

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 08/30/2011

Department of Commerce
National Oceanic and Atmospheric Administration
FOR CERTIFYING OFFICIAL: Simon Szykman
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 06/24/2011

ACTION REQUESTED: Extension without change of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 201106-0648-008
AGENCY ICR TRACKING NUMBER:
TITLE: Northeast Region Observer Providers Requirements
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0546

The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 08/31/2014

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	1,740	619	6,010
New	35,841	6,236	44,715
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	0	0	0
Change due to Agency Adjustment	34,101	5,617	38,705
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official:

Kevin F. Neyland
Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Observer deployment report			50 CFR 648.11
Observer availability report			50 CFR 648.11
Observer availability updates			50 CFR 648.11
Safety refusals			50 CFR 648.11
Raw observer data			50 CFR 648.11
Observer debriefings			50 CFR 648.11
Other (predominantly incident) reports			50 CFR 648.11
Biological samples			50 CFR 648.11
Renewal observer provider permit application			50 CFR 648.11
Applicant response to a denial			50 CFR 648.11
Request for observer training			50 CFR 648.11
Rebuttal of pending removal from list of approved observer providers			50 CFR 648.11
Request for an observer			50 CFR 648.11
Notification of unavailability of observers			50 CFR 648.11
Observer contact list updates			50 CFR 648.11
Service provider material submissions			50 CFR 648.11
Service provider contracts			50 CFR 648.11

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) (<i>if applicable</i>)	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	10. Abstract
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT
NORTHEAST REGION OBSERVER PROVIDERS REQUIREMENTS
OMB CONTROL NO. 0648-0546**

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

This request is for extension of a current information collection.

Fishery Management Plans for Federal Fisheries managed under the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fishery Service (NMFS) are developed under the authority of the [Magnuson-Stevens Fishery Conservation and Management Act](#) (MSA). Amendment 13 to the Atlantic Sea Scallop (Scallop) Fishery Management Plan (FMP), finalized in 0648-AV39 ([72 FR 32549, June 13, 2007](#)) implemented an industry-funded observer program which included reporting requirements for both observer service providers as well as the scallop fishing industry. Framework 19, finalized in 0648-AV90 ([73 FR 30790, May 29, 2008](#)) further revised the scallop observer program and implemented additional information collection requirements to allow for more effective administration of the program.

Observer coverage in the scallop fishery is necessary to monitor the bycatch of finfish including yellowtail flounder, skates, monkfish, cod, and other species. Monitoring of yellowtail flounder bycatch in the Scallop Access Areas within the year round closed areas under the Northeast (NE) Multispecies FMP is of particular concern because the scallop fishery is constrained by a fishery-specific total allowable catch (TAC) of yellowtail flounder. The yellowtail flounder TAC allocated to the scallop fishery is part of the stock-wide yellowtail flounder TACs set by the NE Multispecies FMP to achieve specified yellowtail flounder mortality targets. Observer coverage is also needed to monitor interactions of the scallop fishery with endangered and threatened sea turtles.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

The information collections which are a result of Amendment 13 and Framework 19 are reporting requirements used by the National Marine Fisheries Service (NMFS) and Northeast Fisheries Observer Program (NEFOP). NMFS retains control over all information and safeguards it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information would be subjected to quality control measures and pre-dissemination review pursuant to Section 515 of Public law 106-554.

There are 17 separate information collections that were implemented by Amendment 13 and Framework 19, the use of which is discussed here. All information collections are necessary for

the successful operation of the scallop observer program. NOTE: The information collections in the last two submissions were not broken out in as much detail as they are below. The description below does not add any information collections, just breaks them out in clearer detail.

1. *Observer deployment report:* The observer service provider deployment reports are used to inform NEFOP when, where, to whom, and to what scallop area an observer has been deployed within 24 hours of the observer's departure. The observer service provider also must ensure that the observer reports back to the NEFOP its Observer Contractor Trip Reporting (OBSCON) data, as described in the certified observer training, within 12 hours of landing.
2. *Observer Availability Report:* The observer service provider availability reports are used to inform NEFOP of any occurrence of their inability to respond to an industry request for observer coverage due to the lack of available observers on staff by 5:00 pm, Eastern Standard Time, on any day with an industry request for observer coverage.
3. *Safety Refusals:* The observer service provider safety refusal reports are used to inform NEFOP of any trip that has been refused due to safety issues, e.g., failure to hold a valid USCG Commercial Fishing Vessel Safety Examination Decal or meet the safety requirements of the observer's pre-trip vessel safety checklist, within 24 hours of the refusal.
4. *Raw observer data:* The submission of raw (unedited) data (via courier service eg. FedEx, DHL, etc.) collected by the observer to the NEFOP within 72 hours of trip landing is necessary for NEFOP to administer the observer program. This data is also used to monitor bycatch in the scallop fishery.
5. *Observer debriefing:* The observer service provider must ensure that the observer remains available to the NEFOP and/or NMFS Office for Law Enforcement for debriefing for two weeks following any observed trip. Observer debriefings ensure the data collected by the observer is as accurate as possible, and any potential issues are addressed. An observer that is at sea during the two-week period must contact the NEFOP upon his or her return if requested.
6. *Other reports:* Reports of possible observer harassment, discrimination, concerns about vessel safety or marine casualty, observer illness or injury, and any information, allegations, or reports regarding observer conflict of interest or breach of the standards of behavior must be submitted to the NEFOP in a timely manner.
7. *Biological samples:* The observer service provider must ensure that biological samples, including whole marine mammals, turtles and sea birds, are stored/handled properly and transported to the NEFOP within 7 days of landing.
8. *New permit application for observer provider:* Any third party provider that wishes to operate in the scallop observer program must submit a thorough application and gain approval from NMFS.

9. *Applicant response to a denial:* If an application for approval as an observer service provider is incomplete or does not meet the requirements of an approved observer service provider, the application will be provided with a written denial. Each applicant may present additional information to NMFS to rectify the deficiencies specified in the written denial within 30 days of the applicant's receipt of the denial notification.
10. *Request for observer training:* The observer service provider must submit a request for a certified training class at least 30 days prior to the beginning of the proposed training class to ensure that the NEFOP is provided with the necessary time and information to prepare for the training of candidate observers.
11. *Rebuttal of pending removal from list of approved observer providers:* An observer provider that fails to meet the requirements, conditions, and responsibilities of an approved observer service provider will be notified in writing that it is subject to removal from the list of approved observer service providers. An observer service provider that has received notification that it is subject to removal from the list of approved observer service providers may submit information to rebut the reasons for removal from the list within 30 days and must give written evidence that clearly disproves the reasons for removal.
12. *Request to observer service provider to procure an observer:* An owner of a scallop vessel required to carry an observer must arrange for carrying a NEFOP-certified observer from an approved observer service provider. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider by phone and must provide at least 72 hours for the provider to arrange for observer deployment for a specified trip.
13. *Notification of unavailability of observers:* An owner, operator, or vessel manager of a vessel who cannot procure a certified observer within 72 hours of the notification to the provider, due to the unavailability of an observer, may request a waiver from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel manager has contacted all of the available observer service providers to secure observer coverage. To request a waiver based on the unavailability of observers, an owner, operator, or vessel manager of the vessel must call the NEFOP. If the NEFOP confirms that no observers are available, it will issue a waiver within 24 hours.
14. *Observer contact list updates:* The updated observer contact list would facilitate the ability of NMFS/NEFOP to contact an observer when necessary. This list would be updated by the service provider as necessary.
15. *Observer availability updates:* The observer status report would facilitate the ability of NMFS/NEFOP to confirm observer availability, or the lack thereof, when a provider notifies NMFS/NEFOP of instances when no observers were available for deployment. This list would be updated by the service provider as necessary.
16. *Service provider material submissions:* NMFS/NEFOP may request service providers to provide copies of materials provided to the fishing industry. This would allow

NMFS/NEFOP to ensure such materials are accurate and in keeping with the objectives of the program. This information would likely be solicited when changes to such materials are made.

17. *Service provider contracts:* NMFS/NEFOP may request service providers to provide a copy of each type of signed and valid contract between the observer provider and those entities requiring observer services. This would allow NMFS/NEFOP to resolve contract disputes between the provider and industry, and to ensure provider contracts with their employees are in keeping with the objectives of the observer program. This information would likely be solicited when changes to such materials are made.

NMFS retains control over all information and safeguards it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information would be subjected to quality control measures and pre-dissemination review pursuant to [Section 515 of Public law 106-554](#).

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

The observer providers and vessels submit materials to NMFS/NEFOP via e-mail, fax or postal service. Instructions for providers and for vessels are available on the Northeast Region Web site: <http://www.nefsc.noaa.gov/femad/fsb/>.

4. Describe efforts to identify duplication.

The application processes and information submissions for the observer provider and vessels are unique to the scallop observer program, and direct duplication with other collections does not exist.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

This collection of information does not impose a significant impact on small entities.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

All information is required for the efficient operation of the scallop observer program and must be submitted in the time frames requested. Collecting this information less frequently would jeopardize the goals and objectives of the observer program and the effective management of the scallop fishery.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

Service providers would be required to submit observer contact and availability information as necessary, which may be more often than quarterly. This to ensure NMFS/NEFOP observer data is accurate and up to date.

NMFS/NEFOP may request service provider materials as necessary, which may be more frequent than quarterly. This is to ensure materials provided to industry and observers are accurate, up to date, and in keeping with observer program objectives and policies.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A Federal Register Notice published on February 18, 2011 (76 FR 9551) solicited public comments on this information collection. No comments were received.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payment or gift to respondents is provided under this program for observer service providers or vessel owners as a part of the scallop observer program.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

As stated in information collection instructions, the information collected is confidential under section 402(b) of the Magnuson-Stevens Act (16 U.S.C. 1801, et seq.).

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

This collection of information does not request any information that are of a sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

The time and cost burden of this information collection is presented in Table 1 below. There are currently 628 Limited Access and Limited Access General Category permitted Scallop vessels that are subject to this information collection. At the time of this renewal, there are 2 providers that support the scallop observer program. Conversations with NEFOP staff indicated that there is the potential for one more service provider to enter the scallop observer program within the

three years before this information collection is renewed. Therefore, the majority of the information collections here were analyzed for either 628 vessels or 3 scallop observer program providers. The two exceptions are the 'applicant response to a denial' as it is unlikely the 2 scallop providers already operating will be denied as future providers. However, if a new provider applies to be approved, there is the potential for it to be denied. Therefore, for information collections #9 and #11, analysis was completed assuming only one observer provider would be subject to this information collection in the three years before this information collection is renewed. The estimated total number of respondents, responses and hours for the entire scallop observer program are: **631 respondents (628 vessels and 3 observer providers), 35,841 responses and 6,236 hours**. The burden hours for each information collection are presented here as well as in Table 1:

1. *Observer deployment report*: Each provider is estimated to submit 250 observer deployment reports annually (once a day not including weekends) for a total of 750 reports annually (250 * 3 providers). Each report is estimated to take 10 minutes to fill out and email to NEFOP, for a total of 125 hours.
2. *Observer Availability Report*: Each provider is estimated to submit 150 observer availability reports annually (estimate from NEFOP) for a total of 450 reports annually (150 * 3 providers). Each report is estimated to take 10 minutes to fill out and email to NEFOP, for a total of 75 hours.
3. *Safety Refusals*: Each provider is estimated to submit a maximum of 25 safety refusal reports annually (estimate from NEFOP) for a total of 75 reports annually (25 * 3 providers). Each report is estimated to take 30 minutes to fill out and email to NEFOP, for a total of 37.5 (38) hours.
4. *Raw observer data*: Each provider is estimated to submit raw data to the NEFOP 250 times annually (once a day not including weekends) for a total of 750 total times annually (250 * 3 providers). Each report is estimated to take 5 minutes to fill out and send via express mail to NEFOP for a total of 62.5 hours
5. *Observer debriefing*: Each provider is estimated to have 70 debriefings with observers annually for a total of 210 observer briefings (70 * 3 providers). Each briefing is estimated to take 2 hours for a total of 420 hours.
6. *Other reports*: Each provider is estimated to submit 35 other reports (predominantly incident reports) annually for a total of 105 reports. Each report takes 30 minutes to fill out and email to NEFOP for a total of 52.5 hours.
7. *Biological samples*: Each provider is estimated to submit biological samples 250 times annually for a total of 750 times (250 * 3 providers). Each submission is estimated to take 5 minutes to mail to NEFOP for a total of 62.5 hours.
8. *New permit application for observer provider*: Each provider is estimated to submit new permit applications once annually for a total of 3 new permit applications. Each application is estimated to take 10 hours to complete for a total of 30 hours.

9. *Applicant response to a denial:* NEFOP staff estimated that one new provider application would be denied annually (maximum) and have the opportunity to respond. Each response would take 10 hours to put together and submit to NEFOP for a total of 10 hours.
10. *Request for observer training:* Each provider is estimated to request observer training twice annually for a total of six times (2 * 3 providers). Each request is estimated to take 30 minutes for a total of 3 hours.
11. *Rebuttal of pending removal from list of approved observer providers:* NEFOP staff estimated that no more than one new provider would be removed from the list of approved providers and have the opportunity to rebut their removal. Each rebuttal is estimated to take 8 to complete and mail to NEFOP for a total of 8 hours.
12. *Request to observer service provider to procure an observer:* Each vessel is estimated to request an observer 50 times annually for a total of 31,400 requests (50 * 628 vessels). Each request is estimated to take 10 minutes to call the NEFOP for a total of 5233 hours annually.
13. *Notification of unavailability of observers:* Each vessel is estimated to notify NEFOP of the unavailability of observers twice per year for a total of 1256 times annually (628 * 2). Each notification is estimated to take 5 minutes to call NEFOP, for a total of 105 hours.
14. *Observer contact list updates:* Each provider is estimated to update their observer contact list 12 times annually (once a month) for a total of 36 times (12 * 3 providers). Each update is estimated to take 5 minutes to email to NEFOP for a total of 3 hours.
15. *Observer availability updates:* Each provider is estimated to update their observer availability list 12 times annually (once a month) for a total of 36 times (12 * 3 providers). Each update is estimated to take 1 minute to email to NEFOP for a total of 36 minutes (1 hour).
16. *Service provider material submissions:* Each provider is estimated to submit new materials to NEFOP twice annually for a total of 6 times (2 * 3 providers). Each update is estimated to take 30 minutes to mail to NEFOP for a total of 3 hours.
17. *Service provider contracts:* Each provider is estimated to submit service provider contracts to NEFOP twice annually for a total of 6 times (2 * 3 providers). Each contract is estimated to take 30 minutes to mail to NEFOP for a total of 3 hours.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).

The total annual cost burden to the respondents from the scallop observer program is **\$44,715** (Table 1). These costs are exclusively mail or telephone costs associated with the information collections. Phone calls were estimated to cost \$0.10 per minute and stamps are currently \$0.44 each. Some information collections are required to be sent by express mail (ex. \$13.00 for an express mail envelope) such as raw observer data for timely monitoring of particular bycatch species. The burden cost for each information collection is presented here as well as in Table 1:

1. *Observer deployment report*: sent via e-mail = \$0
2. *Observer Availability Report*: sent via e-mail = \$0
3. *Safety Refusals*: sent via e-mail = \$0
4. *Raw observer data*: \$13.00 per raw data mailing (express mail) times 750 mailings = \$9,750
5. *Observer debriefing*: \$12.00 per debriefing times 210 debriefings = \$2,520
6. *Other reports*: sent via e-mail = \$0
7. *Biological samples*: \$0.50 per sample times 750 samples = \$375
8. *New permit application for observer provider*: \$0.44 per application times 3 applications = \$1.32
9. *Applicant response to a denial*: \$0.44 per denial times 1 application = \$0.44
10. *Request for observer training*: \$1.80 per request times 6 requests = \$10.80
11. *Rebuttal of pending removal from list of approved observer providers*: \$0.44 per rebuttal time 1 estimated rebuttal = \$0.44
12. *Request to observer service provider to procure an observer*: \$1.00 per request times 31,400 requests = \$31,400
13. *Notification of unavailability of observers*: \$0.50 per notification times 1256 notifications = \$628
14. *Observer contact list updates*: sent via e-mail = \$0
15. *Observer availability updates*: sent via e-mail = \$0

16. *Service provider material submissions*: \$2.50 per submission times 6 submissions = \$15.00

17. *Service provider contracts*: \$2.50 per contract times 6 contracts = \$15.00

14. Provide estimates of annualized cost to the Federal government.

The total annualized cost to the Federal government from the scallop observer program is **\$626,242**. This is the cost to the Federal government based on 1089.12 hours at a rate of \$35 per hour. The burden hours for each information collection are presented here as well as in Table 1:

1. *Observer deployment report*: 21 hours annually for a total of \$729
2. *Observer Availability Report*: 13 hours annually for a total of \$438
3. *Safety Refusals*: 19 hours annually for a total of \$656
4. *Raw observer data*: 31 hours annually for a total of \$1,094
5. *Observer debriefing*: 840 hours annually for a total of \$29,400
6. *Other reports*: 26 hours annually for a total of \$919
7. *Biological samples*: 31 hours annually for a total of \$1,094
8. *New permit application for observer provider*: 3 hours annually for a total of \$105
9. *Applicant response to a denial*: 0.02 hours annually for a total of \$1.00
10. *Request for observer training*: 0.05 hours annually for a total of \$2.00
11. *Rebuttal of pending removal from list of approved observer providers*: 0.05 hours annually for a total of \$2.00
12. *Request to observer service provider to procure an observer*: 52 hours annually for a total of \$1,308
13. *Notification of unavailability of observers*: 52 hours annually for a total of \$1,308
14. *Observer contact list updates*: 0.10 hours annually for a total of \$4.00
15. *Observer availability updates*: 0.05 hours annually for a total of \$2
16. *Service provider material submissions*: 0.25 hours annually for a total of \$9.00
17. *Service provider contracts*: 0.10 hours annually for a total of \$4.00

15. Explain the reasons for any program changes or adjustments.

The scallop observer program was established with the implementation of Amendment 13. At the time the program was implemented, the burden and costs were estimated based on how many observer providers were believed to apply, and how many vessels were operating in the scallop fishery at that time. Cost and time burden as a result of the information collection was estimated before the observer program was put into place. The most recent request regarding OMB Control No. 0648-0546 – a revision in conjunction with RIN 0648-AV90 - was coordinated with Framework 19 and introduced new information collections to aid in the effectiveness of the scallop observer program. However, the original burdens and costs were not reviewed at that time.

For this renewal, the burden and costs of the scallop observer program were thoroughly reviewed in coordination with NEFOP staff, as the program has been operational since the 2007 implementation of Amendment 13. Therefore, any changes to the costs and burdens from the previous renewal are due to better understanding the actual burdens and costs of the program, as it is operating currently, and as it is expected to operate in the three years until the next renewal. There are no new information collections introduced during this renewal.

Adjustments to the number of providers:

As the time of this renewal there are 2 providers that support the scallop observer program. Conversations with NEFOP staff indicated that there is the potential for one more service provider to enter the scallop observer program within the three years before this information collection is renewed. Therefore, the majority of the information collections here were analyzed for either 628 vessels or 3 scallop observer program providers. The two exceptions are the ‘applicant response to a denial’ as it is unlikely the 2 scallop providers already operating will be denied as future providers. However, if a new provider applies to be approved, there is the potential for it to be denied. Therefore, for information collections #9 and #11, analysis was completed assuming only one observer provider would be subject to this information collection in the three years before this information collection is renewed.

Adjustments to the number of vessels:

The previous renewals estimated 805 vessels subject to reporting requirements as a part of this information collection: 337 limited access scallop vessels and approximately 50 percent of general category scallop vessels (425 vessels). Since the last renewal, a limited access program for general category scallop vessels has been implemented and the number of total vessels for this information collection has decreased to 628 permitted limited access and limited access general category scallop vessels.

Updates to this information collection resulted in the following adjustments:

Adjustments in Burden and Cost from 2008 to 2011

	2008 Renewal	2011 Renewal	Change in Burden
Number of Respondents	805	631	-177
Number of Responses	1740	35,841	+ 34,101
Total annual hours	619	6,236	+ 5,617
Total annual costs	\$6,000	\$44,715	+ \$38,715

16. For collections whose results will be published, outline the plans for tabulation and publication.

NMFS has no plans to tabulate the results of this information collection.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

No forms are available in this collection. The information is collected through e-mail, reports without forms, and by phone. The instructions posted on the Web site have the OMB Control No. and expiration date on them.

18. Explain each exception to the certification statement.

No exceptions to the certification statement are requested.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

Table 1				Public						Government			
Information Collection	Number of Entities	Items per Entity	Total # of Items	Response Time (Minutes)	Total Time Burden (Hours)	Cost per Hour	Total Time Burden Cost	Total Actual Costs per Entity (phone call (\$0.10/min unless noted))	Total Actual Costs	Response Time (Minutes)	Total Time Burden (Hours)	Cost per Hour	Total Cost
Observer deployment report	3	250	750	10	125	\$25	\$3,125	e-mail	\$0.00	10	21	\$35	\$729
Observer availability report	3	150	450	10	75	\$25	\$1,875	e-mail	\$0.00	10	13	\$35	\$438
Safety refusals	3	25	75	30	38	\$25	\$938	e-mail	\$0.00	30	19	\$35	\$656
Raw observer data	3	250	750	5	63	\$25	\$1,563	\$13.00	\$9,750.00	30	31	\$35	\$1,094
Observer debriefing	3	70	210	120	420	\$25	\$10,500	\$12.00	\$2,520.00	120	840	\$35	\$29,400
Other reports	3	35	105	30	53	\$25	\$1,313	e-mail	\$0.00	30	26	\$35	\$919
Biological samples	3	250	750	5	63	\$25	\$1,563	\$0.50	\$375.00	30	31	\$35	\$1,094
Request to observer service provider to procure an observer	628	50	31,400	10	5233.3	\$15	\$78,500	\$1.00	\$31,400.00	5	52	\$25	\$1,308
Notification of unavailability of observers	628	2	1,256	5	104.7	\$15	\$1,570	\$0.50	\$628.00	5	52	\$25	\$1,308
New permit application for observer provider	3	1	3	600	30	\$25	\$750	\$0.44	\$1.32	60	3	\$35	\$105
Applicant response to denial	1	1	1	600	10	\$25	\$250	\$0.44	\$0.44	1	0.02	\$35	\$1
Request for observer training	3	2	6	30	3	\$25	\$75	\$1.80	\$10.80	1	0.05	\$35	\$2
Rebuttal of pending removal from list of approved observer providers	1	1	1	480	8	\$25	\$200	\$0.44	\$0.44	3	0.05	\$35	\$2
Observer Contact List Updates	3	12	36	5	3	\$0	\$0	e-mail	\$0.00	2	0.10	\$35	\$4
Observer Availability Updates	3	12	36	1	1	\$0	\$0	e-mail	\$0.00	1	0.05	\$35	\$2
Service Provider Material Submissions	3	2	6	30	3	\$0	\$0	\$2.50	\$15.00	5	0.25	\$35	\$9
Service Provider Contracts	3	2	6	30	3	\$0	\$0	\$2.50	\$15.00	2	0.10	\$35	\$4
Totals	1,297	1,115	35,841	2,001	6,236	NA	\$1,901,248	NA	\$44,715.00	345	1089.12	NA	\$626,242

Application information for parties interested in becoming observer service providers for the Northeast Region's sea scallop fishery.

As described in the Emergency Rule for observer coverage in the sea scallop fishery published in the Federal Register, the Northeast Fisheries Science Center will accept applications to become an Approved Observer Service Provider for the Sea Scallop Fishery. The fishery will directly fund the cost of the observer to an approved vendor through a set-aside program and/or from their own revenues. The Northeast Fisheries Observer Program (NEFOP) will direct selected vessels to a list of approved vendors, found on the NEFOP website, for them to procure the services of a NEFOP Certified Observer.

Applications should be mailed to:

Northeast Fisheries Observer Program
Sea Scallop Observer Service Provider Application
25 Bernard St. Jean Drive
East Falmouth, MA 02536
Attn: David Potter, Chief NEFOP

An application to become an approved observer service provider shall contain the following:

- (i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.
- (ii) The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence, and the current physical location, business mailing address, business telephone and fax numbers, and business e-mail address for each office.
- (iii) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, that they are free from a conflict of interest as described under paragraph (h)(6) of the Emergency Rule.
- (iv) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider.
- (v) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.
- (vi) A description of the applicant's ability to carry out the responsibilities and duties of a scallop fishery observer services provider, and the arrangements to be used.

(vii) Evidence of holding adequate insurance to cover injury, liability, and accidental death for observers during their period of employment (including training). Workers' Compensation and Maritime Employer's Liability (MEL) insurance must be provided to cover the observer, vessel owner, and observer provider. The minimum MEL coverage required is \$5 million. Observer service providers shall provide copies of the insurance policies to observers to display to the vessel owner, operator, or vessel manager, when requested.

(viii) Proof that its observers, either contracted or employed by the service provider, are compensated with salaries that meet or exceed the Department of Labor (DOL) guidelines for observers. Observers shall be compensated as a Fair Labor Standards Act (FLSA) non-exempt employee. Observer providers shall provide any other benefits and personnel services in accordance with the terms of each observer's contract or employment status.

(ix) Vendors must supply the NMFS the names of their fully equipped, NEFOP certified observers on staff (with resumes), or a list of their training candidates (with resumes) along with a request for NMFS to schedule a NEFOP Sea Scallop Observer Training class (minimum class size of eight).

(x) Vendors must submit an Emergency Action Plan (EAP) which will describe their response to an 'at sea' emergency with an observer. Including, but not limited to, personal injury, death, harassment or intimidation.

Application evaluation.

(i) The NMFS shall review and evaluate each application submitted. Issuance of approval as an observer provider shall be based on completeness of the application, and a determination of the applicant's ability to perform the duties and responsibilities of a sea scallop fishery observer service provider as demonstrated in the application information. A decision to approve or deny an application shall be made by NMFS within 15 days of receipt of the application by NMFS.

(ii) If NMFS approves the application, the observer service provider's name will be added to the list of approved observer service providers found on the NEFOP website and in any outreach information to the industry. Approved observer service providers shall be notified in writing and provided with any information pertinent to its participation in the sea scallop fishery observer program.

(iii) An application shall be denied if NMFS determines that the information provided in the application is not complete or the evaluation criteria are not met. The NMFS shall notify the applicant in writing of any deficiencies in the application or information submitted in support of the application. An applicant who receives a denial of his or her application may present additional information to rectify the deficiencies specified in the written denial, provided such information is submitted to NMFS within 30 days of the applicant's receipt of the denial notification from NMFS. In the absence of additional information, and after 30 days from an applicant's receipt of a denial, an observer provider is required to resubmit an application containing all of the information required under the application process to be re-considered for being added to the list of approved observer service providers.

(iv) Approved observer service providers performance will be reviewed by NMFS on a quarterly basis. A vendor's ability to place observers on vessels, their ability to follow all of the their requirements and the requirements of their observers will be reviewed. Failure to meet or

exceed the standard conditions will be grounds for removal from the approved vendor list pending their action to rectify the deficiencies. Vendors will be notified in writing of their deficiencies along with the letter of removal from the approved vendor list. A vendor will have thirty days to rectify the situation and notify NMFS in writing of their response. NMFS also holds the right to revoke approval status at any time upon determination of unacceptable performance or egregious misconduct by a vendor or their observer(s).

Once you are approved as an observer service provider, scallop fishing vessels that have been selected by the NMFS to carry an observer may contact you to provide an observer. You will have 72 hours in order to locate an available observer and get them to the vessel (you can do it sooner, if possible). Payment (amount) and method of payment are at the discretion of the vendor/fisher.

Observers must perform their duties in accordance with the training received by the NEFOP including all aspects of data collection, recording and reporting. As the data are edited observers will be debriefed as necessary and may be required to travel to Woods Hole for in-person debriefing. Problems with an individual's data may be grounds for probationary action or decertification following the policies of the NEFOP.

Details of your responsibilities and those of your employees are included in the Emergency Rule and will be reproduced as an attachment with this memo.

Proposed Sea Days

A schedule for the sea day coverage in these fisheries has not yet been developed; the schedule will be posted on the NEFOP website when completed. However estimates of the number of sea days requested for coverage are listed in the table below for your information.

Proposed Sea Scallop Observer Coverage for 2006

Fishery	Location	Type	Observer Coverage
Scallop Dredge	mid-Atlantic	Open Access	1600 Days
	Georges Bank	Open Access	425 Days
	Nantucket Lightship	Closed Area	60 trips*
	Closed Area II	Closed Area	90 Trips*
Scallop Trawl	anywhere	Open Access	200 Days

* 10% coverage for closed areas, trip length may vary.

Attachment A.

Copied from the Emergency Rule published in the Federal Register on June 16, 2006

(5) Responsibilities of observer service providers. (i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for deployment in the sea scallop fishery when contacted and contracted by the owner, operator, or vessel manager of a vessel fishing in the scallop fishery unless the observer service provider refuses to deploy an observer on a requesting vessel for any of the reasons specified at paragraph (viii) of this section.

(ii) An observer service provider must provide to each of its observers:

(A) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments, and to any debriefing locations, if necessary;

(B) Lodging, per diem, and any other services necessary for observers assigned to a scallop vessel or to attend a NMFS/NEFOP Sea Scallop Observer Training class;

(C) The required observer equipment, in accordance with equipment requirements listed on NMFS website specified in paragraph (g)(4) of this section under the Sea Scallop Program, prior to any deployment and/or prior to NMFS observer certification training; and

(D) Individually assigned communication equipment, in working order, such as a cell phone or pager, for all necessary communication. An observer service provider may alternatively compensate observers for the use of the observer-s personal cell phone or pager for communications made in support of, or necessary for, the observer-s duties.

(iii) Observer deployment logistics. Each approved observer service provider must assign an available certified observer to a vessel upon request. Each approved observer service provider must provide for access by industry 24 hours per day, 7 days per week, to enable an owner, operator, or manager of a vessel to secure observer coverage when requested. The telephone system must be monitored a minimum of four times daily to ensure rapid response to industry requests. Observer service providers approved under paragraph (h) of this section are required to report observer deployments to NMFS daily for the purpose of determining whether the predetermined coverage levels are being achieved in the scallop fishery.

(iv) Observer deployment limitations. Unless alternative arrangements are approved by NMFS, an observer provider must not deploy any observer on the same vessel for two or more consecutive deployments, and not more than twice in any given month. A certified observer-s first deployment shall be on a scallop closed area trip and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(v) Communications with observers. An observer service provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, stationed shoreside, in transit, or in port awaiting vessel assignment.

(vi) Observer training requirements. The following information must be submitted to NMFS to request a certified observer training class at least 30 days prior to the beginning of the proposed training class: Date of requested training; a list of observer candidates, with a minimum of eight individuals; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer

trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the beginning of a NMFS/NEFOP Sea Scallop Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS Draft National Minimum Eligibility Standards for observers as described in paragraph (i)(1) of this section.

(vii) Reports--(A) Observer deployment reports. The observer service provider must report to NMFS when, where, to whom, and to what fishery (open or closed area) an observer has been deployed, within 24 hours of their departure. The observer service provider must ensure that the observer reports back to NMFS its Observer Contract (OBSCON) data, as described in the certified observer training, within 12 hours of landing. OBSCON data are to be submitted electronically or by other means as specified by NMFS. The observer service provider shall provide the raw (unedited) data collected by the observer to NMFS within 72 hours of the trip landing.

(B) Safety refusals. The observer service provider must report to NMFS any trip that has been refused due to safety issues, e.g., failure to hold a valid USCG Commercial Fishing Vessel Safety Examination Decal or to meet the safety requirements of the observer-s pre-trip vessel safety checklist, within 24 hours of the refusal.

(C) Biological samples. The observer service provider must ensure that biological samples, including whole marine mammals, turtles and sea birds, are stored/handled properly and transported to NMFS within 7 days of landing.

(D) Observer debriefing. The observer service provider must ensure that the observer remains available to NMFS, including NMFS Office for Law Enforcement, for debriefing for at least two weeks following any observed trip. An observer that is at sea during the 2-week period must contact NMFS upon his or her return, if requested by NMFS.

(E) Observer availability Report. The observer service provider must report to NMFS any occurrence of their inability to respond to an industry request for observer coverage due to the lack of available observers on staff by 5:00 pm (Eastern Standard Time) of any day on which the provider is unable to respond to an industry request for observer coverage.

(F) Other reports. The observer provider must report possible observer harassment, discrimination, concerns about vessel safety or marine casualty, observer illness or injury, and any information, allegations, or reports regarding observer conflict of interest or breach of the standards of behavior and submitted to NMFS within 24 hours of the event or within 24 hours of learning of the event.

(viii) Refusal to deploy an observer. (A) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider does not have an available observer within 72 hours of receiving a request for an observer from a vessel.

(B) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described at *600.746.

(C) The observer service provider may refuse to deploy an observer on a scallop vessel that is otherwise eligible to carry an observer for any other reason, including failure to pay for previous observer deployments, provided the observer service provider has received prior written confirmation from NMFS authorizing such refusal.

(6) Limitations on conflict of interest. An observer service provider:

(i) Must not have a direct or indirect interest in a fishery managed under Federal

regulations, including, but not limited to, a fishing vessel, fish dealer, fishery advocacy group, and/or fishery research;

(ii) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed; and

(iii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(7) Removal of observer service provider from the list of approved observer service providers. An observer provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (h)(6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved observer service providers. Such notification shall specify the reasons for the pending removal. An observer service provider that has received notification that it is subject to removal from the list of approved observer service providers may submit information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the observer service provider that the observer service provider is subject to removal and must be accompanied by written evidence that clearly disproves the reasons for removal. NMFS shall review information rebutting the pending removal and shall notify the observer service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by NMFS, the observer service provider shall be automatically removed from the list of approved observer service providers. The decision to remove the observer service provider from the list, either after reviewing a rebuttal, or if no rebuttal is submitted, shall be the final decision of NMFS and the Department of Commerce. Removal from the list of approved observer service providers does not necessarily prevent such observer service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Certified observers under contract with an observer service provider that has been removed from the list of approved service providers must complete their assigned duties for any scallop trips on which the observers are deployed at the time the observer service provider is removed from the list of approved observer service providers. An observer service provider removed from the list of approved observer service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if an observer service provider may remain on the list of approved observer service providers:

(i) Failure to meet the requirements, conditions, and responsibilities of observer service providers specified in paragraphs (h)(5) and (h)(6) of this section;

(ii) Evidence of conflict of interest as defined under paragraph (h)(3) of this section;

(iii) Evidence of criminal convictions related to:

(A) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; or

(B) The commission of any other crimes of dishonesty, as defined by state law or Federal law that would seriously and directly affect the fitness of an applicant in providing observer services under this section;

(iv) Unsatisfactory performance ratings on any Federal contracts held by the applicant; and

(v) Evidence of any history of decertification as either an observer or observer provider.

(i) Observer certification. (1) To be certified, employees or sub-contractors operating as observers for observer service providers approved under paragraph (h) of this section must meet NMFS National Minimum Eligibility Standards for observers. NMFS National Minimum Eligibility Standards are available at the NEFOP website.

(2) Observer training. In order to be deployed on any scallop vessel, a candidate observer must have passed a NMFS/NEFOP Sea Scallop Fisheries Observer Training course. If a candidate fails training, the candidate shall be notified in writing on or before the last day of training. The notification will indicate the reasons the candidate failed the training. Observer training shall include an observer training trip, paid for as part of the observer's training, aboard a scallop vessel with a trainer. A certified observer's first deployment shall be on a scallop closed area trip and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(3) Observer requirements. All observers must:

(i) Have a valid NMFS/NEFOP fisheries observer certification pursuant to paragraph (i)(1) of this section;

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board scallop vessels, pursuant to standards established by NMFS. Such standards are available from NMFS website specified in paragraph (g)(4) of this section and shall be provided to each approved observer service provider; and

(iii) Have successfully completed all NMFS-required training and briefings for observers before deployment, pursuant to paragraph (i)(2) of this section.

(4) Probation and decertification. NMFS has the authority to review observer certifications and issue observer certification probation and/or decertification as described in NMFS policy found on the website at: <http://www.nefsc.noaa.gov/femad/fsb/>.

(5) Issuance of decertification. Upon determination that decertification is warranted under paragraph (i)(3) of this section, NMFS shall issue a written decision to decertify the observer to the observer and approved observer service providers via certified mail at the observer's most current address provided to NMFS. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken. Decertification is effective immediately as of the date of issuance, unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions. Decertification is the final decision of NMFS and the Department of Commerce and may not be appealed.

Industry-Funded Scallop Observer Program Call-In Guide

For Limited Access (Open Area and Access Area trips) and General Category (Access Area trips)

Northeast Fisheries Observer Program, Feb 5, 2009

STEP I - TRIP NOTIFICATION 72-HOURS PRIOR TO TRIP

No More than 10 days prior to sail date

Call the automated NE Fisheries Scallop Observer Program Number at **(508) 495-2100**, press **1** to report a trip, and follow the telephone message prompts:

Gear type – 1=scallop dredge, 2=scallop trawl

Limited Access/General Category – 1=limited access, 2=general category

Area Fishing – 1=NLSA, 2=CAII, 3=HCA, 4=MA Open, 5=GB Open, 6=ET, 7=CAI, 8=DELMARVA

Phone number – enter your 10 digit phone number (DO NOT use '1' before the area code)

Permit number – enter your 6 digit permit number

Name - speak clearly, first and last name, then press # key

Port sailing from - speak clearly, port name including city and state, then press # key

Date of sailing - speak clearly, month, day, and year, then press # key; for General Category, use the date for Sunday starting that week.

You will receive a **trip confirmation number** for each call (trip calls for limited access trips, and weekly calls for general category trips). For the weekly general category calls, call by Thursday if you expect to make any trips in an access area from Sunday through Saturday of the next week. An email transmission from the National Marine Fisheries Service (NMFS) will be sent to your email address(s) within 24 hours and will either issue a 'waiver' or notify you that an observer must be hired for the trip. If you are issued a waiver, you may begin your trip(s). If you receive an observer notice, please follow the instructions in Step II. Once you make the initial call, NMFS/NEFOP may take up to 24 hours to inform you if you have been selected for observer coverage or not. **If selected, you MUST provide 48 hours notice to the observer provider.** The observer provider may take up to 18 hours to get back to you on observer availability. **If you do not receive VMS notification within 24 hours, contact the NMFS Vessel Call-in Coordinator.**

STEP II - OBSERVER PROVIDER 48-HOURS PRIOR TO TRIP

If you receive an email from NMFS that you must hire an observer for the trip, week (Gen Category) please call the provider(s) below. For the most current list of approved observer service providers, go to the 'Sea Scallop Observer Program Information' webpage at <http://www.nefsc.noaa.gov/femad/fsb/> or call the NE Fisheries Scallop Observer Program Number listed above, and press 2. These are the current providers:

A.I.S. Inc. (508) 990-9057, and East West Technical Services Inc. (860) 223-5165.

If there are no observers available from any of the providers, request a waiver by calling the:

NMFS Vessel Call-in Coordinator at (508) 495-2188 or (508) 560-3550 (cell).

IF THE TRIP IS DELAYED OR CANCELED

If the trip is delayed more than 48 hours beyond the intended sail date, please call the NMFS vessel Call-in Coordinator to explain. If you had an observer assigned and you canceled the trip, you must take an observer on your next trip to the same area, unless no observers are available.

TO CHANGE INTENDED FISHING AREA

If you change the area you plan to fish, please call the NE Fisheries Scallop Observer Program Number for a new confirmation number.

FOR TRIPS THAT LAYOVER IN PORT

If you must interrupt an open area trip and return to port, for example due to weather, **do not offload your catch**, and go back out within 48 hours, you may use the same confirmation number and maintain the same observer status. If any catch is offloaded or the layover time is greater than 48 hours, call the NE Fisheries Scallop Observer Program Number for a new confirmation number.

This summary is not a substitute for the actual regulations. The full text of the regulations is available at <http://www.nero.noaa.gov> or call the Northeast Regional Office at (978) 281-9315.

such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR part 9905, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(iv) Agree to an equitable adjustment as provided in the Changes clause of this contract, if the contract cost is materially affected by an OMB Circular A-21 accounting principle amendment which, on becoming effective after the date of contract award, requires the Contractor to make a change to the Contractor's established cost accounting practices.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied

with an applicable CAS or a CAS rule or regulation in 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201-4 shall be inserted; and

(2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201-1.

(End of clause)

[FR Doc. E7-11325 Filed 6-12-07; 8:45 am]

BILLING CODE 3110-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070322065-7114-02; I.D. 030607C]

RIN 0648-AV39

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 13

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

ACTION: Final rule.

SUMMARY: This final rule implements Amendment 13 to the Atlantic Sea Scallop Fishery Management Plan (Scallop FMP). Amendment 13 was developed by the New England Fishery Management Council (Council) to permanently re-activate the industry-funded observer program in the Scallop FMP through a scallop total allowable

catch (TAC) and days-at-sea (DAS) set-aside program that helps vessel owners defray the cost of carrying observers. The following observer program management measures are implemented by this rule: Requirements for becoming an approved observer service provider; observer certification and decertification criteria; and notification requirements for vessel owners and/or operators. This action also requires scallop vessel owners, operators, or vessel managers to procure certified fishery observers for specified scallop fishing trips from an approved observer service provider. Additionally, this action allows adjustments to the observer program to be done through framework action.

DATES: Effective June 12, 2007.

ADDRESSES: Copies of Amendment 13, the public hearing document, and the Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>. Amendment 13 is categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of the preamble of this final rule. Copies of the FRFA and the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298, and are also available via the internet at <http://www.nero.nmfs.gov>.

Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this final rule should be submitted to the Regional Administrator at the address above and by e-mail to David_Rostker@omb.eop.gov, or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, phone 978-281-9272, fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

The Council adopted Amendment 13 to the Scallop FMP on February 7, 2007, and submitted it to NMFS on February 16, 2007, for review and approval. The Council developed Amendment 13 to permanently re-activate the industry-funded scallop observer program implemented by NMFS via emergency

rule in 2006. Observer coverage in the scallop fishery is necessary to monitor the bycatch of finfish, including yellowtail flounder, skates, monkfish, cod, and other species. Monitoring of yellowtail flounder bycatch in the Scallop Access Areas within the year-round closed areas under the Northeast (NE) Multispecies FMP is of particular concern because the scallop fishery is constrained by a fishery-specific TAC of yellowtail flounder, an overfished species, which is part of the stock-wide yellowtail flounder TACs set by the NE Multispecies FMP to achieve specified mortality targets for the species. Observer coverage is also needed to monitor interactions of the scallop fishery with endangered and threatened sea turtles. A proposed rule for Amendment 13 was published on April 6, 2007 (72 FR 17076). The public comment period for the proposed rule ended on May 7, 2007. The notice of availability for the amendment published on March 19, 2007, and its required 60-day comment period closed on May 18, 2007. This rule implements management measures associated with the scallop observer program, which are described in detail below.

Approved Management Measures

In the proposed rule, NMFS requested comments on all proposed management measures. The approved management measures are discussed below; no measures in Amendment 13 were disapproved. Details concerning the development of these measures were presented in the preamble of the proposed rule and are not repeated here.

Observer Service Provider Requirements

Amendment 13 allows any entity to become an observer service provider if it meets the approval and responsibilities criteria. Potential observer service providers are required to submit an application containing detailed information such as contact information, description of past experience with placing individuals in remote field and/or marine environments, evidence of adequate insurance to cover injury, liability and accidental death for observers during employment, and proof of compensation for observers while employed that meet or exceed Department of Labor guidelines. Entities interested in being included on the list of NMFS-approved observer service providers are required to submit an application with the information described in the regulatory text of this action. Upon receipt of an application, NMFS will provide all potential observer service providers with an estimated number of observer

sea days for the fishing year. Additionally, a planned schedule of observer deployments will be posted on this NOAA Web site: <http://www.nefsc.noaa.gov/femad/fsb/>. NMFS will notify candidate observer service providers of their approval or disapproval within 15 days of its receipt of their applications. If approved, the observer service provider's name will be added to the list of NMFS-approved observer service providers.

Observer service providers will be required to comply with all observer support, deployment logistics and limitations, communication, training, reporting, and conflict of interest requirements in the regulatory text of this action. Observer service providers will also be responsible for setting the daily cost of observer coverage on a vessel. NMFS will continue to be responsible for determining the reduced DAS accrual rate and TAC for the set-aside program to defray the cost of observer coverage through biennial specifications. This NMFS-approval process will maintain quality control of the data collected, but will not have potential conflicts with augmentation of appropriations law and policy.

Amendment 13 implements a few minor changes from the observer service provider requirements implemented by NMFS in 2006 via emergency rule. The cost of training/certifying scallop observers is borne by NMFS. To facilitate cost-effective training/certification, Amendment 13 requires a minimum class size of eight observers, which may be split among multiple observer service providers, to be enrolled in the scallop observer training class operated by the Northeast Fisheries Observer Program (NEFOP). Training classes with fewer than eight participants will be delayed until at least eight participants are enrolled. Amendment 13 also requires that an approved observer service provider maintain in its employ at least eight observers that had been certified through the scallop observer training class operated by NEFOP. The emergency rule required that an observer's first deployment shall be on a Scallop Access Area trip and that the resulting data be edited and approved by NMFS prior to any further deployments. Specifying details of new observer's first deployment was designed to provide the necessary oversight to ensure the collection of timely and accurate data. However, NEFOP has learned that requiring an observer's first deployment and the resulting data be edited and approved by NMFS, prior to any further deployments, is sufficient for quality

control, and that requiring an observer's first deployment be on a Scallop Access Area trip may limit the availability of observers to provide coverage on scallop trips to open areas. Therefore, the requirement that an observer's first deployment and the resulting data be edited and approved by NMFS, prior to any further deployments, is implemented in this action, but the requirement that an observer's first deployment shall be on a Scallop Access Area trip is not.

Observer Certification Requirements

Amendment 13 requires that employees of observer service providers must meet the NMFS National Minimum Eligibility Standards available at <http://www.st.nmfs.gov/st4/nop/> and must pass the NEFOP training course and be physically and mentally capable of carrying out the responsibilities of an observer. NMFS has the authority to review observer certification and issue observer certification probation and/or decertification if warranted. One minor addition to the observer certification requirements implemented by emergency rule is that Amendment 13 requires that all observers hold a current Red Cross (or equivalent) cardiopulmonary resuscitation/first aid certificate.

Removal/Decertification Requirements

Amendment 13 specifies criteria and protocols for removal of an observer service provider from the list of NMFS-approved observer service providers and the probation and decertification of an observer.

Vessel Requirements

Amendment 13 specifies general requirements for scallop vessels, notification procedures, and requirements of the vessel if it is selected to carry an observer. Vessels are responsible for paying the cost of an observer, regardless of whether the vessel lands or sells scallops on that trip, and regardless of the availability of set-aside TAC or reduced DAS accrual rate.

The emergency rule required that vessels contact NMFS prior to the 25th day of the month preceding the month in which it intends to fish. This requirement was designed by NMFS to provide NEFOP with an estimate of fishing effort to expect in the following month, so that observer coverage needs could be met. However, NEFOP has found that it does not need this provision to meet coverage needs; therefore, that notification requirement is not implemented in Amendment 13.

Future Adjustments to the Observer Program

Lastly, Amendment 13 provides for a framework mechanism to implement future adjustments to the scallop observer program. Under the Scallop FMP, and in accordance with the Administrative Procedure Act, the framework process allows for rulemaking to amend observer requirements without the need to also amend the FMP. Currently, adjustments to the observer program must be made through an amendment to the Scallop FMP. Providing for a framework mechanism in the Scallop FMP to make adjustments to measures implemented for the observer program will allow the Council more flexibility to develop improvements to the observer program.

Comments and Responses

NMFS received two comment letters on Amendment 13.

Comment 1: The first comment expressed concern about the lack of Federal support for observer coverage of the scallop fishery. The commenter stated that the Scallop FMP requirement that industry pay for observer coverage was intended to provide observer coverage for trips into Scallop Access Areas, but not observer coverage on trips into open areas. The commenter acknowledged that the Scallop FMP's set-aside program generally does have a positive economic effect. However, the commenter cautioned that using the set-aside to pay for observer coverage may become burdensome for the industry if the abundance or price of scallops declines, especially for observer coverage in open areas. Instead, the commenter proposed that NMFS use Federal funds to pay for observer coverage in open area trips, to the extent that such funding is available.

Response: The Scallop FMP requirement for industry to pay for observer coverage and the level of set-aside available to help defray the cost of observer coverage are not addressed in Amendment 13. However, they were established after being considered in prior scallop actions, particularly Amendment 10, the action that established the current set-aside program in July 2004. Amendment 13 only establishes the mechanism to allow the set-aside to be used; it does not adjust the set-aside program. If this action is implemented, future adjustments to the set-aside program, including adjustments evaluating the commenter's concerns, could be implemented by framework action.

Comment 2: The second comment cautioned that a conflict of interest can

result from industry-funded observer programs, leading to inaccurate and biased data. The commenter proposed camera surveillance as a better means to collect data.

Response: NMFS concurs with the commenter that conflict of interest is an important issue to consider when developing an industry-funded observer program. Therefore, to minimize the likelihood that an observer would develop ties to a vessel owner/operator and/or feel pressured by a vessel owner/operator to misreport, Amendment 13 prohibits observer service providers from consecutively deploying the same observer on the same vessel and from deploying an observer on the same vessel more than twice a month. The Council did not consider electronic monitoring for the scallop fishery in Amendment 13, but as technology develops, electronic monitoring may be considered in a future action.

Changes From the Proposed Rule

In § 648.14, paragraph (h)(17) is revised to include the correct cross-reference.

In § 648.14, paragraph (i)(15) is added to clarify the prohibition to be consistent with paragraph (h)(17).

Classification

The Administrator, Northeast Region, NMFS, determined that FMP Amendment 13 is necessary for the conservation and management of the Atlantic sea scallop fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws.

NMFS approved Amendment 13 on May XX, 2007. A copy of the Amendment is available from the Council and NMFS (see **ADDRESSES**).

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

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for Amendment 13. Because Amendment 13 maintains a mechanism for an industry-funded observer program that has been in place since last year, delaying the effective date of Amendment 13 would be more disruptive and would cause more economic and resource conservation concerns than waiving the delay in effective date.

Amendment 13 permanently implements, with minor modifications, the industry-funded scallop observer program implemented by NMFS through an emergency rule in 2006. Observer coverage in the scallop fishery is necessary to monitor groundfish

bycatch, particularly yellowtail flounder bycatch in the Scallop Access Areas. It is also needed to monitor interactions between the scallop fishery and sea turtles, especially in the Mid-Atlantic during June through October. The emergency rule that implemented the industry-funded scallop observer program in 2006 expires on June 11, 2007, and the Scallop Access Areas open on June 15, 2007.

To prepare for the opening of the Scallop Access Areas, NMFS recently completed a three-week training course for 20 observers for the industry-funded scallop program. The cost of this training was approximately \$112,640 (approximately \$5,632 per observer) and included lodging, meals, travel, salary, leasing training vessels, safety training, and security clearances. If there is a delay in effective date of Amendment 13 and these observers are not able to work, they will likely move on to other jobs and additional observers would need to be found and trained. Because trained observers are valuable and difficult to replace, it would take a minimum of three months to locate and train additional observers. Additionally, there would be a loss of income, potentially severe, for observer service providers who employ industry-funded observers for the scallop fishery, if there is a delay in effective date in Amendment 13 resulting in a lapse of an industry-funded observer program.

NMFS's current and anticipated funding only provides for minimal observer coverage in the scallop fishery. Delaying the implementation of Amendment 13, and its provision for an industry-funded observer coverage in the scallop fishery, would likely result in less than sufficient observer coverage levels for monitoring the yellowtail flounder bycatch in Scallop Access Areas when they open on June 15, 2007. Scallop Access Areas have restrictive yellowtail flounder bycatch TACs that require close monitoring to achieve specified mortality targets. Observer data are used to calculate yellowtail flounder catch rates in these areas and catch rates are extrapolated to unobserved trips. Observer coverage is essential in order to project TAC attainment and close the Scallop Access Areas. Closing Scallop Access Areas after the yellowtail flounder bycatch TACs for Scallop Access Areas are exceeded could result in exceeding mortality targets for an overfished stock, thereby slowing rebuilding of an overfished stock, and potentially conflicting with requirements of National Standard 1 of the Magnuson-Stevens Act to rebuild overfished stocks within a specified time period.

Additionally, observer coverage to monitor interactions between the scallop fishery and sea turtles is particularly important during June through October. Sea turtles are known to occur in areas where the scallop fishery operates during this period and sea turtle takes in scallop trawl and dredge gear have been observed during these months. Delaying the implementation of Amendment 13 would also likely result in less than sufficient observer coverage to document interactions between the scallop fishery and sea turtles in June, and perhaps July. Even though compliance with the Endangered Species Act (ESA) does not require observer coverage in the Mid-Atlantic scallop fishery because of mandatory gear modifications, observer coverage of the scallop fishery continues to provide important information to advance knowledge of how, where, and to what extent ESA-listed sea turtles interact with dredge and trawl gear used in the scallop fishery.

Lastly, the management effects of having minimal observer coverage in the scallop fishery during June, and possibly July could result in negative economic impacts on the scallop industry for the 2007 fishing year. Scallop harvest from Scallop Access Areas is a substantial source of income for the scallop fleet. Should these areas close earlier than necessary because of less reliable data on yellowtail flounder bycatch, the fleet would experience reduced fishing opportunities and reduced harvest.

For these reasons, there is good cause to waive the 30-day delay in effectiveness for Amendment 13. The need for this waiver is due to the timing of the amendment's submission by the Council to NMFS. Amendment 13 was adopted by the Council on February 7, 2007, and was submitted to NMFS for review and approval on February 16, 2007. The notice of availability for the amendment published on March 19, 2007, and its required 60-day comment period closed on May 18, 2007. The proposed rule for Amendment 13 published on April 6, 2007, and its 30-day comment period closed on May 7, 2007.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the IRFA, a summary of the significant issues raised by public comment in response to the IRFA, NMFS responses to those comments, and the corresponding economic analyses prepared for Amendment 13. The contents of these incorporated documents are not repeated in detail here. A copy of Amendment 13 and the

IRFA are available upon request (see **ADDRESSES**).

Statement of Need for This Action

The objective of this action is to reactivate the industry-funded observer program for the scallop fishery. Observer coverage is necessary in the scallop fishery to monitor bycatch of finfish and interactions with endangered and threatened species. The need for this action is to provide a mechanism to approve observer service providers so that the set-aside program can be utilized to help defray costs of carrying the necessary level of observers in the scallop fishery. A complete description of the reasons why this action is being implemented, and the objectives of and legal basis for this action, is contained in the preamble to the proposed rule (72 FR 17076, April 6, 2007) and is not repeated here.

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

As discussed in the preamble, an industry representative commented that the Scallop FMP requirement for industry to pay for observer coverage was intended to provide observer coverage for trips into Scallop Access Areas, but not observer coverage on trips into open areas. The commenter acknowledged that the Scallop FMP's set-aside program generally does have a positive economic effect. However, the commenter cautioned that using the set-aside to pay for observer coverage may become burdensome for the industry if the abundance or price of scallops declines, especially for observer coverage in open areas. The Scallop FMP requirement for industry to pay for observer coverage and the level of set-aside available to help defray the cost of observer coverage are not addressed in Amendment 13. However, they were considered in prior scallop actions, particularly Amendment 10, the action that established the current set-aside program in July 2004. Amendment 13 only implements administrative tools to allow the set-aside to be used; it does not adjust the set-aside program. If this action is implemented, future adjustments to the set-aside program, including adjustments evaluating the commenter's concerns, could be implemented by framework action. No changes to the proposed rule were made as a result of this comment.

Description of Small Entities to Which This Action Will Apply

The vessels in the scallop fishery could all be considered small business entities because all of them grossed less than \$4 million, according to the dealer data, for 2004 to 2006. This action will affect vessels with limited access and general category scallop permits. According to the recent permit data, there were 318 vessels that obtained full-time limited access permits in 2006, including 55 small-dredge and 14 scallop trawl permits. In the same year, there were also 32 part-time and 1 occasional limited access permit in the scallop fishery. In addition, 2,501 permits were issued to vessels in the open access general category and over 500 of these vessels landed scallops during the last 2 years. These numbers could change as the fishing year progresses. There are no large entities participating in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate economic impacts on small entities.

Description of Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This final rule maintains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), previously approved under control number 0648-0546 in conjunction with the emergency action.

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

Approved Action

Previous scallop regulatory actions established provisions that impose some cost on vessels that participate in the scallop fishery by requiring vessels to carry and pay for observers on some trips. Compliance costs associated with the observer coverage can be minimized through the set-aside (*i.e.*, TAC and DAS, depending on fishing area) that will provide compensation to vessel owners that have paid for observers.

This action re-activates the mechanism that allows vessels to offset the costs of observer coverage and harvesting additional scallops from the set-aside. The net impacts of the observer program on vessels that participate in the scallop fishery will depend on scallop prices, trip costs, observer costs, and the TAC or reduced DAS accrual rate provided by NMFS. The analyses presented in Amendment 13 showed that, in some circumstances, observer coverage could reduce crew and vessel income by extending the trip and increasing the trip costs, especially for vessels with a lower catch rate per DAS. But in most cases, overall costs due to the observer coverage will be minimized, and may even yield positive economic benefits, due to the compensation that would be provided by NMFS.

The average total revenue for a general category vessel was \$139,755 for the first 11 months of the 2006 fishing year, \$249,167 for fishing year 2005, and \$260,942 for fishing year 2004. Assuming that the cost of an observer would be \$800 per day-at-sea (or \$33.30 per hour, slightly higher than the \$775 paid by vessels during the 2006 fishing year), average observer costs per general category vessel were estimated to be about \$1,440 per trip in 2006. A cost of \$1,400 per vessel for the year, assuming that each vessel carries an observer on only one trip, would amount to about 1 percent of total revenue. Similarly, the average total revenue of a limited access vessel was \$803,873 for the first 11 months of the 2006 fishing year, \$1,072,991 for fishing year 2005, and \$988,401 for fishing year 2004. Average observer costs per limited access vessel were \$6,560 per trip in 2006. Again, assuming that each vessel carries an observer on only one trip, observer cost would amount to less than 1 percent of the total revenue. (These are the amounts paid to the observer provider and do not include compensation through TAC or DAS set-asides.) Because of the set-aside, compliance costs to scallop vessels are expected to be considerably less than these amounts, under most circumstances. However, as described previously, if there is no set-aside, or no remaining set-aside, to help pay for the observer coverage, the vessels would be responsible for paying the observer, regardless of whether the vessel lands or sells scallops on that trip. This has been the process since the set-aside program was implemented in 1999, but NMFS usually distributes the set-aside such that the majority, if not all trips with an observer aboard, are at least partially compensated.

Economic impacts on scallop vessels, under several scenarios for both limited access and general category vessels, were analyzed in the IRFA for Amendment 13. Scenarios are based on set variables (*i.e.*, trip costs, cost of observer, and the compensation (either TAC or DAS) provided by NMFS for carrying an observer) and fluctuating variables (*i.e.*, landings per unit effort, price of scallops). While TAC compensation is provided by NMFS, vessels must incur additional costs to harvest the compensation TAC. Economic impacts on vessels in the scallop fleet are analyzed in the IRFA by considering set variables, fluctuating variables, and whether or not a vessel carries an observer for a trip. Although the IRFA in Amendment 13 analyzes several scenarios, the results are summarized as follows:

For limited access vessels, fluctuating variables in the assumptions include: Landings per unit effort (LPUE) ranging from 1,800 lb (816.5 kg) per DAS to 800 lb (362.9 kg) per DAS and scallop price ranging from \$7.60 per lb to \$6.00 per lb. Given the highest LPUE and highest price, a vessel's income could be expected to increase by about \$9,280 with an observer onboard (from \$61,560 without an observer, to \$70,840 with an observer). A vessel's crew income could be expected to increase by about \$10,722 with an observer (from \$63,540 without an observer, to \$72,282 with an observer). The increase in income when carrying an observer is due to the compensation for carrying an observer, either additional pounds (400 lb (181.4 kg) per day) or DAS (0.15 reduced accrual rate in open areas). With an LPUE of 800 lb (362.9 kg) per DAS and a price of \$7.60 per lb, a vessel's income could be expected to decline by about \$32 with an observer onboard (from \$24,624 without an observer to \$24,592 with an observer). A vessel's crew income could be expected to decline by about \$1,619 with an observer (from \$19,566 without an observer, to \$17,947 with an observer). These decreases in income result from extended trip lengths to catch the additional pounds to pay for an observer.

General category vessels are subject to the industry-funded observer provisions only when fishing in Scallop Access Areas and are compensated with additional pounds per trip. With a compensation of 400 lb (181.4 kg) per day, a vessel would cover observer costs of \$1,600 by fishing 2 days and landing 1,200 lb (544.3 kg) of scallops (400 lb (181.4 kg) for the trip and 800 lb (362.9 kg) as compensation). At a price of \$6.00 per lb, the vessel would generate \$7,200 revenue from scallops, and would

increase total crew income by \$1,410 and vessel income by \$1,440. At a scallop price of \$7.60 per lb, vessels and crews could be expected to increase revenues even at a lower compensation rate. By fishing more days, a vessel could experience even more gains in revenue. For example, by fishing 3.5 days and receiving 1,600 lb (725.7 kg) in compensation, total scallop revenue could increase to \$15,200 at a price of \$7.60 per lb, increasing both crew and vessel income by over \$4,000. These positive impacts on vessels are due to the fact that general category vessels are not allowed to land more than 400 lb (181.4 kg) on regular trips and, even at a price of \$6.00 per lb, a compensation amount of 400 lb (181.4 kg) could bring \$2,400 in revenue, exceeding the cost of the observer and trip costs. However, if compensation pounds were set too low, or if prices decline below \$6.00 per lb, the economic gains from compensation for carrying an observer could decline.

Observer coverage would improve information that could be used to reduce the amount of finfish bycatch and the level of sea turtle takes in the scallop fishery. This could eliminate the need for more conservative management measures in the future that may potentially have adverse impacts on the scallop industry. For these reasons and the reasons described above, the benefits of the observer program are expected to exceed costs of this program and have positive economic impacts on vessels participating in the scallop fishery.

The mechanism to allow adjustment of the observer program through framework action could be used to reduce the differential impacts of this program on some vessels, such as by implementing different TAC amounts and DAS accrual rates for smaller vessels. The adjustments through framework could also provide more flexibility to the program in determining the amount of set-aside or the way the observer costs are shared among the vessels in the scallop fleet.

Participation by potential observer service providers is voluntary and, since no Federal action is requiring participation, further assessment of the potential impacts on these entities is not required. No significant quantifiable impacts on scallop prices and change in benefits to the consumers are expected from this action, since the observer program is not expected to impact scallop landings in a significant way.

Non-Selected Alternatives

This action permanently re-activates the industry-funded observer program in the Scallop FMP through a set-aside

program that helps vessel owners defray the cost of carrying observers. The alternatives to this action do not provide for an industry-funded observer program. Under the no action alternative, the emergency rule would expire and no regulations would be implemented allowing for funding in addition to that provided by NMFS under its existing observer program. However, as discussed previously, NMFS's current and anticipated funding would only provide for minimal observer coverage in the scallop fishery. Therefore, under the no action alternative, observer coverage levels would likely be less than sufficient for monitoring the yellowtail flounder bycatch TAC in Scallop Access Areas and interactions between the scallop fishery and sea turtles in the Mid-Atlantic during June through October. Due to implications of having minimal observer coverage (e.g., earlier closures based on less reliable bycatch estimates), no action would likely result in negative economic impacts (e.g., reduced fishing opportunity, reduced harvest) for the scallop industry in both the short and long-term. Without an industry-funded observer program, adequate observer coverage for the scallop fishery could only occur if provided wholly by NMFS. However, because of resource constraints, it is not realistically possible for NMFS to wholly fund an adequate level of observer coverage for the scallop fishery.

The set-aside program is already an established provision in the scallop regulations and the measures in this final rule only establish a mechanism to enable the set-asides to be utilized by the industry as compensation for having paid for observer coverage. Measures to modify and improve the set-aside program are outside the scope of Amendment 13. During the Council's public hearing on Amendment 13 and public comment on the proposed rule, the scallop industry expressed concern that the proposed action would not provide a complete solution to the economic impacts associated with having to pay for observers under the existing set-aside program. The scallop industry also acknowledged that there were no other alternatives, besides the proposed and no action alternatives, that could be considered in Amendment 13. Based on this public input, this action also establishes a mechanism to allow future modifications to the observer program to be implemented by framework action. Providing for a framework mechanism in the Scallop FMP to make adjustments to the

observer program would allow more flexibility to address industry's concerns with the program. Because of the administrative nature of this action, there were no other reasonable alternatives.

Small Entity Compliance Guide

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

This final rule maintains collection-of-information requirements subject to the PRA, previously approved under control number 0648-0546 in conjunction with the emergency action. These requirements apply to entities interested in becoming NMFS-approved observer service providers and to those observer service providers approved by NMFS and providing observer services to the scallop fishery. Public reporting burden for these collections of information are estimated to average as follows:

1. Application for approval of observer service provider—10 hr per response;
2. Applicant response to denial of application for approval of observer service provider—10 hr per response;
3. Observer service provider request for observer training—30 min per response;
4. Observer deployment report—10 min per response;
5. Observer availability report—10 min per response;
6. Safety refusal report—30 min per response;
7. Submission of raw observer data—5 min per response;
8. Observer debriefing—2 hr per response;
9. Biological samples—5 min per response;
10. Rebuttal of pending removal from list of approved observer service providers—8 hr per response;

11. Vessel request to observer service provider for procurement of a certified observer—25 min per response; and

12. Vessel request for waiver of observer coverage requirement—5 min per response.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: June 8, 2007.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.10, paragraph (b)(4) is revised to read as follows:

§ 648.10 DAS and VMS notification requirements.

* * * * *

(b) * * *

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

* * * * *

■ 3. In § 648.11, paragraph (a) is revised, and paragraphs (g), (h), and (i) are added to read as follows:

§ 648.11 At-sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry an NMFS-certified fisheries observer. A vessel holding a permit for Atlantic sea scallops is subject to the additional requirements specified in paragraph (g) of this section.

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

(2) [Reserved]

* * * * *

(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 (b) 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 general category 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. All sea scallop vessels issued a VMS general category or Non-VMS general scallop permit that are participating in the Area Access Program specified in § 648.60 are required to comply with the additional VMS notification requirements specified in paragraph (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.

(2) *Vessel notification procedures*. For the purpose of determining if an observer will be deployed on a vessel for a specific trip, the owner, operator, or manager of a vessel issued a limited access permit fishing in open areas or in the Sea Scallop Access Area program specified in § 648.60, or the owner, operator, or manager of a vessel issued a general category scallop permit and fishing in the Sea Scallop Access Area program specified in § 648.60, is required to comply with the following notification requirement. For each scallop trip, the vessel owner, operator, and/or manager shall notify NMFS by telephone, using the phone number provided by the Regional Administrator in the Small Entity Compliance Guide, and provide the following information: Vessel name and permit number; contact name and number; date and time of departure; port of departure; area to be fished (either open areas or the specific Sea Scallop Access Area); and whether fishing as a scallop dredge, scallop trawl, or general category vessel.

(3) *Selection of scallop fishing trips for observer coverage*. Based on predetermined coverage levels for various sectors of the scallop fishery that are provided by NMFS in writing to all observer service providers approved pursuant to paragraph (h) of this section, NMFS shall notify the vessel owner, operator, or vessel manager whether the vessel must carry an observer, or if a waiver has been granted, for the specified trip within 24 hr of the vessel owner's, operator's, or vessel manager's notification of the prospective trip, as specified in paragraph (g)(2) of this section. Any request to carry an observer may be waived by NMFS. All waivers for observer coverage shall be issued to the vessel by VMS so as to have on-board verification of the waiver.

(4) *Procurement of observer services by scallop vessels*. (i) An owner of a scallop vessel required to carry an observer under paragraph (g)(3) of this section must arrange for carrying an observer certified through the observer training class operated by the Northeast Fisheries Observer Program (hereinafter NMFS/NEFOP certified) from an observer service provider approved by

NMFS under paragraph (h) of this section. A list of approved observer service providers shall be posted on the NOAA/NEFOP Web site at <http://www.nefsc.noaa.gov/femad/fjsb/>. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 72-hr notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip.

(ii) An owner, operator, or vessel manager of a vessel that cannot procure a certified observer within 72 hr of the advance notification to the provider due to the unavailability of an observer, may request a waiver from NMFS from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel manager has contacted all of the available observer service providers to secure observer coverage and no observer is available. NMFS shall issue such a waiver within 24 hr, if the conditions of this paragraph (g)(4)(ii) are met.

(5) Owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop fishing trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit or reduced DAS accrual rate. The owners, operators, and/or managers of vessels that carry an observer may be compensated with a reduced DAS accrual rate for open area trips or additional scallop catch per day in access areas in order to help defray the cost of the observer, under the program specified in §§ 648.53 and 648.60. Observer service providers are responsible for setting the daily rate for observer coverage on a vessel. NMFS shall determine any reduced DAS accrual rate and the amount of additional pounds of scallops per day fished in an access area for the applicable fishing year based on the economic conditions of the scallop fishery, as determined by best available information. Vessel owners and observer service providers shall be notified by Small Entity Compliance Guide of any DAS accrual rate and additional pounds of scallops determined by the Regional Administrator. The Regional Administrator may adjust the DAS accrual rate and additional pounds of scallops, if necessary, based on economic conditions of the scallop fishery. Vessel owners and observer providers shall be notified of any such adjustments through a letter.

(6) When the available DAS or TAC set-aside for observer coverage is exhausted, vessels shall still be required to carry an observer as specified in this section, and shall be responsible for paying for the cost of the observer, but shall not be authorized to harvest additional pounds or fish at a reduced DAS accrual rate.

(h) *Observer service provider approval and responsibilities*—(1) *General*. An entity seeking to provide observer services to the Atlantic sea scallop fishery must apply for and obtain approval from NMFS following submission of a complete application to The Observer Program Branch Chief, 25 Bernard St Jean Drive, East Falmouth, MA 02536. A list of approved observer service providers shall be distributed to scallop vessel owners and shall be posted on NMFS's Web page, as specified in paragraph (g)(4) of this section.

(2) [Reserved]

(3) *Contents of application*. An application to become an approved observer service provider shall contain the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence, and the current physical location, business mailing address, business telephone and fax numbers, and business e-mail address for each office.

(iii) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, that they are free from a conflict of interest as described under paragraph (h)(6) of this section.

(iv) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider.

(v) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This

includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(vi) A description of the applicant's ability to carry out the responsibilities and duties of a scallop fishery observer services provider as set out under paragraph (h)(5) of this section, and the arrangements to be used.

(vii) Evidence of holding adequate insurance to cover injury, liability, and accidental death for observers during their period of employment (including during training). Workers' Compensation and Maritime Employer's Liability insurance must be provided to cover the observer, vessel owner, and observer provider. The minimum coverage required is \$5 million. Observer service providers shall provide copies of the insurance policies to observers to display to the vessel owner, operator, or vessel manager, when requested.

(viii) Proof that its observers, either contracted or employed by the service provider, are compensated with salaries that meet or exceed the Department of Labor (DOL) guidelines for observers. Observers shall be compensated as Fair Labor Standards Act (FLSA) non-exempt employees. Observer providers shall provide any other benefits and personnel services in accordance with the terms of each observer's contract or employment status.

(ix) The names of its fully equipped, NMFS/NEFOP certified observers (with resumes) on staff or a list of its training candidates (with resumes) and a request for a NMFS/NEFOP Sea Scallop Observer Training class. The NEFOP training has a minimum class size of eight individuals; which may be split among multiple vendors requesting training. Requests for training classes with fewer than eight individuals will not be processed until further requests make up the full training class size.

(x) An Emergency Action Plan (EAP) describing its response to an "at sea" emergency with an observer, including, but not limited to, personal injury, death, harassment, or intimidation.

(4) *Application evaluation*. (i) NMFS shall review and evaluate each application submitted under paragraphs (h)(2) and (h)(3) of this section. Issuance of approval as an observer provider shall be based on completeness of the application, and a determination by NMFS of the applicant's ability to perform the duties and responsibilities of a sea scallop fishery observer service provider as demonstrated in the application information. A decision to approve or deny an application shall be made by NMFS within 15 days of receipt of the application by NMFS.

(ii) If NMFS approves the application, the observer service provider's name will be added to the list of approved observer service providers found on NMFS's Web site specified in paragraph (g)(4) of this section and in any outreach information to the industry. Approved observer service providers shall be notified in writing and provided with any information pertinent to their participation in the sea scallop fishery observer program.

(iii) An application shall be denied if NMFS determines that the information provided in the application is not complete or NMFS concludes that the applicant does not have the ability to perform the duties and responsibilities of a sea scallop fishery observer service provider. NMFS shall notify the applicant in writing of any deficiencies in the application or information submitted in support of the application. An applicant who receives a denial of his or her application may present additional information, in writing, to rectify the deficiencies specified in the written denial, provided such information is submitted to NMFS within 30 days of the applicant's receipt of the denial notification from NMFS. In the absence of additional information, and after 30 days from an applicant's receipt of a denial, an observer provider is required to resubmit an application containing all of the information required under the application process specified in paragraph (h)(3) of this section to be re-considered for being added to the list as an approved observer service provider.

(5) *Responsibilities of observer service providers*. (i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for deployment in the sea scallop fishery when contacted and contracted by the owner, operator, or vessel manager of a vessel fishing in the scallop fishery, unless the observer service provider does not have an available observer within 72 hr of receiving a request for an observer from a vessel owner, operator, and/or manager, or refuses to deploy an observer on a requesting vessel for any of the reasons specified at paragraph (h)(5)(viii) of this section. An approved observer service provider must maintain in its employ a minimum of eight NMFS/NEFOP certified observers in order to remain approved. Should a service provider's employed NMFS/NEFOP certified observers drop below eight, the provider must supply the appropriate number of candidates to the next available training class. Failure to do so shall be cause for suspension

of the provider's approved status, until rectified.

(ii) An observer service provider must provide to each of its observers:

(A) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments, and to any debriefing locations, if necessary;

(B) Lodging, per diem, and any other services necessary for observers assigned to a scallop vessel or to attend a NMFS/NEFOP Sea Scallop Observer Training class;

(C) The required observer equipment, in accordance with equipment requirements listed on NMFS's Web site specified in paragraph (g)(4) of this section under the Sea Scallop Program, prior to any deployment and/or prior to NMFS observer certification training; and

(D) Individually assigned communication equipment, in working order, such as a cell phone or pager, for all necessary communication. An observer service provider may alternatively compensate observers for the use of the observer's personal cell phone or pager for communications made in support of, or necessary for, the observer's duties.

(iii) *Observer deployment logistics.* Each approved observer service provider must assign an available certified observer to a vessel upon request. Each approved observer service provider must provide for access by industry 24 hr per day, 7 days per week, to enable an owner, operator, or manager of a vessel to secure observer coverage when requested. The telephone system must be monitored a minimum of four times daily to ensure rapid response to industry requests. Observer service providers approved under paragraph (h) of this section are required to report observer deployments to NMFS daily for the purpose of determining whether the predetermined coverage levels are being achieved in the scallop fishery.

(iv) *Observer deployment limitations.* Unless alternative arrangements are approved by NMFS, an observer provider must not deploy any observer on the same vessel for two or more consecutive deployments, and not more than twice in any given month. A certified observer's first deployment and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(v) *Communications with observers.* An observer service provider must have an employee responsible for observer activities on call 24 hr a day to handle

emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, stationed shoreside, in transit, or in port awaiting vessel assignment.

(vi) *Observer training requirements.* The following information must be submitted to NMFS to request a certified observer training class at least 30 days prior to the beginning of the proposed training class: Date of requested training; a list of observer candidates, with a minimum of eight individuals; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the beginning of a NMFS/NEFOP Sea Scallop Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS National Minimum Eligibility Standards for observers as described in paragraph (i)(1) of this section.

(vii) *Reports—(A) Observer deployment reports.* The observer service provider must report to NMFS/NEFOP when, where, to whom, and to what fishery (open or closed area) an observer has been deployed, within 24 hr of the observer's departure. The observer service provider must ensure that the observer reports back to NMFS its Observer Contract (OBSCON) data, as described in the certified observer training, within 12 hr of landing. OBSCON data are to be submitted electronically or by other means as specified by NMFS. The observer service provider shall provide the raw (unedited) data collected by the observer to NMFS within 72 hr of the trip landing.

(B) *Safety refusals.* The observer service provider must report to NMFS any trip for which the deployment of an observer has been refused due to safety issues, e.g., failure to hold a valid USCG Commercial Fishing Vessel Safety Examination Decal, or failure to meet the safety requirements of the observer's pre-trip vessel safety checklist, within 24 hr of the refusal.

(C) *Biological samples.* The observer service provider must ensure that biological samples, including whole marine mammals, sea turtles, and sea birds, are stored/handled properly and transported to NMFS within 7 days of landing.

(D) *Observer debriefing.* The observer service provider must ensure that the observer remains available to NMFS, either in-person or via phone, at NMFS's discretion, including NMFS

Office for Law Enforcement, for debriefing for at least 2 weeks following any observed trip. An observer that is at sea during the 2-week period must contact NMFS upon his or her return, if requested to do so by NMFS.

(E) *Observer availability report.* The observer service provider must report to NMFS any occurrence of inability to respond to an industry request for observer coverage due to the lack of available observers on staff by 5:00 p.m., Eastern Standard Time, of any day on which the provider is unable to respond to an industry request for observer coverage.

(F) *Other reports.* The observer provider must report possible observer harassment, discrimination, concerns about vessel safety or marine casualty, or observer illness or injury; and any information, allegations, or reports regarding observer conflict of interest or breach of the standards of behavior, to NMFS/NEFOP within 24 hr of the event or within 24 hr of learning of the event.

(viii) *Refusal to deploy an observer.—*(A) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider does not have an available observer within 72 hr of receiving a request for an observer from a vessel.

(B) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described at § 600.746.

(C) The observer service provider may refuse to deploy an observer on a scallop vessel that is otherwise eligible to carry an observer for any other reason, including failure to pay for previous observer deployments, provided the observer service provider has received prior written confirmation from NMFS authorizing such refusal.

(6) *Limitations on conflict of interest.* An observer service provider:

(i) Must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, a fishing vessel, fish dealer, fishery advocacy group, and/or fishery research;

(ii) Must assign observers without regard to any preference by representatives of vessels, other than when an observer will be deployed; and

(iii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing related activities that are regulated by NMFS, or who has interests that may be

substantially affected by the performance or nonperformance of the official duties of observer providers.

(7) *Removal of observer service provider from the list of approved observer service providers.* An observer provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (h)(6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved observer service providers. Such notification shall specify the reasons for the pending removal. An observer service provider that has received notification that it is subject to removal from the list of approved observer service providers may submit written information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the observer service provider that the observer service provider is subject to removal and must be accompanied by written evidence rebutting the basis for removal. NMFS shall review information rebutting the pending removal and shall notify the observer service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by NMFS within 30 days of the notification of removal, the observer service provider shall be automatically removed from the list of approved observer service providers. The decision to remove the observer service provider from the list, either after reviewing a rebuttal, or automatically if no timely rebuttal is submitted, shall be the final decision of the Department of Commerce. Removal from the list of approved observer service providers may not prevent such observer service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Certified observers under contract with an observer service provider that has been removed from the list of approved service providers must complete their assigned duties for any scallop trips on which the observers are deployed at the time the observer service provider is removed from the list of approved observer service providers. An observer service provider removed from the list of approved observer service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if an observer

service provider may remain on the list of approved observer service providers:

- (i) Failure to meet the requirements, conditions, and responsibilities of observer service providers specified in paragraphs (h)(5) and (h)(6) of this section;
 - (ii) Evidence of conflict of interest as defined under paragraph (h)(6) of this section;
 - (iii) Evidence of criminal convictions related to:
 - (A) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; or
 - (B) The commission of any other crimes of dishonesty, as defined by state law or Federal law, that would seriously and directly affect the fitness of an applicant in providing observer services under this section;
 - (iv) Unsatisfactory performance ratings on any Federal contracts held by the applicant; and
 - (v) Evidence of any history of decertification as either an observer or observer provider.
- (i) *Observer certification.* (1) To be certified, employees or sub-contractors operating as observers for observer service providers approved under paragraph (h) of this section must meet NMFS National Minimum Eligibility Standards for observers. NMFS National Minimum Eligibility Standards are available at the National Observer Program Web site: <http://www.st.nmfs.gov/st4/nop/>.
- (2) *Observer training.* In order to be deployed on any scallop vessel, a candidate observer must have passed a NMFS/NEFOP Sea Scallop Fisheries Observer Training course. If a candidate fails training, the candidate shall be notified in writing on or before the last day of training. The notification will indicate the reasons the candidate failed the training. A candidate that fails training shall not be able to enroll in a subsequent class. Observer training shall include an observer training trip, as part of the observer's training, aboard a scallop vessel with a trainer. A certified observer's first deployment and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(3) *Observer requirements.* All observers must:

- (i) Have a valid NMFS/NEFOP fisheries observer certification pursuant to paragraph (i)(1) of this section;
- (ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board scallop vessels, pursuant to standards established by NMFS. Such standards

are available from NMFS Web site specified in paragraph (g)(4) of this section and shall be provided to each approved observer service provider;

- (iii) Have successfully completed all NMFS-required training and briefings for observers before deployment, pursuant to paragraph (i)(2) of this section; and
 - (iv) Hold a current Red Cross (or equivalent) cardiopulmonary resuscitation/first aid certification.
- (4) *Probation and decertification.* NMFS has the authority to review observer certifications and issue observer certification probation and/or decertification as described in NMFS policy found on the Web site at: <http://www.nefsc.noaa.gov/femad/fsb/>.
- (5) *Issuance of decertification.* Upon determination that decertification is warranted under paragraphs (i)(1) through (3) of this section, NMFS shall issue a written decision to the observer containing the decertification and to the approved observer service provider via certified mail at their most current address provided to NMFS. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken. Decertification is effective immediately as of the date of issuance, unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions. Decertification is the final decision of the Department of Commerce.

■ 4. In § 648.14, paragraph (h)(17) is revised and (i)(15) is added to read as follows:

§ 648.14 Prohibitions.

- * * * * *
- (h) * * *
 - (17) Fail to comply with the notification requirements specified in § 648.11(g)(2) or refuse or fail to carry an observer after being requested to carry an observer by the Regional Administrator or Regional Administrator's designee.
- * * * * *
- (i) * * *
 - (15) Fail to comply with the notification requirements specified in § 648.11(g)(2) or refuse or fail to carry an observer after being requested to carry an observer by the Regional Administrator or Regional Administrator's designee.
- * * * * *

■ 5. In § 648.51, paragraphs (c)(4) and (e)(3)(iii) are added to read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(c) * * *

(4) A certified at-sea observer is on board, as required by § 648.11(g).

* * * * *

(e) * * *

(3) * * *

(iii) A certified at-sea observer is on board, as required by § 648.11(g).

* * * * *

■ 6. In § 648.55, paragraph (e)(31) is revised, and paragraph (e)(32) is added to read as follows:

* * * * *

§ 648.55 Framework adjustments to management measures.

(e) * * *

(31) Modifications to provisions associated with observer set-asides; observer coverage; observer deployment; observer service provider; and/or the observer certification regulations.

(32) Any other management measures currently included in the FMP.

* * * * *

■ 7. In § 648.60, paragraph (a)(2) is revised to read as follows:

§ 648.60 Sea scallop area access program requirements.

(a) * * *

(2) Vessels participating in the Sea Scallop Access Area Program must comply with the trip declaration requirements specified in § 648.10(b)(4) and vessel notification requirements specified in § 648.11(g) for observer deployment.

* * * * *

[FR Doc. 07-2928 Filed 6-8-07; 2:52 pm]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033-7033-01]

RIN 0648-XA75

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area

(BSAI). This action is necessary to prevent exceeding the third seasonal allowance of the 2007 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 10, 2007, through 1200 hrs, A.l.t., July 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The third seasonal allowance of the 2007 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI is 49 metric tons as established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the third seasonal allowance of the 2007 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI has been reached. Consequently, NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for yellowfin sole by vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for

public comment because the most recent, relevant data only became available as of June 7, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: June 7, 2007.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 07-2927 Filed 6-8-07; 2:52 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070209029-7118-02; I.D. 112906A]

RIN 0648-AU58

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Observer Program

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to amend regulations implementing the North Pacific Groundfish Observer Program (Observer Program). This action is necessary to avoid expiration of these regulations on December 31, 2007, and ensure uninterrupted observer coverage in North Pacific groundfish fisheries. This action is intended to promote the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs).

DATES: Effective on July 13, 2007.

ADDRESSES: Copies of the final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian, and on the NMFS Alaska

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

[Docket No. 070817467-8554-02]

RIN 0648-AV90

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 19

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

ACTION: Final rule.

SUMMARY: NMFS is implementing measures included in Framework Adjustment 19 (Framework 19) to the Atlantic Sea Scallop Fishery Management Plan (FMP), which was developed by the New England Fishery Management Council (Council). Framework 19 was developed to achieve the following management measures for the scallop fishery: Limited access scallop fishery specifications for 2008 and 2009 (open area days-at-sea (DAS) and Sea Scallop Access Area (access area) trip allocations); Elephant Trunk Access Area (ETAA) and Delmarva Access Area (Delmarva) in-season trip adjustment procedures; new Hudson Canyon Access Area (HCAA) measures; DAS allocation adjustment measures if an access area yellowtail flounder (yellowtail) total allowable catch (TAC) is caught; adjustments to the scallop overfishing definition; a prohibition on deckloading of scallops on access area trips; adjustments to the industry-funded observer program; a 30-day vessel monitoring system (VMS) power down provision; general category access area specifications for 2008 and 2009; and general category measures dependent on the implementation of Amendment 11 to the FMP, including a quarterly TAC, 2008 and 2009 general category quota allocations, and individual fishing quota (IFQ) permit cost recovery program requirements. NMFS has disapproved the Council's recommendation to eliminate the September 1 through October 31 ETAA seasonal closure, which was implemented under Framework 18 to the FMP to reduce sea turtle interactions with the scallop fishery. NMFS determined that the Council's recommendation would not be consistent with National Standards 2 and 9 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective June 1, 2008, except § 648.4(a)(2)(ii)(D)(2), (a)(2)(ii)(E), (a)(2)(ii)(H), and (a)(2)(ii)(I)(3), § 648.14(i)(1)(xx) and (i)(2)(xvii), and § 648.59(a)(3)(ii), (b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii) as amended in instruction 9, which are effective July 1, 2008, and § 648.11(h)(vii)(G) through (J), which contain collection-of-information requirements that have not been approved by the Office of Management and Budget (OMB). NMFS will publish a notice in the **Federal Register** announcing the effective date.

ADDRESSES: An environmental assessment (EA) was prepared for Framework 19 that describes the action and other alternatives considered, and provides a thorough analysis of the impacts of the measures and alternatives. Copies of Framework 19, the EA, and the Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Newburyport, MA 01950.

Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this final rule should be submitted to the Regional Administrator at the address above and by e-mail to David_Rostker@omb.eop.gov, or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Ryan Silva, Cooperative Research Program Specialist, 978-281-9326; fax 978-281-9135.

SUPPLEMENTARY INFORMATION:**Background**

The Council adopted Framework 19 on October 25, 2007, and submitted it to NMFS on November 8, 2007, for review and approval. Framework 19 was developed and adopted by the Council in order to meet the FMP's requirement to adjust biennially the management measures for the scallop fishery. The FMP requires biennial adjustments to ensure that the measures continue to meet the fishing mortality rate (F) and other goals of the FMP and achieve optimum yield (OY) from the scallop resource on a continuing basis. The Council reviewed the Framework 19 proposed rule regulations as drafted by NMFS, which included regulations proposed by NMFS under the authority of section 305(d) of the Magnuson-Stevens Act, and on February 27, 2008, deemed them to be necessary and consistent with section 303(c) of the Magnuson-Stevens Act. Framework 19 published in the **Federal Register** on

March 19, 2008, with a 20-day public comment period that ended April 8, 2008. Three comments were received on the proposed measures.

Disapproved Measure

The September through October seasonal closure of the ETAA was implemented under Framework 18 to the FMP (Framework 18), consistent with National Standard 9, which called for management measures to minimize and reduce the mortality of bycatch to the extent practicable, to reduce potential interactions between threatened and endangered sea turtles and the scallop fishery in the Mid-Atlantic. Framework 18 concluded that a closure to scallop fishing may have positive benefits to turtles in the ETAA if fishing effort is not displaced to areas with higher densities of turtles than inside the ETAA. Additionally, Framework 18 concluded that the elevated water and air temperatures that occur during September and October in the ETAA may result in higher than average small scallop and finfish discard mortality. Therefore, Framework 18 concluded that the 2-month closure could also reduce scallop and finfish discard mortality. The information relied on in Framework 19 to eliminate the seasonal closure, as recommended by the Council, does not represent the best scientific information. The scientific information relied on for Framework 18 is still considered the best scientific information available and, therefore, the Council's recommendation to eliminate the closure is therefore inconsistent with National Standard 2. Maintaining the closed season remains consistent with the MSA, including National Std. 9, which requires that management measures minimize bycatch and bycatch mortality to the extent practicable.

Approved Measures

In the proposed rule, NMFS requested comments on all proposed management measures. The approved management measures are discussed below. Details concerning the Council's development of these measures were presented in the preamble of the proposed rule and are not repeated here.

Open Area DAS Allocations

To achieve optimum yield at the target F of 0.20 for the scallop resource, limited access open area DAS allocations are required to be adjusted every 2 years. Because the calculation of overall F also includes the mortality in controlled access areas, the calculation of the open area DAS allocations depends on the access area measures,

including the rotation schedule, management measures, and access area trip allocations. Framework 19 implements the following vessel-specific DAS allocations: Full-time limited access vessels will be allocated 35 DAS in 2008 and 42 DAS in 2009; part-time vessels will be allocated 14 DAS in 2008 and 17 DAS in 2009; and occasional limited access vessels will be allocated 3 DAS in 2008 and 3 DAS in 2009. If implementation of the general category IFQ program is delayed beyond March 1, 2009, the 2009 DAS allocations would be reduced to the following: Full-time—37 DAS; part-time—15 DAS, occasional—3 DAS. Amendment 11 to the FMP specifies that the general category fleet will be allocated 10 percent of the scallop quota during the transition period to the IFQ program. The Council did not specify in Framework 19 what the general category quota would be in the event the IFQ program is not implemented in 2009. Therefore, NMFS has determined that the potential DAS reduction is consistent with Amendment 11 and will extend the 10 percent allocation into 2009 in the event the IFQ program is not implemented by March 1, 2009.

Because Framework 19 was not implemented by the start of the fishing year on March 1, 2008, and interim regulations in effect at the start of the 2008 fishing year are inconsistent with Framework 19 specifications, it is possible that a scallop vessel may have exceeded its DAS allocation during the interim period between March 1, 2008, and June 1, 2008. Therefore, any limited access open area DAS used in 2008 by a vessel that is above the final 2008 allocation for that vessel will be deducted from the vessel's 2009 DAS allocation.

Limited Access Trip Allocations and Possession Limits for Scallop Access Areas

In the 2008 fishing year, full-time limited access scallop vessels will be

allocated one trip in the Nantucket Lightship Access Area (NLCA), and four trips in the ETAA. A part-time limited access scallop vessel will be allocated two trips, which could be taken as follows: One trip in the ETAA and one trip in the NLCA; or two trips in the ETAA. An occasional limited access vessel will be allocated one trip, which could be taken in either the NLCA or the ETAA. The 2008 limited access scallop possession limit for access area trips will be 18,000 lb (8,165 kg) for full-time and part-time vessels, and 7,500 lb (3,402 kg) for occasional vessels.

In the 2009 fishing year, full-time limited access scallop vessels will be allocated one trip in the Closed Area II Access Area (CAII), up to three trips in the ETAA, and up to one trip in Delmarva (unless ETAA and/or Delmarva trips are reduced due to updated exploitable scallop biomass estimates). A part-time limited access scallop vessel will be allocated two trips, and could distribute these trips between the following access areas as follows: Up to two trips in the ETAA; up to one trip in CAII; and up to one trip in Delmarva (unless ETAA and/or Delmarva trips are reduced due to updated exploitable scallop biomass estimates). An occasional limited access vessel will be allocated one trip, which could be taken in CAII, the ETAA, or Delmarva (unless ETAA and/or Delmarva trips are reduced due to updated exploitable scallop biomass estimates). The 2009 limited access scallop possession limit for access area trips will be 18,000 lb (8,165 kg) for full-time and part-time vessels, and 7,500 lb (3,402 kg) for occasional vessels. However, if ETAA or Delmarva trips are reduced, part-time possession limits may be reduced as described below.

Although the Framework 19 document submitted to NMFS did not specify 2009 Delmarva trip options for part-time and occasional vessels, NMFS has interpreted this as an oversight, and

has included Delmarva trip options for part-time and occasional limited access vessels in 2009. ETAA and Delmarva trip allocations and possession limits in 2009 are subject to change per the ETAA and Delmarva trip reduction procedures described below.

Regulatory Procedure To Reduce 2009 ETAA and/or Delmarva Allocations

ETAA and Delmarva specifications are based on 2007 scallop resource survey information, which was the best scientific information available when the Council established the ETAA and Delmarva allocations for Framework 19. If 2008 ETAA and/or Delmarva survey data indicate that there is less estimated exploitable biomass of scallops in the ETAA and/or Delmarva for the 2009 fishing year, the Regional Administrator may reduce ETAA and/or Delmarva allocations to prevent overfishing.

If a reduction in the ETAA is necessary, as dictated by pre-determined thresholds detailed in Table 1, the Regional Administrator will publish a final rule consistent with the Administrative Procedure Act (APA) on or about December 1, 2008. If the ETAA exploitable biomass estimate is between 20,000 and 29,999 mt, part-time limited access vessels will be authorized to take one trip in the ETAA at a reduced possession limit of 3,600 lb (1,633 kg), and one trip in the NLCA at the normal possession limit of 18,000 lb (8,165 kg). The reduced possession limit for part-time vessels under this scenario results from the FMP structure, which allocates to part-time vessels 40 percent of what is allocated to a full-time vessel. If updated exploitable biomass information is not available so that a final rule pursuant to the APA cannot be published on or about December 1, 2008, no reductions will be made.

TABLE 1.—2009 ETAA TRIP REDUCTION TABLE

Exploitable biomass estimate (mt)	Adjusted trips (full-time, part-time, occasional)	Adjusted trips (general category)	Adjusted 2009 research set-aside TAC (mt)	Adjusted 2009 observer set-aside TAC (mt)
30,000 or greater	No adjustment	No adjustment	No adjustment	No adjustment.
20,000–29,999	2, 1*, 0	1473	108.86	54.43.
10,000–19,000	1, 0, 0	982	72.57	36.29.
Less than 10,000	0, 0, 0	491	36.29	18.15.

*Part-time vessels may take one trip in the ETAA at a reduced possession limit of 3,600 lb (1,633 kg) and one trip in CAII or Delmarva (unless Delmarva trips are reduced); or one trip in CAII and one trip in Delmarva (unless Delmarva trips are reduced).

In addition, if an updated estimate of overall F exceeds 0.29 in 2008, then ETAA allocations will be reduced

consistent with the reductions specified in Table 1 under exploitable biomass estimates of 20,000–29,000 mt. If both

the biomass and F thresholds are exceeded, the allocation level will be

established using the biomass adjustment schedule.

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

New Hudson Canyon Rotational Management Area

Due to the high concentration of small scallops in the HCAA, Framework 19, consistent with the FMP's area rotation program strategy to protect young scallop concentrations, will establish the HCAA as a rotational management area, and close the HCAA to all scallop fishing, including general category vessels, for at least the 2008 and 2009 fishing years. The expected increase in exploitable biomass in the absence of fishing mortality is expected to exceed 30 percent per year. The area could be considered again as an access area and re-open to fishing when the annual increase in exploitable biomass in the absence of fishing mortality is less than 15 percent per year.

Open Area DAS Adjustment if a Scallop Access Area Yellowtail TAC Allocated to the Scallop Fishery Is Caught

Under the Northeast Multispecies Fishery Management Plan, 10 percent of the Southern New England (SNE) and Georges Bank (GB) yellowtail TACs are allocated to scallop vessels fishing in the NLCA, CAI, and CAII. If the SNE and/or GB yellowtail TAC is caught, the respective access area(s) are closed to further scallop fishing for the remainder of the fishing year. If a limited access vessel has unutilized trip(s) in an access area closed by a scallop fishery yellowtail TAC, Framework 19 will allocate additional open area DAS in a manner that maintains the F objectives of the FMP. This trip/DAS conversion will apply only to full-time vessels, and to occasional or part-time vessels that have no other available access areas in which to take their access area trip(s). Unused access area trip(s) will be converted to open area DAS so that scallop fishing mortality that will have resulted from the access area trip(s) will be equivalent to the scallop fishing mortality resulting from the open area DAS allocation. Consequently, if the NLCA or CAII is closed in 2008 or 2009, respectively, each vessel with unutilized trip(s) will be allocated a specific amount of additional open area DAS according to permit category. Full-time vessels will be allocated 7.7 DAS per unutilized trip in the NLCA and 7.9 DAS per unutilized trip in CAII. Part-

time vessels will receive the same DAS conversion as full-time vessels, as long as there was no other access area available for the vessel to take a trip(s). If an occasional vessel has no available access area in which to take its trip, it will be allocated converted DAS according to the most recent closure: 3.2 DAS if it was the NLCA; or 3.3 DAS if it was CAII. Although the Council did not specify this measure regarding occasional vessels in Framework 19, based on other Framework 19 measures adopted by the Council and the overall objectives of the FMP, NMFS proposed this measure under the authority of section 305(d) of the Magnuson-Stevens Act.

If a vessel has unused broken trip compensation trip(s) when an access area closes due to reaching a yellowtail TAC, it will be issued additional DAS in proportion to the un-harvested possession limit. For example, if a full-time vessel had an unused 9,000 lb (4,082 kg) NLCA compensation trip (half of the full possession limit) at the time of a NLCA yellowtail TAC closure, the vessel will be allocated 3.85 DAS (half of the 7.7 DAS that would be allocated for a full NLCA trip).

Research Set-Aside (RSA) Allocations

Two percent of each scallop access area quota and 2 percent of the DAS quota are set aside as part of the Scallop RSA Program to fund scallop research and compensate participating vessels through the sale of scallops harvested under the research set-aside quota. The 2008 research set-aside access area allocations will be: NLCA—110,000 lb (50 mt); and ETAA—440,000 lb (200 mt). The 2009 research set-aside access area allocations will be: CAII—116,000 lb (53 mt); ETAA—324,000 lb (147 mt); and Delmarva—120,000 lb (54 mt). If 2008 ETAA and/or Delmarva survey data indicate that there is less estimated exploitable biomass of scallops in the ETAA and/or Delmarva, the 2009 RSA allocations in these areas will be reduced as specified in Table 1.

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

Observer Set-Aside Allocations

One percent of each scallop access area quota and 1 percent of the DAS allocation are set aside as part of the industry funded observer program to help defray the cost of carrying an observer. Scallop vessels on an observed DAS trip are charged a reduced DAS rate, currently 0.85 per DAS; scallop

vessels on an observed access area trip are authorized to have an increased possession limit, currently 400 lb of shucked scallops per DAS. The Regional Administrator for the Northeast Region (Regional Administrator) has the authority to establish, and adjust, the reduced DAS rate and increased possession limit.

The Council recommended in Framework 19 that the observer set-aside compensation rates be adjusted to more accurately reflect current fishery conditions. The Council noted that the current DAS set-aside rate of 0.85 is insufficient to offset the cost of carrying an observer, and suggested that the DAS compensation rate be increased while decreasing the access area possession limit, effectively transferring access area scallops to the DAS set-aside. However, the observer set-aside program is not currently structured to authorize access area scallops to be converted for use under the DAS set-aside. The set-aside program explicitly sets aside 1 percent of scallop DAS and 1 percent from each access area TAC. Therefore, the Council's recommendation cannot be adopted.

NMFS did evaluate the current set-aside rates and determined that, although the current DAS set-aside rate may not fully offset the cost of carrying an observer, the current rate provides the greatest benefit to the fleet and should not change for the 2008 fishing year. NMFS determined that, if the DAS compensation rate was increased, the DAS set aside would not likely last the entire fishing year, resulting in some vessel owners needing to pay the full cost of observer DAS trips. Therefore, the reduced DAS charge on observed DAS trips will remain at 0.85 for the 2008 fishing year. The Regional Administrator may re-evaluate the DAS compensation rate before the start of the 2009 fishing year.

The 2008 access area observer set-aside allocations will be: NLCA—55,000 lb (25 mt); ETAA—222,000 lb (111 mt). The 2009 access area observer set-aside allocations will be: CAII—58,000 lb (26 mt); ETAA—162,000 lb (73 mt); and Delmarva—60,000 lb (27 mt). If 2008 ETAA and/or Delmarva survey data indicate that there is less estimated exploitable biomass of scallops in the ETAA and/or Delmarva, the 2009 RSA allocations in these areas will be reduced as specified in Table 1.

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

Adjustment of the Scallop Overfishing Definition

The Council recommended a new overfishing definition based on results from the recent scallop stock assessment (SAW 45), which used a new model to characterize the scallop resource, including a new biomass target and threshold, and a new F threshold. Because the Council recommended the new reference points and a modified overfishing definition to reflect the new parameters, the Council also considered whether the current target F of 0.20 should be adjusted upward consistent with the F threshold adjustment. The overfishing threshold F of 0.29 is based on an assumption that F is spatially uniform. However, uniform F does not occur in the scallop fishery due to unfished biomass in closed areas and highly variable F's in open and access areas. In the case of highly non-uniform fishing effort, the F that maximizes yield

per recruit will be less than the spatially uniform target (F=0.29). The Council was concerned that setting the F target at the typical 80 percent of the threshold (F=0.23) would result in localized overfishing in open areas. Therefore, the Council recommended keeping the target F at 0.20 in recognition that F is not uniformly distributed throughout the range of the scallop fishery, and the resource is prone to localized overfishing, particularly in open areas. An F target of 0.20 will help maintain a stable fishery over the long term rather than maximize individual catch on an annual basis, compared to higher F targets.

In addition, based on the results of SAW 45, the Council recommended establishing scallop biomass reference points using absolute scallop meat biomass estimates instead of scallop resource survey indices, as in the past.

Based on these recommendations, the scallop overfishing definition will be as

follows: If stock biomass is equal to or greater than the maximum scallop resource biomass target (Bmax), as measured by an absolute value of scallop meat (mt) (currently estimated at 108,600 mt for scallops in the GB and Mid-Atlantic resource areas), overfishing occurs when F exceeds Fmax, currently estimated as 0.29. If the total stock biomass is below Bmax, overfishing occurs when F exceeds the level that has a 50-percent probability to rebuild stock biomass to Bmax in 10 years. The scallop stock is in an overfished condition when stock biomass is below 1/2Bmax and, in that case, overfishing occurs when F is above a level expected to rebuild the stock in 5 years, or when F is greater than zero when the stock is below Bmax.

The following table details the biomass and F reference points that will be implemented by Framework 19.

TABLE 2.—BIOMASS AND F REFERENCE POINTS

	Target	Threshold
Biomass (B)	108,600 mt	54,300 mt.
Fishing mortality (F)	0.20	0.29.

Prohibition on Deckloading

To minimize scallop discard mortality, no scallop vessel that is declared into the Area Access Program as specified in § 648.60 may 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.

Adjustments to the Industry-Funded Observer Program

There are several measures designed to improve the industry-funded observer program. Framework 19 includes measures described below that have new reporting requirements subject to review and approval by the OMB pursuant to the Paperwork Reduction Act (PRA). As noted, OMB is currently reviewing the new PRA requirements and as such, the measures are not effective along with other measures included in this final rule. A subsequent rule published in the **Federal Register** will announce the effective date of such measures.

1. Measures Pertaining to Observer Service Providers

Providers must respond to a fisherman's request for an observer within 18 hr of the fisherman's call to let them know if an observer is available.

Providers must provide the NMFS Northeast Fishery Observer Program (NMFS/NEFOP) with an updated list of contact information for all observers that includes the observer identification number, observer's name, mailing address, e-mail address, phone numbers, homeports or fisheries/trip types assigned, and must include whether or not the observer is "in service," indicating when the observer has requested for leave and/or is not currently working for the industry-funded program.

Providers must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services.

Providers must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and specific observers.

Providers must submit to NMFS/NEFOP, if requested, copies of any information developed and used by the observer providers and distributed to vessels, such as informational

pamphlets, payment notification, description of observer duties, etc.

The proposed rule stated that observer service providers would charge for services consistent with how vessel owners receive compensation, and specified that this would be based on VMS transmission data and time spent seaward of the demarcation line. However, based on comments received on this new requirement, NMFS has revisited the rationale of this requirement. The rationale of this measure was to reduce confusion for vessel owners resulting from different charging methods used by observer service providers, and to ensure the charging methodology was consistent. NMFS does not intend to direct observer providers on how much they may charge, but merely what the charge is based upon. Therefore, for access area trips, a service provider shall charge a vessel owner from when an observer boards a vessel until they disembark (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 1st at 10 pm and lands on July 3rd at 1 am, the time at sea equals 27 hr, which would equate to 2 "days." For open area DAS trips, a service provider shall charge 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, for the trip demonstrated above, the provider would charge 1 day and 3 hours.

Providers will no longer be required to maintain at least eight certified observers.

Providers must provide NMFS/NEFOP with observer contract data within 24 hr of landing, and raw data within 72 hr of landing.

2. Measures Pertaining to Scallop Fishermen

Scallop fishermen must allow NMFS/NEFOP up to 24 hr to respond to a pre-sailing notice and, if selected, must provide the observer provider at least 48 hr to respond to an observer deployment request. Currently, NMFS/NEFOP may take up to 24 hr to respond to a pre-sailing notice, and the observer service provider may take up to 72 hr to respond to an observer deployment request. This will reduce the pre-sailing notice period. The proposed rule erroneously noted that NMFS would have up to 72 hours to respond to a pre-sailing notification.

Limited access trip notification calls cannot be made more than 10 days in advance of a trip, and not more than 10 trips may be called in at a time.

General category vessels making an access area trip(s) must call in with the same notice described above, but make calls weekly rather than daily. For example, a general category vessel could call in by Thursday for all the trips it plans to take from the following Sunday through Saturday. The vessel will either get a waiver for that week, or be selected for observer coverage. If selected, a vessel could be required to carry an observer on up to two trips made that week.

Vessel owners, operators, or managers are required to notify NMFS/NEFOP of any trip plan changes at least 48 hr prior to vessel departure.

Confirmation numbers for trip notification calls are valid for 48 hr from the intended sail date.

A vessel is prohibited from fishing in an access area without a NMFS/NEFOP call-in confirmation number specific to that trip and that was issued for the trip plan and area.

3. Observer Program Observer Training Adjustments

NMFS/NEFOP observer training sessions will no longer have a minimum class size of eight.

An observer's first three deployments and the resulting data will be immediately edited and approved after

each trip by NMFS/NEFOP, prior to any further deployments by that observer. If data quality is considered acceptable, the observer will be certified. If the data is not acceptable, the observer will not be certified.

An observer provider will not deploy any observer on the same vessel for more than two consecutive multi-day trips and not more than twice in any given month for multi-day deployments. Multi-day is defined as more than 2 days.

At least 7 days prior to the beginning of an observer training class, providers would be required to provide a final list of observer candidates, observer candidate resumes, and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any.

Prior to the end of an observer training course, the observer will be required to complete a cardiopulmonary resuscitation/first aid course.

30-Day VMS Power Down Provision for Scallop Vessels

Scallop vessels may power down their VMS unit for a minimum of 30 days provided the vessel does not engage in any fishing activity until the unit is turned back on. Such vessels will be required to obtain a letter of exemption from the Regional Administrator. This provision will provide more flexibility and will reduce operating costs for some scallop vessel owners that do not engage in fisheries for extended periods of time.

General Category Allocations

The general category fishery will be allocated 10 percent of the overall scallop TAC in 2008, and 5 percent in 2009 (unless the IFQ program is not implemented by March 1, 2009, in which case the general category fishery will be allocated 10 percent of the scallop quota). Provided the IFQ program is implemented in 2009, 0.5 percent of the scallop TAC will be allocated to full-time, part-time, or occasional vessels that qualify for an IFQ permit.

The NGOM TAC for both 2008 and 2009 will be 70,000 lb (31,751 kg).

The incidental catch target TAC for the 2008 and 2009 fishing years will be 50,000 lb (22,680 kg) to account for mortality from this component of the fishery and to ensure that F targets are not exceeded.

The annual TAC, excluding the NGOM TAC and incidental catch TAC, will be distributed into quarterly TACs. The fleetwide quarterly TAC will remain in effect until the IFQ program is implemented under Amendment 11 to the FMP. Framework 19 allocates 35

percent (1,523,375 lb (690.99 mt)) of the 2008 directed general category annual TAC to Quarter 1, 40 percent (1,741,000 lb, (789.70 mt)) to Quarter 2, 15 percent (652,875 lb, (296.14 mt)) to Quarter 3, and 10 percent (435,250 lb (197.43 mt)) to Quarter 4. If any portion of the Quarter 1 TAC is not caught, the remainder will be rolled over into Quarter 3; if any portion of the Quarter 2 TAC is not caught, it will be rolled over into Quarter 4. Open area and access area scallop landings by directed general category trips will count against the quarterly TACs. If a quarterly TAC is caught, all directed general category scallop fishing will cease for the remainder of the quarter in access area, and open areas, but excluding the NGOM. If the Quarter 1 TAC (March 1–May 31) is underharvested or exceeded, those pounds will be added or removed from Quarter 3. If the Quarter 2 TAC (June 1–August 31) and/or Quarter 3 TAC (September 1–November 30) are underharvested or exceeded, those pounds will be added or removed from Quarter 4. In addition, since the quarterly TACs are intended to be in place for the entire 2008 fishing year, as specified in Amendment 11, Framework 19 requires that any scallops harvested by general category scallop vessels during the first and/or second quarter prior to implementation of Amendment 11 and Framework 19 are counted against the applicable quarterly TAC.

Starting with the first year of the IFQ program in 2009 or 2010, if necessary, the pool of IFQ vessels that do not qualify for a full-time, part-time, or occasional limited access scallop permit will be allocated 5 percent of the overall scallop TAC; and the pool of full-time, part-time, or occasional limited access vessels that qualify for an IFQ permit will be allocated 0.5 percent of the overall scallop TAC. General category vessels that qualify for an IFQ permit in 2009 will be allocated 5 percent of the overall scallop TAC as follows: 1,182,500 lb (536 mt) from open areas, 785,700 lb (357 mt) from ETAA, and 291,000 lb (132 mt) from Delmarva. Full-time, part-time, and occasional scallop vessels that qualify for an IFQ permit in 2009 will be allocated 225,950 lb (113 mt) from open areas on general category trips.

In the event that implementation of the IFQ program is delayed beyond the start of the 2009 fishing year (March 1, 2009), the IFQ scallop fishery will be allocated 10 percent of the overall scallop TAC and be divided among quarters as described in the preceding section.

General Category Access Area Harvest Specifications for 2008 and 2009

In 2008, the general category fishery will be allocated 667 trips in the NLCA, and 2,668 trips in the ETAA, respectively. Because 997 of the 2,668 ETAA trips have already occurred, 1,161 ETAA trips will be allocated to general category vessels when Framework 19 is effective under this final rule. The NLCA will open on June 15, 2008.

In 2009, the general category scallop fishery will be allocated up to 1,964 ETAA trips and up to 728 Delmarva trips. If 2008 ETAA scallop resource surveys indicate a reduced exploitable scallop biomass, or overall 2008 scallop F exceeds 0.29, general category ETAA trip allocations will be subject to trip reduction procedures as specified under Table 1-2009 ETAA Trip Reduction Table. If updated 2008 Delmarva scallop resource surveys indicate the exploitable biomass in Delmarva is less than 10,000 mt, Delmarva will be closed for the 2009 fishing year, and no general category trips will be allocated. General category vessels will not be allocated any trips in CAII because of concerns that negligible fishing effort by general category vessels will occur there. Because general category vessels will receive overall TAC, the zero allocation in CAII will be offset by a higher percentage of overall catch in open areas.

IFQ Cost Recovery Program

NMFS is required by the Magnuson-Stevens Act to recover the costs directly related to the management, data collection and analysis, and enforcement of IFQ programs such as the one implemented through Amendment 11. Under section 304(d)(2)(A) of the Magnuson-Stevens Act, the Secretary of Commerce is authorized to collect a fee, not to exceed 3 percent of the ex-vessel value of fish harvested, to recover these costs. Therefore, a scallop IFQ vessel will incur a cost recovery fee liability for every landing of scallops. The IFQ permit holder that landed the IFQ scallops will be responsible for submitting this payment to NMFS once per year. The ex-vessel value of scallops used to calculate the cost-recovery fees due for a fishing year will be based on an average of the ex-vessel value of all general category scallops landed between March 1 and September 30 of the initial year of the IFQ program, and October 1 through September 30 of each year thereafter. IFQ permit owners that transferred IFQ scallops (transferee) from another IFQ vessel (transferor) as

part of the IFQ scallop transfer program must submit a cost recovery fee for scallops landed by the transferee.

Payment of the cost recovery fee will be a permit condition that must be met before permits may be renewed. On or about October 30 of each year, NMFS will mail a cost recovery bill for the IFQ fee incurred by each IFQ vessel to each IFQ permit holder. Owners of IFQ vessels will be required to submit payment by January 1 of each year. An IFQ scallop vessel's permit will not be renewed (i.e., not issued) by NMFS until payment for the prior year's fees is received in full. Bills will also be made available electronically via the internet. Fee liabilities due January 1 will be for the previous cost recovery period (October 1–September 30 of the year preceding the January 1 due date). For example, for scallops landed October 1, 2009–September 30, 2010, NMFS will issue a cost recovery bill on or about October 30, 2010, and the IFQ permit holder will be required to submit the cost recovery fee by January 1, 2011. If an IFQ permit holder does not pay, or pays less than the full amount due, the vessel's IFQ permit will not be renewed.

Disputes regarding fee liabilities will be resolved through an administrative appeal procedure. If an IFQ permit holder makes a timely payment to NMFS of an amount less than the fee liability NMFS has determined, the IFQ permit holder will have the burden of demonstrating that the fee amount submitted is correct and that the fee calculated by NMFS is incorrect. If, upon preliminary review of the accuracy and completeness of a fee payment, NMFS determines the IFQ permit holder has not paid the amount due in full, NMFS will notify the IFQ permit holder by letter. NMFS will explain the discrepancy and the IFQ permit holder will have 30 days to either pay the amount that NMFS has determined should be paid, or provide evidence that the amount paid was correct. The IFQ permit for the vessel will not be renewed until the payment discrepancy is resolved. If the IFQ permit holder submits evidence in support of his/her payment, NMFS will evaluate it and, if there is any remaining disagreement as to the appropriate IFQ fee, prepare a Final Administrative Determination (FAD). The FAD will set out the facts, discuss those facts within the context of the relevant agency policies and regulations, and make a determination as to the appropriate disposition of the matter. A FAD will be the final agency action. If the FAD determines that the IFQ permit holder is out of compliance, the IFQ scallop permit in question will not be renewed

until the conditions established by the FAD are met. If the FAD determines that the IFQ permit holder owes additional fees, and if the IFQ permit holder has not paid such fees, all IFQ permit(s) held by the IFQ permit holder will not be renewed until the required payment is received by NMFS. If NMFS does not receive such payment within 30 days of the issuance of the final agency action, NMFS will refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection, and the vessel's IFQ permit(s) will remain invalid. If NMFS does not receive such payment prior to the end of the fishing year, the IFQ permit will be considered voluntarily abandoned.

Cost recovery payments shall be made electronically via the Federal web portal, <http://www.pay.gov>, or other Internet sites as designated by the Regional Administrator. Instructions for electronic payment will be made available on both the payment Web site and the paper bill. Payment options may include payment via a credit card (the Regional Administrator will specify in the cost recovery bill acceptable credit cards) or direct ACH (automated clearing house) withdrawal from a designated checking account. Payment by check could be authorized by the Regional Administrator if the Regional Administrator has determined that electronic payment is not possible (for example, if the geographical area or an individual(s) is affected by catastrophic conditions).

NMFS will create an annual IFQ report and provide it to the owner of the IFQ permit. The report will include quarterly and annual information regarding the amount and value of IFQ scallops landed during the fishing year, the associated cost recovery fees, and the status of those fees. This report will also detail the costs incurred by NMFS, including the calculation of the recoverable costs for the management, enforcement, and data collection, incurred by NMFS during the fishing year.

Comments and Responses

A total of 3 relevant comment letters that raised 6 relevant issues were received in response to the proposed rule for Framework 19.

Comment 1: A comment letter was submitted by an observer service provider suggesting that vessels should be compensated for the full cost of observer coverage; including costs associated with observer deployment, at-sea data collection, and post-trip data processing. At the least, vessels should be compensated based on when the

vessel leaves the dock at the start of the trip to when the vessel returns to the dock at the end of the trip.

Response: Based on the above comment and in consultation with the NMFS/NEFOP, NMFS has adjusted the proposed rule measures. NMFS has determined that “dock-to-dock,” which is the period of time between vessel departure and landing, is the appropriate method by which an observer provider shall charge scallop vessel owners for observer coverage. Details of this adjustment are detailed in the preamble and regulatory text.

Comment 2: A comment letter was submitted by an environmental advocacy organization supporting the continuation of the September 1 through October 31 ETAA seasonal closure. This letter also requests that NMFS include additional measures to further protect sea turtles, including: A scallop closed season for Delmarva similar to the ETAA closed season; expansion of the Hudson Canyon Access Area boundaries; implementation of the requirements of the recently signed biological opinion for the scallop fishery; and a provision to allow up to 5 percent of the access area TACs and open area DAS to be set-aside for the industry-funded observer program to ensure maximum observer coverage.

Response: NMFS agrees that the continuation of this closure is consistent with the Magnuson-Stevens Act. However, NMFS does not have the authority to expand Framework 19 to include additional management measures as requested by the commenter, or to modify measures developed by the Council. NMFS can only approve or disapprove the specific measures recommended by the Council. NMFS did request that the Council adopt through Framework 21 to the Scallop FMP reasonable and prudent measures to reduce sea turtle take as recommended by the most recent biological opinion. Framework 21 is scheduled to be implemented in 2010.

Comment 3: A comment letter was submitted by an organization representing limited access scallop vessel owners. The commenter suggested that maintaining the F target at 0.20 may be overly cautious and may not achieve optimum yield as required by National Standard 1 of the Magnuson-Stevens Act. The commenter expressed the opinion that the DAS reductions proposed by Framework 19 are not warranted given the status of the scallop resource and the new overfishing definition. Framework 19 would allocate 35 DAS in 2008 and 42 DAS in 2009. The commenter also referenced Amendment 10 to the FMP,

which had established the target F at 80 percent of the threshold F, and recommended that the target F should therefore be increased to 0.23 to be consistent with Amendment 10. Consequently, the commenter requested that NMFS disapprove the DAS allocations proposed by Framework 19, and maintain the status quo, which would allocate 51 DAS to full-time scallop vessels in 2008 and 2009.

Response: NMFS has determined that setting the F target at 0.20 is appropriate given that fishing mortality is not uniformly distributed throughout the range of the scallop fishery, but recognizes that maintaining the F target is a conservative approach and may need to be revisited in the future. But because there is concern for localized overfishing in open areas, an F target of 0.20 would help maintain a stable fishery over the long term. NMFS has determined that the DAS allocations proposed through Framework 19 are consistent with National Standard 1 of the Magnuson-Stevens Act.

Comment 4: An organization representing limited access scallop vessel owners expressed concern that NMFS exceeded its legal authority when it proposed to reduce full-time and part-time DAS allocations in the event the IFQ program is not implemented by the start of the 2009 fishing year and the general category fishery is allocated 10 percent of the scallop quota. The commenter also felt that the general category fishery should not be allocated more than 5 percent of the quota beyond 2009, regardless of whether the IFQ program is implemented.

Response: This provision is entirely consistent with Amendment 11 and its implementing regulations and, therefore, NMFS acted within its legal authority. During the transition period to the general category IFQ program Amendment 11 specifies that the limited access fleet would be allocated DAS in open areas based on an allocation of 90 percent of the total allowable scallop catch, without reference to the length of the transition period. Once the IFQ program is implemented, the limited access fleet would be allocated DAS based on an allocation of 94.5 percent of total scallop catch. In specifying DAS for the 2009 fishing year through Framework 19, the Council presumed that the IFQ program would be in effect and consequently did not specify DAS in the event the IFQ program was not implemented by the start of the 2009 fishing year. Framework 19 does not supersede measures approved as part of Amendment 11. Therefore, consistent with Amendment 11, if the general

category fishery is still transitioning to the IFQ program by the start of the 2009 fishing year, the limited access fleet would be allocated DAS in open areas based on an allocation of 90 percent of the total allowable scallop catch. In response to the comment that general category vessels should not be allocated more than 5 percent of the TAC beyond 2009, the Council is scheduled to recommend future scallop specifications beyond the 2009 fishing year through a future framework to the FMP. However, if the Council does not specify otherwise, the 10-percent scallop quota allocation to the general category fishery will remain in effect during the transition period to the IFQ program.

Comment 5: An organization representing limited access scallop vessel owners supported the Council’s recommendation to adjust the observer set-aside compensation rates.

Response: NMFS did consider the Council’s request and evaluated the current set aside rates and determined that, although there is a possibility that the current DAS set-aside rate may not fully offset the cost of carrying an observer, on balance, the current rate provides the greatest benefit to the fleet and should not change for the 2008 fishing year. NMFS determined that if the DAS compensation rate was increased, the DAS set aside would likely not last through the fishing year, resulting in some vessel owners needing to pay the full cost of observer DAS trips. Therefore, the reduced DAS charge on observed DAS trips will remain at 0.85 for the 2008 fishing year to ensure an equitable distribution of DAS compensation for vessels required to carry an observer on a DAS trip. The Regional Administrator may re-evaluate the DAS compensation rate prior to the start of the 2009 fishing year.

Comment 6: An organization representing limited access scallop vessel owners supports the VMS power down provision.

Response: NMFS agrees that the power down provision will provide benefits to the scallop fishery without compromising the objectives of the FMP.

Changes From Proposed Rule to Final Rule

In § 648.4(a)(2)(ii)(D)(2), the conversion from in-shell scallop weight to meat weight is revised to specify that 8.33 lb (3.78 kg) of in-shell scallops will be converted to one pound (0.45 kg) of scallop meats.

In § 648.4(a)(2)(ii)(E), the IFQ contribution factor reference is corrected to read § 648.53(h)(2)(ii)(A).

In § 648.4(a)(2)(ii)(I)(3), the date April 14, 2008, is changed to July 1, 2008, to reflect the effective date of Amendment 11 permit requirements as indicated in the final rule for Amendment 11.

Section 648.11(g)(2)(ii) is revised to clarify the general category access area observer reporting requirements.

In § 648.11, paragraph (g)(3) is revised to state that NMFS shall respond to a trip notification within 24 hours, not 72 hours as erroneously noted in the proposed rule.

In § 648.11, paragraph (g)(5)(i)(A) revises how observer providers should charge vessel owners for access area trips.

In § 648.11, paragraph (g)(5)(i)(B) revises how observer providers should charge vessel owners for open area DAS trips.

In § 648.11, paragraph (h)(5)(i) is revised to clarify that if pre-certification observer data is accepted, the observer would be certified.

In § 648.11, paragraph (h)(5)(vi) is revised to clarify that observer providers must submit candidate information to NMFS within 7 days to the beginning of a class.

In § 648.11, paragraph (h)(5)(vii)(A) is revised to require observer reports to be submitted to NMFS within 24 hr of landing, not 12 hr as noted in the proposed rule. The change in the final rule makes the regulation consistent with the Framework 19 document.

In § 648.53, paragraph (a)(1) is revised to clarify the 2008 scallop fishery allocations.

In § 648.53, paragraph (a)(2) is revised to clarify the 2009 scallop fishery allocations.

In § 648.53, paragraphs (a)(4)(i), (a)(4)(ii), (a)(5)(i), (a)(5)(ii), (a)(5)(iii) are revised to more clearly describe how the scallop quota is divided.

In § 648.53, paragraph (a)(5)(ii) is revised to correctly reference § 648.53(a)(7).

In § 648.53, paragraph (h)(2)(ii) is revised to correctly reference the index factor in § 648.53(h)(2)(ii)(A).

Revisions in § 648.59 have been made to reflect changes that were made in the final rule for Amendment 11 to the FMP. Also, two revisions of paragraphs within § 648.59 are included to reflect measures effective June 1, 2008, and July 1, 2008, under the same paragraphs.

In § 648.60, the table in paragraph (a)(2) listing 2009 research set-aside and observer set-aside adjustment weights is corrected.

Other editorial and minor changes were made throughout the rule to clarify various provisions in this action.

Classification

NMFS has determined that Framework 19 as implemented by this rule is necessary for the conservation and management of the Atlantic sea scallop fishery and is consistent with the Magnuson-Stevens Act and other applicable law.

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

The Assistant Administrator for Fisheries has determined that the need to implement these measures in a timely manner to avoid continuation of measures that are inconsistent with the measures in Framework 19 that are designed to meet the resource conservation goals of the FMP constitutes good cause under authority contained in 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date and establish an effective date of June 1, 2008. Framework 19 measures need to be effective on the same day that the allocation measures for Amendment 11 to the FMP (Amendment 11) measures are effective. Amendment 11 specifies the level of TACs that will be allocated to the general category and limited access scallop fleets to be effective on June 1, 2008. Amendment 11 does not include the actual fishery specifications that would make the full suite of Amendment 11 measures effective in controlling the general category fishery. Rather, the specific TACs based on Amendment 11 are part of Framework 19. As such, implementation of Framework 19 is directly responsible for achieving the effectiveness of Amendment 11 allocation and harvest limit measures. Delaying the measures would compromise the ability to achieve the overall benefits to the resource, fishery, and economy that are anticipated in Amendment 11, to the detriment of the public.

In addition, without the measures included in Framework 19, the limited access scallop fleet will continue to fish under fishing year 2007 DAS and Sea Scallop Access Area trip allocations that continue to be in effect from March 1, 2008, and until Framework 19 is implemented. Current DAS allocations are inconsistent with the measures in Framework 19 designed to meet the resource conservation goals of the FMP. Specifically, open area DAS are higher under current measures than will be implemented under Framework 19 and vessel owners and operators have the potential of exceeding the Framework 19 DAS allocations. Because these vessels have been fishing under the current allocations since March 1, 2008, it is likely that some vessels have

already exceeded their Framework 19 DAS allocations. Vessel owners continue to be faced with uncertainty for future allocations, and will have DAS reduced in 2009 if DAS used exceed the Framework 19 allocated DAS.

NMFS accepted the Council's submission of Framework 19 in December 2007 and anticipated that the final rule could not be published by March 1, 2008, because of its complexity and because Framework 19 could not be made effective until Amendment 11 was effective. NMFS anticipated that Framework 19 would need to be effective on the same day, or very shortly after the effective date of Amendment 11, regardless of when the Framework 19 final rule is published. The complexity and relation of the two related actions delayed publication despite efforts to complete the proposed rule earlier. In addition, due to the dependence of Framework 19 on Amendment 11, the development of the final rule for Framework 19 was held until the final rule for Amendment 11 was published on April 14, 2008. The effective date of June 1, 2008, created a brief window for the final rule for Framework 19 to be developed and published.

This final rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. NMFS will publish a subsequent notice when these information collection requirements have been approved by OMB. Public reporting burden for these collections of information are estimated to average as follows:

1. Service provider observer contact information reports, OMB #0648-0546—5 min per response;
2. Service provider observer availability reports, OMB #0648-0546—1 min per response;
3. Copies of service provider outreach materials, OMB #0648-0546—30 min per response;
4. Copies of service provider contracts, OMB #0648-0546—30 min per response.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments on these or any other aspects of the collection of information to the Regional Administrator as specified in ADDRESSES above, and by e-mail to

David.Rostker@omb.eop.gov or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information requirement subject to the requirements of the PRA, unless that collection-of-information requirement displays a currently valid OMB control number.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has included a final regulatory flexibility analysis (FRFA) in support of Framework 19 in this final rule. The FRFA describes the economic impact that this final rule, along with non-adopted alternatives, will have on small entities. The FRFA incorporates the economic impacts and analysis summarized in the IRFA for the proposed rule to implement Framework 19, the comments and responses in this final rule, and the corresponding economic analyses prepared for Framework 19 (e.g., the EA and the RIR). A copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**).

Statement of Need for This Action

A detailed description of the reasons for this action, the objectives of the action, and the legal basis for this final rule are found in Framework 19 and the preamble to the proposed and final rules.

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

A comment letter was submitted by an organization representing limited access scallop vessel owners noting that the economic impacts presented in the proposed rule wrongly characterized that the DAS allocations would have a positive impact on the industry. This was the only comment received with any bearing on the economic analyses summarized in the IRFA.

Response: The IRFA provides a summary of the economic impacts of the management measures combined and of each proposed and alternative management measure. The IRFA demonstrates that the DAS allocations would have positive impacts overall and in the long term. The IRFA is a summary and refers readers to the full economic analysis in the Framework 19 document, which provides extensive detailed analysis of the economic impacts that are estimated through

projections that have long been utilized in assessing the economic impacts of scallop fishery management measures.

No changes were made to the final rule as result of the above comment.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

The vessels in the Atlantic sea scallop fishery are all considered small business entities and, therefore, there is no disproportionate impact on large and small entities. All of the vessels grossed less than \$4 million according to dealer data for the 2004 to 2006 scallop fishing years. Annual total revenue averaged over \$1 million in the 2005 fishing year, and about \$881,990 in the 2006 fishing year, per limited access vessel. Total revenues per vessel, including revenues from species other than scallops, exceeded these amounts, but were less than \$3.5 million per vessel. Average scallop revenue per general category vessel was \$88,702 in 2005 and \$66,785 in the 2006 fishing years. Average total revenue per general category vessel, including revenue from species other than scallops, exceeded \$250,000 in the 2005 and 2006 fishing years. Average revenues per vessel were lower in the 2006 fishing year for all permit categories because of lower scallop prices.

Framework 19 regulations will affect all federally permitted scallop vessels. The Amendment 11 and Framework 19 documents provide extensive information on the number, port, state, and size of vessels and small businesses that will be affected by the regulations. In 2007, there were 346 full-time, 33 part-time, and 1 occasional limited access scallop permits issued, and 2,332 general category permits issued to vessels in the open access general category fishery: 915 category 1B permits and 1,417 category 1A incidental catch permits.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action contains four new collection-of-information, reporting, and recordkeeping requirements currently under review by OMB. The following describes these requirements.

1. Observer Contact List

Observer service providers will be required to provide and maintain an updated list of contact information for all observers. This will facilitate the ability of NMFS/NEFOP to contact observers. Maintaining an up-to-date observer contact list is estimated to entail 5 min per response, 12 responses

per year, for a total of 1 burden hour annually. These updates do not have any associated miscellaneous costs.

2. Observer Availability List

Service providers will be required to provide and maintain a listing of whether or not the observer is "in service," indicating when the observer has requested leave and/or is not currently working for the industry-funded program. This will facilitate the ability of NMFS/NEFOP to confirm observer availability. Maintaining an up-to-date observer availability list is estimated to entail 1 min per response, 300 responses per year, for a total of 5 burden hr annually. These updates do not have any associated miscellaneous costs.

3. Copies of Observer Service Provider Materials

Service providers will be required to submit to NMFS/NEFOP, if requested, copies of any materials developed and distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, etc. This will allow NMFS/NEFOP to ensure that information distributed to industry is accurate and in keeping with the objectives of the observer program. It is estimated that NMFS/NEFOP will request copies of service provider outreach materials once a year. It is estimated it will take 30 min to submit this information, for a total burden of 0.5 hour. It is estimated the service providers will incur a total of \$5 in mailing fees to submit these materials.

4. Copies of Observer Service Provider Contracts

Service providers will be required to submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services. This will allow NMFS/NEFOP to ensure contractual information is accurate and in keeping with the objectives of the observer program and help resolve disagreements between industry and the service provider. It is estimated that NMFS/NEFOP will request copies of service provider contracts once a year. It is estimated it will take 30 min to submit this information, for a total burden of 1 hour. It is estimated the service providers will incur a total of \$5 in mailing fees to submit these materials.

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

The long-term overall economic effects of Framework 19 measures are estimated to be slightly positive on revenues; an average of about a 0.5-percent increase per year during 2008–2021.

Average overall annual scallop revenue for a limited access vessel is estimated to increase by 1.3 percent in the 2008 fishing year and by 6.2 percent in the 2009 fishing year compared to no action. Because fishing costs are estimated to decline due to fewer DAS used in the access areas and the open areas, the impacts on the net revenue and vessel profits will be positive, with a 2.1-percent increase expected in fishing year 2008 and a 6-percent increase expected in fishing year 2009.

The economic impacts of the adopted measure for the general category fleet will be positive because the general category TAC will be higher under the adopted alternative compared to the no action alternative. As a result, average scallop revenues and profits for general category vessels are expected to be higher for the adopted alternative compared to no action.

However, the level of general category TAC will be lower than general category scallop landings in recent years, resulting in negative short-term economic impacts. These short-term impacts are due to measures in Amendment 11 that will establish a limited entry program for the general category fishery, thereby reducing general category fishing effort and landings. Since Framework 19 will not change measures adopted through Amendment 11, the impacts to the general category limited entry program are not analyzed here. Section 7.9 of the Environmental Impact Statement for Amendment 11 provides a comprehensive analysis of the economic impacts of the general category limited entry program on small business entities. These analyses indicate that, despite the negative impacts in the short-term, the medium to long-term economic impacts of the limited entry program are expected to be positive for the scallop fishery as a whole.

The overall economic impacts of Framework 19 general category measures are not expected to be significantly different from the impacts analyzed in Amendment 11. Amendment 11 analyzed the economic impacts by assuming that the general category TAC will be 5 million lb (2,2668 mt) in 2008 and 2.5 million lb (1,134 mt) in 2009. Framework 19 will result in a lower TAC: About 4.3 million lb (1,950 mt) TAC in 2008 and 2.2 million lb (998 mt) TAC in 2009. Although these amounts exceed potential TAC levels under the no action alternative, they are slightly less than the landings by the general category vessels in recent years. Landings by vessels that had a general category permit before the control date and that are expected to fish in 2008 were 4.6 million lb (2,087 mt) in 2006. The vessels that are expected to qualify for the limited access general category program, and thus fish in 2009, landed about 2.4 million lb (1,089 mt). Therefore, short-term economic impacts of the general category TAC will be negative on the general category fleet to the extent that the overall TAC prevents these vessels from landing the amount of scallops they will catch without such a constraint. Those distributional impacts were analyzed in Amendment 11. However, a limited access general category fishery will have positive economic impacts over the medium to long term on the vessels that qualify for general category limited access permits and for limited access vessels by preventing overfishing of the scallop resource and the dissipation of profits by uncontrolled entry and effort into the general category fishery.

Other Framework 19 measures, such as the general category quarterly hard TAC, 5-percent access area allocation for general category vessels, observer program improvements, a 30-day VMS power down provision, NGOM hard TAC, and yellowtail TAC adjustments, are expected to provide additional positive impacts by providing vessels the opportunity to reduce fishing costs and increase revenues from scallop fishing.

Economic Impacts of the Adopted Alternatives and Rejected Alternatives

In some cases the Council only considered one alternative versus a no action alternative if additional alternatives would be outside the scope of Framework 19. The following describes all of the alternatives considered by the Council.

1. GB Access Area Schedule Revision

Framework 19 will adjust the GB access area schedule so that the NLCA will be open in 2008 and CAII will be open in 2009. The adopted action to revise the GB access area schedule is expected to have positive economic impacts by providing access to areas with more scallop biomass. This will help increase yield, landings, and revenues from the fishery both in the short and the long term, benefiting both limited access and general category vessels. The only alternative was the no action option, which would have provided access in 2008 to CAI instead of the NLCA. Due to low biomass, CAI will not likely support a fleet-wide trip allocation. Consequently, since both the NLCA and CAII have higher scallop concentrations than CAI, the adopted alternative will result in higher economic benefits than the no action alternative.

2. DAS Conversion and Yellowtail TAC

The adopted action to allocate additional open area DAS if an access area closes due to the attainment of a scallop yellowtail TAC will continue under the no action alternative, but the values will be changed to reflect current fishery and resource conditions. The adopted DAS conversion rates will be higher than those under no action because scallop biomass in the NLCA and CAII is lower than when the no action DAS conversion rates were established. This DAS conversion measure helps minimize lost revenue that will result from a yellowtail TAC closure. Although this measure will have positive economic impacts on scallop vessels that lost access area trip(s), they will likely receive less revenue from the DAS due to the access area trip to DAS conversion rate, which is based on scallop fishing mortality, not trip revenue. The conversion rate was established so that scallop mortality from the additional DAS will be equivalent to the scallop mortality from an access area. Scallops in open areas are generally smaller than scallops in access areas. No alternatives, other than maintaining conversion rates that are currently in the regulations, were considered. The adopted higher DAS conversion rates will result in higher economic benefits than no action.

3. HCAA Trip Expiration

Through FY 2007, ending on February 29, 2008, the FMP has allowed scallop vessels to continue fishing in the HCAA under trips that were originally allocated for FY 2005. This extension of the authorized trips was intended to

allow vessels to take advantage of additional time to harvest scallops under the allocated trips since scallop catch rates had declined in FY 2005. Under Framework 19, the Council considered whether or not the trips should continue to be extended into FY 2008. The adopted no action alternative to allow all un-used 2005 HCAA trips to expire on February 29, 2008, instead of the rejected alternative of extending them to May 31, 2008, could have negative economic impacts on those vessels that could not take an economically viable trip to HCAA due to the poor resource conditions in this area. But these negative impacts are on 2007 fishing year revenues, not projected revenues under Framework 19. If landings per unit effort (LPUE) improved in early 2007, some vessels may have had incentive to take their trips rather than let them expire, minimizing these negative impacts. The alternative to extend the trip expiration deadline to May 31, 2008, could have reduced the negative impacts compared to no action. However, extending the duration of Hudson Canyon trips until May 31, 2008, could have had negative impacts on future scallop yields resulting in negative long-term economic impacts.

4. ETAA and Delmarva Schedule

The adopted action to provide access to the ETAA in 2008 and 2009 and Delmarva in 2009 will have positive economic impacts on both limited access and general category vessels because this area has more scallop biomass compared to areas such as open areas and CAI. The procedure to reduce trips will help prevent overfishing, and thus have positive impacts on the scallop resource, and on the long term landings and revenues of scallop vessels. There are no alternatives under the current FMP that would generate higher benefits for scallop vessels. The only alternative is the no action, which would allocate fewer ETAA trips and zero Delmarva trips.

5. Access Area Crew Limits

The adopted action will continue to allow a vessel to carry any number of crew on an access area trip. No crew limit will give vessels the most flexibility, potentially reducing total fishing costs, and will therefore have positive economic impacts on scallop vessels. The alternative option would have restricted the crew size to eight or nine persons. This would potentially reduce scallop mortality and control effort, with positive impacts on the scallop resource, landings, and revenues over the long term. On the other hand,

limiting crew size would reduce a vessel's flexibility and increase trip costs. Therefore, the economic benefits of this alternative are expected to be small compared to the adopted alternative.

6. In-Shell Possession Limit

The adopted action will prohibit any scallop vessel on an access area trip from possessing more than 50 U.S. bu (17.6 hL) of in-shell scallops. This prohibition will help reduce scallop discard mortality, and therefore result in higher yields, revenues, and economic benefits. There are no alternatives that would generate higher benefits for the scallop vessels. The only alternative is the no action which would continue to allow deckloading and result in lower economic benefits compared to the adopted alternative.

7. Research and Observer Set-Asides

The adopted alternative will continue to set-aside 2 percent of the scallop TAC for the research set-aside program and 1 percent of the scallop TAC for the industry-funded observer set-aside program. These set-asides are expected to have indirect economic benefits for the scallop fishery by improving scallop information and data made possible by research and the observer program. There are no alternatives that will generate higher benefits for scallop vessels.

8. DAS Allocations and Access Areas Trip Allocations

The adopted open area DAS allocations are expected to prevent overfishing in open areas and to have positive economic impacts on scallop vessels when combined with controlled access area allocations. Framework 19 will implement the following vessel-specific DAS allocations: Full-time vessels will be allocated 35 DAS in 2008 and 42 DAS in 2009; part-time vessels will be allocated 14 DAS in 2008 and 17 DAS in 2009; and occasional vessels will receive 3 DAS for each year. Except for the no action alternatives, other alternatives would result in slightly higher revenues and profits compared to the adopted action during 2008–2009, but would be offset by lower DAS allocations and resulting reductions in revenues in future years as the result of lower exploitable scallop biomass. The adopted action will allocate fewer open area DAS compared to the no action in both the 2008 and 2009 fishing years, but it will allocate more trips to access areas. As a result, the adopted action will generate higher benefits than the no action alternative.

9. General Category Quarterly TAC

Amendment 11 will establish a limited entry IFQ program for the general category scallop fishery scheduled to start in 2009. The 2008 fishing year will be a transition year as IFQ shares are established. The adopted action will distribute the 2008 general category quota allocation into quarters to minimize derby-style fishing. This measure will have positive economic impacts over the long-term for vessels that qualify for the general category limited entry program. Although management of the general category fishery by a quarterly hard TAC during the transition period to an IFQ program may result in some degree of derby-style fishing, the quarterly TAC allocation is intended to reduce the extent of derby fishing and lessen the negative economic impacts associated with derby fishing. The adopted alternative (Option A) will allocate 35 percent (1,056,563 lb, (475.25 mt) of the 2008 directed general category annual TAC to Quarter 1, 40 percent (1,207,750 lb, (547.83 mt)) to Quarter 2, 15 percent (452,813 lb, (205.39 mt)) to Quarter 3, and 10 percent (301,875 lb, (136.93 mt)) to Quarter 4. Quarters 1 and 2 will be allocated 75 percent of the TAC because general category access area trips primarily occur in those quarters. Unused TAC from Quarter 1 will roll over to Quarter 3, and unused TAC from Quarter 2 will roll over to the fourth quarter, thereby ensuring the full benefit of the scallop TAC is realized. There was no alternative to the adopted alternative to allocate 10 percent of the overall 2008 scallop TAC to the general category fishery. However, Option B would have distributed a greater percentage of the quarterly 10-percent hard TAC to the first and second quarters (85 percent) and less (15 percent) to the last two quarters, reducing the derby fishing in the first two quarters but increasing it in the last two quarters. This option is not expected to have larger positive economic impacts on the general category fishery compared to the adopted alternative.

10. General Category Access Area Allocations

The adopted action to allocate 5 percent of the scallop access area TACs in the 2008 and 2009 fishing years is expected to have positive economic impacts on the general category vessels compared to the no action allocation of 2 percent. In 2008, the general category fishery will be allocated 5 percent of the overall NLCA and ETAA TACs, resulting in up to 665 trips in the NLCA,

and up to 2,662 trips in the ETAA. In 2009, the general category scallop fishery will be allocated 5 percent of the overall ETAA and Delmarva TACs, resulting in up to 1,967 trips and 726, respectively. General category vessels will not be allocated any trips in CAII.

Because access areas are more productive and have higher LPUE than open areas, it will take less fishing time to catch the 400-lb (181-kg) possession limit. As a result, fishing costs will be lower and profits will be higher for trips taken in the access areas when compared to open areas. Since most general category vessels do not fish in CAII, zero percent allocation for this area will increase open area landings and overall revenues of the general category fishery. The alternative option would have allocated 2 percent of the 2008 and 5 percent of the 2009 access area TACs, which would likely have less economic benefits for general category vessels.

11. IFQ Cost Recovery

Framework 19 will implement a cost recovery program that will collect 3 percent of the ex-vessel value of scallop product landed to recover the costs directly related to management, data collection and analysis, and enforcement of the general category IFQ program as mandated by the Magnuson-Stevens Act. The adopted alternative estimates total scallop landings will be 45.9 million lb (20,820 mt) in 2009. With ex-vessel prices estimated from \$7.55–\$8.30, a 3-percent cost recovery will likely range from \$519,818 to \$571,455 in 2009. Although this measure imposes costs on qualifying IFQ vessels, alternatives to reduce those costs, either by not implementing a cost recovery program, or collecting less than 3 percent, would be contrary to the Magnuson-Stevens Act, which requires a full cost recovery program to be implemented for each IFQ program.

12. NGOM TAC

Amendment 11 will establish a NGOM Management Area that will be managed under a hard quota system. Framework 19 will establish the NGOM annual specifications. The adopted NGOM TAC is expected to have positive economic impacts for vessels that do not qualify for limited access IFQ permit but do qualify for a NGOM permit because it will allow them to land scallops in this area during favorable resource conditions. The adopted hard TAC of 70,000 lb (32 mt) is expected to generate more than \$500,000 in scallop revenue for NGOM vessels in 2008–2009. The Council discussed higher TACs for the NGOM, but none were considered

consistent with Amendment 11 and therefore were rejected and not analyzed.

13. Incidental Scallop Catch Target TAC

Amendment 11 includes a provision that the FMP should consider the level of mortality from incidental catch and remove that from the projected total catch before allocations are made to general category and limited access fisheries. The adopted action to remove incidental scallop catch before making allocations to limited access and directed general category vessels will ensure F targets are not exceeded, and thus will have positive impacts on the resource, scallop yield, and on the revenues and profits of scallop vessels. Framework 19 will establish the incidental catch target TAC for the 2008 and 2009 fishing years. The target TAC will be established at 50,000 lb (22.68 mt) per year in 2008 and 2009. This measure is based on the best available estimate of incidental catch and, therefore, no alternatives were considered.

14. Overfishing Definition Adjustment

The Council recommended a new overfishing definition based on results from the recent scallop stock assessment (SAW 45) which used a new model to characterize the scallop resource, including a new biomass target and threshold, as well as a new F threshold. The adopted action to adjust the overfishing definition will have positive impacts on the scallop resource, scallop landings, revenues, and profits of scallop vessels over the long term by more accurately defining the biomass reference points and appropriate F threshold based on the biomass reference points. Maintaining the F target at the precautionary level of 0.20 will also reduce the risk of localized overfishing in open areas. The Council also considered maintaining the current overfishing definition but, for the reasons stated, the new overfishing definition will provide greater benefits to the fishery. The alternative that would increase the F target is less precautionary. Although it would increase landings and economic benefits over the short term, it could result in overfishing and lower long-term economic benefits.

15. Observer Program Improvements

Framework 19 includes several measures that will improve oversight and administration of the scallop observer program. Measures include: Greater oversight by NNMFS/NEFOP of observer availability; observer provider materials and contracts; closer

correlation between service provider fees and observer set-aside compensation rates; adjusted general category access area trip notification requirements; and observer notification and observer waiver requirements, among others. The adopted action will have positive economic impacts by improving the administration and reducing the cost burden of the observer program on scallop vessels by improving observer program efficiency and by making provider fees more commensurate with observer set-aside compensation rates. The no action alternatives will not include observer program improvements, and therefore, will not facilitate the effectiveness and efficiency of the industry-funded observer program.

16. HCAA Rotational Management Area

The adopted action will establish the HCAA as a rotational management area and close it for at least the 2008 and 2009 fishing years to protect young scallops. This is expected to have positive economic impacts over the long term by reducing mortality and increasing yield from this area. As a rotational closed area, the HCAA is expected to provide for increased economic benefits to the scallop industry, consistent with the area rotation program. The foundation of the area rotation program is to increase yield from the scallop resource and thereby increase overall benefits. Two different boundary alternatives for HCAA were considered but not selected by the Council. These alternative closures would have slightly increased the revenues and economic benefits for the scallop vessels compared to the adopted HCAA closure boundaries, but would allocate fewer open area DAS in the 2008 fishing year.

17. 30-Day VMS Power Down Provision

The adopted action to implement a 30-day VMS power down provision will reduce the burden on vessel owners to maintain a transmitting VMS on their vessel for long periods when it is not fishing. This provision will have some positive economic impacts by reducing vessel operation costs. There are no other alternatives other than no action which does not allow vessels to power down the VMS unit.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with

the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the Atlantic scallop fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator and are also available from NMFS, Northeast Region (see ADDRESSES).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: May 21, 2008.

Samuel D. Rauch III,

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

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. Effective July 1, 2008, in § 648.4 paragraphs (a)(2)(ii)(D)(2), (a)(2)(ii)(E), (a)(2)(ii)(H), (a)(2)(ii)(I)(3) are revised to read as follows:

§ 648.4 Vessel permits.

- (a) * * *
(2) * * *
(ii) * * *
(D) * * *

(2) Landings criterion. A vessel must have landed at least 1,000 lb (454 kg) of shucked scallops in any one year when the vessel also held a general category scallop permit as specified in paragraph (a)(2)(ii)(D)(1) of this section. To qualify, scallop landings in the 2004 fishing year must have occurred on or before November 1, 2004. NMFS dealer data shall be used to make the initial determination of vessel eligibility. If a dealer reported more than 400 lb (181.4 kg) of scallops on a trip, only 400 lb (181.4 kg) will be credited toward the landings criteria. For dealer reports that indicate that the landings were bushels of in-shell scallops, a conversion of 8 lb (3.63 kg) of scallop meats per bushel will be used to calculate meat-weight, up to the maximum of 400 lb (181.4 kg) per trip. For dealer reports that indicate that the landings were reported in pounds of in-shell scallops, the weight

shall be converted to meat-weight using the formula of one pound (0.45 kg) of scallop meats for 8.33 lb (3.78 kg) of in-shell scallops, up to the maximum of 400 lb (181.4 kg) per trip, for qualification purposes.

(E) Contribution factor for determining a vessel's IFQ. An eligible IFQ scallop vessel's best year of scallop landings during the qualification period of March 1, 2000, through November 1, 2004, as specified in § 648.53(h)(2)(ii)(A), and the vessel's number of years active, as specified in § 648.53(h)(2)(ii)(B), shall be used to calculate a vessel's contribution factor, as specified in § 648.53(h)(2)(ii)(C). A vessel owner that has applied for an IFQ scallop permit will be notified of the vessel's contribution factor at the time of issuance of the IFQ scallop permit, consistent with confidentiality restrictions of the Magnuson-Stevens Act specified at 16 U.S.C. 1881a. A vessel owner may appeal NMFS's determination of the IFQ scallop vessel's contribution factor by complying with the appeal process as specified in paragraph (a)(2)(ii)(O) of this section.

* * * * *

(H) Application/renewal restrictions. See paragraph (a)(1)(i)(B) of this section. Applications for a LAGC permit described in paragraph (a)(2)(ii) of this section must be postmarked no later than August 30, 2008. Applications for LAGC permits that are not postmarked on or before August 30, 2008, may be denied and returned to the sender with a letter explaining the denial. Such denials may not be appealed and shall be the final decision of the Department of Commerce. If NMFS determines that the vessel owner has failed to pay a cost recovery fee in accordance with the cost recovery requirements specified at § 648.53(h)(4)(ii), the IFQ permit shall not be renewed.

(I) * * *

(3) Notwithstanding paragraph (a)(1)(i)(L) of this section, a vessel owner applying for a LAGC permit who sold or transferred a vessel with non-scallop limited access permits, as specified in paragraph (a)(1)(i)(D) of this section, and retained only the general category scallop history of such vessel as specified in paragraph (a)(1)(i)(D) of this section, before July 1, 2008, may use the general category scallop history to qualify a different vessel for the initial IFQ scallop permit, regardless of whether the history from the sold or transferred vessel was used to qualify another vessel for another limited access permit.

3. In § 648.9, paragraph (c)(2)(i)(B) is revised to read as follows:

§ 648.9 VMS requirements.

* * * * *

- (c) * * *
(2) * * *
(i) * * *

(B) For vessels fishing with a valid NE multispecies limited access permit, a valid surfclam and ocean quahog permit specified at § 648.4(a)(4), or an Atlantic sea scallop permit, the vessel owner signs out of the VMS program for a minimum period of 30 consecutive days by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, the vessel does not engage in any fisheries until the VMS unit is turned back on, and the vessel complies with all conditions and requirements of said letter; or

* * * * *

4. In § 648.11, paragraphs (g)(2), (g)(3), (g)(4)(i), (g)(4)(ii), (g)(5), (h)(5)(i), (h)(5)(iv), (h)(5)(vi), (h)(5)(vii)(A), and (h)(5)(vii)(E) are revised, and paragraphs (h)(5)(vii)(G) through (h)(5)(vii)(J) are added to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

- (g) * * *

(2) Vessel notification procedures—(i) Limited access vessels. Limited access vessel owners, operators, or managers shall notify NMFS/NEFOP by telephone not more than 10 days prior to the beginning of any scallop trip of the time, port of departure, open area or specific Sea Scallop Access Area to be fished, and whether fishing as a scallop dredge, scallop trawl, or general category vessel.

(ii) General category vessels. General category vessel owners, operators, or managers must notify the NMFS/NEFOP by telephone by 0001 hr of the Thursday preceding the week (Sunday through Saturday) that they intend to start a scallop trip in an access area. If selected, up to two Sea Scallop Access Area trips that start during the specified week (Sunday through Saturday) can be selected to be covered by an observer. NMFS/NEFOP must be notified by the owner, operator, or vessel manager of any trip plan changes at least 48 hr prior to vessel departure.

(3) Selection of scallop trips for observer coverage. Based on predetermined coverage levels for various permit categories and areas of the scallop fishery that are provided by NMFS in writing to all observer service providers approved pursuant to paragraph (h) of this section, NMFS shall notify the vessel owner, operator, or vessel manager whether the vessel

must carry an observer, or if a waiver has been granted, for the specified scallop trip, within 24 hr of the vessel owner's, operator's, or vessel manager's notification of the prospective scallop trip, as specified in paragraph (g)(2) of this section. Any request to carry an observer may be waived by NMFS. All waivers for observer coverage shall be issued to the vessel by VMS so as to have on-board verification of the waiver. A vessel may not fish in an area with an observer waiver confirmation number that does not match the scallop trip plan that was called in to NMFS. Confirmation numbers for trip notification calls are only valid for 48 hr from the intended sail date; and

(4) * * *

(i) An owner of a scallop vessel required to carry an observer under paragraph (g)(3) of this section must arrange for carrying an observer certified through the observer training class operated by the NMFS/NEFOP from an observer service provider approved by NMFS under paragraph (h) of this section. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 48-hr notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip. The observer service provider will notify the vessel owner, operator, or manager within 18 hr whether they have an available observer. A list of approved observer service providers shall be posted on the NMFS/NEFOP Web site at <http://www.nefsc.noaa.gov/femad/fsb/>. The observer service provider may take up to 48 hr to arrange for observer deployment for the specified scallop trip.

(ii) An owner, operator, or vessel manager of a vessel that cannot procure a certified observer within 48 hr of the advance notification to the provider due to the unavailability of an observer may request a waiver from NMFS/NEFOP from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel manager has contacted all of the available observer service providers to secure observer coverage and no observer is available. NMFS/NEFOP shall issue such a waiver within 24 hr, if the conditions of this paragraph (g)(4)(ii) are met. A vessel may not begin the trip without being issued a waiver.

(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.* For purposes of determining the daily rate for an observed scallop trip in a Sea Scallop Access Area, a service provider shall charge a vessel owner from when an observer boards a vessel until they disembark (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 the July 1st at 10 pm and lands on July 3rd at 1 am, the time at sea equals 27 hours, which would equate to 2 "days."

(B) *Open area scallop trips.* For purposes of determining the daily rate for an observed scallop trip for open area DAS trips, a service provider shall charge dock to dock where "day" is defined as a 24-hour 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 the July 1st at 10 pm and lands on July 3rd at 1 am, the time at sea equals 27 hours, so the provider would charge 1 day and 3 hours.

(ii) NMFS shall determine any reduced DAS accrual rate and the amount of additional pounds of scallops per day fished in a Sea Scallop Access Area for the applicable fishing year based on the economic conditions of the scallop fishery, as determined by best available information. Vessel owners and observer service providers shall be notified through the Small Entity Compliance Guide of any DAS accrual rate changes and any changes in additional pounds of scallops determined by the Regional Administrator to be necessary. Vessel owners and observer providers shall be notified by NMFS of any adjustments.

* * * * *

(h) * * *

(5) * * *

(i) An observer service provider must provide observers certified by NMFS/

NEFOP pursuant to paragraph (i) of this section for deployment in the scallop fishery when contacted and contracted by the owner, operator, or vessel manager of a vessel fishing in the scallop fishery, unless the observer service provider does not have an available observer within 48 hr of receiving a request for an observer from a vessel owner, operator, and/or manager, or refuses to deploy an observer on a requesting vessel for any of the reasons specified at paragraph (h)(5)(viii) of this section. An observer's first three deployments and the resulting data shall be immediately edited and approved after each trip, by NMFS/NEFOP, prior to any further deployments by that observer. If data quality is considered acceptable, the observer would be certified.

* * * * *

(iv) *Observer deployment limitations.* Unless alternative arrangements are approved by NMFS, an observer provider must not deploy any observer on the same vessel for more than two consecutive multi-day trips, and not more than twice in any given month for multi-day deployments.

* * * * *

(vi) *Observer training requirements.* The following information must be submitted to NMFS/NEFOP at least 7 days prior to the beginning of the proposed training class: A list of observer candidates; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the end of a NMFS/NEFOP Sea Scallop Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS/NEFOP Minimum Eligibility Standards for observers as described on the NMFS/NEFOP Web site.

(vii) * * *

(A) *Observer deployment reports.* The observer service provider must report to NMFS/NEFOP when, where, to whom, and to what fishery (open or closed area) an observer has been deployed, within 24 hr of the observer's departure. The observer service provider must ensure that the observer reports back to NMFS its Observer Contract (OBSCON) data, as described in the certified observer training, within 24 hr of landing. OBSCON data are to be submitted electronically or by other means as specified by NMFS. The observer service provider shall provide the raw (unedited) data collected by the

observer to NMFS within 72 hr, which should be within 4 business days of the trip landing.

* * * * *

(E) *Observer availability report.* The observer service provider must report to NMFS any occurrence of inability to respond to an industry request for observer coverage due to the lack of available observers by 5 p.m., Eastern Standard Time, of any day on which the provider is unable to respond to an industry request for observer coverage.

* * * * *

(G) *Observer status report.* Providers must provide NMFS/NEFOP with an updated list of contact information for all observers that includes the observer identification number, observer's name, mailing address, e-mail address, phone numbers, homeports or fisheries/trip types assigned, and must include whether or not the observer is "in service," indicating when the observer has requested leave and/or is not currently working for the industry funded program.

(H) Providers must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services.

(I) Providers must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and specific observers.

(J) Providers must submit to NMFS/NEFOP, if requested, copies of any information developed and used by the observer providers distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, etc.

* * * * *

■ 5. In § 648.14, as revised on April 14, 2008 (73 FR 20120) effective June 1, 2008, is further amended, effective June 1, 2008, by revising paragraphs (h)(27) and (i)(2)(iv). Paragraph (h)(29) is revised and is effective June 1, 2008, and paragraphs (i)(1)(xx), and (i)(2)(xvii) are added, effective July 1, 2008. All revisions and additions read as follows:

§ 648.14 Prohibitions.

* * * * *

(h) * * *

(27) 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 Area Access Program as specified in § 648.60.

* * * * *

(29) 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.

(i) * * *

(1) * * *

(xx) 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.

(2) * * *

(iv) 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 Area Access Program as specified in § 648.60.

* * * * *

(xvii) Fail to comply with cost recovery requirements as specified under § 648.53(g)(4)

* * * * *

■ 6. In § 648.53, as revised on April 14, 2008 (73 FR 20123), effective June 1, 2008, is further amended, effective June 1, 2008, by revising paragraphs (a)(1) through (7), (a)(8)(i) and (ii), and (a)(9), (b)(5)(i), (b)(5)(ii), (b)(6), (g)(1), (g)(2), (h)(2)(ii) introductory text, and (h)(4), revising, the table in paragraph (b)(4) introductory text, adding and reserving paragraph (b)(4)(ii), removing and reserving paragraph (b)(5)(iii), and adding paragraph (b)(4)(i) to read as follows:

§ 648.53 Total allowable catch, DAS allocations, and Individual Fishing Quotas.

(a) *Target total allowable catch (TAC) for scallop fishery.* The annual target total TAC for the scallop fishery shall be established through the framework adjustment process specified in § 648.55. The annual target TAC shall include the TAC for all scallop vessels fishing in open areas and Sea Scallop Access Areas as specified in this section, the observer and research set-aside TACs specified in paragraphs (g)(1) and (2) of this section, and in § 648.60(d) and (e). The annual target TAC for the scallop fishery shall exclude the TAC established for the Northern Gulf of Maine Scallop Management Area as specified in § 648.62, and the total estimated incidental catch of scallops, as specified at § 648.53(a)(9), by vessels issued incidental catch general category scallop

permits, and limited access and limited access general category scallop vessels not declared into the scallop fishery.

The annual target TAC for open and Sea Scallop Access Areas shall each be divided between limited access vessels, limited access vessels that are fishing under a limited access general category permit, and limited access general category vessels as specified in paragraphs (a)(3) through (a)(6) of this section. In the event that a framework adjustment does not implement an annual TAC for a fishing or part of a fishing year, the preceding fishing year's scallop regulations shall apply.

(1) *2008 fishing year target TAC for scallop fishery.* 20,140 mt, 90 percent of which will be allocated to the limited access fishery, and 10 percent of which will be allocated to the general category fishery.

(2) *2009 fishing year target TAC for scallop fishery.* 20,820 mt, 94.5 percent of which will be allocated to the limited access fishery, 5 percent of which will be allocated to IFQ scallop vessels, and 0.5 percent will be issued to limited access vessels also issued IFQ scallop permits and that are fishing under general category regulations. If the IFQ program is delayed beyond March 1, 2009, as specified at paragraph (a)(7) of this section, 90 percent of the TAC will be allocated to the limited access fishery, and 10 percent of the TAC will be allocated to the general category fishery.

(3) *Access area TAC.* The TAC for each Access Area shall be determined through the framework adjustment process described in § 648.55 and specified in § 648.59. The TAC set-asides for observer coverage and research shall be deducted from the TAC in each Access Area prior to assigning the target TAC and trip allocations for limited access scallop vessels, and prior to allocating TAC to limited access general category vessels. The percentage of the TAC for each access area allocated to limited access vessels, limited access general category vessels, and limited access vessels fishing under general category permits shall be specified in accordance with § 648.60 through the framework adjustment process specified in § 648.55.

(4) *Open area target TAC for limited access vessels.* The open area TAC specified in this paragraph (a)(4) excludes the open area DAS set-aside specified in (g)(1) and (2) of this section, the access area TACs specified in § 648.59, and access area set-asides specified in § 648.60(d) and (e).

(i) *2008 fishing year.* For the 2008 fishing year, the target TAC for limited

access vessels fishing under the scallop DAS program specified in this section shall be 6,274 mt.

(ii) *2009 fishing year.* For the 2009 fishing year, the target TAC for limited access vessels fishing under the scallop DAS program specified in this section shall be 7,458 mt., unless the implementation of the IFQ program is delayed beyond March 1, 2009, as specified in paragraph (a)(7) of this section.

(5) *Open area TAC for IFQ scallop vessels.* The open area TAC specified in this paragraph (a)(5) excludes the access area TACs specified in § 648.59, and access area set-asides specified in § 648.60(d) and (e).

(i) *2008 fishing year.* For the 2008 fishing year, IFQ scallop vessels, and limited access scallop vessels that are fishing under an IFQ scallop permit outside of the scallop DAS and Area Access programs, shall be allocated 1,369 mt.

(ii) *2009 fishing year and beyond for IFQ scallop vessels without a limited access scallop permit.* For the 2009 fishing year, unless the implementation of the IFQ program is delayed beyond March 1, 2009, as specified in paragraph (a)(7) of this section, the TAC for IFQ scallop vessels without a limited access scallop permit shall be 536 mt.

(iii) *2009 fishing year and beyond for IFQ scallop vessels with a limited access scallop permit.* For the 2009 fishing year, unless the IFQ program is delayed beyond March 1, 2009, as specified in paragraph (a)(7) of this section, limited access scallop vessels that are fishing under an IFQ scallop permit outside of the scallop DAS and Area Access programs shall be allocated 0.5 percent of the annual target TAC specified in accordance with this paragraph (a) minus the TAC for all access areas specified in accordance with paragraph (a)(3) of this section. If the IFQ program implementation is delayed beyond March 1, 2009, the allocation of TAC to IFQ scallop vessels is specified in paragraph (a)(7) of this section.

(6) *Northern Gulf of Maine Scallop Fishery.* The TAC for the Northern Gulf of Maine Scallop Fishery shall be specified in accordance with § 648.62, through the framework adjustment process specified in § 648.55. The Northern Gulf of Maine Scallop Fishery TAC is specified in § 648.62(b)(1).

(7) *Delay of the IFQ program.* If the IFQ program implementation is delayed beyond March 1, 2009, the quarterly fleetwide TAC will remain in effect. Under such a scenario, the overall IFQ fishery allocation of 4,551,700 lb (2,065 mt) will be distributed as follows: Quarter 1—1,593,095 lb (723 mt);

Quarter 2—1,820,680 lb (826 mt), Quarter 3—682,755 lb (310 mt), Quarter 4—455,170 lb (206 mt). If the Regional Administrator determines that the IFQ program cannot be implemented by March 1, 2009, NMFS shall inform all scallop vessel owners that the IFQ program shall not take effect.

(8) *Distribution of transition period TAC—(i) Allocation.* For the 2008 fishing year, and subsequent fishing years until the IFQ program is implemented as specified in paragraph (a)(7) of this section, the TAC for IFQ scallop vessels shall be allocated as specified in paragraphs (a)(5) of this section into quarterly periods. The percentage allocations for each period allocated to the IFQ scallop vessels, including limited access vessels fishing under an IFQ scallop permit and vessels under appeal for an IFQ scallop permit pursuant to § 648.4(a)(2)(ii) shall be specified in the framework adjustment process as specified in § 648.55 and are specified in the following table:

Quarter	Per- cent	TAC
I. March–May	35	1,523,375 lb (475.25 mt).
II. June–August ..	40	1,741,000 lb (547.83 mt).
III. September–November.	15	652,875 lb (205.39 mt).
IV. December–February.	10	435,250 lb (136.93 mt).

(ii) *Deductions of landings.* All landings by general category scallop vessels prior to July 1, 2008, and all landings by IFQ scallop vessels and limited access vessels fishing under an IFQ scallop permit after June 30, 2008, shall be deducted from the TAC allocations specified in the table in paragraph (a)(8)(i) of this section.

* * * * *

(9) *Scallop incidental catch target TAC.* The 2008 and 2009 incidental catch target TACs for vessels with incidental catch scallop permits are 50,000 lb (22,680 kg) per year.

(b) * * *
(4) * * *

DAS category	2008	1 2009
Full-time	35	42
Part-time	14	17
Occasional	3	3

¹ If the IFQ program implementation is delayed beyond March 1, 2009, the 2009 DAS allocations will be: Full-time—37; part-time—15, occasional—3.

(i) Limited access vessels that lawfully use more open area DAS in the 2008 fishing year than specified in this section shall have the DAS used in

excess of the 2008 allocation specified in this paragraph (b)(4) deducted from their 2009 open area DAS allocation specified in paragraph (b)(2) of this section.

(ii) [Reserved]
(5) * * *

(i) For each remaining complete trip in the Nantucket Lightship Access Area, a full-time and part-time vessel may fish an additional 7.7 DAS in open areas and an occasional vessel may fish an additional 3.2 DAS during the same fishing year. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). If a vessel has unused broken trip compensation trip(s), as specified in § 648.60(c), when the Nantucket Lightship Access Area closes due to the yellowtail flounder bycatch TAC, it will be issued additional DAS in proportion to the unharvested possession limit. For example, if a full-time vessel had an unused 9,000-lb (4,082-kg) Nantucket Lightship Access Area compensation trip (half of the possession limit) at the time of a Nantucket Lightship Access Area yellowtail flounder bycatch TAC closure, the vessel will be allocated 3.85 DAS (half of 7.7 DAS).

(ii) For each remaining complete trip in Closed Area II, a full-time and part-time vessel may fish an additional 7.9 DAS in open areas and an occasional vessel may fish an additional 3.3 DAS during the same fishing year. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). If a vessel has unused Closed Area II broken trip compensation trip(s), as specified in § 648.60(c), when Closed Area II closes due to the yellowtail flounder bycatch TAC, it will be issued additional DAS in proportion to the unharvested possession limit. For example, if a full-time vessel had an unused 9,000 lb (4,082 kg) Closed Area II compensation trip (half of the possession limit) at the time of a Closed Area II yellowtail flounder bycatch TAC closure, the vessel will be allocated 3.95 DAS (half of 7.9 DAS).

(6) DAS allocations and other management measures are specified for each scallop fishing year, which begins on March 1 and ends on February 28 (or February 29), unless otherwise noted.

* * * * *
(g) * * *

(1) *DAS set-aside for observer coverage.* As specified in paragraph (b)(2) of this section, to help defray the cost of carrying an observer, 1 percent of the total DAS shall be set-aside from the total DAS available for allocation, to

be used by vessels that are assigned to take an at-sea observer on a trip other than an Area Access Program trip. The DAS set-aside for observer coverage is 118 DAS for the 2008 fishing year, and 141 DAS for the 2009 fishing year. If the IFQ program implementation is delayed beyond March 1, 2009, the 2009 DAS set-aside for observer coverage will be 124 DAS. Vessels carrying an observer shall be compensated with reduced DAS accrual rates for each trip on which the vessel carries an observer. For each DAS that a vessel fishes for scallops with an observer on board, the DAS shall be charged at a reduced rate based on an adjustment factor determined by the Regional Administrator on an annual basis, dependent on the cost of observers, catch rates, and amount of available DAS set-aside. The Regional Administrator shall notify vessel owners of the cost of observers and the DAS adjustment factor through a permit holder letter issued prior to the start of each fishing year. The number of DAS that are deducted from each trip based on the adjustment factor shall be deducted from the observer DAS set-aside amount in the applicable fishing year. Utilization of the DAS set-aside shall be on a first-come, first-served basis. When the DAS set-aside for observer coverage has been utilized, vessel owners shall be notified that no additional DAS remain available to offset the cost of carrying observers. The obligation to carry and pay for an observer shall not be waived due to the absence of set-aside DAS allocations.

(2) *DAS set-aside for research.* As specified in paragraph (b)(2) of this section, to help support the activities of vessels participating in certain research, as specified in § 648.56; the DAS set-aside for research is 235 DAS for the 2008 fishing year, and 282 DAS for the 2009 fishing year. If the IFQ program implementation is delayed beyond March 1, 2009, the 2009 DAS set-aside for research shall be 241 DAS. Vessels participating in approved research shall be authorized to use additional DAS in the applicable fishing year. Notification of allocated additional DAS shall be provided through a letter of authorization, or Exempted Fishing Permit issued by NMFS, or shall be added to a participating vessel's open area DAS allocation, as appropriate.

* * * * *

(h) * * *

(2) * * *

(ii) *Contribution factor.* An IFQ scallop vessel's contribution factor is calculated using the best year, years active, and index factor as specified in paragraphs (h)(2)(ii)(A) through (C) of

this section. A vessel's contribution factor shall be provided to the owner of a qualified limited access general category vessel following initial application for an IFQ scallop permit as specified in § 648.4(a)(2)(ii)(E), consistent with confidentiality restrictions of the Magnuson-Stevens Act specified at 16 U.S.C. 1881a.

* * * * *

(4) *IFQ cost recovery.* A fee, not to exceed 3 percent of the ex-vessel value of IFQ fish harvested, shall be collected to recover the costs associated with management, data collection, and enforcement of the IFQ program. The owner of a vessel issued an IFQ scallop permit and subject to the IFQ program specified in this paragraph (h), shall be responsible for paying the fee as specified by NMFS in this paragraph (h)(4). An IFQ scallop vessel shall incur a cost recovery fee liability for every landing of IFQ scallops. The IFQ scallop permit holder shall be responsible for collecting his/her own fee for all of his/her IFQ scallop landings, and shall be responsible for submitting this payment to NMFS once per year.

(i) *Cost recovery fee determination.* The ex-vessel value of scallops shall be determined as an average of the ex-vessel value, as determined by Northeast Federal dealer reports, of all IFQ scallops landed between March 1 and September 30 of the initial year of the IFQ scallop program, and from October 1 through September 30 of each year thereafter.

(ii) *Fee payment procedure.* On or about October 31 of each year, NMFS shall mail a cost recovery bill to each IFQ scallop permit holder for the previous cost recovery period. An IFQ scallop permit holder who has incurred a fee must pay the fee to NMFS by January 1 of each year. Cost recovery payments shall be made electronically via the Federal web portal, www.pay.gov, or other Internet sites as designated by the Regional Administrator. Instructions for electronic payment shall be available on both the payment Web site and the paper bill. Payment options shall include payment via a credit card, as specified in the cost recovery bill, or via direct automated clearing house (ACH) withdrawal from a designated checking account. Payment by check may be authorized by NMFS if it has determined that electronic payment is not possible (for example, if the geographical area of an individual(s) is affected by catastrophic conditions).

(iii) *Payment compliance.* An IFQ scallop permit holder that has incurred an IFQ cost recovery fee must pay the

fee to NMFS by January 1 of each year. If the cost recovery payment, as determined by NMFS, is not made by January 1, NMFS may deny the renewal of the IFQ scallop permit until full payment is received. If, upon preliminary review of the accuracy and completeness of a fee payment, NMFS determines the IFQ scallop permit holder has not paid the full amount due, NMFS shall notify the IFQ scallop permit holder by letter. NMFS shall explain the discrepancy and provide the IFQ scallop permit holder 30 days to either pay the amount specified by NMFS or to provide evidence that the amount paid was correct. If the IFQ scallop permit holder submits evidence in support of his/her payment, NMFS shall determine if there is any remaining disagreement as to the appropriate IFQ fee, and prepare a Final Administrative Determination (FAD). The FAD shall set out the facts, discuss those facts within the context of the relevant agency policies and regulations, and make a determination as to the appropriate disposition of the matter. A FAD shall be the final agency action, and, if the FAD determines that the IFQ scallop permit holder is out of compliance, the FAD shall require payment within 30 days. If a FAD is not issued until after the start of the fishing year, the IFQ scallop permit holder may be authorized to fish temporarily by the Regional Administrator until the FAD is issued, at which point the permit holder shall have 30 days to comply with the terms of the FAD or the IFQ scallop permit shall not be issued until such terms are met. If NMFS determines that the IFQ scallop permit holder owes additional fees for the previous cost recovery period, and the IFQ scallop permit has already been renewed, NMFS shall issue a FAD, at which point the permit holder shall have 30 days to comply with the terms of the FAD or NMFS may withdraw the issuance of the IFQ scallop permit until such terms are met. If such payment is not received within 30 days of issuance of the FAD, NMFS shall refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection, and no IFQ permit held by the permit holder may be renewed until the terms of the FAD are met. If NMFS determines that the conditions of the FAD have been met, the IFQ permit holder may renew the IFQ scallop permit(s). If NMFS does not receive full payment prior to the end of the fishing year, the IFQ scallop permit shall be considered voluntarily abandoned, pursuant to § 648.4(a)(2)(ii)(K), unless

otherwise determined by the Regional Administrator.

* * * * *

■ 7. In § 648.58, paragraph (a) is added and paragraph (b) is revised to read as follows and paragraphs (e) through (h) are removed.

§ 648.58 Rotational Closed Areas.

(a) *Hudson Canyon Closed Area.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Hudson Canyon Closed Area. No vessel may possess scallops in the Hudson Canyon Closed Area, unless such vessel is only transiting the area as provided in paragraph (c) of this section. The Hudson Canyon Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

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

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

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

* * * * *

■ 8. In § 648.59, paragraph (e)(3) is removed and reserved, and paragraph (a) is revised, effective June 1, 2008. Section 648.59 as revised on April 14, 2008 (73 FR 20129) effective June 1, 2008, is further amended, effective June 1, 2008, by revising paragraphs (b)(5)(i), (b)(5)(ii), (c)(5)(i), (c)(5)(ii), (d)(5)(i), (d)(5)(ii), (e)(4)(i), (e)(4)(ii). The revisions read as follows.

§ 648.59 Sea Scallop Access Areas.

(a) *Delmarva Sea Scallop Access Area.* (1) From March 1, 2009, through

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

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

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

(3) *Number of trips.*—(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Delmarva Access Area as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Delmarva Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(i), or unless the vessel is taking a compensation trip for a prior Delmarva Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Delmarva Access Area shall be based on the TAC for the access area, which shall be determined through the annual framework process and specified in this paragraph (a)(5)(i). The 2009 Delmarva Access Area scallop quota for limited access scallop vessels is 5,529,000 lb (2,508 mt), unless reduced per § 648.60(a)(3)(i)(E)(3).

(ii) *General category vessels.* General category vessels shall be allocated 728 Delmarva Access Area trips in 2009, unless reduced per § 648.60(a)(3)(i)(E)(3). Subject to the seasonal restrictions specified in paragraph (a)(4) of this section, a vessel issued a general category scallop permit, may not fish for, possess, or land sea scallops in or from the Delmarva Access Area, or enter the Delmarva Access Area on a declared scallop trip once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that the allocated number of trips for the applicable fishing year have been taken, in total, by all general category scallop

vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken.

(b) * * *
(5) * * *

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

(ii) *General category vessels.* (A) General category vessels shall be allocated 0 trips in the Closed Area I Access Area in 2008 and 2009. Except as provided in paragraph (b)(5)(ii)(B) of this section, and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, a vessel issued a general category scallop permit, may not fish for, possess, or land sea scallops in or from the Closed Area I Access Area, or enter the Closed Area I Access Area on a declared scallop trip, once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that the allocated number of trips for the applicable fishing year have been taken, in total, by all general category scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all general category vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken.

(B) A vessel issued a NE Multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (b)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(c) * * *
(5) * * *

(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area II Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area II Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area II Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area II Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in this paragraph (c)(5)(i). The 2009 Closed Area II Access Area scallop quota for limited access scallop vessels is 5,626,666 lb (2,553 mt).

(ii) *General category vessels.* (A) General category vessels shall be allocated 0 trips in the Closed Area II Access Area in 2008 and 2009. Except as provided in paragraph (c)(5)(ii)(B) of this section, and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, a vessel issued a general category scallop permit may not fish for, possess, or land sea scallops in or from the Closed Area II Access Area, or enter the Closed Area II Access Area on a declared scallop trip once the Regional Administrator has provided notification in the **Federal Register** in accordance with § 648.60(g)(4), that the allocated number of trips for the applicable fishing year have been taken, in total, by all general category scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken.

(B) A vessel issued a NE Multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (c)(5)(ii)(A) of this section provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(d) * * *
(5) * * *

(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish

no more than the maximum number of trips in the Nantucket Lightship Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Nantucket Lightship Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Nantucket Lightship Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Nantucket Lightship Access Area shall be based on the TAC for the access area. The 2008 Nantucket Lightship Access Area scallop quota for limited access scallop vessels is 5,068,250 lb (2,293 mt).

(ii) *General category vessels.* (A) General category vessels shall be allocated 667 trips in the Nantucket Lightship Access Area in 2008 and 0 trips in 2009. Except as provided in paragraph (d)(5)(ii)(B) of this section, a vessel issued a general category scallop permit, may not fish for, possess, or land sea scallops in or from the Nantucket Lightship Access Area, or enter the Nantucket Lightship Access Area on a declared scallop trip, once the Regional Administrator has provided notification in the **Federal Register** in accordance with § 648.60(g)(4), that the allocated number of trips for the applicable fishing year, have been taken, in total, by all general category scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken. The 2008 Nantucket Lightship Access Area scallop quota for general category scallop vessels is 266,750 lb (121 mt).

(B) A vessel issued a NE Multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (d)(5)(ii)(A) of this section provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(e) * * *
(4) * * *

(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Elephant Trunk Access Area, as specified in § 648.60(a)(3)(i), unless the vessel owner has made an

exchange with another vessel owner whereby the vessel gains an Elephant Trunk Access Area trip and gives up a trip into another Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Elephant Trunk Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Elephant Trunk Access Area shall be based on the TAC for the access area. The 2008 Elephant Trunk Access Area scallop quota for limited access scallop vessels is 20,273,000 lb (9,196 mt). The 2009 Elephant Trunk Access Area scallop quota for limited access scallop vessels is 14,928,300 lb (6,771 mt), unless otherwise reduced per § 648.60(a)(3)(i)(E)(2).

(ii) *General category vessels.* General category vessels shall be allocated 2,668 trips in the Elephant Trunk Access Area in 2008 and 1,964 trips in 2009. The 2009 general category trip allocation may be reduced per § 648.60(a)(3)(i)(E)(2). Subject to the possession limits specified in §§ 648.52(a) and (b), and 648.60(g), a vessel issued a general category scallop permit may not fish for, possess, or land sea scallops in or from the Elephant Trunk Access Area, or enter the Elephant Trunk Access Area on a declared scallop trip once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that the allocated trips applicable to each fishing year, have been taken, in total, by all general category scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken. The 2008 Elephant Trunk Access Area scallop quota for general category scallop vessels is 1,067,000 lb (484 mt). The 2009 Elephant Trunk Access Area scallop quota for general category scallop vessels is 785,700 lb (356 mt), unless otherwise reduced per § 648.60(a)(3)(i)(E)(2).

* * * * *

■ 9. Effective July 1, 2008, in § 648.59, paragraphs (a)(3)(ii), (b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii) are revised to read as follows:

§ 648.59 Sea Scallop Access Areas.

(a) * * *
(3) * * *

(ii) *LAGC scallop vessels.* (A) The percentage of the Delmarva Access Area TAC to be allocated to LAGC scallop vessels shall be specified in this

paragraph (a)(3)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (a)(3)(ii)(B) of this section. LAGC vessels will be allocated 291,000 lb (132 mt), which is 5 percent of the 2009 Delmarva Access Area TAC.

(B) Based on the TAC specified in paragraph (a)(3)(ii)(A) of this section, LAGC scallop vessels shall be allocated 728 trips to the Delmarva Access Area, unless reduced per § 648.60(a)(3)(i)(E)(3). The Regional Administrator shall notify all LAGC scallop vessels of the date when 728 trips have been, or are projected to be, taken. Except as provided in paragraph (d)(5)(ii)(C) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Delmarva Access Area, or enter the Delmarva Access Area on a declared LAGC scallop trip once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), of the date that the allocated number of trips for the applicable fishing year have been taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section.

(b) * * *

(5) * * *

(ii) *LAGC scallop vessels.* (A) The percentage of the Closed Area I Access Area TAC to be allocated to LAGC scallop vessels shall be specified in this paragraph (b)(5)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (b)(5)(ii)(B) of this section. The Closed Area I Access Area shall be closed in the 2008 and 2009 fishing years.

(B) The Closed Area I Access Area shall be closed in fishing years 2008 and 2009. The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2008 fishing year. Except as provided in paragraph (b)(5)(ii)(C) of this section, and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Closed Area I Access Area, or enter the Closed Area I Access Area on a declared LAGC scallop trip once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), the date on which the allocated number of trips for the applicable fishing year have been taken, in total, by all LAGC scallop

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

(C) A vessel issued a NE Multispecies permit and a LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (b)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(c) * * *

(5) * * *

(ii) *LAGC scallop vessels.* (A) The percentage of the total Closed Area II Access Area TAC specified to be allocated to LAGC scallop vessels shall be specified in this paragraph (c)(5)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (c)(5)(ii)(B) of this section. The Closed Area II Access Area shall be closed in fishing year 2008, and LAGC vessels will be allocated zero percent of the 2009 Closed Area II Access Area TAC.

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

(C) A vessel issued a NE Multispecies permit and an LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (c)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(d) * * *

(5) * * *

(ii) *LAGC scallop vessels.* (A) The percentage of the Nantucket Lightship Access Area TAC to be allocated to LAGC scallop vessels shall be specified in this paragraph (d)(5)(ii)(A) through

the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (d)(5)(ii)(B) of this section. LAGC vessels shall be allocated 266,750 lb (121 mt) in fishing year 2008, which is 5 percent of the 2008 Nantucket Lightship Access Area TAC. The Nantucket Lightship Access Area shall be closed in fishing year 2009.

(B) Based on the TAC specified in paragraph (d)(5)(ii)(A) of this section, LAGC scallop vessels shall be allocated 667 trips to the Nantucket Lightship Access Area in fishing year 2008. The Regional Administrator shall notify all LAGC scallop vessels of the date when the 667 trips have been, or are projected to be, taken. Except as provided in paragraph (d)(5)(ii)(C) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Nantucket Lightship Access Area, or enter the Nantucket Lightship Access Area on a declared LAGC scallop trip once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), of the date that the allocated number of trips for the applicable fishing year have been taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section.

(C) A vessel issued a NE Multispecies permit and an LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (d)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(e) * * *

(4) * * *

(ii) *LAGC scallop vessels.* (A) The percentage of the Nantucket Lightship Access Area TAC to be allocated to LAGC scallop vessels shall be specified in this paragraph (e)(4)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (e)(4)(ii)(B) of this section. LAGC vessels shall be allocated [INSERT TAC lb] (TAC mt) in fishing year 2008, which is 5 percent of the 2008 Elephant Trunk Access Area TAC. LAGC vessels shall be allocated [INSERT TAC lb] (TAC mt) in fishing year 2009, which is 5 percent of the 2009 Elephant Trunk Access Area TAC. The 2009 general category TAC may be reduced per § 648.60(a)(3)(i)(E)(2).

(B) Based on the TACs specified in paragraph (e)(4)(ii)(A) of this section

LAGC vessels shall be allocated a total of 2,668 trips in the Elephant Trunk Access Area in fishing year 2008 and 1,964 trips in fishing year 2009. The fishing year 2009 general category trip allocation may be reduced per § 648.60(a)(3)(i)(E)(2). The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken. An LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Elephant Trunk Access Area, or enter the Elephant Trunk Access Area on a declared LAGC scallop trip once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), of the date that the allocated number of trips for the applicable fishing year have been taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section.

* * * * *

■ 10. In § 648.60, paragraphs (a)(3)(i), (d)(1), and (e)(1) are revised to read as follows:

§ 648.60 Sea scallop area access program requirements.

- (a) * * *
- (3) * * *

(i) *Limited access vessel trips.* (A)

Except as provided in paragraph (c) of this section, and unless the number of trips is adjusted for the Elephant Trunk Access Area or the Delmarva Access Area as specified in paragraph (a)(3)(i)(F) of this section, paragraphs (a)(3)(i)(B) through (E) of this section specify the total number of trips that a limited access scallop vessel may take into Sea Scallop Access Areas during applicable seasons specified in § 648.59. The number of trips per vessel in any one Sea Scallop Access Area may not exceed the maximum number of trips allocated for such Sea Scallop Access Area as specified in § 648.59, unless the vessel owner has exchanged a trip with another vessel owner for an additional Sea Scallop Access Area trip, as specified in paragraph (a)(3)(ii) of this section, been allocated a compensation trip pursuant to paragraph (c) of this section, or unless the Elephant Trunk Access Area trip allocations are adjusted as specified in § 648.60(a)(3)(i)(F). If, during the interim period between March 1, 2008, and the implementation of the limited access Access Area trip

allocations specified in this section, a limited access vessel takes a 2008 Closed Area I Access Area trip, one ETAA trip will be deducted from the vessel's 2009 allocation as specified in this section.

(B) *Full-time scallop vessels.* In the 2008 fishing year, a full-time scallop vessel may take four trips in the Elephant Trunk Access Area and one trip in the Nantucket Lightship Access Area. In the 2009 fishing year, a full-time scallop vessel may take three trips in the Elephant Trunk Access Area (unless adjusted per paragraph (a)(3)(i)(F) of this section), one trip in the Closed Area II Access Area, and one trip in the Delmarva Access Area (unless adjusted per paragraph (a)(3)(i)(F) of this section).

(C) *Part-time scallop vessels.* In the 2008 fishing year, a part-time scallop vessel may take one trip in the Nantucket Lightship Access Area and one trip in the Elephant Trunk Access Area (unless adjusted per paragraph (a)(3)(i)(F) of this section); or two trips in the Elephant Trunk Access Area. In the 2009 fishing year, a part-time scallop vessel is allocated two trips that may be distributed between access areas as follows: Up to two trips in the Elephant Trunk Access Area (unless adjusted per paragraph (a)(3)(i)(F) of this section); up to one trip in Closed Area II; and up to one trip in the Delmarva Access Area (unless adjusted per paragraph (a)(3)(i)(E) of this section).

(D) *Occasional scallop vessels.* In the 2008 fishing year, an occasional scallop vessel may take one trip in the Nantucket Lightship Access Area or one trip in the Elephant Trunk Access Area. In the 2009 fishing year, an occasional scallop vessel may take one trip in the Closed Area II Access Area or one trip in the Elephant Trunk Access Area (unless adjusted per paragraph (a)(3)(i)(F) of this section) or one trip in the Delmarva Access Area (unless adjusted per paragraph (a)(3)(i)(E) of this section).

(E) *Procedure for adjusting the number of 2009 fishing year trips in the Elephant Trunk and Delmarva Access Areas.* (1) The Regional Administrator shall reduce the number of 2009 Elephant Trunk Access Area trips or Delmarva Access Area trips using the tables in paragraphs (a)(3)(i)(F)(2) and (3) of this section, respectively, provided that updated exploitable biomass projections are available with

sufficient time to announce such an adjustment through publication in the **Federal Register**, in accordance with the Administrative Procedure Act, on or about December 1, 2008. In addition, if an updated estimate of overall F exceeds 0.29 in 2008, then Elephant Trunk Access Area trip allocations shall be reduced consistent with reductions as required in the table in paragraph (a)(3)(i)(F)(2) of this section under exploitable biomass estimates of 20,000–29,000 mt. If both the exploitable biomass and F thresholds are exceeded, the allocation level shall be established using the exploitable biomass adjustment schedule. If information is not available in time for NMFS to announce an adjustment in the **Federal Register** on or about December 1, 2008, no adjustment may be made. The exploitable biomass estimate necessary for any adjustment of the 2009 Elephant Trunk Access Area or Delmarva Access Area trip allocations shall be based on all available scientific surveys of scallops within the Elephant Trunk Access Area or Delmarva Access Area. Survey data must be used only if they are available with sufficient time for review and incorporation in the exploitable biomass estimate and they are determined to be scientifically sound. If no other surveys are available, the annual NOAA scallop resource survey shall be used to estimate exploitable scallop biomass for the Elephant Trunk Access Area.

(2) *Table of Elephant Trunk Access Area TAC and trip allocation adjustments based on exploitable biomass estimates and revised target TAC levels.* If the exploitable biomass estimate is between 20,000 and 29,999 mt, part-time vessels shall be authorized to take one trip in the Elephant Trunk Access Area at a reduced possession limit of 3,600 lb (1,633 kg) and one trip in the Nantucket Lightship Access Area at the normal possession limit as specified at § 648.60(a)(5); and occasional vessels may take one trip in the Elephant Trunk Access Area or one trip in the Nantucket Lightship Access Area with a normal possession limit of 7,500 lb (3,402 kg) as specified at § 648.60(a)(5). The following table specifies the adjustments that shall be made through the procedure required in paragraph (a)(3)(i)(F)(1) of this section under various biomass estimates and adjusted 2009 TAC estimates:

Exploitable biomass estimate (mt)	Adjusted trips (full-time, part-time, occasional)	Adjusted trips (general category)	Adjusted 2009 research set-aside TAC (mt)	Adjusted 2009 observer set-aside TAC (mt)
30,000 or greater	No adjustment	No adjustment	No adjustment	No adjustment.
20,000–29,999	2, 1*, 1**	1473	108.86	54.43.

Exploitable biomass estimate (mt)	Adjusted trips (full-time, part-time, occasional)	Adjusted trips (general category)	Adjusted 2009 research set-aside TAC (mt)	Adjusted 2009 observer set-aside TAC (mt)
10,000–19,000	1, 0, 0	982	72.57	36.29.
Less than 10,000	0, 0, 0	491	36.29	18.15.

* Part-time vessels may take one trip in the Elephant Trunk Access Area at a reduced possession limit of 3,600 lb (1,633 kg) and one trip in the NLCA with a possession limit of 18,000 lb (8,165 kg).

** Occasional vessels may take 1 trip in the Nantucket Lightship Access Area or 1 trip in the Elephant Trunk Access Area.

(3) *Table of Delmarva Access Area TAC and trip allocation adjustments based on exploitable biomass estimates and revised target TAC levels.* The

following table specifies the required adjustments that shall be made through the procedure specified in paragraph (a)(3)(i)(F)(1) of this section under

various biomass estimates and adjusted 2009 target TAC estimates:

Exploitable biomass estimate (mt)	Adjusted trips (full-time, part-time, occasional)	Adjusted trips (general category)	Adjusted 2009 research set-aside TAC	Adjusted 2009 observer set-aside TAC
10,000 or greater	No adjustment	No adjustment	No adjustment	No adjustment.
Less than 10,000	0, 0, 0	0	0	0.

* * * * *

(5) Possession and landing limits—(i) Scallop possession limits. Unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section,

after declaring a trip into a Sea Scallop Access Area, a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, scallops, up to the maximum amounts specified in the table in this paragraph

(a)(5). No vessel declared into an Access Area as described in § 648.59 may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Access Area described in § 648.59.

Fishing year	Permit category possession limit		
	Full-time	Part-time	Occasional
2008	18,000 lb (8,165 kg)	18,000 lb (8,165 kg)	7,500 lb. (3,402 kg).
2009	18,000 lb (8,165 kg)	18,000 lb ¹ (8,165 kg)	7,500 lb. (3,402 kg).

¹ Unless reduced per § 648.60(a)(3)(i)(E)(2).

* * * * *

(d) Possession limit to defray costs of observers—(1) Observer set-aside limits by area—(i) Nantucket Lightship Access Area. For the 2008 fishing year, the observer set-asides for the Nantucket Lightship Access Area is 55,000 lb (25 mt).

Lightship Access Area. For the 2008 fishing year, the research set-aside for the Nantucket Lightship Access Area is 110,000 lb (50 mt).

(ii) *Closed Area II Access Area.* For the 2009 fishing year, the research set-aside for the Closed Area II Access Area is 116,000 lb (53 mt).

(ii) *Closed Area II Access Area.* For the 2009 fishing year, the observer set-aside for the Closed Area II Access Area is 58,000 lb (26 mt).

(iii) *Elephant Trunk Access Area.* For the 2008 and 2009 fishing years, the observer set-aside for the Elephant Trunk Access Area is 222,000 lb (101 mt), and 162,000 lb (73 mt), respectively, unless the 2009 set-aside is adjusted as specified in paragraph (a)(3)(i)(E) of this section.

(iii) *Elephant Trunk Access Area.* For the 2008 and 2009 fishing years, the research set-aside for the Elephant Trunk Access Area is 440,000 lb (200 mt), and 324,000 lb (147 mt), respectively, unless the 2009 set-aside is adjusted as specified in paragraph (a)(3)(i)(E) of this section.

(iv) *Delmarva Access Area.* For the 2009 fishing year, the observer set-aside for the Delmarva Access Area is 60,000 lb (27 mt), unless the 2009 set-aside is adjusted as specified in paragraph (a)(3)(i)(E) of this section.

(iv) *Delmarva Access Area.* For the 2009 fishing year, the research set-aside for the Delmarva Access Area is 120,000 lb (54 mt), unless the 2009 set-aside is adjusted as specified in paragraph (a)(3)(i)(E) of this section.

* * * * *

(e) * * *

(1) Research set-aside limits and number of trips by area—(i) *Nantucket*

* * * * *

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

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

* * * * *

(b) * * *

(1) *NGOM TAC.* The TAC for the NGOM shall be 70,000 lb (31.8 mt) for both the 2008 and 2009 fishing years.

* * * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 080326475–8686–02]

RIN 0648–XG22

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Final rule; closure of directed fishing for Pacific sardine

SUMMARY: NMFS issues this final rule to implement the annual harvest guideline

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS 16 U.S.C. 1853

95-354, 99-659, 101-627, 104-297

(a) **REQUIRED PROVISIONS.**—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify—

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

109-479

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, charter fishing, and fish processing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, economic information necessary to meet the requirements of this Act, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

109-479

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for—

(A) participants in the fisheries and fishing communities affected by the plan or amendment;

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants; and

(C) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery;

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

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MSA § 303

(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

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(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery, including its economic impact, and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors;

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(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector, any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery and;

109-479

(15) establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

97-453, 99-659, 101-627, 102-251, 104-297

(b) DISCRETIONARY PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone [or special areas,]* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]*;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

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(2)(A) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(B) designate such zones in areas where deep sea corals are identified under section 408, to protect deep sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep sea corals, after considering long-term sustainable uses of fishery resources in such areas; and

(C) with respect to any closure of an area under this Act that prohibits all fishing, ensure that such closure—

- (i) is based on the best scientific information available;
- (ii) includes criteria to assess the conservation benefit of the closed area;
- (iii) establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and
- (iv) is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: users of the area, overall fishing activity, fishery science, and fishery and marine conservation;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the—

- (A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);
- (B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and
- (C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

109-479

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery and take into account the different circumstances affecting fisheries from different States and ports, including distances to fishing grounds and proximity to time and area closures;

109-479

(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

- (A) present participation in the fishery;
- (B) historical fishing practices in, and dependence on, the fishery;
- (C) the economics of the fishery;
- (D) the capability of fishing vessels used in the fishery to engage in other fisheries;
- (E) the cultural and social framework relevant to the fishery and any affected fishing communities;
- (F) the fair and equitable distribution of access privileges in the fishery; and
- (G) any other relevant considerations;

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MSA § 303

(7) require fish processors who first receive fish that are subject to the plan to submit data which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research;

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(12) include management measures in the plan to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations; and

(14)[sic]¹⁵ prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

97-453, 104-297

(c) PROPOSED REGULATIONS.—Proposed regulations which the Council deems necessary or appropriate for the purposes of—

(1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 304; and

(2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 304.

¹⁵ So in original.

P.L. 109-479, sec. 104(b), MSA § 303 note

16 U.S.C. 1853 note

EFFECTIVE DATES; APPLICATION TO CERTAIN SPECIES.—The amendment made by subsection (a)(10)¹⁶—

(1) shall, unless otherwise provided for under an international agreement in which the United States participates, take effect—

(A) in fishing year 2010 for fisheries determined by the Secretary to be subject to overfishing; and

(B) in fishing year 2011 for all other fisheries; and

(2) shall not apply to a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species; and

(3) shall not limit or otherwise affect the requirements of section 301(a)(1) or 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a)(1) or 1854(e), respectively).

109-479

SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.

16 U.S.C. 1853a

(a) **IN GENERAL.**—After the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, a Council may submit, and the Secretary may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of this section.

(b) **NO CREATION OF RIGHT, TITLE, OR INTEREST.**—Limited access privilege, quota share, or other limited access system authorization established, implemented, or managed under this Act—

(1) shall be considered a permit for the purposes of sections 307, 308, and 309;

(2) may be revoked, limited, or modified at any time in accordance with this Act, including revocation if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;

(3) shall not confer any right of compensation to the holder of such limited access privilege, quota share, or other such limited access system authorization if it is revoked, limited, or modified;

(4) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and

(5) shall be considered a grant of permission to the holder of the limited access privilege or quota share to engage in activities permitted by such limited access privilege or quota share.

¹⁶ Section 104(a)(10) of P.L. 109-479 added section 303(a)(15).

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

(1) IN GENERAL.—Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—

(A) if established in a fishery that is overfished or subject to a rebuilding plan, assist in its rebuilding;

(B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity;

(C) promote—

(i) fishing safety;

(ii) fishery conservation and management; and

(iii) social and economic benefits;

(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish, including any person that acquires a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege;

(E) require that all fish harvested under a limited access privilege program be processed on vessels of the United States or on United States soil (including any territory of the United States);

(F) specify the goals of the program;

(G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years);

(H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems;

(I) include an appeals process for administrative review of the Secretary's decisions regarding initial allocation of limited access privileges;

(J) provide for the establishment by the Secretary, in consultation with appropriate Federal agencies, for an information collection and review process to provide any additional information needed to determine whether any illegal acts of anti-competition, anti-trust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges under the program; and

(K) provide for the revocation by the Secretary of limited access privileges held by any person found to have violated the antitrust laws of the United States.

(2) WAIVER.—The Secretary may waive the requirement of paragraph (1)(E) if the Secretary determines that—

- (A) the fishery has historically processed the fish outside of the United States; and
- (B) the United States has a seafood safety equivalency agreement with the country where processing will occur.

(3) FISHING COMMUNITIES.—

(A) IN GENERAL.—

(i) ELIGIBILITY.—To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—

- (I) be located within the management area of the relevant Council;
- (II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and
- (IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(ii) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section for any person who fails to comply with the requirements of the community sustainability plan. Any limited access privileges denied or revoked under this section may be reallocated to other eligible members of the fishing community.

- (B) PARTICIPATION CRITERIA.—In developing participation criteria for eligible communities under this paragraph, a Council shall consider—
- (i) traditional fishing or processing practices in, and dependence on, the fishery;
 - (ii) the cultural and social framework relevant to the fishery;
 - (iii) economic barriers to access to fishery;
 - (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
 - (v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and
 - (vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

(4) REGIONAL FISHERY ASSOCIATIONS.—

(A) IN GENERAL.—To be eligible to participate in a limited access privilege program to harvest fish, a regional fishery association shall—

- (i) be located within the management area of the relevant Council;
- (ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (iii) be a voluntary association with established by-laws and operating procedures;
- (iv) consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;
- (v) not be eligible to receive an initial allocation of a limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that is [sic]¹⁷ members contribute; and
- (vi) develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(B) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section to any person participating in a regional fishery association who fails to comply with the requirements of the regional fishery association plan.

¹⁷ So in original.

(C) PARTICIPATION CRITERIA.—In developing participation criteria for eligible regional fishery associations under this paragraph, a Council shall consider—

- (i) traditional fishing or processing practices in, and dependence on, the fishery;
- (ii) the cultural and social framework relevant to the fishery;
- (iii) economic barriers to access to fishery;
- (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
- (v) the administrative and fiduciary soundness of the association; and
- (vi) the expected effectiveness, operational transparency, and equitability of the fishery association plan.

(5) ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall—

(A) establish procedures to ensure fair and equitable initial allocations, including consideration of—

- (i) current and historical harvests;
- (ii) employment in the harvesting and processing sectors;
- (iii) investments in, and dependence upon, the fishery; and
- (iv) the current and historical participation of fishing communities;

(B) consider the basic cultural and social framework of the fishery, especially through—

- (i) the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements; and
- (ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery;

(C) include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges, which may include set-asides or allocations of harvesting privileges, or economic assistance in the purchase of limited access privileges;

(D) ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—

- (i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and
- (ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges; and

(E) authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under the system to persons who substantially participate in the fishery, including in a specific sector of such fishery, as specified by the Council.

(6) PROGRAM INITIATION.—

(A) LIMITATION.—Except as provided in subparagraph (D), a Council may initiate a fishery management plan or amendment to establish a limited access privilege program to harvest fish on its own initiative or if the Secretary has certified an appropriate petition.

(B) PETITION.—A group of fishermen constituting more than 50 percent of the permit holders, or holding more than 50 percent of the allocation, in the fishery for which a limited access privilege program to harvest fish is sought, may submit a petition to the Secretary requesting that the relevant Council or Councils with authority over the fishery be authorized to initiate the development of the program. Any such petition shall clearly state the fishery to which the limited access privilege program would apply. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the limited access program shall be eligible to sign a petition for such a program and shall serve as the basis for determining the percentage described in the first sentence of this subparagraph.

(C) CERTIFICATION BY SECRETARY.—Upon the receipt of any such petition, the Secretary shall review all of the signatures on the petition and, if the Secretary determines that the signatures on the petition represent more than 50 percent of the permit holders, or holders of more than 50 percent of the allocation in the fishery, as described by subparagraph (B), the Secretary shall certify the petition to the appropriate Council or Councils.

(D) NEW ENGLAND AND GULF REFERENDUM.—

(i) Except as provided in clause (iii) for the Gulf of Mexico commercial red snapper fishery, the New England and Gulf Councils may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than 2/3 of those voting in a referendum among eligible permit holders, or other persons described in clause (v), with respect to the New England Council, and by a majority of those voting in the referendum among eligible permit holders with respect to the Gulf Council. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the individual fishing quota program shall be eligible to vote in such a referendum. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.

(ii) The Secretary shall conduct a referendum under this subparagraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed individual fishing quota program. Within 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary shall publish guidelines and procedures to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.

(iii) The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of Mexico commercial red snapper fishery.

(iv) Chapter 35 of title 44, United States Code, (commonly known as the Paperwork Reduction Act) does not apply to the referenda conducted under this subparagraph.

(v) The Secretary shall promulgate criteria for determining whether additional fishery participants are eligible to vote in the New England referendum described in clause (i) in order to ensure that crew members who derive a significant percentage of their total income from the fishery under the proposed program are eligible to vote in the referendum.

(vi) In this subparagraph, the term ‘individual fishing quota’ does not include a sector allocation.

(7) TRANSFERABILITY.—In establishing a limited access privilege program, a Council shall—

(A) establish a policy and criteria for the transferability of limited access privileges (through sale or lease), that is consistent with the policies adopted by the Council for the fishery under paragraph (5); and

(B) establish, in coordination with the Secretary, a process for monitoring of transfers (including sales and leases) of limited access privileges.

(8) PREPARATION AND IMPLEMENTATION OF SECRETARIAL PLANS.—This subsection also applies to a plan prepared and implemented by the Secretary under section 304(c) or 304(g).

(9) ANTITRUST SAVINGS CLAUSE.—Nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term ‘antitrust laws’ has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

16 U.S.C. 1853a
MSA § 303A

(d) AUCTION AND OTHER PROGRAMS.—In establishing a limited access privilege program, a Council shall consider, and may provide, if appropriate, an auction system or other program to collect royalties for the initial, or any subsequent, distribution of allocations in a limited access privilege program if—

(1) the system or program is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of this section; and

(2) revenues generated through such a royalty program are deposited in the Limited Access System Administration Fund established by section 305(h)(5)(B) and available subject to annual appropriations.

(e) COST RECOVERY.—In establishing a limited access privilege program, a Council shall—

(1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and

(2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.

(f) CHARACTERISTICS.—A limited access privilege established after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 is a permit issued for a period of not more than 10 years that—

(1) will be renewed before the end of that period, unless it has been revoked, limited, or modified as provided in this subsection;

(2) will be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have failed to comply with any term of the plan identified in the plan as cause for revocation, limitation, or modification of a permit, which may include conservation requirements established under the plan;

(3) may be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have committed an act prohibited by section 307 of this Act; and

(4) may be acquired, or reacquired, by participants in the program under a mechanism established by the Council if it has been revoked, limited, or modified under paragraph (2) or (3).

(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—

(1) IN GENERAL.—A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 53706(a)(7) of title 46, United States Code, to issue obligations that aid in financing—

(A) the purchase of limited access privileges in that fishery by fishermen who fish from small vessels; and

(B) the first-time purchase of limited access privileges in that fishery by entry level fishermen.

(2) ELIGIBILITY CRITERIA.—A Council making a submission under paragraph (1) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under subparagraphs (A) and (B) of paragraph (1) and the portion of funds to be allocated for guarantees under each subparagraph.

(h) EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—Nothing in this Act, or the amendments made by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, shall be construed to require a reallocation or a reevaluation of individual quota shares, processor quota shares, cooperative programs, or other quota programs, including sector allocation in effect before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

(i) TRANSITION RULES.—

(1) IN GENERAL.—The requirements of this section shall not apply to any quota program, including any individual quota program, cooperative program, or sector allocation for which a Council has taken final action or which has been submitted by a Council to the Secretary, or approved by the Secretary, within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, except that—

(A) the requirements of section 303(d) of this Act in effect on the day before the date of enactment of that Act shall apply to any such program;

(B) the program shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation; and

(C) nothing in this subsection precludes a Council from incorporating criteria contained in this section into any such plans.

(2) PACIFIC GROUND FISH PROPOSALS.—The requirements of this section, other than subparagraphs (A) and (B) of subsection (c)(1) and subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, shall not apply to any proposal authorized under section 302(f) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 that is submitted within the timeframe prescribed by that section.

16 U.S.C. 1853a note, 1854
MSA §§ 303A note, 304

P.L. 109-479, sec. 106(e), MSA § 303A note

16 U.S.C. 1853a note

APPLICATION WITH AMERICAN FISHERIES ACT.—Nothing in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), as added by subsection (a) [P.L. 109-479], shall be construed to modify or supersede any provision of the American Fisheries Act (46 U.S.C. 12102 note; 16 U.S.C. 1851 note; et alia).

P.L. 104-297, sec. 108(i), MSA § 303 note

EXISTING QUOTA PLANS.—Nothing in this Act [P.L.104-297] or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secretary before January 4, 1995.

SEC. 304. ACTION BY THE SECRETARY

16 U.S.C. 1854

104-297

(a) REVIEW OF PLANS.—

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(2) In undertaking the review required under paragraph (1), the Secretary shall—

(A) take into account the information, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—

(A) the applicable law with which the plan or amendment is inconsistent;

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

104-297

SEC. 402. INFORMATION COLLECTION

16 U.S.C. 1881a

109-479

(a) COLLECTION PROGRAMS.—

(1) COUNCIL REQUESTS.—If a Council determines that additional information would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for an information collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this paragraph regarding a Council request shall be made within a reasonable period of time after receipt of that request.

(2) SECRETARIAL INITIATION.—If the Secretary determines that additional information is necessary for developing, implementing, revising, or monitoring a fishery management plan, or for determining whether a fishery is in need of management, the Secretary may, by regulation, implement an information collection or observer program requiring submission of such additional information for the fishery.

109-479

(b) CONFIDENTIALITY OF INFORMATION.—

(1) Any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act shall be confidential and shall not be disclosed except—

(A) to Federal employees and Council employees who are responsible for fishery management plan development, monitoring, or enforcement;

(B) to State or Marine Fisheries Commission employees as necessary to further the Department's mission, subject to a confidentiality agreement that prohibits public disclosure of the identity of business of any person;

(C) to State employees who are responsible for fishery management plan enforcement, if the States employing those employees have entered into a fishery enforcement agreement with the Secretary and the agreement is in effect;

(D) when required by court order;

(E) when such information is used by State, Council, or Marine Fisheries Commission employees to verify catch under a limited access program, but only to the extent that such use is consistent with subparagraph (B);

(F) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act;

(G) when such information is required to be submitted to the Secretary for any determination under a limited access program; or

(H) in support of homeland and national security activities, including the Coast Guard's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)).

(2) Any observer information shall be confidential and shall not be disclosed, except in accordance with the requirements of subparagraphs (A) through (H) of paragraph (1), or—

(A) as authorized by a fishery management plan or regulations under the authority of the North Pacific Council to allow disclosure to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification;

(B) when such information is necessary in proceedings to adjudicate observer certifications; or

(C) as authorized by any regulations issued under paragraph (3) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the information by the observers or observer employers, in order—

(i) to allow the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or

(ii) to validate the accuracy of the observer information collected.

(3) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (2)(A).

(c) RESTRICTION ON USE OF CERTAIN INFORMATION.—

(1) The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), and the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such Acts or regulations thereunder.

(2) The Secretary may not require the submission of a Federal or State income tax return or statement as a prerequisite for issuance of a permit until such time as the Secretary has promulgated regulations to ensure the confidentiality of information contained in such return or statement, to limit the information submitted to that necessary to achieve a demonstrated conservation and management purpose, and to provide appropriate penalties for violation of such regulations.

16 U.S.C. 1881a-1881b
MSA §§ 402-403

(d) **CONTRACTING AUTHORITY.**—Notwithstanding any other provision of law, the Secretary may provide a grant, contract, or other financial assistance on a sole-source basis to a State, Council, or Marine Fisheries Commission for the purpose of carrying out information collection or other programs if—

(1) the recipient of such a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, such State, Council, or Marine Fisheries Commission; or

(2) the Secretary has entered into a cooperative agreement with such State, Council, or Marine Fisheries Commission.

(e) **RESOURCE ASSESSMENTS.**—

(1) The Secretary may use the private sector to provide vessels, equipment, and services necessary to survey the fishery resources of the United States when the arrangement will yield statistically reliable results.

(2) The Secretary, in consultation with the appropriate Council and the fishing industry--

(A) may structure competitive solicitations under paragraph (1) so as to compensate a contractor for a fishery resources survey by allowing the contractor to retain for sale fish harvested during the survey voyage;

(B) in the case of a survey during which the quantity or quality of fish harvested is not expected to be adequately compensatory, may structure those solicitations so as to provide that compensation by permitting the contractor to harvest on a subsequent voyage and retain for sale a portion of the allowable catch of the surveyed fishery; and

(C) may permit fish harvested during such survey to count toward a vessel's catch history under a fishery management plan if such survey was conducted in a manner that precluded a vessel's participation in a fishery that counted under the plan for purposes of determining catch history.

(3) The Secretary shall undertake efforts to expand annual fishery resource assessments in all regions of the Nation.

104-297

SEC. 403. OBSERVERS

16 U.S.C. 1881b

(a) **GUIDELINES FOR CARRYING OBSERVERS.**—Within one year after the date of enactment of the Sustainable Fisheries Act, the Secretary shall promulgate regulations, after notice and opportunity for public comment, for fishing vessels that carry observers. The regulations shall include guidelines for determining—

(1) when a vessel is not required to carry an observer on board because the facilities of such vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; and

(2) actions which vessel owners or operators may reasonably be required to take to render such facilities adequate and safe.

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****Proposed Information Collection; Comment Request; Northeast Region Observer Providers Requirements**

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 19, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Lindsey Feldman, 978-275-2179 or Lindsey.Feldman@noaa.gov.

SUPPLEMENTARY INFORMATION:**I. Abstract**

Under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce (Secretary) has the responsibility for the conservation and management of marine fishery resources. Much of this responsibility has been delegated to the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS). Under this stewardship role, the Secretary was given certain regulatory authorities to ensure the most beneficial uses of these resources. One of the regulatory steps taken to carry out the conservation and management objectives is to collect data from users of the resource.

Regulations at 50 CFR 648.11(g) require observer service providers to comply with specific requirements in order to operate as an approved provider in the Atlantic sea scallop (scallop) fishery. Observer service providers must comply with the following requirements: Submit applications for approval as an observer service provider; formally request

observer training by the Northeast Fisheries Observer Program (NEFOP); submit observer deployment reports and biological samples; give notification of whether a vessel must carry an observer within 24 hours of the vessel owner's notification of a prospective trip; maintain an updated contact list of all observers that includes the observer identification number; observer's name mailing address, e-mail address, phone numbers, homeports or fisheries/trip types assigned, and whether or not the observer is "in service." The regulations also require observer service providers submit any outreach materials, such as informational pamphlets, payment notification, and descriptions of observer duties as well as all contracts between the service provider and entities requiring observer services for review to NMFS/NEFOP. Observer service providers also have the option to respond to application denials, and submit a rebuttal in response to a pending removal from the list of approved observer providers. These requirements allow NMFS/NEFOP to effectively administer the scallop observer program.

II. Method of Collection

The approved observer service providers submit information to NMFS/NEFOP via e-mail, fax, or postal service.

III. Data

OMB Control Number: 0648-0546.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 805.

Estimated Time per Response: Application for approval of observer service provider, 10 hours; applicant response to denial of application for approval of observer service provider, 10 hours; observer service provider request for observer training, 30 minutes; observer deployment report, 10 minutes; observer availability report, 10 minutes; safety refusal report, 30 minutes; submission of raw observer data, 5 minutes; observer debriefing, 2 hours; biological samples, 5 minutes; rebuttal of pending removal from list of approved observer service providers, 8 hours; vessel request to observer service provider for procurement of a certified observer, 25 minutes; vessel request for waiver of observer coverage requirement, 5 minutes; observer contact list updates, 5 minutes; observer availability updates, 1 minute; service provider material submissions, 30 minutes; service provider contracts, 30 minutes.

Estimated Total Annual Burden Hours: 619.

Estimated Total Annual Cost to Public: \$6,270.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 14, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011-3683 Filed 2-17-11; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****Availability of Seats for the Monitor National Marine Sanctuary Advisory Council**

AGENCY: Office of National Marine Sanctuaries, National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applicants for the following seats on the Monitor National Marine Sanctuary advisory council (council): Citizen-at-Large seat, two (2) Recreational/Commercial Fishing seats, Heritage Tourism seat, and Economic Development seat. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the