

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

38. The *NPRM* invites comment as to whether, if the Commission adopts a rule attributing same-market TV JSAs, it should adopt a requirement that attributable TV JSAs must be filed with the Commission.

Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

39. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

40. The Commission invites comment on the options of leaving TV JSAs unattributable, attributing same-market TV JSAs under certain circumstances or examining TV JSAs on a case-by-case basis. The Commission tentatively concludes that it should attribute TV JSAs. The *NPRM*, however, invites comment on the various harms and benefits of TV JSAs, including whether TV JSAs may hinder the ability of smaller broadcasters and broadcasters who are not in a JSA to compete. The Commission has previously recognized the JSAs can have benefits. For example, the Commission, in the *Report and Order in MM Docket Nos. 94-150, 92-51, and 87-154* (64 FR 50622, September 17, 1999), while acknowledging concern with the possible competitive consequences of business agreements such as JSAs, noted that "some JSAs may actually help promote diversity by enabling smaller stations to stay on the air." Also, the *NPRM* refers to JSAs accompanied by non-attributable LMAs, sometimes involving a situation where a stronger station provides local news programming to a weaker station in the market as part of the agreements and allowing such stations to provide news that they were not able to provide previously. The *NPRM* invites comment on whether this is a frequent occurrence and if so, what impact it should have on the Commission's decision. The Commission also invites comment on

the impact of attribution of TV JSAs on the digital transition.

41. Finally, the *NPRM* considers whether, if TV JSAs are made attributable, the Commission should grandfather existing TV JSAs. As discussed in the *NPRM*, the *R&O* did not grandfather radio JSAs, but gave licensees two years from the effective date of the *R&O* to terminate those JSAs or otherwise come into compliance with the Commission's ownership rules. The *NPRM* invites comment on whether the same provisions should apply in the context of TV JSAs. The Commission invites comment on the effects of the alternatives and proposals in the *NPRM* on small businesses.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

42. None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 040809233-4233-01;
I.D.080304B]

RIN 0648-AR55**Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery and Northeast Multispecies Fishery; Framework 16 and Framework 39**

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 concurrently Framework 16 to the Atlantic Sea Scallop Fishery Management Plan (Scallop FMP) and Framework 39 to the Northeast Multispecies FMP (Multispecies FMP) (Joint Frameworks) developed by the New England Fishery Management Council (Council). The Joint Frameworks would establish Scallop Access Areas within Northeast (NE) multispecies Closed Area I (CAI), Closed Area II (CAII) and the Nantucket Lightship Closed Area (NLCA). The NE multispecies closed areas are currently closed year-round to all fishing that is

capable of catching NE multispecies, including scallop fishing. Measures are proposed to allow the scallop fishery to access the scallop resource within the NE multispecies closed areas, and ensure that NE multispecies catches by scallop vessels are consistent with the Multispecies FMP. The Joint Frameworks would also revise the Essential Fish Habitat (EFH) closed areas implemented under Amendment 10 to the Scallop FMP in order to make the areas consistent with the EFH closures under the Multispecies FMP, as established by Amendment 13 to the Multispecies FMP.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) by 5 p.m., local time, on September 10, 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 Joint Frameworks 16/39." Comments also may be sent via facsimile (fax) to (978) 281-9135. Comments submitted via e-mail or internet should be sent to *ScallopAR55@noaa.gov*. Comments may also be submitted electronically through the Federal e-Rulemaking portal: <http://www.regulations.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 RA at the address above and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395-7285.

Copies of the Joint Frameworks, their Regulatory Impact Review (RIR), including the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) 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.

SUPPLEMENTARY INFORMATION:**Background**

The Joint Frameworks were adopted by the Council on February 24, 2004. The Council initially submitted the Joint Frameworks and associated analyses on April 20, 2004, and a final revised submission was provided to NMFS on July 2, 2004. The Joint Frameworks were

developed to establish Scallop Access Areas within the NE multispecies closed areas (CAI, CAII, and NLCA). The regulations that govern these NE multispecies closed areas currently prohibit fishing for scallops to prevent NE multispecies mortality, as scallop gear is capable of catching NE multispecies. The Scallop Access Areas will allow controlled access to these areas in order to harvest appropriately from the large biomass of scallops in the NE multispecies closed areas.

Amendment 10, which was implemented by a final rule published June 23, 2004 (69 FR 35194) contemplated that a controlled access program for the NE multispecies closed areas would be incorporated into the area rotation program through scheduled openings of the areas. However, Amendment 10 did not include the detailed management measures, particularly with respect to NE multispecies bycatch, that were necessary to implement the access program under Amendment 10. In addition, in order to allow controlled access by scallop vessels to the NE multispecies closed areas, complementary action was necessary under the Multispecies FMP. In order to ensure that the management measures included in Amendment 13 to the Multispecies FMP (Amendment 13) and their environmental impacts were considered under the action to allow scallop fishing in the NE multispecies closed areas, the Council delayed action on the Joint Frameworks until Amendment 13 was completed by the Council. Amendment 13 was implemented through a final rule published April 27, 2004 (69 FR 22906). In doing so, the Council and NMFS ensured that the effects of allowing controlled access to the NE multispecies closed areas by the scallop fleet would be fully considered in light of the overall impacts on NE multispecies under Amendment 13 and Amendment 10.

Finally, due to inconsistency between the Multispecies FMP and the Scallop FMP with respect to closures to protect EFH, the Joint Frameworks propose to make the EFH closed areas the same in the Scallop FMP as in the Multispecies FMP.

Proposed Measures

The management measures that are applicable to the fishery within the Scallop Access Areas in CAI, CAII and NLCA are outlined in Items 1–13 below, and the remaining measures are described in Items 14–16. NMFS is publishing for public comment all of the measures adopted by the Council in the

Joint Frameworks. NMFS has particular concerns about two measures, and is seeking public comment specifically on both of them in light of these concerns, to provide additional information.

The first measure that NMFS is concerned with is described in detail in Item 10 of this preamble. The measure would require the Regional Administrator (RA) to monitor catches of Georges Bank (GB) yellowtail flounder (yellowtail) reported by both scallop and NE multispecies vessels and, on or after December 1 each year, determine whether the GB yellowtail allocation for the Scallop Access Area can be increased without resulting in total catches above the overall allocation for GB yellowtail. NMFS is concerned that it may be too early in the multispecies fishing year, which began May 1, 2004, to effectively assess the likelihood of attaining the overall GB yellowtail allocation; the NE multispecies fishery continues through April 30. In addition, it may not be possible for the scallop fishery to effectively utilize an additional yellowtail allocation before the Scallop Access Areas close to scallop fishing on February 1 each year. NMFS specifically seeks comment on this measure in order to further assess its feasibility.

The second measure that NMFS has concerns with is a provision adopted by the Council that would have no associated regulation. The Council included the measure to encourage the scallop industry to avoid areas or times of high bycatch of yellowtail and other species and take voluntarily action to reduce such bycatch through information disseminated by NMFS or the Council. Under this proposal, either NMFS or the Council would distribute existing information about seasonal distribution of yellowtail and other finfish species so that catches of such species can be avoided by scallop vessels. Furthermore, data provided by fishing vessels through VMS would be used to identify areas where finfish bycatch is high and NMFS would provide an alert to vessel captains via VMS. NMFS is concerned that the costs of enacting such a system do not outweigh the potential benefits. NMFS also notes that the Council included measures in the Joint Frameworks to prevent the yellowtail bycatch from exceeding specified levels, and these measures may offset the benefits associated with enacting a real-time alert system.

1. Scallop Access Areas

Scallop Access Areas are proposed within portions of CAI, CAII, and NLCA. While the coordinates are

specified in the proposed regulations, the areas are generally described as the central portion of CAI, the southern portion of CAII, and the eastern portion of NLCA. These Scallop Access Areas are similar to the areas where scallop fishing was allowed through the 2000 Sea Scallop Exemption Program for the period June 15, 2000—March 1, 2001. The Sea Scallop Exemption Program was implemented under Framework 13 to the Scallop FMP and Framework 34 to the Multispecies FMP (65 FR 37903, June 19, 2000). The Scallop Access Areas would not authorize scallop fishing in the EFH closed areas proposed in this rule. The proposed Scallop Access Areas would focus scallop fishing in the most productive scallop areas to maximize scallop yield while minimizing bycatch of other species and impacts on EFH.

2. Rotation of Access Areas

Two of the three Scallop Access Areas would be open for access each fishing year. CAII and NLCA would be opened for the rest of the 2004 fishing year, followed by CAI and CAII in the 2005 fishing year, and CAI and NLCA in the 2006 fishing year. This cycle would repeat beginning in the 2007 fishing year, unless modified by the Council through framework action or an amendment to the Scallop FMP. The rotational order is based on the expected concentrations of scallops within each area, so that each area is accessed when scallop concentrations are projected to maximize yield.

3. Number of Trips, DAS Charges, and Scallop Possession Limits

The total DAS allocated for scallop Access Area fishing, the number of access trips into each area, the DAS charge per trip, and the scallop possession limit are specified for each Scallop Access Area. These measures would be established for vessels issued limited access scallop permits according to permit category: Full-time, Part-time, and Occasional. Vessels in each permit category would be allocated a specific number of DAS for use in Scallop Access Areas, with a specified number of DAS charged for each area trip, regardless of actual trip length. In addition, the Joint Frameworks specify the maximum number of trips that can be made into any one access area, by vessel permit category. The Joint Frameworks also allocate a possession limit for trips into each access area.

The following tables provides the trip, DAS charges, and possession limits, by permit category and by year, through 2006. The Hudson Canyon (HC) Access Area trip allocations, DAS charges, and

possession limits are included in the table as part of the complete area rotation program as implemented under Amendment 10 and proposed in this

action. Part-time and Occasional scallop vessels have separate allocations for the HC Access Area in the 2004 fishing year because the possession limit and DAS

charges are different between the Closed Area Access Areas and the HC Access Area.

TABLE 1.—TOTAL NUMBER OF ACCESS AREA TRIPS AND DAS CHARGE PER TRIP

| Fishing year | Access area | Maximum trips per area and per vessel | Total number of trips; and DAS charge per trip | | |
|--------------|---------------------------|---------------------------------------|------------------------------------------------|-------------------------|-----------------|
| | | | Full-time | Part-time | Occasional |
| 2004 | Closed Area II | 2 | 7 trips; 12 DAS | 2 trips; 11.2 DAS | 1 trip; 7 DAS. |
| | Nantucket Lightship | 1 | ..... | 1 trip; 12 DAS | 1 trip; 12 DAS. |
| | Hudson Canyon | 4 | ..... | 2 trips; 12 DAS | 1 trip; 5 DAS. |
| 2005 | Closed Area I | 1 | 5 trips; 12 DAS ..... | ..... | ..... |
| | Closed Area II | 1 | ..... | ..... | ..... |
| 2006 | Hudson Canyon | 3 | ..... | ..... | ..... |
| | Closed Area I | 1 | 2 trips; 12 DAS | 1 trip; 9.6 DAS | 1 trip; 2 DAS. |
| | Nantucket Lightship | 1 | ..... | ..... | ..... |

An example, using a Part-time vessel, illustrates the flexibility provided by the allocation of trips and DAS. In the 2004 fishing year, a Part-time vessel would be allocated a total of 22.4 DAS and two trips. The trips could be taken in either CAII or NLCA, though only one trip

could be taken in NLCA. The vessel owner may choose to take one trip in the NLCA and one trip in CAII. Alternatively, the vessel owner may choose to take both trips in CAII, because CAII has two trips allocated in the 2004 fishing year; if the vessel

owner chooses to take two trips into the CAII Access Area, the vessel would not be eligible to fish any trips in NLCA, because it would have fully utilized its allocation of two trips.

TABLE 2.—POSSESSION LIMITS BY AREA, FISHING YEAR, AND PERMIT CATEGORY

| Fishing year | Access area | Possession limit | | |
|--------------|----------------------|----------------------------|----------------------------|-----------------------|
| | | Full-time | Part-time | Occasional |
| 2004 | Closed Area II | 18,000 lb (9,525 kg) | 16,800 lb (7,620 kg) | 10,500 lb (4,763 kg). |
| | Nantucket Lightship. | ..... | 18,000 lb (9,525 kg) | 18,000 lb (9,525 kg). |
| 2005 | Hudson Canyon ..... | ..... | 16,800 lb (7,620 kg) | 7,500 lb (3,402 kg). |
| | Closed Area I | 18,000 lb (9,525 kg) ..... | ..... | ..... |
| 2006 | Closed Area II. | ..... | 14,400lb (6,532 kg) | 3,000 lb (1,361 kg). |
| | Hudson Canyon. | ..... | ..... | ..... |
| | Closed Area I | 18,000 lb (9,525 kg) ..... | ..... | ..... |
| | Nantucket Lightship. | ..... | ..... | ..... |

4. Scallop Total Allowed Catch (TAC)

The management measures within the Scallop Access Areas are established to attain a target TAC of scallops as specified in the area rotation program established in the Scallop FMP by Amendment 10. These TACs would be used to monitor fishing activity and determine whether to adjust fishing effort levels for future years. These TACs are also used to calculate TAC set-asides for research, observer coverage, and general category vessels. These TAC set-asides would be established as absolute limits on the amount of scallops harvested during a specific activity, and that activity would cease when the set-aside TAC was attained. The overall target TACs for the scallop fishery would be: (1) 8,395,203 lb (3,808 mt) for CAII and 7,718,384 lb (3,501 mt) for NLCA in the 2004 fishing year; (2) 3,243,000 lb (1,471 mt) for CAI and 7,698,542 lb (3,492 mt) for CAII in the 2005 fishing year; and (3) 2,824,122 lb

(1,281 mt) for CAI and 6,796,852 lb (3,083 mt) for NLCA in the 2006 fishing year.

5. One-for-One Trip Exchanges

The Joint Frameworks would allow limited access vessels to exchange access area trips with other vessels. This provision was approved as part of Amendment 10, but was not available to be used by vessels because an exchange can only be made when more than one access area has been established (Amendment 10 established one access area, the HC Access Area). Vessels would be allowed to enter into agreements to exchange trips for 3 months following implementation of the Joint Framework. After the three month period, vessel owners would not be allowed to negotiate exchanges of trips. Vessel owners would be allowed to use trips authorized under the trip exchange program for the remainder of the fishing year. Because trip allocations, DAS

charges, and possession limits would differ between scallop permit categories, vessels must exchange only with vessels issued permits in the same scallop permit category. Since Occasional vessels would be allocated only one trip, they would not be eligible to exchange trips.

6. General Category Access Provisions

Vessels issued open-access general category scallop permits would be allowed to fish within the Scallop Access Areas subject to the restrictions specified below. This provision is intended to provide vessels in the general category fleet with more flexibility in fishing opportunities by allowing access to productive scallop areas within the NE multispecies closed areas. Additional management restrictions have been proposed by the

Council in order to ensure accurate accounting of catch, and to ensure that general category fishing effort does not cause bycatch or excessive effort and mortality on scallops. The Joint Frameworks would amend the Multispecies FMP to allow general category vessels to fish within the NE multispecies closed areas, where such fishing is currently prohibited. General category vessels would be subject to the following restrictions:

a. A possession limit of 400 lb (181.4 kg) of shucked or 50 U.S. bushel (17.6 hl) of in-shell scallops per trip.

b. A set-aside TAC for general category vessels, equal to 2 percent of the overall scallop TAC for each Scallop Access Area, requiring general category vessels to stop fishing in the specific scallop Access Area once the set-aside TAC is reached. The general category set-aside TACs for 2004, 2005, and 2006, are as follows: (1) 2004; 167,904 lb (76 mt) in CAII and 154,368 lb (70 mt) in NLCA; (2) 2005; 64,860 lb in CAI and 153,971 lb (70 mt) in CAII; and (3) 2006; 56,482 lb in CAI and 135,937 lb (62 mt) in NLCA.

c. A requirement to install and use a NMFS-certified Vessel Monitoring System (VMS) in order to notify NMFS when a vessel plans to fish in a Scallop Access Area.

d. A prohibition on retaining or landing NE multispecies with a

requirement to report all catch of yellowtail caught, including discards, so it can be counted against the yellowtail TAC for the scallop fishery.

e. A requirement to carry at-sea observers when requested.

f. VMS reporting of scallop and yellowtail catch to monitor fishery activity and bycatch. (These requirements are also required of limited access scallop vessels).

g. A requirement that Scallop dredge gear used within a Scallop Access Area be constructed with rings with a minimum diameter of 4 inches (10.2 cm) (Amendment 10 imposed this requirement for General category vessels fishing in open areas, but delayed the requirement until December 23, 2004).

7. Gear Restrictions for Limited Access Vessels

Limited access scallop vessels fishing within the Scallop Access Areas in CAI, CAII, and NLCA would be required to use scallop dredge gear only. The minimum diameter for rings used in the scallop dredge is proposed to be 4 inches (10.2 cm). Amendment 10 imposed the minimum ring size requirement for Limited Access vessels fishing in the HC Access Area, but delayed the requirement in the open areas until December 23, 2004. The requirement to use scallop dredge gear only is intended to maximize scallop

catch selectivity and to minimize bycatch. The minimum dredge ring size is intended to reduce the catch of small scallops.

8. Scallop Access Area Season

The CAI, CAII, and NLCA Scallop Access Areas would be open to scallop fishing from June 15 through January 31 each year. The season is intended to reduce scallop fishing effort in the areas during peak spawning periods for some NE multispecies species, when NE multispecies concentrations are expected to occur.

9. Yellowtail Catch Limits

The Scallop Access Area program would be subject to a TAC for yellowtail set at 10 percent of the total TAC established in Amendment 13 to the Multispecies FMP for each yellowtail stock. Two percent of this scallop fishery yellowtail bycatch TAC (*i.e.*, 2 percent of the 10 percent bycatch TAC, or 0.2 percent of the overall yellowtail TAC) would be set aside for vessels to harvest during approved research, as described below. The TAC governing the Scallop Access Area fishery would, therefore, be equal to 9.8 percent of the overall yellowtail TAC for each stock. The following table specifies the yellowtail bycatch TAC and yellowtail research TAC set-aside.

| Yellowtail stock | Controlled access area | Fishing year | Access area bycatch TAC (10 percent of total TAC) | Controlled access fishery TAC (9.8 percent of total TAC) | Research TAC |
|-----------------------|--------------------------------------------|--------------|------------------------------------------------------|----------------------------------------------------------------|-------------------------|
| Southern New England. | Nantucket Lightship | 2004 | 154,764 lb (70.7 mt) | 152,780 lb (69.3 mt) | 3,086 lb. (1.4 mt). |
| | | 2005 | 436,956 lb (198.2 mt) | 428,138 lb (194.2 mt) | 8,818 lb. (4.0 mt). |
| | | 2006 | 733,037 lb (332.5 mt) | 718,266 lb (325.9 mt) | 14,771 lb. (6.7 mt). |
| GB | Closed Area I and Closed Area II combined. | 2004 | 1,322,774 lb (600 mt) | 1,296,318 lb (588 mt) | 26,455 lb. (12 mt). |
| | | 2005 | (1) | (1) | (1) |
| | | 2006 | (1) | (1) | (1) |

¹ To be updated annually according to the specifications procedure associated with the U.S./Canada Resource Sharing Understanding under the NE multispecies regulations.

Scallop vessels fishing in the Scallop Access Areas would be required to report all yellowtail catches (all catch, including discards) and all catch would be counted toward the TAC. When the yellowtail TAC established for a Scallop Access Area is attained, the scallop fishery in the affected access area would close and any remaining access area trips would be redirected into open areas, as explained in Item 10 below.

The Multispecies FMP established a TAC for yellowtail under the U.S./Canada Resource Sharing Understanding in the Eastern U.S./

Canada Area, and the NE multispecies fishery within the area closes when the TAC is fully attained. If the U.S./Canada yellowtail TAC is fully attained, scallop trips within the Scallop Access Areas in the Eastern U.S./Canada Area (CAI and CAII) would be allowed to continue, though retention of yellowtail would be prohibited, until the yellowtail catches by scallop vessels fully attain the scallop fishery's yellowtail set-aside. At that time, the scallop fishery in the Scallop Access Areas would be closed and any remaining access area trips

would be redirected into open areas, as explained in Item 10 below.

As noted above, NMFS has concerns about the feasibility of implementing the measure requiring NMFS to monitor the landings of scallops and yellowtail through vessel VMS reports, dealer reports, and at-sea observer reports and, to take appropriate action based on projections of whether the yellowtail harvest will be achieved. Specifically, the measure states that if, on December 1 each year, the catch of yellowtail by scallop vessels fishing in the Scallop Access Area is below the yellowtail

TAC set for the GB yellowtail stock, and if the overall GB yellowtail TAC is not projected to be harvested, then the RA could enact measures to increase the Scallop Access Area yellowtail TAC allocated to scallop vessels fishing in the Scallop Access Area. The Joint Frameworks specify that the yellowtail TAC would be increased only if such increase would not be expected to cause the yellowtail TAC under the Multispecies FMP to be exceeded.

NMFS seeks public comment concerning the feasibility of implementing this measure, particularly regarding the likelihood that NMFS could assure that the increase in the yellowtail TAC in the Scallop Access Area would not result in the overall yellowtail TAC being exceeded.

The Joint Frameworks would establish a set-aside of 2 percent of the yellowtail TAC allocated for the Scallop Access Area for the harvest of yellowtail during research approved under the existing scallop research TAC set-aside program. If research fishing that would

be conducted within the Scallop Access Areas is approved, a small amount of yellowtail would be allocated for catch by the vessels involved in the research activity. This is intended to enable researchers to conduct their activities, even if the overall yellowtail TAC has been attained. Without this research set-aside, scallop research approved as part of the scallop TAC set-aside program would be prohibited if the Scallop Access Area were closed due to attainment of the yellowtail TAC.

10. Trip Re-Allocation if Scallop Access Area Is Closed

The Scallop Access Areas could close before limited access scallop vessels have taken all of their NE multispecies closed area access trips if the yellowtail TAC is fully attained. The Joint Frameworks propose that if the yellowtail TAC allocated to the scallop Area Access fishery is harvested, limited access scallop vessels would be allowed to take unused NE multispecies closed area access trips in open areas,

up to the lesser of the following: (1) The difference in the number of equivalent DAS allocated for the affected Access Area and the number of DAS charged to a vessel for trips taken into the affected Access Area; or (2) the difference between open area DAS allocations specified in this rule with access and the 2004 default DAS allocation or open area DAS allocations prior to implementation of the Joint Frameworks (*i.e.*, DAS allocations without access to the NE multispecies closed areas as specified in Amendment 10). A maximum number of DAS would only be available to a vessel if it had taken no trips in the Access Area prior to closure. If a vessel took any trips, the maximum number of DAS to be used in open areas would be deducted by the number of DAS charged for each trip in the Access Area. The following table summarizes the maximum number of DAS that a vessel may fish in open areas if the Access Area closes prior to completion of all trips.

| | Permit category | 2004 | 2005 | 2006 |
|---------------------------------------------------------------------------|------------------|------|------|------|
| Open Area DAS prior to the Joint Frameworks | Full-time | 162 | 117 | 152 |
| | Part-time | 125 | 47 | 61 |
| | Occasional | 15 | 10 | 13 |
| Open Area DAS under the Joint Frameworks | Full-Time | 42 | 40 | 67 |
| | Part-time | 17 | 16 | 27 |
| | Occasional | 4 | 3 | 6 |
| Difference in DAS allocations | Full-time | 20 | 77 | 85 |
| | Part-time | 8 | 31 | 34 |
| | Occasional | 1 | 7 | 7 |
| Maximum number of DAS to be used in Open Areas after Access Area Closure. | Full-time | 20 | 24 | 24 |
| | Part-time | 8 | 24 | 9.6 |
| | Occasional | 1 | 5 | 2 |

¹ DAS to be implemented on September 15, 2004, if a final rule for the Joint Frameworks is not published by that date.

For example, a Full-time scallop vessel with two unused trips into the CAII Scallop Access Area in the 2004 fishing year when the Access Area was closed could fish an additional 20 DAS in open areas. A Full-time scallop vessel with one remaining trip into the CAII Scallop Access Area in the 2004 fishing year when the Access Area was closed could fish an additional 12 DAS in open areas. This provision is intended to allow scallop vessels to reasonably utilize their DAS and trip allocations, even if the Scallop Access Areas close due to harvest of the yellowtail TAC.

11. Finfish Possession Limits

Limited access scallop vessels fishing in a Scallop Access Area would be restricted to a possession limit of 1,000 lb (453.6 kg) of all NE multispecies combined, including 100 lb (45.4 kg) of cod which could be retained for personal use only. No cod could be sold from a scallop vessel participating in the

Access Area program and all cod possessed on board must be whole and gutted for ease of enforcement. Limited Access scallop vessels would be restricted to existing possession limits for haddock, monkfish, and yellowtail. As explained above, yellowtail is further managed through the establishment of Scallop Access Area TACs, and possession of yellowtail would be prohibited when those TACs are attained.

12. At-Sea Observer Coverage

One percent of the scallop target TAC would be set aside and available to help defray the cost of at-sea observers deployed on scallop vessels. Observers would collect information on catch and discards of scallops and other species including incidental catch of other finfish and sea turtles. Observer reports would provide more accurate estimates of yellowtail bycatch for use in monitoring the TAC for yellowtail, for

estimation of bycatch of other finfish and sea turtles. Vessels would be allowed to catch extra scallops under the TAC set-aside, to help pay for the cost of carrying an observer on the vessel. This measure mirrors the observer set-aside established in Amendment 10, and is part of the Council's standardized bycatch reporting methodology.

The amount of observer coverage resulting from the 1-percent TAC set-aside, combined with NMFS-funded observer coverage, to cover at least 5 percent of the trips, is estimated to provide observer coverage for approximately 9, 5, and 12 percent of trips allocated in CAI, CAII, and the NLCA, respectively. The Council estimated that this amount of observer coverage would reduce variability in bycatch estimates for yellowtail, other finfish, and sea turtles, in order to provide more accurate and statistically sound bycatch estimates than would

otherwise be achieved without the additional coverage.

13. Expanded Reporting Requirements

All scallop vessels fishing in the Scallop Access Areas would be required to report their catches of scallops and yellowtail using VMS. Yellowtail reporting is critical to ensure accurate monitoring of the yellowtail TACs. The reports would be submitted via VMS on a daily basis.

14. Modified EFH Closure Areas

Amendment 10 established some areas within the NE multispecies closed areas as EFH closed areas in order to specifically protect EFH from adverse effects of scallop fishing. This action proposes to modify those areas to make them identical to those implemented under Amendment 13. These areas, some of which would extend beyond the boundaries of the NE multispecies closed areas, are intended to more effectively protect EFH by establishing consistent area closures under the Scallop and Multispecies FMPs.

15. DAS Allocation Changes

Amendment 10 established a default measure to increase the DAS allocated to limited access scallop vessels fishing in open areas, to take effect September 15, 2004. The measure specifies that the publication of a final rule enacting the Scallop Access Area program would prevent the default allocation from going into effect. Because the Council was concerned that final regulations might not be published by September 15, 2004, even if the Joint Frameworks are approved, the Joint Frameworks include a contingency measure that specifies that, if the default scallop DAS allocations go into effect, vessels that use any of those DAS could not fish in any Scallop Access Area until March 1, 2005. Vessels' owners who do not use any of the additional DAS allocated under the default would be eligible to fish in the Scallop Access Areas, if and when they are established.

16. Corrections and Clarifications

This proposed rule includes corrections and clarifications to the scallop regulations, and a new prohibition on the sale of fish from Federally permitted vessels to dealers that have not been issued Federal dealer permits. It has come to NMFS's attention that some Federally permitted vessel crews may be selling scallops to dealers that have not been issued Federal dealer permits. This circumvents the Federal dealer permit and reporting requirement that is necessary for adequate administration

and enforcement of the management program. The prohibition is proposed for both the Scallop and Multispecies FMPs.

Classification

At this time, NMFS has not determined that the action 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.

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 the Joint Frameworks would impact vessels issued limited access and general category sea scallop vessel permits. 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 (the most recent complete fishing year landings information available). 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. According to permit data from the 2003 fishing year, there were 278 Full-time permits, 33 Part-time permits, and 10 Occasional permits. In addition, there were 2,257 vessels issued permits to fish in the General category in 2003. 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. All of the vessels permitted to harvest sea scallops are considered to be small entities. The profitability criterion applies if the regulation significantly reduces profit for a substantial number of small entities, and is discussed in the Economic Impacts of the Proposed Action section of the IRFA summary in preamble of this proposed rule.

Proposed Reporting, Recordkeeping, and Other Compliance Requirements

The Joint Frameworks propose new reporting, recordkeeping, and compliance requirements only upon general category scallop vessels. The new requirements proposed in this proposed rule are the following: (1) Installation of VMS units; (2) documentation of VMS unit installation; (3) notification through VMS of intent to fish in the NE multispecies closed area access areas; (4) notification via VMS of NE multispecies closed area access area trip specifics; (5) notification via VMS on the day the vessel departs for a NE multispecies closed area access area trip; (6) daily reporting of scallop and yellowtail catch; and (7) polling of the VMS units for general category vessels twice every hour. The total cost of compliance is relatively high because the cost of purchasing, installing, and operating the VMS unit is approximately \$2,700 per vessel. Spread across the general category fleet, costs associated with VMS notifications and catch reporting are relatively low, at about \$90 per vessel per year (based on the cost of a VMS message, equal to \$0.79 per VMS message). Although these requirements will increase compliance costs for general category vessels, and will impose a high initial cost for purchasing the VMS unit and installation, without such requirements, the Council proposed no alternative that would allow access without the use of VMS. A vessel's ability to offset the cost of the VMS unit, its installation, and operation would dictate the number of vessels that are subject to the new compliance costs. Nevertheless, the proposed access fishery for general category vessels expands those vessels' flexibility and opportunity to fish in different areas.

Economic Impacts of the Proposed Action

The IRFA considers the economic impacts of the proposed management measures in aggregate, evaluating the effects of all of the proposed measures together. The IRFA also considers and compares the economic effects of each proposed management measure and its alternatives, distinct from other alternatives. All economic impacts were analyzed relative to no action, defined as the continuation of the scallop fishery without access to the NE multispecies closed areas, and subject to higher open area DAS allocations.

Summary of Aggregate Economic Impacts Compared to No Action

The combined economic impacts of the proposed action (including the suite of measures proposed by the Council in the Joint Frameworks) are positive for the majority of small business entities in the scallop fishing industry. The economic analyses demonstrated, however, that from 2004 through 2007, the proposed action would produce slightly lower revenues per year, on average, compared to the no action alternative. Revenues under the proposed action are expected to be approximately \$60,000 less for the entire scallop fleet than the no action alternative. This is because, under no action, open area DAS would be higher in open areas for 2004 through 2007 without access to the NE multispecies closed areas. Open area landings are not restricted by a possession limit, and total scallop landings would be higher than if vessels were restricted by the possession limits and TACs under the proposed Scallop Area Access program. The price of scallops would decline, offsetting the increase in landings compared to the proposed action. Access to the NE multispecies closed areas would have positive impacts, however, on producer benefits and gross profits of the scallop fishery compared to no action. Because of the expected higher scallop abundance in the NE multispecies closed areas, which should result in higher landings per unit effort (LPUE), the operating expenses per pound of scallops are expected to decline by almost 30 percent with access, and gross profits, calculated as gross revenues net of operating costs and crew shares, are estimated to increase by 18 percent. The long-term economic impacts of allowing access to the NE multispecies closed areas are expected to be positive, as well, compared to no action, increasing revenues and profits by nearly 2 percent and 23 percent, respectively, on average

per year. Without access, initial higher landings are expected to eventually have negative impacts on scallop biomass, LPUE, and landings in future years, resulting in overall revenues and total benefits of \$3.1 million and \$47.2 million, respectively, less than the proposed action.

Summary of Economic Impacts of Individual Proposed Measures

(1) *Access area boundaries*—The Joint Frameworks considered four NE multispecies closed area access boundary alternatives. The economic impacts of the proposed and alternative Scallop Access Area boundaries are the same as those described in the aggregate impacts above because the analysis presumes that area boundaries are dependant on an overall access program. The proposed areas for the NE multispecies closed area scallop access program would have positive overall economic impacts on scallop vessels compared to the no action alternative, although short-term revenues would be slightly lower than under the no action alternative. The third Scallop Access Area alternative (non-selected), which would restrict the amount of area opened for access, resulted in the most negative impact, with a loss of \$71,000 per year for the scallop fleet combined, on average, compared to the no action alternative.

(2) *EFH closed areas*—The Joint Frameworks considered three EFH closed area alternatives. The proposed EFH closed areas are consistent with the proposed Scallop Access Area boundary alternative and therefore have similar economic impacts. The boundaries of the EFH closures affect the scallop fishery similar to the proposed access boundaries and are not discussed separately. The economic impacts of the proposed EFH closed areas are similar among alternatives, with the exception of EFH closed area Alternative 3, which has the lowest economic benefit of all EFH closed area alternatives, because the area proposed for scallop access is constrained by the EFH closure boundaries, reducing the available scallop resource.

(3) *Gear restrictions*—In addition to the proposed measure, the Joint Frameworks considered allowing trawl gear to be used by scallop vessels in the NE multispecies closed areas (the no action alternative). Prohibiting trawls from accessing NE multispecies areas is expected to have negative economic impacts on scallop trawl vessels, but have positive impacts on the scallop fishing industry overall and the dredge gear sector. These impacts occur because fishing for scallops with trawl

gear may result in larger catch of yellowtail and necessitate the closure of the Scallop Access Areas to scallop fishing if the finfish TACs are exceeded. Such a premature closure would reduce the net economic benefits for the majority of the scallop vessels.

However, many scallop trawl vessels fish primarily in the Mid-Atlantic areas and do not fish in the GB areas. Only eight of the active trawl vessels in 1999 through 2002 fished in the GB areas and those that fished in the previous NE multispecies closed area access program in 1999 and 2000 used dredge gear. Therefore, the negative impacts of this gear requirement would be minimized if trawl vessels could use dredge gear, or trade their closed area access trips for HC or other Access Area trips, where vessels are allowed to use scallop trawls. Also, Amendment 10 provisions provide flexibility to Part-time and Occasional vessels fishing in the controlled access areas, and allows them to choose which Access Area to fish, up to the maximum number of trips allocated to each vessel. Therefore, Part-time and Occasional vessels may be able to use some or all of the closed area access trips in the Mid-Atlantic areas without the necessity to change gear.

(4) *Yellowtail TACs and procedures to help avoid bycatch*—Four measures were considered, three of which were proposed in the Joint Frameworks. The main difference between the proposed measures and the non-selected alternative is that, under the non-selected alternative, scallop vessels would not be allowed to redirect closed area access trips into open areas if the yellowtail TAC is harvested. The economic analysis is qualitative because it is not possible to determine when the yellowtail TAC could be harvested, thus closing the NE multispecies closed area access program. If the yellowtail TACs are exceeded before all scallop vessels have taken all of their eligible trips (meaning that target TAC would not be harvested), the landings of scallops, revenues and economic benefits would reduce the economic benefits from the access compared to the no action alternative. Without a measure to ensure that yellowtail catches do not exceed the yellowtail TACs and comply with the U.S./Canada Resource Sharing Understanding, however, it would not have been possible to provide access for scallop fishing to the NE multispecies closed areas. Therefore, the majority of the scallop vessels are expected to benefit from this measure, due to the opportunity provided to fish in those areas. In addition, the proposed action would allow transfer of unused closed

area access trips to open areas under DAS in case of an early closure of the closed area access program. This measure could alleviate the negative impacts from hard TACs, reduce derby-style fishing, and may prevent a reduction in vessel revenues in the short-term, if access areas are closed early. Furthermore, the rotation schedule proposed by Framework 16 would allocate fewer trips to the Nantucket Lightship access area in 2004, and thus would be less likely to result in closure of the NE multispecies closed areas. The provision to increase the yellowtail TAC if a specified limit is not harvested by December 1 of each year is expected to also have positive impacts on vessels by potentially allowing fishing operations to continue to higher levels of yellowtail catch. The proposed yellowtail catch set-aside could have indirect benefits on scallop vessels due to potential improvements in management through research. Any voluntary actions by the scallop industry to direct fishing activity away from areas of high bycatch, through information gathered by the industry or disseminated by NMFS, would prolong the scallop fishery in the closed areas and increase potential benefits.

(5) *Finfish possession limits*—Because the proposed action would increase the possession limit of Northeast multispecies from 300 lb (136 kg) to 1,000 lb (453.6 kg), it would have positive economic impacts on the scallop vessels fishing in the NE multispecies closed areas. Retaining a possession limit for yellowtail, even at an increased level, may provide additional incentive to avoid yellowtail, reducing the risk of reaching yellowtail TACs before the scallop closed area access program fishery is completed. Therefore, these measures would have indirect economic benefits for the vessels in the scallop fishery. The proposed possession limit of 100 lb (45.4 kg) of cod per trip for personal use may also have some positive economic impacts, compared to a zero possession limit, by allowing the retention of catch that could be used to offset some food costs on fishing trips.

(6) *Closed area access program seasons*—The proposed closed area access season (June 15 through January 31) is expected to have positive impacts on scallop vessels compared to the no action alternative. The proposed season would prevent scallop fishing during months when many species of NE multispecies are at peak spawning activity, and as a result, it would ensure that access to the GB multispecies areas is consistent with conservation goals of the NE Multispecies FMP. By allowing

simultaneous access to these areas, it would provide more flexibility to fishermen to maximize their landings and revenues from the closed areas. The proposed season would have negative economic impacts compared to the alternative of a year-round fishery. However, year-round access may increase the likelihood of the scallop fishery catching the proposed yellowtail TAC quicker, thus reducing benefits of the higher valued scallop resource in the closed areas, and more efficient fishing operations.

(7) *At-sea observers, TAC set-asides, and fishery monitoring*—The Joint Frameworks propose to continue with the existing sampling frequency that can be funded with a 1-percent TAC set-aside (status quo). The scallop industry may benefit from improved management that could result from more accurate fishery information. The TAC set-asides would reduce a small portion of the scallop revenue available to the scallop vessels by removing a portion of the TAC from the overall TAC. The funds generated from the set-aside landings would also reduce the compliance costs for vessels by providing compensation for observer coverage.

(8) *VMS reporting requirements*—The requirement to have a VMS onboard for all scallop vessels that fish in the closed area access program would increase the costs of fishing for occasional vessels and vessels with the general category permits. Currently, all full and part-time vessels are required to have a VMS onboard, thus they would not be impacted by this proposed measure. However, for occasional vessels, the revenues from the controlled access trips would exceed the VMS costs. Further, Occasional scallop vessels have been subject to the VMS requirement in Access Areas since 1999. The impacts of these requirements on the general category vessels are examined separately. Even though VMS and other reporting requirements would increase the fishing costs by about \$3,500 for some Occasional vessels, the economic benefits are expected to be equal to approximately \$41,000 in 2004 and \$29,000 in 2005, per vessel, from only the access areas. The reporting requirements would also have indirect economic benefits for the scallop fishery through improved management of the scallop resource and area expected to outweigh the compliance costs.

(9) *Closed area rotation schedule*—The proposed rotation strategy minimizes the risk of high yellowtail bycatch in the NLCA and would, therefore, reduce the likelihood of scallop revenue loss and reduce the total net benefits from closure of access

areas before the scallop closed area access program is complete. As a result, the mechanical rotation strategy proposed by the Joint Frameworks would have positive economic benefits on scallop vessels.

(10) *Trip and DAS allocations*—There are no changes to the possession limits and DAS trade-offs in the Joint Frameworks from those included in Amendment 10 for Full-time vessels. Therefore, the economic impacts of area-specific DAS and trip allocations are within the range of impacts analyzed in Amendment 10. The Joint Frameworks propose to change the possession trips for the Part-time and Occasional vessels, however, in order to correct the inequities in access area trip allocations. Specifically, the allocations for the Part-time and Occasional vessels would be proportional to the Full-time allocations, similar to the DAS allocations prior to Amendment 10. Overall impacts of this adjustment during the 2004–2007 period would be positive for Part-time vessels, but negative for Occasional vessels. Potential landings would be reduced by 1,200 lb (544 kg) per trip for Part-time vessels and 7,500 lb (3,402 kg) per trip for Occasional vessels in 2004, compared to allowing a 18,000-lb (8,165 kg) possession limit. Similar reductions are proposed for 2005, but in 2006, Occasional vessels would be allowed possession limit of only 3,000 lb (1,361 kg) for one trip. Potential revenue losses for Occasional vessels is expected to be approximately \$57,000 per year, compared to allowing a possession limit of 18,000 lb (8,165 kg). Although many Occasional scallop vessels have not fished in the controlled Access Areas in the past, vessels are allocated trips that can only be taken in Access Areas, making the possession limit restrictive. However, NMFS cannot determine whether or not these access trips would be more profitable than open area trips under more restrictive DAS limitations.

The Joint Frameworks also propose a change in the DAS and trip exchange option in order to prevent administrative complications that could arise if trips with unequal possession limits were exchanged. Under this alternative, Full-time vessels would trade only with another Full-time vessel, and the trades between Part-time and Occasional vessels would be similarly restricted. Although this measure is necessary to avoid management complications from unequal exchanges, it would also reduce the number of opportunities for trading trips. It would be especially difficult for Part-time and Occasional vessels because the vessels in the Part-time and

Occasional category have the flexibility to use their controlled access trips in any Access Area up to the maximum number of trips allocated to each vessel. This flexibility may reduce the need to exchange DAS allocations and mitigate some of the negative impacts resulting from a restrictive trade.

(11) *General category access to closed areas*—Allowing access to the closed areas by general category vessel would have positive impacts on the revenues of these vessels. Profitability of access area trips will depend, however, on net revenues (i.e., revenues net of operating costs, crew shares, and VMS costs). The requirement to carry a VMS onboard would impose additional compliance costs for these vessels, which are estimated to be approximately \$3,500 for the most expensive VMS unit, including the monthly message costs. With a possession limit of 400 lb (181.4 kg) per trip, general category vessels would likely have to take at least six trips to one of the closed areas to experience positive net revenues. Without the requirements, however, it would be difficult to control scallop mortality and monitor bycatch, and it may not be possible to provide access to the NE multispecies closed areas by general category vessels. Although difficult to predict, the benefits of expanding fishing opportunity for general category vessels could outweigh the cost of compliance with VMS, observer coverage, and other reporting requirements.

Economic Impacts of Significant and Other Non-Selected Alternatives

The Joint Frameworks considered several alternatives that could have had less negative economic impact on scallop vessels, owners, operators, and crews. Specifically, the Council considered the following measures: (1) Allowing all gear types in the closed area access program; (2) alternatives for redirecting fishing effort from closed areas to open areas when the yellowtail bycatch TAC is harvested; (3) year-round access to the NE multispecies closed area access areas; and (4) exempting Occasional and general category vessels from VMS reporting requirements in the access areas. Each of these alternatives was considered in comparison with the proposed measures. The Joint Frameworks concluded that the measures would provide more revenues initially through increased scallop landings, or would have reduced compliance costs. However, the Joint Frameworks also concluded that these non-selected alternatives would likely offset the overall benefits of the proposed

measures for the scallop resource and industry.

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

1. Purchase and installation of VMS units, OMB #0648–0491 (1 hr per response);
2. Verification of VMS units, OMB #0648–0491 (0.083 hr per response);
3. Daily reporting via VMS without an at-sea observer on board, OMB #0648–0491 (0.17 hr per response);
4. Daily reporting via VMS with an at-sea observer on board, OMB #0648–0491 (0.17 hr per response);
5. VMS notification of intent to fish on the 25th of the month preceding the intended trip, OMB #0648–0491 (0.033 hr per response);
6. VMS notification of scheduled Access Area trip 72 hr prior to departure, OMB #0648–0491 (0.033 hr per response);
7. VMS notification of trip 1 hr prior to departure, OMB #0648–0491 (0.033 hr per response);
8. Polling of VMS units twice per hour, OMB #0648–0491 (0.0014 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: August 20, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, 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 § 648.2, the definition for “Bushel” is revised to read as follows:

§ 648.2 Definitions.

* * * * *

Bushel (bu) means a standard unit of volumetric measurement deemed to hold 1.88 ft³ (53.24 L) of surfclams or ocean quahogs in shell, or 1.24 ft³ (35.24 L) of in-shell Atlantic sea scallops.

* * * * *

3. In § 648.10, paragraphs (b)(1)(iv) and (v) are revised, and paragraph (b)(1)(vi) is added as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) * * *

(1) * * *

(iv) A scallop vessel issued a general category scallop permit when fishing under the Sea Scallop Area Access Program specified under § 648.60 and in the Sea Scallop Access Areas described in § 648.59(b) through (d);

(v) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit, whose owner elects to provide the notifications required by this paragraph (b), unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section;

(vi) A vessel issued a limited access NE multispecies permit electing to fish under the U.S./Canada Resource Sharing Understanding, as specified in § 648.85(a).

* * * * *

4. In § 648.14, paragraph (a)(57) introductory text and paragraphs (a)(57)(i), (h)(25), (h)(26), (i)(1), and (s) are revised and paragraphs (a)(97), (a)(163), (a)(164), and (i)(10) through (13) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

* * * * *

(57) Fish for or land per trip, or possess at any time prior to a transfer to another person for a commercial purpose, other than solely for transport, in excess of 400 lb (181.4 kg) shucked, or 50 bu (17.6 hl) 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 is fishing under scallop DAS; or

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

(163) Sell or transfer to another person for a commercial purpose, other than solely for transport, any NE multispecies harvested from the EEZ by a vessel issued a Federal NE multispecies permit, unless the transferee has a valid NE multispecies dealer permit.

(164) Sell or transfer to another person for a commercial purpose, other than solely for transport, any Atlantic sea scallops harvested from the EEZ by a vessel issued a Federal Atlantic sea scallop permit, unless the transferee has a valid Atlantic sea scallop dealer permit.

* * * * *

(h) * * *

* * * * *

(25) Fish for, possess, or land scallops from the areas specified in § 648.59(b) through (d) after the effective date of the notification published in the **Federal Register** stating that the yellowtail flounder TAC has been harvested as specified in § 648.85(c).

(26) Retain yellowtail flounder in the areas specified in § 648.59(b) through (d) after the effective date of the notification published in the **Federal Register** stating that the yellowtail flounder TAC has been harvested as specified in § 648.85(c).

(i) * * *

(1) Fish for or land per trip, or possess at any time, in excess of 400 lb (181.4 kg) of shucked or 50 bu (17.6 hl) of in-shell scallops.

* * * * *

(10) Refuse or fail to carry an observer after being requested to carry an observer by the Regional Administrator.

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

(12) Fail to comply with the VMS requirements specified in §§ 648.10 and 648.60.

(13) Fail to comply with the requirements specified in § 648.60.

* * * * *

(s) Any person possessing or landing per trip, scallops in excess of 40 lb (18.1

kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, at or prior to the time when those scallops are received or possessed by a dealer, is subject to all of the scallop prohibitions specified in this section, unless the scallops were harvested by a vessel without a scallop permit that fishes for scallops exclusively in state waters.

* * * * *

5. In § 648.51, paragraph (f)(1) is revised to read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(f) * * *

(1) A vessel issued a limited access scallop permit fishing for scallops under the scallop DAS allocation program may not fish with, possess on board, or land scallops while in possession of, 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. A limited access scallop vessel issued a valid letter of authorization or permit that endorses the vessel to fish for scallops with trawl nets may not fish with trawl nets in the Access Areas specified in § 648.59(b) through (d).

* * * * *

6. In § 648.52, paragraphs (a), (b), and (c) are revised to read as follows:

§ 648.52 Possession and landing limits.

(a) 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, and vessels possessing a general scallop permit, unless exempted under the state waters exemption program described under § 648.54, are prohibited from fishing for or landing per trip, or possessing at any time, in excess of 400 lb (181.4 kg) shucked, or 50 U.S. bu (17.6 hl) in-shell, scallops, with no more than one scallop trip of 400 lb (181.4 kg) of shucked, or 50 bu (17.6 hl) of in-shell scallops, allowable in any calendar day.

(b) Owners or operators of vessels without a scallop permit, except vessels fishing for scallops exclusively in state waters, are prohibited from fishing for or landing per trip, or possessing at any time, more than 40 lb (18.1 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops. Owners or operators of vessels without 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 described in § 648.60 are prohibited from fishing for or landing per trip, or possessing at any

time, more than the sea scallop possession and landing limit specified in § 648.60(a)(5).

* * * * *

7. In § 648.53, paragraphs (b)(1), (b)(2), (b)(4), (c), (d), and (h) are revised, and paragraph (b)(5) is added to read as follows:

§ 648.53 DAS allocations.

* * * * *

(b) * * *

(1) For fishing years after 2006, total DAS to be used in all areas other than those specified in § 648.59, will be specified through the framework process as specified in § 648.55.

(2) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(2) (Full-time, Part-time, or Occasional) shall be allocated the maximum number of DAS for each fishing year it may participate in the open area limited access scallop fishery, according to its category, after deducting research and observer DAS set-asides from the total open area 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 maximum allocated DAS, may leave port without being assessed a DAS, as long as it does not fish for or land per trip, or possess at any time, more than 400 lb (181.4 kg) of shucked or 50 bu (17.6 hl) of in-shell scallops and complies with all other requirements of this part. The annual open area 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 ¹ | 2005 | 2006 |
|------------------|-------------------|------|------|
| Full-time | 42 | 40 | 67 |
| Part-time | 17 | 16 | 27 |
| Occasional | 4 | 3 | 6 |

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

* * * * *

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

| DAS category | 2004 DAS increase |
|-----------------|-------------------|
| Full-time | 20 |

| DAS category | 2004 DAS increase |
|------------------|-------------------|
| Part-time | 8 |
| Occasional | 1 |

(i) If a final rule is published in the **Federal Register** after September 15, 2004, that implements a framework action allowing access by scallop vessels to portions of the NE multispecies closed areas specified in § 648.81(a), (b), and (c), and after the DAS increase becomes effective, as specified in paragraph (b)(4)(i) of this section, then limited access scallop vessels may use the Open Area DAS specified in paragraph (b)(4)(i) of this section. Such vessels are not eligible to fish under the Area Access Program described in § 648.60 until March 1, 2005.

(ii) If a TAC for yellowtail flounder is harvested for an Access Area specified in § 648.59(b) through (d), a scallop vessel with remaining trips in the affected Access Area may fish any remaining trips in the open areas, with the following maximum DAS use limits:

(A) A full-time vessel may fish up to 20 DAS in 2004, 24 DAS in 2005, and 24 DAS in 2006, subject to the maximum number of DAS associated with the unused Access Area trip(s).

(B) A part-time vessel may fish up to 8 DAS in 2004, 12 DAS in 2005, and 9.6 DAS in 2006, subject to the maximum number of DAS associated with the unused Access Area trip(s).

(C) An occasional vessel may fish up to 1 DAS in 2004, 5 DAS in 2005, and 2 DAS in 2006, subject to the maximum number of DAS associated with the unused Access Area trip(s).

(5) DAS allocations and other management measures are specified for each scallop fishing year, which begins on March 1 and ends on February 28 (or February 29), unless otherwise noted. For example, the 2005 fishing year refers to the period March 1, 2005, through February 28, 2006.

(c) *Sea Scallop Access Area DAS allocations.* Limited access scallop 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 a specific number of trips to fish only within the Sea Scallop Access Areas, with the number of DAS charged for each trip designated for each area regardless of actual trip length. The number of trips and DAS to be charged for each scallop permit category and fishing year through 2006 for each Sea Scallop Access Area are provided in paragraphs (c)(1) through (3) of this section. Limited access scallop vessels

may fish a maximum number of trips and associated DAS in each Sea Scallop Access Area, as specified in § 648.60(a)(3). In addition, limited access scallop vessels area allocated a maximum number of trips and DAS that can be used within any of the Scallop Access Areas. As an example, if the total number of trips that a scallop vessel may take is two trips, and there are two Sea Scallop Access Areas opened to controlled fishing, with Area A having a maximum of one trip and Area B having a maximum of two trips, the vessel may take one trip in Area A and one trip in Area B, or both of its total allocated trips in Area B.

(1) Full-time scallop vessels may take seven trips in 2004, five trips in 2005, and two trips in 2006. DAS charges are 12 DAS for each trip, regardless of trip length.

(2) Part-time scallop vessels may take three trips in 2004, two trips in 2005, and one trip in 2006. DAS charges are 12 DAS for the Hudson Canyon Access Area and 11.2 DAS for the Closed Area II and Nantucket Lightship Access Areas in 2004, 12 DAS in 2005, and 9.5 DAS in 2006.

(3) Occasional scallop vessels may take two trips in 2004, one trip in 2005, and one trip in 2006. DAS charges are 12 DAS in 2004 for the Hudson Canyon Access Area and 7 DAS for the Closed Area II or Nantucket Lightship Access Areas, 5 DAS in 2005, and 2 DAS in 2006.

(d) *Adjustments in annual DAS allocations.* Annual DAS allocations shall be established for 2 fishing years through biennial framework adjustments as specified in § 648.55. Except for DAS for the 2006 fishing year, 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 must determine whether or not the 2006 DAS allocations specified in the table in paragraph (b)(2) of this section are sufficient to achieve OY. The 2006 DAS must be adjusted in the first biennial framework, initiated in 2005, if it is determined that the 2006 DAS allocations are unable to achieve OY in the 2006 fishing year. The Council may also adjust DAS allocations through a framework action at any time, if deemed necessary.

* * * * *

(h) *DAS set-asides—(1) DAS set-aside for observer coverage.* As specified in paragraph (b)(3) of this section, to help defray the cost of carrying an observer, 1 percent of the total DAS will be set aside from the total DAS available for allocation, to be used by 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, 2005, and 2006 fishing years are 117 DAS, 111 DAS, and 187 DAS, respectively. On September 15, 2004, the 2004 DAS set-aside will increase by 54 DAS if a final rule is not published that allows access to the GB NE multispecies closed areas. Vessels carrying an observer will be compensated with reduced DAS accrual rates for each trip on which the vessel carries an observer. For each DAS that a vessel fishes for scallops with an observer on board, the DAS will accrue at a reduced rate based on an adjustment factor determined by the Regional Administrator on an annual basis, dependent on the cost of observers, catch rates, and amount of available DAS set-aside. The Regional Administrator shall notify vessel owners of the cost of observers and the DAS adjustment factor through a permit holder letter issued prior to the start of each fishing year. The number of DAS that are deducted from each trip based on the adjustment factor will be deducted from the observer DAS set-aside amount in the applicable fishing year. Utilization of the DAS set-aside will be on a first-come, first-served basis. 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)(3) 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, 2005, and 2006 fishing years are 233 DAS, 223 DAS, and 373 DAS, respectively. Vessels participating in approved research will be authorized to use additional DAS in the applicable fishing year. Notification of and additional DAS allocated will be provided through a letter of authorization, or Exempted Fishing Permit issued by NMFS, as appropriate.

8. In § 648.55, paragraph (b) is revised to read as follows:

§ 648.55 Framework adjustments to management measures.

* * * * *

(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. With the exception of the 2006

fishery year, 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 shall continue, beginning March 1 of each fishing year.

* * * * *

9. Section 648.59 is revised to read as follows:

§ 648.59 Sea Scallop Access Areas.

(a) *Hudson Canyon Sea Scallop Access Area.* (1) Through February 28, 2006, a vessel issued a limited access scallop permit may fish for scallops in, or possess and land scallops from, the area known as the Hudson Canyon Sea Scallop Access Area, described in paragraph (a)(2) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. Any limited access scallop vessel not participating in the Area Access Program, may possess scallops while transiting the area as provided in paragraph (e) 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. |
| H3 | 38°30' N. | 73°30' W. |
| H4/ET4 | 38°50' N. | 73°30' W. |
| H5 | 38°50' N. | 73°42' W. |
| H1 | 39°30' N. | 73°10' W. |

(3) *Number of trips.* Subject to the total number of Sea Scallop Access Area trips allowed for each limited access scallop permit category specified in § 648.60(a)(3), a vessel issued a limited access scallop permit may fish no more than four trips during 2004 and three trips during 2005 in the Hudson Canyon Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Hudson Canyon Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Sea Scallop Access Area trip that was terminated early, as specified in § 648.60(c).

(b) *Closed Area I Access Area.* (1) Through February 28, 2005, and every third fishing year thereafter (i.e., 2007, 2010, etc.) vessels issued scallop

permits may not fish for scallops in, or possess or land scallops from, the area known as the Closed Area I Access Area, described in paragraph (b)(3) of this section.

(2) Beginning March 1, 2005, through February 28, 2007, and for every 2-year fishing year period after each year the area is closed pursuant to paragraph (b)(1) of this section (i.e., the 2008 through 2009 fishing years, and 2011 through 2012 fishing years, etc.), and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, a vessel issued a scallop permit may fish for scallops in, or possess and land scallops from, the area known as the Closed Area I Access Area, described in paragraph (c)(2) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. Any limited access scallop vessel not participating in the Area Access Program, may possess scallops while transiting the area as provided in paragraph (e) of this section.

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

| Point | Latitude | Longitude |
|-------------|-------------|-----------|
| CAIA1 | 41°26' N. | 68°30' W. |
| CAIA2 | 40°58' N. | 68°30' W. |
| CAIA3 | 40°55' N. | 68°53' W. |
| CAIA4 | 41°04.5' N. | 69°01' W. |
| CAIA1 | 41°26' N. | 68°30' W. |

(4) *Season.* A vessel issued a scallop permit may not fish for scallops in, or possess or land scallops from, the area known as the Closed Area I Sea Scallop Access Area, described in paragraph (b)(3) of this section, except during the period June 15 through January 31 of each year the Closed Area I Sea Scallop Access Area is open to scallop vessels.

(5) *Number of trips—(i) Limited access vessels.* Subject to the total number of Sea Scallop Access Area trips allowed for each limited access scallop permit category specified in § 648.60(a)(3), a vessel issued a limited access scallop permit may fish no more than one trip in the Closed Area I Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area I Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is

taking a compensation trip for a prior Sea Scallop Access Area trip that was terminated early, as specified in § 648.60(c).

(ii) *General category vessels.* Subject to the possession limit specified in §§ 648.52(b) and 648.60(a)(5), and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, a vessel issued a general category scallop permit may not enter in, or fish for, possess, or land sea scallops in or from the Closed Area I Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(a)(8), that 162 trips in the 2005 fishing year, and 141 trips in the 2006 fishing year, have been taken, in total, by all general category scallop vessels. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2005 and 2006 fishing years.

(c) *Closed Area II Access Area.* (1) From March 1, 2006, through February 28, 2007, and every third fishing year thereafter, (i.e., 2009, 2012, etc.) vessels issued scallop permits may not fish for scallops in, or possess or land scallops from, the area known as the Closed Area II Access Area, described in paragraph (c)(3) of this section.

(2) From [insert effective date of the final rule] through February 28, 2006, and for every 2-year fishing year period after each year the area is closed pursuant to paragraph (c)(1) of this section (i.e., the 2007 through 2008 fishing years, and 2010 through 2011 fishing years, etc.) and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, a vessel issued a scallop permit may fish for scallops in, or possess or land scallops from, the area known as the Closed Area II Sea Scallop Access Area, described in paragraph (c)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. Any limited access scallop vessel not participating in the Area Access Program, may possess scallops while transiting the area as provided in paragraph (e) of this section.

(3) The Closed Area II 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 |
|--------------|-----------|-------------|
| CAIIC1 | 41°00' N. | 67°20' W. |
| CAIIC2 | 41°00' N. | 66°35.8' W. |

| Point | Latitude | Longitude |
|--------------|-------------|-------------|
| CAIIA3 | 41°18'6" N. | 66°24'8" W. |
| CAIIA4 | 41°30' N. | 66°34'8" W. |
| CAIIA5 | 41°30' N. | 67°20' W. |
| CAIIA1 | 41°00' N. | 67°20' W. |

(4) *Season.* A vessel issued a scallop permit may not fish for scallops in, or possess or land scallops from, the area known as the Closed Area II Sea Scallop Access Area, described in paragraph (c)(3) of this section, except during the period June 15 through January 31 of each year the Closed Area II Access Area is open to scallop vessels.

(5) *Number of trips—(i) Limited access vessels.* Subject to the total number of Sea Scallop Access Area trips allowed for each limited access scallop permit category specified in § 648.60(b)(3), a vessel issued a limited access scallop permit may fish no more than two trips in 2004 and one trip in 2005 in the Closed Area II Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area II Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Sea Scallop Access Area trip that was terminated early, as specified in § 648.60(c).

(ii) *General category vessels.* Subject to the possession limits specified in §§ 648.52(b) and 648.60(a)(5), and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, a vessel issued a general category scallop permit may not enter in, or fish for, possess, or land sea scallops in or from the Closed Area II Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(a)(8), that 420 trips in the 2004 fishing year, and 385 trips in the 2006 fishing year, have been taken, in total, by all general category scallop vessels. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2004 and 2005 fishing years.

(d) *Nantucket Lightship Access Area.* (1) From March 1, 2005, through February 28, 2006, and every third fishing year thereafter (*i.e.*, 2008, 2011, etc.) vessels issued scallop permits may not fish for scallops in, or possess or land scallops from, the area known as the Nantucket Lightship Access Area, described in paragraph (d)(3) of this section.

(2) From [insert effective date of the final rule] through February 28, 2005,

and from March 1, 2006, through February 28, 2008, and for every 2-year fishing year period after each year the area is closed pursuant to paragraph (d)(1) of this section (*i.e.*, the 2009 through 2010 fishing years, and 2012 through 2013 fishing years, etc.) and subject to the seasonal restrictions specified in paragraph (d)(4) of this section, a vessel issued a limited access scallop permit may fish for scallops in, or possess or land scallops from, the area known as the Nantucket Lightship Sea Scallop Access Area, described in paragraph (d)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. Any limited access scallop vessel not participating in the Area Access Program, may possess scallops while transiting the area as provided in paragraph (e) of this section.

(3) The Nantucket Lightship 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 |
|-------------|-----------|-----------|
| NLAA1 | 40°50' N. | 69°30' W. |
| NLAA2 | 40°50' N. | 69°00' W. |
| NLAA3 | 40°20' N. | 69°00' W. |
| NLSS4 | 40°20' N. | 69°30' W. |
| NLAA1 | 40°50' N. | 69°30' W. |

(4) *Season.* A vessel issued a scallop permit may not fish for scallops in, or possess or land scallops from, the area known as the Nantucket Lightship Sea Scallop Access Area, described in paragraph (d)(3) of this section, except during the period June 15 through January 31 of each year the Nantucket Lightship Access Area is open to scallop fishing.

(5) *Number of trips—(i) Limited access vessels.* Subject to the total number of Sea Scallop Access Area trips allowed for each limited access scallop permit category specified in § 648.60(b)(3), a vessel issued a limited access scallop permit may fish no more than one trip in the Nantucket Lightship Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Nantucket Lightship Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Sea Scallop Access Area trip that was terminated early, as specified in § 648.60(c).

(ii) *General category vessels.* Subject to the possession limits specified in §§ 648.52(b) and 648.60(a)(5), a vessel issued a general category scallop permit may not enter in, or fish for, possess, or land sea scallops in or from the Nantucket Lightship Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(a)(8), that 386 trips in the 2004 fishing year, and 340 trips in the 2006 fishing year, have been taken, in total, by all general category scallop vessels. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2004 and 2006 fishing years.

(e) *Transiting.* A limited access sea scallop vessel fishing under a scallop DAS that has not declared a trip into the Sea Scallop Area Access Program may enter in the Sea Scallop Access Areas described in paragraphs (a) through (c) of this section, and possess scallops not caught in the Sea Scallop Access Areas, for transiting purposes only provided the vessel's fishing gear is stowed in accordance with § 648.23(b), or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Access Area, as described in paragraph (d) of this section, if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed in accordance with § 648.23(b).

10. Section 648.60 is revised to read as follows:

§ 648.60 Sea Scallop area access program requirements.

(a) A vessel issued a limited access scallop permit may only fish in the Sea Scallop Access Areas specified in § 648.59, subject to the seasonal restrictions 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. A vessel issued a general category scallop permit may only fish in the Sea Hudson Canyon Sea Scallop Access Area specified in § 648.59(a), subject to the possession limit specified in § 648.52(b). A vessel issued a general category scallop permit may only fish in the Closed Area I, Closed Area II, and Nantucket Lightship Sea Scallop Access Areas specified in § 648.59(b) through (d), and subject to the seasonal restrictions specified in § 648.59(b)(4), (c)(4), and (d)(4), and subject to the possession limit specified in § 648.52(b), and provided the vessel complies with the requirements specified in

paragraphs (a)(1), (a)(2), (a)(3)(ii), (a)(5)(iii), (a)(6) through (a)(8), (d), and (e) of this section.

(1) **VMS.** Each vessel participating in the Sea Scallop Access Area Program must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10, and 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 required under paragraph (a)(2)(i) of this section, and for the purpose of selecting vessels for observer deployment, each participating vessel owner or operator shall provide notice to NMFS of the time, port of departure, and specific Sea Scallop Access Area to be fished, at

least 72 hr, unless otherwise notified by the Regional Administrator, prior to the beginning of any trip into the Sea Scallop Access Area.

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

(3) **Number of Sea Scallop Access Area trips—(i) Table of Limited Access Vessel trips.** Except as provided in paragraph (c) of this section, the table below summarizes the total number of trips and DAS charges for limited access scallop vessels to take into Sea Scallop Access Areas during applicable seasons specified in § 648.59:

| Fishing year | Access area | Maximum trips per area and per vessel | Total number of trips; and DAS charge per trip | | |
|--------------|---------------------------|---------------------------------------|------------------------------------------------|-------------------------|-----------------|
| | | | Full-time | Part-time | Occasional |
| 2004 | Closed Area II | 2 | 7 trips; 12 DAS | 2 trips; 11.2 DAS | 1 trip; 7 DAS. |
| | Nantucket Lightship | 1 | | 1 trip; 12 DAS | 1 trip; 12 DAS. |
| | Hudson Canyon | 4 | | 2 trips; 12 DAS | 1 trip; 5 DAS. |
| 2005 | Closed Area I | 1 | 5 trips; 12 DAS | | |
| | Closed Area II | 1 | | | |
| | Hudson Canyon | 3 | | | |
| 2006 | Closed Area I | 1 | 2 trips; 12 | 1 trip; 9.6 | 1 trip; 2 DAS. |
| | Nantucket Lightship | 1 | | | |

(A) A limited access scallop vessel fishing in Sea Scallop Access Areas may fish the total number of trips specified above according to the vessel's category in any Sea Scallop Access Area, provided the number of trips in any one Sea Scallop Access Area does not exceed the maximum number of trips allocated for such Sea Scallop Access Area as specified in § 648.59, unless the vessel owner has exchanged a trip with another vessel owner for an additional Sea Scallop Access Area trip, as specified in paragraph (a)(3)(ii) of this section. The DAS specified in the table in this paragraph (a)(3)(i) shall be automatically deducted for each Sea Scallop Access Area trip.

(B) [Reserved]

(ii) **One-for-one area access trip exchanges.** If the total number of trips into all Sea Scallop Access Areas combined is more than one, 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. Vessel owners 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 [insert date 3 months after publication of final rule in the **Federal Register**], in 2004, and June 1 of each year thereafter. 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 upon request. The Regional Administrator shall review the records for each vessel to confirm that each vessel has unutilized trips remaining to transfer. The transfer is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the trip exchange has been made effective. A vessel owner may exchange trips between two or more vessels under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange trips.

(iii) General category scallop vessels may not fish for, possess, or land scallops in or from the Access Areas specified in § 648.59(b) through (d) after the effective date of the notification published in the **Federal Register**, stating that the total number of trips specified in § 648.59(b)(5)(ii), (c)(5)(ii), and (d)(5)(ii) have been, or are projected to be, taken by general category scallop vessels.

(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 declared Sea Scallop Access Area during that trip, and must not enter or exit the specific declared Sea Scallop Access Area 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.

(i) **Reallocation of trips into open areas.** If the yellowtail flounder TAC allocated for a NE multispecies closed area Scallop Access Area specified in § 648.59(b) through (d) has been harvested, a vessel with trips remaining to be taken in the affected Access Area may fish the remaining DAS associated with the unused trip(s), up to the maximum DAS specified in § 648.53(b)(4)(C).

(ii) [Reserved]

(5) **Possession and landing limits—(i) Scallop possession limits.** Unless authorized by the Regional Administrator as specified in paragraphs (c) and (d) of this section, after declaring a trip into a Sea Scallop Access Area, a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, up

to the amounts specified in the table in this paragraph (a)(5). A vessel owner or operator of a general category scallop vessel may fish for, possess, and land,

per trip, up to 400 lb (181.4 kg) of shucked scallops or 50 bu (17.6 hl) of in-shell scallops. No vessel fishing in the Sea Scallop Access Area may

possess shoreward of the VMS demarcation line or land, more than 50 bu (17.6 hl) of in-shell scallops.

| Fishing year | Access area | Possession limit | | |
|--------------|----------------------|----------------------------|----------------------------|-----------------------|
| | | Full-time | Part-time | Occasional |
| 2004 | Closed Area II | 18,000 lb (9,525 kg) | 16,800 lb (7,620 kg) | 10,500 lb (4,763 kg). |
| | Nantucket Lightship. | ..... | 18,000 lb (9,525 kg) | 18,000 lb (9,525 kg). |
| 2005 | Hudson Canyon ..... | ..... | 16,800 lb (7,620 kg) | 7,500 lb (3,402 kg). |
| | Closed Area I | 18,000 lb (9,525 kg) ..... | ..... | ..... |
| 2006 | Closed Area II. | ..... | ..... | ..... |
| | Hudson Canyon. | 18,000 lb (9,525 kg) | 14,400 lb (6,532 kg) | 3,000 lb (1,361 kg). |
| ..... | Closed Area I ..... | ..... | ..... | ..... |
| | Nantucket Lightship. | ..... | ..... | ..... |

(ii) *NE multispecies possession limits and yellowtail flounder TAC.* After declaring a trip into a Sea Scallop Access Area and fishing within the Access Areas described in § 648.59(b) through (d), and provided the vessel has been issued a Scallop NE Multispecies Possession Limit permit as specified in § 648.4(a)(1)(ii), a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, up to 1,000 lb (453.6 kg) of all NE multispecies combined, subject to the additional restrictions for Atlantic cod, haddock, and yellowtail flounder specified in paragraphs (a)(5)(ii)(A) through (C) of this section.

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

(B) *Haddock.* Subject to the seasonal restrictions established under the Sea Scallop Area Access Program and specified in § 648.59(b)(4), (c)(4), and (d)(4), a vessel is prohibited from possessing or landing haddock from January 1 through June 30, but may possess and land haddock up to the overall possession limit of all NE multispecies combined, as specified in paragraph (a)(5)(ii) of this section for the rest of the Sea Scallop Area Access Program season.

(C) *Yellowtail flounder—(1) Yellowtail flounder TACs.* Limited access scallop vessels participating in the Area Access Program and fishing within the Access Areas specified in § 648.59(b) through (d), are authorized to catch yellowtail flounder up to the TACs specified in § 648.85(c) for the Closed Area I, Closed Area II, and Nantucket Lightship Access Scallop Areas. The Regional Administrator shall publish notification in the **Federal Register** in accordance with the Administrative Procedure Act, to notify scallop vessel owners that the

scallop fishery portion of the TAC for a yellowtail flounder stock has been or is projected to be harvested by scallop vessels in any Access Area. Upon notification in the **Federal Register** that a TAC has been or is projected to be harvested, scallop vessels are prohibited from fishing within the Access Area(s), where the TAC applies, for the remainder of the fishing year. The yellowtail flounder TACs allocated to scallop vessels may be increased by the Regional Administrator after December 1 of each year pursuant to § 648.85(c)(2).

(2) *SNE/MA yellowtail flounder possession limit.* After declaring a trip into and fishing within the Nantucket Lightship Access Area described in § 648.59(d), the vessel owner or operator of a limited access scallop vessel may fish for, possess, and land up to 250 lb (113.6 kg) per trip of yellowtail flounder between June 15 and June 30, and up to 1,000 lb (453.6 kg) per trip (if the vessel is in possession of no other NE multispecies) from July 1 through January 31, provided the yellowtail flounder TAC as specified in § 648.85(c)(i) has not been harvested.

(3) *GB yellowtail flounder possession limit.* After declaring a trip into and fishing within the Closed Area I or Closed Area II Access Area described in § 648.59(b) and (c), the vessel owner or operator of a limited access scallop vessel may fish for, possess, and land up to 1,000 lb (453.6 kg) per trip of yellowtail flounder (if the vessel is in possession of no other NE multispecies), provided the yellowtail flounder TAC specified in § 648.85(c) has not been harvested. If the yellowtail flounder TAC established for the Eastern U.S./Canada Area pursuant to § 648.85(a)(2) has been or is projected to be harvested, as described in § 648.85(a)(3)(iv)(C)(3), scallop vessels are prohibited from harvesting, possessing, or landing yellowtail flounder in the Closed Area I and Closed Area II Access Areas.

(iii) *General category scallop vessels—*

(A) *Scallop TAC.* General category vessels fishing in the Access Areas specified in § 648.59(b) through (d) are authorized to land scallops, subject to the possession limit specified in § 648.52(b), up to the amount allocated to the scallop TACs for each Access Area specified below. If the scallop TAC for a specified Access Area has been, or is projected to be harvested, the Regional Administrator shall publish notification in the **Federal Register**, in accordance with the Administrative Procedure Act, to notify general category vessels that they may no longer fish within the specified Access Area.

(1) *Closed Area I Access Area.* 64,840 lb (29 mt) in 2005, and 56,482 lb (25.6 mt) in 2006.

(2) *Closed Area II Access Area.*

167,904 (76 mt) in 2004, and 153,971 lb (70 mt) in 2005.

(3) *Nantucket Lightship Access Area.* 154,368 lb (70 mt) in 2004, and 135,937 lb (62 mt) in 2006.

(B) *Possession Limits—(1) Scallops.* General category scallop vessels fishing in the Access Areas specified in § 648.59(b) through (d) may possess scallops up to the possession limit specified in § 648.52(b) and paragraph (a)(5) of this section, subject to a limit on the total number of trips that can be taken by all such vessels into the Access Areas, as specified in § 648.59(b)(5)(ii), (c)(5)(ii), and (d)(5)(ii). If the number of trips allowed have been or are projected to be taken, the Regional Administrator shall publish notification in the **Federal Register**, in accordance with the Administrative Procedure Act, to notify general category vessels that they may no longer fish within the specified Access Area.

(2) *Other species.* General category vessels fishing in the Access Areas specified in § 648.59(b) through (d) are prohibited from possessing any other species of fish.

(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) in diameter. 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 in accordance with § 648.23(b), unless there is a compelling safety reason to be in the area without gear stowed.

(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 DAS specified in paragraph (a)(3) of this section deducted from its access area DAS allocation, 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 catching the allowed possession limit, the vessel may be authorized to fish an additional trip in the same 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 for reasons deemed appropriate by the operator of the vessel;

(2) The amount of scallops landed by 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 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, reason for terminating the trip (for NMFS recordkeeping purposes), 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 terminated trip.

(5) The Regional Administrator must authorize the vessel to take an

additional trip and must specify the amount of scallops that the vessel may land on such trip and the number of DAS charged for such trip, pursuant to the calculation in paragraphs (c)(5)(i) through (iii) of this section. Such authorization will be made within 10 days of receipt of the formal written request for compensation.

(i) The number of DAS a vessel will be charged for an additional trip in the Sea Scallop Access Area shall 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: Two DAS, plus one DAS for each 10 percent increment of the overall possession limit on board. Pounds of scallops landed shall be rounded up to the nearest 10-percent increment.

(ii) The amount of scallops that can be landed on an authorized additional Sea Scallop Access Area trip shall equal 1,500 lb (680.4 kg) multiplied by the number of DAS to be charged for the resumed trip.

(iii) The vessel that terminates a Sea Scallop Access Area trip and has been authorized to take an additional trip shall have the DAS charged for that trip, as determined under paragraph (c)(5)(i) of this section, deducted from its Sea Scallop Access Area DAS allocation specified in paragraph (a)(3) of this section, regardless of the actual number of DAS fished during the additional trip. Vessels that are authorized more than one additional trip for compensation for more than one terminated trip may combine the authorized trips into one, if all terminated trips occurred in the same Sea Scallop Access Area and provided the total possession limits do not exceed those specified in paragraph (a)(5) of this section.

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

(ii) *Closed Area I Access Area.* For the 2005 and 2006 fishing years, the observer set-asides for the Closed Area I Access Area are 32,430 lb (15 mt) and 28,241 lb (13 mt), respectively.

(iii) *Closed Area II Access Area.* For the 2004 and 2005 fishing years, the observer set-asides for the Closed Area II Access Area are 83,952 lb (38 mt) and 76,958 lb (35 mt), respectively.

(iv) *Nantucket Lightship Access Area.* For the 2004 and 2006 fishing years, the observer set-asides for the Nantucket

Lightship Access Area are 77,184 lb (35 mt) and 67,968 lb (31 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 scallop vessels shall be notified of the increase in the possession limit through a permit holder letter issued by the Regional Administrator. If the observer set-aside is fully utilized prior to the end of the fishing year, the Regional Administrator shall notify owners of scallop vessels that, effective on a specified date, the 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—(i) Hudson Canyon Access Area.* For the 2004 and 2005 fishing years, the research set-asides for the Hudson Canyon Access Area are 375,800 lb (170.5 mt) and 299,123 lb (135.7 mt), respectively.

(ii) *Closed Area I Access Area.* For the 2005 and 2006 fishing years, the research set-asides for the Closed Area I Access Area and 64,860 lb (29 mt) and 56,482 lb (26 mt), respectively.

(iii) *Closed Area II Access Area.* For the 2004 and 2005 fishing years, the research set-asides for the Closed Area II Access Area are 167,904 lb (76 mt) and 153,971 lb (70 mt), respectively.

(iv) *Nantucket Lightship Access Area.* For the 2004 and 2006 fishing years, the research set-asides for the Nantucket Lightship Access Area are 154,368 lb (70 mt) and 135,937 lb (62 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.

(3) *Yellowtail flounder research TAC set-aside.* Vessels conducting research approved under the process described in § 648.56, and in the Access Areas specified in § 648.59(b) through (d) may harvest yellowtail flounder up to the TACs specified in the table in this

paragraph (e)(3), and subject to the possession limits specified in paragraph (a)(5)(ii)(C) of this section. If the TACs

listed in the table in this paragraph (e)(3) are harvested, research may no

longer be authorized in the applicable Access Area.

| Yellowtail flounder stock | Access area | Fishing year | Yellowtail flounder research TAC |
|----------------------------|---------------------------|----------------------|-----------------------------------------------------------------|
| Southern New England | Nantucket Lightship | 2004 2005 2006 | 3,086 lb (1.4 mt). 8,818 lb (4.0 mt). 14,771 lb (6.7 mt). |
| GB | Closed Area I and | 2004 2005 | 26,455 lb (12 mt). ⁽¹⁾ |
| | Closed Area II | 2006 | ⁽¹⁾ |

¹ To be established annually, according to the specification procedure described in § 648.85(a)(2).

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

11. Section 648.61 is revised to read as follows:

§ 648.61 EFH closed areas.

(a) No scallop fishing vessel may enter, fish in, or be in the EFH Closure Areas described in § 648.80(h)(1)(i) through (iv). A chart depicting these areas is available from the Regional Administrator upon request.

(b) *Transiting.* A scallop vessel may transit the EFH Closure Areas, as defined in § 648.81(h)(1), provided that its gear is stowed in accordance with the provisions of § 648.23(b), and that it complies with the transiting restrictions for the Closed Area II Habitat Closure Area specified in § 648.81(b)(2)(iv).

12. In § 648.81, paragraphs (a)(2)(vi), (b)(2)(v), and (c)(2)(iv) are added to read as follows:

§ 648.81 NE multispecies closed areas and measures to protect EFH.

- (a) * * *
- (2) * * *

(vi) Fishing for scallops within the Closed Area I Access Area defined in § 648.59(b)(3) during the season specified in § 648.59(b)(4), and pursuant to the provisions specified in § 648.60.

- (b) * * *
- (2) * * *

(v) Fishing for scallops within the Closed Area II Access Area defined in § 648.59(c)(3), during the season specified in § 648.59(c)(4), and pursuant to the provisions specified in § 648.60.

- (c) * * *
- (2) * * *

(iv) Fishing for scallops within the Nantucket Lightship Access Area defined in § 648.59(d)(3), during the season specified in § 648.59(d)(4), and

pursuant to the provisions specified in § 648.60.

* * * * *

13. In § 648.85, paragraph (c) is added to read as follows:

§ 648.85 Special management programs.

* * * * *

(c) *Scallop fishery closed area access program.* Scallop vessels operating under the Sea Scallop Area Access Program, as defined in § 648.59, and fishing in accordance with the regulations at § 648.60 may possess and land up to 1,000 lb (453.6 kg) of all NE multispecies combined, as provided in § 648.60(a)(5)(ii), unless otherwise restricted in this section.

(1) *Yellowtail flounder bycatch TAC allocation.* An amount of yellowtail flounder equal to 10 percent of the total yellowtail flounder TAC for each of the stock area specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section may be harvested by scallop vessels. Limited access scallop vessels enrolled in the Sea Scallop Area Access Program and fishing within the Area Access areas defined at § 648.59(b) through (d) may harvest yellowtail flounder up to 9.8 percent of the applicable yellowtail flounder TAC. Scallop vessels participating in approved research under the process described in § 648.56, and fishing in the Access Areas specified in § 648.59(b) through (d), may harvest 0.2 percent of the applicable yellowtail flounder TAC. With the exception of the 0.2-percent yellowtail flounder TAC set-asides for approved research, the amount of yellowtail flounder that may be harvested in the 2004 through the 2006 fishing years under this section will be specified by permit holder letter/small entity compliance guides. The yellowtail flounder TAC set-aside for research are specified in § 648.60(e)(3).

(i) *SNE/MA yellowtail flounder.*

Limited access scallop vessels may harvest an amount of yellowtail flounder equal to 9.8 percent of the overall SNE/MA yellowtail flounder

TAC from the Nantucket Lightship Closed Area Sea Scallop Access Area for each fishing year, unless otherwise prohibited under paragraph (c)(3) of this section. An amount of yellowtail flounder equal to 0.2 percent of the SNE/MA yellowtail flounder bycatch TAC, as specified in paragraph (c)(1) of this section, is set aside to allow for the harvest of yellowtail flounder during research approved under the scallop research program specified in § 648.56 and conducted in the Access Areas specified in § 648.59(b) through (d).

(ii) *GB yellowtail flounder.* Limited access scallop vessels may harvest an amount of yellowtail flounder up to 9.8 percent of the overall GB yellowtail flounder TAC from the Closed Area I and Closed Area II Sea Scallop Access Areas, combined, for each fishing year, unless otherwise prohibited under paragraph (c)(3) of this section. An amount of yellowtail flounder equal to 0.2 percent of the GB yellowtail flounder TAC, as specified in paragraph (c)(1) of this section, is set aside to allow for the harvest of yellowtail flounder during research approved under the scallop research program specified in § 648.56.

(2) *Adjustments to the yellowtail flounder TAC allocation.* If, as of December 1, of each year, the Regional Administrator projects that the total GB yellowtail flounder TAC for the NE multispecies fishery will not be harvested by the end of the fishing year and the catch of yellowtail flounder in the Sea Scallop Area Access Program is below 10 percent of the GB yellowtail flounder bycatch TAC specified in paragraph (c)(1) of this section, the Regional Administrator may, through rulemaking consistent with the Administrative Procedure Act, increase the yellowtail flounder bycatch TAC allocated to vessels participating in the Sea Scallop Area Access Program above 10 percent, provided that such increase will not result in exceeding the total GB yellowtail flounder TAC.

(3) *Possession restriction and closure when yellowtail flounder TAC has been harvested.* (i) If the GB yellowtail flounder TAC specified for the U.S./Canada Management Area under paragraph (a)(2) of this section has been harvested and notification has been published in the **Federal Register**, pursuant to paragraph (a)(2)(iv)(C)(3) of this section, but the yellowtail flounder bycatch TAC allocation for the GB stock specified under paragraph (c)(1)(ii) of this section has not been harvested, scallop vessels may continue to fish in the Sea Scallop Area Access Program, but may not retain or land yellowtail flounder, until the yellowtail flounder bycatch TAC is caught, as specified in paragraph (c)(3)(ii) of this section. All catch of yellowtail flounder must continue to be reported by scallop vessels fishing in Access Area as required under § 648.60.

(ii) If the yellowtail flounder bycatch TAC allocation for the GB stock specified under paragraph (c)(1)(ii), of this section has been or is projected to be harvested, scallop vessels may not fish within the Closed Area I and II Access Areas for the remainder of the fishing year. The Regional Administrator shall publish notification in the **Federal Register**, in accordance with the Administrative Procedure Act, to notify vessels that they may no longer fish within the Closed Area I and II Access Areas for the remainder of the fishing year.

* * * * *

14. In § 648.88, paragraph (c) is revised to read as follows:

§ 648.88 Multispecies open access permit restrictions.

* * * * *

(c) *Scallop NE multispecies possession limit permit.* With the

exception of vessels fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d), a vessel that has been issued a valid open access scallop NE multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under § 648.86(a)(2)(i), and provided that the amount of yellowtail flounder on board the vessel does not exceed the trip limitations specified in § 648.86(g), and provided the vessel has at least one standard tote on board. A vessel fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d) is subject to the possession limits specified in § 648.60(a)(5)(ii).

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