

general, special, or runoff election, or primary or preference election, or nominating convention or caucus.

(B) *References to Presidential and Vice Presidential candidates.* The public communication refers to a clearly identified Presidential or Vice Presidential candidate and is publicly distributed or otherwise publicly disseminated in a jurisdiction during the period of time beginning 120 days before the clearly identified candidate's primary or preference election in that jurisdiction, or nominating convention or caucus in that jurisdiction, up to and including the day of the general election.

(3) The communication satisfies at least one of the conduct standards in 11 CFR 109.21(d)(1) through (d)(6), subject to the provisions of 11 CFR 109.21(e), (g), and (h). A candidate's response to an inquiry about that candidate's positions on legislative or policy issues, but not including a discussion of campaign plans, projects, activities, or needs, does not satisfy any of the conduct standards in 11 CFR 109.21(d)(1) through (d)(6). Notwithstanding paragraph (b)(1) of this section, the candidate with whom a party coordinated communication is coordinated does not receive or accept an in-kind contribution, and is not required to report an expenditure that results from conduct described in 11 CFR 109.21(d)(4) or (d)(5), unless the candidate, authorized committee, or an agent of any of the foregoing, engages in conduct described in 11 CFR 109.21(d)(1) through (d)(3).

* * * * *

Dated: June 2, 2006.

Michael E. Toner,

Chairman, Federal Election Commission.

[FR Doc. 06-5195 Filed 6-7-06; 8:45 am]

BILLING CODE 6715-01-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 736 and 744

[Docket No. 060531141-6141-01]

RIN: 0694-AD76

Correction to General Order Concerning Mayrow General Trading and Related Entities

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; Correction

SUMMARY: The Bureau of Industry and Security is correcting a final rule that

appeared in the **Federal Register** on June 5, 2006 (71 FR 32272). This rule corrects an inadvertent error in the telephone number listed in the **FOR FURTHER INFORMATION CONTACT:** section of the preamble.

FOR FURTHER INFORMATION CONTACT: [Corrected] Michael D. Turner, Director, Office of Export Enforcement, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044; Phone: (202) 482-1208, x3; E-mail: rp2@bis.doc.gov; Fax: (202) 482-0964.

Eileen Albanese,

Director, Office of Export Services.

[FR Doc. E6-8961 Filed 6-7-06; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 060314069-6138-002; I.D. 030306B]

RIN 0648-AT25

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

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

ACTION: Final rule.

SUMMARY: This final rule implements 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). The following management measures are implemented by this rule: 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 the Elephant Trunk Access Area (ETAA) is implemented to reduce potential interactions between the scallop fishery and sea turtles, and to reduce finfish and scallop bycatch mortality.

DATES: Effective June 15, 2006.

ADDRESSES: Copies of Framework 18, the 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 (Council), 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of the preamble of this rule. Copies of the FRFA and the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298, and are also available via the internet at <http://www.nero.nmfs.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at One Blackburn Drive, Gloucester, MA, 01930, and by e-mail to David_Rostker@omb.eop.gov, or to the Federal e-rulemaking portal <http://www.regulations.gov>, or fax to (202) 395-7285.

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 to the Atlantic Sea Scallop FMP 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 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. A proposed rule for Framework 18 was published on March 30, 2006 (71 FR 16091). The public comment period for the proposed rule ended on April 14, 2006. This rule implements management measures for the 2006 and 2007 fishing years, which are described in detail below.

Approved Management Measures

In the proposed rule, NMFS requested comments on all proposed management measures, and specifically highlighted a provision relating to the harvest of research set-aside from within an Access Area if the yellowtail flounder

Total Allowable Catch (TAC) allocated for the scallop fishery was attained (*see* Item 5 and Comment 2). The approved management measures are discussed below. No measures in Framework 18 were disapproved. Details concerning the Council's development of these measures were presented in the preamble of the proposed rule and are not repeated here.

1. Revised Open Area DAS Allocations

The FMP requires that the biennial adjustment consider the number of open area DAS allocated to limited access vessels every 2 years, and adjust it if necessary in order 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, and Access Area trip allocations. Based on the Access Area Program measures implemented by Framework 18, the total number of open area DAS is set at 20,000 open area DAS, resulting in the following vessel-specific DAS allocations: Full-time vessels are allocated 52 DAS in 2006 and 51 DAS in 2007; part-time vessels are allocated 21 DAS in 2006 and 20 DAS in 2007; and occasional vessels receive 4 DAS each year.

Framework 18 reduces the 2006 DAS allocations, but because it is being implemented after the start of the 2006 fishing year (March 1), some scallop vessels may use more DAS between March 1, 2006, and the implementation of Framework 18 than they would have if Framework 18 had been implemented prior to March 1. 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 reduces 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 are most likely to exceed the Framework 18 DAS allocations for the 2006 fishing year because of their lower allocations implemented by Framework 18. To ensure that the conservation goals of the Scallop FMP are maintained, Framework 18 requires vessels using DAS in excess of their 2006 allocation specified under Framework 18 to deduct the additional DAS from their 2007 fishing year DAS allocations. Although this could potentially allow F to exceed the F target for the 2006 fishing year, the deductions from the 2007 allocations

are expected to 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

Framework 18 establishes a rotational management schedule that opens the CAII and NLCA Access Areas in 2006, and the CAI and NLCA Access Areas in 2007. This schedule is intended to address changes in scallop resource abundance in the CAII and NLCA Access Areas that support trip allocations in those areas in 2006. This schedule is consistent with 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 designed 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.

In the 2006 fishing year, the maximum number of trips a vessel may take in the CAII and NLCA Access Areas is three and two trips, respectively. A full-time scallop vessel is allocated three trips in the CAII Access Area, and two trips in the NLCA Access Area. A part-time scallop vessel is 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 is allocated one trip, which could be taken in either the CAII or NLCA Access Area. The scallop possession limit for Access Area trips is 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 may take in the CAI, NLCA, and ETAA is one, one, and five, respectively (unless the ETAA allocation is adjusted as described in management measure number four below). A full-time scallop vessel is 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 is 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 is 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 is 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 will open for scallop fishing on January 1, 2007, rather than at the start of the fishing year on March 1, 2007. This 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 will open as an Access Area on January 1, 2007. The Framework 18 ETAA trip allocations are based on 2004 scallop survey information, which was the best scientific information available when the Council established the ETAA trip allocations for Framework 18. Because the ETAA will open nearly 3 years after the resource in that area was last surveyed, 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 unless there is a provision for adjusting the number of allocated trips. Framework 18 establishes a rulemaking process that allows the Administrator, Northeast Region, NMFS (Regional Administrator) to adjust allocations in the ETAA based on updated biomass projections 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. This final rule implementing Framework 18 includes reduced total allowable catch (TAC)

specifications and trip allocations based on a range of estimated exploitable biomass levels in the ETAA to 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 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, that area is closed to further scallop fishing. Vessels that have unutilized trips in the affected Access Area are authorized to take their unutilized trips in the open fishing areas. Framework 18 allocates the open area DAS for these unutilized trips in a manner that maintains the fishing mortality objectives for scallops. To do this, Framework 18 establishes a ratio for each Access Area that reflects differential catch rates between Access Areas and open areas. If an Access Area is closed, each vessel with unutilized trips shall 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 shall 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 shall receive 0.458, 0.450, and 0.408 DAS, respectively, in open areas. These ratios shall also apply to vessels participating in approved research under the scallop research set-aside program. Such vessels shall be allowed to conduct compensation fishing in open areas subject to the same ratio if the yellowtail

research set-aside TAC (equal to 2 percent of the scallop fishery's overall yellowtail TAC set-aside) is harvested. This ratio is intended to equate Access Area catch that is limited by possession limit with open area trips that would be limited by DAS.

The yellowtail flounder bycatch TAC allocation for the Area Access Program is specified in the Northeast (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.

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 indicated that scallop biomass in the Hudson Canyon area during 2005 was much lower than had been predicted in Amendment 10 to the FMP. The biomass estimates in Amendment 10 were 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, Framework 18 extends the HCAA until February 29, 2008, so that vessel owners with unutilized or incomplete trips during the 2005 fishing year may wait to complete their trips. This extension of the HCAA will allow short-term growth of scallops in the HCAA that is projected to improve catch rates. Additionally, this extension will 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 will be closed to scallop fishing from September 1–October 31. This 2-month closure is intended to reduce potential interactions between threatened and endangered sea turtles and the scallop fishery in the Mid-

Atlantic. Data through 2004 indicate a relatively high number of sea turtle and scallop fishery interactions during September and October in the ETAA. Closing the ETAA during September and October is predicted to provide the most protection for sea turtles from the effects of the scallop fishery while minimizing the potential economic impacts of a longer closure. Additionally, the high water and air temperatures that occur during September and October in the ETAA may result in higher than average small scallop and finfish discard mortality. Therefore, this 2-month closure is predicted to also reduce scallop and finfish discard mortality.

8. Closure of an Area Off of Delaware/Maryland/Virginia on January 1, 2007

Framework 18 closes 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 Delmarva Rotational Closed Area. The Delmarva area will close on January 1, 2007; this closure coincides with the opening of the ETAA. The Delmarva area will remain closed for 3 years, until February 28, 2010, by which time the small scallops are expected to have grown to an optimal size for harvest. This new Rotational Scallop Closed Area is 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

This action allows 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, Framework 18 eliminates 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 action allows one-to-one trip exchanges of 2006 CAII or NLCA Access Area trips and 2007 ETAA trips.

Without this additional 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. This action provides an important fishing opportunity because, with the exception of vessels that have unutilized HCAA trips from 2005, there will 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 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 action authorizes vessels that break a trip within the last 60 days of an open period for an Access Area 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 are only 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 will not be allowed to carry a compensation trip forward from the 2006 CAII Access Area into the 2007 fishing year because CAII will be closed in 2007. This provision is intended 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 also allows vessel owners and operators additional flexibility in planning end-of-year Access Area trips. Additionally, this rule requires 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 trip allocations in the 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 eliminates 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.

Comments and Responses

NMFS received nine comment letters on Framework 18; two letters were from individuals, five were from industry representatives, one was from the Council, and one was from an environmental advocacy group. Comments on the Scallop FMP that were not specific to Framework 18 or the management measures described in the proposed rule are not responded to in this final rule. This includes comments that suggested that NMFS should implement measures other than those described in the proposed action. Under the regulatory process established by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS can only approve or disapprove measures proposed by the Council and cannot implement other measures.

Comment 1: One commenter indicated general support for a reduction of commercial quotas, the use of accurate harvest information to develop quotas, and the need for protection of the public fishery resource.

Response: NMFS acknowledges the importance of the issues raised by the commenter, which relate generally to Framework 18. As specified in the FMP, the Council developed Framework 18 using the best available data regarding the resource and the fishery. Framework 18 establishes scallop fishery specifications for 2006 and 2007 consistent with the control rules specified in the FMP to achieve OY.

Comment 2: The Council commented that the proposed regulations comport with the intent of the Council, with the following exception. When a scallop Access Area is closed because the scallop fishery has harvested its yellowtail flounder TAC for the area, the proposed rule would have allocated additional open area DAS and re-direct research compensation trips to open areas with the same prorated adjustment that applies to commercial fishing trips. The Council commented that this would be inconsistent and incompatible with the intent of research set-aside, and noted the provision that reserves 2 percent of the yellowtail flounder TAC for research-related trips so that they can occur in an area even if that area is closed to commercial scallop fishing.

Therefore, the Council requests that additional open area DAS adjustments do not apply to research compensations trips because the Council believes it may constrain research in the Access Areas. The Council suggests that these trips should occur using the 2 percent of the yellowtail flounder TAC allocated for this purpose.

Response: NMFS reviewed Framework 18 and agrees with the Council that the proposed regulations, including provisions to allow for additional research compensation trips by way of prorated open area DAS if the yellowtail flounder TACs are attained, extend beyond the intent of Framework 18. Therefore, NMFS removed the provisions allowing research trips to be transferred to open areas in this final rule.

Because 2006 yellowtail flounder TACs are low, the portion of those TACs allocated for research activities are low. For example, the yellowtail flounder catch available to research is estimated to be approximately 644 lb (292 kg) in the NLCA Access Area and 9,127 lb (4,140 kg) in CAII Access Area. Once these yellowtail flounder research allocations are attained, all compensation for research approved under the TAC set-aside program will be prohibited. As a result, NMFS remains concerned that incomplete research and/or the inability to fully compensate research trips may result, should these yellowtail flounder allocations be attained before research is complete.

Comment 3: Two commenters supported seasonal closures in the Mid-Atlantic Region to reduce the potential for interactions between scallop dredges and threatened and endangered sea turtles. One commenter supported a closure of the ETAA during June 15–November 15 because it closed the area during summer months when sea turtles are in the area foraging, and because it would have minimal economic effects on the scallop fishery because vessels would be able to harvest in this area during the remainder of the year. The other commenter also supported seasonal closures but was not specific about the timing or duration of such closures. This commenter recognized that closing the ETAA during September and October would be beneficial, but was concerned that it provided only limited protection for sea turtles.

Response: The Council recommended, and NMFS is implementing, a September 1–October 31 closure of the ETAA. Data through 2004 indicate a relatively high number of sea turtle and scallop fishery interactions during September and October in the ETAA. Because of the potential for interaction

during September and October, Framework 18 concludes that a closure to scallop fishing may have positive benefits to turtles in the ETAA if fishing effort is not displaced to areas with higher densities of turtles than inside the ETAA. Additionally, the elevated water and air temperatures that occur during September and October in the ETAA may result in higher than average small scallop and finfish discard mortality. Therefore, this 2-month closure is intended to also reduce scallop and finfish discard mortality.

Comment 4: Several industry representatives expressed concern regarding the timing of the January 1, 2007, opening of the ETAA. They stated that opening the ETAA 2-months before the start of the scallop fishing year on March 1 may introduce uncertainty into the scallop market by making high volumes of scallops available during non-peak harvesting times. This could create the need to freeze scallops for future sales because of the lower prices associated with high supplies of scallops. In general, commenters proposed that NMFS either align the opening of the ETAA with the beginning of the scallop fishing year on March 1 or limit effort in the ETAA to one or two trips per vessel during January and February.

Response: Framework 18 concluded that opening the ETAA on January 1, 2007, thereby providing 2 additional months of fishing opportunity in 2007, may help to disperse fishing effort within the area over the longer period. Dispersing fishing effort over time should reduce the likelihood that the scallop resource in the ETAA will be adversely impacted by intense fishing effort (e.g., rapid depletion and high levels of effort and scallop shucking in a confined area). A January 1 opening also has the potential of further reducing fishery interactions with sea turtles by allowing more fishing to occur prior to summer months when threatened and endangered sea turtles are most likely to be present within the ETAA. In the initial year of the ETAA opening, the 2 additional months of fishing opportunity also help offset the September 1–October 31 closure of the ETAA that is intended to reduce fishery interactions with sea turtles. Moreover, this action was not designed to control market fluctuations.

Comment 5: Several industry representatives speculated that fishing effort in the ETAA will likely be high in response to the high scallop biomass and raised concerns that the scallop biomass in this relatively small Access Area may become depleted. To prevent a resource collapse due to high fishing

effort and subsequent failure of area rotation management, the commenters proposed reducing the number of ETAA trips from five to three or four, monitoring the ETAA biomass and the landings throughout the year, and only allowing additional ETAA trips if data indicate that the biomass can support additional fishing effort.

Response: NMFS agrees with the commenters on the importance of a healthy resource to ensure the success of area rotation management. Provisions in Framework 18, specifically the ETAA trip adjustment procedure, allow for the status of the ETAA resource to determine the number of access trips prior to the initial opening of the ETAA. A survey of the ETAA is incorporated into the NMFS scallop survey conducted in the summer of each year. Data from that survey, and any additional surveys, will be used to determine the appropriate number of trips for the ETAA in 2007, thereby ensuring the F objectives are met. This assessment and trip setting procedure should be sufficient to ensure that the scallop resource in the ETAA is not depleted.

Comment 6: One industry representative believes that the seasonal September–October closure of the ETAA, intended to reduce fishery interactions with sea turtles, is unnecessary because the estimate of sea turtles takes in the scallop fishery has dramatically declined from 2003 to 2004 and that a gear-based solution to fishery/turtle interactions is a more consistent and constructive approach than a seasonal closure.

Response: Framework 18 concludes that the proposed closure period would provide additional benefits to sea turtles compared to allowing access to the ETAA throughout the fishing year. Although Framework 18 recognizes the potential benefits of gear-based solutions, the Council determined that it would be more precautionary to implement the closure irrespective of the final decision regarding the chain mat requirement.

Comment 7: An industry representative commented that Framework 18's economic analyses may be masking important long-term issues in the fishery. Specifically, the comment noted that economic analyses contrasting the area access options may not adequately take into account scallop resource conditions and long-term OY. The commenter provided the example that, in the short-term, transferring an Access Area trip from CA I to CA II would not have significant economic effects because the trip TAC is limited, but harvesting smaller scallops while

larger scallops remain unharvested in habitat closed areas would have an adverse effect on the fishery's ability to sustain yields in a rotational area management program over time.

Response: Amendment 10 to the Scallop FMP implemented a comprehensive management program for the scallop fishery that incorporates an adaptive area rotation program designed to focusing fishing effort in areas where there is a high catch of scallops. Amendment 10 also established closed areas to protect essential fish habitat (EFH) from the effects of scallop fishing, as well as a suite of other measures to meet the goals and objectives of the Scallop FMP and Magnuson-Stevens Act requirements. The EFH closed areas will remain in place unless modified by the Council. The analyses in Framework 18 are based on the current and foreseeable management program for the scallop fishery, which includes the current EFH closed areas. The fact that scallops are not available within EFH closed areas to the fishery is true for all of the alternatives in Framework 18. Therefore, the presence of EFH closed areas does not result in differential economic impacts between alternatives in either the short or long-term. Furthermore, the economic analyses are derived from results of a sophisticated biological projection model (see Appendix II of Framework 18), which incorporates several facets of the scallop resource and fishery to determine short and long-term scallop yield in an area-based management program. This projection model served as the basis for biological and economic projections in Amendment 10, Joint Frameworks 16/39, and Framework 18.

Comment 8: One industry representative supported Framework 18's access program for Georges Bank, with the exception of the measure that established CA II as an Access Area in 2006 rather than CA I. The commenter argued that CA I has a higher scallop catch rate and a lower incidence of yellowtail flounder bycatch than CA II, and that the CA I Access Area should open in 2006 in addition to CA II and the NLCA.

Response: The Georges Bank Access Area management measures in Framework 18 did not include Access Area trips for Closed Area I in 2006 due to concerns that the adjustment of the boundaries of the area in *Oceana v. Evans, et. al.*, (Civil Action No. 04–810, D.D.C., August 2, 2005, and October 6, 2005), which made the access area smaller, and reduced the biomass of scallops available to the fishery in the Access Area. Because NMFS can only

approve or disapprove substantive measures in this Framework, NMFS cannot modify Framework 18 measures in this rulemaking. If NMFS were to disapprove this portion of Framework 18, it would leave the existing regulations in effect, which allow one trip to the CAI Access Area and one trip to the NLCA Access Area. This would result in Access Area allocations and fishery-wide measures that would fall short of OY.

Comment 9: One industry representative was concerned that the conversion factor for Georges Bank Access Area trips to open area DAS is too low. The commenter noted that the conversion factors are based on a comparison of the estimated average meat counts within the access areas to the average meat count in the open area. The commenter found the figures used in Framework 18 inconsistent with their members' experience in the open areas, and recommended using an alternate calculation that was presented to the Council at the final Council meeting when Framework 18 was adopted.

Response: The intent of the conversion factor is to allow the industry to be allocated DAS for unused access area trips in a way that achieves an equivalent amount of scallop mortality even though the scallop meat count and, therefore, the catch per fishing day, differs inside and outside of the access areas. The meat weight, including open area meat weight, is a product of the biological simulation model and is based on the area rotation selected by the Council. The commenter noted that, at the meeting where the Council took final action, the Council reviewed several examples of such calculations. The commenter would have preferred that the Council select the lower average meat counts in the open areas of 16.8 or 17.2 scallop meats/lb, thus resulting in a greater number of DAS for use in the open areas. While the commenter may find those alternatives preferable, NMFS must approve or disapprove the measure in Framework 18, and finds this is sufficient justification for the selected alternative.

Comment 10: One industry representative remarked that Framework 18 provides for limited open area fishing opportunity in the Mid-Atlantic in 2007 and that NMFS needs to recognize the implications of closing the Delmarva area.

Response: NMFS is uncertain whether the commenter is advocating that the Delmarva Area remain open to provide open access scalloping in the Mid-Atlantic. Regardless, closing the Delmarva area is intended to protect a strong year class of scallops in that area.

Such closures are central to the rotational area management strategy adopted by the Council. The closure of the Delmarva Area will take effect when the ETAA reopens, in order to mitigate the socioeconomic effects of the closure on vessels that fish in the Mid-Atlantic.

Comment 11: One industry representative expressed concern that Framework 18 would eliminate the limit on the number of crew on board a scallop vessel for trips into the Access Areas. The commenter is concerned that this could exacerbate the possibility that a derby fishery will occur in the Access Areas. The commenter believes a derby could be motivated in part by the industry concerns that catches will be reduced if the Access Area yellowtail TACs are attained and trips are shifted to the open areas on a pro-rated basis.

Response: The crew limits were established in the FMP to limit the amount of scallops that could be shucked on a DAS, which limited fishing capacity in the DAS management program. Because the Access Areas limit harvest by poundage (18,000 lb (8,165 kg) per authorized trip), removing crew limits will not affect the total weight of scallops that may be landed. The Council considered the fact that additional crew could enable vessels to harvest smaller scallops because additional crew could be carried to maintain shucking efficiency, but concluded that the resource would be sufficiently protected by the poundage limits.

The yellowtail flounder TAC is a restrictive management measure necessary for the conservation and rebuilding of the yellowtail flounder stock, and cannot be undermined. Derby fishing behavior is a risk often associated with implementing restrictive management measures. The Council weighed the advantages associated with eliminating crew limits, such as lowered fishing costs and increased efficiency, against the possibility of a derby fishery and determined that the advantages outweighed the risks. Therefore, NMFS is eliminating crew limits for vessels fishing in access areas. If derby fishing behavior in response to yellowtail flounder TACs becomes a problem, the Council may consider that issue at a future time.

Comment 12: An industry representative commented that the requirement to stow gear when transiting CA II needs to be reconsidered because of the additional safety risk associated with stowing gear and because other Access Areas can be transited without gear being stowed.

Response: The gear stowage requirements were not considered during the development of Framework 18. The current gear stowage requirements are established in regulations for conserving multispecies groundfish and can not be modified through a scallop framework. NMFS advises the commenter to raise this concern to the Council for possible consideration in a future management action.

Comment 13: An industry representative made several editorial suggestions to regulatory text in the proposed rule for Framework 18.

Response: Several of these editorial changes, which NMFS found to be helpful, are included below in "Changes from the Proposed Rule." NMFS did not accept editorial suggestions that were not considered to be an improvement.

Comment 14: One commenter expressed concern that Framework 18 does not incorporate any information from the Biological Opinion (BO) being developed as part of the section 7 consultation under the ESA that is evaluating the effects of the scallop fishery on sea turtles. The commenter advises that this BO is overdue and it should be completed and incorporated into Framework 18 prior to implementation of the proposed action.

Response: NMFS reinitiated formal consultation on the Scallop FMP in November 2005, based on new information regarding the effects of the continued operation of the scallop fishery on threatened and endangered sea turtles. As allowed by the regulations (50 CFR 402.14), this consultation period was extended.

The effects of the management measures associated with Framework 18 on ESA-listed species were considered during review as part of an informal section 7 consultation under the ESA. The consultation, which concluded on January 26, 2006, determined that implementation of Framework 18 would not result in adverse effects to any ESA-listed species under NMFS jurisdiction and would result in no additional adverse effects on sea turtles because Framework 18 reduces fishing effort from levels allowed under current regulations. Waiting until the new BO has been completed to implement Framework 18 does not enable additional mitigation measures that may be identified in the BO to be implemented as part of Framework 18, given that NMFS can only approve or disapprove measures, and cannot adopt new or modified alternatives to the proposed action. The likelihood of sea turtle interactions with the scallop fishery increase during summer months.

NMFS anticipates having a completed BO by summer of this year. If necessary, the process to implement additional management measures to protect sea turtles will begin at that time, and NMFS will take appropriate action to implement any measures that may result from the new BO, once completed, that are necessary to reduce ESA-listed species interactions with the scallop fishery. Nothing in Framework 18 prevents NMFS's consideration and implementation of additional measures that may result from the new BO.

Comment 15: One commenter raised the issue that the analysis for Framework 18 does not adequately assess the effects on sea turtles. Specifically, the commenter stated that the analysis does not contain recent turtle stock assessment information, that it does not address cumulative effects, that it improperly combines turtle sub-populations, and that it attempts to diminish the effects of the scallop fishery by discussing the number of sea turtle takes in other fisheries. Additionally, the commenter expressed concern that Framework 18 contains no measures specifically designed to avoid, reduce, or mitigate sea turtle takes in the 2006 fishery.

Response: Framework 18 contains a complete evaluation of the effects of the scallop fishery on sea turtles, based on the best available scientific information. The analysis is based on the December 2004 BO evaluating the effect of the scallop fishery on sea turtles and Amendment 10 to the Scallop FMP. Ongoing nest counts for loggerhead sea turtles have suggested a decline in nesting in recent years at some U.S. beaches. However, the currently available nesting data are still too limited to indicate statistically reliable trends for these loggerhead sub-populations. The analysis for Framework 18 combines loggerhead turtle sub-populations because there are not yet adequate data to identify trends in loggerhead sub-populations. As more data on loggerhead sub-populations become available, NMFS will incorporate these data into its analyses. In discussing sea turtle takes in other fisheries, NMFS is in no way diminishing the effects of the scallop fishery on sea turtles, but rather is presenting the information to describe cumulative effects of all ongoing activities on sea turtles. The updated BO section 7 consultation on the continued operation of the scallop fishery was reinitiated in November 2005 in response to new information on takes of sea turtles in the scallop fishery. NMFS will re-evaluate the impacts of the scallop fishery on ESA-listed sea turtles

during consultation and describe the anticipated effects of the fishery on sea turtles in a new BO, along with any non-discretionary measures deemed necessary that NMFS must implement to reduce adverse effects to ESA-listed species such as sea turtles.

Comment 16: One commenter believes that the EA for Framework 18 does not include the fundamental analyses necessary to determine whether this action significantly affects the environment and recommends that an environmental impact statement (EIS) should be developed to fully assess the environmental effects of this action.

Response: NOAA Administrative Order 216-6 (NAO 216-6) (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. On July 22, 2005, NOAA published a Policy Directive with guidelines for the preparation of a Finding of No Significant Impacts. In addition, the Council on Environmental Quality (CEQ) regulations at 40 CFR 1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." The significance of this action was analyzed based on the NAO 216-6 criteria, the recent Policy Directive from NOAA, and CEQ's context and intensity criteria. Based on the analysis contained in the supporting EA prepared for Framework 18, and in the supplemental EIS for Amendment 10 to the Sea Scallop Fishery Management Plan, NMFS determined that Framework 18 will not significantly impact the quality of the human environment and all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Therefore, preparation of an EIS for this action is unnecessary.

Comment 17: One commenter cautioned NMFS that a framework adjustment cannot be used to significantly alter provisions in an FMP. Amendment 10 established the requirement that DAS allocated for controlled access trips cannot be used for open access trips, and therefore, Framework 18 cannot allow limited access vessels to use their closed area trips in the open areas if the scallop fishery's yellowtail flounder TAC has been reached.

Response: While Amendment 10 did establish the requirement that DAS allocated for controlled access trips cannot be used for open access trips, Joint Frameworks 16/39 revised Amendment 10 to allow DAS allocated for Access Area trips to be used in the open areas if an Access Area is closed (69 FR 63460, November 2, 2004).

Under the existing regulations, if the yellowtail flounder TAC is reached and an Access Area is closed, vessels that have not taken their allocated Access Area trips are authorized to take those trips in open fishing areas. Framework 18 only slightly modifies the current provision by reducing the amount of time a vessel can fish in the open areas compared to Access Areas when the yellowtail TAC for the scallop fishery is harvested but does not create a new provision in the FMP.

Comment 18: One commenter stated that Framework 18 will significantly increase the bycatch of overfished groundfish species in 2006, due to high bycatch rates of groundfish in controlled Access Areas, high levels of allocated open area DAS, and the measure that allocates Access Area trips into the open areas if the yellowtail flounder TAC is reached.

Response: The Scallop FMP established a management program that adapts to changing resource conditions. In some years, to achieve OY, higher DAS and Access Area trip allocations may be specified, while in other years the allocations may be lower. Therefore, overall bycatch levels would fluctuate as well, possibly increasing in one year compared to other years when allocations were lower. Nevertheless, NMFS disagrees that Framework 18 will significantly increase the bycatch of overfished species in 2006. Amendment 10 and Joint Frameworks 16/39 implemented measures that minimized bycatch to the extent practicable. Framework 18 adjusts these management measures. To minimize bycatch to the extent practicable, the Scallop FMP relies on gear restrictions and, more generally, reductions in area swept (i.e., overall bottom contact time) by focusing effort in areas where scallop catch rates are highest (and therefore trip times the shortest). The restrictions in the Access Areas within the groundfish closed areas are specified to minimize groundfish bycatch to the extent practicable. Currently, Access Areas have the highest bycatch rates of groundfish species. The Area Access program in the groundfish closed areas incorporates a closed season of February 1 through June 14 each fishing year to prevent fishing effort in the Access Areas when spawning of yellowtail flounder and other groundfish species is at its peak. In addition, the scallop fleet is constrained by a hard TAC on yellowtail flounder in each Access Area when bycatch is a concern. When the TAC is caught, scallop vessels may no longer fish within the Access Area. Not only does this limit bycatch of yellowtail flounder in Access Areas, it

also limits bycatch of other regulated flounder species, skates, and monkfish. The Scallop FMP allows scallop vessels to fish additional open area DAS when the Access Areas close, if they have unutilized trips in the closed Access Area. Although these transferred trips may continue to result in bycatch of regulated species, the provision under Framework 18 reduces the amount of time that a scallop vessel can fish in open areas by equating the mortality of scallops in open areas with that of scallops in Access Areas. Therefore, the provision under Framework 18 would decrease bycatch compared to allowing the trips to be transferred to open areas on a one-for-one basis, as authorized under existing regulations. In addition, the retention of regulated groundfish is strictly managed under the NE Multispecies FMP; limited access scallop vessels may retain only 300 lb (136 kg) of regulated multispecies on each trip. Although discards may occur, the NE Multispecies FMP accounts for the bycatch associated with the scallop fishery in its mortality estimates and necessary management measures. The same is true for the Monkfish FMP with respect to monkfish bycatch. The analysis in Framework 18 supports these conclusions.

Comment 19: One industry representative supported the observer set-aside provisions in the Scallop FMP and suggested that these provisions should be implemented.

Response: NMFS is continuing to explore ways to facilitate an industry-funded observer program implementing the observer set-aside provisions in the Scallop FMP.

Comment 20: One commenter was concerned that Framework 18 does not ensure that adequate observer coverage will be in place during the 2006 fishery to allow for accurate and precise reporting of the significant bycatch that occurs in this fishery. The commenter also remarked that most limited access scallop vessels do not report discards on their Vessel Trip Reports (VTRs). Because of the under-reporting of discard and inadequate observer coverage, the commenter believes that it will be impossible to monitor the yellowtail flounder TACs or scallop catch, assess the bycatch of other groundfish species, or assess the incidental take of sea turtles.

Response: Recent discussions of the Fiscal Year 2006 funding for observer coverage indicated that funding limitations could result in lower coverage than previous years. The funding of observer coverage is not within the scope of this framework and, therefore, this rulemaking can do

nothing to address this issue. Collecting accurate data on the bycatch of groundfish species and the incidental take of sea turtles in the scallop fishery, as well as accurately tracking the harvest of scallops, is clearly critical to the management program. NMFS will continue to work on resolving issues affecting 2006 observer coverage in the scallop fishery and, as noted above, is working on ways to facilitate an industry-funded observer provision. NMFS agrees that one reason that observer coverage is important is that discards reported in VTRs are generally lower, often much lower, than those reported by at-sea observers.

Comment 21: One commenter urged NMFS to take action in Framework 18 to protect Georges Bank cod EFH from dredging that the commenter believes would impede the recovery of the cod stock due to impacts on juvenile cod EFH.

Response: Amendment 10 to the Scallop FMP implemented EFH closed areas to minimize the adverse effects of scallop fishing, to the extent practicable, on EFH that was designated for several species, including cod. Framework 18 is the biennial adjustment of the specifications required by the management program established by Amendment 10. NMFS has determined that there is no need in Framework 18 to modify any of the current EFH provisions in the FMP. The measures in Framework 18 continue to minimize the adverse effects of scallop fishing on EFH to the extent practicable. The Council is currently preparing an omnibus EFH amendment and the commenter can more appropriately raise this issue during that process.

Changes From the Proposed Rule

In § 648.11, paragraph (a)(1) is corrected to remove duplicate text and to make it consistent with other observer provision regulations.

In § 648.51, paragraph (f) is revised to clarify that limited access scallop vessels may not have even one trawl net on board except under the specific conditions outlined in the paragraph.

In § 648.59, the coordinates in paragraph (c)(3) are corrected.

In § 648.60, paragraph (5)(ii) is corrected to remove duplicate text and paragraph (e)(3) is revised to remove provisions allowing research compensation trips to be transferred to open areas after the yellowtail flounder research allocation is attained.

In § 648.60, paragraphs (a)(9)(i) and (ii) are revised to specify that total catch and/or discard must be reported in pounds rather than kilograms.

In § 648.85, paragraph (c)(3)(ii) is revised to more accurately reflect that the Regional Administrator will publish a notice when the scallop fishery's yellowtail flounder TAC for each yellowtail flounder stock has been attained.

Classification

The Regional Administrator determined that the framework adjustments implemented by this rule are necessary for the conservation and management of the Atlantic sea scallop fishery and are consistent with the Magnuson-Stevens Act and other applicable law.

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

Because Section 648.51 of this rule eliminates restrictions on crew size during Access Area trips and for small dredge vessels, thereby relieving a restriction, it is not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1). Under current regulations, the number of people on board vessels participating in the Access Area program could not exceed seven individuals and the number of people aboard vessels participating in the small dredge program could not exceed five individuals. Section 648.51 eliminates restrictions on the number of people aboard vessels participating in the Assess Area program and vessels participating in the small dredge program, thereby, providing vessels the flexibility to maximize their economic gain by fishing with the crew size of their choice. This restriction should be relieved prior to the opening of the Access Areas on June 15, 2006, so that fishers can arrange for their crew prior to the beginning of the season.

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in effective date for this rule under authority contained in 5 U.S.C. 553(d)(3) because a delay would be impracticable and contrary to public interest from the perspective of resource conservation needs and economic impact on the public. Framework 18 implements biennial adjustments to ensure that measures meet the target fishing mortality rate and achieve OY from the scallop resource. Access Area and DAS allocations are set for each fishing year to achieve, but not exceed, annual fishing mortality objectives and OY. Under current regulations, the CAI Access Area will open on June 15, 2006. When Framework 18 was being finalized, an EFH court decision reduced the size of CAI. Because fishing

effort in CAI will now be concentrated in a smaller area, if fished, localized depletion of the scallop resource in CAI is possible. CAI is an important Access Area for the scallop fishery because its close proximity to shore makes it easy to access and because of its abundant scallop resource. Therefore, if this area opens on June 15, 2006, fishers will likely immediately take their CAI trip allowed under current regulation. This rule closes CAI for 2006 to prevent localized depletion of the scallop resource within the Access Area. Allowing fishing in the CAI will increase the potential for exceeding 2006 fishing mortality targets and may result in long-term harm to the health of the scallop resource within this important Access Area.

Delaying implementation of this rule would be impracticable and contrary to public interest because it may prevent scallop fishers from optimizing their limited fishing opportunities in 2006, and possibly in 2007. Because this rule modifies options for fishing in open areas and in Access Areas, it should be implemented as soon as possible to ensure that fishers are able to optimize their decisions on when and where to fish, given a limited number of fishing opportunities. To delay the effectiveness of this rule may result in fishers making less than optimal decisions, especially concerning Access Area trips, because they will be basing their fishing decisions for 2006 on current regulations and not on the specifications for 2006 and 2007. This rule also modifies HCAA requirements by allowing vessels to utilize unused 2005 HCAA trips. Under current regulations, unused 2005 HCAA trips are lost fishing opportunities. Additionally, this rule implements more restrictive open area DAS provisions for 2006 than open area DAS provisions under current regulations. The scallop open area fishing year started on March 1, 2006, and fishers have been basing their fishing decisions on the more liberal DAS provisions under current regulations and not the more restrictive open area DAS provisions for 2006. Because open area DAS are limited, this rule should be implemented as soon as possible to prevent fishers from exceeding the more restrictive 2006 open area DAS provisions. If fishers do exceed 2006 open area DAS during 2006, their excess open area DAS will be subtracted from their 2007 open area DAS opportunities. For these reasons, this rule should be implemented as soon as possible to allow fishers to optimize limited fishing opportunities to maximize economic gain in both 2006

and 2007 and to avoid more restrictive measures, and possible economic penalties, in 2007.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act, has prepared a FRFA in support of Framework 18. The FRFA describes the economic impact that this final rule, along with other non-preferred alternatives, will have on small entities.

The FRFA incorporates the economic impacts and analysis summarized in the IRFA for the proposed rule to implement Framework 18 (71 FR 16091, March 30, 2006), the comments and responses in this final rule, and the corresponding economic analyses prepared for Framework 18 (e.g., the EA and the RIR). The contents of these incorporated documents are not repeated in detail here. A copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**). A description of the reasons for this action, the objectives of the action, and the legal basis for this final rule are found in Framework 18 and the preamble to the proposed and final rules.

Statement of Need for This Action

The purpose of this action is to improve the management of the scallop fishery and to make necessary adjustments to the existing management measures, including the Scallop FMP's Area Rotation Program.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

Several industry representatives expressed concern regarding the timing of the January 1, 2007, opening of the ETAA. They stated that opening the ETAA 2-months before the start of the scallop fishing year on March 1 may introduce uncertainty into the scallop market by making high volumes of scallops available during non-peak harvesting times. This could create the need to freeze scallops for future sales because of the lower prices associated with high supplies of scallops. The analysis for Framework 18 concluded that opening the ETAA on January 1, 2007, thereby providing 2 additional months of fishing opportunity in 2007, may help to disperse fishing effort within the area over the longer period. Dispersing fishing effort over time should reduce the likelihood that the scallop resource in the ETAA will be adversely impacted by intense fishing effort (e.g., rapid depletion and high

levels of effort and scallop shucking in a confined area). A January 1 opening also has the potential of further reducing fishery interactions with sea turtles by allowing more fishing to occur prior to summer months when threatened and endangered sea turtles are most likely to be present within the ETAA. In the initial year of the ETAA opening, the 2 additional months of fishing opportunity also help offset the September 1–October 31 closure of the ETAA that is intended to reduce fishery interactions with sea turtles. No changes to the proposed rule were made as a result of this comment.

Description of Small Entities to Which This Action Will Apply

The regulations associated with Framework 18 will 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 \$4 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 ended 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 on small entities. 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, and therefore, there are no disproportionate effects between large and 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 section of the FRFA summary in this final rule.

Description of Reporting, Recordkeeping, and Other Compliance Requirements

Framework 18 implements 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 the vessel was able to catch 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 to account for vessel trip allocations when a vessel has multiple broken trips and has taken several compensation trips. To address this administrative problem, Framework 18 requires vessels 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 the compensation trip. The trip identification number will be provided on the letter(s) authorizing compensation trip(s). This requirement applies only to limited access scallop vessels and will be a minor addition to current reporting requirements that are done through the vessel's VMS. The cost of such a requirement is approximately \$395 based on an estimated 500 compensation trips, fleet-wide.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

Because total economic impacts of the management measures depend on the overall management program implemented in Framework 18, the 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 through 2007.

The long-term (2008–2019) economic effects of the measures comprising this action are estimated to be slightly negative on revenues (\$901.6 million, 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, benefitting the small business entities in the scallop fishery. However, as noted below for individual measures, the measures in this rule are legally required to meet conservation objectives for scallops and species caught as bycatch. These measures have long-term economic benefits that should outweigh the short-term negative impacts on the scallop industry.

Other measures 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 this 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 these measures would have allocated 15,000 DAS to 30,000 DAS for open areas instead of 20,000 open area DAS under this action. In aggregate, none of the other alternatives would have significantly different impacts than this action in the short- or 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 Area Access schedule in this action 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. This 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 this action, and therefore, would have lower economic benefits. 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 schedule in this rule because the total number of controlled access trips are the same. Although this non-preferred 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, they also prevent 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 will help to minimize the loss in landings and revenue due to the closure of Access Areas before a vessel takes its trip, although impacts will likely be negative compared to no action. Scallop catch in open areas under this action 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 1 lb (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 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) of scallops 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 this action would have positive economic impacts compared to the no action. This action will allow all unused trips to be reallocated to open areas, as opposed to the no action alternative which 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 2 trips not taken before areas close due to 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 action in this rule 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 dispersing fishing effort over time, which should reduce the likelihood that the scallop resource in the ETAA will be adversely impacted by intense fishing effort (e.g., rapid depletion and high levels of effort and scallop shucking in a confined area). It would also provide vessel owners more flexibility to determine when to fish during the initial year of the ETAA. Therefore, fishing revenues would be more stable compared to an opening on March 1, 2007, the beginning of the fishing year.

The alternative to this action is the status quo opening in March 1, 2007, which has lower benefits 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. These allocations could have negative economic impacts on the general category scallop vessels because they limit 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 September through October closed season for the ETAA would likely 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 because the area will be closed for only 2 months, during which time vessels could fish in other areas. Additionally, this closure will not affect the total number of fishing trips that a vessel could make during the fishing year.

This action will 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 above (#7. ETAA Trip Allocations).

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 re-opens 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 revenues and profits of 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 will 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 broken trip carryover provision 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 this action are most relevant in aggregate. Therefore, the impacts of the significant alternatives to this action are also most relevant when considered in aggregate. Framework 18 considered 10 alternative scenarios, including this action and the 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 ETAA 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 action in this rule are expected to result in the second-highest revenues in the short-term, with \$551 million in revenues, as noted above. The action in this rule 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.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the Atlantic scallop fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator and are also available from NMFS, Northeast Region (see **ADDRESSES**).

This final rule contains a new collection-of-information requirements subject to the Paperwork Reduction Act (PRA) which were approved by the Office of Management and Budget (OMB) under control number 0648-0541. 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. Public reporting burden for this collection-of-information is estimated to be 2 minutes 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. Send comments on these or any other aspects of the collection of information, including suggestions for reducing the burden, 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

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: June 1, 2006.

James W. Balsiger,

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

For the reasons stated in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 et seq.

2. In § 902.1, the table in paragraph (b) under the CFR part "50 CFR" is amended by adding a new entry to read as follows.

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act

Table with 5 columns: CFR part or section where the information collection requirement is located, Current OMB control number (all numbers begin with 0648-), and other columns. Includes entries for 50 CFR and 648.60.

50 CFR Chapter VI

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

4. In § 648.4, paragraph (a)(2)(ii)(D) is removed and reserved, and paragraphs (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.

5. 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.

6. In § 648.10, paragraphs (b)(1)(i), (b)(1)(iv), (b)(2) introductory text, (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 paragraphs (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.

■ 7. In § 648.11, paragraph (a)(1) is added, and paragraph (a)(2) is added and reserved 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 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, or reduced accrual rate of DAS.

(2) [Reserved]

■ 8. In § 648.14:

- a. Paragraph (a)(56)(iii) is added.
- b. Paragraph (a)(58) is removed and reserved.
- c. Paragraphs (a)(56) introductory text, (a)(56)(i), (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.
- d. Paragraphs (h)(27) through (h)(35) are removed.

The additions and revisions 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 or Regional Administrator's designee.

(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 fished in any Sea Scallop Area Access Program specified in § 648.60, except as provided in § 648.54.

(25) Declare and initiate a trip into or fish in the areas specified in § 648.59(b) through (d) after the effective date of the notice 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 notice 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 specifications 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).

* * * * *

■ 9. In § 648.51, paragraphs (b)(3)(i), (b)(3)(ii), (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 a trawl net, unless such vessel has been issued a limited access trawl vessel permit that endorses the vessel to fish for scallops with a trawl net. A limited access scallop vessel issued a trawl vessel permit that endorses the vessel to fish for scallops with a trawl net and general category scallop vessels enrolled in the Area Access Program as specified in § 648.60, may not fish with a trawl net in the Access Areas specified in § 648.59(b) through (d).

* * * * *

■ 10. 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 fishing for or possessing more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) if in-shell scallops and from selling, bartering, or trading scallops harvested from Federal waters.

* * * * *

■ 11. 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 ($0.458 \text{ times } 10,000 \text{ lb } (4,536 \text{ kg}) / 1,500 \text{ lb } (680 \text{ kg}) \text{ per day}$).

(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 ($0.450 \text{ times } 10,000 \text{ lb } (4,536 \text{ kg}) / 1,500 \text{ lb } (680 \text{ kg}) \text{ per day}$).

(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 ($0.458 \text{ times } 10,000 \text{ lb } (4,536 \text{ kg}) / 1,500 \text{ lb } (680 \text{ kg}) \text{ per day}$).

(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 lawfully 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 shall 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 shall be set aside from the total DAS available for

allocation, to be used by vessels that are assigned to take an at-sea observer on a trip other than an Area Access Program trip. The DAS set-aside for observer coverage for the 2006 and 2007 fishing years is 165 DAS for each fishing year. Vessels carrying an observer shall be compensated with reduced DAS accrual rates for each trip on which the vessel carries an observer. For each DAS that a vessel fishes for scallops with an observer on board, the DAS shall 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 shall be deducted from the observer DAS set-aside amount in the applicable fishing year. Utilization of the DAS set-aside shall be on a first-come, first-served basis. When the DAS set-aside for observer coverage has been utilized, vessel owners shall be notified that no additional DAS remain available to offset the cost of carrying observers. The obligation to carry and pay for an observer shall not be waived due to the absence of set-aside DAS allocations.

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

* * * * *

■ 12. In § 648.54, paragraphs (a)(1), (a)(2), 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 that 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 issued a state waters exemption, 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 issued a state waters exemption, 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).

* * * * *

■ 13. 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 on or before 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.

* * * * *

■ 14. 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.

(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.

15. 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 (a)(3), may not be exchanged.

(b) *Closed Area I Access Area.* This area shall be managed on a 3-year cycle, with a 1-year closure, followed by a 2-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, unless transiting pursuant to paragraph (f) of this section.

(2) Beginning March 1, 2007, through February 28, 2009, and for every 2-year period, based on the fishing year, 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, unless transiting pursuant to paragraph (f) of this section.

(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, unless transiting pursuant to paragraph (f) of this section. 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, based on fishing years, with a 1-year closure, followed by a 2-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, unless transiting pursuant to paragraph (f) 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.
CAIIA2	41°00' N.	66°35.8' W.
CAIIA3	41°18.6' N.	66°24.8' W.
CAIIA4	41°30' 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, unless transiting pursuant to paragraph (f) of this section.

(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, unless transiting pursuant to paragraph (f) of this section. 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, unless transiting pursuant to paragraph (f) of this section.

(2) Through February 29, 2008, and for every 2-year period, based on fishing years, 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.
NLAA1	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,

unless transiting pursuant to paragraph (f) of this section.

(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, unless transiting pursuant to paragraph (f) of this section. 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, unless transiting pursuant to paragraph (f) of this section.

(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, unless transiting pursuant to paragraph (f) of this section. 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). 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).

■ 16. 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) Each vessel 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 1 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 a limited access scallop vessel may take into Sea Scallop Access Areas during applicable seasons specified in § 648.59. The number of trips per vessel in any one Sea Scallop Access Area may not exceed the maximum number of trips allocated for such Sea Scallop Access Area as specified in § 648.59, unless the vessel owner has exchanged a trip with another vessel owner for an additional Sea Scallop Access Area trip, as specified in paragraph (a)(3)(ii) of this section, 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 three trips in the Closed Area II Access Area, and two trips in the Nantucket Lightship Access Area. In the 2007 fishing year, a full-time scallop vessel may take one trip in the Closed Area I Access Area, one trip in the Nantucket Lightship Access Area, and five 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 one trip in the Closed Area II Access Area and one trip in the Nantucket Lightship Access Area; or two trips in the Closed Area II Access Area; or two 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 two trips in the Elephant Trunk Access Area; or one trip in the Nantucket Lightship Access Area and two trips in the Elephant Trunk Access Area; or three trips in the Elephant Trunk Access Area, unless adjusted as specified in paragraph (a)(3)(i)(F) of this section.

(D) *Occasional scallop vessels.* An occasional scallop vessel 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 paragraphs (a)(3)(i)(B) through (C) of this section, 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 three 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 three trips into the Hudson Canyon Access Area. Part-time vessels were allocated two 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 one 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) of this section, 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 owner involved in an exchange is required to submit a completed Trip Exchange Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has unutilized trips remaining to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the trip exchange has been made effective. A vessel owner may exchange trips between two or more vessels under his/her ownership. A vessel owner holding

a Confirmation of Permit History is not eligible to exchange trips between another vessel and the vessel for which a Confirmation of Permit History has been issued.

(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) of this section, vessels that have exchanged 2006 Closed Area I and/or Nantucket Lightship Access Area trips for 2007 Elephant Trunk Access Area trips shall 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	18,000 lb (8,165 kg)	18,000 lb (8,165 kg)	7,500 lb (3,402 kg)
2007	Nantucket Lightship Closed Area I	18,000 lb (8,165 kg)	16,800 lb (7,620 kg)	7,500 lb (3,402 kg)
	Nantucket Lightship Elephant Truck 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), 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 vessel 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 vessel may catch yellowtail flounder provided the Regional Administrator has not issued a notice that the scallop fishery portion of the TACs specified in § 648.85(c) for the Closed Area I, Closed Area II, and Nantucket Lightship Access Scallop Areas have been harvested. 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, or land more than 250 lb (113.6 kg) per trip of yellowtail flounder between June 15 and June 30, provided the Regional Administrator has not issued a notice that the scallop fishery portion of the the yellowtail

flounder TAC as specified in § 648.85(c)(i) has 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 that the Regional Administrator has not issued a notice that the yellowtail flounder TAC specified in § 648.85(c) has 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 offload 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 of scallop meats kept, total number of tows, and the Fishing Vessel Trip Report log page number.

(ii) Total pounds of yellowtail flounder kept and total pounds 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 following conditions and requirements.

(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; and

(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 compensation 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 compensation trip 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 additional 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 additional 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 an additional compensation trip, and for each such trip, must enter a trip identification number by entering the number in the VMS for each such trip. The trip identification number will be included in the Regional Administrator's authorization for each additional compensation trip. If a vessel operator is combining additional compensation trips, the trip identification numbers from each authorization must be entered into VMS.

(iv) *Unused 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 paragraph (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) *Additional compensation trip carryover.* If an Access Area trip conducted during the last 60 days of the open period or season for the Access Area is terminated before catching the allowed possession limit, and the requirements of paragraph (c) of this section are met, the vessel operator shall be authorized to fish an additional trip as compensation for the terminated trip in the following fishing year. The vessel owner/operator must take such additional compensation trips, complying with the trip notification procedures specified in paragraph (a)(2)(iii) of this section, within the first 60 days of that fishing year the Access Area first opens in the subsequent fishing year. For example, a vessel that terminates a Nantucket Lightship Access Area trip on December 10, 2006, must declare that it is beginning its additional 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 additional compensation trip authorization would expire at the end of the Access Area Season in which the trip was broken. For example, a vessel that terminates a Closed Area II trip on December 10, 2006, may not carry its additional 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. An owner of a scallop vessel 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 increase in the possession limit is no longer available to offset the cost of observers. 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 cumulative yellowtail flounder up to a total 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. Once 0.2 percent of the yellowtail flounder TACs established according to the specification procedure described in § 648.85(a)(2) has been harvested by research vessels, research may no longer be authorized in the applicable Access Area.

(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) of this section 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.* A general category vessel authorized to fish 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.* A general category vessel authorized to fish in the Access Areas specified in § 648.59(b) through (d) may land scallops, subject to the possession limit specified in § 648.52(a), unless the Regional Administrator has issued a notice that the scallop TAC in the Access Area has been or is projected to be harvested. Upon a determination from the Regional Administrator that the scallop TAC for a specified Access Area, as specified in this paragraph (g)(3), has been, or is projected to be harvested, the Regional Administrator shall publish notification of this determination in the **Federal Register**, in accordance with the Administrative Procedure Act.

(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) in 2007.

(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. A general category scallop vessel authorized to fish 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). Upon a determination by the Regional Administrator that the total number of trips allowed for general category vessels have been or are projected to be taken, the Regional Administrator shall publish notification of this determination in the **Federal Register**, in accordance with the Administrative Procedure Act, and general category vessels 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.* A general category scallop vessel 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.

■ 17. In § 648.85, paragraphs (c)(1) introductory text and (c)(3)(ii) are 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.

* * * * *

(3) * * *

(ii) If the Regional Administrator determines that the yellowtail flounder bycatch TAC allocation specified under paragraph (c)(1)(i) or (c)(1)(ii) of this section has been, or is projected to be harvested, scallop vessels may not fish within the applicable Access Area for the remainder of the fishing year. The Regional Administrator shall publish notification in the **Federal Register**, in accordance with the Administrative Procedure Act, to notify vessels that they may no longer fish within the applicable Access Area for the remainder of the fishing year.

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DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 101

[CBP Dec. 06-15; USCBP-2005-0001]

Closing of the Port of Noyes, Minnesota, and Extension of the Limits of the Port of Pembina, North Dakota

AGENCY: Bureau of Customs and Border Protection; Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Homeland Security regulations pertaining to the field organization of the Bureau of Customs and Border Protection by closing the port of entry of Noyes, Minnesota, and extending the limits of the port of entry of Pembina, North Dakota, to include the rail facilities located at Noyes. The closure and extension are the result of