

**G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks**

**1. What Is Executive Order 13045?**

Executive Order 13045: “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

**2. Does Executive Order 13045 Apply to This Proposed Rule?**

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

**H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage**

**Is this Rule Subject to Executive Order 13211?**

This rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

**I. National Technology Transfer and Advancement Act**

**1. What Is the National Technology Transfer and Advancement Act?**

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards

bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

**2. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?**

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: March 10, 2008.

**Susan Parker Bodine,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

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allocations); Elephant Trunk Access Area (ETAA) and Delmarva Access Area (Delmarva) in-season trip adjustment procedures; new Hudson Canyon Access Area (HCAA) measures; DAS allocation adjustments if an access area yellowtail flounder (yellowtail) total allowable catch (TAC) is caught; adjustments to the scallop overfishing definition; a prohibition on deckloading of scallops on access area trips; adjustments to the industry-funded observer program; a 30-day vessel monitoring system (VMS) power down provision; general category access area specifications for 2008 and 2009; and general category measures dependent on the implementation of Amendment 11 to the FMP as proposed by the Council, including a quarterly TAC, 2008 and 2009 general category quota allocations, and individual fishing quota (IFQ) permit cost recovery program requirements. NMFS will disapprove the Council’s recommendation to eliminate the September 1 through October 31, ETAA seasonal closure, which was implemented under Framework 18 to the FMP to reduce sea turtle interactions with the scallop fishery. NMFS has determined that the Council’s recommendation is not consistent with National Standard 2 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Comments must be received by 5 p.m., local time, on April 8, 2008.

**ADDRESSES:** An environmental assessment (EA) was prepared for Framework 19 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Framework 19, the EA, and the Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Newburyport, MA 01950.

You may submit comments, identified by 0648-AV90, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- **Fax:** (978) 281-9135, Attn: Ryan Silva.
- **Mail:** Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on Scallop Framework 19 Proposed Rule.”

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 070817467-7863-01]**

**RIN 0648-AV90**

**Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 19**

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

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

**SUMMARY:** NMFS proposes regulations to approve and implement Framework Adjustment 19 (Framework 19) to the Atlantic Sea Scallop Fishery Management Plan (FMP) which was developed by the New England Fishery Management Council (Council). Framework 19 proposes the following management measures for the scallop fishery: Limited access scallop fishery specifications for 2008 and 2009 (open area days-at-sea (DAS) and Sea Scallop Access Area (access area) trip

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

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

**FOR FURTHER INFORMATION CONTACT:**  
Ryan Silva, Cooperative Research Program Specialist, 978-281-9326; fax 978-281-9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Council adopted Framework 19 on October 25, 2007, and submitted it to NMFS on November 8, 2007, for review and approval. Framework 19 was developed and adopted by the Council in order to meet the FMP's requirement to adjust biennially the management measures for the scallop fishery. The FMP requires biennial adjustments to ensure that the measures meet the fishing mortality rate (F) and other goals of the FMP and achieve optimum yield (OY) from the scallop resource on a continuing basis. This rule proposes measures as adopted by the Council and described in detail here. The Council has reviewed the Framework 19 proposed rule regulations as drafted by NOAA Fisheries Service, which included regulations proposed by NOAA Fisheries Service under the authority of section 305(d) of the Magnuson-Stevens Act, and deemed them to be necessary and consistent with section 303(c) of the Magnuson-Stevens Act.

The Council recommended in Framework 19 to eliminate the September 1 through October 31 ETAA seasonal closure, which was implemented under Framework 18 to the FMP to reduce sea turtle interactions with the scallop fishery. NMFS has deemed this measure as inconsistent with National Standard 2 of the Magnuson-Stevens Act. NMFS has

determined that the Council's recommendation to eliminate the ETAA seasonal closure may not be justified given the information and analysis provided in the Framework 19 document and analysis, and therefore is not consistent with National Standard 2 of the Magnuson-Stevens Act. National Standard 2 specifies that conservation and management measures shall be based upon the best scientific information available. Although the Council considered scientific information, the information is not sufficient to justify removal of the seasonal closure adopted under Framework 18.

*Open Area DAS Allocations*

To achieve optimum yield at the target F=0.20 for the scallop resource, limited access open area DAS allocations are required to be adjusted every 2 years. Since the calculation of overall F also includes the mortality in controlled access areas, the calculation of the open area DAS allocations depends on the access area measures, including the rotation schedule, management measures, and access area trip allocations. Framework 19 would implement the following vessel-specific DAS allocations: Full-time vessels would be allocated 35 DAS in 2008 and 42 DAS in 2009; part-time vessels would be allocated 14 DAS in 2008 and 17 DAS in 2009; and occasional vessels would receive 3 DAS in 2008 and 3 DAS in 2009.

Because Framework 19 will not be implemented by the start of the fishing year on March 1, 2008, and interim regulations that will be in effect at the start of the 2008 fishing year are inconsistent with proposed Framework 19 specifications, it is possible that scallop vessels may exceed their DAS allocations during the interim period between March 1, 2008, and the implementation of Framework 19. Therefore, any limited access open area DAS used in 2008 by a vessel that is above the final 2008 allocation for that vessel would be deducted from the vessel's 2009 DAS allocation.

*Limited Access Trip Allocations, and Possession Limits for Scallop Access Areas*

In the 2008 fishing year, full-time scallop vessels would be allocated one trip in the Nantucket Lightship Access Area (NLCA), and four trips in the ETAA. A part-time scallop vessel would be allocated two trips, which could be taken as follows: One trip in the ETAA and one trip in the NLCA, or two trips in the ETAA. An occasional vessel would be allocated one trip which could

be taken in either the NLCA or the ETAA. The 2008 limited access scallop possession limit for access area trips would be 18,000 lb (8,165 kg) for full-time and part-time vessels, and 7,500 lb (3,402 kg) for occasional vessels.

In the 2009 fishing year, full-time scallop vessels would be allocated one trip in the Closed Area II Access Area (CAII), up to three trips in the ETAA, and up to 1 trip in Delmarva. A part-time scallop vessel would be allocated two trips, and could distribute these trips between the following access areas as follows: Up to two trips in the ETAA, up to one trip in CAII, and up to one trip in Delmarva (unless ETAA and/or Delmarva trips are reduced due to updated exploitable scallop biomass estimates). An occasional vessel would be allocated one trip, which could be taken in CAII, the ETAA, or Delmarva (unless ETAA and/or Delmarva trips are reduced due to updated exploitable scallop biomass estimates). The 2009 limited access scallop possession limit for access area trips would be 18,000 lb (8,165 kg) for full-time and part-time vessels, and 7,500 lb (3,402 kg) for occasional vessels.

Although the Framework 19 document submitted to NMFS did not specify 2009 Delmarva trip options for part-time and occasional vessels, NMFS has interpreted this as an oversight, and has included Delmarva trip options for part-time and occasional vessels in 2009. ETAA and Delmarva trip allocations and possession limits in 2009 are subject to change per the proposed ETAA and Delmarva trip reduction procedures described below.

Because Framework 19 will not be implemented by March 1, 2008, and interim regulations that will be in effect at the start of the 2008 fishing year are inconsistent with proposed Framework 19 specifications, it is possible that scallop vessels may fish in an access area that would otherwise be closed under Framework 19 during the interim period between March 1, 2008, and the implementation of Framework 19. Therefore, if a limited access vessel takes a 2008 Closed Area I Access Area (CAI) trip, one ETAA trip would be deducted from the vessel's 2009 allocation. Although the Council did not specify this measure in Framework 19, based on other Framework 19 measures adopted by the Council and the overall objectives of the FMP, NMFS proposed this measure under the authority of section 305(d) of the Magnuson-Stevens Act.

*Regulatory Procedure to Reduce 2009 ETAA and/or Delmarva Allocations*

ETAA and Delmarva specifications are based on 2007 scallop resource survey information, which was the best scientific information available when the Council established the proposed ETAA and Delmarva allocations for Framework 19. If 2008 ETAA and/or Delmarva survey data indicate that there is less estimated exploitable biomass of scallops in the ETAA and/or Delmarva for the 2009 fishing year, the Regional

Administrator may reduce ETAA and/or Delmarva allocations to prevent overfishing.

If a reduction in the ETAA is necessary, as dictated by pre-determined thresholds detailed in Table 1, the Regional Administrator would publish a final rule consistent with the Administrative Procedure Act (APA) on or about December 1, 2008. If the ETAA exploitable biomass estimate is between 20,000 and 29,999 mt, part-time vessels would be authorized to take one trip in the ETAA at a reduced possession limit

of 3,600 lb (1,633 kg), and one trip in the NLCA at the normal possession limit of 18,000 lb (8,165 kg). The reduced possession limit for part time vessels under this scenario results from the FMP structure, which allocates to part-time vessels 40 percent of what is allocated to a full-time vessel. If updated exploitable biomass information is not available so that a final rule pursuant to the APA cannot be published on or about December 1, 2008, no reductions would be made.

TABLE 1—2009 ETAA TRIP REDUCTION TABLE

Exploitable biomass estimate (mt)	Adjusted trips (full-time, part-time, occasional)	Adjusted trips (general category)	Adjusted 2009 research set-aside TAC (mt)	Adjusted 2009 observer set-aside TAC (mt)
30,000 or greater	No adjustment	No adjustment	No adjustment	No adjustment
20,000–29,999	2, 1*, 0	1473	0.24	0.12
10,000–19,000	1, 0, 0	982	0.16	0.08
Less than 10,000	0, 0, 0	491	0.08	0.04

\*Part-time vessels may take one trip in the ETAA at a reduced possession limit of 3,600 lb (1,633 kg) and one trip in CAII or Delmarva (unless Delmarva trips are reduced); or one trip in CAII and one trip in Delmarva (unless Delmarva trips area reduced).

In addition, if an updated estimate of overall F exceeds 0.29 in 2008, then ETAA allocations would be reduced consistent with the reductions specified in Table 1 under exploitable biomass estimates of 20,000–29,000 mt. If both the biomass and F thresholds were exceeded, the allocation level would be established using the biomass adjustment schedule. Under the same procedures and dates, if the Delmarva biomass for the 2009 fishing year is estimated to be below 10,000 mt, then the area would remain closed to scallop fishing for the 2009 fishing year, and no trips or set-aside would be authorized there.

*New Hudson Canyon Rotational Management Area*

Due to the high concentration of small scallops in the HCAA, Framework 19, consistent with the FMP's area rotation program strategy to protect young scallop concentrations, would establish the HCAA as a rotational management area, and close the HCAA to all scallop fishing, including general category vessels, for at least the 2008 and 2009 fishing years. The expected increase in exploitable biomass in the absence of F is expected to exceed 30 percent per year. The area could be considered again as an access area and re-open to fishing when the annual increase in exploitable biomass in the absence of fishing mortality is less than 15 percent per year.

*Open Area DAS Adjustment if a Scallop Access Area Yellowtail TAC Allocated to the Scallop Fishery is Caught*

Under the Northeast Multispecies Fishery Management Plan, 10 percent of the Southern New England (SNE) and Georges Bank (GB) yellowtail TACs are allocated to scallop vessels fishing in the NLCA, CAI, and CAII. If the SNE and/or GB yellowtail TAC is caught, the respective access area(s) are closed to further scallop fishing for the remainder of the fishing year. If a vessel has unutilized trip(s) in an access area closed by a scallop fishery yellowtail TAC, Framework 19 would allocate additional open area DAS in a manner that maintains the F objectives of the FMP. This trip/DAS conversion would apply only to full-time vessels, and to occasional or part-time vessels that have no other available access areas in which to take their access area trip(s). Unused access area trip(s) would be converted to open area DAS so that scallop fishing mortality that would have resulted from the access area trip(s) would be equivalent to the scallop fishing mortality resulting from the open area DAS allocation. Consequently, if the NLCA or CAII is closed in 2008 or 2009, respectively, each vessel with unutilized trip(s) would be allocated a specific amount of additional open area DAS according to permit category. Full-time vessels would be allocated 7.7 DAS per unutilized trip in the NLCA and 7.9 DAS per unutilized trip in CAII. Part-time vessels would receive the same

DAS conversion as full-time vessels, as long as there was no other access area available for the vessel to take a trip(s) in. If an occasional vessel has no available access area in which to take its trip, it would be allocated converted DAS according to the most recent closure: 3.2 DAS if it was the NLCA, 3.3 DAS if it was CAII. Although the Council did not specify this measure regarding occasional vessels in Framework 19, based on other Framework 19 measures adopted by the Council and the overall objectives of the FMP, NMFS proposed this measure under the authority of section 305(d) of the Magnuson-Stevens Act.

If a vessel has unused broken trip compensation trip(s) when an access area closes due to reaching a yellowtail TAC, it would be issued additional DAS in proportion to the un-harvested possession limit. For example, if a full-time vessel had an unused 9,000 lb (4,082 kg) NLCA compensation trip (half of the full possession limit) at the time of a NLCA yellowtail TAC closure, the vessel would be allocated 3.85 DAS (half of the 7.7 DAS that would be allocated for a full NLCA trip).

*Research Set-Aside (RSA) Allocations*

Two percent of each scallop access area quota and 2 percent of the DAS allocation is set aside as part of the Scallop RSA Program to fund scallop research and compensates participating vessels through the sale of scallops harvested under the research set-aside quota. The 2008 research set-aside

access area allocations would be: NLCA—110,000 lb (50 mt); ETAA—440,000 lb (200 mt). The 2009 research set-aside access area allocations would be: CAII—116,000 lb (53 mt); ETAA—324,000 lb (147 mt); Delmarva—120,000 lb (54 mt). If 2008 ETAA and/or Delmarva survey data indicate that there is less estimated exploitable biomass of scallops in the ETAA and/or Delmarva, the 2009 RSA allocations in these areas would be reduced as specified in Table 1.

The 2008 and 2009 research set-aside DAS allocations would be 235 and 282, respectively.

#### *Observer Set-Aside Allocations*

One percent of each scallop access area quota and 1 percent of the DAS allocation is set aside as part of the industry funded observer program to help defray the cost of carrying an observer. Scallop vessels on an observed DAS trip are charged a reduced DAS rate, currently 0.85 per DAS; scallop vessels on an observed access area trip are authorized to have an increased possession limit, currently 400 lb of shucked scallops per DAS.

The 2008 access area observer set-aside allocations would be: NLCA—55,000 lb (25 mt); ETAA—222,000 lb (111mt). The 2009 access area observer set-aside allocations would be: CAII—58,000 lb (26 mt); ETAA—162,000 lb (73 mt); Delmarva—60,000 lb (27 mt). If 2008 ETAA and/or Delmarva survey data indicate that there is less estimated exploitable biomass of scallops in the ETAA and/or Delmarva, the 2009 RSA allocations in these areas would be reduced as specified in Table 1.

The 2008 and 2009 DAS observer set-aside allocations would be 118 and 141, respectively.

#### *Adjustment of the Scallop Overfishing Definition*

The Council recommended a new overfishing definition based on results from the recent scallop stock assessment (SAW 45), which used a new model to characterize the scallop resource, including a new biomass target and threshold, and a new F threshold. Because the Council recommended the new reference points and a modified overfishing definition to reflect the new parameters, the Council also considered whether the current target of  $F=0.20$  should be adjusted upward consistent with the F threshold adjustment. The overfishing threshold of  $F=0.29$  is based on an assumption that F is spatially uniform. However, uniform F does not occur in the scallop fishery due to unfished biomass in closed areas and highly variable F's in open and access

areas. In the case of highly non-uniform fishing effort, the F that maximizes yield per recruit will be less than the spatially uniform target ( $F=0.29$ ). The Council was concerned that setting the F target at the typical 80 percent of the threshold ( $F=0.23$ ) would result in localized overfishing in open areas. Therefore, the Council recommended keeping the target at  $F=0.20$  in recognition that F is not uniformly distributed in the scallop fishery, and the resource is prone to localized overfishing, particularly in open areas. An F target of 0.20 would help maintain a stable fishery rather than maximize individual catch on an annual basis, compared to higher F targets.

In addition, based on the results of SAW 45, the Council recommended establishing scallop biomass reference points using absolute scallop meat biomass estimates instead of scallop resource survey indices, as in the past.

Based on these recommendations, the scallop overfishing definition would be as follows: If stock biomass is equal to or greater than  $B_{max}$ , as measured by an absolute value of scallop meat (mt) (currently estimated at 108,600 mt for scallops in the GB and Mid-Atlantic resource areas), overfishing occurs when F exceeds  $F_{max}$ , currently estimated as 0.29. If the total stock biomass is below  $B_{max}$ , overfishing occurs when F exceeds the level that has a 50-percent probability to rebuild stock biomass to  $B_{max}$  in 10 years. The scallop stock is in an overfished condition when stock biomass is below  $\frac{1}{2}B_{max}$  and, in that case, overfishing occurs when F is above a level expected to rebuild the stock in 5 years, or when F is greater than zero when the stock is below  $\frac{1}{4}B_{max}$ .

The following table details the biomass and F reference points proposed by Framework 19.

TABLE 2. PROPOSED BIOMASS AND F  
REFERENCE POINTS

	Target	Threshold
Biomass	108,600 mt	54,300 mt
Fishing mortality (F)	0.29	0.20

#### *Prohibition on deckloading*

To minimize scallop discard mortality, no scallop vessel that is declared into the Area Access Program as specified in § 648.60 could possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(d), outside the boundaries of a Sea Scallop Access Area.

#### *Adjustments to the Industry-funded Observer Program*

There are several proposed measures to improve the industry-funded observer program.

##### 1. Proposed Measures Pertaining to Observer Service Providers

Providers must respond to a fisherman's request for an observer, within 18 hr of the fisherman's call, to let him/her know if an observer is available.

Providers must provide the NMFS Northeast Fishery Observer Program (NMFS/NEFOP) with an updated list of contact information for all observers that includes the observer identification number, observer's name, mailing address, email address, phone numbers, homeports or fisheries/trip types assigned, and must include whether or not the observer is "in service," indicating when the observer has requested for leave and/or is not currently working for the industry-funded program.

Providers must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services;

Providers must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and specific observers.

Providers must submit to NMFS/NEFOP, if requested, copies of any information developed and used by the observer providers distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, etc.

Providers are required to charge vessel owners in a way that is consistent with the compensation received by the observed vessel. NMFS authorizes vessel compensation from the industry-funded observer set-aside using VMS transmission data. For the purpose of compensating scallop vessels carrying an observer, NMFS would calculate the duration of the trip as the period from the first VMS polling position outside of the demarcation line at the beginning of the trip to the first VMS polling position inside of the demarcation line at the end of the trip. For example, if the first VMS polling position outside of the demarcation line of a vessel with an observer on an access area trip was 9:00 pm on the 1st, and the first VMS polling

position inside of the demarcation line at the end of the trip was at 1:00 am on the 3rd, the duration of the trip equals 27 hr or 2 "days" (24 hr + 3 hr) for the purposes of observer set-aside compensation. Therefore, the provider would charge for 2 days of observer coverage. For observed open area DAS trips, "day" would be defined as a 24-hour period and portions of days would be pro-rated at an hourly charge. For example, for the trip described above, the provider would charge 1 day and 3 hr.

Providers would no longer be required to maintain at least eight certified observers.

Providers must provide NMFS/NEFOP with observer contract data within 24 hr of landing, and raw data within 72 hr of landing.

## 2. Proposed Measures Pertaining to Scallop Fishermen

NMFS/NEFOP may take up to 72 hr to respond to a pre-sailing notice and, if selected to carry an observer, the observer provider may take up to 48 hr to respond to an observer deployment request. Currently, NMFS/NEFOP may take up to 24 hr to respond to a pre-sailing notice, and the observer service provider may take up to 72 hr to respond to an observer deployment request.

Limited access trip notification calls can not be made more than 10 days in advance of a trip, and not more than 10 trips may be called in at a time.

General Category vessels making an access area trip(s) must call in with the same notice described above, but make weekly calls rather than daily calls. For example, a general category vessel could call in on Tuesday for all the trips it plans to take from the following Sunday through Saturday. The vessel would either get a waiver for that week, or be selected for observer coverage. If selected, a vessel could be required to carry an observer on up to two trips made that week.

Vessel owners, operators, or managers are required to notify NMFS/NEFOP of any trip plan changes at least 48 hr prior to vessel departure.

Confirmation numbers for trip notification calls are valid for 48 hr from the intended sail date.

A vessel is prohibited from fishing in an access area without an observer waiver confirmation number specific to that trip and that was issued for the trip plan that was called in to NMFS.

### 3. Proposed Observer Program Observer Training Adjustments

NMFS/NEFOP observer training sessions would no longer have a minimum class size of eight.

An observer's first three deployments and the resulting data would be immediately edited and approved after each trip by NMFS/NEFOP, prior to any further deployments by that observer. If data quality is considered acceptable, the observer would be certified. If the data is not acceptable, the observer will not be certified.

An observer provider would not deploy any observer on the same vessel for more than two consecutive multi-day trips and not more than twice in any given month for multi-day deployments.

Providers would be required to provide at least 7 days advance notice to NMFS/NEFOP when requesting an observer training class.

Prior to the end of an observer training course, the observer would be required to complete a cardiopulmonary resuscitation/first aid course.

### 4. DAS and TAC Compensation Rates

The Council has recommended the DAS and TAC compensation rates be adjusted to more accurately reflect the costs associated with observed trips. NMFS will consider information included in Framework 19 and any other relevant fishery information and will notify scallop permit holders through a permit holder letter if an adjustment is made.

### 30-day VMS Power Down Provision for Scallop Vessels

The proposed action would allow all scallop vessels to power down their VMS unit for a minimum of 30 days provided the vessel does not engage in any fisheries until the unit is turned back on. Such vessels would be required to obtain a letter of exemption from the Regional Administrator. This provision would provide more flexibility and would reduce operating costs for some scallop vessel owners that do not engage in fisheries for extended periods of time.

### General Category Access Area Harvest Specifications for 2008 and 2009

In 2008, the general category fishery would be allocated 5 percent of the overall NLCA and ETAA TACs, resulting in up to 667 trips in the NLCA, and up to 2,668 trips in the ETAA, respectively. If 2008 scallop resource surveys indicate a reduced exploitable scallop biomass, or overall 2008 scallop F exceeds 0.29, general category ETAA trip allocations would be subject to trip reduction procedures as specified under

### Table 1—2009 ETAA Trip Reduction Table.

In 2009, the general category scallop fishery would be allocated 5 percent of the overall ETAA and Delmarva TACs, resulting in up to 1,964 trips and 728 trips, respectively. If updated 2008 scallop resource surveys indicate the exploitable biomass in Delmarva is less than 10,000 mt, Delmarva would be closed for the 2009 fishing year, and no general category trips would be allocated. General category vessels would not be allocated any trips in CAII because of concerns that negligible fishing effort by general category vessels would occur there. Because general category vessels would receive overall TAC, the zero allocation in CAII would be offset by a higher percentage of overall catch in open areas.

Because Framework 19 will not be implemented by the start of the 2008 fishing year on March 1, 2008, and current regulations that will roll over into the 2008 fishing year are inconsistent with proposed Framework 19 specifications, it is possible that scallop vessels may exceed their allocation or fish in an area that would otherwise be closed under Framework 19. Therefore, if general category vessels take 2008 CAI trips, a like number of ETAA trips as specified under default regulations would be deducted from the general category fleet in 2009. Although the Council did not address this scenario in their Framework 19 document, and therefore did not recommend this adjustment procedure, NMFS is proposing this measure to remain consistent with the intent of the FMP. Although the Council did not specify this measure in Framework 19, based on other Framework 19 measures adopted by the Council and the overall objectives of the FMP, NMFS proposed this measure under the authority of section 305(d) of the Magnuson-Stevens Act.

### General Category Measures Dependent on Amendment 11 to the FMP (Amendment 11)

Several measures in Framework 19 are dependent on the implementation of Amendment 11 as proposed (72 FR 71315, December 17, 2007). The primary intent of Amendment 11 is to reduce fishing capacity in the general category fishery by establishing a limited entry program that would include three permit categories; IFQ, Northern Gulf of Maine Management Area (NGOM), and incidental. Framework 19 proposed regulations have been drafted under the assumption that Amendment 11 will be implemented as proposed. The following measures in Framework 19

are contingent on the implementation of Amendment 11 as currently proposed: Allocation of 10 percent of the overall scallop TAC in 2008 (and 2009 if the IFQ program is not implemented by March 1, 2009), and 5 percent in 2009 and beyond; a quarterly hard TAC for the directed general category scallop fishery for the 2008 scallop fishing year; a separate 0.5-percent TAC allocation of the overall scallop TAC in 2009 and beyond for full-time, part-time, or occasional vessels that qualify for an IFQ permit; cost recovery payment procedures for IFQ permit holders that land IFQ scallops; 2008 and 2009 NGOM TACs; and incidental catch target TACs for 2008 and 2009. The legal basis and rationale for these measures are described in the proposed rule for Amendment 11 and are not repeated here. The following provides details on the specific allocations and other specifications for the Amendment 11 measures.

### 1. Quarterly TAC

Framework 19 would allocate approximately 10 percent of the overall 2008 scallop TAC to the general category fishery. The quarterly TAC would be effective during the transitional period as the IFQ program is implemented, which is scheduled for the start of the 2009 fishing year. Framework 19 would allocate 35 percent (1,523,375 lb (690.99 mt)) of the 2008 directed general category annual TAC to Quarter 1, 40 percent (1,741,000 lb, (789.70 mt)) to Quarter 2, 15 percent (652,875 lb, (296.14 mt)) to Quarter 3, and 10 percent (435,250 lb (197.43 mt)) to Quarter 4. If any portion of the Quarter 1 TAC is not caught, the remainder would be rolled over into Quarter 3; if any portion of the Quarter 2 TAC is not caught, it would be rolled over into Quarter 4. Open area, access area, and NGOM scallop landings by directed general category trips would count against the quarterly TACs. Consequently, if a quarterly TAC is caught, all directed general category scallop fishing would cease for the remainder of the quarter; including access area, and open areas, but excluding the NGOM. If the Quarter 1 TAC (March 1–May 31) is exceeded, those pounds would be removed from Quarters 3 and/or 4.

### 2. IFQ Allocation

Amendment 11 proposes to establish a separate IFQ allocation for full-time, part-time, or occasional scallop vessels that qualify for an IFQ permit. Starting with the first year of the IFQ program in 2009, the pool of IFQ vessels that do not qualify for a full-time, part-time, or

occasional scallop permit would be allocated 5 percent of the overall scallop TAC; and the pool of full-time, part-time, or occasional vessels that qualify for an IFQ permit would be allocated 0.5 percent of the overall scallop TAC.

General category vessels that qualify for an IFQ permit in 2009 would be allocated 5 percent of the overall scallop TAC as follows: 1,182,500 lb (536.37 mt) from open areas, 785,700 lb (356.79 mt) from ETAA, and 291,000 lb (13.20 mt) from Delmarva. Full-time, part-time, and occasional scallop vessels that qualify for an IFQ permit in 2009 would be allocated 225,950 lb (112.96 mt) from open areas.

In the event that implementation of the IFQ program is delayed beyond the start of the 2009 fishing year (March 1, 2009), the IFQ scallop fishery would be allocated 10 percent of the overall scallop TAC and be divided among quarters as described in the preceding section.

### 3. Cost Recovery

NMFS is required by the Magnuson-Stevens Act to recover the costs directly related to the management, data collection and analysis, and enforcement of IFQ programs such as the one proposed by Amendment 11. Under section 304(d)(2)(A) of the Magnuson-Stevens Act, the Secretary of Commerce is authorized to collect a fee, not to exceed 3 percent of the ex-vessel value of fish harvested, to recover these costs. Therefore, a scallop IFQ vessel would incur a cost recovery fee liability for every landing of scallops. The IFQ permit holder that landed the IFQ scallops would be responsible for submitting this payment to NMFS once per year. The ex-vessel value of scallops used to calculate the cost-recovery fees due for a fishing year would be based on an average of the ex-vessel value of all general category scallops landed between March 1 and September 30 of the initial year of the IFQ program, and October 1 through September 30 of each year thereafter. The Amendment 11 proposed rule proposed to require IFQ permit owners that transferred IFQ scallops (transferor) to another IFQ vessel (transferee) as part of the IFQ scallop transfer program to submit a cost recovery fee for scallops landed by the transferee. However, upon further evaluation, Framework 19 would adjust this requirement; the transferee, and not the transferor, would be required to submit the cost recovery fee. The administrative burden would be the same, if not greater, if the IFQ transferor, and not the transferee, were required to submit the cost recovery fee. This adjustment would also reduce the cost

recovery administrative burden of NMFS.

Payment of the cost recovery fee would be a permit condition that must be met before permits could be renewed. On or about October 30 of each year, NMFS would mail a cost recovery bill for the IFQ fee incurred by each IFQ vessel to each IFQ permit holder. Owners of IFQ vessels would be required to submit payment by January 1 of each year. An IFQ scallop vessel's permit would not be renewed (i.e., not issued) by NMFS until payment for the prior year's fees is received in full. Bills would also be made available electronically via the internet. Fee liabilities due January 1 would be for the previous cost recovery period (October 1—September 30 of the year preceding the January 1 due date). For example, for scallops landed October 1, 2009—September 30, 2010, NMFS would issue a cost recovery bill on or about October 30, 2010, and the IFQ permit holder would be required to submit the cost recovery fee by January 1, 2011. If an IFQ permit holder does not pay, or pays less than the full amount due, the vessel's IFQ permit would not be renewed.

Disputes regarding fee liabilities would be resolved through an administrative appeal procedure. If an IFQ permit holder makes a timely payment to NMFS of an amount less than the fee liability NMFS has determined, the IFQ permit holder would have the burden of demonstrating that the fee amount submitted is correct and that the fee calculated by NMFS is incorrect. If, upon preliminary review of the accuracy and completeness of a fee payment, NMFS determines the IFQ permit holder has not paid the amount due in full, NMFS would notify the IFQ permit holder by letter. NMFS would explain the discrepancy and the IFQ permit holder would have 30 days to either pay the amount that NMFS has determined should be paid, or provide evidence that the amount paid was correct. The IFQ permit for the vessel would not be renewed until the payment discrepancy is resolved. If the IFQ permit holder submits evidence in support of his/her payment, NMFS would evaluate it and, if there is any remaining disagreement as to the appropriate IFQ fee, prepare a Final Administrative Determination (FAD). The FAD would set out the facts, discuss those facts within the context of the relevant agency policies and regulations, and make a determination as to the appropriate disposition of the matter. A FAD would be the final agency action. If the FAD determines

that the IFQ permit holder is out of compliance, the IFQ scallop permit in question would not be renewed until the conditions established by the FAD are met. If the FAD determines that the IFQ permit holder owes additional fees, and if the IFQ permit holder has not paid such fees, all IFQ permit(s) held by the IFQ permit holder would not be renewed until the required payment is received by NMFS. If NMFS does not receive such payment within 30 days of the issuance of the final agency action, NMFS would refer the matter to the appropriate authorities within the U.S. Treasury for purposes of collection, and the vessel's IFQ permit(s) would remain invalid. If NMFS does not receive such payment prior to the end of the fishing year, the IFQ permit would be considered voluntarily abandoned.

Cost recovery payments would be made electronically via the Federal web portal, [www.pay.gov](http://www.pay.gov), or other internet sites as designated by the Regional Administrator. Instructions for electronic payment would be made available on both the payment website and the paper bill. Payment options may include payment via a credit card (the Regional Administrator would specify in the cost recovery bill acceptable credit cards) or direct ACH (automated clearing house) withdrawal from a designated checking account. Payment by check could be authorized by the Regional Administrator if the Regional Administrator has determined that electronic payment is not possible (for example, if the geographical area or an individual(s) is affected by catastrophic conditions).

NMFS would create an annual IFQ report and provide it to the owner of the IFQ permit. The report would include quarterly and annual information regarding the amount and value of IFQ scallops landed during the fishing year, the associated cost recovery fees, and the status of those fees. This report would also detail the costs incurred by NMFS, including the calculation of the recoverable costs for the management, enforcement, and data collection, incurred by NMFS during the fishing year.

#### 4. NGOM TACS

Framework 19 proposes a 70,000-lb (31,751-kg) annual NGOM TAC for the 2008 and 2009 fishing years.

#### 5. Scallop Incidental Catch Target TAC

Framework 19 proposes a 50,000-lb (22,680-kg) scallop incidental catch target TAC for the 2008 and 2009 fishing years to account for mortality from this component of the fishery and to ensure that F targets are not exceeded.

#### *Status of Framework 19 if Amendment 11 is Not Implemented as Proposed*

Several measures in Framework 19 are dependent on the implementation of Amendment 11 as proposed. If Amendment 11 is not implemented, the general category scallop fishery would remain an open access fishery; any individual could obtain a permit for a vessel. Vessels would be limited to the 400-lb (181-kg) possession limit if they have a 1B permit; vessels with a 1A permit would be restricted to a 40 (18-kg) pound possession limit. Limited access vessels would be permitted to fish under general category rules when not on a DAS. General category vessels would be permitted to fish in access areas up to a maximum number of trips assigned through biennial frameworks such as Framework 19. The total level of catch from this component of the fishery would not be restricted.

#### Classification

At this time, NMFS has not determined that this proposed rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable law. 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.

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

1. Service provider observer contact information reports—5 min per response;
2. Service provider observer availability reports—1 min per response;
3. Copies of service provider outreach materials—30 min per response;
4. Copies of service provider contracts—30 min 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 the Regional Administrator as specified in **ADDRESSES** above, and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or fax to (202) 395-7285.

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.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA), and consists of the discussion and analyses in the preamble to this action and the analyses of this action and its impacts in Framework 19. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the **SUMMARY**. A complete description of the economic impacts of the Framework 19 measures and alternatives is provided in Section 5.4 of the EA for Framework 19, and the details are not provided in this summary.

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

The vessels in the Atlantic sea scallop fishery are all considered small business entities and, therefore, there is no disproportionate impact on large and small entities. All of the vessels grossed less than \$3.5 million according to dealer data for the 2004 to 2006 scallop fishing years. Annual total revenue averaged over \$1 million in the 2005 fishing year, and about \$881,990 in the 2006 fishing year, per limited access vessel. Total revenues per vessel, including revenues from species other than scallops, exceeded these amounts, but were less than \$3 million per vessel. Average scallop revenue per general category vessel was \$88,702 in 2005 and \$66,785 in the 2006 fishing years. Average total revenue per general category vessel, including revenue from species other than scallops, exceeded \$250,000 in the 2005 and 2006 fishing years. Average revenues per vessel were lower in the 2006 fishing year for all permit categories because of lower scallop prices.

The proposed regulations would affect all Federal scallop vessels. The Amendment 11 and Framework 19 documents provide extensive information on the number, port, state, and size of vessels and small businesses that would be affected by the proposed regulations. In 2007, there were 346 full-time, 33 part-time, and 1 occasional limited access scallop permits issued, and 2,332 general category permits issued to vessels in the open access general category fishery: 915 category 1B permits, and 1,417 category 1A incidental catch permits.

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

This action contains several new collection-of-information, reporting, and recordkeeping requirements. The following describes these requirements.

**1. Observer Contact List**

Observer service providers would be required to provide and maintain an updated list of contact information for all observers. This would facilitate the ability of NMFS/NEFOP to contact observers. Maintaining an up-to-date observer contact list is estimated to entail 5 min per response, 12 responses per year, for a total of 1 burden hour annually. These updates do not have any associated miscellaneous costs.

**2. Observer Availability List**

Service providers would be required to provide and maintain a listing of whether or not the observer is "in service," indicating when the observer has requested leave and/or is not currently working for the industry-funded program. This would facilitate the ability of NMFS/NEFOP to confirm observer availability. Maintaining an up-to-date observer availability list is estimated to entail 1 min per response, 300 responses per year, for a total of 5 burden hr annually. These updates do not have any associated miscellaneous costs.

**3. Copies of Observer Service Provider Materials**

Service providers would be required to submit to NMFS/NEFOP, if requested, copies of any materials developed and distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, etc. This would allow NMFS/NEFOP to ensure that information distributed to industry is accurate and in keeping with the objectives of the observer program. It is estimated that NMFS/NEFOP would request copies of service provider

outreach materials once a year. It is estimated it would take 30 min to submit this information, for a total burden of 1 hour. It is estimated the service providers would incur a total of \$5 in mailing fees to submit these materials.

**4. Copies of Observer Service Provider Contracts**

Service providers would be required to submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services. This would allow NMFS/NEFOP to ensure contractual information is accurate and in keeping with the objectives of the observer program and help resolve disagreements between industry and the service provider. It is estimated that NMFS/NEFOP would request copies of service provider contracts once a year. It is estimated it would take 30 min to submit this information, for a total burden of 1 hour. It is estimated the service providers would incur a total of \$5 in mailing fees to submit these materials.

*Summary of the Aggregate Economic Impacts*

In the event that Framework 19 is not approved and implemented by the start of the 2008 scallop fishing year (March 1, 2008), measures and allocations that are specified in the present regulations (Part 648 Subpart D) would roll over into the 2008 fishing year and beyond, unless superseded by subsequent specifications.

The long-term overall economic effects of the proposed measures are estimated to be slightly positive on revenues; an average of about a 0.5-percent increase per year during 2008–2021.

Average overall annual scallop revenue for a limited access vessel is estimated to increase by 1.3 percent in the 2008 fishing year and by 6.2 percent in the 2009 fishing year compared to no action. Because fishing costs are estimated to decline due to fewer DAS used in the access areas and the open areas, the impacts on the net revenue and vessel profits would be positive, with a 2.1-percent increase in fishing year 2008 and a 6-percent increase in fishing year 2009 (Section 5.4.2.2).

The economic impacts of the proposed alternative for the general category fleet would be positive because the general category TAC would be higher under the preferred alternative

compared to the no action alternative. As a result, average scallop revenues and profits for general category vessels are expected to be higher for the preferred alternative compared to no action.

However, the level of general category TAC would be lower than general category scallop landings in recent years, resulting in negative short-term economic impacts. These short-term impacts are due to measures proposed in Amendment 11 that would establish a limited entry program for the general category fishery, thereby reducing general category fishing effort and landings. Since Framework 19 does not propose any changes to measures proposed by Amendment 11, the impacts to the general category limited entry program are not analyzed here. Section 7.9 of the Environmental Impact Statement for Amendment 11 provides a comprehensive analysis of the economic impacts of the general category limited entry program on small business entities. These analyses indicate that, despite the negative impacts in the short-term, the medium to long-term economic impacts of the limited entry program are expected to be positive for the scallop fishery as a whole.

The overall economic impacts of general category measures proposed by Framework 19 are not expected to be significantly different from the impacts analyzed in Amendment 11.

Amendment 11 analyzed the economic impacts by assuming that the general category TAC would be 5 million lb (2,2668 mt) in 2008 and 2.5 million lb (1,134 mt) in 2009. The preferred option in Framework 19 would result in a lower TAC: About 4.3 million lb (1,950 mt) TAC in 2008 and 2.2 million lb (998 mt) TAC in 2009. Although these amounts exceed potential TAC levels under the no action alternative, they are slightly less than the landings by the general category vessels in recent years. Landings by vessels that had a general category permit before the control date and that are expected to fish in 2008 were 4.6 million lb (2,087 mt) in 2006. The vessels that are expected to qualify for the limited access general category program, and thus fish in 2009, landed about 2.4 million lb (1,089 mt). Therefore, short-term economic impacts of the general category TAC would be negative on the general category fleet to the extent that the overall TAC prevents these vessels from landing the amount of scallops they would catch without such a constraint. Again, those distributional impacts were analyzed in Amendment 11 (Sections 5.4.8.5, 5.4.8.6 and 5.4.13). However, a limited access

general category fishery would have positive economic impacts over the medium to long term on the vessels that qualify for general category limited access permits and for limited access vessels by preventing overfishing of the scallop resource and the dissipation of profits by uncontrolled entry and effort into the general category fishery.

Other proposed Framework 19 measures, such as the general category quarterly hard TAC, 5-percent access area allocation for general category vessels, observer program improvements, a 30-day VMS power down provision, NGOM hard TAC, and yellowtail TAC adjustments, are expected to provide additional positive impacts by providing vessels the opportunity to reduce fishing costs and increase revenues from scallop fishing.

Because the intent of framework actions are to make minor adjustments to an FMP, and not major program changes, the council, in some cases where the adjustment measure was deemed minor, only considered one alternative versus a no action alternative.

#### *Economic Impacts of the Proposed Measures and Alternatives*

##### **1. GB Access Area Schedule Revision**

Framework 19 would adjust the GB access area schedule so that the NLCA would be open in 2008 and CAII would be open in 2009. The proposed action to revise the GB access area schedule is expected to have positive economic impacts by providing access to areas with more scallop biomass. This would help increase yield, landings, and revenues from the fishery both in the short and the long term, benefiting both limited access and general category vessels. The only alternative is the no action option, which would provide access in 2008 to CAI instead of the NLCA. Due to low biomass, CAI would not likely support a fleet-wide trip allocation. Consequently, since both the NLCA and CAII have higher scallop concentrations than CAI, the proposed alternative would result in higher economic benefits than the no action alternative.

##### **2. DAS Conversion and Yellowtail TAC**

The proposed action to allocate additional open area DAS if an access area closes due to the attainment of a scallop yellowtail TAC would continue under the no action alternative, but the values would be changed to reflect current fishery and resource conditions. The proposed DAS conversion rates would be higher than those under no action because scallop biomass in the

NLCA and CAII is lower than when the no action DAS conversion rates were established. This DAS conversion measure helps minimize lost revenue that would result from a yellowtail TAC closure. Although this measure would have positive economic impacts on scallop vessels that lost access area trip(s), they would likely receive less revenue from the DAS due to the access area trip to DAS conversion rate, which is based on scallop fishing mortality, not trip revenue. The conversion rate was established so that scallop mortality from the additional DAS would be equivalent to the scallop mortality from an access area. Scallops in open areas are generally smaller than scallops in access areas. No alternatives, other than maintaining conversion rates that are currently in the regulations, were considered. The proposed higher DAS conversion rates would result in higher economic benefits than no action.

##### **3. HCAA Trip Expiration**

The proposed no action alternative to allow all un-used 2005 HCAA trips to expire on February 29, 2008, instead of the rejected alternative of extending them to May 31, 2008, could have negative economic impacts on those vessels that could not take an economically viable trip to HCAA due to the poor resource conditions in this area. But these negative impacts are on 2007 fishing year revenues, not projected revenues under Framework 19. Landings per unit effort (LPUE) could improve in early 2007 and could provide some vessels incentive to take their trips rather than let them expire, minimizing these negative impacts. The proposed alternative to extend the trip expiration deadline to May 31, 2008, could reduce the negative impacts compared to no action. However, extending the duration of Hudson Canyon trips until May 31, 2008, could have negative impacts on future scallop yields resulting in negative long-term economic impacts.

##### **4. ETAA and Delmarva Schedule**

The proposed no action alternative to provide access to the ETAA in 2008 and 2009 and Delmarva in 2009 would have positive economic impacts on both limited access and general category vessels because this area has more scallop biomass compared to areas such as open areas and CAI. The procedure to reduce trips would help prevent overfishing, and thus have positive impacts on the scallop resource, and on the long term landings and revenues of scallop vessels. There are no alternatives under the current FMP that would generate higher benefits for the

scallop vessels. The only alternative is the no action, which would allocate fewer ETAA trips and zero Delmarva trips.

##### **5. Access Area Crew Limits**

The proposed no action alternative would continue to allow a vessel to carry any number of crew on an access area trip. No crew limit would give vessels the most flexibility, potentially reducing total fishing costs, and would therefore have positive economic impacts on scallop vessels. The alternative option would restrict the crew size to eight or nine persons. This would potentially help reduce scallop mortality and control effort, with positive impacts on the scallop resource, landings, and revenues over the long term. On the other hand, limiting crew size would reduce a vessel's flexibility and increase trip costs. Therefore, the economic benefits of this alternative are expected to be small compared to the proposed alternative.

##### **6. In-Shell Possession Limit**

The proposed action would prohibit any scallop vessel on an access area trip from possessing more than 50 U.S. bu (17.6 hL) of in-shell scallops. This prohibition would help prevent scallop discard mortality, and therefore result in higher yields, revenues, and economic benefits. There are no alternatives that would generate higher benefits for the scallop vessels. The only alternative is the no action which would continue to allow deckloading and result in lower economic benefits compared to the proposed action alternative.

##### **7. Research and Observer Set-Asides**

The proposed no action alternative would continue to set-aside 2 percent of the scallop TAC for the research set-aside program and 1 percent of the scallop TAC for the industry-funded observer set-aside program. These set-asides are expected to have indirect economic benefits for the scallop fishery by improving scallop information and data made possible by research and the observer program. There are no alternatives that would generate higher benefits for scallop vessels.

##### **8. DAS Allocations and Access Areas Trip Allocations**

The proposed open area DAS allocations are expected to prevent overfishing in open areas and to have positive economic impacts on scallop vessels when combined with controlled access area allocations. Framework 19 would implement the following vessel-specific DAS allocations: Full-time

vessels would be allocated 35 DAS in 2008 and 42 DAS in 2009; part-time vessels would be allocated 14 DAS in 2008 and 17 DAS in 2009; and occasional vessels would receive 3 DAS for each year. Except for the no action alternatives, other alternatives would result in slightly higher revenues and profits compared to the preferred action during 2008–2009. Alternatives with higher DAS allocations would provide higher short-term revenues, but could be offset by lower DAS allocations in future years as the result of lower exploitable scallop biomass. The proposed action would allocate fewer open area DAS compared to the no action in both the 2008 and 2009 fishing years, but it would allocate more trips to access areas. As a result, the proposed action would generate higher benefits than the no action alternative.

#### 9. General Category Quarterly TAC

Amendment 11 proposes to establish an IFQ limited entry program for the general category scallop fishery starting in 2009. The 2008 fishing year would be a transition year as IFQ shares are established. The proposed action would distribute the 2008 general category quota allocation into quarters to minimize derby-style fishing. This measure would have positive economic impacts over the long-term for vessels that qualify for the general category limited entry program. Although management of the general category fishery by a quarterly hard TAC during the transition period to an IFQ program would create some derby-style fishing, the quarterly TACs would reduce derby fishing and lessen the negative economic impacts associated with derby fishing. The proposed alternative (Option A) would allocate 35 percent (1,056,563 lb, (475.25 mt) of the 2008 directed general category annual TAC to Quarter 1, 40 percent (1,207,750 lb, (547.83 mt) to Quarter 1, 15 percent (452,813 lb, (205.39 mt)) to Quarter 1, and 10 percent (301,875 lb, (136.93 mt)) to Quarter 4. Quarters 1 and 2 would be allocated 75 percent of the TAC because general category access area trips primarily occur in those quarters. Unused TAC from Quarter 1 would roll over to Quarter 3, and unused TAC from Quarter 2 would roll over to the fourth quarter, thereby ensuring the full benefit of the scallop TAC is realized. There is no alternative to the proposed action (no action) alternative to allocate 10 percent of the overall 2008 scallop TAC to the general category fishery. However, Option B would distribute a greater percentage of the quarterly 10-percent hard TAC to the first and second quarters (85 percent) and less (15

percent) to the last two quarters, reducing the derby fishing in the first two quarters but increasing it in the last two quarters. This option is not expected to have larger positive economic impacts on the general category fishery compared to the proposed action (Option A).

#### 10. General Category Access Area Allocations

The proposed action to allocate 5 percent of the scallop access area TACs in the 2008 and 2009 fishing years is expected to have positive economic impacts on the general category vessels compared to the no action allocation of 2 percent. In 2008, the general category fishery would be allocated 5 percent of the overall NLCA and ETAA TACs, resulting in up to 665 trips in the NLCA, and up to 2,662 trips in the ETAA. In 2009, the general category scallop fishery would be allocated 5 percent of the overall ETAA and Delmarva TACs, resulting in up to 1,967 trips and 726, respectively. General category vessels would not be allocated any trips in CAII.

Because access areas are more productive and have higher LPUE than open areas, it would take less fishing time to catch the 400-lb (181-kg) possession limit. As a result, fishing costs would be lower and profits would be higher for trips taken in the access areas when compared to open areas. Since most general category vessels do not fish in CAII, zero percent allocation for this area would increase open area landings and overall revenues of the general category fishery. The alternative option would allocate 2 percent of the 2008 and 5 percent of the 2009 access area TACs, which would likely have less economic benefits for general category vessels.

#### 11. IFQ Cost Recovery

Framework 19 would implement a cost recovery program that would collect 3 percent of the ex-vessel value of scallop product landed to recover the costs directly related to management, data collection and analysis, and enforcement of the general category IFQ program as mandated by the Magnuson-Stevens Act. The preferred alternative estimates total scallop landings would be 45.9 million lb (20,820 mt) in 2009. With ex-vessel prices estimated from \$7.55–\$8.30, a 3-percent cost recovery would likely range from \$519,818 to \$571,455 in 2009. The positive economic impacts of the IFQ program for the general category limited access qualifiers are expected to exceed the costs of this cost recovery program. There are no other alternative options to

the proposed cost recovery program and the no action alternative would be inconsistent with the Magnuson-Stevens Act.

#### 12. NGOM TAC

Amendment 11 would establish a NGOM Management Area that would be managed under a hard quota system. Framework 19 would establish the NGOM annual specifications. The proposed NGOM TAC is expected to have positive economic impacts for vessels that do not qualify for limited access IFQ permit but do qualify for a NGOM permit because it would allow them to land scallops in this area during favorable resource conditions. The proposed hard TAC of 70,000 lb (32 mt) is expected to generate more than \$500,000 in scallop revenue for NGOM vessels in 2008–2009. The Council discussed higher TACs for the NGOM, but none were considered consistent with Amendment 11 and therefore were rejected and not analyzed.

#### 13. Incidental Scallop Catch Target TAC

Amendment 11 includes a provision that the FMP should consider the level of mortality from incidental catch and remove that from the projected total catch before allocations are made to general category and limited access fisheries. The proposed action to remove incidental scallop catch before making allocations to limited access and directed general category vessels would ensure F targets are not exceeded, and thus would have positive impacts on the resource, scallop yield, and on the revenues and profits of scallop vessels. Framework 19 would establish the incidental catch target TAC for the 2008 and 2009 fishing years. The target TAC would be established at 50,000 lb (22.68 mt) per year in 2008 and 2009. This measure is based on an estimate of incidental catch and therefore, no alternatives were considered.

#### 14. Overfishing Definition Adjustment

The Council recommended a new overfishing definition based on results from the recent scallop stock assessment (SAW 45) which used a new model to characterize the scallop resource, including a new biomass target and threshold, as well as a new F threshold. The proposed action to adjust the overfishing definition would have positive impacts on the scallop resource, scallop landings, revenues and profits of scallop vessels over the long term by more accurately defining the biomass reference points and appropriate F threshold based on the biomass reference points. Maintaining the F target at the precautionary level of

F=0.20 would also reduce the risk of localized overfishing in open areas. The Council also considered maintaining the current overfishing definition but, for the reasons stated, the new overfishing definition would provide greater benefits to the fishery. The alternative that would increase the F target is less precautionary. Although it would increase landings and economic benefits over the short term, it could result in overfishing and lower long-term economic benefits.

## 15. Observer Program Improvements

Framework 19 includes several proposed measures that would improve oversight and administration of the scallop observer program. Measures include: Greater oversight by NNMFS/NEFOP of observer availability; observer provider materials and contracts; closer correlation between service provider fees and observer set-aside compensation rates; adjusted general category access area trip notification requirements; and observer notification and observer waiver requirements, among others. The proposed action would have positive economic impacts by improving the administration and reducing the cost burden of the observer program on scallop vessels by improving observer program efficiency and by making provider fees more commensurate with observer set-aside compensation rates. The no action alternatives would not include observer program improvements, and therefore, would not facilitate the effectiveness and efficiency of the industry-funded observer program.

## 16. HCAA Rotational Management Area

The proposed action would establish the HCAA as a rotational management area and close it for at least the 2008 and 2009 fishing years to protect young scallops. This is expected to have positive economic impacts by reducing mortality and increasing yield from this area over the long term. As a rotational closed area, the HCAA is expected to provide for increased economic benefits to the scallop industry, consistent with the area rotation program. The foundation of the area rotation program is to increase yield from the scallop resource and increase overall benefits. Two different boundary alternatives for HCAA were considered but not selected by the Council. These alternative closures would slightly increase the revenues and economic benefits for the scallop vessels compared to the proposed HCAA closure boundaries, but would allocate fewer open-area DAS in the 2008 fishing year.

## 17. 30-day VMS Power Down Provision

The proposed action to implement a 30-day VMS power down provision would reduce the burden on vessel-owners to maintain a transmitting VMS on their vessel for long periods when it is not fishing. This provision would have some positive economic impacts by reducing vessel operation costs. There are no other alternatives other than no action which does not allow vessels to power down the VMS unit.

## List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 12, 2008.

**John Oliver,**

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

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

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. The following revision to § 648.4 is based on the proposed rule for Amendment 11 to the Atlantic Sea Scallop FMP (72 FR 71315, December 17, 2007). In § 648.4 revise paragraph (a)(2)(ii)(H) to read as follows:

### § 648.4 Vessel permits.

(a) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(H) *Application/renewal restrictions.*

See paragraph (a)(1)(i)(B) of this section. Applications for a LAGC permit described in paragraph (a)(2)(ii) of this section must be postmarked no later than [date 90 days from the date the Amendment 11 Final Rule is published in the **Federal Register**]. Applications for LAGC permits that are not postmarked on or before [date 90 days from the date the Final Rule is published in the **Federal Register**] may be denied and returned to the sender with a letter explaining the denial. Such denials may not be appealed and shall be the final decision of the Department of Commerce. If NMFS determines that the vessel owner has failed to pay a cost recovery fee in accordance with the cost recovery requirements specified at § 648.53(h)(4)(ii), the IFQ permit shall not be renewed.

3. In § 648.9, paragraph (c)(2)(i)(B) is revised to read as follows:

### § 648.9 VMS requirements.

(c) \* \* \*

(2) \* \* \*

(i) \* \* \*

(B) For vessels fishing with a valid NE multispecies limited access permit, a valid surfclam and ocean quahog permit specified at § 648.4(a)(4), or an Atlantic sea scallop permit, the vessel owner signs out of the VMS program for a minimum period of 30 consecutive days by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, the vessel does not engage in any fisheries until the VMS unit is turned back on, and the vessel complies with all conditions and requirements of said letter; or

\* \* \* \* \*

4. In § 648.11, paragraphs (g)(2), (g)(3), (g)(4)(i), (g)(4)(ii), (g)(5), (h)(5)(i), (h)(5)(iv), (h)(5)(vi), (h)(5)(vii)(A), and (h)(5)(vii)(E) are revised, and paragraphs (h)(5)(vii)(G) through (h)(5)(vii)(J) are added to read as follows:

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

\* \* \* \* \*

(g) \* \* \*

(2) *Vessel notification procedures—(i) Limited access vessels.* Limited access vessel owners, operators, or managers shall notify NMFS/NEFOP by telephone not more than 10 days prior to the beginning of any scallop trip of the time, port of departure, open area or specific Sea Scallop Access Area to be fished, and whether fishing as a scallop dredge, scallop trawl, or general category vessel.

(ii) *General category vessels.* General category vessel owners, operators, or managers must notify the NMFS/NEFOP by telephone by 0001 hr of the Wednesday preceding the week (Monday through Sunday) they intend to start a scallop trip. If selected, up to two Sea Scallop Access Area trips that start during the specified week (Monday through Sunday) can be selected to be covered by an observer. NMFS/NEFOP must be notified by the owner, operator, or vessel manager of any trip plan changes.

(3) *Selection of scallop trips for observer coverage.* Based on predetermined coverage levels for various permit categories and areas of the scallop fishery that are provided by NMFS in writing to all observer service providers approved pursuant to paragraph (h) of this section, NMFS shall notify the vessel owner, operator, or vessel manager whether the vessel must carry an observer, or if a waiver has been granted, for the specified scallop trip, within 72 hr of the vessel owner's, operator's, or vessel manager's notification of the prospective scallop trip, as specified in paragraph (g)(2) of

this section. Any request to carry an observer may be waived by NMFS. All waivers for observer coverage shall be issued to the vessel by VMS so as to have on-board verification of the waiver.

A vessel may not fish in an area with an observer waiver confirmation number that does not match the scallop trip plan that was called in to NMFS. Confirmation numbers for trip notification calls are only valid for 48 hr from the intended sail date; and

(4) \* \* \*

(i) An owner of a scallop vessel required to carry an observer under paragraph (g)(3) of this section must arrange for carrying an observer certified through the observer training class operated by the NMFS/NEFOP from an observer service provider approved by NMFS under paragraph (h) of this section. The observer service provider will notify the vessel owner, operator, or manager within 18 hr whether they have an available observer. A list of approved observer service providers shall be posted on the NMFS/NEFOP Web site at <http://www.nefsc.noaa.gov/femad/fsb/>. The observer service provider may take up to 48 hr to arrange for observer deployment for the specified scallop trip.

(ii) An owner, operator, or vessel manager of a vessel that cannot procure a certified observer within 48 hr of the advance notification to the provider due to the unavailability of an observer may request a waiver from NMFS/NEFOP from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel manager has contacted all of the available observer service providers to secure observer coverage and no observer is available. NMFS/NEFOP shall issue such a waiver within 24 hr, if the conditions of this paragraph (g)(4)(ii) are met. If NMFS/NEFOP does not respond within 24 hr, the vessel may depart on the trip without a waiver.

(5) Owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop trips on which an observer is carried onboard the vessel, 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 or reduced DAS accrual rate. The owners of vessels that carry an observer may be compensated with a reduced DAS accrual rate for open area scallop trips or additional scallop catch per day in Sea Scallop Access Areas in order to help defray the cost of the observer, under the program specified in §§ 648.53 and 648.60.

(i) Observer service providers shall establish the daily rate for observer

coverage on a scallop vessel on an Access Area trip or open area DAS scallop trip consistent with paragraphs (g)(5)(i)(A) and (B), respectively, of this section.

(A) *Access Area trips.* For purposes of determining the daily rate for an observed scallop trip in a Sea Scallop Access Area, providers must calculate the duration of the trip as the period from the first VMS polling position outside of the demarcation line at the beginning of the trip to the first VMS polling position inside of the demarcation line at the end of the trip. The daily rate of compensation equates to each 24 hour period or part of a 24 hour period of such trip. For example, if the first VMS polling position outside of the demarcation line of a vessel with an observer on an access area trip was 9 p.m. on the first day of the month, and the first VMS polling position inside of the demarcation line at the end of the trip was at 1 a.m. on the third day of the month, the duration of the trip equals 28 hr or 2 "days" (24 hr (first day) + 4 hr (second day), because it is part of the next 24-hr period) for the purposes of access area observer set-aside compensation.

(B) *Open area scallop trips.* For observed open area DAS scallop trips, providers shall prorate portions of days at an hourly charge, such that, for the example in paragraph (g)(5)(i)(A) of this section, the provider would charge 1 day and 4 hr for the observed trip.

(ii) NMFS shall determine any reduced DAS accrual rate and the amount of additional pounds of scallops per day fished in a Sea Scallop Access Area for the applicable fishing year based on the economic conditions of the scallop fishery, as determined by best available information. Vessel owners and observer service providers shall be notified through the Small Entity Compliance Guide of any DAS accrual rate changes and any changes in additional pounds of scallops determined by the Regional Administrator to be necessary. Vessel owners and observer providers shall be notified by NMFS of any adjustments.

\* \* \* \* \*

(h) \* \* \*

(5) \* \* \*

(i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for deployment in the sea scallop fishery when contacted and contracted by the owner, operator, or vessel manager of a vessel fishing in the scallop fishery, unless the observer service provider does not have an available observer within 48 hr of

receiving a request for an observer from a vessel owner, operator, and/or manager, or refuses to deploy an observer on a requesting vessel for any of the reasons specified at paragraph (h)(5)(viii) of this section. An observer's first three deployments and the resulting data shall be immediately edited and approved after each trip, by NMFS/NEFOP, prior to any further deployments by that observer.

\* \* \* \* \*

(iv) *Observer deployment limitations.* Unless alternative arrangements are approved by NMFS, an observer provider must not deploy any observer on the same vessel for more than two consecutive multi-day trips, and not more than twice in any given month for multi-day deployments.

\* \* \* \* \*

(vi) *Observer training requirements.* The following information must be submitted to NMFS/NEFOP to request a certified observer training class at least 7 days prior to the beginning of the proposed training class: Date of requested training; a list of observer candidates; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the end of a NMFS/NEFOP Sea Scallop Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS National Minimum Eligibility Standards for observers as described in paragraph (i)(1) of this section.

(vii) \* \* \*

(A) *Observer deployment reports.* The observer service provider must report to NMFS/NEFOP when, where, to whom, and to what fishery (open or closed area) an observer has been deployed, within 24 hr of the observer's departure. The observer service provider must ensure that the observer reports back to NMFS its Observer Contract (OBSCON) data, as described in the certified observer training, within 12 hr of landing. OBSCON data are to be submitted electronically or by other means as specified by NMFS. The observer service provider shall provide the raw (unedited) data collected by the observer to NMFS within 72 hr, which should be within 4 business days of the trip landing.

\* \* \* \* \*

(E) *Observer availability report.* The observer service provider must report to NMFS any occurrence of inability to respond to an industry request for

observer coverage due to the lack of available observers by 5 p.m., Eastern Standard Time, of any day on which the provider is unable to respond to an industry request for observer coverage.

\* \* \* \* \*

(G) *Observer status report.* Providers must provide NMFS/NEFOP with an updated list of contact information for all observers that includes the observer identification number, observer's name, mailing address, email address, phone numbers, homeports or fisheries/trip types assigned, and must include whether or not the observer is "in service," indicating when the observer has requested leave and/or is not currently working for the Industry-Funded program.

(H) Providers must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services.

(I) Providers must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and specific observers.

(J) Providers must submit to NMFS/NEFOP, if requested, copies of any information developed and used by the observer providers distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, etc.

\* \* \* \* \*

5. The following revisions to § 648.11 are based on the proposed rule for Amendment 11 (72 FR 71315, December 17, 2007). In § 648.14, paragraphs (h)(27) and (i)(2)(iv) are revised, and paragraphs (h)(29), (i)(1)(xx), and (i)(2)(xvii) are added to read as follows:

#### **§ 648.14 Prohibitions.**

\* \* \* \* \*

(h) \* \* \*

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

\* \* \* \* \*

(29) Fish for, possess, or land scallops from any Sea Scallop Access Area without an observer on board, unless the vessel owner, operator, or manager has received a waiver to carry an observer for the specified trip and area fished.

(i) \* \* \*

(1) \* \* \*

(xx) Fish for, possess, or land scallops in any Sea Scallop Access Area without an observer on board, unless the vessel owner, operator, or manager has received a waiver to carry an observer for the specified trip and area fished.

(2) \* \* \*

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

\* \* \* \* \*

(xvii) Fail to comply with cost recovery requirements as specified under § 648.53(g)(4).

\* \* \* \* \*

6. The following revisions to § 648.53 are based on the proposed rule for Amendment 11 to the Atlantic Sea Scallop FMP (72 FR 71315, December 17, 2007). In § 648.53 paragraphs (a), (b)(5)(i), (b)(5)(ii), (b)(6), (g)(1), (g)(2), and (h)(4) are revised, the table in paragraph (b)(4) introductory text is revised, paragraph (b)(4)(ii) is added and reserved, paragraph (b)(5)(iii) is removed and reserved, and paragraph (b)(4)(i) is added to read as follows.

#### **§ 648.53 Target total allowable catch, DAS allocations, and Individual Fishing Quotas.**

(a) *Target total allowable catch (TAC) for scallop fishery.* The annual target total TAC for the scallop fishery shall be established through the framework adjustment process specified in § 648.55. The annual target TAC shall include the TAC for all scallop vessels fishing in open areas and Sea Scallop Access Areas, but shall exclude the TAC established for the Northern Gulf of Maine Scallop Management Area as specified in § 648.62. After deducting the total estimated incidental catch of scallops, as specified at § 648.53(a)(9), by vessels issued incidental catch general category scallop permits, and limited access and limited access general category scallop vessels not declared into the scallop fishery, the annual target TAC for open and Sea Scallop Access Areas shall each be divided between limited access vessels, limited access vessels that are fishing under a limited access general category permit, and limited access general category vessels as specified in paragraphs (a)(3) through (a)(6) of this section. In the event that a framework adjustment does not implement an annual TAC for a fishing or part of a fishing year, the preceding fishing year's scallop regulations shall apply.

(1) *2008 fishing year target TAC for scallop fishery.* 20,140 mt.

(2) *2009 fishing year target TAC for scallop fishery.* 20,820 mt.

(3) *Access area TAC.* The TAC for each access area specified in § 648.59 shall be determined through the framework adjustment process described in § 648.55 and shall be specified in § 648.59 for each access area. The TAC set-asides for observer coverage and research shall be deducted from the TAC in each Access Area prior to assigning the target TAC and trip allocations for limited access scallop vessels, and prior to allocating TAC to limited access general category vessels. The percentage of the TAC for each Access Area allocated to limited access vessels, limited access general category vessels, and limited access vessels fishing under limited access general category permits shall be specified in accordance with § 648.60 through the framework adjustment process specified in § 648.55.

(4) *Open area TAC for limited access vessels—(i) 2008 fishing year.* For the 2008 fishing year, the target TAC for limited access vessels fishing under the scallop DAS program specified in this section is 6,274 mt, which is equal to 90 percent of the target TAC specified in accordance with this paragraph (a), minus the TAC for all access areas specified in accordance with paragraph (b)(5) of this section.

(ii) *2009 fishing year.* Beginning March 1, 2009, unless the implementation of the IFQ program is delayed beyond March 1, 2009, as specified in paragraph (a)(5) of this section, the target TAC for limited access vessels fishing under the scallop DAS program specified in this section is 7,458 mt, which is equal to 94.5 percent of the target TAC specified in accordance with this paragraph (a), minus the TAC for all access areas specified in accordance with paragraph (b)(5) of this section. The target TAC for limited access vessels fishing under the DAS program shall be used to determine the DAS allocation for full-time, part-time, and occasional scallop vessels will receive after deducting the DAS set-asides for observer coverage and research.

(5) *Open area TAC for IFQ scallop vessels—(i) 2008 fishing year.* For the 2008 fishing year, IFQ scallop vessels, and limited access scallop vessels that are fishing under an IFQ scallop permit outside of the scallop DAS and Area Access programs, shall be allocated 10 percent of the annual target TAC specified in accordance with paragraph (a) of this section, which is 1,369 mt, minus the TAC for all access areas specified in accordance with paragraph (b)(7) of this section.

(ii) *2009 fishing year and beyond for IFQ scallop vessels without a limited access scallop permit.* For the 2009 fishing year, the TAC for IFQ scallop vessels without a limited access scallop permit shall be equal to 5 percent of the target TAC specified in accordance with this paragraph (a), minus the TAC for all access areas specified in accordance with paragraph (b)(5) of this section. Therefore, the 2009 TAC for IFQ scallop vessels without a limited access scallop permit is 536 mt. If the IFQ program implementation is delayed beyond March 1, 2009, as specified in this paragraph (a)(7), the quarterly fleetwide TAC specified in paragraph (a)(8) of this section would remain in effect.

(iii) *2009 fishing year and beyond for IFQ scallop vessels with a limited access scallop permit.* For the 2009 fishing year, limited access scallop vessels that are fishing under an IFQ scallop permit outside of the scallop DAS and Area Access programs shall be allocated 0.5 percent of the annual target TAC specified in accordance with this paragraph (a), which is 102 mt, minus the TAC for all access areas specified in accordance with paragraph (b)(5) of this section. If the IFQ program implementation is delayed beyond March 1, 2009, as specified in this paragraph (a)(7), the quarterly fleetwide TAC specified in paragraph (a)(8) of this section would remain in effect until March 1, 2010, or beyond if the IFQ program implementation is further delayed.

(6) *Northern Gulf of Maine Scallop Fishery.* The TAC for the Northern Gulf of Maine Scallop Fishery shall be specified in accordance with (648.62, through the framework adjustment process specified in (648.55. The Northern Gulf of Maine Scallop Fishery TAC is specified in § 648.62(b)(1).

(7) *Delay of the IFQ program.* If the IFQ program implementation is delayed beyond March 1, 2009, the quarterly fleetwide TAC would remain in effect. Under such a scenario, the overall IFQ fishery allocation of 4,551,700 lb (2,065 mt) would be distributed as follows: Quarter 1—1,593,095 (723 mt); Quarter 2—1,820,680 lb (826 mt), Quarter 3—682,755 lb (310 mt), Quarter 4—455,170 lb (206 mt). If the Regional Administrator determines that the IFQ program cannot be implemented by March 1, 2009, NMFS shall inform all scallop vessel owners that the IFQ program shall not take effect.

(8) *Distribution of transition period TAC—(i) Allocation.* For the 2008 fishing year, and subsequent fishing years until the IFQ program is implemented as specified in paragraph (j) of this section, the TAC for IFQ

scallop vessels shall be allocated as specified in paragraphs (a)(5) of this section into quarterly periods. The percentage allocations for each period allocated to the IFQ scallop vessels, including limited access vessels fishing under an IFQ scallop permit and vessels under appeal for an IFQ scallop permit pursuant to § 648.4(a)(2)(ii) shall be specified in the framework adjustment process as specified in § 648.55 and are specified in the following table:

Quarter	Percent	TAC
I. March–May	35	1,523,375 lb (475.25 mt)
II. June–August	40	1,741,000 lb (547.83 mt)
III. September–November	15	652,875 lb (205.39 mt)
IV. December–February	10	435,250 lb (136.93 mt)

(ii) *Deductions of landings.* All landings by IFQ scallop vessels and limited access vessels fishing under an IFQ scallop permit shall be deducted from the TAC allocations specified in the table in paragraph (a)(8)(i) of this section.

(9) *Scallop incidental catch target TAC.* The 2008 and 2009 incidental catch target TACs for vessels with incidental catch scallop permits are 50,000 lb (22,680 kg) per year.

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

DAS category	2008	2009 <sup>1</sup>
Full-time	35	42
Part-time	14	17
Occasional	3	3

<sup>1</sup> If the IFQ program implementation is delayed beyond March 1, 2009, the following 2009 DAS allocations will be: Full-time—37; part-time—15; occasional—3.

(i) Limited access vessels that lawfully use more open area DAS in the 2008 fishing year than specified in this section shall have the DAS used in excess of the 2008 allocation specified in this paragraph (b)(4) deducted from their 2009 open area DAS allocation specified in paragraph (b)(2) of this section.

(ii) [Reserved]

(5) \* \* \*

(i) For each remaining complete trip in the Nantucket Lightship Access Area, a full-time and part-time vessel may fish an additional 7.7 DAS in open areas and an occasional vessel may fish an additional 3.2 DAS during the same

fishing year. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). If a vessel has unused broken trip compensation trip(s), as specified in § 648.60(c), when the Nantucket Lightship Access Area closes due to the yellowtail flounder bycatch TAC, it would be issued additional DAS in proportion to the unharvested possession limit. For example, if a full-time vessel had an unused 9,000-lb (4,082-kg) Nantucket Lightship Access Area compensation trip (half of the possession limit) at the time of a Nantucket Lightship Access Area yellowtail flounder bycatch TAC closure, the vessel would be allocated 3.85 DAS (half of 7.7 DAS).

(ii) For each remaining complete trip in Closed Area II, a full-time and part-time vessel may fish an additional 7.9 DAS in open areas and an occasional vessel may fish an additional 3.3 DAS during the same fishing year. A

complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). If a vessel has unused Closed Area II broken trip compensation trip(s), as specified in § 648.60(c), when Closed Area II closes due to the yellowtail flounder bycatch TAC, it would be issued additional DAS in proportion to the unharvested possession limit. For example, if a full-time vessel had an unused 9,000 lb (4,082 kg) Closed Area II compensation trip (half of the possession limit) at the time of a Closed Area II yellowtail flounder bycatch TAC closure, the vessel would be allocated 3.95 DAS (half of 7.9 DAS).

(6) 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.

\* \* \* \* \*

(g) \* \* \*

(1) *DAS set-aside for observer coverage.* As specified in paragraph (b)(2) of this section, to help defray the cost of carrying an observer, 1 percent of the total DAS shall 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 is 118 DAS for the 2008 fishing year, and 141 DAS for the 2009 fishing year. If the IFQ program implementation is delayed beyond March 1, 2009, the 2009 DAS set-aside for observer coverage will be 124 DAS. Vessels carrying an observer shall 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 shall be charged 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 shall be deducted from the observer DAS set-aside amount in the applicable fishing year. Utilization of the DAS set-aside shall be on a first-come, first-served basis. When the DAS set-aside for observer coverage has been utilized, vessel owners shall be notified that no additional DAS remain available to offset the cost of carrying observers. The obligation to carry and pay for an observer shall not be waived due to the absence of set-aside DAS allocations.

(2) *DAS set-aside for research.* As specified in paragraph (b)(2) of this section, to help support the activities of vessels participating in certain research, as specified in § 648.56; the DAS set-aside for research is 235 DAS for the 2008 fishing year, and 282 DAS for the 2009 fishing year. If the IFQ program implementation is delayed beyond March 1, 2009, the 2009 DAS set-aside for research will be 241 DAS. Vessels participating in approved research shall be authorized to use additional DAS in the applicable fishing year. Notification of allocated additional DAS shall be provided through a letter of authorization, or Exempted Fishing Permit issued by NMFS, or shall be added to a participating vessel's open area DAS allocation, as appropriate.

\* \* \* \*

(h) \* \* \*

(4) *IFQ cost recovery.* The Secretary of Commerce is authorized to collect a fee, not to exceed 3 percent of the ex-vessel value of IFQ fish harvested, to recover the costs associated with of management, data collection, and enforcement of the IFQ program. The owner of a vessel issued an IFQ scallop permit and subject to the IFQ program specified in this paragraph (h), shall be responsible for paying the fee as required by NMFS in this paragraph (h)(4). An IFQ scallop vessel shall incur a cost recovery fee liability for every landing of IFQ scallops. The IFQ scallop permit holder shall be responsible for collecting his/her own fee liability for

all of his/her IFQ scallop landings, and shall be responsible for submitting this payment to NMFS once per year.

(i) *Cost recovery fee determination.* The ex-vessel value of scallops shall be determined as an average of the ex-vessel value, as determined by Northeast Federal dealer reports, of all IFQ scallops landed between March 1 and September 30 of the initial year of the IFQ scallop program, and from October 1 through September 30 of each year thereafter.

(ii) *Fee payment procedure.* On or about October 31 of each year, NMFS shall mail a cost recovery bill to each IFQ scallop permit holder for the previous cost recovery period. An IFQ scallop permit holder who has incurred a fee liability must pay the fee to NMFS by January 1 of each year. Cost recovery payments shall be made electronically via the Federal web portal, [www.pay.gov](http://www.pay.gov), or other internet sites as designated by the Regional Administrator. Instructions for electronic payment shall be available on both the payment website and the paper bill. Payment options shall include payment via a credit card, as specified in the cost recovery bill, or via direct automated clearing house (ACH) withdrawal from a designated checking account. Payment by check may be authorized by the Regional Administrator if the Regional Administrator has determined that electronic payment is not possible (for example, if the geographical area or an individual(s) is affected by catastrophic conditions).

(iii) *Payment compliance.* An IFQ scallop permit holder that has incurred an IFQ cost recovery fee must pay the fee to NMFS by January 1 of each year. If the cost recovery payment, as determined by NMFS, is not made by January 1, NMFS may deny the renewal of the IFQ scallop permit until full payment is received. If, upon preliminary review of the accuracy and completeness of a fee payment, NMFS determines the IFQ scallop permit holder has not paid the full amount due, NMFS shall notify the IFQ scallop permit holder by letter. NMFS shall explain the discrepancy and provide the IFQ scallop permit holder 30 days to either pay the amount specified by NMFS or to provide evidence that the amount paid was correct. If the IFQ scallop permit holder submits evidence in support of his/her payment, NMFS shall determine if there is any remaining disagreement as to the appropriate IFQ fee, and prepare a Final Administrative Determination (FAD). The FAD shall set out the facts, discuss those facts within the context of the relevant agency

policies and regulations, and make a determination as to the appropriate disposition of the matter. A FAD shall be the final agency action, and, if the FAD determines that the IFQ scallop permit holder is out of compliance, the FAD shall require payment within 30 days. If a FAD is not issued until after the start of the fishing year, the IFQ scallop permit holder may be authorized by the Regional Administrator to fish under their IFQ scallop permit until the FAD is issued, at which point the permit holder will have 30 days to comply with the terms of the FAD or have his/her IFQ scallop permit suspended until such terms are met. If NMFS determines that the IFQ scallop permit holder owes additional fees for the previous cost recovery period, and the IFQ scallop permit has already been renewed, NMFS will issue a FAD, at which point the permit holder will have 30 days to comply with the terms of the FAD or have his/her IFQ scallop permit suspended until such terms are met. If such payment is not received within 30 days of issuance of the FAD, NMFS shall refer the matter to the appropriate authorities within the U.S. Treasury for purposes of collection, and no IFQ permit held by the permit holder will be renewed until the terms of the FAD are met. If NMFS determines that the conditions of the FAD have been met, the IFQ permit holder may renew the IFQ scallop permit(s). If NMFS does not receive full payment prior to the end of the fishing year, the IFQ scallop permit will be considered voluntarily abandoned, pursuant to § 648.4(a)(2)(ii)(K), unless otherwise determined by the Regional Administrator.

\* \* \* \* \*

7. In § 648.58, paragraph (a) is added and paragraph (b) is revised, and paragraphs (e) through (h) are removed:

#### **§ 648.58 Rotational Closed Areas.**

(a) *Hudson Canyon Closed Area.* Through at least February 28, 2010, no vessel may fish for scallops in, or possess or land scallops from, the area known as the Hudson Canyon Closed Area. No vessel may possess scallops in the Hudson Canyon Closed Area, unless such vessel is only transiting the area as provided in paragraph (c) of this section. The Hudson Canyon Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
H1	39°30'N.	73°10'W.

Point	Latitude	Longitude
H2	39°30'N.	72°30'W.
H3	38°30'N.	73°30'W.
H4	38°50'N.	73°30'W.
H5	38°50'N.	73°42'W.
H1	39°30'N.	73°10'W.

(b) *Delmarva Closed Area.* From January 1, 2007, through at least February 28, 2009, no vessel may fish for scallops in, or possess or land scallops from, the area known as the Delmarva Closed Area. No vessel may possess scallops in the Delmarva Closed Area, unless such vessel is only transiting the area as provided in paragraph (b) of this section. The Delmarva Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
DMV1	38°10'N.	74°50'W.
DMV2	38°10'N.	74°00'W.
DMV3	37°15'N.	74°00'W.
DMV4	37°15'N.	74°50'W.
DMV1	38°10'N.	74°50'W.

8. In § 648.59, paragraph (e)(3) is removed and reserved, and paragraphs (a), (b)(5)(ii)(B), (c)(5)(ii)(B), (d)(5)(ii)(B), and (e)(6)(ii)(B) are revised to read as follows. The revisions to (c)(5)(ii)(B), (d)(5)(ii)(B), and (e)(6)(ii)(B) are based on the proposed rule for Amendment 11 to the Atlantic Sea Scallop FMP (72 FR 71315, December 17, 2007).

#### § 648.59 Sea Scallop Access Areas.

(a) *Delmarva Sea Scallop Access Area.* (1) From March 1, 2009, through February 28, 2010, a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Delmarva 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.

(2) The Delmarva 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
DMV1	38°10'N.	74°50'W.
DMV2	38°10'N.	74°00'W.
DMV3	37°15'N.	74°00'W.
DMV4	37°15'N.	74°50'W.
DMV1	38°10'N.	74°50'W.

(3) *Number of trips—(i) Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in 2009 in the Delmarva Access Area as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Delmarva 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 Delmarva Access Area trip that was terminated early, as specified in § 648.60(c).

(ii) *General category vessels.* (A) LAGC vessels are allocated 728 Delmarva Access Area trips for the 2009 fishing year, unless otherwise adjusted according to § 648.60(a)(3)(i)(E). Subject to the possession limit specified in §§ 648.52(a) and (b) and 648.60(g), a LAGC vessel may not enter, fish for, possess, or land sea scallops in or from the Delmarva Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that 728 trips in the 2009 fishing year have been taken, in total, by all general category scallop vessels, unless transiting pursuant to paragraph (f) of this section. 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 2009 fishing year.

(b) \* \* \*

(5) \* \* \*

(ii) \* \* \*

(B) Except as provided in paragraph (b)(5)(ii)(C) of this section, subject to the possession limit specified in §§ 648.52(a) and (b) and 648.60(g), and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, an LAGC scallop vessel may not enter, fish for, possess, or land sea scallops in or from the Closed Area I Access Area through the 2009 fishing year unless transiting pursuant to paragraph (f) of this section. If general category vessels take 2008 Closed Area I Access Area trips, the same number of ETAA trips as specified in paragraph (e)(6)(ii)(B) of this section will be deducted from the LAGC fishery in 2009.

(c) \* \* \*

(5) \* \* \*

(ii) \* \* \*

(B) Except as provided in paragraph (c)(5)(ii)(C) of this section, subject to the possession limits specified in §§ 648.52(a) and (b), and 648.60(g), and

subject to the seasonal restrictions specified in paragraph (c)(4) of this section, an LAGC scallop vessel may not enter in, or fish for, possess, or land sea scallops in or from the Closed Area II Access Area through the 2009 fishing year unless transiting pursuant to paragraph (f) of this section.

(d) \* \* \*

(5) \* \* \*

(ii) \* \* \*

(B) LAGC vessels are allocated 667 Nantucket Lightship Access Area trips for the 2008 fishing year. Except as provided in paragraph (d)(5)(ii)(C) of this section, subject to the possession limits specified in §§ 648.52(a) and (b), and 648.60(g), an LAGC scallop vessel may not enter, 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(g)(4), that the 667 trips allocated in the 2008 fishing year are projected to be taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2008 fishing year.

\* \* \* \* \*

(e) \* \* \*

(6) \* \* \*

(ii) \* \* \*

(B) LAGC vessels are allocated 2,668 Elephant Trunk Access Area trips for the 2008 fishing year, and 1,964 Elephant Trunk Access Area trips for the 2009 fishing year, unless otherwise adjusted according to § 648.60(a)(3)(i)(E). Subject to the possession limits specified in §§ 648.52(a) and (b), and 648.60(g), an LAGC scallop vessel may not enter in, or fish for, possess, or land sea scallops in or from the Elephant Trunk Sea Scallop Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that the 2,668 trips allocated in the 2008 fishing year, or the 1,964 trips allocated to the 2009 fishing year are projected to be taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2008 and 2009 fishing years.

\* \* \* \* \*

9. The revision in § 648.60 paragraph (a) introductory text is based on the proposed rule for Amendment 11 (72 FR

71315, December 17, 2007) as follows. The revision in § 648.60 paragraph (a)(3)(i), (d)(1), and (e)(1) is revised based on current regulations as follows:

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

(a) A limited access scallop vessel may only fish in the Sea Scallop Access Areas specified in § 648.59, subject to the seasonal restrictions specified in § 648.59, provided the vessel complies with the requirements specified in paragraphs (a)(1) through (a)(9), and (b) through (f) of this section. An LAGC scallop vessel may fish in the Sea Scallop Access Areas specified in § 648.59, subject to the seasonal restrictions specified in § 648.59, provided the vessel complies with the requirements specified in paragraph (g) of this section.

\* \* \* \* \*

(3) \* \* \*

(i) *Limited access vessel trips.* (A) Except as provided in paragraph (c) of this section, and unless the number of trips is adjusted for the Elephant Trunk Access Area or the Delmarva Access Area as specified in paragraph (a)(3)(i)(F) of this section, paragraphs (a)(3)(i)(B) through (E) of this section specify the total number of trips that a limited access scallop vessel may take into Sea Scallop Access Areas during applicable seasons specified in § 648.59. The number of trips per vessel in any one Sea Scallop Access Area may 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, been allocated a compensation trip pursuant to paragraph (c) of this section, or unless the Elephant Trunk Access Area trip allocations are adjusted as specified in § 648.60(a)(3)(i)(F). If, during the interim period between March 1, 2008, and the implementation of the limited access Access Area trip allocations specified in this section, a limited access vessel takes a 2008 Closed Area I Access Area trip, one ETAA trip will be deducted from the vessel's 2009 allocation as specified in this section.

(B) *Full-time scallop vessels.* In the 2008 fishing year, a full-time scallop vessel may take four trips in the Elephant Trunk Access Area and one trip in the Nantucket Lightship Access Area. In the 2009 fishing year, a full-time scallop vessel may take three trips in the Elephant Trunk Access Area (unless adjusted per paragraph (a)(3)(i)(F) of this section), one trip in the Closed Area II Access Area, and one trip in the Delmarva Access Area (unless adjusted per paragraph (a)(3)(i)(F) of this section).

(C) *Part-time scallop vessels.* In the 2008 fishing year, a part-time scallop vessel may take one trip in the Nantucket Lightship Access Area and one trip in the Elephant Trunk Access Area (unless adjusted per paragraph (a)(3)(i)(F) of this section); or two trips in the Elephant Trunk Access Area. In the 2009 fishing year, a part-time scallop vessel is allocated two trips that may be distributed between access areas as follows: Up to two trips in the Elephant Trunk Access Area (unless adjusted per paragraph (a)(3)(i)(F) of this section), up to one trip in Closed Area II, and up to one trip in the Delmarva Access Area (unless adjusted per paragraph (a)(3)(i)(E) of this section).

(D) *Occasional scallop vessels.* In the 2008 fishing year, an occasional scallop vessel may take one trip in the Nantucket Lightship Access Area or one trip in the Elephant Trunk Access Area. In the 2009 fishing year, an occasional scallop vessel may take one trip in the Closed Area II Access Area or one trip in the Elephant Trunk Access Area (unless adjusted per paragraph (a)(3)(i)(F) of this section) or one trip in the Delmarva Access Area (unless adjusted per paragraph (a)(3)(i)(E) of this section).

(E) Procedure for adjusting the number of 2009 fishing year trips in the Elephant Trunk and Delmarva Access Areas. (1) The Regional Administrator shall reduce the number of 2009 Elephant Trunk Access Area trips using the table in paragraph (a)(3)(i)(F)(2) of this section and/or Delmarva Access Area trips using the table in paragraph (a)(3)(i)(F)(3) of this section, provided that updated exploitable biomass projections are available with sufficient time to announce such an adjustment through publication of a final rule in the

**Federal Register**, pursuant to the Administrative Procedure Act, on or about December 1, 2008. In addition, if an updated estimate of overall F exceeds 0.29 in 2008, then Elephant Trunk Access Area trip allocations will be reduced consistent with reductions as specified in the table in paragraph (a)(3)(i)(F)(2) of this section under exploitable biomass estimates of 20,000 — 29,000 mt. If both the exploitable biomass and F thresholds are exceeded, the allocation level will be established using the exploitable biomass adjustment schedule. If information is not available in time for NMFS to publish a final rule on or about December 1, 2008, no adjustment may be made. The exploitable biomass estimate necessary for any adjustment of the 2009 Elephant Trunk Access Area and/or Delmarva Access Area trip allocations shall be based on all available scientific surveys of scallops within the Elephant Trunk Access Area or Delmarva Access Area. Survey data must be used only if they are available with sufficient time for review and incorporation in the exploitable biomass estimate and they are determined to be scientifically sound. If no other surveys are available, the annual NOAA scallop resource survey shall be used to estimate exploitable scallop biomass for the Elephant Trunk Access Area.

(2) *Table of Elephant Trunk Access Area TAC and trip allocation adjustments based on exploitable biomass estimates and revised target TAC levels.* If the exploitable biomass estimate is between 20,000 and 29,999 mt, part-time vessels shall be authorized to take one trip in the Elephant Trunk Access Area at a reduced possession limit of 3,600 lb (1,633 kg) and one trip in the Nantucket Lightship Access Area at the normal possession limit as specified at § 648.60(a)(5); and occasional vessels may take one trip in the Elephant Trunk Access Area or one trip in the Nantucket Lightship Access Area with a normal possession limit of 7,500 lb (3,402 kg) as specified at § 648.60(a)(5). The following table specifies the adjustments that shall be made through the procedure specified in paragraph (a)(3)(i)(F)(1) of this section under various biomass estimates and adjusted 2009 TAC estimates:

Exploitable biomass estimate (mt)	Adjusted trips (full-time, part-time, occasional)	Adjusted trips (general category)	Adjusted 2009 research set-aside TAC	Adjusted 2009 observer set-aside TAC
30,000 or greater	No adjustment	No adjustment	No adjustment	No adjustment
20,000–29,999	2, 1*, 1**	1473	0.24	0.12
10,000–19,000	1, 0, 0	982	0.16	0.08

Exploitable biomass estimate (mt)	Adjusted trips (full-time, part-time, occasional)	Adjusted trips (general category)	Adjusted 2009 research set-aside TAC	Adjusted 2009 observer set-aside TAC
Less than 10,000	0, 0, 0	491	0.08	0.04

\* Part-time vessels may take one trip in the Elephant Trunk Access Area at a reduced possession limit of 3,600 lb (1,633 kg) and one trip in the NLCA with a possession limit of 18,000 lb (8,165 kg).

\*\* Occasional vessels may take 1 trip in the Nantucket Lightship Access Area or one trip in the Elephant Trunk Access Area.

*(3) Table of Delmarva Access Area TAC and trip allocation adjustments based on exploitable biomass estimates and revised target TAC levels. The*

following table specifies the adjustments that shall be made through the procedure specified in paragraph (a)(3)(i)(F)(1) of this section under

various biomass estimates and adjusted 2009 target TAC estimates:

Exploitable biomass estimate (mt)	Adjusted trips (full-time, part-time, occasional)	Adjusted trips (general category)	Adjusted 2009 research set-aside TAC	Adjusted 2009 observer set-aside TAC
10,000 or greater	No adjustment	No adjustment	No adjustment	No adjustment
Less than 10,000	0,0,0	0	0	0

\* \* \* \* \*

*(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, scallops, up to the maximum amounts specified in the table in this paragraph (a)(5). 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.

observer set-aside for the Elephant Trunk Access Area is 222,000 lb (101 mt), and 162,000 lb (73 mt), respectively, unless the 2009 set-aside is adjusted as specified in paragraph (a)(3)(i)(E) of this section.

*(iv) Delmarva Access Area.* For the 2009 fishing year, the observer set-aside for the Delmarva Access Area is 60,000 lb (27 mt), unless the 2009 set-aside is adjusted as specified in paragraph (a)(3)(i)(E) of this section.

\* \* \* \* \*

*(e) \* \* \**

*(1) Research set-aside limits and number of trips by area—(i) Nantucket Lightship Access Area.* For the 2008 fishing year, the research set-aside for the Nantucket Lightship Access Area is 110,000 lb (50 mt).

*(ii) Closed Area II Access Area.* For the 2009 fishing year, the research set-aside for the Closed Area II Access Area is 116,000 lb (53 mt).

*(iii) Elephant Trunk Access Area.* For the 2008 and 2009 fishing years, the research set-aside for the Elephant Trunk Access Area is 440,000 lb (200 mt), and 324,000 lb (147 mt), respectively, unless the 2009 set-aside is adjusted as specified in paragraph (a)(3)(i)(E) of this section.

*(iv) Delmarva Access Area.* For the 2009 fishing year, the research set-aside for the Delmarva Access Area is 120,000 lb (54 mt), unless the 2009 set-aside is adjusted as specified in paragraph (a)(3)(i)(E) of this section.

\* \* \* \* \*

#### **§ 648.62 Northern Gulf of Maine (NGOM) scallop management area.**

\* \* \* \* \*

*(b) \* \* \**  
*(1) NCOM TAC.* The TAC for the NGOM shall be 70,000 lb (31.8 mt) for both the 2008 and 2009 fishing years.

\* \* \* \* \*

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 660**

#### **RIN 0648-AW08**

#### **A Vessel License Limitation Program for the Pacific Whiting Fishery; Amendment 15 to the Pacific Coast Groundfish Fishery Management Plan**

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

**ACTION:** Availability of an amendment to a fishery management plan; request for comments.

**SUMMARY:** NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 15 to the Pacific Coast Groundfish Fishery Management Plan (FMP) for review by the Secretary of Commerce (Secretary). Amendment 15 would modify the FMP to implement a limited entry program for the non-tribal Pacific whiting fishery. Amendment 15 is intended to limit participation in the Pacific whiting fishery within the U.S. West Coast

<sup>1</sup> Unless reduced per § 648.60(a)(3)(i)(E)(2)

\* \* \* \* \*

*(d) Possession limit to defray costs of observers—(1) Observer set-aside limits by area—(i) Nantucket Lightship Access Area.* For the 2008 fishing year, the observer set-asides for the Nantucket Lightship Access Area is 55,000 lb (25 mt).

*(ii) Closed Area II Access Area.* For the 2009 fishing year, the observer set-aside for the Closed Area II Access Area is 58,000 lb (26 mt).

*(iii) Elephant Trunk Access Area.* For the 2008 and 2009 fishing years, the

10. The following revision to § 648.62 is based on the proposed rule for Amendment 11 (72 FR 71315, December 17, 2007). In § 648.62, paragraph (b)(1) is revised to read as follows.