

and removing the prohibition on the harvest, possession, and landing of GB yellowtail flounder by all NE multispecies vessels within the entire U.S./Canada Management Area, effective January 14, 2005. In addition, this action removes the previous daily poundage limits for GB yellowtail flounder and GB cod for the entire U.S./Canada Management Area and the Eastern U.S./Canada Area, respectively, and reinstates the 15,000 lb (6,804 kg) and 5,000 lb (2,268 kg) trip limit for GB yellowtail flounder and GB cod, respectively, consistent with ensuring that the TACs for these species will not be exceeded by the end of the 2004 fishing year. Removal of the daily poundage limits for these species provides flexibility to the fishing industry by allowing vessels that may need to end their trip prematurely due to an unexpected event, such as poor weather conditions, with the ability to retain their catch onboard when entering port (catches of species with daily poundage caps must be offloaded when a vessel enters port). The overall trip limits will help ensure that the mortality goals of the FMP are met. Additionally, trawl vessels fishing in the Eastern U.S./Canada Area may only fish with a haddock separator net, as described in § 648.85(a)(3)(iii)(A), for the purposes of reducing bycatch of both GB cod and GB yellowtail flounder to allow greater access to the remaining GB haddock TAC for the rest of the fishing year.

Yellowtail flounder landings will be closely monitored through VMS and other available information and, once 100 percent of the TAC allocation for GB yellowtail flounder is projected to be harvested, the Eastern U.S./Canada Area will be closed to NE multispecies DAS vessels and the harvesting, possession, and landing of yellowtail flounder by NE multispecies vessels in the U.S./Canada Management Area will be prohibited, in accordance with the regulations § 648.85(a)(3)(iv)(C)(3).

#### Classification

This action re-opens the Eastern U.S./Canada Area to the harvest of GB yellowtail flounder, and essentially restores access to this area with similar restrictions before the closure by removing a prohibition on the possession of GB yellowtail flounder in the U.S./Canada Management Area in order to allow vessels to fully harvest the TAC of GB yellowtail flounder. If implementation of this action is delayed, NMFS could be prevented from permitting the full harvest of the GB yellowtail flounder stock, GB cod, and GB haddock TACs. The directed harvest

of the GB yellowtail flounder stock began on May 1, 2004, and additional fishing opportunity on the stock was provided as of June 1, 2004, with the opening of the Closed Area II Yellowtail Flounder Special Access Program (SAP). If a proposed rule for this action, or delay in effectiveness were required, access to the Eastern U.S./Canada Area, as well as the ability to harvest yellowtail flounder from within the entire U.S./Canada Management Area, would be delayed and would create an unnecessary burden on the industry. For the above reason, under 5 U.S.C. 553(b)(3), proposed rulemaking is not necessary because it would be contrary to the public interest. Furthermore, because this rule relieves a restriction, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for this action.

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: January 12, 2005.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 040809233-4363-03; 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 publishes this final rule to implement measures previously approved, but not implemented under Framework 16 to the Atlantic Sea Scallop Fishery Management Plan (Scallop FMP) and Framework 39 to the Northeast Multispecies FMP (Multispecies FMP) (Joint Frameworks). The implementation of these measures was delayed, pending approval of reporting and recordkeeping requirements by the Office of Management and Budget (OMB). This

final rule allows general category scallop vessels to fish in the Northeast (NE) multispecies closed area access program implemented as part of the Joint Frameworks, provided that they comply with new recordkeeping and reporting requirements. OMB has approved the reporting and recordkeeping requirements for vessels with general category scallop permits, as required under the Paperwork Reduction Act (PRA).

**DATES:** Effective February 17, 2005.

**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 final rule should be submitted to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA, 01930, and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or to the Federal e-rulemaking portal <http://www.regulations.gov>, or fax to (202) 395-7285.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

The final rule for the Joint Frameworks (69 FR 63460, November 2, 2004) established Scallop Access Areas within 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 allowed 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 revised the Essential Fish Habitat (EFH) closed areas implemented under Amendment 10 to the Scallop FMP in order to make the areas consistent with the EFH closures under the Multispecies FMP, as established by Amendment 13 to the Multispecies FMP.

A proposed rule including the management measures for general category scallop vessel access was published on August 26, 2004 (69 FR 52470). Several comments related to the measures for general category scallop vessel access to NE multispecies closed areas were submitted in response to the proposed rule. These comments and their responses were included in the November 2, 2004, final rule for the Joint Frameworks. Detailed descriptions, justifications, and summary of impacts of all of the management measures, including general category scallop vessel access to the NE multispecies closed areas, were included in that final rule and are not repeated here. The measures allowing general category vessel access to the NE multispecies closed areas were not made effective upon publication of the November 2, 2004, final rule because NMFS had not received OMB approval of the reporting and recordkeeping requirements associated with these provisions, and because owners of general category scallop vessels required time to prepare for the new requirements. Since the reporting and recordkeeping requirements have been approved by OMB, general category scallop vessels are now subject to the following restrictions when fishing in the NE multispecies closed areas:

a. A possession limit of 400 lb (181.4 kg) of shucked, or 50 U.S. bushels (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 (29 mt) in CAI and 153,971 lb (70 mt) in CAII; and (3) 2006; 56,482 lb (26 mt) 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 vessel monitoring system (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 flounder, including discards, so that it can be counted against the yellowtail flounder 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).

#### Classification

The Regional Administrator, Northeast Region, NMFS (RA) determined that the framework adjustments implemented by this final 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 Fishery Conservation and Management Act and other applicable law.

The measures implemented under the Joint Frameworks, including general category scallop vessel access to the NE multispecies closed areas, has been determined to be not significant for purposes of Executive Order 12866.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared a FRFA in support of the Joint Frameworks, which was included in the November 2, 2004, final rule implementing the Joint Frameworks. The FRFA described the economic impact that this final rule, along with other non-preferred alternatives, will

have on small entities, including general category scallop vessels effected by this action. The contents of the FRFA and the incorporated documents (the IRFA, the RIR, and the EA) are not repeated here, and a copy of these documents is available upon request (see **ADDRESSES**).

#### 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 general category scallop permits issued for the 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 approved by OMB under the PRA. These new requirements apply to general category vessels only (the requirements already exist for other scallop vessels). 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 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: January 11, 2005.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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

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

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

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

■ 2. In § 648.10, paragraph (b)(1)(iv) is revised to read as follows:

**§ 648.10 DAS notification requirements.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iv) 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);

\* \* \* \* \*

■ 3. In § 648.59, paragraphs (b)(5)(ii)(A), (c)(5)(ii)(A), and (d)(5)(ii)(A) are revised to read as follows:

**§ 648.59 Sea Scallop Access Areas.**

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(ii) \* \* \*

(A) Except as provided in paragraph (b)(5)(ii)(B) of this section, 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.

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(ii) \* \* \*

(A) Except as provided in paragraph (c)(5)(ii)(B) of this section, 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.

\* \* \* \* \*

(d) \* \* \*

(5) \* \* \*

(ii) \* \* \*

(A) Except as provided in paragraph (d)(5)(ii)(B) of this section, 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.

\* \* \* \* \*

■ 4. In § 648.60, paragraph (g) is revised to read as follows:

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

\* \* \* \* \*

(g) *General category scallop vessels.*

(1) 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) of this section 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.

(iv) *Possession Limits—(A) 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.

(B) *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.

(4) *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.

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