



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No.: 180202111-8111-01]**

**RIN 0648-BH56**

**Fisheries of the Northeastern United States; Framework Adjustment 29 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 to approve and implement the measures the portion of Framework Adjustment 29 (Framework 29) to the Atlantic Sea Scallop Fishery Management Plan that establishes scallop specifications and other measures for fishing years 2018 and 2019. The measures discussed in this proposed rule are in addition to the Northern Gulf of Maine (NGOM) management measures of Framework 29 that were published in a separate proposed rule on February 20, 2018. This action is necessary to prevent overfishing and improve both yield-per-recruit and the overall management of the Atlantic sea scallop resource. The intended effect of this rule is to notify the public of these proposed measures and to solicit comment on the potential scallop fishery management changes.

**DATES:** Comments must be received by *[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

**ADDRESSES:** The New England Fishery Management Council (Council) has prepared a draft environmental assessment (EA) for this action that describes the proposed measures in Framework 29, other considered alternatives, and analyzes the impacts of the proposed measures and alternatives, including NGOM management measures of Framework 29 that were published as a proposed rule on February 20, 2018 (83 FR 7129). The Council submitted a decision draft of Framework 29 to NMFS that includes the draft EA, a description of the Council’s preferred alternatives, the Council’s rationale for selecting each alternative, and an Initial Regulatory Flexibility Analysis (IRFA). Copies of the draft of Framework 29, the draft EA, the IRFA, and information on the economic impacts of this proposed rulemaking are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: <https://www.nefmc.org/library/framework-29-1>.

With regard to new access areas that will become available to scallop fishing through the Omnibus Essential Fish Habitat Amendment 2 (see proposed rule for the Omnibus Habitat Amendment published on November 6, 2017 (82 FR 51492)), additional documents are available via the internet at: <http://www.nefmc.org/library/omnibus-habitat-amendment-2>.

You may submit comments on this document, identified by NOAA-NMFS-2018-0016, by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!/docketDetail;D=NOAA-NMFS-2018-0016](http://www.regulations.gov/#!/docketDetail;D=NOAA-NMFS-2018-0016), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- Mail: Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on Framework 29”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Travis Ford, Fishery Policy Analyst, 978-281-9233.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The scallop fishery’s management unit ranges from the shorelines of Maine through North Carolina to the outer boundary of the Exclusive Economic Zone. The Atlantic Sea Scallop Fishery Management Plan (FMP), established in 1982, includes a number of amendments and framework adjustments that have revised and refined the fishery’s management. The New England Fishery Management Council sets scallop fishery catch limits and other management measures through specification or framework adjustments that occur annually or biennially. The Council adopted Framework 29 to the Atlantic Sea Scallop FMP in its entirety on December 7, 2017. The Council submitted a decision draft of the framework, including a draft EA, for NMFS

review and approval on December 21, 2017. Framework 29, which establishes scallop specifications and other measures for fishing years 2018 and 2019, includes changes to the NGOM management provisions for fishing years 2018 and 2019, changes to the catch, effort, and quota allocations and adjustments to the rotational area management program for fishing year 2018, and default specifications for fishing year 2019.

On February 20, 2018, NMFS published a separate proposed rule to approve and implement the portion of Framework 29 that address the NGOM measures (83 FR 7129). We informed the Council at the December meeting that we would consider separating out the NGOM measures in Framework 29 to ensure that they were in place prior to April 1, 2018. Additional information on the proposed NGOM measures is provided in the February 20, 2018, proposed rule and is not repeated here. This action addresses only the remaining portions of Framework 29.

This action proposes to approve and implement the portion of Framework 29 that establishes scallop specifications and other measures for fishing year 2018. This includes default fishing year 2019 measures that would go into place should the next specifications-setting action be delayed beyond the start of fishing year 2019.

NMFS will implement these measures of Framework 29, if approved, as close as possible to the April 1, 2018, start of fishing year 2018. If NMFS implements these Framework 29 measures after the start of the 2018 fishing year, 2018 default allocation measures will go into place on April 1, 2018. The Council has reviewed the proposed regulations in this rule as drafted by NMFS and deemed them to be necessary and appropriate as specified in section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

*Specification of Scallop Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limits (ACLs), Annual Catch Targets (ACTs), Annual Projected Landings (APLs) and Set-Asides for the 2018 Fishing Year, and Default Specifications for Fishing Year 2019*

The Council set the proposed OFL based on a fishing mortality rate (F) of 0.48, equivalent to the overfishing F threshold updated through the 2014 assessment. The Council's Scientific and Statistical Committee recommended a scallop fishery ABC for 2018 of 132 million lb (59,968 mt) and 128 million lb (58,126 mt) for 2019, after accounting for discards and incidental mortality. The Council reduced these recommended ABCs to the amounts included in this proposed rule: 45,950 mt for the 2018 fishing year, and 45,805 mt for the 2019 fishing year. For each fishing year the ACL is based on the proposed ABC using an F of 0.38, which is the F associated with a 25-percent probability of exceeding the OFL. The Scientific and Statistical Committee will reevaluate the default ABC for 2019 when the Council develops the next framework adjustment in 2018.

Table 1 outlines the proposed scallop fishery catch limits. After deducting the incidental target total allowable catch (TAC), the research set-aside (RSA), and the observer set-aside, the remaining ACL available to the fishery is allocated according to the following fleet proportions established in Amendment 11 to the FMP (72 FR 20090; April 14, 2008): 94.5 percent is allocated to the limited access scallop fleet (i.e., the larger "trip boat" fleet); 5 percent is allocated to the limited access general category (LAGC) individual fishing quota (IFQ) fleet (i.e., the smaller "day boat" fleet); and the remaining 0.5 percent is allocated to limited access scallop vessels that also have LAGC IFQ permits. Amendment 15 to the FMP (76 FR 43746; July 21, 2011) specified that no buffers to account for management uncertainty are necessary in setting

the LAGC ACLs, meaning that the LAGC ACL would equal the LAGC ACT. For the limited access fleet, the management uncertainty buffer is based on the F associated with a 75-percent probability of remaining below the F associated with ABC/ACL, which, using the updated Fs applied to the ABC/ACL, now results in an F of 0.34.

**Table 1. Scallop Catch Limits (mt) for fishing years 2018 and 2019 for the limited access and LAGC IFQ fleets.**

Catch limits	2018 (mt)	2019 (mt)*
Overfishing Limit	72,055	69,633
Acceptable Biological Catch/ACL (discards removed)	45,950	45,805
Incidental Catch	23	23
RSA	567	567
Observer Set-Aside	460	458
ACL for fishery	44,900	44,757
Limited Access ACL	42,431	42,295
LAGC Total ACL	2,470	2,462
LAGC IFQ ACL (5 percent of ACL)	2,245	2,238
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	225	224
Limited Access ACT	37,964	37,843
Closed Area 1 Carryover	743	n/a
APL	25,451	(*)
Limited Access Projected Landings (94.5 percent of APL)	24,051	(*)
Total IFQ Annual Allocation (5.5 percent of APL)	1,400	**1,050
LAGC IFQ Annual Allocation (5 percent of APL)	1,273	**955
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL)	127	**95

\*The catch limits for the 2019 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2019 that will be based on the 2018 annual scallop surveys.

\*\*As a precautionary measure, the 2019 IFQ annual allocations are set at 75 percent of the 2018 IFQ Annual Allocations.

This action would deduct 1.25 million lb (567 mt) of scallops annually for 2018 and 2019 from the ABC for use as the Scallop RSA to fund scallop research. Participating vessels are compensated through the sale of scallops harvested under RSA projects. Of the 1.25 million lb (567 mt) allocation, NMFS has already allocated 133,037 lb (60.3 mt) to previously-funded multi-year projects as part of the 2017 RSA awards process. NMFS is reviewing proposals submitted for consideration of 2018 RSA awards and will be selecting projects for funding in the near future.

This action would also deduct 1 percent of the ABC for the industry-funded observer program to help defray the cost to scallop vessels that carry an observer. The observer set-aside is 460 mt for 2018 and 458 mt for 2019. The Council may adjust the 2019 observer set-aside when it develops specific, non-default measures for 2019.

#### *Open Area Days-at-Sea (DAS) Allocations*

This action would implement vessel-specific DAS allocations for each of the three limited access scallop DAS permit categories (i.e., full-time, part-time, and occasional) for 2018 and 2019 (Table 2). Proposed 2018 DAS allocations are lower than those allocated to the limited access fleet in 2017 (30.55 DAS for full-time, 12.22 DAS for part-time, and 2.44 DAS for occasional vessels). Framework 29 would set 2019 DAS allocations at 75 percent of fishing year 2018 DAS allocations as a precautionary measure. This is to avoid over-allocating DAS to the fleet in the event that the 2019 specifications action is delayed past the start of the 2019 fishing year. The proposed allocations in Table 2 exclude any DAS deductions that are required if the limited access scallop fleet exceeded its 2017 sub-ACL.

**Table 2 Scallop Open Area DAS Allocations for 2018 and 2019.**

Permit Category	2018	2019 (Default)
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.5

If NMFS implements these Framework 29 measures after April 1, 2018, fishing year 2018 default DAS allocations, which were established in Framework Adjustment 28 to the Scallop FMP (82 FR 15155; March 27, 2017), will go into place on April 1, 2018. Full-time vessels will receive 21.75 DAS, Part-time vessels will receive 8.69 DAS, and Occasional vessels will receive 1.91 DAS. The allocations would later be increased in accordance with Framework 29, if approved. NMFS will send a letter to all limited access permit holders providing both default and Framework 29 DAS allocations so that vessel owners know what mid-year adjustments would occur should Framework 29 be approved and implemented after April 1, 2018.

*Limited Access Allocations and Trip Possession Limits for Scallop Access Areas*

For fishing year 2018 and the start of 2019, Framework 29 would keep the Mid-Atlantic Access Area (MAAA) open as an access area and would include what is now the Elephant Trunk Flex Rotational Area as part of the MAAA. In addition, this action would close the northern portion of Nantucket Lightship (NLS-N), but it would allocate trips into the southern portion of Nantucket Lightship in an area referred to as Nantucket Lightship-South (NLS-S). Further, this action would allocate effort into new access areas (Closed Area 1 (CA1) and Nantucket Lightship-West (NLS-W)) that will become available to scallop fishing through the Omnibus Essential Fish Habitat Amendment 2 (Omnibus Habitat Amendment). We published a proposed

rule for the Omnibus Habitat Amendment on November 6, 2017 (82 FR 51492). On January 3, 2018, NMFS approved the Omnibus Habitat Amendment, which would open areas that are now contained in CA1 and NLS-W. We intend to publish the final rule implementing the Omnibus Habitat Amendment on or about the same time as the final rule implementing these non-NGOM portions of Framework 29.

Table 3 provides the proposed limited access full-time allocations for all of the access areas, which could be taken in as many trips as needed, so long as the vessels do not exceed the possession limit (also in Table 3) on each trip.

**Table 3. Proposed Scallop Access Area Full-Time Limited Access Vessel Poundage Allocations and Trip Possession Limits for 2018 and 2019.**

<b>Rotational access area</b>	<b>Scallop possession limit</b>	<b>2018 Scallop allocation</b>	<b>2019 Scallop allocation (default)</b>
Closed Area 1	18,000 lb (8,165 kg) per trip	18,000 lb (8,165 kg)	0 lb (0 kg).
Nantucket Lightship-South		18,000 lb (8,165 kg)	0 lb (0 kg).
Nantucket Lightship-West		36,000 lb (16,329 kg)	0 lb (0 kg).
Mid-Atlantic		36,000 lb (16,329 kg)	18,000 lb (8,165 kg)
Total		108,000 lb (48,988 kg)	18,000 lb (8,165 kg)

Table 4 provides the proposed limited access part-time allocations for three of the access areas, which could be taken in as many trips as needed, so long as the vessels do not exceed the possession limit (also in Table 4) on each trip. There is no part-time allocation in NLS-S.

**Table 4. Proposed Scallop Access Area Part-Time Limited Access Vessel Poundage Allocations and Trip Possession Limits for 2018 and 2019.**

<b>Rotational access area</b>	<b>Scallop possession limit</b>	<b>2018 Scallop allocation</b>	<b>2019 Scallop allocation (default)</b>
Closed Area 1	14,400 lb (6,532 kg) per trip	14,400 lb (6,532 kg)	0 lb (0 kg).
Nantucket Lightship-West		14,400 lb (6,532 kg)	0 lb (0 kg).
Mid-Atlantic		14,400 lb (6,532 kg)	14,400 lb (6,532 kg)
Total		43,200 lb (19,595 kg)	14,400 lb (6,532 kg)

For the 2018 fishing year, an occasional limited access vessel would be allocated 9,000 lb (4,082 kg) of scallops with a trip possession limit at 9,000 lb of scallops per trip (4,082 kg per trip). Occasional vessels would be able to harvest 9,000 lb (4,082 kg) allocation from only one of three available access areas (CA1, NLS-W, or MAAA). There is no occasional vessel allocation in NLS-S. For the 2019 fishing year, occasional limited access vessels would be allocated 9,000 lb (4,082 kg) in the MAAA only with a trip possession limit of 9,000 lb per trip (4,082 kg per trip).

*Limited Access Vessels' One-for-One Area Access Allocation Exchanges*

The owner of a vessel issued a limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another vessel's unharvested scallop pounds allocated into another access area. These exchanges may only be made for the amount of the current trip possession limit (18,000-lb (8,165-kg)). In addition, these exchanges would be made only between vessels in the same permit category. For example, a full-time vessel may not exchange allocations with a part-time vessel, and vice versa.

*Limited Access Unharvested Closed Area I Allocation from Fishing Years 2012 and 2013*

Towards the end of fishing year 2012 and into fishing year 2013 catch rates in CA1 began to drop below profitable levels for limited access vessels. As a result, many vessels were unable to harvest the pounds associated with their CA1 trips in these two fishing years. Because these trips were not allocated evenly throughout the fleet, Framework Adjustment 25 to the Scallop FMP (79 FR 34251; June 16, 2014) allowed unharvested pounds associated with fishing years 2012 and 2013 CA1 trips to be harvested by those vessels in CA1 when it reopens in the future. Because Framework 29 would be the first action since 2013 to open CA1 to scallop fishing, it would reinstate this unharvested allocation to the limited access fleet in fishing year 2018. 1,638,604 lb (743,258 kg) of CA1 allocation went unharvested from fishing years 2012 and 2013, distributed across 130 permit holders. All amounts of outstanding limited access unharvested CA1 allocation would be made available in addition to fishing year 2018 allocations to that access area. For example, if a full-time limited access vessel has 2,000 lb (907 kg) of unharvested 2012/2013 CA1 allocation, and the CA1 trip limit is 18,000 lbs (8,165 kg), the vessel would be able to land a total of 20,000 lb (9,072 kg) from CA1 in fishing year 2018. Unharvested 2012/2013 CA1 allocation may only be harvested from CA1. There would be no change to specified trip limits through Framework 29, i.e., vessels must still abide by the 18,000-lb (8,165-kg) trip limit. Once allocated for the 2018 fishing year, these allocations would not be eligible to carry over into future years (i.e., available only for fishing year 2018, plus the first 60 days of fishing year 2019). This additional harvest in CA1 would not be included in the fishing year 2018 APL established in Framework 29, because this catch is specific to those vessels that have unharvested 2012/2013 CA1 allocation and is not applicable to the entire fleet. However,

the additional scallops harvested from CA1 would not cause the limited access fleet to exceed its ACT, because the APL is far below the ACT.

*Nantucket Lightship Hatchet Scallop Rotational Area*

The Omnibus Habitat Amendment will make available several areas that were previously closed to the scallop fishery. However, these areas remain closed to scallop fishing until they are opened by a scallop action. The bulk of these areas are encompassed in the NLW-W and CA1 Rotational Areas, which Framework 29 intends to open to scallop fishing. Framework 29 does not propose to open the area west and north of NLS-W (Table 5). We are calling this area the Nantucket Lightship Hatchet Scallop Rotational Area, and it would remain closed to help minimize flounder bycatch due to uncertainty about catch rates in the area.

**Table 5. Nantucket Lightship Hatchet Scallop Rotational Area.**

<b>Point</b>	<b>Latitude</b>	<b>Longitude</b>
NLSH1	40 50' N	69 30' W
NLSH2	40 43.44' N	69 30' W
NLSH3	40 43.44' N	70° W
NLSH4	40 20' N	70° W
NLSH5	40 20' N	70 20' W
NLSH6	40 50' N	70 20' W
NLSH7	40 50' N	69 30' W

*LAGC Measures*

1. *ACL and IFQ Allocation for LAGC Vessels with IFQ Permits.* For LAGC vessels with IFQ permits, this action would implement a 2,245-mt ACL for 2018 and a default ACL of 2,238 mt for 2019 (see Table 1). These sub-ACLs have no associated regulatory or management

requirements, but provide a ceiling on overall landings by the LAGC IFQ fleets. If the fleet were to reach this ceiling any overages would be deducted from the following year's sub-ACL. The annual allocation to the LAGC IFQ-only fleet for fishing years 2018 and 2019 based on APL would be 1,273 mt for 2018 and 955 mt for 2019 (see Table 1). Each vessel's IFQ would be calculated from these allocations based on APL.

If NMFS implements these Framework 29 measures after April 1, 2018, the default 2018 IFQ allocations would go into place automatically on April 1, 2018. Because this action would implement IFQ allocations greater than the default allocations, NMFS will send a letter to IFQ permit holders providing both default April 1, 2018, IFQ allocations and Framework 29 IFQ allocations so that vessel owners know what mid-year adjustments would occur should Framework 29 be approved.

*2. ACL and IFQ Allocation for Limited Access Scallop Vessels with IFQ Permits.* For limited access scallop vessels with IFQ permits, this action would implement a 225-mt ACL for 2018 and a default 224-mt ACL for 2019 (see Table 1). These sub-ACLs have no associated regulatory or management requirements, but provide a ceiling on overall landings by this fleet. If the fleet were to reach this ceiling any overages would be deducted from the following year's sub-ACL. The annual allocation to limited access vessels with IFQ permits for fishing years would be 127 mt for 2018 and 95 mt for 2019 (see Table 1). Each vessel's IFQ would be calculated from these allocations based on APL.

*3. LAGC IFQ Trip Allocations for Scallop Access Areas.* Framework 29 would allocate LAGC IFQ vessels a fleetwide number of trips in the CA1, NLS-S, NLS-W, and MAAA for fishing year 2018 trips and default fishing year 2019 trips in the MAAA (see Table 6). The total

number of trips for all areas combined (3,426) for fishing year 2018 is equivalent to the 5.5 percent of total catch from access areas.

**Table 6. Fishing Years 2018 and 2019 LAGC IFQ Trip Allocations for Scallop Access Areas.**

Access Area	2018	2019 ( <i>Default</i> )
CA1	571	-
NLS-S	571	-
NLS-W	1,142	-
MAAA	1,142	571
Total	3,426	571

4. *Scallop Incidental Catch Target TAC.* This action proposes a 50,000-lb (22,680-kg) scallop incidental catch target TAC for fishing years 2018 and 2019 to account for mortality from vessels that catch scallops while fishing for other species, and to ensure that F targets are not exceeded. The Council and NMFS may adjust this target TAC in a future action if vessels catch more scallops under the incidental target TAC than predicted.

*RSA Harvest Restrictions*

This action proposes that vessels participating in RSA projects would be able to harvest RSA compensation from all available access areas and the open area. Vessels would be prohibited from fishing for RSA compensation in the NGOM unless the vessel is fishing an RSA compensation trip using NGOM RSA allocation that was awarded to an RSA project, as proposed in the separate rule for the NGOM portions of Framework 29. In addition, Framework 29 would prohibit the harvest of RSA from any access areas under default 2019 measures. At

the start of 2019, RSA compensation could only be harvested from open areas. The Council would re-evaluate this measure in the action that would set final 2019 specifications.

*Adjustments to Flatfish Accountability Measures*

This action would adjust the scallop fleet’s accountability measures for two different flatfish stocks (Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder and Georges Bank yellowtail flounder) and develop an accountability measure for northern windowpane flounder. The Council wanted to make the flatfish accountability measures more consistent throughout the Scallop FMP. In addition, it had a preference for gear restricted areas as opposed to closed areas, similar to the existing southern windowpane flounder accountability measure already in place. This action would change the existing Georges Bank yellowtail flounder and the SNE/MA yellowtail flounder accountability measures from closed areas to gear restricted areas, and it would develop a gear restricted area accountability measure for northern windowpane flounder.

For SNE/MA yellowtail flounder this action would adopt the same gear restricted area that is already in place for southern windowpane flounder, i.e., the area west of 71° W. Long.

For Georges Bank yellowtail flounder and northern windowpane flounder this action would create the Georges Bank Accountability Measure Area (Table 7).

**Table 7. Georges Bank Accountability Measure Area**

<b>Point</b>	<b>Latitude</b>	<b>Longitude</b>	<b>Note</b>
GBAM1	41°30' N	67°20' W.	
GBAM2	41°30' N	( <sup>1</sup> )	( <sup>2</sup> )
GBAM3	40°30' N	( <sup>3</sup> )	( <sup>2</sup> )
GBAM4	40°30' N	67°20' W.	
GBAM1	41°30' N	67°20' W.	

<sup>1</sup> The intersection of 41°30' N. lat. and the U.S.-Canada Maritime Boundary, approximately 41°30' N. lat., 66°34.73' W. long.

<sup>2</sup> From Point GBAM2 connected to Point GBAM3 along the U.S.-Canada Maritime Boundary.

<sup>3</sup> The intersection of 40°30' N. lat. and the U.S.-Canada Maritime Boundary, approximately, 65°44.34' W. long.

When the fleet is subject to any of the flatfish accountability measures in a gear restricted area vessels would be required to fish with scallop dredge gear that conforms to the restrictions already in place for the southern windowpane flounder accountability measure:

- (1) No more than 5 rows of rings in the apron of the dredge;
- (2) A maximum hanging ratio of 1.5 meshes per 1 ring overall; and
- (3) A prohibition on the use of trawl gear.

For Georges Bank yellowtail flounder this action would change the existing accountability measure to a requirement to use the accountability measure gear in the Georges Bank Gear Restricted Area. The requirement to use this AM gear in the gear restricted area would remain in effect for the period of time based on the corresponding percent overage of the Georges Bank yellowtail flounder sub-ACL, as follows:

**Table 8. Georges Bank Yellowtail Flounder Accountability Measure Duration**

<b>Percent overage of sub-ACL</b>	<b>Duration of Gear Restriction</b>
20 or less	November 15 through December 31
Greater than 20	April through March (year round)

For northern windowpane flounder this action would create an accountability measure that requires the use of the accountability measure gear in the Georges Bank Gear Restricted Area. The requirement to use this AM gear in the gear restricted area would remain in effect for

the period of time based on the corresponding percent coverage of the northern windowpane flounder sub-ACL, as follows:

**Table 9. Georges Bank Yellowtail Flounder Accountability Measure Duration**

<b>Percent coverage of sub-ACL</b>	<b>Duration of Gear Restriction</b>
20 or less	November 15 through December 31
Greater than 20	April through March (year round)

For SNE/MA yellowtail flounder this action would change the existing accountability measure to a requirement to use the accountability measure gear in the area west of 71° W. Long. The requirement to use this AM gear in the gear restricted area would remain in effect for the period of time based on the corresponding percent coverage of the SNE/MA yellowtail flounder sub-ACL, as follows:

**Table 10. Georges Bank Yellowtail Flounder Accountability Measure Duration**

<b>Percent coverage of sub-ACL</b>	<b>Duration of Gear Restriction</b>
20 or less	April
Greater than 20	April through May

*Regulatory Corrections Under Regional Administrator Authority*

This proposed rule includes three revisions to address regulatory text that is unnecessary, outdated, or unclear. These revisions are consistent with section 305(d) of the Magnuson-Stevens Act, which provides authority to the Secretary of Commerce to promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the Magnuson-Stevens Act. The first revision, at § 648.10(f)(4), would clarify that scallop vessels no longer need to send in daily catch reports through their vessel monitoring system for

trips less than 24 hours because these reports are no longer useful for monitoring purposes. The second revision, at § 648.11(g)(2)(ii), would remove the limitation that a LAGC IFQ could be selected for observer coverage no more than twice in a given week. This revision is necessary because, due to an update to our pre-trip notification system, we will no longer be able to accommodate the limit of two trips per week. Because of the change, vessels may be selected more than twice in given week, but we expect that this would be a very rare occurrence. The final revision, at § 648.14 (i)(4)(ii)(A) and (B), is a correction to the regulations that should have been made as part of Framework Adjustment 28 to the Scallop FMP (82 FR 15155; March 27, 2017). This correction would clarify that owners of IFQ vessels cannot have an ownership interest in vessels that collectively are allocated more than 5 percent of the total IFQ scallop APL, and that they may not have an IFQ allocation on an IFQ scallop vessel of more than 2.5 percent of the total IFQ scallop APL.

### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Sea 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.

An IRFA has been prepared for Framework 29, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities, and also addresses the measures included in the

separate proposed rule for the NGOM measures in Framework 29. The IRFA consists of Framework 29 analyses, the draft IRFA, and the preamble to this proposed rule.

*Description of the Reasons Why Action by the Agency is Being Considered and Statement of the Objectives of, and Legal Basis for, this Proposed Rule*

This action proposes the management measures and specifications for the Atlantic sea scallop fishery for 2018, with 2019 default measures, with the exception of specifications and management measures applicable to the NGOM, which are addressed separately in the NGOM portion of Framework 29. A description of the action, why it is being considered, and the legal basis for this action are contained in the Council's Framework 29 document and the preamble of this proposed rule, and are not repeated here.

*Description of Projected Reporting, Recordkeeping, and other Compliance Requirements of the Proposed Rule*

This action contains no new collection-of-information, reporting, or recordkeeping requirements.

*Federal Rules which may Duplicate, Overlap or Conflict with this Proposed Rule*

The proposed regulations do not create overlapping regulations with any state regulations or other federal laws.

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

The proposed regulations would affect all vessels with limited access and LAGC scallop permits, but there is no differential effect based on whether the affected entities are small or large.

Framework 29 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 (see

**ADDRESSES**). Fishing year 2016 data were used for this analysis because these data are the most recent complete data set for a fishing year. There were 313 vessels that obtained full-time limited access permits in 2016, including 250 dredge, 52 small-dredge, and 11 scallop trawl permits. In the same year, there were also 34 part-time limited access permits in the sea scallop fishery. No vessels were issued occasional scallop permits. NMFS issued 225 LAGC IFQ permits in 2016, and 125 of these vessels actively fished for scallops that year. The remaining permit holders likely leased out scallop IFQ allocations associated with their permits. In 2016, there were 27 NGOM vessels that actively fished.

For RFA purposes, NMFS defines a small business in a shellfish fishery as a firm that is independently owned and operated with receipts of less than \$11 million annually (see 50 CFR 200.2). Individually-permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different fishery management plans, even beyond those impacted by this proposed rule. Furthermore, multiple permitted vessels and/or permits may be owned by entities with various personal and business affiliations. For the purposes of this analysis, “ownership entities” are defined as those entities with common ownership as listed on the permit application. Only permits with identical ownership are categorized as an “ownership entity.” For example, if five permits have the same seven persons listed as co-owners on their permit applications, those seven persons would form one “ownership entity,” that holds those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement would be considered a separate “ownership entity” for the purpose of this analysis. On June 1 of each year, ownership entities are identified based on a list of all permits for the most recent complete calendar year. The current ownership dataset is based on the calendar year

2016 permits and contains average gross sales associated with those permits for calendar years 2014 through 2016. Matching the potentially impacted 2016 fishing year permits described above (limited access permits and LAGC IFQ permits) to calendar year 2016 ownership data results in 161 distinct ownership entities for the limited access fleet and 115 distinct ownership entities for the LAGC IFQ fleet. Of these, based on the Small Business Administration guidelines, 154 of the limited access distinct ownership entities and 113 of the LAGC IFQ entities are categorized as small. The remaining seven of the limited access and two of the LAGC IFQ entities are categorized as large entities. The number of distinct small business entities with active NGOM permits were 27 in 2016 permits.

*Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities*

The Council's preferred alternative (Alternative 4, Sub-option 2) would allocate each full-time limited access vessel 24 open area DAS and 6 access area trips, amounting to 108,000 lb (49,988 kg) at a possession limit of 18,000 lb (8,165 kg) for each trip (Table 11). The LAGC IFQ sub-ACL for vessels with IFQ permits only will be 2.8 million pounds (1.3 million kg). This alternative is expected to positively impact profitability of small entities regulated by this action in 2018 because, compared to the status quo (4 trips, 72,000 lb (32,659 kg)), it would allocate more access trips and allocation to access areas, but it would allocate only one DAS less than the status quo (25 DAS). This alternative would also redirect fishery effort away from Closed Area II in 2018 to more productive areas with larger scallops and higher densities (i.e.,

CA1 and NLS-W). As a result, the preferred alternative would have about 27 percent higher net revenue per entity compared to the status quo levels, translating to higher profits (Table 8).

**Table 11. Framework 29 Alternatives.**

<i>Area Scenario</i>	FW 29 Measures		APL after set-asides	DAS	# of Access Area trips		
<b>1</b> <i>(Status Quo)</i>	<b>Status Quo (FW 28 measures applied in 2018)</b>		41.7 million lb	25	4		
			18.9 million kg				
	<b>Alternative 1 (No Action, FW28 default measures)</b>		22.3 million lb	21.75	1		
			10.1 million kg				
	<b>Alternative 2</b> Base Runs	Sub-option 1		49.6 million lb	23	5	
				22.5 million kg			
Sub-option 2			51.5 million lb	26	5		
			23.4 million kg				
<b>2</b> CA1 & NLS-W open	<b>Alternative 3</b> 5 trip option	Sub-option 1		53.8 million lb	28	5	
				24.4 million kg			
		Sub-option 2		57.6 million lb	31	5	
				26.1 million kg			
	<b>Alternative 4</b> 6 trips	Sub-option 1		53.9 million lb	21	6	
				24.4 million kg			
		<b>Sub-option 2 (Preferred)</b>		<b>56.1 million lb</b>	<b>24</b>	<b>6</b>	
				<b>25.4 million kg</b>			
<b>3</b> Only NLS opens	<b>Alternative 5</b>	Sub-option 1		53.9 million lb	28	5	
				24.4 million kg			
		Sub-option 2		55.9 million lb	31	5	
				25.4 million kg			
		<b>4</b> Only CA1 opens	<b>Alternative 6</b>		49.0 million lb	23	5
					22.2 million kg		

**Table 12. Net Scallop Revenue per Limited Access Full-Time Vessel and Percent Change from the Status Quo (2018 Fishing Year).**

FW 29 Measures	Total Net Scallop Revenue (\$ million)	Net scallop Revenue per Vessel (Average, \$)	Net scallop Revenue per entity (Average, \$)	Percent Change in net scallop revenue per vessel and per business entity from Status Quo
<i>Status Quo</i>	488	1,491,863	3,030,057	0
<b>Alternative 1 (No Action, FW28 default measures)</b>	277	849,111	1,724,592	-43
<b>Alternative 2</b> Sub-option 1	552	1,687,270	3,426,941	13

Base Runs	Sub-option 2	568	1,737,806	3,529,581	16
<b>Alternative 3</b> 5 trip option	Sub-option 1	601	1,837,461	3,731,985	23
	Sub-option 2	619	1,893,560	3,845,926	27
<b>Alternative 4</b> 6 trip option	Sub-option 1	601	1,840,462	3,738,081	23
	<b>Sub-option 2 (Preferred)</b>	<b>620</b>	<b>1,897,372</b>	<b>3,853,669</b>	<b>27</b>
<b>Alternative 5</b>	Sub-option 1	587	1,794,756	3,645,249	20
	Sub-option 2	619	1,893,560	3,845,926	27
<b>Alternative 6</b>		556	1,701,953	3,456,761	14

Under the preferred alternative, allocation for the LAGC IFQ fishery, excluding the limited access vessels with IFQ permits, will be about 35 percent higher than the allocation under the status quo. As a result, the economic impacts of the preferred alternative on the LAGC IFQ fishery are expected to be positive compared to the impacts of the status quo scenario (Table 13).

**Table 13. Impacts of the LAGC IFQ TAC for 2018 Fishing Year.**

FW 29 Measures	IFQ TAC for IFQ permits only		IFQ TAC for LA vessels with IFQ permits		Total IFQ TAC (Million lb/kg)		Percent Change from Status Quo	
	(Million lb/kg)	(Million lb/kg)	(Million lb/kg)	(Million lb/kg)	(Million lb/kg)	(Million lb/kg)		
<b>Status Quo (FRM28 measures applied in 2018)</b>	2.08	0.95	0.208	0.95	2.29	1.04	0 percent	
<b>Alternative 1 (No Action, FW28 default measures)</b>	1.10	0.50	0.110	0.50	1.21	0.55	-47 percent	
<b>Alternative 2</b> Base Runs	Sub-option 1	2.48	1.13	0.248	0.11	2.73	1.24	19 percent
	Sub-option 2	2.57	1.17	0.257	0.12	2.83	1.29	24 percent
<b>Alternative 3</b> 5 trip option	Sub-option 1	2.69	1.22	0.269	0.12	2.96	1.35	29 percent
	Sub-option 2	2.80	1.27	0.280	0.13	3.08	1.40	35 percent
<b>Alternative 4</b> 6 trip option	Sub-option 1	2.70	1.23	0.270	0.12	2.97	1.35	30 percent
	Sub-option 2 <b>(Preferred)</b>	<b>2.80</b>	<b>1.27</b>	<b>0.280</b>	<b>.013</b>	<b>3.08</b>	<b>1.40</b>	<b>35 percent</b>
<b>Alternative 5</b>	Sub-option 1	2.70	1.23	0.270	0.12	2.97	1.35	30 percent
	Sub-option 2	2.80	1.27	0.280	0.13	3.08	1.40	35 percent
<b>Alternative 6</b>		2.45	1.11	0.245	0.11	2.70	1.23	18 percent

The economic benefits of all the alternatives, including the proposed alternative, considered in this action would exceed the benefits for the No Action alternative. Alternative 3 would allocate one less access area trip, but more open area DAS: 26 days under the Sub-option 1, and 31 days under the Sub-option 2. The other alternative to the proposed action is Alternative 4, Sub-option 1, which would allocate a lower number of open area DAS (21 days instead of 24) while retaining the same number of access area trips (6 trips), compared to the proposed action. With the exception of Alternative 3, Sub-option 2, these alternatives would result in lower landings (about 54 million lb (24.5 million kg)) and gross fleet revenue (about \$601 million), compared to the proposed alternative landing levels (about 56.1 million lb (25.4 million kg) (Table 11)) and gross fleet revenue (about \$620 million (Table 8)). Compared to the proposed action, Alternative 3, sub-option 2 would have slightly higher landings (57.6 million lb (26.1 million kg) but slightly lower revenue (about \$619 million), because the proposed action would have higher allocations for the more productive areas. Similarly, the proposed action would result in a higher TAC to the LAGC IFQ fishery and would result in higher revenues, compared to all the other alternatives (Tables 8 and 9). Therefore, the proposed alternative would have the highest economic benefit for the small business entities.

**List of Subjects 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 9, 2018

Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

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

**PART 648—FISHERIES OF THE NORTHEAST UNITED STATES**

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

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

**Subpart A—General Provisions**

2. In § 648.11, revise paragraph (g)(2)(ii) to read as follows:

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

\* \* \* \* \*

(g) \* \* \*

(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 any open area or access area scallop trip and must include the port of departure, open area or specific Sea Scallop Access Area to be fished, and whether fishing as a scallop dredge, scallop trawl vessel. NMFS/NEFOP must be notified by the owner, operator, or vessel manager of any trip plan changes at least 48 hr prior to vessel departure

\* \* \* \* \*

3. In § 648.14:

a. Revise paragraphs (i)(1)(vi)(A); (i)(2)(vi)(B) and (C); and (i)(2)(ix);

b. Add paragraph (i)(2)(x); and

c. Revise paragraphs (i)(3)(v)(E), and (i)(4)(ii)(A) and (B).

The revisions and additions read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(i) \* \* \*

(1) \* \* \*

(vi) \* \* \*

(A) *Habitat Management Areas.* (1) Fish for scallops in, or possess or land scallops from, the Habitat Management Areas specified in §648.370.

(2) Transit or enter the Habitat Management Areas specified in §648.370, except as provided by §648.61(b).

\* \* \* \* \*

(2) \* \* \*

(vi) \* \* \*

(B) Transit the Closed Area II Scallop Rotational Area, as defined in § 648.60(d), unless there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(C) Fish for, possess, or land scallops in or from an access area in excess of the vessel's remaining specific allocation for that area as specified in § 648.59(b)(3) or the amount permitted to be landed from that area.

\* \* \* \* \*

(ix) Fish for scallops west of 71° W. long., outside of the Sea Scallop Access Areas, with gear that does not meet the specifications described in § 648.64 during the period specified in the notice announcing the Southern New England/Mid-Atlantic Yellowtail Flounder or the Southern Windowpane Flounder Gear Restricted Area described in § 648.64(e) and (g), respectively.

(x) Fish for scallops in the Georges Bank Accountability Measure Area described in § 648.64(b), with gear that does not meet the specifications described in § 648.64(c) during the period specified in the notice announcing the Georges Bank Yellowtail Flounder or the Northern Windowpane Flounder Gear Restricted Area described in § 648.64(d) and (f), respectively.

\* \* \* \* \*

(3) \* \* \*

(v) \* \* \*

(E) Transit the Elephant Trunk Flex Scallop Rotational Area, Closed Area II Scallop Rotational Area, or the Closed Area II Extension Scallop Rotational Area, as defined in § 648.60(b), (d), and (e), respectively, unless there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

\* \* \* \* \*

(4) \* \* \*

(ii) \* \* \*

(A) Have an ownership interest in vessels that collectively are allocated more than 5 percent of the total IFQ scallop APL as specified in §648.53(a)(8).

(B) Have an IFQ allocation on an IFQ scallop vessel of more than 2.5 percent of the total IFQ scallop APL as specified in §648.53(a)(8).

\* \* \* \* \*

**Subpart D—Management Measures for the Atlantic Sea Scallop Fishery**

4. In § 648.53 revise paragraphs (a)(8), (b)(3), and (c) introductory text to read as follows:

**§ 648.53 Overfishing limit (OFL), acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), annual projected landings (APL), DAS allocations, and individual fishing quotas (IFQ).**

(a) \* \* \*

(8) The following catch limits will be effective for the 2018 and 2019 fishing years:

**SCALLOP FISHERY CATCH LIMITS**

<b>Catch limits</b>	<b>2018 (mt)</b>	<b>2019 (mt)<sup>1</sup></b>
Overfishing Limit	72,055	69,633
Acceptable Biological Catch/ACL (discards removed)	45,950	45,805
Incidental Catch	23	23
Research Set-Aside (RSA)	567	567
Observer Set-Aside	460	458
ACL for fishery	44,900	44,757
Limited Access ACL	42,431	42,295
LAGC Total ACL	2,470	2,462

LAGC IFQ ACL (5 percent of ACL)	2,245	2,238
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	225	224
Limited Access ACT	37,964	37,843
Closed Area 1 Unharvested Allocation <sup>3</sup>	743	n/a
APL	25,451	( <sup>1</sup> )
Limited Access Projected Landings (94.5 percent of APL)	24,051	( <sup>1</sup> )
Total IFQ Annual Allocation (5.5 percent of APL) <sup>2</sup>	1,400	1,050
LAGC IFQ Annual Allocation (5 percent of APL) <sup>2</sup>	1,273	955
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) <sup>2</sup>	127	95

<sup>1</sup>The catch limits for the 2019 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2019 that will be based on the 2018 annual scallop surveys. The 2019 default allocations for the limited access component are defined for DAS in paragraph (b)(3) of this section and for access areas in § 648.59(b)(3)(i)(B).

<sup>2</sup>As a precautionary measure, the 2019 IFQ annual allocations are set at 75 percent of the 2018 IFQ Annual Allocations.

<sup>3</sup>One-time allocation in 2018 of unharvested Limited Access allocations to Closed Area I from fishing years 2012 and 2013.

\* \* \* \* \*

(b) \* \* \*

(3) The DAS allocations for limited access scallop vessels for fishing years 2018 and 2019 are as follows:

**SCALLOP OPEN AREA DAS ALLOCATIONS**

Permit category	2018	2019 <sup>1</sup>
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.5

<sup>1</sup>The DAS allocations for the 2019 fishing year are subject to change through a future specifications action or framework adjustment. The 2019 DAS allocations are set at 75 percent of the 2018 allocation as a precautionary measure.

(c) *Accountability measures (AM) for limited access vessels.* Unless the limited access AM exception is implemented in accordance with the provision specified in paragraph (c)(1) of this section, if the limited access sub-ACL defined in paragraph (a)(5) of this section is exceeded for the applicable fishing year, the DAS for each limited access vessel shall be reduced by an amount equal to the amount of landings in excess of the sub-ACL divided by the applicable LPUE for the fishing year in which the AM will apply as projected by the specifications or framework adjustment process specified in § 648.55, 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 limited access fishery's sub-ACL in Year 1, an open area LPUE of 2,500 lb (1.13 mt) per DAS in Year 2, and 313 full-time vessels, each full-time vessel's DAS for Year 2 would be reduced by 0.38 DAS ( $300,000 \text{ lb (136 mt)} / 2,500 \text{ lb (1.13 mt) per DAS} = 120 \text{ lb (0.05 mt) per DAS} / 313 \text{ vessels} = 0.38 \text{ DAS per vessel}$ ). Deductions in DAS for part-time and occasional scallop vessels shall be 40 percent and 8.33 percent of the full-time DAS deduction, respectively, as calculated pursuant to paragraph (b)(2) of this section. 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 limited access fishery's sub-ACL in Year 1 would result in the DAS reduction AM in Year 2. 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 Year 1 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 Year 2 would be reduced by 1 DAS.

\* \* \* \* \*

5. In § 648.59:

a. Revise paragraphs (a) introductory text, (a)(2), and (a)(3); (b)(3)(i)(B)(1) through (3); and (b)(3)(ii);

b. Remove paragraphs (b)(3)(ii)(A) and (B);

c. Revise paragraphs (c), (e); and

d. Add paragraph g)(3)(v).

The revisions and additions read as follows:

**§ 648.59 Sea Scallop Rotational Area Management Program and Access Area Program requirements.**

(a) The Sea Scallop Rotational Area Management Program consists of Scallop Rotational Areas, as defined in § 648.2. Guidelines for this area rotation program (i.e., when to close an area and reopen it to scallop fishing) are provided in § 648.55(a)(6). Whether a rotational area is open or closed to scallop fishing in a given year, and the appropriate level of access by limited access and LAGC IFQ vessels, are specified through the specifications or framework adjustment processes defined in § 648.55. When a rotational area is open to the scallop fishery, it is called an Access Area and scallop vessels fishing in the area are subject to the Access Area Program Requirements specified in this section. Areas not defined as Scallop Rotational Areas specified in § 648.60, Habitat Management Areas specified in § 648.370, or areas closed to scallop fishing

under other FMPs, are governed by other management measures and restrictions in this part and are referred to as Open Areas.

\* \* \* \* \*

(2) Transiting a Closed Scallop Rotational Area. No vessel possessing scallops may enter or be in the area(s) specified in this section when those areas are closed, as specified through the specifications or framework adjustment processes defined in § 648.55, unless the vessel is transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Scallop Rotational Area, as defined in § 648.60(d), if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(3) Transiting a Scallop Access Area. Any sea scallop vessel that has not declared a trip into the Scallop Area Access Program may enter a Scallop Access Area, and possess scallops not caught in the Scallop Access Areas, for transiting purposes only, provided the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2. Any scallop vessel that has declared a trip into the Scallop Area Access Program may not enter or be in another Scallop Access Area on the same trip except such vessel may transit another Scallop Access Area provided its gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Scallop Rotational Area, as defined in § 648.60(d), if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(b) \* \* \*

(3) \* \* \*

(i) \* \* \*

(B) The following access area allocations and possession limits for limited access vessels shall be effective for the 2018 and 2019 fishing years:

(1) *Full-time vessels*—For a full-time limited access vessel, the possession limit and allocations are:

<b>Rotational access area</b>	<b>Scallop possession limit</b>	<b>2018 Scallop allocation</b>	<b>2019 Scallop allocation (default)</b>
Closed Area 1	18,000 lb (8,165 kg) per trip	18,000 lb (8,165 kg)	0 lb (0 kg).
Nantucket Lightship-South		18,000 lb (8,165 kg)	0 lb (0 kg).
Nantucket Lightship-West		36,000 lb (16,329 kg)	0 lb (0 kg).
Mid-Atlantic		36,000 lb (16,329 kg)	18,000 lb (8,165 kg)
Total		108,000 lb (48,988 kg)	18,000 lb (8,165 kg)

(2) *Part-time vessels*—For a part-time limited access vessel, the possession limit and allocations are as follows:

<b>Rotational access area</b>	<b>Scallop possession limit</b>	<b>2018 Scallop allocation</b>	<b>2019 Scallop allocation (default)</b>
Closed Area 1	14,400 lb (6,532 kg) per trip	14,400 lb (6,532 kg)	0 lb (0 kg).
Nantucket Lightship West		14,400 lb (6,532 kg)	0 lb (0 kg).
Mid-Atlantic		14,400 lb (6,532 kg)	14,400 lb (6,532 kg)
Total		43,200 lb (19,595 kg)	14,400 lb (6,532 kg)

(3) *Occasional vessels.* (i) For the 2018 fishing year only, an occasional limited access vessel is allocated 9,000 lb (4,082 kg) of scallops with a trip possession limit at 9,000 lb of scallops per trip (4,082 kg per trip). Occasional vessels may harvest the 9,000 lb (4,082 kg) allocation from only one available access area (Closed Area 1, Nantucket Lightship-West, Nantucket Lightship-South, or Mid-Atlantic).

(ii) For the 2019 fishing year, occasional limited access vessels are allocated 9,000 lb (4,082 kg) of scallops in the Mid-Atlantic Access Area only with a trip possession limit of 9,000 lb of scallops per trip (4,082 kg per trip).

(ii) *Limited access vessels' one-for-one area access allocation exchanges.* The owner of a vessel issued a limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another vessel's unharvested scallop pounds allocated into another Scallop Access Area. These exchanges may only be made for the amount of the current trip possession limit, as specified in paragraph (b)(3)(i)(B) of this section. For example, if the access area trip possession limit for full-time vessels is 18,000 lb (8,165 kg), a full-time vessel may exchange no more or less than 18,000 lb (8,165 kg), from one access area for no more or less than 18,000 lb (8,165 kg) allocated to another vessel for another access area. In addition, these exchanges may be made only between vessels with the same permit category: A full-time vessel may not exchange allocations with a part-time vessel, and vice versa. Vessel owners must request these exchanges by submitting a completed Access Area Allocation Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Access Area Allocation Form. The

Regional Administrator shall review the records for each vessel to confirm that each vessel has enough unharvested allocation remaining in a given access area to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the allocation exchange has been made effective. A vessel owner may exchange equal allocations up to the current possession limit between two or more vessels under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange allocations between another vessel and the vessel for which a Confirmation of Permit History has been issued.

\* \* \* \* \*

(c) *Scallop Access Area scallop allocation carryover.* 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, a limited access scallop vessel operator may fish any unharvested Scallop Access Area allocation from a given fishing year within the first 60 days of the subsequent fishing year if the Scallop Access Area is open, unless otherwise specified in this section. For example, if a full-time vessel has 7,000 lb (3,175 kg) remaining in the Mid-Atlantic Access Area at the end of fishing year 2017, that vessel may harvest 7,000 lb (3,175 kg) from its 2018 fishing year scallop access area allocation during the first 60 days that the Mid-Atlantic Access Area is open in fishing year 2018 (April 1, 2018, through May 30, 2018).

\* \* \* \* \*

(e) *Sea Scallop Research Set-Aside Harvest in Scallop Access Areas.* Unless otherwise specified, RSA may be harvested in any access area that is open in a given fishing year, as specified through a specifications action or framework adjustment and pursuant to § 648.56. The

amount of scallops that can be harvested in each access area by vessels participating in approved RSA projects shall be determined through the RSA application review and approval process. The access areas open for RSA harvest for fishing years 2018 and 2019 are:

(1) 2018: Closed Area 1, Nantucket Lightship-West, Nantucket Lightship-South, and Mid-Atlantic.

(2) 2019: No access areas.

\* \* \* \* \*

(g) \* \* \*

(3) \* \* \*

(v) The following LAGC IFQ access area allocations will be effective for the 2018 and 2019 fishing years:

<b>Scallop access area</b>	<b>2017</b>	<b>2018<sup>1</sup></b>
Closed Area 1	571	0
Nantucket Lightship-South	571	0
Nantucket Lightship-West	1,142	0
Mid-Atlantic	1,142	571
<b>Total</b>	<b>3,237</b>	<b>571</b>

<sup>1</sup>The LAGC IFQ access area trip allocations for the 2019 fishing year are subject to change through a future specifications action or framework adjustment.

\* \* \* \* \*

6. In § 648.60:

a. Revise paragraphs (a)(1);

b. Remove and reserve paragraph (a)(2);

- c. Revise paragraph (a)(3);
- d. Remove and reserve paragraph (b);
- e. Revise paragraphs (c), (e), and (f); and
- f. Add paragraphs (g) and (h).

The revisions and additions read as follows:

**§ 648.60 Sea Scallop Rotational Areas.**

(a) *Mid-Atlantic Scallop Rotational Area.* (1) The Mid-Atlantic Scallop Rotational Area is comprised of the following scallop access areas: The Elephant Trunk Scallop Rotational Area, as defined in paragraph (a)(3) of this section; and the Hudson Canyon Scallop Rotational Area, as defined in paragraph (a)(4) of this section.

(2) [Reserved]

(3) *Elephant Trunk Scallop Rotational Area.* The Elephant Trunk Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

<b>Point</b>	<b>Latitude</b>	<b>Longitude</b>
ETAA1	38°50' N	74°20' W
ETAA2	38°10' N	74°20' W
ETAA3	38°10' N	73°30' W
ETAA4	38°50' N	73°30' W
ETAA1	38°50' N	74°20' W

\* \* \* \* \*

(b) [Reserved]

(c) *Closed Area I Scallop Rotational Area.* The Closed Area I Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request), and so that the line connecting points CAIA3 and CAIA4 is the same as the portion of the western boundary line of Closed Area I, defined in § 648.81(a)(1), that lies between points CAIA3 and CAIA4:

<b>Point</b>	<b>Latitude</b>	<b>Longitude</b>	<b>Note</b>
CAIA1	41°30' N	68°30' W.	
CAIA2	40°30' N	68°23' W.	
CAIA3	40°54.95' N	68°53.37' W	( <sup>1</sup> )
CAIA4	41°58' N	69°30' W.	( <sup>1</sup> )
CAIA1	41°30' N	68°30' W.	

<sup>1</sup>From Point CAIA3 to Point CAIA4 along the western boundary of Closed Area I, defined in § 648.81(a)(1).

\* \* \* \* \*

(e) *Nantucket Lightship South Scallop Rotational Area.* The Nantucket Lightship South Rotational Area is defined by straight lines, except where noted, connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

<b>Point</b>	<b>Latitude</b>	<b>Longitude</b>
NLSS1	40°20' N	69°30' W
NLSS2	40°33' N	69°30' W
NLSS3	40°33' N	69°00' W
NLSS4	40°20' N	69°00' W
NLSS1	40°20' N	69°30' W

(f) *Nantucket Lightship West Scallop Rotational Area.* The Nantucket Lightship West Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

<b>Point</b>	<b>Latitude</b>	<b>Longitude</b>
NLSW1	40°20' N	70°00' W
NLSW2	40°43.44' N	70°00' W
NLSW3	40°43.44' N	69°30' W
NLSW4	40°20' N	69°30' W
NLSW5	40°20' N	70°00' W

(g) *Nantucket Lightship North Scallop Rotational Area.* The Nantucket Lightship North Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

<b>Point</b>	<b>Latitude</b>	<b>Longitude</b>
NLSN1	40°50' N	69°30' W
NLSH2	40°50' N	69°00' W
NLSN3	40°33' N	69°00' W
NLSN4	40° 33' N	69°30' W
NLSN1	40°50' N	69°30' W

(h) *Nantucket Lightship Hatchet Scallop Rotational Area.* The Nantucket Lightship Hatchet Scallop Rotational Area is defined by straight lines connecting the following points in the order

stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

<b>Point</b>	<b>Latitude</b>	<b>Longitude</b>
NLSH1	40 50' N	69 30' W
NLSH2	40 43.44' N	69 30' W
NLSH3	40 43.44' N	70° W
NLSH4	40 20' N	70° W
NLSH5	40 20' N	70 20' W
NLSH6	40 50' N	70 20' W
NLSH7	40 50' N	69 30' W

\* \* \* \* \*

**§ 648.61 [Removed and reserved]**

7. Remove and reserve § 648.61.
8. Revise § 648.64 to read as follows:

**§ 648.64 Flounder Stock 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 and the northern and southern stocks of windowpane flounder. The sub-ACLs for the yellowtail flounder stocks and the windowpane flounder stocks are specified in §648.90(a)(4)(iii)(C) and § 648.90(a)(4)(iii)(E) of the NE multispecies regulations, respectively.

(b) Georges Bank Accountability Measure Area. The Georges Bank Accountability Measure Areas is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

<b>Point</b>	<b>Latitude</b>	<b>Longitude</b>	<b>Note</b>
GBAM1	41°30' N	67°20' W.	
GBAM2	41°30' N	( <sup>1</sup> )	( <sup>2</sup> )
GBAM3	40°30' N	( <sup>3</sup> )	( <sup>2</sup> )
GBAM4	40°30' N	67°20' W.	
GBAM1	41°30' N	67°20' W.	

<sup>1</sup> The intersection of 41°30' N. lat. and the U.S.-Canada Maritime Boundary, approximately 41°30' N. lat., 66°34.73' W. long.

<sup>2</sup>From Point GBAM2 connected to Point GBAM3 along the U.S.-Canada Maritime Boundary.

<sup>3</sup> The intersection of 40°30' N. lat. and the U.S.-Canada Maritime Boundary, approximately, 65°44.34' W. long.

(c) *Gear restriction.* When subject to an accountability measure gear restricted area as described in paragraphs (d) through (g) of this section, a vessel must fish with scallop dredge gear that conforms to the following restrictions:

(1) No more than 5 rows of rings shall be used in the apron of the dredge. The apron is on the top side of the dredge, extends the full width of the dredge, and is the rows of dredge rings that extend from the back edge of the twine top (i.e., farthest from the dredge frame) to the clubstick; and

(2) The maximum hanging ratio for a net, net material, or any other material on the top of a scallop dredge (twine top) possessed or used by vessels fishing with scallop dredge gear does

not exceed 1.5 meshes per 1 ring overall. This means that the twine top is attached to the rings in a pattern of alternating 2 meshes per ring and 1 mesh per ring (counted at the bottom where the twine top connects to the apron), for an overall average of 1.5 meshes per ring for the entire width of the twine top. For example, an apron that is 40 rings wide subtracting 5 rings one each side of the side pieces, yielding 30 rings, would only be able to use a twine top with 45 or fewer meshes so that the overall ratio of meshes to rings did not exceed 1.5 (45 meshes/30 rings = 1.5).

(3) Vessels may not fish for scallops with trawl gear west of 71° W. Long when the gear restricted area accountability measure is in effect.

(d) *Georges Bank Yellowtail Flounder Accountability measure.* (1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Georges Bank yellowtail flounder sub-ACL for the scallop fishery is exceeded and an accountability measure is triggered as described in § 648.90(a)(5)(iv), the Georges Bank Accountability Measure Area, described in paragraph (b) of this section, shall be considered the Georges Bank Yellowtail Flounder Gear Restricted Area. Scallop vessels fishing in that area for the period of time specified in paragraph (d)(2) of this section must comply with the gear restrictions specified in paragraph (c) of this section.

(2) *Duration of gear restricted area.* The Georges Bank Yellowtail Flounder Gear Restricted Area shall remain in effect for the period of time based on the corresponding percent overage of the Georges Bank yellowtail flounder sub-ACL, as follows:

<b>Percent overage of sub-ACL</b>	<b>Duration of Gear Restriction</b>
20 or less	November 15 through December 31
Greater than 20	April through March (year round)

(e) *SNE/MA yellowtail flounder accountability measure.* (1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the SNE/MA yellowtail flounder sub-ACL for the scallop fishery is exceeded and an accountability measure is triggered as described in § 648.90(a)(5)(iv), the area west of 71° W. long., shall be considered the SNE/MA Yellowtail Flounder Gear Restricted Area. Scallop vessels participating in the DAS, or LAGC IFQ scallop fishery for the period of time specified in paragraph (e)(2) of this section must comply with the gear restrictions specified in paragraph (c) of this section when fishing in open areas. This accountability measure does not apply to scallop vessels fishing in Sea Scallop Access Areas.

(2) *Duration of gear restricted area.* The SNE/MA Yellowtail Flounder Gear Restricted Area shall remain in effect for the period of time based on the corresponding percent overage of the SNE/MA yellowtail flounder sub-ACL, as follows:

<b>Percent overage of sub-ACL</b>	<b>Duration of Gear Restriction</b>
20 or less	April
Greater than 20	April through May

(f) *Northern windowpane flounder accountability measure.* (1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Northern windowpane flounder sub-ACL for the scallop fishery is exceeded and an accountability measure is triggered as described in § 648.90(a)(5)(iv), the Georges Bank Accountability Measure Area, described in (b) of this section, shall be considered the Northern Windowpane Flounder Gear Restricted Area. Scallop vessels fishing in that area for the period of time specified in paragraph (f)(2) of this section must comply with the gear restrictions specified in paragraph (c) of this section.

(2) *Duration of gear restricted area.* The Northern Windowpane Flounder Gear Restricted Area shall remain in effect for the period of time based on the corresponding percent overage of the Georges Bank yellowtail flounder sub-ACL, as follows:

<b>Percent overage of sub-ACL</b>	<b>Duration of Gear Restriction</b>
20 or less	November 15 through December 31
Greater than 20	April through March (year round)

(g) *Southern windowpane accountability measure.* (1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the southern windowpane flounder sub-ACL for the scallop fishery is exceeded and an accountability measure is triggered as described in § 648.90(a)(5)(iv), the area west of 71° W. long., shall be considered the Southern Windowpane Flounder Gear Restricted Area. Scallop vessels participating in the DAS, or LAGC IFQ scallop fishery for the period of time specified in paragraph (g)(2) of this section must comply with the gear restrictions specified in paragraph (c) of this section when fishing in open areas. This accountability measure does not apply to scallop vessels fishing in Sea Scallop Access Areas.

(2) *Duration of gear restricted area.* The SNE/MA Windowpane Flounder Gear Restricted Area shall remain in effect for the period of time based on the corresponding percent overage of the SNE/MA windowpane flounder sub-ACL, as follows:

<b>Percent overage of sub-ACL</b>	<b>Duration of Gear Restriction</b>
20 or less	February
Greater than 20	March and February

(h) *Process for implementing the AM*—(1) *If there is reliable information to make a mid-year determination*, that a flounder stock sub-ACL was exceeded, or is projected to be exceeded, the Regional Administrator shall determine, on or about January 15 of each year whether an accountability measure should be triggered as described in § 648.90(a)(5)(iv). 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 specific flounder stock. Based on this determination, the Regional Administrator shall implement the AM in the following fishing year in accordance with the APA and attempt to notify owners of limited access and LAGC scallop vessels by letter identifying the length of the gear restricted area and a summary of the catch, overage, and projection that resulted in the gear restricted area.

(2) *If reliable information is not available to make a mid-year determination*, after the end of the scallop fishing year the Regional Administrator shall determine whether the flounder stock sub-ACL was exceeded and if an accountability measure was triggered as described in § 648.90(a)(5)(iv). The determination shall include the amount of the overage, specified as a percentage of the overall sub-ACL for the specific flounder stock. Based on this determination, the Regional Administrator shall implement the AM in accordance with the APA in Year 3 (*e.g.*, an accountability measure would be implemented in fishing year 2016 for an overage that occurred in fishing year 2014) and attempt to notify owners of limited access and LAGC scallop vessels by letter identifying the length of the gear restricted area and a summary of the flounder stock catch and overage information.

**§ 648.65 [Removed and reserved]**

9. Remove and reserve § 648.65

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