

increasing portions of Part 192 or Part 195 would apply to pipelines depending on their risk to the public or the environment. If you think this would be a reasonable approach, we would like comments on which regulations should apply to different risk levels. If you think hoop stress should define risk, we would like comment on which regulations should apply according to different stress levels. For plastic pipe, we are interested in views on what the risk levels should be and how the regulations should vary and, if pressure were to define risk, what the pressure should be.

Other Considerations

Non-rural gathering lines. Under Parts 192 and 195, onshore gathering lines are considered rural—and unregulated—if they lie outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area, such as a subdivision, a business or shopping center, or community development. Conversely, some gathering lines or portions of lines that are inside these limits—and now regulated—are similar to rural lines in that they are not in, or close to, inhabited areas. Should the risk-based approach to regulating rural gathering lines also apply to the regulation of non-rural gathering lines? If so, assuming population density was the risk-based approach, what reduction in currently regulated mileage might result from particular density levels? What would be the associated savings in cost of compliance?

Compliance time. In the public meetings, we discussed time lines for compliance. What would be the appropriate time for operators to achieve compliance? We have also considered establishing milestones for achieving compliance, including early compliance dates for easily implemented regulations, coupled with longer times for more complex regulations requiring greater capital expenditures. Does this appear to be an appropriate path and, if so, what should these times be and which categories of regulations should fall into which time frames?

Authority: 49 U.S.C. Chapter 601 and 49 CFR 1.53.

Issued in Washington, DC, on January 29, 2004.

James K. O'Steen,

Deputy Associate Administrator for Pipeline Safety.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040130031-4031-01; I.D. 012704D]

RIN 0648-AR92

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Proposed Emergency Rule to Maintain an Area Access Program for the Atlantic Sea Scallop Fishery in Hudson Canyon

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

ACTION: Proposed emergency rule; request for comments.

SUMMARY: This proposed emergency rule would implement measures to establish on March 1, 2004, the area access program for the Hudson Canyon Area, as proposed in Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (FMP). These measures would be in place for 180 days or until such time that Amendment 10 can be implemented, which will be published later in the **Federal Register**. This action is necessary to avoid localized overfishing of sea scallops in the Hudson Canyon Area, and would help ensure that fishing mortality rates do not exceed the target thresholds established in the FMP.

DATES: Comments must be received no later than 5 p.m., eastern standard time, February 19, 2004.

ADDRESSES: Comments on this proposed emergency rule should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, 1 Blackburn Drive, Gloucester, MA 01930-2298. Please mark the envelope "Comments - Emergency Rule to Maintain an Area Access Program for the Atlantic Sea Scallop Fishery in Hudson Canyon." Comments also may be sent via facsimile (fax) to 978-281-9135. Comments will not be accepted if submitted via e-mail or Internet. Copies of the Draft Environmental Assessment (Draft EA) and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) and any other documents supporting this action are available from the Regional Office at the address specified here, and are accessible via the Internet at <http://www.nero.nmfs.gov/ro/doc/nero.html>.

FOR FURTHER INFORMATION CONTACT:

Peter W. Christopher, Fishery Policy Analyst, 978-281-9288, fax 978-281-9135, e-mail peter.christopher@noaa.gov.

SUPPLEMENTARY INFORMATION: The Hudson Canyon Area (and the Virginia Beach Area) were first closed to sea scallop fishing in 1998 by the National Marine Fisheries Service (NOAA Fisheries) through an interim rule, enacted in consultation with the New England Fishery Management Council (Council) to protect an abundance of small scallops that would have been vulnerable to excessive mortality if left unprotected. On March 29, 1999, Amendment 7 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP) extended the closures until March 1, 2001, to allow scallops within the areas to grow and spawn. Frameworks 14 and 15, implemented on May 1, 2001, and March 1, 2003, respectively, reopened the Hudson Canyon and Virginia Beach Areas to controlled scallop fishing because the area closures had provided sufficient time for the scallop resource within the areas to grow to a size suitable for harvest.

The regulations for the sea scallop fishery for the 2003 fishing year (March 1, 2003-February 29, 2004) include, among other measures, an area access program to govern the fishery within the Hudson Canyon Sea Scallop Access Area (Hudson Canyon Area). The program establishes an overall total allowable catch (TAC) for the area, limits the number of trips that can be taken into the area, establishes a scallop trip limit, and establishes a minimum number of days-at-sea (DAS) that will be deducted for each access trip from the vessel's DAS allocation. The Council adopted Amendment 10 to the FMP in September 2003, and submitted it for review by the Secretary of Commerce (Secretary) on December 19, 2003. Among the measures proposed in Amendment 10 is a continuation of an area access program for the Hudson Canyon Area, with some revisions to the program. Amendment 10 has been made available to the public for comment through March 15, 2004.

The Council's December 2003 submission of Amendment 10 means that it will not be possible to implement the action, if approved, by March 1, 2004. Thus, the existing Hudson Canyon area access program will expire at the end of the fishing year (February 29, 2004) and, on March 1, 2004, the Hudson Canyon Area will open to fishing without an area access program. Absent another regulatory action, the

DAS allocations currently specified in the FMP will go into effect for limited access scallop vessels on March 1, 2004: 34, 14, and 3 DAS for full-time, part-time, and occasional vessels, respectively. Amendment 10 would, if approved, allocate an additional eight, three, and one DAS for use by full-time, part-time, and occasional vessels, respectively, in areas other than those under area management. Amendment 10 would also, if approved, specifically allocate 48, 12, and 12 DAS for use by full-time, part-time, and occasional vessels, respectively, within the Hudson Canyon Area, under an area access program.

Without this emergency action, the fishing that occurs in the Hudson Canyon Area between March 1 and the implementation of Amendment 10 (if approved) would inflict fishing mortality on the resource in addition to that proposed for the Hudson Canyon Access Area in Amendment 10. The additive impacts of this fishing could result in localized overfishing in the Hudson Canyon Area. Should Amendment 10 be disapproved, this proposed emergency action would allow controlled harvests from the Hudson Canyon Area, consistent with the status of the Hudson Canyon Area resource as analyzed in Amendment 10. This action would allow the resource within the Hudson Canyon Area to be harvested at appropriate levels, and would allow limited access vessels to fish at a level nearer to the mortality objectives for the stock.

Without continued controls on scallop fishing in the Hudson Canyon Area, NMFS is concerned about the impact of fishing on the scallop resource in this area, even with the reduced allocation of DAS. The area was initially closed to protect concentrations of juvenile scallops, which have since grown to harvestable size. For the past 3 fishing years, fishing has been allowed, but with controls. Amendment 10 proposes to maintain controls on effort and catch that would prevent the areas from being overfished. A lapse in controls may result in high fishing effort and mortality, which may be detrimental to the health of the scallop resource in the area. In fact, the reduced DAS allocations that will otherwise take effect on March 1, 2004, may serve as an incentive for some vessels to fish within the Hudson Canyon Area rather than elsewhere, and fishing effort could concentrate in the area. Controls within the area over the past few years have maintained catch rates that may be higher than those in other areas. In addition, the Hudson Canyon Area is a relatively short distance from ports in

the Mid-Atlantic, and vessel owners may choose to fish in the Hudson Canyon Area to minimize the DAS used to cover steaming time to more distant fishing areas.

This emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) is justified under and consistent with NOAA emergency rule guidelines published at 62 FR 44421 (August 21, 1997). These guidelines provide that a Magnuson-Stevens Act emergency action is justified in extremely urgent or special circumstances where substantial harm to or disruption of the resource, fishery or community would be caused in the time it would take to follow standard rulemaking procedures. It was not reasonably foreseeable that Amendment 10 would not be implemented by March 1, 2004, at the time it would have been necessary to initiate another type of action, such as a Secretarial amendment or framework adjustment. Therefore, the only procedure available to the agency for implementing these measures is a section 305(c) emergency action. As discussed above, failure to implement this emergency action would result in serious conservation and economic problems for the fishery.

Proposed Action

The proposed measures for the emergency action are summarized below:

- Continuation of the existing notification and enrollment requirements of the current Hudson Canyon Controlled Access Area program, including twice hourly vessel monitoring system (VMS) polling;

- Continuation of the existing observer program established for the current Hudson Canyon Controlled Access Area program;

- Continuation of the existing VMS catch reporting requirements;
- Continuation of the existing requirement for vessels taking a controlled area access trip to utilize twine top mesh with a minimum size of 10 inches (25.4 cm) to reduce finfish bycatch, primarily of flatfish;

- An additional allocation of 48 DAS for full-time limited access scallop vessels to conduct four trips within the Hudson Canyon Area only;

- An additional allocation of 12 DAS for part-time and occasional limited access vessels to conduct one trip within the Hudson Canyon area only;

- Allocation of DAS in trip-length blocks of 12 days, with each vessel making an Access Area trip to be charged 12 DAS for each trip, regardless of actual trip length;

- Establishment of a trip possession limit for limited access vessels of 18,000 lb (8,165 kg) (consistent with a 1,500-lb (680-kg) per day catch rate);

- Establishment of a 400-lb (181-kg) possession limit for General category vessels fishing in the Hudson Canyon Area (this measure would make the possession limit for these vessels consistent with the existing possession limit in open fishing areas).

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an initial regulatory flexibility analysis (IRFA) as required under section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact that this emergency proposed rule, if adopted, would have on small entities. A copy of the IRFA is available from NMFS (*see ADDRESSES*). A summary of the analysis follows:

The IRFA describes this action, sets forth why it is being taken, and the legal basis for it. A description of the action, why it is being considered, and the legal basis for this action appear in the beginning of this section in the preamble and in the **SUMMARY** section and is not repeated here.

The measures proposed in this emergency action could impact any commercial vessel issued a Federal sea scallop vessel permit. All of these vessels are considered small business entities for purposes of the IRFA because all of them grossed less than \$3.5 million according to the dealer reports for the 2001 and 2002 fishing years. Therefore, the analysis of impacts on vessels in the environmental assessment and other supporting documents for this action are relevant to this IRFA. 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. In 2001, there were 252 Full-time permits, 38 Part-time permits, and 20 Occasional permits. In 2002, there were 270 Full-time permits, 31 part time permits, and 19 Occasional permits. Because the fishing year ends on the last day of February of each year, 2003 vessel permit information was incomplete at the time the Amendment 10 analysis was completed. Much of the economic impacts analysis is based on the 2001 and 2002 fishing years; 2001 and 2002 were the last 2 years with complete permit information. According

to the most recent vessel permit records for 2003, there were 278 Full-time limited access vessels, 32 Part-time limited access vessels, and 16 Occasional vessels. In addition, there were 2,293, 2,493, and 2,257 vessels issued permits to fish in the General Category in 2001, 2002, and 2003, respectively. 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.

This action does not contain any new collection-of-information requirements, implement new reporting or recordkeeping measures, or create other compliance requirements that have not already been implemented and approved in prior actions.

Potential economic impacts are discussed relative to no action, defined as the continuation of the existing DAS schedule (as specified in Amendment 7) with no additional controls on vessels fishing within the boundaries of the Hudson Canyon Access Area. The combined economic impacts of the proposed action relative to the no action alternative are positive for the majority of small business entities in the scallop fishing industry. A third alternative would close the Hudson Canyon Access Area to fishing, pending development of measures to control fishing effort in the area. This alternative may have more negative economic impacts relative to the no action alternative due to the lack of access to the area that contains larger, more valuable scallops. However, vessel owners would likely offset the lack of access to the higher concentrations of large scallops by shucking and landing the larger and more valuable scallops (highgrading). Therefore, the closure alternative would not be significantly different than the no action alternative.

Relative to taking no action, the proposed action is expected to benefit most vessels in the scallop fishery by increasing flexibility and revenues. The emergency action would increase overall DAS allocations by allowing access to the Hudson Canyon Access Area with DAS that can only be used in the Hudson Canyon Access Area. Additional DAS, equal to the DAS that would be implemented under the no action alternative can be used in other open areas. Impacts may vary depending upon the relative mobility of the vessels in accessing fishing areas because the Hudson Canyon Access

Area is more accessible to some vessels than others.

The proposed emergency action would establish two distinct DAS allocations for scallop vessels. Full-time, part-time, and occasional scallop vessels would be allocated 34, 14, and 3 DAS, respectively, to be used in all open areas outside of the Hudson Canyon Access Area. For fishing in the Hudson Canyon Access Area, full-time vessels would be allocated four trips equaling 48 DAS, and part-time and occasional vessels would be allocated one trip equaling 12 DAS. Compared to no action, which would allow only 34 DAS to be fished throughout all open areas, including the area that would be the Hudson Canyon Access Area, the proposed action would have higher revenues resulting from additional DAS allocations. The economic analysis included in Amendment 10 estimates that the annual revenue derived from access to the Hudson Canyon Access Area would be approximately \$48 million in 2004. This \$48 million in revenues would be additional to revenues generated from the DAS used outside of the Hudson Canyon Access Area. Amendment 10 also estimates that the scallop revenue from even one access area trip could amount to more than 10% of the annual revenue in 2004.

Vessels holding General Category scallop permits would be authorized to harvest up to 400 lb (181.4 kg) of scallop meats from open areas and controlled access areas. Expected revenues for those vessels would be the same under the proposed action and the no action alternative because vessels would be able to fish in any open area for 400 lb (181.4 kg) of scallops under both alternatives. However, allowing access to the Hudson Canyon Access Area could have positive economic impacts on these vessels by increasing their flexibility and ability to fish in different areas to increase scallop revenues. Positive impacts would only be realized by the General Category fleet if vessels take advantage of the opening of the area.

The RFA requires consideration of alternatives that accomplish the stated objectives of the applicable statutes and that minimize economic impacts on small entities. The IRFA should identify any significant alternatives that would minimize economic impacts on small entities, if such alternatives exist. If there is an alternative with less impact on small entities that meets the stated objectives, the IRFA should explain why the proposed measure was selected instead of the alternative with less impact. A rationale should be provided

to explain any unavoidable adverse effects on small entities that are necessary to achieve the objectives. The alternatives to the proposed action are the no action alternative and closure of the Hudson Canyon Access Area to scallop fishing. Neither the no-action nor the closure alternative would minimize the economic impacts on small entities. Under both non-preferred alternatives, lower overall DAS allocations would similarly constrain landings and revenues. For both the no-action and the closure alternatives, DAS allocations of 34, 14, and 3 DAS for full-time, part-time, and occasional vessels would reduce annual revenues to approximately \$110 million from \$158 million, compared to the proposed action. For the no-action alternative, the harvest of larger, more valuable scallops from the Hudson Canyon Access Area would not offset the revenue losses.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 2, 2004.

John Oliver,

Deputy Assistant Administrator for Operation, National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.14, paragraphs (h)(30), (h)(31), and (i)(8) are revised to read as follows:

§ 648.14 Prohibitions.

* * * * *
(h) * * *
* * * * *

(30) Land per trip more than 400 lb (181.44 kg) of scallop meats or 50 bu (17.62 hl) of in-shell scallops as specified in § 648.52(e) in or from the areas described in § 648.57 when fishing under a scallop DAS but not declared into the Sea Scallop Area Access Program or when fishing outside of the scallop DAS program.

(31) Possess more than 400 lb. (181.44 kg) of scallop meats or 50 bu (17.62 hl) of in-shell scallops in the areas described in § 648.57 when fishing under a scallop DAS but not declared into the Sea Scallop Area Access Program or when fishing outside of the scallop DAS program, unless the vessel's fishing gear is unavailable for immediate use as defined in

§ 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use.

* * * * *
 (i) * * *
 * * * * *

(8) Possess, retain, or land per trip no more than 400 lb (181.44 kg) of scallop meats or 50 bu (17.62 hl) of in-shell scallops in or from the areas described in § 648.57.

* * * * *

§ 648.52 [Amended]

3. In § 648.52, paragraph (e) is removed.

4. Section 648.53 is revised to read as follows:

§ 648.53 DAS allocations.

(a) *Assignment to DAS categories.* Subject to the vessel permit application requirements specified in § 648.4, for each fishing year, each vessel issued a limited access scallop permit shall be assigned to the DAS category (full-time, part-time, or Occasional) it was assigned to in the preceding year, except as provided under the small dredge program specified in § 648.51(e).

(b) *Open area DAS allocations.* (1) Total DAS to be used in all areas other than those specified in § 648.57 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 (Full-time, Part-

time, or Occasional) shall be allocated, for each fishing year, the maximum number of DAS it may participate in the limited access scallop fishery, according to its category. A vessel whose owner/operator has declared it out of the scallop fishery, pursuant to the provisions of § 648.10, or that has used up its allocated DAS, may leave port without being assessed a DAS, as long as it does not possess or land more than 400 lb (181.4 kg) of shucked or 50 bu (17.62 hl) of in-shell scallops and complies with all other requirements of this part. The annual 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:

	2003	2004	2005	2006	2007	2008
DAS Category						
Full-time	120	34	35	38	36	60
Part-time	48	14	14	15	17	24
Occasional	10	3	3	3	4	5

(c) *Sea Scallop Access Area DAS allocations.* Vessels fishing in a Sea Scallop Access Area specified in § 648.57, under the Sea Scallop Area Access Program specified in § 648.58, are allocated additional DAS to fish only within each Sea Scallop Access Area, as specified in § 648.58(a)(3).

(d) *Adjustments in annual DAS allocations.* Adjustments or changes in annual DAS allocations, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in § 648.55.

(e) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(j) for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of February of any year may carry over a maximum of 10 DAS into the next year. DAS carried over into the next fishing year may not be used in the Hudson Canyon Access Area. DAS sanctioned vessels will be credited with unused DAS based on their DAS allocation minus total DAS sanctioned.

(f) *Accrual of DAS.* Unless participating in the Area Access Program described in § 648.58, DAS shall accrue to the nearest minute.

(g) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can

document the occurrence through the USCG, will not accrue DAS for the time documented.

5. In § 648.57, paragraph (b) is removed and reserved, and paragraph (a) introductory text is revised to read, as follows:

§ 648.57 Closed and regulated areas.

(a) Hudson Canyon Sea Scallop Access Area. From March 1, 2004, through August 2, 2004, except as provided in § 648.58, no vessel may fish for scallops in or possess or land scallops from the area known as the Hudson Canyon Sea Scallop Access Area, and no vessel may possess scallops in the Hudson Canyon Sea Scallop Access Area, unless such vessel is only transiting the area with all fishing gear unavailable for immediate use as defined in § 648.23(b), or there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. The Hudson Canyon Sea Scallop Access Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

* * * * *

6. Section 648.58 is revised to read as follows:

§ 648.58 Sea Scallop Area Access Program requirements.

(a) From March 1, 2004, through August 2, 2004, vessels issued a limited access scallop permit may fish in the Sea Scallop Access Areas specified in

§ 648.57 when fishing under a scallop DAS, provided the vessel complies with the requirements specified in paragraphs (a)(1) through (a)(9) and (b) through (e) of this section. Unless otherwise restricted under this part, vessels issued General Category scallop permits may fish in the Sea Scallop Access Areas specified in § 648.57, subject to the possession limit specified in § 648.52(b).

(1) *VMS.* The vessel 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 described in paragraph (a)(2)(i) of this section, and for the purpose of selecting vessels for observer deployment, a vessel shall provide notice to NMFS of the time, port of departure, and specific Sea Scallop Access Area to be fished, at least 5 working days prior to the beginning of any trip into the Sea Scallop Access Area.

(iii) To fish in a Sea Scallop Access Area, the vessel owner or operator shall declare a Sea Scallop Access Area trip through the VMS less than 1 hour prior to the vessel leaving port, in accordance with instructions to be provided by the Regional Administrator.

(3) *Number of trips.* Except as provided in paragraph (c) of this section, a vessel is limited to the following number of trips and automatic DAS deduction into the Hudson Canyon Sea Scallop Access Area specified in § 648.57:

(i) *Full-time vessels.* A Full-time vessel is restricted to a total of 4 trips, equaling an automatic deduction of 12 days per trip for a total of 48 DAS, into the Hudson Canyon Access Area.

(ii) *Part-time vessels.* A Part-time vessel is restricted to a total of 1 trip, equaling an automatic deduction of 12 days per trip for a total of 12 DAS, into the Hudson Canyon Access Area.

(iii) *Occasional scallop vessels.* An Occasional vessel is restricted to a total of 1 trip, equaling an automatic deduction of 12 days per trip for a total of 12 DAS, into the Hudson Canyon Access Area.

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

(5) *Possession and landing limits.* After declaring a trip into the Hudson Canyon Access Area, a vessel owner or operator may fish for, possess, and land up to 18,000 lb (9,525 kg) of scallop meats per trip. No vessel fishing in the Hudson Canyon Access Area may possess or land, more than 50 bu (17.62 hl) of in-shell scallops shoreward of the VMS demarcation line.

(6) *Gear restrictions.* The vessel must fish with or possess scallop dredge or trawl gear only in accordance with the restrictions specified in § 648.51(a) and (b), except that the mesh size of a net, net material, or any other material on the top of a scallop dredge in use by or in possession of the vessel shall not be smaller than 10.0 inches (25.40 cm) square or diamond mesh.

(7) *Transiting.* While outside a Sea Scallop Access Area on a Sea Scallop Access Area trip, the vessel must have all fishing gear stowed and unavailable for immediate use as specified in § 648.23(b), unless there is a compelling safety reason.

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

(b) *Accrual of DAS.* For each Hudson Canyon Access Area trip, a vessel on a

Hudson Canyon Access Area trip shall have 12 DAS deducted from its access area DAS allocation specified in paragraph (a)(3) of this section, regardless of the actual number of DAS used during the trip.

(c) *Increase of possession limit to defray costs of observers.*—(1) *Observer set-aside limits by area.* The observer set-aside for the Hudson Canyon Access Area is 187,900 lb (85.2 mt).

(2) *Defraying 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 (c)(1) of this section. Owners of limited access scallop vessels will 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 will notify owners of limited access 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.

(d) *VMS polling.* For the duration of the Sea Scallop Area Access Program, as described under this section, all sea scallop limited access vessels equipped with a VMS unit shall be polled at least 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 for the polling.

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