

**§ 622.43 Commercial trip limits.**

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(b) *Gray triggerfish*. Until the commercial ACT (commercial quota) specified in § 622.39(a)(1)(vi) is reached—12 fish. See § 622.39(b) for the limitations regarding gray triggerfish after the commercial ACT (commercial quota) is reached.

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

[Docket No. 121129661-3389-02]

RIN 0648-BC81

**Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery and Northeast Multispecies Fishery; Framework Adjustment 24 and Framework Adjustment 49**

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

**ACTION:** Final rule.

**SUMMARY:** This action approves and implements Framework Adjustment 24 to the Atlantic Sea Scallop Fishery Management Plan (Framework 24) and Framework Adjustment 49 to the Northeast Multispecies Fishery Management Plan (Framework 49), which the New England Fishery Management Council (Council) adopted and submitted to NMFS for approval. Framework 24 sets specifications for the Atlantic sea scallop fishery for the 2013 fishing year, including days-at-sea allocations, individual fishing quotas, and sea scallop access area trip allocations. This action also sets default fishing year 2014 specifications, in case the New England Fishery Management Council delays the development of the next framework, resulting in implementation after the March 1, 2014, start of the 2014 fishing year, and transitional measures are needed. In addition, Framework 24 adjusts the Georges Bank scallop access area seasonal closure schedules, and because that changes exemptions to areas closed to fishing specified in the Northeast Multispecies Fishery Management Plan, Framework 24 must be a joint action with that plan (Framework 49). Framework 24 also continues the closures of the Delmarva and Elephant Trunk scallop access areas, refines the

management of yellowtail flounder accountability measures in the scallop fishery, makes adjustments to the industry-funded observer program, and provides more flexibility in the management of the individual fishing quota program.

**DATES:** Effective May 20, 2013, except for the amendment to § 648.58(b), which is effective May 9, 2013.

**ADDRESSES:** The New England Fishery Management Council developed an environmental assessment (EA) for this action that describes the action and other considered alternatives, and provides a thorough analysis of the impacts of these final measures and alternatives. Copies of the Joint Frameworks, the EA, and the Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Thomas Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The EA/IRFA is also accessible via the Internet at <http://www.nefmc.org/scallops/index.html>.

Copies of the small entity compliance guide are available from John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930-2298, or available on the Internet at <http://www.nero.noaa.gov/nr/>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the Regional Administrator, at the address above, and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395-7285.

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

**SUPPLEMENTARY INFORMATION:****Background**

The management unit of the Atlantic sea scallop fishery (scallop) ranges from the shorelines of Maine through North Carolina to the outer boundary of the Exclusive Economic Zone. The Atlantic Sea Scallop Fishery Management Plan (Scallop FMP), first established in 1982, includes a number of amendments and framework adjustments that have revised and refined the fishery's management. The Council sets scallop fishery specifications through framework adjustments that occur annually or biennially. This action includes allocations for fishing year (FY) 2013, as well as other scallop fishery management measures.

The Council adopted Framework 24/ Framework 49 on November 15, 2012,

initially submitted it to NMFS on January 22, 2013, for review and approval, and submitted a revised final framework document on February 15, 2013. This action is a joint framework with the Northeast (NE) Multispecies FMP because it includes a single measure that adjusts the Georges Bank scallop access area seasonal closure schedules, thus changing exemptions to areas closed to fishing specified in the NE Multispecies FMP. However, the majority of measures contained within this action are specific to the Scallop FMP and, as such, this final rule refers to this action primarily as Framework 24, unless otherwise noted. Framework 24 specifies measures for FY 2013, but includes FY 2014 measures that will go into place as a default, should the next specifications-setting framework be delayed beyond the start of FY 2014. NMFS is implementing Framework 24 after the start of FY 2013; FY 2013 default measures have been in place since March 1, 2013. Because some of the FY 2013 default allocations are higher than what are set under Framework 24, the Council included "payback" measures, which are identified and described below, to address unintended consequences of the late implementation of this action. This action includes some measures that are not explicitly in Framework 24, but NMFS is approving them under the authority of section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), which provides that the Secretary of Commerce 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 late implementation of this action, as well as to clarify implied measures that may not have been explicitly included in Framework 24. The Council reviewed Framework 24 proposed rule regulations as drafted by NMFS, and deemed them to be necessary and appropriate as specified in section 303(c) of the MSA. The proposed rule for Framework 24 published in the **Federal Register** on March 15, 2013 (78 FR 16574), with a 15-day public comment period that ended April 1, 2013. NMFS received eight comments on the proposed measures.

The final Framework 24 management measures are described below. NMFS presented details concerning the Council's development of and rationale for these measures in the preamble of

the proposed rule and they are not repeated here.

*Specification of Scallop Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limits (ACLs), Annual Catch Targets (ACTs), and Set-asides for FY 2013 and Default Specifications for FY 2014*

The Council sets the OFL based on a fishing mortality rate (F) of 0.38, equivalent to the F threshold updated through the most recent scallop stock assessment. The Council sets the ABC and the equivalent total ACL for each FY based on an F of 0.32, which is the F associated with a 25-percent probability of exceeding the OFL. The Council's Scientific and Statistical Committee (SSC) recommended scallop fishery ABCs for FYs 2013 and 2014 of 46.3 M lb (21,004 mt) and 52.2 M lb (23,697 mt), respectively, after accounting for discards and incidental mortality. The SSC will reevaluate an ABC for FY 2014 in conjunction with the next biennial framework adjustment.

Table 1 outlines the various scallop fishery catch limits that are derived

from these ABC values. After deducting the incidental target total allowable catch (TAC) and the research and observer set-asides, the Council proportions the remaining ACL available to the fishery according to Amendment 11 to the Scallop FMP (Amendment 11; 72 FR 20090; April 14, 2008) fleet allocations, with 94.5 percent allocated to the limited access (LA) scallop fleet (i.e., the larger "trip boat" fleet), 5 percent allocated to the limited access general category (LAGC) individual fishing quota (IFQ) fleet (i.e., the smaller "day boat" 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 (76 FR 43746; July 21, 2011) specified 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. The sub-ACLs/ACTs for FYs 2013 and 2014 (default) do not include LAGC IFQ carryover, and NMFS recommends that the Council revisit its LAGC IFQ carryover policy and see what effect carryover has had on the IFQ fishery and if adjustments are necessary. NMFS believes it may be appropriate to consider a buffer between the LAGC sub-ACLs and sub-ACTs to incorporate annual carryover, similar to how the LA fishery's buffer operates. In FY 2011, the scallop fishery did not exceed its ABC/ACL. NMFS has not finished tallying the final FY 2012 landings, but based on data to date, NMFS does not expect that the scallop fishery exceeded its FY 2012 ABC/ACL.

For the LA fleet, the Council set 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 2013 AND 2014 FOR BOTH THE LA AND LAGC IFQ FLEETS

	2013	2014
OFL .....	31,555 mt ..... (69,566,867 lb)	31,110 mt ..... (68,585,801 lb)
ABC/ACL .....	21,004 mt ..... (46,305,894 lb)	23,697 mt ..... (52,242,952 lb)
Incidental TAC .....	22.7 mt ..... (50,000 lb) .....	22.7 mt ..... (50,000 lb)
Research Set-Aside (RSA) .....	567 mt ..... (1,250,000 lb) ...	567 mt ..... (1,250,000 lb)
Observer Set-aside (1 percent of ABC/ACL) .....	210 mt ..... (463,059 lb) .....	237 mt ..... (522,429 lb)
LA sub-ACL(94.5 percent of total ACL, after deducting set-asides and incidental catch) .....	19,093 mt ..... (42,092,979 lb)	21,612 mt ..... (47,647,385 lb)
LA sub-ACT (adjusted for management uncertainty) .....	15,324 mt ..... (33,783,637 lb)	15,428 mt ..... (34,012,918 lb)
LAGC IFQ sub-ACL (5.0 percent of total ACL, after deducting set-asides and incidental catch) .....	1,010 mt ..... (2,227,142 lb) ...	1,144 mt ..... (2,521,026 lb)
LAGC IFQ sub-ACL for vessels with LA scallop permits (0.5 percent of total ACL, after deducting set-asides and incidental catch).	101 mt ..... (222,714 lb) .....	114 mt ..... (252,103 lb)

These allocations do not account for any adjustments that NMFS would make year-to-year if annual landings exceeded the scallop fishery's ACLs, resulting in triggering accountability measures (AMs).

This action deducts 1.25 M lb (567 mt) of scallops annually for FYs 2013 and 2014 from the ABC and sets it aside as the Scallop RSA to fund scallop research and to compensate participating vessels through the sale of scallops harvested under RSA projects. Currently, vessels involved with FY 2013 RSA-funded projects can harvest RSA from open areas and from the

Hudson Canyon (HC) Access Area. Once this action is effective, these vessels will be able to harvest RSA from other access areas (i.e., Closed Area 1 (CA1), Closed Area 2 (CA2), and Nantucket Lightship (NLS)).

This action also removes 1 percent from the ABC and sets it aside for the industry-funded observer program to help defray the cost of carrying an observer. The observer set-aside for FYs 2013 and 2014 are 210 mt (463,059 lb) and 237 mt (522,429 lb), respectively.

*Open Area Days-at-Sea (DAS) Allocations*

This action implements vessel-specific DAS allocations for each of the three LA scallop DAS permit categories (i.e., full-time, part-time, and occasional) for FYs 2013 and 2014 (Table 2). FY 2014 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 2014, estimates that DAS should be less than currently projected.

**TABLE 2—SCALLOP OPEN AREA DAS ALLOCATIONS FOR FYS 2013 AND 2014**

Permit category	FY 2013	FY 2014
Full-Time .....	33	23
Part-Time .....	13	9
Occasional .....	3	2

Upon implementation of this action, the DAS allocations for full-time, part-time, and occasional vessels will increase from the allocations set at the start of FY 2013 (i.e., 26, 11, and 3 DAS, respectively), to the values assigned in Table 2.

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

Framework 24 closes both the Elephant Trunk (ET) area and the Delmarva Access Area (DMV) for FYS 2013 and 2014, continuing the current closures of these areas implemented through MSA emergency actions (77 FR 64915 (October 24, 2012) and 77 FR 73957 (December 12, 2012)). By closing the ET, this action effectively re-establishes the ET as a scallop access area for future controlled access.

For FY 2013, full-time LA vessels will receive two 13,000-lb (5,897-kg) access area trips. Each of these trips will take place in one of two access areas available for fishing (e.g., HC, NLS, CA1, and CA2), although the specific areas to which each vessel will have access will differ (Table 3).

**TABLE 3—TOTAL NUMBER OF FY 2013 FULL-TIME TRIPS BY ACCESS AREA**

Access area	Number of full-time vessel trips
HC .....	210
DMV .....	0
ET .....	0
CA1 .....	118
CA2 .....	182
NLS .....	116
Total .....	* 626

\* There are a total of 313 full-time vessels and each vessel will receive 2 trips.

Part-time vessels will receive one FY 2013 access area trip allocation in FY 2013 equivalent to 10,400 lb (4,717 kg), and vessels with limited access occasional permits will receive one 2,080-lb (943-kg) trip. These trips can be taken in any single access area that is open to the fishery for FY 2013 (i.e., all areas, except ET and DMV).

In order to preserve appropriate access area allocations, there will be no access area trips allocated under FY 2014 default measures. The next framework that would replace these FY 2014 default measures (i.e., Framework 25) would include the FY 2014 access area allocations based on updated scallop projections. If Framework 25 is delayed past March 1, 2014, scallop vessels would be restricted to fishing in open areas until final FY 2014 specifications are implemented.

However, vessels would be able to fish FY 2013 compensation trips in the access areas that were open in FY 2013 (e.g., HC, NLS, CA1, and CA2) for the first 60 days that those areas are open in FY 2014, or until Framework 25 is approved and implemented, whichever occurs first. Although the Council did not consider this detail in how FY 2013 compensation trips carried over into FY 2014 would be handled, NMFS specifies the measure under section 305(d) authority of the MSA to provide some level of flexibility to vessel owners at the start of FY 2014.

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 24 allocates “split-fleet” trips into certain access areas. Framework 24 randomly allocates two trips to each full-time vessel so that no full-time vessel has more than one trip in a given access area. In order to facilitate trading trips between vessels, NMFS has already specified the Framework 24 access area trip allocations for full-time vessels. These allocations are listed in Section 2.1.3 of the Framework 24 document (see ADDRESSES), as well as NMFS’s Web site. NMFS will update these preliminary allocations, with any changes in vessel ownership and/or vessel replacements prior to the effective date of this action.

Because these measures will be implemented after March 1, 2013, and the FY 2013 default access area allocations are inconsistent with Framework 24 allocations, it is possible that during the interim between the start of FY 2013 and the implementation of the proposed measures, a scallop vessel could take too many access area trips and/or land too many pounds of scallops. For example, when Framework 22 set the FY 2013 default allocations, it projected that more scallop biomass would be available to harvest than updated estimates indicate. As a result, the FY 2013 default access area allocations allow for a full-time vessel fish four access area trips at 18,000 lb (8,165 kg) a trip. Although vessels have

not been able to fish all four access area trips prior to Framework 24’s implementation because the Georges Bank access areas (i.e., CA1, CA2, and NLS) will not open until Framework 24 becomes effective, full-time vessels could fish one or two trips in HC. All full-time vessels have one HC trip, and half the full-time fleet has an additional HC trip under current measures. If all full-time vessels took their assigned HC trips prior to the implementation of Framework 24, up to 8.44 M lb (3,829 mt) of scallops could be harvested from HC, which is 5.71 M lb (2,591 mt) more than Framework 24 intends to remove from that area. Because HC has a large number of small scallops in the area, such a dramatic and unintended increase in fishing mortality in that area could have very negative impacts on the scallop resource and the future fishery. To avoid this overharvest and to prevent a FY 2013 ACL overage due to this discrepancy, the Council developed a “payback” measure for vessels that fish default FY 2013 allocations before Framework 24 is implemented to replace those measures. Specifically, if a vessel takes FY 2013 access area trips authorized by Framework 22, it will have to give up all FY 2013 access area trips authorized to that vessel under Framework 24, plus 12 FY 2013 open area DAS. However, vessels that take trips into HC at reduced possession limits (i.e., 13,000 lb; 5,897 kg) that are ultimately allocated those trips through Framework 24 will not be penalized if the trips are made before implementation of Framework 24. Examples on how these payback measures would be applied are available in the preamble to the proposed rule. NMFS has notified all limited access scallop permit holders of these potential payback provisions.

Although the Council did not discuss the payback measures for part-time and occasional vessels, there is still be the potential for those vessels to fish more scallops from HC than allocated under Framework 24. To make measures consistent with the full-time HC payback measures, NMFS specifies, under its MSA section 305(d) authority, similar payback measures for part-time and occasional vessels that are proportional to those specified by the Council for full-time vessels.

At the start of FY 2013 under default measures, part-time and occasional vessels have been allocated two trips at 14,400 lb (6,532 kg) and one trip at 6,000 lb (2,722 kg), respectively. These trips can be taken in any open area, and it is possible that some vessels may choose to take all their access area trips in HC at the start of the FY, rather than

wait for Framework 24's implementation, which allocates one trip at 10,400 lb (4,717 kg) for part-time vessels and one trip at 2,080 lb (943 kg) for occasional vessels. If vessels choose to take a trip(s) into HC above their ultimate trip and possession limit specified under Framework 24, they will receive a reduced DAS allocation once Framework 24 is implemented. Proportionally similar to what is set for full-time vessels, part-time vessels would receive 5 fewer DAS (i.e., total FY 2013 allocation of 8 DAS, rather than 13 DAS) and occasional vessels would receive 1 less DAS (i.e., total FY 2013 allocation of 2 DAS, rather than 3 DAS).

This payback measure does not apply to carryover HC trips from FY 2012 (i.e., trips broken during the last 60 days of FY 2012).

This action also removes the measures that limit fishing effort in the Mid-Atlantic during times when sea turtle distribution overlaps with scallop fishing activity. As a result of the updated Biological Opinion, which includes updated reasonable and prudent measures, the Council is no longer required to develop those effort limitation measures through the specification-setting frameworks. Once Framework 24 is effective, the access area effort-limitation measures specified in Framework 22 will cease to exist.

#### LAGC Measures

1. *Sub-ACL for LAGC vessels with IFQ permits.* For LAGC vessels with IFQ permits, this action sets a 2,227,142-lb (1,010-mt) ACL for FY 2013 and an initial ACL of 2,521,026 lb (1,144 mt) for FY 2014 (Table 1). NMFS calculates IFQ allocations 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. Because Framework 24 will not go into effect until after the March 1 start of FY 2013, the default FY 2013 IFQ allocations, which are higher than those specified in Framework 24, have rolled over until Framework 24 is implemented. It is possible that scallop vessels could exceed their Framework 24 IFQ allocations during this interim period between March 1, 2013, and NMFS's implementation of the IFQ allocations in Framework 24. Therefore, Framework 24 specifies the following payback measure for LAGC IFQ vessels: If a vessel transfers (i.e., temporary lease or permanent transfer) all of its allocation to other vessels prior to Framework 24's implementation (i.e., transfers more than it is ultimately

allocated for FY 2013), the vessel(s) that transferred in the pounds will receive a pound-for-pound deduction in FY 2013 (not the vessel that leased out the IFQ). In situations where a vessel leases out its IFQ to multiple vessels, only the vessel(s) that, in turn, leased in quota resulting in an overage would have to pay back that quota. A vessel that incurs such an overage can either lease in more quota to make up for that overage during FY 2013, or will have that overage, along with any other overages incurred in FY 2013, applied against its FY 2014 IFQ allocation as part of the individual AM applied to the LAGC IFQ fleet. Examples on how these payback measures would be applied are available in the preamble to the proposed rule. As with the limited access scallop permit holders, LAGC permit holders have been notified of these potential payback provisions.

The onus is on the vessel owners to have a business plan to account for the mid-year adjustments in lieu of these payback measures. Prior to the start of FY 2013, NMFS sent a letter to IFQ permit holders providing both March 1, 2013, IFQ allocations and Framework 24 IFQ allocations so that vessel owners would know how much they could lease to avoid any overages incurred through leasing full allocations prior to the implementation of Framework 24.

2. *Sub-ACL for LA scallop vessels with IFQ permits.* For LA scallop vessels with IFQ permits, this action sets a 222,714-lb (101-mt) ACL for FY 2013 and an initial 252,103-lb (114-mt) ACL for FY 2014 (Table 1). NMFS calculates IFQ allocations 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.

If a vessel fishes all of the scallop IFQ it receives at the start of FY 2013, it would incur a pound-for-pound overage that would be applied against its FY 2014 IFQ allocation, along with any other overages incurred in FY 2013, as part of the individual AM applied to the LA vessels with LAGC IFQ permits. These vessels cannot participate in the IFQ transfer program, so leasing quota is not an option.

3. *LAGC IFQ trip allocations and possession limits for scallop access areas.* Table 4 outlines the total number of FY 2013 LAGC IFQ fleetwide access area trips. Once the total number of trips is projected to be fished, NMFS will close that access area to LAGC IFQ vessels for the remainder of FY 2013.

TABLE 4—LAGC FLEET-WIDE ACCESS AREA TRIP ALLOCATIONS FOR FY 2013

Access area	FY 2013
CA1 .....	212
CA2 .....	0
NLS .....	206
HC .....	317
ETA .....	0
DMV .....	0

In previous years, the Council did not allocate trips for LAGC IFQ vessels into CA2, because the Council and NMFS do not expect many of these vessels to fish in that area due to its distance from shore, and the total number of fleetwide trips only reflected 5.5 percent of each open access area. The Council specified in Framework 24 that 5.5 percent of the CA2 available TAC will be included in setting LAGC IFQ fleetwide access area trip allocations, essentially shifting those CA2 trips to other access areas closer to shore, so that LAGC IFQ vessels have the opportunity to harvest up to 5.5 percent of the overall access area TAC, not just that available in areas open to them. As a result, because the LAGC fishery could have been allocated 217 trips in CA2 in FY 2013 (i.e., 5.5 percent of CA2's TAC), those trips are divided equally among the other access areas, adding about 72 additional trips per area.

In order to preserve appropriate access area allocations, there will be no access area trips allocated to LAGC IFQ vessels under FY 2014 default measures. The next framework that would replace these FY 2014 default measures (i.e., Framework 25) would include the FY 2014 access area allocations based on updated scallop projections. If Framework 25 is delayed past March 1, 2014, LAGC IFQ scallop vessels will be restricted to fishing their IFQ allocations in open areas until final FY 2014 specifications are implemented.

4. *NGOM TAC.* This action sets a 70,000-lb (31,751-kg) annual NGOM TAC for FYs 2013 and 2014. The allocation for FY 2014 assumes that there are no overages in FY 2013, which would trigger a pound-for-pound deduction in FY 2014 to account for the overage.

5. *Scallop incidental catch target TAC.* This action sets a 50,000-lb (22,680-kg) scallop incidental catch target TAC for FYs 2013 and 2014 to account for mortality from this component of the fishery, and to ensure that F-targets are not exceeded.

*Adjustments to Georges Bank (GB) Access Area Closure Schedules*

Framework 24 adjusts the time of year when scallop vessels may fish in the GB access areas (CA1, CA2, and NLS). Because this changes exemptions to areas closed to fishing specified in the NE Multispecies FMP, this action is also a joint framework with that plan (Framework 49 to the NE Multispecies FMP). To date, vessels may fish in the areas from June 15 through January 31 and are prohibited from fishing in these areas from February 1 through June 14 of each FY. Framework 24 moves the CA2 closure to August 15–November 15, and eliminates the seasonal closures from CA1 and NLS. Once Framework 24 is effective, all access areas will open.

*Addition of LAGC Yellowtail Flounder (YTF) Accountability Measures (AMs)*

This action requires AMs for the LAGC fishery, one for the LAGC dredge fishery and the other for the LAGC trawl fishery in the Southern New England/Mid-Atlantic (SNE/MA) YTF stock area.

To date, the LAGC fishery does not have associated AMs for any overages to the YTF sub-ACLs, but the fleet is catching more YTF in the Southern New England/Mid-Atlantic (SNE/MA) YTF stock area than previously expected. The Council did not specify AMs for LAGC vessels in the GB YTF stock area because catch of YTF by these vessels is negligible.

For LAGC vessels that use dredges, if the SNE/MA YTF sub-ACL is exceeded and an AM is triggered for the LA scallop fishery, the LAGC dredge fishery will not have an AM triggered unless their estimated catch is more than 3 percent of the SNE/MA sub-ACL by the scallop fishery. AMs in SNE/MA will not trigger on this fishery if dredge vessels exceed 3 percent of the SNE/MA sub-ACL unless the total SNE/MA sub-ACL and SNE/MA ACL are exceeded. For example, if the total SNE/MA sub-ACL for the scallop fishery is 50 mt (110,231 lb) of YTF, and NMFS estimates that the LAGC dredge fishery will catch 1 mt (2,205 lb) of YTF, 2 percent of the SNE/MA sub-ACL, AMs

will not trigger for this fleet even if the total SNE/MA sub-ACL was exceeded and LA AMs were triggered. However, if the catch is more than 3 percent of the SNE/MA YTF sub-ACL (i.e., 1.5 mt (3,307 lb) of YTF), and both the overall scallop fishery’s YTF sub-ACL and the YTF LA AM is triggered, an AM will also trigger for the LAGC dredge fishery. The Council designed this threshold as a way to relieve the LAGC dredge fishery from AMs if they are triggered for LA vessels, since the YTF catch from the LAGC dredge segment of the fishery is such a small percentage of the total.

The AM closure area for LAGC dredge vessels is identical to that currently in place for the LA fishery (statistical areas 537, 539, and 613), but the closure schedule (based on the level of the YTF SNE/MA sub-ACL overage) differs. The Council developed a closure schedule that leaves some of the AM area open for parts of the year when traditional LAGC dredge fishing has occurred, but closes the areas during months when YTF bycatch is higher (Table 5).

TABLE 5—LAGC DREDGE FISHERY’S AM CLOSURE SCHEDULE FOR STATISTICAL AREAS 537, 539, AND 613

Overage	AM closure area and duration		
	539	537	613
2 percent or less .....	Mar–Apr .....	Mar–Apr .....	Mar–Apr.
2.1–7 percent .....	Mar–May, Feb .....	Mar–May, Feb .....	Mar–May, Feb.
7.1–12 percent .....	Mar–May, Dec–Feb .....	Mar–May, Dec–Feb .....	Mar–May, Feb.
12.1–16 percent .....	Mar–Jun, Nov–Feb .....	Mar–Jun, Nov–Feb .....	Mar–May, Feb.
16.1 percent or greater .....	All year .....	Mar–Jun, Nov–Feb .....	Mar–May, Feb.

For LAGC trawl vessels, the AM closure areas are statistical areas 612 and 613. The Council specified that the SNE/MA YTF AM for LAGC trawl vessels will trigger two different ways:

First, the AM will trigger if the estimated catch of SNE/MA YTF by the LAGC trawl fishery is more than 10 percent of the SNE/MA YTF sub-ACL for the scallop fishery. In this case, the AM closure season for LAGC trawl vessels will be March–June and again from December–February, a total of 7 months (i.e., the most restrictive closure in Table 6 below). For example, if the total scallop fishery SNE/MA YTF sub-ACL was 50 mt (2,205 lb), AMs will trigger for the LAGC trawl fishery if the estimated catch by that segment is more than 5 mt (11,023 lb), 10 percent of the SNE/MA YTF sub-ACL for the scallop fishery for that FY. Because the LAGC trawl fishery will meet the 10-percent threshold, based on the example above, the AM will be a 7-month closure of statistical areas 612 and 613, regardless of whether or not the scallop fishery’s

SNE/MA YTF sub-ACL was triggered. This measure is more restrictive than what the Council specified for LAGC dredge vessels, because the LAGC trawl fishery is catching much more SNE/MA YTF than anticipated (i.e., in FY 2012, NMFS estimated that the LAGC trawl fishery caught 22.5 percent of the total SNE/MA YTF sub-ACL, and the LAGC dredge fishery only caught 1.5 percent).

Second, if the scallop fishery exceeds its SNE/MA sub-ACL overall, and total SNE/MA YTF ACL is exceeded, triggering AMs in the LA fleet, LAGC trawl vessels will be subject to their AM closure, with the length of the closure based on the extent of the YTF SNE/MA sub-ACL overage of the entire scallop fishery (See Table 6). Continuing the example above, if the scallop fishery exceeds its 50-mt YTF SNE/MA sub-ACL and the LA AM is triggered, and the LAGC trawl portion of the scallop fishery catches an estimated 2 mt (i.e., less than the 10-percent threshold), LAGC vessels will be prohibited from using trawl gear in statistical areas 612

and 613 from March through April of a following FY, based on Table 6 (See the “Modification to the Timing of YTF AM Implementation” section below for more information on when AMs will be triggered for the scallop fishery overall).

If both of these caveats are triggered (i.e., the trawl fishery catches more than 10 percent of the total SNE/MA YTF sub-ACL and the overall SNE/MA YTF sub-ACL is exceeded, triggering AMs for the LA scallop fishery), the most restrictive AM applies (i.e., the 7-month closure from March–June, and December–February).

In order to reduce the economic impacts on this fleet, vessels may fish in the AM area during the months of July through November to enable LAGC trawl vessels to fish for scallops in that area during part of the year that they have historically fished (i.e., summer and fall). In addition, if the LAGC trawl AM is triggered, a trawl vessel could still covert to dredge gear and continue fishing for scallops. If a vessel chooses to switch gears, it must follow all dredge gear regulations, including that fishery’s

AM schedule if it has also been triggered.

**TABLE 6—LAGC TRAWL FISHERY'S AM CLOSURE SCHEDULE FOR STATISTICAL AREAS 612 AND 613**

Overage	AM Closure
2 percent or less .....	Mar–Apr.
2.1–3 percent .....	Mar–Apr, and Feb.
3.1–7 percent .....	Mar–May, and Feb.
7.1–9 percent .....	Mar–May, and Jan–Feb.
9.1–12 percent .....	Mar–May, and Dec–Feb.
12.1 or greater .....	Mar–June, and Dec–Feb.

*Modification to the Timing of YTF AM Implementation*

Under current regulations, on or about January 15 of each FY, NMFS determines whether the scallop fishery is expected to exceed the YTF flounder sub-ACLs for that FY. This determination is based on a projection that includes assumptions of expected scallop catch for the remainder of the FY, as well as YTF bycatch rates from the previous year's observer data if those data for the current FY are not available. Before the start of the next FY, NMFS announces if AMs are triggered, based on the January projection, and predefined areas close to the limited access scallop fishery based on the AM schedule in Framework 23 (77 FR 20728; April 6, 2012) and the AM trigger thresholds outlined in Framework 47 to the NE Multispecies FMP (Groundfish Framework 47) (77 FR 26104; May 2, 2012). Once all the data are available for the previous year (i.e., full FY scallop landings, full FY observer data), NMFS re-estimates YTF catch and, if the new estimate shows a different conclusion when compared to the sub-ACLs than the initial projection, could re-evaluate the decision to trigger AMs.

Because NMFS must determine whether or not the total YTF ACL has been exceeded before the end of the NE multispecies FY (April 30) when information on YTF catch is fully available, the preliminary determination to trigger an AM may be problematic. Moreover, administering this YTF AM is extremely complex and has resulted in continuously re-evaluating the AM determination, depending on data variability.

To streamline the process of implementing YTF AMs in the scallop fishery, and to alleviate industry confusion caused by preliminary determinations of the need to trigger an AM, Framework 24 specifies that the respective AM for each YTF stock area

will be implemented at the start of the next FY (i.e., the current way YTF AMs are to be triggered) only if reliable information is available that a YTF sub-ACL has been exceeded during a FY. This approach could be used in situations where the ACL for a stock is low, an overage is known early in the FY, and AM determinations are based on actual catch and landings rather than projections.

However, if reliable information is not available to make a mid-year determination of the need to implement an AM for the YTF sub-ACL, NMFS must wait until enough information is available (i.e., when the total observer and catch data is available for that FY for both the groundfish and scallop fisheries) before making a decision to implement an AM. Under this scenario, the AMs will be implemented in Year 3 (e.g., for an overage in FY 2013, the AM will be implemented in FY 2015).

*Additional Flexibility for the LAGC IFQ Leasing Program*

At the request of the LAGC IFQ fleet, the Council developed measures that provide more flexibility to the LAGC IFQ leasing program by allowing transfer of quota after an LAGC IFQ vessel landed scallops in a given FY and will allow IFQ to be transferred more than once, or “re-transferred”. In the proposed rule, NMFS referred to subsequent transfers as “sub-transfers”, but NMFS determined that the term “re-transfer” better describes the process. These provisions do not apply to vessels that have both an LAGC IFQ and LA scallop permit. Those vessels are prohibited from leasing or permanently transferring LAGC IFQ.

Currently, an IFQ vessel is not allowed to transfer IFQ to another vessel for the remainder of a FY if it has already landed part of its scallop IFQ for that year. This restriction was part of the original design of the scallop IFQ program implemented through Amendment 11. At the time, because the IFQ program was new, Amendment 11 limited the IFQ transfer program this way in order to avoid potential administrative mistakes related to the accounting of IFQ scallop landings. Because the Council has determined that this restriction unnecessarily hinders flexibility in the LAGC fishery, this action removes this prohibition, allowing a vessel to utilize its IFQ throughout the FY. For example, if an IFQ vessel that has a base allocation of 10,000 lb (4,536 kg) only lands 2,000 lb (907 kg) before deciding to stop fishing for scallops for the remainder of the year, the vessel will now be able to transfer (temporarily or permanently) its

remaining 8,000 lb (3,629 kg) of scallops to other IFQ vessels during the FY. NMFS will implement this provision along with other Framework 24 measures upon this action's effective date.

Currently, IFQ can only be transferred once during a FY, a restriction that was also part of the original design of the scallop IFQ program implemented through Amendment 11. For similar reasons as those stated above, Amendment 11 limited the IFQ transfer program this way in order to avoid too much complexity and potential administrative mistakes related to multiple transfers to and from multiple vessels. This action changes that restriction by enabling an IFQ vessel to re-transfer IFQ that it received through a previous transfer to another IFQ vessel or vessels during the same fishing year to allow for more flexibility in managing IFQs.

Because re-transfers will add more complexity to IFQ monitoring, and because NMFS is currently making a number of programming changes to the databases to improve monitoring in this fishery, NMFS cannot make the full suite of necessary changes upon the effective date of the final rule. Instead, NMFS will implement this re-transfer allowance in two stages. Upon the effective date of this final rule, vessels will be able to permanently transfer in IFQ and then temporarily re-transfer (i.e., lease out) that IFQ to another vessel(s) within the same fishing year. The proposed rule proposed to delay implementation of this provision for a year to allow time for programming changes to account for these transfers. Upon further consideration, however, because this is a relatively minor adjustment to how NMFS monitors the fishery, and does not involve extensive programming changes, NMFS is able to implement this portion of the measure along with other Framework 24 measures upon this action's effective date. Starting March 1, 2014, following the completion of other programming adjustments, vessels will also be able to re-transfer IFQ, both permanently and temporarily, that they obtained through a permanent or temporary transfer in the same fishing year. There is no limit on the number of times an IFQ may re-transferred in a given FY.

In order to process IFQ re-transfer applications, NMFS requires that both parties involved in a re-transferring request (i.e., the transferor and the transferee) must be up-to-date with their data reporting (i.e., all VMS catch reports, VTR, and dealer data must be up-to-date).

Because this action increases the complexity of NMFS IFQ monitoring, cost recovery fees will likely increase.

This action also requires adjustments to how NMFS applies scallop IFQ towards the ownership and vessel caps, which are held at 5 percent and 2.5 percent of the total LAGC IFQ sub-ACLs, respectively. Re-transfers complicate the ownership/vessel cap accounting, requiring stronger controls. To ensure accurate accounting and to avoid the potential for abuse of the IFQ cap restriction, all pounds that have been on a vessel during a given FY will be counted towards ownership or vessel caps, no matter how long the pounds were "on" the vessel (i.e., even if a vessel leases in 100 lb (45.4 kg) and transfers out those pounds 2 days later, those 100 lb (45.4 kg) will count towards the caps).

For example, Owner A has an IFQ permit on Vessel 1 with an allocation consisting of 2.5 percent of the total IFQ allocation and also has a permit on Vessel 2 with an allocation of 2.0 percent, for a total of 4.5 percent ownership of the total IFQ allocation. If Owner A leases an additional 0.5 percent to Vessel 2 and then re-leases that 0.5 percent to another vessel owned by a separate entity (Owner B), because those pounds were under the ownership of Owner A at one point during the given FY, he will still have reached his ownership cap, as well as the vessel caps for both vessels. As such, Owner A could continue to lease out (or permanently transfer) IFQ pounds to other owners, but could not transfer in any more IFQ until the next FY.

#### *Modifications to the Observer Set-Aside Program*

1. *Inclusion of LAGC open area trips into the industry-funded observer set-aside program.* Framework 24 expands the observer set-aside (OBS) program to include LAGC IFQ vessels in open areas in order to increase the amount of coverage of that fleet compared to current levels. Currently, if an LAGC IFQ vessel is required to carry an observer on an open area trip (i.e., a non-access area trip), NMFS covers the cost of that observer. All other scallop trips (LAGC trips in access areas, and LA trips in both open and access areas) are under the industry-funded scallop OBS program. Under the industry-funded OBS program, if a vessel is selected to carry an observer, the vessel is responsible to pay for that observer on that trip. The vessel is compensated from the OBS program in either additional pounds in access areas or DAS in open areas to help defray the cost of the observer.

In order to incorporate LAGC open area trips into the OBS Program, Framework 24 specifies that LAGC vessels will be compensated in a manner similar to how access area IFQ trips are handled: If an IFQ vessel is selected for an open area observed trip, that vessel will receive compensation of a certain number of pounds per trip. The exact compensation rate is determined by NMFS at the start of each FY. For the remainder of FY 2013, the compensation rate for LAGC open area IFQ trips will be 150 lb/trip (68 kg/trip), resulting in a coverage rate for LAGC open area trips of about 8 percent. If a vessel is selected for an open area trip, that vessel will receive a credit of 150 lb (68 kg) towards its IFQ account to account for the observer coverage, so long as the OBS set-aside has not been fully harvested. Those additional pounds can be fished on the observed IFQ trip above the regular possession limit, or can be fished on a subsequent trip that FY (but must be harvested within the current possession limit requirements if fished on a future trip).

The LAGC call-in requirements for open area trips are identical to those currently in place for LAGC IFQ access area trips: All LAGC vessels are required to call in to NMFS's Northeast Fisheries Observer Program weekly with their expected trip usage: Vessel operators must call by Thursday if they expect to make any open area (or access area) trips from Sunday through Saturday of the following week. Observer providers should charge LAGC IFQ vessels on open area trips in the same way that they charge LAGC access area trips: Providers should charge dock-to-dock, where a "day" is considered a 24-hr period, and portions of other days should be pro-rated at an hourly charge.

2. *Adjustments to applying the OBS TAC by area.* Framework 24 adjusts how the OBS is allocated (i.e., removing the need for it to be area-specific), in order to allow for more flexibility in adjusting compensation rates by area mid-year. One-percent of the total ACL for the scallop fishery is set aside annually to help compensate vessels for the cost of carrying an observer, and currently this amount is divided proportionally into access areas and open areas in order to set the compensation and coverage rates and monitor this set-aside harvest by area. These area-specific OBS allocations are then set in the regulations, along with all other specifications set through the framework process. If the set-aside for a given area is fully harvested, based on the TACs in the regulations, there is currently no mechanism to transfer OBS TAC from one area to another and, as a

result, any vessel with an observed trip in an area with no remaining OBS has to pay for the observer without compensation. Under the Framework 24 measure, although the specification-setting frameworks would still divide up the OBS proportionally by access and open areas in order to set the compensation and coverage rates and for monitoring purposes (i.e., in order to determine if fishing activity in one area is using up more of the set-aside compensation than anticipated when the compensation rate was set), these TACs will not be officially set in the regulations. Instead, set-aside can be transferred from one area to another, based on NMFS in-house area-level monitoring that determines whether one area will likely have excess set-aside while another may not. The set-aside will be considered completely harvested when the full 1 percent is landed, at which point there would be no more compensation for any observed scallop trip, regardless of area. NMFS will continue to proactively adjust compensation rates mid-year, if necessary, to minimize the chance that the set-aside will be harvested prior to the end of the FY. Allowing set-aside to be flexible by area will help reduce the chance that vessels would have to pay for observers without compensation when fishing in a given area.

#### *Other Clarifications and Modifications*

This rule includes several revisions to the regulations to address text that is duplicative and unnecessary, outdated, unclear, or which otherwise could be improved. NMFS sets these changes consistent with section 305(d) of the MSA. There are terms and cross references in the current regulations that are now inaccurate due to the regulatory adjustments made through past rulemakings (e.g., measures related to the YTF access area TACs are no longer necessary because Framework 47 to the NE Multispecies FMP removed those TACs in May 2012). NMFS revises the regulations to remove measures intended by previous rulemaking, and to provide more ease in locating these regulations by updating cross references.

This action also makes revisions that would clarify the intent of certain regulations. For example, NMFS clarifies the Turtle Deflector Dredge regulations at § 648.51 to more clearly indicate the gear requirements intended through Framework Adjustment 23 to the Scallop FMP (77 FR 20728; April 6, 2012). It came to NMFS's attention that some dredge manufacturers were building non-compliant TDDs, so the regulations were clarified to avoid

further confusion. For example, to assist with compliance, NMFS clarified where the flaring bar may be located along the dredge frame and clarified from where the 45 degree angle described at 648.51(b)(5)(ii)(A)(2) should be measured. NMFS considered comments from the Coast Guard in the final clarifications to the TDD regulations. Additionally, prohibitions in § 648.14 imply that vessels cannot land scallops up to the incidental scallop possession limit when declared out of the fishery and that IFQ vessels cannot land up to 600 lb (272 kg) of their IFQ scallops on NE multispecies, surfclam, ocean quahog, or other trip requiring a VMS declaration. This was not the intent of Amendment 11, and conflict with other regulations in part 648, subpart D. As such, NMFS clarifies these regulations. NMFS also adds more description to some access area and habitat closed area coordinates to clarify the boundaries of those areas.

### Comments and Responses

NMFS received seven comment letters in response to the proposed rule from: Congressman William R. Keating, the executive director of the Community Development Partnership (CDP) of Lower Cape Cod, an organization that promotes environmental and economic sustainability for the Lower Cape region of Massachusetts; the Cape Cod Commercial Hook Fishermen's Association (CCCHFA), writing on behalf of LAG IFQ fishermen residing on Cape Cod, Massachusetts; twelve other Cape Cod LAGC IFQ fishermen; and three individuals. Two relevant issues relating to the proposed Framework 24 measures were raised; responses are provided below. NMFS may only approve, disapprove, or partially approve measures in Framework 24, and cannot substantively amend, add, or delete measures beyond what is necessary under section 305(d) of the MSA to discharge its responsibility to carry out such measures.

*Comment 1:* One commenter stated that various FY 2014 scallop quotas should be reduced because they are too high, and suggested reductions from 3 percent to 52 percent. The commenter provided no rationale for why the selected quotas should be reduced in the manner suggested.

*Response:* The reasons presented by the Council and NMFS for recommending the quota allocations for FYs 2013 and 2014, which are discussed in the preambles to both the proposed and final rules, are based on the best scientific information available and are consistent with the control rules

outlined in Amendment 15's ACL process. Scallops are currently not considered overfished or subject to overfishing. Sufficient analysis and scientific justification for NMFS's action in this final rule are contained within the supporting documents. In addition, FY 2014 quotas represent default quotas that would be reconsidered by the Council in a future framework action.

*Comment 2:* NMFS received comment letters from Congressman Keating, the CDP, CCCHFA, twelve IFQ LAGC fishermen, and two individuals requesting that NMFS allow for a quicker implementation of the proposed re-transfer provisions, specifically for one type of LAGC IFQ re-transfer. During the development of Framework 24 and in the Framework 24 proposed rule, NMFS stated that due to the complexity of programming to account for re-transfers during the same fishing year, NMFS would be unable to implement re-transfer procedures until March 1, 2014. These commenters requested that NMFS allow at least the re-transfer of IFQ through a lease in the same fishing year after a sale of IFQ through a permanent transfer. In addition, the commenters stated that the Council was clear in its intent to allow this provision to be effective in FY 2013.

*Response:* NMFS disagrees with the commenters' statements that the Council was clear in its intent to distinguish between different types of re-transfers in Framework 24 and allow for the scenario outlined above to occur in FY 2013. However, NMFS understands the request to implement as soon as possible more flexibility in the IFQ transfer program. As a result, NMFS will, upon the effective date of this action, allow a vessel to permanently transfer in IFQ and then subsequently lease that permanently transferred IFQ to another vessel(s) in the same FY.

In order to ensure that NMFS can accurately monitor ownership cap restrictions and incorporate real-time landings into the IFQ transfer program, NMFS will still need more time to develop the full suite of re-transfer programming procedures. Thus, we will allow for leased IFQ to be leased again in the same FY, and allow for permanent transfers to be permanently transferred again in the same FY beginning March 1, 2014.

### Changes from Proposed Rule to Final Rule

In § 648.53(h)(5), the regulations are updated to reflect NMFS's intent to allow a vessel to permanently transfer IFQ and then subsequently lease that permanently transferred IFQ to another vessel(s) in the same FY, beginning with

the effectiveness of this action, rather than March 1, 2014.

In § 648.51(b)(5)(ii)(A)(3), the words "so that it [the flaring bar] does not interfere with the space created by the bump out" have been removed, to alleviate any potential confusion.

### Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the national standards and other provisions of the MSA and other applicable laws.

The Office of Management and Budget has determined that this rule is not significant according to Executive Order 12866.

This final rule does not contain policies with federalism or "takings" implications, as those terms are defined in E.O. 1312 and E.O. 12630, respectively.

This action contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). The requirement was approved by the Office of Management and Budget (OMB) under the NMFS Northeast Region Observer Providers Family of Forms (OMB Control No. 0648-0546). Under Framework 24, all LAGC IFQ vessels are required to call in weekly with their expected open area trip usage, similar to current requirements for LAGC IFQ trips in access areas. The public reporting burden for this collection of information has already been analyzed under this family of forms and is estimated to average 15 minutes per response with an associated cost of \$1.50, that includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Based on FY 2011 permit data, there are 259 active LAGC IFQ-permitted scallop vessels that are subject to this information collection. These vessels are required to notify observer providers if they plan on fishing in an open area in the following week. This information collection adds a burden to a small portion of the fleet. While this is a new requirement, vessels would never be obligated to call in more than once a week. Since the 2011 renewal of this information collection already estimated the burden at once a week for all active vessels, there are no additional burden hours compared to the previous renewal.

The Assistant Administrator for Fisheries has determined that the need to implement these measures in an expedited manner in order to help achieve conservation objectives for the scallop fishery and certain fish stocks



constitutes good cause, under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness and to make the majority of Framework 24 final measures effective May 20, 2013. The only exception to this would be to make the continued closure of the Delmarva access area effective May 9, 2013, in order to continue to protect small scallops.

If there is a 30-day delay in implementing the measures in Framework 24, the scallop fleet will continue under the current access area schedule, as well as access area trip, DAS, IFQ, RSA and OBS allocations.

The current access area allocations are higher than the measures in Framework 24, which were developed to reflect an updated estimate of the annual catch that can be harvested without resulting in overfishing. As a result, vessel owners and operators are likely to exceed the catch levels specified in Framework 24 for FY 2013 if the Framework 24 measures are not implemented soon. Constraining the implementation of Framework 24 by instituting a 30-day delay in effectiveness would be contrary to the public interest because continuing with these higher allocations would likely result in localized overfishing in access areas, and would negatively impact the access area rotation program, as well as future scallop allocations.

In addition, the emergency action that closed the DMV access area to protect scallop recruitment will expire by May 14, 2013. If Framework 24, which continues this closure, is not effective prior to May 14, 2013, the DMV will reopen and vessels would be able to fish trips in that area. This could also jeopardize the success of the access area program in future years by reducing the long-term biomass and economic yield from this area. FY 2012 survey results show that there are a high number of small scallops in the DMV that need to be protected from harvest in order to grow to a commercially viable size. If this area opens to scallop fishing due to a delay in implementing Framework 24 measures, these scallops would be removed from the DMV, which would result in smaller future scallop allocations and fewer economic benefits to fishery participants.

Expediting the implementation of Framework 24 measures will also have greater public benefit because enacting the DAS allocations and implementing the new GB access area seasonal closures would have positive impacts on the economics of the fishery, thereby furthering the intent of the rule. Currently, limited access vessels are fishing under lower DAS allocations

than will be implemented by Framework 24. In addition, the CA1, CA2, and NLS access areas will open immediately once Framework 24 is implemented, rather than opening on June 15, 2013. Scallop vessels are limited to which access area they can fish until Framework 24 is effective and these openings will take the pressure off of vessel owners/operators from fishing their open area DAS or HC access area trips, allowing for more flexibility on when and where to fish for scallops.

NMFS was unable to incorporate the 30-day delay in effectiveness into the timeline for Framework 24 rulemaking due to the Council's February 2013 submission of Framework 24, which was only two weeks before the March 1 start of the 2013 scallop FY. However, NMFS must also consider the need of the scallop industry to have prior notice in order to make the necessary preparations to begin fishing under these finalized measures (e.g., time to notify the observer program; collect the necessary equipment and notify crew; plan for the steam time to get to an area once it opens; or return from a trip started prior to the effective date of this action, should the vessel owner/operator want to fish in a more preferable area during this time of year). For these reasons, NMFS has determined that implementing these measures with a 10-day delay in effectiveness, and immediately continuing the closure of the Delmarva access area, would have the greatest public benefit.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has completed a final regulatory flexibility analysis (FRFA) in support of Framework 24 in this final rule. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, a summary of the analyses completed in the Framework 24 EA, and this portion of the preamble. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in Framework 24 and in the preamble to the proposed and this final rule, and is not repeated here. All of the documents that constitute the FRFA are available from NMFS and a copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**).

Because Framework 24 includes an alternative to modify the GB access area seasonal restrictions (Section 2.2.1), this action is also a joint framework with the

NE Multispecies FMP (Framework 49). However, this specific alternative is not expected to have direct economic impacts to the groundfish fishery (i.e., groundfish vessels currently have no access to these areas and should that change, Framework Adjustment 48 to the NE Multispecies FMP would include a full analysis of the economic impacts for the groundfish fishery) and thus impacts of such a measure on groundfish small business entities is expected to be negligible. Therefore, this FRFA focuses on the scallop fishery.

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

Although NMFS received no public comments directly in response to the IRFA summary in the proposed rule, six more general public comments were received regarding the impacts of the LAGC IFQ transfer measures on small businesses.

*Comment A:* As noted above in Comment 2, several commenters requested that NMFS allow for one type of re-transfer to occur upon the effectiveness of Framework 24: Allowing for a sale of IFQ through a permanent transfer and then allowing for that IFQ to be temporarily transferred (i.e., leased) in the same FY. Commenters mentioned that their inability to re-transfer causes undue financial hardship and, although many commenters noted that they could wait until FY 2014 for the broader re-transfer program to be effective, they would appreciate the ability to at least allow for leasing after a permanent transfer (i.e., "sale" of IFQ).

*Response:* As noted in our responses to Comment 2, NMFS appreciates the need for LAGC IFQ fishermen to have more flexibility in the IFQ transfer program and want to support this request in order to mitigate any economic hardship in FY 2013 for LAGC IFQ vessels. Although NMFS still need more time to develop the full re-transfer programming procedures (e.g., allowing for leased IFQ to be leased again in the same FY, allowing for permanent transfers to be permanently transferred again in the same FY), NMFS will, upon the effectiveness of this action, allow a vessel to permanently transfer IFQ and then subsequently lease that permanently transferred IFQ to another vessel(s) in the same FY.

*Description and Estimate of Number of Small Entities to Which the Final Rule Will Apply*

Framework 24 measures affect all vessels with LA and LAGC scallop permits. The Framework 24 document provides extensive information on the number and size of vessels and small businesses that will be affected by these regulations, by port and state. There were 313 vessels that obtained full-time LA permits in 2011, 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. In FY 2011, NMFS issued 288 IFQ permits (including 40 IFQ permits issued to vessels with a LA scallop permit), 103 NGOM, and 279 incidental catch permits. Of these, 169 IFQ, 14 NOGM, and over 76 incidental permitted vessels were active. 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 fewer than 10 permits per year.

For the purposes of the RFA, the Small Business Administration (SBA) 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 M annually. In prior Scallop FMP actions, each vessel was considered a small business entity and was treated individually for the purposes of the RFA analyses. In this action, the Council recognized ownership affiliations and made very basic connections between multiple vessels to single owners and has made distinctions between large business entities and small business entities, as defined by the RFA. Although several vessels are owned by a single owner (i.e., 68 vessels out of a total of 343 LA vessels), the majority of the limited access vessels are owned by affiliated entities comprised of several individuals having ownership interest in multiple vessels (i.e., 275 vessels out of a total of 343 LA vessels). The sum of annual gross receipts from all scallop vessels operated by the majority of the multiple boat owners (but not all) would exceed \$4 M in business revenue in 2011 and 2012, qualifying them as

“large” entities. In FY 2010, 190 vessels, including LA and LAGC permitted-vessels, belonged to 27 large business entities that each grossed more than \$4 M annually in scallop revenue. In the same year, 153 vessels belonged to 105 small business entities (ownership ranged from 1 to 4 vessels) that each grossed less than \$4 M a year in scallop revenue. In FY 2011, scallop revenue greatly increased as the scallop ex-vessel prices increased by 20 percent from 2010 prices. As a result, more business entities fell in the large entity category (i.e., the number of LA permits that grossed more than \$4 M annually increased to 34, and the number of small entities decreased to 97). It is likely that the number of large and small entities in FY 2012 were similar to those in FY 2011.

The Office of Advocacy at the 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. The changes in profits, costs, and net revenues due to Framework 24 are not expected to be disproportional for small versus large entities since each vessel will receive the same number of open areas DAS and access area trips allocations according to the categories they belong to (i.e., the allocations for all full-time vessels are identical, and the allocations for the part-time and occasional vessels are proportional to the full-time allocations, 40 percent and 8.33 percent of the full-time allocations, respectively). As a result, this action will have proportionally similar impacts on revenues and profits of each vessel and each multi-vessel owner compared both to status quo (i.e., FY 2012) and no action levels. Therefore, this action is not expected to have disproportionate impacts or place a substantial number of small entities at a competitive disadvantage relative to large entities. A summary of the economic impacts relative to the profitability criterion is provided in the proposed rule under “Economic Impacts of Proposed Measures and Alternatives.”

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

During the development of Framework 24, NMFS and the Council considered ways to reduce the regulatory burden on, and provide flexibility for, the regulated entities in this action. Proposed actions and alternatives are described in detail in Framework 24, which includes an EA, RIR, and IRFA (available at [ADDRESSES](#)). The measures implemented by this final rule minimize the long-term economic impacts on small entities to the extent practicable. Reasonable alternatives, particularly for the prescribed catch limits, are limited because of the legal requirements to implement effective conservation measures which necessarily may result in negative impacts that cannot be effectively mitigated. Catch limits are fundamentally a scientific calculation based on the scallop FMP control rules and SSC approval, and, therefore are legally limited to the numbers contained in this rule. Moreover, the limited number of alternatives available for this action must be evaluated in the context of an ever-changing fishery management plan that has considered numerous alternatives over the years and have provided many mitigating measures applicable every fishing year.

Overall, this rule minimizes adverse long-term impacts by ensuring that management measures and catch limits result in sustainable fishing mortality rates that promote stock rebuilding, and as a result, maximize yield. The measures implemented by this final rule also provide additional flexibility for fishing operations in the short-term. This final rule implements several measures that enable small entities to offset some portion of the estimated economic impacts. These measures include: Prorating LAGC IFQ access area trips to incorporate CA2; adjusting the GB access area seasonal closures; ensuring that LAGC vessels can fish at least part of the year within the AM closures; revising the scallop fishery AM trigger; allowing for more flexibility in the IFQ leasing program; and modifying the OBS set-aside.

This final action prorates LAGC IFQ trips proportionally in all open access areas excluding CA2, with positive economic impacts on the LAGC vessels because they will be able to use CA2 trips in areas closer to the shore with lower trip costs, and will offset some of the negative impacts of the reduced FY 2013 allocation.

This action also modifies the GB seasonal restrictions to provide access during months with highest scallop meat weights and to minimize yellowtail bycatch. As a result, this provides higher flexibility to vessels than the current seasonal closure schedule (i.e., 4.5 months in length), since NLS and CA1 would have no closures, and CA2 would only close for 3 months.

Unlike the current limited access AMs that closure areas for up to a full FY, the LAGC fishery YTF AMs that will be implemented with this final rule allow for fishing to continue part of the year within part of the AM closure areas (i.e., some of the closure areas would be open for parts of the year when traditional fishing has occurred). The Council developed this measure to recognize that LAGC vessels are more limited in terms of the areas where they can fish for scallops. For LAGC vessels using trawls, the AM provides additional flexibility by allowing these vessels to switch to dredge gear during the trawl closure period. These LAGC AM measures mitigate the potential economic impacts of the AM closures on these smaller vessels.

If reliable information is not available to make a mid-year determination of the need to implement an AM for the YTF sub-ACL, NMFS will wait until enough information is available before making a decision to implement an AM. This will avoid confusing situations where an AM is implemented, then reconsidered and partially revoked based on updated data, allowing for more management stability with which to make solid business decisions for a given FY.

This final rule also allows transfer of quota after an LAGC IFQ vessel landed scallops in a given FY and will allow IFQ to be transferred more than once (i.e., re-transfers). This measure will enable vessels to fully harvest their quotas with more ease, thus mitigating some of the negative impacts of the reduced FY 2013 allocation.

The adjustment from area-specific OBS to allowing for OBS to be transferred from one area to another will enable the more efficient use of this set-aside. OBS set-aside will be more fully utilized by vessels, which will support better observer coverage and monitoring efforts.

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency will publish one or more guides to assist small entities in complying with the rule, and will designate such publications as "small entity compliance guides." The agency will explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide (i.e., permit holder letter) will be sent to all holders of permits for the scallop fishery. The guide and this final rule will be available upon request.

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

One measure in this rulemaking imposes new reporting, recordkeeping or other compliance requirements upon the small entities that participate in the fishery.

Under this final action, all LAGC IFQ vessels are required to call in weekly with their expected open area trip usage, similar to current requirements for LAGC IFQ trips in access areas. This measure is intended to improve observer coverage for LAGC open area trips by incorporating them into the industry-funded observer program, rather than continuing to fund them under NMFS's Northeast Fisheries Observer Program, which results in lower coverage levels due to competing interests with funding observers in other target fisheries. Observer coverage in the LAGC scallop fishery is necessary to monitor the bycatch of finfish, including YTF, skates, monkfish, cod, and other species. Monitoring of YTF and windowpane flounder is of particular concern because the scallop fishery is constrained by a fishery-specific sub-Annual Catch Limit (ACL) for these stocks. Observer coverage is also needed to monitor interactions of the LAGC scallop fishery with endangered and threatened sea turtles in open areas.

Notification requires the dissemination of the following information: Gear type (dredge or trawl); specification of LA or LAGC; area to be fished (for FY 2013, these areas include NLS, CA1, CA2, HC, Mid-Atlantic open areas, or GB open areas); phone number; Federal fishery permit number; name;

vessel name; port and state of departure; and estimated date of sail. This information will be used to place observers on LAGC scallop vessels to monitor catch, discards, and potential sea turtle interactions on open area trips. While this is a new requirement, vessels would never be obligated to call in more than once a week and already have a weekly call-in requirement for access area trips. As a result of the current collection of information requirements, there will be no additional burden hours compared to what has already been analyzed. The burden estimates, including the new requirement, applies to all LA and LAGC IFQ vessels and assumed that each vessel would call in to the observer program a total of 50 times in a given FY. NMFS estimates each response to take about 10 min, with an associated cost of \$1.00. NMFS has estimated the cost to observer providers to respond to each vessel request to take about 5 min, with an associated cost of \$0.50. In 2011, there were 259 LAGC IFQ vessels. Therefore, 12,950 requests (50 calls x 259 vessels) will impose total compliance costs of \$19,425. These estimates are likely over-estimates, as an LAGC IFQ vessel would likely not call in 50 times a year.

This action contains no other compliance costs. It does not duplicate, overlap, or conflict with any other Federal law.

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

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: May 3, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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

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

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

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

- 2. In § 648.10, paragraph (f)(1) is revised to read as follows:

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

\* \* \* \* \*

(f) \* \* \*

(1) *IFQ scallop vessels.* An IFQ scallop vessel that has crossed the VMS Demarcation Line specified under

paragraph (a) of this section is deemed to be fishing under the IFQ program, unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery by notifying the Regional Administrator through the VMS. If the vessel has not fished for any fish (i.e., steaming only), after declaring out of the fishery, leaving port, and steaming to another location, the owner or authorized representative of an IFQ scallop vessel may declare into the IFQ fishery without entering another port by making a declaration before first crossing the VMS Demarcation Line. An IFQ scallop vessel that is fishing north of 42°20' N. lat. is deemed to be fishing under the NGOM scallop fishery unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery, as specified in paragraphs (e)(5)(i) and (ii) of this section. After declaring out of the fishery, leaving port, and steaming to another location, if the IFQ scallop vessel has not fished for any fish (i.e., steaming only), the vessel may declare into the NGOM fishery without entering another port by making a declaration before first crossing the VMS Demarcation Line.

\* \* \* \* \*

■ 3. In § 648.11, paragraphs (g)(1), (g)(2)(ii), (g)(5)(i)(B), (g)(5)(ii), and the introductory text to paragraphs (g)(5) and (g)(5)(i), are revised to read as follows:

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

\* \* \* \* \*

(g) \* \* \*

(1) *General.* Unless otherwise specified, owners, operators, and/or managers of vessels issued a Federal scallop permit under § 648.4(a)(2), and specified in paragraph (a) of this section, must comply with this section and are jointly and severally responsible for their vessel's compliance with this section. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access and LAGC IFQ permits are required to comply with the additional notification requirements specified in paragraph (g)(2) of this section. When NMFS notifies the vessel owner, operator, and/or manager of any requirement to carry an observer on a specified trip in either an Access Area or Open Area as specified in paragraph (g)(3) of this section, the vessel may not fish for, take, retain, possess, or land any scallops without carrying an observer. Vessels may only embark on a scallop trip in open areas or Access Areas without an observer if the vessel

owner, operator, and/or manager has been notified that the vessel has received a waiver of the observer requirement for that trip pursuant to paragraphs (g)(3) and (g)(4)(ii) of this section.

(2) \* \* \*

(ii) *LAGC IFQ vessels.* LAGC IFQ vessel owners, operators, or managers must notify the NMFS/NEFOP by telephone by 0001 hr of the Thursday preceding the week (Sunday through Saturday) that they intend to start any scallop trip, and must include the port of departure, open area or specific Sea Scallop Access Area to be fished, and whether fishing as a scallop dredge, scallop trawl vessel. If selected, up to two trips that start during the specified week (Sunday through Saturday) can be selected to be covered by an observer. NMFS/NEFOP must be notified by the owner, operator, or vessel manager of any trip plan changes at least 48 hr prior to vessel departure.

\* \* \* \* \*

(5) Owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit or reduced DAS accrual rate. The owners of vessels that carry an observer may be compensated with a reduced DAS accrual rate for open area scallop trips or additional scallop catch per day in Sea Scallop Access Areas or additional catch per trip for LAGC IFQ trips in order to help defray the cost of the observer, under the program specified in §§ 648.53 and 648.60.

(i) Observer service providers shall establish the daily rate for observer coverage on a scallop vessel on an Access Area trip or open area DAS or IFQ scallop trip consistent with paragraphs (g)(5)(i)(A) and (B), respectively, of this section.

\* \* \* \* \*

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

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

\* \* \* \* \*

■ 4. In § 648.14, paragraphs (i)(2)(vi)(F), (i)(2)(vi)(G), (i)(4)(i)(G), and (i)(4)(iii)(E) are removed and reserved, and paragraphs (i)(1)(iii)(A)(1)(iii), (i)(1)(iii)(A)(2)(iii), (i)(3)(i)(B), (i)(4)(i)(A), and (i)(4)(iii)(D) are revised to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(i) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(A) \* \* \*

(1) \* \* \*

(iii) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit and is properly declared into the IFQ scallop fishery or is properly declared into the NE multispecies, Atlantic surfclam or quahog fishery, or other fishery requiring a VMS declaration, and is not fishing in a sea scallop access area.

\* \* \* \* \*

(2) \* \* \*

(iii) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii)(A), is fishing outside of the NGOM scallop management area, and is properly declared into the general category scallop fishery or is properly declared into the NE multispecies, or Atlantic surfclam or quahog fishery, or other fishery requiring a VMS declaration, and is not fishing in a sea scallop access area.

\* \* \* \* \*

(3) \* \* \*

(i) \* \* \*

(B) Fish for, possess, or land scallops on a vessel that is declared out of scallop fishing unless the vessel has been issued an Incidental scallop permit, or is an IFQ scallop vessel that is properly declared into the IFQ scallop, NE multispecies, Atlantic

surfclam or quahog, or other fishery requiring a VMS declaration.

\* \* \* \* \*

(4) \* \* \*

(i) \* \* \*

(A) Fish for or land per trip, or possess at any time, in excess of 600 lb (272.2 kg) of shucked, or 75 bu (26.4 hL) of in-shell scallops per trip, or 100 bu (35.2 hL) in-shell scallops seaward of the VMS Demarcation Line, unless the vessel is carrying an observer as specified in § 648.11 and an increase in the possession limit is authorized by the Regional Administrator and not exceeded by the vessel, as specified in §§ 648.52(g) and 648.60(d).

\* \* \* \* \*

(iii) \* \* \*

(D) Prior to March 1, 2014, request to transfer IFQ that has already been temporarily transferred from an IFQ scallop vessel in the same fishing year.

\* \* \* \* \*

■ 5. In § 648.51, the introductory text to paragraph (b), and paragraphs (b)(1) and (b)(5)(ii), are revised to read as follows:

§ 648.51 Gear and crew restrictions.

\* \* \* \* \*

(b) Dredge vessel gear restrictions. All vessels issued limited access and General Category scallop permits and fishing with scallop dredges, with the exception of hydraulic clam dredges and mahogany quahog dredges in possession of 600 lb (181.44 kg), or less, of scallops, must comply with the following restrictions, unless otherwise specified:

(1) Maximum dredge width. The combined dredge width in use by or in possession on board such vessels shall not exceed 31 ft (9.4 m), measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section, in § 648.60(g)(2), and the scallop dredge exemption areas specified in § 648.80. However, component parts may be on board the vessel such that they do not conform with the definition of “dredge or dredge gear” in § 648.2, i.e., the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and such that no more than one complete spare dredge could be made from these component’s parts.

\* \* \* \* \*

(5) \* \* \*

(ii) Requirement to use a turtle deflector dredge (TDD) frame—(A) From May 1 through October 31, any limited access scallop vessel using a dredge, regardless of dredge size or vessel permit category, or any LAGC IFQ scallop vessel fishing with a dredge with a width of 10.5 ft (3.2 m) or greater,

that is fishing for scallops in waters west of 71° W long., from the shoreline to the outer boundary of the EEZ, must use a TDD. The TDD requires five modifications to the rigid dredge frame, as specified in paragraphs (b)(5)(ii)(A)(1) through (b)(5)(ii)(A)(5) of this section. See paragraph (b)(5)(ii)(E) of this section for more specific descriptions of the dredge elements mentioned below.

(1) The cutting bar must be located in front of the depressor plate.

(2) The acute angle between the plane of the bale and the strut must be less than or equal to 45 degrees.

(3) All bale bars must be removed, except the outer bale (single or double) bars and the center support beam, leaving an otherwise unobstructed space between the cutting bar and forward bale wheels, if present. The center support beam must be less than 6 inches (15.24 cm) wide. For the purpose of flaring and safe handling of the dredge, a minor appendage not to exceed 12 inches (30.5 cm) in length may be attached to each of the outer bale bars. Only one side of the flaring bar may be attached to the dredge frame. The appendage should at no point be closer than 12 inches (30.5 cm) to the cutting bar.

(4) Struts must be spaced 12 inches (30.5 cm) apart or less from each other, along the entire length of the frame.

(5) Unless exempted, as specified in paragraph (b)(5)(ii)(B) of this section, the TDD must include a straight extension (“bump out”) connecting the outer bale bars to the dredge frame. This “bump out” must exceed 12 inches (30.5 cm) in length, as measured along the inside of the bale bar from the front of the cutting bar to the first bend in the bale bar.

(B) A limited access scallop vessel that uses a dredge with a width less than 10.5 ft (3.2 m) is required to use a TDD, except that such a vessel is exempt from the “bump out” requirement specified in paragraph (b)(5)(ii)(A)(5) of this section. This exemption does not apply to LAGC vessels that use dredges with a width of less than 10.5 ft (3.2 m), because such vessels are exempted from the requirement to use a TDD, as specified in paragraph (b)(5)(ii) of this section.

(C) Vessels subject to the requirements in paragraph (b)(5)(ii) of this section transiting waters west of 71° W. long., from the shoreline to the outer boundary of the EEZ, are exempted from the requirement to only possess and use TDDs, provided the dredge gear is stowed in accordance with § 648.23(b) and not available for immediate use.

(D) TDD-related definitions. (1) The cutting bar refers to the lowermost

horizontal bar connecting the outer bails at the dredge frame.

(2) The depressor plate, also known as the pressure plate, is the angled piece of steel welded along the length of the top of the dredge frame.

(3) The struts are the metal bars connecting the cutting bar and the depressor plate.

\* \* \* \* \*

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

§ 648.52 Possession and landing limits.

(a) A vessel issued an IFQ scallop permit that is declared into the IFQ scallop fishery as specified in § 648.10(b), or on a properly declared NE multispecies, surfclam, or ocean quahog trip (or other fishery requiring a VMS declaration) and not fishing in a scallop access area, unless as specified in paragraph (g) of this section or exempted under the state waters exemption program described in § 648.54, may not possess or land, per trip, more than 600 lb (272.2 kg) of shucked scallops, or possess more than 75 bu (26.4 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 100 bu (35.2 hL) of in-shell scallops seaward of the VMS Demarcation Line on a properly declared IFQ scallop trip, or on a properly declared NE multispecies, surfclam, or ocean quahog trip, or other fishery requiring a VMS declaration, and not fishing in a scallop access area.

\* \* \* \* \*

(g) Possession limit to defray the cost of observers for LAGC IFQ vessels. An LAGC IFQ vessel with an observer on board may retain, per observed trip, up to 1 day’s allowance of the possession limit allocated to limited access vessels, as established by the Regional Administrator in accordance with § 648.60(d), provided the observer set-aside specified in § 648.60(d)(1) has not been fully utilized. For example, if the limited access vessel daily possession limit to defray the cost of an observer is 180 lb (82 kg), the LAGC IFQ possession limit to defray the cost of an observer would be 180 lb (82 kg) per trip, regardless of trip length.

■ 7. In § 648.53, paragraph (b)(5) is removed and reserved and paragraphs (a), (b)(1), (b)(4), (c), (g), (h)(3)(i)(B), and (h)(5) are revised to 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 LAGC permit, and LAGC 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 § 648.56(d). The ABC/ACL for the 2014 fishing year is subject to change through a future framework adjustment.

(1) ABC/ACL for fishing years 2013 through 2014 shall be:

- (i) 2013: 21,004 mt (46,305,894 lb).
- (ii) 2014: 23,697 mt (52,242,942 lb).
- (iii) [Reserved]

(2) *Scallop incidental catch target TAC.* The annual incidental catch target TAC for vessels with incidental catch scallop permits is 50,000 lb (22.7 mt).

(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 2014 fishing year are subject to change through a future framework adjustment.

(i) The limited access fishery sub-ACLs for fishing years 2013 and 2014 are:

- (A) 2013: 19,093 mt (42,092,979 lb).
- (B) 2014: 21,612 mt (47,647,385 lb).
- (C) [Reserved]

(ii) The limited access fishery ACTs for fishing years 2013 and 2014 are:

- (A) 2013: 15,324 mt (33,783,637 lb).
- (B) 2014: 15,428 mt (34,012,918 lb).
- (C) [Reserved]

(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).

(i) The ACLs for fishing years 2013 and 2014 for LAGC IFQ vessels without a limited access scallop permit are:

- (A) 2013: 1,010 mt (2,227,142 lb).
- (B) 2014: 1,144 mt (2,521,026 lb).
- (C) [Reserved]

(ii) The ACLs for fishing years 2013 and 2014 for vessels issued both a LAGC and a limited access scallop permits are:

- (A) 2013: 101 mt (222,714 lb).
- (B) 2014: 114 mt (252,103 lb).
- (C) [Reserved]
- (b) \* \* \*

(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) 2013 fishing year: 2,550 lb/DAS (1,157 kg/DAS).
- (ii) 2014 fishing year: 2,600 lb/DAS (1,179 kg/DAS).
- (iii) [Reserved]

\* \* \* \* \*

(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) of this section, 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 40 percent and 8.33 percent of the full-time DAS allocations, respectively. 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	2013	2014
Full-Time .....	33	26
Part-Time .....	13	9
Occasional .....	3	2

(i) [Reserved]

(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 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*—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 0.28, the AM specified in paragraph (b)(4)(ii) of this section shall not take effect. The fishing mortality rate of 0.28 is the fishing mortality rate that is one standard deviation below the fishing mortality rate for the scallop fishery ACL, currently estimated at 0.32.

(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 0.28. 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.

\* \* \* \* \*  
(c) *Adjustments in annual DAS allocations.* Annual DAS allocations shall be established for up to 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.

\* \* \* \* \*  
(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 210 mt (463,054 lb) in fishing year 2013, and 237 mt (522,429 lb) in fishing year 2014.

(2) At the start of each scallop fishing year, the observer set-aside specified in paragraph (g)(1) of this section initially shall be divided proportionally by access and open areas, based on the amount of effort allocated into each area, in order to set the compensation and coverage rates. NMFS shall monitor the observer set-aside usage and may transfer set-aside from one area to another if one area is using more or less set-aside than originally anticipated. The set-aside may be transferred from one area to another, based on NMFS in-house area-level monitoring that determines whether one area will likely have excess set-aside while another may not. The set-aside shall be considered completely harvested when the full one percent is landed, at which point there would be no more compensation for any observed scallop trip, regardless of area. NMFS shall continue to proactively adjust compensation rates and/or observer coverage levels mid-year in order to minimize the chance that the set-aside would be harvested prior to the end of the FY. Utilization of the set-aside shall be on a first-come, first-served basis. When the set-aside for observer coverage has been utilized, vessel owners shall be notified that no additional scallop catch or 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.

(3) *DAS set-aside for observer coverage.* A limited access scallop vessel carrying an observer in open areas 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 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 set-aside amount in the applicable fishing year.

\* \* \* \* \*  
(h) \* \* \*  
(3) \* \* \*  
(i) \* \* \*  
(B) A vessel may be initially issued more than 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) 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 ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section. A vessel that is allocated an IFQ that exceeds 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) 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. All scallops that have been allocated as part of the original IFQ allocation or transferred to a vessel during a given fishing year shall be counted towards the vessel cap.

\* \* \* \* \*  
(5) *Transferring IFQ*—(i) *Temporary 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 temporarily transfer (e.g. lease) its entire IFQ allocation, or a portion of its IFQ allocation, to another IFQ scallop vessel. Temporary IFQ transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed. For the remainder of the 2013 fishing year, IFQ, once temporarily transferred, cannot be temporarily transferred again to another vessel. Beginning on March 1, 2014, IFQ can be temporarily transferred more than once (i.e., re-transferred). For example, if a vessel temporarily transfers IFQ to a vessel, the transferee vessel may re-transfer any portion of that IFQ to another vessel. There is no limit on how many times IFQ can be re-transferred in a fishing year after March 1, 2014. Temporary IFQ transfers must be in the amount of at least 100 lb (45 kg) up to the entire allocation, unless the transfer reflects the total IFQ amount remaining on the transferor's vessel, or

the entire IFQ allocation. The Regional Administrator has final approval authority for all temporary IFQ transfer requests.

(ii) *Permanent IFQ transfers.* (A) 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 as to the transferee, unless the IFQ is subsequently permanently transferred to another IFQ scallop vessel. For the remainder of the 2013 fishing year, IFQ permanently transferred to a vessel during the 2013 fishing year may then be temporarily transferred (i.e., leased) to another vessel(s) in any amount not to exceed the original permanent transfer. For the remainder of 2013 fishing year, such IFQ may not be permanently re-transferred to another vessel. Beginning March 1, 2014, IFQ may be permanently transferred to a vessel and then be re-transferred (temporarily transferred (i.e., leased) or permanently transferred) by such vessel to another vessel in the same fishing year. There is no limit on how many times IFQ can be re-transferred in a fishing year after March 1, 2014.

(B) If a vessel owner permanently transfers the vessel's entire IFQ to another IFQ vessel, the LAGC IFQ scallop permit shall remain valid on the transferor vessel, unless the owner of the transferor 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 may transfer that vessel's IFQ to another IFQ scallop vessel, regardless of whether or not the vessel has fished under its IFQ in the same fishing year. Requests for IFQ transfers cannot be less than 100 lb (46.4 kg), unless that the transfer reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. For the remainder of the 2013 fishing year, a vessel owner can permanently transfer portions of his/her vessel's IFQ to another vessel(s) during the 2013 fishing year, and such vessel(s) may then temporarily transfer (i.e., lease) such IFQ to another vessel(s) in any amount not to exceed the original permanent transfer(s). Beginning on March 1, 2014,

IFQ may be temporarily or permanently transferred to a vessel and then temporarily re-transferred (i.e., leased) or permanently re-transferred by such vessel to another vessel in the same fishing year. There is no restriction on how many times IFQ can be re-transferred. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2.5 percent of the ACL 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 ACL 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, if approved, prior to the expiration of the fishing year.

(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. If the applicants are requesting a transfer of IFQ that has already been transferred in a given fishing year, both parties must be up-to-date with all data reporting requirements (e.g., all necessary VMS catch reports, VTR, and dealer data must be submitted) in order for the application to be processed.

(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 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 ACL 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 ACL 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.

(D) If an LAGC IFQ vessel transfers (i.e., temporary lease or permanent transfer) all of its allocation to other IFQ vessels prior to Framework 24's implementation (i.e., transfers more than what it is allocated for fishing year 2013 pursuant to the implantation of Framework 24), the vessel(s) to which the scallops were transferred (i.e., the transferee) shall receive a pound-for-pound deduction in fishing year 2013 equal to the difference between the amount of scallops transferred and the amount allocated to the transferring vessel for 2013 pursuant to Framework 24. The vessel that transferred the



scallops shall not be assessed this deduction. For example, Vessel A is allocated 5,000 lb (2,268 kg) of scallops at the start of fishing year 2013, but would receive 3,500 lb (1,588 kg) of scallops once Framework 24 is implemented. If Vessel A transfers its full March 1, 2013, allocation of 5,000 lb (2,268 kg) to Vessel B prior to Framework 24's implementation, Vessel B would lose 1,500 lb (680 kg) of that transfer once Framework 24 is implemented. In situations where a vessel leases out its IFQ to multiple vessels, the deduction of the difference between the original amount of scallops allocated and the amount allocated pursuant to Framework 24 shall begin to apply only to the transfer(s) that exceed the original allocation. Using the example above, if Vessel A first leases 3,000 lb (1,361 kg) of scallops to Vessel B and then leases 2,000 lb (907 kg) of scallops to Vessel C, only Vessel C would have to pay back IFQ in excess of Vessel A's ultimate fishing year 2013 allocation (i.e., Vessel C would have to give up 1,500 lb (680 kg) of that quota because Vessel A ultimately only had 500 lb (227 kg) of IFQ to lease out). If a vessel has already fished its leased-in quota in excess of the amount ultimately allocated pursuant to Framework 24, the vessel must either lease in more quota to make up for that overage during fishing year 2013, or the overage, along with any other overages incurred in fishing year 2013, shall be deducted from its fishing year 2014 IFQ allocation as part of the individual AM applied to the LAGC IFQ fleet, as specified in paragraph (h)(2)(vi) of this section.

■ 8. In § 648.54, paragraph (c) is revised to read as follows:

**§ 648.54 State waters exemption.**

\* \* \* \* \*

(c) *Gear and possession limit restrictions.* Any vessel issued a limited access scallop permit, an LAGC NGOM, or an LAGC IFQ scallop permit is exempt from the minimum twine top mesh size for scallop dredge gear specified in § 648.51(b)(2) and (b)(4)(iv) while fishing exclusively landward of the outer boundary of the waters of the State of Maine under the state waters exemption specified in paragraph (a)(4) of this section, provided the vessel is in compliance with paragraphs (d) through (g) of this section.

\* \* \* \* \*

■ 8. In § 648.58, paragraphs (a) and (b) are added to read as follows:

**§ 648.58 Rotational Closed Areas.**

(a) *Elephant Trunk Closed Area.* No vessel may fish for scallops in, or

possess or land scallops from, the area known as the Elephant Trunk Closed Area. No vessel may possess scallops in the Elephant Trunk Closed Area, unless such vessel is only transiting the area as provided in paragraph (c) of this section. The Elephant Trunk Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
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

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

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

\* \* \* \* \*

■ 9. Revise § 648.59 to read as follows:

**§ 648.59 Sea Scallop Access Areas.**

(a) [Reserved]

(b) *Closed Area I Access Area*—(1) From March 1, 2014, through February 28, 2015 (i.e., fishing year 2014), 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.

(2) From March 1, 2013, through February 28, 2014 (i.e., fishing year 2013), 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.

(3) The Closed Area I Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request), and so that the line connecting points CAIA3 and CAIA4 is the same as the portion of the western boundary line of Closed Area I, defined in § 648.81(a)(1), that lies between points CAIA3 and CAIA4:

Point	Latitude	Longitude
CAIA1 .....	41°26' N	68°30' W
CAIA2 .....	40°58' N	68°30' W
CAIA3 .....	40°54.95' N	68°53.40' W
CAIA4 .....	41°04.30' N	69°01.29' W
CAIA1 .....	41°26' N	68°30' W

(4) [Reserved]

(5) *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 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 1,534,000 lb (695.8 mt) in fishing year 2013. Limited access scallop vessels shall not receive Closed Area I Access Area trip allocations in fishing year 2014.

(ii) *LAGC scallop vessels.* (A) The percentage of the Closed Area I Access Area TAC to be allocated to LAGC scallop vessels shall be specified 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 5.5 percent of the Closed Area I Access Area TAC in fishing year 2013. The Closed Area I Access Area is closed to LAGC IFQ vessels in fishing year 2014.

(B) LAGC IFQ vessels are allocated a total of 212 trips in fishing year 2013 in the Closed Area I Access Area. This trip allocation is based on 5.5 percent of the Closed Area I Access Area TAC, and also includes 72 trips that have been set aside from the Closed Area II Access Area and evenly distributed to access areas available to LAGC IFQ vessels in the 2013 fishing year. No LAGC IFQ trips will be allocated in Closed Area I Access Area in fishing year 2014. 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) A vessel issued a NE Multispecies permit and a LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (b)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(D) Scallops landed by each LAGC IFQ vessel on a Closed Area I Access Area trip shall count against that vessel's IFQ.

(iii) *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).

(c) *Closed Area II Access Area*—(1) From March 1, 2014, through February 28, 2015 (i.e., fishing year 2014), vessels issued scallop permits may not fish for, possess, or land scallops in or from, the area known as the Closed Area II Access Area, described in paragraph (c)(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 (c)(5)(ii)(C) of this section.

(2) From March 1, 2013, through February 28, 2014 (i.e., fishing year 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.

(3) The Closed Area II Sea Scallop Access Area is defined by straight lines, except where noted, 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
CAIIA1 .....	41°00' N.	67°20' W.
CAIIA2 .....	41°00' N.	66°35.8' W.
CAIIA3 .....	41°18.6' N.	(1) (2)
CAIIA4 .....	41°30' N.	(3)
CAIIA5 .....	41°30' N.	67°20' W.
CAIIA1 .....	41°00' N.	67°20' W.

<sup>1</sup> The intersection of 41°18.6 N. lat. and the U.S.-Canada maritime boundary.

<sup>2</sup> From Point CAIIA3 connected to Point CAIIA4 along the U.S.-Canada maritime boundary.

<sup>3</sup> The intersection of 41°30 N. lat. and the U.S.-Canada maritime boundary.

(4) *Season.* A vessel issued a scallop permit may not 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, during the period of August 15 through November 15 of each year the Closed Area II Access Area is open to scallop vessels, unless transiting pursuant to paragraph (f) of this section.

(5) *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 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 TAC for limited access scallop vessels is 2,366,000 lb (1,073.2 mt) in fishing year 2013. Limited access scallop vessels shall not receive Closed Area II Access Area trip allocations in fishing year 2014.

(ii) *LAGC scallop vessels.* (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 2013 fishing year.

(B) 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 (c)(5)(ii)(C) of this section, and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Closed Area II Access Area, or enter the Closed Area II Access Area on a declared LAGC scallop trip after the effective date published in the **Federal Register** unless transiting pursuant to paragraph (f) of this section.

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

(D) Scallops landed by each LAGC IFQ vessel on a Closed Area II Access Area trip shall count against that vessel's IFQ.

(d) *Nantucket Lightship Access Area*—(1) From March 1, 2014, through February 28, 2015 (i.e., fishing year 2014), 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, 2013, through February 28, 2014 (i.e., fishing year 2013), 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.

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

Point	Latitude	Longitude
NLAA1 .....	40°50' N	69°30' W
NLAA2 .....	40°50' N	69°00' W
NLAA3 .....	40°20' N	69°00' W
NLAA4 .....	40°20' N	69°30' W
NLAA1 .....	40°50' N	69°30' W

(4) [Reserved]

(5) *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 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 TAC for limited access scallop vessels is 1,508,000 lb (684.0 mt) in fishing year 2013. Limited access scallop vessels shall not receive Nantucket Lightship Access Area trip allocations in fishing year 2014.

(ii) *LAGC scallop vessels*. (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 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 are allocated 5.5 percent of the Nantucket Lightship Access Area TAC in fishing year 2013. The Nantucket Lightship Access Area is closed to LAGC IFQ vessels in fishing year 2014.

(B) LAGC scallop vessels are allocated 206 trips to the Nantucket Lightship Access Area in fishing year 2013. This trip allocation is based on 5.5 percent of the Nantucket Lightship Access Area TAC, and also includes 72 trips that have been set aside from the Closed Area II Access Area and evenly distributed to access areas available to LAGC IFQ vessels in the 2013 fishing year. 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.

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

(D) Scallops landed by each LAGC IFQ vessel on a Nantucket Lightship Access Area trip shall count against that vessel's IFQ.

(e) *Hudson Canyon Sea Scallop Access Area*. (1) From March 1, 2014, through February 28, 2015 (i.e., fishing year 2014), vessels issued scallop permits may not fish for, possess, or land scallops in or from the area known as the Hudson Canyon Access Area, described in paragraph (e)(3) of this section, unless transiting pursuant to paragraph (f) of this section.

(2) From March 1, 2013, through February 28, 2014 (i.e., fishing year 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)(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.

(3) 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

(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). The Hudson Canyon Access Area scallop TAC for limited access scallop vessels is 2,730,000 lb (1,238.3 mt) in fishing year 2013. Limited access scallop vessels shall not receive Hudson Canyon Access Area trip allocations in fishing year 2014.

(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. 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 shall be allocated 5.5 percent of the Hudson Canyon Access Area TAC in fishing year 2013. The Hudson Canyon Access Area is closed to LAGC IFQ vessels in fishing year 2014.

(B) LAGC IFQ vessels are allocated a total of 317 trips in the Hudson Canyon Access Area in fishing year 2013. This trip allocation is based on 5.5 percent of the Hudson Canyon Access Area TAC, and also includes 72 trips that have been set aside from the Closed Area II Access Area and evenly distributed to access areas available to LAGC IFQ vessels in the 2013 fishing year. 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) Scallops landed by each LAGC IFQ vessel on a Hudson Canyon Access Area trip shall count against that vessel's IFQ.

(f) *Transiting.* A sea scallop vessel that has not declared a trip into the Sea Scallop Area Access Program may enter the Sea Scallop Access Areas described in paragraphs (a), (b), (d), and (e), of this section, and possess scallops not caught in the Sea Scallop Access Areas, for transiting purposes only, provided the vessel's fishing gear is stowed in accordance with § 648.23(b). A scallop vessel that has declared a trip into the Sea Scallop Area Access Program may transit a Scallop Access Area while steaming to or from another Scallop Access Area, provided the vessel's fishing gear is stowed in accordance with § 648.23(b), or there is a

compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Access Area, as described in paragraph (c) of this section, if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed in accordance with § 648.23(b).

■ 10. In § 648.60, paragraphs (a)(3)(ii)(A), (a)(4)(i), (c)(5)(ii)(A), and (e)(3) are removed and reserved, and paragraphs (a)(3)(i), (a)(5)(i), (d), (e)(1), and (g)(4)(ii) are revised to read as follows:

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

(a) \* \* \*

(3) \* \* \*

(i) *Limited access vessel trips.* (A)

Except as provided in paragraph (c) of this section, 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. No access area trips are allocated for fishing year 2014.

(B) *Full-time scallop vessels.* In fishing year 2013, each full-time vessel shall have a total of two access area trips in two of the following areas: Hudson Canyon Access Area, Closed Area I Access Area, Closed Area II Access Area, and Nantucket Lightship Access Area. These allocations shall be determined by the Regional Administrator through a random assignment and shall be made publically available on the NMFS Northeast Region Web site prior to the start of the 2013 fishing year. If, prior to the implementation of Framework 24, a full-time vessel lands more scallops from the Hudson Canyon Access Area than ultimately allocated for fishing year 2013, that vessel is not eligible to take any additional access area trips in fishing year 2013 and NMFS shall deduct 12 open area DAS in fishing year 2013 from that vessel's allocation.

(C) *Part-time scallop vessels.* (1) For the 2013 fishing year, a part-time scallop vessel is allocated two trips that may be distributed between access areas as follows: 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 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 Nantucket Lightship Access Area; or one trip in the Hudson Canyon Access Area and one trip in the Nantucket Lightship Access Area.

(i) If, prior to the implementation of Framework 24, a part-time vessel lands more scallops from the Hudson Canyon Access Area than ultimately allocated for fishing year 2013, NMFS shall deduct five open area DAS in fishing year 2013 from that vessel's allocation.

(ii) [Reserved]

(2) For the 2014 fishing year, part-time scallop vessels shall not receive access area trip allocations.

(D) *Occasional scallop vessels.* For the 2013 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 Nantucket Lightship Access Area, or one trip in the Hudson Canyon Access Area. If, prior to the implementation of Framework 24, an occasional vessel lands more scallops from the Hudson Canyon Access Area than ultimately allocated for fishing year 2013, NMFS shall deduct one open area DAS in fishing year 2013 from that vessel's allocation.

\* \* \* \* \*

(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). 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
2013 .....	13,000 lb (5,897 kg) .....	10,400 lb (4,717 kg) .....	2,080 lb (943 kg).

\* \* \* \* \*

(d) *Increase in possession limit to defray costs of observers*—The Regional Administrator may increase the sea scallop possession limit specified in paragraph (a)(5) of this section to defray costs of at-sea observers deployed on area access trips subject to the limits specified § 648.53(g). An owner of a scallop vessel shall be notified of the increase in the possession limit through a permit holder letter issued by the Regional Administrator. If the observer set-aside is fully utilized prior to the end of the fishing year, the Regional Administrator shall notify owners of scallop vessels that, effective on a specified date, the increase in the possession limit is no longer available to offset the cost of observers. Unless otherwise notified by the Regional Administrator, vessel owners shall be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit.

(e) \* \* \*

(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 2013 and 2014 are:

(i) *2013*: Hudson Canyon Access Area, Nantucket Lightship Access Area, Closed Area I Access Area, and Closed Area II Access Area.

(ii) *2014*: None.

\* \* \* \* \*

(g) \* \* \*

(4) \* \* \*

(ii) *Other species*. Unless issued an LAGC scallop permit and fishing under an approved NE multispecies SAP under NE multispecies DAS, an LAGC IFQ vessel fishing in the Access Areas specified in § 648.59(b) through (d) is prohibited from possessing any species of fish other than scallops and monkfish, as specified in § 648.94(c)(8)(i).

\* \* \* \* \*

■ 11. In § 648.61, paragraphs (a)(1) and (5) are revised to read as follows.

**§ 648.61 EFH closed areas.**

(a) \* \* \*

(1) *Western GOM Habitat Closure Area*. The restrictions specified in this paragraph (a) apply to the Western GOM Habitat Closure Area, which is the area bounded by straight lines connecting the following points in the order stated:

**WESTERN GOM HABITAT CLOSURE AREA**

Point	N. lat.	W. long.
WGM1 .....	43°15'	70°15'
WGM2 .....	42°15'	70°15'
WGM3 .....	42°15'	70°00'
WGM4 .....	43°15'	70°00'
WGM1 .....	43°15'	70°15'

\* \* \* \* \*

(5) *Closed Area II Habitat Closure Area*. The restrictions specified in this paragraph (a) apply to the Closed Area II Habitat Closure Area (also referred to as the Habitat Area of Particular Concern), which is the area bounded by straight lines, except where noted, connecting the following points in the order stated:

**CLOSED AREA II HABITAT CLOSURE AREA**

Point	N. lat.	W. long.
CIIH1 .....	42°10'	67°20'
CIIH2 .....	42°10'	(1) (2)
CIIH3 .....	42°00'	(3)
CIIH4 .....	42°00'	67°10'
CIIH5 .....	41°50'	67°10'
CIIH6 .....	41°50'	67°20'
CIIH1 .....	42°10'	67°20'

<sup>1</sup>The intersection of 42°10 N. lat. and the U.S.-Canada maritime boundary.

<sup>2</sup>From Point CAIIA3 connected to Point CAIIA4 along the U.S.-Canada maritime boundary.

<sup>3</sup>The intersection of 42°00 N. lat. and the U.S.-Canada maritime boundary.

\* \* \* \* \*

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

**§ 648.62 Northern Gulf of Maine (NGOM) Management Program.**

\* \* \* \* \*

(b) \* \* \*

(1) *NGOM annual hard TACs*. The annual hard TAC for the NGOM is 70,000 lb (31.8 mt) for the 2013 and 2014 fishing years.

\* \* \* \* \*

■ 13. In § 648.64, paragraph (d) is removed and reserved, and paragraphs (a), (b)(1), (c), and (e) are revised to read as follows:

**§ 648.64 Yellowtail flounder sub-ACLs and AMs for the scallop fishery.**

(a) As specified in § 648.55(d), and pursuant to the biennial framework adjustment process specified in § 648.90, the scallop fishery shall be allocated a sub-ACL for the Georges Bank and Southern New England/Mid-Atlantic stocks of yellowtail flounder. The sub-ACLs for the 2013 fishing year are specified in § 648.90(a)(4)(iii)(C) of the NE multispecies regulations.

(b) \* \* \*

(1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Georges Bank yellowtail flounder sub-ACL for the scallop fishery is exceeded, the area defined by the following coordinates, bounded in the order stated by straight lines except where noted, shall be closed to scallop fishing by vessels issued a limited access scallop permit for the period of time specified in paragraph (b)(2) of this section:

**GEORGES BANK YELLOWTAIL ACCOUNTABILITY MEASURE CLOSURE**

Point	N. lat.	W. long.
GBYT AM 1 .....	41°50'	(1) (2)
GBYT AM 2 .....	40°30.75'	(3)
GBYT AM 3 .....	40°30'	66°40'
GBYT AM 4 .....	40°40'	66°40'
GBYT AM 5 .....	40°40'	66°50'
GBYT AM 6 .....	40°50'	66°50'
GBYT AM 7 .....	40°50'	67°00'
GBYT AM 8 .....	41°00'	67°00'
GBYT AM 9 .....	41°00'	67°20'
GBYT AM 10 .....	41°10'	67°20'
GBYT AM 11 .....	41°10'	67°40'
GBYT AM 12 .....	41°50'	67°40'
GBYT AM 1 .....	41°50'	66°51.94'

<sup>1</sup>The intersection of 41°50 N. lat. and the U.S.-Canada maritime boundary.

<sup>2</sup>From Point CAIIA3 connected to Point CAIIA4 along the U.S.-Canada maritime boundary.

<sup>3</sup>The intersection of 41°30.75 N. lat. and the U.S.-Canada maritime boundary.

\* \* \* \* \*

(c) *Southern New England/Mid-Atlantic accountability measures*—(1)

*Limited access scallop vessels*. (i) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Southern New England/Mid-Atlantic yellowtail

flounder sub-ACL for the scallop fishery is exceeded, the area defined by the following coordinates, bounded in the order stated by straight lines except where noted, shall be closed to scallop fishing by vessels issued a limited

access scallop permit for the period of time specified in paragraph (c)(1)(ii) of this section. The Southern New England Yellowtail Accountability Measure Closure Area for Limited Access Scallop Vessels is comprised of Northeast

Region Statistical Areas #537, #539 and #613, and is defined by the following coordinates, connected in the order listed by straight lines, unless otherwise noted:

Point	N. lat.	W. long.
LA SNEYT AM 1	(1)	73°00'
LA SNEYT AM 2	40°00'	73°00'
LA SNEYT AM 3	40°00'	71°40'
LA SNEYT AM 4	39°50'	71°40'
LA SNEYT AM 5	39°50'	70°00'
LA SNEYT AM 6	(2) (3)	70°00'
LA SNEYT AM 7 (4)	41°16.76'	70°13.47'
LA SNEYT AM 8 (5)	41°18.01'	70°15.47'
LA SNEYT AM 9 (6)	41°20.26'	70°18.30'
LA SNEYT AM 10 (7)	41°21.09' (8)	70°27.03'
LA SNEYT AM 11	41°20'	(9)
LA SNEYT AM 12	41°20'	71°10'
LA SNEYT AM 13	(10) (11)	71°10'
LA SNEYT AM 14	(12)	71°40'
LA SNEYT AM 15	41°00'	71°40'
LA SNEYT AM 16	41°00' (13)	(14)

- <sup>1</sup> The south facing mainland coastline of Long Island.
- <sup>2</sup> The southern coastline of Nantucket.
- <sup>3</sup> From Point F to Point G along the southern coastline of Nantucket.
- <sup>4</sup> Point G represents Esther Island, Nantucket, Massachusetts.
- <sup>5</sup> Point H represents Tuckernuck Island, Nantucket, Massachusetts.
- <sup>6</sup> Point I represents Muskeget Island, Nantucket, Massachusetts.
- <sup>7</sup> Point J represents Wasque Point, Chappaquiddick Island, Massachusetts.
- <sup>8</sup> From Point J to Point K along the southern coastline of Martha's Vineyard.
- <sup>9</sup> The western coastline of Martha's Vineyard.
- <sup>10</sup> The southern coastline of Rhode Island.
- <sup>11</sup> From Point M to Point B following the mainland coastline of Rhode Island.
- <sup>12</sup> The southern coastline of Rhode Island.
- <sup>13</sup> From Point P back to Point A along the southern mainland coastline of Long Island.
- <sup>14</sup> Southeast facing coastline of Long Island.

(ii) *Duration of closure.* The Southern New England/Mid-Atlantic yellowtail flounder accountability measure closed area for limited access vessels shall

remain closed for the period of time, not to exceed 1 fishing year, as specified for the corresponding percent coverage of the Southern New England/Mid-

Atlantic yellowtail flounder sub-ACL, as follows:

Percent coverage of YTF sub-ACL	Length of closure
2 or less	March through April.
2.1–3	March through April, and February.
3.1–7	March through May, and February.
7.1–9	March through May and January through February.
9.1–12	March through May and December through February.
12.1–15	March through June and December through February.
15.1–16	March through June and November through February.
16.1–18	March through July and November through February.
18.1–19	March through August and October through February.
19.1 or more	March through February.

(2) *Limited access general category IFQ scallop vessels using dredges—(i)* Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL for the scallop fishery is exceeded, and the criteria in

paragraph (c)(2)(iii) of this section are met, the Southern New England Yellowtail Accountability Measure Closure Areas described in paragraphs (c)(2)(ii) through (iv) of this section shall be closed to scallop fishing by vessels issued an LAGC IFQ scallop permit and using dredges for the period of time

specified in paragraph (c)(2)(v) of this section.

(ii) *Closure Area 1* is comprised of Northeast Region Statistical Area #537, and is defined by the following coordinates, connected in the order listed by straight lines, unless otherwise noted:

Point	N. lat.	W. long.
LAGC Dredge SNEYT AM1 A	41°20'	(1)
LAGC Dredge SNEYT AM1 B	41°20'	71°10'
LAGC Dredge SNEYT AM1 C	41°10'	71°10'

Point	N. lat.	W. long.
LAGC Dredge SNEYT AM1 D .....	41°10'	71°20'
LAGC Dredge SNEYT AM1 E .....	40°50'	71°20'
LAGC Dredge SNEYT AM1 F .....	40°50'	71°40'
LAGC Dredge SNEYT AM1 G .....	39°50'	71°40'
LAGC Dredge SNEYT AM1 H .....	39°50'	70°00'
LAGC Dredge SNEYT AM1 I .....	(2)(3)	70°00'
LAGC Dredge SNEYT AM1 J (4) .....	41°16.76'	70°13.47'
LAGC Dredge SNEYT AM1 K (5) .....	41°18.01'	70°15.47'
LAGC Dredge SNEYT AM1 L (6) .....	41°20.26'	70°18.30'
LAGC Dredge SNEYT AM1 M (7) .....	41°21.09' (8)	70°27.03'

- <sup>1</sup> The western coastline of Martha's Vineyard.
- <sup>2</sup> The southern coastline of Nantucket.
- <sup>3</sup> From Point I to Point J along the southern coastline of Nantucket.
- <sup>4</sup> Point J represents Esther Island, Nantucket, Massachusetts.
- <sup>5</sup> Point K represents Tuckernuck Island, Nantucket, Massachusetts.
- <sup>6</sup> Point L represents Muskeget Island, Nantucket, Massachusetts.
- <sup>7</sup> Point M represents Wasque Point, Chappaquiddick Island, Massachusetts.
- <sup>8</sup> From Point M back to Point A along the southern coastline of Martha's Vineyard.

(iii) Closure Area 2 is comprised of Northeast Region Statistical Area #613, and is defined by the following coordinates, connected in the order listed by straight lines, unless otherwise noted:

Point	N. lat.	W. long.
LAGC Dredge SNEYT AM2 A .....	(1)	73°00'
LAGC Dredge SNEYT AM2 B .....	40°00'	73°00'
LAGC Dredge SNEYT AM2 C .....	40°00'	71°40'
LAGC Dredge SNEYT AM2 D .....	41°00'	71°40'
LAGC Dredge SNEYT AM2 E .....	41°00' (2)	(3)

- <sup>1</sup> The south facing mainland coastline of Long Island.
- <sup>2</sup> Southeast facing coastline of Long Island.
- <sup>3</sup> From Point E back to Point A along the southern mainland coastline of Long Island.

(iv) Closure Area 3 is comprised of Northeast Region Statistical Area #539, and is defined by the following coordinates, connected in the order listed by straight lines, unless otherwise noted:

Point	N. lat.	W. long.
LAGC Dredge SNEYT AM3 A .....	(1)	71°40'
LAGC Dredge SNEYT AM3 B .....	40°50' N	71°40'
LAGC Dredge SNEYT AM3 C .....	40°50' N	71°20'
LAGC Dredge SNEYT AM3 D .....	41°10' N	71°20'
LAGC Dredge SNEYT AM3 E .....	41°10' N	71°10'
LAGC Dredge SNEYT AM3 F .....	(1) (2)	71°10'

- <sup>1</sup> The southern coastline of Rhode Island.
- <sup>2</sup> From Point F back to Point A following the southern mainland coastline of Rhode Island.

(v) Duration of closure. The Southern New England/Mid-Atlantic yellowtail flounder accountability measure closure areas for LAGC IFQ vessels using dredge gear shall remain closed for the period of time, not to exceed 1 fishing year, as specified for the corresponding percent overage of the Southern New England/ Mid-Atlantic yellowtail flounder sub-ACL, as follows:

Percent overage of YTF sub-ACL	AM closure area and duration		
	AM Closure Area 1	AM Closure Area 2	AM Closure Area 3
2 or less .....	Mar–Apr .....	Mar–Apr .....	Mar–Apr.
2.1–7 .....	Mar–May, Feb .....	Mar–May, Feb .....	Mar–May, Feb.
7.1–12 .....	Mar–May, Dec–Feb .....	Mar–May, Feb .....	Mar–May, Dec–Feb.
12.1–16 .....	Mar–Jun, Nov–Feb .....	Mar–May, Feb .....	Mar–Jun, Nov–Feb.
16.1 or greater .....	Mar–Jun, Nov–Feb .....	Mar–May, Feb .....	All year.

(vi) The Southern New England/Mid-Atlantic yellowtail flounder accountability measure for LAGC IFQ vessels using dredge gear shall only be triggered if the Southern New England/ Mid-Atlantic yellowtail flounder sub-ACL is exceeded, an accountability measure is triggered for the limited access scallop fishery, and the catch of yellowtail flounder by LAGC IFQ vessels using dredge gear was estimated to be more than 3 percent of the total catch of yellowtail flounder in the scallop fishery. For example, in a given fishing year, if the total sub-ACL for the

scallop fishery was 50 mt of yellowtail flounder and LAGC IFQ vessels using dredge gear caught an estimated 1 mt, accountability measures for IFQ vessels using dredges would not trigger because the fishery did not catch more than 3 percent of the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL (1.5 mt), even if the total sub-ACL was exceeded. If LAGC IFQ vessels using dredge gear caught more than 3 percent of the Southern New England/Mid-Atlantic yellowtail flounder, but the sub-ACL is not exceeded and the

limited access accountability measure is not triggered, LAGC IFQ vessels using dredge gear would not trigger their own accountability measure.

(3) *Limited access general category IFQ scallop vessels using trawls*—(i) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL for the scallop fishery is exceeded, and the criteria in paragraph (c)(3)(iii) of this section are met, the area defined by the following

coordinates shall be closed to LAGC vessels fishing with trawl for the period of time specified in paragraph (c)(3)(ii) of this section. Southern New England Yellowtail Accountability Measure Closure Area for Limited Access General Category IFQ Scallop Vessels using Trawl Gear is comprised of Northeast Region Statistical Areas #612 and #613, and is defined by the following coordinates, connected in the order listed by straight lines, unless otherwise noted:

Point	N. lat.	W. long.
LAGC Trawl SNEYT AM A .....	40°00'	(1)
LAGC Trawl SNEYT AM B .....	40°00'	71°40'
LAGC Trawl SNEYT AM C .....	41°00'	71°40'
LAGC Trawl SNEYT AM D .....	41°00' (2)	(3)

<sup>1</sup> New Jersey mainland coastline.

<sup>2</sup> From Point D back to Point A along the southern mainland coastline of Long Island and New York, and the eastern coastline of New Jersey.

<sup>3</sup> Southeast facing coastline of Long Island, NY.

(ii) *Duration of closure.* The Southern New England/Mid-Atlantic yellowtail flounder accountability measure closure area for LAGC IFQ vessels using trawl

gear shall remain closed for the period of time, not to exceed 1 fishing year, as specified for the corresponding percent overage of the Southern New England/

Mid-Atlantic yellowtail flounder sub-ACL, as follows:

Percent overage of YTF sub-ACL	Length of closure
2 or less .....	March through April.
2.1–3 .....	March through April, and February.
3.1–7 .....	March through May, and February.
7.1–9 .....	March through May and January through February.
9.1–12 .....	March through May and December through February.
12.1–15 .....	March through June and December through February.

(iii) The accountability measure for LAGC vessels using trawl gear shall be triggered under the following conditions:

(A) If the estimated catch of Southern New England/Mid-Atlantic yellowtail flounder by LAGC IFQ vessels using trawl gear is more than 10 percent of the total Southern New England/Mid-Atlantic yellowtail flounder sub-ACL, the accountability measure for LAGC IFQ vessels using trawl gear shall be triggered, regardless of whether or not the scallop fishery's Southern New England/Mid-Atlantic yellowtail flounder sub-ACL was exceeded in a given fishing year. In this case, the accountability measure closure season shall be from March–June and again from December–February (a total of 7 months). For example, if the scallop fishery's Southern New England/Mid-Atlantic yellowtail flounder sub-ACL for a given fishing year is 50 mt, LAGC IFQ vessels using trawl gear would trigger a 7-month closure, the most restrictive closure duration specified in paragraph (c)(3)(ii) of this section, if they caught 5 mt or more of yellowtail flounder.

(B) If the scallop fishery's Southern New England/Mid-Atlantic yellowtail flounder sub-ACL for a given fishing year is exceeded, resulting in an accountability measure for the limited access fleet as specified in paragraph (c)(1) of this section, LAGC IFQ vessels using trawl gear shall be subject to a seasonal closure accountability measure, as specified in paragraph (c)(3)(i) of this section, based on the total scallop fishery's sub-ACL overage, as specified in paragraph (c)(3)(ii) of this section.

(C) If both of these conditions are triggered, (i.e., LAGC IFQ vessels using trawl gear catch more than 10 percent of the total Southern New England/Mid-Atlantic yellowtail flounder sub-ACL and the overall Southern New England/Mid-Atlantic yellowtail flounder sub-ACL is exceeded, triggering limited access scallop fishery accountability measures), the most restrictive accountability measure shall apply to LAGC IFQ vessels using trawl gear (i.e., the closure season would be from March–June and again from December–February).

(iv) If the LAGC accountability measure for vessels using trawl gear is triggered, a vessel can switch to dredge gear to continue fishing in the LAGC trawl closure areas, as specified in paragraph (c)(3)(i) of this section, during the time of year when trawl gear is prohibited, as specified in paragraph (c)(3)(ii) of this section. If such a vessel does switch to dredge gear, it is subject to any yellowtail flounder accountability measures that may be in place for that gear type, as specified in paragraph (c)(3) of this section.

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(e) *Process for implementing the AM*—(1) *If reliable information is available to make a mid-year determination:* On or about January 15 of each year, based upon catch and other information available to NMFS, the Regional Administrator shall determine whether a yellowtail flounder sub-ACL was exceeded, or is projected to be exceeded, by scallop vessels prior to the end of the scallop fishing year ending on February 28/29. The determination shall include the amount



of the overage or projected amount of the overage, specified as a percentage of the overall sub-ACL for the applicable yellowtail flounder stock, in accordance with the values specified in paragraph (a) of this section. Based on this initial projection in mid-January, the Regional Administrator shall implement the AM in accordance with the APA and notify owners of limited access and LAGC scallop vessels by letter identifying the length of the closure and a summary of the yellowtail flounder catch, overage, and projection that resulted in the closure.

(2) *If reliable information is not available to make a mid-year determination:* Once NMFS has compiled the necessary information (e.g., when the previous fishing year's observer and catch data are fully available), the Regional Administrator shall determine whether a yellowtail flounder sub-ACL was exceeded by scallop vessels following the end of the scallop fishing year ending on February 28/29. The determination shall include the amount of the overage, specified as a percentage of the overall sub-ACL for the applicable yellowtail flounder stock, in accordance with the values specified

in paragraph (a) of this section. Based on this information, the Regional Administrator shall implement the AM in accordance with the APA in Year 3 (e.g., an accountability measure would be implemented in fishing year 2016 for an overage that occurred in fishing year 2014) and notify owners of limited access and LAGC scallop vessels by letter identifying the length of the closure and a summary of the yellowtail flounder catch and overage information.

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