

■ B. In ALTERNATE I, revising the date to read NOV 2004, and removing “NPG” and adding “NPR” in its place.

**1852.235–72 [Amended]**

- 18. Amend section 1852.235–72 by—  
 ■ A. Revising the date of the clause to read NOV 2004; and  
 ■ B. In paragraph (a)(4), removing “NPG” and adding “NPR” in its place.

**1852.242–73 [Amended]**

- 19. Amend section 1852.242–73 by—  
 ■ A. Revising the date of the clause to read NOV 2004; and  
 ■ B. In paragraph (a), removing “NPG” and adding “NPR” in its place.

**1852.245–71 [Amended]**

- 20. Amend section 1852.245–71 by—  
 ■ A. Revising the date of the clause to read NOV 2004; and  
 ■ B. Revising ALTERNATE I to read as follows:

**1852.245–73 Installation—Accountable Government Property.**

\* \* \* \* \*

**Alternate I (NOV 2004)**

As prescribed in 1845.106–70(b)(4), substitute the following for paragraph (b)(1)(i) of the basic clause:

(i) The contractor shall not utilize the installation’s central receiving facility for receipt of Contractor-acquired property. However, the Contractor shall provide listings suitable for establishing accountable records of all such property received, on a quarterly basis, to the Contracting Officer and the Supply and Equipment Management Officer.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 040809233–4289–02; I.D. 080304B]

RIN 0648–AR55

**Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery and Northeast Multispecies Fishery; Framework 16 and Framework 39**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS implements concurrently Framework 16 to the

Atlantic Sea Scallop Fishery Management Plan (Scallop FMP) and Framework 39 to the Northeast Multispecies FMP (Multispecies FMP) (Joint Frameworks) developed by the New England Fishery Management Council (Council). The Joint Frameworks establish Scallop Access Areas within Northeast (NE) multispecies Closed Area I (CAI), Closed Area II (CAII), and the Nantucket Lightship Closed Area (NLCA). The NE multispecies closed areas are closed year-round to all fishing that is capable of catching NE multispecies, including scallop fishing. The Joint Frameworks allow the scallop fishery to access the scallop resource within portions of the NE multispecies closed areas during specified seasons, and ensure that NE multispecies catches by scallop vessels are consistent with the Multispecies FMP. The Joint Frameworks also revise the Essential Fish Habitat (EFH) closed areas implemented under Amendment 10 to the Scallop FMP (Amendment 10) in order to make the areas consistent with the EFH closures under the Multispecies FMP, as established by Amendment 13 to the Multispecies FMP (Amendment 13).

**DATES:** Effective November 2, 2004, except the amendments to §§ 648.10(b)(1)(iv); 648.59(b)(5)(ii), (c)(5)(ii), and (d)(5)(ii); and 648.60(g) which will be effective upon approval of reporting and recordkeeping requirements by OMB and upon subsequent publication in the **Federal Register**.

**ADDRESSES:** Copies of the Joint Frameworks, their Regulatory Impact Review (RIR), including the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of the preamble of this rule. Copies of the FRFA and the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298, and are also available via the Internet at <http://www.nero.nmfs.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at One Blackburn Drive,

Gloucester, MA 01930, and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395–7285.

Comments may also be submitted electronically through the Federal e-Rulemaking portal: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Peter W. Christopher, Fishery Policy Analyst, 978–281–9288; fax 978–281–9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Joint Frameworks were adopted by the Council on February 24, 2004. The Council initially submitted the Joint Frameworks and associated analyses on April 20, 2004, and a final revised submission was provided to NMFS on July 2, 2004. The Joint Frameworks were developed to establish Scallop Access Areas within the NE multispecies closed areas (CAI, CAII, and NLCA). The regulations that govern these NE multispecies closed areas prohibit fishing for scallops to prevent NE multispecies mortality, as scallop gear is capable of catching NE multispecies. The Scallop Access Area Program allows scallop vessels to have controlled access to these areas in order to harvest appropriately from the large biomass of scallops in the NE multispecies closed areas.

Amendment 10, which was implemented by a final rule published June 23, 2004 (69 FR 35194) contemplated that a controlled access program for the NE multispecies closed areas would be incorporated into the area rotation program through scheduled openings of the areas. However, Amendment 10 did not include the detailed management measures, particularly with respect to NE multispecies bycatch, that were necessary to implement the access program under Amendment 10. In addition, in order to allow controlled access by scallop vessels to the NE multispecies closed areas, complementary action was necessary under the Multispecies FMP. In order to ensure that the management measures included in Amendment 13 and their environmental impacts were considered under the action to allow scallop fishing in the NE multispecies closed areas, the Council delayed action on the Joint Frameworks until Amendment 13 was completed by the Council (Amendment 13 was implemented through a final rule published April 27, 2004 (69 FR 22906)). As a result, the Council and NMFS ensured that the effects of allowing controlled access to the NE multispecies closed areas by the scallop

fleet would be fully considered in light of the overall impacts on NE multispecies under Amendment 13 and Amendment 10.

Finally, due to inconsistency between the Multispecies FMP and the Scallop FMP with respect to closures to protect EFH, the Joint Frameworks make the EFH closed areas the same in the Scallop FMP as in the Multispecies FMP.

In the proposed rule, NMFS requested comment on all proposed measures, but specifically highlighted two issues about which NMFS had concerns. These were: Reallocation of Georges Bank (GB) yellowtail flounder (yellowtail) bycatch TAC to the Scallop Access Area Program after December 1 of each year; and dissemination of information by NMFS to trigger voluntary industry action to avoid bycatch. A discussion of these issues, including NMFS's consideration of public comments on the issues, follows.

#### *1. Reallocation of GB Yellowtail Bycatch TAC*

This measure is being implemented through this final rule and is described in detail in Item 9 of this preamble. The measure requires that the Regional Administrator (RA) monitor catches of GB yellowtail reported by both scallop and NE multispecies vessels and, on or after December 1 each year, determine whether the GB yellowtail allocation for the Scallop Access Area can be increased without resulting in total catches above the overall allocation of GB yellowtail. NMFS expressed concern in the proposed rule that it may be too early in the multispecies fishing year, which begins on May 1 each year, to assess effectively the likelihood of attaining the overall GB yellowtail allocation; the NE multispecies fishery continues through April 30. In addition, NMFS stated that it may not be possible for the scallop fishery to utilize effectively an additional yellowtail allocation before the Scallop Access Areas close to scallop fishing on February 1 each year. NMFS received two comments in support of this measure; see comment 7 in the "Comments and Responses" section of this final rule. After considering the Council's rationale and public comments, NMFS has approved this measure because historical landings of yellowtail, including those in the current fishing year, could allow for projections in December, if data are found to be adequate. However, if data for projections are inadequate, the measure does not require an adjustment of the yellowtail bycatch TAC for the scallop fleet. Therefore, since this

flexibility is built into the program, NMFS has included it in the measures implemented by this final rule. NMFS notes, however, that the timing of an adjustment is likely to limit additional catch of yellowtail and continuation of the scallop fishery to a very short period, since the Access Area season ends on January 31 of each year.

#### *2. Dissemination of Information by NMFS Triggering Voluntary Action by Industry To Avoid High Bycatch*

NMFS noted its concern in the proposed rule about a provision in the Joint Frameworks that encouraged NMFS to disseminate information on a real-time basis voluntarily provided by vessel operators about bycatch to the entire scallop fleet. The Council included the measure hoping that the scallop industry would avoid areas or times of high bycatch of yellowtail and other species and take voluntary action to reduce such bycatch based on information provided by vessel operators. While the Joint Frameworks document stated that either NMFS or the Council would distribute this information, the public comments on this measure indicate that commenters expect that NMFS would provide the full suite of information suggested by the Council (see Comment 8 in the "Comments and Responses" section of this preamble).

NMFS does not consider the Council's request to implement this program to be a specific recommendation by the Council subject to approval or disapproval. Because the proposed system is merely a recommendation and is not fully developed, NMFS is not implementing this program at this time. The Council envisioned such a system would use the VMS units that are mandatory on scallop vessels. NMFS concludes that the costs of such dissemination of information to industry would be high and the benefits of such a voluntary program are uncertain. Although not included in any cost analysis in the EA, the cost of VMS messages is typically determined by the number of characters in the message. One 5-line message sent to all scallop vessels would cost thousands of dollars. To include sufficient information to be useful, messages about bycatch hot-spots would need to be detailed. Whether the Council intended NMFS or the industry to pay for such messages, which was unspecified in the Joint Frameworks document, it is certain that, over the course of the fishing year, the cost of several messages would be substantial. NMFS recognizes that full-scale industry reaction to avoid bycatch could slow attainment of bycatch TACs

and extend the scallop fishery. However, for such a program to be viable, more development is necessary, including full consideration of costs, benefits, regulatory requirements, full industry commitment, and incentives. Without such considerations, such a program cannot be expected to achieve its intended goals. Although NMFS is not required to and is not taking any specific action to follow the Council's urging to disseminate bycatch information, NMFS intends to post landing, catch, and bycatch TAC reports on its web page. Such information will allow the industry to make adjustments in fishing practices. Finally, the scallop industry has full discretion to take voluntary action to avoid bycatch using information typically shared among vessels.

#### **Approved Management Measures**

The approved management measures that are applicable to the fishery within the Scallop Access Areas in CAI, CAII, and NLCA are summarized in Items 1–13 below, and the remaining approved measures are described in Items 14–16.

##### *1. Scallop Access Areas*

Scallop Access Areas are implemented within portions of CAI, CAII, and NLCA. While the coordinates are specified in the regulations implemented by this final rule, the areas are generally described as the central portion of CAI, the southern portion of CAII, and the eastern portion of NLCA. The Scallop Access Areas are intended to focus scallop fishing in the most productive scallop areas to maximize scallop yield while minimizing bycatch of other species and impacts on EFH.

##### *2. Rotation of Access Areas*

Two of the three Scallop Access Areas will be open for access each fishing year. CAII and NLCA will be opened for the rest of the 2004 fishing year, followed by CAI and CAII in the 2005 fishing year, and CAI and NLCA in the 2006 fishing year. This cycle repeats beginning in the 2007 fishing year, unless modified by the Council through additional framework action or an amendment to the Scallop FMP.

##### *3. Number of Trips, DAS Charges, and Scallop Possession Limits*

The total DAS allocated for scallop Access Area fishing, the number of access trips into each area, the DAS charge per trip, and the scallop possession limit are specified for each Scallop Access Area. These measures are established for vessels issued limited access scallop permits according to permit category: Full-time, Part-time,

and Occasional. Vessels in each permit category are allocated a specific number of DAS for use in Scallop Access Areas, with a specified number of DAS charged for each area trip, regardless of actual trip length. In addition, the Joint Frameworks specify the maximum number of trips that can be made into any one Access Area, by vessel permit

category. The Joint Frameworks also allocate a possession limit for trips into each Access Area.

The following tables provide the trip, DAS charges, and possession limits, by permit category and by year, through 2006. The Hudson Canyon (HC) Access Area trip allocations, DAS charges, and possession limits are included in the

table as part of the complete area rotation program implemented under Amendment 10. Part-time and Occasional scallop vessels have separate allocations for the HC Access Area in the 2004 fishing year because the possession limit and DAS charges are different between the Closed Area Access Areas and the HC Access Area.

TABLE 1.—TOTAL NUMBER OF ACCESS AREA TRIPS AND DAS CHARGE PER TRIP

Fishing year	Access area	Maximum trips per area and per vessel	Total number of trips; and DAS charge per trip		
			Full-time	Part-time	Occasional
2004	Closed Area II	2	7 trips; 12 DAS	2 trips; 11.2 DAS	1 trip; 7 DAS.
	Nantucket Lightship	1			
	Hudson Canyon	4			
2005	Closed Area I	1	5 trips; 12 DAS	2 trips; 12 DAS	1 trip; 12 DAS. 1 trip; 5 DAS.
	Closed Area II	1			
	Hudson Canyon	3			
2006	Closed Area I	1	2 trips; 12 DAS	1 trip; 9.6 DAS	1 trip; 2 DAS.
	Nantucket Lightship	1			

TABLE 2.—POSSESSION LIMITS BY AREA, FISHING YEAR, AND PERMIT CATEGORY

Fishing year	Access area	Possession limit		
		Full-time	Part-time	Occasional
2004	Closed Area II	18,000 lb (8,165 kg)	16,800 lb (7,620 kg)	10,500 lb (4,763 kg).
	Nantucket Lightship Hudson Canyon			
2005	Closed Area I	18,000 lb (8,165 kg)	18,000 lb (8,165 kg)	18,000 lb (8,165 kg). 7,500 lb (3,402 kg).
	Closed Area II Hudson Canyon			
2006	Closed Area I	18,000 lb (8,165 kg)	14,400 lb (6,532 kg)	3,000 lb (1,361 kg).
	Nantucket Lightship			

4. Scallop TAC

The management measures within the Scallop Access Areas are established to attain a target TAC of scallops as specified in the area rotation program established by Amendment 10. These TACs will be used to monitor fishing activity and determine whether to adjust fishing effort levels for future years. These TACs are also used to calculate TAC set-asides for research, observer coverage, and general category vessels. These TAC set-asides are established as absolute limits on the amount of scallops harvested during a specific activity, and that activity will cease when the set-aside TAC is attained. The overall target TACs for the scallop fishery are: (1) 8,395,203 lb (3,808 mt) for CAII and 7,718,384 lb (3,501 mt) for NLCA in the 2004 fishing year; (2) 3,243,000 lb (1,471 mt) for CAI and 7,698,542 lb (3,492 mt) for CAII in the 2005 fishing year; and (3) 2,824,122 lb (1,281 mt) for CAI and 6,796,852 lb (3,083 mt) for NLCA in the 2006 fishing year.

5. One-for-One Trip Exchanges

The Joint Frameworks allow limited access vessels to exchange access area trips with other vessels. In the 2004 fishing year, vessels are allowed to enter into agreements to exchange trips for 3 months following implementation of the Joint Frameworks. After the 3-month period, vessel owners will not be allowed to negotiate exchanges of trips. In subsequent fishing years, owners may exchange trips until June 1 each year. Vessel owners are allowed to use trips authorized under the trip exchange program for the remainder of the fishing year. Because trip allocations, DAS charges, and possession limits differ between scallop permit categories, vessels must exchange only with vessels issued permits in the same scallop permit category. Since Occasional vessels are allocated only one trip, they are not eligible to exchange trips.

6. General Category Access Provisions

When reporting and recordkeeping requirements submitted to OMB for review have been approved, another

final rule will be published to announce when vessels issued open-access general category scallop permits will be allowed to fish within the Scallop Access Areas subject to the restrictions specified below. This provision includes additional management restrictions in order to ensure accurate accounting of catch, and to ensure that general category fishing effort does not cause bycatch or excessive effort and mortality on scallops. The Joint Frameworks amend the Multispecies FMP to allow general category vessels to fish within the NE multispecies closed areas, where such fishing is otherwise prohibited. General category vessels are subject to the following restrictions:

- a. A possession limit of 400 lb (181.4 kg) of shucked or 50 U.S. bushel (17.6 hl) of in-shell scallops per trip.
- b. A set-aside TAC for general category vessels, equal to 2 percent of the overall scallop TAC for each Scallop Access Area, requiring general category vessels to stop fishing in the specific Scallop Access Area once the set-aside TAC is reached. The general category set-aside TACs for 2004, 2005, and

2006, are as follows: (1) 2004; 167,904 lb (76 mt) in CAII and 154,368 lb (70 mt) in NLCA; (2) 2005; 64,860 lb in CAI and 153,971 lb (70 mt) in CAII; and (3) 2006; 56,482 lb in CAI and 135,937 lb (62 mt) in NLCA.

c. A limit on the number of trips that the general category fleet can take into the Scallop Access Areas, requiring general category vessels to stop fishing in the specific Scallop Access Area once the total number of allowed trips is reached. The limits on the number of trips general category vessels may take for 2004, 2005, and 2006, are as follows: (1) 2004; 420 trips in CAII and 386 trips in NLCA; (2) 2005; 162 trips in CAI and 385 trips in CAII; and (3) 2006; 141 trips in CAI and 340 trips in NLCA.

d. A requirement to install and use a NMFS-certified VMS in order to notify NMFS when a vessel plans to fish in a Scallop Access Area.

e. A prohibition on retaining or landing NE multispecies, with a requirement to report all catch of yellowtail, including discards, so that it can be counted against the yellowtail TAC for the scallop fishery. This restriction is consistent with the provisions for general category vessels fishing in other exempted fisheries under the Multispecies FMP.

f. A requirement to carry at-sea observers when requested.

g. VMS reporting of scallop and yellowtail catch to monitor fishery

activity and bycatch. (These requirements are also required of limited access scallop vessels).

h. A requirement that scallop dredge gear used within a Scallop Access Area be constructed with rings with a minimum diameter of 4 inches (10.2 cm) (Amendment 10 imposed this requirement for General category vessels fishing in open areas, but delayed the implementation of the requirement until December 23, 2004). Dredge width for general category vessels cannot exceed 10.5 ft (3.2 m).

Access by general category vessels is not effective upon publication of this rule because of compliance and reporting requirements that require time for this sector of the industry to purchase VMS units and prepare for new compliance requirements. In addition, NMFS is awaiting approval by OMB of the reporting and recordkeeping requirements associated with these provisions. Therefore, the Access Area restriction for general category vessels will be made effective on the date of publication in the **Federal Register** indicating that OMB has approved the reporting requirements which will allow access and require compliance with the measures upon notification.

**7. Gear Restrictions**

Scallop vessels fishing within the Scallop Access Areas in CAI, CAII, and NLCA are required to use scallop dredge

gear only. The minimum diameter for rings used in the scallop dredge is 4 inches (10.2 cm). Amendment 10 imposed the minimum ring size requirement for Limited Access vessels fishing in the HC Access Area, but delayed the requirement in the open areas until December 23, 2004.

**8. Scallop Access Area Season**

The CAI, CAII, and NLCA Scallop Access Areas are open to scallop fishing from June 15 through January 31 each year.

**9. Yellowtail Catch Limits**

The Scallop Access Area program is subject to a TAC for yellowtail set at 10 percent of the total TAC established in Amendment 13 for each yellowtail stock. Two percent of this scallop fishery yellowtail bycatch TAC (*i.e.*, 2 percent of the 10-percent bycatch TAC, or 0.2 percent of the overall yellowtail TAC) is set aside for limited access scallop vessels to harvest during approved research, as described below. The TAC governing the Scallop Access Area fishery is, therefore, equal to 9.8 percent of the overall yellowtail TAC for each stock. The following table specifies the yellowtail bycatch TAC and yellowtail research TAC set-aside.

Yellowtail stock	Controlled access area	Fishing year	Access area by-catch TAC (10 percent of total TAC)	Controlled access fishery TAC (9.8 percent of total TAC)	Research TAC
Southern New England .....	Nantucket Lightship .....	2004	154,764 lb ..... (70.7 mt)	152,780 lb ..... (69.3 mt)	3,086 lb. (1.4 mt).
		2005	436,956 lb ..... (198.2 mt)	428,138 lb ..... (194.2 mt)	8,818 lb. (4.0 mt).
		2006	733,037 lb ..... (332.5 mt)	718,266 lb ..... (325.9 mt)	14,771 lb. (6.7 mt).
GB .....	Closed Area I and Closed Area II combined.	2004	1,322,774 lb ..... (600 mt)	1,296,318 lb ..... (588 mt)	26,455 lb. (12 mt).
		2005	( <sup>1</sup> ) .....	( <sup>1</sup> ) .....	( <sup>1</sup> )
		2006	( <sup>1</sup> ) .....	( <sup>1</sup> ) .....	( <sup>1</sup> )

<sup>1</sup> To be updated annually according to the specifications procedure associated with the U.S./Canada Resource Sharing Understanding under the NE multispecies regulations.

All scallop vessels (including general category vessels) fishing in the Scallop Access Areas are required to report all yellowtail catches (all catch, including discards) and all catch is counted toward the TAC. When the yellowtail TAC established for a Scallop Access Area is attained, the scallop fishery in the affected access area will be closed and any remaining access area trips will be redirected into open areas, as explained in Item 10 below.

The Multispecies FMP established a TAC for yellowtail under the U.S./Canada Resource Sharing Understanding in the Eastern U.S./Canada Area, and the NE multispecies fishery within the area closes when the TAC is projected to be fully attained. If the U.S./Canada yellowtail TAC is fully attained, scallop trips within the Scallop Access Areas in the Eastern U.S./Canada Area (CAI and CAII) may continue, though retention of yellowtail will be prohibited, until the yellowtail

catches by scallop vessels fully attain the scallop fishery's yellowtail set-aside. At that time, the scallop fishery in the Scallop Access Areas will be closed and any remaining access area trips shall be redirected into open areas, as explained in Item 10 below. Any vessel that has declared and began a trip into the area for which the closure applies when the closure notice is made will be allowed to complete that trip. NMFS expects that projections of closure dates will ensure that remaining trips will not result in

the yellowtail bycatch TAC being exceeded.

NMFS will monitor the landings of scallops and yellowtail through vessel VMS reports, dealer reports, and at-sea observer reports and take appropriate action based on projections of whether the yellowtail harvest will be achieved. If available information is sufficient to make a projection shortly after December 1 each year that the catch of yellowtail by scallop vessels fishing in the Scallop Access Area is below the yellowtail TAC set for the GB yellowtail stock, and if the overall GB yellowtail TAC is not projected to be harvested in the remainder of the fishing year, the RA may enact measures to increase the Scallop Access Area yellowtail TAC allocated to scallop vessels fishing in the Scallop Access Area. The yellowtail TAC may be increased only if such increase is not expected to cause the yellowtail TAC under the Multispecies FMP to be exceeded.

The Joint Frameworks establish a set-aside of 2 percent of the yellowtail TAC

allocated for the Scallop Access Area for the harvest of yellowtail during research approved under the existing scallop research TAC set-aside program. If research fishing that is conducted within the Scallop Access Areas is approved, a small amount of yellowtail shall be allocated for catch by the vessels involved in the research activity. This is intended to enable researchers to conduct their activities, even if the overall yellowtail TAC has been attained. Without this research set-aside, scallop research approved as part of the scallop TAC set-aside program would be prohibited if the Scallop Access Area were closed due to attainment of the yellowtail TAC.

**10. Trip Re-allocation if Scallop Access Area Is Closed**

If the yellowtail TAC is fully attained, the Scallop Access Areas will be closed before limited access scallop vessels have taken all of their NE multispecies closed area access trips. If the scallop access areas are closed before vessels

have taken all of their allocated trips in the area, limited access scallop vessels will be allowed to take the same number of unused NE multispecies closed area Access Area program trips in open areas, up to the lesser of the following: (1) The difference in the number of equivalent DAS allowed for the affected Access Area and the number of DAS charged to a vessel for trips taken into the affected Access Area; or (2) the difference between open area DAS allocations specified in this rule with access and the 2004 default DAS allocation or open area DAS allocations prior to implementation of the Joint Frameworks (*i.e.*, DAS allocations without access to the NE multispecies closed areas as specified in Amendment 10). The following table summarizes the maximum number of DAS that a vessel may fish in open areas if the Access Area closes prior to completion of all trips.

	Permit category	2004	2005	2006
Open Area DAS prior to the Joint Frameworks .....	Full-time .....	162	117	152
	Part-time .....	125	47	61
	Occasional .....	15	10	13
Open Area DAS under the Joint Frameworks .....	Full-Time .....	42	40	67
	Part-time .....	17	16	27
	Occasional .....	4	3	6
Difference in DAS allocations .....	Full-time .....	20	77	85
	Part-time .....	8	31	34
	Occasional .....	1	7	7
Maximum number of additional DAS to be used in Open Areas after Access Area Closure.	Full-time .....	20	24	24
	Part-time .....	8	24	9.6
	Occasional .....	1	5	2
Maximum number of additional DAS to be used in Open Areas after Access Area Closure, including traded trips.	Full-time .....	20	60	24
	Part-time .....	8	48	9.6
	Occasional .....	1	5	2

<sup>1</sup>DAS implemented on September 15, 2004, under the default DAS adjustment as part of Amendment 10.

The maximum number of DAS will only be available to a vessel if it has taken no trips in the Access Area prior to its closure. If a vessel has taken any trips into the Access Area, the maximum number of DAS that can be used in open areas will be deducted by the number of DAS charged for each trip in the Access Area. Trips acquired through a one-for-one trip exchange may also be used in open areas if a NE multispecies closed area Access Area closes. For example, a Full-time scallop vessel with two unused trips into the CAII Scallop Access Area in the 2004 fishing year when the Access Area closes can fish an additional 20 DAS in open areas. A Full-time scallop vessel with one remaining trip into the CAII Scallop Access Area in the 2004 fishing

year when the Access Area closes can fish an additional 12 DAS in open areas.

If a vessel owner has increased the number of trips that his/her vessel may take in a Scallop Access Area through one-for-one trips exchanges with other vessel owners, the vessel may also use those trips in open areas when the Scallop Access Area fishery in a NE multispecies closed area has closed. For example, a Full-time scallop vessel that has traded away two HC trips and received two additional CAII trips in 2005 could fish up to 48 additional DAS in the open areas if the CAII Scallop Access Area fishery closes before the vessel has taken any trips in CAII.

**11. Finfish Possession Limits**

Limited access scallop vessels fishing in a Scallop Access Area are restricted to a possession limit of 1,000 lb (453.6 kg) of all NE multispecies combined, including a maximum of 100 lb (45.4 kg) of cod, provided it is retained for personal use only. No cod may be sold from a scallop vessel participating in the Access Area program, and all cod possessed on board must be head-on and gutted for ease of enforcement. Limited Access scallop vessels are restricted to existing possession limits for haddock, monkfish, and yellowtail. As explained above, yellowtail is further managed through the establishment of Scallop Access Area TACs, and possession of yellowtail will be

prohibited when those TACs are attained.

#### 12. At-Sea Observer Coverage

One percent of the scallop target TAC is set aside and available to help defray the cost of at-sea observers deployed on scallop vessels. Observers will collect information on catch and discards of scallops and other species including incidental catch of other finfish and sea turtles. Observer reports will provide information that will be used to monitor the yellowtail catch relative to the TAC for yellowtail, and for estimation of bycatch of other finfish and sea turtles. Vessels are allowed to catch extra scallops under the TAC set-aside, to help pay for the cost of carrying an observer on the vessel. This measure mirrors the observer set-aside established in Amendment 10, and is part of the Council's standardized bycatch reporting methodology.

The amount of observer coverage resulting from the 1-percent TAC is estimated to provide observer coverage for approximately 9–20 percent of trips allocated in CAI, 12–19 percent of the trips taken in CAII, and 11–25 percent of the trips taken in the NLCA. The Council estimated that this amount of observer coverage would reduce variability in bycatch estimates for yellowtail, other finfish, and sea turtles, in order to provide more accurate and statistically sound bycatch estimates than would otherwise be achieved without the additional coverage.

#### 13. Expanded Reporting Requirements

All scallop vessels fishing in the Scallop Access Areas are required to report their catches (landings and discards) of scallops and yellowtail using VMS. Yellowtail reporting is critical to ensure accurate monitoring of the yellowtail TACs. The reports will be submitted via VMS on a daily basis.

#### 14. Modified EFH Closure Areas

Amendment 10 established some areas within the NE multispecies closed areas as EFH closed areas in order to protect EFH from adverse effects of scallop fishing. This action modifies those areas to make them identical to those implemented under Amendment 13. These areas, some of which extend beyond the boundaries of the NE multispecies closed areas, are intended to more effectively protect EFH by establishing consistent area closures under the Scallop and Multispecies FMPs.

#### 15. DAS Allocation Changes

Amendment 10 established a default measure to increase the DAS allocated

to limited access scallop vessels fishing in open areas, which took effect September 15, 2004. The Joint Frameworks include a measure that specifies that vessels that use any of these additional DAS are prohibited from fishing in any Scallop Access Area until March 1, 2005. Vessels owners who have not used any of the additional DAS allocated on September 15, 2004, are eligible to fish in the Scallop Access Areas, which voids the allocation of the additional DAS in the open areas.

#### 16. Corrections and Clarifications

This final rule includes corrections and clarifications to the scallop regulations, and a new prohibition on the sale of scallops and multispecies from federally permitted vessels to dealers that have not been issued Federal dealer permits. This prohibition clarifies that it is illegal for crew members of federally permitted vessels to sell scallops and multispecies to dealers that have not been issued Federal dealer permits.

#### Comments and Responses

NMFS received five comment letters on the Joint Frameworks, from three individuals, the Council, an industry representative, and the State of Maine. The comments raised concerns regarding general category provisions, impacts on multispecies vessels fishing in the multispecies closed area Access Areas, and overall provisions of the Joint Frameworks. No responses are included for comments that pertained to aspects of the Scallop FMP that were not measures included in the proposed rule (including alternative area rotation schemes, evaluation of scallop dredge ring size, scientific basis for scallop management under Amendment 7 to the Scallop FMP, one-to-one trip exchanges, DAS and possession limit charges in access areas, and industry review of recorded observer data).

*Comment 1:* One commenter did not specifically address the proposed action, but rather indicated general support for marine protected areas, reduction of commercial quotas in general, better enforcement of fisheries regulations, and the need for protection of the public fishery resource.

*Response:* Although NMFS acknowledges the importance of the issues raised by the commenter, they do not specifically relate to the proposed rule. The Joint Frameworks are intended to complete the area rotation program approved and implemented as part of Amendment 10 by allowing controlled scallop fishing within the NE multispecies closed areas. In addition, the Joint Frameworks rectify an

inconsistency between the Multispecies FMP and Scallop FMP with respect to EFH closed areas by making the areas the same in each FMP.

*Comment 2:* One individual commented that the Joint Frameworks do not address market considerations for 20- to 40-count scallops because the Scallop FMP strives to achieve harvest of only the largest scallops.

*Response:* The Joint Frameworks, and fishery management in general under the Magnuson-Stevens Act, are not designed to control or manage market conditions. The area rotation program, expanded by the Area Access Program included in the Joint Frameworks, strives to achieve (OY) from the scallop resource as required by the Magnuson-Stevens Act.

*Comment 3:* One individual questioned why water temperature and lunar tide cycles were not considered in determining seasons for the NE multispecies closed area access program.

*Response:* The commenter does not explain how or why these factors should have been used to determine access program seasons. NMFS is unaware of any studies on these environmental conditions that would enable or require the Council to incorporate these factors into management programs for scallops or NE multispecies.

*Comment 4:* One individual commented that vessels should be allowed to sell all marketable fish caught during scallop fishing as a way to reduce bycatch, and stated that the 1,000 lb (453.6 kg) possession limit for multispecies does not promote bycatch reduction in the scallop fishery.

*Response:* Allowing landing of all marketable fish could promote non-selective fishing and result in higher fishing mortality on NE multispecies stocks. The 1,000 lb (453.6 kg) possession limit for multispecies is intended to encourage scallop vessels to stay away from high concentrations of yellowtail and other multispecies, thereby reducing bycatch and slowing or preventing attainment of the yellowtail bycatch TAC by the scallop fishery.

*Comment 5:* One individual questioned whether vessels issued a NE multispecies permit and a general category scallop permit fishing within a NE multispecies Special Access Program (SAP) that overlaps with a scallop Access Area would be constrained by the restrictions on general category vessels included in the Joint Frameworks.

*Response:* In the provisions applicable to vessels with general category scallop permits, the Council

made no distinction for vessels fishing for multispecies in an approved SAP that overlaps with a Scallop Access Area. Therefore, in any scallop fishing year that a NE multispecies closed area Scallop Access Area is open to scallop fishing, all general category vessels must comply with the Scallop Access Area provisions and requirements, and are subject to a limit on the number of trips taken and scallop TAC that can be harvested. A vessel with both a general category scallop permit and a multispecies permit that is fishing in a SAP may elect not to enroll in the Scallop Area Access Program, but may not harvest any scallops during that trip. In any scallop fishing year that a NE Multispecies closed area Scallop Access Area is closed to scallop fishing, a multispecies vessel issued a general category permit and fishing in an approved SAP that overlaps with the Scallop Access Area may possess, retain, and land up to 400 lb (181.4 kg) of scallops on each trip. NMFS has made changes to the regulations in the proposed rule to clarify this; these changes are explained in the "Changes from Proposed to Final Rule" portion of the preamble of this final rule.

*Comment 6:* While the State of Maine Department of Marine Resources (DMR) commented in favor of the Joint Frameworks as a whole, it expressed concern about restrictions on general category vessels. DMR commented that the VMS requirement for general category scallop vessels should be accompanied with a possession limit increase to 800 lb (362.9 kg) for trips over 24 hours to help absorb the cost of the VMS units. DMR also commented that the amount of TAC set-aside of scallops available to general category scallop vessels should be increased from 2 percent to 5 percent because allocating 98 percent of the TAC to limited access vessels is excessive. Finally, DMR commented that allowing limited access scallop vessels to possess up to 100 lb (45.4 kg) of cod per trip is not appropriate, given the poor stock status of GB cod, and that it is discriminatory because such personal use provision is not allowed for any other fishery, including the general category scallop fishery.

*Response:* NMFS does not have the discretion to implement a higher general category possession limit or to modify the TAC set-aside allocation because it can only approve or disapprove measures submitted by the Council in this framework action. NMFS's review of the Council's analysis in the EA indicates that the 400 lb (181.4 kg) possession limit will provide compensation for costs of the VMS units

on only a few trips, should general category vessels fish in the Access Areas. The general category possession restrictions are consistent with other exemptions for general category vessels under the Multispecies FMP. The Council adequately justified that the 100 lb (45.4 kg) possession limit of cod would help minimize discards of cod and would have negligible impact on the cod stocks and goals and objectives of the Multispecies FMP.

*Comment 7:* The Council and an industry representative commented in favor of the GB yellowtail TAC adjustment procedure that authorizes the RA to increase the GB yellowtail TAC for scallop vessels participating in the Scallop Access Area program on or after December 1 each year. The Council stated that the rationale and analysis in the Joint Frameworks document demonstrated that an adjustment on or after December 1 of a fishing year could be reasonably made. The Council reiterated that the rationale included considerations of the progress of the CAII Yellowtail SAP (which has already been closed to fishing for the remainder of the 2004 fishing year); anticipated seasonal patterns in yellowtail flounder catches under Amendment 13; and effects on levels of yellowtail TAC in subsequent years. The industry representative noted that the provision enables the RA to use discretion concerning the adequacy of the data used to make any projection and to decline to make an adjustment if information is insufficient. The industry representative stated that, if the overall GB yellowtail TAC is underutilized by the multispecies fleet, the adjustment process would provide for additional harvest of scallops within this conservative management scheme. Therefore, the industry representative urged NMFS to approve the measure.

*Response:* After considering these comments, NMFS has determined that sufficient discretion is given to the RA to adjust or maintain the yellowtail TAC level for scallop vessels based on the sufficiency of information available at the time. Historical and current multispecies fishery status demonstrates that, in some years, sufficient information may exist for the RA to determine whether or not to adjust the TAC; the RA is under no obligation to make the adjustment if data are insufficient. Although NMFS is concerned that scallop vessels may have very little time left in the Access Area season to utilize additional TAC if it is adjusted in December, it has approved the measure and included it in this final rule.

*Comment 8:* The Council and the industry representative commented in favor of the request for NMFS to disseminate information to trigger voluntary action by the scallop industry to avoid bycatch. The Council questioned the lack of regulatory language in the proposed rule regarding the measure, but acknowledged the difficulty in drafting a regulation for a voluntary program. Nevertheless, the Council urged NMFS to disseminate bycatch-related information as frequently as necessary via letter to permit holders and notices to mariners. The Council commented that such action could go a long way to help the Scallop FMP achieve OY, by giving vessels information they need to avoid high catches of yellowtail and prevent attainment of the bycatch TAC. The industry representative commented that the dissemination of information through VMS is a responsibility of NMFS, and that such information is necessary to ensure that the fishery achieves OY. The commenter stated that, if NMFS does not make such data available, it will hinder responsible, careful harvesting of scallops that underpinned the 1999 and 2000 access programs. The commenter stated that the costs of not minimizing yellowtail bycatches would be enormous, and urged NMFS to undertake efforts to implement such real-time alerts because the measures will benefit the industry over time. However, the commenter concluded by recognizing the difficulty in initiating such measures and noted that the Access Area Program is more important to industry than this proposed voluntary program.

*Response:* NMFS does not consider the Council's request to disseminate bycatch information to be a specific measure in the Joint Frameworks that is subject to approval or disapproval. Therefore, in exercising its discretion, NMFS has determined that this provision would have excessive costs and minimal benefits, for reasons outlined thoroughly in the preamble section of this final rule. NMFS encourages voluntary action by industry to reduce bycatch but will not establish a program to disseminate the information recommended by the Council at this time.

*Comment 9:* An industry representative urged NMFS to enact the Area Access Program so that access to the NE multispecies closed areas can occur this fishing year. The commenter noted several aspects of the program that he stated should be reconsidered in the future: Reconsideration of allowing access to only two of the three NE multispecies closed areas per year; the

target fishing mortality rate for the Area Access Program; the effects of the long term closure status of the NE multispecies closed areas on appropriate scallop fishing mortality rates; seasons for accessing the NE multispecies closed areas; bycatch rates in the general category vessel sector; and elimination of the limitation on the period allowed for one-for-one exchange of Access Area trips.

*Response:* The measures proposed by the Council as part of the Joint Frameworks have been approved and are implemented through this final rule. Some measures that the commenter highlighted were also adopted as part of Amendment 10. NMFS notes that any changes would have to be developed by the Council in a future Scallop FMP amendment or framework.

*Comment 10:* An industry representative commented that authorization of a compensation trip for a broken trip in an Access Area should not be at the discretion of the Regional Administrator and that all broken trip requests should be granted an authorized compensation trip.

*Response:* This final rule provides that a trip may be terminated for any reason, as deemed necessary by the owner or operator. The provision designed by the Council requires NMFS to review landings from trips terminated early in order to determine the scallop possession limit for the compensation trip.

*Comment 11:* An industry representative commented that general category vessels should be restricted to using only dredge gear in the Scallop Access Areas.

*Response:* The restrictions on general category vessels as proposed by the Council were intended to be consistent with the provisions of the Gulf of Maine Scallop Dredge Exemption Area included in the Multispecies FMP regulations. NMFS has reviewed these provisions, agrees with the comment, and has made appropriate changes in this final rule to be consistent with the Council's intent, as specified in section 4.1.3 of the document supporting the Joint Frameworks (see **ADDRESSES**).

*Comment 12:* An industry representative commented that the system to re-allocate trips when the yellowtail bycatch TAC is harvested for an area does not appropriately account for traded trips and is not an accurate representation of the system approved by the Council.

*Response:* NMFS has reviewed the Council's document and has compared it to the system included in the proposed rule, and concludes that the commenter has raised valid concerns.

The program recommended by the Council, and described in section 4.1.4.1 of the document supporting the Joint Frameworks (see **ADDRESSES**), included a provision to use a maximum number of unused Access Area trips in open areas, up to a maximum amount of DAS, including trips acquired through one-for-one trip exchanges. NMFS has made revisions to the regulations in the proposed rule to accurately implement the measure as adopted by the Council. The changes are explained in the "Changes from Proposed Rule to Final Rule" section of this final rule.

*Comment 13:* An industry representative commented that the trip notification requirements for vessels participating in the Area Access Program are unnecessarily complex and not necessary. In particular, the commenter suggested elimination of the requirement that vessel owners notify NMFS of potential access area trips by the 25th day of the month preceding the month in which the trips would be taken.

*Response:* The notification requirements have been part of the Area Access Program since its creation. The Council may revise or eliminate these notification requirements in the future if they are deemed to be no longer necessary. Currently, the information is necessary to allow for planning of observer deployment in the scallop fishery. Therefore, the notification requirement remains in this final rule as part of the Area Access Program, as approved under Amendment 10.

*Comment 14:* An industry representative commented that the VMS restrictions for general category vessels provide an additional opportunity to these vessels to participate in the Area Access Program in the NE multispecies closed areas.

*Response:* A detailed response to this comment is provided in the response to comments section of the FRFA in the preamble of this final rule. In summary, the IRFA supports the statements of the commenter because it concludes that the costs of requiring VMS on general category vessels would be offset by the benefits of gaining access to the NE multispecies closed areas.

*Comment 15:* The Council commented that the proposed rule misrepresented the observer coverage provision approved by the Council. Specifically, the proposed rule specified that NMFS would provide and fund at-sea observers on 5 percent of the trips in the NE multispecies closed areas, and implies that coverage levels from TAC set-aside would be 4, 0, and 7 percent of the trips in CAI, CAII, and the NLCA, respectively. The Council commented

that the approved provision excluded the NMFS-funded coverage and that the TAC set-aside would cover approximately 9–20 percent, 12–19 percent, and 11–25 percent of the trips in CAI, CAII, and the NLCA.

*Response:* Although the Joint Frameworks document did not present this information clearly, NMFS has concluded that the Council's comment is correct. The Council's specified coverage levels are reflected in the preamble of this final rule.

*Comment 16:* The Council and an industry representative provided suggestions on how to clarify the regulations in this final rule.

*Response:* Those changes that NMFS agreed are necessary and appropriate are described in the "Changes from Proposed Rule to Final Rule" section of the preamble of this final rule. The following suggested changes were not made for the reasons described below.

*Comment 16a:* An industry representative commented that the haddock possession limit described in § 648.60(a)(5)(ii)(B) unnecessarily constrains the haddock possession limit outside of the Access Area seasons and appears to place no other limit on the possession of haddock.

*Response:* The period when haddock possession is prohibited for scallop dredge vessels under the NE multispecies regulations (§ 648.86(a)(2)) overlaps the Access Area season from January 1 through January 31, and from June 15 through June 30. Section 648.60(a)(5)(ii)(B) therefore specifies that no haddock may be possessed by scallop vessels during the entire period specified in § 648.86(a)(2). Without the specific seasons identified in § 648.60(a)(5)(ii)(B), the regulation retains flexibility should the Access Area seasons change in the future. Section 648.60(a)(5)(ii)(B) also accurately depicts the haddock possession limit for the remainder of the season. Therefore, no regulatory text revision has been made.

*Comment 16b:* An industry representative commented that the regulatory text in § 648.60(a)(5)(ii)(C) should include a provision that vessels on a Scallop Access Area trip when the fishery is projected to be closed due to the harvest of the yellowtail TAC are allowed to continue the trip.

*Response:* Vessels that have initiated an Access Area Program trip to a NE multispecies closed area prior to notification of closure of the Access Area would be allowed to finish that trip. NMFS will project the date that the bycatch TAC is expected to be attained so that vessels will have sufficient notice of the closure date. NMFS also



expects to be able to use area-specific trip declarations to help project the date that it expects the bycatch TAC to be harvested and to identify vessels that have initiated a trip prior to notice of the closure being made.

*Comment 16c:* An industry representative commented that § 648.85(c) refers to limited access scallopers harvesting yellowtail up to the quota, but makes no mention of yellowtail bycatch by general category vessels.

*Response:* Section 648.85(c) pertains to limited access vessels fishing in the Access Areas. Although that paragraph has been clarified to specify limited access vessels, no further changes are necessary. Section 648.60(a)(5)(iii)(B)(2) specifies that general category vessels may not possess any other species of fish on an Access Area trip, although general category vessels are required to report catch of yellowtail, as required in § 648.60(a)(9). All yellowtail catch will be counted against the TAC.

*Comment 16d:* An industry representative commented that vessels should be allowed to transit Access Areas after leaving another Access Area, and that § 648.60(a)(4) should reflect this allowance.

*Response:* NMFS recognizes that a direct transit route may lead a vessel across another Access Area and has therefore included a revised transiting allowance in the regulations in § 648.59(e).

*Comment 16e:* The Council commented that the text in § 648.85(c)(3) should be clarified by including language about publication of a notice in the **Federal Register** in accordance with the Administrative Procedure Act.

*Response:* No change to the regulations are necessary since the paragraph references the requirement to publish a notice in the **Federal Register**, which is fully described in § 648.85(a)(3)(iv)(C)(3).

### Changes From the Proposed Rule to Final Rule

In addition to minor editorial changes to the proposed rule, the following changes have been made in this final rule.

Language has been added to § 648.10(b)(1)(iv); and §§ 648.59(b)(5)(ii), (c)(5)(ii), and (d)(5)(ii), and 648.60(a)(3)(iii), (a)(5)(iii), (a)(6)(iii) are reserved to reflect the delay in effectiveness for general category provisions associated with the Scallop Area Access Program until OMB has approved the associated reporting and recordkeeping requirements.

In § 648.14, paragraphs (i)(14) through (16) have been added to prohibit vessels issued general category permits from fishing in an Access Area when it is closed due to harvesting the scallop or yellowtail bycatch TAC, or if general category vessels have taken the allocated number of trips in a specific area.

In § 648.51, a prohibition on trawl gear use by general category vessels in NE multispecies closed area Access Areas, except vessels issued a NE multispecies limited access permit and fishing in an approved SAP while under NE multispecies DAS and not enrolled in the Scallop Area Access Program, has been added in response to a comment submitted by an industry representative.

In § 648.53, paragraph (b)(4) has been revised to eliminate duplicate paragraph numbering and to allow unused trips resulting from an exchange with another vessel to be used in open areas if the yellowtail TAC in the area has been harvested. This change has been made in response to a comment submitted by an industry representative.

In § 648.53, paragraphs (b)(4)(ii)(A), (B), and (C) are revised to clarify the number of trips vessels may take in Scallop Access Areas.

In § 648.53(c)(2), the value of 9.5 DAS in 2006 has been changed to 9.6 DAS in 2006, consistent with the Council's approved measure and a comment submitted by the Council.

In § 648.53, paragraph (h)(1) has been revised to specify that vessel owners are responsible for paying for the cost of carrying at-sea observers, regardless of whether or not DAS set-aside is available.

In § 648.59, paragraph (a)(3), (b)(5)(i), (c)(5)(i), and (d)(5)(i) have been revised to clarify the number of trips that vessels may take in Scallop Access Areas.

In § 648.59, paragraphs (b)(1), (c)(1), and (d)(1) have been revised to clarify that multispecies vessels fishing under multispecies DAS in an approved SAP may retain and land up to 400 lb (181.4 kg) of scallops during the period that the Scallop Access Area is closed to scallop fishing. This is consistent with the Joint Frameworks, which did not prohibit this measure. This change was made in response to a comment by a member of the industry in order to clarify the regulations with respect to multispecies fisheries that overlap Scallop Access Areas.

In § 648.59, paragraphs (b)(5)(ii), (c)(5)(ii), and (d)(5)(ii) have been revised to include two subparagraphs to clarify that multispecies vessels fishing under multispecies DAS in an approved SAP may continue fishing in an area that is

also a Scallop Access Area if they have chosen to not enroll in the Area Access Program and do not possess scallops.

In § 648.59, paragraph (e) has been revised to allow scallop vessels to transit an access area while steaming to or from another Access Area in response to a comment by an industry representative. The proposed rule would have prohibited such transiting, which is not necessary.

In § 648.60, paragraph (a) has been revised to allow vessels issued NE multispecies and general category permits and fishing under multispecies DAS in an approved SAP to continue fishing in an area that is also a Scallop Access Area if they have chosen to not enroll in the Area Access Program and do not possess scallops.

In § 648.60(a), references to § 648.52(b) have been corrected to § 648.52(a) in response to a comment by an industry representative.

In § 648.60, paragraph (a)(3)(ii) has been revised to clarify the one-for-one trip exchange provisions in response to a comment by an industry representative.

In § 648.60, paragraph (a)(4) has been revised to allow vessels to transit a Scallop Access Area while steaming to and from another Scallop Access Area.

In § 648.60, paragraph (a)(5)(i) has been revised to clarify the appropriate possession limit for part-time vessels in the 2005 fishing year in response to comments submitted by the Council and an industry representative. The Joint Frameworks document included conflicting tables and, after consultation with Council staff, NMFS determined that the intent of the Council was clear that the possession limit for part-time vessels in 2005 should be 18,000 lb (8,165 kg), rather than 16,900 lb (7,666 kg), consistent with a 1,500-lb (680-kg) per DAS catch rate.

In § 648.60, paragraph (a)(5)(ii)(A) has been revised to reference NE multispecies possession restrictions in § 648.83 to avoid inconsistency between fishery regulations. An industry representative commented that "whole and gutted" cod is "internally inconsistent."

In § 648.60, paragraphs (a)(5)(ii)(C)(2) and (3) are revised to allow the possession of 1,000 lb (453.6 kg) of NE multispecies combined.

In § 648.60, paragraph (a)(9) has been added to implement reporting requirements approved by the Council and not included in the proposed rule. The Council and an industry representative commented that this portion of the regulations was omitted from the proposed rule and that the omission is inconsistent with the

measure approved by the Council, as described in section 4.1.9.1 of the document supporting the Joint Frameworks (see **ADDRESSES**).

In § 648.60, paragraph (g) is added to reflect general category restrictions in NE multispecies closed area Scallop Access Areas. The restrictions included in this final rule in § 648.60(g) were included in the proposed rule throughout § 648.60, but have been moved to § 648.60(g) to allow the effectiveness of the measures to be delayed until OMB clears the reporting and recordkeeping requirements. Section 648.60(g) also allows multispecies vessels fishing under multispecies DAS in an approved SAP to continue fishing in an area that is also a Scallop Access Area if they have chosen to not enroll in the Area Access Program and do not possess scallops.

In § 648.85, paragraph (c)(1)(ii)(2) has been revised to clarify the RA's discretion in adjusting the yellowtail TAC for scallop vessels fishing in the Scallop Access Areas based on the sufficiency of data available to make an adjustment as soon after December 1 as possible.

#### Classification

The RA determined that the framework adjustments implemented by this rule are necessary for the conservation and management of the Atlantic sea scallop fishery and the NE multispecies fishery and are consistent with the Magnuson-Stevens Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA, finds that the 30-day delayed effective date required by 5 U.S.C. 553 is inapplicable because this rule, with the exception of the Area Access Program measures for general category vessels which will be addressed in a subsequent rulemaking, relieves restrictions imposed on scallop vessels. Scallop vessels are currently prohibited from fishing in the NE multispecies closed areas: Closed Area I, Closed Area II, and the Nantucket Lightship Closed Area. This rule allows scallop vessels access to these areas on a three-year rotational basis. Access to these areas will allow scallopers to fish on greater concentrations and abundance of scallops than are now distributed throughout the open areas. This includes the revision to the boundaries of the EFH closed areas, as failure to implement that measure as part of the Area Access Program would render a portion of the NLCA Access Area unuseable until the new EFH closures go into effect. The revised EFH closed areas shift the boundaries of the closure in the NLCA, resulting in a

larger access area. Because general category vessels will be required to comply with new reporting and recordkeeping requirements, including the use of VMS units that they will need to acquire, the measures allowing general category vessels to access the NE multispecies closed areas is delayed until OMB has approved the reporting and recordkeeping requirements associated with this action.

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

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has prepared a FRFA in support of the Joint Frameworks. The FRFA describes the economic impact that this final rule, along with other non-preferred alternatives, will have on small entities.

The FRFA incorporates the economic impacts and analysis summarized in the IRFA for the proposed rule to implement the Joint Frameworks (69 FR 52470, August 26, 2004), the comments and responses in this final rule, and the corresponding economic analyses prepared for the Joint Frameworks (*e.g.*, the EA and the RIR). The contents of these incorporated documents are not repeated in detail here. A copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**). A description of the reasons why this action is being considered, the objectives of, and the legal basis for this final rule is found in the Joint Frameworks and the preamble to the proposed and final rules.

#### *Description of Small Entities to Which the Proposed Rule Will Apply*

The measures proposed in the Joint Frameworks will impact vessels issued limited access and general category sea scallop vessel permits. All of these vessels are considered small business entities for purposes of the RFA because all of them grossed less than \$3.5 million according to the dealer reports for the 2001 and 2002 fishing years (the most recent complete fishing year landings information available). There are two main components of the scallop fleet: Vessels eligible to participate in the limited access sector of the fleet and vessels that participate in the open access general category sector of the fleet. Limited access vessels are issued permits to fish for scallops on a full-time, part-time, or occasional basis. According to permit data from the 2003 fishing year, there were 278 Full-time permits, 33 Part-time permits, and 10 Occasional permits. In addition, there were 2,257 vessels issued permits to fish in the General category in 2003. Annual scallop revenue for the limited access

sector averaged from \$615,000 to \$665,600 for Full-time vessels, \$194,790 to \$209,750 for Part-time vessels, and \$14,400 to \$42,500 for Occasional vessels during the 2001 and 2002 fishing years. Total revenues per vessel, including revenues from species other than scallops, exceeded these amounts, but were less than \$3.5 million per vessel.

Two criteria, disproportionality and profitability, were considered in determining the significance of regulatory impacts. The disproportionality criterion compares the effects of the regulatory action on small versus large entities. All of the vessels permitted to harvest sea scallops are considered to be small entities. The profitability criterion applies if the regulation significantly reduces profit for a substantial number of small entities. The IRFA concludes that this criterion does not apply. The basis for this conclusion is discussed at length in the Economic Impacts of the Proposed Action section of the IRFA summary in the preamble of the proposed rule.

#### *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 comment was received in response to the IRFA. No other comments related to the economic analyses presented in the IRFA or the EA.

*Comment:* An industry representative commented that the VMS restrictions on general category vessels provide an additional opportunity for these vessels to participate in the Area Access Program in the NE multispecies closed areas.

*Response:* The RFA requires NMFS to consider and describe the costs and benefits of proposed measures compared to alternative measures. While the IRFA did highlight the relatively high compliance costs associated with the new requirements for general category vessels to use VMS, NMFS concluded that “\* \* \* the proposed access fishery for general category vessels expands those vessels’ flexibility and opportunity to fish in different areas” (69 FR 52470 at 52475, August 26, 2004) and “Without the requirements, however, it would be difficult to control scallop mortality and monitor bycatch, and it may not be possible to provide access to the NE multispecies closed areas by general category vessels. Although difficult to predict, the benefits of expanding

fishing opportunity for general category vessels could outweigh the cost of compliance with VMS, observer coverage, and other reporting requirements" (69 FR 52470 at 52478, August 26, 2004). The IRFA was consistent with the statements of the commenter.

*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 combined economic impacts of the Joint Frameworks are positive for the majority of small business entities in the scallop fishing industry. The economic analyses demonstrated, however, that from 2004 through 2007, the proposed action would produce slightly lower revenues per year, on average, compared to the no action alternative. Revenues under the proposed action are expected to be approximately \$60,000 less for the entire scallop fleet than under the no action alternative. This is because, under no action, open area DAS would be higher in open areas for 2004 through 2007 without access to the NE multispecies closed areas. Open area landings are not restricted by a possession limit, and total scallop landings would be higher than if vessels were restricted by the possession limits and TACs under the proposed Scallop Area Access program. The price of scallops would decline, offsetting the increase in landings compared to the proposed action. Access to the NE multispecies closed areas would have positive impacts, however, on producer benefits and gross profits of the scallop fishery compared to no action. Because of the expected higher scallop abundance in the NE multispecies closed areas, which should result in higher landings per unit effort (LPUE), the operating expenses per pound of scallops are expected to decline by almost 30 percent with access, and gross profits, calculated as gross revenues net of operating costs and crew shares, are estimated to increase by 18 percent. The long-term economic impacts of allowing access to the NE multispecies closed areas are expected to be positive, as well, compared to no action, increasing revenues and profits by nearly 2 percent and 23 percent, respectively, on average

per year. Without access, initial higher landings are expected to eventually have negative impacts on scallop biomass, LPUE, and landings in future years, resulting in overall revenues and total benefits of \$3.1 million and \$47.2 million, respectively, less than the proposed action.

NMFS implements the closed area access boundaries as proposed by the Council and in the proposed rule because, in comparison to the four NE multispecies closed area access boundary alternatives, the boundaries implemented in this rule offer the most economic benefits in the long-term while remaining consistent with measures to protect EFH and minimize bycatch. The economic impacts of this action and alternative Scallop Access Area boundaries are the same as those described in the aggregate impacts above because the analysis presumes that area boundaries are dependant on an overall access program. The specified areas for the NE multispecies closed area scallop access program have positive overall economic impacts on scallop vessels compared to the no action alternative, although short-term revenues are slightly lower than under the no action alternative. The third Scallop Access Area alternative (non-selected), which would restrict the amount of area opened for access, would result in the most negative impact, with a loss of \$71,000 per year for the scallop fleet combined, on average, compared to the no action alternative.

The EFH closed area alternative implemented in this action is consistent with both the Access Area boundaries and EFH closed areas implemented in prior Multispecies FMP actions. Other alternatives would have constrained the fishery, had lower economic benefits, or would have been inconsistent with EFH closures.

The provision allowing scallop fishing using dredge gear only in the NE multispecies closed area Access Program was compared in the Joint Frameworks to an alternative that would have allowed trawl gear to be used by scallop vessels in the Access Areas. While prohibiting trawls is expected to have negative economic impacts on scallop trawl vessels, it was adopted because of benefits to the scallop fishing industry overall and the dredge gear sector. NMFS is implementing the prohibition on the use of trawl gear in the NE multispecies closed area, Area Access Program, because reduced finfish bycatch by scallop dredges will reduce the likelihood of attaining the yellowtail bycatch TAC, thus lengthening the fishery season, and

contributing to higher revenues for the fleet. Scallop trawl vessels are capable of converting to dredge gear, allowing flexibility within the Area Access provisions.

NMFS implements the yellowtail TAC measures included in this rule to minimize bycatch while maximizing flexibility and ensuring that the scallop vessels do not lose landings and revenue after a closure once a yellowtail TAC is harvested. Vessels will be able to take additional open area trips if they have unused NE multispecies closed area Access Area trips when the fishery closes due to harvesting the yellowtail TAC. Attainment of the yellowtail TAC without the trip reallocation provision could have left some of the scallop TAC, designed to achieve OY, from being harvested. The economic analysis is qualitative because it is not possible to determine when the yellowtail TAC could be harvested. Without a measure to ensure that yellowtail catches do not exceed the yellowtail TACs and comply with the U.S./Canada Resource Sharing Understanding, however, it would not have been possible to authorize scallop fishing in the NE multispecies closed areas. Therefore, the majority of the scallop vessels are expected to benefit from this measure, due to the opportunity provided to fish in those areas. The provision to allow an increase in the yellowtail TAC if a specified limit is not harvested by December 1 of each year is also expected to have positive impacts on vessels by potentially allowing scallop fishing operations to continue to higher levels of yellowtail catch. NMFS is not implementing the provision that would encourage voluntary actions by the scallop industry to direct fishing activity away from areas of high bycatch, through information provided by the industry and disseminated by NMFS. This measure would likely have excessive costs without certainty that it would result in the intended benefits.

NMFS is implementing the NE multispecies possession limits proposed by the Council. This measure increases the possession limit of NE multispecies from 300 lb (136 kg) to 1,000 lb (453.6 kg), and is expected to have positive economic impacts on the scallop vessels fishing in the NE multispecies closed areas. Therefore, these measures would have indirect economic benefits for the vessels in the scallop fishery. The possession limit of 100 lb (45.4 kg) of cod per trip for personal use may also have some positive economic impacts, compared to a zero possession limit, by allowing the retention of catch that could be used to offset some food costs on fishing trips.

NMFS is implementing the area access season (June 15 through January 31) which is expected to have positive impacts on scallop vessels compared to the no action alternative. The season prohibits scallop fishing during months when many species of NE multispecies are at peak spawning activity, and as a result, it should ensure that access to the GB multispecies areas is consistent with conservation goals of the NE Multispecies FMP. By allowing simultaneous access to all of the Access Areas, the final action provides more flexibility to fishermen to maximize their landings and revenues from the closed areas. The season will likely have negative economic impacts compared to the alternative of a year-round fishery. However, year-round access poses a risk of finfish bycatch and bycatch mortality and may increase the likelihood of the scallop fishery catching the proposed yellowtail TAC sooner than would be the case with the seasonal restrictions. Bycatch TAC attainment would close the Access Area, thus reducing benefits derived from the higher valued scallop resource in the NE multispecies closed areas.

The final action maintains the existing sampling frequency that can be funded with a 1-percent TAC set-aside. The scallop industry may benefit from improved management that could result from more accurate fishery information. Although the TAC set-asides slightly reduce overall TAC available to all scallop vessels, the funds generated from the set-aside landings provide revenue to offset compliance costs for vessels carrying at-sea observers.

The requirement to have a VMS onboard for all scallop vessels that fish in the closed area access program will increase the costs of fishing for occasional category vessels that have not yet participated in the Area Access Program and all vessels with general category permits (none of which previously participated in any Area Access Program). However, the alternative that prohibits access by these vessels would certainly constrain fishing opportunity and reduce revenues, potentially. NMFS therefore is implementing the measures as proposed to provide flexibility and opportunity for additional landings and revenues.

NMFS is implementing the rotation strategy as proposed because it minimizes the risk of high yellowtail bycatch in the NLCA and, therefore, reduces the likelihood of scallop revenue loss from closure of access areas before the scallop closed area access program is complete.

There are no changes to the possession limits and DAS trade-offs in

the Joint Frameworks from those included in Amendment 10 for Full-time vessels. Therefore, the economic impacts of area-specific DAS and trip allocations are within the range of impacts analyzed in Amendment 10. NMFS is implementing the change in the possession trips for the Part-time and Occasional vessels, however, in order to correct inequities in Access Area trip allocations. For example, under Amendment 10, part-time and occasional vessels both were allocated the same possession limit and trip allocation, despite a clear distinction in the effort levels intended for each category. This action makes the allocations for the part-time and occasional vessels proportional, similar to the DAS allocations prior to Amendment 10. Overall impacts of this adjustment during the 2004–2007 period would be positive for part-time vessels, but negative for occasional vessels. However, NMFS cannot determine whether or not these access trips would be more profitable than open area trips under more restrictive DAS limitations.

The Joint Frameworks modify the DAS and trip exchange option enacted in Amendment 10 to prevent administrative complications that could arise if trips with unequal possession limits were exchanged. Under this action, full-time vessels can trade only with another full-time vessel, and the trades between part-time and occasional vessels are similarly restricted. Although this measure is necessary to avoid management complications from unequal exchanges, it reduces the number of opportunities for trading trips. It may be especially difficult for part-time and occasional vessel owners to locate other owners willing to exchange trips because the vessels in the part-time and occasional category have the flexibility to use their controlled access trips in any Access Area up to the maximum number of trips allocated to each vessel. However, this flexibility reduces the need to exchange DAS allocations and is expected to mitigate some of the negative impacts resulting from the restriction.

NMFS is implementing measures to allow general category vessels to access closed areas. This is expected to have positive impacts on the revenues of these vessels. Despite high compliance costs associated with VMS installation and operation requirements, the added fishing opportunity would provide for increased revenues compared to the alternative of not allowing access. The benefits of expanding fishing opportunity for general category vessels

are expected outweigh the cost of compliance with VMS, observer coverage, and other reporting requirements for those vessels that choose to participate.

#### *Economic Impacts of Significant and Other Non-Selected Alternatives*

The Joint Frameworks considered several alternatives that could have had lower negative economic impact on scallop vessels, owners, operators, and crews. Specifically, the Council considered the following measures: (1) Allowing all gear types in the closed area access program; (2) alternatives for redirecting fishing effort from closed areas to open areas when the yellowtail bycatch TAC is harvested; (3) year-round access to the NE multispecies closed area access areas; and (4) exempting Occasional and general category vessels from VMS reporting requirements in the access areas. Each of these alternatives was considered in comparison with the measures included in the proposed rule and this final rule. NMFS has concluded that the measures would provide more revenues initially through increased scallop landings, or would have reduced compliance costs. However, NMFS has also concluded that these non-selected alternatives would likely offset the overall benefits for the scallop resource and industry and may not achieve the goals and objectives of the Scallop FMP or the requirements of the Magnuson-Stevens Act.

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the Atlantic scallop fishery. In addition, copies of this final rule and guide (*i.e.*, permit holder letter) are available from the RA and are also available from NMFS, Northeast Region (*see ADDRESSES*).

This final rule contains new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements would

apply to general category vessels only, and have been submitted to OMB for approval. Public reporting burden for these collections of information are estimated to average as follows:

- 1. Purchase and installation of VMS units, OMB #0648-0491 (1 hr per response);
2. Verification of VMS units, OMB #0648-0491 (0.083 hr per response);
3. Daily reporting via VMS without an at-sea observer on board, OMB #0648-0491 (0.17 hr per response);
4. Daily reporting via VMS with an at-sea observer on board, OMB #0648-0491 (0.17 hr per response);
5. VMS notification of intent to fish on the 25th of the month preceding the intended trip, OMB #0648-0491 (0.033 hr per response);
6. VMS notification of scheduled Access Area trip 72 hr prior to departure, OMB #0648-0491 (0.033 hr per response);
7. VMS notification of trip 1 hr prior to departure, OMB #0648-0491 (0.033 hr per response);
8. Polling of VMS units twice per hour, OMB #0648-0491 (0.0014 hr per response).

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see ADDRESSES).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: October 28, 2004.

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

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.2, the definition for "Bushel" is revised to read as follows:

§ 648.2 Definitions.

Bushel (bu) means a standard unit of volumetric measurement deemed to hold 1.88 ft³ (53.24 L) of surfclams or ocean quahogs in shell, or 1.24 ft³ (35.24 L) of in-shell Atlantic sea scallops.

3. In § 648.10, paragraphs (b)(1)(iv) and (v) are revised, and paragraph (b)(1)(vi) is added as follows:

§ 648.10 DAS notification requirements.

- (b) (1) Effective upon approval of the reporting and recordkeeping requirements by OMB, a scallop vessel issued a general category scallop permit when fishing under the Sea Scallop Area Access Program specified under § 648.60 and in the Sea Scallop Access Areas described in § 648.59(b) through (d);
(v) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit, whose owner elects to provide the notifications required by this paragraph (b), unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section;

(vi) A vessel issued a limited access NE multispecies permit electing to fish under the U.S./Canada Resource Sharing Understanding, as specified in § 648.85(a).

4. In § 648.14, paragraph (a)(57) introductory text and paragraphs (a)(57)(i), (i)(1), and (s) are revised and paragraphs (a)(97), (a)(163), (a)(164), (h)(34), (h)(35), and (i)(4) through (10) are added to read as follows:

§ 648.14 Prohibitions.

- (a) (57) Fish for or land per trip, or possess at any time prior to a transfer to another person for a commercial

purpose, other than solely for transport, in excess of 400 lb (181.4 kg) shucked, or 50 bu (17.6 hl) in-shell scallops, unless:

(i) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit and is fishing under scallop DAS; or

(97) Fail to comply with any of the provisions specified in § 648.56.

(163) Sell or transfer to another person for a commercial purpose, other than solely for transport, any NE multispecies harvested from the EEZ by a vessel issued a Federal NE multispecies permit, unless the transferee has a valid NE multispecies dealer permit.

(164) Sell or transfer to another person for a commercial purpose, other than solely for transport, any Atlantic sea scallops harvested from the EEZ by a vessel issued a Federal Atlantic sea scallop permit, unless the transferee has a valid Atlantic sea scallop dealer permit.

(34) Declare and initiate a trip into the areas specified in § 648.59(b) through (d) after the effective date of the notification published in the Federal Register stating that the yellowtail flounder TAC has been harvested as specified in § 648.85(c).

(35) Retain yellowtail flounder in the areas specified in § 648.59(b) through (d) after the effective date of the notification published in the Federal Register stating that the yellowtail flounder TAC has been harvested as specified in § 648.85(c).

(1) Fish for or land per trip, or possess at any time, in excess of 400 lb (181.4 kg) of shucked or 50 bu (17.6 hl) of in-shell scallops.

(4) Refuse, or fail, to carry an observer after being requested to carry an observer by the Regional Administrator.

(5) Fail to provide an observer with required food, accommodations, access, and assistance, as specified in § 648.11.

(6) Fail to comply with the VMS requirements specified in §§ 648.10 and 648.60.

(7) Fail to comply with the requirements specified in § 648.60.

(8) Declare and initiate a trip into the areas specified in § 648.59(b) through (d) after the effective date of the notification published in the Federal Register stating that the general category

scallop TAC has been harvested as specified in § 648.60.

(9) Declare and initiate a trip into the areas specified in § 648.59(b) through (d) after the effective date of the notification published in the **Federal Register** stating that the number of general category trips have been taken as specified in § 648.60.

(10) Declare or initiate a trip into areas specified in § 648.59(b) through (d) after the effective date of the notification published in the **Federal Register** stating that the yellowtail flounder TAC has been harvested as specified in § 648.85(c).

\* \* \* \* \*

(s) Any person possessing or landing per trip, scallops in excess of 40 lb (18.1 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, at or prior to the time when those scallops are received or possessed by a dealer, is subject to all of the scallop prohibitions specified in this section, unless the scallops were harvested by a vessel without a scallop permit that fishes for scallops exclusively in state waters.

\* \* \* \* \*

■ 5. In § 648.51, paragraph (f)(1) is revised to read as follows:

**§ 648.51 Gear and crew restrictions.**

\* \* \* \* \*

(f) \* \* \*

(1) A vessel issued a limited access scallop permit fishing for scallops under the scallop DAS allocation program may not fish with, possess on board, or land scallops while in possession of, trawl nets, unless such vessel has on board a valid letter of authorization or permit that endorses the vessel to fish for scallops with trawl nets. A limited access scallop vessel issued a valid letter of authorization or permit that endorses the vessel to fish for scallops with trawl nets, and general category scallop vessels enrolled in the Area Access Program as specified in § 648.60(g), may not fish with trawl nets in the Access Areas specified in § 648.59(b) through (d).

\* \* \* \* \*

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

**§ 648.52 Possession and landing limits.**

(a) Owners or operators of vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels possessing a general scallop permit, unless exempted under the state waters exemption program described under § 648.54, are prohibited from fishing for or landing per trip, or

possessing at any time, in excess of 400 lb (181.4 kg) shucked, or 50 U.S. bu (17.6 hl) in-shell, scallops, with no more than one scallop trip of 400 lb (181.4 kg) of shucked, or 50 bu (17.6 hl) of in-shell scallops, allowable in any calendar day.

(b) Owners or operators of vessels without a scallop permit, except vessels fishing for scallops exclusively in state waters, are prohibited from fishing for or landing per trip, or possessing at any time, more than 40 lb (18.1 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops. Owners or operators of vessels without a scallop permit are prohibited from selling, bartering, or trading scallops harvested from Federal waters.

(c) Owners or operators of vessels with a limited access scallop permit that have declared into the Sea Scallop Area Access Program as described in § 648.60 are prohibited from fishing for or landing per trip, or possessing at any time, more than the sea scallop possession and landing limit specified in § 648.60(a)(5).

\* \* \* \* \*

■ 7. In § 648.53, paragraphs (b)(1), (b)(2), (b)(4), (c), (d), and (h) are revised, and paragraph (b)(5) is added to read as follows:

**§ 648.53 DAS allocations.**

\* \* \* \* \*

(b) \* \* \*

(1) For fishing years after 2006, total DAS to be used in all areas other than those specified in § 648.59, will be specified through the framework process as specified in § 648.55.

(2) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(2) (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, after deducting research and observer DAS set-asides from the total open area DAS allocation. 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 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	2004 <sup>1</sup>	2005	2006
Full-time .....	42	40	67
Part-time .....	17	16	27
Occasional .....	4	3	6

<sup>1</sup> Not including additional DAS allocated as specified in paragraph (b)(4) of this section.

\* \* \* \* \*

(4) *Additional 2004 DAS.* (i) Effective September 15, 2004, DAS for the 2004 fishing year increased by the following amounts:

DAS category	2004 DAS increase
Full-time .....	20
Part-time .....	8
Occasional .....	1

(ii) If a limited access scallop vessel uses the Open Area DAS specified in paragraph (b)(4)(i) of this section, such vessel is not eligible to fish under the Area Access Program described in § 648.60 until March 1, 2005.

(iii) If a TAC for yellowtail flounder is harvested from an Access Area specified in § 648.59(b) through (d), and such area is closed to scallop fishing, a scallop vessel with remaining trips in the affected Access Area may fish any remaining trips in the open areas, with the following maximum DAS use limits:

(A) A full-time vessel may fish up to 20 DAS in 2004, 24 DAS in 2005, and 24 DAS in 2006, not to exceed the maximum number of equivalent DAS charge per trip, as specified in § 648.60(a)(3)(i), associated with the total number of unused Access Area trip(s). A full-time vessel that has acquired additional trips through a one-for-one trip exchange with another vessel may fish up to 60 DAS in 2005, subject to the maximum number of equivalent DAS associated with the total number of unused Access Area trip(s).

(B) A part-time vessel may fish up to 8 DAS in 2004, 12 DAS in 2005, and 9.6 DAS in 2006, not to exceed the maximum number of equivalent DAS charge per trip, as specified in § 648.60(a)(3)(i), associated with the total number of unused Access Area trip(s). A part-time vessel that has acquired an additional trip through a one-for-one trip exchange with another vessel may fish up to 24 DAS in 2005, subject to the maximum number of equivalent DAS associated with the total number of unused Access Area trip(s).

(C) An occasional vessel may fish up to 1 DAS in 2004, 5 DAS in 2005, and 2 DAS in 2006, not to exceed the maximum number of equivalent DAS charge per trip, as specified in § 648.60(a)(3)(i), associated with the

total number of unused Access Area trip(s).

(5) DAS allocations and other management measures are specified for each scallop fishing year, which begins on March 1 and ends on February 28 (or February 29), unless otherwise noted. For example, the 2005 fishing year refers to the period March 1, 2005, through February 28, 2006.

(c) *Sea Scallop Access Area DAS allocations.* Limited access scallop vessels fishing in a Sea Scallop Access Area specified in § 648.59, under the Sea Scallop Area Access Program specified in § 648.60, are allocated a specific number of trips to fish only within the Sea Scallop Access Areas, with the number of DAS charged for each trip designated for each area regardless of actual trip length. The number of trips and DAS to be charged for each scallop permit category and fishing year through 2006 for each Sea Scallop Access Area are provided in paragraphs (c)(1) through (3) of this section. Limited access scallop vessels may fish a maximum number of trips and associated DAS in each Sea Scallop Access Area, as specified in § 648.60(a)(3). In addition, limited access scallop vessels are allocated a maximum number of trips and DAS that can be used within any of the Scallop Access Areas. As an example, if the total number of trips that a scallop vessel may take is two trips, and there are two Sea Scallop Access Areas opened to controlled fishing, with Area A having a maximum of one trip and Area B having a maximum of two trips, the vessel may take one trip in Area A and one trip in Area B, or both of its total allocated trips in Area B.

(1) Full-time scallop vessels may take seven trips into Scallop Access Areas in 2004, five trips in 2005, and two trips in 2006. DAS charges are 12 DAS for each trip, regardless of trip length.

(2) Part-time scallop vessels may take three trips into Scallop Access Areas in 2004, two trips in 2005, and one trip in 2006. DAS charges are 12 DAS for the Hudson Canyon Access Area and 11.2 DAS for the Closed Area II and Nantucket Lightship Access Areas in 2004, 12 DAS in 2005, and 9.6 DAS in 2006.

(3) Occasional scallop vessels may take two trips into Scallop Access Areas in 2004, one trip in 2005, and one trip in 2006. DAS charges are 12 DAS in 2004 for the Hudson Canyon Access Area and 7 DAS for the Closed Area II or Nantucket Lightship Access Areas, 5 DAS in 2005, and 2 DAS in 2006.

(d) *Adjustments in annual DAS allocations.* Annual DAS allocations shall be established for 2 fishing years

through biennial framework adjustments as specified in § 648.55. Except for DAS for the 2006 fishing year, if a biennial framework action is not undertaken by the Council and enacted by NMFS, the allocations from the most recent fishing year will continue. The Council must determine whether or not the 2006 DAS allocations specified in the table in paragraph (b)(2) of this section are sufficient to achieve OY. The 2006 DAS must be adjusted in the first biennial framework, initiated in 2005, if it is determined that the 2006 DAS allocations are unable to achieve OY in the 2006 fishing year. The Council may also adjust DAS allocations through a framework action at any time, if deemed necessary.

\* \* \* \* \*

(h) *DAS set-asides*—(1) *DAS set-aside for observer coverage.* As specified in paragraph (b)(3) of this section, to help defray the cost of carrying an observer, 1 percent of the total DAS will 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 for the 2004, 2005, and 2006 fishing years are 117 DAS, 111 DAS, and 187 DAS, respectively. On September 15, 2004, the 2004 DAS set-aside will increase by 54 DAS if a final rule is not published that allows access to the GB NE multispecies closed areas. Vessels carrying an observer will 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 will accrue at a reduced rate based on an adjustment factor determined by the Regional Administrator on an annual basis, dependent on the cost of observers, catch rates, and amount of available DAS set-aside. The Regional Administrator shall notify vessel owners of the cost of observers and the DAS adjustment factor through a permit holder letter issued prior to the start of each fishing year. The number of DAS that are deducted from each trip based on the adjustment factor will be deducted from the observer DAS set-aside amount in the applicable fishing year. Utilization of the DAS set-aside will be on a first-come, first-served basis. When the DAS set-aside for observer coverage has been utilized, vessel owners will be notified that no additional DAS remain available to offset the cost of carrying observers. The obligation to carry an observer will not be waived due to the absence of additional DAS allocation. Vessel

owners shall be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of DAS set-aside.

(2) *DAS set-aside for research.* As specified in paragraph (b)(3) 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 for the 2004, 2005, and 2006 fishing years are 233 DAS, 223 DAS, and 373 DAS, respectively. Vessels participating in approved research will be authorized to use additional DAS in the applicable fishing year. Notification of and additional DAS allocated will be provided through a letter of authorization, or Exempted Fishing Permit issued by NMFS, as appropriate.

■ 8. In § 648.55, paragraph (b) is revised to read as follows:

**§ 648.55 Framework adjustments to management measures.**

\* \* \* \* \*

(b) The preparation of the SAFE Report shall begin on or about June 1, 2005, for fishing year 2006, and on or about June 1 of the year preceding the fishing year in which measures will be adjusted. With the exception of the 2006 fishing year, if the biennial framework action is not undertaken by the Council, or if a final rule resulting from a biennial framework is not published in the **Federal Register** with an effective date of March 1, in accordance with the Administrative Procedure Act, the measures from the most recent fishing year shall continue, beginning March 1 of each fishing year.

\* \* \* \* \*

■ 9. Section 648.59 is revised to read as follows:

**§ 648.59 Sea Scallop Access Areas.**

(a) *Hudson Canyon Sea Scallop Access Area.* (1) Through February 28, 2006, a vessel issued a limited access scallop permit may fish for, possess, and land scallops in or from, the area known as the Hudson Canyon Sea Scallop Access Area, described in paragraph (a)(2) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

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

Point	Latitude	Longitude
H1 .....	39°30' N ..	73°10' W

Point	Latitude	Longitude
H2 .....	39°30' N ..	72°30' W
H3 .....	38°30' N ..	73°30' W
H4/ET4 .....	38°50' N ..	73°30' W
H5 .....	38°50' N ..	73°42' W
H1 .....	39°30' N ..	73°10' W

(3) *Number of trips.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips during 2004 and 2005 in the Hudson Canyon Access Area, as specified in the table at § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Hudson Canyon 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 Sea Scallop Access Area trip that was terminated early, as specified in § 648.60(c).

(b) *Closed Area I Access Area.* (1) Through February 28, 2005, and every third fishing year thereafter (*i.e.*, 2007, 2010, etc.) vessels issued scallop permits, except vessels issued a NE Multispecies permit and a general category scallop permit and fishing in an approved SAP under § 648.85 and under multispecies DAS, 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.

(2) Beginning March 1, 2005, through February 28, 2007, and for every 2-year fishing year period after each year the area is closed pursuant to paragraph (b)(1) of this section (*i.e.*, the 2008 through 2009 fishing years, and 2011 through 2012 fishing years, etc.), 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 (c)(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) The Closed Area I Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
CAIA1 .....	41°26' N ..	68°30' W
CAIA2 .....	40°58' N ..	68°30' W
CAIA3 .....	40°55' N ..	68°53' W
CAIA4 .....	41°04.5' N	69°01' W

Point	Latitude	Longitude
CAIA1 .....	41°26' N ..	68°30' W

(4) *Season.* A vessel issued a scallop permit may not fish for, possess, or land scallops in or from, the area known as the Closed Area I Sea Scallop Access Area, described in paragraph (b)(3) of this section, except during the period June 15 through January 31 of each year the Closed Area I Sea Scallop Access Area is open to scallop vessels.

(5) *Number of trips—(i) Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area I Access Area as specified in the table at § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area I Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Sea Scallop Access Area trip that was terminated early, as specified in § 648.60(c).

(ii) *General category vessels.* (A) Except as provided in paragraph (b)(5)(ii)(B) of this section, effective upon approval of reporting and recordkeeping requirements by OMB, subject to the possession limit specified in §§ 648.52(b) and 648.60(a)(5), and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, a vessel issued a general category scallop permit, may not enter in, or fish for, possess, or land sea scallops in or from the Closed Area I Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(a)(8), that 162 trips in the 2005 fishing year, and 141 trips in the 2006 fishing year, have been taken, in total, by all general category scallop vessels. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2005 and 2006 fishing years.

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

(c) *Closed Area II Access Area.* (1) From March 1, 2006, through February

28, 2007, and every third fishing year thereafter, (*i.e.*, 2009, 2012, etc.) vessels issued scallop permits, except vessels issued a NE Multispecies permit and a general category scallop permit and fishing in an approved SAP under § 648.85 and under multispecies DAS, 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.

(2) From November 2, 2004, through February 28, 2006, and for every 2-year fishing year period after each year the area is closed pursuant to paragraph (c)(1) of this section (*i.e.*, the 2007 through 2008 fishing years, and 2010 through 2011 fishing years, etc.) 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.

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

Point	Latitude	Longitude
CAIIA1 .....	41°00' N ..	67°20' W
CAIIA2 .....	41°00' N ..	66°35.8' W
CAIIA3 .....	41°18.6' N	66°24.8' W
CAIIA4 .....	41°30' N ..	66°34.8' W
CAIIA5 .....	41°30' N ..	67°20' W
CAIIA1 .....	41°00' N ..	67°20' W

(4) *Season.* A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Closed Area II Sea Scallop Access Area, described in paragraph (c)(3) of this section, except during the period June 15 through January 31 of each year the Closed Area II Access Area is open to scallop vessels.

(5) *Number of trips—(i) Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in 2004 and 2005 in the Closed Area II Access Area as specified in the table at § 648.60(a)(3)(i), 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



Sea Scallop Access Area trip that was terminated early, as specified in § 648.60(c).

(ii) *General category vessels.* (A) Except as provided in paragraph (c)(5)(ii)(B) of this section, effective upon approval of reporting and recordkeeping requirements by OMB, subject to the possession limits specified in §§ 648.52(b) and 648.60(a)(5), and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, a vessel issued a general category scallop permit, may not enter in, or fish for, possess, or land sea scallops in or from the Closed Area II Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(a)(8), that 420 trips in the 2004 fishing year, and 385 trips in the 2006 fishing year, have been taken, in total, by all general category scallop vessels. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2004 and 2005 fishing years.

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

(d) *Nantucket Lightship Access Area.* (1) From March 1, 2005, through February 28, 2006, and every third fishing year thereafter (*i.e.*, 2008, 2011, etc.) vessels issued scallop permits, except vessels issued a NE Multispecies permit and a general category scallop permit and fishing in an approved SAP under § 648.85 and under multispecies DAS, 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.

(2) From November 2, 2004, through February 28, 2005, and from March 1, 2006, through February 28, 2008, and for every 2-year fishing year period after each year the area is closed pursuant to paragraph (d)(1) of this section (*i.e.*, the 2009 through 2010 fishing years, and 2012 through 2013 fishing years, etc.) and subject to the seasonal restrictions specified in paragraph (d)(4) of this section, a vessel issued a limited access scallop permit may fish for, possess, or land scallops in or from, the area known as the Nantucket Lightship Sea Scallop Access Area, described in paragraph

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

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

Point	Latitude	Longitude
NLAA1 .....	40°50' N ..	69°30' W
NLAA2 .....	40°50' N ..	69°00' W
NLAA3 .....	40°20' N ..	69°00' W
NLSS4 .....	40°20' N ..	69°30' W
NLAA1 .....	40°50' N ..	69°30' W

(4) *Season.* A vessel issued a scallop permit may not 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, except during the period June 15 through January 31 of each year the Nantucket Lightship Access Area is open to scallop fishing.

(5) *Number of trips—(i) Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Nantucket Lightship Access Area as specified in the table at § 648.60(a)(3)(i), 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 Sea Scallop Access Area trip that was terminated early, as specified in § 648.60(c).

(ii) *General category vessels.* (A) Except as provided in paragraph (d)(5)(ii)(B) of this section, effective upon approval of reporting and recordkeeping requirements by OMB, subject to the possession limits specified in §§ 648.52(b) and 648.60(a)(5), a vessel issued a general category scallop permit, may not enter in, or fish for, possess, or land sea scallops in or from the Nantucket Lightship Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(a)(8), that 386 trips in the 2004 fishing year, and 340 trips in the 2006 fishing year, have been taken, in total, by all general category scallop vessels. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed

trips have been, or are projected to be, taken for the 2004 and 2006 fishing years.

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

(e) *Transiting.* A sea scallop vessel that has not declared a trip into the Sea Scallop Area Access Program may enter in the Sea Scallop Access Areas described in paragraphs (a) through (c) of this section, and possess scallops not caught in the Sea Scallop Access Areas, for transiting purposes only provided the vessel's fishing gear is stowed in accordance with § 648.23(b), or there is a compelling safety reason to be in such areas without such gear being stowed. A scallop vessel that has declared a trip into the Sea Scallop Area Access Program may transit a Scallop Access Area while steaming to or from another Scallop Access Area, provided the vessel's fishing gear is stowed in accordance with § 648.23(b), or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Access Area, as described in paragraph (d) of this section, if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed in accordance with § 648.23(b).

■ 10. Section 648.60 is revised to read as follows:

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

(a) A vessel issued a limited access scallop permit may only fish in the Sea Scallop Access Areas specified in § 648.59, subject to the seasonal restrictions specified in § 648.59, when fishing under a scallop DAS, provided the vessel complies with the requirements specified in paragraphs (a)(1) through (a)(9) and (b) through (f) of this section. A vessel issued a general category scallop permit may only fish in the Hudson Canyon Sea Scallop Access Area specified in § 648.59(a), subject to the possession limit specified in § 648.52(a), unless that vessel is fishing in an approved NE multispecies fishery SAP under NE multispecies DAS.

(1) *VMS.* Each vessel participating in the Sea Scallop Access Area Program must have installed on board an operational VMS unit that meets the minimum performance criteria specified

in §§ 648.9 and 648.10, and paragraph (e) of this section.

(2) *Declaration.* (i) Prior to the 25th day of the month preceding the month in which fishing is to take place, the vessel must submit a monthly report through the VMS e-mail messaging system of its intention to fish in any Sea Scallop Access Area, along with the following information: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for each Sea Scallop Access Area in which it intends to fish. The Regional Administrator may waive a portion of this notification period for trips into the Sea Scallop Access Areas

if it is determined that there is insufficient time to provide such notification prior to an access opening. Notification of this waiver of a portion of the notification period shall be provided to the vessel through a permit holder letter issued by the Regional Administrator.

(ii) In addition to the information required under paragraph (a)(2)(i) of this section, and for the purpose of selecting vessels for observer deployment, each participating vessel owner or operator shall provide notice to NMFS of the time, port of departure, and specific Sea Scallop Access Area to be fished, at least 72 hr, unless otherwise notified by the Regional Administrator, prior to the

beginning of any trip into the Sea Scallop Access Area.

(iii) To fish in a Sea Scallop Access Area, each participating vessel owner or operator shall declare a Sea Scallop Access Area trip via VMS less than one hr prior to the vessel leaving port, in accordance with instructions to be provided by the Regional Administrator.

(3) *Number of Sea Scallop Access Area trips—(i) Table of Limited Access Vessel trips.* (A) Except as provided in paragraph (c) of this section, the table below summarizes the total number of trips and DAS charges for limited access scallop vessels to take into Sea Scallop Access Areas during applicable seasons specified in § 648.59:

Fishing year	Access area	Maximum trips per area and per vessel	Maximum number of trips; and equivalent DAS charge per trip		
			Full-time	Part-time	Occasional
2004 .....	Closed Area II .....	2	7 trips; 12 DAS .....	2 trips; 11.2 DAS .....	1 trip; 7 DAS.
	Nantucket Lightship .....	1			
	Hudson Canyon .....	4		1 trip; 12 DAS .....	1 trip; 12 DAS.
2005 .....	Closed Area I .....	1	5 trips; 12 DAS .....	2 trips; 12 DAS .....	1 trip; 5 DAS.
	Closed Area II .....	1			
	Hudson Canyon .....	3			
2006 .....	Closed Area I .....	1	2 trips; 12 DAS .....	1 trip; 9.6 DAS .....	1 trip; 2 DAS.
	Nantucket Lightship .....	1			

(B) A limited access scallop vessel fishing in Sea Scallop Access Areas may fish the maximum number of trips specified above according to the vessel's category in any Sea Scallop Access Area, provided the number of trips in any one Sea Scallop Access Area does 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. The DAS specified in the table in this paragraph (a)(3)(i) shall be automatically deducted for each Sea Scallop Access Area trip.

(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, but no later than February 2, 2005, in 2004, and June 1 of each year thereafter. Each vessel involved in an exchange is required to submit a completed Trip Exchange Form. Trip Exchange Forms will be provided by the Regional Administrator upon request. The Regional Administrator shall review the records for each vessel to confirm that each vessel has unutilized trips remaining to transfer. The transfer 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.

(iii) [Reserved]

(4) *Area fished.* While on a Sea Scallop Access Area trip, a vessel may not fish for, possess, or land scallops in or from outside the specific declared Sea Scallop Access Area during that trip, and may not enter or exit the specific declared Sea Scallop Access Area more than once per trip. A vessel on a Sea Scallop Access Area trip may

not enter or be in another Sea Scallop Access Area on the same trip except such vessel may transit another Sea Scallop Access Area provided its gear is stowed in accordance with § 648.23(b).

(i) *Reallocation of trips into open areas.* If the yellowtail flounder TAC allocated for a Scallop Access Area specified in § 648.59(b) through (d) has been harvested and such area has been closed, a vessel with trips remaining to be taken in such Access Areas may fish the remaining DAS associated with the unused trip(s) in Open Areas, up to the maximum DAS specified in § 648.53(b)(4)(iii)(A) through (C).

(ii) [Reserved]

(5) *Possession and landing limits—(i) Scallop possession limits.* Unless authorized by the Regional Administrator as specified in paragraphs (c) and (d) of this section, after declaring a trip into a Sea Scallop Access Area, a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, scallops, up to the maximum amounts specified in the table in this paragraph (a)(5). No vessel fishing in the Sea Scallop Access Area may possess shoreward of the VMS demarcation line or land, more than 50 bu (17.6 hl) of in-shell scallops.

Fishing year	Access area	Possession limit		
		Full-time	Part-time	Occasional
2004	Closed Area II Nantucket Lightship Hudson Canyon	18,000 lb (8,165 kg)	16,800 lb (7,620 kg)	10,500 lb (4,763 kg).
2005	Closed Area I Closed Area II Hudson Canyon	18,000 lb (8,165 kg)	18,000 lb (8,165 kg)	18,000 lb (8,165 kg). 7,500 lb (3,402 kg).
2006	Closed Area I Nantucket Lightship	18,000 lb (8,165 kg)	14,400 lb (6,532 kg)	3,000 lb (1,361 kg).

(ii) *NE multispecies possession limits and yellowtail flounder TAC.* After declaring a trip into a Sea Scallop Access Area and fishing within the Access Areas described in § 648.59(b) through (d), and provided the vessel has been issued a Scallop NE Multispecies Possession Limit permit as specified in § 648.4(a)(1)(ii), a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, up to a maximum of 1,000 lb (453.6 kg) of all NE multispecies combined, subject to the minimum commercial fish size restrictions specified in § 648.83(a)(2), and the additional restrictions for Atlantic cod, haddock, and yellowtail flounder specified in paragraphs (a)(5)(ii)(A) through (C) of this section.

(A) *Atlantic Cod.* A vessel may bring onboard and possess only up to 100 lb (45.4 kg) of Atlantic cod per trip, provided such fish is intended for personal use only and cannot be not sold, traded, or bartered.

(B) *Haddock.* Subject to the seasonal restrictions established under the Sea Scallop Area Access Program and specified in § 648.59(b)(4), (c)(4), and (d)(4), a vessel is prohibited from possessing or landing haddock from January 1 through June 30, but may possess and land haddock up to the overall possession limit of all NE multispecies combined, as specified in paragraph (a)(5)(ii) of this section for the rest of the Sea Scallop Area Access Program season.

(C) *Yellowtail flounder—(1) Yellowtail flounder TACs.* Limited access scallop vessels participating in the Area Access Program and fishing within the Access Areas specified in § 648.59(b) through (d), are authorized to catch yellowtail flounder up to the TACs specified in § 648.85(c) for the Closed Area I, Closed Area II, and Nantucket Lightship Access Scallop Areas. The Regional Administrator shall publish notification in the **Federal Register** in accordance with the Administrative Procedure Act, to notify scallop vessel owners that the scallop fishery portion of the TAC for a yellowtail flounder stock has been or is

projected to be harvested by scallop vessels in any Access Area. Upon notification in the **Federal Register** that a TAC has been or is projected to be harvested, scallop vessels are prohibited from declaring and initiating a trip within the Access Area(s), where the TAC applies, for the remainder of the fishing year. The yellowtail flounder TACs allocated to scallop vessels may be increased by the Regional Administrator after December 1 of each year pursuant to § 648.85(c)(2).

(2) *SNE/MA yellowtail flounder possession limit.* After declaring a trip into and fishing within the Nantucket Lightship Access Area described in § 648.59(d), the vessel owner or operator of a limited access scallop vessel may fish for, possess, and land up to 250 lb (113.6 kg) per trip of yellowtail flounder between June 15 and June 30, and from July 1 through January 31, up to 1,000 lb (453.6 kg) per trip subject to the amount of other NE multispecies onboard, provided the yellowtail flounder TAC as specified in § 648.85(c)(i) has not been harvested.

(3) *GB yellowtail flounder possession limit.* After declaring a trip into and fishing within the Closed Area I or Closed Area II Access Area described in § 648.59(b) and (c), the vessel owner or operator of a limited access scallop vessel may fish for, possess, and land up to 1,000 lb (453.6 kg) per trip of yellowtail flounder subject to the amount of other NE multispecies onboard, provided the yellowtail flounder TAC specified in § 648.85(c) has not been harvested. If the yellowtail flounder TAC established for the Eastern U.S./Canada Area pursuant to § 648.85(a)(2) has been or is projected to be harvested, as described in § 648.85(a)(3)(iv)(C)(3), scallop vessels are prohibited from harvesting, possessing, or landing yellowtail flounder in or from the Closed Area I and Closed Area II Access Areas.

(iii) [Reserved]

(6) *Gear restrictions.* (i) The minimum ring size for dredge gear used by a vessel fishing on a Sea Scallop Access Area trip is 4 inches (10.2 cm) in diameter.

Dredge or trawl gear used by a vessel fishing on a Sea Scallop Access Area trip must be in accordance with the restrictions specified in § 648.51(a) and (b).

(ii) [Reserved]

(7) *Transiting.* While outside a Sea Scallop Access Area on a Sea Scallop Access Area trip, the vessel must have all fishing gear stowed in accordance with § 648.23(b), unless there is a compelling safety reason to be in the area without gear stowed.

(8) *Off-loading restrictions.* The vessel may not off-load its catch from a Sea Scallop Access Area trip at more than one location per trip.

(9) *Reporting.* The owner or operator must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared in the Sea Scallop Area Access Program, including trips accompanied by a NMFS-approved observer. The reports must be submitted in 24-hour intervals, for each day beginning at 0000 hours and ending at 2400 hours. The reports must be submitted by 0900 hours of the following day and must include the following information:

(i) Total pounds/kilograms of scallop meats kept, total number of tows and the Fishing Vessel Trip Report log page number.

(ii) Total pounds/kilograms of yellowtail flounder kept and total pounds/kilograms of yellowtail flounder discarded.

(iii) For each trip that the vessel has a NMFS approved observer on board, the total pounds/kilograms of scallop meats kept and the total pounds/kilograms of yellowtail flounder caught on all tows that were observed by a NMFS approved observer.

(b) *Accrual of DAS.* For each Sea Scallop Access Area trip, except as provided in paragraph (c) of this section, a vessel on a Sea Scallop Access Area trip shall have DAS specified in paragraph (a)(3) of this section deducted from its Access Area DAS allocation, regardless of the actual number of DAS used during the trip.

(c) *Compensation for Sea Scallop Access Area trips terminated early.* If a Sea Scallop Access Area trip is terminated before catching the allowed possession limit, the vessel may be authorized to fish an additional trip in the same Sea Scallop Access Area based on the conditions and requirements of paragraphs (c)(1) through (5) of this section.

(1) The vessel owner/operator has determined that the Sea Scallop Access Area trip should be terminated early for reasons deemed appropriate by the operator of the vessel;

(2) The amount of scallops landed by the vessel for the trip must be less than the maximum possession limit specified in paragraph (a)(5) of this section.

(3) The vessel owner/operator must report the termination of the trip prior to leaving the Sea Scallop Access Area by VMS email messaging, with the following information: Vessel name, vessel owner, vessel operator, time of trip termination, reason for terminating the trip (for NMFS recordkeeping purposes), expected date and time of return to port, and amount of scallops on board in pounds.

(4) The vessel owners/operator must request that the Regional Administrator authorize an additional trip as compensation for the terminated trip by submitting a written request to the Regional Administrator within 30 days of the vessel's return to port from the terminated trip.

(5) The Regional Administrator must authorize the vessel to take an additional trip and must specify the amount of scallops that the vessel may land on such trip and the number of DAS charged for such trip, pursuant to the calculation in paragraphs (c)(5)(i) through (iii) of this section. Such authorization shall be made within 10 days of receipt of the formal written request for compensation.

(i) The number of DAS a vessel will be charged for an additional trip in the Sea Scallop Access Area shall be calculated as the difference between the number of DAS automatically deducted for the trip as specified in paragraph (b) of this section, and the sum of the following calculation: Two DAS, plus one DAS for each 10 percent increment of the overall possession limit on board. Pounds of scallops landed shall be rounded up to the nearest 10-percent increment.

(ii) The amount of scallops that can be landed on an authorized additional Sea Scallop Access Area trip shall equal 1,500 lb (680.4 kg) multiplied by the number of DAS to be charged for the resumed trip.

(iii) The vessel that terminates a Sea Scallop Access Area trip and has been authorized to take an additional trip shall have the DAS charged for that trip, as determined under paragraph (c)(5)(i) of this section, deducted from its Sea Scallop Access Area DAS allocation specified in paragraph (a)(3) of this section, regardless of the actual number of DAS fished during the additional trip. Vessels that are authorized more than one additional trip for compensation for more than one terminated trip may combine the authorized trips into one, if all terminated trips occurred in the same Sea Scallop Access Area and provided the total possession limits do not exceed those specified in paragraph (a)(5) of this section.

(d) *Possession limit to defray costs of observers—(1) Observer set-aside limits by area—(i) Hudson Canyon Access Area.* For 2004 and 2005, the observer set-asides for the Hudson Canyon Access Area are 187,900 lb (85.2 mt) and 149,562 lb (67.8 mt), respectively.

(ii) *Closed Area I Access Area.* For the 2005 and 2006 fishing years, the observer set-asides for the Closed Area I Access Area are 32,430 lb (15 mt) and 28,241 lb (13 mt), respectively.

(iii) *Closed Area II Access Area.* For the 2004 and 2005 fishing years, the observer set-asides for the Closed Area II Access Area are 83,952 lb (38 mt) and 76,958 lb (35 mt), respectively.

(iv) *Nantucket Lightship Access Area.* For the 2004 and 2006 fishing years, the observer set-asides for the Nantucket Lightship Access Area are 77,184 lb (35 mt) and 67,968 lb (31 mt), respectively.

(2) *Increase in the possession limit to defray the costs of observers.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (a)(5) of this section to defray costs of at-sea observers deployed on area access trips subject to the limits specified in paragraph (d)(1) of this section. Owners of scallop vessels shall be notified of the increase in the possession limit through a permit holder letter issued by the Regional Administrator. If the observer set-aside is fully utilized prior to the end of the fishing year, the Regional

Administrator shall notify owners of scallop vessels that, effective on a specified date, the possession limit will be decreased to the level specified in paragraph (a)(5) of this section. Vessel owners shall be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit.

(e) *Possession limits and/or number of trips to defray the costs of sea scallop research—(1) Research set-aside limits and number of trips by area—(i) Hudson Canyon Access Area.* For the 2004 and 2005 fishing years, the research set-asides for the Hudson Canyon Access Area are 375,800 lb (170.5 mt) and 299,123 lb (135.7 mt), respectively.

(ii) *Closed Area I Access Area.* For the 2005 and 2006 fishing years, the research set-asides for the Closed Area I Access Area are 64,860 lb (29 mt) and 56,482 lb (26 mt), respectively.

(iii) *Closed Area II Access Area.* For the 2004 and 2005 fishing years, the research set-asides for the Closed Area II Access Area are 167,904 lb (76 mt) and 153,971 lb (70 mt), respectively.

(iv) *Nantucket Lightship Access Area.* For the 2004 and 2006 fishing years, the research set-asides for the Nantucket Lightship Access Area are 154,368 lb (70 mt) and 135,937 lb (62 mt), respectively.

(2) *Increase of possession limit to defray the costs of sea scallop research.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (a)(5) of this section or allow additional trips into a Sea Scallop Access Area to defray costs for approved sea scallop research up to the amount specified in paragraph (e)(1) of this section.

(3) *Yellowtail flounder research TAC set-aside.* Vessels conducting research approved under the process described in § 648.56, and in the Access Areas specified in § 648.59(b) through (d) may harvest yellowtail flounder up to the TACs specified in the table in this paragraph (e)(3), and subject to the possession limits specified in paragraph (a)(5)(ii)(C) of this section. If the TACs listed in the table in this paragraph (e)(3) are harvested, research may no longer be authorized in the applicable Access Area.

Yellowtail flounder stock	Access area	Fishing year	Yellowtail flounder research TAC
Southern New England .....	Nantucket Lightship .....	2004	3,086 lb (1.4 mt).
		2005	8,818 lb (4.0 mt).
		2006	14,771 lb (6.7 mt).

Yellowtail flounder stock	Access area	Fishing year	Yellowtail flounder re- search TAC
GB .....	Closed Area I and Closed Area II .....	2004 2005 2006	26,455 lb (12 mt). (1) (1)

To be established annually, according to the specification procedure described in § 648.85(a)(2).

(f) *VMS polling.* For the duration of the Sea Scallop Area Access Program, as described in this section, all sea scallop vessels equipped with a VMS unit shall be polled at a minimum of twice per hour, regardless of whether the vessel is enrolled in the Sea Scallop Area Access Program. Vessel owners shall be responsible for paying the costs of polling twice per hour.

(g) *General category scallop vessels.* (1) Effective upon approval of reporting and recordkeeping requirements by OMB, a vessel issued a general category scallop permit, except 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 that has not enrolled in the general category Access Area fishery, may only fish in the Closed Area I, Closed Area II, and Nantucket Lightship Sea Scallop Access Areas specified in § 648.59(b) through (d), subject to the seasonal restrictions specified in § 648.59(b)(4), (c)(4), and (d)(4), and subject to the possession limit specified in § 648.52(a), and provided the vessel complies with the requirements specified in paragraphs (a)(1), (a)(2), (a)(6) through (a)(9), (d), (e), (f), and (g) of this section, and § 648.85(c)(3)(ii). A vessel issued a NE Multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS that has not enrolled in the Sea Scallop Area Access program as specified in paragraph (a)(2) is not subject to the restrictions and requirements specified in § 648.59(b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and this paragraph (g).

(2) *Gear restrictions.* The combined dredge width in use by, or in possession on board, general category scallop vessels fishing in the Access Areas described in § 648.59(b) through (d) may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(3) *Scallop TAC.* General category vessels fishing in the Access Areas specified in § 648.59(b) through (d) are authorized to land scallops, subject to the possession limit specified in § 648.52(a), up to the amount allocated to the scallop TACs for each Access Area specified below. If the scallop TAC for a specified Access Area has been, or

is projected to be harvested, the Regional Administrator shall publish notification in the **Federal Register**, in accordance with the Administrative Procedure Act, to notify general category vessels that they may no longer fish within the specified Access Area.

(i) *Closed Area I Access Area.* 64,840 lb (29 mt) in 2005, and 56,482 lb (25.6 mt) in 2006.

(ii) *Closed Area II Access Area.* 167,904 (76 mt) in 2004, and 153,971 lb (70 mt) in 2005.

(iii) *Nantucket Lightship Access Area.* 154,368 lb (70 mt) in 2004, and 135,937 lb (62 mt) in 2006.

(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 that has not enrolled in the general category Access Area fishery is prohibited from possessing scallops. General category scallop vessels fishing in the Access Areas specified in § 648.59(b) through (d) may possess scallops up to the possession limit specified in § 648.52(b), subject to a limit on the total number of trips that can be taken by all such vessels into the Access Areas, as specified in § 648.59(b)(5)(ii), (c)(5)(ii), and (d)(5)(ii). If the number of trips allowed have been or are projected to be taken, the Regional Administrator shall publish notification in the **Federal Register**, in accordance with the Administrative Procedure Act, to notify general category vessels that they may no longer fish within the specified Access Area.

(ii) *Other species.* Except for vessels issued a general category scallop permit and fishing under an approved NE multispecies SAP under NE multispecies DAS, general category vessels fishing in the Access Areas specified in § 648.59(b) through (d) are prohibited from possessing any other species of fish.

(5) *Number of trips.* General category scallop vessels may not fish for, possess, or land scallops in or from the Access Areas specified in § 648.59(b) through (d) after the effective date of the notification published in the **Federal Register**, stating that the total number of trips specified in § 648.59(b)(5)(ii), (c)(5)(ii), and (d)(5)(ii) have been, or are

projected to be, taken by general category scallop vessels.

■ 11. Section 648.61 is revised to read as follows:

**§ 648.61 EFH closed areas.**

(a) No scallop fishing vessel may enter, fish in, or be in the EFH Closure Areas described in § 648.80(h)(1)(i) through (iv). A chart depicting these areas is available from the Regional Administrator upon request.

(b) *Transiting.* A scallop vessel may transit the EFH Closure Areas, as defined in § 648.81(h)(1), provided that its gear is stowed in accordance with the provisions of § 648.23(b), and that it complies with the transiting restrictions for the Closed Area II Habitat Closure Area specified in § 648.81(b)(2)(iv).

■ 12. In § 648.81, paragraphs (a)(2)(vi), (b)(2)(v), and (c)(2)(iv) are added to read as follows:

**§ 648.81 NE multispecies closed areas and measures to protect EFH.**

(a) \* \* \*

(2) \* \* \*

(vi) Fishing for scallops within the Closed Area I Access Area defined in § 648.59(b)(3) during the season specified in § 648.59(b)(4), and pursuant to the provisions specified in § 648.60.

(b) \* \* \*

(2) \* \* \*

(v) Fishing for scallops within the Closed Area II Access Area defined in § 648.59(c)(3), during the season specified in § 648.59(c)(4), and pursuant to the provisions specified in § 648.60.

(c) \* \* \*

(2) \* \* \*

(iv) Fishing for scallops within the Nantucket Lightship Access Area defined in § 648.59(d)(3), during the season specified in § 648.59(d)(4), and pursuant to the provisions specified in § 648.60.

\* \* \* \* \*

■ 13. In § 648.85, paragraph (c) is added to read as follows:

**§ 648.85 Special management programs.**

\* \* \* \* \*

(c) *Scallop fishery closed area access program.* Limited access scallop vessels operating under the Sea Scallop Area Access Program, as defined in § 648.59, and fishing in accordance with the regulations at § 648.60 may possess and

land up to 1,000 lb (453.6 kg) of all NE multispecies combined, as provided in § 648.60(a)(5)(ii), unless otherwise restricted in this section.

(1) *Yellowtail flounder bycatch TAC allocation.* An amount of yellowtail flounder equal to 10 percent of the total yellowtail flounder TAC for each of the stock areas specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section may be harvested by scallop vessels subject to the restrictions of this paragraph. Limited access scallop vessels enrolled in the Sea Scallop Area Access Program and fishing within the Area Access areas defined at § 648.59(b) through (d) may harvest yellowtail flounder up to 9.8 percent of the applicable yellowtail flounder TAC. Scallop vessels participating in approved research under the process described in § 648.56, and fishing in the Access Areas specified in § 648.59(b) through (d), may harvest 0.2 percent of the applicable yellowtail flounder TAC. The amount of yellowtail flounder that may be harvested in the 2004 through the 2006 fishing years under this section shall be specified in a small entity compliance guide. The yellowtail flounder TAC set-asides for research are specified in § 648.60(e)(3).

(i) *SNE/MA yellowtail flounder.* Limited access scallop vessels may harvest an amount of yellowtail flounder equal to 9.8 percent of the SNE/MA yellowtail flounder TAC from the Nantucket Lightship Closed Area Sea Scallop Access Area for each fishing year, unless otherwise prohibited under paragraph (c)(3) of this section. An amount of yellowtail flounder equal to 0.2 percent of the SNE/MA yellowtail flounder bycatch TAC, as specified in paragraph (c)(1) of this section, is set aside to allow for the harvest of yellowtail flounder during research approved under the scallop research program specified in § 648.56 and conducted in the Access Areas specified in § 648.59(b) through (d).

(ii) *GB yellowtail flounder.* Limited access scallop vessels may harvest an amount of yellowtail flounder up to 9.8 percent of the GB yellowtail flounder TAC from the Closed Area I and Closed

Area II Sea Scallop Access Areas, combined, for each fishing year, unless otherwise prohibited under paragraph (c)(3) of this section. An amount of yellowtail flounder equal to 0.2 percent of the GB yellowtail flounder TAC, as specified in paragraph (c)(1) of this section, is set aside to allow for the harvest of yellowtail flounder during research approved under the scallop research program specified in § 648.56.

(2) *Adjustments to the yellowtail flounder TAC allocation.* If, on or after December 1 of each year, information is available to make an accurate projection of yellowtail catch through the end of the fishing year, and if the Regional Administrator projects that the total GB yellowtail flounder TAC for the NE multispecies fishery specified at § 648.85(a)(2) will not be harvested by the end of the fishing year, and if the catch of yellowtail flounder in the Sea Scallop Area Access Program is below 10 percent of the GB yellowtail flounder bycatch TAC specified in paragraph (c)(1) of this section, the Regional Administrator may, through rulemaking consistent with the Administrative Procedure Act, increase the yellowtail flounder bycatch TAC allocated to vessels participating in the Sea Scallop Area Access Program above 10 percent, provided that such increase will not result in exceeding the total GB yellowtail flounder TAC specified in § 648.85(a)(2).

(3) *Possession restriction and closure when yellowtail flounder TAC has been harvested.* (i) If the Regional Administrator determines that the GB yellowtail flounder TAC specified for the U.S./Canada Management Area under paragraph (a)(2) of this section has been harvested or is projected to be harvested, and notification has been published in the **Federal Register**, pursuant to paragraph (a)(3)(iv)(C)(3) of this section, but the yellowtail flounder bycatch TAC allocation for the GB stock specified under paragraph (c)(1)(ii) of this section has not been harvested, scallop vessels may continue to fish in the Sea Scallop Area Access Program, but may not retain or land yellowtail flounder, until the yellowtail flounder

bycatch TAC is caught, as specified in paragraph (c)(3)(ii) of this section. All catch of yellowtail flounder must continue to be reported by scallop vessels fishing in Access Areas as required under § 648.60.

(ii) If the Regional Administrator determines that the yellowtail flounder bycatch TAC allocation for the GB stock specified under paragraph (c)(1)(ii), of this section has been or is projected to be harvested, scallop vessels may not fish within the Closed Area I and II Access Areas for the remainder of the fishing year. The Regional Administrator shall publish notification in the **Federal Register**, in accordance with the Administrative Procedure Act, to notify vessels that they may no longer fish within the Closed Area I and II Access Areas for the remainder of the fishing year.

\* \* \* \* \*

■ 14. In § 648.88, paragraph (c) is revised to read as follows:

**§ 648.88 Multispecies open access permit restrictions.**

\* \* \* \* \*

(c) *Scallop NE multispecies possession limit permit.* With the exception of vessels fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d), a vessel that has been issued a valid open access scallop NE multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under § 648.86(a)(2)(i), and provided that the amount of yellowtail flounder on board the vessel does not exceed the trip limitations specified in § 648.86(g), and provided the vessel has at least one standard tote on board. A vessel fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d) is subject to the possession limits specified in § 648.60(a)(5)(ii).

\* \* \* \* \*

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