

Fishery Conservation and Management

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audience; and a detailed final accounting of all funds used to conduct the sea scallop research.

[76 FR 43769, July 21, 2011, as amended at 77 FR 20740, Apr. 6, 2012; 81 FR 76525, Nov. 3, 2016; 83 FR 12862, Mar. 26, 2018]

§§ 648.57–648.58 [Reserved]

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

(a) The Sea Scallop Rotational Area Management Program consists of Scallop Rotational Areas, as defined in § 648.2. Guidelines for this area rotation program (*i.e.*, when to close an area and reopen it to scallop fishing) are provided in § 648.55(a)(6). Whether a rotational area is open or closed to scallop fishing in a given year, and the appropriate level of access by limited access and LAGC IFQ vessels, are specified through the specifications or framework adjustment processes defined in § 648.55. When a rotational area is open to the scallop fishery, it is called an Access Area and scallop vessels fishing in the area are subject to the Access Area Program Requirements specified in this section. Areas not defined as Scallop Rotational Areas specified in § 648.60, Habitat Management Areas specified in § 648.370, or areas closed to scallop fishing under other FMPs, are governed by other management measures and restrictions in this part and are referred to as Open Areas.

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

is transiting pursuant to paragraph (a)(3) of this section.

(2) *Transiting a Closed Scallop Rotational Area.* No vessel possessing scallops may enter or be in the area(s) specified in this section when those areas are closed, as specified through the specifications or framework adjustment processes defined in § 648.55, unless the vessel is transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Scallop Rotational Area, as defined in § 648.60(d), if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(3) *Transiting a Scallop Access Area.* Any sea scallop vessel that has not declared a trip into the Scallop Area Access Program may enter a Scallop Access Area, and possess scallops not caught in the Scallop Access Areas, for transiting purposes only, provided the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2. Any scallop vessel that has declared a trip into the Scallop Area Access Program may not enter or be in another Scallop Access Area on the same trip except such vessel may transit another Scallop Access Area provided its gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Scallop Rotational Area, as defined in § 648.60(d), if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

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

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of this section. An LAGC scallop vessel may fish in the Scallop Rotational Areas, defined in §648.60, when the areas are open (*i.e.*, Access Areas), as specified through the specifications or framework adjustment processes defined in §648.55, subject to any additional requirements specified in §648.60, provided the vessel complies with the requirements specified in paragraph (g) of this section.

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

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

(3) *Scallop Access Area Allocations*—(i) *Limited access vessel allocations and possession limits*. (A) Except as provided in paragraph (c) of this section, the specifications or framework adjustment processes defined in §648.55 determine the total amount of scallops, in weight, that a limited access scallop vessel may harvest from Scallop Access Areas

during applicable seasons specified in §648.60. A vessel may not possess or land in excess of its scallop allocation assigned to specific Scallop Access Areas, unless authorized by the Regional Administrator, as specified in paragraph (d) of this section, unless the vessel owner has exchanged an area-specific scallop allocation with another vessel owner for additional scallop allocation in that area, as specified in paragraph (b)(3)(ii) of this section. A vessel may harvest its scallop allocation on any number of trips in a given fishing year, provided that no single trip exceeds the possession limits specified in the specifications or framework adjustment processes defined in §648.55, unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section. No vessel declared into the Scallop Access Areas may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Scallop Rotational Area boundaries defined in §648.60.

(B) The following access area allocations and possession limits for limited access vessels shall be effective for the 2019 and 2020 fishing years:

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

Rotational access area	Scallop possession limit	2019 Scallop allocation	2020 Scallop allocation (default)
Closed Area 1 Flex *	18,000 lb (8,165 kg) per trip.	18,000 lb (8,165 kg)	0 lb (0 kg).
Nantucket Lightship-West		54,000 lb (24,494 kg)	18,000 lb (8,165 kg).
Mid-Atlantic		54,000 lb (24,494 kg)	18,000 lb (8,165 kg).
Total		126,000 lb (57,153 kg)	36,000 lb (16,329 kg).

* Closed Area 1 flex allocation can be landed in any access area made available in the 2019 fishing year pursuant to the area boundaries defined by Framework 30.

(ii) *Closed Area 1 Access Area flex allocations*. For the 2019 fishing year and the first 60 days of the 2020 fishing year, a full-time limited access vessel may choose to land up to 18,000 lb (8,165 kg) of its Closed Area 1 Access Area allocation from any access area made available in the 2019 fishing year pursuant to the area boundaries defined by Framework 30. For example, a vessel could take a trip in the Closed Area 1 Access Area and land 10,000 lb (4,536 kg) from that area, leaving the vessel with

8,000 lb (3,629 kg) of the Closed Area 1 flex allocation available, which could be landed from any other available access area as described in this section, provided the 18,000-lb (8,165-kg) possession limit is not exceeded on any one trip.

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

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Rotational access area	Scallop possession limit	2019 Scallop allocation	2020 Scallop allocation (default)
Closed Area 1 Flex*		17,000 lb (7,711 kg)	0 lb (0 kg).
Nantucket Lightship West	17,000 lb (7,711 kg) per trip	17,000 lb (7,711 kg)	7,200 lb (3,266 kg).
Mid-Atlantic		17,000 lb (7,711 kg)	7,200 lb (3,266 kg).
Total		51,000 lb (23,133 kg).	14,400 lb (6,532 kg).

* Closed Area 1 flex allocation can be landed in any access area made available in the 2019 fishing year pursuant to the area boundaries defined by Framework 30.

(ii) *Closed Area 1 Access Area flex allocations.* For the 2019 fishing year and the first 60 days of the 2020 fishing year, a part-time limited access vessel may choose to land up to 17,000 lb (7,711 kg) of its Closed Area 1 Access Area allocation from any access area made available in the 2019 fishing year pursuant to the area boundaries defined by Framework 30. For example, a vessel could take a trip in the Closed Area 1 Access Area and land 10,000 lb (4,536 kg) from that area, leaving the vessel with 7,000 lb (3,175 kg) of the Closed Area 1 flex allocation available, which could be landed from any other available access area as described in this section, provided the 17,000-lb (7,711-kg) possession limit is not exceeded on any one trip.

(3) *Occasional limited access vessels.* (i) For the 2019 fishing year only, an occasional limited access vessel is allocated 10,500 lb (4,763 kg) of scallops with a trip possession limit at 10,500 lb of scallops per trip (4,763 kg per trip). Occasional limited access vessels may harvest the 10,500 lb (4,763 kg) allocation from only one available access area (Closed Area 1, Nantucket Lightship-West, or Mid-Atlantic).

(ii) For the 2020 fishing year, occasional limited access vessels are allocated 3,000 lb (1,361 kg) of scallops in the Mid-Atlantic Access Area only with a trip possession limit of 3,000 lb of scallops per trip (1,361 kg per trip).

(ii) *Limited access vessels' one-for-one area access allocation exchanges.* (A) The owner of a vessel issued a limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another vessel's unharvested scallop pounds allocated into another scallop access area. These exchanges may be made only for

the amount of the current trip possession limit, as specified in paragraph (b)(3)(i)(B) of this section. For example, if the access area trip possession limit for full-time vessels is 18,000 lb (8,165 kg), a full-time vessel may exchange no more or less than 18,000 lb (8,165 kg), from one access area for no more or less than 18,000 lb (8,165 kg) allocated to another vessel for another access area. In addition, these exchanges may be made only between vessels with the same permit category: A full-time vessel may not exchange allocations with a part-time vessel, and vice versa. Vessel owners must request these exchanges by submitting a completed Access Area Allocation Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Access Area Allocation Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has enough unharvested allocation remaining in a given access area to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the allocation exchange has been made effective. A vessel owner may exchange equal allocations up to the current possession limit between two or more vessels under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange allocations between another vessel and the vessel for which a Confirmation of Permit History has been issued.

(B) *Flex allocation exchanges.* In fishing year 2019, full-time and part-time

vessel are respectively allocated 18,000 lb (8,165 kg) and 17,000 lb (7,711 kg) of scallops that may be landed from any access area made available in the 2019 fishing year pursuant to the area boundaries defined by Framework 30. This flex allocation may be exchanged in full for another access area allocation, but only the flex allocation may be landed from any access area. For example, if a Vessel A exchanges 18,000 lb (8,165 kg) of flex allocation for 18,000 lb (8,165 kg) of Mid-Atlantic Access Area allocation with Vessel B, Vessel A would no longer be allowed to land this allocation from the any available access area and may only land this allocation from Mid-Atlantic Access Area, but Vessel B could land the flex allocation in any available access area.

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

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

(ii) *Atlantic cod.* Such vessel may bring onboard and possess only up to 100 lb (45.4 kg) of Atlantic cod per trip, provided such fish is intended for per-

sonal use only and cannot be not sold, traded, or bartered.

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

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

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

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

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

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

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

(c) *Scallop Access Area scallop allocation carryover.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, a limited access scallop vessel operator may fish any unharvested Scallop Access Area allocation from a given fishing year within the first 60 days of the subsequent fishing year if the Scallop

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Access Area is open, unless otherwise specified in this section. For example, if a full-time vessel has 7,000 lb (3,175 kg) remaining in the Mid-Atlantic Access Area at the end of fishing year 2018, that vessel may harvest those 7,000 lb (3,175 kg) during the first 60 days that the Mid-Atlantic Access Area is open in fishing year 2019 (April 1, 2019, through May 30, 2019).

(d) *Possession limit to defray the cost of observers.* The Regional Administrator may increase the sea scallop possession limit through the specifications or framework adjustment processes defined in §648.55 to defray costs of at-sea observers deployed on area access trips subject to the limits specified §648.53(g). An owner of a scallop vessel shall be notified of the increase in the possession limit through a permit holder letter issued by the Regional Administrator. If the observer set-aside is fully utilized prior to the end of the fishing year, the Regional Administrator shall notify owners of scallop vessels that, effective on a specified date, the increase in the possession limit is no longer available to offset the cost of observers. Unless otherwise notified by the Regional Administrator, vessel owners shall be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit. If a vessel does not land its additional allowance on the trip while carrying an observer, the additional allowance will be added to the vessel's IFQ allocation or the vessel's allocation for the Scallop Rotational Area that was fished. The vessel may land the remainder of its allowance on a subsequent trip. However, the vessel may not exceed the IFQ or Scallop Rotational Area trip possession limit, as described in §648.52(a) or §648.59(b), respectively, unless it is actively carrying an observer.

(e) *Sea Scallop Research Set-Aside Harvest in Scallop Access Areas.* Unless otherwise specified, RSA may be harvested in any access area that is open in a given fishing year, as specified through a specifications action or framework adjustment and pursuant to §648.56. The amount of scallops that can be

harvested in each access area by vessels participating in approved RSA projects shall be determined through the RSA application review and approval process. The access areas open for RSA harvest for fishing years 2019 and 2020 are:

(1) 2019: Nantucket Lightship-West and Mid-Atlantic.

(2) 2020: No access areas.

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

(g) *Limited Access General Category vessels.* (1) An LAGC scallop vessel may only fish in the scallop rotational areas specified in §648.60 or in paragraph (g)(3)(iv) of this section, subject to any additional restrictions specified in §648.60, subject to the possession limit and access area schedule specified in the specifications or framework adjustment processes defined in §648.55, provided the vessel complies with the requirements specified in paragraphs (b)(1), (b)(2), (b)(6) through (9), (d), (e), (f), and (g) of this section. A vessel issued both a NE multispecies permit and an LAGC scallop permit may fish in an approved SAP under §648.85 and under multispecies DAS in the Closed Area I, Closed Area II, Closed Area II Extension, and Nantucket Lightship Scallop Rotational Areas specified in §648.60, when open, provided the vessel complies with the requirements specified in §648.59 and this paragraph (g), but may not fish for, possess, or land scallops on such trips.

(2) *Limited Access General Category Gear restrictions.* An LAGC IFQ scallop vessel authorized to fish in the Scallop Rotational Areas specified in §648.60 that lay east of 72°30' W. lat. 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 these areas may not exceed 10.5 ft (3.2 m). The combined dredge width in use by, or in possession on

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board of, an LAGC scallop vessel fishing in the remaining Scallop Rotational Areas defined in § 648.60 may not exceed 31 ft (9.4 m). Dredge width is measured at the widest point in the bail of the dredge.

(3) *LAGC IFQ Access Area trips.* (i) An LAGC scallop vessel authorized to fish in the Scallop Rotational Areas specified in § 648.60 or in paragraph (g)(3)(iv) of this section may land scallops, subject to the possession limit specified in § 648.52(a), unless the Regional Administrator has issued a notice that the number of LAGC IFQ access area trips have been or are projected to be taken. All LAGC IFQ access area trips must be taken in the fishing year that they are allocated (*i.e.*, there are no carry-over trips). The total number of LAGC IFQ trips in an Access Area is specified in the specifications or framework adjustment processes defined in § 648.55.

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

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

(iv) *Allocation of Scallop Access Area Trips.* Unless otherwise specified by the Council through the framework adjustment or specifications process defined in § 648.55, the LAGC IFQ access area trip allocations, specified in paragraph (v) of this section, shall be set at 5.5 percent of the total expected access area harvest for each year.

(v) The following LAGC IFQ access area trip allocations will be effective for the 2019 and 2020 fishing years:

Scallop access area	2019	2020 ¹
Closed Area 1	571	0
Nantucket Lightship-West	1,713	571
Mid-Atlantic	1,713	571

Scallop access area	2019	2020 ¹
Total	3,997	1,142

¹The LAGC IFQ access area trip allocations for the 2020 fishing year are subject to change through a future specifications action or framework adjustment.

(4) *Possession limits—(i)Scallops.* (A) A vessel issued a NE multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS, and that has not declared into the Scallop Access Area Program, is prohibited from possessing scallops.

(B) An LAGC scallop vessel authorized to fish in the Scallop Rotational Areas specified in § 648.60 may possess scallops up to the possession limit specified in § 648.52(a), unless otherwise authorized pursuant to paragraph (d) of this section.

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

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§ 648.60 Sea Scallop Rotational Areas.

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

(2) [Reserved]