

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

[Docket No. 070817467-8554-02]

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:** Final rule.

**SUMMARY:** NMFS is implementing measures included in 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 was developed to achieve 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 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 adjustment measures 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, including a quarterly TAC, 2008 and 2009 general category quota allocations, and individual fishing quota (IFQ) permit cost recovery program requirements. NMFS has disapproved 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 determined that the Council's recommendation would not be consistent with National Standards 2 and 9 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Effective June 1, 2008, except § 648.4(a)(2)(ii)(D)(2), (a)(2)(ii)(E), (a)(2)(ii)(H), and (a)(2)(ii)(I)(3), § 648.14(i)(1)(xx) and (i)(2)(xvii), and § 648.59(a)(3)(ii), (b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii) as amended in instruction 9, which are effective July 1, 2008, and § 648.11(h)(vii)(G) through (J), which contain collection-of-information requirements that have not been approved by the Office of Management and Budget (OMB). NMFS will publish a notice in the **Federal Register** announcing the effective date.

**ADDRESSES:** An environmental assessment (EA) was prepared for Framework 19 that describes the action and other alternatives considered, and provides a thorough analysis of the impacts of the 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.

Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this final 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 continue to 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. The Council reviewed the Framework 19 proposed rule regulations as drafted by NMFS, which included regulations proposed by NMFS under the authority of section 305(d) of the Magnuson-Stevens Act, and on February 27, 2008, deemed them to be necessary and consistent with section 303(c) of the Magnuson-Stevens Act. Framework 19 published in the **Federal Register** on

March 19, 2008, with a 20-day public comment period that ended April 8, 2008. Three comments were received on the proposed measures.

**Disapproved Measure**

The September through October seasonal closure of the ETAA was implemented under Framework 18 to the FMP (Framework 18), consistent with National Standard 9, which called for management measures to minimize and reduce the mortality of bycatch to the extent practicable, to reduce potential interactions between threatened and endangered sea turtles and the scallop fishery in the Mid-Atlantic. Framework 18 concluded that a closure to scallop fishing may have positive benefits to turtles in the ETAA if fishing effort is not displaced to areas with higher densities of turtles than inside the ETAA. Additionally, Framework 18 concluded that the elevated water and air temperatures that occur during September and October in the ETAA may result in higher than average small scallop and finfish discard mortality. Therefore, Framework 18 concluded that the 2-month closure could also reduce scallop and finfish discard mortality. The information relied on in Framework 19 to eliminate the seasonal closure, as recommended by the Council, does not represent the best scientific information. The scientific information relied on for Framework 18 is still considered the best scientific information available and, therefore, the Council's recommendation to eliminate the closure is therefore inconsistent with National Standard 2. Maintaining the closed season remains consistent with the MSA, including National Std. 9, which requires that management measures minimize bycatch and bycatch mortality to the extent practicable.

**Approved Measures**

In the proposed rule, NMFS requested comments on all proposed management measures. The approved management measures are discussed below. Details concerning the Council's development of these measures were presented in the preamble of the proposed rule and are not repeated here.

**Open Area DAS Allocations**

To achieve optimum yield at the target F of 0.20 for the scallop resource, limited access open area DAS allocations are required to be adjusted every 2 years. Because 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 implements the following vessel-specific DAS allocations: Full-time limited access vessels will be allocated 35 DAS in 2008 and 42 DAS in 2009; part-time vessels will be allocated 14 DAS in 2008 and 17 DAS in 2009; and occasional limited access vessels will be allocated 3 DAS in 2008 and 3 DAS in 2009. If implementation of the general category IFQ program is delayed beyond March 1, 2009, the 2009 DAS allocations would be reduced to the following: Full-time—37 DAS; part-time—15 DAS, occasional—3 DAS. Amendment 11 to the FMP specifies that the general category fleet will be allocated 10 percent of the scallop quota during the transition period to the IFQ program. The Council did not specify in Framework 19 what the general category quota would be in the event the IFQ program is not implemented in 2009. Therefore, NMFS has determined that the potential DAS reduction is consistent with Amendment 11 and will extend the 10 percent allocation into 2009 in the event the IFQ program is not implemented by March 1, 2009.

Because Framework 19 was not implemented by the start of the fishing year on March 1, 2008, and interim regulations in effect at the start of the 2008 fishing year are inconsistent with Framework 19 specifications, it is possible that a scallop vessel may have exceeded its DAS allocation during the interim period between March 1, 2008, and June 1, 2008. Therefore, any limited access open area DAS used in 2008 by a vessel that is above the final 2008 allocation for that vessel will 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 limited access scallop vessels will be

allocated one trip in the Nantucket Lightship Access Area (NLCA), and four trips in the ETAA. A part-time limited access scallop vessel will 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 limited access vessel will 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 will 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 limited access scallop vessels will be allocated one trip in the Closed Area II Access Area (CAII), up to three trips in the ETAA, and up to one trip in Delmarva (unless ETAA and/or Delmarva trips are reduced due to updated exploitable scallop biomass estimates). A part-time limited access scallop vessel will 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 limited access vessel will 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 will be 18,000 lb (8,165 kg) for full-time and part-time vessels, and 7,500 lb (3,402 kg) for occasional vessels. However, if ETAA or Delmarva trips are reduced, part-time possession limits may be reduced as described below.

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 limited access vessels in 2009. ETAA and Delmarva trip allocations and possession limits in 2009 are subject to change per the ETAA and Delmarva trip reduction procedures described below.

*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 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 will 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 limited access vessels will 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 will 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 .....	108.86 .....	54.43.
10,000–19,000 .....	1, 0, 0 .....	982 .....	72.57 .....	36.29.
Less than 10,000 .....	0, 0, 0 .....	491 .....	36.29 .....	18.15.

\*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 are reduced).

In addition, if an updated estimate of overall F exceeds 0.29 in 2008, then ETAA allocations will 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 are exceeded, the allocation level will 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 will remain closed to scallop fishing for the 2009 fishing year, and no trips or set-aside will 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, will 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 fishing mortality 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 limited access vessel has unutilized trip(s) in an access area closed by a scallop fishery yellowtail TAC, Framework 19 will allocate additional open area DAS in a manner that maintains the F objectives of the FMP. This trip/DAS conversion will 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) will be converted to open area DAS so that scallop fishing mortality that will have resulted from the access area trip(s) will 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) will be allocated a specific amount of additional open area DAS according to permit category. Full-time vessels will be allocated 7.7 DAS per unutilized trip in the NLCA and 7.9 DAS per unutilized trip in CAII. Part-

time vessels will 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). If an occasional vessel has no available access area in which to take its trip, it will be allocated converted DAS according to the most recent closure: 3.2 DAS if it was the NLCA; or 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 will 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 will 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 quota are set aside as part of the Scallop RSA Program to fund scallop research and compensate participating vessels through the sale of scallops harvested under the research set-aside quota. The 2008 research set-aside access area allocations will be: NLCA—110,000 lb (50 mt); and ETAA—440,000 lb (200 mt). The 2009 research set-aside access area allocations will be: CAII—116,000 lb (53 mt); ETAA—324,000 lb (147 mt); and 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 will be reduced as specified in Table 1.

The 2008 and 2009 research set-aside DAS allocations will be 235 and 282, respectively. If the general category IFQ program is delayed beyond March 1, 2009, the 2009 RSA DAS allocation would be 241 DAS.

#### *Observer Set-Aside Allocations*

One percent of each scallop access area quota and 1 percent of the DAS allocation are 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 Regional Administrator for the Northeast Region (Regional Administrator) has the authority to establish, and adjust, the reduced DAS rate and increased possession limit.

The Council recommended in Framework 19 that the observer set-aside compensation rates be adjusted to more accurately reflect current fishery conditions. The Council noted that the current DAS set-aside rate of 0.85 is insufficient to offset the cost of carrying an observer, and suggested that the DAS compensation rate be increased while decreasing the access area possession limit, effectively transferring access area scallops to the DAS set-aside. However, the observer set-aside program is not currently structured to authorize access area scallops to be converted for use under the DAS set-aside. The set-aside program explicitly sets aside 1 percent of scallop DAS and 1 percent from each access area TAC. Therefore, the Council's recommendation cannot be adopted.

NMFS did evaluate the current set-aside rates and determined that, although the current DAS set-aside rate may not fully offset the cost of carrying an observer, the current rate provides the greatest benefit to the fleet and should not change for the 2008 fishing year. NMFS determined that, if the DAS compensation rate was increased, the DAS set aside would not likely last the entire fishing year, resulting in some vessel owners needing to pay the full cost of observer DAS trips. Therefore, the reduced DAS charge on observed DAS trips will remain at 0.85 for the 2008 fishing year. The Regional Administrator may re-evaluate the DAS compensation rate before the start of the 2009 fishing year.

The 2008 access area observer set-aside allocations will be: NLCA—55,000 lb (25 mt); ETAA—222,000 lb (111 mt). The 2009 access area observer set-aside allocations will be: CAII—58,000 lb (26 mt); ETAA—162,000 lb (73 mt); and 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 will be reduced as specified in Table 1.

The 2008 and 2009 DAS observer set-aside allocations will be 118 and 141, respectively. If the general category IFQ program is delayed beyond March 1, 2009, the 2009 observer set-aside DAS allocation would be 124 DAS.

*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 F of 0.20 should be adjusted upward consistent with the F threshold adjustment. The overfishing threshold F of 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 F at 0.20 in recognition that F is not uniformly distributed throughout the range of the scallop fishery, and the resource is prone to localized overfishing, particularly in open areas. An F target of 0.20 will help maintain a stable fishery over the long term 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 will be as

follows: If stock biomass is equal to or greater than the maximum scallop resource biomass target (Bmax), 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 Fmax, currently estimated as 0.29. If the total stock biomass is below Bmax, overfishing occurs when F exceeds the level that has a 50-percent probability to rebuild stock biomass to Bmax in 10 years. The scallop stock is in an overfished condition when stock biomass is below 1/2Bmax 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 Bmax.

The following table details the biomass and F reference points that will be implemented by Framework 19.

TABLE 2.—BIOMASS AND F REFERENCE POINTS

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

*Prohibition on Deckloading*

To minimize scallop discard mortality, no scallop vessel that is declared into the Area Access Program as specified in § 648.60 may 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 measures designed to improve the industry-funded observer program. Framework 19 includes measures described below that have new reporting requirements subject to review and approval by the OMB pursuant to the Paperwork Reduction Act (PRA). As noted, OMB is currently reviewing the new PRA requirements and as such, the measures are not effective along with other measures included in this final rule. A subsequent rule published in the **Federal Register** will announce the effective date of such measures.

1. 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 them 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, e-mail 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 and distributed to vessels, such as informational

pamphlets, payment notification, description of observer duties, etc.

The proposed rule stated that observer service providers would charge for services consistent with how vessel owners receive compensation, and specified that this would be based on VMS transmission data and time spent seaward of the demarcation line. However, based on comments received on this new requirement, NMFS has revisited the rationale of this requirement. The rationale of this measure was to reduce confusion for vessel owners resulting from different charging methods used by observer service providers, and to ensure the charging methodology was consistent. NMFS does not intend to direct observer providers on how much they may charge, but merely what the charge is based upon. Therefore, for access area trips, a service provider shall charge a vessel owner from when an observer boards a vessel until they disembark (dock to dock), where "day" is defined as a 24-hr period, or any portion of a 24-hr period, regardless of the calendar day. For example, if a vessel with an observer departs on July 1st at 10 pm and lands on July 3rd at 1 am, the time at sea equals 27 hr, which would equate to 2 "days." For open area DAS trips, a service provider shall charge dock to dock where "day" is defined as a 24-hr

period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, for the trip demonstrated above, the provider would charge 1 day and 3 hours.

Providers will 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. Measures Pertaining to Scallop Fishermen

Scallop fishermen must allow NMFS/NEFOP up to 24 hr to respond to a pre-sailing notice and, if selected, must provide the observer provider at least 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. This will reduce the pre-sailing notice period. The proposed rule erroneously noted that NMFS would have up to 72 hours to respond to a pre-sailing notification.

Limited access trip notification calls cannot 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 calls weekly rather than daily. For example, a general category vessel could call in by Thursday for all the trips it plans to take from the following Sunday through Saturday. The vessel will 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 a NMFS/NEFOP call-in confirmation number specific to that trip and that was issued for the trip plan and area.

## 3. Observer Program Observer Training Adjustments

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

An observer's first three deployments and the resulting data will 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 will be certified. If the data is not acceptable, the observer will not be certified.

An observer provider will 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. Multi-day is defined as more than 2 days.

At least 7 days prior to the beginning of an observer training class, providers would be required to provide a final 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.

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

### *30-Day VMS Power Down Provision for Scallop Vessels*

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

### *General Category Allocations*

The general category fishery will be allocated 10 percent of the overall scallop TAC in 2008, and 5 percent in 2009 (unless the IFQ program is not implemented by March 1, 2009, in which case the general category fishery will be allocated 10 percent of the scallop quota). Provided the IFQ program is implemented in 2009, 0.5 percent of the scallop TAC will be allocated to full-time, part-time, or occasional vessels that qualify for an IFQ permit.

The NGOM TAC for both 2008 and 2009 will be 70,000 lb (31,751 kg).

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

The annual TAC, excluding the NGOM TAC and incidental catch TAC, will be distributed into quarterly TACs. The fleetwide quarterly TAC will remain in effect until the IFQ program is implemented under Amendment 11 to the FMP. Framework 19 allocates 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 will be rolled over into Quarter 3; if any portion of the Quarter 2 TAC is not caught, it will be rolled over into Quarter 4. Open area and access area scallop landings by directed general category trips will count against the quarterly TACs. If a quarterly TAC is caught, all directed general category scallop fishing will cease for the remainder of the quarter in access area, and open areas, but excluding the NGOM. If the Quarter 1 TAC (March 1–May 31) is underharvested or exceeded, those pounds will be added or removed from Quarter 3. If the Quarter 2 TAC (June 1–August 31) and/or Quarter 3 TAC (September 1–November 30) are underharvested or exceeded, those pounds will be added or removed from Quarter 4. In addition, since the quarterly TACs are intended to be in place for the entire 2008 fishing year, as specified in Amendment 11, Framework 19 requires that any scallops harvested by general category scallop vessels during the first and/or second quarter prior to implementation of Amendment 11 and Framework 19 are counted against the applicable quarterly TAC.

Starting with the first year of the IFQ program in 2009 or 2010, if necessary, the pool of IFQ vessels that do not qualify for a full-time, part-time, or occasional limited access scallop permit will be allocated 5 percent of the overall scallop TAC; and the pool of full-time, part-time, or occasional limited access vessels that qualify for an IFQ permit will be allocated 0.5 percent of the overall scallop TAC. General category vessels that qualify for an IFQ permit in 2009 will be allocated 5 percent of the overall scallop TAC as follows: 1,182,500 lb (536 mt) from open areas, 785,700 lb (357 mt) from ETAA, and 291,000 lb (132 mt) from Delmarva. Full-time, part-time, and occasional scallop vessels that qualify for an IFQ permit in 2009 will be allocated 225,950 lb (113 mt) from open areas on general category trips.

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 will be allocated 10 percent of the overall scallop TAC and be divided among quarters as described in the preceding section.

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

In 2008, the general category fishery will be allocated 667 trips in the NLCA, and 2,668 trips in the ETAA, respectively. Because 997 of the 2,668 ETAA trips have already occurred, 1,161 ETAA trips will be allocated to general category vessels when Framework 19 is effective under this final rule. The NLCA will open on June 15, 2008.

In 2009, the general category scallop fishery will be allocated up to 1,964 ETAA trips and up to 728 Delmarva trips. If 2008 ETAA scallop resource surveys indicate a reduced exploitable scallop biomass, or overall 2008 scallop F exceeds 0.29, general category ETAA trip allocations will be subject to trip reduction procedures as specified under Table 1-2009 ETAA Trip Reduction Table. If updated 2008 Delmarva scallop resource surveys indicate the exploitable biomass in Delmarva is less than 10,000 mt, Delmarva will be closed for the 2009 fishing year, and no general category trips will be allocated. General category vessels will not be allocated any trips in CAII because of concerns that negligible fishing effort by general category vessels will occur there. Because general category vessels will receive overall TAC, the zero allocation in CAII will be offset by a higher percentage of overall catch in open areas.

### *IFQ Cost Recovery Program*

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 implemented through 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 will incur a cost recovery fee liability for every landing of scallops. The IFQ permit holder that landed the IFQ scallops will 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 will 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. IFQ permit owners that transferred IFQ scallops (transferee) from another IFQ vessel (transferor) as

part of the IFQ scallop transfer program must submit a cost recovery fee for scallops landed by the transferee.

Payment of the cost recovery fee will be a permit condition that must be met before permits may be renewed. On or about October 30 of each year, NMFS will mail a cost recovery bill for the IFQ fee incurred by each IFQ vessel to each IFQ permit holder. Owners of IFQ vessels will be required to submit payment by January 1 of each year. An IFQ scallop vessel's permit will not be renewed (i.e., not issued) by NMFS until payment for the prior year's fees is received in full. Bills will also be made available electronically via the internet. Fee liabilities due January 1 will 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 will issue a cost recovery bill on or about October 30, 2010, and the IFQ permit holder will 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 will not be renewed.

Disputes regarding fee liabilities will 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 will 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 will notify the IFQ permit holder by letter. NMFS will explain the discrepancy and the IFQ permit holder will 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 will not be renewed until the payment discrepancy is resolved. If the IFQ permit holder submits evidence in support of his/her payment, NMFS will evaluate it and, if there is any remaining disagreement as to the appropriate IFQ fee, prepare a Final Administrative Determination (FAD). The FAD will 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 will be the final agency action. If the FAD determines that the IFQ permit holder is out of compliance, the IFQ scallop permit in question will 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 will 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 will refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection, and the vessel's IFQ permit(s) will remain invalid. If NMFS does not receive such payment prior to the end of the fishing year, the IFQ permit will be considered voluntarily abandoned.

Cost recovery payments shall be made electronically via the Federal web portal, <http://www.pay.gov>, or other Internet sites as designated by the Regional Administrator. Instructions for electronic payment will be made available on both the payment Web site and the paper bill. Payment options may include payment via a credit card (the Regional Administrator will 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 will create an annual IFQ report and provide it to the owner of the IFQ permit. The report will 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 will 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.

### **Comments and Responses**

A total of 3 relevant comment letters that raised 6 relevant issues were received in response to the proposed rule for Framework 19.

*Comment 1:* A comment letter was submitted by an observer service provider suggesting that vessels should be compensated for the full cost of observer coverage; including costs associated with observer deployment, at-sea data collection, and post-trip data processing. At the least, vessels should be compensated based on when the

vessel leaves the dock at the start of the trip to when the vessel returns to the dock at the end of the trip.

*Response:* Based on the above comment and in consultation with the NMFS/NEFOP, NMFS has adjusted the proposed rule measures. NMFS has determined that “dock-to-dock,” which is the period of time between vessel departure and landing, is the appropriate method by which an observer provider shall charge scallop vessel owners for observer coverage. Details of this adjustment are detailed in the preamble and regulatory text.

*Comment 2:* A comment letter was submitted by an environmental advocacy organization supporting the continuation of the September 1 through October 31 ETAA seasonal closure. This letter also requests that NMFS include additional measures to further protect sea turtles, including: A scallop closed season for Delmarva similar to the ETAA closed season; expansion of the Hudson Canyon Access Area boundaries; implementation of the requirements of the recently signed biological opinion for the scallop fishery; and a provision to allow up to 5 percent of the access area TACs and open area DAS to be set-aside for the industry-funded observer program to ensure maximum observer coverage.

*Response:* NMFS agrees that the continuation of this closure is consistent with the Magnuson-Stevens Act. However, NMFS does not have the authority to expand Framework 19 to include additional management measures as requested by the commenter, or to modify measures developed by the Council. NMFS can only approve or disapprove the specific measures recommended by the Council. NMFS did request that the Council adopt through Framework 21 to the Scallop FMP reasonable and prudent measures to reduce sea turtle take as recommended by the most recent biological opinion. Framework 21 is scheduled to be implemented in 2010.

*Comment 3:* A comment letter was submitted by an organization representing limited access scallop vessel owners. The commenter suggested that maintaining the F target at 0.20 may be overly cautious and may not achieve optimum yield as required by National Standard 1 of the Magnuson-Stevens Act. The commenter expressed the opinion that the DAS reductions proposed by Framework 19 are not warranted given the status of the scallop resource and the new overfishing definition. Framework 19 would allocate 35 DAS in 2008 and 42 DAS in 2009. The commenter also referenced Amendment 10 to the FMP,

which had established the target F at 80 percent of the threshold F, and recommended that the target F should therefore be increased to 0.23 to be consistent with Amendment 10. Consequently, the commenter requested that NMFS disapprove the DAS allocations proposed by Framework 19, and maintain the status quo, which would allocate 51 DAS to full-time scallop vessels in 2008 and 2009.

*Response:* NMFS has determined that setting the F target at 0.20 is appropriate given that fishing mortality is not uniformly distributed throughout the range of the scallop fishery, but recognizes that maintaining the F target is a conservative approach and may need to be revisited in the future. But because there is concern for localized overfishing in open areas, an F target of 0.20 would help maintain a stable fishery over the long term. NMFS has determined that the DAS allocations proposed through Framework 19 are consistent with National Standard 1 of the Magnuson-Stevens Act.

*Comment 4:* An organization representing limited access scallop vessel owners expressed concern that NMFS exceeded its legal authority when it proposed to reduce full-time and part-time DAS allocations in the event the IFQ program is not implemented by the start of the 2009 fishing year and the general category fishery is allocated 10 percent of the scallop quota. The commenter also felt that the general category fishery should not be allocated more than 5 percent of the quota beyond 2009, regardless of whether the IFQ program is implemented.

*Response:* This provision is entirely consistent with Amendment 11 and its implementing regulations and, therefore, NMFS acted within its legal authority. During the transition period to the general category IFQ program Amendment 11 specifies that the limited access fleet would be allocated DAS in open areas based on an allocation of 90 percent of the total allowable scallop catch, without reference to the length of the transition period. Once the IFQ program is implemented, the limited access fleet would be allocated DAS based on an allocation of 94.5 percent of total scallop catch. In specifying DAS for the 2009 fishing year through Framework 19, the Council presumed that the IFQ program would be in effect and consequently did not specify DAS in the event the IFQ program was not implemented by the start of the 2009 fishing year. Framework 19 does not supersede measures approved as part of Amendment 11. Therefore, consistent with Amendment 11, if the general

category fishery is still transitioning to the IFQ program by the start of the 2009 fishing year, the limited access fleet would be allocated DAS in open areas based on an allocation of 90 percent of the total allowable scallop catch. In response to the comment that general category vessels should not be allocated more than 5 percent of the TAC beyond 2009, the Council is scheduled to recommend future scallop specifications beyond the 2009 fishing year through a future framework to the FMP. However, if the Council does not specify otherwise, the 10-percent scallop quota allocation to the general category fishery will remain in effect during the transition period to the IFQ program.

*Comment 5:* An organization representing limited access scallop vessel owners supported the Council’s recommendation to adjust the observer set-aside compensation rates.

*Response:* NMFS did consider the Council’s request and evaluated the current set aside rates and determined that, although there is a possibility that the current DAS set-aside rate may not fully offset the cost of carrying an observer, on balance, the current rate provides the greatest benefit to the fleet and should not change for the 2008 fishing year. NMFS determined that if the DAS compensation rate was increased, the DAS set aside would likely not last through the fishing year, resulting in some vessel owners needing to pay the full cost of observer DAS trips. Therefore, the reduced DAS charge on observed DAS trips will remain at 0.85 for the 2008 fishing year to ensure an equitable distribution of DAS compensation for vessels required to carry an observer on a DAS trip. The Regional Administrator may re-evaluate the DAS compensation rate prior to the start of the 2009 fishing year.

*Comment 6:* An organization representing limited access scallop vessel owners supports the VMS power down provision.

*Response:* NMFS agrees that the power down provision will provide benefits to the scallop fishery without compromising the objectives of the FMP.

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

In § 648.4(a)(2)(ii)(D)(2), the conversion from in-shell scallop weight to meat weight is revised to specify that 8.33 lb (3.78 kg) of in-shell scallops will be converted to one pound (0.45 kg) of scallop meats.

In § 648.4(a)(2)(ii)(E), the IFQ contribution factor reference is corrected to read § 648.53(h)(2)(ii)(A).

In § 648.4(a)(2)(ii)(I)(3), the date April 14, 2008, is changed to July 1, 2008, to reflect the effective date of Amendment 11 permit requirements as indicated in the final rule for Amendment 11.

Section 648.11(g)(2)(ii) is revised to clarify the general category access area observer reporting requirements.

In § 648.11, paragraph (g)(3) is revised to state that NMFS shall respond to a trip notification within 24 hours, not 72 hours as erroneously noted in the proposed rule.

In § 648.11, paragraph (g)(5)(i)(A) revises how observer providers should charge vessel owners for access area trips.

In § 648.11, paragraph (g)(5)(i)(B) revises how observer providers should charge vessel owners for open area DAS trips.

In § 648.11, paragraph (h)(5)(i) is revised to clarify that if pre-certification observer data is accepted, the observer would be certified.

In § 648.11, paragraph (h)(5)(vi) is revised to clarify that observer providers must submit candidate information to NMFS within 7 days to the beginning of a class.

In § 648.11, paragraph (h)(5)(vii)(A) is revised to require observer reports to be submitted to NMFS within 24 hr of landing, not 12 hr as noted in the proposed rule. The change in the final rule makes the regulation consistent with the Framework 19 document.

In § 648.53, paragraph (a)(1) is revised to clarify the 2008 scallop fishery allocations.

In § 648.53, paragraph (a)(2) is revised to clarify the 2009 scallop fishery allocations.

In § 648.53, paragraphs (a)(4)(i), (a)(4)(ii), (a)(5)(i), (a)(5)(ii), (a)(5)(iii) are revised to more clearly describe how the scallop quota is divided.

In § 648.53, paragraph (a)(5)(ii) is revised to correctly reference § 648.53(a)(7).

In § 648.53, paragraph (h)(2)(ii) is revised to correctly reference the index factor in § 648.53(h)(2)(ii)(A).

Revisions in § 648.59 have been made to reflect changes that were made in the final rule for Amendment 11 to the FMP. Also, two revisions of paragraphs within § 648.59 are included to reflect measures effective June 1, 2008, and July 1, 2008, under the same paragraphs.

In § 648.60, the table in paragraph (a)(2) listing 2009 research set-aside and observer set-aside adjustment weights is corrected.

Other editorial and minor changes were made throughout the rule to clarify various provisions in this action.

### Classification

NMFS has determined that Framework 19 as implemented by this rule is necessary for the conservation and management of the Atlantic sea scallop fishery and is consistent with the Magnuson-Stevens Act and other applicable law.

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

The Assistant Administrator for Fisheries has determined that the need to implement these measures in a timely manner to avoid continuation of measures that are inconsistent with the measures in Framework 19 that are designed to meet the resource conservation goals of the FMP constitutes good cause under authority contained in 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date and establish an effective date of June 1, 2008. Framework 19 measures need to be effective on the same day that the allocation measures for Amendment 11 to the FMP (Amendment 11) measures are effective. Amendment 11 specifies the level of TACs that will be allocated to the general category and limited access scallop fleets to be effective on June 1, 2008. Amendment 11 does not include the actual fishery specifications that would make the full suite of Amendment 11 measures effective in controlling the general category fishery. Rather, the specific TACs based on Amendment 11 are part of Framework 19. As such, implementation of Framework 19 is directly responsible for achieving the effectiveness of Amendment 11 allocation and harvest limit measures. Delaying the measures would compromise the ability to achieve the overall benefits to the resource, fishery, and economy that are anticipated in Amendment 11, to the detriment of the public.

In addition, without the measures included in Framework 19, the limited access scallop fleet will continue to fish under fishing year 2007 DAS and Sea Scallop Access Area trip allocations that continue to be in effect from March 1, 2008, and until Framework 19 is implemented. Current DAS allocations are inconsistent with the measures in Framework 19 designed to meet the resource conservation goals of the FMP. Specifically, open area DAS are higher under current measures than will be implemented under Framework 19 and vessel owners and operators have the potential of exceeding the Framework 19 DAS allocations. Because these vessels have been fishing under the current allocations since March 1, 2008, it is likely that some vessels have

already exceeded their Framework 19 DAS allocations. Vessel owners continue to be faced with uncertainty for future allocations, and will have DAS reduced in 2009 if DAS used exceed the Framework 19 allocated DAS.

NMFS accepted the Council's submission of Framework 19 in December 2007 and anticipated that the final rule could not be published by March 1, 2008, because of its complexity and because Framework 19 could not be made effective until Amendment 11 was effective. NMFS anticipated that Framework 19 would need to be effective on the same day, or very shortly after the effective date of Amendment 11, regardless of when the Framework 19 final rule is published. The complexity and relation of the two related actions delayed publication despite efforts to complete the proposed rule earlier. In addition, due to the dependence of Framework 19 on Amendment 11, the development of the final rule for Framework 19 was held until the final rule for Amendment 11 was published on April 14, 2008. The effective date of June 1, 2008, created a brief window for the final rule for Framework 19 to be developed and published.

This final rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. NMFS will publish a subsequent notice when these information collection requirements have been approved by OMB. Public reporting burden for these collections of information are estimated to average as follows:

1. Service provider observer contact information reports, OMB #0648-0546—5 min per response;
2. Service provider observer availability reports, OMB #0648-0546—1 min per response;
3. Copies of service provider outreach materials, OMB #0648-0546—30 min per response;
4. Copies of service provider contracts, OMB #0648-0546—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. 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 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 requirement subject to the requirements of the PRA, unless that collection-of-information requirement displays a currently valid OMB control number.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has included a final regulatory flexibility analysis (FRFA) in support of Framework 19 in this final rule. The FRFA describes the economic impact that this final rule, along with non-adopted alternatives, will have on small entities. The FRFA incorporates the economic impacts and analysis summarized in the IRFA for the proposed rule to implement Framework 19, the comments and responses in this final rule, and the corresponding economic analyses prepared for Framework 19 (e.g., the EA and the RIR). A copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**).

#### *Statement of Need for This Action*

A detailed description of the reasons for this action, the objectives of the action, and the legal basis for this final rule are found in Framework 19 and the preamble to the proposed and final rules.

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

A comment letter was submitted by an organization representing limited access scallop vessel owners noting that the economic impacts presented in the proposed rule wrongly characterized that the DAS allocations would have a positive impact on the industry. This was the only comment received with any bearing on the economic analyses summarized in the IRFA.

*Response:* The IRFA provides a summary of the economic impacts of the management measures combined and of each proposed and alternative management measure. The IRFA demonstrates that the DAS allocations would have positive impacts overall and in the long term. The IRFA is a summary and refers readers to the full economic analysis in the Framework 19 document, which provides extensive detailed analysis of the economic impacts that are estimated through

projections that have long been utilized in assessing the economic impacts of scallop fishery management measures.

No changes were made to the final rule as result of the above comment.

#### *Description and Estimate of Number of Small Entities to Which the Rule Will 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 \$4 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 \$3.5 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.

Framework 19 regulations will affect all federally permitted 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 will be affected by the 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 four new collection-of-information, reporting, and recordkeeping requirements currently under review by OMB. The following describes these requirements.

##### 1. Observer Contact List

Observer service providers will be required to provide and maintain an updated list of contact information for all observers. This will 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 will 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 will 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 will 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 will 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 will request copies of service provider outreach materials once a year. It is estimated it will take 30 min to submit this information, for a total burden of 0.5 hour. It is estimated the service providers will incur a total of \$5 in mailing fees to submit these materials.

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

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

*Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected*

The long-term overall economic effects of Framework 19 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 will be positive, with a 2.1-percent increase expected in fishing year 2008 and a 6-percent increase expected in fishing year 2009.

The economic impacts of the adopted measure for the general category fleet will be positive because the general category TAC will be higher under the adopted 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 adopted alternative compared to no action.

However, the level of general category TAC will 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 in Amendment 11 that will establish a limited entry program for the general category fishery, thereby reducing general category fishing effort and landings. Since Framework 19 will not change measures adopted through 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 Framework 19 general category measures 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 will be 5 million lb (2,2668 mt) in 2008 and 2.5 million lb (1,134 mt) in 2009. Framework 19 will 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 will be negative on the general category fleet to the extent that the overall TAC prevents these vessels from landing the amount of scallops they will catch without such a constraint. Those distributional impacts were analyzed in Amendment 11. However, a limited access general category fishery will 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 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.

*Economic Impacts of the Adopted Alternatives and Rejected Alternatives*

In some cases the Council only considered one alternative versus a no action alternative if additional alternatives would be outside the scope of Framework 19. The following describes all of the alternatives considered by the Council.

1. GB Access Area Schedule Revision

Framework 19 will adjust the GB access area schedule so that the NLCA will be open in 2008 and CAII will be open in 2009. The adopted 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 will 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 was the no action option, which would have provided access in 2008 to CAI instead of the NLCA. Due to low biomass, CAI will not likely support a fleet-wide trip allocation. Consequently, since both the NLCA and CAII have higher scallop concentrations than CAI, the adopted alternative will result in higher economic benefits than the no action alternative.

2. DAS Conversion and Yellowtail TAC

The adopted action to allocate additional open area DAS if an access area closes due to the attainment of a scallop yellowtail TAC will continue under the no action alternative, but the values will be changed to reflect current fishery and resource conditions. The adopted DAS conversion rates will 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 will result from a yellowtail TAC closure. Although this measure will have positive economic impacts on scallop vessels that lost access area trip(s), they will 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 will 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 adopted higher DAS conversion rates will result in higher economic benefits than no action.

3. HCAA Trip Expiration

Through FY 2007, ending on February 29, 2008, the FMP has allowed scallop vessels to continue fishing in the HCAA under trips that were originally allocated for FY 2005. This extension of the authorized trips was intended to

allow vessels to take advantage of additional time to harvest scallops under the allocated trips since scallop catch rates had declined in FY 2005. Under Framework 19, the Council considered whether or not the trips should continue to be extended into FY 2008. The adopted 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. If landings per unit effort (LPUE) improved in early 2007, some vessels may have had incentive to take their trips rather than let them expire, minimizing these negative impacts. The alternative to extend the trip expiration deadline to May 31, 2008, could have reduced the negative impacts compared to no action. However, extending the duration of Hudson Canyon trips until May 31, 2008, could have had negative impacts on future scallop yields resulting in negative long-term economic impacts.

#### 4. ETAA and Delmarva Schedule

The adopted action to provide access to the ETAA in 2008 and 2009 and Delmarva in 2009 will 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 will 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 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 adopted action will continue to allow a vessel to carry any number of crew on an access area trip. No crew limit will give vessels the most flexibility, potentially reducing total fishing costs, and will therefore have positive economic impacts on scallop vessels. The alternative option would have restricted the crew size to eight or nine persons. This would potentially 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 adopted alternative.

#### 6. In-Shell Possession Limit

The adopted action will 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 will help reduce 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 adopted alternative.

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

The adopted alternative will 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 will generate higher benefits for scallop vessels.

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

The adopted 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 will implement the following vessel-specific DAS allocations: Full-time vessels will be allocated 35 DAS in 2008 and 42 DAS in 2009; part-time vessels will be allocated 14 DAS in 2008 and 17 DAS in 2009; and occasional vessels will 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 adopted action during 2008–2009, but would be offset by lower DAS allocations and resulting reductions in revenues in future years as the result of lower exploitable scallop biomass. The adopted action will allocate fewer open area DAS compared to the no action in both the 2008 and 2009 fishing years, but it will allocate more trips to access areas. As a result, the adopted action will generate higher benefits than the no action alternative.

#### 9. General Category Quarterly TAC

Amendment 11 will establish a limited entry IFQ program for the general category scallop fishery scheduled to start in 2009. The 2008 fishing year will be a transition year as IFQ shares are established. The adopted action will distribute the 2008 general category quota allocation into quarters to minimize derby-style fishing. This measure will 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 may result in some degree of derby-style fishing, the quarterly TAC allocation is intended to reduce the extent of derby fishing and lessen the negative economic impacts associated with derby fishing. The adopted alternative (Option A) will 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 2, 15 percent (452,813 lb, (205.39 mt)) to Quarter 3, and 10 percent (301,875 lb, (136.93 mt)) to Quarter 4. Quarters 1 and 2 will be allocated 75 percent of the TAC because general category access area trips primarily occur in those quarters. Unused TAC from Quarter 1 will roll over to Quarter 3, and unused TAC from Quarter 2 will roll over to the fourth quarter, thereby ensuring the full benefit of the scallop TAC is realized. There was no alternative to the adopted alternative to allocate 10 percent of the overall 2008 scallop TAC to the general category fishery. However, Option B would have distributed 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 adopted alternative.

#### 10. General Category Access Area Allocations

The adopted 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 will 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 will be allocated 5 percent of the overall ETAA and Delmarva TACs, resulting in up to 1,967 trips and 726, respectively. General category vessels will not be allocated any trips in CAII.

Because access areas are more productive and have higher LPUE than open areas, it will take less fishing time to catch the 400-lb (181-kg) possession limit. As a result, fishing costs will be lower and profits will 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 will increase open area landings and overall revenues of the general category fishery. The alternative option would have allocated 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 will implement a cost recovery program that will 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 adopted alternative estimates total scallop landings will 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 will likely range from \$519,818 to \$571,455 in 2009. Although this measure imposes costs on qualifying IFQ vessels, alternatives to reduce those costs, either by not implementing a cost recovery program, or collecting less than 3 percent, would be contrary to the Magnuson-Stevens Act, which requires a full cost recovery program to be implemented for each IFQ program.

#### 12. NGOM TAC

Amendment 11 will establish a NGOM Management Area that will be managed under a hard quota system. Framework 19 will establish the NGOM annual specifications. The adopted 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 will allow them to land scallops in this area during favorable resource conditions. The adopted 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 adopted action to remove incidental scallop catch before making allocations to limited access and directed general category vessels will ensure F targets are not exceeded, and thus will have positive impacts on the resource, scallop yield, and on the revenues and profits of scallop vessels. Framework 19 will establish the incidental catch target TAC for the 2008 and 2009 fishing years. The target TAC will be established at 50,000 lb (22.68 mt) per year in 2008 and 2009. This measure is based on the best available 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 adopted action to adjust the overfishing definition will 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 0.20 will 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 will 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 measures that will 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 adopted action will 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 will not include observer program improvements, and therefore, will not facilitate the effectiveness and efficiency of the industry-funded observer program.

#### 16. HCAA Rotational Management Area

The adopted action will 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 over the long term by reducing mortality and increasing yield from this area. 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 thereby increase overall benefits. Two different boundary alternatives for HCAA were considered but not selected by the Council. These alternative closures would have slightly increased the revenues and economic benefits for the scallop vessels compared to the adopted HCAA closure boundaries, but would allocate fewer open area DAS in the 2008 fishing year.

#### 17. 30-Day VMS Power Down Provision

The adopted action to implement a 30-day VMS power down provision will reduce the burden on vessel owners to maintain a transmitting VMS on their vessel for long periods when it is not fishing. This provision will 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.

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with

the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the Atlantic scallop fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator and are also available from NMFS, Northeast Region (see ADDRESSES).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: May 21, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. Effective July 1, 2008, in § 648.4 paragraphs (a)(2)(ii)(D)(2), (a)(2)(ii)(E), (a)(2)(ii)(H), (a)(2)(ii)(I)(3) are revised to read as follows:

§ 648.4 Vessel permits.

- (a) \* \* \*
(2) \* \* \*
(ii) \* \* \*
(D) \* \* \*

(2) Landings criterion. A vessel must have landed at least 1,000 lb (454 kg) of shucked scallops in any one year when the vessel also held a general category scallop permit as specified in paragraph (a)(2)(ii)(D)(1) of this section. To qualify, scallop landings in the 2004 fishing year must have occurred on or before November 1, 2004. NMFS dealer data shall be used to make the initial determination of vessel eligibility. If a dealer reported more than 400 lb (181.4 kg) of scallops on a trip, only 400 lb (181.4 kg) will be credited toward the landings criteria. For dealer reports that indicate that the landings were bushels of in-shell scallops, a conversion of 8 lb (3.63 kg) of scallop meats per bushel will be used to calculate meat-weight, up to the maximum of 400 lb (181.4 kg) per trip. For dealer reports that indicate that the landings were reported in pounds of in-shell scallops, the weight

shall be converted to meat-weight using the formula of one pound (0.45 kg) of scallop meats for 8.33 lb (3.78 kg) of in-shell scallops, up to the maximum of 400 lb (181.4 kg) per trip, for qualification purposes.

(E) Contribution factor for determining a vessel's IFQ. An eligible IFQ scallop vessel's best year of scallop landings during the qualification period of March 1, 2000, through November 1, 2004, as specified in § 648.53(h)(2)(ii)(A), and the vessel's number of years active, as specified in § 648.53(h)(2)(ii)(B), shall be used to calculate a vessel's contribution factor, as specified in § 648.53(h)(2)(ii)(C). A vessel owner that has applied for an IFQ scallop permit will be notified of the vessel's contribution factor at the time of issuance of the IFQ scallop permit, consistent with confidentiality restrictions of the Magnuson-Stevens Act specified at 16 U.S.C. 1881a. A vessel owner may appeal NMFS's determination of the IFQ scallop vessel's contribution factor by complying with the appeal process as specified in paragraph (a)(2)(ii)(O) of this section.

\* \* \* \* \*

(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 August 30, 2008. Applications for LAGC permits that are not postmarked on or before August 30, 2008, 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.

(I) \* \* \*

(3) Notwithstanding paragraph (a)(1)(i)(L) of this section, a vessel owner applying for a LAGC permit who sold or transferred a vessel with non-scallop limited access permits, as specified in paragraph (a)(1)(i)(D) of this section, and retained only the general category scallop history of such vessel as specified in paragraph (a)(1)(i)(D) of this section, before July 1, 2008, may use the general category scallop history to qualify a different vessel for the initial IFQ scallop permit, regardless of whether the history from the sold or transferred vessel was used to qualify another vessel for another limited access permit.

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 Thursday preceding the week (Sunday through Saturday) that they intend to start a scallop trip in an access area. If selected, up to two Sea Scallop Access Area trips that start during the specified week (Sunday through Saturday) 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 at least 48 hr prior to vessel departure.

(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 24 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 owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 48-hr notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip. 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. A vessel may not begin the trip without being issued 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, a service provider shall charge a vessel owner from when an observer boards a vessel until they disembark (dock to dock), where "day" is defined as a 24-hr period, or any portion of a 24-hr period, regardless of the calendar day. For example, if a vessel with an observer departs on the July 1st at 10 pm and lands on July 3rd at 1 am, the time at sea equals 27 hours, which would equate to 2 "days."

(B) *Open area scallop trips.* For purposes of determining the daily rate for an observed scallop trip for open area DAS trips, a service provider shall charge dock to dock where "day" is defined as a 24-hour period, and portions of the other days would be prorated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on the July 1st at 10 pm and lands on July 3rd at 1 am, the time at sea equals 27 hours, so the provider would charge 1 day and 3 hours.

(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 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. If data quality is considered acceptable, the observer would be certified.

\* \* \* \* \*

(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 at least 7 days prior to the beginning of the proposed training class: 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/NEFOP Minimum Eligibility Standards for observers as described on the NMFS/NEFOP Web site.

(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 24 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, e-mail 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. In § 648.14, as revised on April 14, 2008 (73 FR 20120) effective June 1, 2008, is further amended, effective June 1, 2008, by revising paragraphs (h)(27) and (i)(2)(iv). Paragraph (h)(29) is revised and is effective June 1, 2008, and paragraphs (i)(1)(xx), and (i)(2)(xvii) are added, effective July 1, 2008. All revisions and additions 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 in or 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 or 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.

(2) \* \* \*

(iv) 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.

\* \* \* \* \*

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

\* \* \* \* \*

■ 6. In § 648.53, as revised on April 14, 2008 (73 FR 20123), effective June 1, 2008, is further amended, effective June 1, 2008, by revising paragraphs (a)(1) through (7), (a)(8)(i) and (ii), and (a)(9), (b)(5)(i), (b)(5)(ii), (b)(6), (g)(1), (g)(2), (h)(2)(ii) introductory text, and (h)(4), revising, the table in paragraph (b)(4) introductory text, adding and reserving paragraph (b)(4)(ii), removing and reserving paragraph (b)(5)(iii), and adding paragraph (b)(4)(i) to read as follows:

**§ 648.53 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 as specified in this section, the observer and research set-aside TACs specified in paragraphs (g)(1) and (2) of this section, and in § 648.60(d) and (e). The annual target TAC for the scallop fishery shall exclude the TAC established for the Northern Gulf of Maine Scallop Management Area as specified in § 648.62, and 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, 90 percent of which will be allocated to the limited access fishery, and 10 percent of which will be allocated to the general category fishery.

(2) *2009 fishing year target TAC for scallop fishery.* 20,820 mt, 94.5 percent of which will be allocated to the limited access fishery, 5 percent of which will be allocated to IFQ scallop vessels, and 0.5 percent will be issued to limited access vessels also issued IFQ scallop permits and that are fishing under general category regulations. If the IFQ program is delayed beyond March 1, 2009, as specified at paragraph (a)(7) of this section, 90 percent of the TAC will be allocated to the limited access fishery, and 10 percent of the TAC will be allocated to the general category fishery.

(3) *Access area TAC.* The TAC for each Access Area shall be determined through the framework adjustment process described in § 648.55 and specified in § 648.59. 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 general category permits shall be specified in accordance with § 648.60 through the framework adjustment process specified in § 648.55.

(4) *Open area target TAC for limited access vessels.* The open area TAC specified in this paragraph (a)(4) excludes the open area DAS set-aside specified in (g)(1) and (2) of this section, the access area TACs specified in § 648.59, and access area set-asides specified in § 648.60(d) and (e).

(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 shall be 6,274 mt.

(ii) *2009 fishing year.* For the 2009 fishing year, the target TAC for limited access vessels fishing under the scallop DAS program specified in this section shall be 7,458 mt., unless the implementation of the IFQ program is delayed beyond March 1, 2009, as specified in paragraph (a)(7) of this section.

(5) *Open area TAC for IFQ scallop vessels.* The open area TAC specified in this paragraph (a)(5) excludes the access area TACs specified in § 648.59, and access area set-asides specified in § 648.60(d) and (e).

(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 1,369 mt.

(ii) *2009 fishing year and beyond for IFQ scallop vessels without a limited access scallop permit.* For the 2009 fishing year, unless the implementation of the IFQ program is delayed beyond March 1, 2009, as specified in paragraph (a)(7) of this section, the TAC for IFQ scallop vessels without a limited access scallop permit shall be 536 mt.

(iii) *2009 fishing year and beyond for IFQ scallop vessels with a limited access scallop permit.* For the 2009 fishing year, unless the IFQ program is delayed beyond March 1, 2009, as specified in paragraph (a)(7) of this section, 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) minus the TAC for all access areas specified in accordance with paragraph (a)(3) of this section. If the IFQ program implementation is delayed beyond March 1, 2009, the allocation of TAC to IFQ scallop vessels is specified in paragraph (a)(7) of this section.

(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 will remain in effect. Under such a scenario, the overall IFQ fishery allocation of 4,551,700 lb (2,065 mt) will be distributed as follows: Quarter 1—1,593,095 lb (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 (a)(7) 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	Per- cent	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 general category scallop vessels prior to July 1, 2008, and all landings by IFQ scallop vessels and limited access vessels fishing under an IFQ scallop permit after June 30, 2008, 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	1 2009
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 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 will 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 will 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 will 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 will 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 shall 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) \* \* \*  
(2) \* \* \*

(ii) *Contribution factor.* An IFQ scallop vessel's contribution factor is calculated using the best year, years active, and index factor as specified in paragraphs (h)(2)(ii)(A) through (C) of

this section. A vessel's contribution factor shall be provided to the owner of a qualified limited access general category vessel following initial application for an IFQ scallop permit as specified in § 648.4(a)(2)(ii)(E), consistent with confidentiality restrictions of the Magnuson-Stevens Act specified at 16 U.S.C. 1881a.

\* \* \* \* \*

(4) *IFQ cost recovery.* A fee, not to exceed 3 percent of the ex-vessel value of IFQ fish harvested, shall be collected to recover the costs associated with 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 specified 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 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 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 Web site 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 NMFS if it has determined that electronic payment is not possible (for example, if the geographical area of 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 to fish temporarily by the Regional Administrator until the FAD is issued, at which point the permit holder shall have 30 days to comply with the terms of the FAD or the IFQ scallop permit shall not be issued 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 shall issue a FAD, at which point the permit holder shall have 30 days to comply with the terms of the FAD or NMFS may withdraw the issuance of the IFQ scallop permit 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. Department of the Treasury for purposes of collection, and no IFQ permit held by the permit holder may 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 shall 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 to read as follows and paragraphs (e) through (h) are removed.

**§ 648.58 Rotational Closed Areas.**

(a) *Hudson Canyon Closed Area.* 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.
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.* 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 paragraph (a) is revised, effective June 1, 2008. Section 648.59 as revised on April 14, 2008 (73 FR 20129) effective June 1, 2008, is further amended, effective June 1, 2008, by revising paragraphs (b)(5)(i), (b)(5)(ii), (c)(5)(i), (c)(5)(ii), (d)(5)(i), (d)(5)(ii), (e)(4)(i), (e)(4)(ii). The revisions read as follows.

**§ 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 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)(i), 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). The number of trips allocated to limited access vessels in the Delmarva Access Area shall be based on the TAC for the access area, which shall be determined through the annual framework process and specified in this paragraph (a)(5)(i). The 2009 Delmarva Access Area scallop quota for limited access scallop vessels is 5,529,000 lb (2,508 mt), unless reduced per § 648.60(a)(3)(i)(E)(3).

(ii) *General category vessels.* General category vessels shall be allocated 728 Delmarva Access Area trips in 2009, unless reduced per § 648.60(a)(3)(i)(E)(3). Subject to the seasonal restrictions specified in paragraph (a)(4) of this section, a vessel issued a general category scallop permit, may not fish for, possess, or land sea scallops in or from the Delmarva Access Area, or enter the Delmarva Access Area on a declared scallop trip once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that the allocated number of trips for the applicable 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.

(b) \* \* \*  
(5) \* \* \*

(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 the Closed Area I 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 Closed Area I Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area I Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area I Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in this paragraph (b)(5)(i).

(ii) *General category vessels.* (A) General category vessels shall be allocated 0 trips in the Closed Area I Access Area in 2008 and 2009. Except as provided in paragraph (b)(5)(ii)(B) of this section, and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, a vessel issued a general category scallop permit, may not fish for, possess, or land sea scallops in or from the Closed Area I Access Area, or enter the Closed Area I Access Area on a declared scallop trip, once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that the allocated number of trips for the applicable 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 vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken.

(B) A vessel issued a NE Multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (b)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(c) \* \* \*  
(5) \* \* \*

(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 the Closed Area II Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area II Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area II Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area II Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in this paragraph (c)(5)(i). The 2009 Closed Area II Access Area scallop quota for limited access scallop vessels is 5,626,666 lb (2,553 mt).

(ii) *General category vessels.* (A) General category vessels shall be allocated 0 trips in the Closed Area II Access Area in 2008 and 2009. Except as provided in paragraph (c)(5)(ii)(B) of this section, and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, a vessel issued a general category scallop permit may not fish for, possess, or land sea scallops in or from the Closed Area II Access Area, or enter the Closed Area II Access Area on a declared scallop trip once the Regional Administrator has provided notification in the **Federal Register** in accordance with § 648.60(g)(4), that the allocated number of trips for the applicable 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.

(B) A vessel issued a NE Multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (c)(5)(ii)(A) of this section provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(d) \* \* \*  
(5) \* \* \*

(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 the Nantucket Lightship Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Nantucket Lightship Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Nantucket Lightship Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Nantucket Lightship Access Area shall be based on the TAC for the access area. The 2008 Nantucket Lightship Access Area scallop quota for limited access scallop vessels is 5,068,250 lb (2,293 mt).

(ii) *General category vessels.* (A) General category vessels shall be allocated 667 trips in the Nantucket Lightship Access Area in 2008 and 0 trips in 2009. Except as provided in paragraph (d)(5)(ii)(B) of this section, a vessel issued a general category scallop permit, may not fish for, possess, or land sea scallops in or from the Nantucket Lightship Access Area, or enter the Nantucket Lightship Access Area on a declared scallop trip, once the Regional Administrator has provided notification in the **Federal Register** in accordance with § 648.60(g)(4), that the allocated number of trips for the applicable 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. The 2008 Nantucket Lightship Access Area scallop quota for general category scallop vessels is 266,750 lb (121 mt).

(B) A vessel issued a NE Multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (d)(5)(ii)(A) of this section provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(e) \* \* \*  
(4) \* \* \*

(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 the Elephant Trunk 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 an Elephant Trunk Access Area trip and gives up a trip into another Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Elephant Trunk Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Elephant Trunk Access Area shall be based on the TAC for the access area. The 2008 Elephant Trunk Access Area scallop quota for limited access scallop vessels is 20,273,000 lb (9,196 mt). The 2009 Elephant Trunk Access Area scallop quota for limited access scallop vessels is 14,928,300 lb (6,771 mt), unless otherwise reduced per § 648.60(a)(3)(i)(E)(2).

(ii) *General category vessels.* General category vessels shall be allocated 2,668 trips in the Elephant Trunk Access Area in 2008 and 1,964 trips in 2009. The 2009 general category trip allocation may be reduced per § 648.60(a)(3)(i)(E)(2). Subject to the possession limits specified in §§ 648.52(a) and (b), and 648.60(g), a vessel issued a general category scallop permit may not fish for, possess, or land sea scallops in or from the Elephant Trunk Access Area, or enter the Elephant Trunk Access Area on a declared scallop trip once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that the allocated trips applicable to each 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. The 2008 Elephant Trunk Access Area scallop quota for general category scallop vessels is 1,067,000 lb (484 mt). The 2009 Elephant Trunk Access Area scallop quota for general category scallop vessels is 785,700 lb (356 mt), unless otherwise reduced per § 648.60(a)(3)(i)(E)(2).

\* \* \* \* \*

■ 9. Effective July 1, 2008, in § 648.59, paragraphs (a)(3)(ii), (b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii) are revised to read as follows:

**§ 648.59 Sea Scallop Access Areas.**

(a) \* \* \*  
(3) \* \* \*

(ii) *LAGC scallop vessels.* (A) The percentage of the Delmarva Access Area TAC to be allocated to LAGC scallop vessels shall be specified in this

paragraph (a)(3)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (a)(3)(ii)(B) of this section. LAGC vessels will be allocated 291,000 lb (132 mt), which is 5 percent of the 2009 Delmarva Access Area TAC.

(B) Based on the TAC specified in paragraph (a)(3)(ii)(A) of this section, LAGC scallop vessels shall be allocated 728 trips to the Delmarva Access Area, unless reduced per § 648.60(a)(3)(i)(E)(3). The Regional Administrator shall notify all LAGC scallop vessels of the date when 728 trips have been, or are projected to be, taken. Except as provided in paragraph (d)(5)(ii)(C) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Delmarva Access Area, or enter the Delmarva Access Area on a declared LAGC scallop trip once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), of the date that the allocated number of trips for the applicable fishing year have been taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section.

(b) \* \* \*

(5) \* \* \*

(ii) *LAGC scallop vessels.* (A) The percentage of the Closed Area I Access Area TAC to be allocated to LAGC scallop vessels shall be specified in this paragraph (b)(5)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (b)(5)(ii)(B) of this section. The Closed Area I Access Area shall be closed in the 2008 and 2009 fishing years.

(B) The Closed Area I Access Area shall be closed in fishing years 2008 and 2009. 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. Except as provided in paragraph (b)(5)(ii)(C) of this section, and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Closed Area I Access Area, or enter the Closed Area I Access Area on a declared LAGC scallop trip once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), the date on which the allocated number of trips for the applicable fishing year have been taken, in total, by all LAGC scallop

vessels, unless transiting pursuant to paragraph (f) of this section.

(C) A vessel issued a NE Multispecies permit and a LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (b)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(c) \* \* \*

(5) \* \* \*

(ii) *LAGC scallop vessels.* (A) The percentage of the total Closed Area II Access Area TAC specified to be allocated to LAGC scallop vessels shall be specified in this paragraph (c)(5)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (c)(5)(ii)(B) of this section. The Closed Area II Access Area shall be closed in fishing year 2008, and LAGC vessels will be allocated zero percent of the 2009 Closed Area II Access Area TAC.

(B) 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. Except as provided in paragraph (c)(5)(ii)(C) of this section, and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Closed Area II Access Area, or enter the Closed Area II Access Area on a declared LAGC scallop trip once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), of the date that the allocated number of trips for the applicable fishing year have been taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section.

(C) A vessel issued a NE Multispecies permit and an LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (c)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(d) \* \* \*

(5) \* \* \*

(ii) *LAGC scallop vessels.* (A) The percentage of the Nantucket Lightship Access Area TAC to be allocated to LAGC scallop vessels shall be specified in this paragraph (d)(5)(ii)(A) through

the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (d)(5)(ii)(B) of this section. LAGC vessels shall be allocated 266,750 lb (121 mt) in fishing year 2008, which is 5 percent of the 2008 Nantucket Lightship Access Area TAC. The Nantucket Lightship Access Area shall be closed in fishing year 2009.

(B) Based on the TAC specified in paragraph (d)(5)(ii)(A) of this section, LAGC scallop vessels shall be allocated 667 trips to the Nantucket Lightship Access Area in fishing year 2008. The Regional Administrator shall notify all LAGC scallop vessels of the date when the 667 trips have been, or are projected to be, taken. Except as provided in paragraph (d)(5)(ii)(C) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Nantucket Lightship Access Area, or enter the Nantucket Lightship Access Area on a declared LAGC scallop trip once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), of the date that the allocated number of trips for the applicable fishing year have been taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section.

(C) A vessel issued a NE Multispecies permit and an LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (d)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(e) \* \* \*

(4) \* \* \*

(ii) *LAGC scallop vessels.* (A) The percentage of the Nantucket Lightship Access Area TAC to be allocated to LAGC scallop vessels shall be specified in this paragraph (e)(4)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (e)(4)(ii)(B) of this section. LAGC vessels shall be allocated [INSERT TAC lb] (TAC mt) in fishing year 2008, which is 5 percent of the 2008 Elephant Trunk Access Area TAC. LAGC vessels shall be allocated [INSERT TAC lb] (TAC mt) in fishing year 2009, which is 5 percent of the 2009 Elephant Trunk Access Area TAC. The 2009 general category TAC may be reduced per § 648.60(a)(3)(i)(E)(2).

(B) Based on the TACs specified in paragraph (e)(4)(ii)(A) of this section

LAGC vessels shall be allocated a total of 2,668 trips in the Elephant Trunk Access Area in fishing year 2008 and 1,964 trips in fishing year 2009. The fishing year 2009 general category trip allocation may be reduced per § 648.60(a)(3)(i)(E)(2). 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. An LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Elephant Trunk Access Area, or enter the Elephant Trunk Access Area on a declared LAGC scallop trip once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), of the date that the allocated number of trips for the applicable fishing year have been taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section.

\* \* \* \* \*

■ 10. In § 648.60, paragraphs (a)(3)(i), (d)(1), and (e)(1) are revised to read as follows:

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

- (a) \* \* \*
- (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 or Delmarva Access Area trips using the tables in paragraphs (a)(3)(i)(F)(2) and (3) of this section, respectively, provided that updated exploitable biomass projections are available with

sufficient time to announce such an adjustment through publication in the **Federal Register**, in accordance with 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 shall be reduced consistent with reductions as required 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 shall be established using the exploitable biomass adjustment schedule. If information is not available in time for NMFS to announce an adjustment in the **Federal Register** 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 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 required 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 (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*, 1** .....	1473 .....	108.86 .....	54.43.

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)
10,000–19,000 .....	1, 0, 0 .....	982 .....	72.57 .....	36.29.
Less than 10,000 .....	0, 0, 0 .....	491 .....	36.29 .....	18.15.

\* 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 1 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 required 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 declared into an Access Area as described in § 648.59 may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Access Area described in § 648.59.

Fishing year	Permit category possession limit		
	Full-time	Part-time	Occasional
2008 .....	18,000 lb (8,165 kg) .....	18,000 lb (8,165 kg) .....	7,500 lb. (3,402 kg).
2009 .....	18,000 lb (8,165 kg) .....	18,000 lb <sup>1</sup> (8,165 kg) .....	7,500 lb. (3,402 kg).

<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).

*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).

(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 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.

(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 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.

(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.

\* \* \* \* \*

(e) \* \* \*

(1) Research set-aside limits and number of trips by area—(i) *Nantucket*

\* \* \* \* \*

■ 11. In § 648.62, paragraph (b)(1) is revised to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

[FR Doc. 08–1300 Filed 5–23–08; 12:48 pm]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No. 080326475–8686–02]

RIN 0648–XG22

**Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications**

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

**ACTION:** Final rule; closure of directed fishing for Pacific sardine

**SUMMARY:** NMFS issues this final rule to implement the annual harvest guideline