

We published the withdrawn rule as a direct final rule under 33 CFR 1.05–55 because we considered the rule to be noncontroversial and therefore did not expect any adverse comments. In the direct final rule, we notified the public of our intent to make the rule effective on April 12, 2012, unless an adverse comment or notice of intent to submit an adverse comment was received on or before February 13, 2012.

We received two submissions from the same commenter during the comment period, and we determined that both are adverse comments, as explained below. As such, we are withdrawing the direct final rule. We plan to consider the issues raised in the adverse comments in a notice of proposed rulemaking.

#### Withdrawal

We received two comments in response to the direct final rule. In the first comment, the commenter stated that without a definition of the term “oil in bulk,” the rule would be ineffective. In the second comment, the commenter stated that without a definition of the term “manned,” the rule would be ineffective. In the direct final rule, we explained that a comment is considered adverse if the commenter explains why this rule or part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptably without a change. We have determined that both comments received are adverse comments.

In the first comment, the commenter expressed concern that, without a definition of “in bulk,” the rule does not make it clear whether a barge that carries flammable or combustible liquids, including oil, in bulk for use by the vessel and not as cargo, is exempt from inspection and certification. Furthermore, the commenter asked at what quantity of such flammable or combustible liquid carried in bulk is the barge no longer considered exempt under the rule. The commenter also expressed concern that without a definition of “in bulk,” barges that carry flammable or combustible liquid, including oil, in bulk as cargo would be subject to inspection regardless of how small the quantity.

In the second comment, the commenter requested a definition for the term “manned,” and stated that without such a definition, the rule would be ineffective. The commenter was concerned that there are times when barges that do not require manning to operate have personnel on board to prepare the barges for transfer and off-load, and that without a

definition in the rule, it is not clear whether barges with personnel permissively on board require inspection or are exempt.

#### Authority

We issue this notice of withdrawal under the authority of 33 U.S.C. 494, 502, 525, 33 CFR 1.05–55, and Department of Homeland Security Delegation No. 0170.1.

Because we consider these comments to be adverse, we are withdrawing the direct final rule. We plan to seek comment on these concerns in a forthcoming notice of proposed rulemaking.

**J.G. Lantz,**

*Director of Commercial Regulations and Standards, U.S. Coast Guard.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 111011616–2102–02]

RIN 0648–BB51

#### Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 23

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

**ACTION:** Final rule.

**SUMMARY:** This action approves Framework Adjustment 23 to the Atlantic Sea Scallop Fishery Management Plan (Framework 23) and implements its measures. Framework 23 was developed and adopted by the New England Fishery Management Council and includes measures to: Minimize impacts on sea turtles through the requirement of a turtle deflector dredge; improve the effectiveness of the scallop fishery’s accountability measures related to the yellowtail flounder annual catch limits; adjust the limited access general category Northern Gulf of Maine management program; and modify the scallop vessel monitoring system trip notification procedures to improve flexibility for the scallop fleet.

**DATES:** Effective May 7, 2012.

**ADDRESSES:** An environmental assessment (EA) was prepared for Framework 23 that describes the action and other considered alternatives and

provides a thorough analysis of the impacts of these measures and alternatives. Copies of Framework 23, the EA, and the Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Emily Gilbert, Fishery Policy Analyst, 978–281–9244; fax 978–281–9135.

#### SUPPLEMENTARY INFORMATION:

#### Background

The New England Fishery Management Council (Council) adopted Framework 23 on September 27, 2011, initially submitted it to NMFS on October 25, 2011, for review and approval, and submitted a revised final framework document on November 30, 2011. Framework 23 includes measures that require vessels fishing in the Atlantic Sea Scallop fishery to use a turtle deflector dredge (TDD), including where, when, and to which vessels this TDD requirement applies. It also revises the current accountability measures (AMs) related to the yellowtail flounder (YTF) annual catch limits (sub-ACLs) for the Georges Bank (GB) and Southern New England/Mid-Atlantic (SNE/MA) YTF stock areas. These modifications only alter the months when a closure applies and do not change the locations for these seasonal closure AMs. Framework 23 also changes how scallop landings are applied to the Northern Gulf of Maine Management (NGOM) total allowable catch (TAC) when harvested by federally NGOM-permitted vessels. Finally, Framework 23 implements procedural changes to when and where a vessel can declare a scallop trip through vessel monitoring systems (VMS).

The Council reviewed the Framework 23 proposed rule regulations as drafted by NMFS, which included regulations proposed by NMFS under the authority of section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and deemed them to be necessary and consistent with section 303(c) of the Magnuson-Stevens Act. The proposed rule for Framework 23 published in the **Federal Register** on January 3, 2012 (77 FR 52), with a 15-day public comment period that ended January 18, 2012. Three comments were received on the proposed measures.

The final Framework 23 management measures are described below. Details concerning the Council’s development of these measures were presented in the

preamble of the proposed rule and are not repeated here.

*Requirement To Use a TDD*

This action implements a requirement that all limited access (LA) vessels (regardless of permit category or dredge size), and limited access general category (LAGC) Individual Fishing Quota (IFQ) vessels that fish with a dredge with a width of 10.5 ft (3.2 m) or greater, use a TDD in the Mid-Atlantic (west of 71° W long.) from May through October.

The TDD is designed to reduce injury and mortality of sea turtles that come into contact with scallop dredges on the sea floor by deflecting sea turtles over the dredge frame and dredge bag. The TDD includes five modifications to the standard commercial dredge frame:

(1) The cutting bar must be located in front of the depressor plate.

(2) The angle between the front edge of the cutting bar and the top of the dredge frame must be less than or equal to 45 degrees.

(3) All bale bars must be removed, except the outer bale (single or double) bars and the center support beam, leaving an otherwise unobstructed space between the cutting bar and forward bale wheels, if present. The center support beam must be less than 6 in (15.24 cm) wide. For the purpose of flaring and safe handling of the dredge, a minor appendage not to exceed 12 in (30.5 cm) in length may be attached to the outer bale bar.

(4) Struts must be spaced no more than 12 in (30.5 cm) apart from each other.

(5) The TDD must include a straight extension (“bump out”) connecting the outer bale bars to the dredge frame. This “bump out” must exceed 12 in (30.5 cm) in length.

Each element of this dredge is based on direct field research that has been conducted over several years. The combination of these modifications is designed to reduce the likelihood of a sea turtle passing under the dredge frame when the gear is on the seafloor, which could result in the sea turtle

being crushed or injured. Available information indicates that these modifications cumulatively benefit sea turtle conservation, while not compromising the structural integrity of the dredge design and scallop yield. These TDD components can be modified by future actions, if additional modifications are developed to further minimize impacts on sea turtles or improve the effectiveness of these measures.

This action requires that all LA vessels, regardless of permit category or dredge width, and all LAGC IFQ vessels that fish with dredge gear greater than or equal to 10.5 feet (3.2 m) in width in the applicable area and season, use a TDD. Because the bump out modification has not yet been fully tested on small dredges, Framework 23 exempts LA scallop vessels that use dredges with a width less than 10.5 ft (3.2 m) from that requirement of the TDD. Thus, LA vessels fishing with dredges less than 10.5 ft (3.2 m) in width only have to use a TDD with the first four modifications listed above. If an LA vessel fishes with two dredges at a time, both of which are less than 10.5 ft (3.2 m) in width, neither dredge is required to have the bump out extension, even though the combined width of both dredges is greater than 10.5 ft (3.2 m). The bump out exemption does not apply to LAGC vessels that use dredges less than 10.5 ft (3.2 m) wide because such vessels are exempted from the requirement to use a TDD entirely, due to concerns of the financial burden that building a new dredge would have on these small day boats, which may have lower IFQ allocations. If an LAGC vessel fishes with two dredges, both of which are less than 10.5 ft (3.2 m) wide, neither dredge is required to comply with the TDD requirements, even though the combined width of both dredges is greater than 10.5 ft (3.2 m).

Due to the time it will take manufacturers to develop TDDs for the scallop fishery, this measure will be effective 1 year after the effective date of Framework 23 (e.g., if Framework 23

is effective on March 15, 2012, the TDD regulations would be effective on March 15, 2013, and TDDs would be required to be used starting May 1, 2013). This delay also provides vessel operators and crew time to fish with the new dredge design before the TDD season begins, should they choose to do so.

This TDD requirement is an important measure to ensure compliance with the second reasonable and prudent measure (RPM#2) and accompanying terms and conditions (T/C) of the 2008 Biological Opinion (2008 Biological Opinion) on the Scallop FMP. RPM#2 states that “NMFS must continue to investigate and implement, as appropriate, gear modifications for scallop dredge and trawl gear to reduce the capture of sea turtles and/or the severity of the interactions that occur.” Along with effort restrictions in the Mid-Atlantic, which are required under the first RPM of the 2008 Biological Opinion, and previously implemented regulations requiring the use of chain mate (50 CFR 223.206(d)(11)), TDDs are expected to provide an additional conservation benefit to sea turtles by reducing the severity of any interactions that occur.

*Adjustments to the AMs Related to the Scallop Fishery’s YTF Sub-ACLs*

1. Revised AM Closure Schedules

This action also revises the YTF seasonal closure AM schedules in both GB and SNE/MA such that the closures will occur during months with the highest YTF catch rates, rather than being in place for consecutive months beginning at the start of the fishing year (FY). These AM adjustments still only apply to LA vessels. Table 1 compares the current SNE/MA AM schedule with the new Framework 23 schedule. The major difference for SNE/MA is that the Framework 23 closure schedule occurs in the early spring and winter first, rather than starting with the spring and summer, as under the current AM for that stock area. AMs will occur in the same FY, with the winter closures occurring at the end of the FY.

TABLE 1—COMPARISON OF CURRENT SNE/MA AM SCHEDULE AND THE FRAMEWORK 23

Current AM schedule		Proposed	
Percent overage	LA closure	Percent overage	LA closure
1–2	March	2 or less	Mar–Apr.
3–5	Mar–Apr	2.1–3	Mar–Apr, and Feb.
6–8	Mar–May	3.1–7	Mar–May, and Feb.
9–12	Mar–June	7.1–9	Mar–May, and Jan–Feb.
13–14	Mar–July	9.1–12	Mar–May, and Dec–Feb.
15	Mar–Aug	12.1–15	Mar–June, and Dec–Feb.
16	Mar–Sept	15.1–16	Mar–June, and Nov–Feb.
17	Mar–Oct	16.1–18	Mar–July, and Nov–Feb.
18	Mar–Nov	18.1–19	Mar–Aug, and Oct–Feb.

TABLE 1—COMPARISON OF CURRENT SNE/MA AM SCHEDULE AND THE FRAMEWORK 23—Continued

Current AM schedule		Proposed	
Percent overage	LA closure	Percent overage	LA closure
19 .....	Mar–Jan .....	19.1 or more .....	Mar–Feb.
20 and higher .....	Mar–Feb.		

Tables 2 and 3 compare the current GB AM schedules with the new Framework 23 schedules. The GB AM schedule is still complex because the extent of the closure period depends on whether or not Closed Area II Scallop Access Area (CAII) is open in the FY following a GB sub-ACL overage. In

general, the major difference is that the current GB AM closures begin in the fall, when GB YTF catch rates are highest, followed by the winter months. The updated GB schedule will begin the closures at a time of year when scallop meat weights are lowest, thus impacts on the scallop resource and fishery

should be lower compared to closing the area beginning in March through the spring and summer when scallop meat weights are larger. Similar to the Framework 23 SNE/MA schedule, all closures will occur in the same FY.

TABLE 2—COMPARISON OF CURRENT GB AM SCHEDULE AND THE FRAMEWORK 23 SCHEDULE FOR YEARS WHEN CAII IS OPEN

Current AM schedule		Proposed	
Percent overage	LA closure	Percent overage	LA closure
1 .....	Mar–May .....	3 or less .....	Oct–Nov.
2–24 .....	Mar–June .....	3.1–14 .....	Sept–Nov.
25–38 .....	Mar–July .....	14.1–16 .....	Sept–Jan.
39–57 .....	Mar–Aug .....	16.1–39 .....	Aug–Jan.
58–63 .....	Mar–Sept .....	39.1–56 .....	Jul–Jan.
64–65 .....	Mar–Oct .....	Greater than 56 .....	Mar–Feb.
66–68 .....	Mar–Nov.		
69 .....	Mar–Dec.		
70 and higher .....	Mar–Feb.		

TABLE 3—COMPARISON OF CURRENT GB AM SCHEDULE AND THE FRAMEWORK 23 SCHEDULE FOR YEARS WHEN CAII IS CLOSED

Current AM schedule		Proposed	
Percent overage	LA closure	Percent overage	LA closure
1 .....	Mar–May .....	1.9 or less .....	Sept–Nov.
2 .....	Mar–June .....	2.0–2.9 .....	Aug–Jan.
3 .....	Mar–July .....	3.0–3.9 .....	Mar, and Aug–Feb.
4–5 .....	Mar–Aug .....	4.0–4.9 .....	Mar, and Jul–Feb.
6 and higher .....	Mar–Feb .....	5.0–5.9 .....	Mar–May, and Jul–Feb.
		6.0 or greater .....	Mar–Feb.

2. Re-Evaluating AM Determination Mid-Year

This action modifies the YTF AM regulations by allowing NMFS to re-examine the implementation of an AM once the FY has ended and all data are available. After the end of a given FY, if available end-of-year data results in different projected YTF catch levels than those that determined the initial announcement of any AM triggering (e.g., the extent of the estimated overage was higher or lower than originally estimated, or that an AM should or should not have been triggered), NMFS will adjust the AM determination to reflect the best information available. Currently the only sub-ACLs allocated to the scallop fishery are for SNE/MA

YTF and GB YTF, but the Council’s intent is for this flexibility to apply to any species’ sub-ACL, should they be implemented in the scallop fishery in the future.

On or around January 15 of each year, the Regional Administrator is required to determine if the bycatch sub-ACLs are projected to be exceeded for that FY. If a sub-ACL is exceeded, a closure will be implemented in the following FY based on the overage schedule specified in this final rule. Several months after an FY is complete, a final estimate of YTF catch in the scallop fishery will be completed when all observer and scallop catch data are available. The timing of the final YTF year-end estimate is ultimately based on the

availability of the observer data for a given FY. Ideally, observer data in open areas will be available 90 days after the completion of an observed trip. As such, the earliest month that the complete FY observer data would be available is likely June of the following FY. If the final estimate of YTF catch differs from the original estimate, this action gives the Regional Administrator the authority to revise the AM for the YTF sub-ACLs based on the final estimates. Due to the timing of the current AMs, there may not always be an opportunity to adjust AMs if the seasonal closure has already occurred during that FY, but the intent is to be more flexible to incorporate updated information when possible. This action does not give the

Regional Administrator authority to impose AMs outside the scope of approved measures.

In November 2011, the Council adopted Framework Adjustment 47 (Framework 47) to the Northeast (NE) Multispecies FMP. Under Framework 47, the YTF AMs applicable to the scallop fishery would only be triggered if either the entire YTF ACL for a given stock area (SNE/MA or GB) is exceeded, or the scallop fishery exceeds its ACL by 50 percent or more. For example, if the entire YTF ACL for SNE/MA is exceeded in a given FY, and the scallop fishery exceeded its sub-ACL by 1.5 percent, an AM would be triggered for the following scallop FY based on the new Framework 23 schedule (i.e., a portion of SNE/MA would close in March and April). However, if the scallop fishery exceeded its sub-ACL by 1.5 percent but the total ACL for SNE/MA was not exceeded, no AM would be triggered in the scallop fishery for the following FY (i.e., an AM would only be triggered if the scallop FY exceeded its sub-ACL by 150 percent). The proposed rule for Framework 47 (77 FR 18179) published in the **Federal Register** on March 27, 2012, with the public comment period ending on April 11, 2012. NMFS anticipates that Framework 47, if approved, would be effective in May 2012.

#### *Modifications to the NGOM Management Program*

To address some concerns regarding the management of the NGOM, this action allows federally permitted NGOM vessels to declare a state waters-only trip within the NGOM and not have those landings applied to the Federal NGOM TAC. If the vessel decides to fish exclusively in state waters within the NGOM area (i.e., MA, NH, and ME state waters), on a trip-by-trip basis, the scallop catch from state water only trips will not be applied against the Federal NGOM TAC. On a trip-by-trip basis, each NGOM vessel can decide which area it is going to fish in (i.e., Federal or state NGOM trip). A NGOM vessel may still fish in both state and Federal waters on a single trip, but that vessel will need to declare a Federal trip before leaving, and the entire catch from that trip will be applied to the Federal TAC, even if some of it was harvested in state waters.

Currently, NGOM and IFQ vessels that declare NGOM trips must have all landings applied to the Federal TAC, regardless of whether or not they were fishing in state or Federal waters of the NGOM. Although this action makes adjustments for NGOM-permitted vessels, the Council did not include a

similar provision for IFQ vessels that fish in the NGOM. As a result, IFQ vessels will continue to have all of their landings applied to the NGOM TAC, as well as their IFQ allocations, when fishing in Federal or state waters within the NGOM.

Once the Federal TAC is closed, all federally permitted scallop vessels (i.e., LA, IFQ, and NGOM) are prohibited from fishing in any part of the NGOM until the next FY, unless they permanently relinquish their Federal NGOM permits and fish exclusively in state waters. This action does not change this provision for any scallop vessel, including NGOM vessels. NGOM vessels cannot declare state-only NGOM trips after the effective date of the Federal NGOM closure.

To date, the annual NGOM TAC of 70,000 lb (31.75 mt) has not been fully harvested in any FY, and most NGOM landings come from vessels fishing in state waters. Framework 23 does not change the NGOM hard TAC of 70,000 lb (31.75 mt). The Council will reevaluate the NGOM TAC in the next framework adjustment that will set the specifications for FYs 2013 and 2014.

Although this action applies to all NGOM permitted vessels, the ability for such vessels to fish in state waters within the NGOM (i.e., ME, NH, MA state waters) depends on whether or not such vessels have the necessary state permits to do so. In addition, NGOM permit holders still have to abide by the more restrictive possession limit of either their state or Federal NGOM scallop permit. This action does not exempt vessels from their Federal possession limit when fishing in state waters of the NGOM. To be exempt from Federal scallop possession limits, a state would have to apply for such exemption through the scallop state waters exemption program.

#### *Adjustments to VMS Trip Notifications for Scallop Vessels*

This action implements a measure that changes the current VMS trip declaration requirement for scallop vessels only, allowing them to declare a scallop trip anywhere shoreward of the VMS Demarcation Line, rather than from a designated port. Under current regulations, vessels that are involved in VMS fisheries (e.g., vessels with scallop, monkfish, multispecies, surfclam/quahog, and herring permits) must make their VMS trip declarations from inside a port. This action adjusts this process by allowing scallop vessels the authority to declare their scallop trips outside of a designated port, prior to crossing the VMS Demarcation Line and fishing, but does not change the trip declaration

requirements for any other fishery. The Council's rationale for this alternative is to improve safety by eliminating the requirement that sometimes results in scallop vessels steaming into unfamiliar ports to declare their scallop trips before being able to fish. The Council may choose to address this issue in other VMS fisheries in future actions for those FMPs, and NMFS recommends that the Council discuss this further for other FMPs in order to be consistent, where possible, when addressing safety issues across all fisheries requiring VMS.

The Council has implemented this action for LA, LAGC IFQ, and LAGC NGOM vessels, although many of these scallop-permitted vessels will likely continue to declare from port, regardless of the option to do otherwise. The only vessels that will likely take advantage of this increased flexibility in trip declarations are the LA vessels declaring scallop DAS trips for fishing grounds that are far from their home port. These trips are what most commonly require a vessel to go into an unfamiliar port to declare into the DAS program because DAS begin to accrue once a vessel crosses to the seaward side of the VMS Demarcation Line and it is not possible, safe, or practicable to remain inside the VMS Demarcation Line throughout the steam to the fishing grounds. Because the current estimate of landings-per-unit-effort (LPUE) is calculated using DAS charged, this action does not change how LPUE is estimated, and increased catch is not expected.

#### *Other Clarifications and Modifications*

This action includes several revisions to the regulatory text to address text that is duplicative and unnecessary, outdated, unclear, or otherwise could be improved through revision. For example, there are terms and cross references in the current regulations that are now inaccurate due to the regulatory adjustments made through Amendment 15 rulemaking (i.e., references to "TAC" in some cases should now refer to "annual catch limits (ACLs)"). NMFS revises the regulations to clarify the terminology intended by Amendment 15 to the FMP (76 FR 43746, July 21, 2011), and to provide more ease in locating these regulations by updating cross references.

This action also clarifies the intent of certain regulations. For example, the VMS regulations are clarified in § 648.10 to more clearly indicate the reporting requirements for various aspects of the scallop fishery (e.g., pre-landing notification requirements and state water exemption trip declaration requirements), to reflect the instructions

currently available through on-board VMS units. Additionally, there are currently prohibitions in § 648.14 that imply that NGOM and incidental scallop vessels may retain more scallops than their allowable possession limit if they are assigned industry-funded observers during scallop trips. This text is unnecessary and confusing, because NGOM and incidental scallop vessels are not part of the scallop industry-funded observer program, and therefore would not be assigned such observers. As such, NMFS removes these references from the regulations. NMFS also clarifies how LAGC vessels are charged fees by observer providers in § 648.14, since such an explanation exists for LA vessels. A restriction on transferring IFQ in § 648.53(h)(5)(iii) is also clarified to allow vessels to complete multiple IFQ transfers during the course of a FY, as long as the transfers are for a portion of the IFQ and do not exceed the total yearly allocation. NMFS received some applications for permanent transfers of 100 percent of a vessel's IFQ in the same FY that IFQ was already leased from the same vessel. While this activity remains prohibited because transfers of allocation percentage is effectively a transfer of pounds, the restriction was not intended to prevent someone from completing multiple transfers of portions of their IFQ. As a result, the regulations are clarified to indicate that such multiple IFQ transfers are possible during a single FY.

NMFS also removes outdated text regarding LAGC quarterly TACs, which ceased to exist after the IFQ program was implemented in FY 2010, and references to the CAII rotational management schedule, which was intended to be removed in the rulemaking for Framework 22, along with the schedules for the other GB access areas. NMFS makes these changes consistent with section 305(d) of the Magnuson-Stevens Act.

NMFS also changes, pursuant to its authority under section 305(d) of the Magnuson-Stevens Act, the coordinates of the Closed Area I (CAI) access area and the CAI North and South essential fish habitat (EFH) areas. These coordinates were initially developed through Framework 16 to the FMP (69 FR 63460, November 2, 2004) and were implemented through Amendment 15 for FY 2011. During the course of FY 2011, vessels fishing in the CAI access area discovered that the new coordinates for the access area created a western boundary that is ¼ of a mile (0.4 km) to the east of the CAI western boundary, described in § 648.81(a)(1) as the line extending between the points

CI1 (41°30' N lat.; 69°23' W long.) and CI2 (40°45' N lat.; 68°45' W long.). However, the access area was designed to cover the whole middle portion of CAI and extend out to the CAI western boundary. In reviewing the coordinates, NMFS found that the western coordinates for the CAI access area were established using imprecise matching of coordinates to the CAI western boundary line. NMFS updates these coordinates in the regulations to extend the western boundary of CAI. To avoid any confusion on intent, in the case that various mapping software used by the industry or NOAA's Office of Law Enforcement provide slightly different results, NMFS also clarifies that the western boundary of the CAI access area is the same as the western boundary of CAI that lies between the two westernmost coordinates of the CAI access area. Since these two coordinates also are included in the coordinates of the CAI North and CAI South EFH closed areas, NMFS changes those EFH area coordinates as well.

Finally, although this does not affect the current regulations, NMFS clarifies an error in table 3 of the final rule to Framework 22 (76 FR 43774; July 21, 2011). The scallop sub-ACL values of YTF in GB and SNE/MA were mistakenly reversed in this table and should have stated that the FY 2011 sub-ACLs in GB and SNE/MA are 200.8 mt and 82 mt, respectively, and the FY 2012 sub-ACLs in GB and SNE/MA are 307.5 mt and 127 mt, respectively. The regulations already indicate the correct values for these FYs, so this action makes no regulatory changes due to this error.

#### Comments and Responses

NMFS received three comment letters in response to the proposed rule from: A representative from Nordic Fisheries, a family-owned company that runs out of New Bedford, MA; the Fisheries Survival Fund (FSF), writing on behalf of full-time limited access scallop fleet members; and Oceana, a non-profit organization focused on ocean-related environmental issues. Six relevant issues relating to the proposed Framework 23 measures were raised; responses are provided below. NMFS may only approve, disapprove, or partially approve measures in Framework 23, and cannot substantively amend, add, or delete measures beyond what is necessary under section 305(d) of the MSA to discharge its responsibility to carry out such measures.

*Comment 1:* A representative of Nordic Fisheries generally supports the proposed measures in Framework 23,

but commented that the final rule should mention that the TDD requirement meets RPM#2 and associated T/C of the 2008 Biological Opinion as an appropriate gear modification for a scallop dredge to reduce the capture of sea turtles.

*Response 1:* Based on its Endangered Species Act Section 7 consultation on the proposed Framework 23 measures, NMFS agrees that the TDD measures support the RPM#2 and T/C#2 of the 2008 Biological Opinion and has stated this in the preamble to this final rule.

*Comment 2:* FSF commented in support of the proposed measures, and expressed their satisfaction with industry, Council, and NMFS coordination on regulatory language describing the TDD requirement. However, FSF continue to note their opinion that the TDD requirement should remove the need for "area closures and other fishery restrictions implemented as RPMs for the scallop fishery."

*Response 2:* The RPMs and implementing T/Cs included in a Biological Opinion are non-discretionary actions that must be implemented. The 2008 Biological Opinion included a number of RPMs to minimize incidental take of sea turtles, including RPMs that are both gear-based and effort-based. NMFS assumes that FSF's comment regarding "area closures and other fishery restrictions" refers to the effort-based RPM, RPM#1, which requires that NMFS limit the amount of allocated scallop fishing effort that can be used in the Mid-Atlantic during the time of year when sea turtle distribution overlaps with scallop fishing activity. The gear-based RPM (RPM#2) requires that NMFS continue to investigate and implement, as appropriate, scallop gear modifications to reduce the capture of sea turtles and/or the severity of the interactions that occur. These two RPMs are distinct from one another: The TDD meets the requirements of gear-based RPM#2, but that does not change the fact that RPM#1 must still be implemented. The current RPMs will be revisited when formal Section 7 consultation on the Scallop FMP is reinitiated and a new Biological Opinion is prepared, at which time all changes in the operation of the fishery that have occurred since the previous consultation in 2008 will be examined.

*Comment 3:* FSF also expressed concern that the yellowtail flounder AMs should not be implemented the subsequent year of an overage, but rather should be implemented in Year 3 (i.e., if the overage occurs in 2011, the accountability measure should be implemented in 2013). FSF noted that if

the estimation of yellowtail flounder bycatch is completed before the end of the fishing year, it is unlikely that all of the data will be accounted for in the mid-year projection. Since the scallop fleet is more active in the beginning of the fishing year, FSF commented that the bycatch rate is not likely to be accurate and will have to be adjusted mid-year, which could potentially lead to adverse consequences to the scallop fleet.

*Response 3:* NMFS recognizes that the subsequent-year AMs are a concern to the industry, and is generally supportive of the Council considering modifications to the year the YTF AM in the scallop fishery would be implemented. However, as the preamble to the proposed rule for this action states, the measures in Framework 23 regarding YTF AMs do not give the Regional Administrator the authority to impose AMs outside the scope of the Council's approved measures. Neither Amendment 15 nor Framework 23 adopted measures to include Year 3 YTF AMs in the scallop fishery. However, the Council recently included such a measure to be considered in Framework Adjustment 24 (Framework 24) to the Scallop FMP, which is in the early stages of development.

*Comment 4:* FSF also discussed the need to revisit imposing YTF AMs on the LAGC fleet.

*Response 4:* NMFS agrees and continues to work with the Council on upcoming actions to address the LAGC fleet with regard to YTF AMs in the scallop fishery. The Council intends to address this issue in Framework 24.

*Comment 5:* Oceana commented in general support of Framework 23 measures, but specifically recommended changes to the proposed TDD measures. Oceana believes that the TDD should be implemented in the summer of 2012 and that the delay to 2013 is unnecessary and unsupported. Oceana also commented that the TDD should be required for a longer timeframe and should apply to all scallop vessels, but did not offer any argument to why the proposed measures are not sufficient.

*Response 5:* When implementing gear modifications such as TDD, NMFS must take into account the amount of time it will take for the industry to come into compliance with the new requirement. The scallop industry stated during development of Framework 23 measures that gear manufacturers would not be able to make enough dredges in time for everyone to come into compliance during the 2012 season. It is therefore not reasonable to require the gear until 2013. The Council considered an

alternative that would have required all scallop vessels to adhere to the TDD requirement, but ultimately did not adopt that measure due to concerns that requiring TDDs on smaller LAGC vessels may not be economically feasible. Although sea turtle interactions in the Mid-Atlantic scallop fishery may occur in November when TDDs are not required, the adopted timeframe of May through October is still expected to have positive impacts on sea turtles. This time period includes all the months when observed takes have occurred in the scallop dredge fishery (June through October), and also includes May to account for the fact that turtles are expected to be in that area based upon best available data. In addition, although the TDD requirement is for vessels to use this gear for 6 months, it is likely that many vessels will choose to use this gear for longer time periods, perhaps even year-round (i.e., if they fish in the Mid-Atlantic primarily and do not want to bother switching back to the standard commercial dredge after the TDD timeframe). Therefore, the timeframe is reasonably expected to have the intended benefit for sea turtles without unduly restricting scallop vessels, and is consistent with the 2008 Biological Opinion.

*Comment 6:* Oceana also commented that NMFS should analyze annually the effectiveness of the TDD and promote future research to monitor its impacts on the fishery and sea turtle interactions. In addition, Oceana requested that Framework 23 implement a requirement for the Limited Access bottom trawl fleet to use Turtle Excluder Devices (TED). Independent of Framework 23, NMFS is considering measures to address sea turtle takes in the Mid-Atlantic trawl fisheries.

*Response 6:* Analyzing the TDDs effectiveness is a requirement of the 2008 Biological Opinion. As such, we intend on continuing to evaluate the effectiveness of gear modifications used in the scallop fishery and other measures designed to protect sea turtles, as needed. Oceana's request to implement a TED requirement for the LA bottom trawl fleet was not proposed by Framework 23 and, therefore, is beyond the scope and purpose of this action.

#### **Changes From Proposed Rule to Final Rule**

In § 648.14(i)(2)(ii)(B)(3) and § 648.51(b)(5)(ii), the TDD regulations were clarified to indicate that the TDD will not be required until May 1, 2013.

#### **Classification**

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the national standards and other provisions of the MSA and other applicable laws.

The Office of Management and Budget has determined that this rule is not significant according to Executive Order 12866.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has completed a final regulatory flexibility analysis (FRFA) in support of Framework 23 in this final rule. The FRFA consists of and incorporates the IRFA, the relevant analyses and summaries thereof prepared for Framework 23, and the following discussion. This FRFA describes the economic impact that this final rule, along with non-adopted alternatives, will have on small entities. A copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**).

#### *Statement of Objective and Need*

This action implements four specific management measures applicable to the scallop fishery for FY 2012 and beyond. A description of the action, why it is being considered, and the legal basis for this action are contained in Framework 23 and in the preambles of the proposed and final rules, and are not repeated here.

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

No public comments were received in response to the IRFA summary in the proposed rule or the economic impacts of these measures more generally on small businesses. Summaries of the public comments and NMFS' responses are provided in the "Comments and Responses" section of this final rule.

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

For the purposes of the RFA, the Small Business Administration (SBA) defines a small business entity in any fish-harvesting or hatchery business as a firm that is independently owned and operated and not dominant in its field of operation (including its affiliates), with receipts of up to \$4 million annually. All of the vessels in the Atlantic sea scallop fishery are considered small business entities because all of them grossed less than \$3 million according to the dealer's data for

FYs 1994 to 2010. In FY 2010, total average revenue per full-time scallop vessel was just over \$1.2 million, and total average scallop revenue per LAGC vessel was just under \$120,000. The IRFA for this and prior Scallop FMP actions do not consider individual entity ownership of multiple vessels. More information about common ownership is being gathered, but the effects of common ownership relative to small versus large entities under the RFA is still unclear and will be addressed in future analyses.

The Office of Advocacy at the Small Business Association (SBA) suggests two criteria to consider in determining the significance of regulatory impacts; namely, disproportionality and profitability. The disproportionality criterion compares the effects of the regulatory action on small versus large entities (using the SBA-approved size definition of "small entity"), not the difference between segments of small entities. Because Framework 23 estimates that no individual vessel grosses more than \$3 million in any FY from 1994 through 2010, all permit holders in the sea scallop fishery were considered small business entities for the purpose of this analysis. Therefore, it is not necessary to perform the disproportionality assessment to compare the effects of the regulatory actions on small versus large entities. A summary of the economic impacts relative to the profitability criterion is provided below.

The measures contained in this final rule affect vessels with LA and LAGC scallop permits. The Framework 23 document from the Council provides extensive information on the number and size of vessels and small businesses that would be affected by the proposed regulations, by port and state. There were 313 vessels that obtained full-time LA permits in 2010, including 250 dredge, 52 small-dredge, and 11 scallop trawl permits. In the same year, there were also 34 part-time (i.e., vessels that receive annual scallop allocations that are 40 percent of what is allocated to full-time vessels, based on the permit eligibility criteria established through Amendment 4 to the Scallop FMP) LA permits in the sea scallop fishery. No vessels were issued occasional scallop permits (i.e., vessels that receive annual scallop allocations that are 8.33 percent of what is allocated to full-time vessels, based on the permit eligibility criteria established through Amendment 4 to the Scallop FMP). In FY 2010, the first year of the LAGC IFQ program, 333 active IFQ (including IFQ permits issued to vessels with a LA scallop permit), 122 NGOM, and 285 incidental

catch permits were issued. Since all scallop permits are limited access, vessel owners only cancel permits if they decide to stop fishing for scallops on the permitted vessel permanently. This is likely to be infrequent due to the value of retaining the permit. As such, the number of scallop permits could decline over time, but the decline would likely be less than 10 permits per year.

#### *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

This action contains no new collection-of-information, reporting, or recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal law.

#### *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, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected*

A summary of the economic impacts of adopted and alternative measures is provided below. A detailed analysis of the economic impacts can be found in Section 5.4 of the Framework 23 document (see **ADDRESSES**). All economic values are presented in terms of 2010 dollars.

In summary, in the short-term, the aggregate economic impact of this action on small businesses could range from a low negative to low positive, depending on the extent that positive impacts of the measures outweigh the costs of TDD requirement. These measures are not expected to have significant impacts on the viability of the vessels, especially in a highly profitable industry like the scallop fishery. Over the long-term, Framework 23 is expected to have positive economic impacts for the participants of the scallop fishery and related businesses. This action is not expected to have a considerable adverse impact on the net revenues and profits of the majority of the scallop vessels in the short and the medium term.

#### *Economic Impacts of the Final Action*

The following describes all of the alternatives considered by the Council.

##### 1. Requirement To Use a TDD

This action implements a requirement for some scallop vessels to use a TDD from May 1 through October 31 in

waters west of 71° W long. This requirement is applicable to all LA vessels (regardless of permit category or dredge size) and to those LAGC vessels that fish with a dredge(s) that has a width of 10.5 ft (3.2 m) or greater. The Council estimates that the cost of a new dredge plus the cost of freight would be about \$5,000 for a standard dredge, and \$2,500 to \$3,000 for smaller dredges. The cost of buying a dredge and the freight cost will be a very small proportion (1 to 2 percent) of the average scallop revenues per LA vessel, even when the maximum estimate of costs is used. For an average LAGC vessel that uses only one dredge, the cost could be small, as well, amounting to about 2 percent of scallop revenue. Alternatively, for some vessels that use two dredges, the cost of buying and installing the dredges could be higher. Some of these vessels could choose to fish during times and in areas for which a TDD is not required.

The Council considered two other alternatives regarding which vessels would be required to use a TDD: One would have required the TDD for all LA vessels and no LAGC vessels, and thus would not have any adverse impacts on the LAGC IFQ vessels. The other non-selected alternative would have required the use of TDD for all vessels, including all LA and LAGC IFQ vessels, and would have had negative impacts on some LAGC IFQ vessels that use smaller dredges. There are some short-term costs associated with buying and installing TDDs under all alternatives, but these costs are not large and are not expected to have adverse impacts on the financial viability of small business entities. Indirect positive economic benefits over the medium to long term are expected to outweigh these costs under the adopted measure, particularly because it exempts LAGC vessels that use small dredges.

The option to have the TDD be required west of 71° W long, covers the majority of areas the scallop fishery and expected turtle interactions in the Mid-Atlantic overlap and excludes GB, where interactions with turtles are rare. This adopted measure minimizes the economic impacts for scallop vessels that fish solely in GB east of 71° W long, and those that fish in the Gulf of Maine. The adopted measure exempts LAGC vessels with dredges less than 10.5 ft (3.2 m) in width from TDD requirement, mitigating some of these negative impacts on the smaller boats fishing in those areas. The only other location option related to the TDD requirement was the area used to set effort limitations in Framework 22, which is the greatest area of overlap in the

distribution of scallop fishing gear and sea turtles, with the exception of waters due south of Rhode Island. Thus, the adopted location option excludes those areas that LAGC vessels are active, and minimizes the negative economic impacts of TDD requirement on those vessels. Exempting LAGC vessels that use a dredge less than 10.5 ft (3.2 m) wide mitigates the impacts of the adopted boundary option and minimizes the differences between the impacts of the two location options considered.

Based on research indicating that using a TDD is not expected to have negative impacts on scallop landings, the season for the TDD requirement will probably have marginal economic impacts on the fishery overall. LA vessels are unlikely to change dredges during the year, once they are required to operate with a TDD during a part of the year. Therefore, the relative difference between the adopted season option (May 1 through October 31) and other non-selected options (i.e., May 1 through November 1, or June 1 through October 31) is likely to have only negligible impacts on these vessels. The difference between the season options could impact LAGC IFQ vessels relatively more than the LA vessels, but exempting LAGC IFQ vessels that use dredges less than 10.5 ft (3.2 m) wide prevents the adopted measure from negatively affecting smaller vessels. The increase in costs could also be minimized to some degree by leasing quota to LAGC IFQ vessels that fish in other areas. The shortest season considered by the Council (June through October) would have had the least impacts, and the longest considered season option (May through November) would have had the largest impact on vessels. The adopted season option maximizes the benefits of reducing the impacts on turtles, while not impacting a large proportion of scallop landings.

The adopted implementation date of the TDD requirements, 1 year after Framework 23 is implemented (i.e., May 2013, if Framework 23 is implemented in March 2012), allows manufacturers enough time to build dredges and gives vessels time to fish with the new dredge before the TDD requirement begins. A shorter period for implementation, such as the non-selected options for 90 days and 180 days after Framework 23's implementation, would not be feasible because so many dredges need to be built and it may not be possible to have all dredges manufactured in time. Overall, there are no other alternatives that would generate higher economic benefits for the participants of the scallop fishery.

## 2. Adjustments to the AMs Related to the Scallop Fishery's YTF Sub-ACLs

This action revises the YTF seasonal closure AM schedules in both GB and SNE/MA such that the closures will be during months with the highest YTF catch rates when an overage occurs, rather than beginning at the start of the FY and running for consecutive months under No Action. Overall, these modifications are not expected to have large impacts on scallop vessels, given that only a small percentage of LA scallop landings took place in those areas. Because the revised closure schedules include the winter months, they will shift effort to seasons when the meat weights are larger, benefiting the scallop resource and increasing landings and overall economic benefits for the scallop vessels in the medium to long term. There are no other alternatives that would generate higher economic benefits for the participants of the scallop fishery.

The action to re-evaluate the AM determination mid-year, thus allowing for more flexibility in determining the appropriate AM seasonal closure length, is positive for LA scallop vessels compared to No Action. Although adjusting the FY to which the AMs would apply could result in higher benefits to the scallop fishery (e.g., if YTF AMs were triggered the year after the overage occurred), these measures were not considered by the Council and can be re-examined in a future framework action. Thus, given the two alternatives considered by the Council, the selected action generates the higher economic benefits for the participants of the scallop fishery.

## 3. Modifications to the NGOM Management Program

This action allows all vessels with a Federal NGOM permit to fish exclusively in state waters, on a trip-by-trip basis, without the scallop catch from exclusive state water trips counted against the Federal NGOM TAC. This change is not expected to have any significant impacts under the current resource conditions on landings and revenues from this area. However, if the scallop resource abundance and landings within the State of Maine's waters increase in the future, this action could prevent a reduction in landings from federally permitted NGOM vessels fishing in the NGOM. This action could potentially have positive economic impacts on the vessels that fish both in the state and Federal waters. In addition, this action will keep the Federal NGOM hard-TAC at 70,000 lb (31.74 mt), which will have a positive

economic impact on the participants of the NGOM scallop fishery. The only other TAC alternative would have lowered the Federal TAC to 31,000 lb (14.06 mt) to prevent excess fishing in the NGOM above potentially sustainable levels. Although the selected TAC alternative, if continued over the long-term, could result in reduced landings and revenues for the NGOM fishery if effort in Federal waters increases substantially, given the present lack of effort in the Federal portion of the NGOM, it is unlikely that keeping the TAC at this level will cause near-term problems. In addition, the Council will re-evaluate the NGOM TAC in the next framework adjustment that will set the specifications for FYs 2013 and 2014. Thus, there are no alternatives that would generate higher economic benefits for the participants of the scallop fishery.

## 4. Change to When a Scallop Trip Can Be Declared Through VMS

This action allows a vessel to declare into the scallop fishery shoreward of the VMS Demarcation Line rather than from a designated port, enabling the vessel to reduce steaming time to scallop fishing grounds and decrease its fuel and oil costs. Therefore, this modification will have positive economic impacts on scallop vessels and small business entities. The only other alternative considered by the Council was No Action and, as such, there are no alternatives that would generate higher economic benefits for the participants of the scallop fishery.

### *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 (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide (i.e., permit holder letter) will be sent to all holders of permits for the scallop fishery and available online. The guide and this final rule will be available upon request.



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

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 2, 2012.

**Alan D. Risenhoover,**

*Acting 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 NORTHEASTERN UNITED STATES**

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

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

■ 2. In § 648.10, paragraphs (e)(5)(i), (e)(5)(ii), (f) introductory text, (f)(1), (f)(2), (f)(3), (f)(4)(ii), (f)(5)(i)(A), (g)(1), (h)(1) introductory text, and (h)(8) are revised, and (g)(3)(iii) is added to read as follows:

**§ 648.10 VMS and DAS requirements for vessel owner/operators.**

\* \* \* \* \*

(e) \* \* \*  
(5) \* \* \*

(i) A vessel subject to the VMS requirements of § 648.9 and paragraphs (b) through (d) of this section that has crossed the VMS Demarcation Line under paragraph (a) of this section is deemed to be fishing under the DAS program, the Access Area Program, the LAGC IFQ or NGOM scallop fishery, or other fishery requiring the operation of VMS as applicable, unless prior to leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period. NMFS must be notified by transmitting the appropriate VMS code through the VMS, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area, as described in § 648.85(a)(3)(ii), under the provisions of that program.

(ii) Notification that the vessel is not under the DAS program, the Access Area Program, the LAGC IFQ or NGOM scallop fishery, or any other fishery requiring the operation of VMS, must be received by NMFS prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip, unless the vessel is a scallop vessel and is exempted, as specified in paragraph (f) of this section.

\* \* \* \* \*

(f) *Atlantic sea scallop vessel VMS notification requirements.* Less than 1 hr

prior to leaving port, the owner or authorized representative of a scallop vessel that is required to use VMS as specified in paragraph (b)(1) of this section must notify the Regional Administrator by transmitting the appropriate VMS code that the vessel will be participating in the scallop DAS program, Area Access Program, LAGC scallop fishery, or will be fishing outside of the scallop fishery under the requirements of its other Federal permits, or that the vessel will be steaming to another location prior to commencing its fishing trip by transmitting a "declared out of fishery" VMS code. If the owner or authorized representative of a scallop vessel declares out of the fishery for the steaming portion of the trip, the vessel cannot possess, retain, or land scallops, or fish for any other fish. Prior to commencing the fishing trip following a "declared out of fishery" trip, the owner or authorized representative must notify the Regional Administrator by transmitting the appropriate VMS code, before first crossing the VMS Demarcation Line, that the vessel will be participating in the scallop DAS program, Area Access Program, or LAGC scallop fishery. VMS codes and instructions are available from the Regional Administrator upon request.

(1) *IFQ scallop vessels.* An IFQ scallop vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the IFQ program, unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery (i.e., agrees that the vessel will not possess, retain, or land scallops while declared out of the fishery) by notifying the Regional Administrator through the VMS. If the vessel has not fished for any other fish (i.e., steaming only), after declaring out of the fishery, leaving port, and steaming to another location, the owner or authorized representative of an IFQ scallop vessel may declare into the IFQ fishery without entering another port by making a declaration before first crossing the VMS Demarcation Line. An IFQ scallop vessel that is fishing north of 42°20' N. lat. is deemed to be fishing under the NGOM scallop fishery unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery, as specified in paragraphs (e)(5)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops while under such a declaration. After declaring out of the fishery, leaving port, and

steaming to another location, if the IFQ scallop vessel has not fished for any other fish (i.e., steaming only), the vessel may declare into the NGOM fishery without entering another port by making a declaration before first crossing the VMS Demarcation Line.

(2) *NGOM scallop fishery.* A NGOM scallop vessel is deemed to be fishing in Federal waters of the NGOM management area and will have its landings applied against the NGOM management area TAC, specified in § 648.62(b)(1), unless:

(i) Prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery, as specified in paragraphs (e)(5)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops while under such a declaration. After declaring out of the fishery, leaving port, and steaming to another location, if the NGOM scallop vessel has not fished for any other fish (i.e., steaming only), the vessel may declare into the NGOM fishery without entering another port by making a declaration before first crossing the VMS Demarcation Line.

(ii) The vessel has specifically declared into the state-only NGOM fishery, thus is fishing exclusively in the state waters portion of the NGOM management area.

(3) *Incidental scallop fishery.* An Incidental scallop vessel that has crossed the VMS Demarcation Line on any declared fishing trip for any species is deemed to be fishing under the Incidental scallop fishery.

\* \* \* \* \*

(4) \* \* \*

(i) *Scallop Pre-Landing Notification Form for IFQ and NGOM vessels.* Using the Scallop Pre-Landing Notification Form, a vessel issued an IFQ or NGOM scallop permit must report through VMS the amount of any scallops kept on each trip declared as a scallop trip, including declared scallop trips where no scallops were landed. In addition, vessels with an IFQ or NGOM permit must submit a Scallop Pre-Landing Notification Form on trips that are not declared as scallop trips, but on which scallops are kept incidentally. A limited access vessel that also holds an IFQ or NGOM permit must submit the Scallop Pre-Landing Notification Form only when fishing under the provisions of the vessel's IFQ or NGOM permit. VMS Scallop Pre-Landing Notification forms must be submitted no less than 6 hr prior to crossing the VMS Demarcation Line on the way back to port, and, if scallops will be landed, must include the vessel's captain/operator name, the

amount of scallop meats and/or bushels to be landed, the estimated time of arrival in port, the port at which the scallops will be landed, the VTR serial number recorded from that trip's VTR, and whether any scallops were caught in the NGOM. If the scallop harvest ends less than 6 hr prior to landing, then the Scallop Pre-Landing Notification form must be submitted immediately upon leaving the fishing grounds. If no scallops will be landed, the form only requires the vessel's captain/operator name, the VTR serial number recorded from that trip's VTR, and indication that no scallops will be landed. If the report is being submitted as a correction of a prior report, the information entered into the notification form will replace the data previously submitted in the prior report.

(5) \* \* \*

(i) \* \* \*

(A) Notify the Regional Administrator, via their VMS, prior to each trip of the vessel under the state waters exemption program, that the vessel will be fishing exclusively in state waters; and

\* \* \* \* \*

(g) \* \* \*

(1) Unless otherwise specified in this part, or via letters sent to affected permit holders under paragraph (e)(1)(iv) of this section, the owner or authorized representative of a vessel that is required to use VMS, as specified in paragraph (b) of this section, unless exempted under paragraph (f) of this section, must notify the Regional Administrator of the vessel's intended fishing activity by entering the appropriate VMS code prior to leaving port at the start of each fishing trip.

\* \* \* \* \*

(3) \* \* \*

(iii) The vessel carries onboard a valid limited access or LAGC scallop permit, has declared out of the fishery in port, and is steaming to another location, pursuant to paragraph (f) of this section.

\* \* \* \* \*

(h) \* \* \*

(1) Less than 1 hr prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish permit (Category C, D, F, G, or H), unless otherwise specified in paragraph (h) of this section, or an occasional scallop permit as specified in this paragraph (h), and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by

calling the call-in system and providing the following information:

\* \* \* \* \*

(8) Regardless of whether a vessel's owner or authorized representative provides correct notification as required by paragraphs (e) through (h) of this section, a vessel meeting any of the following descriptions shall be deemed to be in its respective fishery's DAS or Scallop Access Area Program for the purpose of counting DAS or scallop access area trips/pounds, and, shall be charged DAS from the time of sailing to landing:

(i) Any vessel issued a limited access scallop permit and not issued an LAGC scallop permit that possesses or lands scallops;

(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 § 648.60(d)(2);

(iii) Any vessel issued a limited access scallop and LAGC NGOM scallop permit that possesses or lands more than 200 lb (90.7 kg) of scallops;

(iv) Any vessel issued a limited access scallop and LAGC IC scallop permit that possesses or lands more than 40 lb (18.1 kg) of scallops;

(v) Any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program requirements that possesses or lands regulated NE multispecies, except as provided in §§ 648.10(h)(9)(ii), 648.17, and 648.89; and

(vi) Any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possesses or lands monkfish above the incidental catch trip limits specified in § 648.94(c).

\* \* \* \* \*

■ 3. In § 648.11, paragraphs (g)(1) and (g)(5)(i)(A) are revised to read as follows:

**§ 648.11 At-sea sea sampler/observer coverage.**

\* \* \* \* \*

(g) \* \* \*

(1) *General.* Unless otherwise specified, owners, operators, and/or managers of vessels issued a Federal scallop permit under § 648.4(a)(2), and specified in paragraph (a) of this section, must comply with this section and are jointly and severally responsible for their vessel's compliance with this section. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access permits fishing in open areas or Sea Scallop Access Areas, and LAGC IFQ vessels fishing under the Sea Scallop Access Area program

specified in § 648.60, are required to comply with the additional notification requirements specified in paragraph (g)(2) of this section. When NMFS notifies the vessel owner, operator, and/or manager of any requirement to carry an observer on a specified trip in either an Access Area or Open Area as specified in paragraph (g)(3) of this section, the vessel may not fish for, take, retain, possess, or land any scallops without carrying an observer. Vessels may only embark on a scallop trip in open areas or Access Areas without an observer if the vessel owner, operator, and/or manager has been notified that the vessel has received a waiver of the observer requirement for that trip pursuant to paragraphs (g)(3) and (g)(4)(ii) of this section.

\* \* \* \* \*

(5) \* \* \*

(i) \* \* \*

(A) *Access Area trips.* (1) For purposes of determining the daily rate for an observed scallop trip on a limited access vessel in a Sea Scallop Access Area when that specific Access Area's observer set-aside specified in § 648.60(d)(1) has not been fully utilized, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where "day" is defined as a 24-hr period, or any portion of a 24-hr period, regardless of the calendar day. For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time at sea equals 27 hr, which would equate to 2 full "days."

(2) For purposes of determining the daily rate in a specific Sea Scallop Access Area for an observed scallop trip on a limited access vessel taken after NMFS has announced the industry-funded observer set-aside in that specific Access Area has been fully utilized, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where "day" is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time spent at sea equals 27 hr, which would equate to 1 day and 3 hr.

(3) For purposes of determining the daily rate in a specific Sea Scallop Access Area for observed scallop trips on an LAGC vessel, regardless of the status of the industry-funded observer set-aside, a service provider may charge

a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where "day" is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time spent at sea equals 27 hr, which would equate to 1 day and 3 hr.

\* \* \* \* \*

■ 3. In § 648.14,

■ a. Paragraphs (i)(1)(iii)(A)(1)(iv), (i)(1)(iv)(C), (i)(2)(ii)(B)(3), (i)(2)(iv)(A), (i)(3)(iii)(C), (i)(3)(iv)(B), (i)(3)(v)(B), (i)(4)(i)(C), (i)(4)(i)(D), (i)(4)(i)(E), (i)(4)(ii)(A), (i)(4)(iii)(A), (i)(5)(i), and (i)(5)(iii) are revised;

■ b. Paragraphs (i)(1)(iv)(E), (i)(2)(v)(C), (i)(2)(v)(D), (i)(3)(iv)(C), (i)(3)(iv)(D) and (i)(5)(iv) are added; and

■ c. Paragraphs (i)(1)(iii)(A)(1)(v) and (i)(1)(iii)(A)(2)(v) are removed and reserved.

The revisions and additions read as follows:

§ 648.14 Prohibitions.

\* \* \* \* \*

- (j) \* \* \*
- (1) \* \* \*
- (iii) \* \* \*
- (A) \* \* \*
- (1) \* \* \*

(iv) The scallops were harvested by a vessel that has been issued and carries on board an NGOM or IFQ scallop permit, and is properly declared into the NGOM scallop management area, and the NGOM TAC specified in § 648.62 has been harvested.

\* \* \* \* \*

- (iv) \* \* \*

(C) Purchase, possess, or receive for commercial purposes; or attempt to purchase or receive for commercial purposes; scallops from a vessel other than one issued a valid limited access or LAGC scallop permit, unless the scallops were harvested by a vessel that has not been issued a Federal scallop permit and fishes for scallops exclusively in state waters.

\* \* \* \* \*

(E) Fish for, possess, or retain scallops in Federal waters of the NGOM management area on a vessel that has been issued and carries on board a NGOM permit and has declared into the state waters fishery of the NGOM management area.

\* \* \* \* \*

- (2) \* \* \*
- (ii) \* \* \*
- (B) \* \* \*

(3) After April 30, 2013, fail to comply with the turtle deflector dredge vessel

gear restrictions specified in § 648.51(b)(5), and turtle dredge chain mat requirements in § 223.206(d)(11) of this chapter.

\* \* \* \* \*

- (iv) \* \* \*

(A) Fish for, possess, or land scallops after using up the vessel's annual DAS allocation and Access Area trip allocations, or when not properly declared into the DAS or an Area Access program pursuant to § 648.10, unless the vessel has been issued an LAGC scallop permit pursuant to § 648.4(a)(2)(ii) and is lawfully fishing in a LAGC scallop fishery, unless exempted from DAS allocations as provided in state waters exemption, specified in § 648.54.

\* \* \* \* \*

- (v) \* \* \*

(C) If a limited access scallop vessel declares a scallop trip before first crossing the VMS Demarcation Line, but not necessarily from port, in accordance with § 648.10(f), fail to declare out of the fishery in port and have fishing gear unavailable for immediate use as defined in § 648.23(b), until declared into the scallop fishery.

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

\* \* \* \* \*

- (3) \* \* \*

- (iii) \* \* \*

(C) Declare into the NGOM scallop management area after the effective date of a notification published in the **Federal Register** stating that the NGOM scallop management area TAC has been harvested as specified in § 648.62.

\* \* \* \* \*

- (iv) \* \* \*

(B) Fail to comply with any requirement for declaring in or out of the LAGC scallop fishery or other notification requirements specified in § 648.10(b).

(C) If an LAGC scallop vessel declares a scallop trip shoreward of the VMS Demarcation Line, but not necessarily from port, in accordance with § 648.10(f), fail to declare out of the fishery in port and have fishing gear unavailable for immediate use as defined in § 648.23(b), until declared into the scallop fishery.

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

(v) \* \* \*

(B) Declare into or leave port for an area specified in § 648.59(b) through (d) after the effective date of a notification

published in the **Federal Register** stating that the number of LAGC trips have been taken, as specified in § 648.60.

\* \* \* \* \*

- (4) \* \* \*

- (i) \* \* \*

(C) Declare into the NGOM scallop management area after the effective date of a notification published in the **Federal Register** stating that the NGOM scallop management area TAC has been harvested as specified in § 648.62.

(D) Possess more than 100 bu (35.2 hL) of in-shell scallops seaward of the VMS Demarcation Line and not be participating in the Access Area Program, or possess or land per trip more than 50 bu (17.6 hL) of in-shell scallops shoreward of the VMS Demarcation Line, unless exempted from DAS allocations as provided in § 648.54.

(E) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(d), outside the boundaries of a Sea Scallop Access Area by a vessel that is declared into the Access Area Program as specified in § 648.60.

\* \* \* \* \*

- (ii) \* \* \*

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

\* \* \* \* \*

- (iii) \* \* \*

(A) Apply for an IFQ transfer that will result in the transferee having an aggregate ownership interest in more than 5 percent of the total IFQ scallop ACL.

\* \* \* \* \*

- (5) \* \* \*

(i) Declare into, or fish for or possess scallops outside of the NGOM Scallop Management Area as defined in § 648.62.

\* \* \* \* \*

(iii) Fish for, possess, or land scallops in state or Federal waters of the NGOM management area after the effective date of notification in the **Federal Register** that the NGOM scallop management area TAC has been harvested as specified in § 648.62.

(iv) Fish for, possess, or retain scallops in Federal waters of the NGOM after declaring a trip into NGOM state waters.

\* \* \* \* \*

■ 4. In § 648.51, paragraph (b)(1) is revised and paragraph (b)(5) is added 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 and in § 648.60(g)(2). 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.

\* \* \* \* \*

(5) *Restrictions applicable to sea scallop dredges in the mid-Atlantic—(i) Requirement to use chain mats.* See § 223.206(d)(11) of this chapter for chain mat requirements for scallop dredges.

(ii) *Requirement to use a turtle deflector dredge (TDD) frame—(A)* Beginning May 1, 2013, and from May 1 through October 31 every year, any limited access scallop vessel using a dredge, regardless of dredge size or vessel permit category, or any LAGC IFQ scallop vessel fishing with a dredge with a width of 10.5 ft (3.2 m) or greater, that is fishing for scallops in waters west of 71° W long., from the shoreline to the outer boundary of the Exclusive Economic Zone, must use a TDD. The TDD requires five modifications to the rigid dredge frame, as specified in paragraphs (b)(5)(ii)(A)(1) through (b)(5)(ii)(A)(5) of this section. See paragraph (b)(5)(ii)(E) of this section for more specific descriptions of the dredge elements mentioned below.

(1) The cutting bar must be located in front of the depressor plate.

(2) The angle between the front edge of the cutting bar and the top of the dredge frame must be less than or equal to 45 degrees.

(3) All bale bars must be removed, except the outer bale (single or double) bars and the center support beam, leaving an otherwise unobstructed space between the cutting bar and forward bale wheels, if present. The center support beam must be less than 6 in (15.24 cm) wide. For the purpose of flaring and safe handling of the dredge, a minor appendage not to exceed 12 in (30.5 cm) in length may be attached to the outer bale bar;

(4) Struts must be spaced 12 in (30.5 cm) apart or less from each other.

(5) Unless exempted, as specified in paragraph (b)(5)(ii)(B) of this section, the TDD must include a straight extension (“bump out”) connecting the outer bale bars to the dredge frame. This

“bump out” must exceed 12 in (30.5 cm) in length.

(B) A limited access scallop vessel that uses a dredge with a width less than 10.5 ft (3.2 m) is required to use a TDD except that such a vessel is exempt from the “bump out” requirement specified in paragraph (b)(5)(ii)(A)(5) of this section. This exemption does not apply to LAGC vessels that use dredges with a width of less than 10.5 ft (3.2 m) because such vessels are exempted from the requirement to use a TDD, as specified in paragraph (b)(5)(ii) of this section.

(C) Vessels subject to the requirements in paragraph (b)(5)(ii) of this section transiting waters west of 71° W long., from the shoreline to the outer boundary of the Exclusive Economic Zone, are exempted from the requirement to only possess and use TDDs, provided the dredge gear is stowed in accordance with § 648.23(b) and not available for immediate use.

(D) *TDD-related definitions.* (1) The cutting bar refers to the lowermost horizontal bar connecting the outer bails at the dredge frame.

(2) The depressor plate, also known as the pressure plate, is the angled piece of steel welded along the length of the top of the dredge frame.

(3) The top of the dredge frame refers to the posterior point of the depressor plate.

(4) The struts are the metal bars connecting the cutting bar and the depressor plate.

\* \* \* \* \*

■ 5. In § 648.53, paragraphs (b)(4)(vii), (h)(2) introductory text, (h)(2)(i), (h)(2)(ii)(C), (h)(2)(iv), (h)(3)(i)(A), and (h)(5)(iii) are revised to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(vii) If, prior to the implementation of Framework 22, a vessel owner exchanges an Elephant Trunk Access Area trip for another access area trip as specified in § 648.60(a)(3)(ii) in fishing year 2011, the vessel that receives an additional Elephant Trunk Access Area trip will receive a DAS credit of 7.4 DAS in FY 2011, resulting in a total fishing year 2011 DAS allocation of 39.4 DAS (32 DAS plus 7.4 DAS). This DAS credit from unused Elephant Trunk Access Area trip gained through a trip exchange is based on a full-time vessel’s 18,000-lb (8,165-kg) possession limit and is calculated by using the formula specified in paragraph (b)(4)(vi) of this

section, but the DAS conversion is applied as a DAS credit in the 2011 fishing year, rather than as a DAS deduction in fishing year 2012. Similarly, using the same calculation with a 14,400-lb (6,532-kg) possession limit, part-time vessels will receive a credit of 5.9 DAS if the vessel owner received an additional Elephant Trunk Access Area trip through a trip exchange in the interim between the start of the 2011 fishing year and the implementation of Framework 22 and did not use it. If a vessel fishes any part of an Elephant Trunk Access Area trip gained through a trip exchange, those landings would be deducted from any DAS credit applied to the 2011 fishing year. For example, if a full-time vessel lands 10,000 lb (4,536 kg) from an Elephant Trunk Access Area trip gained through a trip exchange, the pounds landed would be converted to DAS and deducted from the trip-exchange credit as follows: The 10,000 lb (4,536 kg) is first be multiplied by the estimated average meat count in the Elephant Trunk Access Area (18.4 meats/lb) and then divided by the estimated open area average meat count (also 18.4 meats/lb) and by the estimated open area LPUE for fishing year 2011 (2,441 lb/DAS), resulting in a DAS deduction of 4.1 DAS ((10,000 lb × 18.4 meats/lb)/(18.4 meats/lb × 2,441 lb/DAS) = 4.1 DAS). Thus, this vessel would receive a reduced DAS credit in FY 2011 to account for the Elephant Trunk Access Area trip exchange of 3.3 DAS (7.4 DAS – 4.1 DAS = 3.3 DAS).

\* \* \* \* \*

(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 specified in paragraphs (a)(4)(i) and (ii) 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 paragraphs (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 specified in paragraphs (a)(4)(i) and (ii) of this section.

(ii) \* \* \*

(C) *Index to determine contribution factor.* For each eligible IFQ scallop

vessel, the best year as determined pursuant to paragraph (a)(2)(ii)(E)(1) of this section shall be multiplied by the appropriate index factor specified in the following table, based on years active as specified in paragraph (a)(2)(ii)(E)(2) of this section. The resulting contribution factor shall determine its IFQ for each fishing year based on the allocation to general category scallop vessels as specified in paragraph (a)(4) of this section and the method of calculating the IFQ provided in paragraph (h) of this section.

Years active	Index factor
1 .....	0.75
2 .....	0.875
3 .....	1.0
4 .....	1.125
5 .....	1.25

\* \* \* \* \*

(iv) *Vessel IFQ Example.* Continuing the example in paragraphs (h)(1)(ii)(D) and (h)(1)(iii) of this section, with an ACL allocated to IFQ scallop vessels estimated for this example to be equal to 2.5 million lb (1,134 mt), the vessel's IFQ would be 36,250 lb (16,443 kg) (1.45 percent \* 2.5 million lb (1,134 mt)).

\* \* \* \* \*

(3) \* \* \*  
(i) \* \* \*

(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 ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(ii) of this section.

\* \* \* \* \*

(5) \* \* \*

(iii) *IFQ transfer restrictions.* The owner of an IFQ scallop vessel not issued a limited access scallop permit that has fished under its IFQ in a fishing year may not transfer that vessel's IFQ to another IFQ scallop vessel in the same fishing year. Requests for IFQ transfers cannot be less than 100 lb (46.4 kg), unless that value reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. A vessel's total IFQ allocation can be transferred only once during a given fishing year. For example, a vessel owner can complete several transfers of portions of his/her vessel's IFQ during the fishing year, but cannot complete a temporary transfer of a portion of its IFQ then request to either temporarily or permanently transfer the entire IFQ in the same fishing year. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2.5 percent

of the ACL allocated to IFQ scallop vessels. A transfer of an IFQ, whether temporary or permanent, may not result in the transferee having a total ownership of, or interest in, general category scallop allocation that exceeds 5 percent of the ACL allocated to IFQ scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not transfer to or receive IFQ from another IFQ scallop vessel.

\* \* \* \* \*

■ 6. In § 648.55, paragraphs (c)(1) and (c)(5) are revised to read as follows:

**§ 648.55 Framework adjustments to management measures.**

\* \* \* \* \*

(c) \* \* \*

(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 specified in paragraphs (c)(2) through (c)(5) of this section.

\* \* \* \* \*

(5) *Sub-ACLs for the limited access and LAGC fleets.* The Council shall specify sub-ACLs for the limited access and LAGC fleets for each year covered under the biennial or other framework adjustment. After applying the deductions as specified in paragraph (a)(4) of this section, a sub-ACL equal to 94.5 percent of the ABC/ACL shall be allocated to the limited access fleet. After applying the deductions as specified in paragraph (a)(4) of this section, a sub-ACL of 5.5 percent of ABC/ACL shall be allocated to the LAGC fleet, 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 § 648.53(b)(4)(iii).

\* \* \* \* \*

■ 7. In § 648.56, paragraph (d) is revised to read as follows:

**§ 648.56 Scallop research.**

\* \* \* \* \*

(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 (a)(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 § 648.60(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.

\* \* \* \* \*

■ 8. In § 648.59, paragraph (b)(3) and the heading of paragraph (c) are revised to read as follows:

**§ 648.59 Sea Scallop Access Areas.**

\* \* \* \* \*

(b) \* \* \*

(3) The Closed Area I 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), 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
CAIA1 .....	41°26' N	68°30' W
CAIA2 .....	40°58' N	68°30' W
CAIA3 .....	40°54.95' N	68°53.40' W
CAIA4 .....	41°04.30' N	69°01.29' W
CAIA1 .....	41°26' N	68°30' W

\* \* \* \* \*

(c) *Closed Area II Access Area.*

\* \* \* \* \*

■ 9. In § 648.60, the section heading is revised and paragraph (g)(2) is revised to read as follows:

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

\* \* \* \* \*

(g) \* \* \*

(2) *Limited Access General Category Gear restrictions.* An LAGC IFQ scallop

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

\* \* \* \* \*

■ 10. In § 648.61, paragraph (a)(4) is revised to read as follows:

**§ 648.61 EFH Closed Areas.**

(a) \* \* \*

(4) *Closed Area I Habitat Closure Areas.* The restrictions specified in paragraph (a) of this section apply to the Closed Area I Habitat Closure Areas, Closed Area I-North and Closed Area I-South, which are the areas bounded by straight lines connecting the following points in the order stated, and so that the line connecting points CI1 and CIH1, and CI2 and CIH3 is the same as the portion of the western boundary line of Closed Area I, defined in § 648.81(a)(1), that lies between those points:

**CLOSED AREA I—NORTH HABITAT CLOSURE AREA**

Point	N. lat.	W. long.
CI1 .....	41°30'	69°23'
CI4 .....	41°30'	68°30'
CIH1 .....	41°26'	68°30'
CIH2 .....	41°04.30' N	69°01.29' W
CI1 .....	41°30'	69°23'

**CLOSED AREA I—SOUTH HABITAT CLOSURE AREA**

Point	N. lat.	W. long.
CIH3 .....	40°54.95' N	68°53.40' W
CIH4 .....	40°58'	68°30'
CI3 .....	40°45'	68°30'
CI2 .....	40°45'	68°45'
CIH3 .....	40°54.95' N	68°53.40' W

\* \* \* \* \*

■ 11. In § 648.62, the section heading, paragraphs (a), (b) introductory text, (b)(2), and (c) are revised to read as follows:

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

(a) The NGOM scallop management area is the area north of 42°20' N. lat. and within the boundaries of the Gulf of

Maine Scallop Dredge Exemption Area as specified in § 648.80(a)(11). To fish for or possess scallops in the NGOM scallop management area, a vessel must have been issued a scallop permit as specified in § 648.4(a)(2).

(1) If a vessel has been issued a NGOM scallop permit, the vessel is restricted to fishing for or possessing scallops only in the NGOM scallop management area.

(2) Scallop landings by vessels issued NGOM permits shall be deducted from the NGOM scallop total allowable catch when vessels fished all or part of a trip in the Federal waters portion of the NGOM. If a vessel with a NGOM scallop permit fishes exclusively in state waters within the NGOM, scallop landings from those trips will not be deducted from the Federal NGOM quota.

(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 paragraph (b) of this section. 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.

(4) A vessel issued a NGOM or IFQ scallop permit that fishes in the NGOM may fish for, possess, or retain up to 200 lb (90.7 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops, and may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS Demarcation Line. A vessel issued an incidental catch general category scallop permit that fishes in the NGOM may fish for, possess, or retain only up to 40 lb of shucked or 5 U.S. bu (1.76 hL) of in-shell scallops, and may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line.

(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 specified 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 specified in § 648.53(a).

\* \* \* \* \*

(2) Unless a vessel has fished for scallops outside of the NGOM scallop management area and is transiting the NGOM scallop management area with all fishing gear stowed in accordance with § 648.23(b), no vessel issued a scallop permit pursuant to § 648.4(a)(2) may possess, retain, or land scallops in the NGOM scallop management area once the Regional Administrator has provided notification in the **Federal Register** that the NGOM scallop total allowable catch in accordance with this paragraph (b) has been reached. Once the NGOM hard TAC is reached, a vessel issued a NGOM permit may no longer declare a state-only NGOM scallop trip and fish for scallops exclusively in state waters within the NGOM. A vessel that has not been issued a Federal scallop permit that fishes exclusively in state waters is not subject to the closure of the NGOM scallop management area.

\* \* \* \* \*

(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 can 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.

\* \* \* \* \*

■ 12. In § 648.63, paragraphs (b)(2)(i) and (b)(2)(iii) are revised to read as follows:

**§ 648.63 General category sectors and harvest cooperatives.**

\* \* \* \* \*

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

(i) The sector allocation shall be equal to a percentage share of the ACL allocation for IFQ scallop vessels specified in § 648.53(a), similar to an IFQ scallop vessel's IFQ as specified in § 648.53(h). The sector's percentage share of the IFQ scallop fishery ACL catch shall not change, but the amount

of allocation based on the percentage share will change based on the ACL specified in § 648.53(a).

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

■ 13. In § 648.64, paragraphs (b)(2)(i), (b)(2)(ii), (c)(2), and (e) are revised, and paragraph (f) is removed and reserved to read as follows:

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

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

(i) For years when the Closed Area II Sea Scallop Access Area is open, the closure duration shall be:

Percent overage of YTF sub-ACL	Length of closure
3 or less .....	October through November.
3.1–14 .....	September through November.
14.1–16 .....	September through January.
16.1–39 .....	August through January.
39.1–56 .....	July through January.
Greater than 56	March through February.

(ii) For fishing years when the Closed Area II Sea Scallop Access Area is closed to scallop fishing, the closure duration shall be:

Percent overage of YTF sub-ACL	Length of closure
1.9 or less .....	September through November.
2.0–2.9 .....	August through January.
3.0–3.9 .....	March and August through February.
4.0–4.9 .....	March and July through February.
5.0–5.9 .....	March through May and July through February.
6.0 or greater ....	March through February.

(c) \* \* \*  
(2) *Duration of closure.* The Southern New England/Mid-Atlantic yellowtail

flounder accountability measure closed area shall remain closed for the period of time, not to exceed 1 fishing year, as specified for the corresponding percent overage of the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL, as follows:

Percent overage of YTF sub-ACL	Length of closure
2 or less .....	March through April.
2.1–3 .....	March through April, and February.
3.1–7 .....	March through May, and February.
7.1–9 .....	March through May and January through February.
9.1–12 .....	March through May and December through February.
12.1–15 .....	March through June and December through February.
15.1–16 .....	March through June and November through February.
16.1–18 .....	March through July and November through February.
18.1–19 .....	March through August and October through February.
19.1 or more ....	March through February.

(e) *Process for implementing the AM.* 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 ending on February 28/29. 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 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. The initial projected estimate shall be updated after the end of each scallop fishing year once complete fishing year information becomes available. An AM implemented at the start of the fishing year will be reevaluated and adjusted proportionately, if necessary, once updated information is obtained. For example, if in January 2013, the preliminary estimate of 2012 Southern New England/Mid-Atlantic yellowtail flounder catch is estimated to be 5 percent over the 2012 sub-ACL, the Regional Administrator shall implement AMs for the 2013 scallop fishing year in that stock area. Based on the schedule in paragraph (c)(2) of this section, limited access vessels would be prohibited from fishing in the area specified in paragraph (c)(1) of this section for 4 months (i.e., March through May 2013, and February 2014). Continuing the example, after the 2012 fishing year is completed, if the final estimate of Southern New England/Mid-Atlantic yellowtail flounder catch indicates the scallop fishery caught 1.5 percent of the sub-ACL, rather than 5 percent, the Regional Administrator, in accordance with the APA, would adjust the AM for the 2014 fishing year based on the overage schedule in paragraph (c)(2) of this section. As a result, limited access vessels would be subject to a 2-month seasonal closure in March and April 2013. In this example, due to the availability of final fishing year data, it is possible that the original AM closure was already in effect during the month of May. However, the unnecessary AM closure in February 2014 would be avoided. If the Regional Administrator determines that a final estimate is higher than the original projection, the Regional Administrator, if necessary, shall make adjustments to the current fishing year's respective AM closure schedules in accordance with the overage schedule in paragraphs (b)(2)(i), (b)(2)(ii), and (c)(2) of this section.

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