	42° 15' N	70° 15' W
WGM3	42° 15' N	70° 00' W
WGM4	43° 15' N	70° 00' W
WGM1	43° 15' N	70° 15' W

* * * * *

(f) * * *

(4) *Restricted Gear Area II.* Restricted Gear Area II is defined by the following points connected in the order listed by straight lines (points followed by an asterisk are shared with an adjacent Restricted Gear Area):

Point	Latitude	Longitude	Note
AA	40°02.75' N	70°16.10' W	(*)
EB	39°59.30' N	70°14.00' W	(*)
EC	39°58.85' N	70°15.20' W	
ED	39°59.30' N	70°18.40' W	

EE	39°58.10' N	70°19.40' W	
EF	39°57.00' N	70°19.85' W	
EG	39°57.55' N	70°21.25' W	
EH	39°57.50' N	70°22.80' W	
EI	39°57.10' N	70°25.40' W	
EJ	39°57.65' N	70°27.05' W	
EK	39°58.58' N	70°27.70' W	
EL	40°00.65' N	70°28.80' W	
EM	40°02.20' N	70°29.15' W	
EN	40°01.00' N	70°30.20' W	
EO	39°58.58' N	70°31.85' W	
EP	39°57.05' N	70°34.35' W	
EQ	39°56.42' N	70°36.80' W	
ER	39°58.15' N	70°48.00' W	
ES	39°58.30' N	70°51.10' W	
ET	39°58.10' N	70°52.25' W	
EU	39°58.05' N	70°53.55' W	
EV	39°58.40' N	70°59.60' W	
EW	39°59.80' N	71°01.05' W	
EX	39°58.20' N	71°05.85' W	
EY	39°57.45' N	71°12.15' W	
EZ	39°57.20' N	71°15.00' W	

FA	39°56.30' N	71°18.95' W	
FB	39°51.40' N	71°36.10' W	
FC	39°51.75' N	71°41.50' W	
FD	39°50.05' N	71°42.50' W	
FE	39°50.00' N	71°45.00' W	
FF	39°48.95' N	71°46.05' W	
FG	39°46.60' N	71°46.10' W	
FH	39°43.50' N	71°49.40' W	
FI	39°41.30' N	71°55.00' W	
FJ	39°39.00' N	71°55.60' W	
FK	39°36.72' N	71°58.25' W	
FL	39°35.15' N	71°58.55' W	
FM	39°34.50' N	72°00.75' W	
FN	39°32.20' N	72°02.25' W	
FO	39°32.15' N	72°04.10' W	
FP	39°28.50' N	72°06.50' W	
FQ	39°29.00' N	72°09.25' W	
FR	39°29.75' N	72°09.80' W	(*)
FS	39°32.65' N	72°06.10' W	(*)
FT	39°35.45' N	72°02.00' W	(*)
FU	39°41.15' N	71°57.10' W	(*)
FV	39°46.95' N	71°49.00' W	(*)

FW	39°53.10' N	71°42.70' W	(*)
FX	39°52.60' N	71°40.35' W	(*)
FY	39°53.10' N	71°36.10' W	(*)
FZ	39°57.50' N	71°20.60' W	(*)
GA	40°00.70' N	71°19.80' W	(*)
GB	39°59.30' N	71°18.40' W	(*)
GC	40°02.00' N	71°01.30' W	(*)
GD	40°00.50' N	70°57.60' W	(*)
GE	40°00.10' N	70°45.10' W	(*)
GF	39°58.90' N	70°38.65' W	(*)
GG	39°59.15' N	70°34.45' W	(*)
GH	40°00.55' N	70°32.10' W	(*)
GI	40°03.85' N	70°28.75' W	(*)
GJ	39°59.75' N	70°25.50' W	(*)
GK	39°59.80' N	70°21.75' W	(*)
GL	40°00.70' N	70°18.60' W	(*)
AA	40°02.75' N	70°16.10' W	(*)

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