

*Collection of Information*

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under control number 0648–0575. The public reporting burden for charter vessel guide respondents to fill out and submit logbook data sheets is estimated to average four minutes per response. The public reporting burden for charter vessel anglers to sign the logbook is estimated to be one minute per response. These estimates include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

**List of Subjects in 50 CFR Part 300**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 22, 2010.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

1. The authority citation for 50 CFR part 300, subpart E, continues to read as follows:

**Authority:** 16 U.S.C. 773–773k.

2. In § 300.65:

a. Remove paragraphs (d)(2)(iv)(B)(1), (d)(2)(iv)(B)(4), and (d)(3);

b. Redesignate paragraphs (d)(2)(iv)(B)(2), (d)(2)(iv)(B)(3), (d)(2)(iv)(B)(5), (d)(2)(iv)(B)(6), (d)(2)(iv)(B)(7), and (d)(2)(iv)(B)(8), as (d)(2)(iv)(B)(1), (d)(2)(iv)(B)(2), (d)(2)(iv)(B)(3), (d)(2)(iv)(B)(4), (d)(2)(iv)(B)(5), and (d)(2)(iv)(B)(6), respectively;

c. Revise paragraphs (d)(1)(i), (d)(2)(iv)(A), and (d)(2)(iv)(B) introductory text; and

d. Add paragraph (d)(1)(iii) to read as follows:

**§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.**

\* \* \* \* \*

(d) *Charter vessels in Area 2C and Area 3A*—(1) *General requirements*—(i) *Logbook submission.* For a charter vessel fishing trip ending April 5 through December 31, during which halibut were caught and retained, Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheets must be submitted to the Alaska Department of Fish and Game and postmarked or received no more than 14 calendar days after the end of that trip. Logbook sheets for a charter vessel fishing trip ending February 1 through April 4, during which halibut were retained, must be submitted to the Alaska Department of Fish and Game and postmarked or received no later than April 12.

\* \* \* \* \*

(iii) In the Alaska Department of Fish and Game (ADF&G) Saltwater Sport Fishing Charter Trip Logbook, record the primary ADF&G statistical area where halibut were caught and retained during each charter vessel fishing trip. If halibut were caught and retained in IPHC Regulatory Area 2C and Area 3A during the same charter vessel fishing trip, then a separate logbook data sheet must be used for each regulatory area to record the halibut caught and retained within that regulatory area.

(2) \* \* \*

(iv) \* \* \*

(A) *Charter vessel angler signature requirement.* At the end of a charter vessel fishing trip, each charter vessel angler who retains halibut caught in Area 2C must acknowledge that his or her information and the number of halibut retained (kept) are recorded correctly by signing the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheet on the line that corresponds to the angler's information.

(B) *Charter vessel guide requirements.* For each charter vessel fishing trip in Area 2C, during which halibut were caught and retained, the charter vessel guide must record the following information (see paragraphs (d)(2)(iv)(B)(1) through (6) of this section) in the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook:

\* \* \* \* \*

[FR Doc. 2010–9737 Filed 4–26–10; 8:45 am]

**BILLING CODE 3510–22–S**

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

[Docket No. 100107011–0168–01]

**RIN 0648–AY43**

**Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 21**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Framework Adjustment 21 (Framework 21) to the Atlantic Sea Scallop Fishery Management Plan (FMP), which was developed by the New England Fishery Management Council (Council). Framework 21 proposes the following management measures for the 2010 scallop fishery: Total allowable catch (TAC); open area days-at-sea (DAS) and Sea Scallop Access Area (access area) trip allocations; DAS adjustments if an access area yellowtail flounder (yellowtail) TAC is caught; limited access general category (LAGC) access area trip allocations; management measures to minimize impacts of incidental take of sea turtles as required by the March 14, 2008, Atlantic Sea Scallop Biological Opinion (Biological Opinion); minor adjustments to the limited access general category (LAGC) individual fishing quota (IFQ) program; and minor adjustments to the industry-funded observer program. This action also proposes changes to regulatory language to eliminate duplicative and outdated text, and to clarify provisions in the regulations that are currently unclear.

**DATES:** Comments must be received by 5 p.m., local time, on May 12, 2010.

**ADDRESSES:** An environmental assessment (EA) was prepared for Framework 21 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Framework 21, the EA, and the Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

You may submit comments, identified by 0648–AY43, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- **Fax:** (978) 281–9135, Attn: Emily Bryant.

- **Mail:** Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on Scallop Framework 21 Proposed Rule.”

**Instructions:** No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**

Emily Bryant, Fishery Policy Analyst, 978–281–9244; fax 978–281–9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Council adopted Framework 21 on January 27, 2010, and submitted it to NMFS on March 1, 2010, for review. Framework 21 was developed and adopted by the Council in order to meet the FMP’s objectives to prevent overfishing and improve yield-per-recruit from the fishery. The FMP requires biennial adjustments to ensure that the measures meet the fishing mortality rate (F) and other goals of the FMP and achieve optimum yield (OY) from the scallop resource on a continuing basis. This rule proposes Framework 21 measures as adopted by the Council and described in detail here. The 2010 fishing year began on March 1, 2010, and Framework 21 specifies measures only for the 2010 fishing year. Due to late submission, measures will be implemented mid-year. Amendment 15 to the FMP, currently under development by the Council, will identify and implement annual catch limits and accountability measures to bring the FMP into compliance with the new requirements

of the re-authorized Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) for the 2011 fishing year and beyond.

Framework 22 will be developed by the Council to set the specifications for the 2011 and 2012 fishing years. The Council has reviewed the Framework 21 proposed rule regulations as drafted by NMFS and deemed them to be necessary and appropriate as specified in section 303(c) of the Magnuson-Stevens Act.

The IFQ Program was implemented on March 1, 2010. As a result, limited access scallop vessels, limited access scallop vessels with LAGC IFQ permits, and LAGC IFQ vessels will receive 94.5 percent, 0.5 percent, and 5 percent of the allocated target TAC, respectively, after accounting for applicable research and observer set-asides.

**Acceptable Biological Catch (ABC) and TAC**

The Magnuson-Stevens Act requires that an ABC be set in each fishery. The ABC is defined as a level of a stock’s annual catch, after accounting for the scientific uncertainty in the estimate of the catch level above which overfishing would be occurring, as well as any other scientific uncertainty. The Council’s Scientific and Statistical Committee (SSC) recommended an ABC for the 2010 scallop fishery based on an F of 0.284, which results in a TAC of 57,803,000 lb (26,219 mt) after accounting for discards and incidental mortality. The calculation on which this ABC recommendation is based assumes that mortality in the scallop fishery is spatially and temporarily uniform, and that all exploitable scallop biomass is accessible to the fleet. However, due to various rotational and permanent closures, as well as area-based differences in F, a lower F target should be set to prevent localized overfishing in areas that are accessible to the fleet. As a result, the Council based the target TAC on an F of 0.24. This results in a TAC of 47,278,000 lb (21,445 mt).

After the deduction of the incidental target TAC (50,000 lb, 22.7 mt) allocated to vessels with LAGC incidental permits, the remaining TAC is 47,228,000 lb (21,422 mt). This TAC is allocated into several components: Open area DAS; individual access area trips for limited access vessels; IFQ allocations, including access area allocations, to vessels with LAGC IFQ permits; and research and observer set-asides.

**Open Area DAS Allocations**

This action would implement the following vessel-specific DAS allocations for the 2010 fishing year:

Full-time vessels would be allocated 38 DAS; part-time vessels would be allocated 15 DAS; and occasional vessels would be allocated 3 DAS.

The proposed measures would be implemented after the start of the fishing year (FY) on March 1, 2010. The regulations that are currently in effect for FY 2010 (*i.e.*, March 1, 2010, through February 28, 2011) are inconsistent with proposed Framework 21 specifications, so it is possible that scallop vessels could exceed their DAS allocations during the interim period between March 1, 2010, and the implementation of the proposed DAS. Therefore, this action specifies that any limited access open area DAS used in FY 2010 by a vessel that is above the final FY 2010 allocation for that vessel would be deducted from the vessel’s FY 2011 DAS allocation.

**Open Area DAS Adjustment if Access Area Yellowtail TAC Is Attained**

Under the Northeast Multispecies FMP, 10 percent of the Southern New England (SNE) yellowtail TAC is allocated to scallop vessels fishing in the Nantucket Lightship Access Area (NLAA). If the SNE yellowtail TAC is caught, the NLAA would be closed to further scallop fishing for the remainder of the fishing year. If a vessel has unutilized trip(s) after the access area is closed due to reaching the yellowtail TAC, it would be allocated additional open area DAS at a reduced rate. This trip/DAS conversion would 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) would be converted to open area DAS so that scallop fishing mortality that would have resulted from the access area trip(s) would be equivalent to the scallop fishing mortality resulting from the open area DAS allocation. Consequently, if the NLAA is closed in FY 2010, each vessel with unutilized trip(s) would be allocated a specific amount of additional open area DAS according to permit category. Full-time vessels would be allocated 5.8 DAS per unutilized trip in the NLAA. If part-time and occasional vessels have no available access areas in which to take an unused trip, they would be allocated 4.6 DAS and 1.9 DAS, respectively. Although the Council did not specify this measure regarding occasional and part-time vessels in Framework 21, based on other Framework 21 measures adopted by the Council and the overall objectives of the FMP, NMFS proposes this measure under the authority of section 305(d) of

the Magnuson-Stevens Act, consistent with scallop measures in previous years.

If a vessel has unused compensation trip(s) from a previously broken trip(s) when the access area closes due to reaching the yellowtail TAC, it would be issued additional DAS in proportion to the unharvested possession limit. For example, if a full-time vessel had an unused 9,000-lb (4,082-kg) NLAA compensation trip (half of the full possession limit) at the time of a NLAA yellowtail TAC closure, the vessel would be allocated 2.9 DAS (half of the 5.8 DAS that would be allocated for a full NLAA trip). Although the Council did not specify this measure regarding broken trip compensation in Framework 21, based on other Framework 21 measures adopted by the Council and the overall objectives of the FMP, NMFS proposes this measure under the authority of section 305(d) of the Magnuson-Stevens Act, consistent with scallop measures in previous years.

#### *Limited Access Trip Allocations, and Possession Limits for Scallop Access Areas*

In FY 2010, full-time scallop vessels would be allocated one trip in the NLAA, two trips in the Elephant Trunk Access Area (ETAA), and one trip in the Delmarva Access Area (Delmarva). A part-time scallop vessel would be allocated two trips, which could be taken as follows: Two trips in the ETAA; one trip in the ETAA and one trip in the NLAA; one trip in the ETAA and one trip in Delmarva; or one trip in NLAA and one trip in Delmarva. An occasional vessel would be allocated one trip, which could be taken in any one open access area. The FY 2010 limited access scallop possession limit for access area trips would be 18,000 lb (8,165 kg) for full-time vessels, 14,400 lb (6,532 kg) for part-time vessels, and 6,000 lb (2,723 kg) for occasional vessels.

Because the proposed measures would be implemented after March 1, 2010, and the regulations that are currently in effect are inconsistent with proposed specifications, it is possible that scallop vessels could exceed their access area trip allocation during the interim period between March 1, 2010, and the implementation of final measures implementing Framework 21. For example, there are currently three ETAA trips allocated for full-time scallop vessels, but only two trips are proposed in this action. If a full-time vessel takes three trips into the ETAA during FY 2010, the vessel's FY 2011 trip allocation would be reduced by one trip to account for the FY 2010 overage. No access area trips are currently

allocated for the NLAA, so no trips into that area could be taken until a final rule is effective for this action.

In addition, the current FY 2010 regulations provide part-time and occasional vessels a higher possession limit than this action proposes, which would be in effect during the interim period between March 1, 2010, and the date that final measures for Framework 21 are in effect. The current regulations allow for a part-time vessel and occasional vessel to land up to 18,000 lb (8,165 kg) and 7,500 lb (3,402 kg) per access area trip, respectively, but this would be reduced to 14,400 lb (6,532 kg) and 6,000 lb (2,722 kg) per access area trip, respectively. If a part-time or occasional vessel exceeds its final FY 2010 possession limit, the overage will be deducted from that vessel's FY 2011 possession limit allocation. Although the Council did not specify this measure regarding part-time and occasional vessel possession limit overages in Framework 21, based on other Framework 21 measures adopted by the Council and the overall objectives of the FMP, NMFS proposes this measure under the authority of section 305(d) of the Magnuson-Stevens Act.

#### *LAGC Measures*

1. *TAC for LAGC vessels with IFQ permits.* This action proposes a 2,326,700-lb (1,055-mt) annual TAC for LAGC vessels with IFQ permits for FY 2010. IFQ allocations would be calculated by applying each vessel's IFQ contribution percentage to this TAC.

2. *TAC for Limited Access Scallop Vessels with IFQ Permits.* This action proposes a 232,670-lb (106-mt) annual TAC for limited access scallop vessels with IFQ permits for FY 2010. IFQ allocations would be calculated by applying each vessel's IFQ contribution percentage to this TAC.

3. *LAGC IFQ Trip Allocations and Possession Limits for Scallop Access Areas.* The LAGC IFQ fishery would be allocated 5 percent of the overall ETAA, NLAA, and Delmarva TACs, resulting in a fleet-wide trip allocation of 1,377 trips in the ETAA and 714 trips in both the NLAA and in Delmarva. The areas would close to LAGC vessels when the Regional Administrator determines that the allocated number of trips have been taken in the respective areas.

Because this action would be implemented mid-year, and the current regulations are inconsistent with the proposed specifications, it is possible that LAGC scallop vessels could exceed the final FY 2010 fleet-wide trip allocations in the ETAA and Delmarva. The current regulations allocate 1,964 and 728 trips in the ETAA and

Delmarva, respectively. If general category vessels exceed the final number of allocated trips from the ETAA or Delmarva in FY 2010, the number of excess trips would be deducted from the LAGC IFQ fleet access area trip allocation in FY 2011 in the ETAA or Delmarva, respectively. Although the Council did not address this scenario for Delmarva in their Framework 21 document, based on other Framework 21 measures adopted by the Council and the overall objectives of the FMP, NMFS proposes this measure under the authority of section 305(d) of the Magnuson-Stevens Act.

4. *Northern Gulf of Maine (NGOM) TACS.* This action proposes a 70,000-lb (31,751-kg) annual NGOM TAC for FY 2010.

5. *Scallop Incidental Catch Target TAC.* This action proposes a 50,000-lb (22,680-kg) scallop incidental catch target TAC for FY 2010 to account for mortality from this component of the fishery and to ensure that F targets are not exceeded.

#### *Research Set-Aside (RSA) Allocations*

Two percent of each scallop access area quota and 2 percent of the DAS allocation are set aside as the Scallop RSA to fund scallop research and to compensate participating vessels through the sale of scallops harvested under RSA quota. The FY 2010 RSA access area allocations would be: NLAA—117,820 lb (53 mt); ETAA—227,060 lb (103 mt); and Delmarva—117,700 lb (53 mt). The FY 2010 RSA DAS allocations would be 269 DAS.

#### *Observer Set-Aside Allocations*

One percent of each scallop access area quota and 1 percent of the DAS allocation are set aside as part of the industry-funded observer program to help defray the cost of carrying an observer. Scallop vessels on an observed DAS trip are charged a reduced DAS rate, and scallop vessels on an observed access area trip are authorized to have an increased possession limit. The Regional Administrator has specified the following compensation rate for the start of FY 2010: Vessels carrying an observer will receive 180 lb (82 kg) of scallops per day, or part of a day, in ETAA and Delmarva, and limited access DAS vessels will be compensated 0.10 DAS per DAS fished during observed open area trips (*i.e.*, vessels will be charged 0.90 DAS per DAS fished with an observer onboard). The Regional Administrator will review all available fishery information to determine if these rates should be adjusted in response to the final Framework 21 measures. The

2010 observer set-aside access area allocations would be: NLAA—58,910 lb (27 mt); ETAA—113,530 lb (52 mt); and Delmarva—58,850 lb (27 mt). The FY 2010 DAS observer set-aside allocations would be 135 DAS.

#### *Reasonable and Prudent Measures*

Under the Endangered Species Act, each Federal agency is required to ensure its actions are not likely to jeopardize the continued existence of any listed species or critical habitat. If a Federal action is likely to adversely affect a listed species, formal consultation is necessary. Five formal Section 7 consultations, with resulting Biological Opinions, have been completed on the Atlantic sea scallop fishery to date. All five have had the same conclusion: The continued authorization of the scallop fishery may adversely affect, but is not likely to jeopardize the continued existence of four sea turtles species (loggerhead, green, Kemp's ridley, and leatherback). In the accompanying Incidental Take Statement of the Biological Opinions, NMFS is required to identify and implement non-discretionary reasonable and prudent measures (RPMs) necessary or appropriate to minimize the impacts of any incidental take, as well as Terms and Conditions (T/C) for implementing each RPM. RPMs and T/C cannot alter the basic design, location, scope, duration, or timing of the action and may involve only minor changes.

Five RPMs and T/Cs were identified in the most recent Biological Opinion, as amended February 5, 2009. Framework 21 includes management measures to comply with the first of these RPMs, which required a limit of fishing effort in the Mid-Atlantic during times when sea turtle distribution is expected to overlap with scallop fishing activity. The Biological Opinion required that this restriction on fishing effort must be in place no later than FY 2010 and shall be limited to a level that will not result in more than a minor impact on the fishery.

For FY 2010, Framework 21 defines a "more than minor impact" on the fishery as one that would result in a 10-percent shift in baseline effort from the Mid-Atlantic during June 15 through October 31 into other areas and times of year when sea turtle interactions are less likely. This definition, as well as management measures to comply with the Biological Opinion and any future Biological Opinions, will be reevaluated for future fishing years in Framework 22 and subsequent actions.

This action proposes to close the Delmarva access area from September 1, 2010, through October 31, 2010. In

addition, because the ETAA and Delmarva are in the Mid-Atlantic, full-time limited access vessels would be restricted to taking two of the access area trips allocated to those areas during the period June 15, 2010, through August 31, 2010. The Council proposed this trip restriction measure with the intention that there would be no change in the possession limit for trips taken during June 15, 2010, through August 31, 2010, and that the broken trip provision would apply to all trips. In order to be consistent with the Council's rationale, and under the authority of section 305(d) of the Magnuson-Stevens Act, NMFS proposes that full-time limited access vessels would be restricted to taking two of the access area trips allocated to those areas, or to maximum landings of 36,000 lb (16,329 kg) from those areas (*i.e.*, the equivalent of two access area trips). Compliance with the trip restriction would be monitored by pounds landed during June 15, 2010, through August 31, 2010, rather than trip declarations, which could result in landings that are less than the allowable trip possession limit. The additional pounds allocated to vessels with on-board observers during trips taken within this time period would not count towards this 36,000-lb (16,329-kg) limit. If a vessel fishes any part of an access area trip in the ETAA or Delmarva during this time period (*i.e.*, starts a trip on June 13, 2010, and ends the trip on June 15, 2010), landings from that trip would count towards the two-trip limit.

In addition, compensation trips may not be combined during this time period in a way that would allow more than 36,000 lb (16,329 kg) to be landed from the ETAA or Delmarva from June 15, 2010, through August 31, 2010. For example, a full-time vessel is allocated three total trips into the Mid-Atlantic access areas. If that vessel declared and subsequently broke one of the three trips into Mid-Atlantic access areas prior to June 15, it would have two full trips (*i.e.*, 36,000 lb, 16,329 kg) available for use during the trip-restriction window. In that case, the vessel could only harvest up to 36,000 lb (16,329 kg) total from June 15, 2010, through August 31, 2010, in the Mid-Atlantic access areas, either by fishing its compensation trip and one full access area trip or by fishing two full access area trips and waiting to declare the compensation trip on or after November 1, 2010 (*i.e.*, after the ETAA and Delmarva seasonal closures). Although the Council did not address specifically how compensation trips would be adjusted in order to comply with the

Biological Opinion in its Framework 21 document, based on other Framework 21 measures adopted by the Council and the overall objectives of the FMP, NMFS proposes this measure under the authority of section 305(d) of the Magnuson-Stevens Act.

Part-time and occasional vessels would not be affected by this trip restriction because they are not allocated more than two trips during the entire fishing year. LAGC IFQ vessels would not be affected by this trip.

#### *Adjustments to the Industry-Funded Observer Program*

The following measures were developed by the Council and are proposed to improve the administration of the industry-funded observer program.

1. *Limit the amount of observer compensation LAGC IFQ vessels can possess per observed trip in access areas.* Currently, LAGC IFQ vessels are allowed to retain observer compensation in the form of a daily possession limit, as established by the Regional Administrator. In FY 2009, it was apparent that some LAGC vessels were extending the length of their observed trips into access areas in order to land additional scallops. This resulted in observer compensation in excess of the amount necessary to pay for the observer costs for these trips. This was one factor that resulted in the full harvest of the observer set-aside in FY 2009.

To account for this unintended result, this action proposes that the possession limit to defray the cost of an observer for LAGC IFQ vessels fishing in access areas would be specified by trip, not by fishing day. For example, if the limited access vessel daily possession limit to defray the cost of an observer is 180 lb (82 kg), the LAGC IFQ possession limit would be 180 lb (82 kg) per observed trip. In this scenario, an LAGC IFQ vessel with an onboard observer would be able to land up to 580 lb (263 kg), the sum of its regular possession limit of 400 lb (181 kg) plus the additional observer possession limit increase, during an access area trip, regardless of trip length.

2. *Providers may charge a prorated fee for vessels fishing in access areas if the observer set-aside has been fully harvested.* The current regulations require providers to charge a vessel owner for observer fees based on a calendar day, not per hour, to coincide with the daily rate of observer set-aside compensation. The regulation omitted regulatory text that would require the provider to adjust the fee if the set-aside is exhausted. Therefore, when the set-

asides were exhausted in FY 2009, and vessel owners continued to pay for observers, the fee was based on a full calendar day instead of an hourly prorated fee. In some cases the charges were considered excessive, but were required by the regulations.

This proposed measure would specify that if the observer set-aside for a given FY is fully exhausted prior to the end of the FY, service providers must prorate their fees on an hourly basis, similar to how observer fees are charged for vessels fishing on open area scallop trips.

Although the Council did not specify this measure regarding observer prorated fees in Framework 21, it is a necessary component of the observer set-aside program. Therefore, based on the overall objectives of the FMP, NMFS proposes this measure under the authority of section 305(d) of the Magnuson-Stevens Act.

#### *Adjustments to the IFQ Program*

This action proposes a measure that would allow the owner of an IFQ vessel or IFQ confirmation of permit history (CPH) to lease a portion of its IFQ to or from another IFQ vessel during a single FY. The current regulations allow leasing only of an entire IFQ; under the proposed measure a vessel owner could lease some or all of an IFQ allocation. This alternative would only apply to leases, and not to permanent transfers, which would still require a vessel's entire IFQ allocation to be transferred permanently. Vessel owners intending to lease some or all of their IFQ allocation to another IFQ vessel(s) may not fish any of their IFQ allocation prior to the lease transaction.

This action would require partial IFQ leases to be at least 100 lb (45 kg). If a vessel owner has previously leased a portion of the vessel's IFQ, and the remaining allocation is less than 100 lb (45 kg), the remaining IFQ could be transferred in full to another vessel. Although the Council did not specify this measure regarding IFQ balances of less than 100 lb as the result of a previous lease, based on other Framework 21 measures adopted by the Council and the overall objectives of the FMP, NMFS proposes this measure under the authority of section 305(d) of the Magnuson-Stevens Act.

NMFS is also proposing several revisions to the regulatory text that were duplicative and unnecessary, outdated, unclear, or otherwise could be improved through revision. These were not recommended by the Council, but are necessary for the effective implementation and enforcement of the regulations. For example, the current

vessel monitoring system (VMS) regulations that were included through Amendment 11 and pertain to required submission of pre-landing notification forms are currently difficult to distinguish from other VMS catch report requirements in the regulations. NMFS proposes to revise the regulations to clarify the regulations intended by Amendment 11 and to provide more ease in locating these requirements in § 648.10. In addition, this action proposes several revisions to the regulatory text that update the FYs when access areas will be open and rotational closed areas will be in effect, according to the current access area rotational management schedule. This action also proposes revisions that would remove text pertaining to regulations from prior fishing years that are no longer in effect. NMFS makes these changes consistent with section 305(d) of the Magnuson-Stevens Act.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows.

#### **Statement of Objective and Need**

This action proposes the FY 2010 management measures and specifications for the Atlantic sea scallop fishery. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble of this proposed rule and are not repeated here.

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

The vessels in the Atlantic sea scallop fishery are all considered small business entities and, therefore, there is no disproportionate impact on large and small entities. All of the vessels grossed less than \$3 million according to dealer data for the FYs 1994 through 2008. According to this information, annual total revenue, including revenue from species other than scallops, has averaged over \$1 million per full-time limited access vessel since FY 2004.

According to FY 2008 dealer data, total revenue per vessel, including revenue from species other than scallops, averaged \$1,079,722 per full-time limited access vessel and \$135,378 per general category vessel.

The proposed regulations would affect all Federal scallop vessels. The Framework 21 document provides extensive information on the number and size of vessels and small businesses that would be affected by the proposed regulations, by port and state. In FY 2008 (the most recent complete FY for which data are complete), there were 321 full-time, 34 part-time, and 1 occasional limited access scallop permits issued, and 459 general category permits issued to vessels in the LAGC fishery. Amendment 11 to the FMP established a limited access fishery for general category vessels and the appeals and limited access permit process for the LAGC fleet was completed in January 2010. There are now 329 vessels that qualified for IFQ permits, 40 limited access vessels that qualified for IFQ permits, 107 vessels that qualified for NGOM permits, and 288 vessels that qualified for incidental permits.

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

This action contains no new collection-of-information, reporting, and recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal law.

#### **Economic Impacts and Proposed Measures and Alternatives**

##### *Summary of the Aggregate Economic Impacts*

A detailed analysis of the economic impacts of the proposed actions may be found in Section 5.4 of the Framework 21 document. All the values for economic impacts discussed below are presented in terms of 2008 dollars and the projected values presented use a 7-percent discount rate to compare results to current values.

If approved, Framework 21 will be implemented after the start of FY 2010 (March 1, 2010). As a result, the current management measures and allocations are extended into FY 2010, including trip allocations for access areas and an open area allocation of 42 DAS per full-time limited access vessel, 17 per part-time vessel, and 3 per occasional vessel.

The aggregate economic impacts of the proposed measures, including the open area DAS and access area allocations for limited access vessels and TAC for the LAGC fishery, are expected to be slightly negative in FY

2010 compared to the No Action alternative and compared to the average revenue in FYs 2008 and 2009. The impact of five FY 2010 quota allocation alternatives were evaluated by Framework 21: Two alternatives proposing a new closure in the Great South Channel with different fishing mortality rates ( $F=0.18$  and  $F=0.20$ ), two alternatives with no new closure with different fishing mortality rates ( $F=0.20$  and  $F=0.24$ ), and the No Action alternative, which results in an  $F=0.25$ . The alternative with no new closure and  $F=0.24$  will be referred to below as the proposed action. The non-selected alternatives will be referred to as Closure (0.18), Closure (0.20), No Closure (0.20), and No Action, respectively. Under all alternatives, the total number of access area trips allocated to limited access vessels remain the same, although the No Action alternative would allocate those trips to less productive areas than all other alternatives.

#### *Economic Impacts of the Proposed Measures and Alternatives*

##### 1. DAS Allocations and Access Area Trip Allocations—Aggregate Impacts

The proposed open area DAS allocations are expected to prevent overfishing in open areas. The proposed action would implement the following vessel-specific DAS allocations for FY 2010: Full-time vessels would be allocated 38 DAS; part-time vessels would be allocated 15 DAS; and occasional vessels would receive 3 DAS. The analysis of the fleet-wide aggregate economic impacts indicate that the proposed action will have slightly negative economic impacts on the revenues and profits of the scallop vessels in FY 2010, compared with the No Action alternative and compared to the levels in FYs 2008 and 2009. Because the proposed action will reduce the open area DAS allocations from 42 DAS to 38 DAS for each full-time limited access vessel (with similar reductions, proportionally for part-time and occasional vessels), the total landings will decline by 6 percent in FY 2010, from 50 million under No Action to 47 million under the proposed action, reducing 2010 revenues for an average vessel by about 2 percent. In comparison to FYs 2008 and 2009 average, the proposed action will result in a 14-percent decrease in landings, representing a 2.3-percent decrease in revenues. The percentage decline in revenues is less than the percentage decline in landings because the price per pound of scallops is estimated to be higher for the proposed action (\$7.27

per pound) compared with No Action (\$7.07 per pound), the price in FY 2008 (\$6.92), and the price in FY 2009 (\$6.45).

Although the proposed action will produce slightly less revenue in FY 2010 compared to FYs 2008 and 2009, the proposed action, as well as the Closure (0.18), Closure (0.20), and No Closure (0.20) alternatives, will result in higher revenues for full-time limited access vessels from FY 2011 through FY 2016.

Over the short term, from FY 2010 through FY 2016, the proposed action's cumulative revenues are estimated to be slightly lower than the No Action revenues by \$9 million, representing a 0.3-percent decrease. However, the No Action alternative does not prevent overfishing and would result in suboptimal allocation of open area DAS and access area trips. Under the No Action alternative, there is no access into the NLAA, but the biomass in that area can support one trip. In addition, under No Action, open area DAS allocations would be higher than sustainable levels because there is no adjustment to reflect the present conditions of biomass in those areas. For these reasons, the levels of exploitable biomass for the No Action alternative will be less than the levels for the proposed action and all the other alternatives. Consequently, No Action would have long-term negative impacts on the scallop stock biomass, landings, revenues, and economic benefits of the scallop fishery. Over the long term (FYs 2010 to 2023), the proposed action will generate \$53 million more in total revenues than the No Action alternative.

The Closure (0.20) and Closure (0.18) alternatives allocate higher DAS (51 and 42 DAS, respectively) to full-time vessels than the proposed alternative and would have positive economic impacts on scallop vessels in FY 2010. However, these alternatives would have negative biological impacts because the new rotational area closure resulted in a higher area-swept estimate in the Mid-Atlantic open area, which may have impacts on non-target species in those areas and increase the possibility of localized overfishing in open areas. If these negative biological impacts were to occur as a result of the Closure (0.18) or Closure (0.20) alternatives, more stringent measures would have to be taken in the future to reduce effort, with potentially negative impacts on the scallop vessels. Therefore, these alternatives are not expected to generate higher benefits for the scallop vessels in the long term compared to the proposed action.

The revenue for an average full-time limited access vessel is estimated to be \$931,799 for the proposed action, which ranges from \$108,152 to \$18,661 lower than the Closure (0.18), Closure (0.20), and No Action alternatives. However, because the proposed action will allocate fewer open area DAS in FY 2010 compared to these three alternatives, and also will allocate access area trips in more productive areas compared to No Action, the trip costs would be comparatively reduced. The average trip costs per vessel (\$111,621) would decline by a range of 20 to 9 percent in comparison to the higher DAS alternatives. The allowance for carry-over DAS is another factor that could also mitigate some of the negative impacts of the proposed action on vessel revenues and profits in FY 2010. Vessels may save up to 10 of their open area DAS in FY 2009 to mitigate the slightly smaller FY 2010 DAS allocations compared to No Action, Closure (0.18), or Closure (0.20) alternatives.

Although the No Closure (0.20) alternative would produce the greatest benefits over the long term, it would result in a 13-percent and 11-percent loss in FY 2010 average annual revenue compared to No Action and the proposed action, respectively. The proposed action would result in average FY 2010 revenues that are \$109,563 greater than the No Closure (0.20) alternative. Although the proposed action will have marginally smaller positive long-term economic impacts in comparison to the No Closure (0.20) alternative, Framework 21 is only addressing the allocations for FY 2010 and future management measures in FY 2011 and beyond will affect these forecasts.

Under all alternatives, including No Action, the LAGC fleet is allocated 5 percent of the TAC. This means the relative comparison of the proposed action to the other alternatives is similar to the limited access fleet. For example, similar to full-time limited access vessels, the revenues of LAGC vessels are expected to be 2 percent lower under the proposed action than under No Action in FY 2010.

Compared to FYs 2008 and 2009, however, the revenues of LAGC vessels will decline by a larger percentage due to the implementation of the IFQ program, as required by Amendment 11 to the FMP. The total scallop revenue for the general category fishery was estimated to be \$30.8 million for FY 2008 and \$29.6 million for FY 2009, averaging \$30.2 million across both FYs. During FYs 2008 and 2009, the LAGC fishery was under a transition period while the final decisions for IFQ permit

appeals were determined. The transition period allocated 10 percent of the TAC to LAGC IFQ vessels, as well as vessels that were granted a letter of authorization to fish for scallops while their IFQ permit applications were under appeal. FY 2010 marks the first year that the IFQ program is in effect, and LAGC IFQ vessels are now allocated 5 percent of the TAC. As a result, revenues for LAGC vessels under the proposed action are projected to be \$17 million, representing a 43-percent decline. The short- and long-term economic impacts of allocating 5 percent of the total TAC to LAGC vessels were analyzed in Amendment 11 to the FMP. The economic impacts of the proposed TAC are within the range of the impacts previously analyzed in these documents.

The proposed action will have positive economic impacts for the LAGC fishery starting in FY 2011, as the LAGC TAC is expected to increase compared to the FY 2010 allocation.

## 2. Open Area DAS Adjustment if Access Area Yellowtail TAC Is Attained

The proposed action maintains a provision that allocates additional open area DAS if an access area closes due to the attainment of the scallop yellowtail TAC. This would continue the current measures with the same impacts as the No Action alternative. This conversion will help to minimize lost catch and revenue if the NLAA closes due to the full harvest of yellowtail quota. As a result, this measure will have positive economic impacts on scallop vessels, although the scallop pounds per trip could be lower than the allocated pounds for NLAA trips due to proration to assure that the measure is conservation neutral. There were no alternatives considered that would generate higher economic benefits for the participants of the scallop fishery.

## 3. Research and Observer Set-Aside TACs

The proposed action would continue to set aside 2 percent of the scallop TAC for the RSA program and 1 percent of the scallop TAC for the industry-funded observer set-aside program. These set-asides are expected to have indirect economic benefits for the scallop fishery by improving scallop information and data made possible by research and the observer program. Although allocating higher set-aside percentages could result in higher indirect benefits to the scallop fleet by increasing available funds for research and the observer program, these set-aside increases could decrease direct economic benefits to the fishery

by reducing revenues, and no such alternatives were considered.

## 4. Access Area Management

The proposed action and the alternatives include access into both ETAA and Delmarva for both the limited access DAS and LAGC fleets. By itself, allocations for these highly productive areas in FY 2010 will have positive economic impacts on both limited access and LAGC vessels. The only alternative that would generate higher benefits than the proposed action is the No Action alternative, which would allocate three trips to ETAA. This number of trips is higher than the projected biomass in that area can support. As a result, the No Action alternative would have negative impacts on the biomass and yield from the ETAA after FY 2010. As experienced in the Hudson Canyon Access Area in FY 2005, excessive harvest in an access area can lead to rapid, almost immediate, depletion of the area's resource, leading to poor catch rates and elevated fishing costs.

The proposed action and alternatives considered, with the exception of No Action, all would allocate one access area trip into the NLAA. The biomass in this area is estimated to be high and trip costs will be lower because the same amount of scallops could be landed in a shorter time frame compared to areas with lower scallop abundance. Providing allocations to high abundance areas will help increase yield, landings, and revenues from the fishery both in the short and long term, benefiting both limited access and LAGC vessels that participate in the scallop fishery. Because there is no trip allocation to the NLAA area under No Action, economic benefits would be lower both in the short and long term compared to the proposed alternative, and other alternatives considered.

## 5. NGOM Hard TAC

The proposed action specifies a 70,000-lb (31,751-kg) TAC for the NGOM. This is the same TAC as the No Action alternative and all other alternatives. The FMP specifies that the NGOM TAC should be based on historic landings levels until the stock in the NGOM can be assessed formally, and there has been no stock assessment to date. The NGOM TAC has been specified at this level since FY 2008, and the fishery has harvested less than 15 percent of the TAC in each of those years, therefore, the TAC has no negative economic impacts.

## 6. Allow Leasing of Partial LAGC IFQ Allocations

LAGC IFQ allocations can only be leased in their entirety under current regulations. The proposed action would allow LAGC IFQ vessels owners (or IFQ CPH owners) to lease some or all of their IFQ allocations to other vessels during a given FY. The proposed action would provide increased flexibility for LAGC IFQ vessel owners. As a result, this measure would have positive impacts on vessel revenues and profits. The only alternative is the No Action alternative, which would require that vessel owners lease entire unused quota allocations.

## 7. Reasonable and Prudent Measures

The proposed action would close the Delmarva access area in September and October and would limit the maximum number of trips (two per full-time vessel) that can be taken in the Mid-Atlantic areas from June 15 to August 31. Because fishing effort is shifted to a relatively less productive season, total fleet trip costs are expected to increase slightly (*i.e.*, less than 0.2 percent) due to reduced scallop catch rates. Since there is no change in the scallop possession limit, the trips that are shifted from this season are expected to be taken outside of this time period without a loss in total revenue, as long as this measure does not, as expected, have a negative impact on prices. The closure in the Delmarva access area from September 1–October 31 applies to all scallop vessels, including LAGC IFQ vessels. This measure is not expected to affect the LAGC fleet specifically, since the access area trips for this fleet are allocated as a fleet-wide number of trips, and tend to be used outside of the closure period. No other alternatives considered would generate higher benefits for the scallop vessels, other than the No Action alternative. The No Action alternative, however, would not comply with the RPMs specified in the Biological Opinion. The proposed action is expected to minimize the effort shift from the given time period compared to the other action alternatives considered by the Council; thus, there are no other alternatives that would generate higher benefits for the scallop vessels.

## 8. Limit the Amount of Observer Compensation for LAGC Vessels in Access Areas

The proposed action includes a provision to limit the total amount of observer compensation LAGC IFQ vessels can receive on observed trips in access areas to the equivalent of 1 day's compensation, regardless of trip length.

The No Action alternative would continue to provide LAGC IFQ vessels observer compensation on a daily basis and would generate higher benefits for the scallop vessels while the observer set-aside is available. This, however, may exhaust the set-aside TAC before the end of the FY. The current LAGC IFQ access area observer compensation contributed to fully harvesting the FY 2009 observer set-aside earlier than anticipated. This had negative impacts fleet-wide because vessels had to provide full payment to observers without available observer compensation after the observer set-aside was exhausted, with negative impacts that were not equally distributed across the fleet.

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

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 22, 2010.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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

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

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

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

2. In § 648.10, revise paragraph (f)(4) to read as follows:

#### § 648.10 VMS and DAS requirements for vessel owners/operators.

\* \* \* \* \*

(f) \* \* \*

(4) *Catch reports.* (i) All scallop vessels fishing in the Sea Scallop Area Access Program as described in § 648.60 are required to submit daily reports, through VMS, of scallops kept and yellowtail flounder caught (including discarded yellowtail flounder) on each Access Area trip. The VMS catch reporting requirements are specified in § 648.60(a)(9).

(ii) *Pre-landing notification forms for IFQ and NGOM vessels.* Using the Scallop Pre-Landing Notification form, a vessel issued an IFQ or NGOM scallop permit must report through VMS the amount of any scallops kept on each trip declared as a scallop trip, including declared scallop trips where no scallops were landed. In addition, vessels with an IFQ or NGOM permit must submit a Scallop Pre-Landing Notification form on trips that are not declared as scallop trips, but on which scallops are kept

incidentally. A limited access vessel that also holds an IFQ or NGOM permit must submit the Scallop Pre-Landing Notification form only when fishing under the provisions of the vessel's IFQ or NGOM permit. VMS Scallop Pre-Landing Notification forms must be submitted no less than 6 hr prior to crossing the VMS Demarcation Line on the way back to port, and must include the amount of scallop meats or bushels to be landed, the estimated time of arrival in port, the port at which the scallops will be landed, and the VTR serial number recorded from that trip's VTR. If the scallop harvest ends less than 6 hr prior to landing, then the Scallop Pre-Landing Notification form must be submitted immediately upon leaving the fishing grounds.

\* \* \* \* \*

3. In § 648.11, revise paragraph (g)(5)(i)(A) to read as follows:

#### § 648.11 At-sea sea sampler/observer coverage.

\* \* \* \* \*

(g) \* \* \*

(5) \* \* \*

(i) \* \* \*

(A) *Access Area Trips.* (1) For purposes of determining the daily rate for an observed scallop trip in a Sea Scallop Access Area when the observer set-aside specified in § 648.60(d)(1) has not been fully utilized, a service provider shall charge a vessel owner from the time an observer boards a vessel until the vessel disembarks (dock to dock), where "day" is defined as a 24-hr period, or any portion of a 24-hr period, regardless of the calendar day. For example, if a vessel with an observer departs on July 1 at 10 pm and lands on July 3 at 1 am, the time at sea equals 27 hr, which would equate to 2 full "days."

(2) For purposes of determining the daily rate for an observed scallop trip in a Sea Scallop Access Area when the industry-funded observer set-asides have been fully utilized, a service provider shall charge a vessel owner from the time an observer boards a vessel until the vessel disembarks (dock to dock), where "day" is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on July 1 at 10 pm and lands on July 3 at 1 am, the time spent at sea equals 27 hr, so the provider may charge 1 day and 3 hr.

\* \* \* \* \*

4. In § 648.14, paragraphs (i)(2)(vi)(F) and G) are added, paragraph (i)(4)(i)(A) is revised, and paragraph (i)(4)(iii)(F) is

removed and reserved to read as follows:

#### § 648.14 Prohibitions.

\* \* \* \* \*

(i) \* \* \*

(2) \* \* \*

(vi) \* \* \*

(F) Declare more than two access area trips into the Delmarva and Elephant Trunk Access Areas, as specified in § 648.59(a) and (e), during the period June 15 through August 31, unless at least one trip is terminated early and trips in excess of two are declared compensation trips authorized under § 648.60(c); and

(G) Vessels do not fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg) of scallops from the Delmarva and Elephant Trunk Access Areas specified in § 648.59(a) and (e) during the period June 15 through August 31. This restriction does not include the additional possession allowance to defray the cost of carrying an observer, as specified in § 648.60(d), that occur during observed trips between June 15 through August 31.

\* \* \* \* \*

(4) \* \* \*

(i) *Possession and landing.* (A) Fish for or land per trip, or possess at any time, in excess of 400 lb (181.4 kg) of shucked, or 50 bu (17.6 hL) of in-shell scallops shoreward of the VMS Demarcation Line, unless the vessel is participating in the Area Access Program specified in § 648.60; is carrying an observer as specified in § 648.11; and, an increase in the possession limit is authorized by the Regional Administrator and not exceeded by the vessel, as specified in §§ 648.52(g) and 648.60(d)(2).

\* \* \* \* \*

5. In § 648.52, paragraphs (a) and (f) are revised, and paragraph (g) is added to read as follows:

#### § 648.52 Possession and landing limits.

(a) A vessel issued an IFQ scallop permit that is declared into the IFQ scallop fishery as specified in § 648.10(b), unless as specified in paragraph (g) of this section or exempted under the state waters exemption program described in § 648.54, may not possess or land, per trip, more than 400 lb (181.4 kg) of shucked scallops, or possess more than 50 bu (17.6 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 100 bu (35.2 hl) of in-shell scallops seaward of the

VMS demarcation line on a properly declared IFQ scallop trip.

(f) A vessel that is declared into the Sea Scallop Area Access Program as described in § 648.60, may not possess more than 50 bu (17.6 hL) of in-shell scallops outside of the Access Areas described in § 648.59(a) through (e).

(g) *Possession limit to defray the cost of observers in Access Areas for LAGC IFQ vessels.* An LAGC IFQ vessel with an observer on board may retain, per observed trip, up to 1 day's allowance of the possession limit allocated to limited access vessels, as established by the Regional Administrator in accordance with § 648.60(d), provided the observer set-aside specified in § 648.60(d)(1) has not been fully utilized. For example, if the limited access vessel daily possession limit to defray the cost of an observer is 180 lb (82 kg), the LAGC IFQ possession limit to defray the cost of an observer would be 180 lb (82 kg) per trip, regardless of trip length.

6. In § 648.53, paragraphs (a)(1), (a)(4)(i), (a)(5), (a)(9), (b)(1), (b)(4), (b)(5)(i), (g)(1), (g)(2), (h)(5)(i), (h)(5)(iii), (h)(5)(iv)(A), (h)(5)(iv)(B), and (h)(5)(iv)(C) are revised; the introductory text in paragraph (h)(2) is revised; and paragraphs (a)(2), (a)(4)(ii), (a)(7), (a)(8), and (b)(5)(ii) are removed and reserved to read as follows.

**§ 648.53 Target total allowable catch, DAS allocations, and Individual Fishing Quotas.**

(a) \* \* \*

(1) *2010 fishing year target TAC for scallop fishery.* The 2010 fishing year TAC is 21,445 mt, 94.5 percent of which shall be allocated to the limited access fishery, 5 percent of which shall be allocated to IFQ scallop vessels, and 0.5 percent of which shall be issued to limited access vessels also issued IFQ scallop permits and that are fishing under general category regulations. These percentages reflect the TAC allocations prior to the deduction of set-asides for observer coverage and research.

\* \* \* \* \*

(4) \* \* \*

(i) *2010 fishing year.* The target TAC for limited access vessels fishing under the scallop DAS program specified in this section is 10,330 mt, including open area DAS for observer and research set-aside TACs.

\* \* \* \* \*

(5) *TACs for IFQ scallop vessels.* The TACs specified in this paragraph (a)(5) have accounted for the access area set-asides specified in § 648.60(d) and (e).

(i) *IFQ vessels without a limited access scallop permit.* For the 2010

fishing year, such vessels are allocated 1,055 mt, which includes both the open area TAC (547 mt) and the access area TACs specified in § 648.59.

(ii) *IFQ scallop vessels with a limited access scallop permit.* Such vessels that are fishing under an IFQ scallop permit outside of the scallop DAS and Area Access programs as a limited access vessel shall be allocated 0.5 percent of the annual target TAC specified in accordance with this paragraph (a). For the 2010 fishing year, the IFQ TAC for IFQ vessels with a limited access scallop permit is 106 mt.

\* \* \* \* \*

(9) *Scallop incidental catch target TAC.* The 2010 incidental catch target TAC for vessels with incidental catch scallop permits is 50,000 lb (22,680 kg).

(b) \* \* \*

(1) Total DAS to be used in all areas other than those specified in § 648.59, shall be specified through the framework adjustment process as specified in § 648.55, using the target TAC for open areas specified in paragraph (a) of this section and estimated catch per unit effort. The total DAS for 2010 are 13,324. After accounting for applicable set-asides, the total DAS allocated the limited access fishery are 12,920.

\* \* \* \* \*

(4) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(4) (Full-time, Part-time, or Occasional) shall be allocated the maximum number of DAS for each fishing year it may participate in the open area limited access scallop fishery, according to its category. A vessel whose owner/operator has declared out of the scallop fishery, pursuant to the provisions of § 648.10, or that has used up its maximum allocated DAS, may leave port without being assessed a DAS, as long as it has made an appropriate VMS declaration, as specified in § 648.10(f), does not fish for or land per trip, or possess at any time, more than 400 lb (181.4 kg) of shucked or 50 bu (17.6 hL) of in-shell scallops, and complies with all other requirements of this part. The annual open area 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:

DAS category	2010
Full-time .....	38
Part-time .....	15
Occasional .....	3

(i) A limited access vessel that lawfully uses more open area DAS in

the 2010 fishing year than specified in this section shall have the DAS used in excess of the 2010 allocation specified in this paragraph (b)(4) deducted from its 2011 open area DAS allocation.

(ii) [Reserved]

(5) \* \* \*

(i) When the Nantucket Lightship Access Area closes due to the yellowtail flounder bycatch TAC, for each remaining complete trip in the Nantucket Lightship Access Area, a full-time vessel may fish an additional 5.8 DAS in open areas, a part-time vessel may fish an additional 4.6 DAS in open areas, and an occasional vessel may fish an additional 1.9 DAS during the same fishing year. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). If a vessel has unused broken trip compensation trip(s), as specified in § 648.60(c), when the Nantucket Lightship Access Area closes due to the yellowtail flounder bycatch TAC, it will be issued additional DAS in proportion to the unharvested possession limit. For example, if a full-time vessel had an unused 9,000-lb (4,082-kg) Nantucket Lightship Access Area compensation trip (half of the possession limit) at the time of a Nantucket Lightship Access Area yellowtail flounder bycatch TAC closure, the vessel will be allocated 2.9 DAS (half of 5.8 DAS).

\* \* \* \* \*

(g) \* \* \*

(1) *DAS set-aside for observer coverage.* As specified in paragraph (b)(2) of this section, to help defray the cost of carrying an observer, 1 percent of the total DAS specified in paragraph (b)(1) of this section shall be set aside from the total DAS available for allocation, to be used by vessels that are assigned to take an at-sea observer on a trip other than an Area Access Program trip. The DAS set-aside for observer coverage is 135 DAS for the 2010 fishing year. Vessels carrying an observer shall be compensated with reduced DAS accrual rates for each trip on which the vessel carries an observer. For each DAS that a vessel fishes for scallops with an observer on board, the DAS shall be charged at a reduced rate, based on an adjustment factor determined by the Regional Administrator on an annual basis, dependent on the cost of observers, catch rates, and amount of available DAS set-aside. The Regional Administrator shall notify vessel owners of the cost of observers and the DAS adjustment factor through a permit holder letter issued prior to the start of each fishing year. This DAS adjustment factor may also be changed during the

fishing year if fishery conditions warrant such a change. The number of DAS that are deducted from each trip based on the adjustment factor shall be deducted from the observer DAS set-aside amount in the applicable fishing year. Utilization of the DAS set-aside shall be on a first-come, first-served basis. When the DAS set-aside for observer coverage has been utilized, vessel owners shall be notified that no additional DAS remain available to offset the cost of carrying observers. The obligation to carry and pay for an observer shall not be waived due to the absence of set-aside DAS allocations.

(2) *DAS set-aside for research.* As specified in paragraph (b)(2) of this section, to help support the activities of vessels participating in certain research, as specified in § 648.56, the DAS set-aside for research is 269 DAS for the 2010 fishing year.

(h) \* \* \*

(2) *Calculation of IFQ.* The total allowable catch allocated to IFQ scallop vessels, and the TAC allocated to limited access scallop vessels issued IFQ scallop permits, as specified in paragraphs (a)(5)(i) and (ii) of this section, shall be used to determine the IFQ of each vessel issued an IFQ scallop permit. Each fishing year, the Regional Administrator shall provide the owner of a vessel issued an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii) with the scallop IFQ for the vessel for the upcoming fishing year.

\* \* \* \* \*

(5) \* \* \*

(i) *Temporary IFQ transfers.* Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel not issued a limited access scallop permit may temporarily transfer its entire IFQ allocation, or a portion of its IFQ allocation, to another IFQ scallop vessel. Temporary IFQ transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed. IFQ can be transferred only once during a given fishing year. Temporary IFQ transfers must be in the amount of at least 100 lb (45 kg), or the entire allocation may be transferred to another vessel. If a vessel has previously transferred a portion of its IFQ and the remaining allocation is less than 100 lb (45 kg), the remaining IFQ may be transferred in full to another vessel. The Regional Administrator has final approval authority for all temporary IFQ transfer requests.

\* \* \* \* \*

(iii) *IFQ transfer restrictions.* The owner of an IFQ scallop vessel not issued a limited access scallop permit

that has fished under its IFQ in a fishing year may not transfer that vessel's IFQ to another IFQ scallop vessel in the same fishing year. IFQ can be transferred only once during a given fishing year. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2 percent of the TAC allocated to IFQ scallop vessels. A transfer of an IFQ, whether temporary or permanent, may not result in the transferee having a total ownership of or interest in general category scallop allocation that exceeds 5 percent of the TAC allocated to IFQ scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not transfer or receive IFQ from another IFQ scallop vessel.

(iv) \* \* \*

(A) *Application information requirements.* An application to transfer IFQ must contain at least the following information: Transferor's name, vessel name, permit number, and official number or state registration number; transferee's name, vessel name, permit number, and official number or state registration number; total price paid for purchased IFQ; signatures of transferor and transferee; and date the form was completed. In addition, applications to temporarily transfer IFQ must indicate the amount, in pounds, of the IFQ allocation transfer, which may not be in increments of less than 100 lb (45 kg) unless that value reflects the total IFQ allocation remaining on the transferor's vessel, or the entire allocation.

Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery. If applicable, an application for a permanent IFQ transfer must be accompanied by verification, in writing, that the transferor either has requested cancellation of all other limited access Federal fishing permits, or has applied for a transfer of all of its limited access permits in accordance with the vessel replacement restrictions under § 648.4.

(B) *Approval of IFQ transfer applications.* Unless an application to transfer IFQ is denied according to paragraph (h)(5)(iii)(C) of this section, the Regional Administrator shall issue confirmation of application approval to both parties involved in the transfer within 30 days of receipt of an application.

(C) *Denial of transfer application.* The Regional Administrator may reject an application to transfer IFQ for the following reasons: The application is incomplete; the transferor or transferee does not possess a valid limited access general category permit; the transferor's

vessel has fished under its IFQ prior to the completion of the transfer request; the transferor's or transferee's vessel or IFQ scallop permit has been sanctioned, pursuant to a final administrative decision or settlement of an enforcement proceeding; the transfer will result in the transferee's vessel having an allocation that exceeds 2 percent of the TAC allocated to IFQ scallop vessels; the transfer will result in the transferee having a total ownership of or interest in general category scallop allocation that exceeds 5 percent of the TAC allocated to IFQ scallop vessels; or any other failure to meet the requirements of this subpart. Upon denial of an application to transfer IFQ, the Regional Administrator shall send a letter to the applicants describing the reason(s) for the rejection. The decision, by the Regional Administrator is the final agency decision and there is no opportunity to appeal the Regional Administrator's decision.

\* \* \* \* \*

#### § 648.58 [Amended]

7. In § 648.58, paragraph (b) is removed and reserved.

8. In § 648.59, paragraphs (a)(4), (b)(5)(ii)(D), (c)(5)(ii)(D), and (d)(5)(ii)(D) are added; and paragraphs (a)(1), (a)(3), (b)(1), (b)(2), (b)(5)(i), (b)(5)(ii)(A), (b)(5)(ii)(B), (c)(1), (c)(2), (c)(5)(i), (c)(5)(ii)(A), (c)(5)(ii)(B), (d)(1), (d)(2), (d)(5)(i), (d)(5)(ii)(A), (d)(5)(ii)(B), and (e)(4) are revised to read as follows.

#### § 648.59 Sea Scallop Access Areas.

(a) \* \* \*

(1) From March 1, 2010, through February 28, 2011, and subject to the seasonal restriction specified in paragraph (a)(4) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Delmarva Sea Scallop Access Area, described in paragraph (a)(2) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

\* \* \* \* \*

(3) *Number of trips—(i) Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Delmarva Access Area as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Delmarva Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior

Delmarva Access Area trip that was terminated early, as specified in § 648.60(c). Additionally, limited access full-time scallop vessels are restricted in the number of trips that may be taken from June 15 through August 31, as specified in § 648.60(a)(3)(i)(B)(1). The number of trips allocated to limited access vessels in the Delmarva Access Area shall be based on the TAC for the access area, which shall be determined through the annual framework process and specified in this paragraph (a)(5)(i). The 2010 Delmarva Access Area scallop TAC for limited access scallop vessels is 5,394,485 lb (2,447 mt), after accounting for applicable set-asides and LAGC IFQ TAC.

(ii) *LAGC IFQ scallop vessels.*—(A) The percentage of the Delmarva Access Area TAC to be allocated to LAGC IFQ scallop vessels shall be specified in this paragraph (a)(4)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC IFQ scallop vessels as specified in paragraph (a)(4)(ii)(B) of this section. LAGC IFQ vessels will be allocated 285,423 lb (129 mt) in fishing year 2010, which is 5 percent of the 2010 Delmarva Access Area TAC, after set-asides have been deducted. This TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit.

(B) Based on the TAC specified in paragraph (a)(4)(ii)(A) of this section, LAGC scallop vessels are allocated 714 trips to the Delmarva Access Area in fishing year 2010. This fleet-wide trip allocation applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Regional Administrator shall notify all LAGC IFQ scallop vessels of the date when 714 trips have been, or are projected to be, taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). An LAGC IFQ scallop vessel may not fish for, possess, or land sea scallops in or from the Delmarva Access Area, or enter the Delmarva Access Area on a declared LAGC IFQ scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

(C) Scallop landed by each LAGC IFQ vessel on a Delmarva Access Area trip shall count against that vessel's IFQ.

(4) *Season.* A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Delmarva Sea Scallop Access Area, described in paragraph (a)(2) of this section, from September 1 through

October 31 of each year the Delmarva Access Area is open to scallop fishing as a Sea Scallop Access Area, except that a vessel may possess scallops while transiting pursuant to paragraph (f) of this section.

(b) \* \* \*

(1) From March 1, 2010, through February 28, 2011, and every third fishing year thereafter (*i.e.*, March 1, 2013, through February 28, 2014) vessels issued scallop permits may not fish for, possess, or land scallops in or from, the area known as the Closed Area I Access Area, described in paragraph (b)(3) of this section, unless transiting pursuant to paragraph (f) of this section. Vessels issued both a NE Multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area provided they comply with restrictions in paragraph (b)(5)(ii)(C) of this section.

(2) From March 1, 2011, through February 28, 2013, and for every 2-yr period, based on the fishing year, after the closure described in paragraph (b)(1) of this section (*i.e.*, March 1, 2014, through February 29, 2016), and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, a vessel issued a scallop permit may fish for, possess, and land scallops in or from, the area known as the Closed Area I Access Area, described in paragraph (b)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

\* \* \* \* \*

(5) \* \* \*

(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area I Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area I Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area I Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area I Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in this paragraph (c)(5)(i). Closed Area I Access Area is closed to limited access vessels for the 2010 fishing year.

(ii) \* \* \*

(A) The percentage of the Closed Area I Access Area TAC to be allocated to

LAGC scallop vessels shall be specified in this paragraph (b)(5)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (b)(5)(ii)(B) of this section. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Closed Area I Access Area shall be closed to LAGC IFQ vessels in the 2010 fishing year.

(B) The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips for the applicable fishing year have been, or are projected to be, taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). Except as provided in paragraph (c)(5)(ii)(C) of this section, and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Closed Area I Access Area, or enter the Closed Area I Access Area on a declared LAGC scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

\* \* \* \* \*

(D) Scallop landed by each LAGC IFQ vessel on a Closed Area I Access Area trip shall count against that vessel's IFQ.

(c) \* \* \*

(1) From March 1, 2010, through February 28, 2011, and every third fishing year thereafter (*i.e.*, March 1, 2013, through February 28, 2014) vessels issued scallop permits may not fish for, possess, or land scallops in or from, the area known as the Closed Area II Access Area, described in paragraph (c)(3) of this section, unless transiting pursuant to paragraph (f) of this section. Vessels issued both a NE Multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided they comply with restrictions in paragraph (c)(5)(ii)(C) of this section.

(2) From March 1, 2011, through February 28, 2013, and for every 2-yr period, based on the fishing year, after the year-long closure described in paragraph (c)(1) of this section (*i.e.*, March 1, 2014, through February 29, 2016), and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from, the area known as the Closed Area II Sea Scallop Access Area, described in paragraph (c)(3) of

this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

\* \* \* \* \*

(5) \* \* \*

(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area II Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area II Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area II Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area II Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in this paragraph (c)(5)(i). Closed Area II Access Area is closed to limited access vessels for the 2010 fishing year.

(ii) \* \* \*

(A) The percentage of the total Closed Area II Access Area TAC specified to be allocated to LAGC IFQ scallop vessels shall be specified in this paragraph (c)(5)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to IFQ LAGC scallop vessels as specified in paragraph (c)(5)(ii)(B) of this section. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits. The Closed Area II Access Area is closed to LAGC IFQ vessels in the 2010 fishing year.

(B) The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips for the applicable fishing year have been, or are projected to be, taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). Except as provided in paragraph (c)(5)(ii)(C) of this section, and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Closed Area II Access Area, or enter the Closed Area II Access Area on a declared LAGC scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

\* \* \* \* \*

(D) Scallops landed by each LAGC IFQ vessel on a Closed Area II Access

Area trip shall count against that vessel's IFQ.

\* \* \* \* \*

(d) \* \* \*

(1) From March 1, 2012, through February 28, 2013, and every third fishing year thereafter (*i.e.*, March 1, 2015, through February 29, 2016) vessels issued scallop permits may not fish for, possess, or land scallops in or from the area known as the Nantucket Lightship Access Area, described in paragraph (d)(3) of this section, unless transiting pursuant to paragraph (f) of this section. Vessels issued both a NE multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided they comply with restrictions in paragraph (d)(5)(ii)(C) of this section.

(2) From March 1, 2010, through February 29, 2012, and for every 2-yr period after the year-long closure described in paragraph (d)(1) of this section (*i.e.*, March 1, 2013, through February 28, 2015), and subject to the seasonal restrictions specified in paragraph (d)(4) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Nantucket Lightship Sea Scallop Access Area, described in paragraph (d)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

\* \* \* \* \*

(5) \* \* \*

(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Nantucket Lightship Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Nantucket Lightship Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Nantucket Lightship Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Nantucket Lightship Access Area shall be based on the TAC for the access area. The 2010 Nantucket Lightship Access Area scallop TAC for limited access scallop vessels is 5,399,985 lb (2,449 mt), after accounting for set-asides applicable and LAGC IFQ TAC to the Nantucket Lightship Access Area.

(ii) \* \* \*

(A) The percentage of the Nantucket Lightship Access Area TAC to be allocated to LAGC IFQ scallop vessels shall be specified in this paragraph (d)(5)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC IFQ scallop vessels as specified in paragraph (d)(5)(ii)(B) of this section. LAGC IFQ vessels are allocated 285,715 lb (130 mt) in fishing year 2010, which is 5 percent of the 2010 Nantucket Lightship Access Area TAC, after accounting for all applicable set-asides. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit.

(B) Based on the TAC specified in paragraph (d)(5)(ii)(A) of this section, LAGC scallop vessels are allocated 714 trips to the Nantucket Lightship Access Area in fishing year 2010. This fleet-wide trip allocation applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Regional Administrator shall notify all LAGC IFQ scallop vessels of the date when 714 trips have been, or are projected to be, taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). Except as provided in paragraph (d)(5)(ii)(C) of this section, an LAGC IFQ scallop vessel may not fish for, possess, or land sea scallops in or from the Nantucket Lightship Access Area, or enter the Nantucket Lightship Access Area on a declared LAGC IFQ scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

\* \* \* \* \*

(D) Scallops landed by each LAGC IFQ vessel on a Nantucket Lightship Access Area trip shall count against that vessel's IFQ.

(e) \* \* \*

(4) *Number of trips*—(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Elephant Trunk Sea Scallop Access Area between March 1, 2010, and February 29, 2011, as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains an Elephant Trunk Sea Scallop Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Elephant Trunk Access Area

trip that was terminated early, as specified in § 648.60(c). Additionally, full-time scallop vessels are restricted in the number of trips that may be taken from June 15 through August 31, as specified in § 648.60(a)(3)(i)(B)(1). The 2010 Elephant Trunk Access Area scallop TAC for limited access scallop vessels is 10,406,727 lb (4,720 mt), after accounting for applicable set-asides and LAGC IFQ TAC.

(ii) *LAGC IFQ scallop vessels.*—(A) The percentage of the Elephant Trunk Access Area TAC to be allocated to LAGC scallop vessels shall be specified in this paragraph (e)(4)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC IFQ scallop vessels as specified in paragraph (e)(4)(ii)(B) of this section. LAGC IFQ vessels shall be allocated 550,621 lb (248 mt) in fishing year 2010, which is 5 percent of the 2010 Elephant Trunk Access Area TAC, after accounting for all applicable set-asides. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit.

(B) Based on the TACs specified in paragraph (e)(4)(ii)(A) of this section, LAGC IFQ vessels are allocated a total of 1,377 trips in the Elephant Trunk Access Area in fishing year 2010. This fleet-wide trip allocation applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Regional Administrator shall notify all LAGC IFQ scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). An LAGC IFQ scallop vessel may not fish for, possess, or land sea scallops in or from the Elephant Trunk Access Area, or enter the Elephant Trunk Access Area on a declared LAGC IFQ scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

(C) Scallops landed by each LAGC IFQ vessel on an Elephant Trunk Access Area trip shall count against that vessel's IFQ.

\* \* \* \* \*

9. In § 648.60, paragraphs (a)(3)(iii), (a)(5)(iv), and (c)(5)(iv) are removed and reserved; paragraph (c)(5)(ii)(A) is added; paragraph (c)(5)(ii)(B) is added and reserved; and paragraphs (a)(3)(i), (a)(3)(ii), (a)(5)(i), (c)(5)(v), (d)(1), (e)(1), and (g) are revised to read as follows:

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

(a) \* \* \*

(3) \* \* \*

(i) *Limited access vessel trips.* (A) Except as provided in paragraph (c) of this section, paragraphs (a)(3)(i)(B) through (E) of this section specify the total number of trips that a limited access scallop vessel may take into Sea Scallop Access Areas during applicable seasons specified in § 648.59. The number of trips per vessel in any one Sea Scallop Access Area may not exceed the maximum number of trips allocated for such Sea Scallop Access Area as specified in § 648.59, unless the vessel owner has exchanged a trip with another vessel owner for an additional Sea Scallop Access Area trip, as specified in paragraph (a)(3)(ii) of this section, or has been allocated a compensation trip pursuant to paragraph (c) of this section.

(B) *Full-time scallop vessels.* A full-time scallop vessel may take two trips in the Elephant Trunk Access Area, one trip in the Delmarva access area, and one trip in the Nantucket Lightship Access Area, subject to the following seasonal trip restrictions.

(1) A full-time scallop vessel may not take more than two of its three allocated scallop access area trips during the period June 15 through August 31, or may not fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg) of scallops, the equivalent of two full trip possession limits specified in § 648.60(a)(5)(i)(A), during this time period from the Delmarva and Elephant Trunk Access Areas specified in § 648.59(a) and (e). For example, a full-time vessel may declare up to two trips in the Elephant Trunk Access Area or up to one trip in the Elephant Trunk Access Area and one trip in Delmarva Access Area during June 15 through August 31. The remaining access area trips may be taken during the remainder of the fishing year, subject to the seasonal closures described under § 648.59(a)(3) and (e)(3). This restriction does not include the additional possession allowance to defray the cost of carrying an observer as specified in § 648.60(d) that occur during observed trips between June 15 through August 31.

(2) [Reserved]

(C) *Part-time scallop vessels.* A part-time scallop vessel is allocated two trips that may be distributed between access areas as follows: Two trips in the Elephant Trunk Access Area; one trip in the Elephant Trunk Access Area and one trip in the Nantucket Lightship Access Area; one trip in the Elephant Trunk Access Area and one trip in the

Delmarva Access Area; or one trip in the Nantucket Lightship Access Area and one trip in the Delmarva Access Area.

(D) *Occasional scallop vessels.* An occasional scallop vessel may take one trip in the Elephant Trunk Access Area, or one trip in the Nantucket Lightship Access Area, or one trip in the Delmarva Access Area.

(E) [Reserved]

(ii) *One-for-one area access trip exchanges.* If the total number of trips allocated to a vessel into all Sea Scallop Access Areas combined is more than one, the owner of a vessel issued a limited access scallop permit may exchange, on a one-for-one basis, unutilized trips into one access area for another vessel's unutilized trips into another Sea Scallop Access Area. One-for-one exchanges may be made only between vessels with the same permit category. For example, a full-time vessel may not exchange trips with a part-time vessel, and vice versa. Vessel owners must request the exchange of trips by submitting a completed Trip Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Trip exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Trip Exchange Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has unutilized trips remaining to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the trip exchange has been made effective. A vessel owner may exchange trips between two or more vessels under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange trips between another vessel and the vessel for which a Confirmation of Permit History has been issued.

\* \* \* \* \*

(5) *Possession and landing limits.*—(i) *Scallop possession limits.* Unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section, after declaring a trip into a Sea Scallop Access Area, a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, scallops, up to the maximum amounts specified in the table in this paragraph (a)(5). A part-time or occasional limited access vessel that lawfully fishes for, possesses, and lands an amount of scallops greater than specified in this section in the 2010 fishing year shall

have the excess pounds landed above the possession limit specified in this paragraph (a)(5) deducted from that vessel's 2011 possession limit. A full-time vessel shall not fish for, possess, or retain more than 36,000 lb (16,329 kg) of scallops from the Elephant Trunk and

Delmarva Access Areas, combined, from trips taken between June 15 and August 31. This landing restriction does not include the additional possession allowance to defray the cost of carrying an observer as specified in § 648.60(d) that occur during observed trips

between June 15 through August 31. No vessel declared into the Access Areas as described in § 648.59(a) through (e) may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Access Areas described in § 648.59(a) through (e).

Fishing year	Permit category possession limit		
	Full-time	Part-time	Occasional
2010 .....	18,000 lb ..... (8,165 kg) .....	14,400 lb ..... (6,532 kg) .....	6,000 lb ..... (2,722 kg) .....

\* \* \* \* \*

- (c) \* \* \*
- (5) \* \* \*
- (ii) \* \* \*

(A) Pursuant to § 648.60(a)(3)(i)(B)(1), a full-time vessel may not take a compensation trip based on a single or multiple terminated trip(s) during the period June 15 through August 31 if the compensation trip would allow a vessel to land more than 36,000 lb (16,329 kg), the equivalent of two full access area trips, during the period June 15 through August 31, in the Elephant Trunk Access Area and Delmarva Access Area combined. For example, a vessel that terminated a trip in the Delmarva Access Area on June 1, 2010, and intends to declare two full trips in the Elephant Trunk Access Area access area from June 15 through August 31, must wait to fish its compensation trip in the Delmarva Access Area until November 1, 2010.

(B) [Reserved]

\* \* \* \* \*

(v) *Additional compensation trip carryover.* If an Access Area trip conducted during the last 60 days of the open period or season for the Access Area is terminated before catching the allowed possession limit, and the requirements of paragraph (c) of this section are met, the vessel operator shall be authorized to fish an additional trip as compensation for the terminated trip in the following fishing year. The vessel owner/operator must take such additional compensation trips, complying with the trip notification procedures specified in paragraph (a)(2)(iii) of this section, within the first 60 days of that fishing year the Access Area first opens in the subsequent fishing year. For example, a vessel that terminates an Elephant Trunk Access Area trip on December 29, 2010, must declare that it is beginning its additional compensation trip during the first 60 days that the Elephant Trunk Access Area is open (March 1, 2011, through April 29, 2011). If an Access Area is not open in the subsequent fishing year,

then the additional compensation trip authorization would expire at the end of the Access Area Season in which the trip was broken. For example, a vessel that terminates a Closed Area II trip on December 10, 2009, may not carry its additional compensation trip into the 2010 fishing year because Closed Area II is not open during the 2010 fishing year, and must complete any compensation trip by January 31, 2010.

(d) *Possession limit to defray costs of observers—*(1) *Observer set-aside limits by area—*(i) *Nantucket Lightship Access Area.* For the 2010 fishing year, the observer set-aside for the Nantucket Lightship Access Area is 58,910 lb (27 mt).

(ii) [Reserved]

(iii) *Elephant Trunk Access Area.* For the 2010 fishing year, the observer set-aside for the Elephant Trunk Access Area is 113,530 lb (52 mt).

(iv) *Delmarva Access Area.* For the 2010 fishing year, the observer set-aside for the Delmarva Access Area is 58,850 lb (27 mt).

\* \* \* \* \*

(e) \* \* \*

(1) *Research set-aside limits and number of trips by area—*(i) *Nantucket Lightship Access Area.* For the 2010 fishing year, the research set-aside for the Nantucket Lightship Access Area is 117,820 lb (53 mt).

(ii) [Reserved]

(iii) *Elephant Trunk Access Area.* For the 2010 fishing year, the research set-aside for the Elephant Trunk Access Area is 277,060 lb (126 mt).

(iv) *Delmarva Access Area.* For the 2010 fishing year, the research set-aside for the Delmarva Access Area is 117,700 lb (53 mt).

\* \* \* \* \*

(g) *Limited Access General Category Vessels.* (1) An LAGC scallop vessel may only fish in the scallop access areas specified in § 648.59(a) through (e), subject to the seasonal restrictions specified in § 648.59(a)(4), (b)(4), (c)(4), (d)(4), and (e)(3), and subject to the possession limit specified in § 648.52(a),

and provided the vessel complies with the requirements specified in paragraphs (a)(1), (a)(2), (a)(6) through (a)(9), (d), (e), (f), and (g) of this section, and § 648.85(c)(3)(ii). A vessel issued both a NE Multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the Closed Area I, Closed Area II, and Nantucket Lightship Sea Scallop Access Areas specified in § 648.59(b) through (d), provided the vessel complies with the requirements specified in § 648.59(b)(5)(ii), (c)(5)(ii), and (d)(5)(ii), and this paragraph (g), but may not fish for, possess, or land scallops on such trips.

(2) *Gear restrictions.* An LAGC IFQ scallop vessel authorized to fish in the Access Areas specified in § 648.59(a) through (e) must fish with dredge gear only. The combined dredge width in use by, or in possession on board of, an LAGC scallop vessel fishing in the Access Areas described in § 648.59(a) through (e) may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(3) *LAGC IFQ Access Area Trips.* An LAGC scallop vessel authorized to fish in the Access Areas specified in § 648.59(a) through (e) may land scallops, subject to the possession limit specified in § 648.52(a), unless the Regional Administrator has issued a notice that the number of LAGC IFQ access area trips specified in § 648.59(a)(3)(ii), (b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii) have been or are projected to be taken. Upon a determination from the Regional Administrator that the total number of LAGC IFQ trips in a specified Access Area have been or are projected to be taken, the Regional Administrator shall publish notification of this determination in the **Federal Register**, in accordance with the Administrative Procedure Act. Once this determination has been made, an LAGC IFQ scallop vessel may not fish for, possess, or land scallops in or from the specified Access Area after the effective date of the

notification published in the **Federal Register**.

- (i) [Reserved]
- (ii) [Reserved]
- (iii) [Reserved]
- (iv) [Reserved]

(4) *Possession Limits*. (i) *Scallops*. A vessel issued a NE multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS and that has not enrolled in the LAGC Access Area fishery, is prohibited from possessing scallops. An LAGC scallop vessel authorized to fish in the Access Areas specified in § 648.59(a) through (e) may possess scallops up to the possession limit specified in § 648.52(a).

(ii) *Other species*. Unless issued an LAGC scallop permit and fishing under an approved NE multispecies SAP under NE multispecies DAS, an LAGC IFQ vessel fishing in the Access Areas specified in § 648.59(a) through (e) is prohibited from possessing any species of fish other than scallops and monkfish, as specified in § 648.94(c)(8).

(5) *Number of trips*. An LAGC IFQ scallop vessel may not fish for, possess, or land scallops in or from the Access Areas specified in § 648.59(a) through (e) after the effective date of the notification published in the **Federal Register**, stating that the total number of trips specified in § 648.59(a)(3)(ii), (b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii) have been, or are projected to be, taken by LAGC IFQ scallop vessels.

10. In § 648.62, paragraph (b)(1) is revised to read as follows.

**§ 648.62 Northern Gulf of Maine (NGOM) scallop management area.**

\* \* \* \* \*

(b) \* \* \*

(1) *NGOM TAC*. The TAC for the NGOM is 70,000 lb (31.8 mt) for the 2010 fishing year.

\* \* \* \* \*

[FR Doc. 2010-9728 Filed 4-26-10; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 0907211158-91159-01]

RIN 0648-AY04

#### Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2010

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes management measures for the 2010 summer flounder, scup, and black sea bass recreational fisheries. The implementing regulations for these fisheries require NMFS to publish recreational measures for the fishing year and to provide an opportunity for public comment. The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

**DATES:** Comments must be received by 5 p.m. local time, on May 27, 2010.

**ADDRESSES:** You may submit comments, identified by 0648-AY04, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>
- Fax: (978) 281-9135, Attn: Comments on 2010 Summer Flounder, Scup, and Black Sea Bass Recreational Management Measures, 0648-AY04
- Mail and hand delivery: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

Mark the outside of the envelope: "Comments on 2010 Summer Flounder, Scup, and Black Sea Bass Recreational Measures, 0648-AY04."

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required

fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the recreational management measures document, including the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and other supporting documents for the recreational management measures are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901. These documents are also accessible via the Internet at <http://www.nero.noaa.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Michael Ruccio, Fishery Policy Analyst, (978) 281-9104.

#### SUPPLEMENTARY INFORMATION:

##### Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) developed by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission), in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35° E. 13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border.

The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 648, subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass). General regulations governing U.S. fisheries also appear at 50 CFR part 600. States manage summer flounder within 3 nautical miles of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The Federal regulations govern vessels fishing in Federal waters of the exclusive economic zone (EEZ), as well as vessels possessing a Federal fisheries permit, regardless of where they fish.