

required to be filed by this part, except for any document filed pursuant to § 234.11 of this part, is subject to a \$5,000 fine and 2 years imprisonment as prescribed by 49 U.S.C. 522(a) and 21311(a).

### Subpart B—Reports and Plans

■ 7. The heading to subpart B is revised to read as set forth above.

■ 8. Section 234.11 is added to subpart B to read as follows:

#### § 234.11 State highway-rail grade crossing action plans.

(a) *Purpose.* The purpose of this section is to reduce collisions at highway-rail grade crossings in the ten States that have had the most highway-rail grade crossing collisions, on average, during the calendar years 2006, 2007, and 2008. This section does not restrict any other State, or other entity, from adopting a highway-rail grade crossing action plan. This section also does not restrict any of the States required to develop action plans under this section from adopting a highway-rail grade crossing action plan with additional or more stringent requirements not inconsistent with this section.

(b) *Application.* This section applies to the ten States that have had the most highway-rail grade crossing collisions, on average, during the calendar years 2006, 2007, and 2008.

(c) *Action plans.* (1) The ten identified States shall each develop a State highway-rail grade crossing action plan and submit such a plan to FRA for review and approval not later than August 27, 2011.

(2) A State highway-rail grade crossing action plan shall:

(i) Identify specific solutions for improving safety at crossings, including highway-rail grade crossing closures or grade separations;

(ii) Focus on crossings that have experienced multiple accidents or are at high risk for such accidents; and

(iii) Cover a five-year time period.

(d) *Review and approval.* (1) State highway-rail grade crossing action plans required under paragraph (c) of this section shall be submitted for FRA review and approval using at least one of the following methods: Mail to the Associate Administrator for Railroad Safety/Chief Safety Officer, U.S. Department of Transportation, Federal Railroad Administration, 1200 New Jersey Ave., SE., Washington, DC 20590; or e-mail to

[rrs.correspondence@fra.dot.gov](mailto:rrs.correspondence@fra.dot.gov).

(2) FRA will review and approve or disapprove a State highway-rail grade

crossing action plan submitted pursuant to paragraph (d) of this section within 60 days of receipt.

(3) If the proposed State highway-rail grade crossing action plan is disapproved, FRA will notify the affected State as to the specific areas in which the proposed plan is deficient. A State shall correct all deficiencies within 30 days following receipt of written notice from FRA.

(4) FRA may condition the awarding of any grants under 49 U.S.C. 20158, 20167, or 22501 to an identified State on the development of an FRA approved State highway-rail grade crossing action plan.

Issued in Washington, DC, on June 22, 2010.

**Karen Rae,**

*Deputy Administrator, Federal Railroad Administration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 100107011-0248-03]

RIN 0648-AY43

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

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is implementing measures specified in Framework Adjustment 21 (Framework 21) to the Atlantic Sea Scallop Fishery Management Plan (FMP), which was developed by the New England Fishery Management Council (Council). Framework 21 specifies the following management measures for the 2010 scallop fishery: Total allowable catch (TAC); open area days-at-sea (DAS) and Sea Scallop Access Area (access area) trip allocations; DAS adjustments if an access area yellowtail flounder (YTF) TAC is caught; limited access general category (LAGC) access area trip allocations; management measures to minimize impacts of incidental take of sea turtles as required by the March 14, 2008, Atlantic Sea Scallop Biological Opinion (Biological Opinion); minor adjustments to the LAGC individual fishing quota (IFQ) program; and minor

adjustments to the industry-funded observer program. This action also adjusts regulatory language to eliminate duplicative and outdated text, and to clarify provisions in the regulations that are currently unclear.

**DATES:** Effective June 28, 2010.

**ADDRESSES:** An environmental assessment (EA) was prepared for Framework 21 that describes the action and other considered alternatives and provides a thorough analysis of the impacts of the measures and alternatives. Copies of Framework 21, the EA, and the Initial Regulatory Flexibility Analysis (IRFA) are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

Framework 21 was developed and adopted by the Council in order to meet the FMP's objectives to prevent overfishing and improve yield-per-recruit from the fishery. The FMP requires biennial adjustments to ensure that the measures meet the fishing mortality rate (F) and other goals of the FMP and achieve optimum yield (OY) from the scallop resource on a continuing basis. Framework 21 measures will replace those that were specified for the March 1, 2010, start of the fishing year (FY). Framework 21 specifies measures only for FY 2010. Amendment 15 to the FMP, currently under development by the Council, will identify and implement annual catch limits and accountability measures to bring the FMP into compliance with the new requirements of the re-authorized Magnuson-Stevens Fishery Conservation and Management Act (MSA) for FY 2011 and beyond. Framework 22 will be developed by the Council to set the specifications for FYs 2011 and 2012.

The Council approved Framework 21 at its November 18, 2009, meeting and submitted Framework 21 to NMFS for review on December 21, 2009. At its November 2009 meeting, the Council focused on two F target alternatives that did not involve a new access area closure: A target F of 0.24 (TAC of 47.3 M lb), and a lower target F of 0.20 (TAC of 41.5 M lb), which was ultimately selected by the Council. The Council's quota allocation recommendation for FY 2010 became very controversial due to industry concerns over the FY 2010 economic impacts of what some

believed to be an overly precautionary F target. Following public testimony from both scallop and groundfish fishery participants who supported adoption of a higher allocation alternative, and an in-depth review of the two alternatives, the Council amended its previous Framework 21 decision and voted to adopt the higher F target of 0.24 for FY 2010 at its January 27, 2010, meeting. The Council's rationale for the amended decision was primarily based on the fact that the Framework 21 allocation alternatives were analyzed using a revised landings-per-unit effort (LPUE) calculation applied to the DAS model that would likely be more reflective of actual fishing effort than the DAS model used in Framework 19 to the FMP. Framework 19's LPUE model had underestimated fishing effort in open areas in FYs 2008 and 2009, resulting in higher levels of harvest than projected. The adjusted LPUE used in Framework 21 increased, resulting in lower overall DAS allocations that take into account higher effort levels. After an extensive discussion of the aggregate impacts of the revised LPUE calculation, in addition to setting a lower F target, the Council determined that the higher F target (0.24), in addition to the revised DAS model, would better achieve OY while also being appropriately precautionary. The Council subsequently revised its recommendations for action in Framework 21 and resubmitted the document with updated analyses reflecting the higher F target allocation to NMFS for review on March 19, 2010.

The Council reviewed the Framework 21 proposed rule regulations as drafted by NMFS, which included regulations proposed by NMFS under the authority of section 305(d) of the MSA, and on March 30, 2010, deemed them to be necessary and consistent with section 303(c) of the MSA. The proposed rule for Framework 21 published in the **Federal Register** on April 27, 2010, with a 15-day public comment period that ended May 12, 2010. Three comments were received on the proposed measures.

The IFQ Program was implemented on March 1, 2010. As a result, limited access scallop vessels, limited access scallop vessels with LAGC IFQ permits, and LAGC IFQ vessels will receive 94.5 percent, 0.5 percent, and 5 percent of the allocated target TAC, respectively, after accounting for applicable research and observer set-asides.

The final management measures are described below. Details concerning the Council's development of these measures were presented in the

preamble of the proposed rule and are not repeated here.

#### **Acceptable Biological Catch (ABC) and TAC**

The Council's Scientific and Statistical Committee (SSC) recommended an ABC for the 2010 scallop fishery based on an F of 0.284, which results in a TAC of 57,803,000 lb (26,219 mt) after accounting for discards and incidental mortality. The calculation on which this ABC recommendation is based assumes that mortality in the scallop fishery is spatially and temporarily uniform, and that all exploitable scallop biomass is accessible to the fleet. However, due to various rotational and permanent closures, as well as area-based differences in F, the PDT developed and analyzed allocation alternatives with various F targets below 0.284 in order to prevent localized overfishing in areas that are accessible to the fleet. Based on these analyses, and in order to minimize adverse impacts on Essential Fish Habitat (EFH), minimize bycatch, and achieve OY to the extent practicable, the Council ultimately based the target TAC on an F of 0.24. This results in a TAC of 47,278,000 lb (21,445 mt).

After the deduction of the incidental target TAC (50,000 lb, 22.7 mt) allocated to vessels with LAGC incidental permits, the remaining TAC is 47,228,000 lb (21,422 mt). This TAC is allocated into several components: Open area DAS; individual access area trips for limited access vessels; IFQ allocations, including access area allocations, to vessels with LAGC IFQ permits; and research and observer set-asides.

#### **Open Area DAS Allocations**

This action implements the following vessel-specific DAS allocations for FY 2010: Full-time vessels will be allocated 38 DAS; part-time vessels will be allocated 15 DAS; and occasional vessels will be allocated 3 DAS.

Because Framework 21 was not implemented by the start of the FY on March 1, 2010, and the regulations in effect at the start of FY 2010 are inconsistent with Framework 21 specifications, it is possible that a scallop vessel may have exceeded its DAS allocation during the interim period between March 1, 2010, and the effective date of this final rule. Therefore, any limited access open area DAS used in FY 2010 by a vessel that is above the final FY 2010 allocation for that vessel will be deducted from the vessel's FY 2011 DAS allocation.

#### **Open Area DAS Adjustment if Access Area Yellowtail Flounder (YTF) TAC Is Attained**

Under the Northeast Multispecies FMP, 10 percent of the Southern New England (SNE) YTF TAC is allocated to scallop vessels fishing in the Nantucket Lightship Access Area (NLAA). For FY 2010, this equates to 47 mt; 103,617 lb (April 9, 2010; 75 FR 18356). If the NLAA YTF TAC is caught, the NLAA will be closed to further scallop fishing for the remainder of the FY. If a vessel has unutilized trip(s) after the access area is closed due to reaching the YTF TAC, it will be allocated additional open area DAS at a reduced rate. This trip/DAS conversion will apply only to full-time vessels, and to occasional or part-time vessels that have no other available access areas in which to take their access area trip(s). Full-time vessels will be allocated 5.8 DAS per unutilized trip in the NLAA. If part-time and occasional vessels have no available access areas in which to take an unused trip, they will be allocated 4.6 DAS and 1.9 DAS, respectively.

If a vessel has unused compensation trip(s) from a previously broken trip(s) when the access area closes due to reaching the YTF TAC, it will be issued additional DAS in proportion to the unharvested possession limit. For example, if a full-time vessel had an unused 9,000-lb (4,082-kg) NLAA compensation trip (half of the full possession limit) at the time of a NLAA YTF TAC closure, the vessel will be allocated 2.9 DAS (half of the 5.8 DAS that will be allocated for a full NLAA trip).

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

In FY 2010, full-time scallop vessels are allocated one trip in the NLAA, two trips in the Elephant Trunk Access Area (ETAA), and one trip in the Delmarva Access Area (Delmarva). A part-time scallop vessel is allocated two trips, which can be taken as follows: two trips in the ETAA; one trip in the ETAA and one trip in the NLAA; one trip in the ETAA and one trip in Delmarva; or one trip in NLAA and one trip in Delmarva. An occasional vessel is allocated one trip, which can be taken in any one open access area. The FY 2010 limited access scallop possession limit for access area trips is 18,000 lb (8,165 kg) for full-time vessels, 14,400 lb (6,532 kg) for part-time vessels, and 6,000 lb (2,723 kg) for occasional vessels.

Because Framework 21 was not implemented by the start of the FY on March 1, 2010, and the regulations in

effect at the start of FY 2010 are inconsistent with Framework 21 specifications, it is possible that scallop vessels could exceed their ETAA access area trip allocation during the interim period between March 1, 2010, and the effective date of this final rule. There were three ETAA trips allocated for full-time scallop vessels at the start of FY 2010, but this final rule allocates only two trips. If a full-time vessel takes three trips into the ETAA during FY 2010, the vessel's FY 2011 overall access area trip allocation will be reduced by one trip to account for the FY 2010 overage. The access area trip allocations for FY 2011 are not yet determined; vessel owners who exceed their ETAA trip allocations for FY 2010 will have their overage deducted from their ETAA allocation, if there is a trip allocated into the ETAA for FY 2011. If no ETAA trips are allocated in FY 2011, vessel owners will be given the opportunity to select the area from which their trip overage would be deducted, with NMFS determining the area, if the vessel owner fails to respond.

Framework 21 reduces the access area possession limit for part-time and occasional vessels. Therefore, it is also possible that a part-time or occasional vessel may have exceeded its trip possession limit during the interim period between March 1, 2010, and the effective date of this final rule. If a part-time or occasional vessel exceeds its FY 2010 possession limit, the overage will be deducted from that vessel's FY 2011 possession limit allocation.

#### LAGC Measures

1. *TAC for LAGC vessels with IFQ permits.* This action specifies a 2,326,700-lb (1,055-mt) annual TAC for LAGC vessels with IFQ permits for FY 2010. IFQ allocations will be calculated by applying each vessel's IFQ contribution percentage to this TAC.

2. *TAC for Limited Access Scallop Vessels with IFQ Permits.* This action specifies a 232,670-lb (106-mt) annual TAC for limited access scallop vessels with IFQ permits for FY 2010. IFQ allocations will be calculated by applying each vessel's IFQ contribution percentage to this TAC.

3. *LAGC IFQ Trip Allocations and Possession Limits for Scallop Access Areas.* The LAGC IFQ fishery is allocated 5 percent of the overall ETAA, NLAA, and Delmarva TACs, resulting in a fleet-wide trip allocation of 1,377 trips in the ETAA and 714 trips in both the NLAA and in Delmarva. These areas will close to LAGC vessels when the Regional Administrator determines that the allocated number of trips have been taken in the respective areas.

Framework 21 reduces the number of LAGC trips into the ETAA and Delmarva. Therefore, it is possible that LAGC scallop vessels could exceed the FY 2010 fleet-wide trip allocations in the ETAA and Delmarva. If LAGC vessels exceed the number of allocated trips from the ETAA or Delmarva in FY 2010, the number of excess trips will be deducted from the LAGC IFQ fleet access area trip allocation in FY 2011 in the ETAA or Delmarva, respectively.

4. *Northern Gulf of Maine (NGOM) TACS.* This action specifies a 70,000-lb (31,751-kg) annual NGOM TAC for FY 2010.

5. *Scallop Incidental Catch Target TAC.* This action specifies a 50,000-lb (22,680-kg) scallop incidental catch target TAC for FY 2010 to account for mortality from this component of the fishery and to ensure that F targets are not exceeded.

#### Research Set-Aside (RSA) Allocations

Two percent of each scallop access area quota and 2 percent of the DAS allocation are set aside as the Scallop RSA to fund scallop research and to compensate participating vessels through the sale of scallops harvested under RSA quota. The FY 2010 RSA access area allocations are: NLAA—117,820 lb (53 mt); ETAA—227,060 lb (103 mt); and Delmarva—117,700 lb (53 mt). The FY 2010 RSA DAS allocation is 269 DAS.

#### Observer Set-Aside Allocations

One percent of each scallop access area quota and 1 percent of the DAS allocation are set aside as part of the industry-funded observer program to help defray the cost of carrying an observer. Scallop vessels on an observed DAS trip are charged a reduced DAS rate, and scallop vessels on an observed access area trip are authorized to have an increased possession limit. Unless changed by the Regional Administrator, the current compensation rate for FY 2010 will continue, as follows: Limited access DAS vessels carrying an observer on access area trips will receive 180 lb (82 kg) of scallops per day, or part of a day, in ETAA, Delmarva, and NLAA; LAGC IFQ vessels carrying an observer on access area trips will receive 180 lb (82 kg) of scallops per trip in ETAA, Delmarva, and NLAA; and limited access DAS vessels will be compensated 0.10 DAS per DAS fished during observed open area trips (*i.e.*, vessels will be charged 0.90 DAS per DAS fished with an observer onboard). The Regional Administrator will re-evaluate the compensation rates for FY 2010 should new information regarding monitoring and coverage levels indicate

the need for adjustment. The 2010 observer set-aside access area allocations are: NLAA—58,910 lb (27 mt); ETAA—113,530 lb (52 mt); and Delmarva—58,850 lb (27 mt). The FY 2010 DAS observer set-aside allocation is 135 DAS.

#### Reasonable and Prudent Measures

The Incidental Take Statement of the March 14, 2008, Biological Opinion required NMFS to implement five non-discretionary reasonable and prudent measures (RPMs) identified as necessary or appropriate to minimize the impacts of any incidental take, as well as Terms and Conditions for implementing each RPM. Framework 21 includes management measures to comply with the first of these RPMs, which requires a limit of fishing effort in the Mid-Atlantic during times when sea turtle distribution is expected to overlap with scallop fishing activity. The Biological Opinion requires that this restriction on fishing effort must be in place no later than FY 2010 and shall be limited to a level that will not result in more than a minor impact on the fishery.

For FY 2010, Framework 21 defined a "more than minor impact" on the fishery as one that would result in a 10-percent shift in baseline effort from the Mid-Atlantic during June 15 through October 31 into other areas and times of year when sea turtle interactions are less likely. This definition, as well as management measures to comply with the Biological Opinion and any future Biological Opinions, will be reevaluated for future FYs in Framework 22 and subsequent actions.

This action will close the Delmarva access area from September 1, 2010, through October 31, 2010. In addition, because the ETAA and Delmarva are in the Mid-Atlantic, full-time limited access vessels will be restricted to taking two of the access area trips allocated to those areas, or to maximum landings of 36,000 lb (16,329 kg) from those areas (*i.e.*, the equivalent of two access area trips), during the period June 15, 2010, through August 31, 2010. Compliance with the trip restriction will be monitored by pounds of scallops landed during June 15, 2010, through August 31, 2010, rather than trip declarations, which could result in landings that are less than the allowable trip possession limit. The additional pounds allocated to vessels with on-board observers during trips taken within this time period will not count towards this 36,000-lb (16,329-kg) limit. If a vessel fishes any part of an access area trip in the ETAA or Delmarva during this time period (*i.e.*, starts a trip on June 13, 2010, and ends the trip on

June 15, 2010), landings from that trip would count towards the two-trip limit.

In addition, compensation trips may not be combined during this time period in a way that would allow more than 36,000 lb (16,329 kg) to be landed from the ETAA or Delmarva from June 15, 2010, through August 31, 2010. For example, this final rule allocates three total trips into the Mid-Atlantic access areas to a full-time vessel for FY 2010 (One trip in Delmarva; two trips in the ETAA). If that vessel declared and subsequently broke one of the three trips into Mid-Atlantic access areas prior to June 15, it would have two full trips (*i.e.*, 36,000 lb, 16,329 kg) available for use during the trip-restriction window. In that case, the vessel could only harvest up to 36,000 lb (16,329 kg) total from June 15, 2010, through August 31, 2010, in the Mid-Atlantic access areas, either by fishing its compensation trip and one full access area trip or by fishing two full access area trips and waiting to conduct the compensation trip on or after November 1, 2010 (*i.e.*, after the ETAA and Delmarva seasonal closures).

Part-time and occasional vessels are not affected by this trip restriction because they are not allocated more than two trips during the entire FY. LAGC IFQ vessels are also not affected by this trip restriction.

#### Adjustments to the Industry-Funded Observer Program

The following measures were developed by the Council to improve the administration of the industry-funded observer program.

1. *Limit the amount of observer compensation LAGC IFQ vessels can possess per observed trip in access areas.* This action requires that for access area trips declared after the effective date of this action, the possession limit to defray the cost of an observer for LAGC IFQ vessels fishing in access areas be specified by trip, not by fishing day. 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 will be 180 lb (82 kg) per observed trip. In this scenario, an LAGC IFQ vessel with an onboard observer will be able to land up to 580 lb (263 kg), the sum of its regular possession limit of 400 lb (181 kg) plus the additional observer compensation, during an access area trip, regardless of trip length. The intent of this measure is to avoid allocating observer compensation in excess of the amount necessary to pay for the observer costs for these trips in order to minimize the possibility of fully

harvesting the observer set-aside in an access area prior to the end of the FY.

2. *Providers must charge a prorated fee for vessels fishing in access areas if the observer set-aside has been fully harvested.* This action requires that, for observed access area trips declared after NMFS announces that the annual observer set-aside for a given access area is fully exhausted, service providers must prorate their fees on an hourly basis for the remainder of the FY, similar to how observer fees are charged for vessels fishing on open area scallop trips. The intent of this measure is to avoid observer fees charged in excess of actual time spent on an observed trip in an access area once the set-aside allocated to that specific access area is no longer available to defray observer costs.

#### Adjustments to the IFQ Program

This final rule will enable the owner of an IFQ vessel or IFQ confirmation of permit history (CPH) to lease some or all of its IFQ to or from and other IFQ vessel during a single FY. This measure removes the restriction that requires leasing only of an entire IFQ. This alternative only applies to leases, and not to permanent transfers, which will still require a vessel's entire IFQ allocation to be transferred permanently. Vessel owners intending to lease some or all of their IFQ allocation to another IFQ vessel(s) may not fish any of their IFQ allocation prior to the lease transaction.

This action requires partial IFQ leases to be at least 100 lb (45 kg). If a vessel owner has previously leased a portion of the vessel's IFQ, and the remaining allocation is less than 100 lb (45 kg), the remaining IFQ may be transferred in full to another vessel.

This action also revises regulatory text to remove or clarify text that was duplicative and unnecessary, outdated, or unclear.

#### Comments and Responses

Three comment letters were received in response to the proposed rule from an individual; the Fisheries Survival Fund (FSF), writing on behalf of full-time limited access scallop fleet members; and Oceana, an environmental organization. The comments relating to the proposed Framework 21 measures are responded to below. Other comments, including those raising specific concerns about the contents and development of the March 14, 2008, Biological Opinion for the sea scallop fishery, are not the subject of this rulemaking and are therefore not responded to in this document. The FSF stated in its comment letter that it intended to incorporate by reference

other comments made during the Council's development of Framework 21; NMFS notes that the rulemaking process does not recognize such non-specific incorporation by reference. As a general matter, NMFS is constrained to only approve, disapprove, or partially approve measures in Framework 21, and cannot substantively amend or add to these regulations beyond what is necessary under section 305(d) of the MSA to discharge its responsibility to carry out such measures.

*Comment 1:* The FSF noted that it disagrees with the requirements of the Biological Opinion, characterizing them as ultraconservative, but reluctantly accepted the measures specified to comply with the RPM in the Biological Opinion. The FSF noted that, while the measures meet the criteria of having no more than a minor impact on the fishery, they will have negative economic impacts on the scallop industry because they will divert fishing activity to sub-optimal times of the year, when scallop yields are lower. However, FSF recognized that the findings of the Biological Opinion impose legal duties on NMFS that must be addressed through Framework 21, and that the scallop fleet will have to bear the costs of the measures.

*Response:* NMFS recognizes that FSF has concerns about the Biological Opinion that are not directly related to this rulemaking. NMFS agrees that the Framework 21 analysis shows that there will be some economic losses as a result of the diversion of fishing from the Mid-Atlantic region during a productive fishing period into areas and times with lower scallop yields. As FSF notes, however, the analysis concluded that the measures would comply with the RPM specified in the Biological Opinion, and have no more than a minor impact on the fishery, as required by the Endangered Species Act (ESA).

*Comment 2:* Oceana contended that Framework 21 fails to protect threatened and endangered sea turtles, fails to protect habitat, fails to reduce bycatch of sea turtles and finfish, and fails to achieve OY of scallops. Oceana suggests that NMFS should disapprove the use of the F=0.24 target and should approve and implement the measures developed by the Council to be consistent with the F=0.20 target. Oceana suggested that NMFS should disapprove Framework 21 and return the document to the Council for revision.

*Response:* Additional specific concerns noted by Oceana are characterized further and responded to in subsequent comments. NMFS disagrees with Oceana's suggestion that Framework 21 should be disapproved.

NMFS has found that the measures in Framework 21 comply with the MSA, ESA, NEPA, and all other applicable laws. Oceana's comments are based largely on the comparison of the impacts of the management alternatives considered by the Council. These alternatives included measures that would have achieved the  $F=0.24$  and  $F=0.20$  targets. There is no legal requirement when such alternatives are considered to necessarily select the more restrictive alternative for implementation. The analysis in Framework 21 demonstrates that the  $F=0.24$  target is not expected to result in overfishing and would achieve OY on a continuing basis, fully in compliance with MSA and the FMP. The  $F=0.24$  target is approximately 80 percent of the  $F=0.284$  overfishing threshold, and is consistent with the overfishing definition in the FMP. Framework 21 complies with NEPA, as it clearly presents the purpose and need for Framework 21, includes all necessary components of a NEPA document, fully analyzes and compares the impacts of a well-developed range of alternatives, and makes conclusions directly based on the information and analyses.

NMFS notes that a disapproval of Framework 21 would mean that the current management program would continue in effect. While the overall TAC is slightly higher in Framework 21 than the status quo, it is distributed to the fishery in a way that results in fewer open area DAS and access area trips. This, in turn, represents a reduction of the amount of the sea bottom where fishing occurs (overall swept area), with associated reductions in bycatch and habitat impacts. Failing to enact the measures in Framework 21 at this time would mean that there would be no measures to reduce interactions with sea turtles, as specified in the Biological Opinion.

*Comment 3:* Oceana's comments about ESA requirements include concerns that there should be a reinitiation of consultation on this fishery and that the current Biological Opinion for the scallop fishery must be updated because new information is available concerning loggerhead sea turtles as reflected in a status review and by a proposed listing of the North Atlantic distinct population segment as endangered. Although Oceana stops short of advocating disapproval of Framework 21 while a reinitiation occurs, it recommends that NFMS should implement the  $F=0.20$  alternative originally adopted by the Council and that there should be specific management measures that would apply to both the open area and

access areas in the Mid-Atlantic region. Oceana objects to the fact that the DAS allocated in Framework 21 are higher than those that would have been allocated if the target  $F$  was 0.20. Because the measures proposed in Framework 21 are applicable only to the access areas, Oceana contends that the measures do not comply with the requirements of the Biological Opinion.

*Response:* NMFS has determined that the measures in Framework 21 comply with the requirements of the MSA, the ESA and, specifically, the current Biological Opinion, even in light of the new status review and proposed listing. As a preliminary matter, NMFS is constrained from implementing the  $F=0.20$  alternative or any new sea turtle measures under the MSA because it can only approve, disapprove, or partially approve measures included in a framework adjustment. NMFS does not believe that the 2009 loggerhead sea turtle status review or proposed listing is cause to reinitiate ESA Section 7 consultation on the Atlantic sea scallop fishery. The status review did not focus on the scallop fishery or Framework 21, and therefore there is no new information provided in the status review specifically regarding the exposure of loggerhead sea turtles to scallop fishing gear. The status review provides no new information regarding risk from Framework 21 or the scallop fishery to loggerhead sea turtles. The status review states that the decline of loggerhead sea turtles in the Northwest Atlantic is largely driven by mortality due to bycatch throughout the North Atlantic Ocean; however, these bycatch mortalities are from multiple fisheries operating under the jurisdiction of multiple countries, not just the U.S. Atlantic sea scallop fishery. The Population Viability Analysis conducted for the 2008 Biological Opinion, which specifically examined the effects of the scallop fishery on sea turtles in the North Atlantic, found that the mortality caused by the scallop fishery did not significantly alter the risk of extinction or quasi-extinction of loggerheads in the North Atlantic. The status review used the same nesting beach abundance data as the March 14, 2008, Biological Opinion, and the two documents identify the same key nesting beach and oceanic threats to survival and recovery of the species. Both documents utilized similar modeling techniques, and used the same nesting data. Because the status review's modeling exercise relied on essentially the same information that was used in the Biological Opinion, the status review does not provide new

information that indicates effects of Framework 21 or the scallop fishery on loggerhead sea turtles, in a manner or to an extent not considered in the 2008 Biological Opinion. The comments made by Oceana related to the loggerhead sea turtle status review also presume the outcome of the agency process relating to making a future listing decision. If NMFS and the U.S. Fish and Wildlife Service (FWS) do make a final listing decision to list the Northwest Atlantic Distinct Population Segment of loggerhead sea turtles (as described in the status review and the proposed rule published on March 16, 2010 (75 FR 12597)), then reinitiation of consultation will be required. However, without such a final listing decision, NMFS does not consider the triggers for reinitiation of consultation to have been met. The publication of the status review in and of itself does not meet the triggers for reinitiation and, thus, by logical extension, there are no grounds for adjusting the RPMs or enacting any other restrictive measures relating to sea turtle protection.

NMFS has found that Framework 21 complies with the requirements of the RPM, and also meets the ESA criteria of having no more than minor impact on the fishery. Framework 21 includes measures to assure compliance with RPM #1 of the March 14, 2008 (amended February 5, 2009) Biological Opinion. This RPM stated that "NMFS must limit the amount of allocated scallop fishing effort by 'limited access scallop vessels' as such vessels are defined in the regulations (50 CFR 648.2), that can be used in the area and during the time of year when sea turtle distribution overlaps with scallop fishing activity." The non-discretionary Term and Condition that implements the RPM above mandates that "no later than the 2010 scallop FY, NMFS must limit the amount of allocated limited access scallop fishing effort that can be used in waters south of the northern boundaries of statistical areas 612, 613, 533, 534, 541-543 during the periods in which turtle takes have occurred. Restrictions on fishing effort described above shall be limited to a level that will not result in more than a minor impact on the fishery." The Council took these requirements into account throughout the development of Framework 21 and considered measures to limit effort in the Mid-Atlantic area from mid-June through the end of October that also would not result in more than a minor impact on the fishery. The measures ranged from limits on DAS or access area trips that could be used in that area and time

period, seasonal closures of access areas in the Mid-Atlantic, and reduced possession limits in Mid-Atlantic access areas.

After a number of discussions, the Council decided that Framework 21 measures would include a seasonal closure of the Delmarva access area and a limit on the number of Mid-Atlantic access area trips. The restrictions are intended to remove fishing effort during the time when effort overlaps with sea turtle distribution. The seasonal closure of the Delmarva access area takes place from September 1 through October 31. This measure will remove an estimated 563 DAS from the sea turtle window. Although this measure may increase the DAS needed to land the same amount of pounds of scallops in other areas, this increase in effort will take place in areas and at times of the year when sea turtles are less abundant in the action area. Limiting the number of Mid-Atlantic access area trips that can be taken during times when sea turtles are most abundant will likely benefit sea turtles. Each vessel is restricted to taking two of the three allocated access area trips in the Mid-Atlantic during June 15 to October 31. Since both Mid-Atlantic access areas are now closed from September 1 to October 31 to reduce impacts on sea turtles, the limit is applicable for June 15 through August 31. Limiting the maximum number of trips to two per vessel will move 358 DAS from the sea turtle window to the rest of the year, which constitutes a 3.5-percent effort shift. In summary, the combined measures will result in an 8.9-percent shift of effort from the sea turtle window (June 15–October 31) into the rest of the year, which is slightly below a threshold level suggested by the Scallop PDT (10 percent) for a minor change to the fishery based on the analyses prepared by the Scallop PDT for the RPM in Framework 21. Thus, the measures taken in Framework 21 meet the requirements of the RPM and Term and Condition in the March 14, 2008 (amended February 5, 2009) Biological Opinion in that they shift effort away from times and areas where the fishery and sea turtles overlap, but do not result in more than a minor impact on the fishery.

With respect to compliance with the ESA, NMFS has concluded that the operation of the scallop fishery under Framework 21 measures will not affect endangered and threatened species in a way that has not already been considered and analyzed. Considering all aspects of Framework 21, including the measures to implement the RPM and term and condition from the Biological Opinion and the F=0.24 target, overall

fishing effort in the fishery will be reduced compared to that which would occur in the absence of Framework 21 and to that considered in the Biological Opinion. It is significant, also, that Framework 21 is a one-year measure only. The Council and NMFS will need to reconsider the adequacy of sea turtle measures for FYs beyond 2010, and, if there are any changes based on new information or a determination concerning the proposed listing, reintiation would be required and new measures may be appropriate.

*Comment 4:* Oceana commented that, by allowing fishing levels consistent with the F=0.24 target, Framework 21 fails to minimize bycatch of finfish and adverse effects on EFH. Oceana concluded that the amount of swept area would have been lower under a target F=0.20. This, Oceana concluded, means that Framework 21 does not minimize impacts on adverse impacts to the extent practicable to EFH. Oceana expressed concern that estimates of YTF bycatch are higher under the higher target F, and will likely have impacts on the fledgling sector management program for NE multispecies.

*Response:* As noted in Response to Comment 2, when the Council compares alternatives, there is no legal requirement to select the most restrictive alternative for implementation. The measures in Framework 21 achieve a variety of objectives, including preventing overfishing and achieving OY of scallops. This action must be put into perspective of the overall FMP, which contains more comprehensive analysis and consideration of bycatch and EFH concerns. This action merely makes adjustments to the FMP on a one-year basis and is limited in scope. In the process of achieving those FMP objectives, the Council and NMFS must only minimize adverse impacts on EFH and minimize bycatch to the extent practicable. The National Standard Guidelines for minimizing EFH impacts and bycatch explicitly acknowledge that social and economic impacts are important considerations in determining the practicability of EFH and bycatch reduction measures (*see* 50 CFR 600.350(d)(3) and 600.815(a)(2)(iii)). The Council and NMFS are also required to minimize the economic impacts when there are multiple alternatives that may be consistent with conservation objectives. NMFS has concluded that Framework 21 analyzes and balances these objectives and complies with all applicable legal requirements.

*Comment 5:* The FSF commented that the Framework 21 allocations based on

the F=0.24 target are overly precautionary, and that at least one additional access area trip is justified based on levels of scallop abundance. The FSF criticized the Council for not considering an alternative that included an additional access area trip. However, FSF concluded that the recommended specifications are fully within the legal parameters established in the MSA and the National Standard 1 guidelines.

*Response:* The allocations for access areas and open areas combine to achieve the F=0.24 target. NMFS notes that allocating additional access area trips likely would have reduced open area DAS because of the additional mortality caused by fishing within Closed Area I or Closed Area II.

*Comment 6:* Oceana commented that Framework 21 establishes a level of fishing at the F=0.24 target that allows localized overfishing of the scallop resource, which is illegal. It further alleges that the Council was swayed by political pressure to select the F=0.24 target in order to reap short-term gains for the scallop fishery in FY 2010. Oceana encouraged NMFS to disapprove the F=0.24 strategy and substitute the more risk-averse and profitable F=0.20 strategy for FY 2010. Oceana commented that the F=0.24 strategy provides only minor short-term economic benefits for the fishery that come at a considerable cost to the ocean ecosystem, in violation of MSA requirements.

*Response:* The analysis of the impacts of Framework 21 management measures on the scallop resource demonstrate clearly that the F=0.24 target is not expected to result in overfishing and is expected to achieve OY on a continuing basis. The MSA requires overfishing to be prevented on the stock as a whole, and, in fact, the MSA does not define localized overfishing. The area rotation management program established by the FMP presumes that F will vary by area, depending upon the distribution of biomass. The analysis of economic impacts demonstrates that cumulative profits over several years may be marginally higher under the F=0.20 target, but the Council chose to adopt measures with marginally lower cumulative profits because of its concern about the negative economic, community, and social impacts that could have resulted in the first year of the management measures under F=0.20. There was great concern among some members of the public that the future return in landings and revenue under F=0.20 would not outweigh the risk of lost market share that could occur in FY 2010, particularly if a lower quota resulted in a ripple effect

throughout the major ports that could potentially affect business and fisheries outside of those directly tied to scallops. Should this occur, businesses currently impacted by the recent economic climate would have a difficult time recovering their losses in the future, regardless of whether the allocations increased after FY 2010. Ultimately, the Council considered that the longer-term benefits do not outweigh these short-term impacts. Although this action will have marginally smaller positive long-term economic impacts in comparison to the F=0.20 alternative, Framework 21 is only addressing the allocations for FY 2010. Future management measures in FY 2011 and beyond will affect these forecasts. NMFS finds that this is fully consistent with the MSA because Framework 21 measures under the F=0.24 alternative prevent overfishing the scallop stock, achieve OY on a continuing basis, and reduce negative impacts on fishing communities.

*Comment 7:* The FSF suggested that the final rule for Framework 21 clarify how ETAA trips will be addressed in FY 2011 if a vessel exceeds its Framework 21 two-trip allocation by taking three trips prior to the implementation of Framework 21, as allowed.

*Response:* NMFS has clarified that a vessel will lose one access area trip if it takes more than two trips allocated in the ETAA under Framework 21 prior to the effective date of Framework 21. It is not yet known whether the ETAA will be open as an access area in FY 2011. If the ETAA is open, the deduction would be taken from the FY 2011 ETAA allocation. If the ETAA is not open, vessel owners would be given the opportunity to select the access area from which the overage would be deducted, with NMFS determining the area, if the vessel owner fails to respond. This is consistent with the Framework 21 access area trip provisions described in Section 2.2.3 of the Framework 21 document.

*Comment 8:* The FSF urged NMFS to recalculate the conversion factor that would be used to convert unused NLAA access area trips into open area DAS if the area is closed due to attainment of the YTF TAC. The FSF believes that the FMP requires the 5.8 DAS given as compensation for an NLAA trip to be increased in order to assure that a vessel with unharvested poundage from the NLAA trip is able to harvest the full amount of 18,000 lb (8,165 kg) of scallops (the amount allocated for a full-time vessel trip into the NLAA).

*Response:* The FSF has incorrectly characterized the objective of the FMP measure that specifies that unused NLAA trips will be converted to open

area DAS. This measure was initially established through Joint Framework 16/39 (69 FR 63460; November 2, 2004), which modified both the Sea Scallop and NE Multispecies FMPs and went into effect in FY 2005. The objective of the measure is not, as FSF states, to assure that vessels should be allocated DAS that are sufficient to fully harvest 18,000 lb (8,165 kg). The measure, which is described in Section 2.5.1.1 of Framework 21, was established to ensure that the transfer of fishing effort from the access area to the open area is conservation neutral. This calculation takes into account the expected average landings per DAS based on relative biomass and scallop size in open areas, compared to the NLAA. Framework 21 calculated that, in the NLAA, based on the F=0.24 target, the average NLAA scallop meat count will be 11.5 meats per lb—therefore 207,000 scallops (18,000 lb \* 11.5) would be removed per trip. In the open areas, the average meat count will be 21.2 meats per lb, so that 207,000 scallops per trip correspond to 9,764 lb (4,429 kg) of scallops (207,000 lb/21.2 meats per lb). With an expected landings per unit effort of 1,693 lb (768 kg) per DAS, the open area DAS to harvest 9,764 lb (4,429 kg) is 5.77 DAS (9,764 lb/1,693 lb per DAS).

*Comment 9:* The FSF commented in support of the regulatory changes related to the industry funded observer program compensation rates for vessels that carry observers. The FSF supports the provision that requires observer service providers to prorate the observer coverage fee if the set aside is exhausted.

*Response:* The measures have been enacted through this action.

#### Changes From Proposed Rule to Final Rule

The section heading of § 648.10 is revised to correct an inadvertent change made through a previous action, paragraph (c)(1) is revised to clarify the current Vessel Monitoring System (VMS) regulations, and paragraph (f)(4) is revised to correctly reference the name of the required catch report for NGOM and LAGC vessels.

In § 648.11, paragraph (g)(5)(i)(A) is revised to clarify that observer service providers must charge a prorated fee when issuing an observer to a vessel on an access area trip after NMFS has announced that the observer set-aside for that specific access area has been fully utilized.

In § 648.14, paragraph (i)(4)(i) is revised to clarify that LAGC IFQ vessels may only exceed the possession and landing limit if granted observer

compensation while carrying an observer in an access area.

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

#### Classification

NMFS has determined that Framework 21 as implemented by this rule is necessary for the conservation and management of the Atlantic sea scallop fishery and is consistent with the MSA and other applicable law.

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

The Assistant Administrator for Fisheries has determined that the need to implement these measures in an expedited manner in order to help achieve conservation objectives for threatened and endangered sea turtles 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. Framework 21 includes management measures to minimize fishery interaction with threatened and endangered sea turtles and prevent overfishing. Specifically, Framework 21 includes a measure that specifies that vessels may take only two of their three allocated access area trips in the ETAA and Delmarva between June 15 and August 31, 2010. This limitation complies with one of the RPMs required in the most recent Biological Opinion completed for the scallop fishery. The Biological Opinion examined fishery interactions with threatened and endangered sea turtles and specified RPMs to minimize the impacts on sea turtles. If implementation is delayed greatly beyond June 15, 2010, sea turtle conservation benefits during this short window of time will be compromised.

In addition, if there is a delay in implementing the measures in Framework 21, the scallop fleet will continue under the current DAS, observer set-aside, access area trip allocations, and access area trip possession limits for part-time and occasional vessels. These allocations are higher than the measures specified in Framework 21, 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 have the potential of exceeding the catch levels specified in Framework 21. Further continuation of the inconsistent FY 2009 management measures increases the risk that the actual F will exceed the target level upon which Framework 21 management measures are based. Actual F was higher than

projected in both FYs 2008 and 2009, a situation which was addressed in the DAS model used to calculate the Framework 21 allocations. Continuing this trend in higher-than-projected fishing mortality could result in overfishing and future decreases in allowable harvest.

NMFS was unable to incorporate the delay in effectiveness into the timeline for Framework 21 rulemaking due to the Council's January 2010 reconsideration and amendment of its initial Framework 21 recommendations, which were originally submitted to NMFS on December 21, 2009. The Council resubmitted the Framework 21 document with updated analyses to NMFS on March 19, 2010, after the March 1 start of the 2010 scallop FY.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has completed a final regulatory flexibility analysis (FRFA) in support of Framework 21 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, and NMFS's responses to those comments, and a summary of the analyses prepared for Framework 21. This FRFA describes the economic impact that this final rule, along with non-adopted alternatives, will have on small entities. A copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**).

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

This action specifies the FY 2010 management measures for the Atlantic sea scallop fishery. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to the proposed and final rules and are not repeated here.

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

The vessels in the Atlantic sea scallop fishery are all considered small business entities and, therefore, there is no disproportionate impact on small entities. All of the vessels grossed less than \$3 M according to dealer data for the FYs 1994 through 2008. According to this information, annual total revenue, including revenue from species other than scallops, has averaged over \$1 M per full-time limited access vessel since FY 2004. According to FY 2008 dealer data, total revenue per vessel, including revenue from species other than scallops, averaged \$1,079,722 per full-time limited access vessel, and \$135,378 per general category vessel.

Framework 21 measures affect all Federal scallop vessels. The Framework 21 document provides extensive information on the number and size of vessels and small businesses that would be affected by these measures, by port and State. In FY 2008 (the most recent complete FY for which data are complete), there were 321 full-time, 34 part-time, and 1 occasional limited access scallop permits issued, and 459 general category permits issued to vessels in the LAGC fishery.

Amendment 11 to the FMP established a limited access fishery for general category vessels and the appeals and limited access permit process for the LAGC fleet was completed in January 2010. There are now 329 vessels that qualified for IFQ permits, 40 limited access vessels that qualified for IFQ permits, 107 vessels that qualified for NGOM permits, and 288 vessels that qualified for incidental permits.

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

One commenter expressed concern about the economic impacts of the measures to comply with the Biological Opinion. The FSF noted that, while the measures meet the criteria of having no more than a minor impact on the fishery, they will have negative economic impacts on the scallop industry because they will divert fishing activity to sub-optimal times of the year, when scallop yields are lower. However, FSF recognized that the findings of the Biological Opinion impose legal duties on NMFS that must be addressed through Framework 21, and that the scallop fleet will have to bear the costs of the measures. No modifications to the proposed rule were made as a result of this comment. As FSF recognized, the Framework 21 analysis concluded that the measures would comply with the RPM specified in the Biological Opinion, and have no more than a minor impact on the fishery, as required by the ESA.

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

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

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

The analysis of the fleet-wide aggregate economic impacts indicate that the final DAS allocations will have slightly negative economic impacts on the revenues and profits of the scallop vessels in FY 2010, compared with the No Action alternative and compared to the levels in FYs 2008 and 2009. Because this action will reduce the open area DAS allocations from 42 DAS to 38 DAS for each full-time limited access vessel (with similar reductions, proportionally for part-time and occasional vessels), the total landings will decline by 6 percent in FY 2010, from \$50 M under No Action to \$47 M under this action, reducing FY 2010 revenues for an average vessel by about 2 percent. In comparison to FYs 2008 and 2009 average, the adopted action will result in a 14-percent decrease in landings, representing a 2.3-percent decrease in revenues. The percentage decline in revenues is less than the percentage decline in landings because the price per pound of scallops is estimated to be higher for the adopted action (\$7.27 per lb) compared with No Action (\$7.07 per lb), the price in FY 2008 (\$6.92 per lb) and the price in FY 2009 (\$6.45 per lb).

Although this action will produce slightly less revenue in FY 2010 compared to FYs 2008 and 2009, it will result in higher revenues for full-time limited access vessels from FY 2011 through FY 2016. This was also true of the non-selected alternatives.

Over the short term, from FY 2010 through FY 2016, the action's cumulative revenues are estimated to be slightly lower than the No Action revenues, by \$9 M, representing a 0.3-percent decrease. However, the No Action alternative does not prevent overfishing and would result in suboptimal allocation of open area DAS and access area trips. Under the No Action alternative, there is no access into the NLAA, but the biomass in that area can support one trip. In addition, under No Action, open area DAS allocations would be higher than sustainable levels because there is no adjustment to reflect the present

conditions of biomass in those areas. For these reasons, the levels of exploitable biomass for the No Action alternative will be less than the levels for this action and all the other alternatives considered. Consequently, No Action would have long-term negative impacts on the scallop stock biomass, landings, revenues, and economic benefits of the scallop fishery. Over the long term (FYs 2010 to 2023), the alternative implemented by this rule will generate \$53 M more in total revenues than the No Action alternative.

The non-selected Closure (F=0.20) and Closure (F=0.18) alternatives would allocate higher DAS (51 and 42 DAS, respectively) to full-time vessels than this action and would have had positive economic impacts on scallop vessels in FY 2010. However, these alternatives would have negative biological impacts because the new rotational area closure resulted in a higher area-swept estimate in the Mid-Atlantic open area, which may have impacts on non-target species in those areas and increase the possibility of localized overfishing in open areas. If these negative biological impacts were to occur as a result of the Closure (F=0.18) or Closure (F=0.20) alternatives, more stringent measures would have to be taken in the future to reduce effort, with potentially negative impacts on the scallop vessels. Therefore, these alternatives are not expected to generate higher benefits for the scallop vessels in the long term, compared to this action.

The revenue for an average full-time limited access vessel is estimated to be \$931,799 for this action, which ranges from \$108,152 to \$18,661 lower than the Closure (F=0.18), Closure (F=0.20), and No Action alternatives. However, because this action will allocate fewer open area DAS in FY 2010 compared to these three alternatives, and also will allocate access area trips in more productive areas compared to No Action, the trip costs would be comparatively reduced. The average trip costs per vessel (\$111,621) would decline by a range of 20 to 9 percent in comparison to the higher DAS alternatives. The allowance for carry-over DAS is another factor that could mitigate some of the negative impacts of this action on vessel revenues and profits in FY 2010. Vessels may save up to 10 of their open area DAS in FY 2009 to mitigate the slightly smaller FY 2010 DAS allocations compared to No Action, Closure (F=0.18), or Closure (F=0.20) alternatives.

Although the No Closure (F=0.20) alternative would produce the marginally greater benefits over the long term compared to the selected

alternatives, it would result in a 13-percent and 11-percent loss in FY 2010 average annual revenue compared to No Action and this action, respectively. This action would result in average FY 2010 revenues that are \$109,563 greater than the No Closure (F=0.20) alternative. This action yields 5.8 M lb (2.6 M kg) more in 2010 than the No Closure (F=0.20) alternative, which equates to an increase in \$41 M in ex-vessel revenues. In consideration of the FY 2010 economic benefits under this action, the future return in landings and revenue under No Closure (F=0.20), representing an increase in 10.3 M lb (4.7 M kg) and \$58 M over FYs 2011–2016, does not outweigh the risk of lost market share that could occur in FY 2010, particularly if a lower quota results in a ripple effect throughout the major ports that could potentially affect business and fisheries outside of those directly tied to scallops. Should this occur, businesses currently impacted by the recent economic climate would have a difficult time recovering their losses in the future, regardless of whether the allocations increased after FY 2010. This action also minimizes impacts on the fishery by helping to stabilize landings from year to year (*i.e.*, between FY 2009 and FY 2011) compared to other alternatives considered. In addition, although this action will have marginally smaller positive long-term economic impacts in comparison to the No Closure (F=0.20) alternative, Framework 21 is only addressing the allocations for FY 2010. Future management measures in FY 2011 and beyond will affect these forecasts.

Under all alternatives, including No Action, the LAGC fleet is allocated 5 percent of the TAC. This means the relative comparison of this action to the other alternatives is similar to the comparison for the limited access fleet. For example, similar to full-time limited access vessels, the revenues of LAGC vessels are expected to be 2 percent lower under this action than under No Action in FY 2010.

Compared to FYs 2008 and 2009, however, the revenues of LAGC vessels will decline by a larger percentage due to the implementation of the IFQ program, as required by Amendment 11 to the FMP. The total scallop revenue for the general category fishery was estimated to be \$30.8 M for FY 2008 and \$29.6 M for FY 2009, averaging \$30.2 M across both FYs. During FYs 2008 and 2009, the LAGC fishery was under a transition period while the final decisions for IFQ permit appeals were determined. The transition period allocated 10 percent of the TAC to LAGC IFQ vessels, as well as vessels

that were granted a letter of authorization to fish for scallops while their IFQ permit applications were under appeal. FY 2010 marks the first year that the IFQ program is in effect, and LAGC IFQ vessels are now allocated 5 percent of the TAC. As a result, revenues for LAGC vessels under this action are projected to be \$17 M, representing a 43-percent decline. The short- and long-term economic impacts of allocating 5 percent of the total TAC to LAGC vessels were analyzed in Amendment 11 to the FMP. The economic impacts of the LAGC TAC are within the range of the impacts previously analyzed in Amendment 11.

This action will have positive economic impacts for the LAGC fishery starting in FY 2011, as the LAGC TAC is expected to increase compared to the FY 2010 allocation.

Other Framework 21 measures, such as observer program improvements, IFQ program improvements, NGOM hard TAC, and YTF TAC adjustments are expected to provide additional positive impacts by providing vessels the opportunity to reduce fishing costs and increase revenues from scallop fishing.

#### *Economic Impacts of the Final Action*

The following describes all of the alternatives considered by the Council.

#### 1. Open Area DAS Adjustment if Access Area YTF TAC Is Attained

This action maintains a provision that allocates additional open area DAS if an access area closes due to the attainment of the scallop YTF TAC. This will continue the current measures with the same impacts as the No Action alternative. This conversion will help to minimize lost catch and revenue if the NLAA closes due to the full harvest of the YTF quota. As a result, this measure will have positive economic impacts on scallop vessels, although the scallop pounds per trip could be lower than the allocated pounds for NLAA trips due to proration to assure that the measure is conservation neutral. There were no alternatives considered to address this issue that would generate higher economic benefits for the participants of the scallop fishery.

#### 2. Research and Observer Set-Aside TACs

This action will continue to set aside 2 percent of the scallop TAC for the RSA program and 1 percent of the scallop TAC for the industry-funded observer set-aside program. These set-asides are expected to have indirect economic benefits for the scallop fishery by improving scallop information and data made possible by research and the

observer program. Although allocating higher set-aside percentages could result in higher indirect benefits to the scallop fleet by increasing available funds for research and the observer program, these set-aside increases could decrease direct economic benefits to the fishery by reducing revenues, and no such alternatives were considered.

### 3. Access Area Management

This action will allow access into both ETAA and Delmarva for both the limited access DAS and LAGC fleets. By itself, allocations for these highly productive areas in FY 2010 will have positive economic impacts on both limited access and LAGC vessels. The only alternative that would have generated higher benefits than the proposed action is the No Action alternative, which would have allocated three trips to ETAA, rather than two trips. This number of trips is higher than the projected biomass in that area can support. As a result, the No Action alternative would have had negative impacts on the biomass and yield from the ETAA after FY 2010. As occurred in the Hudson Canyon Access Area in FY 2005, excessive harvest in an access area can lead to rapid, almost immediate, depletion of the area's resource, leading to poor catch rates and elevated fishing costs.

This action will allocate one access area trip into the NLAA. All alternatives considered, with the exception of No Action, included this trip allocation. The biomass in this area is estimated to be high, and trip costs will be lower, because the same amount of scallops could be landed in a shorter time frame compared to areas with lower scallop abundance. Providing access to high abundance areas will help increase yield, landings, and revenues from the fishery both in the short- and long-term, benefiting both limited access and LAGC vessels that participate in the scallop fishery. Because there is no trip allocation to the NLAA area under No Action, economic benefits would have been lower both in the short- and long-term compared to the adopted alternative, and other alternatives considered.

### 4. NGOM Hard TAC

This action establishes a 70,000-lb (31,751-kg) TAC for the NGOM. This is the same TAC as the No Action alternative and all other alternatives. The FMP specifies that the NGOM TAC should be based on historic landings levels until the stock in the NGOM can be assessed formally, and there has been no stock assessment to date. The NGOM TAC has been specified at this level

since FY 2008, and the fishery has harvested less than 15 percent of the TAC in each of those years; therefore, the TAC has no negative economic impacts.

### 5. Allow LAGC IFQ Vessel or CPH Owners To Lease Some or All of Their IFQ

This action allows LAGC IFQ vessels owners (or IFQ CPH owners) to lease some or all of their IFQ allocations to other vessels during a given FY. This action will provide increased flexibility for LAGC IFQ vessel owners, who, to date, are required to lease the entirety of their IFQ allocations. This measure will have positive impacts on vessel revenues and profits. The only other alternative was the No Action alternative, which would have required that vessel owners continue to lease unused quota allocations in full.

### 6. Reasonable and Prudent Measures

This action will close the Delmarva access area in September and October and will limit the maximum number of trips (two per full-time vessel) that can be taken in the Mid-Atlantic areas from June 15 to August 31. Because fishing effort is shifted to a relatively less productive season, total fleet trip costs are expected to increase slightly (*i.e.*, less than 0.2 percent) due to reduced scallop catch rates. Since there is no change in the scallop possession limit, the trips that are shifted from this season are expected to be taken outside of this time period, without a loss in total revenue, as long as this adopted measure does not have a negative impact on prices. The closure in the Delmarva access area from September 1 through October 31 applies to all scallop vessels, including LAGC IFQ vessels. This measure is not expected to affect the LAGC fleet specifically, since the access area trips for this fleet are allocated as a fleet-wide number of trips, and tend to be used outside of the closure period. No other alternatives considered would generate higher benefits for the scallop vessels, other than the No Action alternative. The No Action alternative, however, would not comply with the RPMs specified in the Biological Opinion. This measure is expected to minimize the effort shift from the given time period compared to the other alternatives considered by the Council; thus, there are no other alternatives that would generate higher benefits for the scallop vessels.

### 7. Limit the Amount of Observer Compensation for LAGC Vessels in Access Areas

This action will limit the total amount of observer compensation LAGC IFQ vessels may receive on observed trips in access areas to the equivalent of 1 day's compensation, regardless of trip length. The No Action alternative would continue to provide LAGC IFQ vessels observer compensation on a daily basis and would generate higher benefits for the scallop vessels while the observer set-aside is available. This, however, may exhaust the set-aside TAC before the end of the FY. The current LAGC IFQ access area observer compensation contributed to fully harvesting the FY 2009 observer set-aside earlier than anticipated. This had negative impacts fleet-wide because vessels had to provide full payment to observers without available observer compensation after the observer set-aside was exhausted. These negative impacts were not equally distributed across the fleet.

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a 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.

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

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: June 22, 2010.

**Eric C. Schwaab,**

*Assistant Administrator for Fisheries,  
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, revise the section heading and paragraphs (c)(1) and (f)(4) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(1) Except as provided in paragraph (c)(2) of this section, or unless otherwise required by paragraph (c)(1)(ii) of this section, all vessels required to use VMS units, as specified in paragraph (b) of this section, must transmit a signal indicating the vessel's accurate position, as specified under paragraph (c)(1)(i) of this section:

(i) At least every hour, 24 hr a day, throughout the year; or

(ii) At least twice per hour, 24 hr a day, throughout the year, for vessels issued a scallop permit.

\* \* \* \* \*

(f) \* \* \*

(4) *Catch reports.* (i) All scallop vessels fishing in the Sea Scallop Area Access Program as described in § 648.60 are required to submit daily reports, through VMS, of scallops kept and yellowtail flounder caught (including discarded yellowtail flounder) on each Access Area trip. The VMS catch reporting requirements are specified in § 648.60(a)(9).

(ii) *Scallop Pre-Landing Catch Reports for IFQ and NGOM vessels.* Using the Scallop Pre-Landing Catch Report, a vessel issued an IFQ or NGOM scallop permit must report through VMS the amount of any scallops kept on each trip declared as a scallop trip, including declared scallop trips where no scallops were landed. In addition, vessels with an IFQ or NGOM permit must submit a Scallop Pre-Landing Catch Report on trips that are not declared as scallop trips, but on which scallops are kept incidentally. A limited access vessel that also holds an IFQ or NGOM permit must submit the Scallop Pre-Landing Catch Report only when fishing under the provisions of the vessel's IFQ or NGOM permit. VMS Scallop Pre-Landing Notification forms must be submitted no less than 6 hr prior to crossing the VMS Demarcation Line on the way back to port, and must include the amount of scallop meats or bushels to be landed, the estimated time of arrival in port, the port at which the scallops will be landed, and the VTR serial number recorded from that trip's VTR. If the scallop harvest ends less than 6 hr prior to landing, then the Scallop Pre-Landing Catch Report must be submitted immediately upon leaving the fishing grounds.

\* \* \* \* \*

■ 3. In § 648.11, revise paragraph (g)(5)(i)(A) to read as follows:

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

\* \* \* \* \*

(g) \* \* \*

(5) \* \* \*

(i) \* \* \*

(A) *Access Area Trips.* (1) For purposes of determining the daily rate for an observed scallop trip in a Sea Scallop Access Area when that specific Access Area's observer set-aside specified in § 648.60(d)(1) has not been fully utilized, a service provider shall charge a vessel owner from the time an observer boards a vessel until the vessel disembarks (dock to dock), where "day" is defined as a 24-hr period, or any portion of a 24-hr period, regardless of the calendar day. For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time at sea equals 27 hr, which would equate to 2 full "days."

(2) For purposes of determining the daily rate in a specific Sea Scallop Access Area for observed scallop trips taken after NMFS has announced the industry-funded observer set-aside in that specific Access Area has been fully utilized, a service provider shall charge a vessel owner from the time an observer boards a vessel until the vessel disembarks (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 July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time spent at sea equals 27 hr, so the provider shall charge 1 day and 3 hr.

\* \* \* \* \*

■ 4. In § 648.14, paragraphs (i)(2)(vi)(F) and (G) are added, paragraph (i)(4)(i) is revised, and paragraph (i)(4)(iii)(F) is removed and reserved.

The additions and revision read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(i) \* \* \*

(2) \* \* \*

(vi) \* \* \*

(F) Declare more than two access area trips into the Delmarva and Elephant Trunk Access Areas, as specified in § 648.59(a) and (e), during the period June 15 through August 31, unless at least one trip is terminated early and trips in excess of two are declared compensation trips authorized under § 648.60(c); and

(G) Vessels do not fish for, possess, or retain more than a combined total of

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

\* \* \* \* \*

(4) \* \* \*

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

\* \* \* \* \*

■ 5. In § 648.52, paragraphs (a) and (f) are revised, and paragraph (g) is added 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), 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 400 lb (181.4 kg) of shucked scallops, or possess more than 50 bu (17.6 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.

\* \* \* \* \*

(f) A vessel that is declared into the Sea Scallop Area Access Program as described in § 648.60, may not possess more than 50 bu (17.6 hL) of in-shell scallops outside of the Access Areas described in § 648.59(a) through (e).

(g) *Possession limit to defray the cost of observers in Access Areas 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.

■ 6. In § 648.53:

- a. The section heading is revised;
- b. Paragraphs (a)(1), (a)(4)(i), (a)(5), (a)(9), (b)(1), (b)(4), (b)(5)(i), (g)(1), (g)(2), (h)(2) introductory text, (h)(5)(i), (h)(5)(iii), (h)(5)(iv)(A), (h)(5)(iv)(B), and (h)(5)(iv)(C) are revised; and
- c. Paragraphs (a)(2), (a)(4)(ii), (a)(7), (a)(8), and (b)(5)(ii) are removed and reserved.

The revisions read as follows:

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

(a) \* \* \*

(1) 2010 fishing year target TAC for scallop fishery. The 2010 fishing year TAC is 21,445 mt, 94.5 percent of which shall be allocated to the limited access fishery, 5 percent of which shall be allocated to IFQ scallop vessels, and 0.5 percent of which shall be issued to limited access vessels also issued IFQ scallop permits and that are fishing under general category regulations. These percentages reflect the TAC allocations prior to the deduction of set-asides for observer coverage and research.

\* \* \* \* \*

(4) \* \* \*

(1) 2010 fishing year. The target TAC for limited access vessels fishing under the scallop DAS program specified in this section is 10,330 mt, including open area DAS for observer and research set-aside TACs.

\* \* \* \* \*

(5) TACs for IFQ scallop vessels. The TACs specified in this paragraph (a)(5) have accounted for the access area set-asides specified in § 648.60(d) and (e).

(i) IFQ vessels without a limited access scallop permit. For the 2010 fishing year, such vessels are allocated 1,055 mt, which includes both the open area TAC (547 mt) and the access area TACs specified in § 648.59.

(ii) IFQ scallop vessels with a limited access scallop permit. Such vessels that are fishing under an IFQ scallop permit outside of the scallop DAS and Area Access programs as a limited access vessel shall be allocated 0.5 percent of the annual target TAC specified in accordance with this paragraph (a). For the 2010 fishing year, the IFQ TAC for IFQ vessels with a limited access scallop permit is 106 mt.

\* \* \* \* \*

(9) Scallop incidental catch target TAC. The 2010 incidental catch target TAC for vessels with incidental catch scallop permits is 50,000 lb (22,680 kg).

(b) \* \* \*

(1) Total DAS to be used in all areas other than those specified in § 648.59 shall be specified through the framework adjustment process, as specified in § 648.55, using the target TAC for open areas specified in paragraph (a) of this section and estimated catch per unit effort. The total DAS for 2010 are 13,324. After accounting for applicable set-asides, the total DAS allocated the limited access fishery are 12,920.

\* \* \* \* \*

(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. A vessel whose owner/operator has declared out of the scallop fishery, pursuant to the provisions of § 648.10, or that has used up its maximum allocated DAS, may leave port without being assessed a DAS, as long as it has made an appropriate VMS declaration, as specified in § 648.10(f), does not fish for or land per trip, or possess at any time, more than 400 lb (181.4 kg) of shucked or 50 bu (17.6 hL) of in-shell scallops, and complies with all other requirements of this part. The annual open area DAS allocations for each category of vessel for the fishing years indicated, after deducting DAS for observer and research DAS set-asides, are as follows:

DAS category	2010
Full-time .....	38
Part-time .....	15
Occasional .....	3

(i) A limited access vessel that lawfully uses more open area DAS in the 2010 fishing year than specified in this section shall have the DAS used in excess of the 2010 allocation specified in this paragraph (b)(4) deducted from its 2011 open area DAS allocation.

(ii) [Reserved]

(5) \* \* \*

(i) When the Nantucket Lightship Access Area closes due to the yellowtail flounder bycatch TAC, for each remaining complete trip in the Nantucket Lightship Access Area, a full-time vessel may fish an additional 5.8 DAS in open areas, a part-time vessel may fish an additional 4.6 DAS in open areas, and an occasional vessel may fish an additional 1.9 DAS during the same fishing year. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the

broken trip provision in § 648.60(c). If a vessel has unused broken trip compensation trip(s), as specified in § 648.60(c), when the Nantucket Lightship Access Area closes due to the yellowtail flounder bycatch TAC, it will be issued additional DAS in proportion to the unharvested possession limit. For example, if a full-time vessel had an unused 9,000-lb (4,082-kg) Nantucket Lightship Access Area compensation trip (half of the possession limit) at the time of a Nantucket Lightship Access Area yellowtail flounder bycatch TAC closure, the vessel would be allocated 2.9 DAS (half of 5.8 DAS).

\* \* \* \* \*

(g) \* \* \*

(1) DAS set-aside for observer coverage. As specified in paragraph (b)(2) of this section, to help defray the cost of carrying an observer, 1 percent of the total DAS specified in paragraph (b)(1) of this section shall be set aside from the total DAS available for allocation, to be used by vessels that are assigned to take an at-sea observer on a trip other than an Area Access Program trip. The DAS set-aside for observer coverage is 135 DAS for the 2010 fishing year. Vessels carrying an observer shall be compensated with reduced DAS accrual rates for each trip on which the vessel carries an observer. For each DAS that a vessel fishes for scallops with an observer on board, the DAS shall be charged at a reduced rate, based on an adjustment factor determined by the Regional Administrator on an annual basis, dependent on the cost of observers, catch rates, and amount of available DAS set-aside. The Regional Administrator shall notify vessel owners of the cost of observers and the DAS adjustment factor through a permit holder letter issued prior to the start of each fishing year. This DAS adjustment factor may also be changed during the fishing year if fishery conditions warrant such a change. The number of DAS that are deducted from each trip based on the adjustment factor shall be deducted from the observer DAS set-aside amount in the applicable fishing year. Utilization of the DAS set-aside shall be on a first-come, first-served basis. When the DAS set-aside for observer coverage has been utilized, vessel owners shall be notified that no additional DAS remain available to offset the cost of carrying observers. The obligation to carry and pay for an observer shall not be waived due to the absence of set-aside DAS allocations.

(2) DAS set-aside for research. As specified in paragraph (b)(2) of this section, to help support the activities of vessels participating in certain research,

as specified in § 648.56, the DAS set-aside for research is 269 DAS for the 2010 fishing year.

(h) \* \* \*

(2) *Calculation of IFQ.* The total allowable catch allocated to IFQ scallop vessels, and the TAC allocated to limited access scallop vessels issued IFQ scallop permits, as specified in paragraphs (a)(5)(i) and (ii) of this section, shall be used to determine the IFQ of each vessel issued an IFQ scallop permit. Each fishing year, the Regional Administrator shall provide the owner of a vessel issued an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii) with the scallop IFQ for the vessel for the upcoming fishing year.

\* \* \* \* \*

(5) \* \* \*

(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 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. IFQ can be transferred only once during a given fishing year. Temporary IFQ transfers must be in the amount of at least 100 lb (45 kg), or the entire allocation may be transferred to another vessel. If a vessel has previously transferred a portion of its IFQ and the remaining allocation is less than 100 lb (45 kg), the remaining IFQ may be transferred in full to another vessel. The Regional Administrator has final approval authority for all temporary IFQ transfer requests.

\* \* \* \* \*

(iii) *IFQ transfer restrictions.* The owner of an IFQ scallop vessel not issued a limited access scallop permit that has fished under its IFQ in a fishing year may not transfer that vessel's IFQ to another IFQ scallop vessel in the same fishing year. IFQ can be transferred only once during a given fishing year. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2 percent of the TAC allocated to IFQ scallop vessels. A transfer of an IFQ, whether temporary or permanent, may not result in the transferee having a total ownership of or interest in general category scallop allocation that exceeds 5 percent of the TAC allocated to IFQ scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not transfer or receive IFQ from another IFQ scallop vessel.

(iv) \* \* \*

(A) *Application information*

*requirements.* An application to transfer IFQ must contain at least the following information: Transferor's name, vessel name, permit number, and official number or State registration number; transferee's name, vessel name, permit number, and official number or State registration number; total price paid for purchased IFQ; signatures of transferor and transferee; and date the form was completed. In addition, applications to temporarily transfer IFQ must indicate the amount, in pounds, of the IFQ allocation transfer, which may not be in increments of less than 100 lb (45 kg) unless that value reflects the total IFQ allocation remaining on the transferor's vessel, or the entire allocation.

Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery. If applicable, an application for a permanent IFQ transfer must be accompanied by verification, in writing, that the transferor either has requested cancellation of all other limited access Federal fishing permits, or has applied for a transfer of all of its limited access permits in accordance with the vessel replacement restrictions under § 648.4.

(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 the following reasons: The application is incomplete; the transferor or transferee does not possess a valid limited access general category permit; the transferor's vessel has fished under its IFQ prior to the completion of the transfer request; the transferor's or transferee's vessel or IFQ scallop permit has been sanctioned, pursuant to a final administrative decision or settlement of an enforcement proceeding; the transfer will result in the transferee's vessel having an allocation that exceeds 2 percent of the TAC allocated to IFQ scallop vessels; the transfer will result in the transferee having a total ownership of or interest in general category scallop allocation that exceeds 5 percent of the TAC allocated to IFQ scallop vessels; or any other failure to meet the requirements of this subpart. 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.

**§ 648.58 [Amended]**

■ 7. In § 648.58, paragraph (b) is removed and reserved.

■ 8. In § 648.59:

■ a. Paragraphs (a)(4), (b)(5)(ii)(D), (c)(5)(ii)(D), and (d)(5)(ii)(D) are added; and

■ b. Paragraphs (a)(1), (a)(3), (b)(1), (b)(2), (b)(5)(i), (b)(5)(ii)(A), (b)(5)(ii)(B), (c)(1), (c)(2), (c)(5)(i), (c)(5)(ii)(A), (c)(5)(ii)(B), (d)(1), (d)(2), (d)(5)(i), (d)(5)(ii)(A), (d)(5)(ii)(B), and (e)(4) are revised.

The additions and revisions read as follows.

**§ 648.59 Sea Scallop Access Areas.**

(a) \* \* \*

(1) From March 1, 2010, through February 28, 2011, and subject to the seasonal restriction specified in paragraph (a)(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 Delmarva Sea Scallop Access Area, described in paragraph (a)(2) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

\* \* \* \* \*

(3) *Number of trips*—(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Delmarva Access Area as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Delmarva Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Delmarva Access Area trip that was terminated early, as specified in § 648.60(c). Additionally, limited access full-time scallop vessels are restricted in the number of trips that may be taken from June 15 through August 31, as specified in § 648.60(a)(3)(i)(B)(1). The number of trips allocated to limited access vessels in the Delmarva Access Area shall be based on the TAC for the access area, which shall be determined through the annual framework process and specified in paragraph (a)(5)(i) of this section. The 2010 Delmarva Access Area scallop TAC for limited access scallop vessels is 5,394,485 lb (2,447

mt), after accounting for applicable set-asides and LAGC IFQ TAC.

(ii) *LAGC IFQ scallop vessels*—(A) The percentage of the Delmarva Access Area TAC to be allocated to LAGC IFQ scallop vessels shall be specified in this paragraph (a)(3)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC IFQ scallop vessels as specified in paragraph (a)(3)(ii)(B) of this section. LAGC IFQ vessels will be allocated 285,423 lb (129 mt) in fishing year 2010, which is 5 percent of the 2010 Delmarva Access Area TAC, after set-asides have been deducted. This TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit.

(B) Based on the TAC specified in paragraph (a)(4)(ii)(A) of this section, LAGC scallop vessels are allocated 714 trips to the Delmarva Access Area in fishing year 2010. 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 714 trips have been, or are projected to be, taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). An LAGC IFQ scallop vessel may not fish for, possess, or land sea scallops in or from the Delmarva Access Area, or enter the Delmarva Access Area on a declared LAGC IFQ scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

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

(4) *Season*. A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Delmarva Sea Scallop Access Area, described in paragraph (a)(2) of this section, from September 1 through October 31 of each year the Delmarva Access Area is open to scallop fishing as a Sea Scallop Access Area, except that a vessel may possess scallops while transiting pursuant to paragraph (f) of this section.

(b) \* \* \*

(1) From March 1, 2010, through February 28, 2011, and every third fishing year thereafter (*i.e.*, March 1, 2013, through February 28, 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, 2011, through February 28, 2013, and for every 2-yr period, based on the fishing year, after the closure described in paragraph (b)(1) of this section (*i.e.*, March 1, 2014, through February 29, 2016), and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, a vessel issued a scallop permit may fish for, possess, and land scallops in or from, the area known as the Closed Area I Access Area, described in paragraph (b)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

\* \* \* \* \*

(5) \* \* \*

(i) *Limited access vessels*. Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area I Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area I Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area I Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area I Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in this paragraph (b)(5)(i). Closed Area I Access Area is closed to limited access vessels for the 2010 fishing year.

(ii) \* \* \*

(A) The percentage of the Closed Area I Access Area TAC to be allocated to LAGC scallop vessels shall be specified in this paragraph (b)(5)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (b)(5)(ii)(B) of this section. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Closed Area I Access Area shall be closed to LAGC IFQ vessels in the 2010 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 (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.

\* \* \* \* \*

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

(c) \* \* \*

(1) From March 1, 2010, through February 28, 2011, and every third fishing year thereafter, (*i.e.*, March 1, 2013, through February 28, 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, 2011, through February 28, 2013, and for every 2-yr period, based on the fishing year, after the year-long closure described in paragraph (c)(1) of this section (*i.e.*, March 1, 2014, through February 29, 2016), and 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.

\* \* \* \* \*

(5) \* \* \*

(i) *Limited access vessels*. Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area II Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area II Access Area trip and gives up a trip into another Sea Scallop Access Area, as

specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area II Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area II Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in this paragraph (c)(5)(i). Closed Area II Access Area is closed to limited access vessels for the 2010 fishing year.

(ii) \* \* \*

(A) The percentage of the total Closed Area II Access Area TAC specified to be allocated to LAGC IFQ scallop vessels shall be specified in this paragraph (c)(5)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to 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 2010 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.

\* \* \* \* \*

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

\* \* \* \* \*

(d) \* \* \*

(1) From March 1, 2012, through February 28, 2013, and every third fishing year thereafter (*i.e.*, March 1, 2015, through February 29, 2016) 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, 2010, through February 29, 2012, and for every 2-yr period after the year-long closure described in paragraph (d)(1) of this section (*i.e.*, March 1, 2013, through February 28, 2015), and subject to the seasonal restrictions specified in paragraph (d)(4) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Nantucket Lightship Sea Scallop Access Area, described in paragraph (d)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

\* \* \* \* \*

(5) \* \* \*

(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Nantucket Lightship Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Nantucket Lightship Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Nantucket Lightship Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Nantucket Lightship Access Area shall be based on the TAC for the access area. The 2010 Nantucket Lightship Access Area scallop TAC for limited access scallop vessels is 5,399,985 lb (2,449 mt), after accounting for set-asides applicable and LAGC IFQ TAC to the Nantucket Lightship Access Area.

(ii) \* \* \*

(A) The percentage of the Nantucket Lightship Access Area TAC to be allocated to LAGC IFQ scallop vessels shall be specified in this paragraph (d)(5)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC IFQ scallop vessels as specified in paragraph (d)(5)(ii)(B) of this section. LAGC IFQ vessels are allocated 285,715 lb (130 mt) in fishing year 2010, which is 5 percent of the 2010 Nantucket Lightship Access Area TAC, after accounting for all applicable set-asides. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit.

(B) Based on the TAC specified in paragraph (d)(5)(ii)(A) of this section, LAGC scallop vessels are allocated 714 trips to the Nantucket Lightship Access Area in fishing year 2010. 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 714 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.

\* \* \* \* \*

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

(e) \* \* \*

(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 Elephant Trunk Sea Scallop Access Area between March 1, 2010, and February 28, 2011, as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains an Elephant Trunk 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 Elephant Trunk Access Area trip that was terminated early, as specified in § 648.60(c). Additionally, full-time scallop vessels are restricted in the number of trips that may be taken from June 15 through August 31, as specified in § 648.60(a)(3)(i)(B)(1). The 2010 Elephant Trunk Access Area scallop TAC for limited access scallop vessels is 10,406,727 lb (4,720 mt), after accounting for applicable set-asides and LAGC IFQ TAC.

(ii) *LAGC IFQ scallop vessels*—(A) The percentage of the Elephant Trunk Access Area TAC to be allocated to LAGC scallop vessels shall be specified in this paragraph (e)(4)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC IFQ scallop vessels as

specified in paragraph (e)(4)(ii)(B) of this section. LAGC IFQ vessels shall be allocated 550,621 lb (248 mt) in fishing year 2010, which is 5 percent of the 2010 Elephant Trunk Access Area TAC, after accounting for all applicable set-asides. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit.

(B) Based on the TACs specified in paragraph (e)(4)(ii)(A) of this section, LAGC IFQ vessels are allocated a total of 1,377 trips in the Elephant Trunk Access Area in fishing year 2010. 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 Elephant Trunk Access Area, or enter the Elephant Trunk 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 an Elephant Trunk Access Area trip shall count against that vessel's IFQ.

\* \* \* \* \*

- 9. In § 648.60:
- a. Paragraphs (a)(3)(iii), (a)(5)(iv), and (c)(5)(iv) are removed and reserved;
- b. Paragraph (c)(5)(ii)(A) is added;
- c. Paragraph (c)(5)(ii)(B) is added and reserved; and
- d. Paragraphs (a)(3)(i), (a)(3)(ii), (a)(5)(i), (c)(5)(v), (d)(1), (e)(1), and (g) are revised.

The additions and revisions read as follows:

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

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

(i) *Limited access vessel trips.* (A) Except as provided in paragraph (c) of this section, paragraphs (a)(3)(i)(B) through (E) of this section specify the total number of trips that a limited access scallop vessel may take into Sea Scallop Access Areas during applicable seasons specified in § 648.59. The number of trips per vessel in any one Sea Scallop Access Area may not exceed the maximum number of trips allocated for such Sea Scallop Access Area as

specified in § 648.59, unless the vessel owner has exchanged a trip with another vessel owner for an additional Sea Scallop Access Area trip, as specified in paragraph (a)(3)(ii) of this section, or has been allocated a compensation trip pursuant to paragraph (c) of this section.

(B) *Full-time scallop vessels.* A full-time scallop vessel may take two trips in the Elephant Trunk Access Area, one trip in the Delmarva access area, and one trip in the Nantucket Lightship Access Area, subject to the following seasonal trip restrictions.

(1) A full-time scallop vessel may not take more than two of its three allocated scallop access area trips during the period June 15 through August 31, or may not fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg) of scallops, the equivalent of two full trip possession limits specified in § 648.60(a)(5)(i)(A), during this time period from the Delmarva and Elephant Trunk Access Areas specified in § 648.59(a) and (e). For example, a full-time vessel may declare up to two trips in the Elephant Trunk Access Area or up to one trip in the Elephant Trunk Access Area and one trip in Delmarva Access Area during June 15 through August 31. The remaining access area trips may be taken during the remainder of the fishing year, subject to the seasonal closures described under § 648.59(a)(3) and (e)(3). This restriction does not include the additional possession allowance to defray the cost of carrying an observer as specified in § 648.60(d) that occur during observed trips between June 15 through August 31.

(2) [Reserved]

(C) *Part-time scallop vessels.* A part-time scallop vessel is allocated two trips that may be distributed between access areas as follows: Two trips in the Elephant Trunk Access Area; one trip in the Elephant Trunk Access Area and one trip in the Nantucket Lightship Access Area; one trip in the Elephant Trunk Access Area and one trip in the Delmarva Access Area; or one trip in the Nantucket Lightship Access Area and one trip in the Delmarva Access Area.

(D) *Occasional scallop vessels.* An occasional scallop vessel may take one trip in the Elephant Trunk Access Area, or one trip in the Nantucket Lightship Access Area, or one trip in the Delmarva Access Area.

(E) [Reserved]

(ii) *One-for-one area access trip exchanges.* If the total number of trips allocated to a vessel into all Sea Scallop Access Areas combined is more than one, the owner of a vessel issued a limited access scallop permit may

exchange, on a one-for-one basis, unutilized trips into one access area for another vessel's unutilized trips into another Sea Scallop Access Area. One-for-one exchanges may be made only between vessels with the same permit category. For example, a full-time vessel may not exchange trips with a part-time vessel, and vice versa. Vessel owners must request the exchange of trips by submitting a completed Trip Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Trip exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Trip Exchange Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has unutilized trips remaining to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the trip exchange has been made effective. A vessel owner may exchange trips between two or more vessels under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange trips between another vessel and the vessel for which a Confirmation of Permit History has been issued.

\* \* \* \* \*

(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). A part-time or occasional limited access vessel that lawfully fishes for, possesses, and lands an amount of scallops greater than specified in this section in the 2010 fishing year shall have the excess pounds landed above the possession limit specified in this paragraph (a)(5) deducted from that vessel's 2011 possession limit. A full-time vessel shall not fish for, possess, or retain more than 36,000 lb (16,329 kg) of scallops from the Elephant Trunk and Delmarva Access Areas, combined, from trips taken between June 15 and August 31. This landing restriction does not include the additional possession allowance to defray the cost of carrying an observer as specified in § 648.60(d) that occur during observed trips between June 15 through August 31. No vessel declared into the Access Areas as

described in § 648.59(a) through (e) may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Access Areas described in § 648.59(a) through (e).

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

\* \* \* \* \*

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

(A) Pursuant to § 648.60(a)(3)(i)(B)(1), a full-time vessel may not take a compensation trip based on a single or multiple terminated trip(s) during the period June 15 through August 31 if the compensation trip would allow a vessel to land more than 36,000 lb (16,329 kg), the equivalent of two full access area trips, during the period June 15 through August 31, in the Elephant Trunk Access Area and Delmarva Access Area combined. For example, a vessel that terminated a trip in the Delmarva Access Area on June 1, 2010, and intends to declare two full trips in the Elephant Trunk Access Area access area from June 15 through August 31, must wait to fish its compensation trip in the Delmarva Access Area until November 1, 2010.

(B) [Reserved]

\* \* \* \* \*

(v) *Additional compensation trip carryover.* If an Access Area trip conducted during the last 60 days of the open period or season for the Access Area is terminated before catching the allowed possession limit, and the requirements of paragraph (c) of this section are met, the vessel operator shall be authorized to fish an additional trip as compensation for the terminated trip in the following fishing year. The vessel owner/operator must take such additional compensation trips, complying with the trip notification procedures specified in paragraph (a)(2)(iii) of this section, within the first 60 days of that fishing year the Access Area first opens in the subsequent fishing year. For example, a vessel that terminates an Elephant Trunk Access Area trip on December 29, 2010, must declare that it is beginning its additional compensation trip during the first 60 days that the Elephant Trunk Access Area is open (March 1, 2011, through April 29, 2011). If an Access Area is not open in the subsequent fishing year, then the additional compensation trip authorization would expire at the end of the Access Area Season in which the trip was broken. For example, a vessel that terminates a Closed Area II trip on

December 10, 2009, may not carry its additional compensation trip into the 2010 fishing year because Closed Area II is not open during the 2010 fishing year, and must complete any compensation trip by January 31, 2010.

(d) \* \* \*

(1) *Observer set-aside limits by area—*(i) *Nantucket Lightship Access Area.* For the 2010 fishing year, the observer set-aside for the Nantucket Lightship Access Area is 58,910 lb (27 mt).

(ii) [Reserved]

(iii) *Elephant Trunk Access Area.* For the 2010 fishing year, the observer set-aside for the Elephant Trunk Access Area is 113,530 lb (52 mt).

(iv) *Delmarva Access Area.* For the 2010 fishing year, the observer set-aside for the Delmarva Access Area is 58,850 lb (27 mt).

\* \* \* \* \*

(e) \* \* \*

(1) *Research set-aside limits and number of trips by area—*(i) *Nantucket Lightship Access Area.* For the 2010 fishing year, the research set-aside for the Nantucket Lightship Access Area is 117,820 lb (53 mt).

(ii) [Reserved]

(iii) *Elephant Trunk Access Area.* For the 2010 fishing year, the research set-aside for the Elephant Trunk Access Area is 277,060 lb (126 mt).

(iv) *Delmarva Access Area.* For the 2010 fishing year, the research set-aside for the Delmarva Access Area is 117,700 lb (53 mt).

\* \* \* \* \*

(g) *Limited Access General Category Vessels.* (1) An LAGC scallop vessel may only fish in the scallop access areas specified in § 648.59(a) through (e), subject to the seasonal restrictions specified in § 648.59(a)(4), (b)(4), (c)(4), (d)(4), and (e)(3), and subject to the possession limit specified in § 648.52(a), and provided the vessel complies with the requirements specified in paragraphs (a)(1), (a)(2), (a)(6) through (a)(9), (d), (e), (f), and (g) of this section, and § 648.85(c)(3)(ii). A vessel issued both a NE multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the Closed Area I, Closed Area II, and Nantucket Lightship Sea Scallop Access Areas specified in

§ 648.59(b) through (d), provided the vessel complies with the requirements specified in § 648.59(b)(5)(ii), (c)(5)(ii), and (d)(5)(ii), and this paragraph (g), but may not fish for, possess, or land scallops on such trips.

(2) *Gear restrictions.* An LAGC IFQ scallop vessel authorized to fish in the Access Areas specified in § 648.59(a) through (e) must fish with dredge gear only. The combined dredge width in use by, or in possession on board of, an LAGC scallop vessel fishing in the Access Areas described in § 648.59(a) through (e) may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(3) *LAGC IFQ Access Area Trips.* An LAGC scallop vessel authorized to fish in the Access Areas specified in § 648.59(a) through (e) may land scallops, subject to the possession limit specified in § 648.52(a), unless the Regional Administrator has issued a notice that the number of LAGC IFQ access area trips specified in § 648.59(a)(3)(ii), (b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii) have been or are projected to be taken. Upon a determination from the Regional Administrator that the total number of LAGC IFQ trips in a specified Access Area have been or are projected to be taken, the Regional Administrator shall publish notification of this determination in the **Federal Register**, in accordance with the Administrative Procedure Act. Once this determination has been made, an LAGC IFQ scallop vessel may not fish for, possess, or land scallops in or from the specified Access Area after the effective date of the notification published in the **Federal Register**.

(4) *Possession Limits—*(i) *Scallops.* A vessel issued a NE multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS, and that has not enrolled in the LAGC Access Area fishery, is prohibited from possessing scallops. An LAGC scallop vessel authorized to fish in the Access Areas specified in § 648.59(a) through (e) may possess scallops up to the possession limit specified in § 648.52(a).

(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(a) through (e) is prohibited from possessing any species of fish other than scallops and monkfish, as specified in § 648.94(c)(8).

(5) *Number of trips.* An LAGC IFQ scallop vessel may not fish for, possess, or land scallops in or from the Access

Areas specified in § 648.59(a) through (e) after the effective date of the notification published in the **Federal Register**, stating that the total number of trips specified in § 648.59(a)(3)(ii), (b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii) have been, or are projected to be, taken by LAGC IFQ scallop vessels.

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

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

\* \* \* \* \*

(b) \* \* \*

(1) *NGOM TAC.* The TAC for the NGOM is 70,000 lb (31.8 mt) for the 2010 fishing year.

\* \* \* \* \*

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**BILLING CODE 3510-22-P**