

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/§ 52.2063 citation
* Section 130.462	* Modification of an ACP by the Department.	* 10/11/08	* October 18, 2010 [Insert page number where the document begins].	* *
* Section 130.465	* Other applicable requirements ...	* 10/11/08	* October 18, 2010 [Insert page number where the document begins].	* *
Public Hearing Requirements				
* Section 130.471	* Public hearings	* 10/11/08	* October 18, 2010 [Insert page number where the document begins].	* *
Subchapter C—Architectural and Industrial Maintenance Coatings				
* Section 130.602	* Definitions	* 10/11/08	* October 18, 2010 [Insert page number where the document begins].	* *

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

[Docket No. 100803321-0477-01]

RIN 0648-BA08

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 21; Correction

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

ACTION: Correcting amendments.

SUMMARY: On June 28, 2010, NMFS published in the **Federal Register** the final rule to implement Framework Adjustment 21 (Framework 21) to the Atlantic Sea Scallop Fishery Management Plan (Scallop FMP), which established management measures for the 2010 scallop fishing year (FY). Following publication, NMFS identified errors, omissions, and possible need for clarification of some provisions. In addition to certain technical and wording clarifications, the Framework 21 final rule inadvertently did not incorporate a proposed regulatory provision pertaining to how scallop

access area trip overages incurred during the interim period between the March 1, 2010, start of the fishing year (FY) and the implementation of Framework 21 FY 2010 management measures would be applied to FY 2011. This provision was described in the proposed rule and NMFS subsequently responded to specific comments on this provision and provided greater detail of this measure in the preamble of the final rule. However, the regulatory text was inadvertently excluded. In addition, the Framework 21 final rule inadvertently deleted regulations pertaining to limited access general category (LAGC) possession and landing limits promulgated in the final rule implementing Amendment 11 to the Scallop FMP that published in the **Federal Register** on April 24, 2008. This correcting amendment corrects these errors.

DATES: Effective October 18, 2010.

FOR FURTHER INFORMATION CONTACT: Emily Bryant, Fishery Policy Analyst, (978) 281-9244.

SUPPLEMENTARY INFORMATION: On June 28, 2010, the final rule for Framework 21 published in the **Federal Register** (75 FR 36559). The purpose of Framework 21, developed by the New England Fishery Management Council, was to set scallop management measures for FY 2010. The final rule to Framework 21 also included revisions to regulatory text at 50 CFR part 648 in order to remove or clarify text that was duplicative and unnecessary, outdated, or unclear.

This action corrects errors and omissions, and provides clarification in the final rule for Framework 21. Because Framework 21 was not implemented by the start of the FY on March 1, 2010, and the regulations in effect at the start of FY 2010 were inconsistent with Framework 21 specifications, the preamble to the proposed and final rules discussed how FY 2010 overages in scallop days-at-sea (DAS), access area trips, and possession limits incurred prior to Framework 21's effectiveness would be applied to FY 2011 allocations. NMFS received one comment specifically addressing the provision for Elephant Trunk Access Area (ETAA) trip overages for limited access full-time scallop vessels during the comment period on the proposed rule and, based on this comment, NMFS intended to clarify this provision in the final rule. However, the specific reference to the ETAA trip overage provision was inadvertently omitted from the regulatory text. This action corrects this error by including the regulatory text to this specific provision in § 648.60.

This action also makes minor editorial revisions to the regulatory text at §§ 648.14(i)(2)(i)(G) and 648.53(h)(5)(iv)(A) to ensure that the regulatory language incorporated through the Framework 21 final rule is consistent with the language in other sections of the regulations. This action also corrects the title of a required vessel monitoring system (VMS) form for LAGC Northern Gulf of Maine (NGOM) and Individual Fishing Quota

(IFQ) vessels at § 648.10(f)(4)(ii), to be consistent with other references to this form in the regulations, as well as with the current designation used in on-board VMS units.

Finally, this action reinstates regulatory language pertaining to LAGC possession and landing limits at § 648.14(i)(4)(i)(B)–(H), originally incorporated into the regulations through the final rule to Amendment 11 to the Scallop FMP (April 14, 2008; 73 FR 20090). These prohibitions were inadvertently deleted due to inaccurate regulatory instructions provided in both the proposed (April 27, 2010; 75 FR 22073) and final rules to implement Framework 21.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive prior notice and opportunity for additional public comment for this action because any delay of this action would be unnecessary, impracticable, or contrary to the public interest. This correcting amendment includes editorial revisions that make only minor, non-substantive changes in order to clarify the regulations and alleviate unnecessary confusion. The remaining revisions reflect the measures detailed in the preamble of the proposed rule for Framework 21, for which the opportunity for public comment was already given. The provision regarding FY 2010 ETAA access area trip overages was specifically addressed in the response to comments in the Framework 21 final rule and further described in detail in that rule’s preamble. This provision was intended to be included in the final rule and was only unintentionally excluded. In addition, the inaccurate regulatory instructions which inadvertently deleted the prohibitions at § 648.14(i)(4)(i)(B)–(H) were available in the proposed rule and the public had the opportunity to provide comments on this error at that time. This deletion was also unintentional. One comment was received during the comment period for Framework 21 in general support of NMFS initiating general revisions to clarify unclear text, implying support for reinstating inadvertently-deleted text that may result in further unintended confusion. For these reasons, there is good cause to waive prior notice and opportunity for additional public comment so that these errors may be corrected, and public confusion avoided, without delay.

Moreover, pursuant to 5 U.S.C. 553(d), the Assistant Administrator finds good cause to waive the 30-day

delay in effective date for the reasons given above. Most of these revisions make only minor, non-substantive changes and do not change operating practices in the fishery. The immediate publication of the correct information regarding the ETAA overage provision for full-time scallop vessels and the prohibitions for possession and landing limits for LAGC NGOM and IFQ vessels would alleviate confusion among industry members regarding the final FY 2010 management measures to the Scallop FMP.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This final rule is exempt from review under Executive Order 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: October 13, 2010.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons explained in the preamble, 50 CFR part 648 is corrected by making the following correcting amendments:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.10, paragraph (f)(4)(ii) is revised to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(f) * * *

(4) * * *

(ii) *Scallop Pre-Landing Notification Form for IFQ and NGOM vessels.* Using the Scallop Pre-Landing Notification Form, a vessel issued an IFQ or NGOM scallop permit must report through VMS the amount of any scallops kept on each trip declared as a scallop trip, including declared scallop trips where no scallops were landed. In addition, vessels with an IFQ or NGOM permit must submit a Scallop Pre-Landing Notification Form on trips that are not declared as scallop trips, but on which scallops are kept incidentally. A limited access vessel that also holds an IFQ or NGOM permit must submit the Scallop Pre-Landing Notification Form only when fishing under the provisions of the vessel’s IFQ

or NGOM permit. VMS Scallop Pre-Landing Notification forms must be submitted no less than 6 hr prior to crossing the VMS Demarcation Line on the way back to port, and must include the amount of scallop meats or bushels to be landed, the estimated time of arrival in port, the port at which the scallops will be landed, and the VTR serial number recorded from that trip’s VTR. If the scallop harvest ends less than 6 hr prior to landing, then the Scallop Pre-Landing Notification form must be submitted immediately upon leaving the fishing grounds.

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■ 3. In § 648.14, paragraphs (i)(2)(vi)(G) and (i)(4)(i) are revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(2) * * *

(vi) * * *

(G) Fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg) of scallops from the Delmarva and Elephant Trunk Access Areas specified in § 648.59(a) and (e) during the period June 15 through August 31. This restriction does not include the additional possession allowance to defray the cost of carrying an observer, as specified in § 648.60(d), that occurs during observed trips between June 15 through August 31.

* * * * *

(4) * * *

(i) *Possession and landing.* (A) Fish for or land per trip, or possess at any time, in excess of 400 lb (181.4 kg) of shucked, or 50 bu (17.6 hL) of in-shell scallops shoreward of the VMS Demarcation Line, unless the vessel is carrying an observer as specified in § 648.11 while participating in the Area Access Program specified in § 648.60 and an increase in the possession limit is authorized by the Regional Administrator and not exceeded by the vessel, as specified in §§ 648.52(g) and 648.60(d)(2).

(B) Fish for or land per trip, or possess at any time, in excess of 200 lb (90.7 kg) of shucked or 25 bu (8.8 hL) of in-shell scallops in the NGOM scallop management area, unless the vessel is seaward of the VMS Demarcation Line and in possession of no more than 50 bu (17.6 hL) of in-shell scallops, or when the vessel is not declared into the NGOM scallop management area and is transiting the NGOM scallop management area with gear properly stowed and unavailable for immediate use in accordance with § 648.23.

(C) Possess more than 100 bu (35.2 hL) of in-shell scallops seaward of the

VMS Demarcation Line and not participating in the Access Area Program, or possess or land per trip more than 50 bu (17.6 hL) of in-shell scallops shoreward of the VMS Demarcation Line, unless exempted from DAS allocations as provided in § 648.54.

(D) 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 Access Area Program as specified in § 648.60.

(E) Fish for, possess, or land scallops after the effective date of a notification in the **Federal Register** that the quarterly TAC specified in § 648.53(a)(8) has been harvested.

(F) Fish for, possess, or land scallops in excess of a vessel's IFQ.

(G) Fish for, possess, or land more than 40 lb (18.1 kg) of shucked scallops, or 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line, or 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line, when the vessel is not declared into the IFQ scallop fishery, unless the vessel is fishing in compliance with all of the requirements of the State waters exemption program, specified at § 648.54.

(H) Land scallops more than once per calendar day.

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■ 4. In § 648.53, paragraph (h)(5)(iv)(A) is revised to read as follows:

§ 648.53 Target total allowable catch, DAS allocations, and individual fishing quotas.

* * * * *

(h) * * *

(5) * * *

(iv) * * *

(A) *Application information*

requirements. An application to transfer IFQ must contain at least the following information: Transferor's name, vessel name, permit number, and official number or State registration number; transferee's name, vessel name, permit number, and official number or State registration number; total price paid for purchased IFQ; signatures of transferor and transferee; and date the form was completed. In addition, applications to temporarily transfer IFQ must indicate the amount, in pounds, of the IFQ allocation transfer, which may not be less than 100 lb (45 kg) unless that value reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery. If applicable, an application for a permanent IFQ transfer must be accompanied by verification, in writing, that the transferor either has requested cancellation of all other limited access Federal fishing permits, or has applied for a transfer of all of its limited access permits in accordance with the vessel replacement restrictions under § 648.4.

* * * * *

■ 5. In § 648.60, paragraph (a)(3)(i)(A) is revised to read as follows:

§ 648.60 Sea scallop area access program requirements.

(a) * * *

(3) * * *

(i) * * *

(A) Except as provided in paragraph (c) 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, or has been allocated a compensation trip pursuant to paragraph (c) of this section. If, during the interim period between March 1, 2010, and the implementation of trip allocations specified in this section, a full-time limited access vessel takes more than the number of Elephant Trunk Access Area trips specified in this section, the trip overage will be deducted from the vessel's 2011 access area trip allocation. The deduction would be taken from the vessel's Elephant Trunk Access Area trip allocation if that area is open in 2011. If the Elephant Trunk Access Area is not open in 2011, vessel owners will be given the opportunity to select the access area from which the trip overage would be deducted, with NMFS determining the access area if the vessel owner fails to respond.

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