

conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This final determination does not constitute a major Federal action significantly affecting the quality of the human environment.

#### Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands essential for the conservation of the Santa Ana sucker. Therefore, critical habitat for the Santa Ana sucker has not been designated on Tribal lands.

#### References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

#### Author

The primary author of this document is the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

#### Proposed Rule Promulgation

For the reasons set out in the preamble, we propose to amend 50 CFR 17.11(h) and 17.95(e) to designate critical habitat for the Santa Ana sucker. The text of the proposed amendments is identical to the text of the final rule amendments made to 17.11(h) and 17.95(e) for the Santa Ana sucker, published elsewhere in this issue of the **Federal Register**.

Dated: February 20, 2004.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 04-4226 Filed 2-25-04; 8:45 am]

**BILLING CODE 4310-55-U**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 040210050-4050-01; I.D. 011204A]

RIN 0648-AN16

#### Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 10

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (FMP) developed by the New England Fishery Management Council (Council). Amendment 10 proposes a long-term, comprehensive program to manage the sea scallop fishery through an area rotation management program to maximize scallop yield. Areas would be defined and would be closed and re-opened to fishing on a rotational basis, depending on the condition and size of the scallop resource in the areas. Amendment 10 evaluates and proposes measures to minimize the adverse effects of fishing on Essential Fish Habitat (EFH). Amendment 10 also proposes days-at-sea (DAS) allocations consistent with the current status of the resource, measures to minimize bycatch to the extent practicable, and other measures to make the management program more effective, efficient, and flexible.

**DATES:** Comments must be received at the appropriate address or fax number (see **ADDRESSES**) by 5 p.m., local time, on March 29, 2004.

**ADDRESSES:** Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Amendment 10 to the Scallop FMP." Comments also may be sent via facsimile (fax) to (978) 281-9135. Comments submitted via e-mail or

internet should be sent to [ScallopAN16@noaa.gov](mailto:ScallopAN16@noaa.gov).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule should be submitted to the Regional Administrator at the address above and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395-7285.

Copies of Amendment 10, its Regulatory Impact Review (RIR), including the Initial Regulatory Flexibility Analysis (IRFA), and the draft Final Supplemental Environmental Impact Statement (FSEIS) are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>.

**FOR FURTHER INFORMATION CONTACT:** Peter W. Christopher, Fishery Policy Analyst, 978-281-9288; fax 978-281-9135; e-mail [peter.christopher@noaa.gov](mailto:peter.christopher@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Amendment 10 was developed by the Council over a period of more than 3 years. The primary management measure included in Amendment 10 is the proposed area rotation management program, which is designed to improve yield from the scallop resource by defining areas to be closed and re-opened based on the condition and size of the scallop resource. Amendment 10 evaluates and proposes measures to minimize the adverse effects of fishing on EFH, in accordance with the Joint Stipulation and Order resulting from the legal challenge *American Oceans Campaign et al. v. Evans et al.* (Civil Case Number 99-982 (GK)) (Joint Stipulation and Order). Amendment 10 also proposes days-at-sea (DAS) allocations consistent with the current status of the resource, measures to minimize bycatch to the extent practicable, and other measures to make the management program more effective, efficient, and flexible.

Area-based management was first used for the scallop resource in 1998, when NMFS, in consultation with the Council, implemented an interim rule to close two areas in the Mid-Atlantic (MA) to scallop fishing (March 31, 1998, 63 FR 15324). These areas, the Hudson Canyon South and Virginia Beach areas, were closed to protect an abundance of small scallops that would have been vulnerable to excessive mortality if left unprotected. On March 29, 1999,

Amendment 7 to the FMP (March 29, 1999, 64 FR 14835) extended the closures until March 1, 2001, to allow scallops within the areas to grow and spawn.

On June 10, 1999, NMFS and the Council expanded the use of area-based management in the scallop fishery by implementing Framework 11 to the FMP and Framework 29 to the Northeast Multispecies FMP (NE Multispecies FMP)(Frameworks 11/29) (64 FR 31144) to authorize scallop vessels to fish within Groundfish Closed Area II (CAII) on Georges Bank (GB). On June 19, 2000, with the implementation of Framework 13 to the FMP and Framework 34 to the NE Multispecies FMP (Frameworks 13/34) (65 FR 37903), area-based management for the scallop fishery was further expanded. Frameworks 13/34 allowed access by the scallop fishery to Groundfish CAI and II on GB and the Nantucket Lightship Closed Area (NLCA) in southern New England. In both Frameworks 11/29 and Frameworks 13/34, these areas, closed to protect groundfish species managed under the NE Multispecies FMP, were found to have high concentrations of large scallops that would support a controlled fishery for scallops with only minimal bycatch of groundfish.

Frameworks 14 (66 FR 24052, May 1, 2001) and 15 (68 FR 9580, February 28, 2003), to the FMP implemented on May 1, 2001, and March 1, 2003, respectively, included area-based controlled harvest strategies for the Hudson Canyon and Virginia Beach areas similar to the programs established within the groundfish closed areas. The MA scallop closed areas were reopened to controlled scallop fishing by these actions because the area closure had provided sufficient time for the protected scallop resource within the areas to grow to a size more suitable for harvest. These recent area-based management actions for the scallop fishery provided the Council with valuable information and experience in area-based management for the scallop fishery, which it relied upon in the development of Amendment 10.

Amendment 10 was also developed by the Council to minimize the adverse effects of fishing on EFH. Consistent with the EFH Joint Stipulation and Order, Amendment 10 evaluates the impacts of fishing on EFH and proposes management measures designed to minimize the adverse effects of scallop fishing on EFH, to the extent practicable.

A notice of availability for the Draft Supplemental Environmental Impact

Statement (DSEIS) for Amendment 10 was published in the **Federal Register** on April 18, 2003 (68 FR 19206). The public was given 90 days to comment on the DSEIS, in accordance with the EFH Joint Stipulation and Order. After considering all comments on the DSEIS, the Council adopted the final measures to be included in Amendment 10 at its August 13–14, and September 16–17, 2003, meetings. The Council submitted the final Amendment 10 document to NMFS in December 2003.

A notice of availability for Amendment 10 was published in the **Federal Register** at 69 FR 2561 on January 16, 2004. The comment period on Amendment 10 in terms of its approvability under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) ends on March 15, 2004.

### Measures of Particular Concern

NMFS is highlighting the following five measures included in Amendment 10, due to concern relating to implementation and timing: Scallop fishing access in the groundfish closed areas; cooperative industry surveys; the increase in the minimum ring size; implementation of an observer set-aside program; and the title of the proposed MA closed area. NMFS's concern with these measures is described below. While NMFS only raises the groundfish access issue for public awareness, NMFS seeks specific public input on the remaining four measures of concern. The measures are described in full in the "Proposed Measures" section of this preamble.

#### 1. Scallop Fishing Access in Groundfish Closed Areas

Amendment 10 would allow scallop vessels to fish within the groundfish closed areas (CAI, CAII, and the NLCA), pending action under the Northeast (NE) Multispecies FMP, because a high percentage of the scallop biomass at harvestable size is within the boundaries of those areas. If vessels are allowed to harvest the scallops within the closed areas, Amendment 10 projects that the yield from the scallop fishery could be improved significantly, boosting both short-term and long-term benefits to the resource and the industry. Without access, the potential benefits would be lost, particularly in the long-term.

Although Amendment 10 contemplates access to the three groundfish closed areas, it is not possible to enact the access program for those areas through this action. Complementary action must be taken under the NE Multispecies FMP, to

authorize access because those areas were closed by the NE Multispecies FMP to protect groundfish. Therefore, access to the groundfish closed areas will be considered in a separate joint framework action, Framework 16 to the FMP and Framework 39 to the NE Multispecies FMP (the Joint Framework), and these proposed regulations do not enact the access program in the groundfish closed areas.

DAS allocations could also be impacted, depending on whether or not the Joint Framework is implemented. Upon implementation of Amendment 10, DAS would be 42, 17, and 4 for Full-time, Part-time and Occasional vessels, respectively. Amendment 10 proposes that if the Joint Framework is not approved and a final rule allowing access to the groundfish closed areas is not published by August 15, 2004, the DAS for the 2004 fishing year will increase by 20, 8, and 1 DAS for Full-time, Part-time, and Occasional vessels, respectively. A delay of action on the Joint Framework until after August 15, 2004, would likely delay potential access to the three groundfish closed areas until the 2005 scallop fishing year (March 1, 2005, through February 28, 2006).

#### 2. Cooperative Industry Surveys

NMFS notes its concerns about the Council's proposal to establish a cooperative industry scallop survey in support of area rotation. The proposed measure is intended as an important tool for the fully adaptive area rotation scheme proposed in Amendment 10. However, Amendment 10 specifies no details of the cooperative scallop survey regarding the vessels that would be used, the survey design and timing, and issues of survey standardization. New information about the scallop resource, presumably through the cooperative industry surveys, would need to be available to the Council in the early spring of 2005 in order to be used in the proposed biennial framework adjustment process for 2006 through 2007. Given the lack of detail in the cooperative industry survey provision, it is unclear what the Council or NMFS, is to do if vessel owners do not make vessels available to conduct the survey. In addition, although the cooperative industry resource survey is the Council's top research priority for scallops and the set-aside program, the research total allowable catch (TAC) set-aside program developed in Amendment 10 does not establish research TAC set-aside specifically for the resource survey. Therefore, there is no assurance that any resource-based funding would be available for the

survey. NMFS is concerned that the proposed measure is not specified in sufficient detail to be implemented, and notes that it appears likely that a framework action will be required to develop these details prior to implementation.

### 3. Minimum Ring Size Increase

The Council has proposed that the increase in the minimum ring size to 4 inches (10.2 cm) would be effective upon implementation of Amendment 10 in the Hudson Canyon Access Area, and 6 months following publication of the final rule for Amendment 10, if approved, in the remaining areas. NMFS seeks comment on whether it would be feasible to implement the gear conversion requirement upon publication of the final rule and implementation of Amendment 10.

### 4. DAS Set-aside for Observer Coverage

NMFS is concerned about effective implementation of the DAS set-aside for observer coverage that would help defray the cost of observers on open area trips. Implementation of this measure would be complicated because it requires allocation of additional fishing time that is based on several variables, including random selection of vessels to carry an observer, actual trip length, DAS and observer cost equivalents (i.e., how many days of fishing is equal to the cost of carrying an observer for 1 day, or for a trip), catch rates, and scallop value. As suggested in the Amendment 10 document, to implement the measure, NMFS proposes that vessels would be allocated a pre-determined number of additional DAS for each trip that is observed. The number of additional DAS to be allocated would be determined from a multiplier of 0.14. For example, if a vessel takes trip of 14 DAS, 1.96 DAS would be added to its allocation. A multiplier is taken from the analysis provided in the Amendment 10 FSEIS.

### 5. MA Closed Area

NMFS is concerned about the title of MA closed area proposed in Amendment 10. The title, "Elephant Trunk" closed area was provided to the Council by a member of the scallop industry, but it has come to NMFS's attention that the "Elephant Trunk" is also used to describe an area in the Great South Channel area of GB. NMFS therefore seeks public comment on how to clarify the designation of the area proposed in Amendment 10.

### Proposed Measures

Amendment 10 proposes a number of changes to the management regime for

the scallop fishery. In order to provide the public with a clear presentation of the regulations that would result if Amendment 10 is approved and implemented, NMFS is publishing the sea scallop regulations in 50 CFR part 648, subpart D, in their entirety in this proposed rule.

The proposed regulations also include some non-substantive revisions to the existing text in subpart D that are not proposed in Amendment 10; these revisions would remove obsolete language and improve the organization and clarity of the regulations.

#### 1. Overfishing Definition

Amendment 10 proposes to maintain the existing overfishing definition in the FMP, with an increase in the minimum biomass threshold from  $1/4 B_{MAX}$  to  $1/2 B_{MAX}$  to be consistent with the National Standard Guidelines. Annual determinations of the status of the resource would be based on the resource conditions and fishery performance relative to biomass and fishing mortality reference points for the combined Georges Bank and Mid-Atlantic scallop resource. Amendment 10 proposes new guidelines for the Council to use during the development of biennial framework adjustments that would assure that the management measures implemented in the future would prevent overfishing and achieve optimum yield (OY) on a continuing basis.

#### 2. Area Rotation

Under area rotation, three types of areas would exist: Closed areas; controlled access areas; and open areas. Closed areas would be closed to all scallop harvest as a result of large concentrations of fast growing, small scallops. Controlled access areas would be re-openings of closed areas or areas needing additional effort or harvest controls. Controlled access areas would have area-specific effort allocation programs, or "Area Access Programs" as described below, established to prevent rapid harvest of the scallop resource within the areas. Finally, open areas would be all areas without area-specific controls. In general, open areas would be subject to DAS and gear restrictions with no possession limit and trip limitations other than those for General Category vessels and vessels fishing for scallops outside of scallop DAS.

The Council considered various approaches to area rotation and adopted the approach that would provide the most flexibility to define future rotational areas. The "fully adaptive area rotation scheme" was adopted by the Council because it would allow more accurate area definitions

compared to the fixed boundary alternatives.

Amendment 10 would establish rotational area management closures for beds of small sea scallops before the scallops are exposed to fishing mortality. Scallops have their highest growth rates when they are very small and protection of these scallops through area closures is critical in the management of the scallop resource. After a period of closure, according to the criteria and procedures established, the areas would re-open for scallop fishing when the scallops are larger and more suitable for harvest. This process would boost scallop meat yield and yield per recruit. The fully adaptive area rotation scheme would establish no pre-defined conditions for area closures and reopenings. There would be no standard closure area boundaries, dimensions, or durations. This area rotation program would be based entirely on changing conditions of the scallop resource. The biennial frameworks used to enact the fully adaptive area rotation program would use predetermined scallop biomass and growth rate reference points to determine boundaries and duration of area closures and reopenings. The fully adaptive area rotation scheme would specify guidelines as part of the biennial framework process that would be used to establish the rotational areas.

#### 3. Initial Area Rotation

Amendment 10 proposes two areas in the MA to be part of the initial area rotation scheme. First, a redefined Hudson Canyon Access Area would be established as a controlled access scallop fishing area, with limited access scallop vessels allowed to take four trips into the area. Second, an area would be closed that includes the lower portion of the existing Hudson Canyon Access Area, and an adjacent area. The new closed area is called the "Elephant Trunk Area." Fishing for and possession of scallops would be prohibited in the Elephant Trunk Area through February 2007. Vessel transit with gear stowed would be allowed for both areas.

#### 4. Area-specific DAS and Trip Allocations for Limited Access Vessels

Amendment 10 would limit fishing by limited access scallop vessels under area access programs in order to prevent rapid harvest of scallops in controlled access areas. Limits on fishing would include: Area-specific DAS allocations; a number of DAS to be charged for each closed area trip, regardless of trip length; a maximum number of trips allowed into each area; and a maximum sea scallop possession limit per trip.

These limits would be based upon a target TAC for each area and the level of effort that would be expected to harvest the target TAC. The harvest of scallops at a level at or above the target TAC would not result in a closure of the area. Rather, landings relative to the target TAC would be evaluated through biennial, or more frequent reviews of the fishery.

Unused controlled access DAS could not be carried forward into the next fishing year. The area target TAC, DAS allocations, maximum number of trips and possession limit, and number of DAS charged per trip would be calculated to optimize yield while reducing the potential for overexploitation of the resource in the open fishing areas.

Amendment 10 proposes specific measures that would be a part of the rotational area access program for the Hudson Canyon Area, based on a target TAC of 18,789,999 lb (8,523 mt) in 2004, and 14,956,160 lb (6,784 mt) in 2005. DAS assignments for the 2004 and 2005 fishing years would be in trip-length blocks of 12 DAS, and four trips with a trip possession limit of 18,000 lb (8,164.7 kg), consistent with a 1,500–lb (680–kg) per day catch rate. Each vessel would be charged 12 DAS for each trip, regardless of actual trip length. Trip length DAS charge and possession limits would be re-evaluated for future years through the framework adjustment process, beginning with the development of the first biennial framework in 2005, that would be effective March 1, 2006.

#### 5. One-for-one Controlled Access Trip Exchanges

The controlled area access program would allocate each limited access vessel a specific number of trips into each controlled area. Limited access vessel owners would be allowed to enter into one-for-one exchanges of controlled access area trips. Allowing vessel owners to exchange trips would enable them to take advantage of fishing area preferences. For example, a vessel owner in the north could exchange a trip in a southern area with a vessel owner in the south for a trip in a northern area. The northern vessel would thus gain one trip in the northern area, but would give up one trip in the southern area. The total number of trips in each area would be unchanged, assuming each vessel would take all of its allocated trips. The one-for-one trip exchange provision would require more than one area to be managed under a controlled access program. This proposed rule would establish the provision for future use, because

Amendment 10 proposes to open only the Hudson Canyon Access Area to controlled fishing.

#### 6. Compensation for Sea Scallop Access Area Trips Terminated Early

Amendment 10 would allow vessel owners to request that NMFS allow compensation for a Sea Scallop Access Area trip terminated before the vessel has fished up to the automatic deducted DAS. Such trips would be allowed without counting as one of the initially allocated trips and at a reduced DAS charge and possession limit. The vessel owner must submit proof that the vessel owner terminated a controlled access trip due to unforeseen events, emergencies, or for safety reasons. This is intended to promote vessel and crew safety by preventing the minimum DAS charge from being imposed if a vessel owner/operator believes it is necessary to terminate a trip. The existing regulations provide a very limited set of circumstances that allow such DAS restoration, and this would broaden the provision.

#### 7. Gear Restrictions

Amendment 10 proposes to increase the minimum size of the metal rings used to construct the chain bag in scallop dredge gear from 3.5 inches (8.9 cm) to 4 inches (10.2 cm) in diameter. The new minimum ring size is intended to improve yield from the scallop resource by promoting harvest of larger scallops with higher meat weights. Upon implementation of Amendment 10, if approved, all scallop dredges onboard vessels conducting a Hudson Canyon Area controlled access trip would be required to comply with the proposed requirement, because the improved selectivity of the larger rings would help achieve the objective of the controlled access program, to improve yield. A 6-month delay in effectiveness of this measure has been proposed by the Council for vessels fishing outside of the Hudson Canyon Area, in order to allow vessel owners time to convert their gear.

Amendment 10 also proposes to require all scallop dredge twine tops to be constructed of mesh with a minimum size of 10 inches (25.4 cm), inside measure, for both diamond and square mesh. The increase in the twine top mesh size is intended to minimize bycatch and bycatch mortality by improving escapement of some species of finfish.

#### 8. Permit Restrictions

Except for vessels fishing under the NE multispecies or monkfish DAS program, or fishing for scallops under a

state exemption program, vessels issued a limited access scallop permit that are not fishing under a scallop DAS, would be prohibited from possessing more than 40 lb (18.1 kg) of shucked scallops or 5 U.S. bu. (176.2 L) of unshucked scallops. This would eliminate the current allowance for limited access vessels to fish for scallops outside of DAS and land up to 400 lb (181.4 kg) of scallops. The measure is intended to prevent excessive harvest of scallops outside of DAS, which could have negative effects on overall resource conditions and DAS allocations.

#### 9. EFH Closures

Amendment 10 would define areas to be closed to scallop fishing to minimize the impacts of scallop gear on EFH. These areas are within the areas currently closed under the NE Multispecies FMP in order to protect groundfish (CAI, CAII and the NLCA). These areas do not include the portions of the groundfish closed areas that were previously opened to the scallop fishery under the Scallop Framework 13 Closed Area Access Program. The proposed EFH closed areas include areas designated as EFH for several finfish species, which would be closed to prevent impacts by scallop gear. To promote the rebuilding of groundfish stocks, the NE Multispecies FMP prohibits the use of most bottom-tending gear in the groundfish closed areas.

#### 10. Data Collection, Monitoring, and Scallop Research

Under the current regulations, vessels issued scallop permits may be required by the Administrator, Northeast Region, NMFS (Regional Administrator) to carry an observer onboard, with the related costs being borne by the vessel. To partially or entirely defray these costs, vessels carrying an observer would be allowed to land more scallops or utilize more DAS than it would otherwise be allowed. Amendment 10 proposes to establish a 1-percent set-aside of the total DAS in open areas and the target TAC within the Area Access Program areas to help defray the cost of observers. The set-asides for observers is intended to improve data on scallop catch and bycatch. Expansion of the program to open areas under the DAS set-aside would further improve data collection.

Amendment 10 would also establish a DAS set-aside from open area DAS and a TAC set-aside to supplement the available funding for research. Amendment 10 would expand the research objectives to be pursued using this set-aside to include habitat-related

research, research to identify potential solutions to bycatch of fish and sea turtles, and cooperative industry scallop resource survey work. The TAC set-aside made available for the research would be 2 percent of the target TAC within the the Area Access Program areas. In addition, 2 percent of the open area DAS allocation would be set aside to help fund scallop related research. A request for proposals will be published in the **Federal Register** in the near future which solicits proposals for research for the 2004 fishing year. The research set-aside program is intended to promote cooperative research related to the scallop resource and fishery.

#### 11. Cooperative Industry Resource Surveys

Amendment 10 proposes to use a cooperative industry scallop survey to improve the precision of closed area designations, and re-opening dates and conditions. The Regional Administrator would be authorized to allocate additional compensation trips to vessels that participate in the cooperative surveys to help defray the costs of the vessel's participation in research projects. Vessel compensation and direct administrative costs for these surveys would be recaptured from the 2-percent DAS and TAC set-asides, if cooperative industry resource surveys are approved through set-aside awards.

#### 12. Framework Adjustment Process

Amendment 10 proposes a biennial framework adjustment process for changing area rotation closed areas and area re-openings, setting DAS allocations, and making other management adjustments. In addition to a change from an annual to a biennial process, the new framework procedures would ensure that OY is achieved and overfishing is prevented on a continuing basis, through consideration of the resource condition by the Scallop Plan Development Team (PDT). In addition to the frameworkable measures in the FMP, Amendment 10 proposes that changes in the following measures could be enacted through framework action: Size and configuration of rotation management areas; controlled access seasons to minimize bycatch and maximize yield; area-specific DAS or trip allocations; amount and duration of TAC specifications following re-opening; limits on number of closures; TAC or DAS set-asides for funding research; priorities for scallop-related research that is funded by a set-aside from scallop management allocations; finfish TACs for controlled access areas; finfish possession limits; sea sampling

frequency; and area-specific gear limits and specifications.

#### 13. Proactive Protected Species Program

To reduce the risk of takes of sea turtles and other species protected under the Endangered Species Act by fishing gear used in the scallop fishery, Amendment 10 proposes a mechanism to close areas, establish seasons, implement gear modifications, or other measures through the framework adjustment process. As new information about sea turtles and other protected species becomes available, particularly if interactions between protected species and the scallop fishery increase beyond anticipated levels, the Council would propose actions to mitigate takes.

#### Classification

At this time, NMFS has not determined that the FMP amendment that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

A notice of availability of the DSEIS, which analyzed the impacts of all of the measures under consideration in Amendment 10, was published on April 18, 2003, (68 FR 19206).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an IRFA as required under section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A summary of the analysis follows:

A description of the action, why it is being considered, and the legal basis for the action are contained in the preamble to this proposed rule. This proposed rule does not duplicate, overlap or conflict with any relevant Federal rules.

#### *Description of Small Entities to Which the Proposed Rule Will Apply*

The measures proposed in Amendment 10 could impact any commercial vessel issued a Federal sea scallop vessel permit. All of these vessels are considered small business entities for purposes of the RFA because all of them grossed less than \$3.5 million according to the dealer reports for the 2001 and 2002 fishing years. There are two main components of the scallop fleet: Vessels eligible to participate in the limited access sector of the fleet and vessels that participate in the open access General Category

sector of the fleet. Limited access vessels are issued permits to fish for scallops on a Full-time, Part-time or Occasional basis. In 2001, there were 252 Full-time permits, 38 Part-time permits, and 20 Occasional permits. In 2002, there were 270 Full-time permits, 31 part time permits, and 19 Occasional permits. Because the fishing year ends on the last day of February of each year, 2003 vessel permit information was incomplete at the time the Amendment 10 analysis was completed. Much of the economic impacts analysis is based on the 2001 and 2002 fishing years; 2001 and 2002 were the last 2 years with complete permit information. According to the most recent vessel permit records for 2003, there were 278 Full-time limited access vessels, 32 Part-time limited access vessels, and 16 Occasional vessels. In addition, there were 2,293, 2,493, and 2,257 vessels issued permits to fish in the General Category in 2001, 2002, and 2003, respectively. Annual scallop revenue for the limited access sector averaged from \$615,000 to \$665,600 for Full-time vessels, \$194,790 to \$209,750 for Part-time vessels, and \$14,400 to \$42,500 for Occasional vessels during the 2001 and 2002 fishing years. Total revenues per vessel, including revenues from species other than scallops, exceeded these amounts, but were less than \$3.5 million per vessel.

Two criteria, disproportionality and profitability, were considered in determining the significance of regulatory impacts. The disproportionality criterion compares the effects of the regulatory action on small versus large entities. Because all of the vessels permitted to harvest sea scallops are considered to be small entities, there are no disproportional impacts. Due to a lack of individual vessel cost data, the analyses performed for this proposed rule use increases in fleet revenue as a proxy for vessel profitability.

#### *Proposed Reporting, Recordkeeping, and Other Compliance Requirements*

There are four proposed measures that impose new reporting, recordkeeping or other compliance requirements upon the small entities that participate in the fishery.

#### **Reporting and Recordkeeping**

Two measures with new reporting requirements are intended to provide flexibility to vessel owners participating in the area access program proposed in Amendment 10. The first would allow vessel owners to request restoration of DAS charged for area access trips terminated by the vessel operator due to

an emergency, poor weather or any other reason deemed appropriate. This broken trip provision would require a vessel owner to notify NMFS via its vessel monitoring system (VMS) when the trip was terminated, and to submit a request for DAS restoration by mail to the Regional Administrator. The estimated number of such requests varies from 188–481, with the higher number based on the larger number of area access trips expected to occur if Amendment 10 is followed by action in the Joint Framework to authorize scallop fishing in the Groundfish closed areas. Each request is estimated to have associated compliance costs of \$1.26, representing the cost of the VMS message (\$ 0.79 per minute), postage (\$ 0.37), and document reproduction (\$ 0.10). Therefore, 188 requests would impose total compliance costs of \$236.88 and 481 requests would impose total compliance costs of \$606.06.

The second proposed measure to provide flexibility to vessel owners participating in the area access program would allow vessel owners to exchange the controlled access trips allocated to their vessel for use within specific access areas. Such exchanges would allow vessel owners to mitigate their operating costs. For example, a vessel owner in New England with an allocated trip to an access area in the MA region could exchange with a vessel owner in the MA region who had an allocated trip to an access area in New England. Both owners could minimize their vessel operating expenses without foregoing any area access trips. A conservative estimate of the potential compliance costs associated with this provision was calculated based on the assumption that each of the 278 Full-time limited access vessels would make one exchange per year. Both vessel owners involved in the trade would be required to submit a form, so the total number of respondents would be 556. Each request is estimated to have associated compliance costs of \$ 0.47 representing the cost of postage (\$ 0.37) and document reproduction (\$ 0.10). Therefore, 556 requests would impose compliance costs of \$261.32.

Amendment 10 proposes that commercial vessels would participate in the conduct of a cooperative industry survey, with the direct costs of participation covered by a research set-aside of TAC and DAS. However, there would be some costs to vessel owners interested in participating in this survey, because they would be required to notify NMFS of their interest by submitting a form to NMFS. The number of respondents is estimated at 278, with the cost of notification

estimated at \$0.47 representing the cost of postage (\$ 0.37) and document reproduction (\$ 0.10), for a total compliance cost of \$130.66.

All vessels issued permits to harvest sea scallops must carry an at-sea observer onboard, if requested by the Regional Administrator to gather data necessary to manage the fishery. The cost to the vessel is estimated at \$1,100.00 per DAS. Amendment 10 proposes to mitigate the impact of this cost to vessel owners by establishing an observer set-aside that would allow vessels carrying an observer to harvest additional scallops to offset the cost. In order to ensure that all scallop vessels are considered for at-sea observer coverage, vessel owners would be required to notify NMFS of their intent to fish through their VMS. Without access to the groundfish closed areas, it is expected that approximately 1,965 trips would be reported by vessels for VMS coverage. With access to the groundfish closed areas, the number of trips would decrease (because of lower overall DAS allocations with access) to 957. The cost of notification is estimated at \$0.79 per response, for a total compliance cost of \$1,552.35 without access, and \$756.03 with access.

#### Other Compliance Costs

Two proposed gear modifications have associated implementation costs: An increase in the minimum size of the rings used to construct scallop dredge chain bags from 3.5 inches (8.9 cm) in diameter to 4 inches (10.2 cm) in diameter; and an increase in the size of the mesh used to construct scallop dredge twine tops, from 8 inches (20.3 cm) to 10 inches (25.4 cm). The increase in the ring size would require vessel owners to modify their existing gear. Actual cost of converting ring size is not available. Additional information gathered during the public comment period regarding gear conversion should assist NMFS in determining the actual cost. With the exception of requiring 4-inch (10.2-cm) rings in the Hudson Canyon Access Area upon implementation, Amendment 10 proposes to provide a 6-month delay in the requirement to provide time for the industry to purchase the gear. This would temporarily mitigate the economic impact of the requirement by allowing vessel owners to use existing gear in most areas for the first 6 months after implementation and replace worn gear with the new 4-inch (10.2-cm) rings. Long-term benefits of the increased ring size are expected to outweigh the short-term cost of replacing the 3.5-inch (8.9-cm) rings because larger scallops caught with the

larger ring size would be more valuable and would make up more of the overall catch. The increase in the minimum mesh size in twine tops would impose a cost on vessel owners, though scallop vessels on controlled access trips have had to use 10-inch (25.4-cm) mesh twine tops since 1999, so some vessels would already be in compliance and would have already incurred those costs. Additionally, Full-time limited access vessels customarily have to replace their twine tops several times a year, so the purchase of twine would not represent an additional expense. The process of sewing a twine top into a dredge takes about 30–45 minutes in good weather, dockside.

#### Economic Impacts of the Proposed Action

Economic impacts were analyzed relative to no action, defined as the continuation of the existing DAS schedule (as specified in Amendment 7) with no access by scallop vessels to the scallop resource located within the groundfish closed areas. The combined economic impacts of the proposed measures are positive for the majority of small business entities in the scallop fishing industry. Although the economic analysis was conducted for an average Full-time limited access vessel, the impacts would be similar for Part-time and Occasional limited access vessels because the overall management measures apply equally to all limited access vessels. The DAS allocations for Part-time and Occasional limited access vessels would be impacted in the same manner as Full-time DAS allocations, though proportional to their relative allocations. The impacts of specific measures are summarized below.

##### 1. Area Rotation

The proposed area rotation alternative with access to the GB groundfish areas would have positive economic impacts on vessels compared to the no action levels in the short term from 2004 to 2007. Gross revenues would increase by over 50 percent from 2004 to 2007. The average gross profits per year are estimated to be positive during these first 4 years, and to exceed the no-action levels by approximately \$72,000 from 2004 to 2007. The impacts would be positive over the next 4 years (2008–2011) as well. Therefore, if all vessels are able to use their area-specific DAS allocations, and if access is provided to the Groundfish closed areas by the Joint Framework, the impacts on vessel revenues and profits would be positive both in the short and long term.

Although the proposed regulations are expected to benefit most vessels in the

scallop fishery by increasing the productivity of the scallop resource, these benefits may not necessarily be equally distributed. Area rotation and area closures could have differential effects on scallop vessel owners, processors, ports, and fishing communities, depending upon their home port proximity to open and controlled access areas. These impacts may vary depending upon the relative mobility of vessels in accessing alternative fishing areas. However, the differential effects are difficult to quantify and predict since actual effects would depend on reaction to the new regulations by the industry.

Without future access to the Groundfish closed areas, area rotation would increase estimated gross and net revenues for the first 3 years, from 2004 to 2006, but would have negative impacts on revenue and profits in subsequent years as vessels would not benefit from abundant fishing grounds and as the resource in open areas becomes less abundant. Annual average gross revenues would decrease by 4 percent per year from 2008 to 2011.

## 2. Annual DAS Allocations

This action would allocate DAS to vessels in order to achieve OY from the scallop resource. The DAS allocations would be area-specific, and one-to-one exchanges would be allowed between vessel owners for the controlled access area trips. The initial DAS allocations and catch levels proposed by Amendment 10 are higher than the allocations and catch levels under the no action alternative. As a result, vessel landings, revenues and gross profits would increase in the short term, compared to the no action alternative.

These economic impacts assume that all vessels would be able to access each of the controlled access areas. There is uncertainty, however, regarding the number of vessels that would be able to fish in those areas or that would be able to trade their trips in one access area for trips to a preferable access area. The analysis showed that, although the majority of the Full-time limited access vessels that were active in 2002 previously fished both in the controlled access areas of GB and Hudson Canyon, about 9 percent of them never fished in the MA controlled access areas, another 17 percent never fished in the GB groundfish areas, and about 8 percent never fished in any of these areas. These three groups of vessels constitute about one-third of the Full-time vessels that were active in the 2002 fishing year and that would be allocated trips in areas that they have not fished in the past.

When the analysis was conducted, however, based on a sample of vessels that were active during all the years when access was provided to these areas, the percentage of Full-time vessels that did not access one or more of the controlled access areas in GB and the MA was reduced to 22 percent. Therefore, the proportion of vessels that could be affected by area-specific DAS allocations ranges from one-fourth to one-third of the Full-time fleet.

Although the provision that allows one-to-one exchange of controlled access area trips may mitigate these impacts, some vessels may be unable to arrange an exchange to fish in a preferable area if other vessel owners are not willing to exchange trips. These vessels could face negative economic impacts from area-specific trip and DAS allocations if they are unable to take their trips to specific controlled access areas due to the limitations in vessel size and equipment, safety concerns, or cost factors. Controlled area access revenue is estimated to constitute 45 percent of the total scallop revenue in 2004 and 35 percent in 2005, if there is no access to groundfish closed areas. Controlled area access revenue is estimated to increase to 66 percent of the total scallop revenue in 2004 and 60 percent in 2005, if there is access provided to the groundfish closed areas through Joint Framework 16/39. The scallop revenue from even one access area trip could amount to more than 10 percent of the annual revenue in 2004 without access to the Groundfish closed areas and close to 10 percent of the annual revenue with access to the Groundfish closed areas. Therefore, the loss of revenue and gross profits from controlled access trips could be significant, even if one or two of these trips could not be taken.

Under the proposed area access program, a vessel could harvest 18,000 lb (8,165 kg) of scallop meats, with a minimum charge of 12 DAS for each area access trip. This trade-off would result in maximum annual net revenues per vessel from the controlled access areas in 2004 alone, or on average for the period 2004 to 2007. When compared to other possession limits, the possession limit of 18,000 lb (8,165 kg) is slightly lower than the status quo trip limit of 21,000 lb (9,525 kg) and could constrain larger vessels with the capacity to land more scallops per trip. However, larger possession limits at higher automatic DAS deduction (e.g., 21,000 lb (9,525 kg) with an automatic 14 DAS deduction) result in a smaller number of trips per vessel as less trips would be necessary to harvest the target TAC. As a result, a 21,000-lb (9,525 kg)

or larger possession limit generates lower average annual net revenues for 2004–2007, compared to the other possession limit alternatives. On the other hand, it could be difficult for some vessels to land the possession limit within 12 DAS. In order to accommodate for this difficulty, this rule proposes that the limited access vessels would be charged no more than 12 DAS, even if the actual trip length was longer.

## 3. One-to-one Exchanges of Controlled Access Area Trips

To mitigate the potential adverse impacts related to the fact that some vessels may not be able to utilize area access trips into specific areas, the proposed action would allow one-to-one exchanges of controlled access area trips. This is expected to provide flexibility to vessel owners regarding which areas to fish, thereby reducing the possibility of revenue loss if they are unable to access some areas. As noted above, the compliance costs associated with this provision are minor, and the measure should provide benefits to vessel owners involved in an exchange.

## 4. Compensation for Sea Scallop Access Area Trips Terminated Early

This action proposes to allow vessel owners to request compensation for Sea Scallop Access Area trips terminated by the vessel operator due to unforeseen events, emergency, or safety reasons. If such a request is approved by NMFS, a vessel would be authorized to resume the area access trip and harvest 1,500 lb (680 kg) of scallop meats for each DAS restored. Therefore, this measure would have positive economic impacts on vessels by reducing lost revenue from area access trips that are terminated, making it more likely that vessels would utilize their controlled access trips. As noted above, the compliance costs associated with this measure are minor.

## 5. Gear Restrictions

The proposal to increase the minimum ring size to 4 inches (10.2 cm) is expected to have positive economic impacts overall, despite short-term costs associated with gear changes. Larger rings would allow more small scallops to escape capture, reducing discard mortality and improving yield and vessel revenue. The increase in the ring size is estimated to improve the efficiency of the gear in capturing large (greater than 4.3-inch (10.9-cm)) scallops by about 10–15 percent. In addition, gear efficiency for large scallops would increase, reducing the tow time needed to catch the allowed possession limit. This in turn could



result in lower vessel operating expenses. The positive benefits of the 10-inch (25.4 cm) twine top requirement are indirect, because the measure would allow for greater escapement of many finfish species, thus minimizing bycatch. Without measures to keep bycatch low, the Council felt it was unlikely that scallop vessels would be allowed to fish within the Groundfish closed areas. The Council did not consider alternatives for mesh larger than 10 inches (25.4 cm) because studies of 12-inch (30.5-cm) mesh twine tops indicate excessive reductions in scallop catch.

#### 6. General Category Permit Restrictions

This proposed action would prohibit a vessel issued a limited access permit to harvest scallops under the regulations applicable to the General Category when not fishing on a scallop DAS. This would prohibit an activity that is allowed under current regulations. Although one-third of the limited access vessels landed some scallops under the General Category rules during the 2002 fishing year, only 7 percent of these vessels derived more than 1 percent of their revenues from the General Category trips. The Council concluded that the measure would benefit most limited access vessels, since an increase in General Category landings could require the reduction of DAS allocations to limited access vessels in the future. Such reductions would impact all limited access vessels, including those that have never harvested scallops under the General Category.

Vessels holding General Category scallop permits and limited access scallop vessels fishing under a NE multispecies or monkfish DAS would be authorized to harvest up to 400 lb (181.4 kg) of scallop meats from open areas and controlled access areas. Allowing the harvest of up to 400 lb (181.4 kg) of scallop meats in controlled access areas would benefit vessels that have been restricted to 100 lb (45.4 kg) in controlled access areas under previous actions.

#### 7. Habitat Alternatives

Amendment 10 proposes to close specified areas to scallop gear to minimize the adverse effects of fishing on EFH to the extent practicable. The areas identified for closure are currently closed to the scallop fishery by regulations implemented under the NE Multispecies FMP to conserve groundfish. Therefore, establishing these areas as Habitat Closed Areas in Amendment 10 would have no impact on small entities, when compared to the no action alternative.

#### 8. Biennial Framework Adjustment Procedure

The framework provision would have positive impacts on the scallop industry by adjusting the management actions to changing resource conditions. Biennial adjustments would enable participants in the fishery to conduct their business planning on a biennial basis, as well.

#### 9. Proactive Protected Species Program

This program is expected to have positive impacts on the scallop fishery by helping to minimize the interactions between scallop gear and protected species and, therefore, reducing the need for more conservative actions that could have negatively impacts on the small businesses in scallop industry.

#### Economic Impacts of Significant and Other Non-selected Alternatives

The RFA requires consideration of alternatives that accomplish the stated objectives of the applicable statutes and that minimize economic impacts on small entities. The IRFA should identify any significant alternatives that would minimize economic impacts on small entities, if such alternatives exist. If there is an alternative with less impact on small entities that meets the stated objectives, the IRFA should identify and describe such an alternative. A rationale should be provided to explain any unavoidable adverse effects on small entities that are necessary to achieve the objectives.

The Council compared the economic impacts of the proposed measures to the impacts of the other significant alternatives considered. The Council selected its proposed measures to function as a set of integrated measures that would, when implemented, achieve a number of conservation and management objectives while minimizing the economic impacts on the industry, to the extent possible. Therefore, one of the many analyses conducted by the Council evaluated the impacts of the set of proposed measures in comparison to the no action measures, and considered the impacts both with and without future access to the groundfish closed areas through The Joint Framework. Furthermore, the impacts of the proposed measures were compared to the status quo alternative, defined to be limited access fishing DAS allocated consistent with the existing fishing mortality targets and the current condition of scallop resource, no increase in the minimum ring size, and no area rotation program.

The results of this analysis show that the combined economic impacts on small entities of the proposed measures

are positive when compared to the impacts of both the no action and status quo measures, if there is future access to the groundfish closed areas. If there is no future access to the groundfish closed areas, however, economic impacts from the proposed option would be negative in comparison to no action after the first 4 years of implementation. This is because open areas would be fished at a higher rate in the absence of access to the groundfish closed areas, reducing landings per unit effort and, consequently, resulting in lower landings than the level of landings under the no action alternative.

With or without access to the groundfish closed areas, the proposed measures would result in higher DAS allocations than the no action alternative. This would translate into higher landings, lower prices, larger fleet revenue, producer and consumer surpluses and greater total benefits than the no action alternative during the first 4 years of the program (2004 to 2007). The annual fleet revenues would exceed no action levels by \$58 million during the initial 4-year period with access to the groundfish closed areas, and by \$37 million without access to the groundfish closed areas. The cumulative value of the net benefits, measured by the sum of consumer and producer surpluses net of no action, would reach \$371 million with access to the groundfish closed areas, and \$124 million without access during the initial 4-year period. The economic impacts during the following 4 years, and in the long term, would also be positive if access is allowed to the groundfish closed areas, increasing total benefits by \$53 million during 2008–2012 and by \$95 million over the long term (2013–2030).

The alternatives considered by the Council included alternatives with no area rotation component, as well as various rotational management alternatives with fixed area boundaries, various closure durations, and inflexible/mechanical rotation schemes. These were examined with both 3.5-inch (8.9-cm) and 4-inch (10.2-cm) ring requirements.

The Council did not find it necessary to select one of these other alternatives because development of the Joint Framework was contemplated by the Council at the time it selected its proposed measures. The Joint Framework addresses the circumstances that would cause the negative impacts projected in the absence of access to the groundfish closed areas. It should be possible to develop a program to allow such access before the negative impacts of the proposed measures are experienced by the industry.



Amendment 10 also includes analyses that compare the various alternatives. The proposed rotational management measure (adaptive rotation with flexible area boundaries based on frequent surveys of the resource) was found to have positive impacts compared to alternatives that did not include area rotation. This is because it protects small scallops during periods of their highest growth rates, and allows the boundaries of closed areas to be determined more accurately, improving both yield and fishing efficiency. The proposed area rotation measure also had higher benefits compared to other rotational management alternatives with mechanical rotation and fixed boundaries. Specifically, area rotation closed areas would be determined optimally based on recent surveys, and area boundaries could be established to minimize the social and economic impacts on fishing communities located close to areas proposed for closure or area access programs.

The results also showed that area rotation combined with 3.5-inch (8.9-cm) rings could result in slightly higher economic benefits in the first 10 years of implementation, than area rotation combined with the proposed 4-inch (10.2-cm) ring size. Four-inch rings result in slightly lower landings, about a million pounds per year on the average, compared to the 3.5-inch (8.9-cm) ring options during the first 10 years from 2003 to 2013 under all scenarios. However, over the long term, the increase in ring size yields higher benefits than those achieved with the smaller ring size.

In addition, analysis of the ring size indicates that the 4-inch (10.2-cm) rings are preferable over the long-term because they reduce mortality on small scallops and, as a result improve yield and increase scallop revenues. By improving dredge efficiency in harvesting larger scallops, the use of 4-inch (10.2-cm) rings would also reduce bottom contact time, potentially reducing both bycatch of other species and impacts on habitat. Thus, the Council rejected alternatives with no area rotation and rotational management alternatives that incorporated the 3.5-inch (8.9-cm) ring size in favor of the proposed measures.

Even without access to the groundfish closed areas, almost all of the rotational management alternatives would result in an increase in landings compared to the status quo option over the first 10 years of the management program. The status quo alternative is estimated to result in landings averaging 32 million lb (14,515 mt) per year, while most of the rotational management options

increase average landings to 33–34 million lb (14,968–15,422 mt) per year from 2003–2012. There are three rotational management alternatives that would not increase average landings during the period: The mechanical rotation alternative, the alternative that allows areas to be closed for 4 years, and the program that allows 50 percent and 100 percent of the maximum biomass to be located in closed areas. Mechanical rotation is estimated to reduce average landings and revenues per year, and result in high variability in landings, prices, revenues and in total economic benefits during the first 10 years, as well as in the long term. In general, the rotational management options that increase closure duration or the amount of biomass that can be within closed areas, also would result in higher variability in landings and prices, which could reduce vessel revenues.

The rotational management alternatives with access to the groundfish closed areas are estimated to result in an increase in average annual landings during the 10-year period from 32 million lb (14,515 mt) under status quo to 39–55 million lb (17,690–24,948 mt) with access to some groundfish closed areas. If the scallop fishery has access to all groundfish closed areas, the average annual landings for the period could increase to 68 million lb (30,844 mt). Rotational management alternatives were also considered that would have utilized the groundfish closed areas as a “stabilizing reservoir.” These alternatives increase average landings to 40–46 million lb (18,144–20,865 mt) per year, while at the same time reducing the variability.

The Council considered a large number of alternatives to minimize and mitigate adverse effects of the fishery on EFH, to the extent practicable. The alternatives are briefly defined below, including the four alternatives adopted by the Council.

Alternative 1, status quo measures with no scallop access to Groundfish closed areas;

Alternative 2 (adopted by the Council), habitat benefits of other selected measures in Amendment 10;

Alternative 3 (a and b), area closures to protect hard-bottom habitat;

Alternative 4, area closures to protect hard-bottom habitats that overlap proposed modified groundfish closed areas in Amendment 13;

Alternative 5 (a-d), area closures designed to protect EFH and balance fishery productivity;

Alternative 6 (adopted by Council), area closures within the Groundfish closed areas that maintain closure to the

scallop fishery of areas that were closed to scallop fishing under Framework 13;

Alternative 7, area closures designed to protect areas of high EFH value and low scallop productivity;

Alternative 8 (a and b), area closures on the eastern portion of GB;

Alternative 9, area closures that include all of the existing year-round groundfish closed areas in southern New England, GB and the Gulf of Maine;

Alternative 10, restrictions on use of rock chains;

Alternative 11 (adopted by the Council), increase in the minimum ring size to 4 inches (10.2 cm);

Alternative 12 (adopted by the Council), habitat research funded through scallop TAC set-aside; and

Alternative 13, area based management and rotation based on habitat protection.

Many of these alternatives (1, 3a, 3b, 4, 5a-d, 6, 7, 8a, 8b, 9) proposed to close various areas and the impacts on revenues and economic benefits from various habitat closures were examined. These relative impacts show that proposed Alternative 6 was ranked in the middle of the range of impacts on scallop revenues and economic benefits. Several other habitat alternatives, including Alternatives 5a, 5c, 5d, 8a, and 8b, would have lower impacts on vessel revenues. These alternatives were not chosen, however, because they either had impracticable social/economic impacts on some fishing communities or did not satisfy the requirement to minimize adverse impacts of fishing on EFH, to the extent practicable.

The alternatives considered by the Council also included measures other than closures. An alternative to restrict the use of rock chains (Alternative 10), was determined to have a neutral impact on habitat because it was not anticipated to reduce the footprint of the scallop fishery. Another alternative, that was ultimately adopted, was the 4-inch (10.2-cm) ring requirement (Alternative 11), which was found to have a modest benefit to habitat through reductions in bycatch and epifaunal displacement. In the initial implementation period, it appeared that this alternative could increase area swept, as dredge efficiency decreases and previously recruitable scallops are no longer retained. This was expected to last approximately 1 year, at which point those same scallops would be recruitable and, as the average size of recruited scallops increases area swept is projected to decrease due to the increased efficiency of 4-inch (10.2-cm) rings in catching large scallops.

The proposed action relies on the EFH benefits of all of the other management measures in the proposed action, along with the establishment of portions of the current groundfish closed areas as EFH Closed Areas. This would preserve within the Scallop FMP the habitat benefits currently realized as a result of the NE Multispecies FMP provision that prohibits the use of scallop gear within those closed areas. The establishment of these closures as EFH measures would prohibit the use of scallop gear in vulnerable EFH areas containing various benthic habitat types. This is the only habitat closure alternative that does not have significant revenue losses for other fisheries including those harvesting groundfish and monkfish, because most of this area has been closed to access by these fisheries since 2001.

This proposed rule contains collection-of-information requirements subject to review and approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden for these collections of information are estimated to average, as follows:

1. Broken trip adjustment, OMB #0648-0416 (0.27 hr per response);
2. One-to-one trip exchange, OMB #0648-0416 (0.083 hr per response);
3. Open area trip declaration for observer deployment, OMB #0648-0416 (0.033 hr per response); and
4. Cooperative research participant enrollment form, OMB #0648-0416 (0.02 hr per response).

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject

to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

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

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 18, 2004.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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

#### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.10, paragraph (b)(1) introductory text is revised, and paragraph (b)(3) is added to read as follows:

#### § 648.10 DAS notification requirements.

\* \* \* \* \*

(b) \* \* \*

(1) Unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section, a scallop vessel issued a Full-time or Part-time limited access scallop permit; or a scallop vessel issued an Occasional limited access permit when fishing under the Sea Scallop Area Access Program specified under § 648.60; or a scallop vessel fishing under the small dredge program specified in § 648.51(e); or a vessel issued a limited access multispecies, monkfish, Occasional scallop, or Combination permit whose owner elects to provide the notifications required by this paragraph using a VMS, must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified pursuant to § 648.9(a). The owner of such a vessel must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets those criteria. If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to, or whose owner has elected to, use a VMS unit is subject to

the following requirements and presumptions:

\* \* \* \* \*

(3) Atlantic Sea Scallop Vessel VMS Notification Requirements. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access permits are required to comply with the additional VMS notification requirements specified in § 648.60(c)(2)(ii), except that scallop vessels issued Occasional scallop permits and not participating in the Area Access Program specified in § 648.60 may provide the specified information to the Regional Administrator by calling the Regional Administrator.

3. In § 648.14, paragraphs (a)(56), (a)(57), (a)(61), (a)(97), (a)(110), (a)(111), (h), and (i) are revised to read as follows:

#### § 648.14 Prohibitions.

(a) \* \* \*

(56) Possess, or land per trip, scallops in excess of 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, unless:

(i) The scallops were harvested by a vessel that has been issued and carries on board a General Category scallop permit;

(ii) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit and is fishing under the scallop DAS program as specified in § 648.53;

(iii) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters; or

(iv) The scallops were harvested by a vessel that has been issued and carries on board a limited access or General Category scallop permit and the vessel is fishing under the provisions of the state waters exemption program specified in § 648.54.

(57) Fish for, possess or land per trip, scallops in excess of 400 lb (181.44 kg) or 50 bu (17.62 hl) of in-shell scallops, unless:

(i) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit and the vessel is fishing under the scallop DAS program;

(ii) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters; or

(iii) The scallops were harvested by a vessel that has been issued and carries on board a limited access or General Category scallop permit and the vessel is fishing under the provisions of the

state waters exemption program specified in § 648.54.

\* \* \* \* \*

(61) Sell, barter or trade, or otherwise transfer, or attempt to sell, barter or trade, or otherwise transfer, for a commercial purpose, any scallops from a trip whose catch is 40 lb (18.14 kg) of shucked scallops or less, or 5 bu (176.2 L) of in-shell scallops, unless the vessel has been issued a valid general or limited access scallop permit, or the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

\* \* \* \* \*

(97) Fail to comply with any of the provisions specified in § 648.56.

\* \* \* \* \*

(110) Fish for, possess, or land sea scallops in or from the areas specified in §§ 648.58 and 648.61.

(111) Transit or be in the areas described in §§ 648.58 and 648.61 in possession of scallops, except when all fishing gear is unavailable for immediate use as defined in § 648.23(b), unless there is a compelling safety reason to be in such areas.

\* \* \* \* \*

(h) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (g) of this section, it is unlawful for any person owning or operating a vessel issued a limited access scallop permit under § 648.4(a)(2) to do any of the following:

(1) Possess, or land per trip, more than 40 lb (18.4 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 648.10, unless exempted from DAS allocations as provided in § 648.54.

(2) Fail to have an approved, operational, and functioning VMS unit that meets the specifications of § 648.9 on board the vessel at all times, unless the vessel is not subject to the VMS requirements specified in § 648.10.

(3) If the vessel is not subject to VMS requirements specified in § 648.10(a), fail to comply with the requirements of the call-in system specified in § 648.10(b).

(4) Combine, transfer, or consolidate DAS allocations.

(5) Have an ownership interest in more than 5 percent of the total number of vessels issued limited access scallop permits, except as provided in § 648.4(a)(2)(i)(H).

(6) Fish for, possess, or land scallops with or from a vessel that has had the horsepower of such vessel or its

replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(2)(i)(E) or (F).

(7) Fish for, possess, or land scallops with or from a vessel that has had the length, GRT, or NT of such vessel or its replacement increased or upgraded in excess of limitations specified in § 648.4(a)(2)(i)(E) or (F).

(8) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 l) of in-shell scallops, or participate in the DAS allocation program, while in the possession of trawl nets that have a maximum sweep exceeding 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net, except as specified in § 648.51(a)(1).

(9) Fish under the DAS allocation program with, or have available for immediate use, trawl nets of mesh smaller than the minimum size specified in § 648.51(a)(2).

(10) Fish under the DAS allocation program with trawl nets that use chafing gear or other means or devices that do not meet the requirements of § 648.51(a)(3).

(11) Possess or use dredge gear that does not comply with any of the provisions and specifications specified in § 648.51(a) or (b).

(12) Participate in the DAS allocation program with more than the number of persons specified in § 648.51(c), including the operator, on board when the vessel is not docked or moored in port, unless otherwise authorized by the Regional Administrator.

(13) Fish under the small dredge program specified in § 648.51(e), with, or while in possession of, a dredge that exceeds 10.5 ft (3.2 m) in overall width, as measured at the widest point in the bail of the dredge.

(14) Fish under the small dredge program as specified in § 648.51(e) with more than five persons, including the operator, aboard the vessel, unless otherwise authorized by the Regional Administrator.

(15) Have a shucking or sorting machine on board a vessel that shucks scallops at sea while fishing under the DAS allocation program, unless otherwise authorized by the Regional Administrator.

(16) Refuse or fail to carry an observer if requested to do so by the Regional Administrator.

(17) Fail to provide an observer with required food, accommodations, access, and assistance, as specified in § 648.11.

(18) Fail to comply with any requirement for declaring in and out of the DAS allocation program as specified in § 648.10.

(19) Fail to comply with any requirement for participating in the DAS Exemption Program as specified in § 648.54.

(20) Fish with, possess on board, or land scallops while in possession of trawl nets, when fishing for scallops under the DAS allocation program, unless exempted as provided for in § 648.51(f).

(21) Fail to comply with the restriction on twine top described in § 648.51(b)(4)(iv).

(22) Fail to comply with any of the provisions and specifications of § 648.60.

(23) Possess or land more than 50 bu (17.62 hl) of in-shell scallops, as specified in § 648.52(d), once inside the VMS Demarcation Line by a vessel that, at any time during the trip, fished in or transited any area south of 42°20' N. lat., except as provided in § 648.54.

(i) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (f), and (g) of this section, it is unlawful for any person owning or operating a vessel issued a general scallop permit to do any of the following:

(1) Fish for, possess, or land per trip, more than 400 lb (181.44 kg) of shucked or 50 bu (17.62 hl) of in-shell scallops.

(2) Fish for, possess, or land scallops on more than one trip per calendar day.

(3) Possess or use dredge gear that does not comply with any of the provisions or specification specified in § 648.51(a) or (b).

\* \* \* \* \*

4. Subpart D is revised to read as follows:

#### Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

Sec.

648.50 Shell-height standard.

638.51 Gear and crew restrictions.

648.52 Possession and landing limits.

648.53 DAS allocation.

648.54 State waters exemption.

648.55 Framework adjustments to management measures.

648.56 Scallop research.

648.57 Sea scallop area rotation program.

648.58 Rotational closed areas.

648.59 Sea scallop access areas.

648.60 Sea scallop area access program requirements.

648.61 EFH closed areas.

#### § 648.50 Shell-height standard.

(a) *Minimum shell height.* The minimum shell height for in-shell scallops that may be landed, or possessed at or after landing, is 3.5 inches (8.9 cm). Shell height is a straight line measurement from the hinge to the part of the shell that is farthest away from the hinge.

(b) *Compliance and sampling.* Any time at landing or after, including when the scallop are received or possessed by a dealer or person acting in the capacity of a dealer, compliance with the minimum shell-height standard will be determined as follows: Samples of 40 scallops each will be taken at random from the total amount of scallops in possession. The person in possession of the scallops may request that as many as 10 sample groups (400 scallops) be examined. A sample group fails to comply with the standard if more than 10 percent of all scallops sampled are less than the shell height specified. The total amount of scallops in possession will be deemed in violation of this subpart and subject to forfeiture, if the sample group fails to comply with the minimum standard.

**§ 648.51 Gear and crew restrictions.**

(a) *Trawl vessel gear restrictions.* Trawl vessels issued a limited access scallop permit under § 648.4(a)(2) while fishing under or subject to the DAS allocation program for scallops and authorized to fish with or possess on board trawl nets pursuant to § 648.51(f), any trawl vessels in possession of more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops in or from the EEZ, and any trawl vessels fishing for scallops in the EEZ, must comply with the following:

(1) *Maximum sweep.* The trawl sweep of nets shall not exceed 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing, unless the net is stowed and not available for immediate use, as specified in § 648.23.

(2) *Net requirements*—(i) *Minimum mesh size.* The mesh size for any scallop trawl net in all areas shall not be smaller than 5.5 inches (13.97 cm).

(ii) *Measurement of mesh size.* Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches) and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net will be measured at least five meshes away from the lacings running parallel to the long axis of the net.

(3) *Chafing gear and other gear obstructions*—(i) *Net obstruction or constriction.* A fishing vessel may not use any device or material, including, but not limited to, nets, net

strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. “The top of the trawl net” means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph (a)(3), head ropes shall not be considered part of the top of the trawl net.

(ii) *Mesh obstruction or constriction.* A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (a)(3)(i) of this section, if it obstructs the meshes of the net in any manner.

(iii) A fishing vessel may not use or possess a net capable of catching scallops in which the bars entering or exiting the knots twist around each other.

(b) *Dredge vessel gear restrictions.* All vessels issued limited access and General Category scallop permits and fishing with scallop dredges, with the exception of hydraulic clam dredges and mahogany quahog dredges in possession of 400 lb (181.44 kg), or less, of scallops, must comply with the following restrictions, unless otherwise specified:

(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. 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.

(2) *Minimum mesh size.* The mesh size of a net, net material, or any other material on the top of a scallop dredge (twine top) possessed or used by vessels fishing with scallop dredge gear shall not be smaller than 10-inch (25.4-cm) square or diamond mesh.

(3) *Minimum ring size.* (i) Prior to [6 months after the date of publication of the final rule in the FEDERAL REGISTER], the ring size used in a scallop dredge possessed or used by scallop vessels shall not be smaller than 3.5 inches (8.9 cm), unless otherwise required under the Sea Scallop Area

Access Program specified in § 648.60(a)(6).

(ii) Beginning [6 months after the date of publication of the final rule in the FEDERAL REGISTER], the ring size used in a scallop dredge possessed or used by scallop vessels shall not be smaller than 4 inches (10.2 cm).

(iii) Ring size is determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement shall not include normal welds from ring manufacturing or links. The rings to be measured will be at least five rings away from the mouth, and at least two rings away from other rigid portions of the dredge.

(4) *Chafing gear and other gear obstructions*—(i) *Chafing gear restrictions.* No chafing gear or cookies shall be used on the top of a scallop dredge.

(ii) *Link restrictions.* No more than double links between rings shall be used in or on all parts of the dredge bag, except the dredge bottom. No more than triple linking shall be used in or on the dredge bottom portion and the diamonds. Damaged links that are connected to only one ring, i.e., “hangers,” are allowed, unless they occur between two links that both couple the same two rings. Dredge rings may not be attached via links to more than four adjacent rings. Thus, dredge rings must be rigged in a configuration such that, when a series of adjacent rings are held horizontally, the neighboring rings form a pattern of horizontal rows and vertical columns. A copy of a diagram showing a schematic of a legal dredge ring pattern is available from the Regional Administrator upon request.

(iii) *Dredge or net obstructions.* No material, device, net, dredge, ring, or link configuration or design shall be used if it results in obstructing the release of scallops that would have passed through a legal sized and configured net and dredge, as described in this part, that did not have in use any such material, device, net, dredge, ring link configuration or design.

(iv) *Twine top restrictions.* In addition to the minimum twine top mesh size specified in paragraph (b)(2) of this section, vessels issued limited access scallop permits that are fishing for scallops under the DAS Program are also subject to the following restrictions:

(A) If a vessel is rigged with more than one dredge, or if a vessel is rigged with only one dredge and such dredge is greater than 8 ft (2.4 m) in width, there must be at least seven rows of non-overlapping steel rings unobstructed by

netting or any other material between the terminus of the dredge (club stick) and the net material on the top of the dredge (twine top).

(B) If a vessel is rigged with only one dredge, and such dredge is less than 8 ft (2.4 m) in width, there must be at least four rows of non-overlapping steel rings unobstructed by netting or any other material between the club stick and the twine top of the dredge. (A copy of a diagram showing a schematic of a legal dredge with twine top is available from the Regional Administrator upon request).

(c) *Crew restrictions.* Limited access vessels participating in or subject to the scallop DAS allocation program may have no more than seven people aboard, including the operator, when not docked or moored in port, unless participating in the small dredge program as specified in paragraph (e) of this section, or otherwise authorized by the Regional Administrator.

(d) *Sorting and shucking machines.* (1) Shucking machines are prohibited on all limited access vessels fishing under the scallop DAS program, or any vessel in possession of more than 400 lb (181.44 kg) of scallops, unless the vessel has not been issued a limited access scallop permit and fishes exclusively in state waters.

(2) Sorting machines are prohibited on limited access vessels fishing under the scallop DAS program.

(e) *Small dredge program restrictions.* Any vessel owner whose vessel is assigned to either the part-time or Occasional category may request, in the application for the vessel's annual permit, to be placed in one category higher. Vessel owners making such request may be placed in the appropriate higher category for the entire year, if they agree to comply with the following restrictions, in addition to and notwithstanding other restrictions of this part, when fishing under the DAS program described in § 648.53, or in possession of more than 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hl) of in-shell scallops:

(1) The vessel must fish exclusively with one dredge no more than 10.5 ft (3.2 m) in width.

(2) The vessel may not use or have more than one dredge on board.

(3) The vessel may have no more than five people, including the operator, on board.

(f) *Restrictions on use of trawl nets.* (1) A vessel issued a limited access scallop permit fishing for scallops under the scallop DAS allocation program may not fish with, possess on board, or land scallops while in possession of, trawl nets unless such vessel has on board a

valid letter of authorization or permit that endorses the vessel to fish for scallops with trawl nets.

(2) *Replacement vessels.* A vessel that is replacing a vessel authorized to use trawl nets to fish for scallops under scallop DAS may also be authorized to use trawl nets to fish for scallops under scallop DAS if it meets the following criteria:

(i) Has not fished for scallops with a scallop dredge after December 31, 1987; or

(ii) Has fished for scallops with a scallop dredge on no more than 10 trips from January 1, 1988, through December 31, 1994, has an engine horsepower no greater than 450.

#### § 648.52 Possession and landing limits.

(a) Owners or operators of vessels with a General Category scallop permit, unless exempted under the state waters exemption program described under § 648.54, are prohibited from possessing or landing per trip more than 400 lb (181.44 kg) of shucked, or 50 bu (17.62 L) of in-shell scallops. Such vessels may not land scallops on more than one trip during any single calendar day, which is defined as the 24-hour period beginning at 0001 hours and ending at 2400 hours.

(b) Owners or operators of vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, unless exempted under the state waters exemption program described under § 648.54, and owners or operators of vessels without a scallop permit, except vessels fishing for scallops exclusively in state waters, are prohibited from fishing for, possessing or landing per trip, more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops. Owners or operators of vessels specified in this paragraph (b) and not issued a scallop permit are prohibited from selling, bartering, or trading scallops harvested from Federal waters.

(c) Owners or operators of vessels with a limited access scallop permit that have declared into the Sea Scallop Area Access Program as specified in § 648.60 are prohibited from fishing for, possessing or landing per trip more than the sea scallop possession and landing limit specified in § 648.60(a)(5).

(d) Owners or operators of vessels issued limited access or General Category scallop permits fishing in or transiting the area south of 42°20' N. lat. at any time during a trip are prohibited from fishing for, possessing, or landing per trip more than 50 bu (17.62 hl) of in-shell scallops shoreward of the VMS Demarcation Line, unless fishing under

the state waters exemption as specified under § 648.54.

#### § 648.53 DAS allocations.

(a) *Assignment to DAS categories.* Subject to the vessel permit application requirements specified in § 648.4, for each fishing year, each vessel issued a limited access scallop permit shall be assigned to the DAS category (full-time, part-time, or Occasional) it was assigned to in the preceding year, except as provided under the small dredge program specified in § 648.51(e).

(b) *Open area DAS allocations.* (1) Total DAS to be used in all areas other than those specified in §§ 648.58 and 648.59 will be specified through the framework process as specified in § 648.55.

(2) One percent of total DAS will be set aside to help defray the cost of observers, as specified in paragraph (h)(i) of this section. Two percent of total DAS will be set aside to pay for scallop related research, as outlined in paragraph (h)(ii) of this section.

(3) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(3) (Full-time, Part-time, or Occasional) shall be allocated, for each fishing year, the maximum number of DAS it may participate in the limited access scallop fishery, according to its category, after deducting research and observer DAS set-asides from the total DAS allocation. A vessel whose owner/operator has declared it out of the scallop fishery, pursuant to the provisions of § 648.10, or that has used up its allocated DAS, may leave port without being assessed a DAS, as long as it does not possess or land more than 40 lb (18.14 kg) of shucked or 5 bu (176.2 L) of in-shell scallops and complies with all other requirements of this part. The annual DAS allocations for each category of vessel for the fishing years indicated, after deducting DAS for observer and research DAS set-asides, are as follows:

| DAS Category | 2004 <sup>1</sup> | 2005 |
|--------------|-------------------|------|
| Full-time    | 42                | 117  |
| Part-time    | 17                | 47   |
| Occasional   | 4                 | 10   |

<sup>1</sup> Unless additional DAS are allocated as specified in paragraph (b)(4) of this section.

(4) *Additional 2004 DAS.* Unless a final rule is published in the **Federal Register** by August 15, 2004, that implements a framework action allowing access by scallop vessels to portions of the Northeast multispecies closed areas specified in § 648.81(a), (b), and (c), the DAS allocations for the 2004 fishing year, beginning on August 15,

2004, shall increase by the following amounts:

| DAS Category | 2004 DAS Increase |
|--------------|-------------------|
| Full-time    | 20.               |
| Part-time    | 8.                |
| Occasional   | 1.                |

(c) *Sea Scallop Access Area DAS allocations.* Vessels fishing in a Sea Scallop Access Area specified in § 648.59, under the Sea Scallop Area Access Program specified in § 648.60, are allocated additional DAS to fish only within each Sea Scallop Access Area, as specified in § 648.60(a)(3).

(d) *Adjustments in annual DAS allocations.* Annual DAS allocations will be established for 2 fishing years through biennial framework adjustments as specified in § 648.55. If a biennial framework action is not undertaken by the Council and enacted by NMFS, the allocations from the most recent fishing year will continue. The Council may adjust DAS allocations through a framework action at any time, if deemed necessary.

(e) *End-of-year carry-over for open area DAS.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(j) for the entire fishing year preceding the carry-over year, limited access vessels that have unused open area DAS on the last day of February of any year may carry over a maximum of 10 DAS into the next year. DAS carried over into the next fishing year may only be used in open areas. DAS sanctioned vessels will be credited with unused DAS based on their unused DAS allocation, minus total DAS sanctioned.

(f) *Accrual of DAS.* Unless participating in the Area Access Program described in § 648.60, DAS shall accrue to the nearest minute.

(g) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented.

(h) *DAS set-asides—(1) DAS set-aside for observer coverage.* As specified in paragraph (b)(2) of this section, to help defray the cost of carrying an observer, 1 percent of the total DAS allocations will be set aside from the total DAS allocation and reallocated to vessels that are assigned to take an at-sea observer on a trip other than an Area Access Program trip. The DAS set-aside for observer coverage for the 2004 and 2005 fishing years are 117 DAS and 304 DAS,

respectively. Vessels carrying an observer will be allocated additional DAS for use in the applicable fishing year on a first-come, first-served basis. Allocation of additional DAS will be made based on the length of the trip and by using a DAS multiplier of 0.14. For example, a vessel taking a 10-DAS trip with an observer will be allocated an additional 1.4 DAS at the end of its trip. Likewise, a vessel taking a 15-DAS trip with an observer will be allocated an additional 2.1 DAS at the end of its trip. When the DAS set-aside for observer coverage has been utilized, vessel owners will be notified that no additional DAS remain available to offset the cost of carrying observers. The obligation to carry an observer will not be waived due to the absence of additional DAS allocation.

(2) *DAS set-aside for research.* As specified in paragraph (b)(2) of this section, to help support the activities of vessels participating in certain research, as specified in § 648.56; the DAS set-aside for research for the 2004 and 2005 fishing years are 233 DAS and 607 DAS, respectively. Vessels participating in approved research will be authorized to use additional DAS in the applicable fishing year. Notification of allocated additional DAS will be provided through a letter of acknowledgement, letter of authorization, or Exempted Fishing Permit issued by NMFS, as appropriate.

#### § 648.54 State waters exemption.

(a) *Limited access scallop vessel exemption.* (1) DAS requirements. Any vessel issued a limited access scallop permit is exempt from the DAS requirements specified in § 648.53(b) while fishing exclusively landward of the outer boundary of a state's waters, provided the vessel complies with paragraphs (d) through (g) of this section.

(2) *Gear and possession limit restrictions.* Any vessel issued a limited access scallop permit that is exempt from the DAS requirements of § 648.53(b) under paragraph (a) of this section is also exempt from the gear restrictions specified in § 648.51(a), (b), (e)(1) and (e)(2), and the possession restrictions specified in § 648.52(a), while fishing exclusively landward of the outer boundary of the waters of a state that has been deemed by the Regional Administrator under paragraph (c) of this section to have a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP, provided the vessel complies with paragraphs (d) through (g) of this section.

(b) *General Category scallop vessel gear and possession limit restrictions.* Any vessel issued a general scallop permit is exempt from the gear restrictions specified in § 648.51(a), (b), (e)(1) and (e)(2) while fishing exclusively landward of the outer boundary of the waters of a state that has been determined by the Regional Administrator under paragraph (b)(3) of this section to have a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP, provided the vessel complies with paragraphs (d) through (g) of this section.

(c) *State eligibility for exemption.* (1) A state may be eligible for the state waters exemption if it has a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP.

(2) The Regional Administrator shall determine which states have a scallop fishery and which of those states have a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP.

(3) Maine, New Hampshire, and Massachusetts have been determined by the Regional Administrator to have scallop fisheries and scallop conservation programs that do not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP. These states must immediately notify the Regional Administrator of any changes in their respective scallop conservation program. The Regional Administrator will review these changes and, if a determination is made that the state's conservation program jeopardizes the fishing mortality/effort reduction objectives of the Scallop FMP, or that the state no longer has a scallop fishery, the Regional Administrator shall publish a rule in the **Federal Register**, in accordance with the Administrative Procedure Act, amending this paragraph (c)(3) to eliminate the exemption for that state. The Regional Administrator may determine that other states have scallop fisheries and scallop conservation programs that do not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP. In such case, the Regional Administrator shall publish a rule in the **Federal Register**, in accordance with the Administrative Procedure Act, amending this paragraph (c)(3) to provide the exemption for such states.

(d) *Notification requirements.* Vessels fishing under the exemptions provided by paragraph(s) (a)(1) and/or (a)(2) of this section must notify the Regional

Administrator in accordance with the provisions of § 648.10(e).

(e) *Restriction on fishing in the EEZ.* A vessel fishing under a state waters exemption may not fish in the EEZ during the time in which it is fishing under the state waters exemption, as declared under the notification requirements of this section.

(f) *Duration of exemption.* An exemption expires upon a change in the vessel's name or ownership, or upon notification by the participating vessel's owner.

(g) *Applicability of other provisions of this part.* A vessel fishing under the exemptions provided by paragraphs (a) and/or (b) of this section remains subject to all other requirements of this part.

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

(a) Biennially, or upon a request from the Council, the Regional Administrator will provide the Council with information on the status of the scallop resource. Within 60 days of receipt of that information, the Council PDT shall assess the condition of the scallop resource to determine the adequacy of the management measures to achieve the stock-rebuilding objectives. Based on this information, the PDT will prepare a Stock Assessment and Fishery Evaluation (SAFE) Report that provides the information and analysis needed to evaluate potential management adjustments. Based on this information and analysis, the Council will initiate a framework adjustment to establish or revise DAS allocations, rotational area management programs, TACs, scallop possession limits, or other measures to achieve FMP objectives and limit fishing mortality. The Council's development of an area rotation program shall take into account at least the following factors: General rotation policy; boundaries and distribution of rotational closures; number of closures; minimum closure size; maximum closure extent; enforceability of rotational closed and re-opened areas; monitoring through resource surveys; and re-opening criteria.

(b) The preparation of the SAFE Report shall begin on or about June 1, 2005, for fishing year 2006, and on or about June 1 of the year preceding the fishing year in which measures will be adjusted. If the biennial framework action is not undertaken by the Council, or if a final rule resulting from a biennial framework is not published in the **Federal Register** with an effective date of March 1, in accordance with the Administrative Procedure Act, the measures from the most recent fishing

year will continue, beginning March 1 of each fishing year.

(c) In the SAFE Report, the Scallop PDT shall review and evaluate the existing management measures to determine if the measures are achieving the FMP objectives and OY from the scallop resource as a whole. In doing so, the PDT shall consider the effects of any closed areas, either temporary, indefinite, or permanent, on the ability of the FMP to achieve OY and prevent overfishing on a continuing basis, as required by National Standard 1 of the Magnuson-Stevens Act. If the existing management measures are deemed insufficient to achieve FMP objectives and/or are not expected to achieve OY and prevent overfishing on a continuing basis, the PDT shall recommend to the Council appropriate measures and alternatives that will meet FMP objectives, achieve OY, and prevent overfishing on a continuing basis. When making the status determination in the SAFE Report, the PDT shall calculate the stock biomass and fishing mortality for the entire unit stock and consider all sources of scallop mortality to compare with the minimum biomass and maximum fishing mortality thresholds.

(d) In order to assure that OY is achieved and overfishing is prevented, on a continuing basis, the PDT shall recommend management measures necessary to achieve optimum yield-per-recruit from the exploitable components of the resource (e.g., those components available for harvest in the upcoming fishing years), taking into account at least the following factors:

(1) Differential fishing mortality rates for the various spatial components of the resource;

(2) Overall yields from the portions of the scallop resource available to the fishery;

(3) Outlook for phasing in and out closed or controlled access areas under the Area Rotation Program; and

(4) Potential adverse impacts on EFH.

(e) After considering the PDT's findings and recommendations, or at any other time, if the Council determines that adjustments to, or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings. Such adjustments may include proactive measures to address protected species concerns. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management

measures must include measures to prevent overfishing of the available biomass of scallops and ensure that OY is achieved on a continuing basis, and must come from one or more of the following categories:

- (1) DAS changes.
  - (2) Shell height.
  - (3) Offloading window reinstatement.
  - (4) Effort monitoring.
  - (5) Data reporting.
  - (6) Trip limits.
  - (7) Gear restrictions.
  - (8) Permitting restrictions.
  - (9) Crew limits.
  - (10) Small mesh line.
  - (11) Onboard observers.
  - (12) Modifications to the overfishing definition.
  - (13) VMS Demarcation Line for DAS monitoring.
  - (14) DAS allocations by gear type.
  - (15) Temporary leasing of scallop DAS requiring full public hearings.
  - (16) Scallop size restrictions, except a minimum size or weight of individual scallop meats in the catch.
  - (17) Aquaculture enhancement measures and closures.
  - (18) Closed areas to increase the size of scallops caught.
  - (19) Modifications to the opening dates of closed areas.
  - (20) Size and configuration of rotation management areas.
  - (21) Controlled access seasons to minimize bycatch and maximize yield.
  - (22) Area-specific DAS or trip allocations.
  - (23) TAC specifications and seasons following re-opening.
  - (24) Limits on number of area closures.
  - (25) TAC or DAS set-asides for funding research.
  - (26) Priorities for scallop-related research that is funded by a TAC or DAS set-aside.
  - (27) Finfish TACs for controlled access areas.
  - (28) Finfish possession limits.
  - (29) Sea sampling frequency.
  - (30) Area-specific gear limits and specifications.
  - (31) Any other management measures currently included in the FMP.
- (f) The Council must select an alternative that will achieve OY and prevent overfishing on a continuing basis, and which is consistent with other applicable law. If the Council fails to act or does not recommend an approvable alternative, the Regional Administrator may select one of the alternatives developed and recommended by the PDT, which would achieve OY and prevent overfishing on a continuing basis and is consistent with applicable law, and shall



implement such alternative pursuant to the Administrative Procedure Act.

(g) The Council may make recommendations to the Regional Administrator to implement measures in accordance with the procedures described in this subpart to address gear conflict as defined under § 600.10 of this chapter. In developing such recommendation, the Council shall define gear management areas, each not to exceed 2,700 mi<sup>2</sup> (5,000 km<sup>2</sup>), and seek industry comments by referring the matter to its standing industry advisory committee for gear conflict, or to any ad hoc industry advisory committee that may be formed. The standing industry advisory committee or ad hoc committee on gear conflict shall hold public meetings seeking comments from affected fishers and develop findings and recommendations on addressing the gear conflict. After receiving the industry advisory committee findings and recommendations, or at any other time, the Council shall determine whether it is necessary to adjust or add management measures to address gear conflicts and which FMPs must be modified to address such conflicts. If the Council determines that adjustments or additional measures are necessary, it shall develop and analyze appropriate management actions for the relevant FMPs over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of the recommendation, the appropriate justification and economic and biological analyses, and opportunity to comment on them prior to and at the second or final Council meeting before submission to the Regional Administrator. The Council's recommendation on adjustments or additions to management measures for gear conflicts must come from one or more of the following categories:

- (1) Monitoring of a radio channel by fishing vessels.
- (2) Fixed gear location reporting and plotting requirements.
- (3) Standards of operation when gear conflict occurs.
- (4) Fixed gear marking and setting practices.
- (5) Gear restrictions for specific areas (including time and area closures).
- (6) VMS.
- (7) Restrictions on the maximum number of fishing vessels or amount of gear.
- (8) Special permitting conditions.

(h) The measures shall be evaluated and approved by the relevant committees with oversight authority for the affected FMPs. If there is disagreement between committees, the

Council may return the proposed framework adjustment to the standing or ad hoc gear conflict committee for further review and discussion.

(i) Unless otherwise specified, after developing a framework adjustment and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to publish the framework adjustment as a final rule. If the Council recommends that the framework adjustment should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry, consistent with the Administrative Procedure Act, in the development of the Council's recommended management measures.

(3) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(j) If the Council's recommendation includes adjustments or additions to management measures, and if, after reviewing the Council's recommendation and supporting information:

(1) The Regional Administrator approves the Council's recommended management measures, the Secretary may, for good cause found pursuant to the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the **Federal Register**. The Secretary, in doing so, shall publish only the final rule. Submission of a recommendation by the Council for a final rule does not effect the Secretary's responsibility to comply with the Administrative Procedure Act; or

(2) The Regional Administrator approves the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the **Federal Register**. After

additional public comment, if the Regional Administrator concurs with the Council recommendation, the action will be published as a final rule in the **Federal Register**; or

(3) The Regional Administrator does not concur, the Council will be notified, in writing, of the reasons for the non-concurrence.

(k) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

#### § 648.56 Scallop research

(a) Annually, the Council and NMFS shall prepare and issue a Request for Proposals (RFP) that identifies research priorities for projects to be conducted by vessels using research set-aside as specified in §§ 648.53(b)(2) and 648.60(e).

(b) Proposals submitted in response to the RFP must include the following information, as well as any other specific information required within the RFP: A project summary that includes the project goals and objectives; the relationship of the proposed research to scallop research priorities and/or management needs; project design; participants other than the applicant, funding needs, breakdown of costs, and the vessel(s) for which authorization is requested to conduct research activities.

(c) NMFS will make the final determination as to what proposals are approved and which vessels are authorized to take scallops in excess of possession limits, utilize DAS set-aside for research, or take additional trips into Access Areas. NMFS will provide authorization of such activities to specific vessels by letter of acknowledgement, letter of authorization, or Exempted Fishing Permit issued by the Regional Administrator, which must be kept on board the vessel.

(d) Upon completion of scallop research projects approved under this part, researchers must provide the Council and NMFS with a report of research findings, which must include: A detailed description of methods of data collection and analysis; a discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; and a detailed final accounting of all funds used to conduct the sea scallop research.

#### § 648.57 Sea scallop area rotation program.

(a) An area rotation program is established for the scallop fishery, which may include areas closed to

scallop fishing defined in § 648.58, and/or sea scallop access areas defined in § 648.59, subject to the Sea Scallop Area Access program requirements specified in § 648.60. Areas not defined as closed areas or access areas are open to scallop fishing as governed by the other management measures and restrictions imposed in this part. The Council's development of area rotation programs is subject to the framework adjustment process specified in § 648.55, including the Area Rotation Program factors included in § 648.55(a).

(b) [Reserved]

#### § 648.58 Rotational closed areas.

(a) *Mid-Atlantic (Elephant Trunk) Closed Area.* Through February 28, 2007, no vessel may fish for scallops in, or possess or land scallops from, the area known as the Elephant Trunk Closed Area. No vessel may possess scallops in the Elephant Trunk Closed Area, unless such vessel is only transiting the area as provided in paragraph (b) of this section. The Elephant Trunk Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

| Point | Latitude | Longitude |
|-------|----------|-----------|
| ET1   | 38°50'N. | 74°20'W.  |
| ET2   | 38°10'N. | 74°20'W.  |
| ET3   | 38°10'N. | 73°30'W.  |
| ET4   | 38°50'N. | 73°30'W.  |
| ET1   | 38°50'N. | 74°20'W.  |

(b) *Transiting.* No vessel possessing scallops may enter or be in the area(s) specified in paragraph (a) of this section unless the vessel is transiting the area and the vessel's fishing gear is unavailable for immediate use as defined in § 648.23(b), or there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use.

#### § 648.59 Sea scallop access areas.

(a) *Hudson Canyon Sea Scallop Access Area.* (1) Through February 28, 2006, vessels issued limited access scallop permits may not fish for scallops in, or possess or land scallops from, the area known as the Hudson Canyon Sea Scallop Access Area, described in paragraph (a)(2) of this section, unless the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. Limited access scallop vessels may not possess scallops in the Hudson Canyon Sea Scallop Access Area, unless such vessel is participating in, and complies with the requirement of, the

area access program described in § 648.60, or is transiting the area as provided in paragraph (b) of this section.

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

| Point  | Latitude | Longitude |
|--------|----------|-----------|
| H1     | 39°30'N. | 73°10'W.  |
| H2     | 39°30'N. | 72°30'W.  |
| H/3ET1 | 38°50'N. | 73°30'W.  |
| H4/ET2 | 38°10'N. | 74°20'W.  |
| H1     | 39°30'N. | 73°10'W.  |

(b) *Transiting.* Limited access sea scallop vessels fishing under a scallop DAS that have not declared a trip into the Sea Scallop Area Access Program may not fish for or possess scallops in the Sea Scallop Access Areas described in this section, and may not enter or be in such areas unless the vessel is transiting the area and the vessel's fishing gear is unavailable for immediate use as defined in § 648.23(b), or there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use.

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

(a) Vessels issued a limited access scallop permit may fish in the Sea Scallop Access Areas specified in § 648.59 and during seasons specified in § 648.59, when fishing under a scallop DAS, provided the vessel complies with the requirements specified in paragraphs (a)(1) through (a)(8) and (b) through (e) of this section. Unless otherwise restricted under this part, vessels issued General Category scallop permits may fish in the Sea Scallop Access Areas and during seasons specified in § 648.59, subject to the possession limit specified in § 648.52(b). If no season is specified in § 648.59, the Access Area is open from March 1 through February 28 of each fishing year.

(1) *VMS.* The vessel must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10, and paragraph (e) of this section.

(2) *Declaration.* (i) Prior to the 25th day of the month preceding the month in which fishing is to take place, the vessel must submit a monthly report through the VMS e-mail messaging system of its intention to fish in any Sea Scallop Access Area, along with the following information: Vessel name and permit number, owner and operator's

name, owner and operator's phone numbers, and number of trips anticipated for each Sea Scallop Access Area in which it intends to fish. The Regional Administrator may waive a portion of this notification period for trips into the Sea Scallop Access Areas if it is determined that there is insufficient time to provide such notification prior to an access opening. Notification of this waiver of a portion of the notification period shall be provided to the vessel through a permit holder letter issued by the Regional Administrator.

(ii) In addition to the information described in paragraph (c)(2)(i) of this section, and for the purpose of selecting vessels for observer deployment, a vessel shall provide notice to NMFS of the time, port of departure, and specific Sea Scallop Access Area to be fished, at least 5 working days prior to the beginning of any trip into the Sea Scallop Access Area.

(iii) To fish in a Sea Scallop Access Area, the vessel owner or operator shall declare a Sea Scallop Access Area trip through the VMS less than 1 hour prior to the vessel leaving port, in accordance with instructions to be provided by the Regional Administrator.

(3) *Number of trips.* Except as provided in paragraph (c) of this section, a vessel is limited to the following number of trips and DAS into each of the Sea Scallop Access Areas during seasons specified in § 648.59:

(i) *Full-time vessels.* A Full-time vessel is restricted to a total of 4 trips, equaling 48 DAS, into the Hudson Canyon Access Area.

(ii) *Part-time vessels.* A Part-time vessel is restricted to a total of 1 trip, equaling 12 DAS, into the Hudson Canyon Access Area.

(iii) *Occasional scallop vessels.* An Occasional vessel is restricted to a total of 1 trip equaling 12 DAS into the Hudson Canyon Access Area.

(iv) *One-for-one area access trip exchanges.* If the total number of trips into all Sea Scallop Access Areas combined is greater than one trip, the owner of a vessel issued a limited access scallop permit may exchange, on a one-for-one basis, unutilized trips into one access area for unutilized trips into another Sea Scallop Access Area. A vessel owner must request the exchange of trips by submitting a completed Trip Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective, but no later than May 1 of each year. Each vessel involved in an exchange is required to submit a completed Trip Exchange Form. Trip Exchange Forms will be provided by the Regional Administrator.

The transfer is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator. A vessel owner holding a Confirmation of Permit History is not eligible to exchange trips.

(4) *Area fished.* While on a Sea Scallop Access Area trip, a vessel may not fish for, possess, or land scallops from outside the specific Sea Scallop Access Area fished during that trip and must not enter or exit the specific Sea Scallop Access Area fished more than once per trip. A vessel on a Sea Scallop Access Area trip may not exit that Sea Scallop Access Area and transit to, or enter, another Sea Scallop Access Area on the same trip.

(5) *Possession and landing limits.* Unless authorized by the Regional Administrator as specified in paragraph (c) and (d) of this section, after declaring a trip into a Sea Scallop Access Area in fishing year 2004 and 2005, a vessel owner or operator may fish for, possess, and land up to 18,000 lb (9,525 kg) of scallop meats per trip. No vessel fishing in the Sea Scallop Access Area may possess shoreward of the VMS demarcation line or land, more than 50 bu (17.62 hl) of in-shell scallops.

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

(7) *Transiting.* While outside a Sea Scallop Access Area on a Sea Scallop Access Area trip, the vessel must have all fishing gear stowed and unavailable for immediate use as specified in § 648.23(b), unless there is a compelling safety reason.

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

(b) *Accrual of DAS.* For each Sea Scallop Access Area trip, except as provided in paragraph (c) of this section, a vessel on a Sea Scallop Access Area trip shall have 12 DAS deducted from its access area DAS allocation specified in paragraph (a)(3) of this section, regardless of the actual number of DAS used during the trip.

(c) *Compensation for Sea Scallop Access Area trips terminated early.* If a Sea Scallop Access Area trip is terminated before the vessel has fished up to the number of DAS automatically deducted, due to unforeseen events, emergency or safety reasons, as determined by the owner/operator of the vessel, the vessel may be authorized to fish an additional trip in the Sea Scallop

Access Area based on the conditions and requirements of paragraphs (c)(1) through (5) of this section.

(1) The vessel owner/operator has determined that the Sea Scallop Access Area trip should be terminated early due to an unforeseen event, emergency, or safety reason;

(2) The landing of the vessel for the trip must be less than the maximum possession limit specified in paragraph (a)(5) of this section.

(3) The vessel owner/operator must report the early termination of the trip prior to leaving the Sea Scallop Access Area by VMS email messaging, with the following information: Vessel name; vessel owner; vessel operator; time of trip termination; emergency or safety reason for terminating the trip; expected date and time of return to port; and amount of scallops on board in pounds.

(4) The vessel owners/operator must request that the Regional Administrator authorize an additional trip as compensation for the terminated trip by submitting a written request to the Regional Administrator within 30 days of the vessel's return to port from the early terminated trip.

(5) The Regional Administrator must authorize the vessel to take an additional trip and must specify the number of DAS for such trip and the amount of scallops the vessel may land on such trip, pursuant to the calculation specified in paragraphs (c)(5)(i) through (iii) of this section.

(i) The number of DAS a vessel may fish on an additional trip in the Sea Scallop Access Area will be calculated as the difference between the number of DAS automatically deducted for the trip as specified in paragraph (b) of this section, and the sum of the following calculation: 2 DAS, plus one DAS for each 10 percent (1,800 lb (816 kg)) increment of the overall possession limit on board. For example, a vessel that terminates a Sea Scallop Access Area trip on the 5th day of the trip with no scallops on board would be charged 2 DAS for the trip and could make an additional trip of no more than 10 DAS. Likewise, a vessel returning to port prior to the 12th DAS with 5,000 lb (2,268 kg) of scallops on board would be charged 5 DAS (2 DAS plus 3 DAS for the 3, 10 percent (1,800 lb (816 kg)) increments) and could make a resumed trip of 7 DAS. Pounds of scallops landed shall be rounded up to the nearest 1,800 lb (816 kg).

(ii) The amount of scallops that can be landed on an authorized additional Sea Scallop Access Area trip shall equal 1,500 lb (680 kg) multiplied by the number of DAS authorized for the resumed trip. In the second example

provided in paragraph (c)(5)(i) of this section, the vessel could land up to 10,500 lb (4,763 kg) of scallops.

(iii) The vessel that terminates a Sea Scallop Access Area trip and has been authorized to take an additional trip may only utilize the DAS allocated for that trip as determined under paragraph (c)(5)(i) of this section. Vessels that are authorized more than one additional trip for compensation for more than one terminated trip may combine the DAS authorized the trips into one additional trip if all terminated trips occurred in the same access area and provided the total of the combined resumed trips does not exceed the number of additional DAS deducted as specified in paragraph (c)(2) of this section.

(d) *Increase of possession limit to defray costs of observers.*—(1) *Observer set-aside limits by area.* For the 2004 and 2005 fishing years, the observer set-aside for the Hudson Canyon Access Area is 187,900 lb (85.2 mt) and 149,562 lb (67.8 mt), respectively.

(2) *Defraying the costs of observers.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (a)(5) of this section to defray costs of at-sea observers deployed on area access trips subject to the limits specified in paragraph (d)(1) of this section. Owners of limited access scallop vessels will 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 will notify owners of limited access vessels that, effective on a specified date, the possession limit will be decreased to the level specified in paragraph (a)(5) of this section. Vessel owners shall be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit.

(e) *Adjustments to possession limits and/or number of trips to defray the costs of sea scallop research*—(1) *Research set-aside limits and number of trips by area.* For the 2004 and 2005 fishing years, the research set-aside for the Hudson Canyon Access Area is 375,800 lb (170.5 mt) and 299,123 lb (135.7 mt), respectively.

(2) *Defraying the costs of sea scallop research.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (a)(5) of this section or allow additional trips into a Sea Scallop Access Area to defray costs for approved sea scallop research up to

the amount specified in paragraph (e)(1) of this section.

(f) *VMS polling.* For the duration of the Sea Scallop Area Access Program, as described under this section, all sea scallop limited access vessels equipped with a VMS unit shall be polled at least 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 for the polling.

**§ 648.61 EFH closed areas.**

Notwithstanding any other provision of this part, the following areas are closed to scallop fishing to protect EFH from adverse effects of scallop fishing:

(a) *Closed Area I EFH Closure.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Closed Area I EFH Closure. No vessel may possess scallops

in the Closed Area I EFH Closure, unless such vessel is only transiting the area as provided in paragraph (d) of this section. The Closed Area I EFH Closure consists of two sections, 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):

**SECTION 1**

| Point | Latitude | Longitude |
|-------|----------|-----------|
| CAIE1 | 41°30'N. | 69°23'W.  |
| CAIE2 | 41°30'N. | 68°35'W.  |
| CAIE3 | 41°08'N. | 69°4.2'W. |
| CAIE4 | 41°30'N. | 69°23'W.  |

**SECTION 2**

| Point | Latitude   | Longitude |
|-------|------------|-----------|
| CAIE5 | 41°04.5'N. | 69°1.2'W. |
| CAIE6 | 41°0.9'N.  | 68°30'W.  |
| CAIE7 | 40°45'N.   | 68°30'W.  |
| CAIE8 | 40°45'N.   | 68°45'W.  |
| CAIE5 | 41°04.5'N. | 69°1.2'W. |

(b) *Closed Area II EFH Closure.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Closed Area II EFH Closure. No vessel may possess scallops in the Closed Area II EFH Closure, unless such vessel is only transiting the area as provided in paragraph (d) of this section. The Closed Area II EFH Closure is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

| Point  | Latitude | Longitude   |
|--------|----------|---|
| CAIIE1 | 42°22'N. | 67°20'W. (the U.S.-Canada Maritime Boundary)      |
| CAIIE2 | 41°30'N. | 66°34.8'W. (on the U.S./Canada Maritime Boundary) |
| CAIIE3 | 41°30'N. | 67°20'W.  |
| CAIIE1 | 42°22'N. | 67°20'W. (the U.S.-Canada Maritime Boundary)      |

(c) *Nantucket Lightship Closed Area EFH Closure.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Nantucket Lightship Closed Area EFH Closure. No vessel may possess scallops in the Nantucket Lightship Closed Area EFH Closure, unless such vessel is only transiting the area as provided in paragraph (d) of this section. The Nantucket Lightship Closed Area EFH Closure is defined by straight lines connecting the following points in the

order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

| Point | Latitude | Longitude  |
|-------|----------|------------|
| NLSE1 | 40°50'N. | 70°20'W.   |
| NLSE2 | 40°50'N. | 69°29'W.   |
| NLSE3 | 40°50'N. | 69°00'W.   |
| NLSE4 | 40°3'N.  | 69°14.5'W. |
| NLSE5 | 40°N.    | 69°00'W.   |
| NLSE6 | 40°20'N. | 70°20'W.   |
| NLSE1 | 40°50'N. | 70°20'W.   |

(d) *Transiting.* No vessel possessing scallops may enter or be in the area(s) specified in paragraphs (a) through (c) of this section, unless the vessel is transiting the area(s) as allowed in § 648.81(b)(2) and (d).

[FR Doc. 04-4019 Filed 2-25-04; 8:45 am]

**BILLING CODE 3510-22-S**