subject to the exemptions specified in paragraphs (b) and (c) of this section, provided the vessel is in compliance with paragraphs (d) through (g) of this section.

(b) **Limited access scallop vessel exemption.** Any vessel issued a limited access scallop permit is exempt from the DAS requirements specified in §648.53(b) while fishing exclusively landward of the outer boundary of the waters of a state that has been issued a state waters exemption under paragraph (a)(4) of this section, provided the vessel complies with paragraphs (d) through (g) of this section.

(c) **Gear and possession limit restrictions.** Any vessel issued a limited access scallop permit, an LAGC NGOM, or an LAGC IFQ scallop permit is exempt from the minimum twine top mesh size for scallop dredge gear specified in §648.51(b)(4)(iv) while fishing exclusively landward of the outer boundary of the waters of the State of Maine under the state waters exemption specified in paragraph (a)(4) of this section, provided the vessel is in compliance with paragraphs (d) through (g) of this section.

(d) **Notification requirements.** Vessels fishing under the exemptions specified in paragraph (b) and/or (c) of this section must notify the Regional Administrator in accordance with the provisions of §648.10(e).

(e) **Restriction on fishing in the EEZ.** A vessel fishing under a state waters exemption may not fish in the EEZ during the time in which it is fishing under the state waters exemption, as declared under the notification requirements of this section.

(f) **Duration of exemption.** An exemption expires upon a change in the vessel’s name or ownership, or upon notification through VMS by the participating vessel’s owner.

(g) **Applicability of other provisions of this part.** A vessel fishing under the exemptions provided by paragraphs (b) and/or (c) of this section remains subject to all other requirements of this part.

(c) In the SAFE Report, the Scallop PDT shall review and evaluate the existing management measures to determine if the measures are achieving the FMP objectives and OY from the scallop resource as a whole. In doing so, the PDT shall consider the effects of any closed areas, either temporary, indefinite, or permanent, on the ability of the FMP to achieve OY and prevent overfishing on a continuing basis, as required by National Standard 1 of the Magnuson-Stevens Act. If the existing management measures are deemed insufficient to achieve FMP objectives and/or are not expected to achieve OY and prevent overfishing on a continuing basis, the PDT shall recommend to the Council appropriate measures and alternatives that will meet FMP objectives, achieve OY, and prevent overfishing on a continuing basis. When making the status determination in the SAFE Report, the PDT shall calculate the stock biomass and fishing mortality for the entire unit stock and consider all sources of scallop mortality to compare with the minimum biomass and maximum fishing mortality thresholds.

(d) In order to assure that OY is achieved and overfishing is prevented, on a continuing basis, the PDT shall recommend management measures necessary to achieve optimum yield-per-recruit from the exploitable components of the resource (e.g., those components available for harvest in the upcoming fishing years), taking into account at least the following factors:

1. Differential fishing mortality rates for the various spatial components of the resource;
2. Overall yields from the portions of the scallop resource available to the fishery;
3. Outlook for phasing in and out closed or controlled access areas under the Area Rotation Program; and
4. Potential adverse impacts on EFH.

(e) After considering the PDT’s findings and recommendations, or at any other time, if the Council determines that adjustments to, or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings. To address interactions between the scallop fishery and sea turtles and other protected species, such adjustments may include proactive measures including, but not limited to, the timing of Sea Scallop Access Area openings, seasonal closures, gear modifications, increased observer coverage, and additional research. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second Council meeting. The Council’s recommendation on adjustments or additions to management measures must include measures to prevent overfishing of the available biomass of scallops and ensure that OY is achieved on a continuing basis, and must come from one or more of the following categories:

1. Total allowable catch and DAS changes;
2. Shell height;
3. Offloading window reinstatement;
4. Effort monitoring;
5. Data reporting;
6. Trip limits;
7. Gear restrictions;
8. Permitting restrictions;
9. Crew limits;
10. Small mesh line;
11. Onboard observers;
12. Modifications to the overfishing definition;
13. VMS Demarcation Line for DAS monitoring;
14. DAS allocations by gear type;
15. Temporary leasing of scallop DAS requiring full public hearings;
16. Scallop size restrictions, except a minimum size or weight of individual scallop meats in the catch;
17. Aquaculture enhancement measures and closures;
18. Closed areas to increase the size of scallops caught;
19. Modifications to the opening dates of closed areas;
20. Size and configuration of rotational management areas;
21. Controlled access seasons to minimize bycatch and maximize yield;
22. Area-specific trip allocations;
23. TAC specifications and seasons following re-opening;
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(24) Limits on number of area closures;
(25) TAC or DAS set-asides for funding research;
(26) Priorities for scallop-related research that is funded by a TAC or DAS set-aside;
(27) Finfish TACs for controlled access areas;
(28) Finfish possession limits;
(29) Sea sampling frequency;
(30) Area-specific gear limits and specifications;
(31) Modifications to provisions associated with observer set-asides; observer coverage; observer deployment; observer service provider; and/or the observer certification regulations;
(32) Specifications for IFQs for limited access general category vessels;
(33) Revisions to the cost recovery program for IFQs;
(34) Development of general category fishing industry sectors and fishing cooperatives;
(35) Adjustments to the Northern Gulf of Maine scallop fishery measures;
(36) VMS requirements; and
(37) Any other management measures currently included in the FMP.

(f) The Council must select an alternative that will achieve OY and prevent overfishing on a continuing basis, and which is consistent with other applicable law. If the Council fails to act or does not recommend an approvable alternative, the Regional Administrator may select one of the alternatives developed and recommended by the PDT, which would achieve OY and prevent overfishing on a continuing basis and is consistent with applicable law, and shall implement such alternative pursuant to the Administrative Procedure Act.

(g) The Council may make recommendations to the Regional Administrator to implement measures in accordance with the procedures described in this subpart to address gear conflict as defined under §600.10 of this chapter. In developing such recommendation, the Council shall define gear management areas, each not to exceed 2,700 mi² (6,993 km²), and seek industry comments by referring the matter to its standing industry advisory committee for gear conflict, or to any ad hoc industry advisory committee that may be formed. The standing industry advisory committee or ad hoc committee on gear conflict shall hold public meetings seeking comments from affected fishers and develop findings and recommendations on addressing the gear conflict. After receiving the industry advisory committee findings and recommendations, or at any other time, the Council shall determine whether it is necessary to adjust or add management measures to address gear conflicts and which FMPs must be modified to address such conflicts. If the Council determines that adjustments or additional measures are necessary, it shall develop and analyze appropriate management actions for the relevant FMPs over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of the recommendation, the appropriate justification and economic and biological analyses, and opportunity to comment on them prior to and at the second or final Council meeting before submission to the Regional Administrator. The Council’s recommendation on adjustments or additions to management measures for gear conflicts must come from one or more of the following categories:

1. Monitoring of a radio channel by fishing vessels.
2. Fixed gear location reporting and plotting requirements.
3. Standards of operation when gear conflict occurs.
4. Fixed gear marking and setting practices.
5. Gear restrictions for specific areas (including time and area closures).
6. VMS.
7. Restrictions on the maximum number of fishing vessels or amount of gear.
8. Special permitting conditions.

(h) The measures shall be evaluated and approved by the relevant committees with oversight authority for the affected FMPs. If there is disagreement between committees, the Council may return the proposed framework adjustment to the standing or ad hoc gear conflict committee for further review and discussion.

(i) Unless otherwise specified, after developing a framework adjustment
and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council’s recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to publish the framework adjustment as a final rule. If the Council recommends that the framework adjustment should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry, consistent with the Administrative Procedure Act, in the development of the Council’s recommended management measures.

(3) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(j) If the Council’s recommendation includes adjustments or additions to management measures, and if, after reviewing the Council’s recommendation and supporting information:

(1) The Regional Administrator approves the Council’s recommended management measures, and determines that the recommended management measures should be published first as a proposed rule, the action shall be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if the Regional Administrator concurs with the Council recommendation, the action shall be published as a final rule in the FEDERAL REGISTER; or

(3) The Regional Administrator does not concur, the Council shall be notified, in writing, of the reasons for the non-concurrence.

(k) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under §305(c) of the Magnuson-Stevens Act.

§648.56 Scallop research.

(a) Annually, the Council and NMFS shall prepare and issue a Request for Proposals (RFP) that identifies research priorities for projects to be conducted by vessels using research set-aside as specified in §§648.53(b)(3) and 648.60(e).

(b) Proposals submitted in response to the RFP must include the following information, as well as any other specific information required within the RFP: A project summary that includes the project goals and objectives; the relationship of the proposed research to scallop research priorities and/or management needs; project design; participants other than the applicant, funding needs, breakdown of costs, and the vessel(s) for which authorization is requested to conduct research activities.

(c) NMFS shall make the final determination as to what proposals are approved and which vessels are authorized to take scallops in excess of possession limits, utilize DAS set-aside for research, or take additional trips into Access Areas. NMFS shall provide authorization of such activities to specific vessels by letter of acknowledgement, letter of authorization, or Exempted Fishing Permit issued by the Regional Administrator, which must be kept on board the vessel.