

**SUPPLEMENTARY INFORMATION:****Public Comments Solicited**

We intend that any final action resulting from the proposed rule will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule in light of the additional information. Generally, we seek information, data, and comments concerning:

(1) The taxonomic status of *Z.h. preblei*, *Z.h. campestris*, *Z.h. intermedius*, and other *Z. hudsonius* subspecies with a particular focus on Ramey et al. (2003, 2004a, 2004b, 2005), King et al. (2006), and the recently released genetics data;

(2) The taxonomy, biology, ecology, distribution, status, and factors affecting *Z.h. preblei*, *Z.h. campestris*, *Z.h. intermedius*, and other *Z. hudsonius* subspecies;

(3) Data from any systematic surveys for *Z.h. preblei*, *Z.h. campestris*, *Z.h. intermedius*, and other *Z. hudsonius* subspecies, as well as any studies that may show population size or trends;

(4) Quantitative information regarding the life history, ecology, and habitat use of *Z.h. preblei*, *Z.h. campestris*, *Z.h. intermedius*, and other *Z. hudsonius* subspecies, as well as information regarding the applicability of information relevant to other subspecies;

(5) Information on the threats faced by the *Z.h. preblei*, *Z.h. campestris*, *Z.h. intermedius*, and other *Z. hudsonius* subspecies in relation to the five listing factors (as defined in section 4(a)(1) of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*));

(6) Information regarding the effects of current land management on population distribution and abundance of *Z.h. preblei*, *Z.h. campestris*, *Z.h. intermedius*, and other *Z. hudsonius* subspecies; and

(7) Information regarding the possibility of contact and interaction within or between *Z.h. preblei*, *Z.h. campestris*, and adjacent subspecies of meadow jumping mouse (i.e., *Z.h. intermedius* and *Z.h. pallidus*) or other information relevant to a determination of the taxonomic classification of the species.

You may submit comments as indicated under **ADDRESSES**. If you wish to submit comments by e-mail, please avoid the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Due to the high level of interest in this rulemaking process, we also may post comments on our Web site. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and other information received, as well as supporting information used to write the proposed rule, will be available for public inspection, by appointment, during normal business hours at the Colorado Field Office (see **ADDRESSES** section). In making a final decision on the proposal, we will take into consideration the comments and any additional information we receive. Such communications may lead to a final regulation that differs from the proposal.

**Background**

The Preble's meadow jumping mouse (*Zapus hudsonius preblei*) was listed as a threatened species on May 13, 1998 (63 FR 26517). At the time of listing, we recognized Krutzsch (1954) as the "most recent revision of *Z. hudsonius*" and "the authority for (the 'subspecies') taxonomy" (63 FR 26517, May 13, 1998). In our February 2, 2005, **Federal Register** document (70 FR 5404), we determined that Ramey et al. (2004a) represented the best scientific and commercial information available regarding the taxonomy of *Z.h. preblei* and *Z.h. campestris*. Based on the lack of distinct genetic and morphologic differences between the two subspecies presented in Ramey et al. (2004a), we concluded that *Z.h. preblei* was likely not a valid subspecies and proposed removing the subspecies from the list of threatened and endangered species.

Since then, substantial additional information has become available including two recently available reports: "Comprehensive analysis of molecular phylogeographic structure among meadow jumping mice (*Zapus*

*hudsonius*) reveals evolutionarily distinct subspecies" (King et al. 2006) and "Genetic relatedness of the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) to nearby subspecies of *Z. hudsonius* as inferred from variation in cranial morphology, mitochondrial DNA, and microsatellite DNA: Implications for taxonomy and conservation" (Ramey et al. 2005). The Service intends to fully consider all of the available information in any delisting decision based on taxonomy.

In order to ensure all relevant information is considered, we have recently made available on our Web site (<http://mountain-prairie.fws.gov/preble/PEER/PEERindex.htm>) all of the morphological, mtDNA and microsatellite nuclear DNA data from Ramey et al. (2005) and King et al. (2006). We are extending the public comment period on the delisting proposal to allow the public to consider and comment on the above data.

**Authority**

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: March 20, 2006.

**H. Dale Hall,**

*Director, U.S. Fish and Wildlife Service.*

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

[Docket No.060314069-6069-01; I.D. 030306B]

**RIN 0648-AT25**

**Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 18**

**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 18 (Framework 18) to the Atlantic Sea Scallop Fishery Management Plan (FMP) which was developed by the New England Fishery Management Council (Council). Framework 18 proposes the following management measures: Scallop fishery specifications for 2006 and 2007 (open area days-at-sea (DAS)

and Scallop Access Area trip allocations); scallop Area Rotation Program adjustments; and revisions to management measures that would improve administration of the FMP. In addition, a seasonal closure of a proposed Scallop Access Area is proposed to reduce potential interactions between the scallop fishery and sea turtles, and to reduce finfish and scallop bycatch mortality.

**DATES:** Comments must be received at the appropriate address or fax number (see **ADDRESSES**) by 5 p.m., local time, on April 14, 2006.

**ADDRESSES:** Written comments should be submitted by any of the following methods:

- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Framework 18."

- Email: [ScallopAT25@noaa.gov](mailto:ScallopAT25@noaa.gov)

- Fax: (978) 281-9135

- Electronically through the Federal e-Rulemaking portal: <http://www.regulations.gov>.

Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this proposed rule should be submitted to the Regional Administrator at the address above and by e-mail to

[David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395-7285.

Copies of Framework 18 and its Regulatory Impact Review (RIR), including the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>.

**FOR FURTHER INFORMATION CONTACT:**

Peter W. Christopher, Fishery Policy Analyst, 978-281-9288; fax 978-281-9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Council adopted Framework 18 on November 17, 2005, and submitted it to NMFS on December 16, 2005, for review and approval. Framework 18 was developed and adopted by the Council to meet the FMP's requirement to adjust biennially the management measures for the scallop fishery. The FMP requires the biennial adjustments to ensure that the measures meet the target 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 measures for the 2006 and 2007 fishing years, which are described in detail below.

**Proposed Measures**

*1. Revised open area DAS allocations*

The number of open area DAS allocated to limited access vessels are required to be adjusted every 2 years to achieve OY at the target F ( $F=0.2$ ) for the scallop resource. Since the calculation of overall fishing mortality also includes the mortality in controlled access areas, the calculation of the open area DAS allocations depends on the Access Area Program measures, including the rotation schedule, management measures, and Access Area trip allocations. Based on the Access Area Program measures proposed in Framework 18, the total number of open area DAS would be set at 20,000 open area DAS, resulting in the following vessel-specific DAS allocations: Full-time vessels would be allocated 52 DAS in 2006 and 51 DAS in 2007; part-time vessels would be allocated 21 DAS in 2006 and 20 DAS in 2007; and occasional vessels would receive 4 DAS for each year.

Since Framework 18, if approved, will be implemented after the start of the 2006 fishing year (March 1, 2006), and would reduce the 2006 DAS allocations, some scallop vessels may fish more DAS between March 1, 2006, and the implementation of Framework 18. Under current regulations, full-time, part-time, and occasional vessels are allocated 67, 27, and 6 DAS, respectively for the 2006 fishing year. Framework 18 would reduce the DAS allocations in the 2006 fishing year to 52, 21, and 4 DAS, for full-time, part-time, and occasional vessels, respectively. Part-time and occasional vessels would be most likely to exceed the proposed Framework 18 allocations for the 2006 fishing year because of their lower DAS allocations under both current regulation and Framework 18. To ensure that the conservation goals of the Scallop FMP are maintained, Framework 18 therefore proposes that any vessel that uses DAS in the 2006 fishing year in excess of the final number allocated to that vessel for the 2006 fishing year under Framework 18 would have the excess DAS deducted from its 2007 fishing year DAS allocations. Although this could potentially allow F to exceed the F target for the 2006 fishing year, the deduction from the 2007 allocations

would neutralize the impacts on the resource over the 2-year period.

*2. Revised rotational management schedule for the Closed Area I (CAI), Closed Area II (CAII), and Nantucket Lightship Closed Area (NLCA) Scallop Access Areas*

Under existing regulations, the CAI and the NLCA Access Areas are scheduled to be open in 2006 and CAII and the NLCA are scheduled to be open in 2007. Framework 18 proposes to revise that schedule by opening the CAII and NLCA Access Areas in 2006 and CAI and NLCA in 2007. The revised schedule is intended to address changes in scallop resource abundance in the CAII and NLCA Access Areas that supports higher trip allocations in those areas in 2006. In *Oceana v. Evans, et al.*, (Civil Action No. 04-810, D.D.C., August 2, 2005, and October 6, 2005), the court vacated the essential fish habitat closures implemented under Framework 16 to the Scallop FMP and Framework 39 to the Northeast Multispecies FMP (69 FR 63460, November 2, 2004), which would have enlarged the CAI Access Area. Consequently, the Council opted to shift potential CAI trips in 2006 to CAII, and to close the CAI Access Area in 2006. With a smaller Access Area in CAI, the analysis in Framework 18 indicates that scallop catch rates would decline, causing increases in fishing time, bycatch, and habitat effects in CAI, with no notable benefits. The analysis in Framework 18 also indicates that CAII is capable of supporting an additional trip (from CAI) without exceeding the rotational area F target ( $F=0.2$  to  $0.3$ ), which is specified in the FMP to achieve OY from the Scallop Access Areas.

*3. Trip allocations, catch limits and seasons for Scallop Access Areas*

The Access Area program regulations authorize limited access vessels to take a specified number of trips in each controlled Access Area, with a scallop possession limit for each trip. The number of trips and the possession limit are proposed to maintain F at 0.2 to 0.3 within the Access Areas. Vessels are allocated a maximum number of trips into each Access Area, though this allocation can be increased through an exchange of a trip(s) with another vessel. The following explains the proposed trip allocations for the 2006 and 2007 fishing years:

In the 2006 fishing year, the maximum number of trips a vessel could take in the CAII and NLCA Access Areas would be three and two trips, respectively. A full-time scallop vessel

would be allocated three trips in the CAII Access Area, and two trips in the NLCA Access Area. A part-time scallop vessel would be allocated two trips, which could be distributed into the Access Areas as follows: One trip in CAII Access Area and one trip in the NLCA Access Area; two trips in the CAII Access Area; or two trips in the NLCA Access Area. An occasional vessel would be allocated one trip, which could be taken in either the CAII or NLCA Access Area. The scallop possession limit for Access Area trips would be 18,000 lb (8,165 kg) for full-time and part-time vessels, and 7,500 lb (3,402 kg) for occasional vessels.

In the 2007 fishing year, the maximum number of trips a vessel could take in the CAI, NLCA, and Elephant Trunk Access Area (ETAA) would be one, one, and five, respectively (unless the ETAA allocation is adjusted as described in management measure number 4 below). A full-time scallop vessel would be allocated one trip in the CAI Access Area, one trip in the NLCA Access Area, and five trips in the ETAA. A part-time scallop vessel would be allocated three trips, which could be distributed as follows: One trip in the CAI Access Area, one trip in the NLCA Access Area, and one trip in the ETAA; one trip in the CAI Access Area and two trips in the ETAA; or one trip in the NLCA Access Area and two trips in the ETAA; or three trips in the ETAA. An occasional vessel would be allocated one trip, which could be taken in either the CAI or NLCA Access Areas, or ETAA. The scallop possession limit for Access Area trips would be 18,000 lb (8,165 kg) for full-time vessels, 16,800 lb (7,620 kg) for part-time vessels, and 7,500 lb (3,402 kg) for occasional vessels.

The ETAA would open for scallop fishing on January 1, 2007, rather than at the start of the fishing year on March 1, 2007. The early opening is intended to spread out the fishing effort in the ETAA to avoid potential negative effects of high levels of fishing effort concentrated in a shorter period of time.

#### *4. Regulatory procedure to reduce the number of Scallop Access Area trips into the ETAA if updated biomass estimates are available from 2006 resource survey(s) that identify lower exploitable scallop biomass within the ETAA*

The ETAA would open as an Access Area on January 1, 2007. The proposed Framework 18 ETAA trip allocations are based on 2004 scallop survey information, which was the best scientific information available when

the Council established the proposed ETAA trip allocations for Framework 18. Because the ETAA would open nearly 3 years after the resource was surveyed in the area, the biomass estimates used in Framework 18 may not reflect the biomass at the time the ETAA opens. If, as of January 1, 2007, there is less biomass in the ETAA than the 2004 estimate, the number of allocated trips would be too high. This could result in overharvest of the ETAA under the proposed allocations unless there is a provision for adjusting the number of allocated trips. Framework 18 would establish a rulemaking process that would allow the Administrator, Northeast Region, NMFS (Regional Administrator) to adjust allocations in the ETAA based on updated biomass projections resulting from the 2006 resource surveys. To provide sufficient time to adjust allocations, if necessary, the survey data and analyses of updated exploitable biomass estimates for the area must be available prior to December 1, 2006, because Framework 18 requires NMFS to publish revised trip allocations on or about December 1, 2006. Framework 18 would require the Regional Administrator to publish predetermined revisions of the total allowable catch (TAC) specifications and trip allocations specified for a range of estimated exploitable biomass levels in the ETAA. Reduced trip allocations would ensure that the ETAA allocations do not cause overharvest of the scallop biomass in the area. If biomass estimates are lower than projected, the number of access trips can be reduced through a regulatory action consistent with the Administrative Procedure Act using the predetermined values in the table in § 648.60(a)(3)(i)(F) of the proposed regulatory text.

#### *5. Open Area DAS Adjustments when yellowtail flounder catches reach the TAC limit allocated to scallop vessels fishing in Georges Bank Access Areas*

Under current groundfish regulations, 10 percent of the yellowtail flounder TAC specified for harvest for each yellowtail flounder stock is allocated to vessels fishing for scallops under the Area Access Program in the CAI, CAII, or NLCA Access Areas (9.8 percent for the scallop access area fishery and 0.2 percent for vessels participating in approved scallop research). If the yellowtail flounder TAC is attained in any Access Area, the area is closed to further scallop fishing and vessels that have unutilized trips in the affected Access Area are authorized to take their unutilized trips in the open fishing areas. Framework 18 proposes to allocate the open area DAS for these

unutilized trips in a manner that maintains the fishing mortality objectives for scallops. To do this, Framework 18 proposes a ratio for each Access Area that would address differential catch rates between Access Areas and open areas. If an Access Area is closed, each vessel with unutilized trips would be allocated a specific amount of additional open area DAS based on the following ratios: 5.5 DAS per unutilized trip in the CAI Access Area; 5.4 DAS per unutilized trip in the CAII Access Area; and 4.9 DAS per unused trip in the NLCA Access Area. For broken trips for which a vessel has not completed a compensation trip, the unutilized compensation days remaining in the applicable Access Area would be determined by dividing the pounds of scallops authorized for harvest on the compensation trip(s) by 1,500 lb (680 kg) (the catch per day used to calculate the possession limit in the access areas). For each unutilized compensation trip day in the CAI, CAII, or NLCA Access Areas, a vessel would receive 0.458, 0.450, and 0.408 DAS, respectively, in open areas. Although not explicitly stated in Framework 18, NMFS would also apply these ratios to vessels participating in approved research under the scallop research set-aside program. Such vessels would be allowed to conduct compensation fishing in open areas subject to the same ratio if the yellowtail research set-aside TAC (equal to two percent of the scallop fishery's overall yellowtail TAC set-aside) is harvested. The ratio is intended to equate Access Area catch that is limited by possession limit with open area trips that would be limited by DAS.

#### *6. Extension of the current Scallop Access Area program in the Hudson Canyon Access Area (HCAA) through February 2008 for vessels that have unutilized HCAA trips from 2005*

The 2005 scallop resource surveys indicate that scallop biomass in the Hudson Canyon area in 2005 was much lower than had been predicted in Amendment 10 to the FMP, which was based on 2003 NMFS scallop survey results. Catch rates dropped more quickly than had been anticipated, and many vessel owners hesitated to take their 2005 HCAA trips. In response, to concerns about low catch rates, this proposed action would extend the HCAA until February 29, 2008, so that vessel owners with unutilized or incomplete trips during the 2005 fishing year could wait to complete their trips. This would allow short-term growth of scallops in the HCAA that is projected to improve catch rates. This extension would also apply to unutilized 2005

research set-aside that was allocated for harvest in the HCAA.

**7. Seasonal closure of the ETAA (September-October) to reduce sea turtle interactions in the ETAA and reduce scallop and finfish discard mortality**

The ETAA would be closed to scallop fishing for a two month period (September 1 - October 31). The 2-month closure is intended to provide protection for threatened and endangered sea turtles that may interact with the scallop fishery in the Mid-Atlantic and to reduce small scallop and finfish discard mortality. This closure period was selected to reflect a time of year when a relatively high number of sea turtle interactions were observed through 2004 in the ETAA, while minimizing the potential economic impacts of a longer closure. During this period, the analysis in Framework 18 also demonstrates that it is a period of high water and air temperatures, which causes higher scallop and finfish discard mortality.

**8. Closure of an area off of Delaware/Maryland/Virginia on January 1, 2007**

Framework 18 proposes to close an area to the south of the ETAA, known as the Delmarva area. High numbers of small scallops from the 2003 year class were observed in the 2005 NMFS scallop survey in the proposed Delmarva rotational closed area. The area would close on January 1, 2007, coinciding with the opening of the ETAA. The Delmarva area would remain closed for 3 years, until February 28, 2010, when the small scallops would have grown to an optimal size for harvest. The new rotational scallop closed area would be consistent with the FMP's requirement to adjust the Area Rotation Program by establishing rotational closed areas to protect large concentrations of small scallops.

**9. Elimination of the Scallop Access Area trip exchange program deadline in order to allow trip exchanges throughout the year**

The proposed action would allow vessels to exchange controlled access area trips at any time during the fishing year, with proper notification and approval by NMFS. The current regulations require that transactions be submitted by June 1 of each year, but this time restriction was found to be unnecessary for adequate monitoring and compliance. Therefore, this rule proposes to eliminate the June 1 deadline.

**10. Allowance of trip exchanges of 2006 CAII and/or NLCA Access Area trips for 2007 ETAA trips**

In addition to allowing one-for-one exchanges of Access Area trips in areas open during the same fishing year (including any unutilized HCAA trips under the HCAA extension described above), this rule proposes to allow one-to-one trip exchanges of 2006 CAII or NLCA Access Area trips and 2007 ETAA trips. Without this proposed measure, the owners of Mid-Atlantic vessels who prefer not to fish on Georges Bank would not be able to gain a Mid-Atlantic controlled access area trip in exchange for a Georges Bank controlled access area trip in 2006. With the exception of vessels that have unutilized HCAA trips from 2005, there would be no Mid-Atlantic Access Areas open to fishing in 2006.

**11. Modification of the Scallop Access Area broken trip program to allow unused makeup trips to be carried over to the next fishing year**

The broken trip exemption program allows vessels that terminate an Access Area trip prior to catching the full possession limit to return to the Access Area to catch the remaining portion of the possession limit on a compensation trip. This rule proposes that vessels that break a trip within the last 60 days of an open period for an Access Area would be allowed to take their compensation trip in the same Access Area up to 60 days after the start of the subsequent fishing year or season for the Access Area. Vessels would only be allowed to take compensation trips in the subsequent fishing year in the same Access Area where the original trip was broken and only if the Access Area is open in the subsequent fishing year. For example, a vessel would not be allowed to carry a compensation trip forward from the 2006 CAII Access Area into the 2007 fishing year because CAII would be closed in 2007. This provision is proposed in order to reduce safety risks associated with vessel owners attempting to complete a broken trip with limited time left in the fishing year or Access Area season. It would also allow vessel owners and operators additional flexibility in planning end-of-year Access Area trips. This rule also proposes to require vessel operators to enter a trip identification number in the vessel's VMS prior to the start of a compensation trip so that NMFS can more accurately monitor Access Area activity in the scallop fleet. Under current regulations, which do not require such trip identification, accounting of vessel's trip allocations in

Access Areas has been difficult and burdensome, especially if compensation trips are terminated before catching the possession limit allowed on that compensation trip.

**12. Elimination of the scallop vessel crew size limit for Scallop Access Area trips only**

This rule proposes to eliminate the seven-person crew limit (five-person limit for small dredge category vessels) for Access Area trips. Limited access vessels on an access area trip would have no limit on the number of crew onboard. This action is intended to eliminate inefficiencies caused by the crew limit for fishing activity that is limited by a possession limit. The crew limit was established to control vessels' shucking capacity when fishing under DAS.

**Corrections and Clarifications**

This proposed rule includes changes to the scallop regulations to improve compliance with, and understanding of regulations. Several paragraphs with inappropriate references to other paragraphs or sections are proposed to be changed. Some paragraphs contain references to the 2004 and/or 2005 fishing years, which are proposed to be revised. Additional or revised prohibitions in § 648.14 are proposed for clarification. In addition, the following revisions are proposed for the reasons stated:

In § 648.4, paragraph (a)(2)(ii)(D) included initial general category application requirements for the 2005 fishing year to designate a vessel to a VMS general scallop permit category. Since this requirement was for initial designations only, it is deleted. Paragraph (a)(2)(ii)(D) of § 648.4 would instead be reserved for future regulatory revisions, if necessary.

In § 648.4, paragraph (c)(2)(iv)(B) would be revised to make vessel monitoring system (VMS) requirements for permit applications consistent for general scallop and limited access category vessels.

In §§ 648.9 and 648.10, clarifications would be made to VMS requirements for scallop vessels, including general category scallop vessels, to ensure that regulations clearly identify VMS operation requirements for such vessels.

In § 648.11, paragraph (a)(1) would be added to reflect trip notification requirements for scallop vessels for the purpose of deploying at-sea observers.

In § 648.60, paragraph (a) would be revised to be consistent with the Access Area restrictions for general scallop vessels specified in § 648.60(g).

In § 648.60, paragraph (a)(2) would be revised to reference the clarified VMS operation requirements specified in § 648.10(b)(4).

The table of trip allocations in § 648.60(a)(3) would be removed, and replaced with text specifying the number of trips per limited access permit category, and possible distribution of trips for vessels with part-time or occasional permits that have total trip allocations that are less than the number of trips for all areas combined. This revision is proposed because the table in the current regulations is confusing.

In § 648.60, the text in paragraph (a)(9)(iii) would be removed and the paragraph designated as "Reserved" because NMFS's observer program indicated that the requirement for vessel operators to report catch on each observed tow is inconsistent with current observer program protocols.

The yellowtail flounder bycatch TAC allocation for the Area Access Program is specified in the NE multispecies regulations in § 648.85(c). Although Framework 18 is not proposing substantive modifications of the NE multispecies regulations, § 648.85(c) is revised to remove references to the 2004 and 2005 fishing years. In addition, since Framework 16 to the Scallop FMP and Framework 39 to the NE Multispecies FMP (69 FR 63460, November 2, 2004) implemented a permanent allowance for the yellowtail flounder bycatch TAC under the Area Access Program, specific dates in § 648.85(c) would be removed to eliminate the need to modify the paragraph each time a new framework is completed.

#### Classification

At this time, NMFS has not determined that the action that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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

An IRFA has been prepared pursuant to section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. Data, information, and impacts discussed in the IRFA below are taken from the Framework 18

document (see **ADDRESSES**). A summary of the analysis follows:

Measures proposed in Framework 18 are intended to improve the management of the scallop fishery and to make necessary adjustments to the existing management measures, including the FMP's Area Rotation Program. A full description of the action and why it is being considered is contained in the preamble to this proposed rule. The Magnuson-Stevens Act and the FMP (which allows for framework adjustments and amendments to improve the management of the scallop fishery and to modify the Area Rotation Program), are the legal basis for the proposed action. This proposed rule does not duplicate, overlap, or conflict with any relevant Federal rules.

#### Description of the Small Business Entities

The proposed regulations of Framework 18 would affect vessels with limited access scallop and general category permits. According to NMFS Northeast Region permit data, 337 vessels were issued limited access scallop permits, with 300 full-time, 30 part-time, and 7 occasional limited access permits in the 2004 fishing year. In addition, 2,801 open access general category permits were issued to vessels in the 2004 fishing year. All of the vessels in the Atlantic sea scallop fishery are considered small business entities because all of them grossed less than \$3 million according to landings data for the 2004 fishing year. Complete landings and value information from the 2005 fishing year is not available since the fishing year ends on February 28, 2006. According to the information in Framework 18, annual revenue from scallop landings averaged about \$759,816 per full-time vessel, \$208,002 per part-time vessel, and \$7,193 per occasional vessel during the 1999–2004 fishing years. Total revenues per vessel for all species landed were less than \$3 million per vessel. Since December 1, 2005, the general category fleet has been separated into two permit categories under Framework Adjustment 17 to the FMP (70 FR 61233, October 21, 2005). Vessels that possess up to 400 lb (181.4 kg) per trip are required to operate VMS and are issued a VMS general scallop permit. Vessels that do not possess more than 40 lb (18.1 kg) are not required to operate VMS and are issued Non-VMS general scallop permits. There are currently 831 VMS general scallop vessels and 1,949 Non-VMS general scallop vessels. Revenues for these vessels are not available at this time.

Two criteria, disproportionality and profitability, are considered to determine the significance of regulatory impacts. The disproportionality criterion compares the effects of the regulatory action on small versus large entities. All of the vessels permitted to harvest sea scallops are considered to be small entities. The profitability criterion applies if the regulation significantly reduces profit for a substantial number of small entities, and is discussed in the Economic Impacts of the Proposed Action section of the IRFA summary below.

#### Proposed Reporting, Recordkeeping, and Other Compliance Requirements

Framework 18 proposes one new reporting, recordkeeping, and compliance requirement for limited access scallop vessels. The broken trip program allows vessels to resume an Access Area trip that was terminated before catching the full possession limit, provided the vessel operator complies with the notification requirements, submits a request for a compensation trip, and receives written verification of the compensation trip from the Regional Administrator. Currently, it is difficult for the NMFS Northeast Regional Office to account for vessel trip allocations when a vessel has multiple broken trips and has taken several compensation trips. To address the administrative problem, Framework 18 proposes to require vessels that are resuming an Access Area trip that was previously terminated early (a so-called compensation trip) to enter a trip identification number through their VMS prior to sailing on a compensation trip. The trip identification number would be provided on the letter(s) authorizing compensation trip(s). This requirement would apply only to limited access scallop vessels and would be a minor addition to current reporting requirements that are done through the vessel's VMS. The cost of such a requirement would be approximately \$395 based on an estimated 500 compensation trips, fleet-wide.

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

Because total economic impacts of the management measures depend on the overall management scheme implemented in Framework 18, economic impacts of Framework 18 are most relevant in aggregate. Therefore, aggregate impacts are discussed below, followed by qualitative discussion of the impacts of the individual measures.

The aggregate economic impacts of the proposed measures and other

alternatives considered by the Council are analyzed relative to the no action alternative. Management measures considered in aggregate include Access Area allocations, modified ETAA opening and groundfish closed area access, extended HCAA, area closures (Delmarva), and open area DAS allocations. "No action" refers to open area DAS (24,700 for the fleet), CAI, CAII, and NLCA rotation order, as specified in current regulations, HCAA and ETA reverting to open areas subject to open area DAS, and no additional closures. Total open area DAS under the proposed alternative would be 20,000. The impacts on vessel revenues and profits are expected to be similar to the impacts of the proposed measures on total fleet revenue and producer surplus. Overall fleet revenue, and therefore annual scallop revenue, is estimated to be \$545 million under the no action compared to \$551 million under the proposed alternative during 2006–2007 (an increase of 1.06 percent). Revenues for each vessel issued a limited access permit would increase by approximately 1.06 percent under the proposed action compared to the no action alternative. Because fishing costs are estimated to increase due to the allocation of more access area trips with the proposed measures, the changes in net revenue (revenue minus variable costs) and vessel profits compared to no action will be negligible (0.1–percent increase per year) over the 2–year period from 2006 to 2007.

The long-term (2008–2019) economic effects of the proposed measures are estimated to be slightly negative on revenues (\$901.6 million under the proposed action compared to \$913.2 million under no action, an average 1.27–percent decline per year) and negligible on producer surplus (0.1–percent decline per year) compared to no action. Since the no action scenario would result in higher price due to lower landings, revenues under this scenario would exceed the revenues for the proposed measures, depending on the assumptions regarding changes in export, imports, disposable income, consumer preferences, and composition of landings by market size category in the future years. Expansion of the export markets for the U.S. sea scallops, for example, has helped to prevent price declines in the recent years despite the record increase in scallop landings, and could keep prices and scallop revenues higher than historical averages over the long-term as well, benefiting the small business entities in the scallop fishery. However, as noted below for individual measures, there are conservation

benefits for scallops and species caught as bycatch that outweigh the minimal losses in economic benefits.

Other measures proposed in this rule are expected to provide additional positive impacts, although not quantified, by providing vessels more flexibility in choosing the areas and time of fishing that will maximize their profits. These measures include one-for-one exchanges of 2006 CAII and NLCA Access Area trips for 2007 ETAA trips, other one-for-one exchanges of Access Area trips, the 60–day carryover of compensation trips, the January 1, 2007, opening of ETAA (rather than March 1, 2007), the September through October closed season for the ETAA, and the elimination of the trip exchange deadline.

### *1. Revised open area DAS allocations*

Open area DAS under the proposed action would be lower than under the no action alternative, reducing potential economic benefits. In addition, 2007 DAS for some vessels may be reduced if such vessels use more DAS initially in 2006 than are ultimately allocated under Framework 18 because such DAS would be deducted from 2007 DAS allocations. However, consistent with the Area Rotation Program and the overall FMP management program, proposed open area DAS allocations would prevent overfishing in open areas and a decline in future yield. It would therefore have long-term positive impacts on revenue and profits of small business entities.

Alternatives to the proposed measures would allocate 15,000 DAS to 30,000 DAS for open areas instead of 20,000 open area DAS under the proposed action. In aggregate, none of the other alternatives would have significantly different impacts than the proposed action in the short and the long-term, as indicated by changes in revenues near 1 percent for all alternatives (compared to the no action alternative).

### *2. Revised rotational management schedule for the CAI, CAII, and NLCA Access Areas*

Because the proposed Area Access schedule allocates five trips in 2006 to CAII and NLCA combined, compared to the no action schedule of a total of two trips in 2006, it would have positive impacts on landings, revenues, and gross profits of small businesses in general. The proposed rotation schedule could have some negative impacts in 2006 compared to no action, and other alternatives allowing access to CAI in 2006. It may not be possible for smaller boats, such as general category scallop vessels, to access CAII to substitute for

the CAI trips. The short-term negative impacts could be offset if enough trips can be taken in open areas of Georges Bank and/or the Mid-Atlantic to compensate for the trips that could not be taken in CAI. The closure of the CAI access area in 2006 would protect the smaller biomass of scallops in the modified Access Area from overfishing, and, therefore, would result in higher future benefits for both the limited access and general category vessels when it is reopened to fishing in 2007. These long-term benefits are expected to outweigh short-term losses from the closure of CAI.

The no action and status quo alternatives would allocate fewer trips to the Georges Bank Access Areas than the proposed action, and therefore, would have lower economic benefits compared to the proposed access. The economic impacts on small business entities of the alternative that would have allowed the limited access and general category vessels to fish in all three access areas in 2006 would be similar to the proposed schedule because the total number of controlled access trips are the same under both alternatives. Although this alternative would have provided general category and limited access vessels the opportunity to fish in CAI in 2006, it could also increase the risk of localized overfishing as many vessels could fish within the small area. As a result, this alternative could lower revenues and profits for both limited access and general category vessels over the long-term and when this area is reopened in 2007.

### *3. Area Specific limits on vessels fishing in Access Areas*

The economic impacts of area specific trip allocations and possession limits are unchanged from the no action alternative. Area specific trip allocations and possession limits help prevent overfishing in Access Areas, preventing reduction in future yield, and in social and economic benefits from the scallop fishery. Although trip allocations and possession limits increase fishing costs by lowering flexibility for vessel owners to determine how many trips to take to land the allocated amounts, it also prevents large landings, resulting in more stable landings and less fluctuation in prices over time. Overall, these positive economic impacts are expected to outweigh the negative impacts associated with the reduced flexibility.

The alternative to trip allocations and possession limits would have introduced an overall catch limit for vessels fishing in Access Areas, but

would have allowed vessels to harvest the overall catch limit in as many trips as necessary for each vessel. Therefore, the alternative would have eliminated the trip allocations with trip-by-trip possession limits. This non-preferred alternative could have lowered the fishing costs for some vessels if fewer trips were necessary to land the overall limit for an area. Therefore, this measure could have increased profits and other benefits for those vessels. However, this alternative may also have resulted in large landings lowering prices and reducing economic gains. Combined with the elimination of crew limits in controlled access areas, this measure could reduce the long-term revenues, profits and total economic benefits if vessels with large crews start targeting smaller scallops with lower prices.

*4. Open Area DAS Adjustments when yellowtail flounder catches reach the 10-percent TAC limit allocated to scallop vessels fishing in Georges Bank Access Areas*

Allowing unutilized Access Area trips to be used as open area DAS would help to minimize the loss in landings and revenue due to the closure of Access Areas before a vessel takes its trip, although impacts would likely be negative compared to no action. Scallop catch in open areas under the proposed alternative is expected to be similar to the overall catch on Access Area trips in terms of numbers of scallops. However, if meat counts (i.e., the number of scallop meats that it takes to weigh one pound (0.45 kg)) are lower in open areas, the landed weight of scallops would be lower than 18,000 lb (8,165 kg) for a full Access Area trip. For example, if the open area meat count averages 17.2 meats per pound in open areas, compared to 12.0 meats per pound in Closed Area II Access Area, catches from the additional open area trips could range from about 11,000 lb (4,990 kg) to close to 13,000 lb (5,897 kg) compared to the 18,000 lb (8,165 kg) from the trip that would have been taken in the Access Area. Compared to the no action alternative, which would have allowed the trips to be reallocated on a one-to-one DAS ratio, this example could result in revenues of \$60,000 if 11,000 lb (4,990 kg) are landed or \$47,000 if 13,000 lb (5,897 kg) of scallops are landed. However, the higher the meat count, the less the economic loss in comparison to the no action alternative. Vessels with more than 24 DAS reallocated in open areas under the proposed action would have positive economic impacts compared to the no action. The proposed alternative

would allow all unused trips to be reallocated to open areas, as opposed to the no action alternative that caps the reallocation at 24 DAS for full-time vessels. The amount of additional revenue compared to the no action would depend on the amount and size of scallops landed.

One alternative considered for this measure would allocate an equal number of open area trips with an 18,000-lb (8,165-kg) possession limit for each trip not taken before areas close from yellowtail flounder catches. Such trips would not count against the vessel's open area DAS allocation. Although this alternative would minimize the loss in revenue compared to the preferred alternative, it could result in negative long-term impacts on the scallop resource and negative economic benefits for the small business entities since the transferred trips in the open areas could increase fishing mortality and take longer than in the access areas. Another alternative, to allocate half the access trips, would prevent any shift of effort into open areas, but each vessel would be allocated fewer trips if the TAC is reached, thus it would lower revenues as compared to the preferred alternative. The status quo alternative would allow vessels to fish 12 DAS in open areas for up to two trips not taken before areas close from yellowtail flounder catches. This alternative would have a negative economic impact on vessels that could not take three or more of their trips in the controlled access areas.

*5. Extension of the current Access Area program in the HCAA through February 2008 for vessels that have unutilized HCAA trips from 2005*

Extension of the HCAA program by itself is expected to have positive economic impacts in 2006 and/or 2007 because the vessels could lower their costs and increase their profits by taking trips when catch rates increase relative to the 2005 levels. However, if prices decline, revenue relative to foregone revenue in 2005 would be negative. Nevertheless, the opportunity to complete the trips in the HCAA would provide for additional benefits in 2006 and 2007.

The only significant alternative to the proposed measures is the no action alternative of converting HCAA to a fully open area without allowing vessels to take any 2005 access trips in the future. This would result in slightly lower revenues and profits for small business entities in the short term, and negligible impacts over the long term compared to the proposed action. Given that catch rates of scallops in areas

outside of the boundaries of the HCAA are currently higher than catch rates within the HCAA, it is unlikely that vessels would utilize open area DAS to fish in the HCAA under the no action alternative.

*6. Opening of the ETAA on January 1, 2007*

Opening the ETAA on January 1, 2007, would have positive economic impacts on small entities by helping to spread out fishing effort and landings over time, and by providing vessel owners more flexibility to determine when to fish during the initial year of the ETAA. The fishing revenues would be more stable compared to an opening on March 1, 2007, the beginning of the fishing year.

The alternative to the proposed measure is the status quo opening in March 1, 2007, which has lower benefits than the preferred alternative for the reasons noted above.

*7. ETAA trip allocations*

The combined impacts of the proposed ETAA trip allocations are expected to be positive. Allocating five trips initially compared to nine trips under the status quo (there is not a no action alternative in this case), would result in slightly higher revenues and profits for small business entities in the short term and negligible impacts over the long term, as summarized above in the discussion of aggregate impacts. This action by itself, therefore, is expected to increase yield from the scallop fishery over the long term, and thus, would have positive economic impacts on small entities. The proposed allocations could have negative economic impacts on the general category scallop vessels because it limits the maximum catch from this vessel category whereas under the status quo alternative, general category vessels would not be constrained by a limit on trips or by the TAC. However, if such controls are not implemented for the general category fleet, the landings from this area could exceed the fishing mortality targets, and reduce the scallop biomass and yield in the future. This could result in lower allocations in the future for both the limited access and general category vessels and reduce the net economic benefits from the scallop resource.

*8. Seasonal closure of the ETAA (September-October) to reduce sea turtle interactions in the ETAA and reduce scallop and finfish discard mortality*

The proposed September through October closed season for the ETAA could have negative economic effects on



scallop fishermen by reducing their flexibility in choosing when to fish. Under no action, vessels could fish in the area year-round, with maximum flexibility. Furthermore, seasonal closures can cause spikes in landings before and after the closure, which can have negative effects on price and revenues. The negative economic impacts of this closure are expected to be minimal, however, because the area will be closed only for 2 months, when vessels could fish in other areas, and vessels will still have the same number of trips to take. The preferred alternative would minimize these negative impacts on fishing costs relative to other closure alternatives. The alternative options would close the ETAA for a longer period, one alternative from July 15 to October 31 and another alternative from June 15 to November 14, and thus could have larger negative impacts on vessels due to the length of the closure.

**9. Regulatory procedure to reduce the number of Scallop Access Area trips into the ETAA if updated biomass estimates are available from 2006 resource survey(s) that identify lower exploitable scallop biomass within the ETAA**

The adjustment procedure is expected to have positive economic impacts by ensuring that landings and economic benefits are kept to sustainable levels by making timely adjustments to management measures when new ETAA biomass data become available. The no action alternative would reduce economic benefits if the exploitable scallop biomass in the ETAA is determined to be too low to support the allocated number of trips, reducing biomass too rapidly, compromising years 2 and 3 of the ETAA. The economic impacts of the higher versus lower trip allocations are discussed in "Initial ETA Access Area allocations" above.

**10. Closure of an area off of Delaware/Maryland/Virginia on January 1, 2007**

The impacts of closing the Delmarva area, by itself, could have negative impacts in the short term compared to the no action alternative, which would not close the area. It may also have negative economic impacts on some vessels that mainly fish in Mid-Atlantic areas, by narrowing the fishing grounds they could use for their open-area DAS. Some of these negative economic impacts may be mitigated by the re-opening of the ETAA in 2007. However, the Delmarva area was identified during development of Framework 18 as an area where a concentration of small scallops warranted the establishment of

a rotational closed area under the FMP's Area Rotation Program. The Area Rotation Program represents the FMP's management strategy to improve yield over the long term and, consistent with that strategy, positive impacts over the long term are anticipated from the closure. When the area reopens in 2010, increased revenues should be realized because the scallops in the area will be the optimal size for harvesting. When considered in aggregate as discussed above, the impacts will be positive on the revenues and profits of the small entities in the short term, and negligible over the long term (as summarized above in aggregate impacts).

**11. Elimination of the Scallop Access Area trip exchange program deadline in order to allow trip exchanges throughout the year**

The elimination of the trip exchange deadline is expected to have positive economic impacts by providing greater flexibility for vessel owners to respond to circumstances, and it is expected to lower fishing costs as well as reducing business and safety risks. Vessel owners may find it necessary or advantageous to be able to exchange trips throughout the fishing year as fishery and resource conditions change. The no action alternative of keeping the June 1 deadline would constrain trip exchange activity when no such constraint is necessary.

**12. Allowance of trip exchanges of 2006 CAII and/or NLCA Access Area trips for 2007 ETAA trips**

Allowing vessel owners to exchange 2007 ETAA trips for 2006 CAII or NLCA Access Area trips will have positive economic impacts on small entities. In particular, vessels in the Mid-Atlantic that would typically not fish in the CAII or NLCA Access Areas would otherwise be forced to take trips on Georges Bank or forego a large number of trips in the 2006 fishing year. The cross-year trip exchange would allow such vessels to forego such trips to Georges Bank in 2006 but make up for them with additional trips in the ETAA in 2007. Exchanging vessel owners could also negotiate compensation for the postponed landings, thus mitigating the short-term costs for one of the exchanging vessels. The revised exchange program is expected to provide flexibility to vessel owners regarding which areas to fish, thereby reducing fishing costs without changing the total number of trips allocated to the fleet in the Access Areas during a fishing year.

There were no significant alternatives other than the no action alternative,

which would not have allowed cross-year trip exchanges between CAII, NLCA, and ETAA.

**13. Modification of the Scallop Access Area broken trip program to allow unused makeup trips to be carried over to the next fishing year**

The proposed broken trip carryover provision action would have positive impacts by reducing the risk associated with trips taken at the end of a fishing year, or at the end of a seasonal access program, and preventing any revenue loss that would result if the compensation trips could not be taken by the end of the same fishing year due to weather or other factors. Under the no action alternative, vessels breaking trips near the end of the fishing year or Access Area season would be required to complete the trip before the end of the fishing year or Access Area season. In prior years, such a restriction has resulted in vessels opting to not break a trip, foregoing the trip and resulting revenues, or forcing compensation trips in poor weather, potentially compromising safety.

**14. Elimination of the scallop vessel crew size limit for Scallop Access Area trips only**

Eliminating the crew limit for limited access vessels conducting an Access Area trip is expected to lower total fishing costs, increase total benefits for crew and the vessel-owners, but reduce income per crew member. This measure could have negative economic impacts, however, if there is a race to fish by many vessels employing large crews in order to fish before catch rates decline or before the area is closed due to bycatch. Furthermore, if unlimited crew size leads to smaller scallops being landed, then both the immediate impacts (if price falls) and long-term impacts (when harvesting smaller scallops affects future landings) would be negative. On the other hand, the existing possession limits for access areas could mitigate some of these negative impacts by limiting the trip duration.

**Economic Impacts of Significant and Other Non-selected Alternatives**

As noted above, the economic impacts of the proposed action are most relevant in aggregate. Therefore, the impacts of the significant alternatives to the proposed action are also most relevant when considered in aggregate. Framework 18 considered 10 alternative scenarios, including the proposed action and no action alternative. Status quo differs from the no action in that it specified open area DAS and Access



Area allocations to meet the F=0.2 fishing mortality target for the scallop resource overall, and fishing mortality targets consistent with the area rotation program. Both the status quo and no action alternatives would allocate 24,700 open area DAS. The main difference between status quo and no action would be, that under status quo, the ETAA would become an Access Area with nine trips allocated, whereas under no action, the Elephant Trunk Area would become part of the open area under DAS. Framework 18 considered open area DAS allocations of 30,000; 24,700; 20,000; 18,000; and 15,000, combined with CAI, CAII, and NLCA Access Area Schedule, ETA Access Area trip allocations, HCAA opening to open area DAS, HCAA extension through the 2007 fishing year, and the Delmarva closed area. The difference in overall economic impacts between alternatives compared to the no action alternative are relatively small, with all of the alternative scenarios resulting in total revenues between \$540 million to \$552 million, compared to \$527 million for the no action alternative for 2006 and 2007 combined. The proposed action would result in the second-highest revenues in the short-term, with \$551 million in revenues as noted above. The proposed action would result in the second to lowest long-term revenues. The alternative with the highest short-term revenues, at \$552 million, would allocate 18,000 DAS, allow access to the CAI, CAII, and NLCA Access Areas in 2006 and the CAI and NLCA Access Areas in 2007, allow five trips in the ETAA in 2007, extend the HCAA, and close the Delmarva area. This alternative also would have the lowest long-term revenues. Long-term impacts would likely be mitigated by required adjustments that will be completed by the Council for the 2008 and 2009 fishing years. The status quo alternative would result in the lowest short-term revenues, at \$539 million, and middle-of-the-range long-term revenues. The difference in revenues depended on the total open area DAS allocations (15,000; 18,000; 20,000; 24,700; and 30,000 were considered), the schedule for the CAI, CAII, and NLCA Access Areas, whether the ETAA would be an Access Area or open to fishing under open area DAS in 2006, whether the HCAA would be extended or not, and whether the Delmarva area would be closed or not in 2007.

This proposed rule contains one new collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction

Act (PRA). Vessels that are resuming an access area trip that was previously terminated early (a so-called compensation trip) would be required to enter a trip identification number through their VMS units prior to sailing on the compensation trip. This requirement would apply to limited access scallop vessels and has been submitted to OMB for approval under OMB 10648-0491. Public reporting burden for this collection-of-information is estimated to be 1 minute per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see ADDRESSES).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 23, 2006.

**James W. Balsiger,**

*Acting 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 § 648.4, paragraphs (a)(2)(ii)(D), (c)(2)(iv) introductory text, and (c)(2)(iv)(B) are revised to read as follows:

#### § 648.4 Vessel permits.

- (a) \* \* \*
- (2) \* \* \*
- (ii) \* \* \*
- (D) [Reserved]

\* \* \* \* \*

- (c) \* \* \*
- (2) \* \* \*

(iv) An application for a scallop permit must also contain the following information:

\* \* \* \* \*

(B) If applying for a VMS general scallop permit, or full-time or part-time limited access scallop permit, or if opting to use a VMS unit, a copy of the vendor installation receipt or proof of vendor activation of the VMS from a NMFS-approved VMS vendor. NMFS-approved vendors are described in § 648.9.

\* \* \* \* \*

3. In § 648.9, paragraphs (c)(1)(iii) and (c)(2)(i)(D) are revised to read as follows:

#### § 648.9 VMS requirements.

- (c) \* \* \*
- (1) \* \* \*

(iii) At least twice per hour, 24 hours a day, throughout the year, for vessels issued a general scallop permit and subject to the requirements of § 648.4(a)(2)(ii)(B).

\* \* \* \* \*

- (2) \* \* \*
- (i) \* \* \*

(D) The vessel has been issued a general scallop permit and is required to operate VMS as specified in § 648.10(b)(1)(iv), is not in possession of any scallops onboard the vessel, is tied to a permanent dock or mooring, and the vessel operator has notified NMFS through VMS by transmitting the appropriate VMS power down code, that the VMS will be powered down, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such a vessel must repower the VMS prior to moving from the fixed dock or mooring. VMS codes and instructions are available from the Regional Administrator upon request.

\* \* \* \* \*

4. In § 648.10, paragraphs (b)(1)(i), (b)(1)(iv), (b)(2), (b)(2)(i), (b)(2)(ii), and (b)(4) are revised and paragraph (e)(2)(v) is added to read as follows:

#### § 648.10 DAS and VMS notification requirements.

\* \* \* \* \*

- (b) \* \* \*
- (1) \* \* \*

(i) A scallop vessel issued a Full-time or Part-time limited access scallop permit or a VMS general scallop permit;

\* \* \* \* \*

(iv) A scallop vessel issued a VMS or a Non-VMS general scallop permit when fishing under the Sea Scallop Area Access Program specified under § 648.60;

\* \* \* \* \*

(2) The owner of such a vessel specified in paragraph (b)(1) of this section must provide documentation to the Regional Administrator at the time of application for a limited access permit or general scallop permit that the vessel has an operational VMS unit installed on board that meets those criteria, unless otherwise allowed under this paragraph (b). If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to, or whose owner has elected to, use a VMS unit is subject to the following requirements and presumptions:

(i) A vessel subject to the VMS requirements of § 648.9 and this paragraph (b) that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the DAS program, the general category scallop fishery, or other fishery requiring the operation of VMS as applicable, unless the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying NMFS by transmitting the appropriate VMS code through the VMS prior to the vessel leaving port, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area as described in § 648.85(a)(3)(ii) under the provisions of that program.

(ii) Notification that the vessel is not fishing under the DAS program, the general category scallop fishery, or other fishery requiring the operation of VMS, must be received prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip.

\* \* \* \* \*

(4) *Atlantic sea scallop vessel VMS notification requirements.* (i) Less than 1 hour prior to leaving port, the owner or authorized representative of a scallop vessel that is required to use VMS as specified in paragraph (b)(1) of this section, must notify the Regional Administrator by entering the

appropriate VMS code that the vessel will be participating in the scallop DAS program, Area Access Program, or general category scallop fishery. VMS codes and instructions are available from the Regional Administrator upon request.

(ii) To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access permits fishing in open areas or Sea Scallop Access Areas, and general category vessels fishing under the Sea Scallop Access Area program specified in § 648.60, are required to comply with the additional VMS notification requirements specified in paragraphs (b)(4)(iii) and (iv) of this section, except that scallop vessels issued Occasional scallop permits not participating in the Area Access Program specified in § 648.60 may provide the specified information to NMFS by calling NMFS. All sea scallop vessels issued a VMS general category or Non-VMS general scallop permit that are participating in the Area Access Program specified in § 648.60 are required to comply with the additional VMS notification requirements specified in paragraph (b)(4)(iii) and (iv) of this section.

(iii) Prior to the 25th day of the month preceding the month in which fishing is to take place, the vessel must submit a monthly report through the VMS e-mail messaging system of its intention to fish for scallops, along with the following information: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for open areas and each Sea Scallop Access Area in which it intends to fish. The Regional Administrator may waive this notification period if it is determined that there is insufficient time to provide such notification prior to a Sea Scallop Access Area opening or beginning of the fishing year. Notification of this waiver of a portion of the notification period shall be provided to the vessel through a permit holder letter issued by the Regional Administrator.

(iv) In addition to the information required under paragraph (b)(4)(iii) of this section, and for the purpose of selecting vessels for observer deployment, each participating vessel owner or operator shall provide notice to NMFS of the time, port of departure, and open area or specific Sea Scallop Access Area to be fished, at least 72 hr, unless otherwise notified by the Regional Administrator, prior to the beginning of any scallop trip.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(v) Such vessels must comply with the VMS notification requirements specified in paragraph (b) of this section by notifying the Regional Administrator by entering the appropriate VMS code that the vessel is fishing outside of the scallop fishery. VMS codes and instructions are available from the Regional Administrator upon request.

5. In § 648.11, paragraph (a)(1) and (a)(2) are added to read as follows:

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

(a) \* \* \*

(1) For the purpose of deploying at-sea observers, sea scallop vessels are required to notify NMFS of scallop trips as specified in § 648.10(b)(4). Unless otherwise notified by the Regional Administrator, owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop fishing trips on which an observer is carried onboard the a the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit.

(2) [Reserved]

\* \* \* \* \*

6. In § 648.14, paragraphs (h)(27) through (35) are removed and paragraphs (a)(56)(i), (a)(56)(iii), (a)(58), (h)(2), (h)(4), (h)(5), (h)(6), (h)(12), (h)(13), (h)(15), (h)(17), (h)(19), (h)(24), (h)(25), (h)(26), (i)(3), (i)(11) and (i)(12) are revised to read as follows:

**§ 648.14 Prohibitions.**

(a) \* \* \*

(56) Fish for, possess, or land per trip, scallops in excess of 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops unless:

(i) The scallops were fished for and harvested by a vessel that has been issued and carries on board a VMS general scallop or limited access scallop permit;

\* \* \* \* \*

(iii) The scallops were fished for and harvested by a vessel issued a VMS general scallop permit with an operator on board who has been issued an operator's permit and the permit is on board the vessel and is valid.

\* \* \* \* \*

(58) [Reserved]

\* \* \* \* \*

(h) \* \* \*

\* \* \* \* \*

(2) Land scallops on more than one trip per calendar day after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 648.10, unless

exempted from DAS allocations as provided in § 648.54.

\* \* \* \* \*

(4) If the vessel is not subject to VMS requirements specified in § 648.10(b), fail to comply with the requirements of the call-in system specified in § 648.10(c).

(5) Combine, transfer, or consolidate DAS allocations, except as allowed for one-for-one Access Area trip exchanges as specified in § 648.60(a)(3)(ii).

(6) Have an ownership interest in more than 5 percent of the total number of vessels issued limited access scallop permits, except as provided in § 648.4(a)(2)(i)(M).

\* \* \* \* \*

(12) Possess or use dredge gear that does not comply with the provisions and specifications in § 648.51(b).

(13) Participate in the DAS allocation program with more persons on board the vessel than the number specified in § 648.51(c), including the operator, when the vessel is not docked or moored in port, unless otherwise authorized by the Regional Administrator, or unless participating in the Area Access Program pursuant to the requirements specified in § 648.60.

\* \* \* \* \*

(15) Fish under the small dredge program specified in § 648.51(e) with more than five persons on board the vessel, including the operator, unless otherwise authorized by the Regional Administrator or unless participating in the Area Access Program pursuant to the requirements specified in § 648.60.

\* \* \* \* \*

(17) Fail to comply with the notification requirements specified in § 648.10(b)(4) or refuse or fail to carry an observer after being requested to carry an observer by the Regional Administrator.

\* \* \* \* \*

(19) Fail to comply with any requirement for declaring in and out of the DAS allocation program or other notification requirements specified in § 648.10.

\* \* \* \* \*

(24) Possess or land more than 50 bu (17.62 hL) of in-shell scallops, as specified in § 648.52(d), once inside the VMS Demarcation Line by a vessel that, at any time during the trip, fished in or transited any area south of 42°20' N. Lat. or fishing in the Sea Scallop Area Access Program specified in § 648.60, except as provided in § 648.54.

(25) Declare and initiate a trip into the areas specified in § 648.59(b) through (d) after the effective date of the notification published in the **Federal**

**Register** stating that the yellowtail flounder TAC has been harvested as specified in § 648.85(c).

(26) Retain yellowtail flounder in the areas specified in § 648.59(b) through (d) after the effective date of the notification published in the **Federal Register** stating that the yellowtail flounder TAC has been harvested as specified in § 648.85(c).

(i) \* \* \*

(3) Possess or use dredge gear that does not comply with any of the provisions or specification in § 648.51(b).

\* \* \* \* \*

(11) Fail to comply with any requirement for declaring in and out of the general category scallop fishery or other notification requirements specified in § 648.10(b).

(12) Fish for or land per trip, or possess at any time, in excess of 40 lb (18.14 kg) of shucked or 5 bu (176.2 L) of in-shell scallops unless the vessel has been issued a VMS general scallop permit and has declared into the general category scallop fishery as specified in § 648.10(b)(4).

\* \* \* \* \*

7. In § 648.51, paragraphs (b)(3), (c), (e)(3), and (f)(1) are revised to read as follows:

#### **§ 648.51 Gear and crew restrictions.**

\* \* \* \* \*

(b) \* \* \*

(3) *Minimum ring size.* (i) Unless otherwise required under the Sea Scallop Area Access program specified in § 648.60(a)(6), the ring size used in a scallop dredge possessed or used by scallop vessels shall not be smaller than 4 inches (10.2 cm).

(ii) Ring size is determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement shall not include normal welds from ring manufacturing or links. The rings to be measured will be at least five rings away from the mouth, and at least two rings away from other rigid portions of the dredge.

\* \* \* \* \*

(c) *Crew restrictions.* Limited access vessels participating in or subject to the scallop DAS allocation program may have no more than seven people aboard, including the operator, when not docked or moored in port, except as follows:

(1) There is no restriction on the number of people on board for vessels participating in the Sea Scallop Area Access Program as specified in § 648.60;

(2) Vessels participating in the small dredge program are restricted as

specified in paragraph (e) of this section;

(3) The Regional Administrator may authorize additional people to be on board through issuance of a letter of authorization.

\* \* \* \* \*

(e) \* \* \*

(3) The vessel may have no more than five people, including the operator, on board, except as follows:

(i) There is no restriction on the number of people on board for vessels participating in the Sea Scallop Area Access Program as specified in § 648.60;

(ii) The Regional Administrator may authorize additional people to be on board through issuance of a letter of authorization.

\* \* \* \* \*

(f) *Restrictions on the use of trawl nets.* (1) A vessel issued a limited access scallop permit fishing for scallops under the scallop DAS allocation program may not fish with, possess on board, or land scallops while in possession of trawl nets, unless such vessel has been issued a limited access trawl vessel permit that endorses the vessel to fish for scallops with trawl nets. A limited access scallop vessel issued trawl vessel permit that endorses the vessel to fish for scallops with trawl nets and general category scallop vessels enrolled in the Area Access Program as specified in § 648.60, may not fish with trawl nets in the Access Areas specified in § 648.59(b) through (d).

\* \* \* \* \*

8. In § 648.52, paragraphs (a) and (b) are revised to read as follows:

#### **§ 648.52 Possession and landing limits.**

(a) Owners or operators of vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10 or that have used up their DAS allocations, and vessels issued a VMS general scallop permit, unless exempted under the state waters exemption program described under § 648.54, are prohibited from possessing or landing per trip more than 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hl) of in-shell scallops, with no more than one scallop trip of 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hl) of in-shell scallops, allowable in any calendar day.

(b) Owners or operators of vessels without a scallop permit, vessels issued a Non-VMS general scallop permit, and vessels issued a VMS general scallop permit that have declared out of the general scallop fishery as described in § 648.10(b)(4), except vessels fishing for scallops exclusively in state waters, are prohibited from possessing or landing

per trip, more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops. Owners or operators of vessels without a scallop permit are prohibited from selling, bartering, or trading scallops harvested from Federal waters.

\* \* \* \* \*

9. In § 648.53, paragraphs (b)(1), (b)(2), (b)(4), (b)(5), (c), (d) and (h) are revised to read as follows:

**§ 648.53 DAS allocations.**

\* \* \* \* \*

(b) \* \* \*

(1) Total DAS to be used in all areas other than those specified in § 648.59, are specified through the framework process as specified in § 648.55.

(2) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(2) (Full-time, Part-time, or Occasional) shall be allocated 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 appropriate VMS declaration as specified in § 648.10(b)(4), 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	2006	2007
Full-time	52	51
Part-time	21	20
Occasional	4	4

\* \* \* \* \*

(4) *Additional open area DAS.* If a TAC for yellowtail flounder specified in § 648.85(c) is harvested for an Access Area specified in § 648.59(b) through (d), a scallop vessel with remaining trips in the affected Access Area shall be allocated additional open area DAS according to the calculations specified in paragraphs (b)(4)(i) through (iii) of this section.

(i) For each remaining complete trip in Closed Area I, a vessel may fish an additional 5.5 DAS in open areas 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). For example, a full-time scallop vessel with

two complete trips remaining in Closed Area I would be allocated 11 additional open area DAS ( $2 \times 5.5 = 11$  DAS) if the TAC for yellowtail flounder allocated to the scallop fishery is harvested in that area. Vessels allocated compensation trips as specified in § 648.60(c) that cannot be made because the yellowtail TAC in Closed Area I allocated to the scallop fishery is harvested shall be allocated 0.458 additional DAS for each unused DAS in the affected access area. Unused DAS shall be calculated by dividing the compensation trip possession limit by 1,500 lb (680 kg), (the catch rate per DAS). For example, a vessel with a 10,000-lb (4,536-kg) compensation trip remaining in Closed Area I would be allocated 3.05 additional open area DAS in that same fishing year ( $0.458 \text{ times } 10,000 \text{ lb (4,536 kg) / 1,500 lb (680 kg) per day}$ ).

(ii) For each remaining complete trip in Closed Area II, a vessel may fish an additional 5.4 DAS in open areas 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). For example, a full-time scallop vessel with two complete trips remaining in Closed Area II would be allocated 10.8 additional open area DAS ( $2 \times 5.4 = 10.8$  DAS) if the TAC for yellowtail flounder allocated to the scallop fishery is harvested in that area. Vessels allocated compensation trips as specified in § 648.60(c) that cannot be made because the yellowtail TAC in Closed Area II allocated to the scallop fishery is harvested shall be allocated 0.450 additional DAS for each unused DAS in the affected access area. Unused DAS shall be calculated by dividing the compensation trip possession limit by 1,500 lb (680 kg), (the catch rate per DAS). For example, a vessel with a 10,000-lb (4,536-kg) compensation trip remaining in Closed Area II would be allocated 3 additional open area DAS in that same fishing year ( $0.450 \text{ times } 10,000 \text{ lb (4,536 kg) / 1,500 lb (680 kg) per day}$ ).

(iii) For each remaining complete trip in the Nantucket Lightship Access Area, a vessel may fish an additional 4.9 DAS in open areas 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). For example, a full-time scallop vessel with two complete trips remaining in Nantucket Lightship Access Area would be allocated 9.8 additional open area DAS ( $2 \times 4.9 = 9.8$  DAS) if the TAC for yellowtail flounder allocated to the scallop fishery is harvested in that area. Vessels allocated compensation trips as

specified in § 648.60(c) that cannot be made because the yellowtail TAC in Nantucket Lightship Access Area allocated to the scallop fishery is harvested shall be allocated 0.408 additional DAS for each unused DAS in the affected access area. Unused DAS shall be calculated by dividing the compensation trip possession limit by 1,500 lb (680 kg), (the catch rate per DAS). For example, a vessel with a 10,000-lb (4,536-kg) compensation trip remaining in Nantucket Lightship Access Area would be allocated 2.7 additional open area DAS in that same fishing year ( $0.458 \text{ times } 10,000 \text{ lb (4,536 kg) / 1,500 lb (680 kg) per day}$ ).

(5) DAS allocations and other management measures are specified for each scallop fishing year, which begins on March 1 and ends on February 28 (or February 29), unless otherwise noted. For example, the 2006 fishing year refers to the period March 1, 2006, through February 28, 2007.

(c) *DAS used in excess of 2006 DAS allocations.* Limited access vessels that use more open area DAS in the 2006 fishing year than specified in this section shall have the DAS used in excess of the 2006 DAS allocation specified in paragraph (b)(2) of this section deducted from their 2007 open area DAS allocation specified in paragraph (b)(2).

(d) *Adjustments in annual DAS allocations.* Annual DAS allocations shall be established for 2 fishing years through biennial framework adjustments as specified in § 648.55. If a biennial framework action is not undertaken by the Council and implemented by NMFS, the DAS allocations and Access Area trip allocations from the most recent fishing year will remain in effect for the next fishing year. The Council may also recommend adjustments to DAS allocations through a framework action at any time.

\* \* \* \* \*

(h) *DAS set-asides—(1) DAS set-aside for observer coverage.* As specified in paragraph (b)(3) of this section, to help defray the cost of carrying an observer, 1 percent of the total DAS will 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 for the 2006 and 2007 fishing years is 165 DAS for each fishing year. Vessels carrying an observer will 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 will accrue 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. The number of DAS that are deducted from each trip based on the adjustment factor will be deducted from the observer DAS set-aside amount in the applicable fishing year. Utilization of the DAS set-aside will be on a first-come, first-served basis. When the DAS set-aside for observer coverage has been utilized, vessel owners will be notified that no additional DAS remain available to offset the cost of carrying observers. The obligation to carry an observer will not be waived due to the absence of additional DAS allocation.

(2) *DAS set-aside for research.* As specified in paragraph (b)(3) 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 for the 2006 and 2007 fishing years is 330 DAS for each fishing year. Vessels participating in approved research will be authorized to use additional DAS in the applicable fishing year. Notification of allocated additional DAS will be provided through a letter of authorization, or Exempted Fishing Permit issued by NMFS, or will be added to a participating vessel's open area DAS allocation, as appropriate.

10. In § 648.54, paragraphs (a) and (b) are revised to read as follows:

**§ 648.54 State waters exemption.**

(a) \* \* \*

(1) *DAS requirements.* Any vessel issued a limited access scallop permit is exempt from the DAS requirements specified in § 648.53(b) while fishing exclusively landward of the outer boundary of a state's waters, provided the vessel complies with paragraphs (d) through (g) of this section, and the notification requirements of § 648.10(e).

(2) *Gear and possession limit restrictions.* Any vessel issued a limited access scallop permit that is exempt from the DAS requirements of § 648.53(b) under paragraph (a) of this section, and has complied with the notification requirements of § 648.10(e), is also exempt from the gear restrictions specified in § 648.51(a), (b), (e)(1) and (e)(2), and the possession restrictions specified in § 648.52(a), while fishing exclusively landward of the outer boundary of the waters of a state that

has been deemed by the Regional Administrator under paragraph (c) of this section to have a scallop fishery and a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP, provided the vessel complies with paragraphs (d) through (g) of this section.

(b) *General scallop vessel gear and possession limit restrictions.* Any vessel issued a general scallop permit is exempt from the gear restrictions specified in § 648.51(a), (b), (e)(1) and (e)(2), and the possession limit specified in § 648.52(a), while fishing exclusively landward of the outer boundary of the waters of a state that has been determined by the Regional Administrator under paragraph (b)(3) of this section to have a scallop fishery and a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP, provided the vessel complies with paragraphs (d) through (g) of this section. Vessels issued a VMS general scallop permit must be declared out of the general category scallop fishery as described in § 648.10(e).

\* \* \* \* \*

11. In § 648.55, paragraph (b) is revised to read as follows:

**§ 648.55 Framework adjustments to management measures.**

\* \* \* \* \*

(b) The preparation of the SAFE Report shall begin on or about June 1 of the year preceding the fishing year in which measures will be adjusted. If the biennial framework action is not undertaken by the Council, or if a final rule resulting from a biennial framework is not published in the **Federal Register** with an effective date of March 1, in accordance with the Administrative Procedure Act, the measures from the most recent fishing year shall continue, beginning March 1 of each fishing year.

\* \* \* \* \*

12. Section 648.58 is revised to read as follows:

**§ 648.58 Rotational Closed Areas.**

(a) *Elephant Trunk Closed Area.* Through December 31, 2006, no vessel may fish for scallops in, or possess or land scallops from, the area known as the Elephant Trunk Closed Area. No vessel may possess scallops in the Elephant Trunk Closed Area, unless such vessel is only transiting the area as provided in paragraph (c) of this section. The Elephant Trunk Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting

this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
ET1	38°50'N.	74°20'W.
ET2	38°10'N.	74°20'W.
ET3	38°10'N.	73°30'W.
ET4	38°50'N.	73°30'W.
ET1	38°50'N.	74°20'W.

(b) *Delmarva Closed Area.* From January 1, 2007, through February 28, 2010, no vessel may fish for scallops in, or possess or land scallops from, the area known as the Delmarva Closed Area. No vessel may possess scallops in the Delmarva Closed Area, unless such vessel is only transiting the area as provided in paragraph (b) of this section. The Delmarva Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
DMV1	38°10'N.	74°50'W.
DMV2	38°10'N.	74°00'W.
DMV3	37°15'N.	74°00'W.
DMV4	37°15'N.	74°50'W.
DMV1	38°10'N.	74°50'W.

(c) *Transiting.* No vessel possessing scallops may enter or be in the area(s) specified in paragraphs (a) and (b) of this section unless the vessel is transiting the area and the vessel's fishing gear is unavailable for immediate use as defined in § 648.23(b), or there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use.

(d) *Vessels fishing for species other than scallops.* A vessel may fish for species other than scallops within the closed areas specified in paragraphs (a) and (b) of this section as allowed in this part provided the vessel does not fish for, catch, or retain scallops or intend to fish for, catch, or retain scallops. Declaration through VMS that the vessel is fishing in the general category scallop fishery is deemed to be an intent to fish for, catch, or retain scallops.

13. Section 648.59 is revised to read as follows:

**§ 648.59 Sea Scallop Access Areas.**

(a) *Hudson Canyon Sea Scallop Access Area.* (1) Through February 29, 2008, a vessel issued a limited access scallop permit may fish for, possess, and land scallops in or from, the area known as the Hudson Canyon 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, and provided the vessel did not complete all of its allocated trips during the 2005 fishing year, as described in § 648.60(a)(3)(i)(E). A vessel issued a general scallop permit may fish in the Hudson Canyon Sea Scallop Access Area in 2006 and 2007 provided it complies with the trip declaration requirements specified in § 648.10(b)(4) and possession restrictions specified in § 648.52.

(2) The Hudson Canyon Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
H1	39°30'N.	73°10'W.
H2	39°30'N.	72°30'W.
H3	38°30'N.	73°30'W.
H4/ET4	38°50'N.	73°30'W.
H5	38°50'N.	73°42'W.
H1	39°30'N.	73°10'W.

(3) *Number of trips.* Based on its permit category, a vessel issued a limited access scallop permit may fish any remaining Hudson Canyon Access Area trips allocated for the 2005 fishing year in the Hudson Canyon Access Area, as specified in § 648.60(a)(3)(i)(C), plus any additional Hudson Canyon Access Area trips acquired through an authorized one-for-one exchange as specified in § 648.60(a)(3)(ii). A vessel with unutilized compensation trips for Sea Scallop Access Area trips terminated early during the 2005 fishing year, pursuant to § 648.60(c), may take such compensation trips in the 2006 and/or 2007 fishing year in the Hudson Canyon Access Area. A vessel owner may exchange complete unutilized trips carried forward to the 2006 and 2007 fishing years with another vessel owner as specified in § 648.60(a)(3)(ii). Compensation trips for prior trips terminated early that are carried forward from the 2005 fishing year as specified in this paragraph may not be exchanged.

(b) *Closed Area I Access Area.* This area shall be managed on a 3-year cycle, with a one-year closure, followed by a two-year Area Access Program as follows:

(1) Through February 28, 2007, and every third fishing year thereafter (i.e., March 1, 2009 through February 28, 2010, etc.) vessels issued scallop permits, except vessels issued a NE Multispecies permit and a general category scallop permit and fishing in an approved SAP under § 648.85 and under multispecies DAS, 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.

(2) Beginning March 1, 2007, through February 28, 2009, and for every 2-year period after the year-long closure described in paragraph (b)(1) of this section (i.e., March 1, 2010 through February 29, 2012, etc.), 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.

(3) The Closed Area I Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
CAIA1	41°26'N.	68°30'W.
CAIA2	41°09'N.	68°30'W.
CAIA3	41°4.54'N.	69°0.9'W.
CAIA1	41°26'N.	68°30'W.

(4) *Season.* A vessel issued a scallop permit may not fish for, possess, or land scallops in or from, the area known as the Closed Area I Sea Scallop Access Area, described in paragraph (b)(3) of this section, except during the period June 15 through January 31 of each year the Closed Area I Sea Scallop Access Area is open to scallop vessels.

(5) *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 2007 in the Closed Area I 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 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).

(ii) *General category vessels.* (A) Except as provided in paragraph (b)(5)(ii)(B) of this section, subject to the possession limit specified in §§ 648.52(a) and (b) and 648.60(g), and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, a vessel issued a general category scallop permit, may not enter in, or fish for, possess, or land sea

scallops in or from the Closed Area I Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that 216 trips in the 2007 fishing year have been taken, in total, by all general category scallop vessels. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2007 fishing year.

(B) 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 may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (b)(5)(ii)(A) of this section provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from possessing scallops.

(c) *Closed Area II Access Area.* This area shall be managed on a 3-year cycle, with a one-year closure, followed by a two-year Area Access Program as follows:

(1) From March 1, 2007, through February 29, 2008, and every third fishing year thereafter, (i.e., March 1, 2010, through February 28, 2011, etc.) vessels issued scallop permits, except vessels issued a NE Multispecies permit and a general category scallop permit and fishing in an approved SAP under § 648.85 and under multispecies DAS, 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.

(2) Through February 28, 2007, and for every 2-year period after the year-long closure described in paragraph (c)(1) of this section (i.e., March 1, 2008, through February 28, 2010, etc.) 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.

(3) The Closed Area II Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
CAIIA1	41°00'N.	67°20'W.

Point	Latitude	Longitude
CAIIA2	41°00'N.	66°35.8'W.
CAIIA3	41°18.6'N.	66°24.8'W.
CAIIA4	41°36'N.	66°34.8'W.
CAIIA5	41°30'N.	67°20'W.
CAIIA1	41°00'N.	67°20'W.

(4) *Season*. A vessel issued a scallop permit may not 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, except during the period June 15 through January 31 of each year the Closed Area II Access Area is open to scallop vessels.

(5) *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 2006 in the Closed Area II 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 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).

(ii) *General category vessels*. (A) Except as provided in paragraph (c)(5)(ii)(B) of this section, subject to the possession limits specified in §§ 648.52(a) and (b) and 648.60(g), and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, a vessel issued a general category scallop permit, may not enter in, or fish for, possess, or land sea scallops in or from the Closed Area II Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that 865 trips in the 2006 fishing year have been taken, in total, by all general category scallop vessels. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2006 fishing year.

(B) 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 may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (c)(5)(ii)(A) of this section provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from possessing scallops.

(d) *Nantucket Lightship Access Area*. (1) From March 1, 2008, through February 28, 2009, and every third fishing year thereafter (i.e., March 1, 2011, through February 29, 2012 2014, etc.) vessels issued scallop permits, except vessels issued a NE Multispecies permit and a general category scallop permit and fishing in an approved SAP under § 648.85 and under multispecies DAS, 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.

(2) Through February 29, 2008, and for every 2-year period after each the year-long closure described in paragraph (d)(1) of this section (i.e., March 1, 2009, through February 28, 2011, etc.) 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.

(3) The Nantucket Lightship Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
NLSA1	40°50'N.	69°00'W.
NLSA2	40°30'N.	69°00'W.
NLSA3	40°30'N.	69°14.5'W.
NLSA4	40°50'N.	69°29.5'W.
NLSA1	40°50'N.	69°00'W.

(4) *Season*. A vessel issued a scallop permit may not 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, except during the period June 15 through January 31 of each year the Nantucket Lightship Access Area is open to scallop fishing.

(5) *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 2006 and 2007 in the Nantucket Lightship 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 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 Closed Area Access Area trip that was terminated early, as specified in § 648.60(c).

(ii) *General category vessels*. (A) Except as provided in paragraph (d)(5)(ii)(B) of this section, subject to the possession limits specified in §§ 648.52(a) and (b) and 648.60(g), a vessel issued a general category scallop permit, may not enter in, or fish for, possess, or land sea scallops in or from the Nantucket Lightship Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that 577 trips in the 2006 fishing year, and 394 trips in the 2007 fishing year, have been taken, in total, by all general category scallop vessels. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2006 and 2007 fishing years.

(B) 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 may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (d)(5)(ii)(A) of this section provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from possessing scallops.

(e) *Elephant Trunk Sea Scallop Access Area*. (1) From January 1, 2007, through February 29, 2012, and subject to the seasonal restrictions specified in paragraph (e)(3) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from, the area known as the Elephant Trunk Sea Scallop Access Area, described in paragraph (e)(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.

(2) The Elephant Trunk Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
ETAA1	38°50'N.	74°20'W.
ETAA2	38°10'N.	74°20'W.
ETAA3	38°10'N.	73°30'W.
ETAA4	38°50'N.	73°30'W.
ETAA1	38°50'N.	74°20'W.

(3) *Season*. A vessel issued a scallop permit may not fish for, possess, or land



scallops in or from the area known as the Elephant Trunk Sea Scallop Access Area, described in paragraph (d)(2) of this section from September 1 through October 31 of each year the Elephant Trunk Access Area is open to scallop fishing as a Sea Scallop Access Area.

(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 January 1, 2007, and February 29, 2008, as specified in § 648.60(a)(3)(i), or as adjusted as specified in § 648.60(a)(3)(i)(F), 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).

(ii) *General category vessels*. Subject to the possession limits specified in §§ 648.52(a) and (b) and 648.60(g), a vessel issued a general category scallop permit, may not enter in, or fish for, possess, or land sea scallops in or from the Elephant Trunk Sea Scallop Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that 1,360 trips allocated for the period January 1, 2007, through February 29, 2008, unless adjusted as specified in § 648.60(a)(3)(i)(F), have been taken, in total, by all general category scallop vessels. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the period January 1, 2007 through February 29, 2008.

(f) *Transiting*. A sea scallop vessel that has not declared a trip into the Sea Scallop Area Access Program may enter the Sea Scallop Access Areas described in paragraphs (a), (b), (d), and (e), of this section, and possess scallops not caught in the Sea Scallop Access Areas, for transiting purposes only provided the vessel's fishing gear is stowed in accordance with § 648.23(b), or there is a compelling safety reason to be in such areas without such gear being stowed. A scallop vessel that has declared a trip into the Sea Scallop Area Access Program may transit a Scallop Access Area while steaming to or from another Scallop Access Area, provided the vessel's fishing gear is stowed in accordance with § 648.23(b), or there is

a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Access Area, as described in paragraph (c) of this section, if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed in accordance with § 648.23(b).

14. Section 648.60 is revised to read as follows:

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

(a) A vessel issued a limited access scallop permit may only fish in the Sea Scallop Access Areas specified in § 648.59, subject to the seasonal restrictions specified in § 648.59, when fishing under a scallop DAS, provided the vessel complies with the requirements specified in paragraphs (a)(1) through (a)(9) and (b) through (f) of this section. A general category scallop vessel may fish in the Sea Scallop Access Areas specified in § 648.59, subject to the seasonal restrictions specified in § 648.59, provided the vessel complies with the requirements specified in paragraphs (g) of this section.

(1) *VMS*. Each vessel participating in the Sea Scallop Access Area Program must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § § 648.9 and 648.10, and paragraph (e) of this section.

(2) *Declaration*. (i) Vessels participating in the Sea Scallop Access Area Program must comply with the trip declaration requirements specified in § 648.10(b)(4).

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

(3) *Number of Sea Scallop Access Area trips*—(i) *Limited Access Vessel trips*. (A) Except as provided in paragraph (c) of this section, and unless the number of trips is adjusted for the Elephant Trunk Access Area as specified in paragraph (a)(3)(i)(F) of this section, paragraphs (a)(3)(i)(B) through (E) specify the total number of trips that limited access scallop vessels 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, been allocated a compensation trip pursuant to paragraph (c) of this section, or unless the Elephant Trunk Access Area trip allocations are adjusted as specified in § 648.60(a)(3)(i)(F).

(B) *Full-time scallop vessels*. In the 2006 fishing year, a full time scallop vessel may take 3 trips in the Closed Area II Access Area, and 2 trips in the Nantucket Lightship Access Area. In the 2007 fishing year, full time scallop vessels may take 1 trip in the Closed Area I Access Area, 1 trip in the Nantucket Lightship Access Area, and 5 trips in the Elephant Trunk Access Area, unless adjusted as specified in paragraph (a)(3)(i)(F) of this section.

(C) *Part-time scallop vessels*. In the 2006 fishing year, a part-time scallop vessel may take 1 trip in the Closed Area II Access Area and 1 trip in the Nantucket Lightship Access Area; or 2 trips in the Closed Area II Access Area; or 2 trips in the Nantucket Lightship Access Area. In the 2007 fishing year, a part-time scallop vessel may take one trip in the Closed Area I Access Area, one trip in the Nantucket Lightship Access Area, and one trip in the Elephant Trunk Access Area; or one trip in the Closed Area I Access Area and 2 trips in the Elephant Trunk Access Area; or one trip in the Nantucket Lightship Access Area and 2 trips in the Elephant Trunk Access Area; or 3 trips in the Elephant Trunk Access Area unless adjusted as specified in paragraph (a)(3)(i)(F) of this section.

(D) *Occasional scallop vessels*. Occasional scallop vessels may take one trip in the 2006 fishing year and one trip in the 2007 fishing year into any of the Access Areas described in § 648.59 that is open during the specified fishing years.

(E) *Hudson Canyon Access Area trips*. In addition to the number of trips specified in paragraph (a)(3)(i)(B) through (C) of this sections, vessels may fish remaining Hudson Canyon Access Area trips allocated for the 2005 fishing year in the Hudson Canyon Access Area in the 2006 and/or 2007 fishing year as specified in § 648.59(a)(3). The maximum number of trips that a vessel could take in the Hudson Canyon Access Area in the 2005 fishing year was 3 trips, unless a vessel acquired additional trips through an authorized one-for-one exchange as specified in paragraph (a)(3)(ii) of this section. Full-time scallop vessels were allocated 3 trips into the Hudson Canyon Access Area. Part-time vessels were allocated 2 trips that could be distributed among Closed Area I, Closed Area II, and the Hudson Canyon Access Areas, not to exceed one trip in the Closed Area I or

Closed Area II Access Areas. Occasional vessels were allocated 1 trip that could be taken in any Access Area that was open in the 2005 fishing year.

(F) *Procedure for adjusting the number of 2007 fishing year trips in the Elephant Trunk Access Area.* (1) The Regional Administrator shall reduce the number of Elephant Trunk Access Area trips using the table in paragraph (a)(3)(i)(F)(2) provided that an updated biomass projection is available with sufficient time to announce such an adjustment through publication of a final rule in the **Federal Register**, pursuant to the Administrative

Procedure Act, on or about December 1, 2006. If information is not available in time for NMFS to publish a final rule on or about December 1, 2006, no adjustment may be made. The adjustment of the 2007 Elephant Trunk Access Area trip allocations shall be based on all available scientific surveys of scallops within the Elephant Trunk Access Area. Survey data must be available with sufficient time for review and incorporation in the biomass estimate. If NMFS determines that a survey is not scientifically sound and unbiased, those results shall not be used to estimate biomass. If no other surveys

are available, the annual NOAA scallop resource survey shall be used alone to estimate exploitable scallop biomass for the Elephant Trunk Access Area.

(2) *Table of total allowable catch and trip allocation adjustments based on exploitable biomass estimates and revised target total allowable catch levels.* The following table specifies the adjustments that would be made through the procedure specified in paragraph (a)(3)(i)(F)(1) of this section under various biomass estimates and adjusted 2007 target total allowable catch (TAC) estimates:

UPDATED ESTIMATES OF ELEPHANT TRUNK ACCESS AREA BIOMASS IN METRIC TONS (MT) AND MILLIONS OF POUNDS (MLB)

	Below 22,920 mt (50.5 mlb)	22,920 28,650 mt (50.5 63.1 mlb)	28,651 34,380 mt (63.2 75.7 mlb)	Above 34,381 mt (75.8 mlb)
Adjusted 2007 Target Total Allowable Catch	5,234 mt (11.5 mlb).	7,851 mt (17.3 mlb).	10,468 mt (23.08 mlb).	13,085 mt (28.8 mlb).
Adjusted 2007 TAC for Research and General Category Fishery	103 mt (0.228 mlb).	157 mt (0.346 mlb).	209 mt (0.461 mlb).	262 mt (0.578 mlb).
Adjusted 2007 Observer TAC	52 mt (0.114 mlb).	78 mt (0.173 mlb).	105 mt (0.231 mlb).	131 mt (0.289 mlb).
Maximum Number of Limited Access Trips per Vessel	2 .....	3 .....	4 .....	No adjustment.
General Category Trips	570 .....	865 .....	1,154 .....	No adjustment.

(ii) *One-for-one area access trip exchanges.* (A) 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 by request from the Regional Administrator. Each vessel 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.

(B) The owner of a vessel issued a limited access scallop permit may exchange, on a one-for-one basis, unutilized Closed Area I and Nantucket Lightship Access Area trips allocated for the 2006 fishing year as specified in paragraph (a)(3)(i) of this section for Elephant Trunk Access Area trips allocated for the 2007 fishing year as specified in paragraph (a)(3)(i) of this section. If Elephant Trunk Access Area allocations are reduced as specified in paragraph (a)(3)(i)(F), vessels that have exchanged 2006 Closed Area I and/or Nantucket Lightship Access Area trips for 2007 Elephant Trunk Access Area trips will have excess Elephant Trunk Access Area trips acquired through the exchange deducted from their available 2007 Elephant Trunk Access Area trip allocation.

(4) *Area fished.* While on a Sea Scallop Access Area trip, a vessel may not fish for, possess, or land scallops in or from areas outside the Sea Scallop Access Area in which the vessel operator has declared the vessel will fish during that trip, and may not enter or exit the specific declared Sea Scallop Access Area more than once per trip. A vessel on a Sea Scallop Access Area trip may not enter or be in another Sea Scallop Access Area on the same trip except such vessel may transit another Sea Scallop Access Area provided its gear is stowed in accordance with § 648.23(b).

(i) *Reallocation of trips into open areas.* If the yellowtail flounder TAC allocated for a Scallop Access Area specified in § 648.59(b) through (d) has been harvested and such area has been closed, a vessel with trips remaining to be taken in such Access Areas may fish the remaining DAS associated with the unused trip(s) in Open Areas, up to the maximum DAS specified in § 648.53(b)(4)(i) through (iii).

(ii) [Reserved]

(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). No vessel fishing in the Sea

Scallop Access Area may possess shoreward of the VMS demarcation line or land, more than 50 bu (17.6 hl) of in-shell scallops.

Fishing Year	Access Area	Possession Limit		
		Full-time	Part-time	Occasional
2006	Closed Area II Nantucket Lightship	18,000 lb (8,165 kg)	18,000 lb (8,165 kg)	7,500 lb (3,402 kg)
2007	Closed Area I Nantucket Lightship	18,000 lb (8,165 kg)	16,800 lb (7,620 kg)	7,500 lb (3,402 kg)
2006 and 2007	Elephant Trunk Hudson Canyon	18,000 lb (8,165 kg)	18,000 lb (8,165 kg)	7,500 lb (3,402 kg)

(ii) *NE multispecies possession limits and yellowtail flounder TAC*. Subject to the seasonal restriction established under the Sea Scallop Area Access Program and specified in 648.59(b)(4), (c)(4), and (d)(4), and provided the vessel has been issued a scallop multispecies possession limit permit as specified in § 648.4(a)(1)(ii), after declaring a trip into a Sea Scallop Access Area and fishing within the Access Areas described in § 648.59(b) through (d), and provided the vessel has been issued a Scallop NE Multispecies Possession Limit permit as specified in § 648.4(a)(1)(ii), a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, up to a maximum of 1,000 lb (453.6 kg) of all NE multispecies combined, subject to the minimum commercial fish size restrictions specified in § 648.83(a)(2), and the additional restrictions for Atlantic cod, haddock, and yellowtail flounder specified in paragraphs (a)(5)(ii)(A) through (C) of this section.

(A) *Atlantic Cod*. Such vessels may bring onboard and possess only up to 100 lb (45.4 kg) of Atlantic cod per trip, provided such fish is intended for personal use only and cannot be not sold, traded, or bartered.

(B) *Haddock*. Such vessels may possess and land haddock up to the overall possession limit of all NE multispecies combined, as specified in paragraph (a)(5)(ii) of this section except that such vessels are prohibited from possessing or landing haddock from January 1 through June 30.

(C) *Yellowtail flounder*—(1) *Yellowtail flounder TACs*. Such vessels may catch yellowtail flounder up to the TACs specified in § 648.85(c) for the Closed Area I, Closed Area II, and Nantucket Lightship Access Scallop Areas. The Regional Administrator shall publish notification in the **Federal Register** in accordance with the Administrative Procedure Act, to notify scallop vessel

owners that the scallop fishery portion of the TAC for a yellowtail flounder stock has been or is projected to be harvested by scallop vessels in any Access Area. Upon notification in the **Federal Register** that a TAC has been or is projected to be harvested, scallop vessels are prohibited from declaring and initiating a trip within the Access Area(s), where the TAC applies, for the remainder of the fishing year. The yellowtail flounder TACs allocated to scallop vessels may be increased by the Regional Administrator after December 1 of each year pursuant to § 648.85(c)(2).

(2) *SNE/MA yellowtail flounder possession limit*. Such vessels fishing within the Nantucket Lightship Access Area described in § 648.59(d), may fish for, possess, and land yellowtail flounder up to the overall possession limit of all NE multispecies combined as specified in paragraph (a)(5)(ii) of this section, except that such vessels may not fish for, possess, and land more than 250 lb (113.6 kg) per trip of yellowtail flounder between June 15 and June 30, provided the yellowtail flounder TAC as specified in § 648.85(c)(i) has not been harvested.

(3) *GB yellowtail flounder possession limit*. After declaring a trip into and fishing within the Closed Area I or Closed Area II Access Area described in § 648.59(b) and (c), the vessel owner or operator of a limited access scallop vessel may fish for, possess, and land up to 1,000 lb (453.6 kg) per trip of yellowtail flounder subject to the amount of other NE multispecies onboard, provided the yellowtail flounder TAC specified in § 648.85(c) has not been harvested. If the yellowtail flounder TAC established for the Eastern U.S./Canada Area pursuant to § 648.85(a)(2) has been or is projected to be harvested, as described in § 648.85(a)(3)(iv)(C)(3), scallop vessels are prohibited from harvesting, possessing, or landing yellowtail

flounder in or from the Closed Area I and Closed Area II Access Areas.

(iii) [Reserved]

(6) *Gear restrictions*. (i) The minimum ring size for dredge gear used by a vessel fishing on a Sea Scallop Access Area trip is 4 inches (10.2 cm) in diameter. Dredge or trawl gear used by a vessel fishing on a Sea Scallop Access Area trip must be in accordance with the restrictions specified in § 648.51(a) and (b).

(ii) Vessels fishing in the Closed Area I, Closed Area II, and Nantucket Lightship Closed Area Sea Scallop Access Areas described in § 648.59(b) through (d) are prohibited from fishing with trawl gear as specified in § 648.51(f)(1).

(7) *Transiting*. While outside a Sea Scallop Access Area on a Sea Scallop Access Area trip, the vessel must have all fishing gear stowed in accordance with § 648.23(b), unless there is a compelling safety reason to be transiting the area without gear stowed.

(8) *Off-loading restrictions*. The vessel may not off-load its catch from a Sea Scallop Access Area trip at more than one location per trip.

(9) *Reporting*. The owner or operator must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared in the Sea Scallop Area Access Program, including trips accompanied by a NMFS-approved observer. The reports must be submitted in 24-hour intervals, for each day beginning at 0000 hours and ending at 2400 hours. The reports must be submitted by 0900 hours of the following day and must include the following information:

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

(ii) Total pounds/kilograms of yellowtail flounder kept and total pounds/kilograms of yellowtail flounder discarded.

(b) [Reserved]

(c) *Compensation for Sea Scallop Access Area trips terminated early.* If a Sea Scallop Access Area trip is terminated before catching the allowed possession limit, the vessel may be authorized to fish an additional trip in the same Sea Scallop Access Area based on the conditions and requirements of paragraphs (c)(1) through (5) of this section.

(1) The vessel owner/operator has determined that the Sea Scallop Access Area trip should be terminated early for reasons deemed appropriate by the operator of the vessel;

(2) The amount of scallops landed by the vessel for the trip must be less than the maximum possession limit specified in paragraph (a)(5) of this section.

(3) The vessel owner/operator must report the termination of the trip prior to leaving the Sea Scallop Access Area by VMS email messaging, with the following information: Vessel name, vessel owner, vessel operator, time of trip termination, reason for terminating the trip (for NMFS recordkeeping purposes), expected date and time of return to port, and amount of scallops on board in pounds.

(4) The vessel owners/operator must request that the Regional Administrator authorize an additional trip as compensation for the terminated trip by submitting a written request to the Regional Administrator within 30 days of the vessel's return to port from the terminated trip.

(5) The Regional Administrator shall authorize the vessel to take an additional trip and shall specify the amount of scallops that the vessel may land on such trip pursuant to the calculation specified in paragraph (c)(5)(i) of this section. Such authorization shall be made within 10 days of receipt of the formal written request for compensation.

(i) The amount of scallops that can be landed on an authorized additional Sea Scallop Access Area trip shall equal the possession limit specified in paragraph (a)(5) of this section minus the amount of scallops landed on the terminated trip. For example, if the possession limit for a full-time vessel is 18,000 lb (8,165 kg) per trip, and the vessel lands 6,500 lb (2,948.4 kg) of scallops and requests compensation for the terminated trip, the possession limit for the additional trip is 11,500 lb (5,216.3 kg) or 18,000 lb (8,165 kg) minus 6,500 lb (2,948.4 kg).

(ii) If a vessel is authorized more than one additional trip for compensation into any Sea Scallop Access Area as the result of more than one terminated trip in the same Access Area, the possession

limits for the authorized trips may be combined, provided the total possession limit on a combined compensation trip does not exceed the possession limit for a trip as specified in paragraph (a)(5) of this section. For example, a vessel that has two broken trips with corresponding compensation trip authorizations of 10,000 lb (4,536 kg) and 8,000 lb (3,629 kg) may combine the authorizations to allow one compensation trip with a possession limit of 18,000 lb (8,165 kg).

(iii) A vessel operator must comply with all notification requirements prior to taking a compensation trip, and for each compensation trip, must enter a trip identification number by entering the number in the VMS for each compensation trip. The trip identification number will be included in the Regional Administrator's authorization for each compensation trip. If a vessel operator is combining compensation trips, the trip identification numbers from each authorization must be entered into VMS.

(iv) *Unutilized 2005 Hudson Canyon Compensation Trips.* A vessel that terminated a 2005 Hudson Canyon Access Area trip shall be issued authorization to take an additional trip as compensation for the trip terminated early pursuant to paragraphs (c)(5) of this section. Such additional trips may be taken at any time during the 2006 or 2007 fishing years, as specified in § 648.59(a)(3).

(v) *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 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 a Nantucket Lightship Access Area trip on December 10, 2006, must declare that it is beginning its compensation trip during the first 60 days that the Access Area is open (June 15, 2007, through August 15, 2007). If an Access Area is not open in the subsequent fishing year, then the 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, 2006, may not carry its compensation

trip into the 2007 fishing year because Closed Area II is not open during the 2007 fishing year, and must complete any compensation trip by January 31, 2007.

(d) *Possession limit to defray costs of observers—(1) Observer set-aside limits by area—(i) Hudson Canyon Access Area.* For 2006 and 2007 combined, the observer set-aside for the Hudson Canyon Access Area is 149,562 lb (67.8 mt).

(ii) *Closed Area I Access Area.* For the 2007 fishing year, the observer set-aside for the Closed Area I Access Area is 43,207 lb (20 mt).

(iii) *Closed Area II Access Area.* For the 2006 fishing year, the observer set-aside for the Closed Area II Access Area is 173,085 lb (79 mt).

(iv) *Nantucket Lightship Access Area.* For the 2006 and 2007 fishing years, the observer set-asides for the Nantucket Lightship Access Area are 115,390 lb (52 mt) and 78,727 lb (36 mt), respectively.

(v) *Elephant Trunk Access Area.* From January 1, 2007, through February 29, 2008, the observer set-aside for the Elephant Trunk Access Area is 272,000 lb (123 mt), unless adjusted as specified in paragraph (a)(3)(i)(F) of this section.

(2) *Increase in the possession limit to defray the costs of observers.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (a)(5) of this section to defray costs of at-sea observers deployed on area access trips subject to the limits specified in paragraph (d)(1) of this section. Owners of scallop vessels shall be notified of the increase in the possession limit through a permit holder letter issued by the Regional Administrator. If the observer set-aside is fully utilized prior to the end of the fishing year, the Regional Administrator shall notify owners of scallop vessels that, effective on a specified date, the possession limit will be decreased to the level specified in paragraph (a)(5) of this section. Unless otherwise notified by the Regional Administrator, vessel owners shall be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit.

(e) *Possession limits and/or number of trips to defray the costs of sea scallop research—(1) Research set-aside limits and number of trips by area—(i) Hudson Canyon Access Area.* For the 2006 and 2007 fishing years combined, the research set-aside for the Hudson Canyon Access Area is 299,123 (135.7 mt).

(ii) *Closed Area I Access Area.* For the 2007 fishing year, the research set-aside for the Closed Area I Access Area is 84,414 lb (38 mt).

(iii) *Closed Area II Access Area.* For the 2006 fishing year, the research set-aside for the Closed Area II Access Area is 346,170 lb (157 mt).

(iv) *Nantucket Lightship Access Area.* For the 2006 and 2007 fishing years, the research set-asides for the Nantucket Lightship Access Area are 230,780 lb (105 mt) and 157,454 lb (71 mt), respectively.

(v) *Elephant Trunk Access Area.* From January 1, 2007, through February 29, 2008, the research set-aside for the Elephant Trunk Access Area is 544,000 lb (247 mt), unless adjusted as specified in (a)(3)(i)(E) of this section.

(2) *Increase of possession limit to defray the costs of sea scallop research.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (a)(5) of this section or allow additional trips into a Sea Scallop Access Area to defray costs for approved sea scallop research up to the amount specified in paragraph (e)(1) of this section.

(3) *Yellowtail flounder research TAC set-aside.* Vessels conducting research approved under the process described in § 648.56, and in the Access Areas specified in § 648.59(b) through (d) may harvest yellowtail flounder up to an amount that equals 0.2 percent of the yellowtail flounder TACs established annually, according to the specification procedure described in § 648.85(a)(2), and subject to the possession limits specified in paragraph (a)(5)(ii)(C) of this section. If vessels participating in approved scallop research harvest an amount of yellowtail flounder equal to 0.2 percent of the yellowtail flounder TACs established annually, according to the specification procedure described in § 648.85(a)(2), research may no longer be authorized in the applicable Access Area and participating vessels may harvest scallops in open areas, under open area DAS. The amount of open area DAS authorized if the 0.2 percent of the yellowtail flounder TAC is harvested shall be determined by multiplying the DAS ratio described in § 648.53(b)(4)(i), (ii), or (iii), by the amount of scallop pounds authorized in the applicable access area, divided by 1,500 lb (680 kg) per day.

(f) *VMS polling.* For the duration of the Sea Scallop Area Access Program, as described in this section, all sea scallop vessels equipped with a VMS unit shall be polled at a minimum of twice per hour, regardless of whether the vessel is enrolled in the Sea Scallop Area Access Program. Vessel owners shall be

responsible for paying the costs of polling twice per hour.

(g) *General category scallop vessels.*

(1) A vessel issued a general category scallop permit, except 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 that has not enrolled in the general category Access Area fishery, may only fish in the Closed Area I, Closed Area II, and Nantucket Lightship Sea Scallop Access Areas specified in § 648.59(b) through (d), subject to the seasonal restrictions specified in § 648.59(b)(4), (c)(4), and (d)(4), 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 a NE Multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS that has not enrolled in the Sea Scallop Area Access program as specified in paragraph (a)(2) is not subject to the restrictions and requirements specified in § 648.59(b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and this paragraph (g), and is prohibited from retaining scallops on such trips.

(2) *Gear restrictions.* General category vessels fishing in the Access Areas specified in § 648.59(b) through (d) must fish with dredge gear only. The combined dredge width in use by, or in possession on board, general category scallop vessels fishing in the Access Areas described in § 648.59(b) through (d) may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(3) *Scallop TAC.* General category vessels fishing in the Access Areas specified in § 648.59(b) through (d) are authorized to land scallops, subject to the possession limit specified in § 648.52(a), up to the amount allocated to the scallop TACs for each Access Area specified below. If the scallop TAC for a specified Access Area has been, or is projected to be harvested, the Regional Administrator shall publish notification in the **Federal Register**, in accordance with the Administrative Procedure Act, to notify general category vessels that they may no longer fish within the specified Access Area.

(i) *Closed Area I Access Area.* 86,414 (38 mt) in 2007.

(ii) *Closed Area II Access Area.* 346,170 (157 mt) in 2006.

(iii) *Nantucket Lightship Access Area.* 230,780 lb (105 mt) in 2006, and 157,454 lb (71 mt).

(iv) *Elephant Trunk Access Area.* 544,000 lb (247 mt) from January 1, 2007 through February 29, 2008, unless adjusted as specified in paragraph (a)(3)(i)(E) of this section.

(v) *Possession Limits—(A) 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 that has not enrolled in the general category Access Area fishery is prohibited from possessing scallops. General category scallop vessels fishing in the Access Areas specified in § 648.59(b) through (e) may possess scallops up to the possession limit specified in § 648.52(b), subject to a limit on the total number of trips that can be taken by all such vessels into the Access Areas, as specified in § 648.59(b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii). If the number of trips allowed have been or are projected to be taken, the Regional Administrator shall publish notification in the **Federal Register**, in accordance with the Administrative Procedure Act, to notify general category vessels that they may no longer fish within the specified Access Area.

(B) *Other species.* Except for vessels issued a general category scallop permit and fishing under an approved NE multispecies SAP under NE multispecies DAS, general category vessels fishing in the Access Areas specified in § 648.59(b) through (d) are prohibited from possessing any species of fish other than scallops.

(4) *Number of trips.* General category scallop vessels may not fish for, possess, or land scallops in or from the Access Areas specified in § 648.59(b) 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(b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii) have been, or are projected to be, taken by general category scallop vessels.

\* \* \* \* \*

13. In § 648.85, paragraph (c)(1) is revised to read as follows:

**§ 648.85 Special management programs.**

\* \* \* \* \*

(c) \* \* \*

(1) *Yellowtail flounder bycatch TAC allocation.* An amount of yellowtail flounder equal to 10 percent of the total yellowtail flounder TAC for each of the stock area specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section may be harvested by scallop vessels subject to the restrictions of this paragraph. Limited access scallop vessels enrolled in the Sea Scallop Area Access Program and fishing within the Area Access

areas defined at § 648.59(b) through (d) may harvest yellowtail flounder up to 9.8 percent of the applicable yellowtail flounder TAC. Scallop vessels participating in approved research under the process described in § 648.56, and fishing in the Access Areas specified in § 648.59(b) through (d), may harvest 0.2 percent of the applicable yellowtail flounder TAC. The amount of yellowtail flounder that may be harvested in each fishing year under this section shall be specified in a small entity compliance guide.

\* \* \* \* \*

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BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 060320078-6078-01; I.D. 031506B]

RIN 0648-AU40

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Notice of a Control Date for the Purpose of Limiting Entry to the Charter and Party Fishery; Northeast (NE) Multispecies Fishery Management Plan (FMP)

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

**ACTION:** Advance Notice of Proposed Rulemaking.

**SUMMARY:** NMFS announces that it is considering, and is seeking public comment on, proposed rulemaking to control future access to the open access charter and party boat (charter/party) fishery in the NE multispecies fishery if a management regime is developed and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to limit the number of participants in this sector of the NE multispecies fishery. This sector of the fishery includes vessels with open access charter/party permits, as well as limited access NE multispecies permits, while not on a NE multispecies day-at-sea (DAS). This announcement is intended, in part, to promote awareness of potential eligibility criteria for future access so as to discourage speculative entry into the fishery while the New England Fishery Management Council (Council) considers whether and how

access to the charter/party fishery should be controlled.

**DATES:** The date of publication of this document, March 30, 2006, shall be known as the "control date" and may be used for establishing eligibility criteria for determining levels of future access to the charter/party fishery subject to Federal authority. Written comments must be received on or before 5 p.m., local time, May 1, 2006.

**ADDRESSES:** You may submit comments by any of the following methods:

- Written comments (paper, disk, or CD-ROM) should be sent to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Mark the outside of the envelope, "Comments on Charter/Party Multispecies Control Date."

- Comments also may be sent via facsimile (fax) to (978) 465-3116.

- E-mail: [MUL\\_Charter\\_Party\\_Control\\_Date@Noaa.gov](mailto:MUL_Charter_Party_Control_Date@Noaa.gov). Include in the subject line the following "Comments on Charter/Party Multispecies Control Date." Federal e-Rulemaking Portal: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Moira C. Kelly, Fishery Management Specialist, 978-281-9218; fax 978-281-9135; e-mail: [moira.kelly@noaa.gov](mailto:moira.kelly@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The recreational fishery historically has landed a significant percentage of the cod caught in the GOM. As a result of the overfished condition of both Georges Bank (GB) and Gulf of Maine (GOM) stocks of Atlantic cod (*Gadus morhua*), the Council has implemented measures to regulate recreational cod fishing since 1994. These measures include minimum fish sizes, limits on the number of hooks per line, and restrictions on the number of cod permitted to be landed (bag limits). More recently, Framework Adjustment 42 to the NE Multispecies Fishery Management Plan (FMP), which, if approved, is expected to be effective during the summer of 2006, would prohibit the possession of Atlantic cod in the recreational fishery from November 1 through March 31, and increase the minimum size for recreationally caught cod from 22 inches (55.88 cm) to 24 inches (60.96 cm). These measures would apply to both charter/party and private recreational vessels and would reduce fishing mortality on GOM cod by approximately 32 percent in order to help achieve the necessary fishing mortality reduction levels required by the FMP. A Secretarial proposed emergency rule was published on March 3, 2006 (71 FR 11060), that would implement these measures at the start of

the fishing year, May 1, 2006. In addition to cod, the following NE multispecies are also commonly caught by the charter/party industry: Pollock (*Pollachius virens*); haddock (*Melanogrammus aeglefinus*); and winter flounder (*Pleuronectes americanus*); and, to a lesser extent, white hake (*Urophycis tenuis*), and non-regulated species such as cusk (*Brosme brosme*) and wolffish (*Anarhichas lupus*).

In light of these new proposed restrictions and their impacts, members of the charter/party industry and the Council's Recreational Advisory Panel recommended that the Council restrict new entrants to the charter/party fishery to reduce the need for further restrictions on the recreational catch of cod and other groundfish.

Based on information developed by the Marine Recreational Fishery Statistical Survey (MRFSS) and the Council's Groundfish Plan Development Team, while the number of charter/party open access permits in 2005 (approximately 673) was 5 percent below that in 2002, the highest number of charter/party permits issued in 1 year, the number of charter/party trips landing GOM cod remained relatively constant from 1990 through 2001. However, despite the fact that the number of trips has remained constant, the recreational catch of GOM cod has declined since 1982. The percent decrease in the amount of GOM cod caught by the recreational fishery is similar to the percent change in GOM cod caught by the commercial fishery throughout much of the same time period.

The control date is intended to discourage speculative entry into the charter/party NE multispecies fishery while controlled access restrictions are considered by the Council. The control date will help to distinguish established participants from speculative entrants to the fishery. Although entering the fishery after the control date will not ensure fishing vessels of future access to the NE multispecies resource on the grounds of previous participation, additional and/or other qualifying criteria may be applied. The Council may choose different and variably weighted measures to qualify participants based on the type and length of participation in the charter/party NE multispecies fishery.

This notification establishes March 30, 2006 as the control date for potential use in determining historical or traditional participation in the NE multispecies charter/party fishery. Consideration of a control date does not commit the Council or NMFS to develop