



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
NORTHEAST REGION  
55 Great Republic Drive  
Gloucester, MA 01930-2276

NOV - 1 2011

Rip Cunningham, Chairman  
New England Fishery Management Council  
50 Water Street  
Newburyport, MA 01950

RE: Council Deeming of Drafted Scallop Framework 23 Regulations

Dear Rip:

Please see the enclosed draft regulatory text for the proposed rule for Framework 23 to the Atlantic Sea Scallop Fishery Management Plan (Scallop FMP). We are providing these regulations to you so that the Council can consider the proposed regulations for deeming "necessary and appropriate" for the purposes of implementing Framework 23, as required by section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). My staff is prepared to review and discuss these regulations with the Council at its upcoming November meeting.

To make this review easier to understand, we have organized the drafted regulations in a different format than in past submissions and have noted through track changes and comments which regulations we propose to amend and why. Please note that the proposed regulatory text also includes, identifies, and explains adjustments to the regulations that were not included in the Environmental Assessment for Framework 23. These changes are intended to clarify the current regulations by updating terminology (e.g., changing references to "total allowable catch" to "annual catch limit") and update section and paragraph references. There are also other proposed changes that would remove outdated text or clarify existing regulations to make them easier to understand and/or consistent with other sections of the regulations.

We have received the Council's Framework 23 document and are currently reviewing the document for compliance with the Magnuson-Stevens Act, the Scallop FMP, and other applicable law.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia A. Kurkul".

Patricia A. Kurkul  
Regional Administrator

cc: Paul Howard

Enclosure



## Enclosure

This document includes track changes to indicate where changes are proposed to the scallop regulations at 50 CFR part 648. Comments that appear in the margins are also compiled at the end of this document in larger print.

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

*[Unless otherwise indicated, changes to this section would implement the Council's Framework 23 Vessel Monitoring System (VMS) and Northern Gulf of Maine (NGOM) preferred alternatives. The only text included from this section of regulations is the paragraphs to which we are the proposing adjustments (§ 648.10(e) through (h)).]*

(e) *VMS notifications* —(1) *VMS installation notification.* (i) The owner of such a vessel specified in paragraph (b) of this section, with the exception of a vessel issued a limited access NE multispecies permit as specified in paragraph (b)(4) of this section, must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets the minimum performance criteria, unless otherwise allowed under paragraph (b) of this section.

(ii) Vessel owners must confirm the VMS unit's operation and communications service to NMFS by calling the Office of Law Enforcement (OLE) to ensure that position reports are automatically sent to and received by NMFS OLE.

(iii) NMFS does not regard the fishing vessel as meeting the VMS requirements until automatic position reports and a manual declaration are received.

(iv) 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 minimum performance criteria, and for the owner to provide documentation of such installation to the Regional Administrator.

(v) The owner of a vessel issued a limited access NE multispecies permit that fishes or intends to fish under a NE multispecies Category A or B DAS, or that catches regulated species or ocean pout while on a sector trip, as specified in paragraph (b)(4) of this section, must provide documentation to the Regional Administrator that the vessel has an operational VMS unit installed on board, meeting all requirements of this part, prior to fishing under a NE multispecies DAS or under the provisions of an approved sector operations plan.

(vi) NMFS shall provide notification to all affected permit holders providing detailed information on procedures pertaining to VMS purchase, installation, and use.

(2) *Replacement VMS installations.* Should a VMS unit require replacement, a vessel owner must submit documentation to the Regional Administrator, within 3 days of installation and prior to the vessel's next trip, verifying, as described in this paragraph (e), that the new VMS unit is an operational approved system as described under § 648.9(a).

(3) *Access.* As a condition to obtaining a limited access scallop, multispecies, an Atlantic herring, a surfclam, ocean quahog, or Maine mahogany quahog permit; or as a condition of using a VMS unit; all vessel owners must allow NMFS, the USCG, and their authorized officers or designees access to the vessel's DAS data, if applicable, and to location data obtained from its VMS unit, if required, at the time of or after its transmission to the vendor or receiver, as the case may be.

(4) *Tampering.* Tampering with a VMS, a VMS unit, or a VMS signal, is prohibited. Tampering includes any activity that may affect the unit's ability to operate or signal properly, or to accurately compute or report the vessel's position.

(5) *Fishery participation notification.* (i) A vessel subject to the VMS requirements of § 648.9 and paragraphs (b) through (d) of this section that has crossed the VMS Demarcation Line under paragraph (a) of this section is deemed to be fishing under the DAS program, the Access Area Program, the LAGC IFQ or NGOM scallop fishery, or other fishery requiring the operation of VMS as applicable, unless prior to leaving port, 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. NMFS must be notified by transmitting the appropriate VMS code through the VMS, 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.

**Comment [eg1]:** NMFS is using MSA 305(d) authority to add reference to the Scallop Access Area Program here to clarify that VMS is required on these trips.

(ii) Notification that the vessel is not under the DAS program, the Access Area Program, the LAGC IFQ or NGOM scallop fishery, or any other fishery requiring the operation of VMS, must be received by NMFS 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, unless the vessel is a scallop vessel and is exempted, as specified in paragraph (f) of this section.

(iii) DAS counting for a vessel that is under the VMS notification requirements of paragraph (b) of this section, with the exception of vessels that have elected to fish exclusively in the Eastern U.S./Canada Area on a particular trip, as described in paragraph (e)(5) of this section, begins with the first location signal received showing that the vessel crossed the VMS Demarcation Line after leaving port. DAS counting ends with the first location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port.

(iv) For those vessels that have elected to fish exclusively in the Eastern U.S./Canada Area pursuant to § 648.85(a)(3)(ii), the requirements of this paragraph (b) begin with the

first location signal received showing that the vessel crossed into the Eastern U.S./Canada Area and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port, unless the vessel elects to also fish outside the Eastern U.S./Canada Area on the same trip, in accordance with § 648.85(a)(3)(ii)(A).

(v) The Regional Administrator may authorize or require the use of the call-in system instead of the use of VMS, as described under paragraph (h) of this section. Furthermore, the Regional Administrator may authorize or require the use of letters of authorization as an alternative means of enforcing possession limits, if VMS cannot be used for such purposes.

(f) *Atlantic sea scallop vessel VMS notification requirements.* Less than 1 hr 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 ~~transmitting~~entering the appropriate VMS code that the vessel will be participating in the scallop DAS program, Area Access Program, or ~~general category~~LAGC scallop fishery, or will be fishing outside of the scallop fishery under the requirements of its other Federal permits, or that the vessel will be steaming to another location prior to commencing its fishing trip by transmitting a "declared out of fishery" VMS code. If the owner or authorized representative of a scallop vessel declares out of the fishery for the steaming portion of the trip, the vessel cannot possess, retain, or land scallops, or fish for any other fish. Prior to commencing the fishing trip following a "declared out of fishery" trip, the owner or authorized representative must notify the Regional Administrator by transmitting the appropriate VMS code, before first crossing the VMS Demarcation Line, that the vessel will be participating in the scallop DAS program, Area Access Program, or LAGC scallop fishery. VMS codes and instructions are available from the Regional Administrator upon request.

(1) *IFQ scallop vessels.* An IFQ scallop vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the IFQ program, unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery ( *i.e.* , agrees that the vessel will not possess, retain, or land scallops while declared out of the fishery) ~~for a specific time period~~ by notifying the Regional Administrator through the VMS. If the vessel has not fished for any other fish (i.e., steaming only) after declaring out of the fishery, leaving port, and steaming to another location, the owner or authorized representative of an IFQ scallop vessel may declare into the IFQ fishery without entering another port by making a declaration before first crossing the VMS Demarcation Line. An IFQ scallop vessel that is fishing north of 42°20' N. lat. is deemed to be fishing under the NGOM scallop fishery unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery, as specified in paragraphs (e)(5)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops while under such a declaration. If the IFQ scallop vessel has not fished for any other fish (i.e., steaming only) after declaring out of the fishery, leaving port, and steaming to another location, the vessel may declare into the

NGOM fishery without entering another port by making a declaration before first crossing the VMS Demarcation Line.

(2) *NGOM scallop fishery.* An NGOM scallop vessel is deemed to be fishing in Federal waters of the NGOM management area and will have its landings applied against the NGOM management area TAC, specified in § 648.62(b)(1), unless:

(i) under the NGOM scallop fishery unless Prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery, as specified in paragraphs (e)(5)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops while under such a declaration. If a NGOM scallop vessel has not fished for any other fish (i.e., steaming only) after declaring out of the fishery, leaving port, and steaming to the NGOM management area, the vessel may declare into the NGOM fishery without entering another port by making a declaration before first crossing the VMS Demarcation Line.

(ii) The vessel has specifically declared into the state-only NGOM fishery, thus is fishing exclusively in the state waters portion of the NGOM management area.

(3) *Incidental scallop fishery.* An Incidental scallop vessel that has crossed the VMS Demarcation Line on any declared fishing trip for any species is deemed to be fishing under the Incidental scallop fishery, unless, prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery, as specified in paragraphs (e)(5)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops.

**Comment [eg2]:** NMFS has deleted the last part of this sentence under its MSA 305(d) authority because it is unnecessary and unclear. A vessel with an incidental scallop permit cannot "declare into the scallop fishery" to begin with and can possess/retain/land scallops under a DOF code. We propose to clarify this regulation here.

(4) *Catch reports.* (i) The owner or operator of a limited access or LAGC IFQ vessel that fishes for, possesses, or retains scallops, and is not fishing under a NE Multispecies DAS or sector allocation, must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished, including open area trips, access area trips as described in § 648.60(a)(9), and trips accompanied by a NMFS-approved observer. The reports must be submitted for each day (beginning at 0000 hr and ending at 2400 hr) and not later than 0900 hours of the following day. Such reports must include the following information:

- (A) FVTR serial number;
- (B) Date fish were caught;
- (C) Total pounds of scallop meats kept;
- (D) Total pounds of yellowtail flounder kept;
- (E) Total pounds of yellowtail flounder discarded; and
- (F) Total pounds of all other fish kept.

(ii) *Scallop Pre-Landing Notification Form for IFQ and NGOM vessels.* Using the Scallop Pre-Landing Notification Form, a vessel issued an IFQ or NGOM scallop permit must report through VMS the amount of any scallops kept on each trip declared as a scallop trip, including declared scallop trips where no scallops were landed. In addition, vessels with an IFQ or NGOM permit must submit a Scallop Pre-Landing Notification Form on trips that are not declared as scallop trips, but on which scallops are kept incidentally. A limited access vessel that also holds an IFQ or NGOM permit must submit the Scallop Pre-Landing Notification Form only when fishing under the provisions of the vessel's IFQ or NGOM permit. VMS Scallop Pre-Landing Notification forms must be submitted no less than 6 hr prior to crossing the VMS Demarcation Line on the way back to port, and, if scallops will be landed, must include the vessel's captain/operator name, the amount of scallop meats and/or bushels to be landed, the estimated time of arrival in port, the port at which the scallops will be landed, and the VTR serial number recorded from that trip's VTR, and whether any scallops were caught in the NGOM. If the scallop harvest ends less than 6 hr prior to landing, then the Scallop Pre-Landing Notification form must be submitted immediately upon leaving the fishing grounds. If no scallops will be landed, the form only requires the vessel's captain/operator name, the VTR serial number recorded from that trip's VTR, and indication that no scallops will be landed. If the report is being submitted as a correction of a prior report, the information entered into the notification form will replace the data previously submitted in the prior report.

**Comment [eg3]:** NMFS has clarified the VMS pre-land notification procedures under its MSA 305(d) authority to include what to do if a vessel is not landing scallops or is submitting a corrected pre-land form.

(5) *Scallop vessels fishing under exemption.* Vessels fishing under the exemptions provided by § 648.54 (a) and/or (b)(1) must comply with the exemption requirements and notify the Regional Administrator by VMS notification or by call-in notification as follows:

(i) *VMS notification for scallop vessels fishing under exemptions.* (A) Notify the Regional Administrator, via their VMS, prior to each trip of the vessel's first trip under the state waters exemption program, that the vessel will be fishing exclusively in state waters; and

**Comment [eg4]:** NMFS has clarified the VMS notification procedure for vessels fishing under the state water exemption program under its MSA 305(d) authority.

(B) Notify the Regional Administrator, via their VMS, prior to the vessel's first planned trip in the EEZ, that the vessel is to resume fishing under the vessel's DAS allocation.

(ii) *Call-in notification for scallop vessels fishing under exemptions.* (A) Notify the Regional Administrator by using the call-in system and providing the following information at least 7 days prior to fishing under the exemption:

( 1 ) Owner and caller name and address;

( 2 ) Vessel name and permit number; and

( 3 ) Beginning and ending dates of the exemption period.

(B) Remain under the exemption for a minimum of 7 days.

(C) If, under the exemption for a minimum of 7 days and wishing to withdraw earlier than the designated end of the exemption period, notify the Regional Administrator of early withdrawal from the program by calling the call-in system, providing the vessel's name and permit number and the name and phone number of the caller, and stating that the vessel is withdrawing from the exemption. The vessel may not leave port to fish in the EEZ until 48 hr after notification of early withdrawal is received by the Regional Administrator.

(D) The Regional Administrator will furnish a phone number for call-ins upon request.

(E) Such vessels must comply with the VMS notification requirements specified in paragraph (e) 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.

(g) *VMS notification requirements for other fisheries.* (1) Unless otherwise specified in this part, or via letters sent to affected permit holders under paragraph (e)(1)(iv) of this section, the owner or authorized representative of a vessel that is required to use VMS, as specified in paragraph (b) of this section, unless exempted under paragraph (f) of this section, must notify the Regional Administrator of the vessel's intended fishing activity by entering the appropriate VMS code prior to leaving port at the start of each fishing trip.

(2) Notification of a vessel's intended fishing activity includes, but is not limited to, gear and DAS type to be used; area to be fished; and whether the vessel will be declared out of the DAS fishery, or will participate in the NE multispecies and monkfish DAS fisheries, including approved special management programs.

(3) A vessel cannot change any aspect of its VMS activity code outside of port, except as follows:

(i) NE multispecies vessels are authorized to change the category of DAS used ( *i.e.*, flip its DAS), as provided at § 648.85(b), or change the area declared to be fished so that the vessel may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, as provided at § 648.85(a)(3)(ii)(A).

(ii) Vessels issued both a NE multispecies permit and a monkfish permit are authorized to change their DAS declaration from a NE multispecies Category A DAS to a monkfish DAS, while remaining subject to the to the NE multispecies DAS usage requirements under § 648.92(b)(1)(i), during the course of a trip, as provided at § 648.92(b)(1)(iii)(A).

(iii) The vessel carries onboard a valid limited access or LAGC scallop permit, has declared out of the fishery in port, and is steaming to another location pursuant to paragraph (f) of this section.

(4) VMS activity codes and declaration instructions are available from the Regional Administrator upon request.

(h) *Call-in notification.* The owner of a vessel issued a limited access monkfish permit who is participating in a DAS program and who is not required to provide notification using a VMS, and a scallop vessel qualifying for a DAS allocation under the occasional category that has not elected to fish under the VMS notification requirements of paragraph (e) of this section and is not participating in the Sea Scallop Area Access program as specified in § 648.60, and any vessel that may be required by the Regional Administrator to use the call-in program under paragraph (i) of this section, are subject to the following requirements:

(1) Less than 1 hr prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish permit (Category C, D, F, G, or H), unless otherwise specified in ~~this paragraph (h),~~ of this section, or an occasional scallop permit as specified in this paragraph (h), and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the call-in system and providing the following information:

(i) Owner and caller name and phone number;

(ii) Vessel name and permit number;

(iii) Type of trip to be taken;

(iv) Port of departure; and

(v) That the vessel is beginning a trip.

(2) A DAS begins once the call has been received and a confirmation number is given by the Regional Administrator, or when a vessel leaves port, whichever occurs first, unless otherwise specified in paragraph (e)(2)(iii) of this section.

(3) Vessels issued a limited access monkfish Category C, D, F, G, or H permit that are allowed to fish as a monkfish Category A or B vessel in accordance with the provisions of § 648.92(b)(2)(i) are subject to the call-in notification requirements for limited access monkfish Category A or B vessels specified under this paragraph (h) for those monkfish DAS when there is not a concurrent NE multispecies DAS.

(4) The vessel's confirmation numbers for the current and immediately prior NE multispecies or monkfish fishing trip must be maintained on board the vessel and provided to an authorized officer immediately upon request.

**Comment [eg5]:** NMFS has added reference to Occasional Vessels under its MSA 305(d) authority to clarify the intent that Occasional Vessels, if they choose not to declare through VMS, must call into the IVR system. This is mentioned elsewhere in the regulations but was unclear here.



(5) At the end of a vessel's trip, upon its return to port, the vessel owner or owner's representative must call the Regional Administrator and notify him/her that the trip has ended by providing the following information:

(i) Owner and caller name and phone number;

(ii) Vessel name and permit number;

(iii) Port of landing; and

(iv) That the vessel has ended its trip.

(6) A DAS ends when the call has been received and confirmation has been given by the Regional Administrator, or when a vessel enters port at the end of a fishing trip, whichever occurs later, unless otherwise specified in paragraph (e)(2)(iii) of this section.

(7) The Regional Administrator will furnish a phone number for DAS notification call-ins upon request.

(8) Regardless of whether a vessel's owner or authorized representative provides correct notification as required by paragraphs (e) through (h) of this section, a vessel meeting any of the following descriptions shall be deemed to be in its respective fishery's DAS or Scallop Access Area Program for purpose of counting DAS or scallop access area trips/pounds, and, shall be charged DAS from the time of sailing to landing:

(i) Any vessel issued a limited access scallop permit and not issued an LAGC scallop permit that possesses or lands scallops;

(ii) Any vessel issued a limited access scallop and LAGC IFQ scallop permit that possesses or lands more than 600 lb (272.2 kg) of scallops, unless specified in § 648.60(d)(2);

(iii) Any vessel issued a limited access scallop and LAGC NGOM scallop permit that possesses or lands more than 200 lb (90.7 kg) of scallops;

(iv) Any vessel issued a limited access scallop and LAGC IC scallop permit that possesses or lands more than 40 lb (18.1 kg) of scallops;

(v) Any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program requirements that possesses or lands regulated NE multispecies, except as provided in §§ 648.10(h)(9)(ii), 648.17, and 648.89; and

(vi) Any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possess or lands monkfish above the incidental catch trip limits specified in § 648.94(c), shall be deemed to be in its respective DAS program for purposes of counting DAS and will be charged DAS from its time of sailing

**Comment [eg6]:** This regulation was unnecessarily confusing so NMFS is proposing the following change under its MSA 305(d) authority to clarify the regulation's intent. The original regulation, without track changes, read as follows:

"Any vessel issued a limited access scallop permit and not issued an LAGC scallop permit that possesses or lands scallops; any vessel issued a limited access scallop and LAGC IFQ scallop permit that possesses or lands more than 600 lb (272.2 kg) of scallops; any vessel issued a limited access scallop and LAGC NGOM scallop permit that possesses or lands more than 200 lb (90.7 kg) of scallops; any vessel issued a limited access scallop and LAGC IC scallop permit that possesses or lands more than 40 lb (18.1 kg) of scallops; any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program requirements that possesses or lands regulated NE multispecies, except as provided in §§648.10(h)(9)(ii), 648.17, and 648.89; and any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possess or lands monkfish above the incidental catch trip limits specified in §648.94(c) shall be deemed to be in its respective DAS program for purposes of counting DAS and will be charged DAS from its time of sailing to landing, regardless of whether the vessel's owner or authorized representative provides adequate notification as required by paragraphs (e) through (h) of this section."

~~to landing, regardless of whether the vessel's owner or authorized representative provides adequate notification as required by paragraphs (e) through (h) of this section.~~

(9) *Vessels electing to use VMS.* (i) A vessel issued a limited access monkfish, Occasional scallop, or Combination permit must use the call-in system specified in paragraph (h) of this section, unless the owner of such vessel has elected to provide the notifications required by paragraph (g) of this section, through VMS as specified under paragraph (h)(9)(ii) of this section. Any vessel issued a limited access monkfish or an Occasional scallop permit that has elected to provide notifications through VMS must continue to provide notifications through VMS for the entire fishing year.

(ii) A vessel issued a limited access monkfish or Occasional scallop permit may be authorized by the Regional Administrator to provide the notifications required by paragraph (e) of this section using the VMS specified in paragraph (b) of this section. For the vessel to become authorized, the vessel owner must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has installed on board an operational VMS as provided under § 648.9(a). A vessel that is authorized to use the VMS in lieu of the call-in requirement for DAS notification shall be subject to the requirements and presumptions described under paragraphs (e)(2)(i) through (v) of this section. This paragraph (h) does not apply to vessels electing to use the VMS.

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

*[There are no specific Framework 23 changes to this section. NMFS is using MSA 305(d) authority to correct references, terminology, and intent of the regulations, where applicable. The only text included from this section of regulations is the paragraph to which we are the proposing adjustments (§ 648.11(g)(1) and (g)(5)).]*

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(g) *Atlantic sea scallop observer program*—(1) *General.* Unless otherwise specified, owners, operators, and/or managers of vessels issued a Federal scallop permit under § 648.4(a)(2), and specified in paragraph (ba) of this section, must comply with this section and are jointly and severally responsible for their vessel's compliance with this section. 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 LAGC IFQ vessels fishing under the Sea Scallop Access Area program specified in § 648.60, are required to comply with the additional notification requirements specified in paragraph (g)(2) of this section. When NMFS notifies the vessel owner, operator, and/or manager of any requirement to carry an observer on a specified trip in either an Access Area or Open Area as specified in paragraph (g)(3) of this section, the vessel may not

fish for, take, retain, possess, or land any scallops without carrying an observer. Vessels may only embark on a scallop trip in open areas or Access Areas without an observer if the vessel owner, operator, and/or manager has been notified that the vessel has received a waiver of the observer requirement for that trip pursuant to paragraphs (g)(3) and (g)(4)(ii) of this section.

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(g)(5) Owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop 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 DAS accrual rate. The owners of vessels that carry an observer may be compensated with a reduced DAS accrual rate for open area scallop trips or additional scallop catch per day in Sea Scallop Access Areas in order to help defray the cost of the observer, under the program specified in §§ 648.53 and 648.60.

(i) Observer service providers shall establish the daily rate for observer coverage on a scallop vessel on an Access Area trip or open area DAS scallop trip consistent with paragraphs (g)(5)(i)(A) and (B), respectively, of this section.

(A) *Access Area trips.* ( 1 ) For purposes of determining the daily rate for an observed scallop trip on a limited access vessel in a Sea Scallop Access Area when that specific Access Area's observer set-aside specified in § 648.60(d)(1) has not been fully utilized, a service provider ~~shall charge a vessel owner from~~ may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where "day" is defined as a 24-hr period, or any portion of a 24-hr period, regardless of the calendar day. For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time at sea equals 27 hr, which would equate to 2 full "days."

**Comment [eg7]:** Paragraphs (A)(1) and (A)(2) are clarified to indicate they are intended for limited access vessels. The new paragraph below was included to demonstrate provider charges for LAGC vessels fishing in access areas.

( 2 ) For purposes of determining the daily rate in a specific Sea Scallop Access Area for an observed scallop trips on a limited access vessel taken after NMFS has announced the industry-funded observer set-aside in that specific Access Area has been fully utilized, a service provider may charge a vessel owner for no more than shall charge a vessel owner from the time an observer boards a vessel until the vessel disembarks (dock to dock), where "day" is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time spent at sea equals 27 hr, so the provider shall charge which would equate to 1 day and 3 hr.

(3) For purposes of determining the daily rate in a specific Sea Scallop Access Area for observed scallop trips on an LAGC vessel, regardless of the status of the industry-funded observer set-aside, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock),

**Comment [eg8]:** This paragraph (A)(3) is added to clarify the observer service provider charge for LAGC vessels, regardless of the status of the observer set-aside.

where “day” is defined as a 24-hr period, and portions of the other days would be prorated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time spent at sea equals 27 hr, which would equate to 1 day and 3 hr.

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**§ 648.14 Prohibitions. [Only those regulations relating to sea scallops are shown below]**

*[Unless otherwise indicated, updates to this section would implement the Council’s Framework 23 VMS, NGOM, and turtle deflector dredge (TDD) preferred alternatives. (The yellowtail flounder alternative did not have to be addressed in this prohibitions section because Amendment 15 included sufficient regulatory text).]*

(i) *Atlantic sea scallops* —(1) *All persons*. It is unlawful for any person to do any of the following:

(i) *Permit requirement*. Fish for, possess, or land, scallops without the vessel having been issued and carrying onboard a valid scallop permit in accordance with § 648.4(a)(2), unless the scallops were harvested by a vessel that has not been issued a Federal scallop permit and fishes for scallops exclusively in state waters.

(ii) *Gear and crew requirements*. Have a shucking or sorting machine on board a vessel while in possession of more than 600 lb (272.2 kg) of shucked scallops, unless that vessel has not been issued a scallop permit and fishes exclusively in state waters.

(iii) *Possession and landing*. (A) Fish for or land per trip, or possess at any time prior to a transfer to another person for a commercial purpose, other than solely for transport on land:

( 1 ) In excess of 40 lb (18.1 kg) of shucked scallops at any time, 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line, or 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line, unless:

( i ) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

( ii ) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit and is properly declared into the scallop DAS or Area Access program.

( iii ) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit and is properly declared into the IFQ scallop fishery or is properly declared into the NE multispecies or Atlantic surfclam or quahog fishery and is not fishing in a sea scallop access area.

( iv ) The scallops were harvested by a vessel that has been issued and carries on board an NGOM scallop permit, and is properly declared into the NGOM scallop management area, and the NGOM TAC specified in § 648.62 has not been harvested.

~~( v ) The scallops were harvested by a vessel that has been issued and carries on board an incidental scallop permit allowing up to 40 lb (18.1 kg) of shucked or 5 bu (1.76 hL) of in-shell scallops; is carrying an at-sea observer; and is authorized by the Regional Administrator to have, and the vessel does not exceed, an increased possession limit to compensate for the cost of carrying the observer.~~

**Comment [eg9]:** Removed by NMFS under MSA 305(d) authority. Vessels with incidental permits are not part of the scallop industry-funded observer program, thus this regulation is unnecessary.

( 2 ) In excess of 200 lb (90.7 kg) of shucked scallops at any time, 25 bu (8.8 hL) of in-shell scallops inside the VMS Demarcation Line, or 50 bu (17.6 hL) of in-shell scallops seaward of the VMS Demarcation Line, unless:

( i ) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

( ii ) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit and is properly declared into the scallop DAS or Area Access program.

( iii ) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii)(A), is fishing outside of the NGOM scallop management area, and is properly declared into the general category scallop fishery or is properly declared into the NE multispecies or Atlantic surfclam or quahog fishery and is not fishing in a sea scallop access area.

( iv ) The scallops were harvested by a vessel that has been issued and carries on board a scallop permit and the vessel is fishing in accordance with the provisions of the state waters exemption program specified in § 648.54.

~~( v ) The scallops were harvested by a vessel that has been issued and carries on board an NGOM scallop permit allowing up to 200 lb (90.7 kg) of shucked or 25 bu (8.8 hL) of in-shell scallops; is carrying an at-sea observer; and is authorized by the Regional Administrator to have, and the vessel does not exceed, an increased possession limit to compensate for the cost of carrying the observer. [Reserved].~~

**Comment [eg10]:** Removed by NMFS under MSA 305(d) authority. Vessels with NGOM permits are not part of the scallop industry-funded observer program, thus this regulation is unnecessary.

( 3 ) In excess of 600 lb (272.2 kg) of shucked scallops at any time, 50 bu (17.6 hL) of in-shell scallops per trip South of 42°20' N. Lat. and shoreward of the VMS Demarcation Line, or 75 bu (26.4 hL) of in-shell scallops per trip North of 42°20' N. Lat and

shoreward of the VMS demarcation line, or 100 bu (35.2 hL) in-shell scallops seaward of the VMS Demarcation Line, unless:

( i ) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

( ii ) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit issued pursuant to § 648.4(a)(2)(i) and is properly declared into the scallop DAS or Area Access program.

( iii ) The scallops were harvested by a vessel that has been issued and carries on board a scallop permit and the vessel is fishing in accordance with the provisions of the state waters exemption program specified in § 648.54.

( iv ) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit, is carrying an at-sea observer, and is authorized by the Regional Administrator to have, and the vessel does not exceed, an increased possession limit to compensate for the cost of carrying the observer.

(iv) *Transfer and purchase.* (A) Land, offload, remove, or otherwise transfer; or attempt to land, offload, remove or otherwise transfer; scallops from one vessel to another, unless that vessel has not been issued a scallop permit and fishes exclusively in state waters.

(B) Sell, barter, or trade, or otherwise transfer scallops from a vessel; or attempt to sell, barter or trade, or otherwise transfer scallops from a vessel; for a commercial purpose, unless the vessel has been issued a valid scallop permit pursuant to § 648.4(a)(2), or the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(C) Purchase, possess, or receive for commercial purposes; or attempt to purchase or receive for commercial purposes; scallops from a vessel other than one issued a valid limited access or ~~general~~-LAGC scallop permit, unless the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(D) Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any scallops harvested from the EEZ by a vessel issued a Federal scallop permit, unless the transferee has a valid scallop dealer permit.

(E) Fish for, possess, or retain scallops in Federal waters of the NGOM management area on a vessel that has been issued and carries onboard a NGOM permit and has declared into the state waters fishery of the NGOM management area.

(v) *Ownership cap.* Have an ownership interest in more than 5 percent of the total number of vessels issued limited access scallop permits and confirmations of permit history, except as provided in § 648.4(a)(2)(i)(M).

(vi) *Closed area requirements.* (A) Fish for scallops in, or possess or land scallops from, the areas specified in §§ 648.58 and 648.61.

(B) Transit or be in the areas described in §§ 648.58 or 648.61 in possession of scallops, except when all fishing gear is unavailable for immediate use as defined in § 648.23(b), or unless there is a compelling safety reason to be in such areas.

(vii) *Scallop sectors.* Fail to comply with any of the requirements or restrictions for general category scallop sectors specified in § 648.63.

(viii) *Scallop research.* Fail to comply with any of the provisions specified in § 648.56.

(ix) *Observer program.* (A) Refuse, or fail, to carry onboard an observer after being requested to by the Regional Administrator or the Regional Administrator's designee.

(B) Fail to provide information, notification, accommodations, access, or reasonable assistance to a NMFS-approved observer conducting his or her duties aboard a vessel, as specified in § 648.11.

(C) Fail to comply with the notification, observer services procurement, and observer services payment requirements of the sea scallop observer program specified in § 648.11(g).

(x) *Presumption.* For purposes of this section, the following presumption applies: Scallops that are possessed or landed at or prior to the time when the scallops are received by a dealer, or scallops that are possessed by a dealer, are deemed to be harvested from the EEZ, unless the preponderance of evidence demonstrates that such scallops were harvested by a vessel without a scallop permit and fishing exclusively for scallops in state waters.

(2) *Limited access scallop vessel permit holders.* It is unlawful for any person owning or operating a vessel issued a limited access scallop permit under § 648.4(a)(2) to do any of the following:

(i) *Minimum shell height.* Land, or possess at or after landing, in-shell scallops smaller than the minimum shell height specified in § 648.50(a).

(ii) *Vessel, gear, and crew restrictions.* (A) Possess more than 40 lb (18.1 kg) of shucked, or 5 bu (1.76 hL) of in-shell scallops, or participate in the scallop DAS or Area Access programs, while in the possession of trawl nets that have a maximum sweep exceeding 144 ft (43.9 m), as measured by the total length of the footrope that is directly

attached to the webbing of the net, except as specified in §648.51(a)(1), unless the vessel is fishing under the Northeast multispecies or monkfish DAS program.

(B) While under or subject to the DAS allocation program, in possession of more than 40 lb (18.1 kg) of shucked scallops or 5 bu (1.76 hL) of in-shell scallops, or fishing for scallops in the EEZ:

( 1 ) Fish with, or have available for immediate use, trawl nets of mesh smaller than the minimum size specified in § 648.51(a)(2).

( 2 ) Fail to comply with any chafing gear or other gear obstruction restrictions specified in § 648.51(a)(3).

( 3 ) Fail to comply with the [turtle deflector](#) dredge vessel gear restrictions specified in § 648.51(b)(5), and [turtle dredge chain mat requirements at §223.206\(d\)\(11\)](#).

( 4 ) Fish under the small dredge program specified in §648.51(e), with, or while in possession of, a dredge that exceeds 10.5 ft (3.2 m) in overall width, as measured at the widest point in the bail of the dredge.

( 5 ) 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.

( 6 ) 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.

( 7 ) Have a shucking or sorting machine on board a vessel that shucks scallops at sea while fishing under the DAS allocation program, unless otherwise authorized by the Regional Administrator.

( 8 ) Fish with, possess on board, or land scallops while in possession of trawl nets, when fishing for scallops under the DAS allocation program, unless exempted as provided for in § 648.51(f).

( 9 ) Fail to comply with the restriction on twine top described in § 648.51(b)(4)(iv).

(iii) *Possession and landing.* (A) Land scallops after using up the vessel's annual DAS allocation or land scallops on more than one trip per calendar day when not participating under the DAS allocation program pursuant to § 648.10, unless exempted from DAS allocations as provided in the state waters exemption, specified in § 648.54.



(B) Fish for, possess, or land more than 50 bu (17.62 hL) of in-shell scallops once inside the VMS Demarcation Line on or 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 the state waters exemption, as specified in § 648.54.

(C) Fish for or land per trip, or possess at any time, scallops in the NGOM scallop management area after notification in the Federal Register that the NGOM scallop management area TAC has been harvested, as specified in § 648.62, unless the vessel possesses or lands scallops that were harvested south of 42°20' N. lat. and the vessel only transits the NGOM scallop management area with the vessel's fishing gear properly stowed and unavailable for immediate use in accordance with §648.23.

(D) Discard yellowtail flounder that meet the minimum size restrictions specified under § 648.83(a)(1) and (2).

(iv) *DAS*. (A) Fish for, possess, or land scallops after using up the vessel's annual DAS allocation and Access Area trip allocations, or when not properly declared into the DAS or an Area Access program pursuant to § 648.10, unless the vessel has been issued an LAGC scallop permit pursuant to §6 48.4(a)(2)(ii) and ~~has properly declared into-ais~~ lawfully fishing in a LAGC general-category scallop fishery, unless exempted from DAS allocations as provided in state waters exemption, specified in § 648.54.

(B) 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).

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

(v) *VMS requirements*. (A) Fail to have an approved, operational, and functioning VMS unit that meets the specifications of §648.9 on board the vessel at all times, unless the vessel is not subject to the VMS requirements specified in § 648.10.

(B) 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).

(C) If a limited access scallop vessel intends to declare a scallop trip before first crossing the VMS Demarcation Line, but not necessarily from port, in accordance with § 648.10(f), such vessel must first declare out of the fishery in port and have fishing gear unavailable for immediate use as defined in § 648.23(b), until such vessel declares into the scallop fishery.

(D) Once declared into the scallop fishery in accordance with § 648.10(f), a limited access scallop vessel cannot change its VMS declaration until the trip has ended and scallop catch has been offloaded.

(vi) *Scallop access area program.* (A) Fail to comply with any of the provisions and specifications of § 648.60.

(B) Declare, 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).

(C) Possess or retain yellowtail flounder in or from 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).

(D) Possess more than 50 bu (17.6 hL) of in-shell scallops outside the boundaries of a Sea Scallop Access Area by a vessel that is declared into the Area Access Program as specified in § 648.60.

(E) Fish for, possess, or land scallops in or from any Sea Scallop Access Area without an observer on board, unless the vessel owner, operator, or manager has received a waiver to carry an observer for the specified trip and area fished.

(F) Unless specified in paragraph (i)(2)(vi)(F)( 1 ) of this section, a full-time vessel shall not fish for, possess, or retain more than a combined total of 18,000 lb (8,165 kg; the equivalent of one full-time access area trip) of scallops from the Delmarva and Hudson Canyon Access Areas specified in § 648.59(a) and (e) during the period June 15 through October 31. Any scallops fished for, possessed, or retained during this time period from either Delmarva and Hudson Canyon Access Areas, regardless of whether or not they were harvested on a single access area trip or on multiple trips by taking compensation trips, as specified in § 648.60(c), will be applied to this possession and landing limit. This restriction does not include the additional possession allowance to defray the cost of carrying an observer, as specified in § 648.60(d), that occur during observed trips between June 15 through October 31.

( 1 ) If the owner of a full-time vessel has exchanged a trip(s) with another full-time vessel owner(s), as specified in § 648.60(a)(3)(ii), so that the vessel has a total access area trip allocation of four combined trips into the Delmarva and Hudson Canyon Access Areas (e.g., two Hudson Canyon trip and two Delmarva trips; one Hudson Canyon trip and three Delmarva trips, three Hudson Canyon trips and one Delmarva trip; no Hudson Canyon trips and four Delmarva trips; or four Hudson Canyon trips and no Delmarva trips) that vessel must not fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg; the equivalent of two full-time access area trips) of scallops from the Delmarva and Hudson Canyon Access Areas specified in § 648.59(a) and (e) during the period June 15 through October 31. Any scallops fished for, possessed, or retained during this time period from either Delmarva and Hudson Canyon Access Areas, regardless of whether or not they were harvested on a single access area trip or on multiple trips by taking compensation trips, as specified in § 648.60(c), will be applied to this possession and landing limit. This restriction does not include the additional possession allowance to defray the cost of carrying an observer,

as specified in § 648.60(d), that occur during observed trips between June 15 through October 31.

( 2) [Reserved]

(G) Part-time vessels shall not fish for, possess, or retain more than a combined total of 14,400 lb (6,532 kg; the equivalent of one part-time access area trip) of scallops from the Delmarva and Hudson Canyon Access Areas specified in § 648.59(a) and (e) during the period June 15 through October 31. Any scallops fished for, possessed, or retained during this time period from either Delmarva and Hudson Canyon Access Areas, regardless of whether or not they were harvested on a single access area trip or on multiple trips by taking compensation trips, as specified in § 648.60(c), will be applied to this possession and landing limit. This restriction does not include the additional possession allowance to defray the cost of carrying an observer, as specified in § 648.60(d), that occur during observed trips between June 15 through October 31.

(vii) *State waters exemption program.* Fail to comply with any requirement for participating in the State Waters Exemption Program specified in § 648.54.

(viii) Fish for scallops in, or possess scallops or land scallops from, the yellowtail flounder accountability measure closed areas specified in § 648.64 during the period specified in the notice announcing the closure and based on the closure table specified in § 648.64.

(3) *LAGC scallop vessels.* It is unlawful for any person owning or operating a vessel issued an LAGC scallop permit to do any of the following:

(i) *Permit requirements.* (A) Fail to comply with the LAGC scallop permit restrictions as specified in § 648.4(a)(2)(ii)(G) through (O).

(B) Fish for, possess, or land scallops on a vessel that is declared out of scallop fishing unless the vessel has been issued an Incidental scallop permit.

(ii) *Gear requirements.* (A) Possess or use trawl gear that does not comply with any of the provisions or specifications in § 648.51(a), unless the vessel is fishing under the Northeast multispecies or monkfish DAS program.

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

(iii) *Possession and landing.* (A) Land scallops more than once per calendar day.

(B) Possess in-shell scallops while in possession of the maximum allowed amount of shucked scallops specified for each LAGC scallop permit category in § 648.52.

(C) Declare into ~~or leave port for~~, the NGOM scallop management area after the effective date of a notification published in the Federal Register stating that the ~~general category~~NGOM scallop ~~management area~~ TAC has been harvested as specified in ~~§648.52 or § 648.62, unless such a vessel carries on board a NGOM scallop permit and declares a state-only NGOM scallop trip and intends to fish for scallops exclusively in state waters within the NGOM.~~

(D) Fish for, possess, or land scallops in or from the NGOM scallop management area after the effective date of a notification published in the Federal Register that the NGOM scallop management area TAC has been harvested, as specified in § 648.62, unless the vessel possesses or lands scallops that were harvested south of 42°20' N. lat., the vessel is transiting the NGOM scallop management area, and the vessel's fishing gear is properly stowed and unavailable for immediate use in accordance with § 648.23.

(iv) *VMS requirements.* (A) Fail to comply with any of the VMS requirements specified in §§ 648.10, 648.60, or 648.62.

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

(C) If an LAGC scallop vessel intends to declare a scallop trip shoreward of the VMS Demarcation Line, but not necessarily from port, in accordance with § 648.10(f), such vessel must first declare out of the fishery in port and have fishing gear unavailable for immediate use as defined in § 648.23(b), until such vessel declares into the scallop fishery.

(D) Once declared into the scallop fishery in accordance with § 648.10(f), an LAGC scallop vessel cannot change its VMS declaration until the trip has ended and scallop catch has been offloaded.

(v) *Scallop access area program.* (A) Fail to comply with any of the requirements specified in § 648.60.

(B) Declare into or leave port for an area specified in § 648.59(b) through (d) after the effective date of a notification published in the Federal Register stating that ~~the general category scallop TAC has been harvested or that~~ the number of ~~General Category~~LAGC trips have been taken, as specified in § 648.60.

(C) Declare into, or leave port for, an area specified in § 648.59(b) through (d) after the effective date of a notification published in the Federal Register stating that the yellowtail flounder TAC has been harvested as specified in § 648.85(c).

(D) Fish for, possess, or land scallops in or from any Sea Scallop Access Area without an observer on board, unless the vessel owner, operator, or manager has received a waiver to carry an observer for the specified trip and area fished.

**Comment [eg11]:** Removed by NMFS under MSA 305(d) authority. This is an outdated and unnecessary reference to the time when LAGC vessels had a quarterly TAC.

(vi) *Sectors*. Fail to comply with any of the requirements and restrictions for General Category sectors and harvesting cooperatives specified in § 648.63.

(4) *IFQ scallop permit*. It is unlawful for any person owning or operating a vessel issued an IFQ scallop permit to do any of the following:

(i) *Possession and landing*. (A) Fish for or land per trip, or possess at any time, in excess of 600 lb (272.2 kg) of shucked, or 75 bu (26.4 hL) of in-shell scallops per trip, or 100 bu (35.2 hL) in-shell scallops seaward of the VMS Demarcation Line, unless the vessel is carrying an observer as specified in § 648.11 while participating in the Area Access Program specified in § 648.60 and an increase in the possession limit is authorized by the Regional Administrator and not exceeded by the vessel, as specified in §§ 648.52(g) and 648.60(d)(2).

(B) Fish for or land per trip, or possess at any time, in excess of 200 lb (90.7 kg) of shucked or 25 bu (8.8 hL) of in-shell scallops in the NGOM scallop management area, unless the vessel is seaward of the VMS Demarcation Line and in possession of no more than 50 bu (17.6 hL) of in-shell scallops, or when the vessel is not declared into the NGOM scallop management area and is transiting the NGOM scallop management area with gear properly stowed and unavailable for immediate use in accordance with § 648.23.

(C) Declare into the NGOM scallop management area after the effective date of a notification published in the Federal Register stating that the NGOM scallop management area TAC has been harvested as specified in § 648.62.

(D) Possess more than 100 bu (35.2 hL) of in-shell scallops seaward of the VMS Demarcation Line and not participating in the Access Area Program, or possess or land per trip more than 50 bu (17.6 hL) of in-shell scallops shoreward of the VMS Demarcation Line, unless exempted from DAS allocations as provided in § 648.54.

(DE) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(d), outside the boundaries of a Sea Scallop Access Area by a vessel that is declared into the Access Area Program as specified in § 648.60.

~~(E) Fish for, possess, or land scallops after the effective date of a notification in the Federal Register that the quarterly TAC specified in §648.53(a)(8) has been harvested.~~

(F) Fish for, possess, or land scallops in excess of a vessel's IFQ.

(G) Fish for, possess, or land more than 40 lb (18.1 kg) of shucked scallops, or 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line, or 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line, when the vessel is not declared into the IFQ scallop fishery, unless the vessel is fishing in compliance with all of the requirements of the State waters exemption program, specified at § 648.54.

**Comment [eg12]:** NMFS is using MSA 305(d) authority to remove this outdated reference to the LAGC quarterly TAC.

(H) Land scallops more than once per calendar day.

(ii) *Owner and allocation cap.* (A) Have an ownership interest in vessels that collectively are allocated more than 5 percent of the total IFQ scallop ~~TAC-ACL~~ as specified at § 648.53(a)(5)(ii) and (iii).

**Comment [eg13]:** NMFS is using MSA 305(d) authority to adjust a term in order to correctly refer to regulations put into place by Amendment 15 (changing "TAC" to "ACL").

(B) Have an IFQ allocation on an IFQ scallop vessel of more than 2.5 percent of the total IFQ scallop ACL as specified in § 648.53(a)(4)(i).

(iii) *IFQ Transfer Program.* (A) Apply for an IFQ transfer that will result in the transferee having an aggregate ownership interest in more than 5 percent of the total IFQ scallop ~~TAC-ACL~~.

(B) Apply for an IFQ transfer that will result in the receiving vessel having an IFQ allocation in excess of 2.5 percent of the total IFQ scallop ACL as specified in § 648.53(a)(4)(i).

(C) Fish for, possess, or land transferred IFQ prior to approval of the transfer by the Regional Administrator as specified in § 648.53(h)(5).

(D) Request to transfer IFQ that has already been temporarily transferred from an IFQ scallop vessel in the same fishing year.

(E) Transfer scallop IFQ to a vessel after the transferring vessel has landed scallops in the same fishing year.

(F) [Reserved]

(G) Transfer scallop IFQ to, or receive scallop IFQ from, a vessel that has not been issued a valid IFQ scallop permit.

(iv) *Cost Recovery Program.* Fail to comply with any of the cost recovery requirements specified under § 648.53(g)(4).

(5) *NGOM scallop permit.* It is unlawful for any person owning or operating a vessel issued an NGOM scallop permit to do any of the following:

(i) Declare into ~~or leave port for a scallop trip~~, or fish for or possess scallops outside of the NGOM Scallop Management Area as defined in § 648.62.

(ii) Fish for or land per trip, or possess at any time, in excess of 200 lb (90.7 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops in or from the NGOM scallop management area, or seaward of the VMS Demarcation Line more than 50 bu (17.6 hL) of in-shell scallops.

(iii) Fish for, possess, or land scallops in state or Federal waters of the NGOM management area after the effective date of notification in the Federal Register the Federal Register that the NGOM scallop management area TAC has been harvested as specified in § 648.62.

**Comment [eg14]:** The Council's submitted Framework 23 document specifies that once the NGOM Federal TAC is harvested, NGOM-permitted vessels may no longer fish in state or Federal waters portions of the NGOM. See pages 85 and 135 in the EA.

(iv) Fish for, possess, or retain scallops in Federal waters of the NGOM after declaring a trip into NGOM state waters.

(6) *Incidental scallop permit.* It is unlawful for any person owning or operating a vessel issued an Incidental scallop permit to fish for, possess, or retain, more than 40 lb (18.1 kg) of shucked scallops, or 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line, or 10 bu (3.52 hL) of in-shell scallops while seaward of the VMS Demarcation Line.

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

*[Unless otherwise indicated, updates to this section would implement the Council's FW23 TDD preferred alternative. The only text included from this section of regulations is the paragraphs to which we are the proposing adjustments (§ 648.51(b)(1) and (b)(5)).]*

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(b)(1) *Maximum dredge width.* The combined dredge width in use by or in possession on board such vessels shall not exceed 31 ft (9.4 m) measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section and at §648.60(g)(2). However, component parts may be on board the vessel such that they do not conform with the definition of "dredge or dredge gear" in § 648.2, *i.e.*, the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and such that no more than one complete spare dredge could be made from these component's parts.

**Comment [eg15]:** NMFS included this reference under its MSA 305(d) authority to help clarify where other related regulations can be found.

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[The paragraphs below would be added.]

(b)(5) Restrictions applicable to sea scallop dredges in the mid-Atlantic.

(i) Requirement to use chain mats. See § 223.206(d)(11) for chain mat requirements for scallop dredges.

(ii) Requirement to use a turtle deflector dredge (TDD) frame — (A) From May 1 through October 31, any limited access scallop vessel using a dredge, regardless of dredge size or vessel permit category, or any LAGC IFQ scallop vessel fishing with a dredge with a

width of 10.5 ft (3.2 m) or greater, that is fishing for scallops in waters west of 71° W longitude, from the shoreline to the outer boundary of the Exclusive Economic Zone, must use a TDD. The TDD requires five modifications to the rigid dredge frame, as specified in paragraphs (ii)(A)(1) through (ii)(A)(5) of this section. See paragraph (b)(5)(ii)(E) of this section for more specific descriptions of the dredge elements mentioned below.

(1) The cutting bar must be located in front of the depressor plate.

(2) The angle between the front edge of the cutting bar and the top of the dredge frame (i.e., the posterior point of the depressor plate) must be less than or equal to 45 degrees.

(3) All bale bars must be removed, except the outer bale (single or double) bars and the center support beam, leaving an otherwise unobstructed space between the cutting bar and forward bale wheels, if present. The center support beam must be less than 6 in (15.24 cm) wide;

(4) Struts must be spaced 12 in (30.5 cm) apart or less from each other.

(5) Unless exempted, as specified in paragraph (b)(5)(ii)(B) of this section, the TDD must include a straight extension (“bump out”) connecting the outer bale bars to the dredge frame. This “bump out” must exceed 12 in (30.5 cm) in length.

(B) A limited access scallop vessel that uses a dredge with a width less than 10.5 ft (3.2 m) is required to have a TDD except that such a vessel is exempt from the “bump out” requirement specified in paragraph (b)(5)(ii)(A)(5) of this section. This exemption does not apply to LAGC vessels that use dredges with a width of less than 10.5 ft (3.2 m) because such vessels are exempted from the requirement to use a TDD, as specified in paragraph (b)(5)(ii) of this section.

(C) Vessels subject to the requirements in paragraph (b)(5)(ii) of this section transiting waters west of 71°W longitude, from the shoreline to the outer boundary of the Exclusive Economic Zone, are exempted from the requirement to only possess and use TDDs, provided the dredge gear is stowed in accordance with § 648.23(b) and not available for immediate use.

(D) TDD-related definitions.

(1) The cutting bar refers to the lowermost horizontal bar connecting the outer bails at the dredge frame.

(2) The depressor plate, also known as the pressure plate, is the angled piece of steel welded along the length of the top of the dredge frame.

(3) The top of the dredge frame refers to the posterior point of the depressor plate.



(4) The struts are the metal bars connecting the cutting bar and the depressor plate.

**§ 648.53 Acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), DAS allocations, and individual fishing quotas (IFQ).**

*[There are no specific Framework 23 changes to this section. NMFS is using MSA 305(d) authority to correct references and terminology (i.e., changing “TAC” to “ACL”) to clarify Amendment 15 definitions. The only text included from this section of regulations is the paragraphs to which we are the proposing adjustments (§ 648.53(b)(4)(vii), portions of (h)(2), (h)(3) and (h)(5)).]*

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(b)(4)(vii) If, prior to the implementation of Framework 22, a vessel owner exchanges an Elephant Trunk Access Area trip for another access area trip as specified in § 648.60(a)(3)(ii) in fishing year 2011, the vessel that receives an additional Elephant Trunk Access Area trip would receive a DAS credit of 7.4 DAS in FY 2011, resulting in a total fishing year 2011 DAS allocation of 39.4 DAS (32 DAS plus 7.4 DAS). This DAS credit from unused Elephant Trunk Access Area trip gained through a trip exchange is based on a full-time vessel's 18,000-lb (8,165-kg) possession limit and is calculated by using the formula specified in paragraph (b)(4)(vi) of this section but the DAS conversion is applied as a DAS credit in the 2011 fishing year, rather than as a DAS deduction in fishing year 2012. Similarly, using the same calculation with a 14,400-lb (6,532-kg) possession limit, part-time vessels would receive a credit of 5.9 DAS if the vessel owner received an additional Elephant Trunk Access Area trip through a trip exchange in the interim between the start of the 2011 fishing year and the implementation of Framework 22 and did not use it. If a vessel fishes any part of an Elephant Trunk Access Area trip gained through a trip exchange, those landings would be deducted from any DAS credit applied to the 2011 fishing year. For example, if a full-time vessel lands 10,000 lb (4,536 kg) from an Elephant Trunk Access Area trip gained through a trip exchange, the pounds landed would be converted to DAS and deducted from the trip-exchange credit as follows: The 10,000 lb (4,536 kg) would first be multiplied by the estimated average meat count in the Elephant Trunk Access Area (18.4 meats/lb) and then divided by the estimated open area average meat count (also 18.4 meats/lb) and by the estimate open area LPUE for fishing year 2011 (2,441 lb/DAS), resulting in a DAS deduction of 4.1 DAS  $((10,000 \text{ lb} \times 18.4 \text{ meats/lb}) / (18.4 \text{ meats/lb} \times 2,441 \text{ lb/DAS}) = 4.1 \text{ DAS})$ . Thus, this vessel would receive a reduced DAS credit in FY 2011 to account for the Elephant Trunk Access Area trip exchange of 3.3 DAS  $(7.4 \text{ DAS} - 4.1 \text{ DAS} = 3.3 \text{ DAS})$ .

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(h)(2) *Calculation of IFQ.* The ~~total allowable catch~~ACL allocated to IFQ scallop vessels, and the ~~TAC~~ACL allocated to limited access scallop vessels issued IFQ scallop permits, as specified in paragraphs (a)(~~54~~)(i) and (ii) of this section, shall be used to determine the IFQ of each vessel issued an IFQ scallop permit. Each fishing year, the Regional Administrator shall provide the owner of a vessel issued an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii) with the scallop IFQ for the vessel for the upcoming fishing year.

(h)(2)(i) *Individual fishing quota.* The IFQ for an IFQ scallop vessel shall be the vessel's contribution percentage as specified in paragraph (h)(2)(iii) of this section and determined using the steps specified in paragraphs (h)(2)(ii) of this section, multiplied by the ~~TAC~~ACL allocated to the IFQ scallop fishery, or limited access vessels issued an IFQ scallop permit, as specified in paragraphs (a)(~~34~~)(ii) and (iii) of this section.

(h)(2)(ii)(C) *Index to determine contribution factor.* For each eligible IFQ scallop vessel, the best year as determined pursuant to paragraph (a)(2)(ii)(E)( 1 ) of this section shall be multiplied by the appropriate index factor specified in the following table, based on years active as specified in paragraph (a)(2)(ii)(E)( 2 ) of this section. The resulting contribution factor shall determine its IFQ for each fishing year based on the allocation to general category scallop vessels as specified in § 648.53(a)(~~24~~) and the method of calculating the IFQ provided in § 648.53(h).

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(h)(2)(iv) *Vessel IFQ Example.* Continuing the example in paragraphs (h)(1)(ii)(D) and (h)(1)(iii) of this section, with a ~~TAC~~ACL allocated to IFQ scallop vessels estimated for this example to be equal to 2.5 million lb (1,134 mt), the vessel's IFQ would be 36,250 lb (16,443 kg) (1.45 percent \* 2.5 million lb (1,134 mt)).

\*\*\*

(h)(3) *IFQ ownership restrictions* —(i) *IFQ scallop vessel IFQ cap.* (A) Unless otherwise specified in paragraphs (h)(3)(i)(B) and (C) of this section, a vessel issued an IFQ scallop permit or confirmation of permit history shall not be issued more than 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(ii) of this section.

\*\*\*

(5)(iii) *IFQ transfer restrictions.* The owner of an IFQ scallop vessel not issued a limited access scallop permit that has fished under its IFQ in a fishing year may not transfer that vessel's IFQ to another IFQ scallop vessel in the same fishing year. Requests for IFQ transfers cannot be less than 100 lb (46.4 kg), unless that value reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. A vessel's total IFQ allocation can be transferred only once during a given fishing year. For example, a vessel owner can complete several transfers of portions of his/her

**Comment [eg16]:** This is clarified to allow vessels to complete multiple IFQ transfers during the course of a fishing year, as long as the transfers are for a portion of the IFQ.

vessel's IFQ during the fishing year, but cannot complete a temporary transfer of a portion of its IFQ then request to either temporarily or permanently transfer the entire IFQ in the same fishing year. IFQ can be transferred only once during a given fishing year. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2.5 percent of the ACL allocated to IFQ scallop vessels. A transfer of an IFQ, whether temporary or permanent, may not result in the transferee having a total ownership of, or interest in, general category scallop allocation that exceeds 5 percent of the ACL allocated to IFQ scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not transfer to or receive IFQ from another IFQ scallop vessel.

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

*[There are no specific Framework 23 regulatory adjustments to this section. NMFS is using MSA 305(d) authority to adjust a reference and a term in order to correctly refer to regulations put into place by Amendment 15. The only text included from this section of regulations is the paragraph to which we are proposing adjustments (a reference update to §648.55(c)(1) and corrected term to (c)(5)).]*

\*\*\*

(c)(1) *OFL* . OFL shall be based on an updated scallop resource and fishery assessment provided by either the Scallop PDT or a formal stock assessment. OFL shall include all sources of scallop mortality and shall include an upward adjustment to account for catch of scallops in state waters by vessels not issued Federal scallop permits. The fishing mortality rate (F) associated with OFL shall be the threshold F, above which, overfishing is occurring in the scallop fishery. The F associated with OFL shall be used to derive specifications for ABC, ACL, and ACT, as specified in paragraphs (a)(2) through (5) of this section.

\*\*\*

(c)(5) *Sub-ACLs for the limited access and LAGC fleets* . The Council shall specify sub-ACLs for the limited access and LAGC fleets for each year covered under the biennial or other framework adjustment. After applying the deductions as specified in paragraph (a)(4) of this section, a sub-ACL equal to 94.5 percent of the ABC/ACL shall be allocated to the limited access fleet. After applying the deductions as specified in paragraph (a)(4) of this section, a sub-ACL of 5.5 percent of ABC/ACL shall be allocated to the LAGC fleet, so that 5 percent of ABC/ACL is allocated to the LAGC fleet of vessels that do not also have a limited access scallop permit, and 0.5 percent of the

ABC/ACL is allocated to the LAGC fleet of vessels that have limited access scallop permits. This specification of sub-ACLs shall not account for catch reductions associated with the application of AMs or adjustment of the sub-ACL as a result of the ~~disclaimer provision~~ limited access AM exception as specified in § 648.53(b)(4)(iii).

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### § 648.56 Scallop research.

*[There are no specific Framework 23 regulatory adjustments to this section. NMFS is using MSA 305(d) authority to make a slight change to §648.56(d) in order to correctly reference regulations that were adjusted through Amendment 15. The only text included from this section of regulations is the paragraph to which we are the proposing adjustments (§ 648.56(d)).]*

\*\*\*

(d) Available RSA allocation shall be 1.25 million lb (567 mt) annually, which shall be deducted from the ABC/ACL specified in §648.53(a) prior to setting ACLs for the limited access and LAGC fleets, as specified in § 648.53(a)(3)~~(i)~~ and (a)(4)~~(i)~~<sub>1</sub>, respectively. Approved RSA projects shall be allocated an amount of scallop pounds that can be harvested in open areas and available access areas. The specific access areas that are open to RSA harvest shall be specified through the framework process and identified in § 648.60(e)(1). In a year in which a framework adjustment is under review by the Council and/or NMFS, NMFS shall make RSA awards prior to approval of the framework, if practicable, based on total scallop pounds needed to fund each research project. Recipients may begin compensation fishing in open areas prior to approval of the framework, or wait until NMFS approval of the framework to begin compensation fishing within approved access areas.

### § 648.59 Sea Scallop Access Areas.

*[There are no specific Framework 23 regulatory adjustments to this section. NMFS is using MSA 305(d) authority to remove reference to the Closed Area II access area schedule that was intended to be removed through Framework 22 rulemaking. Framework 22 removed the schedules for Closed Area I and NLS but did not remove this last schedule by mistake. The only text included from this section of regulations is the sentence that we are proposing to remove (the introductory text to §648.59(c)).]*

\*\*\*

(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:~~

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

*[There are no specific Framework 23 changes to this section. NMFS is using MSA 305(d) authority to clarify an LAGC access area dredge gear regulation. There is a regulation in this section that currently says LAGC vessels fishing in any access area may not have a combined dredge width greater than 10.5 ft. However, this requirement was intended only for LAGC dredge gear when fishing in the GB access areas, not those access areas in the mid-Atlantic (where they can use a combined dredge width of 31 ft). The only text included from this section of regulations is the paragraph to which we are proposing adjustments (§648.60(g)(2)).]*

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(g)(2) Limited Access General Category Gear restrictions. An LAGC IFQ scallop vessel authorized to fish in the Access Areas specified in §648.59(a) through (e) must fish with dredge gear only. The combined dredge width in use by, or in possession on board of, an LAGC scallop vessel fishing in Closed Area I, Closed Area II, and Nantucket Lightship the Access Areas ~~described in §648.59(a) through (e)~~ may not exceed 10.5 ft (3.2 m), ~~measured at the widest point in the bail of the dredge.~~ The combined dredge width in use by, or in possession on board of, an LAGC scallop vessel fishing in the remaining Access Areas described in §648.59 may not exceed 31 ft (9.4 m). Dredge width is measured at the widest point in the bail of the dredge.

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

*[Regulatory adjustments to this section focus on the NGOM alternative, unless otherwise indicated. The intent of these regulations, based on the Council's Framework 23 document, is to clarify that a NGOM-permitted vessel can declare a state waters NGOM trip and have those landings not apply to the Federal NGOM TAC. However, IFQ vessels may not declare a state-waters NGOM trip, regardless of where they are fishing within the NGOM, and all landings will continue to be applied both to the NGOM TAC and the vessel's IFQ allocation.]*

(a) The NGOM scallop management area is the area north of 42°20' N. lat. and within the boundaries of the Gulf of Maine Scallop Dredge Exemption Area as specified in §648.80(a)(11). To fish for or possess scallops in the NGOM scallop management area, a vessel must have been issued a scallop permit as specified in §648.4(a)(2).

(1) If a vessel has been issued a NGOM scallop permit, the vessel is restricted to fishing for or possessing scallops only in the NGOM scallop management area.

(2) Scallop landings by vessels issued NGOM permits shall be deducted from the NGOM scallop total allowable catch when vessels fished all or part of a trip in the Federal waters portion of the NGOM. If a vessel with a NGOM scallop permit fishes exclusively in state waters within the NGOM, scallop landings from those trips would not be deducted from the Federal NGOM quota.

(23) Scallop landings by all vessels issued LAGC ~~scallop permits, including~~ IFQ scallop permits, and fishing in the NGOM scallop management area shall be deducted from the NGOM scallop total allowable catch specified in paragraph (b) of this section. Scallop landings by IFQ scallop vessels fishing in the NGOM scallop management area shall be deducted from their respective scallop IFQs. Landings by incidental catch scallop vessels and limited access scallop vessels fishing under the scallop DAS program shall not be deducted from the NGOM total allowable catch specified in paragraph (b) of this section.

(34) A vessel issued a NGOM or IFQ scallop permit that fishes in the NGOM may fish for, possess, or retain up to 200 lb (90.7 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops, and may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS Demarcation Line. A vessel issued an incidental catch general category scallop permit that fishes in the NGOM may fish for, possess, or retain only up to 40 lb of shucked or 5 U.S. bu (1.76 hL) of in-shell scallops, and may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line.

(b) Total allowable catch. The total allowable catch for the NGOM scallop management area shall be specified through the framework adjustment process. The total allowable catch for the NGOM scallop management area shall be based on the Federal portion of the scallop resource in the NGOM. The total allowable catch shall be determined by historical landings until additional information on the NGOM scallop resource is available, for example through an NGOM resource survey and assessment. The ~~total~~

**Comment [eg17]:** NMFS is using MSA 305(d) authority to update this paragraph with Amendment 15 terminology.

~~allowable catch and allocations~~ABC/ACL as specified in §648.53(a) shall not include the total allowable catch for the NGOM scallop management area, and landings from the NGOM scallop management area shall not be counted against the ~~ABC/ACL total allowable catch and allocations~~ specified in § 648.53(a).

(1) *NGOM annual hard TACs.* The annual hard TAC for the NGOM is 70,000 lb (31.8 mt) for the 2011, 2012, and 2013 fishing years. The NGOM TAC for the 2013 fishing year is a default allocation and is subject to change in a future framework adjustment.

(2) Unless a vessel has fished for scallops outside of the NGOM scallop management area and is transiting NGOM scallop management area with all fishing gear stowed in accordance with § 648.23(b), no vessel issued a scallop permit pursuant to §648.4(a)(2) may possess, retain, or land scallops in the NGOM scallop management area once the Regional Administrator has provided notification in the Federal Register that the NGOM scallop total allowable catch in accordance with this paragraph (b) has been reached.

Once the NGOM hard TAC is reached, a vessel issued a NGOM permit may no longer declare a state-only NGOM scallop trip and fish for scallops exclusively in state waters within the NGOM. A vessel that has not been issued a Federal scallop permit that fishes exclusively in state waters is not subject to the closure of the NGOM scallop management area.

**Comment [eg18]:** The Council's submitted Framework 23 document specifies that once the NGOM Federal TAC is harvested, NGOM-permitted vessels may no longer fish in state or Federal waters portions of the NGOM.

(3) If the TAC specified in paragraph (b)(1) of this section is exceeded, the amount of NGOM scallop landings in excess of the TAC specified in paragraph (b)(1) of this section shall be deducted from the NGOM TAC for the subsequent fishing year, as soon as practicable, once scallop landings data for the NGOM fishery is available.

(c) *VMS requirements.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have declared a trip under the scallop DAS program, a vessel issued a scallop permit pursuant to § 648.4(a)(2) that intends to fish for scallops in the NGOM scallop management area or fishes for, possesses, or lands scallops in or from the NGOM scallop management area, must declare a NGOM scallop management area trip and report scallop catch through the vessel's VMS unit, as required in § 648.10. If the vessel has a NGOM permit, the vessel can declare either a Federal NGOM trip or a state-waters NGOM trip. If a vessel intends to fish any part of a NGOM trip in Federal NGOM waters, it may not declare into the state water NGOM fishery.

(d) *Gear restrictions.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have properly declared a trip under the scallop DAS program, the combined dredge width in use by, or in possession on board, LAGC scallop vessels fishing in the NGOM scallop management area may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

### **§ 648.63 General category Sectors and harvesting cooperatives.**

*[There are no specific Framework 23 changes to this section. NMFS is using MSA 305(d) authority to correct references and terminology to clarify Amendment 15 definitions. The only text included from this section of regulations is the paragraph to which we are proposing adjustments (§648.63(b)(2)).]*

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(b)(2) *Allocation of TAC to Sectors.* (i) The Sector allocation shall be equal to a percentage share of the ~~TAC-ACL~~ allocation for IFQ scallop vessels specified in § 648.53(a), similar to a IFQ scallop vessel's IFQ as specified in § 648.53(h). The Sector's percentage share of the IFQ scallop fishery ~~TAC-ACL~~ catch shall not change, but the amount of allocation based on the percentage share will change based on the ~~TAC-ACL~~ specified in § 648.53(a).

(ii) *Sector share determination.* When a Sector proposal is submitted, NMFS shall verify the contribution percentage as specified in § 648.53(h)(2)(iii) for each vessel listed as a Sector member. The Sector's share shall be the sum of the participating vessels' contribution percentages.

(iii) A Sector shall not be allocated more than 20 percent of the ~~TAC-ACL~~ for IFQ vessels specified in § 648.53(a)(~~54~~)(ii) or (iii).

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### **§ 648.64 Yellowtail flounder sub-ACLs and AMs for the scallop fishery.**

*[Changes to this section would implement the Council's Framework 23 yellowtail flounder AM preferred alternative.]*

(a) As specified in § 648.55(d), and pursuant to the biennial framework adjustment process specified in § 648.90, the scallop fishery shall be allocated a sub-ACL for the Georges Bank and Southern New England/Mid-Atlantic stocks of yellowtail flounder. The sub-ACL for the 2011 through 2013 fishing years are as follows:

(1) 2011. 82 mt for the Southern New England/Mid-Atlantic stock of yellowtail flounder and 200.8 mt for the Georges Bank stock of yellowtail flounder.

(2) 2012. 127 mt for the Southern New England/Mid-Atlantic stock of yellowtail flounder and 307.5 mt for the Georges Bank stock of yellowtail flounder.



(3) 2013. To be determined.

(b) *Georges Bank accountability measure.* (1) If the Georges Bank yellowtail flounder sub-ACL for the scallop fishery is exceeded, the area defined by the following coordinates shall be closed to scallop fishing by vessels issued a limited access scallop permit for the period of time specified in paragraph (b)(2) of this section:

**Georges Bank Yellowtail Closure**

<b>Point</b>	<b>N. lat.</b>	<b>W. long.</b>
GBYT AM 1	41°50'	66°51.94'
GBYT AM 2	40°30.75'	65°44.96'
GBYT AM 3	40°30'	66°40'
GBYT AM 4	40°40'	66°40'
GBYT AM 5	40°40'	66°50'
GBYT AM 6	40°50'	66°50'
GBYT AM 7	40°50'	67°00'
GBYT AM 8	41°00'	67°00'
GBYT AM 9	41°00'	67°20'
GBYT AM 10	41°10'	67°20'
GBYT AM 11	41°10'	67°40'
GBYT AM 12	41°50'	67°40'
GBYT AM 1	41°50'	66°51.94'

(2) *Duration of closure.* The Georges Bank yellowtail flounder accountability measure closed area shall remain closed for the period of time, not to exceed 1 fishing year, as specified for the corresponding percent overage of the Georges Bank yellowtail flounder sub-ACL, as follows:

(i) For years when the Closed Area II Sea Scallop Access Area is open, the closure duration shall be:

<u>Percent overage of YTF sub-ACL</u>	<u>Length of closure</u>
<u>3% or less</u>	<u>October through November</u>
<u>3.1-14%</u>	<u>September through November</u>
<u>14.1-16%</u>	<u>September through January</u>
<u>16.1-39%</u>	<u>August through January</u>
<u>39.1-56%</u>	<u>July through January</u>
<u>Greater than 56%</u>	<u>March through February</u>

**Comment [eg19]:** Changes to the following three tables would implement the Council's preferred yellowtail AM schedule alternative in Framework 23.

<u>Percent overage of YTF sub-ACL</u>	<u>Length of closure</u>
<u>4</u>	<u>March through May.</u>
<u>2-24</u>	<u>March through June.</u>
<u>25-38</u>	<u>March through July.</u>
<u>39-57</u>	<u>March through August.</u>
<u>58-63</u>	<u>March through September.</u>
<u>64-65</u>	<u>March through October.</u>
<u>66-68</u>	<u>March through November.</u>
<u>69</u>	<u>March through December.</u>
<u>70 and higher</u>	<u>March through February.</u>

(ii) For fishing years when the Closed Area II Sea Scallop Access Area is closed to scallop fishing, the closure duration shall be:

<u>Percent overage of YTF sub-ACL</u>	<u>Length of closure</u>
<u>1.9% or less</u>	<u>September through November</u>
<u>2.0 -2.9%</u>	<u>August through January</u>
<u>3.0 -3.9%</u>	<u>March and August through February</u>
<u>4.0 - 4.9%</u>	<u>March and July through February</u>
<u>5.0 -5.9%</u>	<u>March through May and July through February</u>
<u>6.0% or greater</u>	<u>March through February</u>

<u>Percent overage of YTF sub-ACL</u>	<u>Length of closure</u>
<u>1</u>	<u>March through May.</u>
<u>2</u>	<u>March through June.</u>
<u>3</u>	<u>March through July.</u>
<u>4 - 5</u>	<u>March through August.</u>
<u>6 and higher</u>	<u>March through February.</u>

(c) *Southern New England/Mid-Atlantic accountability measure.* (1) If the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL for the scallop fishery is exceeded, the area defined by the following coordinates shall be closed to scallop fishing by vessels issued a limited access scallop permit for the period of time specified in paragraph (c)(2) of this section:

**Southern New England Yellowtail Closure**

<b>Point</b>	<b>N. lat.</b>	<b>W. long.</b>
SNEYT AM 1	41°28.4'	71°10.25'
SNEYT AM 2	41°28.57'	71°10'
SNEYT AM 3	41°20'	71°10'

SNEYT AM 4	41°20'	70°50'
SNEYT AM 5	41°20'	70°30'
SNEYT AM 6	41°18'	70°15'
SNEYT AM 7	41°17.69'	70°12.54'
SNEYT AM 8	41°14.73'	70°00'
SNEYT AM 9	39°50'	70°00'
SNEYT AM 10	39°50'	71°00'
SNEYT AM 11	39°50'	71°40'
SNEYT AM 12	40°00'	71°40'
SNEYT AM 13	40°00'	73°00'
SNEYT AM 14	40°41.23'	73°00'
SNEYT AM 15	41°00'	71°55'
SNEYT AM 16	41°00'	71°40'
SNEYT AM 17	41°20'	71°40'
SNEYT AM 18	41°21.15'	71°40'

(2) *Duration of closure.* The Southern New England/Mid-Atlantic yellowtail flounder accountability measure closed area shall remain closed for the period of time, not to exceed 1 fishing year, as specified for the corresponding percent overage of the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL, as follows:

<u>Percent overage of YTF sub-ACL</u>	<u>Length of closure</u>
<u>2% or less</u>	<u>March through April</u>
<u>2.1-3%</u>	<u>March through April and February</u>
<u>3.1-7%</u>	<u>March through May and February</u>
<u>7.1-9%</u>	<u>March through May and January through February</u>
<u>9.1-12%</u>	<u>March through May and December through February</u>
<u>12.1-15%</u>	<u>March through June and December through February</u>
<u>15.1-16%</u>	<u>March through June and November through February</u>
<u>16.1-18%</u>	<u>March through July and November through February</u>
<u>18.1-19%</u>	<u>March through August and October through February</u>
<u>19.1% or more</u>	<u>March through February</u>

<u>Percent overage of YTF sub-ACL</u>	<u>Length of closure</u>
<u>1-2</u>	<u>March.</u>
<u>3-5</u>	<u>March and April.</u>
<u>6-8</u>	<u>March through May.</u>
<u>9-12</u>	<u>March through June.</u>
<u>13-14</u>	<u>March through July.</u>
<u>15</u>	<u>March through August.</u>
<u>16</u>	<u>March through September.</u>
<u>17</u>	<u>March through October.</u>
<u>18</u>	<u>March through November.</u>
<u>19</u>	<u>March through January.</u>

20 and higher

March through February.

(d) *Exemption for LAGC IFQ vessels.* Vessels issued an LAGC IFQ permit and fishing under the LAGC IFQ scallop fishery shall be exempt from the closure(s) specified in paragraphs (b) and (c) of this section. Yellowtail bycatch by such vessels shall be counted against the applicable yellowtail flounder sub-ACL specified in paragraph (a) of this section.

(e) *Process for implementing the AM.* On or about January 15 of each year, based upon catch and other information available to NMFS, the Regional Administrator shall determine whether a yellowtail flounder sub-ACL was exceeded, or is projected to be exceeded, by scallop vessels prior to the end of the scallop fishing year ending on February 28/29. The determination shall include the amount of the overage or projected amount of the overage, specified as a percentage of the overall sub-ACL for the applicable yellowtail flounder stock, in accordance with the values specified in paragraph (a) of this section. Based on this initial projection in mid-January, the Regional Administrator shall implement the AM in accordance with the APA and notify owners of limited access scallop vessels by letter identifying the length of the closure and a summary of the yellowtail flounder catch, overage, and projection that resulted in the closure. The initial projected estimate shall be updated after the end of each scallop fishing year once complete fishing year information becomes available. An AM implemented at the start of the fishing year will be reevaluated and adjusted proportionately, if necessary, once updated information is obtained. For example, if in January 2013, the preliminary estimate of 2012 Southern New England/Mid-Atlantic yellowtail flounder catch is estimated to be 5 percent over the 2012 sub-ACL, the Regional Administrator shall implement AMs for the 2013 scallop fishing year in that stock area. Based on the schedule in paragraph (c)(2) of this section, limited access vessels would be prohibited from fishing in the area specified in paragraph (c)(1) of this section for 4 months (i.e., March through May 2013, and February 2014). After the 2012 fishing year is completed, if the final estimate of Southern New England/Mid-Atlantic yellowtail flounder catch indicates the scallop fishery caught over 2 percent of the sub-ACL, rather than 5 percent, the Regional Administrator, in accordance with the APA, would adjust the AM for the 2014 fishing year based on the overage schedule in paragraph (c)(2) of this section. As a result, limited access vessels would be subject to a 2-month seasonal closure in March and April 2013. In this example, due to the availability of final fishing year data, it is possible that the original AM closure was already in effect during the month of May. However, the unnecessary AM closure in February 2014 would be avoided. If the Regional Administrator determines that a final estimate is higher than the original projection, the Regional Administrator, if necessary, shall make adjustments to the current fishing year's respective AM closure schedules in accordance with the overage schedule in paragraphs (b)(2)(i), (b)(2)(ii), and (c)(2) of this section.

**Comment [eg20]:** Changes here would implement Framework 23's "yellowtail AM flexibility" alternative.

~~(f) *AM for the 2011 fishing year.* AMs shall be applied in the 2011 fishing year for any overage of the applicable yellowtail flounder stock's total ACL in the 2010 fishing year in accordance with the APA. If a 2010 yellowtail flounder subcomponent catch allocation~~

**Comment [eg21]:** This paragraph would be removed under NMFS's MSA 305(d) authority. The Amendment 15 regulations about what would happen if the 2010 yellowtail sub-component was exceeded are now outdated and no longer necessary.

~~was exceeded in the 2010 fishing year, and that overage caused the total yellowtail flounder ACL for that stock specified in accordance with §648.90(a)(4) and §648.90(a)(6) to be exceeded, the Regional Administrator shall implement the yellowtail flounder AM closure for the area, as defined in paragraph (b)(1) or (c)(1) of this section as soon as practicable after the effective date of this regulation. The closure shall be effective on the date specified by the Regional Administrator and the area shall remained closed for a period of time equal to the period of time specified in paragraphs (b)(2)(i)(A), (b)(2)(i)(B), or (c)(2) of this section, as applicable. For example, if the overage is 3 to 5 percent for the Southern New England/Mid-Atlantic yellowtail stock, and the closure is effective beginning July 15, 2011, the closure shall remain in effect through September 15, 2011, a 2-month period equivalent to the March–April, 2-month closure specified in paragraph (c)(2) of this section.~~

**Comment 1:** NMFS is using MSA 305(d) authority to add reference to the Scallop Access Area Program here to clarify that VMS is required on these trips.

**Comment 2:** NMFS has deleted the last part of this sentence under its MSA 305(d) authority because it is unnecessary and unclear. A vessel with an incidental scallop permit cannot “declare into the scallop fishery” to begin with and can possess/ retain/ land scallops under a DOF code. We propose to clarify this regulation here.

**Comment 3:** NMFS has clarified the VMS pre-land notification procedures under its MSA 305(d) authority to include what to do if a vessel is not landing scallops or is submitting a corrected pre-land form.

**Comment 4:** NMFS has clarified the VMS notification procedure for vessels fishing under the state water exemption program under its MSA 305(d) authority.

**Comment 5:** NMFS has added reference to Occasional Vessels under its MSA 305(d) authority to clarify the intent that Occasional Vessels, if they choose not to declare through VMS, must call into the IVR system. This is mentioned elsewhere in the regulations but was unclear here.

**Comment 6:** This regulation was unnecessarily confusing so NMFS is proposing the following change under its MSA 305(d) authority to clarify the regulation’s intent. The original regulation, without track changes, reads as follows:

“Any vessel issued a limited access scallop permit and not issued an LAGC scallop permit that possesses or lands scallops; any vessel issued a limited access scallop and LAGC IFQ scallop permit that possesses or lands more than 600 lb (272.2 kg) of scallops; any vessel issued a limited access scallop and LAGC NGOM scallop permit that possesses or lands more than 200 lb (90.7 kg) of scallops; any vessel issued a limited access scallop and LAGC IC scallop permit that possesses or lands more than 40 lb (18.1 kg) of scallops; any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program requirements that possesses or lands regulated NE multispecies, except as provided in §§648.10(h)(9)(ii), 648.17, and 648.89; and any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possess or lands monkfish above the incidental catch trip limits specified in §648.94(c) shall be deemed to be in its respective DAS program for purposes of counting DAS and will be charged DAS from its time of sailing to landing, regardless of whether the vessel's owner or authorized representative provides adequate notification as required by paragraphs (e) through (h) of this section.”

**Comment 7:** Paragraphs (A)(1) and (A)(2) are clarified to indicate they are intended for limited access vessels. The new paragraph below was included to demonstrate provider charges for LAGC vessels fishing in access areas.

**Comment 8:** This paragraph (A)(3) is added to clarify the observer service provider charge for LAGC vessels, regardless of the status of the observer set-aside

**Comment 9:** Removed by NMFS under MSA 305(d) authority. Vessels with incidental permits are not part of the scallop industry-funded observer program, thus this regulation is unnecessary.



**Comment 10:** Removed by NMFS under MSA 305(d) authority. Vessels with NGOM permits are not part of the scallop industry-funded observer program, thus this regulation is unnecessary.

**Comment 11:** Removed by NMFS under MSA 305(d) authority. This is an outdated and unnecessary reference to the time when LAGC vessels had a quarterly TAC.

**Comment 12:** NMFS is using MSA 305(d) authority to remove this outdated reference to the LAGC quarterly TAC.

**Comment 13:** NMFS is using MSA 305(d) authority to adjust a term in order to correctly refer to regulations put into place by Amendment 15 (changing “TAC” to “ACL”).

**Comment 14:** The Council’s submitted Framework 23 document specifies that once the NGOM Federal TAC is harvested, NGOM-permitted vessels may no longer fish in state or Federal waters portions of the NGOM. See pages 85 and 135 in the EA.

**Comment 15:** NMFS included this reference under its MSA 305(d) authority to help clarify where other related regulations can be found.

**Comment 16:** This is clarified to allow vessels to complete multiple IFQ transfers during the course of a fishing year, as long as the transfers are for a portion of the IFQ.

**Comment 17:** NMFS is using MSA 305(d) authority to update this paragraph with Amendment 15 terminology.

**Comment 18:** The Council’s submitted Framework 23 document specifies that once the NGOM Federal TAC is harvested, NGOM-permitted vessels may no longer fish in state or Federal waters portions of the NGOM.

**Comment 19:** Changes to the following three tables would implement the Council’s preferred yellowtail AM schedule alternative in Framework 23.

**Comment 20:** Changes here would implement Framework 23’s “yellowtail AM flexibility” alternative.

**Comment 21:** This paragraph would be removed under NMFS’s MSA 305(d) authority. The Amendment 15 regulations about what would happen if the 2010 yellowtail sub-component was exceeded are now outdated and no longer necessary.