



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
 NATIONAL MARINE FISHERIES SERVICE  
 NORTHEAST REGION  
 One Blackburn Drive  
 Gloucester, MA 01930-2298

May 23, 2008

SMALL ENTITY COMPLIANCE GUIDE

Dear Sea Scallop Permit Holder:

This letter notifies you that regulations implementing Framework Adjustment 19 to the Atlantic Sea Scallop Fishery Management Plan (FMP) (Framework 19) will be effective on **June 1, 2008**, except where noted below. This letter summarizes the new management measures established by Framework 19 and is not a substitute for the actual regulations. The full text of the regulations is available on our website: <http://www.nero.noaa.gov/>, or you may request a copy by calling (978) 281-9315.

**Scallop fishery allocations**

Framework 19 establishes the following scallop quotas for the 2008 and 2009 fishing years:

	<b>2008 Quota</b> (mt)	<b>2009 Quota</b> - IFQ program is implemented by 3/1/2009 (mt)	<b>2009 Quota</b> - IFQ program is <b>not</b> implemented by 3/1/2009 (mt)
<b>Overall quota</b>	20,140	20,820	20,820
<b>Limited access</b>	18,126 (90%)	19,675 (94.5%)	18,738 (90%)
<b>General category</b>	2,014 (10%)	1,145 (5.5%)*	2,082 (10%)

\*0.5 percent is allocated to limited access vessels that qualify for a scallop individual fishing quota (IFQ) permit.

**Open area days-at-sea (DAS) allocation\***

Framework 19 implements the following DAS allocations for limited access vessels:

<b>Full-Time</b>		<b>Part-Time</b>		<b>Occasional</b>	
<u>2008</u>	<u>2009</u>	<u>2008</u>	<u>2009</u>	<u>2008</u>	<u>2009</u>
35	42**	14	17**	3	3

\*If a vessel used more DAS between March 1, 2008, and June 1, 2008, than is allocated by Framework 19 for the 2008 fishing year, the overage will be deducted from the vessel's 2009 DAS allocation.

\*\*If implementation of the scallop IFQ program is delayed beyond March 1, 2009, full-time and part-time vessels will be allocated 37 DAS and 15 DAS, respectively.



## Sea scallop access area schedule

Framework 19 implements the following access area schedule:

	<b>2008</b>	<b>2009</b>
<b>Nantucket Lightship (NLCA)</b>	Open (06/15/08 to 01/31/09)	Closed
<b>Closed Area II (CAII)</b>	Closed	Open (06/15/09 to 01/31/10)
<b>Elephant Trunk (ETAA)</b>	Open*	Open*
<b>Delmarva</b>	Closed	Open
<b>Closed Area I (CAI)</b>	Closed	Closed
<b>Hudson Canyon (HCAA)</b>	Closed	Closed

\* ETAA: Seasonal closure from September 1 through October 30, effective through 2012

## Access area trip allocation

Framework 19 implements the following access area trip allocations:

	<u>NLCA</u>		<u>CAII</u>		<u>ETAA</u>		<u>Delmarva</u>	
	<u>2008</u>	<u>2009</u>	<u>2008</u>	<u>2009</u>	<u>2008</u>	<u>2009*</u>	<u>2008</u>	<u>2009*</u>
<b>Full-time</b>	1	0	0	1	4	3	0	1
<b>Part-time**</b>	Up to 1	0	0	Up to 1	Up to 2	Up to 2	0	Up to 1
<b>Occasional***</b>	Up to 1	0	0	Up to 1	Up to 1	Up to 1	0	Up to 1
<b>General Category</b>	667	0	0	0	1,671****	1,964	0	728

\* 2009 ETAA and Delmarva trips may be reduced if 2008 resource surveys identify a lower exploitable biomass.

\*\* Part-time scallop vessels have the following access area trip options:

2008: 1 trip in ETAA and 1 trip in NLCA; or 2 trips in ETAA.

2009: Up to 2 trips total, one of which may be taken in CAII and/or Delmarva and up to 2 that may be taken in ETAA (unless the ETAA and/or Delmarva trip allocation is reduced as described below).

\*\*\* Occasional scallop vessels have the following access area trip options:

2008: 1 trip in CAI; or 1 trip in ETAA.

2009: 1 trip in CAII; or 1 trip in ETAA; or 1 trip in Delmarva (unless the ETAA and/or Delmarva trip allocation is reduced as described below).

\*\*\*\* Framework 19 allocates 2,668 ETAA trips for the 2008 fishing year, but because 997 of these trips were already taken earlier this year, 1,671 trips remain.

## ETAA and Delmarva trip adjustment procedures

The number of trips that may be taken in the ETAA and/or Delmarva may be reduced for the 2009 fishing year if the exploitable biomasses identified by 2008 resource surveys are lower than currently estimated. Permit holders will be notified in December 2008 if such an adjustment is made.

Exploitable biomass estimate (mt)	Full-time trip allocation	Part-time trip allocation	Occasional trip allocation	General category trip allocation
30,000 or greater	No adjustment	No adjustment	No adjustment	No adjustment
20,000 – 29,999	2	1*	0	1,473
10,000 – 19,999	1	0	0	982
Less than 10,000	0	0	0	491

\* Part-time vessels may take one trip in the ETAA at a reduced possession limit of 3,600 lb and one trip in CAII or Delmarva (unless Delmarva trips are reduced); or one trip in CAII and one trip in Delmarva (unless Delmarva trips area reduced).

If an updated estimate of the overall scallop fishing mortality rate (F) exceeds 0.29 in 2008, then ETAA allocations will be reduced consistent with the reductions specified in the above table under exploitable biomass estimates of 20,000–29,999 mt. If both the exploitable biomass and F thresholds are exceeded, the allocation level will be established using the exploitable biomass adjustment schedule.

Under the same procedures and dates, if the Delmarva exploitable biomass for the 2009 fishing year is estimated to be below 10,000 mt, then the area will remain closed to scallop fishing for the 2009 fishing year, and no trips or set-aside will be authorized there.

## Sea scallop access area possession limits for limited access vessels

The 2008 and 2009 limited access scallop possession limit for access area trips is 18,000 lb for full-time and part-time vessels, 7,500 lb for occasional vessels.

## Hudson Canyon Access Area closure

Due to a high concentration of small scallops in the HCAA, Framework 19, consistent with the Scallop FMP's area rotation program strategy to protect young scallop concentrations, establishes the HCAA as a rotational management area, and closes the HCAA to all scallop fishing, including general category vessels, until further notice.

## Yellowtail flounder access area bycatch

Commercial scallop vessels fishing in access areas are limited to a bycatch of yellowtail flounder that equals 9.8 percent of the annual yellowtail flounder total allowable catch (TAC) established in the Northeast (NE) multispecies regulations. If the TAC is reached, the access area will close to all scallop vessels fishing for scallops for the remainder of the scallop fishing year. You will be notified if the TAC is reached through an announcement in the Federal Register and by permit holder letter, as well as other means of communication such as radio announcements and vessel monitoring system (VMS) announcements. The yellowtail TAC allocated to scallop vessels fishing in the NLCA for the 2008 fishing year is 67,407 lb. The 2009 yellowtail TAC allocated to scallop vessels fishing in CAII for the 2009 fishing year has not yet been established.

Updates, if available, on the status of the 2008 scallop fishery yellowtail TAC can be found at: <http://www.nero.noaa.gov/ro/fso/scal.htm>.

Through June 30, 2008, limited access scallop vessels that have a Federal NE multispecies permit and are fishing in the NLCA may possess no more than 250 lb of yellowtail flounder per trip. General category vessels may not possess or land any species other than scallops.

#### Transfer of access area trips to open areas if the yellowtail flounder bycatch TAC is attained

If a limited access vessel has unutilized trip(s) in an access area closed by a scallop fishery yellowtail TAC, Framework 19 authorizes the allocation of additional open area DAS in a manner that maintains the fishing mortality objectives of the FMP. This trip/DAS conversion will apply only to full-time vessels, and to occasional or part-time vessels that have no other available access areas in which to take their access area trip(s). Unused access area trip(s) will be converted to open area DAS so that scallop fishing mortality that would have resulted from the access area trip(s) will be equivalent to the scallop fishing mortality resulting from the open area DAS allocation. Consequently, if the NLCA or CAII is closed in 2008 or 2009, respectively, each vessel with unutilized trip(s) will be allocated a specific amount of additional open area DAS according to its permit category. Full-time vessels will be allocated 7.7 DAS per unutilized trip in the NLCA and 7.9 DAS per unutilized trip in CAII. Part-time vessels will receive the same DAS conversion as full-time vessels, as long as there is no other access area available for the vessel to take a trip(s). If an occasional vessel has no available access area in which to take its trip, it will be allocated converted DAS according to the most recent closure: 3.2 DAS if it was the NLCA; or 3.3 DAS if it was CAII.

If a vessel has unused broken trip compensation trip(s) when an access area closes due to reaching a yellowtail TAC, it will be issued additional DAS in proportion to the un-harvested possession limit. For example, if a full-time vessel had an unused 9,000-lb NLCA compensation trip (half of the full possession limit) at the time of a NLCA yellowtail TAC closure, the vessel would be allocated 3.85 DAS (half of the 7.7 DAS that would be allocated for a full NLCA trip).

#### **General category scallop quarterly quota**

The annual general category scallop TAC, excluding the Northern Gulf of Maine Management Area (NGOM) TAC and incidental catch TAC, is distributed into quarterly TACs. Open area and access area scallop landings by directed general category trips will count against the quarterly TACs. If a quarterly TAC is reached, all directed general category scallop fishing must cease in access areas and open areas for the remainder of the quarter. You will be notified if the quarterly TAC is reached through an announcement in the Federal Register and by permit holder letter, as well as other means of communication such as radio announcements and VMS announcements. Framework 19 implements the following quarterly allocations:

<b>Quarter</b>	<b>Percent</b>	<b>2008 Quota</b>	<b>2009 Quota - IFQ program is <u>not</u> implemented by 3/1/2009</b>
I. March-May	35	1,523,375 lb	1,606,508 lb
II. June-August	40	1,741,000 lb	1,836,010 lb
III. September-November	15	652,875 lb	688,504 lb
IV. December-February	10	435,250 lb	459,002 lb

All landings by general category scallop vessels prior to July 1, 2008, and all landings by IFQ scallop vessels and limited access vessels fishing under an IFQ scallop permit after June 30, 2008, shall be deducted from the TAC allocations specified in the above table.

### **General category Northern Gulf of Maine Management Area scallop quota**

Framework 19 implements a 70,000 lb NGOM TAC for the 2008 and 2009 fishing years. Once this TAC is reached, the area will close to all scallop fishing for the remainder of the fishing year.

You will be notified if the NGOM TAC is reached through an announcement in the Federal Register and by permit holder letter, as well as other means of communication such as radio announcements and VMS announcements. For additional detail on NGOM, please refer to the Amendment 11 to the Scallop FMP (Amendment 11) permit holder letter.

### **Adjustment to the scallop overfishing definition**

Framework 19 implements a new overfishing definition based on results of a recent scallop stock assessment workshop (SAW 45), which used a new assessment model to estimate new reference points, including a new biomass target and threshold, and a new F threshold. The target F rate of 0.20 did not change. The following table details the new biomass and fishing mortality reference points that will be implemented by Framework 19.

	<b>New Target</b>	<b>New Threshold</b>
<b>Biomass</b>	108,600 mt	54,300 mt
<b>Fishing mortality rate</b>	0.20 (no change)	0.29

### **Prohibition on deckloading**

To minimize scallop discard mortality, no scallop vessel that is declared into the Area Access Program may possess more than 50 bu of in-shell scallops outside the boundaries of the Sea Scallop Access Area.

### **30-day Vessel Monitoring System (VMS) power-down provision**

Scallop vessels may power down their VMS unit for a minimum of 30 days provided the vessel does not engage in any fishing activity until the unit is turned back on. Such vessels will be required to obtain a letter of exemption from the Regional Administrator. A vessel owner may apply for a letter of exemption for their vessel by sending a written request to the Regional Administrator and providing the following: The location of the vessel during the time an exemption is sought; and the exact time period for which an exemption is needed (i.e., the time the VMS signal will be turned off and turned on again). The letter of exemption must be on board the vessel at all times, and the vessel may not turn off the VMS signal until the letter of exemption has been received.

General category vessels may continue to power down after each trip provided the vessel is not required by any other fishery to keep the VMS unit on, the vessel is tied to a dock or mooring, and the vessel's product has been offloaded. If the vessel leaves the dock or mooring for any reason, the VMS unit must be re-powered, and an appropriate activity code must be entered.

## **IFQ cost recovery program**

NOAA's National Marine Fisheries Service (NMFS) is required by the Magnuson-Stevens Fishery Conservation and Management Act to recover the costs directly related to the management, data collection and analysis, and enforcement of IFQ programs, such as the one implemented under Amendment 11, by collecting up to 3 percent of the value of fish landed by an IFQ vessel. Framework 19 implements the cost recovery program for the scallop IFQ program, by which 3 percent of the ex-vessel value of scallops harvested by IFQ vessels will be used to recover these costs. Under this program, a scallop IFQ vessel will incur a cost recovery fee based on scallop landings. The scallop IFQ cost recovery program will be implemented with the scallop IFQ program, which is currently scheduled for the 2009 fishing year. Prior to implementation of the scallop IFQ cost recovery program, additional detail and instructions will be sent to vessel owners that qualify for a scallop IFQ permit.

## **Industry funded observer program**

### Observer Set-Aside

In 2008 and 2009, 1 percent of both the open area DAS and access area TAC allocations are set aside to help defray the cost of observer coverage. The Council recommended in Framework 19 that the observer set-aside compensation rates be adjusted to more accurately reflect current fishery conditions. NMFS did evaluate the current DAS set-aside rates and determined that, although the current DAS set-aside rate may not fully offset the cost of carrying an observer, the current rate provides the greatest benefit to the fleet and should not change for the 2008 fishing year. NMFS determined that if the DAS compensation rate were increased, the DAS set-aside would not likely last the entire fishing year, resulting in some vessel owners needing to pay the full cost of observer DAS trips. Therefore, the reduced DAS charge on observed DAS trips will remain at 0.85 for the 2008 fishing year. The Regional Administrator may re-evaluate the DAS and access area compensation rate before the start of the 2009 fishing year.

The 2008 access area observer set-aside allocations are as follows: NLCA - 55,000 lb; and ETAA - 222,000 lb. The 2009 access area observer set-aside allocations will be: CAII - 58,000 lb; ETAA - 162,000 lb; and Delmarva - 60,000 lb. If 2008 ETAA and/or Delmarva survey data indicate that there is less estimated exploitable biomass of scallops in the ETAA and/or Delmarva, the 2009 RSA allocations in these areas will be reduced.

The 2008 and 2009 DAS observer set-aside allocations are 118 and 141 DAS, respectively. If the general category IFQ program is delayed beyond March 1, 2009, the 2009 observer set-aside DAS allocation would be 124 DAS.

### Reporting Requirement Changes

New observer program reporting requirements are scheduled to go into effect shortly. A subsequent letter will be issued to scallop permit holders detailing these new requirements and when they become effective. Therefore, until further notice, current observer notification requirements remain in effect.

## **Research set-aside (RSA) program**

In 2008 and 2009, 2 percent of both the open area DAS and access area TAC allocations are set aside to fund sea scallop research. Additional DAS and access area TAC will be allocated to

vessels participating in approved research projects. Scallop vessels participating in the RSA program are limited to a catch of yellowtail flounder that equals 0.2 percent of the annual yellowtail flounder TACs established in the NE multispecies regulations. Set-aside projects for the 2008 fishing year are currently under consideration for funding. An announcement for research proposals utilizing the 2009 research set-asides is expected to be published in June 2008.

The 2008 RSA access area allocations are as follows: NLCA - 110,000 lb; and ETAA - 440,000 lb. The 2009 research set-aside access area allocations will be: CAII - 116,000 lb; ETAA - 324,000 lb; and Delmarva - 120,000 lb. If 2008 ETAA and/or Delmarva survey data indicate that there is less estimated exploitable biomass of scallops in the ETAA and/or Delmarva, the 2009 RSA allocations in these areas will be reduced.

The 2008 and 2009 RSA DAS allocations are 235 and 282 DAS, respectively. If the general category IFQ program is delayed beyond March 1, 2009, the 2009 RSA DAS allocation would be 241 DAS.

If you have any questions regarding this letter, please contact the Sustainable Fisheries Division at (978) 281-9315.

Sincerely,



for

Patricia A. Kurkul  
Regional Administrator

*This small entity compliance guide complies with section 212 of the Small Business Regulatory Enforcement and Fairness Act of 1996.*