Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR Part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area, and is categorically excluded from further analysis under paragraph 34(g) of the Commandant Instruction. This category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add a temporary section, § 100.35–T05–0182 to read as follows:

§ 100.35–T05–0182 Special Local Regulations for Marine Events; Patapsco River, Northwest Harbor, Baltimore, MD.

(a) *Regulated area.* The following locations are regulated areas: All waters of the Patapsco River, Northwest Harbor, within an area bounded by the following lines of reference: Bounded on the west by a line running along longitude 076°35′35″ W; bounded on the east by a line running along longitude 076°35′10″ W; bounded on the north by a line running along latitude 39°16′40″ N; and bounded on the south by the shoreline between the east and west lines of reference in Baltimore, MD. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations:* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must: (i) Stop the vessel immediately when directed to do so by the Coast Guard Patrol Commander or any Official Patrol.

(ii) Proceed as directed by the Coast Guard Patrol Commander or any Official Patrol.

(d) Enforcement period: This section will be enforced as follows; (1) from 6 a.m. until 6 p.m. on June 25, 2011.

(2) In the case of inclement weather this marine event may be postponed and rescheduled for 6 a.m. to 6 p.m. on June 26, 2011.

(3) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

Dated: March 23, 2011.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Captain of the Port Baltimore.

[FR Doc. 2011–8519 Filed 4–8–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110329229–1219–02]

RIN 0648–BA71

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 15 to the Atlantic Sea Scallop Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 15 to the Atlantic Sea Scallop Fishery Management Plan (FMP), which was developed by the New England Fishery Management Council (Council). The Council submitted Amendment 15, incorporating the Final Environmental Impact Statement (FEIS) and the Initial Regulatory Flexibility Analysis (IRFA), for review by the Secretary of Commerce. NMFS has also published a Notice of Availability requesting comments from the public on Amendment 15 pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Amendment 15 was developed primarily to implement annual catch limits (ACLs) and accountability measures (AMs) to bring the Scallop FMP into compliance with requirements of the MSA as reauthorized in 2007. Amendment 15 includes additional measures recommended by the Council, including: A revision of the overfishing definition (OFD); modification of the essential fish habitat (EFH) closed areas under the Scallop FMP; adjustments to measures for the Limited Access General Category (LAGC) fishery; adjustments to the scallop research set-aside (RSA) program; and additions to the list of measures that can be adjusted by framework adjustments.

DATES:

Comments must be received by 5 p.m., Eastern Standard Time, by May 26, 2011.

ADDRESSES: An FEIS was prepared for Amendment 15 that describes the proposed action and its alternatives and provides a thorough analysis of the impacts of proposed measures and their alternatives. Copies of Amendment 15, including the FEIS and the IRFA, are available 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.*

You may submit comments, identified by 0648–BA71, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Fax:* (978) 281–9135, Attn: Peter Christopher.
- *Mail:* Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Scallop Amendment 15 Proposed Regulations."

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not

submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to the Office of Management and Budget (OMB) by e-mail at *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Policy Analyst, phone (978) 281–9288, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

In January 2007, the MSA was reauthorized and included a new provision requiring each FMP to use ACLs to prevent overfishing, including measures to ensure accountability, should the ACLs be exceeded. For fishery resources that were determined to be overfished, the MSA requires that such measures be implemented by 2010. For fishery resources that are not overfished, such measures must be implemented by 2011. Scallop fishery management measures to comply with the MSA's ACL and AM requirements are required for 2011, because the scallop resource is not overfished. To meet this requirement, the Council initiated development of Amendment 15 on March 5, 2008, by publishing a Notice of Intent to develop Amendment 15 (73 FR 11888, March 5, 2008) and prepare an EIS to analyze the impacts of the proposed management alternatives. The Council intended that Amendment 15 would address three goals: (1) Bring the Scallop FMP into compliance with new requirements of the reauthorized MSA; (2) address excess capacity in the limited access scallop fishery; and (3) consider measures to adjust several aspects of the overall program to make the Scallop FMP more effective. Following the public comment period that ended on August 23, 2010, the Council adopted Amendment 15 on September 29, 2010. The Council voted to adopt most of the measures proposed in the amendment except permit stacking and leasing alternatives that had been designed to address excess capacity, after considering extensive written and oral public comment on the measures. Ultimately the Council rejected these measures due to concerns that the measures would have unacceptable negative economic and social impacts on the scallop fleet and fishing communities.

Amendment 15 would establish the mechanism for implementing ACLs and AMs, which in turn would generate scallop fishery specifications, including days-at-sea (DAS), access area trip allocations, and individual fishing quotas (IFQs). Amendment 15 does not include actual catch limits and fishery specifications. These specifications will be established through the separate action of Framework 22 to the FMP for fishing years (FYs) 2011, 2012, and 2013. Framework 22 includes specific measures that address the change from DAS, access areas, and trip allocations that became effective on March 1, 2011, to different allocations implemented under Framework 22. The Council adopted Framework 22 and submitted it to NMFS for review. NMFS' review of Framework 22 is on the same timeline as Amendment 15.

The Council has reviewed the Amendment 15 proposed regulations as drafted by NMFS and deemed them to be necessary and appropriate as required by section 303(c) of the MSA.

Recommended Management Measures

1. ACL Flow Chart

Amendment 15 would establish how the Scallop FMP would account for all catch in the scallop fishery and would include designations of Overfishing Limit (OFL), Acceptable Biological Catch (ABC), ACLs, and Annual Catch Targets (ACT) for the scallop fishery, as well as scallop catch for the Northern Gulf of Maine (NGOM), incidental, and State waters catch components of the scallop fishery. The scallop fishery assessment would determine the exploitable biomass, including an assessment of discard and incidental mortality (mortality of scallops resulting from interaction, but not capture, in the scallop fishery). Based on the assessment, OFL would be specified as the level of landings, and associated fishing mortality rate (F) that, above which, overfishing is occurring. OFL would account for landings of scallops in State waters by vessels without Federal scallop permits. The current assessment of the scallop fishery (SAW 50, 2010) determined that the F associated with the OFL is 0.38. Since discard and incidental mortality are accounted for in the scallop resource assessment and removed prior to setting ABC, the specification of ABC, ACL, and ACT, as well as the NGOM and incidental catch, are represented by landings as a proxy for catch. ABC would be equal to overall ACL, but to account for scientific uncertainty, ABC would be less than OFL, with an associated F that has a 25-percent probability of exceeding F associated with OFL (*i.e.,* a 75-percent probability of being below the F associated with OFL). SAW 50 determined that the F associated with the ABC/ACL is 0.32. Catch from the NGOM would be established at the ABC/ACL level, but would not be subtracted from ABC/ACL. Since this portion of the scallop fishery is not part of the scallop assessment, the catch would be added and specified as a separate Total Allowable Catch (TAC) in addition to ABC/ACL. After removing observer set-aside and RSA (1 percent of the ABC/ACL and 1.25 M lb (567 mt) (proposed in Amendment 15), respectively), Amendment 15 would establish separate sub-ACLs for the limited access (LA) and LAGC fisheries. To account for management uncertainty, Amendment 15 proposes ACTs for each fleet. For the LA fleet, the ACT would have an associated F that has a 25-percent chance of exceeding ABC. The F associated with this ACT is currently estimated to be 0.28. For the LAGC fleet, the ACT would be set equal to the LAGC fleet's sub-ACL.

2. Modification of the OFD

Amendment 15 proposes to modify the current OFD to provide for better management of the scallop fishery under area rotation. The proposed Hybrid OFD combines the overfishing threshold from the status quo overfishing definition for open areas with a time-averaged fishing mortality F approach for access areas. The F target in the open areas would be set at a level that is no higher than the overfishing threshold (currently F = 0.38). In access areas, it would be set annually at a level that results in F no higher than F_{MSY} when averaged over time with the F in that access area, including times when the access area was closed. The combined target F for all areas could be no higher than that which gives a 25-percent probability of exceeding the F associated with ABC (F = 0.32), which is currently calculated to be F = 0.28, taking into account all sources of F in the scallop fishery.

The current OFD and overfishing reference points are based on the assumption that F is spatially uniform. In the scallop fishery this assumption is inaccurate, because of unfished biomass in closed areas, variable Fs in access areas, and spatially variable fishing mortality in open areas. Under the current OFD, closed and access areas protect the scallop stock from

recruitment overfishing, but growth overfishing may occur in the open areas because the current OFD averages spatially across open and closed areas, *i.e.,* F is higher in open areas to compensate for the zero F in closed areas. The greater the fraction of scallops in the closed areas, the more ineffective the current OFD becomes. Additionally, when more biomass is within closed areas, the estimated whole-stock F may be more sensitive to recruitment and measurement error than to changes in effort. Therefore, while the scallop fishery's current OFD is consistent with MSA requirements, and has been effective at keeping the scallop fishery above the overfished level and preventing overfishing overall, certain resource and fishery conditions as described above may reduce the effectiveness of the FMP.

3. OFD Reference Points

The current OFD states that F_{MAX} will be used as a proxy for F_{MSY}. However, SAW 50 approved a direct estimate of F_{MSY}. Therefore, Amendment 15 would replace the current B_{MAX} and F_{MAX} with B_{MSY} and F_{MSY}. Final results from SAW 50 were available in August 2010, and both the Scallop Committee and the Council's Scientific and Statistical Committee (SSC) reviewed the results and agreed that the existing OFD should be updated to reflect new biological reference points based on B_{MSY} and F_{MSY}. Under Amendment 15, the new overfishing definition would read:

> If stock biomass is equal or greater than B_{MSY} as measured by an absolute value of scallop meat (mt) (estimated in 2009 at 125,358 mt scallop meat in the Georges Bank and Mid-Atlantic resource areas), overfishing occurs when F exceeds F_{MSY}, currently estimated as 0.38. If the total stock biomass is below B_{MSY}, overfishing occurs when F exceeds the level that has a 50-percent probability to rebuild stock biomass to B_{MSY} in 10 years. The scallop stock is in an overfished condition when stock biomass is below ½ B_{MSY}, and in that case overfishing occurs when F is above a level expected to rebuild in 5 years, or above zero when the stock is below ¼ B_{MSY}.

The proposed changes to the OFD would also require revisions of the current framework provisions in the scallop fishery regulations at 50 CFR 648.55. Under the current OFD, the framework adjustment process included provisions that ensure that measures achieve optimum yield (OY) on a continuing basis. These provisions were established as part of Amendment 10 to the FMP because of the potential inconsistency between rotational area management and use of a spatially-average OFD, whereby open area fishing mortality may be elevated relative to the condition of the resource in open areas, thus preventing OY from being achieved. Because the proposed OFD drastically reduces the risk of inappropriate open area fishing levels, due to application of the threshold F to drive open area fishing levels, the framework provisions specifically designed to adjust Council recommendations to ensure that OY is achieved are no longer necessary.

4. Scientific Uncertainty and ABC Control Rule

Amendment 15 includes two different assessments of scientific uncertainty, based on the following scientific parameters that are utilized in scallop resource and fishery assessments:

- Growth;
- Maturity and fecundity;
- Shell height/meat weight relationship;
- Natural mortality;
- Catch data;
- Discards and discard mortality;
- Incidental mortality;
- Commercial shell height data;
- Commercial and survey gear selectivity;
- Commercial and survey dredge efficiency;
- Stock-recruitment relationship; and
- Density dependence.

The first assessment of scientific uncertainty is qualitative and is based on the level of uncertainty, importance, and effect of the parameters. Uncertainty, importance, and effect of the parameters on the scallop resource and fishery assessment are characterized numerically on a scale of low to high. This first assessment of scientific uncertainty would provide managers with an indication of the overall level of scientific uncertainty, which would help determine a buffer between the OFL and ABC. The Council concluded in Amendment 15 that scientific uncertainty in the scallop resource and fishery is low.

The second consideration of scientific uncertainty enables the Council to establish ABC that has a low risk of exceeding OFL. Based on the parameters for determining scientific uncertainty, an analytical model developed by the PDT specifies the probability of exceeding the OFL at a specified F associated with the corresponding catch level. Using this model, and given the overall low level of scientific uncertainty, the ABC control rule would set ABC at a level that has a 25-percent probability of exceeding OFL (*i.e.,* a 75-percent probability that it will not exceed OFL). This value could be modified through the framework adjustment process.

5. State Waters Catch, NGOM TAC, and Incidental Catch

Scallop catch from State waters by vessels not issued a Federal scallop permit is a relatively small component of overall scallop catch, and the scallop resource in State waters is not part of the Federal scallop resource survey. To account for scallop landings from State waters, the Council's Scallop Plan Development Team (PDT) will estimate landings annually, based on available State waters landings information, and include it in the specification of OFL. The amount of scallop landings in State waters would then be specified as a separate level of landings that would be compared to actual landings each year, and adjusted as necessary in subsequent years. This component of overall catch is not specified as an ACL and has no associated AM, since there is no Federal authority to adjust catch by vessels without a Federal permit.

Scallop catch in the NGOM would be specified similar to State waters scallop catch, except that the NGOM landings level would be based on historical landings or available resource surveys in the NGOM, and would be included in the specification of ABC. While there is no Federal survey in the NGOM, independent surveys have been conducted, and if continued, would provide survey information for NGOM landings specifications each year. Although this component of overall scallop catch is not formally an ACL, an overage is accounted for in the subsequent year through a reduction of the landings limit that is equal to the overage from the prior year.

Incidental catch has been estimated to be 50,000 lb (24,948 kg), and data continue to support this value, based on historical and predicted landing levels. Incidental catch would be removed from ABC prior to establishing the research and observer set-asides and ACLs for the limited access and LACG IFQ fleets. This component of overall scallop catch does not have a specific AM, but if incidental catch is higher than predicted, the landings limit would be adjusted in the subsequent year(s) by removing more incidental catch from ABC.

6. Separate ACLs for the LA and LAGC IFQ Fleets as Sub-ACLs

The LA and LAGC IFQ fleets would be allocated landings as sub-ACLs of the overall scallop fishery ACL with the same allocation values that were established under Amendment 11 to the FMP: LA vessels would be allocated 94.5 percent of the ABC/ACL landings; and LAGC IFQ vessels would be

allocated 5.5 percent of the ABC/ACL landings. Both allocations would be made after deducting incidental catch and research and observer set-asides from ABC. Sub-ACLs were established for these two fleets so that AMs would be based on each fleet's harvest relative to its own ACL, without requiring that one fleet would be penalized for an overage of the other. Both fleets would have carryover provisions (existing for the LA and proposed under Amendment 15 for the LAGC fleet) and RSA catch could be carried over into the subsequent year. For the purpose of accounting relative to ABC and ACL, landings from carryover DAS, IFQ, or TAC would apply to the FY in which they are landed (*i.e.,* not to the FY for which they were allocated).

7. Management Uncertainty and ACT

Amendment 15 proposes that management uncertainty in the scallop fishery mainly results from the uncertainty associated with carryover DAS, vessel upgrades and replacements, and open area catch under DAS. The uncertainty associated with these measures results from a difference between estimated vessel efficiency and landings per unit effort (LPUE), and realized efficiency and LPUE during the course of the fishing year. Management uncertainty for the LAGC IFQ fleet is considered very low because it would result from landings in excess of a vessel's IFQ, which can be audited and accounted for through data reviews each year. Although ACT could be specified for the LAGC fishery, it would be equal to the fleet's ACL initially, unless revised by the Council. An ACT for the LA fleet to account for management uncertainty would be set at a level with an associated F that has a 25-percent probability of exceeding ABC, which is currently 0.28.

8. AMs for the LA Fleet

The primary AM for the LA fleet requires a DAS reduction for the fleet in open areas that would approximate the catch overage of the ACT. Using the ACT for determining the overage is designed to account for management uncertainty and to better prevent vessels from exceeding the fleet's ACL. The DAS reduction would be distributed evenly to limited access vessels. For example, an overage of 1,500,000 lb (680 mt) would have a DAS equivalent of 625 DAS, based on an LPUE of 2,400 lb (1.1 mt) per DAS. Divided across 327 full-time vessels, the DAS reduction per vessel would be 1.9 DAS. Part time vessel DAS would be reduced by 0.76 DAS (40 percent of the full time deduction) and occasional vessel DAS would be reduced by 0.16 DAS (1/12th of the full time deduction). Part time and occasional proportional deductions are consistent with the way that DAS are assigned in the fishery. The AM would take effect in the fishing year following the fishing year in which the ACL was exceeded. Since the AM would apply mid-year, vessels may have already used more DAS in that fishing year than are ultimately allocated after applying the AM. If this occurs, a vessel that exceeds the DAS it is allocated after the AM is applied would have the amount of DAS used in excess of the vessel's final DAS allocation after the AM is applied deducted from its DAS allocation in the subsequent fishing year. For example, a vessel initially allocated 32 DAS in 2011 uses all 32 DAS prior to application of the AM. If, after application of the AM, the vessel's DAS allocation is reduced to 31 DAS, the vessel's DAS in 2012 would be reduced by 1 DAS.

9. LA Fleet AM Exception

Even if the ACL is exceeded, triggering the AM for the LA fleet, the F associated with the fleet's ACL may not be exceeded if, in retrospect, some of the assumptions for determining the ACL, such as LPUE relative to the status of the resource or the biomass were underestimated. Since the overall goal of the ACL is to ensure that F limits are not exceeded, enacting an AM would not be necessary if the F limits are not exceeded. To address this, Amendment 15 includes an exception provision (called a "disclaimer" in the amendment) that would stop the AM from taking effect if, in an analysis of the preceding fishing year before the AM goes into effect, the actual F resulting from the fishery in the prior year was one standard deviation below the overall F for the fleet's ACL. With an F = 0.28 for the ACL, one standard deviation below would be F = 0.24. If the fishery's F is below 0.24, the AM would not be implemented. However, if the fishery's F is 0.24 or above, the AM would take effect. When fishery data are available after the FY ends, and before the AM takes effect, the Scallop PDT will evaluate the fishery, determine the F and would recommend through the Council whether or not the AM should be implemented. To ensure compliance with applicable laws, the Regional Administrator would have discretion to implement the exception or implement the AM in accordance with the Administrative Procedure Act (APA), 5 U.S.C. 553 *et seq.,* after considering the Council's recommendation.

The application of the AM described in item 8 above, and the AM exception described in this item 9, would be considered at the same time to ensure that multiple adjustments of DAS do not occur in one fishing year, if possible. The decision to implement the AM or the AM exception would be made by the Regional Administrator on or about September 30 of each year.

10. Increase of LAGC IFQ ACL if LA AM Exception Is Enacted

If the LA fleet's AM exception is enacted, a portion of landings would be re-distributed to the LAGC fleet for equity purposes. Under the exception, the LA fleet would have exceeded its ACL, but no AM would be put in place, as described in item 9 above. Because the LA fleet still would have harvested more scallops than allocated, without being held accountable, an inequity would be created. Had the ACL been higher, commensurate with the analysis of the prior fishing year, those "extra" scallops could have been distributed to the LAGC IFQ fleets as well. To account for the inequity, the LAGC IFQ fleet would be allocated 5.5 percent of the LA fleet's overage of its ACL. The additional allocation to the LAGC IFQ fleet would be distributed through adjustment of IFQs, upon implementation of the exception on or about September 30 of each year. An amount equivalent to the amount allocated to the LAGC IFQ fleet would be deducted from the LA ACL. The deduction would not affect the LA fleet's ACT or DAS allocations, but would establish a lower threshold for the LA fishery for triggering AMs.

11. AM for the LAGC IFQ Fleet

Amendment 15 proposes that, if an LAGC vessel exceeds its IFQ, its IFQ would be reduced by the amount equal to the overage as soon as possible in the fishing year immediately following the fishing year in which the IFQ overage occurred. Since the AM would apply mid-year, vessels may have already used more IFQ in that fishing year than is ultimately allocated after applying the AM. If this occurs, a vessel that exceeds the IFQ it is allocated after the AM is applied would have the amount of IFQ landed in excess of the vessel's final IFQ allocation after the AM is applied deducted from its IFQ allocation in the subsequent fishing year. For example, a vessel with an initial IFQ of 1,000 lb (453.6 kg) in 2010 landed 1,200 lb (544.3 kg) of scallops in 2010, and is initially allocated 1,300 lb (589.7 kg) of scallops in 2011. That vessel would be subject to an IFQ reduction equal to 200 lb (90.7 kg) to account for the 200 lb (90.7 kg) overage in 2010. If that vessel lands 1,300 lb (589.7 kg) of scallops in 2011 prior to application of the 200 lb

(90.7 kg) deduction as the AM, the vessel would be subject to a deduction of 200 lb (90.7 kg) in 2012.

For vessels involved in a temporary IFQ transfer, the entire deduction shall apply to the vessel that acquired IFQ, not the transferring vessel. A vessel that has an overage that exceeds its IFQ in the subsequent fishing year shall be subject to an IFQ reduction in subsequent years until the overage is paid back. For example, a vessel with an IFQ of 1,000 lb (454 kg) in each year over a 3-year period, that harvests 2,500 lb (1,134 kg) of scallops the first year, would have a 1,500-lb (680-kg) IFQ deduction, so that it would have zero pounds to harvest in year 2, and 500 lb (227 kg) to harvest in year 3. A vessel that has a "negative" IFQ balance, as described in the example, could lease or transfer IFQ to balance the IFQ, provided there are no sanctions or other enforcement penalties that would prohibit the vessel from acquiring IFQ.

Applying the AM to an individual vessel's IFQ was considered appropriate because the Council determined that individual vessel overages of IFQ would be the only cause of exceeding the ACL for the IFQ fleet. A vessel that has an overage in one FY that exceeds its entire IFQ in the subsequent FY would be required to take IFQ reductions in subsequent years until the overage is paid back. For example, a vessel with an IFQ of 1,000 lb (454 kg) in each year over a 3-year period, that harvests 2,500 lb (1,134 kg) of scallops the first year, would have a 1,500-lb (680-kg) IFQ deduction, so that it would have zero pounds to harvest in year 2, and 500 lb (227 kg) to harvest in year 3. A vessel that has a "negative" IFQ balance, as described in the example, could lease IFQ to balance the IFQ, provided there are no sanctions or other enforcement actions that would prohibit the vessel from acquiring IFQ. These automatic IFQ deductions do not excuse a vessel from any enforcement actions that may be applicable for the overage. The Council determined that this individual-vessel AM would be more equitable than penalizing others in the fleet for single-vessel overages. The Council incorporated ACT into the LAGC IFQ fleet allocation, but chose not to apply any management uncertainty buffer for the fleet at this time. This could be adjusted through the framework process if an ACT is needed to address management uncertainty.

12. Yellowtail Flounder (YTF) Sub-ACL

To account for YTF catch in the scallop fishery, Amendment 15 would establish sub-ACLs (called "sub" ACLs to reflect that these ACLs are part of the overall ACL established in the NE Multispecies FMP). for the Southern New England/Mid-Atlantic (SNE/MA) and Georges Bank (GB) YTF sub-ACLs for the scallop fishery. The amount of YTF estimated to be harvested annually would depend on the scallop DAS and access area allocations, and could be adjusted through the NE Multispecies FMP framework adjustment process.

13. YTF Sub-ACL AM

Areas within the GB and SNE/MA YTF stock areas that have been pre-identified would close to scallop fishing in the FY following a FY in which the YTF sub-ACL for the scallop fishery is exceeded. These areas were identified during the final development of Amendment 15 as the statistical areas that have high bycatch of YTF in the scallop fishery. For the GB YTF stock, the closure would be in statistical area 562, which extends from just west of Closed Area II (CAII), through that closed area, and to the southeast of that closed area. In addition, a small portion of statistical area 525 within the CAII access area would also be closed. For the SNE/MA YTF stock, statistical areas 537, 539, and 613 would close under the YTF AM. Coordinates of these YTF AM closed areas are included in the proposed regulations in this proposed rule. A chart depicting the areas is in the Amendment 15 FEIS (*see* **ADDRESSES**). The Council decided that the statistical areas included in each YTF AM would close to LA vessels only; LAGC vessels would be exempt from these closures if fishing in an exempted area authorized under the NE Multispecies FMP, because these exemptions were created because bycatch of YTF in the LAGC fishery is extremely low. However, any YTF catch by LAGC vessels as they continue to fish would count toward that stock area's sub-ACL for the scallop fishery (and would contribute to an overage of the sub-ACL for the scallop fishery). The YTF closure AM would be effective in the scallop FY directly following the year in which the YTF sub-ACL is exceeded. By January 15 of each year, NMFS would determine whether the YTF sub-ACL is expected to (or has been) exceeded that year. NMFS would announce the closure to the scallop fleet as soon as possible following the determination, and the closure would take effect on March 1. The Council also specified that if the scallop fishery exceeds its YTF allocation in 2010 (specified under the NE Multispecies FMP), and that causes the entire applicable YT ACL to be exceeded for the 2010 fishing year, the scallop fishery will be subject to the applicable YTF AM. To implement the YTF AM for the 2011 fishing year, NMFS would determine the length of the closure as specified below, beginning when Amendment 15 is effective, if approved. For the 2012 fishing year and beyond, the YTF closure AM areas would remain closed for the length of time specified in the following tables, and would be in place for one fishing year only:

SNE/MA YT Closure AM Duration for Specified Overage

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

GB YT Closure AM Duration for Specified Overage in Years When the CAII Access Area Is Open

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

GB YT Closure AM Duration for Specified Overage in Years When the CAII Access Area Is Closed

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

14. Monitoring the YTF Sub-ACL

In order to more effectively monitor YTF bycatch in open areas, the daily vessel monitoring system (VMS) catch report that is currently required in access areas only would be required for all scallop trips in all areas. Vessel operators would be required to report the following information: Fishing

vessel trip report (FVTR) serial number; date fish caught; total pounds of scallop meats kept; total pounds of YTF kept; total pounds of YTF discarded; and total pounds of all other fish kept. Vessels would be required to submit VMS catch reports for every day fished by 9 a.m. of the day following the day on which fishing occurred, consistent with access area catch reporting.

15. LAGC IFQ Vessel Possession Limit Increase

IFQ scallop vessels would be allowed to harvest 600 lb (272.2 kg) of shucked scallops or 75 bu (26.4 hL) of in-shell scallops per trip, an increase of 200 lb (90.7 kg) or 25 bu (8.8 hL) per trip from the current 400-lb (181.4-kg) or 50-bu (17.6-hL) possession/trip limit. This alternative would address concerns that the current possession limit is not economically feasible due to increased costs. The 600-lb (272.2-kg) possession limit is not expected to change the "small boat" nature of the LAGC fishery, and would remain consistent with the Council's vision for LAGC vessels, while enabling vessel owners to maintain profits under rising costs. The increase is also consistent with the conservation objectives of the FMP because landings are constrained by the IFQ allocations.

16. IFQ Carryover

Amendment 15 proposes to allow IFQ vessels that have unused IFQ at the end of the FY to carry over up to 15 percent of their unused IFQ to the subsequent FY. Any IFQ that was leased by but not used by a vessel could also be carried over by the vessel that acquired the IFQ (for monitoring and accounting purposes, leased-in IFQ is used first, in the order acquired). For accounting purposes, the combined total of all vessels' IFQ carry-over shall be added to the LAGC IFQ fleet's applicable ACL for the carry-over year. Any IFQ carried over that is landed in the carry-over fishing year shall be counted against the ACL specified in paragraph (a)(4)(i) of this section, as increased by the total carry-over for all LAGC IFQ vessels, as specified in paragraph (h)(2)(v)(B).

17. Increase the IFQ Vessel Cap to 2.5 Percent

This proposed measure would increase the 2-percent IFQ cap per vessel to 2.5 percent of the total IFQ allocation to allow more flexibility and promote efficiency for vessels in fishing IFQs available to them. IFQ that is carried over would not contribute to the vessel's 2.5-percent IFQ cap because the carryover is a temporary increase of the vessel's IFQ based on underharvest the prior year. Because there is also a 5-percent overall cap on how much IFQ on entity may own, a vessel owner would now be permitted to own only two vessels to meet the 5-percent ownership cap, rather than having to own more than two vessels. This alternative would provide increased flexibility to vessel owners to more effectively and efficiently fish their IFQs.

18. Permanent IFQ Transfers Separate From LAGC IFQ Permit

This alternative would allow LAGC IFQ permit owners to permanently transfer some or all of their quota allocation, independent of their IFQ permit, to another LAGC IFQ permit holder while retaining the permit itself. This measure would enable vessel owners additional flexibility to buy or sell IFQ without impacting other permits on their vessel. This allowance would only apply to IFQ permit holders that do not also have a LA scallop permit to prevent crossover of IFQ allocations between the two IFQ fleets that have separate allocations.

19. Revision of the EFH Closed Areas

To establish compatibility with the NE Multispecies FMP, Amendment 15 would modify the EFH closed areas in the Scallop FMP by removing the four EFH closed areas that were implemented in Amendment 10 to the Scallop FMP, and it would replacing them with EFH closed areas that are identical to the EFH closed areas implemented under the NE Multispecies FMP. These areas are the Closed Area I (CAI), Closed Area II (CAII), Nantucket Lightship, Western Gulf of Maine, Jeffrey's Bank, and Cashes Ledge Habitat Closed Areas. Coordinates for the area are provided in the proposed regulations in this proposed rule. A chart depicting the areas is in the FEIS for Amendment 15 (*see* **ADDRESSES**). These areas would be closed to scallop fishing (and closed to all mobile bottom-tending gear under the NE Multispecies FMP) to minimize the adverse impacts of scallop fishing. This change in the EFH closed areas under the Scallop FMP would make the EFH closed areas consistent between the Scallop FMP and the NE Multispecies FMP, as intended under Joint Frameworks 16 to the Scallop FMP and 39 to the NE Multispecies FMP (Joint Framework 16/39) (69 FR 63460, November 2, 2004). With inconsistent areas, the scallop access areas in CAI, CAII, and the NLCA are inconsistent with the area rotation program established under the Scallop FMP because they are restricted to areas smaller than designed. These areas were originally implemented under that action, but were vacated by a Federal Court order resulting from a lawsuit on Joint Framework 16/39. That order specified that the EFH closed areas could only be changed through an FMP amendment. This proposed action would address the inconsistency while the Council continues to develop EFH measures under Phase 2 of its Omnibus EFH Amendment.

20. Establish Third-Year Default Measures Through the Biennial Framework Process

Fishery specifications in the scallop fishery are generally set every 2 years, through the biennial framework adjustment process. This alternative would extend the fishery specification process to include a third year of allocation measures that would be effective if subsequent framework actions are delayed. Currently, measures from the prior year roll over to the next FY while the implementation of the new set of management measures is pending. However, the measures that roll over are often not appropriate for the status of the resource. By setting the measures for the third year in the framework, the measures are more likely to be appropriate for the condition of the fishery and resource. Third-year measures would need to be set with sufficient precaution to take into account the uncertainty associated with projections for the third year. The third-year measures would be superseded by the measures developed in the biennial framework adjustment for that year as soon as it is implemented.

21. New Frameworkable Measures

The following measures would be added to the current list of measures that can be adjusted under the Scallop FMP by framework action.

Modify the LAGC possession limit: The possession limit for LAGC vessels could be modified upward or downward by framework action. The intent is that any modification of the possession limit would not modify the nature of the LAGC fleet and would be consistent with the Council's vision to maintain a small-vessel fleet under LAGC provisions. While the Council specified in the Amendment 15 document that the possession limit adjustments could be done for IFQ vessels, it also determined that the regulations should specify that possession limit adjustments could be made through the framework process for all LAGC vessels, including LAGC NGOM and Incidental vessels.

Adjustment to aspects of ACL management: This action proposes a

new management strategy under ACL management that will use many new measures. All of the measures specified in this action would be able to be modified through framework actions. The specific ACL-related measures that could be modified by framework include: Modifying associated definitions and specification of OFL, ABC, ACLs and ACTs, all of which are specifically intended to be changed in future frameworks or specification packages as new information becomes available about the resource and fishery; buffers identified for management uncertainty or scientific uncertainty (ABC control rule); AMs for scallop ACLs and other sub-ACLs allocated to the scallop fishery; monitoring and reporting requirements associated with ACLs; timing of AM measures; and adoption of sub-ACLs for other species that are not currently part of this program.

Adjusting EFH Closed Area Management Boundaries

The framework action proposing the boundary change would include an analysis of the impacts of the specific boundaries considered. This additional framework authority would not allow adoption of new EFH closed areas.

Adjusting RSA Allocation

Amendment 15 proposes to allocate 1.25 million lb (567 mt) of scallops for RSA, regardless of the total projected catch for the fishery. In the future, the value could be increased or decreased by framework action.

22. Changes to the Scallop RSA Program

Amendment 15 includes several adjustments designed to improve the RSA Program so that it is more efficient, and so that awards under the Federal grants process can be provided near or before the start of the scallop FY on March 1. The following improvements are proposed:

Announce (Publish) Federal Funding Opportunity (FFO) as Early as Possible

Amendment 15 proposes that the announcement of the funding opportunity should be published as soon as possible in the year preceding the year in which research would be conducted. If this results in more timely reviewing and processing of awards, this would maximize time for research and compensation trips before the end of the FY. This would be facilitated by the Amendment 15 proposal to allocate 1.25 M lb (567 mt) to RSA program annually (*see* below).

Enable Multi-Year Awards

Currently, research priorities, TACs for RSAs, and approved research projects are limited to 1 year. Amendment 15 would allow RSA proposals and compensation to span up to 2 years, corresponding with the biennial framework process. Projects could be awarded for 1 or 2 years. Under this alternative, applicants could apply for RSA for the first year, second year, or both. This alternative would increase flexibility for the applicant, provide funding for some longer term projects, and potentially reduce time and resources spent on the application and review process.

Establish RSA Allocation as a Fixed Amount of Pounds Rather Than a Percent of Total Catch

Currently 2 percent of access area TACs and open area DAS are set aside for the RSA program. That amount of TAC and DAS varies depending on the total TAC and DAS for the fishery. Amendment 15 would modify the scallop RSA program so that 1.25 M lb (567 mt) would be set aside for the RSA program. In addition, open area RSA would be awarded in pounds rather than DAS. Total projected catch for the fishery may vary from year to year, but the amount of catch set-aside for research would be constant at 1.25 M lb (567 mt), unless changed through a framework adjustment. Assuming a projected catch of about 50 million lb (22,680 mt) for the fishery, 1.25 M lb (567 mt) equals about 2.5 percent. This is higher than recent levels to recognize the importance of research and scallop resource surveys for the success of the area rotation program, but would not create a separate pool of RSA for scallop resource surveys.

Allocating this fixed amount could enable the grant awards to be issued earlier, because the amount of TAC available for research would be known in advance and would not change from year to year. The specific areas that would have available RSA would be identified in the framework, but RSA awards could still be made before approval of the framework, based on total scallop pounds needed to fund the research. Recipients could either choose to wait for NMFS approval of the framework to begin compensation fishing within approved access areas, or could begin compensation fishing in open areas prior to approval of the framework. The intent of this alternative is to help improve timeliness of the scallop RSA program. This should only be an issue for the first year of a framework, because area-specific RSA pounds will be known for the second year of the framework action.

Rollover of Unused RSA Pounds to Compensate Awarded Projects

Amendment 15 includes a provision that specifies that if updated analyses suggest that the price per pound estimates used in the FFO were low, and if all RSA TAC is not allocated, NMFS could allocate unused TAC to compensate awarded projects or to expand a project rather than having that RSA go unused. Amendment 15 proposes that if there is RSA TAC available after all awards are made, a project that was already awarded RSA would be permitted to apply for additional TAC to expand its research project or for compensation if the actual scallop price per pound was less than estimated. The implementation details of this proposal were not specified in Amendment 15. Therefore, under the authority of section 305(d) of the MSA, NMFS proposes that this provision would enable NMFS to provide the opportunity for reallocation of available RSA pounds as part of the original FFO for the project. The FFO would specify the conditions under which a project that has been awarded RSA could be provided additional RSA pounds as supplemental compensation to account for lower-than-expected scallop price or for expansion of the approved project.

Extension for Harvesting RSA Compensation

Currently all RSA TAC has to be harvested by the end of the FY for which it is awarded. This measure would allow an RSA award recipient to harvest RSA compensation TAC for up to 3 months (*i.e.,* prior to June 1) into the subsequent FY. Allowing vessels involved in RSA projects to harvest RSA TAC into the next FY would provide flexibility for participating vessels and researchers, and is consistent with carryover provisions for the fishery as a whole.

Specify Regulations From Which RSA Projects Would be Exempt

Amendment 15 proposes a list of the scallop management measures from which RSA funded projects may be exempt. The researcher would need to list the measures the project is proposed to be exempt from in the RSA proposal. The researcher would not need to apply for an exempted fishing permit (EFP) to be exempt from the following restrictions: Crew restrictions; seasonal closures in access areas; and the requirement to return to port if fishing in more than one area. These exemptions would be issued by the

Regional Administrator through a letter of authorization. The exemptions would be issued for research trips under the applicable RSA project. RSA compensation fishing trips would not be eligible for exemption from these restrictions because compensation trips are intended only to provide researchers with the ability to collect funds through normal fishing operations.

Increase Public Input on RSA Proposals

Although the Council recommended that the Council's Scallop Advisory Panel members play a more prominent role in setting research priorities and reviewing proposals, no proposed regulations are necessary to effectuate that recommendation. NMFS would seek more input from the Council's Scallop Advisors through the next solicitation for scallop RSA proposals. Review of RSA projects under the Federal grants program is limited to individuals who do not have any relationship or vested interest in proposed research.

Public comments are being solicited on Amendment 15 and its incorporated documents through the end of the comment period stated in this proposed rule (*see* **DATES**). NMFS has also published a Notice of Availability, with a comment period ending May 23, 2011, (76 FR 16595, March 24, 2011). All comments received by May 23, 2011, whether specifically directed to Amendment 15 or the proposed rule for Amendment 15, will be considered in the approval/disapproval decision on Amendment 15. Comments received after that date will not be considered in the decision to approve or disapprove Amendment 15. To be considered, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Scallop FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

This proposed rule contains a revision to a current collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). Public reporting burden for this collection of information, the expansion of the VMS catch report to all areas (OMB Control Number 0648–0491), is estimated to average 2 min per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to OMB by e-mail at *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285 and to the Regional Administrator at the address provided in the **ADDRESSES** section of this proposed rule.

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.

An IRFA has been prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA consists of the relevant analyses, including the draft IRFA, included in Amendment 15, and the preamble to this proposed rule. A summary of the analysis follows.

Statement of Objective and Need

This action proposes to implement ACL and AMs for the scallop fishery, as well as other measures to improve management of the scallop fishery. A description of the management measures, why this action is being considered, and the legal basis for this action are contained in the preamble of this proposed rule and are not repeated here.

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

The proposed regulations would affect vessels with LA and LAGC scallop permits. The FEIS for Amendment 15 provides extensive information on the number and size of vessels and small businesses that would be affected by the proposed regulations, by port and State. There were 313 vessels that obtained full-time LA permits in 2010, including 250 dredge, 52 small-dredge and 11 scallop trawl permits. In the same year, there were also 34 part-time LA permits in the sea scallop fishery. No vessels were issued occasional scallop permits. By the start of FY 2010, the first year of the LAGC IFQ program, 362 IFQ permits (including 40 IFQ permits issued to vessels with a LA scallop permit), 127 NGOM, and 294 incidental catch permits were issued. Since all scallop permits are limited access, vessel owners would only cancel permits if they decide to stop fishing for scallops on the permitted vessel permanently or if they transfer IFQ to another IFQ vessel and permanently relinquish the vessel's scallop permit. This is likely to be infrequent due to the value of retaining the permit. As such, the number of scallop permits could decline over time, but would likely be less than 10 permits per year.

The RFA defines a small business entity in any fish-harvesting or hatchery business as a firm that is independently owned and operated and not dominant in its field of operation (including its affiliates), with receipts of up to $4 million annually. The vessels in the Atlantic sea scallop fishery are considered small business entities because all of them grossed less than $3 million according to the dealer's data for FYs 1994 to 2009. In FY 2009, total average revenue per full-time scallop vessel was just over $1 million, and total average scallop revenue per general category vessel was just under $80,000. The IRFA for this and prior Scallop FMP actions has not considered individual entity ownership of multiple vessels. More information about common ownership is being gathered, but the effects of common ownership relative to small v large entities under the RFA is still unclear and will be addressed in future analyses.

The Small Business Association (SBA) suggests two criteria to consider in determining the significance of regulatory impacts; namely, disproportionality and profitability. The disproportionality criterion compares the effects of the regulatory action on small versus large entities (using the SBA-approved size definition of "small entity"), not the difference between segments of small entities. Amendment 15 is not expected to have significant regulatory impacts on the basis of the disproportionality criterion, because all entities are considered to be small entities in the scallop fishery and, therefore, the proposed action would not place a substantial number of small entities at a significant competitive disadvantage relative to large entities. A summary of the economic impacts

relative to the profitability criterion is provided below under "Economic Impacts of Proposed Measures and Alternatives."

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action would implement an expansion of current VMS catch reporting that would require all LA, LAGC IFQ, and LAGC NGOM scallop vessels to report YTF catch (kept and discards) and all other species kept (including scallops) on all scallop trips. Such reports would have to be submitted for each day fished by 9 a.m. of the day following the day on which the fishing activity occurred. Currently this requirement applies only to access area scallop trips. The expansion of the requirement to all areas would increase the current burden cost of 333 hours at a total cost of $4,995 to 1,000 hours at a total cost of $15,000 for all scallop vessels combined. The expansion is needed to monitor YTF bycatch relative to the sub-ACL for YTF proposed under Amendment 15. Amendment 15 does not duplicate, overlap, or conflict with any other Federal law.

Economic Impacts of Proposed Measures and Alternatives

A summary of the economic impacts of proposed and alternative measures is provided below. Detailed economic impact analysis is provided in Section 5.4 and Appendix III of the FEIS for Amendment 15 (*see* **ADDRESSES**).

Each vessel within the same permit category (*i.e.,* full-time, part-time, and occasional) is allocated the same number of DAS and access area trips. LAGC IFQ vessels receive 5.5 percent of the projected catch after research and observer set-asides are removed, and IFQs are proportionately allocated based on a percent share of the 5.5-percent fleetwide allocation. Therefore, those measures that affect overall projected landings will have proportional impacts on all the participants because allocations for all vessels will be adjusted up or down in the same percentage. Some of the other proposed measures are specific to each fishery, however, and they will result in differential impacts, as discussed below for each individual action. In summary, although some specific measures proposed in Amendment 15, such as the hybrid OFD, catch limits, and AMs could have some negative impacts on the revenues and profits from the scallop fishery in the short-term, the benefits from the other proposed alternatives, including the measures that would reduce scientific or management uncertainty, the modification of the EFH areas, modifications to the LAGC possession limits and other related measures are expected to offset in part or in full these short-term negative effects. As a result, the aggregate economic impacts of Amendment 15 measures, combined, in the short-term are likely to range from small negative impacts to small positive impacts. The proposed action is not expected to have significant impacts on the viability of the vessels, because these impacts are estimated to be relatively small. In addition, even with negative impacts, the profit rate is estimated to exceed 20 percent of the gross revenue in the scallop industry, providing for short-term cash reserves to finance operations through several months or years until the positive effects of the regulations start paying off. In the long-term, the economic impacts of the combined measures on the participants of the scallop are expected to be positive.

Economic Impacts of the Individual Measures

Amendment 15 includes ACLs and AMs to bring the Scallop FMP into compliance with requirements of the MSA as reauthorized in 2007. Although the Council discussed various ways of establishing ACLs throughout the development of Amendment 15, the only alternative was to take no action. Alternatives to proposed AMs would have implemented AMs a full year after the end of the fishing year in which the overage occurred. The Council considered two alternatives to the proposed revision of the OFD. One alternative maintained the current OFD and another based the OFD on a resource-wide and time-averaged approach. The Council's decision to modify the essential fish habitat (EFH) closed areas under the Scallop FMP had only the alternative to take no action. The Council considered several alternatives to the various adjustments to measures for the LAGC fishery and determined that additional alternatives were not necessary. Specifically, the Council considered various increases to the LAGC IFQ fishery possession limit, no increase to the maximum IFQ a vessel can be allocated, no allowance to carry over IFQ from one fishing year to the next, no allowance to transfer IFQ separately from the IFQ permit, and a suite of measures to regulate the formation of community fishing associations. The Council also considered several alternatives to the proposed adjustments to the scallop RSA program, including separating set-aside TAC for scallop resource surveys, and various ways of allocating RSA TAC that remains available after all approved projects are awarded in a particular year. Since the Council can only establish framework measures for those measures that are included in the FMP already, the only alternative to the proposed additions to the list of measures that can be adjusted by framework adjustments is to not add measures or add only a subset of the measures. Under the MSA, NMFS can only approve or disapprove management measures recommended by the Council. Therefore, NMFS cannot replace proposed alternatives with other measures considered by not adopted by the Council.

1. Compliance With MSA

ACL Structure and Subcomponents

This new requirement is expected to have long-term economic benefits on the fishery by helping to ensure that catch limits (ACLs) are set at or below ABC, in order to prevent the resource from being overfished and overfishing from occurring. Buffers for scientific and management uncertainty would reduce the risk of fishery exceeding its ACL, thus reducing the risk of overfishing the scallop resource, with positive impacts on the overall scallop yield, revenues, and total economic benefits from the fishery. Establishing catch limits is expected to result in a similar landings stream compared to the status quo management. Even if the landing streams changed as a result of the new measures, the risk to the resource from overfishing due to scientific or management uncertainty would be minimized under the proposed measures, because these sources of uncertainty are better accounted for. This, in turn, is expected to keep the landings and economic benefits relatively more stable and reduce the uncertainty in business decisions over the long-term. The separation of an ACL into two sub-ACLs with associated ACTs is expected to have positive impacts on the scallop fishery and its subcomponents. Separating the two fleets with separate ACLs prevents one component of the fishery from impacting the catch levels of the other. This would prevent negative economic impacts from spreading from one fleet to the other. There are no alternatives that would generate higher economic benefits for the participants of the scallop fishery. Under the No Action alternative, there is a risk of overfishing the resource due to the scientific and management uncertainty that is not adequately addressed currently. Existing measures do not have well-defined accountability and payback mechanisms

if catch limits are exceeded due to these sources of uncertainty, which could result in continual reductions in allocations, effort levels, and trips.

2. Implementation of AMs

LA AMs would consist of the use of an ACT, and an overall DAS reduction to account for any overages. The deduction would be applied in the second FY following the FY in which the overage occurred (*e.g.,* an overage in FY 2011 would result in a DAS reduction in FY 2013). The overall economic impacts in the short-term on the participants of the scallop fishery depend on whether or not the ACT prevents an ACL overage. Exceeding the ACL in one year will have positive economic impacts on the participants of the scallop fishery in that year, but it would be followed by negative impacts in the year in which the AM is applied, since DAS would be deducted based on the level of the overage. The short-term impacts averaged over the applicable years would be neutral or small. The proposed action also includes a disclaimer for when the LA AM would not be triggered, even if the LA sub-ACL exceeded. If there is no biological harm, and updated estimates of F are actually lower than what was projected, there will be no reason for a DAS reduction in the subsequent year. This would minimize or even eliminate any potentially negative impacts, since the AM would not be implemented.

For the LAGC fishery, if an individual vessel exceeds its IFQ (including leased IFQ), the amount of IFQ equal to the overage would be deducted from the vessel's IFQ in the FY following the FY in which the overage occurred. Similarly, this action proposes that if the NGOM component of the fishery exceeds the overall hard-TAC (equal to the NGOM ACL) after all data is final, then the hard TAC could be reduced by the amount equal to the overage in the following FY. Exceeding the vessel's IFQ in one year will have positive economic impacts in that year, followed by negative impacts in the year in which the deduction is applied, so the short-term impacts averaged over these 2 years would be neutral or small. The measures would help reduce the risks of exceeding ACLs and would have positive impacts on the scallop yields and economic impacts from the fishery as a whole over the long-term.

The Council also considered making the AMs effective in the second year following FY in which the overage occurred. This would have very similar economic impacts to the proposed application of AMs, except that the negative impacts would be delayed for 1 year.

3. Trigger of LA AM Disclaimer and Allocations to the LAGC

If the LA AM disclaimer is triggered, 5.5 percent of the difference between the exceeded LA sub-ACL and the actual LA landings will be allocated to the LAGC fleet the following FY. This measure would have positive economic impacts on the LAGC vessels and prevent the LA fishery from receiving a higher share of the total catch than allocated to them by Amendment 15 provisions. The no action alternative would generate negative economic impacts compared to the proposed action, because it would not provide the LAGC fleet with similar additional catch.

4. ACLs and AMs for YTF

The proposed AM for the YTF sub-ACL, if the scallop fishery exceeds the sub-ACL, is a seasonal closure of areas that have been pre-identified to have high YTF bycatch rates. The applicable area would be closed in the subsequent FY for a specified period of time to only LA scallop vessels (LAGC vessels would be exempt from the closure). This measure could increase fishing costs and have negative impacts on the scallop revenues and profits if the effort is moved to less productive areas with lower LPUE, or to areas with a predominance of smaller scallops with a lower price. Implementation of the closure in the subsequent year, rather than in-season, would prevent derby style fishing and minimize the negative impacts on prices and revenues associated with it. Exempting LAGC trips from this AM would prevent high distributional impacts for LAGC vessels that have a dependence on fishing within the proposed closure areas in SNE waters.

The alternative that would close an entire YTF stock area would have greater negative impacts on scallop revenues and profits compared to options that would close only specific portions of areas with high YTF bycatch. Higher negative impacts result from a very large portion of the scallop fishery being closed compared to discrete areas under the proposed alternative. Economic benefits from minimizing YTF bycatch in the year following an overage under the stock wide area closure alternatives would accrue over the long term if YTF stocks improve and the likelihood of scallop fishery closures is reduced. However, the proposed measure provides nearly the same bycatch reduction for YTF because the areas are where the highest YTF bycatch occurs in the scallop fishery. The immediate economic benefits of the proposed measure therefore outweighs the long term potential benefits associated with the stock wide closure. The alternatives that would institute either a fleet maximum DAS or an individual maximum number of DAS that can be used in a stock area for year 3 to account for an overage of the YTF sub-ACL in year 1 could reduce the negative impacts on scallop revenues, costs, and total economic benefits by preventing derby fishing and allowing more time for the scallop fleet to make adjustments for exceeding the YTF ACLs. However, it would apply penalties to the whole fleet for overages that may have been caused by only a part of the fleet. In addition, these options could increase the administration costs by making it necessary to monitor DAS-used by YTF stock areas, which would require additional reporting and recordkeeping requirements.

5. Measures to Adjust the OFD

The adoption of the hybrid OFD could result in a reduction in revenues and profits compared to no action alternative in the short to medium term. During the first 10 years of implementation, average scallop revenue per vessel net of trips costs are expected to decline by about 5.8 percent. This alternative is expected have positive economic impacts over the long-term, however, since this definition will provide more flexibility to meet the area rotation objectives and is expected to increase catch by 10 percent with larger average scallop size. In addition, this alternative could potentially reduce area swept, thus would reduce adverse effects on bycatch, seabed habitats, and EFH, with indirect positive impacts on the scallop fishery. For example, a reduction in bycatch would prevent triggering YTF AM measures, and the negative impacts on scallop landings and revenues associated with such a measure. This could offset some of the short-term potentially negative economic impacts from the hybrid OFD.

The status quo OFD is estimated to result in higher revenues and profits in the short-term compared to the hybrid overfishing definition. This alternative was not selected by the Council because it is not consistent with the spatial management of the scallop fishery, has higher risks for the scallop resource, and lower economic benefits for the scallop fishery over the long-term compared to the proposed measure.

6. IFQ Carryover

The proposed carryover provision would allow LAGC IFQ vessels to carry up to 15 percent of a vessel's IFQ, including leased IFQ, to the following FY, if the vessel has unused IFQ at the end of the FY. This would provide flexibility and safety-at-sea benefits in the case of unforeseen circumstances or bad weather that prevents the vessel from using all of its IFQ. As a result, this would give opportunity to vessels to land their unused quote in the next year with positive economic impacts for vessels, the LAGC fishery, and overall scallop revenue and profits.

The no action alternative would have smaller economic benefits compared to the proposed option because it would not allow IFQ to be carried over into the subsequent FY. The Council also considered allowing a vessel's entire IFQ to be carried over, which would have provided higher immediate economic benefits than the proposed option. However, transferring a larger portion or the entire amount of the unused quota could increase management uncertainty, which could result in application of an ACT, set below the ACL, to serve as a buffer to protect against the uncertainty. This overall reduction for the following FY would have negative impacts on the quota allocations and economic benefits in future years.

7. Modification of the LAGC IFQ Vessel Possession Limit

An increase in the general category possession limit from 400 lb (181.4 kg) to 600 lb (272.2 kg) is expected to reduce the fishing time and trip costs, because it would increase trip efficiency and reduce steaming time over the course of the FY. In addition, it could increase profits for these vessels or offset the cost of elevated fuel prices. As a result, the proposed option is expected have positive economic impacts on the scallop fishery compared to the no action alternative.

Alternatives to the proposed action included eliminating the possession limit and increasing it to 1,000 lb (454 kg) per trip. These alternatives would produce higher benefits than the proposed option by maximizing trip revenue compared to fishing costs. However, this alternative could change the nature of the LAGC fishery from a small scale fishery to a full-time operation like the LA fishery, which would run counter to the FMP's objective of preserving the small scale nature of the fishery for the LAGC fleet. It may result in consolidation that would eliminate operations with smaller IFQs or that have less total share of the IFQ fishery. This alternative was not selected because the Council continues to support the LAGC fishery as a small vessel fishery, consistent with its goals and vision for the fishery as developed under Amendment 11 to the FMP.

8. Increase in the Maximum IFQ per Vessel

The proposed action to change the 2-percent maximum quota per vessel to 2.5 percent would provide more flexibility to vessels to adjust their harvest levels to changes in the scallop resource conditions. In addition, since a vessel owner could meet the 5-percent ownership cap by owning only two vessels, it would eliminate ownership costs associated with multiple vessels. The proposed increase to a 2.5-percent cap would, therefore, have positive impacts on profitability. The no action alternative for increasing the maximum IFQ per vessel would not improve flexibility and would have negative economic impacts associated with costs of vessel ownership compared to the proposed action.

9. Allowing LAGC Quota To Be Split From IFQ Permits

The proposed measure to allow the IFQ to be split from the IFQ permit would improve flexibility and facilitate movement of quota between fishermen. It would also increase the likelihood that all IFQ will be harvested, thereby reducing management uncertainty. It would allow fishermen to combine their allocations and to benefit from an economically viable operation when the allocations of some vessels are too small to make scallop fishing profitable. The proposed measure is therefore likely to have positive impacts on revenues and profits for the participants of the IFQ fishery.

The Council rejected an alternative that would have allowed quota to be transferred between the LA/IFQ fleet and IFQ-only fleet. This alternative would have resulted in larger economic benefits for LAGC vessels because it would provide another source of IFQ. However, this option was not chosen by the Council mostly due to concerns about the difficulty of monitoring mixed quota from the two categories, since they are allocated quota from two separate pools.

Under the no action alternative, LAGC vessels that want to permanently transfer quota have to purchase LAGC permit as well as all the other permits a vessel has, which makes purchasing of LAGC IFQ very expensive. It also is a deterrent to engaging in permanent transfers, since some owners would prefer to retain the permits for other fisheries. The no action alternative, therefore, would have reduced benefits compared to the proposed action.

10. Measures to Address EFH Closed Areas

The proposed option would modify the EFH areas closed to scallop gear under Scallop Amendment 10 to be consistent with NE Multispecies Amendment 13, and eliminate the areas closed for EFH under Amendment 10. As a result, effort could be allocated to CAI (where the scallops are larger and yield is higher), instead of allocating more open area effort in areas with potentially lower catch rates. This is estimated to have positive impacts on the scallop resource and future yield, and to increase the scallop revenues by about $8 million (assuming a price of $7.00 per lb) per year. Fishing in more productive areas would also reduce the fishing costs. Therefore, the proposed measure is expected to have positive impacts on revenues and profits from the scallop fishery. The Council considered taking no action, but such action would have lower economic benefits than the proposed action, since it would not provide access to portions of the scallop resource that would improve yield and reduce fishing costs.

11. Measures to Improve RSA Program

These alternatives are expected to have positive indirect economic benefits for the sea scallop fishery by improving the timing and administration of the RSA program. Having dedicated resources for funding research to survey access areas will improve the Council's ability to allocate the appropriate amount of effort to prevent overfishing and optimize yield. Exempting RSA projects (if identified in the proposal) from crew restrictions, the seasonal closure in Elephant Trunk, and the requirement to return to port if fishing in more than one area will allow more flexibility and more effective research. If, as a result of these measures, the program can be more streamlined, and worthwhile projects can occur with fewer obstacles, better and more timely research will result in indirect benefits to the scallop resource and yield and will increase economic benefits from the scallop fishery. Several alternatives were considered by the Council, but they all would have similar impacts. Therefore, the proposed measures are based on policy decisions that reflect the most efficient and effective way of implementing the RSA Program.

12. Third-Year Default Measures in the Framework Adjustment Process and Addition to the List of Frameworkable Items in the FMP

The proposed action includes adding a third year of specifications to the framework process in order to prevent outdated measures from getting implemented due to the delay in the implementation of the 2-year framework actions. It would serve as a "safety mechanism" to prevent against "No Action" rollovers during implementation delays. These "No Action" rollover measures complicate management of the scallop fishery, do not make sense for the industry, and may cause undesired negative effects or require further management intervention. Therefore, including third-year specifications would alleviate some of the implementation issues caused by the time lag between the FY and the time when the survey data becomes available. Since the measures that are created for year 3 will result in landings more consistent with the updated scallop biomass estimates and PDT recommendations, this action is expected to have positive indirect effects on the participants of the scallop fishery. There are no other alternatives that would result in larger economic benefits.

Expanding the list of adjustable framework items would allow the Council to more easily adjust the allocations according to the resource conditions and as needed in terms of research priorities or to make further changes to benefit EFH. As a result, these measures are expected to have positive impacts on the scallop fishery and its participants. There are no other alternatives that would result in larger economic benefits.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 4, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.4, paragraphs (a)(2)(i) introductory text, and (a)(2)(ii)(A) are revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(2) * * *

(i) *Limited access scallop permits.* Any vessel of the United States that possesses or lands more than 600 lb (272.2 kg) of shucked scallops, or 50 bu (17.6 hL) of in-shell scallops per trip South of 42°20′ N. Lat., or 75 bu (26.4 hL) of in-shell scallops per trip North of 42°20′ N. Lat, or possesses more than 100 bu (35.2 hL) of in-shell scallops seaward of the VMS Demarcation Line, except vessels that fish exclusively in State waters for scallops, must have been issued and carry on board a valid limited access scallop permit.

* * * * *

(ii) * * *

(A) *Individual fishing quota LAGC permit.* To possess or land up to 600 lb (272.2 kg) of shucked meats, or land up to 75 bu (26.4 hL) of in-shell scallops per trip, or possess up to 100 bu (35.2 hL) of in-shell scallops seaward of the VMS demarcation line, a vessel must have been issued an individual fishing quota LAGC scallop permit (IFQ scallop permit). Issuance of an initial IFQ scallop permit is contingent upon the vessel owner submitting the required application and other information that demonstrates that the vessel meets the eligibility criteria specified in paragraph (a)(2)(ii)(D) of this section.

* * * * *

3. In § 648.10, paragraphs (e)(5)(i), (e)(5)(ii), (f)(4)(i), and (h)(8) are revised to read as follows:

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

* * * * *

(e) * * *

(5) * * *

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

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

* * * * *

(f) * * *

(4) * * *.

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

(A) FVTR serial number;

(B) Date fish were caught;

(C) Total pounds of scallop meats kept;

(D) Total pounds of yellowtail flounder kept;

(E) Total pounds of yellowtail flounder discarded; and

(F) Total pounds of all other fish kept.

* * * * *

(h) * * *

(8) Any vessel issued a limited access scallop permit and not issued an LAGC scallop permit that possesses or lands scallops; any vessel issued a limited access scallop and LAGC IFQ scallop permit that possesses or lands more than 600 lb (272.2 kg) of scallops; any vessel issued a limited access scallop and LAGC NGOM scallop permit that possesses or lands more than 200 lb (90.7 kg) of scallops; any vessel issued a limited access scallop and LAGC IC scallop permit that possesses or lands more than 40 lb (18.1 kg) of scallops; any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program requirements that possesses or lands regulated NE multispecies, except as provided in §§ 648.10(h)(9)(ii), 648.17, and 648.89; any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possesses or lands monkfish above the incidental catch trip limits specified in § 648.94(c); and any vessel issued a limited access red crab permit subject to the red crab DAS program and call-in requirement that possesses or lands red

crab above the incidental catch trip limits specified in § 648.263(b)(1) shall be deemed to be in its respective DAS program for purposes of counting DAS and will be charged DAS from its time of sailing to landing, regardless of whether the vessel's owner or authorized representative provides adequate notification as required by paragraphs (e) through (h) of this section.

* * * * *

4. In § 648.11, paragraphs (g)(1) and (g)(2)(ii) are revised to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(g) * * *

(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 LAGC IFQ vessels fishing under the Sea Scallop Access Area program specified in § 648.60, are required to comply with the additional notification requirements specified in paragraph (g)(2) of this section. When NMFS notifies the vessel owner, operator, and/or manager of any requirement to carry an observer on a specified trip in either an Access Area or Open Area as specified in paragraph (g)(3) of this section, the vessel may not fish for, take, retain, possess, or land any scallops without carrying an observer. Vessels may only embark on a scallop trip in open areas or Access Areas without an observer if the vessel owner, operator, and/or manager has been notified that the vessel has received a waiver of the observer requirement for that trip pursuant to paragraphs (g)(3) and (g)(4)(ii) of this section.

(2) * * *

(ii) *LAGC IFQ vessels.* LAGC IFQ 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.

* * * * *

5. In § 648.14, paragraphs (i)(1)(ii), (i)(1)(iii)(A)(*1*)(*iii*), (i)(1)(iii)(A)(*2*)(*iii*), (i)(1)(iii)(A)(*3*) introductory text, (i)(4)(i)(A), (i)(4)(ii)(B), and (i)(4)(iii)(B) are revised, paragraph (i)(2)(viii) is added, and paragraph (i)(3)(iii)(E) is removed as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(1) * * *

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

(iii) * * *

(A) * * *

(*1*) * * *

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

* * * * *

(*2*) * * *

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

* * * * *

(*3*) In excess of 600 lb (272.2 kg) of shucked scallops at any time, 50 bu (17.6 hL) of in-shell scallops per trip South of 42°20′ N. Lat. and shoreward of the VMS Demarcation Line, or 75 bu (26.4 hL) of in-shell scallops per trip North of 42°20′ N. Lat and shoreward of the VMS demarcation line, or 100 bu (35.2 hL) in-shell scallops seaward of the VMS Demarcation Line, unless:

* * * * *

(2) * * *

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

* * * * *

(4) * * *

(i) * * *

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

* * * * *

(ii) * * *

(B) Have an IFQ allocation on an IFQ scallop vessel of more than 2.5 percent of the total IFQ scallop TAC as specified in § 648.53(a)(5).

* * * * *

(iii) * * *

(B) Apply for an IFQ transfer that will result in the receiving vessel having an IFQ allocation in excess of 2.5 percent of the total IFQ scallop TAC.

* * * * *

6. In § 648.51, paragraphs (d)(1) and (e) introductory text are revised to read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(d) * * *

(1) Shucking machines are prohibited on all limited access vessels fishing under the scallop DAS program, or any vessel in possession of more than 600 lb (272.2 kg) of scallops, unless the vessel has not been issued a limited access scallop permit and fishes exclusively in State waters.

* * * * *

(e) *Small dredge program restrictions.* Any vessel owner whose vessel is assigned to either the part-time or Occasional category may request, in the application for the vessel's annual permit, to be placed in one category higher. Vessel owners making such request may be placed in the appropriate higher category for the entire year, if they agree to comply with the following restrictions, in addition to, and notwithstanding other restrictions of this part, when fishing under the DAS program described in § 648.53:

* * * * *

7. In § 648.52, paragraph (a) is revised to read as follows:

§ 648.52 Possession and landing limits.

(a) A vessel issued an IFQ scallop permit that is declared into the IFQ scallop fishery as specified in § 648.10(b), or on a properly declared

NE multispecies, surfclam, or ocean quahog trip and not fishing in a scallop access area, unless as specified in paragraph (g) of this section or exempted under the State waters exemption program described in § 648.54, may not possess or land, per trip, more than 600 lb (272.2 kg) of shucked scallops, or possess more than 75 bu (26.4 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 100 bu (35.2 hL) of in-shell scallops seaward of the VMS demarcation line on a properly declared IFQ scallop trip, or on a properly declared NE multispecies, surfclam, or ocean quahog trip and not fishing in a scallop access area.

* * * * *

8. In § 648.53,

a. The section heading and paragraphs (a), (b) introductory text, (b)(1), (b)(4), (c), (d), (g), (h)(2)(iii), (h)(3)(i)(A), (h)(3)(i)(B), (h)(3)(i)(C), (h)(4) introductory text, (h)(5)(ii), (h)(5)(iii), and (h)(5)(iv) are revised,

b. Paragraphs (h)(2)(v), and (h)(2)(vi) are added; and

c. Paragraphs (a)(5), (a)(6), and (a)(9), (b)(2), and (b)(4)(i) are removed and reserved

The revisions and additions read as follows:

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

(a) *Scallop fishery ABC.* The ABC for the scallop fishery shall be established through the framework adjustment process specified in § 648.55 and is equal to the overall scallop fishery ACL. The ABC/ACL shall be divided as sub-ACLs 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) and (a)(4) of this section, after deducting the scallop incidental catch target TAC specified in paragraph (a)(2) of this section, observer set-aside specified in paragraph (g)(1) of this section, and research set-aside specified in § 648.56(d).

(1) ABC/ACL for fishing years 2011 through 2013 shall be:

(i) *2011.* To be determined.

(ii) *2012.* To be determined.

(iii) *2013.* To be determined.

(2) *Scallop incidental catch target TAC.* The incidental catch target TAC for vessels with incidental catch scallop permits is to be determined for fishing years 2011, 2012, and 2013.

(3) *Limited access fleet sub-ACL and ACT.* The limited access scallop fishery shall be allocated 94.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). ACT for the limited access scallop fishery shall be established through the framework adjustment process described in § 648.55. DAS specified in paragraph (b) of this section shall be based on the ACTs specified in paragraph (a)(3)(ii) of this section.

(i) The limited access fishery sub-ACLs for the 2011 through 2013 fishing years are:

(A) *2011.* To be determined.

(B) *2012.* To be determined.

(C) *2013.* To be determined.

(ii) The limited access fishery ACTs for the 2011 through 2013 fishing years are:

(A) *2011.* To be determined.

(B) *2012.* To be determined.

(C) *2013.* To be determined.

(4) *LAGC fleet sub-ACL.* The sub-ACL for the LAGC IFQ fishery shall be equal to 5.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). The LAGC IFQ fishery ACT shall be equal to the LAGC IFQ fishery's ACL. The ACL for the LAGC IFQ fishery for vessels issued only a LAGC IFQ scallop permit shall be equal to 5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). The ACL for the LAGC IFQ fishery for vessels issued both a LAGC IFQ scallop permit and a limited access scallop permit shall be 0.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a).

(i) The ACLs for the 2011 through 2013 fishing years for LAGC IFQ vessels without a limited access scallop permit are:

(A) *2011.* To be determined.

(B) *2012.* To be determined.

(C) *2013.* To be determined.

(ii) The ACLs for the 2011 through 2013 fishing years for vessels issued both a LAGC and a limited access scallop permit are:

(A) *2011.* To be determined.

(B) *2012.* To be determined.

(C) *2013.* To be determined.

(b) *DAS allocations.* DAS allocations for limited access scallop trips in all areas other than those specified in § 648.59 shall be specified through the framework adjustment process, as specified in § 648.55, using the ACT specified in paragraph (a)(3)(ii) of this section. A vessel's DAS, shall be determined and specified in paragraph (b)(4) of this section by dividing the total DAS specified in the framework adjustment by the LPUE specified in paragraph (b)(1) of this section, then dividing by the total number of vessels in the fleet.

(1) *Landings per unit effort (LPUE).* LPUE is an estimate of the average amount of scallops, in pounds, that the limited access scallop fleet lands per DAS fished. The estimated LPUE is the average LPUE for all limited access scallop vessels fishing under DAS, and shall be used to calculate DAS specified in paragraph (b)(4) of this section, the DAS reduction for the AM specified in paragraph (b)(4)(ii) of this section, and the observer set-aside DAS allocation specified in paragraph (g)(1) of this section. LPUE shall be:

(i) *2011.* To be determined.

(ii) *2012.* To be determined.

(iii) *2013.* To be determined.

* * * * *

(4) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(4) (full-time, part-time, or occasional) shall be allocated the maximum number of DAS for each fishing year it may participate in the open area limited access scallop fishery, according to its category, excluding carryover DAS in accordance with paragraph (d) of this section. DAS allocations shall be determined by distributing the portion of ACT specified in paragraph (a)(3)(ii), as reduced by access area allocations, as specified in § 648.59, and dividing that among vessels in the form of DAS calculated by applying estimates of open area LPUE specified in paragraph (b)(1) of this section. Part-time and occasional scallop vessels shall be equal to 40 percent and 8.33 percent of the full-time DAS allocations, respectively. The annual open area DAS allocations for each category of vessel for the fishing years indicated are as follows:

DAS category	2010
Full-time	38
Part-time	15
Occasional	3

(i) [Reserved]

(ii) *Accountability measures (AM).* Unless the limited access AM exception is implemented accordance with the provision specified in paragraph (b)(4)(iii) of this section, if the ACL specified in paragraph (a)(3)(i) of this section is exceeded for the applicable fishing year, the DAS specified in paragraph (b)(4) of this section for each

limited access vessel shall be reduced by an amount equal to the amount of landings in excess of the ACL divided by the applicable LPUE for the fishing year in which the AM will apply as specified in paragraph (b)(1) of this section, then divided by the number of scallop vessels eligible to be issued a full-time limited access scallop permit. For example, assuming a 300,000-lb (136-mt) overage of the ACL in 2011, an open area LPUE of 2,500 lb (1.13 mt) per DAS in 2012, and 313 full-time vessels, each full time vessel's DAS would be reduced by 0.38 DAS (300,000 lb (136 mt)/2,500 lb (1.13 mt) per DAS = 120 lb (0.05 mt) per DAS/313 vessels = 0.38 DAS per vessel). Deductions for part-time and occasional scallop vessels shall be equal to 40 percent and 8 percent of the full-time DAS deduction, respectively, as calculated pursuant to this paragraph (b)(4)(ii). The AM shall take effect in the fishing year following the fishing year in which the overage occurred. For example, landings in excess of the ACL in fishing year 2011 would result in the DAS reduction AM in fishing year 2012. If the AM takes effect, and a limited access vessel uses more open area DAS in the fishing year in which the AM is applied, the vessel shall have the DAS used in excess of the allocation after applying the AM deducted from its open area DAS allocation in the subsequent fishing year. For example, a vessel initially allocated 32 DAS in 2011 uses all 32 DAS prior to application of the AM. If, after application of the AM, the vessel's DAS allocation is reduced to 31 DAS, the vessel's DAS in 2012 would be reduced by 1 DAS.

(iii) *Limited access AM exception*—(A) If it is determined by NMFS in accordance with paragraph (b)(4)(ii) of this section, that the fishing mortality rate associated with the limited access fleet's landings in a fishing year is less than 0.24, the AM specified in paragraph (b)(4)(ii) of this section shall not take effect. The fishing mortality rate of 0.24 is the fishing mortality that is one standard deviation below the fishing mortality rate for the scallop fishery ACL, currently estimated at 0.28.

(B) If the limited access AM exception described in this paragraph (b)(4)(iii) is invoked, the Regional Administrator shall increase the sub-ACL for the LAGC IFQ fleet specified in paragraph (a)(4)(i) of this section by the amount of scallops equal to 5.5 percent of the amount of scallop landings in excess of the limited access fleet's ACL specified in paragraph (a)(3)(i) of this section. The applicable sub-ACL for the limited access fleet specified in paragraph (a)(3)(i) of this section shall be reduced by the amount equivalent to the increase in the sub-ACL for LAGC IFQ specified pursuant to this paragraph (b)(4)(iii)(B). For example, if the limited access fishery ACL is exceeded by 1 million lb (453.6 mt), but the exception is invoked, the LAGC sub-ACL shall be increased, and the limited access fleet's ACL decreased, by 55,000 lb (24.9 mt) (1 million lb (453.6 mt) × 5.5% (0.055) = 55,000 lb (24.9 mt). The ACL adjustments in this paragraph (b)(4)(iii)(B) shall take effect in the fishing year immediately following the fishing year in which the overage of the ACL occurred. For example, for an ACL overage in the 2011 fishing year, the adjustments due to implementation of the exception would be implemented in the 2012 fishing year.

(iv) *Limited access fleet AM and exception provision timing.* The Regional Administrator shall determine whether the limited access fleet exceeded its ACL specified in paragraph (a)(3)(i) of this section by July of the fishing year following the year for which landings are being evaluated. On or about July 1, the Regional Administrator shall notify the New England Fishery Management Council (Council) of the determination of whether or not the ACL for the limited access fleet was exceeded, and the amount of landings in excess of the ACL. Upon this notification, the Scallop Plan Development Team (PDT) shall evaluate the overage and determine if the fishing mortality rate associated with total landings by the limited access scallop fleet is less than 0.24. On or about September 1 of each year, the Scallop PDT shall notify the Council of its determination, and the Council, on or about September 30, shall make a recommendation, based on the Scallop PDT findings, concerning whether to invoke the limited access AM exception. If NMFS concurs with the Scallop PDT recommendation to invoke the limited access AM exception, in accordance with the APA, the limited access AM shall not be implemented. If NMFS does not concur, in accordance with the APA, the limited access AM shall be implemented as soon as possible after September 30 each year.

* * * * *

(c) *Adjustments in annual DAS allocations.* Annual DAS allocations shall be established for 3 fishing years through biennial framework adjustments as specified in § 648.55. If a biennial framework action is not undertaken by the Council and implemented by NMFS before the beginning of the third year of each biennial adjustment, the third-year measures specified in the biennial framework adjustment shall remain in effect for the next fishing year. If a new biennial or other framework adjustment is not implemented by NMFS by the conclusion of the third year, the management measures from that third year would remain in place until a new action is implemented. The Council may also recommend adjustments to DAS allocations or other measures through a framework adjustment at any time.

(d) *End-of-year carry-over for open area DAS.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused Open Area DAS on the last day of February of any year may carry over a maximum of 10 DAS, not to exceed the total Open Area DAS allocation by permit category, into the next year. DAS carried over into the next fishing year may only be used in Open Areas. Carry-over DAS are accounted for in setting the ACT for the limited access fleet, as specified in paragraph (a)(3)(ii) of this section. Therefore, if carry-over DAS result or contribute to an overage of the ACL, the limited access fleet AM specified in paragraph (b)(4)(ii) of this section would still apply, provided the AM exception specified in paragraph (b)(4)(iii) of this section is not invoked.

* * * * *

(g) *Set-asides for observer coverage.* (1) To help defray the cost of carrying an observer, 1 percent of the ABC/ACL specified in paragraph (a)(1) of this section shall be set aside to be used by vessels that are assigned to take an at-sea observer on a trip. The total TAC for observer set aside is 273 mt in fishing year 2011, 289 mt in fishing year 2012, and 287 mt in fishing year 2013. This 1 percent is divided proportionally into access areas and open areas, as specified in § 648.60(d)(1) and (g)(2), respectively.

(2) *DAS set-aside for observer coverage.* For vessels assigned to take an at-sea observer on a trip other than an Access Area Program trip, the open-area observer set-aside TACs are 139 mt, 161 mt, and 136 mt for fishing years 2011, 2012, and 2013, respectively. The DAS set-aside shall be determined by dividing these amounts by the LPUE specified in paragraph (b)(1)(i) of this section for each specific fishing year. The DAS set-aside for observer coverage is 137 DAS for the 2011 fishing year, 133 DAS for the 2012 fishing year, and 112 DAS for the 2013 fishing year. A vessel 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. This DAS adjustment factor may also be changed during the fishing year if fishery conditions warrant such a change. 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 if set-aside is not available.

(h) * * *

(2) * * *

(iii) *Contribution percentage.* A vessel's contribution percentage shall be determined by dividing its contribution factor by the sum of the contribution factors of all vessels issued an IFQ scallop permit. Continuing the example in paragraph (h)(1)(ii)(D) of this section, the sum of the contribution factors for 380 IFQ scallop vessels is estimated, for the purpose of this example, to be 4.18 million lb (1,896 mt). The contribution percentage of the above vessel is 1.45 percent (60,687 lb (27,527 kg)/4.18 million lb (1,896 mt) = 1.45 percent). The contribution percentage for a vessel that is issued an IFQ scallop permit and that has permanently transferred all of its IFQ to another IFQ vessel, as specified in paragraph (h)(5)(ii) of this section, shall be equal to 0 percent.

* * * * *

(v) *End-of-year carry-over for IFQ.* (A) With the exception of vessels that held a confirmation of permit history as described in § 648.4(a)(2)(ii)(L) for the entire fishing year preceding the carry-over year, LAGC IFQ vessels that have unused IFQ on the last day of February of any year may carry over up to 15 percent of the vessel's original IFQ and transferred (either temporary or permanent) IFQ into the next fishing year. For example, a vessel with a 10,000 lb (4,536 kg) IFQ and 5,000 lb (2,268 kg) leased IFQ may carry over 2,250 lb (1,020 kg) of IFQ (*i.e*, 15 percent of 15,000 lb (6,804 kg) into the next fishing year if it landed 12,750 lb (5,783 kg) (*i.e.,* 85 percent of 15,000 lb (6,804 kg) of scallops or less in the preceding fishing year. Using the same IFQ values from the example, if the vessel landed 14,000 lb (6,350 kg) of scallops, it could carry over 1,000 lb (454 kg) of scallops into the next fishing year.

(B) For accounting purposes, the combined total of all vessels' IFQ carry-over shall be added to the LAGC IFQ fleet's applicable ACL for the carry-over year. Any IFQ carried over that is landed in the carry-over fishing year shall be counted against the ACL specified in paragraph (a)(4)(i) of this section, as increased by the total carry-over for all LAGC IFQ vessels, as specified in this paragraph (h)(2)(v)(B).

(vi) *AM for the IFQ fleet.* If a vessel exceeds its IFQ, including all temporarily and permanently transferred IFQ, in a fishing year, the amount of landings in excess of the vessel's IFQ, including all temporarily and permanently transferred IFQ, shall be deducted from the vessel's IFQ as soon as possible in the fishing year following the fishing year in which the vessel exceeded its IFQ. If the AM takes effect, and an IFQ vessel lands more scallops than allocated after the AM is applied, the vessel shall have the IFQ landed in excess of its IFQ after applying the AM deducted from its IFQ in the subsequent fishing year. For example, a vessel with an initial IFQ of 1,000 lb (453.6 kg) in 2010 landed 1,200 lb (544.3 kg) of scallops in 2010, and is initially allocated 1,300 lb (589.7 kg) of scallops in 2011. That vessel would be subject to an IFQ reduction equal to 200 lb (90.7 kg) to account for the 200 lb (90.7 kg) overage in 2010. If that vessel lands 1,300 lb (589.7 kg) of scallops in 2011 prior to application of the 200 lb (90.7 kg) deduction, the vessel would be subject to a deduction of 200 lb (90.7 kg) in 2012. For vessels involved in a temporary IFQ transfer, the entire deduction shall apply to the vessel that acquired IFQ, not the transferring vessel. A vessel that has an overage that exceeds its IFQ in the subsequent fishing year shall be subject to an IFQ reduction in subsequent years until the overage is paid back. For example, a vessel with an IFQ of 1,000 lb (454 kg) in each year over a 3-year period, that harvests 2,500 lb (1,134 kg) of scallops the first year, would have a 1,500-lb (680-kg) IFQ deduction, so that it would have zero pounds to harvest in year 2, and 500 lb (227 kg) to harvest in year 3. A vessel that has a "negative" IFQ balance, as described in the example, could lease or transfer IFQ to balance the IFQ, provided there are no sanctions or other enforcement penalties that would prohibit the vessel from acquiring IFQ.

(3) * * *

(i) * * *

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

(B) A vessel may be initially issued more than 2.5 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section, if the initial determination of its contribution factor specified in accordance with § 648.4(a)(2)(ii)(E) and paragraph (h)(2)(ii) of this section, results in an IFQ that exceeds 2.5 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section. A vessel that is allocated an IFQ that exceeds 2.5 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section, in accordance with this paragraph (h)(3)(i)(B), may not receive IFQ through an IFQ transfer, as specified in paragraph (h)(5) of this section.

(C) A vessel initially issued a 2008 IFQ scallop permit or confirmation of permit history, or that was issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 2009 and thereafter, in compliance with the ownership restrictions in paragraph (h)(3)(i)(A) of this section, is eligible to renew such permit(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permit or confirmations of permit history will result in the 2.5 percent IFQ cap restriction being exceeded.

* * * * *

(4) *IFQ cost recovery.* A fee, not to exceed 3 percent of the ex-vessel value of IFQ scallops 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 the fee for all of its vessels' IFQ scallop landings, and shall be responsible for submitting this payment to NMFS once per year. The cost recovery fee for all landings, regardless of ownership changes throughout the fishing year, shall be the responsibility of the official owner of the vessel, as recorded in the vessel permit or confirmation of permit history file, at the time the bill is sent.

* * * * *

(5) * * *

(ii) *Permanent IFQ transfers.* Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel not issued a limited access scallop permit may transfer IFQ permanently to or from another IFQ scallop vessel. Any such transfer cannot be limited in duration and is permanent, unless the IFQ is subsequently transferred to another IFQ scallop vessel, other than the originating IFQ scallop vessel, in a subsequent fishing year. If a vessel permanently transfers its entire IFQ to another vessel, the LAGC IFQ scallop permit shall remain valid on the transferring vessel, unless the owner of the transferring vessel cancels the IFQ scallop permit. Such cancellation shall be considered voluntary relinquishment of the IFQ permit, and the vessel shall be ineligible for an IFQ scallop permit unless it replaces another vessel that was issued an IFQ scallop permit. The Regional Administrator has final approval authority for all IFQ transfer requests.

(iii) *IFQ transfer restrictions.* The owner of an IFQ scallop vessel not issued a limited access scallop permit that has fished under its IFQ in a fishing year may not transfer that vessel's IFQ to another IFQ scallop vessel in the same fishing year. Requests for IFQ transfers cannot be less than 100 lb (46.4 kg), unless that value reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. IFQ can be transferred only once during a given fishing year. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2.5 percent of the TAC allocated to IFQ scallop vessels. A transfer of an IFQ, whether temporary or permanent, may not result in the transferee having a total ownership of, or interest in, general category scallop allocation that exceeds 5 percent of the TAC allocated to IFQ scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not transfer to or receive IFQ from another IFQ scallop vessel.

(iv) *Application for an IFQ transfer.* The owner of a vessel applying for a transfer of IFQ must submit a completed application form obtained from the Regional Administrator. The application must be signed by both parties (transferor and transferee) involved in the transfer of the IFQ, and must be submitted to the NMFS Northeast Regional Office at least 30 days before the date on which the applicants desire to have the IFQ effective on the receiving vessel. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time during the scallop fishing year, provided the vessel transferring the IFQ to another vessel has not utilized any of its own IFQ in that fishing year. Applications for temporary transfers received less than 45 days prior to the end of the fishing year may not be processed in time for a vessel to utilize the transferred IFQ prior to the expiration of the fishing year for which the IFQ transfer, if approved, would be effective.

(A) *Application information requirements.* An application to transfer IFQ must contain at least the following information: Transferor's name, vessel name, permit number, and official number or State registration number; transferee's name, vessel name, permit number, and official number or State registration number; total price paid for purchased IFQ; signatures of transferor and transferee; and date the form was completed. In addition, applications to transfer IFQ must indicate the amount, in pounds, of the IFQ allocation transfer, which may not be less than 100 lb (45 kg), unless that value reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery.

(B) *Approval of IFQ transfer applications.* Unless an application to transfer IFQ is denied according to paragraph (h)(5)(iii)(C) of this section, the Regional Administrator shall issue confirmation of application approval to both parties involved in the transfer within 30 days of receipt of an application.

(C) *Denial of transfer application.* The Regional Administrator may reject an application to transfer IFQ for the following reasons: The application is incomplete; the transferor or transferee does not possess a valid limited access general category permit; the transferor's vessel has fished under its IFQ prior to the completion of the transfer request; the transferor's or transferee's vessel or IFQ scallop permit has been sanctioned, pursuant to a final administrative decision or settlement of an enforcement proceeding; the transfer will result in the transferee's vessel having an allocation that exceeds 2.5 percent of the TAC allocated to IFQ scallop vessels; the transfer will result in the transferee having a total ownership of or interest in general category scallop allocation that exceeds 5 percent of the TAC allocated to IFQ scallop vessels; or any other failure to meet the requirements of the regulations in 50 CFR 648. Upon denial of an application to transfer IFQ, the Regional Administrator shall send a letter to the applicants describing the reason(s) for the rejection. The decision by the Regional Administrator is the final agency decision, and there is no opportunity to appeal the Regional Administrator's decision. An application that was denied can be resubmitted if the discrepancy(ies) that resulted in denial are resolved.

8. Section 648.55 is revised to read as follows:

§ 648.55 Framework adjustments to management measures.

(a) At least Biennially, the Council shall assess the status of the scallop resource, determine the adequacy of the management measures to achieve scallop resource conservation objectives, and initiate a framework adjustment to establish scallop fishery management measures for the 2-year period beginning with the scallop fishing year immediately following the year in which the action is initiated. The PDT shall prepare a Stock Assessment and Fishery Evaluation (SAFE) Report that provides the information and analysis needed to evaluate potential management adjustments. The framework adjustment shall establish OFL, ABC, ACL, ACT, DAS allocations, rotational area management programs, percentage allocations for limited access general category vessels in Sea Scallop Access Areas, scallop possession limits, AMs, and other measures to achieve FMP objectives and limit fishing mortality. The Council's development of rotational area management adjustments shall take into account at least the following factors: General rotation policy; boundaries and distribution of rotational closures; number of closures; minimum closure size; maximum closure extent; enforceability of rotational closed and re-opened areas; monitoring through resource surveys; and re-opening criteria. Rotational

Closures should be considered where projected annual change in scallop biomass is greater than 30 percent. Areas should be considered for Sea Scallop Access Areas where the projected annual change in scallop biomass is less than 15 percent.

(b) The preparation of the SAFE Report shall begin on or about June 1 of the year preceding the fishing year in which measures will be adjusted.

(c) *OFL, ABC, ACL, ACT, and AMs.* The Council shall specify OFL, ABC, ACL, ACT, and AMs, as applicable, for each year covered under the biennial or other framework adjustment.

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

(2) The specification of ABC, ACL, and ACT shall be based upon the following overfishing definition: The F shall be set so that in access areas, averaged for all years combined over the period of time that the area is closed and open to scallop fishing as an access area, it does not exceed the established F threshold for the scallop fishery; in open areas it shall not exceed the F threshold for the scallop fishery; and for access and open areas combined, it is set at a level that has a 75-percent probability of remaining below the F associated with ABC, as specified in paragraph (c)(2) of this section, taking into account all sources of fishing mortality in the limited access and LAGC fleets of the scallop fishery.

(3) *ABC.* The Council shall specify ABC for each year covered under the biennial or other framework adjustment. ABC shall be the catch that has an associated F that has a 75-percent probability of remaining below the F associated with OFL. ABC shall be equal to ACL for the scallop fishery.

(4) *Deductions from ABC.* Incidental catch, equal to the value established in § 648.53(a)(2), shall be removed from ABC/ACL. One percent of ABC/ACL shall be removed from ABC/ACL for observer set-aside. Scallop catch equal to the value specified in § 648.56(d) shall be removed from ABC/ACL for research set-aside. These deductions for incidental catch, observer set-aside, and research set-aside, shall be made prior to establishing ACLs for the limited access and LAGC fleets, as specified in paragraph (c)(4) of this section.

(5) *Sub-ACLs for the limited access and LAGC fleets.* The Council shall specify sub-ACLs for the limited access and LAGC fleets for each year covered under the biennial or other framework adjustment. After applying the deductions as specified in paragraph (a)(4) of this section, a sub-ACL equal to 94.5 percent of the ABC/ACL shall be allocated to the limited access fleet. After applying the deductions as specified in paragraph (a)(4) of this section, a sub-ACL of 5.5 percent of ABC/ACL shall be allocated to the LAGC fleet, so that 5 percent of ABC/ACL is allocated to the LAGC fleet of vessels that do not also have a limited access scallop permit, and 0.5 percent of the ABC/ACL is allocated to the LAGC fleet of vessels that have limited access scallop permits. This specification of sub-ACLs shall not account for catch reductions associated with the application of AMs or adjustment of the sub-ACL as a result of the disclaimer provision as specified in § 648.53(b)(4)(iii).

(6) *ACT for the limited access and LAGC fleets.* The Council shall specify ACTs for the limited access and LAGC fleets for each year covered under the biennial or other framework adjustment. The ACT for the limited access fishery shall be set at a level that has an associated F with a 75-percent probability of remaining below the F associated with ABC/ACL. The LAGC ACT shall be set equal to the LAGC sub-ACL as specified in paragraph (a)(5) of this section.

(7) *AMs.* The Council shall specify AMs for the limited access and LAGC fleets for each year covered under the biennial or other framework adjustment. For the limited access scallop fleet, AMs result in a DAS reduction for each limited access scallop vessel as specified in § 648.53(b)(4)(ii). For the LAGC scallop fleet, AMs result in an IFQ deduction for each vessel issued a LAGC scallop permit as specified in § 648.53(h)(2)(vi).

(d) *Yellowtail flounder sub-ACL.* The Council shall specify the yellowtail flounder sub-ACL allocated to the scallop fishery through the framework adjustment process specified in § 648.90.

(e) *Third-year default management measures.* The biennial framework action shall include default management measures that shall be effective in the third year unless replaced by the measures included in the next biennial framework action. If the biennial framework action is not published in the **Federal Register** with an effective date on or before March 1, in accordance with the Administrative Procedure Act, the third-year measures shall be effective beginning March 1 of each fishing year until the framework adjustment is implemented, or for the entire fishing year if the framework adjustment is completed or is not implemented by NMFS for the third year. The framework action shall specify the measures necessary to address inconsistencies between specifications and allocations for the period after March 1 but before the framework adjustment is implemented for that year. In the case of third-year measures of a biennial adjustment being implemented, if no framework adjustment has been implemented by March 1 of the following year, the measures from the preceding year shall continue to be in effect until replaced by subsequent action.

(f) 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;

(24) Limits on number of area closures;

(25) 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;

(37) Increases or decreases in the LAGC possession limit;

(38) Adjustments to aspects of ACL management;

(39) Adjusting EFH closed area management boundaries or other associated measures; and

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

(g) The Council may make recommendations to the Regional Administrator to implement measures in accordance with the procedures described in this section 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 mi^2 (6,993 km^2), 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; and

(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; and

(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, the Secretary may, for good cause found pursuant to the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the **Federal Register**. The Secretary, in doing so, shall publish only the final rule. Submission of a recommendation by the Council for a final rule does not affect the Secretary's responsibility to comply with the Administrative Procedure Act; or

(2) The Regional Administrator approves the Council's recommendation 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 section 305(c) of the Magnuson-Stevens Act.

9. Section 648.56 is revised to read as follows:

§ 648.56 Scallop research.

(a) Annually, the Council and NMFS shall prepare and issue an announcement of Federal Funding Opportunity (FFO) 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), provides requirements and instructions for applying for funding of a proposed RSA project, and specifies the date by which applications must be received. The FFO shall be published as soon as possible by NMFS and shall provide the opportunity for applicants to apply for projects to be awarded for 1 or 2 years by allowing applicants to apply for RSA funding for the first year, second year, or both.

(b) Proposals submitted in response to the FFO must include the following information, as well as any other specific information required within the FFO: 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, or take additional trips into Open or 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.

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

(e) If all RSA TAC is not allocated in a fishing year, and proceeds from compensation fishing for approved projects fall short of funds needed to cover a project's budget due to a lower-than-expected scallop price, unused RSA allocation can be provided to that year's awarded projects to compensate for the funding shortfall, or to expand a project, rather than having that RSA go unused. NMFS shall identify the process for the reallocation of available RSA pounds as part of the FFO for the RSA program. The FFO shall specify the conditions under which a project that has been awarded RSA could be provided additional RSA pounds as supplemental compensation to account for lower-than-expected scallop price or for expansion of the project, timing of reallocation, and information submission requirements.

(f) A vessels participating in research may harvest RSA through May 31 of the subsequent fishing year if it, combined with other participating vessels, if any, is unable to harvest all of the awarded RSA in the fishing year for which the RSA pounds were awarded.

(g) Vessels conducting research under an approved RSA project may be exempt from crew restrictions specified in § 648.51, seasonal closures of access areas specified in § 648.59, and the restriction on fishing in only one access area during a trip specified in § 648.60(a)(4). The RSA project proposal must list which of these measures for which an exemption is required. An exemption shall be provided by Letter of Authorization issued by the Regional Administrator. RSA compensation fishing trips and combined compensation and research trips are not eligible for these exemptions.

(h) Upon completion of scallop research projects approved pursuant to this section and the applicable NOAA grants review process, researchers must provide the Council and NMFS with a report of research findings, which must include at least the following: A detailed description of methods of data collection and analysis; a discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; and a detailed final accounting of all funds used to conduct the sea scallop research.

10. In § 648.60, paragraph (a)(5)(iii) is removed and reserved, and paragraphs (a)(9), (c)(3), and (e)(1) are revised to read as follows:

§ 648.60 Sea scallop area access program requirements.

(a) * * *

(9) *Reporting.* The owner or operator must submit reports through the VMS, as specified in § 648.10(f)(4)(i).

* * * * *

(c) * * *

(3) The vessel owner/operator must report the termination of the trip prior to entering the access area if the trip is terminated while transiting to the area, or prior to leaving the Sea Scallop Access Area if the trip is terminated after entering the access area, by VMS e-mail messaging, with the following information: Vessel name, vessel owner, vessel operator, time of trip termination, reason for terminating the trip (for NMFS recordkeeping purposes), expected date and time of return to port, and amount of scallops on board in pounds;

* * * * *

(e) * * *

(1) Research set-aside may be harvested in an access area that is open in the applicable fishing year, as specified in § 648.59.

* * * * *

11. Section 648.61 is revised to read as follows:

§ 648.61 EFH closed areas.

(a) No vessel fishing for scallops, or person on a vessel fishing for scallops, may enter, fish in, or be in the EFH Closure Areas described in paragraphs (a)(1) through (6) of this section, unless otherwise specified. A chart depicting these areas is available from the Regional Administrator upon request.

(1) *Western GOM Habitat Closure Area.* The restrictions specified in paragraph (a) of this section apply to the Western GOM Habitat Closure Area, which is the area bounded by straight lines connecting the following points in the order stated:

WESTERN GOM HABITAT CLOSURE AREA

Point	N. lat.	W. long.
WGM4	43°15′	70°15′
WGM1	42°15′	70°15′
WGM5	42°15′	70°00′
WGM6	43°15′	70°00′
WGM4	43°15′	70°15′

(2) *Cashes Ledge Habitat Closure Area.* The restrictions specified in

paragraph (a) of this section apply to the Cashes Ledge Habitat Closure Area, which is the area bounded by straight lines connecting the following points in the order stated:

CASHES LEDGE HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CLH1	43°01′	69°03′
CLH2	43°01′	68°52′
CLH3	42°45′	68°52′
CLH4	42°45′	69°03′
CLH1	43°01′	69°03′

(3) *Jeffrey's Bank Habitat Closure Area.* The restrictions specified in paragraph (a) of this section apply to the Jeffrey's Bank Habitat Closure Area, which is the area bounded by straight lines connecting the following points in the order stated:

JEFFREY'S BANK HABITAT CLOSURE AREA

Point	N. lat.	W. long.
JB1	43°40′	68°50′
JB2	43°40′	68°40′
JB3	43°20′	68°40′
JB4	43°20′	68°50′
JB1	43°40′	68°50′

(4) *Closed Area I Habitat Closure Areas.* The restrictions specified in paragraph (a) of this section apply to the Closed Area I Habitat Closure Areas, Closed Area I—North and Closed Area I—South, which are the areas bounded by straight lines connecting the following points in the order stated:

CLOSED AREA I—NORTH HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CI1	41°30′	69°23′
CI4	41°30′	68°30′
CIH1	41°26′	68°30′
CIH2	41°04′	69°01′
CI1	41°30′	69°23′

CLOSED AREA I—SOUTH HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CIH3	40°55′	68°53′
CIH4	40°58′	68°30′
CI3	40°45′	68°30′
CI2	40°45′	68°45′
CIH3	40°55′	68°53′

(5) *Closed Area II Habitat Closure Area.* The restrictions specified in this paragraph (a) apply to the Closed Area II Habitat Closure Area (also referred to as the Habitat Area of Particular Concern), which is the area bounded by straight lines connecting the following points in the order stated:

CLOSED AREA II HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CIIH1	42°10′	67°20′
CIIH2	42°10′	67°9.3′
CIIH3	42°00′	67°0.5′
CIIH4	42°00′	67°10′
CIIH5	41°50′	67°10′
CIIH6	41°50′	67°20′
CIIH1	42°10′	67°20′

(6) *Nantucket Lightship Habitat Closure Area.* The restrictions specified in paragraph (a) of this section apply to the Nantucket Lightship Habitat Closure Area, which is the area bounded by straight lines connecting the following points in the order stated:

NANTUCKET LIGHTSHIP HABITAT CLOSED AREA

Point	N. lat.	W. long.
NLH1	41°10′	70°00′
NLH2	41°10′	69°50′
NLH3	40°50′	69°30′
NLH4	40°20′	69°30′
NLH5	40°20′	70°00′
NLH1	41°10′	70°00′

(b) *Transiting.* A vessel may transit the EFH Closure Areas as defined in paragraphs (a)(1) through (6) of this section, unless otherwise restricted, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel may transit the CAII EFH closed area, as defined in paragraph (a)(6) of this section, provided there is a compelling safety reason to enter the area and all gear is stowed in accordance with the provisions of § 648.23(b).

12. In § 648.62, paragraph (b)(3) is added to read as follows:

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

* * * * *

(b) * * *

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

* * * * *

13. Section 648.64 is added to subpart D to read as follows:

§ 648.64 Yellowtail Flounder Sub-ACLs and AMs for the Scallop Fishery.

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

(1) *2011.* To be determined.

(2) *2012.* To be determined.

(3) *2013.* To be determined.

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

GEORGES BANK YELLOWTAIL CLOSURE

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

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

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

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

(ii) For fishing years when the Closed Area II Sea Scallop Access Area is

closed to scallop fishing, the closure duration shall be:

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

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

SOUTHERN NEW ENGLAND YELLOWTAIL CLOSURE

Point	N. lat.	W. long.
SNEYT AM 1	41°28.4′	71°10.25′
SNEYT AM 2	41°28.57′	71°10′
SNEYT AM 3	41°20′	71°10′
SNEYT AM 4	41°20′	70°50′
SNEYT AM 5	41°20′	70°30′
SNEYT AM 6	41°18′	70°15′
SNEYT AM 7	41°17.69′	70°12.54′
SNEYT AM 8	41°14.73′	70°00′
SNEYT AM 9	39°50′	70°00′
SNEYT AM 10	39°50′	71°00′
SNEYT AM 11	39°50′	71°40′
SNEYT AM 12	40°00′	71°40′
SNEYT AM 13	40°00′	73°00′
SNEYT AM 14	40°41.23′	73°00′
SNEYT AM 15	41°00′	71°55′
SNEYT AM 16	41°00′	71°40′
SNEYT AM 17	41°20′	71°40′
SNEYT AM 18	41°21.15′	71°40′

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

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

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

(e) *Process for implementing the AM.* On or about January 15 of each year, the Regional Administrator shall determine whether a yellowtail flounder sub-ACL was exceeded, or is projected to be exceeded, by scallop vessels prior to the end of the scallop fishing year ending on February 28/29. The determination shall include the amount of the overage or projected amount of the overage, specified as a percentage of the overall sub-ACL for the applicable yellowtail flounder stock, in accordance with the values specified in paragraph (a) of this section. The Regional Administrator shall implement the AM in accordance with the APA and notify owners of limited access scallop vessels by letter identifying the length of the closure and a summary of the yellowtail flounder catch, overage, and projection that resulted in the closure.

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

[FR Doc. 2011–8444 Filed 4–8–11; 8:45 am]

BILLING CODE 3510–22–P