

or possessed in the Atlantic Ocean. The operator of a vessel for which a retention limit applies is responsible for the vessel retention limit and for the cumulative retention limit based on the number of persons aboard. Federal recreational retention limits may not be combined with any recreational retention limit applicable in state waters.

(2) Vessels issued a HMS General Category permit under § 635.4(d) that are participating in a HMS registered tournament, vessels issued a HMS Angling category permit under § 635.4(c), or vessels issued a HMS Charter/Headboat permit under § 635.4(b) may not retain oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks if swordfish, tuna, or billfish are retained or possessed on board the vessel. Those vessels also may not retain swordfish, tuna, or billfish if oceanic whitetip sharks, or scalloped, smooth or great hammerheads are retained or possessed on board the vessel.

\* \* \* \* \*

4. In § 635.24, paragraphs (a)(2) and (a)(4)(i) are revised to read as follows:

**§ 635.24 Commercial retention limits for sharks and swordfish.**

\* \* \* \* \*

(a) \* \* \*

(2) From July 24, 2008 through December 31, 2012, a person who owns or operates a vessel that has been issued a directed LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued a directed LAP for sharks and that has been issued a valid shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 33 non-sandbar LCS per vessel per trip if the fishery is open per §§ 635.27 and 635.28. Such persons may not retain, possess, or land sandbar sharks or, as specified at § 635.21(c)(1)(ii), scalloped, smooth or great hammerhead sharks. As of January 1, 2013, a person who owns or operates a vessel that has been issued a directed LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued a directed LAP for sharks and that has been issued a shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 36 non-sandbar LCS per vessel per trip if the fishery is open per § 635.27 and § 635.28. Such persons may not retain, possess, or land sandbar sharks or, as specified at

§ 635.21(c)(1)(ii), scalloped, smooth or great hammerhead sharks.

\* \* \* \* \*

(4)(i) A person who owns or operates a vessel that has been issued a directed shark LAP may retain, possess, or land pelagic sharks, except as specified at § 635.21(c)(1)(ii), if the pelagic shark fishery is open per §§ 635.27 and 635.28.

\* \* \* \* \*

5. In § 635.31, paragraph (c)(6) is added to read as follows:

**§ 635.31 Restrictions on sale and purchase.**

\* \* \* \* \*

(c) \* \* \*

(6) A dealer issued a permit under this part may not purchase oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks from an owner or operator of a fishing vessel with pelagic longline gear on board, or from the owner of a fishing vessel issued both a HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel.

\* \* \* \* \*

6. In § 635.71, paragraph (d)(18) is added to read as follows:

**§ 635.71 Prohibitions.**

\* \* \* \* \*

(d) \* \* \*

(18) Retain, transship, land, store, sell or purchase oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks as specified in § 635.21 (c)(1)(ii), § 635.31(c)(6) and § 635.22(a)(2).

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 110118038-1236-01]

RIN 0648-BA72

**Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 22**

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

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

**SUMMARY:** NMFS proposes regulations to implement Framework Adjustment 22

(Framework 22) to the Atlantic Sea Scallop Fishery Management Plan (FMP), which was developed and adopted by the New England Fishery Management Council (Council) and submitted to NMFS for approval. The specifications proposed in Framework 22 are based on, and being proposed in conjunction with, the management measures proposed in Amendment 15 to the FMP (Amendment 15) that establish the process for setting annual catch limits (ACLs) and accountability measures (AMs) to bring the FMP into compliance with the requirements of the re-authorized Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The purpose of Framework 22 is to specify the following scallop management measures for the 2011 through 2012 fishing years (FYs): The overfishing limit (OFL), acceptable biological catches (ABC), ACLs, and annual catch targets (ACTs) for both the limited access (LA) and limited access general category (LAGC) fleets; open area days-at-sea (DAS) and Sea Scallop Access Area (access area) trip allocations; DAS adjustments if an access area yellowtail flounder (YTF) total allowable catch (TAC) is caught; LAGC-specific allocations, including access area trip allocations for vessels with individual fishing quotas (IFQs), the Northern Gulf of Maine (NGOM) TAC, and the incidental target TAC; management measures to minimize impacts of incidental take of sea turtles as required by the March 14, 2008, Atlantic Sea Scallop Biological Opinion (Biological Opinion); and the elimination of the default Georges Bank (GB) access area rotation schedule.

Framework 22 also proposes, consistent with proposed measures in Amendment 15, precautionary default management measures for FY 2013 to be applied if a new biennial framework adjustment is not implemented by the start of FY 2013.

**DATES:** Comments must be received by 5 p.m., local time, on May 31, 2011.

**ADDRESSES:** An environmental assessment (EA) was prepared for Framework 22 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Framework 22, the EA, and the Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

You may submit comments, identified by 0648-BA72, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- **Fax:** (978) 281-9135, Attn: Emily Gilbert.

- **Mail:** Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Scallop Framework 22 Proposed Rule."

**Instructions:** All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.)

voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Emily Gilbert, Fishery Policy Analyst, 978-281-9244; fax 978-281-9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Council adopted Framework 22 on November 17, 2010, and submitted it to NMFS on March 23, 2011, for review and approval. Framework 22 was developed and adopted by the Council, partially in conjunction with and based on Amendment 15 proposed measures, in order to comply with requirements of the Magnuson-Stevens Act enacted in 2007 to meet the FMP's objectives to prevent overfishing and improve yield-per-recruit from the fishery. Consequently, the authority to implement Framework 22, in part, is based on approval by NMFS of Amendment 15. Framework 22 specifies measures for FYs 2011 through 2012, but includes FY 2013 measures that will go into place as a default should the biennial framework required by proposed Amendment 15 to specify FY 2013 and FY 2014 measures be delayed beyond the start of FY 2013. Framework 22, if approved, will be implemented after the start of FY 2011. Some of the measures proposed by this action are not explicitly proposed in Framework 22, but are being proposed by NMFS under the authority of Section 305(d) of

the Magnuson-Stevens Act, which provides that the Secretary may promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the MSA. These measures, which are identified and described below, are necessary to address unintended consequences of the projected late implementation of this action, as well as to clarify implied measures which may not have been explicitly included in Framework 22. The Council has reviewed the Framework 22 proposed rule regulations as drafted by NMFS and deemed them to be necessary and appropriate as specified in section 303(c) of the Magnuson-Stevens Act.

**Default Management Measures for FY 2013**

The specifications proposed in this action also include default measures for FY 2013, because Amendment 15 proposes that framework adjustments setting biennial scallop specifications should also include an additional year of allocations to be used as default measures. Final Council action on scallop frameworks has routinely occurred at the November Council meeting, which has resulted in management measures being approved and implemented by NMFS after the March 1 start of the first FY for which the measures apply. Under the current regulations, the prior year's management measures roll over to the subsequent FY until they are superseded by a subsequent framework adjustment. Amendment 15 proposes instead to develop specific third-year default measures to account for any possible delays in the implementation of the subsequent biennial framework adjustment. Therefore, this action proposes default FY 2013 measures that would be implemented on March 1, 2013, if the next biennial adjustment is delayed beyond the start of FY 2013. The proposed FY 2013 measures will be replaced by a subsequent framework adjustment that would set FYs 2013 through 2015 measures based on updated scallop biomass projections. The proposed FY 2013 DAS allocations would be set at a precautionary level (i.e., 75 percent of what current biomass levels project would be the DAS allocation for the entire FY). In addition, this action proposes the following default management measures for FY 2013: Access area trip allocations; DAS adjustments if an access area YTF TAC is caught; LAGC access area trip allocations; and management measures to minimize impacts of incidental take of sea turtles that are based on the proposed FY 2013 allocations. These

management measures are described in greater detail throughout the preamble of this action.

**Specification of Scallop OFL, ABC, ACL, and ACTs for FYs 2011 and 2012 and defaults specifications for FY 2013**

These specifications are being proposed in accordance with measures and criteria set out in proposed Amendment 15. The OFL is set based on a fishing mortality rate (F) of 0.38, equivalent to the F threshold updated through the most recent scallop stock assessment. The ABC and equivalent total ACL for each FY are based on an F of 0.32, the F associated with a 25-percent probability of exceeding the OFL. The Council's Scientific and Statistical Committee (SSC) recommended ABCs for the FY 2011 and 2012 scallop fisheries of 60.1 M lb (27,269 mt) and 63.8 M lb (28,961 mt), respectively, after accounting for discards and incidental mortality. The Scallop Plan Development Team (PDT) estimated the FY 2013 ABC of 28,700 mt using the same approach that was reviewed and approved by the SSC to set the ABC for FYs 2011 and 2012. The decision to include third-year default measures occurred after the SSC made ABC recommendations for this action. The SSC will recommend an ABC in conjunction with the next biennial framework adjustment for FY 2013 and FY 2014, as well as a default ABC for FY 2015.

Table 1 outlines the various scallop fishery catch limits that are derived from these ABC values. After deducting the incidental target TAC and the research and observer set-asides, the remaining ACL available to the fishery is proportioned out according to Amendment 11 fleet allocations, with 94.5 percent allocated to the LA scallop fleet, 5 percent allocated to the LAGC IFQ fleet, and the remaining 0.5 percent allocated to LA scallop vessels that also have LAGC IFQ permits. These separate ACLs and their corresponding ACTs are referred to as sub-ACLs and sub-ACTs, respectively, throughout this action. Amendment 15 proposes that no buffers to account for management uncertainty are necessary in setting the LAGC sub-ACLs, meaning that the LAGC sub-ACL would equal the LAGC sub-ACT. As a result, the LAGC sub-ACL values in Table 1, based on an F of 0.32, represent the amount of catch from which IFQ percent shares will be applied to calculate each vessel's IFQ for a given FY. For the LA fleet, Amendment 15 proposes a management uncertainty buffer based on the F associated with a 75-percent probability of remaining

below the F associated with ABC/ACL, which results in an F of 0.28.

TABLE 1—SCALLOP CATCH LIMITS FOR FYS 2011 THROUGH 2013 FOR BOTH THE LA AND LAGC IFQ FLEETS (MT)

	2011	2012	2013
OFL .....	32,387	34,382	34,081
ABC/ACL .....	27,269	28,961	28,700
Incidental TAC .....	23	23	23
Research Set-Aside (RSA) .....	567	567	567
Observer Set-aside (1 percent of ABC/ACL) .....	273	290	287
LA sub-ACL(94.5 percent of total ACL, after deducting set-asides and incidental catch) .....	24,954	26,537	26,293
LA sub-ACT (adjusted for management uncertainty) .....	21,431	23,546	19,688
LAGC IFQ sub-ACL (5.0 percent of total ACL, after deducting set-asides and incidental catch) .....	1,320	1,404	1,391
LAGC IFQ sub-ACL for vessels with LA scallop permits (0.5 percent of total ACL, after deducting set-asides and incidental catch) .....	132	140	139

These allocations do not account for any adjustments that would be made year-to-year if the AMs proposed in Amendment 15 are triggered due to annual landings exceeding the ACL.

*Open Area DAS Allocations*

This action would implement vessel-specific DAS allocations for each of the three limited access scallop DAS permit categories (i.e., full-time, part-time, and occasional) for FYS 2011 through 2013 (Table 2). While the Council specified full-time DAS allocations and provided

the formula for calculating DAS allocations for part-time and occasional vessels based on Amendment 4 to the Scallop FMP (Amendment 4), Framework 22 did not explicitly state the specific DAS allocations for part-time and occasional vessels. Amendment 4 sets the DAS allocations for part-time and occasional vessel at 40 percent and 8.33 percent, respectively, of the DAS allocations assigned to full-time vessels. NMFS has applied these percentages to the full-time vessel DAS

allocations for FYS 2011 through FY 2013 to clearly specify the part-time and occasional DAS for those FYS in Table 2. FY 2013 DAS allocations are precautionary, and are set at 75 percent of what current biomass projections indicate could be allocated to each LA scallop vessel for the entire FY so as to avoid over-allocating DAS to the fleet in the event that the framework that would set those allocations, if delayed past the start of FY 2013, estimates that DAS should be less than currently projected.

TABLE 2—SCALLOP OPEN AREA DAS ALLOCATIONS FOR FYS 2011 THROUGH 2013

Scallop open area DAS allocations			
Permit category	FY 2011	FY 2012	FY 2013
Full-Time .....	32	34	26
Part-Time .....	13	14	11
Occasional .....	3	3	3

Because Framework 22 would not go into effect until after the March 1 start of FY 2011, the current DAS allocations, which are higher than those proposed in Framework 22, will roll over until Framework 22 is implemented. It is possible that scallop vessels could exceed their Framework 22 DAS allocations during the interim period between March 1, 2011, and the implementation of the proposed DAS allocations in Framework 22. Therefore, Framework 22 specifies that the number of LA open area DAS used in FY 2011 by a vessel (excluding carryover DAS) that exceed the final FY 2011 open area DAS allocation for that vessel would be deducted from the vessel's FY 2012 open area DAS allocation.

*Open Area DAS Adjustment if Access Area YTF TAC Is Attained*

Under the Northeast Multispecies FMP, 10 percent of the GB YTF TAC is allocated to scallop vessels fishing in

the Closed Area 1 (CAI) and Closed Area II (CAII) Access Areas, combined; and 10 percent of the Southern New England/Mid-Atlantic (SNE/MA) YTF TAC is allocated to scallop vessels fishing in the Nantucket Lightship (NLS) Access Area. Under the Northeast Multispecies regulations, if the GB or SNE/MA YTF TAC is caught, CAI and CAII, and/or NLS would close to further scallop fishing for the remainder of the FY. If a vessel has unutilized trip(s) after an access area is closed due to reaching the YTF TAC, it would be allocated additional open area DAS at a reduced rate. Unused access area trip(s) would be converted to open area DAS so that scallop fishing mortality that would have resulted from the access area trip(s) would be equivalent to the scallop fishing mortality resulting from the open area DAS allocation. The conversion used to allocate additional DAS from a YTF access area closure is

based on Framework 22's proposed FYS 2011–2013 LA scallop possession limits for access area trips of 18,000 lb (8,165 kg) for full-time vessels, 14,400 lb (6,532 kg) for part-time vessels, and 6,000 lb (2,723 kg) for occasional vessels, and are as follows: For a given FY, the pounds remaining from an access area trip(s) (i.e., from a fully unused trip(s) and/or unused compensation trip(s)) would first be multiplied by the average meat count (i.e., number of shucked scallop abductor muscles per lb) from that area and then subsequently divided by both the open area average meat count and by the open area landings per unit effort (LPUE), resulting in a DAS allocation comparable to the unused access area pounds. For example, in FY 2011, based on a catch limit of 18,000 lb, the average meat count for scallops in CAI is estimated to be 10.6 meats/lb, assuming that 190,800 scallops are removed per full-time trip (18,000 lb (8,165 kg) × 10.6

meats/lb = 190,800 meats (equivalent to 1 scallop per meat)). The open area meat count and LPUE for open areas in FY 2011 are estimated to be 18.4 meats/lb and 2,441 lb/DAS, respectively. The estimated number of open area DAS a full-time vessel would use to catch the same number of scallops as it would in CAI with an 18,000-lb possession limit would be 4.3 DAS (190,800 scallops/ (18.4 meats/lb × 2,441 lb/DAS = 4.3 DAS). Therefore, if a full-time vessel had an unused CAI trip at the time of a CAI YTF TAC closure, the vessel would be allocated 4.3 DAS in open areas. Table 3 outlines the DAS/trip conversion for unused full-time, part-

time, and occasional vessels access area trips. This trip/DAS conversion would apply to all full-time vessels, but only to occasional or part-time vessels that have no other available access areas in which to take their access area trip(s). Although Framework 22 did not explicitly outline the DAS conversion factors for part-time and occasional vessels, NMFS has listed those values in Table 3 using the possession limits, LPUE estimates, and meat weight estimates provided in the Framework 22 document. Additionally, Framework 22 did not explicitly provide how the DAS/trip conversion would be applied to compensation trips that could no longer

be used in the access area to which they apply. NMFS clarifies in this proposed rule that if a vessel has an unused compensation trip in an access area that closes due to YTF, the same calculation outlined above would apply, resulting in a proportional DAS increase to that of a fully unused trip allocation. For example, in FY 2011, if a full-time vessel had an unused 9,000-lb (4,082-kg) CAI compensation trip (*i.e.*, half of the full-time vessel's 18,000-lb (8,165-kg) possession limit) at the time of a CAI YTF TAC closure, the vessel would be allocated 2.15 DAS (*i.e.*, half of the 4.3 DAS that would be allocated for a full CAI trip).

TABLE 3—SCALLOP ACCESS AREA TRIP/DAS CONVERSIONS IF CAI, CAII, AND/OR NLS CLOSE DUE TO FULL HARVEST OF GB AND/OR SNE/MA YTF TAC

Access area trip conversion to open area DAS				
Permit category	FY	CAI	CAII	NLS
Full-Time .....	2011	4.3	5.7	
	2012	4.4	5.4	4.3
	2013	.....	5.4	4.9
Part-Time .....	2011	3.4	4.5	
	2012	3.6	4.3	3.4
	2013	.....	4.3	3.9
Occasional .....	2011	1.4	1.9	
	2012	1.5	1.8	1.4
	2013	.....	1.8	1.6

*LA Trip Allocations, the Random Allocation Process, and Possession Limits for Scallop Access Areas*

This action proposes a new access area allocation scheme for full-time vessels fishing in scallop access areas. In terms of allocations to the fleet, full-time LA scallop vessels would receive four access area trips in FYs 2011 through 2013. In order to avoid allocating trips into access areas with scallop biomass levels not large enough to support a full trip by all 313 LA full-time vessels, Framework 22 proposes to allocate “split-fleet” trips into certain access areas. Framework 22 would randomly allocate half of the full-time vessels a full trip into a specific area(s), and half of the full-time vessels a full trip into a different area(s). Ultimately, all vessels would receive the same number of total access area trips, although the specific areas to which they have access may differ (Table 4). The Framework 22 document refers to this process as a “lottery,” but NMFS refers to this allocation scheme as the “random allocation process.”

The Council specified that the full-time vessels’ access area trip allocations should be set as randomly as possible. Therefore, the Scallop PDT developed an allocation system where permit

numbers are selected based on a simple random number generator in Microsoft Excel and the vessels associated with a permit number would be allocated the access area(s) where it can fish. For FYs 2011 and 2013, this process is relatively simple because there are only two access areas in which to split trip allocations in each FY: Half of the full-time vessels would be randomly allocated a trip into one area, resulting in the rest of the vessels being allocated a trip into the other area. The random allocation process is more complicated if there are more than two applicable access areas. Section 2.4.2 of the Framework 22 document includes a full description of the random allocation process in cases involving more than two access area trips. In FY 2012, because full-time vessels would receive two access area trip allocations randomly from a selection of four access areas, the random allocation process would be modified by computing a number of random iterations to allow for vessels to receive two trips from two distinct access areas (rather than only a single iteration, as in FYs 2011 and 2013), while distributing fishing effort equally across the four access areas. In order to facilitate trading trips between vessels, the proposed allocations for

full-time vessels for FY 2011 have already been identified, and can be found in Section 2.4.2 of the Framework 22 document (See ADDRESSES), as well as NMFS’s Web site. These preliminary allocations, subject to NMFS approval of Framework 22 and permit renewal requirements, would be updated with any changes in vessel ownership and/or vessel replacements. The split-fleet trip assignments would also be made publically available through NMFS’s Web site and in permit holder letters prior to the start of FYs 2012 and 2013. The decision to use a random allocation process to allocate access area trips to full-time vessels will be re-evaluated in a future framework adjustment.

In FY 2011, all full-time scallop vessels would be allocated one trip in the Delmarva Access Area (Delmarva), one trip into the Hudson Canyon Access Area (HC), and one trip into CAI (Table 4). In addition, 157 full-time vessels would be allocated one trip into CAII, and the other 156 full-time vessels would be allocated an additional trip into CAI, for a total of four access area trips per full-time vessel. A part-time scallop vessel would be allocated two trips, which could be taken in one of the following combinations: Two trips in CAI; one trip in the CAI and one trip in

CAII; one trip in CAI and one trip in HC; one trip in CAI and one trip in Delmarva; one trip in CAII and one trip in HC; one trip in CAII and one trip in Delmarva; or one trip in HC and one trip in Delmarva. An occasional vessel would be allocated one trip, which could be taken in any one open access area.

Because the proposed measures would be implemented after March 1, 2011, and the current regulations that would roll over into FY 2011 are inconsistent with the proposed specifications, it is possible that during the interim between the start of FY 2011 and the implementation of the proposed measures a scallop vessel would take a trip in an area not open under the proposed measures. For example, under the current roll-over provisions, at the start of FY 2011, the Elephant Trunk Access Area (ETAA), is an open access area, and full-time vessels have received the same allocation as they received in FY 2010 (*i.e.*, two ETAA trips, one Delmarva trip, and one NLS trip). However, Framework 22 proposes to close NLS in FY 2011 and change the ETAA into an open area to be fished under DAS allocations. Framework 22 has accounted for the ETAA changing from an access area to an open area by including the calculated biomass in this and other areas in the proposed overall open area DAS allocations for FY 2011.

If during FY 2011 a vessel fishes on an ETAA trip allocated during the interim period between the start of FY 2011 and the implementation of Framework 22, under this rule's framework any pounds landed from a declared ETAA trip would be converted to the equivalent DAS and deducted from that vessel's open area DAS allocations in FY 2012. The conversion would be calculated as follows: The pounds a vessel lands from the ETAA would first be multiplied by the estimated ETAA average meat count (18.4 meats/lb) and then divided by the product of the estimated open area average meat count (also 18.4 meats/lb) multiplied by the estimated open area LPUE for FY 2011 (2,441 lb/DAS). For example, if a full-time vessel lands the full 18,000-lb (8,165-kg) possession limit on an ETAA trip in FY 2011, that vessel would incur a DAS deduction of 7.4 DAS in FY 2012 ( $(18,000 \text{ lb} \times 18.4 \text{ meats/lb}) / (18.4 \text{ meats/lb} \times 2,441 \text{ lb/DAS})$ ), to account for those landings, resulting in a total FY 2012 DAS allocation of 26.8 DAS (*i.e.*, 34 DAS minus 7.4 DAS). Part-time and occasional vessels would receive deductions of 5.9 DAS and 2.5 DAS, respectively, for landing their full trip possession limits from the ETAA in FY

2011. If a vessel only lands a portion of its full possession limit, the applicable DAS reduction would be proportional to those landings. For example, if a full-time vessel lands 9,000 lb (4,082 kg) during a declared ETAA trip in FY 2011, that vessel's FY 2012 DAS allocation would be reduced by 3.7 DAS (*i.e.*, half of the DAS that would be deducted for a full trip).

Framework 22 includes a provision that this DAS deduction would not apply to vessels that are fishing compensation trips in the ETAA from trips broken during the last 60 days of FY 2010. The regulations would allow for these compensation trips to be taken within the first 60 days of the subsequent FY if the access area from where the trip was broken remains open. Because the ETAA would still be considered an access area under the roll-over regulations at the start of FY 2011, any FY 2010 compensation trips taken prior to April 29, 2011 would not be counted against FY 2011 DAS.

Framework 22 also proposes that NLS will close in FY 2011 but, under the roll-over FY 2010 measures in effect at the start of FY 2011, trips are currently allocated into NLS. In the event that Framework 22 is not approved prior to the opening of NLS (June 15, 2011), Framework 22 also proposes a pay-back measure to account for scallops that could be landed from vessels that declare NLS trips: If a vessel declares a trip into and lands scallops from the NLS in FY 2011, any pounds landed from this area would be deducted from that vessel's FY 2012 NLS allocation. NMFS would send a notification letter to the vessel regarding the incurred overage following the end of FY 2011. If the vessel is not allocated an NLS trip in FY 2012 under the "split fleet" random allocation process, the vessel owner would be given the opportunity to select the area from which the trip overage would be deducted, with NMFS determining the area if the vessel owner fails to respond.

Framework 22 does not account for the effects of delays in implementation of Framework 22 on trip exchanges that occurred during the interim period between the start of FY 2011 and the implementation of Framework 22. Currently, Delmarva is the only access area which would remain open under measures in place at the start of FY 2011 and proposed in the Framework 22 measures. Because the regulations allow for allocated access area trip exchanges between vessels of the same permit category, and due to the mid-year implementation of Framework 22, there would likely be complications for vessels that exchanged a Delmarva trip

for a trip in either the ETAA or NLS prior to the implementation of Framework 22. For example, if a vessel gave up its Delmarva trip through an exchange with another vessel, and gained an additional NLS as a result, both its NLS trips would disappear after Framework 22 is implemented, assuming the vessel did not declare into and land scallops from the NLS. With the loss of its two NLS trips, two ETAA trips, and one traded Delmarva trip, the vessel would end up with a total FY 2011 access area allocation of three trips (*e.g.*, one in HC, and either two in CAI or one in CAI and one in CAII). Conversely, the vessel that gained the additional Delmarva trip through the exchange would ultimately have a total FY 2011 access area trip allocation of five trips (*e.g.*, two in Delmarva, one in HC, and either two in CAI or one in CAI and one in CAII). The identical outcome would occur if a vessel traded its Delmarva trip for another vessel's ETAA trip. Although the total number of trips between two vessels trading a Delmarva trip for either an ETAA or NLS trip would still equal eight trips (*i.e.*, no additional landings result from the trip exchange that were not already accounted for in Framework 22's biological projections), the distribution of trips between these vessels would not be the identical for FY 2011 (*i.e.*, one vessel would have a total of three trips and the other would have a total of five, rather than each vessel having a total of four). Similarly, if a part-time vessel trades its Delmarva trip for a trip into either the NLS or ETAA, that vessel would be locked into taking the trip in either of those areas. This trip, regardless of whether it's an NLS trip or an ETAA trip, would also disappear after the implementation of Framework 22, resulting in that part-time vessel having a total of only one access area trip to fish in any open access area.

To avoid these and other potential inequitable consequences of trip exchanges due to the late implementation of Framework 22 to the extent practicable, NMFS proposes the following measure, under section 305(d) authority of the Magnuson-Stevens Act: If a vessel acquires an additional ETAA trip through a trip exchange, it will be credited for that trip with additional DAS, equivalent to the trip's possession limit, as soon as possible if and when Framework 22 is implemented. Under this proposal, a full-time vessel that had exchanged for an ETAA trip would receive a DAS credit of 7.4 DAS if that vessel did not declare into and fish that ETAA trip. That vessel would then have a total FY 2011 DAS allocation of 39.4

DAS (32 DAS plus 7.4 DAS). Similarly, part-time vessels would receive a credit of 5.9 DAS, if they initially receive an additional ETAA trip through a trip exchange that is later removed upon implementation of Framework 22. In order to apply this trip exchange DAS conversion consistently, NMFS proposes that if the vessel fishes any part of an ETAA trip it gained through a trip exchange, those landings would be converted to DAS, using the same calculation described previously, and deducted from any DAS credit applied to FY 2011, rather than deducted in FY 2012. Although the Council has generally applied pay-back measures due to late framework implementation in the subsequent FY, this DAS credit, if applied to the subsequent FY, could have unintended ACL implications in FY 2012 by increasing the risk that the LA fleet could exceed the ACL for that FY. Because Framework 22 proposes that NLS is closed in FY 2011, there is not a viable way to account for the loss of a traded NLS trip. By proposing a DAS credit applicable to ETAA trip exchanges, NMFS is providing a level of flexibility in trip exchanges during the interim period between the start of FY

2011 and implementation of Framework 22.

No access area trips are currently allocated for CAI and CAII, and HC is currently closed, so no trips into those areas could be taken until Framework 22 is effective.

Under Framework 22, during FY 2012 all full-time scallop vessels would be allocated a total of four access area trips (Table 4). Each full-time vessel would receive one trip into CAII, and one trip into HC. The remaining two access area trips would be allocated in the following combinations: One trip in CAI and one trip in NLS; one trip in CAI and one additional trip in HC; one trip in CAI and one trip in Delmarva; one trip in NLS and an additional trip in HC; one trip in NLS and one trip in Delmarva; or an additional trip in HC and one in Delmarva. Information on trip assignments would be available prior to the start of FY 2012. A part-time scallop vessel would be allocated two trips in FY 2012, which could be taken in one of the following combinations: Two trips in HC; one trip in the CAI and one trip in NLS; one trip in CAI and one trip in HC; one trip in NLS and one

trip in HC; one trip in NLS and one trip in Delmarva; or one trip in HC and one trip in Delmarva. An occasional vessel would be allocated one trip, which could be taken in any one open access area.

Also under Framework 22, at the start of FY 2013, all full-time scallop vessels would be allocated one trip in CAII, one trip in NLS, and one trip in HC (Table 4). In addition, half the fleet would be allocated a trip in Delmarva and the other half of the fleet would be allocated another trip in HC, for a total of four access area trips for each full-time vessel. These allocations would be assigned and made publically available prior to the start of FY 2013. A part-time scallop vessel would be allocated two trips, which could be taken in one of the following combinations: Two trips in HC; one trip in CAII and one trip in NLS; one trip in CAII and one trip in HC; one trip in CAII and one trip in Delmarva; one trip in NLS and one trip in HC; one trip in NLS and one trip in Delmarva; or one trip in HC and one trip in Delmarva. An occasional vessel would be allocated one trip, which could be taken in any one open access area.

TABLE 4—SCALLOP ACCESS AREA TRIP ALLOCATIONS FOR FULL-TIME LA SCALLOP VESSELS DURING FY 2011–2013 \*

	CAI	CAII	NLAA	HC	Delmarva
2011 .....	1.5	0.5	.....	1	1
2012 .....	0.5	1	0.5	1.5	0.5
2013 .....	.....	1	1	1.5	0.5

\* Split-fleet trips are identified by “0.5” and “1.5”: The “0.5” indicates that half the fleet would be allocated one full trip into a specific access area and the “1.5” indicates that all full-time vessels would be allocated one full trip into a specific access area and half of the vessels would be allocated an additional full trip into that area.

*LAGC Measures*

1. *Sub-ACL for LAGC vessels with IFQ permits.* For LAGC vessels with IFQ permits, this action proposes a 2,910,800-lb (1,320-mt) ACL for FY 2011, a 3,095,450-lb (1,404-mt) ACL for FY 2012, and an initial ACL of 3,067,000 lb (1,391 mt) for FY 2013 (Table 1). IFQ allocations would be calculated by applying each vessel’s IFQ contribution percentage to these ACLs. These allocations assume that no LAGC IFQ AMs are triggered. If a vessel exceeds its IFQ in a given FY, its IFQ for the subsequent FY would be deducted by the amount of the overage.

2. *Sub-ACL for LA Scallop Vessels with IFQ Permits.* For LA scallop vessels with IFQ permits, this action proposes a 291,080-lb (132-mt) ACL for FY 2011, a 309,550-lb (140-mt) ACL for FY 2012, and an initial ACL of 306,700 lb (139 mt) for FY 2013 (Table 1). IFQ allocations would be calculated by applying each vessel’s IFQ contribution

percentage to these ACLs. These allocations assume that no LAGC IFQ AMs are triggered. If a vessel exceeds its IFQ in a given FY, its IFQ for the subsequent FY would be reduced by the amount of the overage.

3. *LAGC IFQ Trip Allocations and Possession Limits for Scallop Access Areas.* The LAGC IFQ fishery would be allocated 5.5 percent of the overall TAC in each open access area for FYs 2011 through 2013. LAGC IFQ vessels would not be allocated trips into CAII, because these vessels are not expected to fish in that area due to its distance from shore. These percentages would result in a specific number of fleet-wide trips for LAGC vessels fishing in access areas (Table 5). The areas would close to LAGC vessels when the Regional Administrator determines that the allocated number of trips have been taken in the applicable area.

TABLE 5—LAGC FLEET-WIDE ACCESS AREA TRIP ALLOCATIONS FOR FYS 2011 THROUGH 2013

Access area	FY 2011	FY 2012	FY 2013
CAI .....	890	296	.....
CAII .....	0	0	0
NLS .....	.....	296	595
HC .....	593	887	893
Delmarva ....	593	296	298

Because this action would be implemented mid-year, and the current regulations, which have rolled over into FY 2011, are inconsistent with the proposed specifications, it is possible that LAGC scallop vessels could exceed the final FY 2011 fleet-wide trip allocation in Delmarva under Framework 22. Additionally, LAGC vessels could declare and fish trips in NLS, proposed to be closed in FY 2011 under Framework 22, should Framework 22 be approved and

implemented after that area is currently scheduled to open on June 15, 2011. Although the Council did not discuss this LAGC trip-coverage scenario for Delmarva, NLS, and the ETAA in their Framework 22 document, to make measures consistent with other Framework 22 measures applicable to the LA scallop fleet and with previous framework adjustments, NMFS proposes, under its section 305(d) authority, the following measures: The current regulations allocate 714 trips each into Delmarva and NLS. If LAGC vessels exceed the final number of allocated trips from Delmarva in FY 2011, the number of excess trips would be deducted from the LAGC IFQ fleet Delmarva trip allocation in FY 2012. Because NLS would close in FY 2011 under Framework 22, any LAGC trips declared into NLS will be in excess of that area's FY 2011 fleet-wide trip allocation. As a result, if Framework 22 is implemented, LAGC vessels that declare into and land scallops from NLS would have the number of trips declared deducted from the LAGC IFQ fleet-wide NLS trip allocation in FY 2012. Although there will be fleet-wide LAGC trips into the ETAA at the start of FY 2011, this area would change to an open area under the proposed action. Because any landings from trips taken in the ETAA will be deducted from each vessel's IFQ allocations, and because there are no specific fleet-wide trips allocated to LAGC vessels fishing in open areas, there would be no pay-back measure associated with LAGC vessels that fish in the ETAA prior to the implementation of the proposed action.

4. *NGOM TAC.* This action proposes a 70,000-lb (31,751-kg) annual NGOM TAC for FYs 2011 through 2013. These allocations for FY 2012 and FY 2013 assume that in a given FY there are no overages, which would trigger a pound-for-pound deduction in the subsequent FY to account for the overage based on measures proposed in Amendment 15.

5. *Scallop Incidental Catch Target TAC.* This action proposes a 50,000-lb (22,680-kg) scallop incidental catch target TAC for FYs 2011 through 2013 to account for mortality from this component of the fishery, and to ensure that F-targets are not exceeded.

*Research Set-Aside (RSA) Allocations*

As proposed in Amendment 15, this action would deduct 1.25 M lb (567 mt) of scallops annually for FYs 2011 through 2013 from the ABC and set it aside as the Scallop RSA to fund scallop research and to compensate participating vessels through the sale of scallops harvested under RSA projects. Upon final approval of Amendment 15

measures, this set-aside would be available for harvest in open areas. Framework 22 would set the access area rotation schedule, and vessels would be able to harvest RSA from access areas upon implementation of Framework 22. Unlike previous scallop framework adjustments, Framework 22 does not propose specific RSA quota allocations within specific access areas. Projects would be assigned specific harvest allocations within access areas through the RSA application review and approval process, and a vessel with available RSA could harvest allotted RSA from an access area until the RSA allocated to that vessel and/or project is fully harvested.

*Observer Set-Aside Allocations*

This action would remove 1 percent from the ABC and set it aside for the industry-funded observer program to help defray the cost of carrying an observer. This observer set-aside would be further divided proportionally into access areas and open areas. Scallop vessels on an observed DAS trip are charged a reduced DAS rate, and scallop vessels on an observed access area trip are authorized an increased possession limit. The Regional Administrator has specified the following compensation rate for the start of FY 2011: Vessels carrying an observer will receive 180 lb (82 kg) of scallops per day, or part of a day, when fishing in an access area, and LA DAS vessels will be compensated 0.08 DAS per DAS fished during observed open area trips (*i.e.*, vessels will be charged 0.92 DAS per DAS fished with an observer onboard). The Regional Administrator shall periodically review, but at least once prior to each fishing year, all available fishery information to determine if these rates should be adjusted. The FY 2011 through 2013 observer set-aside allocations for open and access areas are outlined in Table 6.

TABLE 6—OPEN AREA, ACCESS AREA, AND TOTAL OBSERVER SET-ASIDE TACS FOR FYS 2011 THROUGH 2013

[mt, unless otherwise specified]

Area	FY 2011	FY 2012	FY 2013
Open areas	139	161	136
Open (in DAS) .....	137	133	112
CAI .....	51	16	N/A
CAII .....	16	31	36
NLS .....	N/A	16	38
HC .....	34	49	57
Delmarva ....	34	16	19
Total .....	273	290	287

*Measures to Minimize the Impacts of Incidental Take of Sea Turtles*

Under the Endangered Species Act, each Federal agency is required to ensure its actions are not likely to jeopardize the continued existence of any listed species or critical habitat. If a Federal action is likely to adversely affect a listed species, formal consultation is necessary. To date, five formal Section 7 consultations, with resulting Biological Opinions, have been completed on the Atlantic sea scallop fishery. All five have had the same conclusion: The continued authorization of the scallop fishery may adversely affect, but is not likely to jeopardize, the continued existence of four sea turtles species (Kemp's ridley, loggerhead, green, and leatherback). In the accompanying Incidental Take Statements of the Biological Opinions, NMFS is required to identify and implement non-discretionary reasonable and prudent measures (RPMs) necessary or appropriate to minimize the impacts of any incidental take, as well as Terms and Conditions (T/C) for implementing each RPM. RPMs and T/C cannot alter the basic design, location, scope, duration, or timing of the action, and may involve only minor changes.

Five RPMs and T/Cs were identified in the most recent Biological Opinion, as amended on February 5, 2009. Framework 22 includes management measures to comply with the first of these RPMs, which required a limit of fishing effort in the Mid-Atlantic during times when sea turtle distribution is expected to overlap with scallop fishing activity. The Biological Opinion required that this restriction be limited to a level that will not result in more than a minor impact on the scallop fishery.

For FYs 2011 through 2013, Framework 22 defines "more than a minor impact" on the fishery as one that would result in a 10-percent or greater shift in baseline effort from the Mid-Atlantic during June 15 through October 31 into other areas and times of year when sea turtle interactions are less likely. This definition, as well as management measures to comply with the Biological Opinion and any future Biological Opinions, will be re-evaluated for FY 2013 and future fishing years in subsequent framework actions. An informal consultation under the Endangered Species Act is being prepared to analyze the impact of the Framework 22 on threatened and endangered sea turtles. That informal consultation will be completed prior to the decision to approve or disapprove all or part of Framework 22, but NMFS

has preliminarily determined that fishing activities pursuant to Framework 22 will not affect endangered and threatened species or critical habitat in any manner not considered in prior consultations on this fishery.

For FYs 2011 through 2013, Framework 22 proposes that each full-time and part-time vessel would be restricted to taking one access area trip to areas located in the Mid-Atlantic (i.e., HC and Delmarva) during the period June 15 through October 31 of each specified FY. Although Framework 22 does not specifically outline which LA permit categories would be affected by this one-trip restriction, NMFS clarifies that this specific trip restriction is applicable to both part-time and full-time vessels because vessels in both permit categories would both be able to take up to two trips in the Mid-Atlantic. However, Framework 22 does include an additional measure specific measure intended for full-time vessels: If a vessel has traded access area trips with another vessel so that it has a total allocation of four trips in the Mid-Atlantic access areas, the vessel would be able to fish up to two of the four trips during the period June 15 through October 31. This measure is only applicable to full-time vessels because part-time vessels are only allocated a total of two access area trips to be fished in any open access area. Occasional vessels would not be affected by this measure because they would only be allocated a single access area trip. This provision is included in order to minimize any distributional impacts that may result from the proposed "split fleet" trip random allocation assignment and allows for more flexibility in access area trip exchanges. LAGC vessels fishing in the Mid-Atlantic access areas under the fleet-wide IFQ trips would also not be affected by this trip restriction.

As with similar measures implemented through Framework 21 (75 FR 36559; June 28, 2010), the Council proposed this trip restriction measure with the intention that there would be no change in the possession limit for trips taken during June 15 through October 31 of each year, and that the broken trip provision would apply to all trips. In order to be consistent with the Council's intention while also taking into account the fact that vessels can end a "full-trip" early and declare an additional trip as a compensation trip (thus declaring two trips to land the possession limit of a single full-trip), and to be consistent with how this measure was implemented and enforced in FY 2010, NMFS proposes, under the authority of section 305(d) of the Magnuson-Stevens Act, to monitor

compliance with the trip restriction using pounds landed during June 15 through October 31, rather than trip declarations, which could result in landings that are less than the allowable trip possession limit. For example, full-time and part-time LA vessels would be restricted to landing a maximum of 18,000 lb (8,165 kg) for full-time vessels and 14,400 lb (6,532 kg) for part-time vessels from those areas (i.e., the equivalent of one full access area trip, depending on the permit category's possession limit). Additionally, if a full-time vessel has acquired four Mid-Atlantic access trips due to a trip exchange(s), that vessel would be restricted to landing a combined maximum of 36,000 lb (16,329 kg) from HC and Delmarva (i.e., the equivalent of two full access area trips). Compensation trips may not be combined during this time period in a way that would allow more than 14,400 lb (6,532 kg) for part-time vessels, 18,000 lb (8,165 kg) for full-time vessels, or 36,000 lb (16,329 kg) for full-time vessels with a total allocation of four Mid-Atlantic access area trips, to be landed from HC and Delmarva, combined, from June 15 through October 31 of FYs 2011 through 2013. For example, if a full-time vessel is allocated two total trips into the Mid-Atlantic access areas and that vessel declared and subsequently broke one of the two trips into Mid-Atlantic access areas prior to June 15, it would have one full trip (i.e., 18,000 lb, 8,165 kg) available for use during the trip-restriction window. In that case, the vessel could only harvest up to 18,000 lb (8,165 kg) total from June 15 through October 31, in the Mid-Atlantic access areas, either by fishing its compensation trip and part of its full access area trip or by fishing only one full access area trip and waiting to declare the compensation trip on or after November 1. If a vessel fishes any part of an access area trip in HC or Delmarva during this time period (i.e., starts a trip on June 13 and ends the trip on June 15), landings from that trip would count towards the one- or two-trip limit. The additional pounds allocated to vessels with on-board observers during trips taken within this time period would not count towards the aforementioned possession and landing restrictions.

Because this action would be implemented mid-year, and the current regulations are inconsistent with the proposed specifications, it is possible that full-time and part-time vessels could exceed their final FY 2011 access area trip restrictions. Framework 22 did not address this possible inconsistency.

To address this possibility of exceeding the trip-restriction measure outlined in Framework 22, NMFS proposes the measure described below under the authority of section 305(d) of the Magnuson-Stevens Act. If the proposed measure is implemented after June 15, 2011, a full-time or part-time vessel that landed more than 18,000 lb (8,165 kg) or 14,400 lb (6,532 kg), respectively (i.e., more than the equivalent of one full access area trip), between June 15, 2011, and the implementation of Framework 22, that vessel would be prevented from taking an access area trip in FY 2012 in the Mid-Atlantic during June 15 through October. Alternatively, a full-time vessel could make up for the overage by trading in trips so that it had a total of four trips allocated into the Mid-Atlantic access areas and continue to fish up to a maximum of 36,000 lb (16,329 kg) through October 31, 2011 (i.e., the equivalent of two full access area trips).

Framework 22 did not include a measure that would continue the Delmarva seasonal closure in September and October. Thus, if Framework 22 is approved, this closure, implemented through Framework 21 and currently included in the regulations, would cease to exist.

#### *Elimination of the GB Access Area Rotational Schedule*

This action proposes to eliminate the default GB access area schedule that was implemented through Framework 16 to the FMP (69 FR 63460; November 2, 2004). The Council intended that this default cycle would be in place until the Council modified it through a future action. The schedule has based access area openings on the premise that an area would be open for 1 year, followed by a 2-year closure. However, the schedule has been consistently revised in framework actions based on area-specific scallop biomass projections. The pre-defined schedule has led to inconsistencies between roll-over measures at the start of a FY when a framework is delayed and unnecessary confusion. This proposed measure would remove the schedule from the regulations, allowing for the GB access area scheduled openings to be based on updated resource information. Third-year default measures (e.g., FY 2013) would provide the access area schedule for a subsequent FY if the subsequent framework action is delayed past the start of the FY.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined

that the proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. The regulatory language proposed in this action has incorporated, where applicable, the regulatory language proposed by Amendment 15.

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

An IRFA has been prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA consists of Framework 22 analyses, its draft IRFA, and the preamble to this action. To some degree, this IRFA overlaps, and should be considered in conjunction, with the IRFA for Amendment 15, which provides the basis and authority for many measures in Framework 22. A summary of the analysis follows.

#### *Statement of Objective and Need*

This action proposes the management measures and specifications for the Atlantic sea scallop fishery for FY 2011 and FY 2012, with FY 2013 default measures. A description of the action, why it is being considered, and the legal basis for this action are contained in Framework 22 and the preamble of this proposed rule and are not repeated here.

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

The RFA defines a small business entity in any fish-harvesting or hatchery business as a firm that is independently owned and operated and not dominant in its field of operation (including its affiliates), with receipts of up to \$4 million annually. The vessels in the Atlantic sea scallop fishery are considered small business entities because all of them grossed less than \$3 million according to the dealer's data for FYs 1994 to 2009. In FY 2009, total average revenue per full-time scallop vessel was just over \$1 million, and total average scallop revenue per general category vessel was just under \$80,000. The IRFA for this and prior Scallop FMP actions does not consider individual entity ownership of multiple vessels. More information about common ownership is being gathered, but the effects of common ownership relative to small versus large entities under the RFA is still unclear and will be addressed in future analyses.

The Office of Advocacy at the Small Business Association (SBA) suggests two criteria to consider in determining the significance of regulatory impacts; namely, disproportionality and

profitability. The disproportionality criterion compares the effects of the regulatory action on small versus large entities (using the SBA-approved size definition of "small entity"), not the difference between segments of small entities. Framework 22 is not expected to have significant regulatory impacts on the basis of the disproportionality criterion, because all entities are considered to be small entities in the scallop fishery and, therefore, the proposed action would not place a substantial number of small entities at a significant competitive disadvantage relative to large entities. A summary of the economic impacts relative to the profitability criterion is provided below under "Economic Impacts of Proposed Measures and Alternatives." The proposed regulations would affect vessels with LA and LAGC scallop permits. The Framework 22 document provides extensive information on the number and size of vessels and small businesses that would be affected by the proposed regulations, by port and state. There were 313 vessels that obtained full-time LA permits in 2010, including 250 dredge, 52 small-dredge and 11 scallop trawl permits. In the same year, there were also 34 part-time LA permits in the sea scallop fishery. No vessels were issued occasional scallop permits. By the start of FY 2010, the first year of the LAGC IFQ program, 362 IFQ permits (including 40 IFQ permits issued to vessels with a LA scallop permit), 127 NGOM, and 294 incidental catch permits were issued. Since all scallop permits are limited access, vessel owners would only cancel permits if they decide to stop fishing for scallops on the permitted vessel permanently or if they transfer IFQ to another IFQ vessel and permanently relinquish the vessel's scallop permit. This is likely to be infrequent due to the value of retaining the permit. As such, the number of scallop permits could decline over time, but would likely be less than 10 permits per year.

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

This action contains no new collection-of-information, reporting, and recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal law.

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

##### *Summary of the Aggregate Economic Impacts*

A detailed analysis of the economic impacts of the proposed actions may be

found in Section 5.4 of the Framework 22 document. All economic values are presented in terms of 2010 dollars and projected economic values presented below use a 7-percent discount rate to compare results to current values.

Framework 22 would be implemented after the start of FY 2011 (March 1, 2011) and the FY 2010 management measures and allocations are extended into FY 2011 until the proposed action is implemented. These current roll-over measures include open area LA allocation that are higher than proposed under Framework 22 (*i.e.*, 38 DAS per full-time LA vessel, 15 DAS per part-time vessel, and 3 DAS per occasional vessel). Additionally, although the total number of access area trips allocated to LA vessels would remain the same under Framework 22 as what is currently allocated for the start of FY 2011 (*i.e.*, four trips), the access areas from where these trips can be taken will differ. Framework 22 included a number of provisions to account for the inconsistencies between allocations in effect at the start of FY 2011 and those that would be implemented under Framework 22. Generally, any overages incurred in FY 2011 will result in a pound-for-pound (or DAS-for-DAS) deduction in FY 2012 to account for the excess landings and fishing effort not accounted for in the Framework 22 biomass projections and resulting annual allocations. As a result, vessels that choose to exceed the FY 2011 allocations proposed in Framework 22 would have slightly higher revenues than the estimated fleet average in FY 2011, resulting in positive short-term impact on those individual vessels in FY 2011. Subsequently, those vessels receive reduced individual allocations in FY 2012 to account for the FY 2011 overage incurred by the vessel. This reduction would result in slightly lower revenues than the estimated average in FY 2012, resulting in a negative short-term impact on those vessels in FY 2012. However, over the long-term, the overage provisions proposed in Framework 22 are expected to reduce the negative impacts of overfishing in FY 2011 on the scallop resource. Therefore, these measures will have positive fleet-wide impacts on landings and revenues over the long term.

The aggregate economic impacts of the proposed measures, including the open area DAS and access area allocations for LA vessels and ACLs for the LAGC fishery, are expected to be positive in both in the short-term (FYs 2011–2012) and the long-term (FYs 2011–2022) compared to the No Action alternative and all other alternatives considered. Estimated fleet revenues

under the proposed action in FY 2011 are slightly lower than the average fleet revenues in FYs 2009 and 2010. In FY 2012, revenues are expected to exceed the average revenues in FYs 2009 and 2010. The proposed action is not expected to have short-term adverse impacts on the revenues and profits of the scallop vessels compared to recent levels. The impact of four allocation alternatives were evaluated in Framework 22: One alternative proposing a new closure in the Great South Channel (GSC; the “GSC closure” alternative); one alternative with full-time “split fleet” allocations and no new closure (the proposed action); one alternative with identical access area allocations (*i.e.*, all full-time vessels are allocated access into the same areas) (the “identical fleet allocation” alternative) and the No Action alternative. With the exception of the No Action alternative, the total number of access area trips allocated to LA vessels remains the same for all alternatives.

The definition of “No Action” refers to the continuation of the allocations that are specified in the current regulations. However, because of the restrictions set forth by the current GB rotational area schedules, which determine outside of annual allocations when an access area will be opened or closed to fishing in a given FY, the No Action alternative does not result in the same allocations or revenues as in FY 2010. Rather, No Action would result in one less access area trip in FY 2012 compared to FY 2010 due to the closure of NLS. In addition, No Action would allocate two trips to a less productive area (*i.e.*, the ETAA). Due to these restrictions associated with No Action, the fishing effort in the access areas and landings overall are expected to be significantly lower compared to actual levels in FYs 2009 and 2010. As a result, The No Action alternative would result in significantly lower revenues (\$364.5 M in FY 2011 and \$290.2 M in FY 2012) compared to the actual revenues in FY 2009 (\$379.5 M) and in FY 2010 (\$431 M). From the perspective of the impacts on the economy and of the participants in the fishery, a baseline that would reflect potential economic impacts relative to the recent levels of allocations would be a more useful comparison. For this purpose, a Status Quo scenario was also incorporated into the economic analysis. This scenario allocated vessels exactly the same amount of access area trips and DAS in FYs 2011 and 2012 as they had the opportunity to take in FY 2010, resulting in projected revenues (\$433.1

M in FY 2011) that are very similar to the estimated revenues for FY 2010. Note that the Status Quo alternative is used here for analytical purposes in the economic impact analysis of Framework 22’s allocations alternatives but was not actually considered by the Council, because it is based on an infeasible scenario that would increase the scallop fishing mortality above sustainable levels, resulting in reduced scallop yield and revenues in the long-term.

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

##### 1. Allocations for the LA and LAGC Scallop Fleets—Aggregate Impacts

The proposed open area DAS allocations are expected to prevent overfishing in open areas. The proposed action would implement the following vessel-specific DAS allocations for FYs 2011 and 2012: Full-time vessels would be allocated 32 and 34 DAS, respectively; part-time vessels would be allocated 13 and 14 DAS, respectively; and occasional vessels would receive 3 DAS for each FY. Additionally, full-time vessels would receive a total of four access area trips, part-time vessels would receive two access area trips, and occasional vessels would receive one access area trip.

The Framework 22 analysis of the fleet-wide aggregate economic impacts indicate that the proposed action and all other alternatives would have positive economic impacts on the revenues and profits of the scallop vessels in the short-term (FYs 2011 and 2012), compared with the No Action alternative. Total fleet revenue under the proposed action is estimated at \$399.1 million in FY 2011 and \$428.4 million in FY 2012. Additionally, net revenues per vessel (*i.e.*, gross revenues minus trip costs, used as a proxy for profits) are estimated to be \$1,014,659 and \$1,089,108 in FY 2011 and FY 2012, respectively. Compared with No Action fleet revenues (\$364.5 M in FY 2011 and \$290.1 M in FY 2012), the proposed action would result in increases in fleet revenues of 9.6 percent and 47.6 percent in FYs 2011 and 2012, respectively; the “GSC closure” alternative would result in increases in revenues by 2.2 percent and 44.9 percent in FYs 2011 and 2012, respectively; and the “identical fleet allocation” alternative would result in increases in revenues by 10.3 percent and 44.3 percent in FYs 2011 and 2012, respectively. In terms of net revenues per vessel (\$917,452 in FY 2011 and \$732,848 M in FY 2012 for No Action), the proposed action would result in higher vessel net revenues (10.6 percent

in FY 2011 and 48.6 percent in FY 2012). Vessel net revenues would also be higher under the “GSC closure” and “identical fleet allocation” alternatives as well, ranging between 3.1–11.3 percent higher in FY 2011 and 45.2–45.5 percent higher in FY 2012. In both the short- and long-term, the proposed action would result in larger cumulative fleet and vessel net revenues than both the “GSC closure” alternative and the “identical fleet allocation.” The proposed action fleet revenues are estimated to exceed the revenues for the “identical fleet allocation” alternative by \$6.5 M and \$53 M in the short-term and long-term, respectively. The proposed action revenues are expected to exceed those for the “GSC closure” alternative by an even greater amount: \$33.5 M and \$98.9 M more in the short-term and long-term, respectively. Furthermore, the proposed action would result in a more constant stream of landings compared to the other two alternatives, providing stability in business operations.

Compared to the Status Quo alternative, the proposed action would result in gross fleet revenues about \$47.9 M lower in the short-term, resulting in estimates of gross revenue per vessel to be 7.9 percent and 4.1 percent, less than those under Status Quo in FY 2011 and FY 2012, respectively. These decreases in fleet and vessel revenues compared to those estimated under Status Quo are due to the fact that the Status Quo alternative does not take projected scallop biomass levels into account: Although landings and revenues are higher in the short-term under the Status Quo scenario, by setting future allocations based on a fishing mortality that exceeds sustainable levels, the Status Quo reduces yield and revenues in the long-term. From FYs 2011–2022, the proposed action would have positive economic impacts compared to Status Quo, exceeding Status Quo fleet revenues by \$19.8 M. Over the medium term (FYs 2011–2015) the proposed action would result in higher revenues per vessel compared to the Status Quo—5.8 percent in FY 2013 and 3.7 percent in FYs 2014 and 2015—thus offsetting the decreases in FYs 2011 and 2012. Because the cumulative value of the scallop net revenue per vessel will be only marginally lower (0.1 percent) in the medium-term compared to the Status Quo values, the proposed action will not have significant impacts for the scallop vessels compared to Status Quo levels.

The proposed action would have positive economic benefits in both the short- and long-term for the LAGC

fishery starting in FY 2011, as the LAGC ACL would increase compared to No Action allocations. Under the proposal, LAGC vessels would be allocated 5 percent of the total ACL and the LA vessels with the IFQ permits would be allocated 0.5-percent of the ACL. The positive short- and long-term economic impacts of the proposed measures for the LAGC vessels, compared to the No Action alternative, result from the higher allocation of fish to the LAGC fleets (1.3 percent higher in FY 2011 and 2.9 percent higher in FY 2012) than those allocated under No Action. In addition, compared to FY 2010 revenues, which was the first year that the LAGC IFQ Program was implemented, the revenues of LAGC vessels will be higher under the proposed action. There are no alternatives that would generate higher economic benefits for the participants of the scallop fishery. In fact, because the LAGC allocations are derived from the ACL, the values are identical across all alternatives considered, with the exception of No Action.

In summary, the proposed action will not have a considerable adverse impact on the net revenues and profits on the LA and LAGC scallop fleets. Therefore, the proposed action is not expected to have significant economic impacts on the viability of these vessels, especially in a highly profitable industry like the scallop fishery.

#### 2. Default Management Measures for FY 2013

The proposed action to set precautionary default measures for FY 2013 is also expected to have potentially positive economic impacts. If resource conditions turn out to be less favorable in FY 2013 than suggested by the current biological projections, and the next framework is delayed, this measure would allocate only 26 DAS, rather than 35 DAS, to prevent potentially negative impacts on the resource, including impacts on scallop yield and subsequent impacts on scallop prices. There are no alternatives that would generate higher economic benefits for the participants of the scallop fishery.

#### 3. Access Area Trip Allocations and Use of Split-Fleet Trips Allocated Through a Lottery System

The proposed action to allocate split-fleet trips into access areas with biomass levels not large enough to support a full trip would increase landings, revenues, and total economic benefits to the fishery. The administration of the random allocation process is expected to have positive economic impacts on the fishermen by providing flexibility

for the vessels to trade access area trips. With the exception of the No Action alternative, all alternatives considered the same number of access area trips. There were no other alternatives considered that would generate higher economic benefits for the participants of the scallop fishery.

#### 4. Open Area DAS Adjustment if Access Area YTF TAC is Attained

The proposed action maintains provisions that allocate additional open area DAS if an access area closes due to the attainment of the scallop YTF TAC for unused access area trips (*i.e.*, fully unused trips and compensation trips). This allocation is a continuation of current measures and would have the same impacts as the No Action alternative. This conversion helps to minimize lost catch and revenue for affected vessels if CAI and CAII and/or NLS close due to the full harvest of YTF quota. As a result, this measure would have positive economic impacts on scallop vessels, although the scallop pounds per trip could be lower than the allocated pounds for GB and/or SNE/MA access area trips due to proration to assure that the measure is conservation neutral. There were no alternatives considered that would generate higher economic benefits for the participants of the scallop fishery.

#### 5. RSA and Observer Set-Aside TACs

The proposed action would set aside 1 percent of the ABC for the industry-funded observer set-aside program, and would set aside 1.25 M lb (567 mt) from the ABC for the RSA program, based on measures proposed in Amendment 15. 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. Although allocating a higher observer set-aside percentage or higher RSA allocation could result in higher indirect benefits to the scallop fleet by increasing available funds for research and the observer program, these set-aside increases could also decrease direct economic benefits to the fishery by reducing revenues, and no such alternatives were considered.

#### 6. NGOM TAC

The proposed action specifies a 70,000-lb (31,751-kg) TAC for the NGOM. This is the same TAC as the No Action alternative. Thus, the proposed action would not have additional economic impacts on the participants of the NGOM fishery. The NGOM TAC has been specified at this level since FY 2008, and the fishery has harvested less

than 15 percent of the TAC in each FY; therefore, the TAC has no negative economic impacts. There are no alternatives that would generate higher benefits for NGOM scallop vessels. The alternative for setting the NGOM TAC at 31,100 lb (14,107 kg) is expected to reduce the chance of excess fishing in Federal waters in the NGOM management area, but could result in negative impacts on the participants of the NGOM fishery if landings from NGOM-permitted vessels fishing in state waters lead to the closure of the NGOM management area.

#### 7. Measures To Minimize the Impacts of Incidental Take of Sea Turtles

The proposed action would limit the maximum number of trips that can be taken in the Mid-Atlantic areas from June 15 to October 31. Because fishing effort is shifted to a relatively less productive season, total fleet trip costs are expected to increase slightly (*i.e.*, less than 0.1 percent) due to reduced scallop catch rates. Since there is no change in the scallop possession limit, the trips that are shifted from this season are expected to be taken outside of this time period without a loss in total revenue, as long as this measure does not, as expected, have a negative impact on prices. No other alternatives considered would generate higher benefits for the scallop vessels, other than the No Action alternative, which would continue the FY 2010 measures implemented by Framework 21 (an access area trip-restriction of 2 trips (or 36,000 lb; 16,329 kg) between June 15 and August 31 in the ETAA and Delmarva, as well as seasonal closures in Delmarva and ETAA during September and October). Because the basis for No Action is the regulations that match the FY 2010 allocations implemented through Framework 21, the No Action alternative would not account for the opening of HC and would not take the ETAA into account if it were to revert to an open area, thus only reducing effort in Delmarva. As a result, the No Action alternative would likely not comply with the relevant RPM and T/Cs of the Biological Opinion and thus, was not considered by the Council. The proposed action is expected to minimize the effort shift from the given time period compared to the other action alternatives considered by the Council; thus, there are no other alternatives that would generate higher benefits for the scallop vessels.

#### 8. Elimination of the GB Closed Area Rotation Schedule

The elimination of the GB rotation schedule that indicates the opening and

closing of access areas in the regulations would reduce the public's confusion and administrative burden. Instead, access area schedules would be based solely on survey results and available exploitable biomass as assessed by the Scallop PDT and the SSC. These schedules would be approved by the Council and implemented biannually through the framework adjustment process. The proposed action would improve the management of the scallop resource, with positive impacts on the scallop yield and on economic benefits from the scallop fishery. There are no alternatives that would generate higher benefits for the scallop vessels.

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

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 25, 2011.

**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 proposed to be amended as follows:

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

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

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

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

#### § 648.14 Prohibitions.

\* \* \* \* \*

(i) \* \* \*

(2) \* \* \*

(vi) \* \* \*

(F) Unless specified in paragraph (i)(2)(vi)(F)(1) of this section, a full-time vessel shall not fish for, possess, or retain more than a combined total of 18,000 lb (8,165 kg; the equivalent of one full-time access area trip) of scallops from the Delmarva and Hudson Canyon Access Areas specified in § 648.59(a) and (e) during the period June 15 through October 31. Any scallops fished for, possessed, or retained during this time period from either Delmarva and Hudson Canyon Access Areas, regardless of whether or not they were harvested on a single access area trip or on multiple trips by taking compensation trips, as specified in § 648.60(c), will be applied to this possession and landing limit. This restriction does not include the additional possession allowance to defray the cost of carrying an observer, as specified in § 648.60(d), that occur

during observed trips between June 15 through October 31.

(1) If the owner of a full-time vessel has exchanged a trip(s) with another full-time vessel owner(s), as specified in § 648.60(a)(3)(ii), so that the vessel has a total access area trip allocation of four combined trips into the Delmarva and Hudson Canyon Access Areas (e.g., two Hudson Canyon trip and two Delmarva trips; one Hudson Canyon trip and three Delmarva trips, three Hudson Canyon trips and one Delmarva trip; no Hudson Canyon trips and four Delmarva trips; or four Hudson Canyon trips and no Delmarva trips) that vessel must not fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg; the equivalent of two full-time access area trips) of scallops from the Delmarva and Hudson Canyon Access Areas specified in § 648.59(a) and (e) during the period June 15 through October 31. Any scallops fished for, possessed, or retained during this time period from either Delmarva and Hudson Canyon Access Areas, regardless of whether or not they were harvested on a single access area trip or on multiple trips by taking compensation trips, as specified in § 648.60(c), will be applied to this possession and landing limit. This restriction does not include the additional possession allowance to defray the cost of carrying an observer, as specified in § 648.60(d), that occur during observed trips between June 15 through October 31.

(2) [Reserved]

(G) Part-time vessels shall not fish for, possess, or retain more than a combined total of 14,400 lb (6,532 kg; the equivalent of one part-time access area trip) of scallops from the Delmarva and Hudson Canyon Access Areas specified in § 648.59(a) and (e) during the period June 15 through October 31. Any scallops fished for, possessed, or retained during this time period from either Delmarva and Hudson Canyon Access Areas, regardless of whether or not they were harvested on a single access area trip or on multiple trips by taking compensation trips, as specified in § 648.60(c), will be applied to this possession and landing limit. This restriction does not include the additional possession allowance to defray the cost of carrying an observer, as specified in § 648.60(d), that occur during observed trips between June 15 through October 31.

\* \* \* \* \*

3. In § 648.53:

a. The section heading is revised;

b. Paragraph (a), the introductory text to paragraph (b), paragraphs (b)(1), (b)(4), (b)(5), (c), (d), (g), (h)(2)(iii),

(h)(3)(i)(A), (h)(3)(i)(B), (h)(3)(i)(C), the introductory text to paragraph (h)(4), and paragraphs (h)(5)(ii), (h)(5)(iii), and (h)(5)(iv) are revised;

c. Paragraphs (h)(2)(v) and (h)(2)(vi) are added; and

d. Paragraph (b)(2) is removed and reserved

The revisions and additions read as follows:

#### § 648.53 Acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), DAS allocations, and individual fishing quotas (IFQ).

(a) *Scallop fishery ABC.* The ABC for the scallop fishery shall be established through the framework adjustment process specified in § 648.55 and is equal to the overall scallop fishery ACL. The ABC/ACL shall be divided as sub-ACLs 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) and (a)(4) of this section, after deducting the scallop incidental catch target TAC specified in paragraph (a)(2) of this section, observer set-aside specified in paragraph (g)(1) of this section, and research set-aside specified in Section 648.56(d). The ABC/ACL for the 2013 fishing year is subject to change through a future framework adjustment.

(1) ABC/ACL for fishing years 2011 through 2013 shall be:

(i) 2011: 27,269 mt.

(ii) 2012: 28,961 mt.

(iii) 2013: 28,700 mt.

(2) *Scallop incidental catch target TAC.* The incidental catch target TAC for vessels with incidental catch scallop permits is 50,000 lb (22.7 mt) for fishing years 2011, 2012, and 2013.

(3) *Limited access fleet sub-ACL and ACT.* The limited access scallop fishery shall be allocated 94.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). ACT for the limited access scallop fishery shall be established through the framework adjustment process described in § 648.55. DAS specified in paragraph (b) of this section shall be based on the ACTs specified in paragraph (a)(3)(ii) of this section. The limited access fleet sub-ACL and ACT for the 2013 fishing year are subject to change through a future framework adjustment.

(i) The limited access fishery sub-ACLs for fishing years 2011 through 2013 are:

(A) 2011: 24,954 mt.

(B) 2012: 26,537 mt.

- (C) 2013: 26,293 mt.
- (ii) The limited access fishery ACTs for fishing years 2011 through 2013 are:
  - (A) 2011: 21,431 mt.
  - (B) 2012: 23,546 mt.
  - (C) 2013: 19,688 mt.

(4) *LAGC fleet sub-ACL.* The sub-ACL for the LAGC IFQ fishery shall be equal to 5.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). The LAGC IFQ fishery ACT shall be equal to the LAGC IFQ fishery's ACL. The ACL for the LAGC IFQ fishery for vessels issued only a LAGC IFQ scallop permit shall be equal to 5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). The ACL for the LAGC IFQ fishery for vessels issued only both a LAGC IFQ scallop permit and a limited access scallop permit shall be 0.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). The LAGC ACLs for the 2013 fishing year are default allocations and are subject to change through a future framework adjustment.

(i) The ACLs for fishing years 2011 through 2013 for LAGC IFQ vessels without a limited access scallop permit are:

- (A) 2011: 1,320 mt.
- (B) 2012: 1,404 mt.
- (C) 2013: 1,391 mt.

(ii) The ACLs for fishing years 2011 through 2013 for vessels issued both a LAGC and a limited access scallop permit are:

- (A) 2011: 132 mt.
- (B) 2012: 140 mt.
- (C) 2013: 139 mt.

(b) *DAS allocations.* DAS allocations for limited access scallop trips in all areas other than those specified in § 648.59 shall be specified through the framework adjustment process, as specified in § 648.55, using the ACT specified in paragraph (a)(3)(ii) of this section. A vessel's DAS shall be determined and specified in paragraph (b)(4) of this section by dividing the total DAS specified in the framework adjustment by the landings per unit effort (LPUE) specified in paragraph (b)(1) of this section, then dividing by the total number of vessels in the fleet.

(1) *Landings per unit effort (LPUE).* LPUE is an estimate of the average amount of scallops, in pounds, that the limited access scallop fleet lands per DAS fished. The estimated LPUE is the average LPUE for all limited access

scallop vessels fishing under DAS, and shall be used to calculate DAS specified in paragraph (b)(4) of this section, the DAS reduction for the AM specified in paragraph (b)(4)(ii) of this section, and the observer set-aside DAS allocation specified in paragraph (g)(1) of this section. LPUE shall be:

- (i) 2011 fishing year: 2,441 lb/DAS.
- (ii) 2012 fishing year: 2,662 lb/DAS.
- (iii) 2013 fishing year: 2,676 lb/DAS.

\* \* \* \* \*

(4) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(4) (full-time, part-time, or occasional) shall be allocated the maximum number of DAS for each fishing year it may participate in the open area limited access scallop fishery, according to its category, excluding carryover DAS in accordance with paragraph (d) of this section. DAS allocations shall be determined by distributing the portion of ACT specified in paragraph (a)(3)(ii), as reduced by access area allocations specified in § 648.59, and dividing that amount among vessels in the form of DAS calculated by applying estimates of open area LPUE specified in paragraph (b)(1) of this section. Allocation for part-time and occasional scallop vessels shall be equal to 40 percent and 8.33 percent of the full-time DAS allocations, respectively. DAS allocations for the 2013 fishing year are default allocations and are subject to change through a future framework adjustment. The annual open area DAS allocations for each category of vessel for the fishing years indicated are as follows:

Scallop open area DAS allocations			
Permit category	2011	2012	2013
Full-Time .....	32	34	26
Part-Time ....	13	14	11
Occasional ..	3	3	3

(i) If, prior to the implementation of Framework 22, a limited access vessel uses more open area DAS in the 2011 fishing year than specified in this section, such vessel shall have the DAS used in excess of the 2012 fishing year allocation specified in this paragraph (b)(4) deducted from its fishing year 2012 open area DAS allocation.

(ii) *Accountability measures (AM).* Unless the limited access AM exception is implemented in accordance with the provision specified in paragraph (b)(4)(iii) of this section, if the ACL specified in paragraph (a)(3)(i) of this section is exceeded for the applicable fishing year, the DAS specified in paragraph (b)(4) of this section for each limited access vessel shall be reduced

by an amount equal to the amount of landings in excess of the ACL divided by the applicable LPUE for the fishing year in which the AM will apply as specified in paragraph (b)(1) of this section, then divided by the number of scallop vessels eligible to be issued a full-time limited access scallop permit. For example, assuming a 300,000-lb (136-mt) overage of the ACL in 2011, an open area LPUE of 2,500 lb (1.13 mt) per DAS in 2012, and 313 full-time vessels, each full-time vessel's DAS would be reduced by 0.38 DAS (300,000 lb (136 mt)/2,500 lb (1.13 mt) per DAS = 120 lb (0.05 mt) per DAS/313 vessels = 0.38 DAS per vessel). Deductions in DAS for part-time and occasional scallop vessels shall be equal to 40 percent and 8.33 percent of the full-time DAS deduction, respectively, as calculated pursuant to this paragraph (b)(4)(ii). The AM shall take effect in the fishing year following the fishing year in which the overage occurred. For example, landings in excess of the ACL in fishing year 2011 would result in the DAS reduction AM in fishing year 2012. If the AM takes effect, and a limited access vessel uses more open area DAS in the fishing year in which the AM is applied, the vessel shall have the DAS used in excess of the allocation after applying the AM deducted from its open area DAS allocation in the subsequent fishing year. For example, a vessel initially allocated 32 DAS in 2011 uses all 32 DAS prior to application of the AM. If, after application of the AM, the vessel's DAS allocation is reduced to 31 DAS, the vessel's DAS in 2012 would be reduced by 1 DAS.

(iii) *Limited access AM exception—*  
 (A) If NMFS determines, in accordance with paragraph (b)(4)(ii) of this section, that the fishing mortality rate associated with the limited access fleet's landings in a fishing year is less than 0.24, the AM specified in paragraph (b)(4)(ii) of this section shall not take effect. The fishing mortality rate of 0.24 is the fishing mortality that is one standard deviation below the fishing mortality rate for the scallop fishery ACL, currently estimated at 0.28.

(B) If the limited access AM exception described in this paragraph (b)(4)(iii) is invoked, the Regional Administrator shall increase the sub-ACL for the LAGC IFQ fleet specified in paragraph (a)(4)(i) of this section by the amount of scallops equal to 5.5 percent of the amount of scallop landings in excess of the limited access fleet's ACL specified in paragraph (a)(3)(i) of this section. The applicable sub-ACL for the limited access fleet specified in paragraph (a)(3)(i) of this section shall be reduced by the amount equivalent to the increase

in the sub-ACL for LAGC IFQ specified pursuant to this paragraph (b)(4)(iii)(B). For example, if the limited access fishery ACL is exceeded by 1 million lb (453.6 mt), but the limited access AM exception is invoked, the LAGC sub-ACL shall be increased, and the limited access fleet's ACL decreased, by 55,000 lb (24.9 mt) (1 million lb (453.6 mt) × 5.5% (0.055) = 55,000 lb (24.9 mt)). The ACL adjustments in this paragraph (b)(4)(iii)(B) shall take effect in the fishing year immediately following the fishing year in which the overage of the ACL occurred. For example, for an ACL overage in the 2011 fishing year, the adjustments due to implementation of the exception would be implemented in the 2012 fishing year.

(iv) *Limited access fleet AM and exception provision timing.* The Regional Administrator shall determine whether the limited access fleet exceeded its ACL specified in paragraph (a)(3)(i) of this section by July of the fishing year following the year for which landings are being evaluated. On or about July 1, the Regional Administrator shall notify the New England Fishery Management Council (Council) of the determination of whether or not the ACL for the limited access fleet was exceeded, and the amount of landings in excess of the ACL. Upon this notification, the Scallop Plan Development Team (PDT) shall evaluate the overage and determine if the fishing mortality rate associated with total landings by the limited access scallop fleet is less than 0.24. On or about September 1 of each year, the Scallop PDT shall notify the Council of its determination, and the Council, on or about September 30, shall make a recommendation, based on the Scallop PDT findings, concerning whether to invoke the limited access AM exception. If NMFS concurs with the Scallop PDT's recommendation to invoke the limited access AM exception, in accordance with the APA, the limited access AM shall not be implemented. If NMFS does not concur, in accordance with the APA, the limited access AM shall be implemented as soon as possible after September 30 each year.

(v) The Elephant Trunk Access Area shall change to an open area starting in fishing year 2011. For reference, the Elephant Trunk Sea Scallop Access Area was defined by straight lines connecting the following points in the order stated (copies of a chart depicting the area previously known as the Elephant Trunk Access Area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
ETAA1 .....	38°50' N.	74°20' W.
ETAA2 .....	38°10' N.	74°20' W.
ETAA3 .....	38°10' N.	73°30' W.
ETAA4 .....	38°50' N.	73°30' W.
ETAA1 .....	38°50' N.	74°20' W.

(vi) If, prior to the implementation of Framework 22, a vessel lands all or part of an Elephant Trunk Access Area trip that was allocated at the start of the 2011 fishing year, any pounds landed from that declared Elephant Trunk Access Area trip would be converted to DAS and deducted from the vessel's open area DAS allocations in fishing year 2012. This DAS deduction would be equivalent to the scallop fishing mortality resulting from the open area DAS allocation. For example, if a full-time vessel lands the full 18,000-lb (8,165-kg) possession limit from an Elephant Trunk Access Area trip allocated at the start of the 2011 fishing year, the pounds landed would be converted to DAS and deducted from the vessel's 2012 fishing year DAS allocation as follows: The 18,000 lb (8,165-kg) would first be multiplied by the estimated average meat count in the Elephant Trunk Access Area (18.4 meats/lb) and then divided by the estimated open area average meat count (also 18.4 meats/lb) and by the estimated open area LPUE for fishing year 2011 (2,441 lb/DAS), resulting in a DAS deduction of 7.4 DAS ((18,000 lb × 18.4 meats/lb)/(18.4 meats/lb × 2,441 lb/DAS) = 7.4 DAS). This amount would be deducted from that vessel's 2012 fishing year (*i.e.*, 34 DAS minus 7.4 DAS), resulting in a total 2012 fishing year DAS allocation of 26.6 DAS. Similarly, Part-time and occasional vessels shall receive deductions of 5.9 DAS and 2.5 DAS, respectively, based on their respective possession limits, for landing their full trip possession limits from the area formerly known as the Elephant Trunk Access Area. If a vessel only lands a portion of its full possession limit, the applicable DAS reduction shall be proportional to those landings. For example, if a full-time vessel lands 9,000 lb (4,082 kg) during a declared Elephant Trunk Access Area trip, that vessel's fishing year 2012 DAS allocation would be reduced by 3.7 DAS (*i.e.*, half of the DAS that would be deducted for a full trip).

(vii) If, prior to the implementation of Framework 22, a vessel owner exchanges an Elephant Trunk Access Area trip for another access area trip as specified in § 648.60(a)(3)(ii) in fishing year 2011, the vessel that receives an additional Elephant Trunk Access Area trip would receive a DAS credit of 7.4

DAS in FY 2011, resulting in a total fishing year 2011 DAS allocation of 39.4 DAS (32 DAS plus 7.4 DAS). This DAS credit from unused Elephant Trunk Access Area trip gained through a trip exchange is based on a full-time vessel's 18,000-lb (8,165-kg) possession limit and is calculated by using the formula specified in paragraph (b)(4)(vi) but the DAS conversion is applied as a DAS credit in the 2011 fishing year, rather than as a DAS deduction in fishing year 2012. Similarly, using the same calculation with a 14,400-lb (6,532-kg) possession limit, part-time vessels would receive a credit of 5.9 DAS if the vessel owner received an additional Elephant Trunk Access Area trip through a trip exchange in the interim between the start of the 2011 fishing year and the implementation of Framework 22 and did not use it. If a vessel fishes any part of an Elephant Trunk Access Area trip gained through a trip exchange, those landings would be deducted from any DAS credit applied to the 2011 fishing year. For example, if a full-time vessel lands 10,000 lb (4,536 kg) from an Elephant Trunk Access Area trip gained through a trip exchange, the pounds landed would be converted to DAS and deducted from the trip-exchange credit as follows: The 10,000 lb (4,536 kg) would first be multiplied by the estimated average meat count in the Elephant Trunk Access Area (18.4 meats/lb) and then divided by the estimated open area average meat count (also 18.4 meats/lb) and by the estimate open area LPUE for fishing year 2011 (2,441 lb/DAS), resulting in a DAS deduction of 4.1 DAS ((10,000 lb × 18.4 meats/lb)/(18.4 meats/lb × 2,441 lb/DAS) = 4.1 DAS). Thus, this vessel would receive a reduced DAS credit in FY 2011 to account for the Elephant Trunk Access Area trip exchange of 3.3 DAS (7.4 DAS – 4.1 DAS = 3.3 DAS).

(5) *Additional open area DAS.* (i) When Closed Area I, Closed Area II, and/or the Nantucket Lightship Access Areas close due to the yellowtail flounder bycatch TAC, for each remaining complete trip in each of these Access Areas, a full-time, part-time, or occasional vessel may fish an additional DAS in open areas during the same fishing year. Part-time and occasional vessels shall only receive additional DAS if there are no other access areas available in which to take an access area trip. 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). The Access Area DAS trip conversion for fishing

years 2011 and 2013 are specified in paragraph (b)(5)(ii) of this section.

(ii) *Access area trip conversion to open area DAS.*

Access area trip conversion to open area DAS

Permit category	FY	CAI	CAII	NLAA
Full-Time .....	2011	4.3	5.7	N/A
	2012	4.4	5.4	4.3
	2013	N/A	5.4	4.9
Part-Time .....	2011	3.4	4.5	N/A
	2012	3.6	4.3	3.4
	2013	N/A	4.3	3.9
Occasional .....	2011	1.4	1.9	N/A
	2012	1.5	1.8	1.4
	2013	N/A	1.8	1.6

(iii) If a vessel has unused broken trip compensation trip(s), as specified in § 648.60(c), when Closed Area I, Closed Area II, and/or Nantucket Lightship Access Areas close due to the yellowtail flounder bycatch TAC, it will be issued additional open area 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 in FY 2012, the vessel will be allocated 2.15 DAS (half of 4.3 DAS).

\* \* \* \* \*

(c) *Adjustments in annual DAS allocations.* Annual DAS allocations shall be established for 3 fishing years through biennial framework adjustments as specified in § 648.55. If a biennial framework action is not undertaken by the Council and implemented by NMFS before the beginning of the third year of each biennial adjustment, the third-year measures specified in the biennial framework adjustment shall remain in effect for the next fishing year. If a new biennial or other framework adjustment is not implemented by NMFS by the conclusion of the third year, the management measures from that third year would remain in place until a new action is implemented. The Council may also recommend adjustments to DAS allocations or other measures through a framework adjustment at any time.

(d) *End-of-year carry-over for open area DAS.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(j) for the entire fishing year preceding the carry-over year, limited access vessels that have unused open area DAS on the last day of February of any year may carry over a maximum of 10 DAS, not to exceed the total open area DAS allocation by permit category, into the

next year. DAS carried over into the next fishing year may only be used in open areas. Carry-over DAS are accounted for in setting the ACT for the limited access fleet, as specified in paragraph (a)(3)(ii) of this section. Therefore, if carry-over DAS result or contribute to an overage of the ACL, the limited access fleet AM specified in paragraph (b)(4)(i) of this section would still apply, provided the AM exception specified in paragraph (b)(4)(iii) of this section is not invoked.

\* \* \* \* \*

(g) *Set-asides for observer coverage.* (1) To help defray the cost of carrying an observer, 1 percent of the ABC/ACL specified in paragraph (a)(1) of this section shall be set aside to be used by vessels that are assigned to take an at-sea observer on a trip. The total TAC for observer set aside is 273 mt in fishing year 2011, 290 mt in fishing year 2012, and 287 mt in fishing year 2013. This 1 percent is divided proportionally into access areas and open areas, as specified in § 648.60(d)(1) and paragraph (g)(2) of this section, respectively. The total observer set-aside TAC specified for fishing year 2013 is a default allocation and is subject to change through a future framework adjustment

(2) *DAS set-aside for observer coverage.* For vessels assigned to take an at-sea observer on a trip other than an Access Area Program trip, the open-area observer set-aside TACs are 139 mt, 161 mt, and 136 mt for fishing years 2011, 2012, and 2013, respectively. The DAS set-aside shall be determined by dividing these amounts by the LPUE specified in paragraph (b)(1)(i) of this section for each specific fishing year. The DAS set-aside for observer coverage is 137 DAS for the 2011 fishing year, 133 DAS for the 2012 fishing year, and 112 DAS for the 2013 fishing year. A vessel 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. This DAS adjustment factor may also be changed during the fishing year if fishery conditions warrant such a change. 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 if set-aside is not available.

(h) \* \* \*

(2) \* \* \*

(iii) *Contribution percentage.* A vessel's contribution percentage shall be determined by dividing its contribution factor by the sum of the contribution factors of all vessels issued an IFQ scallop permit. Continuing the example in paragraph (h)(1)(ii)(D) of this section, the sum of the contribution factors for 380 IFQ scallop vessels is estimated for the purpose of this example to be 4.18 million lb (1,896 mt). The contribution percentage of the above vessel is 1.45 percent (60,687 lb (27,527 kg)/4.18 million lb (1,896 mt) = 1.45 percent). The contribution percentage for a vessel that is issued an IFQ scallop permit and that has permanently transferred all of its IFQ to another IFQ vessel, as

specified in paragraph (h)(5)(ii) of this section, shall be equal to 0 percent.

\* \* \* \* \*

(v) *End-of-year carry-over for IFQ.* (A) With the exception of vessels that held a confirmation of permit history as described in § 648.4(a)(2)(ii)(L) for the entire fishing year preceding the carry-over year, LAGC IFQ vessels that have unused IFQ on the last day of February of any year may carry over up to 15 percent of the vessel's original IFQ and transferred (either temporary or permanent) IFQ into the next fishing year. For example, a vessel with a 10,000-lb (4,536-kg) IFQ and 5,000-lb (2,268-kg) of leased IFQ may carry over 2,250 lb (1,020 kg) of IFQ (*i.e.*, 15 percent of 15,000 lb (6,804 kg)) into the next fishing year if it landed 12,750 lb (5,783 kg) (*i.e.*, 85 percent of 15,000 lb (6,804 kg)) of scallops or less in the preceding fishing year. Using the same IFQ values from the example, if the vessel landed 14,000 lb (6,350 kg) of scallops, it could carry over 1,000 lb (454 kg) of scallops into the next fishing year.

(B) For accounting purposes, the combined total of all vessels' IFQ carry-over shall be added to the LAGC IFQ fleet's applicable ACL for the carry-over year. Any IFQ carried over that is landed in the carry-over fishing year shall be counted against the ACL specified in paragraph (a)(4)(i) of this section, as increased by the total carry-over for all LAGC IFQ vessels, as specified in this paragraph (h)(2)(v)(B).

(vi) *AM for the IFQ fleet.* If a vessel exceeds its IFQ, including all temporarily and permanently transferred IFQ, in a fishing year, the amount of landings in excess of the vessel's IFQ, including all temporarily and permanently transferred IFQ, shall be deducted from the vessel's IFQ as soon as possible in the fishing year following the fishing year in which the vessel exceeded its IFQ. If the AM takes effect, and an IFQ vessel lands more scallops than allocated after the AM is applied, the vessel shall have the IFQ landed in excess of its IFQ after applying the AM deducted from its IFQ in the subsequent fishing year. For example, a vessel with an initial IFQ of 1,000 lb (453.6 kg) in 2010 landed 1,200 lb (544.3 kg) of scallops in 2010, and is initially allocated 1,300 lb (589.7 kg) of scallops in 2011. That vessel would be subject to an IFQ reduction equal to 200 lb (90.7 kg) to account for the 200 lb (90.7 kg) overage in 2010. If that vessel lands 1,300 lb (589.7 kg) of scallops in 2011 prior to application of the 200 lb (90.7 kg) deduction, the vessel would be subject to a deduction of 200 lb (90.7 kg)

in 2012. For vessels involved in a temporary IFQ transfer, the entire deduction shall apply to the vessel that acquired IFQ, not the transferring vessel. A vessel that has an overage that exceeds its IFQ in the subsequent fishing year shall be subject to an IFQ reduction in subsequent years until the overage is paid back. For example, a vessel with an IFQ of 1,000 lb (454 kg) in each year over a 3-year period that harvests 2,500 lb (1,134 kg) of scallops the first year would have a 1,500-lb (680-kg) IFQ deduction, so that it would have zero pounds to harvest in year 2, and 500 lb (227 kg) to harvest in year 3. A vessel that has a "negative" IFQ balance, as described in the example, could lease or transfer IFQ to balance the IFQ, provided there are no sanctions or other enforcement penalties that would prohibit the vessel from acquiring IFQ.

(3) \* \* \*

(i) \* \* \*

(A) Unless otherwise specified in paragraphs (h)(3)(i)(B) and (C) of this section, a vessel issued an IFQ scallop permit or confirmation of permit history shall not be issued more than 2.5 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section.

(B) A vessel may be initially issued more than 2.5 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section, if the initial determination of its contribution factor specified in accordance with § 648.4(a)(2)(ii)(E) and paragraph (h)(2)(ii) of this section, results in an IFQ that exceeds 2.5 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section. A vessel that is allocated an IFQ that exceeds 2.5 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section, in accordance with this paragraph (h)(3)(i)(B), may not receive IFQ through an IFQ transfer, as specified in paragraph (h)(5) of this section.

(C) A vessel initially issued a 2008 IFQ scallop permit or confirmation of permit history, or that was issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 2009 and thereafter, in compliance with the ownership restrictions in paragraph (h)(3)(i)(A) of this section, is eligible to renew such permits(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permit or confirmations of permit history will result in the 2.5-

percent IFQ cap restriction being exceeded.

\* \* \* \* \*

(4) *IFQ cost recovery.* A fee, not to exceed 3 percent of the ex-vessel value of IFQ scallops 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)(4), 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 the fee for all of its vessels' IFQ scallop landings, and shall be responsible for submitting this payment to NMFS once per year. The cost recovery fee for all landings, regardless of ownership changes throughout the fishing year, shall be the responsibility of the official owner of the vessel, as recorded in the vessel permit or confirmation of permit history file, at the time the bill is sent.

\* \* \* \* \*

(5) \* \* \*

(ii) *Permanent IFQ transfers.* Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel not issued a limited access scallop permit may transfer IFQ permanently to or from another IFQ scallop vessel. Any such transfer cannot be limited in duration and is permanent, unless the IFQ is subsequently transferred to another IFQ scallop vessel, other than the originating IFQ scallop vessel, in a subsequent fishing year. If a vessel permanently transfers its entire IFQ to another vessel, the LAGC IFQ scallop permit shall remain valid on the transferring vessel, unless the owner of the transferring vessel cancels the IFQ scallop permit. Such cancellation shall be considered voluntary relinquishment of the IFQ permit, and the vessel shall be ineligible for an IFQ scallop permit unless it replaces another vessel that was issued an IFQ scallop permit. The Regional Administrator has final approval authority for all IFQ transfer requests.

(iii) *IFQ transfer restrictions.* The owner of an IFQ scallop vessel not issued a limited access scallop permit that has fished under its IFQ in a fishing year may not transfer that vessel's IFQ to another IFQ scallop vessel in the same fishing year. Requests for IFQ transfers cannot be less than 100 lb (46.4 kg), unless that value reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ

allocation. IFQ can be transferred only once during a given fishing year. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2.5 percent of the TAC allocated to IFQ scallop vessels. A transfer of an IFQ, whether temporary or permanent, may not result in the transferee having a total ownership of, or interest in, general category scallop allocation that exceeds 5 percent of the TAC allocated to IFQ scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not transfer to or receive IFQ from another IFQ scallop vessel.

(iv) *Application for an IFQ transfer.* The owners of vessels applying for a transfer of IFQ must submit a completed application form obtained from the Regional Administrator. The application must be signed by both parties (transferor and transferee) involved in the transfer of the IFQ, and must be submitted to the NMFS Northeast Regional Office at least 30 days before the date on which the applicants desire to have the IFQ effective on the receiving vessel. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time during the scallop fishing year, provided the vessel transferring the IFQ to another vessel has not utilized any of its own IFQ in that fishing year. Applications for temporary transfers received less than 45 days prior to the end of the fishing year may not be processed in time for a vessel to utilize the transferred IFQ prior to the expiration of the fishing year for which the IFQ transfer, if approved, would be effective.

(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 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.

(B) *Approval of IFQ transfer applications.* Unless an application to transfer IFQ is denied according to paragraph (h)(5)(iii)(C) of this section, the Regional Administrator shall issue confirmation of application approval to both parties involved in the transfer within 30 days of receipt of an application.

(C) *Denial of transfer application.* The Regional Administrator may reject an application to transfer IFQ for any of the following reasons: The application is incomplete; the transferor or transferee does not possess a valid limited access general category permit; the transferor's vessel has fished under its IFQ prior to the completion of the transfer request; the transferor's or transferee's vessel or IFQ scallop permit has been sanctioned, pursuant to a final administrative decision or settlement of an enforcement proceeding; the transfer will result in the transferee's vessel having an allocation that exceeds 2.5 percent of the TAC allocated to IFQ scallop vessels; the transfer will result in the transferee having a total ownership of, or interest in, a general category scallop allocation that exceeds 5 percent of the TAC allocated to IFQ scallop vessels; or any other failure to meet the requirements of the regulations in 50 CFR part 648. Upon denial of an application to transfer IFQ, the Regional Administrator shall send a letter to the applicants describing the reason(s) for the rejection. The decision by the Regional Administrator is the final agency decision, and there is no opportunity to appeal the Regional Administrator's decision. An application that was denied can be resubmitted if the discrepancy(ies) that resulted in denial are resolved.

\* \* \* \* \*

**§ 648.58 [Amended]**

- 4. In § 648.58, paragraph (a) is removed and reserved.
- 5. In § 648.59:
  - a. Paragraphs (a)(4) and (c)(1) are removed and reserved;
  - b. The introductory text in paragraphs (b) and (c) are revised; and
  - c. Paragraphs (a)(1), (a)(3), (b)(1), (b)(2), (b)(5)(i), (b)(5)(ii)(A), (b)(5)(ii)(B), (c)(2), (c)(5)(i), (c)(5)(ii)(A), (d)(1), (d)(2), (d)(5)(i), (d)(5)(ii)(A), (d)(5)(ii)(B), and (e) are revised to read as follows.

**§ 648.59 Sea Scallop Access Areas.**

- (a) \* \* \*
- (1) From March 1, 2011, through February 28, 2014 (i.e., fishing years 2011 through 2013), 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. The Delmarva Scallop Access Area schedule and TACs specified in paragraph (a)(3) of this section for fishing year 2013 are default measures and subject to change through a future framework adjustment.

\* \* \* \* \*

(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)(ii), or unless the vessel is taking a compensation trip for a prior Delmarva Access Area trip that was terminated early, as specified in § 648.60(c). Additionally, limited access full-time and part-time scallop vessels are restricted in the number of trips that may be taken from June 15 through October 31, as specified in § 648.60(a)(3)(i)(B)(4) and (a)(3)(i)(C)(4). 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 paragraph (a)(5)(i) of this section. The Delmarva Access Area scallop TACs for limited access scallop vessels are 5,886,000 lb (2,670 mt) in fishing year 2011, and 2,943,000 lb (1,335 mt) in fishing years 2012 and 2013.

(ii) *LAGC IFQ scallop vessels.—(A)* The percentage of the Delmarva Access Area TAC to be allocated to LAGC IFQ scallop vessels shall be specified in paragraph (a)(4)(ii)(A) of this section through the framework adjustment process, and shall determine the number of trips allocated to LAGC IFQ scallop vessels as specified in paragraph (a)(4)(ii)(B) of this section. LAGC IFQ vessels will be allocated 355,900 lb (161 mt) in fishing year 2011, 177,490 lb (81 mt) in fishing year 2012, and 178,600 lb (81 mt) in fishing year 2013, which represent 5.5 percent of the Delmarva Access Area TACs for each fishing year. This TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit.

(B) Based on the TAC specified in paragraph (a)(4)(ii)(A) of this section,

LAGC scallop vessels are allocated 593 trips in fishing year 2011, 296 trips in fishing year 2012, and 298 trips in fishing year 2013 to the Delmarva Access Area. This fleet-wide trip allocation applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Regional Administrator shall notify all LAGC IFQ scallop vessels of the date when the total number of trips have been, or are projected to be, taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). An LAGC IFQ 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 IFQ scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

(1) If the fleet-wide Delmarva Access Area trip allocation implemented by Framework 22 is exceeded in the 2011 fishing year, the fleet-wide Delmarva Access Area trip allocation in fishing year 2012 shall be reduced by the number of trips taken in excess of the amount specified in paragraph (a)(3)(ii)(B) of this section.

(2) [Reserved]

(C) Scallops landed by each LAGC IFQ vessel on a Delmarva Access Area trip shall be counted against that vessel's IFQ.

\* \* \* \* \*

(b) *Closed Area I Access Area*—(1) From March 1, 2013, through February 28, 2014 (i.e., fishing year 2013), vessels issued scallop permits may not fish for, possess, or land scallops in or from, the area known as the Closed Area I Access Area, described in paragraph (b)(3) of this section, unless transiting pursuant to paragraph (f) of this section. Vessels issued both a NE Multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided they comply with restrictions in paragraph (b)(5)(ii)(C) of this section. The Closed Area I Sea Scallop Access Area schedule and TACs specified in paragraph (b)(5) of this section for fishing year 2013 are default measures and subject to change through a future framework adjustment.

(2) From March 1, 2011, through February 28, 2013 (i.e., fishing years 2011 and 2012), subject to the seasonal restrictions specified in paragraph (b)(4) of this section, a vessel issued a scallop permit may fish for, possess, and land scallops in or from the area known as the Closed Area I Access Area,

described in paragraph (b)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

\* \* \* \* \*

(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, 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 paragraph (c)(5)(i) of this section. 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 shall be determined through the annual framework process and specified in this paragraph (b)(5)(i). The Closed Area I Access Area scallop TAC for limited access scallop vessels is 8,829,000 (4,005 mt) in fishing year 2011, and 2,943,000 lb (1,335 mt) in fishing year 2012. Closed Area I Access Area is closed to limited access vessels for the 2013 fishing year.

(ii) \* \* \*

(A) The percentage of the Closed Area I Access Area TAC to be allocated to LAGC scallop vessels shall be specified 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 TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. LAGC IFQ vessels will be allocated 533,850 lb (242 mt) in fishing year 2011, and 177,490 lb (81 mt) in fishing year 2012, which represent 5.5 percent of the Closed Area I Access Area TACs for each fishing year. This TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Closed Area I Access Area will be closed to LAGC IFQ vessels in fishing year 2013.

(B) Based on the TACs specified in paragraph (b)(5)(ii)(A) of this section,

LAGC IFQ vessels are allocated a total of 890 trips in fishing year 2011, and 296 trips in fishing year 2012 in the Closed Area I Access Area. No LAGC IFQ trips will be allocated in Closed Area I Access Area in fishing year 2013. The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips for the applicable fishing year have been, or are projected to be, taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). 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 after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

\* \* \* \* \*

(c) \* \* \*

(2) From March 1, 2011, through February 28, 2014 (i.e., fishing years 2011 through 2013), subject to the seasonal restrictions specified in paragraph (c)(4) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Closed Area II Sea Scallop Access Area, described in paragraph (c)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. The Closed Area II Sea Scallop Access Area schedule and TACs specified in paragraph (c)(5) of this section for fishing year 2013 are default measures and subject to change through a future framework adjustment.

\* \* \* \* \*

(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 Closed Area II Access Area scallop TACs for limited access scallop vessels are 2,943,000 lb (1,335 mt) in fishing year 2011 and 5,886,000 lb (2,670 mt) in fishing years 2012 and 2013.

(ii) \* \* \*

(A) The percentage of the total Closed Area II Access Area TAC to be allocated to LAGC IFQ scallop vessels shall be specified through the framework adjustment process and shall determine the number of trips allocated to IFQ LAGC scallop vessels as specified in paragraph (c)(5)(ii)(B) of this section. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits. The Closed Area II Access Area is closed to LAGC IFQ vessels in the 2011 through 2013 fishing years.

\* \* \* \* \*

(d) \* \* \*

(1) From March 1, 2011, through February 28, 2012 (i.e., fishing year 2011), vessels issued scallop permits may not fish for, possess, or land scallops in or from the area known as the Nantucket Lightship Access Area, described in paragraph (d)(3) of this section, unless transiting pursuant to paragraph (f) of this section. Vessels issued both a NE multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided they comply with restrictions in paragraph (d)(5)(ii)(C) of this section.

(2) From March 1, 2012, through February 28, 2014 (i.e., fishing years 2012 and 2013), subject to the seasonal restrictions specified in paragraph (d)(4) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Nantucket Lightship Sea Scallop Access Area, described in paragraph (d)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. The Nantucket Lightship Sea Scallop Access Area schedule and TACs specified in paragraph (d)(5) of this section for fishing year 2013 are default measures and subject to change through a future framework adjustment.

\* \* \* \* \*

(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 Nantucket Lightship Access Area scallop TACs for limited access scallop vessels are 2,943,000 lb (1,335 mt) in fishing year 2012, and 5,886,000 lb (2,670 mt) in fishing year 2013. The Nantucket Lightship Access Area will be closed to limited access vessels in fishing year 2011.

(A) A limited access vessel that uses a Nantucket Lightship Access Area trip in the 2011 fishing year prior to the implementation of Framework 22 shall have those pounds landed during that trip deducted from an access area trip allocation in fishing year 2012.

(B) [Reserved]

(ii) \* \* \*

(A) The percentage of the Nantucket Lightship Access Area TAC to be allocated to LAGC IFQ scallop vessels shall be specified through the framework adjustment process and shall determine the number of trips allocated to LAGC IFQ scallop vessels as specified in paragraph (d)(5)(ii)(B) of this section. The Nantucket Lightship Access Area will be closed to LAGC IFQ vessels in fishing year 2011. LAGC IFQ vessels are allocated 177,490 lb (81 mt) in fishing year 2012 and 357,200 lb (162 mt) in fishing year 2013, which represent 5.5 percent of the Nantucket Lightship Access Area TAC for each fishing year. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit.

(1) If LAGC IFQ vessels declare a trip into the Nantucket Lightship Access Area in the 2011 fishing year prior to the implementation of Framework 22 and the closure of the Nantucket Lightship Access Area in fishing year 2011, the number of LAGC IFQ trips that have been declared on which scallops have been landed shall be deducted from the total number of LAGC IFQ fleet-wide trips allocated in the Nantucket Lightship Access Area in fishing year 2012.

(2) [Reserved]

(B) Based on the TAC specified in paragraph (d)(5)(ii)(A) of this section, LAGC scallop vessels are allocated 296 trips in fishing year 2012, and 595 trips in fishing year 2013 to the Nantucket Lightship Access Area. This fleet-wide

trip allocation applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Regional Administrator shall notify all LAGC IFQ scallop vessels of the date when the total number of trips have been, or are projected to be, taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). Except as provided in paragraph (d)(5)(ii)(C) of this section, an LAGC IFQ 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 IFQ scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

\* \* \* \* \*

(e) *Hudson Canyon Sea Scallop Access Area.* (1) From March 1, 2011, through February 28, 2014 (i.e., fishing years 2011 through 2013), a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Hudson Canyon Sea Scallop Access Area, described in paragraph (e)(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. The Hudson Canyon Sea Scallop Access Area schedule and TACs specified in paragraph (e)(4) of this section for fishing year 2013 are default measures and subject to change through a future framework adjustment.

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

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

(3) [Reserved]

(4) *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 Hudson Canyon Sea Scallop Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Hudson Canyon Sea Scallop 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 Hudson Canyon Access Area trip that was terminated early, as specified in § 648.60(c). Additionally, limited access full-time and part-time scallop vessels are restricted in the number of trips that may be taken from June 15 through October 31, as specified in § 648.60(a)(3)(i)(B)(4) or § 648.60(a)(3)(i)(C)(4). The Hudson Canyon Access Area scallop TACs for limited access scallop vessels are 5,886,000 lb (2,670 mt) in fishing year 2011, and 8,829,000 lb (4,005 mt) in fishing years 2012 and 2013.

(ii) *LAGC IFQ scallop vessels.*—(A) The percentage of the Hudson Canyon Access Area TAC to be allocated to LAGC scallop vessels shall be specified through the framework adjustment process and shall determine the number of trips allocated to LAGC IFQ scallop vessels as specified in paragraph (e)(4)(ii)(B) of this section. LAGC IFQ vessels shall be allocated 355,900 lb (161 mt) in fishing year 2011, 532,460 lb (242 mt) in fishing year 2012, and 535,800 lb (243 mt) in fishing year 2013, which is 5.5 percent of the Hudson Canyon Access Area TAC for each fishing year. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit.

(B) Based on the TACs specified in paragraph (e)(4)(ii)(A) of this section, LAGC IFQ vessels are allocated a total of 593, 887, and 893 trips in the Hudson Canyon Access Area in fishing years 2011, 2012, and 2013, respectively. This fleet-wide trip allocation applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Regional Administrator shall notify all LAGC IFQ scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). An LAGC IFQ scallop vessel may not fish for, possess, or land sea scallops in or from the Hudson Canyon Access Area, or enter the Hudson Canyon Access Area on a declared LAGC IFQ scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

(C) Scallop landed by each LAGC IFQ vessel on a Hudson Canyon Access Area trip shall count against that vessel's IFQ.

6. In § 648.60, paragraphs (a)(3)(i), (a)(5)(i), (c)(5)(ii)(A), (c)(5)(v), (d)(1), the heading of paragraph (e), the introductory text of paragraph (e)(1), and paragraphs (e)(1)(ii), (e)(1)(iii), and (g)(1) are revised and paragraph (e)(1)(ii) is added 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, 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.

(B) *Full-time scallop vessels.* —(1) In fishing year 2011, each full-time vessel will have a total of four access area trips and is subject to the following seasonal trip restrictions specified in paragraph (a)(3)(i)(B)(4) of this section. All full-time scallop vessels will be allocated one trip in the Delmarva Access Area, one trip into the Hudson Canyon Access Area, and one trip into the Closed Area I Access Area. In addition, each vessel will receive either an additional trip into the Closed Area I Access Area or a trip into the Closed Area II Access Area. These allocations will be determined by the Regional Administrator through a random assignment and shall be made publically available on the Northeast Regional website prior to the start of the 2011 fishing year. The 2011 fishing year access area assignment will not be applicable to full-time vessels until the effective date of Framework 22 implementation. A full description of the random assignment process for FY 2011 is outlined in Section 2.4.2 of Framework 22 to the Scallop Fishery Management Plan.

(2) In fishing year 2012, each full-time vessel shall have a total of four access area trips and is subject to the following seasonal trip restrictions specified in paragraph (a)(3)(i)(B)(4) of this section. All full-time vessels shall receive one trip into the Closed Area II Access Area and one trip into the Hudson Canyon Access Area. Each vessel shall also

receive an additional two access area trips that must be allocated in one of the following combinations: One trip in the Closed Area I Access Area and one trip in the Nantucket Lightship Access Area; one trip in the Closed Area I Access Area and one additional trip in the Hudson Canyon Access Area; one trip in the Closed Area I Access Area and one trip in the Delmarva Access Area; one trip in the Nantucket Lightship Access Area and an additional trip in the Hudson Canyon Access Area; one trip in the Nantucket Lightship Access Area and one trip in the Delmarva Access Area; or an additional trip in the Hudson Canyon Access Area and one in the Delmarva Access Area. These allocations shall be determined by the Regional Administrator through a random assignment and shall be made publically available prior to the start of the 2012 fishing year. A full description of the random assignment process for FY 2012 is outlined in Section 2.4.2 of Framework 22 to the Scallop Fishery Management Plan.

(3) At the start of fishing year 2013, each full-time vessel shall have a total of four access area trips and are subject to the following seasonal trip restrictions specified in paragraph (a)(3)(i)(B)(4) of this section. The access area trip allocations for the 2013 fishing year are default allocations that are subject to change in a future framework adjustment. All full-time scallop vessels shall be allocated one trip in the Closed Area II Access Area, one trip in the Nantucket Lightship Access Area, and one trip in the Hudson Canyon Access Area. In addition, each vessel shall receive either an additional trip in the Hudson Canyon Access Area or in the Delmarva Access Area. These allocations shall be determined by the Regional Administrator through a random assignment and will be made publically available prior to the start of the 2013 fishing year. A full description of the random assignment process for FY 2013 is outlined in Section 2.4.2 of Framework 22 to the Scallop Fishery Management Plan.

(4) A full-time scallop vessel may not fish for, possess, or retain more than a combined total of 18,000 lb (8,165 kg) of scallops during the period June 15 through October 31, the equivalent of one full trip possession limit specified in § 648.60(a)(5)(i), during this time period from the Delmarva and Hudson Canyon Access Areas specified in § 648.59(a) and (e). For example, a full-time vessel may possess or land up to 18,000 lb (8,165 kg) from the Hudson Canyon Access Area, up to 18,000 lb (8,165 kg) from the Delmarva Access Area, or up to 18,000 lb (8,165 kg)

combined from separate trips into each access area during June 15 through October 31. The remaining access area trips may be taken during the remainder of the fishing year. These possession and landing restrictions does not include the additional possession allowance to defray the cost of carrying an observer as specified in § 648.60(d) that occur during observed trips between June 15 through October 31. In addition, if the owner of a full-time vessel has exchanged a trip(s) with another vessel owner(s) so that the vessel has an allocation of four combined trips into the Delmarva and/or Hudson Canyon Access Areas, that vessel may not fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg) of scallops, the equivalent of two full trip possession limits specified in § 648.60(a)(5)(i), during this time period from the Delmarva and/or Hudson Canyon Access Areas combined.

(i) If, prior to the implementation of Framework 22, a full-time vessel with less than four total Mid-Atlantic access trips possesses or lands more than 18,000 lb (8,165 kg) from declared access area trips into the Delmarva and Hudson Canyon Access Areas during June 15 through October 31 in fishing year 2011, that vessel shall not declare an access area trip in fishing year 2012 in the Mid-Atlantic during June 15 through October 31. Alternatively, a full-time vessel could account for the overage by exchanging trips with another vessel(s) so that it has an allocation of a total of four Mid-Atlantic trips and continue to fish up to a maximum of 36,000 lb (16,329 kg) (*i.e.*, the equivalent of two full-time limited access trips) through October 31, 2011.

(ii) [Reserved]

(C) *Part-time scallop vessels.* (1) For the 2011 fishing year, a part-time scallop vessel is allocated two trips that may be distributed between access areas as follows: Two trips in the Closed Area I Access Area; one trip in the Closed Area I Access Area and one trip in the Closed Area II Access Area; one trip in the Closed Area I Access Area and one trip in the Hudson Canyon Access Area; one trip in the Closed Area I Access Area and one trip in the Delmarva Access Area; one trip in the Closed Area II Access Area and one trip in the Hudson Canyon Access Area; one trip in the Closed Area II Access Area and one trip in the Delmarva Access Area; or one trip in the Hudson Canyon Access Area and one trip in the Delmarva Access Area. Part-time vessels are subject to the seasonal trip restrictions specified in paragraph (a)(3)(i)(C)(4) of this section.

(2) For the 2012 fishing year, a part-time scallop vessel is allocated two trips that may be distributed between access areas as follows: Two trips in the Hudson Canyon Access Area; one trip in the Closed Area I Access Area and one trip in the Nantucket Lightship Access Area; one trip in the Closed Area I Access Area and one trip in the Hudson Canyon Access Area; one trip in the Closed Area I Access Area and one trip in the Delmarva Access Area; one trip in the Nantucket Lightship Access Area and one trip in the Hudson Canyon Access Area; or one trip in the Hudson Canyon Access Area and one trip in the Delmarva Access Area. Part-time vessels are subject to the seasonal trip restrictions specified in paragraph (a)(3)(i)(C)(4) of this section.

(3) For the 2013 fishing year, a part-time scallop vessel is allocated two trips that may be distributed between access areas as follows: Two trips in the Hudson Canyon Access Area; one trip in the Closed Area II Access Area and one trip in the Nantucket Lightship Access Area; one trip in the Closed Area II Access Area and one trip in the Hudson Canyon Access Area; one trip in the Closed Area II Access Area and one trip in the Delmarva Access Area; one trip in the Nantucket Lightship Access Area and one trip in the Hudson Canyon Access Area; or one trip in the Hudson Canyon Access Area and one trip in the Delmarva Access Area. Part-time vessels are subject to the seasonal trip restrictions specified in paragraph (a)(3)(i)(C)(4) of this section. The access area trip allocations for the 2013 fishing year are default allocations and are subject to change in a future framework adjustment.

(4) A part-time scallop vessel may not fish for, possess, or retain more than a combined total of 14,400 lb (6,532 kg) of scallops, the equivalent of one full trip possession limit specified in § 648.60(a)(5)(i), during the period June 15 through October 31 from the Delmarva and Hudson Canyon Access Areas specified in § 648.59(a) and (e). For example, a part-time vessel may possess or land up to 14,400 lb (6,532 kg) from the Hudson Canyon Access Area, up to 14,400 lb (6,532 kg) from the Delmarva Access Area, or up to 14,400 lb (6,532 kg) combined from separate trips into each access area during June 15 through October 31. The remaining access area trips allocated to part-time vessels may be taken in the Hudson Canyon Access Area or Delmarva Access Area during the remainder of the

fishing year, or taken in a different access area during the period of June 15 through October 31. These possession and landing restrictions does not include the additional possession allowance to defray the cost of carrying an observer as specified in § 648.60(d) that occur during observed trips between June 15 through October 31.

(i) If, prior to the implementation of Framework 22, a part-time vessel possesses or lands more than 14,400 lb (6,532 kg) from declared access area trips into the Delmarva and Hudson Canyon Access Areas combined during June 15 through October 31 in fishing year 2011, that vessel shall not declare an access area trip in fishing year 2012 in the Mid-Atlantic during June 15 through October 31.

(ii) [Reserved]

(D) *Occasional scallop vessels.* (1) For the 2011 fishing year, an occasional scallop vessel may take one trip in the Closed Area I Access Area, or one trip in the Closed Area II Access Area, or one trip in the Hudson Canyon Access Area, or one trip in the Delmarva Access Area.

(2) For the 2012 fishing year, an occasional scallop vessel may take one trip in the Hudson Canyon Access Area, or one trip in the Closed Area I Access Area, or one trip in the Closed Area II Access Area, or one trip in the Nantucket Lightship Access Area, or one trip in the Delmarva Access Area.

(3) For the 2013 fishing year, an occasional scallop vessel may take one trip in the Hudson Canyon Access Area, or one trip in the Closed Area II Access Area, or one trip in the Nantucket Lightship Access Area, or one trip in the Delmarva Access Area. The access area trip allocations for the 2013 fishing year are default allocations and are subject to change in a future framework adjustment.

(E) [Reserved]

\* \* \* \* \*

(5) \* \* \*

(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). Full-time and part-time vessels shall not fish for, possess, or retain more than 18,000 lb (8,165 kg) and 14,400 lb (6,532 kg), respectively, of scallops from the Hudson Canyon and Delmarva Access Areas, combined, from trips taken between June 15 and October 31

(i.e., the equivalent of one full trip based on permit category). In addition, if the owner of a full-time vessel has exchanged a trip(s) with another vessel owner(s) so that the vessel has a total allocation of four combined trips into the Delmarva and/or Hudson Canyon Access Areas, that vessel may not fish for, possess, or retain more than a

combined total of 36,000 lb (16,329 kg) of scallops, the equivalent of two full trip possession limits specified in paragraph (a)(5)(i) of this section, during this time period from the Delmarva and/or Hudson Canyon Access Areas. These possession and landing restrictions do not include the additional possession allowance to defray the cost of carrying

an observer as specified in paragraph (d) of this section that occur during observed trips between June 15 and October 31. No vessel declared into the Access Areas as described in § 648.59(a) through (e) may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Access Areas described in § 648.59(a) through (e).

Fishing year	Permit category possession limit		
	Full-time	Part-time	Occasional
2010 .....	18,000 lb (8,165 kg)	14,400 lb (6,532 kg)	6,000 lb (2,722 kg)
2012 .....	18,000 lb (8,165 kg)	14,400 lb (6,532 kg)	6,000 lb (2,722 kg)
2013 .....	18,000 lb (8,165 kg)	14,400 lb (6,532 kg)	6,000 lb (2,722 kg)

- \* \* \* \* \*
- (c) \* \* \*
- (5) \* \* \*
- (ii) \* \* \*

(A) Pursuant to paragraphs (a)(3)(i)(B)(4) or (a)(3)(i)(C)(4) of this section, a full-time or part-time vessel may not take a compensation trip based on a single or multiple terminated trip(s) during the period June 15 through October 31 if the compensation trip would allow a vessel to land more than 18,000 lb (8,165 kg) or 14,400 lb (6,532 kg) (i.e., the equivalent of one full access area trip), respectively, during the period June 15 through October 31, in the Hudson Canyon Access Area and Delmarva Access Area combined. For example, a vessel that terminated a trip in the Delmarva Access Area on June 1, 2011, and intends to declare two full trips in the Hudson Canyon Access Area from June 15 through October 31, must wait to fish its compensation trip in the Delmarva Access Area until on or after November 1, 2011. If the owner of a full-time vessel has exchanged a trip(s) with another vessel owner(s) so that the vessel has an allocation of four combined trips into the Delmarva and/or Hudson Canyon Access Areas, that vessel may not fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg) of scallops, the equivalent of two full trip possession limits specified in paragraph 648.60(a)(5)(i) of this section, during this time period from the Delmarva and/or Hudson Canyon Access Areas.

(v) *Additional compensation trip carryover.* If an Access Area trip conducted during the last 60 days of the open period or season for the Access Area is terminated before catching the allowed possession limit, and the requirements of paragraph (c) of this section are met, the vessel operator shall be authorized to fish an additional trip as compensation for the terminated trip

in the following fishing year. The vessel owner/operator must take such additional compensation trips, complying with the trip notification procedures specified in paragraph (a)(2)(iii) of this section, within the first 60 days of that fishing year the Access Area first opens in the subsequent fishing year. For example, a vessel that terminates a Delmarva Access Area trip on December 29, 2011, must declare that it is beginning its additional compensation trip during the first 60 days that the Delmarva Access Area is open (March 1, 2012, through April 29, 2012). If an Access Area is not open in the subsequent fishing year, then the additional compensation trip authorization would expire at the end of the Access Area Season in which the trip was broken. For example, a vessel that terminates a Closed Area I trip on December 10, 2012, may not carry its additional compensation trip into the 2013 fishing year because Closed Area I is not open during the 2013 fishing year, and must complete any compensation trip by January 31, 2013.

- (d) \* \* \*
- (1) *Observer set-aside limits by area—*
  - (i) *Nantucket Lightship Access Area.* For the 2012 and 2013 fishing years, the observer set-asides for the Nantucket Lightship Access Area are 36,000 lb (16 mt) and 84,450 lb (38 mt), respectively.
  - (ii) *Closed Area I Access Area.* For the 2011 and 2012 fishing years, the observer set-asides for the Closed Area I Access Area are 111,540 lb (51 mt) and 36,000 lb (316 mt), respectively.
  - (iii) *Closed Area II Access Area.* For the 2011, 2012, and 2013 fishing years, the observer set-aside for the Closed Area II Access Area are 35,060 lb (16 mt), 67,890 lb (31 mt), and 79,600 lb (36 mt), respectively.

(iv) *Delmarva Access Area.* For the 2011, 2012, and 2013 fishing years, the observer set-aside for the Delmarva Access Area are 74,360 lb (34 mt),

36,000 lb (316 mt), and 42,230 lb (19 mt), respectively.  
 (v) *Hudson Canyon Access Area.* For the 2011, 2012, and 2013 fishing years, the observer set-aside for the Hudson Canyon Access Area are 74,360 lb (34 mt), 107,980 lb (49 mt), and 126,680 lb (57 mt), respectively.

- \* \* \* \* \*
- (e) *Sea Scallop Research in Access Areas*
  - (1) *Access Areas available for harvest of research set-aside (RSA).* RSA may be harvested in any access area that is open in a given fishing year, as specified through a framework adjustment and pursuant to § 648.56. The amount of pounds that can be harvested in each access area by vessels participating in approved RSA projects shall be determined through the RSA application review and approval process. The access areas open for RSA harvest for fishing years 2011 through 2013 are:
    - (i) *2011:* Delmarva Access Area, Hudson Canyon Access Area, Closed Area I Access Area, and Closed Area II Access Area.
    - (ii) *2012:* Delmarva Access Area, Hudson Canyon Access Area, Closed Area I Access Area, Closed Area II Access Area, and Nantucket Lightship Access Area.
    - (iii) *2013:* Delmarva Access Area, Hudson Canyon Access Area, Nantucket Lightship Access Area, and Closed Area II Access Area.

(f) \* \* \* \* \*

- (g) \* \* \*
- (1) An LAGC scallop vessel may only fish in the scallop access areas specified in § 648.59(a) through (e), subject to the seasonal restrictions specified in § 648.59(b)(4), (c)(4), and (d)(4), and subject to the possession limit specified in § 648.52(a), and provided the vessel complies with the requirements specified in paragraphs (a)(1), (a)(2), (a)(6) through (a)(9), (d), (e), (f), and (g)

of this section, and § 648.85(c)(3)(ii). A vessel issued both a NE Multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the Closed Area I, Closed Area II, and Nantucket Lightship Sea Scallop Access Areas specified in § 648.59(b) through (d), provided the vessel complies with the requirements specified in § 648.59(b)(5)(ii), (c)(5)(ii), and (d)(5)(ii), and this paragraph (g), but may not fish for, possess, or land scallops on such trips.

\* \* \* \* \*

7. 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 annual hard TACs.* The annual hard TAC for the NGOM is 70,000 lb (31.8 mt) for the 2011, 2012, and 2013 fishing years. The NGOM TAC for the 2013 fishing year is a default allocation and is subject to change in a future framework adjustment.

\* \* \* \* \*

[FR Doc. 2011-10334 Filed 4-28-11; 8:45 am]

BILLING CODE 3510-22-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No.101102552-1232-01]

RIN 0648-BA35

**Fisheries Off West Coast States; Highly Migratory Species Fisheries; Annual Catch Limits and Accountability Measures**

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

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

**SUMMARY:** NMFS proposes regulations under authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to implement Amendment 2 to the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) which is currently under review by NMFS. The proposed rule would change the suite of management unit species, modify the process for revising numerical estimates of maximum sustainable yield and optimal

yield, and specify status determination criteria so that overfishing and overfished determinations can be made for all management unit species. The proposed rule is necessary to ensure that the HMS FMP is consistent with the objectives of National Standard 1 in the MSA. National Standard 1 mandates that "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry."

**DATES:** Comments must be received by May 31, 2011.

**ADDRESSES:** You may submit comments on this proposed rule, identified by 0648-BA35, the draft environmental assessment (EA), and the regulatory impact review (RIR) prepared for the proposed rule by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

- *Fax:* (562) 980-4047.

Instructions: All comments received are part of the public record and generally will be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (if submitting comments via the Federal e-Rulemaking portal, enter "N/A" in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only. Copies of the draft EA and RIR prepared for this proposed rule are available at <http://swr.nmfs.noaa.gov/> or may be obtained from Rodney R. McInnis (see **ADDRESSES**).

**FOR FURTHER INFORMATION CONTACT:** Craig Heberer, Sustainable Fisheries Division, NMFS, 760-431-9440, ext. 303.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This proposed rule is also accessible at (<http://swr.nmfs.noaa.gov/>). An electronic copy of the current HMS FMP and accompanying appendices, including Amendment 1, are available on the Pacific Fishery Management

Council's Web site at <http://www.pcouncil.org/hms/hmsfmp.html>.

The HMS FMP was developed by the Pacific Fishery Management Council (Council) in response to the need to coordinate state, Federal, and international management of HMS stocks. The management unit in the FMP consists of several highly migratory species (tunas, billfish, and sharks) that occur within the West Coast (California, Oregon, and Washington) Exclusive Economic Zone (EEZ) and to a limited extent on adjacent high seas waters. The National Marine Fisheries Service (NMFS), on behalf of the U.S. Secretary of Commerce, partially approved the HMS FMP on February 4, 2004. The majority of HMS FMP implementing regulations became effective on April 7, 2004. Reporting and recordkeeping provisions became effective on February 10, 2005.

On June 7, 2007, NMFS approved Amendment 1 to the HMS FMP to incorporate recommended international measures to end overfishing of the Pacific stock of bigeye tuna (*Thunnus obesus*) in response to formal notification from NMFS that overfishing was occurring on this stock. Amendment 1 also served as a means to substantially reorganize the original combined FMP and Final Environmental Impact Statement, published in August 2003. NMFS implements the Council's recommended management measures through the Federal regulatory process.

In June 2010, the Council took final action to recommend Amendment 2 to the HMS FMP, which would address statutory requirements of the MSA National Standard Guidelines in regard to the establishment of annual catch limits (ACLs) and accountability measures (AMs). This proposed rule to implement Amendment 2 would reduce the number of HMS FMP Management Unit Species (MUS) listed in 50 CFR part 660 from 13 to 11. The Council has recommended that all 11 MUS should be deemed to fall under the international exemption for setting ACLs and AMs as outlined in the revised MSA National Standard 1 (NS1) Guidelines described in detail below, and therefore the Council has not proposed implementing regulations for ACLs and AMs. The proposed rule would also modify the process for revising and seeking NMFS approval for numerical estimates of maximum sustainable yield (MSY) and optimal yield (OY) and to specify status determination criteria (SDC) so that overfishing and overfished determinations can be made for all MUS stocks.