

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on August 2, 2000, (65 FR 41015, July 3, 2000) NMFS implemented a commercial quota of 3.87 million lb (1.76 million kg) for the Atlantic migratory group of Spanish mackerel. For the southern zone, NMFS specified an adjusted quota of 3.62 million lb (1.64 million kg) calculated to allow continued harvest at a set rate for the remainder of the fishing year in accordance with 50 CFR 622.44(b)(2). In accordance with 50 CFR 622.44(b)(1)(ii)(C), after 75 percent of the adjusted quota of Atlantic group Spanish mackerel from the southern zone is taken until 100 percent of the adjusted quota is taken, Spanish mackerel in or from the EEZ in the southern zone may be possessed on board or landed from a permitted vessel in amounts not exceeding 1,500 lb (680 kg) per day. The southern zone for Atlantic migratory group Spanish mackerel extends from 30°42'45.6" N. lat., which is a line directly east from the Georgia/Florida boundary, to 25°20.4' N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary.

NMFS has determined that 75 percent of the adjusted quota for Atlantic group Spanish mackerel from the southern zone has been taken. Accordingly, the 1,500 lb (680 kg) per day commercial trip limit applies to Spanish mackerel in or from the EEZ in the southern zone effective 6 a.m., local time, March 1, 2004, through March 31, 2004, unless changed by further notification in the **Federal Register**.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA,

(AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B), as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action in order to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment will require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: February 26, 2004.

**Bruce C. Morehead,**

*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. 040130031-4070-02; I.D. 012704D]

**RIN 0648-AR92**

**Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; 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:** Final emergency rule.

**SUMMARY:** This emergency rule implements, as of March 1, 2004, an area access program for the Hudson Canyon Area. The area access program continues the controlled access program that has been implemented through Frameworks 14 and 15 to the Atlantic

Sea Scallop Fishery Management Plan (FMP) with modifications similar to the measures proposed in Amendment 10 to the FMP. The measures in this emergency action will be in place for 180 days and may be extended, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action is necessary to avoid localized overfishing of sea scallops in the Hudson Canyon Area, and will help ensure that fishing mortality rates are more consistent with the status of the scallop resource while not exceeding the target thresholds established in the FMP.

**DATES:** Effective February 27, 2004, through August 30, 2004. This rule will be implemented March 1, 2004, through August 30, 2004.

**ADDRESSES:** Copies of the Environmental Assessment (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:**

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**SUPPLEMENTARY INFORMATION:** 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). Details about the development of this program were provided in the proposed rule for this action, and are not repeated here. 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 New England Fishery Management Council (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, with the Notice

of Availability published on January 16, 2004 (69 FR 2561).

The Council's December 2003 submission of Amendment 10 means that it will not be possible to implement the action, if approved, by the start of the fishing year on 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 final emergency action will 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 will allow the resource within the Hudson Canyon Area to be harvested at appropriate levels, and will 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 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 will 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 when it was in development, otherwise, NMFS would have initiated 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 will result in serious conservation and economic problems for the fishery. NMFS published a proposed emergency rule on February 4, 2004 (69 FR 5307) and requested public comment. Comments and responses are addressed in this final rule.

#### Final Action

The final 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 fishing under DAS 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 will make the possession limit for these vessels consistent with the existing possession limit in open fishing areas).

#### Comments and Responses

Four sets of comments were submitted in response to the proposed rule for the emergency action from the Council, the Fishery Survival Fund (FSF) and two members of the public.

*Comment 1:* One individual urged NMFS to keep the Hudson Canyon Area closed and immediately establish other marine sanctuary areas so that fish stocks do not continue to be decimated.

*Response:* NMFS considered closing the Hudson Canyon Access Area as an alternative to the emergency action. However, closure of this area was deemed to be unwarranted given the analyses for this action and in Amendment 10 that indicate that controlled harvest of the area should be maintained for an additional 2 years, beginning in 2004. Moreover, it would be inappropriate to establish marine sanctuaries in an emergency action given the narrow scope of such an action.

*Comment 2:* One individual commented that quotas are already too high, even in this alleged emergency. The emergency rule should cut all such quotas by 50 percent and 10 percent every year thereafter.

*Response:* NMFS assumes that the commenter is referring to DAS allocations. NMFS disagrees with the comment. The scallop resource condition actually warrants a higher level of harvest than would occur without any action. The DAS schedule in the current regulations would achieve

a fishing mortality level well below the target prescribed for the scallop fishery.

*Comment 3:* One individual commented that NMFS should establish email communication for comments on NMFS actions.

*Response:* NMFS now requires that all actions soliciting public comment include email addresses for electronic commenting (E-comments).

*Comment 4:* The Council is concerned that vessels will charge into the Hudson Canyon Area to fish all four trips using 3.5-inch (8.9-cm) rings, particularly in areas where small scallops occur.

Amendment 10 proposes to require vessels fishing the Hudson Canyon Area to use gear with larger rings and to protect small scallops in the southwest corner of the Hudson Canyon Area by including this portion of the area as part of a closed area. The Council states that the allocation of four trips in Amendment 10 was calculated to produce optimum yield with 4-inch (10.2-cm) rings, and that an allocation as high as four trips may not be appropriate if vessels using 3.5-inch (8.9-cm) rings utilize the majority of the four trip allocation. The Council therefore recommends that the emergency action allocate no more than one Hudson Canyon Area trip per limited access vessel.

*Response:* The comment implies that Amendment 10 will definitely be implemented prior to expiration of the emergency action. However, NMFS has not determined that Amendment 10 will be approved, and allocating only one trip would be overly restrictive if Amendment 10 is not approved. While 4-inch (10.2-cm) rings may provide for long-term benefits according to the analyses included in Amendment 10, NMFS does not expect these benefits to come to light in this action which is limited in duration. Therefore, given the impracticability of establishing a new gear requirement in the limited timeframe of this emergency action, NMFS has determined that maintaining the 3.5-inch (8.9-cm) ring size requirement is appropriate for this limited action.

*Comment 5:* The Council is concerned about opening the Hudson Canyon Area to access by vessels using general category permits or limited access vessels fishing under general category rules. The Council states that the intent of Amendment 10 was to allow access by general category vessels in the future when new controlled access areas are reopened, and to allow for them to land 400 lb (181.44 kg) of scallops. However, the comment notes that the Council intended to develop additional management measures including

mandatory vessel monitoring systems, mandatory observers on selected trips, and a 2-percent TAC set-aside to cap the number of general category trips into reopened areas. The comment states that, because none of these measures are available for Hudson Canyon Area access, the Council did not intend to allow general category access. The Council, therefore, recommends that the emergency action continue the existing 100-lb (45.36-kg) scallop possession limit for vessels fishing under general category rules within the Hudson Canyon Access Area.

*Response:* Based on historical information of general category activity in the fishery, there is no evidence that the impacts of fishing activity by general category vessels operating with a 400 lb (181.44 kg) possession limit will jeopardize the scallop resource within the Hudson Canyon Access Area in the context of this temporary, limited action. Moreover, allowing a 400-lb (181.44-kg) possession limit for general category vessels and limited access vessels fishing outside of the DAS program will reduce the enforceability concerns associated with having different possession limits for general category vessels fishing inside and outside of the Hudson Canyon Access Area. NMFS's review of the Amendment 10 document does not clearly support the Council intent described in their comment above. NMFS urges the Council to provide more details about the record supporting this comment so the intent can be properly reflected in any final action on Amendment 10, if approved.

*Comment 6:* The Council commented that, although the Amendment 10 analysis shows substantial abundance of small scallops in the Elephant Trunk area, the Council agrees that the benefits derived from closing the area on March 1, 2004, until implementation of Amendment 10, if approved, are reduced with a 34 DAS allocation for full-time vessels. If Amendment 10 is delayed more than anticipated, or higher DAS allocations are available, however, the Council recommends reconsideration of the decision to let the Elephant Trunk area remain open.

*Response:* NMFS agrees that, if Amendment 10 is approved, the benefits of a short-term closure of the Elephant Trunk may be negligible. NMFS did not consider closure of the area as an alternative because conducting the necessary analysis may have delayed the action beyond March 1, 2004, and defeating the benefits of proceeding with an emergency action.

*Comment 7:* One individual commented that the closure of the

Hudson Canyon Access Area is based on Amendment 7 to the FMP, which established the closure. The commenter stated that Amendment 7 is not based on science and ignored relevant science and environmental conditions.

*Response:* NMFS disagrees. While Amendment 7 originally established the 3-year closure of the Hudson Canyon Area, this emergency action will continue a controlled access program for the Hudson Canyon Access Area based on several years of controlled harvest strategies. The management actions that established area access all were based on the best available scientific information.

*Comment 8:* The FSF commented in support of the emergency action but requested that NMFS consider a provision or policy to address trips terminated early due to unforeseen circumstances (i.e., the broken trip provision). The FSF also urged NMFS to consider a closure of the Elephant Trunk area to scallop fishing to protect the large concentration of small scallops in the area.

*Response:* Because of the limited scope of this action, it is not possible to address the broken trip issue at this time. NMFS could not consider the broken trip provision that is proposed in Amendment 10 because the provision would require a collection of information that has not been approved by the Office of Management and Budget (OMB). As in prior years, NMFS will consider broken trips on a case by case basis. If Amendment 10 is approved, all relevant implementation issues associated with the broken trip provision would be considered.

NMFS did not consider closure of the Elephant Trunk for the reasons explained in the response to Comment 6.

#### **Changes From the Proposed Rule**

The regulatory text in § 648.14, paragraphs (30) and (31) has been changed to clarify the prohibition relative to scallop possession limits.

#### **Classification**

A formal section 7 consultation under the Endangered Species Act was initiated for the Atlantic sea scallop fishery on November 21, 2003, and subsequently included consideration of the measures included in this emergency action. In a biological opinion dated February 23, 2004, the Regional Administrator determined that fishing activities conducted under the emergency rule are not likely to jeopardize the continued existence of any endangered or threatened species or

result in the destruction or adverse modification of critical habitat.

As explained in greater detail elsewhere in the preamble to this final rule, the Assistant Administrator for Fisheries, NOAA, finds that the need to implement these measures in a timely manner to avoid excessive localized fishing mortality in the Hudson Canyon Access Area, constitutes good cause under the authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date. Without the emergency rule, the Hudson Canyon Area will open to fishing without an area access program on March 1, 2004. This area was initially closed to protect concentrations of juvenile scallops, which have since grown to harvestable size. However, for the past 3 years, fishing in this area has been allowed, but with controls. 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. This emergency rule should prevent a derby style fishery from occurring in the Hudson Canyon Area.

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

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA) prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the discussion that follows, the comments and responses to the proposed rule, and the IRFA and other analyses completed in support of this action. A copy of the IRFA is available from the Regional Administrator (see **ADDRESSES**).

### Final Regulatory Flexibility Analysis

#### Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to the proposed rule and is not repeated here.

#### Summary of Significant Issues Raised in Public Comments

Four sets of comments were submitted on the proposed rule, but none contained comments on the economic impacts of this rule.

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

The measures implemented by 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 FRFA

because they all 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 FRFA. 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.

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

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements.

#### Minimizing Significant Economic Impacts on Small Entities

The alternatives to the final 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 final 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 because lower overall DAS allocations would constrain landings.

#### 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 will be sent to all holders of permits issued for the Atlantic sea scallop fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see **ADDRESSES**) and may be found at the following web site: <http://www.nmfs.gov/ro/doc/nero.html>.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 26, 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 § 648.14, paragraphs (h)(30), (h)(31), and (i)(8) are revised to read as follows:

#### § 648.14 Prohibitions.

\* \* \* \* \*

(h) \* \* \*

(30) Possess or 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 not declared into the Sea Scallop Area Access 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. Possess more than 400 lb. (181.44 kg) of scallop meats or 50 bu (17.62 hl) of in-shell scallops when fishing outside the scallop DAS program.

(31) Fail to stow gear in accordance with § 648.23(b), unless there is a compelling safety reason, while a vessel is outside of a Sea Scallop Access Area on a Sea Scallop Access Area trip.

(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 (b)(2) (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
<i>DAS Category</i>						
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 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 30, 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 30, 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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