

99313	Nursing fac care, subseq	\$ 84.34	\$ 85.71	2%	70.95	\$ 71.73	1%
99348	Home visit, est patient	\$ 73.85	\$ 74.31	1%	N/A	N/A	N/A
99350	Home visit, est patient	\$166.52	\$167.74	1%	N/A	N/A	N/A
G0008	Admin influenza virus vac	\$ 3.98	\$ 7.72	94%	N/A	N/A	N/A
G0009	Admin pneumococcal vaccine	\$ 3.98	\$ 7.72	94%	N/A	N/A	N/A
G0010	Admin hepatitis b vaccine	\$ 3.98	\$ 7.72	94%	N/A	N/A	N/A

**BILLING CODE 4120-01-C***Impact on Beneficiaries*

We do not believe that any problems regarding beneficiary access to care will result from changes in this rule. Moreover, it is possible that potential problems regarding beneficiary access to care that could have resulted from the 4.4 percent reduction contained in the December 31, 2002, final rule (67 FR 79966) will be alleviated by the increase in payment being announced in this rule. Nevertheless, we believe it remains important to continue our efforts to monitor beneficiary access to care.

Any change in Medicare payments will have an impact on beneficiary cost-sharing. If the 4.4 percent reduction were to go into effect and beneficiary access to care were reduced, it is possible that beneficiaries would have lower coinsurance costs but might have problems with access to services (for example, whether physicians continue to see existing or new Medicare beneficiaries). Because we do not know the impact of the 4.4 percent reduction on beneficiary access to care, it is difficult to estimate the effect on out-of-pocket costs. Assuming beneficiary access to care were unaffected, we estimate that the increase in the 1.6 percent increase in the CF compared to a 4.4 percent reduction would increase beneficiary coinsurance liabilities by approximately \$300 million in FY 2003 or about \$80 million more than if the rates applied in 2002 remained in effect for the remainder of 2003. Some of the increased costs of beneficiary coinsurance may be incurred by the many policies that supplement Medicare. We would note that the 1.6 percent increase will only marginally increase out-of-pocket costs for beneficiaries that do not have any insurance other than Medicare.

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget reviewed this regulation.

This final rule is issued under the authority of sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 19, 2003.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: February 24, 2003.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 03-4862 Filed 2-26-03; 11:47 am]

**BILLING CODE 4120-01-P**

**DEPARTMENT OF DEFENSE****48 CFR Part 214****Defense Federal Acquisition Regulation Supplement; Technical Amendments; Correction**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Correction to final rule.

**SUMMARY:** DoD is issuing a correction to the final rule published at 68 FR 7438-7441 on February 14, 2003, making technical amendments to the Defense Federal Acquisition Regulation Supplement. This correction is needed because the February 14, 2003, final rule contained an incorrect paragraph designation.

**EFFECTIVE DATE:** February 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0311; facsimile (703) 602-0350.

**Correction**

In the issue of Friday, February 14, 2003, on page 7439, in the third column, amendatory instruction 16 and the corresponding regulatory text are corrected by removing “(vii)” and adding in its place “(viii)”.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

[FR Doc. 03-4699 Filed 2-27-03; 8:45 am]

**BILLING CODE 5001-08-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 030108004-3044-02; ID 010303B]

**RIN 0648-AQ28**

**Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 15**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Framework 15 to the Atlantic Sea Scallop Fishery Management Plan (FMP) developed by the New England Fishery Management Council (Council). This final rule implements management measures for the 2003 fishing year, including a days-at-sea (DAS) adjustment, and continuation of a Sea Scallop Area Access Program (Area Access Program) for 2003. The intent of this action is to achieve the goals and objectives of the FMP under the Magnuson-Stevens Fishery Conservation and Management Act and to achieve optimum yield (OY) in the scallop fishery. In addition, this final rule includes regulatory text that codifies an additional gear stowage provision for scallop dredge gear that was established by the Administrator, Northeast Region, NMFS (Regional Administrator) in 2001.

**DATES:** Effective March 1, 2003.

**ADDRESSES:** Copies of Framework Adjustment 15, its 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>. A copy of the Final Regulatory Flexibility Analysis (FRFA) is available from Patricia A. Kurkul,

Regional Administrator, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Peter W. Christopher, Fishery Policy Analyst, 978-281-9288; fax 78-281-9135; e-mail *peter.christopher@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** On September 12, 2002, the Council adopted Framework 15 to the FMP, which includes annual management measures for the 2003 fishing year (March 1, 2003, through February 29, 2004). On January 16, 2003, NMFS published a proposed rule for Framework 15 (68 FR 2303). Framework 15 increases the annual DAS allocation and extends the Area Access Program in the Hudson Canyon and Virginia Beach Access Areas (Access Areas) for 2003. The only modification to the measures that have been in effect for the 2002 fishing year is an increase in the possession limit allowed to vessels participating in the Area Access Program. Framework 15 was developed during the latter stages of development of Amendment 10 to the FMP (Amendment 10) because it was clear that Amendment 10 would not be implemented by the start of the 2003 fishing year and, therefore, Framework 15 is considered to be an action of limited scope, which is intended to be a stop-gap measure until Amendment 10 is implemented. Additional details concerning the justification for and development of Framework 15 and the implementing regulations were provided in the preamble to the proposed rule and are not repeated here.

Framework 15 increases the annual DAS allocation from the DAS allocations scheduled to take effect in 2003 under Amendment 7 to the FMP. Framework 15 implements 120 full-time, 48 part-time, and 10 occasional DAS, which is an increase from the scheduled DAS of 45, 18, and 4 DAS allocations for full-time, part-time, and occasional vessels, respectively. These DAS allocations in Framework 15 are the same as the DAS that have been implemented since 1999. Framework 15 also extends the Area Access Program in the Access Areas for 2003.

The DAS allocations in Framework 15 are intended to achieve a fishing mortality rate (F) that is consistent with the F target in the FMP. The DAS allocations in Framework 15 are expected to achieve an F of approximately 0.155 for the resource overall. Although this F is still well below the F target, it reduces the potential for more damaging effects on the scallop resource and for impacts on

the physical environment that may be associated with higher DAS allocations.

The increase in the Area Access Program possession limit is intended to create an incentive for vessels to fish within the Area Access Program and is consistent with increasing catch rates in the areas. Due to stock abundance in the Areas, a higher level of F can occur in the Areas. This higher F allows for more trips and a higher trip limit, thereby creating more opportunity for vessels to fish in the Areas. The increased opportunity to fish in the Areas should create an incentive for vessels to utilize the Area Access Program where the scallop resource can be harvested at higher rates, thereby removing fishing pressure from other areas that may be more sensitive to fishing pressure.

#### Approved Measures

This action implements an annual DAS allocation of 120, 48, and 10 DAS for full-time, part-time, and occasional scallop vessels, respectively, for the 2003 fishing year. This represents an increase over the DAS allocations that would otherwise have become effective March 1, 2003, under Amendment 7 to the FMP (i.e., 45 full-time, 18 part-time, and 4 occasional). The 120, 48, and 10 DAS allocations have been in place each year since 1999, due to better conditions in the scallop resource than were anticipated in Amendment 7.

This final rule continues the Area Access Program that was implemented in the 2001 and 2002 fishing years. The Area Access Program allows controlled scallop fishing in the Hudson Canyon and Virginia Beach Sea Scallop Access Areas. Vessels are prohibited from fishing for scallops in the Sea Scallop Access Areas unless they are fishing under the Area Access Program. The intent of the Area Access Program is to prevent the uncontrolled harvest of a sensitive portion of the scallop resource while increasing the social benefits by allowing all limited access vessels the opportunity to fish in the Areas without creating a derby fishery, thereby increasing economic benefits by promoting an orderly fishery.

The 2003 Area Access Program begins on March 1, 2003. The 2003 Area Access Program will end when the total allowable catch (TAC) allocated to the Area Access Program is caught, or when vessels have used up their allocated number of trips.

The Area Access Program includes a TAC of 17.06 million lb (7,740 mt) and 0.23 million lb (105 mt) for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively. These TACs include set-asides of 2 percent and 1 percent to defray the costs of observers

and research, respectively. The TACs are expected to achieve an F of 0.32 in each of the two areas. Although this F exceeds the target F of 0.22 for the scallop fishery, it is not expected to jeopardize the rebuilding potential for the Mid-Atlantic stock. Rather, it is anticipated that the higher F for the Access Areas will allow greater levels of effort and catch within the Access Areas, thereby reducing effort and catch in other areas of the Mid-Atlantic. Therefore, overall F for sea scallops in the 2003 fishing year is expected to be 0.155. This anticipated impact on the distribution of fishing effort is expected to continue to provide for rebuilding of the Mid-Atlantic scallop stock and the scallop resource as a whole.

All limited access scallop vessels, including vessels that replace vessels that hold a scallop Confirmation of Permit History, are eligible to fish for the sea scallop TAC under the Area Access Program. Full-time and part-time scallop vessels are restricted to a total of three annual trips into the Hudson Canyon and Virginia Beach Sea Scallop Access Areas. A trip into either of the Areas will count as one of the allowed trips. Vessels participating in the Area Access Program are allowed to take only one of the three allocated trips before May 1, and only two of the three allocated trips before June 1. This measure is meant to prevent a derby style fishery from occurring and may reduce the potential for bycatch by limiting trips in late spring when bycatch, particularly of summer flounder, could be problematic. Vessels in the occasional permit category are allowed to conduct only one trip into the Area of their choice. Participating scallop vessels are allowed to possess and land from the Areas up to 21,000 lb (9,525.4 kg) of scallop meats per trip.

After taking into account data on the number of eligible vessels participating, and on the total number of trips taken, the Regional Administrator will consider adjusting the sea scallop possession limit for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas any time during the season and, on or after October 1, 2003, will consider allocating one or more additional trips for full-time and part-time vessels. In order for additional trips to be allocated, a sufficient amount of the sea scallop TAC must remain to warrant such an adjustment or allocation. In order for a vessel to participate in any additional Area Access Program trips that may be allocated on or after October 1, 2003, that vessel must have started at least one Area Access Program trip prior to September 1, 2003. Vessels with

occasional permits will not be allocated any additional trips.

Any trip of 10 DAS or less by a vessel fishing in the Area Access Program will be counted as 10 DAS. Any trip of over 10 DAS will be counted as the actual DAS used (e.g., if a vessel used 12 DAS, 12 DAS would be deducted from its annual DAS allocation). The purpose of the minimum 10 DAS count is to reduce the number of DAS that are available for use by vessels to fish in other areas, thereby reducing fishing mortality on the scallop resource overall by potentially reducing the number of scallops caught under DAS.

Vessels are allowed to use dredges or trawls when fishing in the Area Access Program. Dredge gear is required to be outfitted with a twine top with a minimum mesh size of 10 inches (25.40 cm). The purpose of increasing the minimum twine top mesh size measurement from 8 inches (20.32 cm) to 10 inches (25.40 cm) for the Area Access Program is to reduce bycatch of groundfish and other finfish. Research and experience from the Georges Bank and Southern New England Closed Area Sea Scallop Exemption Program demonstrate that the 10-inch (25.40-cm) mesh size may significantly reduce bycatch of certain species, especially flatfish species.

All scallop vessels fishing in the Area Access Program are required to have installed on board an operational vessel monitoring system (VMS) unit that meets the minimum performance criteria as specified at § 648.9(b). Vessels with occasional permits are the only limited access scallop vessels not currently required to have a VMS unit and would, therefore, be required to install an approved VMS unit in order to participate in the Area Access Program. Scallop vessels planning to fish in the Area Access Program are required to so declare by notifying the Regional Administrator through the VMS as described below.

Each vessel operator is required to inform NMFS of his/her intention to fish in the Sea Scallop Access Areas prior to the 25th day of the month preceding the month in question through the VMS e-mail system (e.g., if the vessel plans to fish in these areas in July, it would need to notify the Regional Administrator by June 25). This notification requirement facilitates placement of observers and provides for an estimate of the number of potential Area Access Program participating vessels in order to make preliminary projections of potential TAC harvest rates.

Vessel operators are required to report the following information to the

Regional Administrator prior to the 25th day of the month preceding the month in question: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, the area to be fished, and the anticipated number of trips to be taken in the area in question.

In addition, for the purpose of selecting vessels for observer deployment, a vessel's operator is required to provide notice to NMFS of the time, port of departure, and specific Access Area to be fished, at least 5 working days prior to the beginning of any trip on which it declares into the Area Access Program.

On the day the vessel leaves port to fish under the Area Access Program, the vessel owner or operator must declare into the Program through the VMS. Declaration into the fishery allows for more accurate and timely monitoring of the catch in the fishery.

The operator of each vessel participating in the Area Access Program is required to report specific information on a daily basis through the VMS. For each day of an Area Access Program trip, a vessel's operator is required to report the daily pounds (kg) of scallop meats kept, the area fished that day, and the Fishing Vessel Trip Report page numbers corresponding to the respective Sea Scallop Access Area trip. In addition, vessel operators on vessels carrying an observer are required to provide a separate report of the daily pounds (kg) of scallop meats kept on tows that were observed on that trip.

Vessels that have declared a trip into the Area Access Program are prohibited from possessing more than 50 U.S. bu (17.62 hl) shell-stock or 400 lb (181.4 kg) of meats of shell stock when outside the Access Areas. This limit for shell stock is considered part of the overall Area Access Program possession limit. A limit on the amount of sea scallops landed in the shell is necessary to monitor and enforce the overall meat weight possession limit requirement. Allowing vessels to retain a relatively minor amount of shell stock helps satisfy a market for large, whole scallops, without compromising the enforceability of the possession limit.

General category permitted vessels and limited access scallop vessels fishing outside a scallop DAS are allowed to fish in the Access Areas throughout the year, provided that no more than 100 lb (45.36 kg) of scallop meats are possessed on board the vessel when the vessel is in the Access Areas. These vessels are prohibited from possessing in-shell scallops while inside the Access Areas, except they are allowed to possess an equivalent of in-

shell scallops that are necessary to provide 100 lb (45.36 kg) of scallop meats. Vessels not fishing under the Area Access Program are allowed to transit the Access Areas with more than these possession limits on board, provided their gear is properly stowed according to § 648.23(b). This measure is intended to allow an incidental catch of scallops for scallop vessels that fish for other species outside the Access Areas and to allow for more direct transiting to and from other fishing areas.

To improve the enforceability of the Area Access Program, all limited access scallop vessels equipped with a VMS unit will be polled twice per hour, regardless of whether the vessel is enrolled in the Area Access Program or not. Also, vessels are required to stow all dredge or trawl gear while transiting to and from the Access Areas pursuant to the applicable gear stowage requirements specified in § 648.23. A new dredge gear stowage requirement included in this rule improves safety on board vessels transiting to and from the Access Areas. Finally, to ensure effective enforcement of the Area Access Program measures, vessels participating in the Area Access Program must land their scallop catch at one location for each trip.

Vessels are required to carry observers when requested. The Council has recommended 10-percent observer coverage for the Hudson Canyon Access Area and 20-percent observer coverage for the Virginia Beach Access Area. Observers will obtain information on catch, catch rates, and bycatch and may obtain information on gear efficiency and selectivity and on other characteristics of the fishery. The vessel owner is responsible for paying for the cost of the observer, regardless of whether any scallops are caught on the trip. At the discretion of the Regional Administrator, scallop vessels may be allocated an additional amount of sea scallops, not to exceed a cumulative total of 155 mt or 2 mt for the Hudson Canyon and Virginia Beach Access Areas, respectively, for each trip on which an observer is taken, to help defray the cost of the observer. Additional scallops to fund observers may not exceed a value equal to 2 percent of the overall scallop TAC. One percent of the scallop TAC for both the Hudson Canyon and Virginia Beach Access Areas has been set aside to pay for observers. Similarly, a value equal to 1 percent of the overall TAC has been added on to the amount of observer TAC, also to help vessels pay for the cost of observers. The allocation of 1 percent set-aside and 1 percent

additional observer TAC is consistent with the Area Access Program in 2001 and 2002, as well as the Georges Bank Closed Area Exemption Program. A TAC set-aside of 1 percent to fund research is also included as part of the Area Access Program. Amounts over the trip limits for sea scallop meats to be allocated for defraying research costs are limited, by area, up to 77 mt or 1 mt for the Hudson Canyon and Virginia Beach Access Areas, respectively. This research program for the Access Areas is modeled after the research program in the 2000 Georges Bank Sea Scallop Exemption Program. A Request for Proposals notice published in the **Federal Register** on January 17, 2003 (68 FR 2527), provides information on the submission process, eligibility criteria, proposal requirements and priorities, project evaluation, application deadlines and other requirements.

Finally, this final rule codifies a scallop dredge gear stowage provision that was established by the Regional Administrator in 2001. The new provision eliminates the need for vessel operators to disconnect towing wires and reel them fully onto the winch in order for the gear to be considered properly stowed. Reconnecting the wires at sea was determined to be dangerous, particularly in rough seas. The Regional Administrator has the authority to establish new gear stowage provisions through notification through a permit holder letter. Subsequent codification of the provision ensures proper implementation of the requirement.

A discussion of comments received in response to the proposed rule for Framework 15, and their responses, follows.

### Comments and Responses

Two comments were received on the proposed rule for Framework 15. While one comment was generally in support of the action, the other opposed it. Many of the specific issues raised in each comment highlight issues that were analyzed in Framework 15. Many of the issues and analyses included in Framework 15 are summarized in the following responses and the commenters and other interested members of the public should refer to the Framework 15 document for a more detailed discussion of the analyses (See **ADDRESSES** for a copy of Framework 15).

*Comment 1:* The Fisheries Survival Fund (FSF) commented in support of the measures contained in Framework 15, and urged timely implementation in order to avoid “economically devastating” default DAS reductions.

The FSF urged NMFS to give more emphasis in the final rule to the habitat and bycatch benefits of the 120–DAS allocation compared to the higher DAS allocation of 140 DAS that was calculated to be more consistent with the FMP’s target F.

*Response:* NMFS acknowledges FSF’s comments in support of Framework 15. With respect to the benefits of implementing 120 full-time DAS versus other DAS alternatives, NMFS has relied on the comparisons of costs and benefits of the various alternatives included in Framework 15. The habitat and bycatch benefits cannot be precisely determined because it is not possible to predict fully the behavior of the fishing fleet in response to these regulations. The amount of habitat and bycatch impact depends not only on the total fleet activity, but also on the distribution of fishing activity relative to the distribution of vulnerable habitats and bycatch. While less fishing usually means fewer impacts, and distribution of habitat or bycatch is known at a broad scale, the response of the fleet to changes in resource distribution and different DAS allocations is not well known. If reductions in DAS allocations were to cause industry to concentrate effort in less remote but more sensitive areas with respect to habitat and bycatch, then the benefits of lower DAS would be reduced. The Council recommended, and NMFS concurs, that the 120 full-time DAS allocation (48 part-time and 10 occasional DAS), combined with the Area Access Program, as a 1–year action, complies best with the goals and objectives of the Scallop FMP. Given the uncertainties of the fleet response to this action, the action is intended to balance conservation of the scallop resource and the economic benefits derived from fishing while minimizing, to the extent practicable, the known adverse effects on the environment, including habitat and species caught as bycatch, in the scallop fishery.

*Comment 2:* The FSF urged NMFS to reconsider industry recommendations for measures to address the issue of trips into the Area Access Program that are terminated unexpectedly. They advocate more flexibility in determining if such “broken” trips should be charged fewer DAS than the 10 DAS that are automatically charged under the Area Access Program. The FSF believes this is required by National Standard 10 of the Magnuson-Stevens Act, concerning safety at sea.

*Response:* NMFS understands the problems that arise as a result of the automatic deduction of 10 DAS for Area Access trips, but the Council, working

within the short-term context of this action, was unable to develop measures necessary to address broken trips that are clearly understood and can be effectively administered. There are alternatives being developed in Amendment 10 to address this concern. In the meantime, NMFS has determined that this concern can be addressed sufficiently through ad hoc determinations for each instance of a broken trip.

*Comment 3:* Oceana and the Conservation Law Foundation (Oceana/CLF) commented that Framework 15 allows overfishing in the open areas on Georges Bank and in the Mid-Atlantic. Oceana/CLF contends that the DAS alternative selected (120 full-time, 48 part-time, and 10 occasional DAS) does not constitute a sustainable management strategy for the sea scallop resource and is, therefore, inconsistent with the Magnuson-Stevens Act requirements to prevent overfishing. In addition, Oceana/CLF commented that overfishing in the Mid-Atlantic continues, despite actions under previous Frameworks that were intended to redirect effort into controlled access programs, but failed to do so. Oceana/CLF asserts that NMFS should adequately justify its support of the 120 DAS (“risk-prone”) alternative and better elaborate on the long-term effects of the action in the environmental analyses.

*Response:* The FMP and overfishing definition do not consider the open and closed areas separately (with the exception of the special program for the Area Access Program). While projections indicate that the DAS allocations, if analyzed according to discrete areas, may result in overexploitation of scallops in some areas, Framework 15 is based on analyzing fishing mortality on the resource as a whole. Under this analysis, the fishery overall would not exceed the F target of 0.22, due in part to continued large concentrations of scallops that cannot be fished in the Georges Bank and Southern New England groundfish closed areas.

The analyses in Framework 15 indicate that the 120–DAS alternative complies with the Magnuson-Stevens Act and achieves the goals and objectives of the FMP. Framework 15 clearly demonstrates that overfishing will not occur on the resource as a whole and that F will likely be less than Amendment 7 targets. The current condition of the scallop resource is rebuilt for both the Georges Bank and Mid-Atlantic stocks. To fish at the DAS level scheduled in Amendment 7 would cause the fishing level to fall

unnecessarily well below OY and cause substantial adverse economic and social effects on the scallop industry under rebuilt resource conditions.

The F in the Mid-Atlantic continues to be high, despite efforts in recent years to reduce the effective F through the Area Access Program. However, the FMP does not prescribe different management measures for each stock, consistent with National Standard 3. To enhance the incentive to fish in the Access Areas, Framework 15 allows for an increase in the F for the Area Access Program, which results in an increase in the possession limit. It is expected that this enhanced incentive will reduce fishing pressure in the Mid-Atlantic region outside of the Access Areas.

*Comment 4:* Oceana/CLF commented that the 100 DAS alternative has greater environmental, biological, and economic benefits than the 120-DAS alternative. Oceana/CLF commented that it is unclear what rationale NMFS is using to justify its proposed action of 120 DAS, when the analyses in Framework 15 clearly support the 100-DAS allocation alternative, touting the following environmental, biological and economic benefits: (1) Reduced unsustainable fishing mortality in the open fishing areas; (2) higher long-term net benefit (\$38 - \$42 million); (3) likely increase in future landings, rather than the sharp decline predicted under the proposed action; (4) reduced area affected by scallop dredging; and (5) reduced operational costs, and increased producer surplus and net benefits.

*Response:* Oceana/CLF has focused on the long-term effects of the DAS to be implemented through Framework 15. Framework 15 is intended as a short-term action while the comprehensive Amendment 10 is developed and implemented. In light of the short-term context of Framework 15, NMFS disagrees that Framework 15 clearly supports the 100 DAS alternative, since short-term losses associated with the alternative are not clearly outweighed by the benefits of the reduced DAS. The analysis demonstrates that the 120-DAS alternative, combined with the Area Access Program, has noticeably higher economic and social benefits with only marginal loss of benefits to the scallop resource overall and the environment in the short-term. NMFS believes that the short-term effects of the action are more relevant, because Framework 15 does not contemplate continuation of these measures alone for more than 1 year, despite the analyses that project the effects of the action over as many as 10 years.

*Comment 5:* Oceana/CLF commented that Framework 15 does not contain measures adequate to minimize adverse fishing impacts on known gravel habitats and sensitive EFH in open areas on Georges Bank. Oceana/CLF asserts that the 120-DAS alternative in Framework 15 "dramatically increases" the amount of EFH impacted by scallop dredging by 60 to 80 percent. Oceana/CLF also commented that the increase in EFH affected by scallop dredging under the 120-DAS alternative is exacerbated by a lack of management measures specifically designed to protect EFH. Oceana/CLF contends that prior scallop amendments modified the framework process "...so that habitat conservation measures may be approved by the Council in a more timely manner than the plan amendment process." Oceana/CLF commented that NMFS and the Council cannot rely on future amendments in the Scallop and Northeast Multispecies FMPs to implement appropriate measures to minimize the impacts on EFH. Finally, Oceana/CLF urged NMFS to take immediate action under Framework 15 to minimize fishing impacts on known gravel habitats and sensitive juvenile cod EFH and other groundfish EFH in the open areas on Georges Bank.

*Response:* NMFS disagrees that Framework 15 dramatically increases the amount of EFH impacted by scallop dredging. To draw that conclusion, Oceana/CLF compares the action in Framework 15 to the default measures that would otherwise become effective March 1, 2003. These measures include 45 full-time, 18 part-time, and 4 occasional DAS allocations that are well below any level of fishing effort that has occurred in the scallop fishery under recent management and recent historical scallop fishing activity. This conclusion ignores the practicability standard for analyzing the appropriateness of habitat mitigating measures. The 120-DAS alternative maintains the DAS allocations that have been in place since 1999. Therefore, the Framework 15 DAS allocation does not actually increase impacts on EFH at all, when compared to the status quo of current fishing activities.

Frameworks are required to comply with the Magnuson-Stevens Act and minimize the adverse effects of fishing on EFH to the extent practicable. In light of the drastic DAS reductions that would occur under Amendment 7, Framework 15 implements a more appropriate DAS allocation and takes practicable steps to minimize the impacts of the scallop fishery on EFH in order to comply with the Magnuson-Stevens Act and to meet the goals and

objectives of the FMP. It is not correct that framework actions must necessarily include a full reconsideration of EFH, or of any of the other 21 frameworkable measures included in the FMP.

Framework 15 was developed during the latter stages of development of Amendment 10 because it was clear that Amendment 10 would not be implemented by the start of the 2003 fishing year and, therefore, Framework 15 is considered to be an action of limited scope, which is intended to be a stop-gap measure until Amendment 10 is implemented. The Council is required to adjust management measures on an annual basis in order to make measures consistent with the condition of the resource and the status of the fishery. The Council and NMFS are maintaining extensive closures of areas of high scallop abundance and potential prime scallop fishing areas on Georges Bank and in Southern New England waters, which provide substantial protection of habitat. The Council is carrying out a full reconsideration of measures to address EFH through the more extensive public process associated with Amendment 10. NMFS notes that the measures have been highly controversial and complex and have been the subject of lengthy debate.

Taking into account the short-term context of Framework 15, the OY calculations, the areas closed to scallop fishing, and other measures already in place that provide extensive EFH protection, Framework 15 minimizes the impacts on EFH to the extent practicable.

*Comment 6:* Oceana/CLF commented that Framework 15 does not contain measures adequate to accurately report or minimize bycatch of overfished groundfish, skates and other marine life. Specifically, Oceana/CLF commented that high levels of bycatch of fish and other marine life continue in the scallop fishery--most of it unaccounted for due to a lack of observer coverage and unreliable vessel trip report data. Oceana/CLF urged NMFS to improve its compliance with the Endangered Species Act (ESA) with regard to the scallop fishery and to complete a Biological Opinion (BO) for Framework 15 prior to its approval and implementation. Oceana/CLF concluded by requesting that NMFS not approve Framework 15 until it contains adequate measures to: (1) protect sensitive juvenile cod and other sensitive groundfish EFH; (2) increase levels of observer coverage throughout the entire scallop fishery; and (3) stop all illegal takes of threatened and endangered sea turtles and minimize bycatch of other overfished and at-risk species (e.g.,

barndoor skate, monkfish, and other skates).

*Response:* National Standard 9 requires that FMPs minimize, to the extent practicable, bycatch and bycatch mortality. Measures currently in place in the scallop fishery, and the measures included in Framework 15, take practicable steps to reduce bycatch in the sea scallop fishery. Gear restrictions, i.e. increasing the minimum twine top mesh size to 10 inches (25.40 cm), in the Area Access Program are intended to reduce bycatch in scallop dredge gear. NMFS is attempting to improve observer coverage in this and other fisheries, i.e. increased percentage coverage in access areas (10–20 percent) although a large increase in observer coverage is limited by Agency resources. Limiting the number of trips by month in the Area Access Program is also designed to reduce bycatch. In addition, maintaining groundfish closed areas will reduce bycatch of such species as yellowtail flounder and skates in the scallop fishery overall. Oceana/CLF specifically noted that much bycatch is unaccounted for due to lack of observer coverage. The lack of more specific information about bycatch and how to avoid it complicates efforts to develop specific management measures to reduce it. In light of the limited scope and context of Framework 15, NMFS has determined that Framework 15 complies with the Magnuson-Stevens Act concerning bycatch requirements. The specific concerns raised by Oceana/CLF have been addressed in Framework 15.

In response to reports of sea turtle takes in the sea scallop fishery, NMFS reinitiated consultation under section 7 of the ESA on December 21, 2001. NMFS completed a BO for the scallop fishery as a whole, including the measures included in Framework 15, on [insert date BO completed]. The BO concluded that the continued implementation of the scallop fishery and the proposed activity may adversely affect but is not likely to jeopardize the continued existence of loggerhead, Kemp's ridley, green, and leatherback sea turtles. In the BO, NMFS provides an incidental take statement allowing the annual take of 88 loggerhead (up to 25 lethal), 7 Kemp's ridley (2 lethal), and 1 green (lethal or non-lethal) sea turtles in the sea scallop dredge fishery. In addition, the incidental take statement allows the lethal or non-lethal observed annual take of one loggerhead, Kemp's ridley, green, or leatherback sea turtles in the scallop trawl fishery.

### Changes From the Proposed Rule

One change to the regulatory text in the proposed rule has been made. In § 648.58, paragraph (c)(6) is revised to more clearly address the intent of the prohibition to prevent vessels participating in the Area Access Program from loading up on shell-stock and then shucking the scallops inside the VMS demarcation line.

### Classification

The Administrator, Northeast Region, NMFS, determined that Framework 15 is necessary for the conservation and management of the Atlantic sea scallop fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

For the reasons stated below, the Assistant Administrator for NOAA (AA) waives the 30-day delay in effectiveness for the Framework 15 measures under 5 U.S.C. 553(d)(1) because this rule relieves a restriction.

This action implements DAS allocations of 120, 48, and 10 DAS for full-time, part-time, and occasional scallop vessels, respectively, and continues the Hudson Canyon and Mid-Atlantic Area Access Program with an increase in the possession limit for vessels participating in the Area Access Program. Scallop vessels are precluded from: exceeding the DAS that are allocated to the vessel based on its permit category; fishing in the Hudson Canyon or Virginia Beach Access Areas unless they are participating in the Area Access Program; fishing for more than three trips in the Area Access Program; possessing more than the sea scallop possession limit in the Area Access Program; and violating any provisions of the regulations of the Northeastern United States that are not modified by this action.

The annual DAS allocations implemented in this final rule are less restrictive than the DAS allocations that would otherwise go into effect on March 1, 2003. The DAS scheduled to take effect on March 1, 2003, would have considerable negative economic and social impacts because limited access scallop vessels would only be able to fish 45 full-time, 18 part-time, and 4 occasional DAS, as compared to 120 full-time, 48 part-time and 10 occasional DAS under the preferred alternative. Further, the DAS allocation under Framework 15 would be the same as the allocation last year and therefore would be no more restrictive. In addition, the Area Access Program is a continuation of the program that has been in place for the last 2 years. The only change to the program is an increase in the possession

limit. The Council prepared an environmental assessment (EA) for this framework and the Assistant Administrator for Fisheries, NMFS, concluded that there will be no significant impact on the human environment as a result of this rule. This action will result in a minor increase in fishing mortality on sea scallops and will allow continued economic viability of the fishery. The Area Access Program will provide an incentive for vessels to direct fishing effort away from more sensitive open areas in the Mid-Atlantic. A copy of the EA is available from the Council (see **ADDRESSES**).

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

Pursuant to 5 U.S.C. 604(a) of the Regulatory Flexibility Act, NMFS prepared an FRFA for Framework 15, which consists of the IRFA, comments and responses contained in this final rule, and a summary of the analyses prepared in support of this final rule. A copy of the FRFA is available from the Regional Administrator (see **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here. A copy of the IRFA is available from the Council (see **ADDRESSES**).

The reasons why action by the agency is being considered and the objectives of the action are explained in the preambles to the proposed rule and this final rule and are not repeated here. This action does not contain reporting and recordkeeping requirements. It will not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Fishery Conservation and Management Act and regulations at 50 CFR part 648.

### Public Comments

Two sets of comments were received on the proposed rule and are responded to in this rule. One comment addressed indirectly the results of the IRFA and the second set of comments related to issues other than economic impacts. In this comment, the FSF urged timely implementation of the Framework 15 measures in order to avoid "economically devastating" default DAS reductions. NMFS agrees with the FSF that the DAS reductions included in Amendment 7 to the FMP and scheduled to take effect on March 1, 2003, under the no action alternative will have substantially negative economic impacts for vessels participating in the sea scallop fishery and would not be necessary, given the

condition of the scallop resource. This “no action” alternative would be inconsistent with National Standard 1 because it would fail to achieve OY in the scallop fishery. It may also cause safety at sea concerns, as vessels may push crews and trip lengths to hazardous levels.

**Number of Small Entities**

This action and its alternatives could affect any commercial vessel holding an active Federal permit for sea scallops. Data from the 2001 Northeast permit database show that 310 commercial vessels were permitted with limited access scallop permits, and 2,293 commercial vessels were permitted with general category (open access) scallop permits. Information from the 2002 fishery remains incomplete. The majority, if not all, of the federally permitted vessels readily fall within the Small Business Administration’s (SBA) definition of small business and the Regulatory Flexibility Act’s definition of “small entity.” The management measures included in this final rule propose to increase DAS allocations in the same proportion for each category of the limited access scallop permit. The resulting increase in profits, costs and net revenues are not expected to be disproportional for small versus large entities.

**Minimizing Economic Impacts on Small Entities**

Framework 15 contains six alternatives, including no action and status quo alternatives. Each alternative, with the exception of the no action alternative, consists of DAS allocations for full-time, part-time, and occasional scallop vessels and a TAC and possession limit derived from a target F for the Access Areas. The alternatives are described in this discussion as the full-time DAS allocation and the target F rate in the Area Access Program. The no action alternative would implement 45 full-time, 18 part-time, and 4 occasional DAS and would open the Hudson Canyon and Virginia Beach Access Areas to general scallop fishery management. The status quo alternative includes 120 full-time DAS and an Area Access Program F of 0.2.

This final rule will implement the 120 full-time DAS with an Area Access Program F = 0.32, which minimizes economic impacts on small entities. The impacts of the proposed alternatives on

revenues, costs, and profits of an average vessel were analyzed. The increase in the days-at-sea allocations to 100, 120 or 140 full-time DAS allocations from the 45 full-time DAS allocation scheduled for the 2003 fishing year under Amendment 7 and the Area Access Program will have positive economic impacts on the vessels. The revenues per full-time vessel in 2003 are expected to increase by 56 percent for the preferred action (120 DAS, F=0.22), and by 38 percent (100 DAS, F=0.2) to 58 percent (140 DAS, F=0.32) for non-preferred alternatives compared to the no action (45 full-time DAS, no Area Access Program). The no action alternative would represent a 15-percent decline in revenues from actual revenues in 2002. The profits are expected to more than double under all alternatives including the preferred action relative to the no action alternative. Although the analysis in this section is conducted for an average full-time vessel in the scallop fishery, the results are expected to be positive for all full-time, part-time and occasional vessels as well since their DAS allocations will also be adjusted upwards and they will be able to participate in the Area Access Program.

**Small Entity Compliance Guide**

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the Atlantic 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 are also available at the following web site: <http://www.nmfs.gov/ro/doc/nero.html>.

A formal section 7 consultation under the ESA was initiated for the scallop fishery, including the measures contained in Framework 15. In a BO

dated [insert date of BO], the AA determined that fishing activities conducted in the scallop fishery, including activities under Framework 15 and their implementing regulations, are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 25, 2003.

**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 § 648.23, paragraph (b)(2) is revised to read as follows:

**§ 648.23 Gear restrictions.**

\* \* \* \* \*

(b) \* \* \*

(2) *Scallop dredges.* (i) The towing wire is detached from the scallop dredge, the towing wire is completely reeled up onto the winch, the dredge is secured and the dredge or the winch is covered so that it is rendered unuseable for fishing; or

(ii) The towing wire is detached from the dredge and attached to a bright-colored poly ball no less than 24 inches (60.9 cm) in diameter, with the towing wire left in its normal operating position (through the various blocks) and either is wound back to the first block (in the gallows) or is suspended at the end of the lifting block where its retrieval does not present a hazard to the crew and where it is readily visible from above.

\* \* \* \* \*

3. In § 648.53, the table in paragraph (b) is revised to read as follows:

**§ 648.53 DAS allocations.**

\* \* \* \* \*

(b) \* \* \*

DAS Category	1999–2000	2000–2001	2001–2002	2002–2003	2003–2004	2004–2005	2005–2006	2006–2007	2007–2008	2008
Full-time	120	120	120	120	120	34	35	38	36	60
Part-time	48	48	48	48	48	14	14	15	17	24

DAS Category	1999–2000	2000–2001	2001–2002	2002–2003	2003–2004	2004–2005	2005–2006	2006–2007	2007–2008	2008
Occasional	10	10	10	10	10	3	3	3	4	5

\* \* \* \* \*

4. In § 648.57, the introductory text of paragraphs (a) and (b) are revised to read as follows:

**§ 648.57 Closed and regulated areas.**

(a) *Hudson Canyon Sea Scallop Access Area.* Through February 29, 2004, except as provided in §§ 648.52 and 648.58, no vessel may fish for scallops in 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:

\* \* \* \* \*

(b) *Virginia Beach Sea Scallop Access Area.* Through February 29, 2004, except as provided in §§ 648.52 and 648.58, no vessel may fish for scallops in or land scallops from the area known as the Virginia Beach Sea Scallop Access Area, and no vessel may possess scallops in the Virginia Beach Sea Scallop Access Area, unless such vessel is only transiting the areas 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 Virginia Beach 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:

\* \* \* \* \*

5. In § 648.58, paragraphs (c)(1), (c)(4), (c)(6), (e)(2), (e)(3)(ii), (e)(4)(ii), and (f) are revised to read as follows:

**§ 648.58 Sea Scallop Area Access Program.**

\* \* \* \* \*

(c) \* \* \*

(1) *Season*—From March 1, 2003, through February 29, 2004, vessels participating in the Sea Scallop Area Access Program may fish for or possess

sea scallop in or from the respective Sea Scallop Access Areas specified in § 648.57, unless access to these areas is terminated as specified in paragraph (f) of this section. Should the 2002 fishing year season be closed early (i.e., prior to February 28, 2003), as described in this paragraph (c)(1), the Sea Scallop Area Access Program season for fishing year 2003 will begin on April 1, 2003.

\* \* \* \* \*

(4) *Number of trips*—(i) *Full and part-time vessels.* Full and part-time vessels are restricted to a total of three trips into the Sea Scallop Access Areas, unless otherwise authorized by the Regional Administrator as specified in paragraph (e)(2) of this section. A trip to either Area counts as one trip. Full-time and part-time vessels participating in the Sea Scallop Area Access Program may start no more than one of their three allowed Area Access Program trips before May 1, 2003, and no more than two of their three allowed Area Access Program trips before June 1, 2003.

(ii) *Occasional scallop vessels.* Occasional vessels may fish only one trip under the Sea Scallop Area Access Program. The one allowed trip may be conducted in either the Hudson Canyon or Virginia Beach Sea Scallop Access Area specified in § 648.57 at any time during the season, as specified in paragraph (c)(1) of this section.

\* \* \* \* \*

(6) *Possession and landing limits*—Unless otherwise authorized by the Regional Administrator as specified in paragraph (e) of this section, after declaring into the Sea Scallop Area Access Program in fishing year 2003, a vessel owner or operator may fish for, possess, and land up to 21,000 lb (9,525.4 kg) of scallop meats per trip. No vessel participating in the Sea Scallop Area Access Program may possess shoreward of the VMS demarcation line or land, more than 50 bu (17.62 hl) of in-shell scallops.

\* \* \* \* \*

(e) \* \* \*

(2) *Adjustment process for number of trips for Hudson Canyon and the Virginia Beach Sea Scallop Access Areas.* On or after October 1, 2003, if the scallop catch in the Hudson Canyon and/or Virginia Beach Sea Scallop Access Areas is less than the scallop TACs specified for fishing year 2003 in paragraph (f) of this section, the Regional Administrator may allocate

one or more additional trips for the Hudson Canyon and/or Virginia Beach Sea Scallop Access Areas for full and part-time limited access sea scallop vessels that declared into and began a trip under the Sea Scallop Area Access Program prior to September 1, 2003. This adjustment may be made if the Regional Administrator determines that such adjustment will likely allow the scallop TAC to be reached without exceeding it. Notification of this adjustment to the trip limit will be provided to the vessel through a permit holder letter issued by the Regional Administrator. Vessels with occasional permits would not be allocated an additional trip.

(3) \* \* \*

(ii) *Observer set-aside limits by area.* The cumulative amount of scallop authorized under this part to be taken by vessels in excess of the possession limits specified in paragraph (c)(6) of this section to defray the cost of an observer shall not exceed 2 percent of the overall TAC for each Sea Scallop Access Area. The following amounts represent 2 percent of those TACs:

(A) Hudson Canyon Sea Scallop Access Area - 2003 area access program - 155 mt;

(B) Virginia Beach Sea Scallop Access Area - 2003 area access program - 2 mt.

\* \* \* \* \*

(4) \* \* \*

(ii) *Research set-aside limits and number of trips by area.* The cumulative amount of scallop authorized under this part to be taken by vessels in excess of the possession limits specified in paragraph (c)(6) of this section to defray the cost of sea scallop research shall not exceed 1 percent of the overall TAC for each Sea Scallop Access Area. The following amounts represent 1 percent of those TACs:

(A) Hudson Canyon Sea Scallop Access Area - 2003 area access program - 77 mt;

(B) Virginia Beach Sea Scallop Access Area - 2003 area access program - 1 mt.

\* \* \* \* \*

(f) *Termination of the Sea Scallop Area Access Program*—(1) *Hudson Canyon Sea Scallop Access Area.* The Hudson Canyon Sea Scallop Access Area fishery for fishing year 2003 shall be terminated as of the date the Regional Administrator projects that 7,585 mt of sea scallops (the TAC less the observer and research set-asides) will be caught



by vessels fishing in the Hudson Canyon Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(2) *Virginia Beach Sea Scallop Access Area*. The Virginia Beach Sea Scallop

Access Area fishery for fishing year 2003 shall be terminated as of the date the Regional Administrator projects that 103 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Virginia Beach Sea Scallop Access Area

described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

\* \* \* \* \*

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