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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 180110025-8285-02]

RIN 0648-BH51

Fisheries of the Northeastern United States; Northern Gulf of Maine Measures in 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: Final rule.

SUMMARY: NMFS approves and implements those measures included in Framework Adjustment 29 to the Atlantic Sea Scallop Fishery Management Plan that establish fishing year 2018 and 2019 scallop specifications and other measures for the Northern Gulf of Maine scallop management area. This action is necessary to prevent overfishing and improve both yield-per-recruit and the overall management of the Atlantic sea scallop resource in the Northern Gulf of Maine. The intended effect of this rule is to implement these measures for the 2018 fishing year.

DATES: Effective April 1, 2018.

ADDRESSES: The New England Fishery Management Council developed an environmental assessment (EA) for this action that describes the measures, other considered alternatives, and analyzes the impacts of the measures and alternatives. Copies of Framework Adjustment 29, the EA, and the Initial Regulatory Flexibility Analysis (IRFA), are available upon request from

Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The EA/IRFA is also accessible via the Internet at:

<http://www.nefmc.org/scallops/index.html>.

Copies of the small entity compliance guide are available from Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930-2298, or available on the internet at:

<http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/scallop/>.

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

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council adopted Framework Adjustment 29 to the Atlantic Sea Scallop Fishery Management Plan (FMP) in its entirety on December 7, 2017, and submitted a draft of the framework, including a draft EA, to NMFS on January 25, 2018, for review and approval.

This action implements and approves the portion of Framework 29 that establishes scallop fishing year 2018 and 2019 specifications and other measures for the Northern Gulf of Maine (NGOM) scallop management area. We are expediting the implementation of these measures separately from other measures in Framework 29 to help prevent excessive fishing at the beginning of the scallop fishing year in the NGOM. The explanation for why it was necessary to implement the NGOM measures in a separate action are detailed in the proposed rule and not repeated here. We published a proposed rule for the remaining specifications and

other management measures in Framework 29 on March 15, 2018 (83 FR 11474). We intend to publish a final rule for those remaining measures, if approved, shortly after the comment period closes.

This action includes catch, effort, and quota allocation adjustments to the NGOM management program for fishing year 2018 and default specifications for fishing year 2019. NMFS published a proposed rule for approving and implementing the NGOM Measures in Framework 29 on February 20, 2018 (83 FR 7129). The proposed rule included a 15-day public comment period that closed on March 7, 2018. The Council submitted a final EA to NMFS on March 14, 2018, for approval. NMFS has approved all of the NGOM measures recommended by the Council and described below. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) permits NMFS to approve, partially approve, or disapprove measures proposed by the Council based only on whether the measures are consistent with the fishery management plan, the Magnuson-Stevens Act and its National Standards, and other applicable law. We defer to the Council's policy choices unless there is a clear inconsistency with the law or the FMP. Details concerning the development of these measures were contained in the preamble of the proposed rule and are not repeated here.

This action sets new management measures in the NGOM for the scallop fishery for the 2018 and 2019 fishing years, including prohibiting the limited access fleet from accessing the NGOM while participating in the days-at-sea (DAS) program. In addition, this action divides the annual NGOM total allowable catch (TAC) between the limited access fleet while on research set-aside (RSA) trips and limited access general category (LAGC) fleets for the 2018 and 2019 (default) fishing years as follows:

Table 1. NGOM TAC for Fishing Years 2018 and 2019 (default)

Fleet	2018		2019 (default)	
	lb	kg	lb	kg
LAGC	135,000	61,235	102,500	46,493
Limited access	65,000	29,484	32,500	14,742
Total	200,000	90,718	135,000	61,235

Setting the NGOM TAC

This actions sets the NGOM TAC by applying a fishing mortality rate (F) of F=0.18 using only the projected exploitable biomass on Jeffreys Ledge and Stellwagen Bank for fishing years 2018 and 2019. The overall TAC for the entire NGOM management area is set at 200,000 lbs (90,718 kg) for fishing year 2018, and 135,000 lbs (61,235 kg) for fishing year 2019 (Table 1).

Dividing the NGOM TAC

This action divides the TAC between the LAGC fleet and the limited access fleet while on an RSA trip at a level consistent with the biomass in the area. The first 70,000 lb (31,751 kg) of the NGOM TAC is allocated to the LAGC fleet, and any remaining pounds are split equally between the LAGC and limited access fleets (Table 1). Each fleet must operate independently under its own portion of the TAC. The NGOM management area remains open for each component until their TAC is projected to be harvested, even if the other component has reached its TAC. For example, if the LAGC component harvests its TAC before the limited access fleet harvests all of its allocation, the area would remain open for limited access fishing. This TAC division is intended to be a short-term solution to allow controlled fishing in the NGOM

management area until the Council and NMFS can develop a future action to address NGOM issues more completely.

Managing Limited Access Removals

This action does not change how the LAGC component currently operates in the NGOM. However, the limited access fleet is prohibited from accessing the NGOM while participating in the DAS program. The limited access share of the NGOM TAC is available through RSA compensation fishing only. This action allows NMFS to allocate the limited access portion of the NGOM TAC (65,000 lb (29,484 kg)) to be harvested as RSA compensation quota. This allocation is not in addition to the 1.25 million lb (566,990 kg) RSA quota. When allocating the 65,000 lb (29,484 kg) NGOM RSA quota to specific projects, NMFS gives priority to projects that are relevant to the NGOM. Any limited access or LAGC vessels that NMFS awards NGOM RSA compensation pounds must declare into the area and fish exclusively within the NGOM management area. Any NGOM RSA harvest overages will be deducted from the following year's limited access NGOM TAC.

Making the limited access share of the NGOM TAC available for RSA compensation fishing is a short-term solution to utilize a small limited access portion of the NGOM TAC available, with the expectation that a more long-term and complete allocation and harvest strategy will be developed in a future amendment.

Clarifying Changes from Proposed Rule to Final Rule

We included minor, clarifying changes to the regulatory text in the § 648.10(f) language requiring that vessels participating in the NGOM program must declare into the fishery through their vessel monitoring system. Specifically, we deleted the unnecessary phrase “fishing in the”

and corrected the reference by replacing the phrase “Northern Gulf of Maine management area” with “NGOM Management Program”, and inserted “NGOM Management Program,” before the second reference to “LAGC scallop fishery”.

Comments and Responses

We received 10 comments on the proposed rule during the public comment period; 7 in support of the action and 3 that were unrelated to the proposed measures. All of the relevant comments were in favor of this action. Comments were submitted by a limited access scallop fisherman, a limited access scallop fisherman who also owns a NGOM permit, two NGOM fishermen, Maine Coast Fishermen’s Association (MCFA), Downeast Dayboat, and a group of 22 fishermen.

Comment 1: Downeast Dayboat, MCFA, one NGOM fisherman, and the group of 22 fishermen commented that the Council should develop more permanent and robust management measures in the NGOM.

Response: It is the Council’s intent that this action serve as a short-term solution to some of the issues facing the NGOM. The Council has a priority to more permanently address these issues in a future amendment.

Comment 2: Downeast Dayboat, MCFA, and both NGOM fishermen commented that it is necessary to get these measures in place by April 1, 2018.

Response: NMFS agrees that it is essential to get these measures in place by April 1, 2018. As discussed in the proposed rule and the preamble of this rule, we separated out the NGOM measures in Framework 29 to ensure that they will be in place by April 1, 2018.

Comment 3: A limited access scallop fisherman commented that the oceans are warming and that if the scallop resource moves north it would be detrimental to shut out any user group in this area.

Response: This action is intended to be a short-term solution to allow controlled fishing in the NGOM management area until the Council and NMFS can develop a future action to address NGOM issues more completely. The Council currently has a priority to address NGOM management in 2018. Any such allocation decisions that are more comprehensive and permanent would be addressed by the Council as part of this priority in a future amendment.

Comment 4: The owner of both a limited access and a NGOM permit commented that if the NGOM quota is not harvested that the remaining scallops should be used to seed other areas in the NGOM.

Response: In 2017, the Council had a research priority to evaluate the impacts of scallop spat and seeding projects. While scallop seeding projects have been successful in other countries, the Scallop FMP does not officially include a seeding program. However, if the limited access fleet does not harvest all of its portion of the TAC the unharvested scallops would add to the spawning population. Further, the Council intentionally set a conservative TAC for the NGOM to lead to more consistent harvests in the area.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, the Endangered Species Act, and other applicable law.

OMB has determined that this rule is not significant pursuant to E.O. 12866.

This final rule does not contain policies with federalism or “takings” implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This action does not contain any collection-of-information requirements subject the Paperwork Reduction Act (PRA).

The Assistant Administrator for Fisheries has determined that the need to implement the measures of this rule in an expedited manner are necessary to achieve conservation objectives for the scallop fishery and certain fish stocks, and to relieve other restrictions on the scallop fleet. This constitutes good cause, under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in the date of effectiveness and to make the final NGOM measures in Framework 29 effective on April 1, 2018.

As described in the proposed rule, in the absence of this action, the current default 2018 regulations would apply, and the limited access fleet would be able to fish in the NGOM under the DAS program with no hard TAC to limit scallop removals. The Council determined and NMFS agrees that this result would be inconsistent with the goals of the NGOM management program because it would allow excessive catch of scallops by this fleet.

This final rule sets the limited access portion of the NGOM TAC at 65,000 lb (29,484 kg). At one point during the 2017 fishing year, the limited access fleet was harvesting over 100,000 lb/day (45,359 kg/day) in the NGOM. If this final rule is not in place by April 1, 2018, the beginning of the fishing scallop fishing year, the limited access fleet will likely begin fishing in the NGOM on this date at levels equivalent to or in excess of last year’s levels. Fishing at these excessive levels again in the upcoming fishing year would undermine the conservation objectives of the NGOM program because it would result in much higher fishing mortality than

is considered acceptable for this portion of the scallop stock. This higher fishing mortality could jeopardize the long-term optimum yield of scallops in the NGOM. Moreover, this action increases the economic benefits to the LAGC fleet by allowing them to harvest a higher allocated share of the TAC and by basing the trigger for closing this area on what each fleet harvests.

NMFS is not providing for a 30-day delay in the date of effectiveness because the information and data necessary for the Council to develop the framework were not available in time for this action to be forwarded to NMFS and implemented by April 1, 2018, the beginning of the scallop fishing year. NMFS published the proposed rule as quickly as possible after receiving Framework 29 from the Council. Even though we are also publishing the final rule as quickly as possible after the close of the comment period, there is not sufficient time to allow for a 30-day cooling off period before the beginning of the scallop fishing year. Delaying the implementation of this action for 30 days would likely result in excessive fishing in the NGOM leading to the negative consequences described above. Therefore, the Assistant Administrator for Fisheries has waived the 30-day delay in the date of effectiveness requirement of 5 U.S.C. 553(d).

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has completed a final regulatory flexibility analysis (FRFA) in support of the entirety of Framework 29. Specific to the NGOM measures of Framework 29 contained in this final rule, the FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, a summary of the analyses completed in the Framework 29 EA, and the preamble to this final rule. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was

considered, the objectives of, and the legal basis for this rule is contained in Framework 29 and in the preambles to the proposed rule and this final rule, and is not repeated here. All of the documents that constitute the FRFA are available from NMFS and/or the Council, and a copy of the IRFA, the Regulatory Impact Review (RIR), and the EA are available upon request (see **ADDRESSES**).

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

There were no specific comments on the IRFA.

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

These regulations 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 are affected by the 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 individual fishing quota (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 with their permits in Confirmation of Permit History. In 2016, there were 27 NGOM vessels that actively fished.

For RFA purposes, NMFS defines a small business in 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, and 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. There were 27 distinct small business entities with NGOM permits and active NGOM vessels based on 2016 permits.

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

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

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes

During the development of NGOM measures in Framework 29, NMFS and the Council considered ways to reduce the regulatory burden on, and provide flexibility for, the regulated entities in this action. For instance, in fishing years 2016 and 2017, the limited access fleet (larger trip boats) harvested substantially more scallops from the NGOM than they had since the beginning of the NGOM management program. Because the limited access fleet accessed the NGOM through the DAS program, there was no hard limit on its landings from the area. This resulted in total landings from the NGOM by the limited access fleet that far exceeded the TAC for the LAGC fleet (smaller day boats). The Council determined that this was inconsistent with the goals of the NGOM management program. Accordingly, the Council developed this action, in part, to put these measures in place to temporarily divide the catch more equitably between the two fleets and limit the total catch by the limited access fleet from the NGOM to a level consistent with its specified TAC for the NGOM. Alternatives to the measures in this final rule are described in detail in Framework 29, which includes an EA, RIR, and IRFA (available at **ADDRESSES**). The measures implemented by this final rule minimize the long-term economic

impacts on small entities to the extent practicable. The only alternatives for the prescribed catch limits that were analyzed were those that met the legal requirements to implement effective conservation measures. Catch limits are fundamentally a scientific calculation based on the Scallop FMP control rules and SSC approval, and therefore are legally limited to the numbers contained in this rule. Moreover, the limited number of alternatives available for this action must be evaluated in the context of an ever-changing fishery management plan, as the Council has considered numerous alternatives to mitigating measures every fishing year in amendments and frameworks since the establishment of the FMP in 1982.

Overall, this rule minimizes adverse long-term impacts by ensuring that management measures and catch limits result in sustainable fishing mortality rates that promote stock rebuilding, and as a result, maximize optimal yield. The measures implemented by this final rule also provide additional flexibility for fishing operations in the short-term.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency will publish one or more guides to assist small entities in complying with the rule, and will designate such publications as “small entity compliance guides.” The agency will explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Greater Atlantic Regional Fisheries Office, and the guide (i.e., permit holder letter) will be sent

to all holders of permits for the scallop fishery. The guide and this final rule will be available upon request.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 21, 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 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 § 648.10, revise paragraphs (f) introductory text, (f)(2) introductory text, and (f)(4)(i) to read as follows:

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

* * * * *

(f) *Atlantic sea scallop vessel VMS notification requirements.* Less than 1 hour prior to leaving port, the owner or authorized representative of a scallop vessel that is required to use

VMS as specified in paragraph (b)(1) of this section must notify the Regional Administrator by transmitting the appropriate VMS code that the vessel will be participating in the scallop DAS program, Area Access Program, LAGC scallop fishery, NGOM Management Program, or will be fishing outside of the scallop fishery under the requirements of its other Federal permits, or that the vessel will be steaming to another location prior to commencing its fishing trip by transmitting a “declared out of fishery” VMS code. If the owner or authorized representative of a scallop vessel declares out of the fishery for the steaming portion of the trip, the vessel cannot possess, retain, or land scallops, or fish for any other fish. Prior to commencing the fishing trip following a “declared out of fishery” trip, the owner or authorized representative must notify the Regional Administrator by transmitting the appropriate VMS code, before first crossing the VMS Demarcation Line, that the vessel will be participating in the scallop DAS program, Area Access Program, NGOM Management Program, or LAGC scallop fishery. VMS codes and instructions are available from the Regional Administrator upon request.

* * * * *

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

* * * * *

(4) *Catch reports.* (i) The owner or operator of a limited access or LAGC scallop vessel with an IFQ permit 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 § 648.59(b)(9), Northern Gulf of Maine RSA trips, 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 hr of the following day. Such reports must include the following information:

- (A) VTR serial number;
- (B) Date fish were caught;
- (C) Total pounds of scallop meats kept;
- (D) Total pounds of all fish kept.

* * * * *

3. In § 648.14:

- a. Revise paragraphs (i)(1)(iii)(A)(*I*)(*ii*) and (*iv*), and (i)(1)(viii)(A) and (B);
- b. Add paragraph (i)(2)(iii)(E); and
- c. Revise paragraphs (i)(3)(iii)(C) and(D).

The revisions and addition read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(1) * * *

(iii) * * *

(A) * * *

(*I*) * * *

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

* * * * *

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

* * * * *

(viii) *Scallop research.* (A) Fail to comply with any of the provisions specified in § 648.56 or the conditions of a letter of authorization issued under § 648.56.

(B) Fish for scallops in, or possess or land scallops from the NGOM, unless allocated NGOM RSA allocation as described in § 648.56(d) and fishing on a scallop research set aside compensation trip.

* * * * *

(2) * * *

(iii) * * *

(E) Fish for, possess, or land scallops from the NGOM, unless on a scallop RSA compensation trip and allocated NGOM RSA allocation as described in § 648.56(d).

* * * * *

(3) * * *

(iii) * * *

(C) Declare into the NGOM scallop management area after the effective date of a notification published in the *Federal Register* stating that the LAGC portion of the NGOM scallop management area TAC has been harvested as specified in § 648.62, unless the vessel is fishing exclusively in state waters, declared a state-waters only NGOM trip, and is participating in an approved state waters exemption program as specified in § 648.54, or unless the vessel is participating in the scallop RSA program as specified in § 648.56.

(D) Fish for, possess, or land scallops in or from the NGOM scallop management area after the effective date of a notification published in the *Federal Register* that the LAGC portion of the NGOM scallop management area TAC has been harvested, as specified in § 648.62, unless the vessel possesses or lands scallops that were harvested south of 42°20' N. lat., the vessel is transiting the NGOM scallop management area, and the vessel's fishing gear is properly stowed and not available for immediate use in accordance with § 648.2 or unless the vessel is fishing exclusively in state waters, declared a state-waters only NGOM trip, and is participating in an approved state waters exemption program as specified in § 648.54 , or unless the vessel is participating in the scallop RSA program as specified in § 648.56.

* * * * *

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

4. In § 648.56 revise paragraphs (c) and (d) to read as follows:

§ 648.56 Scallop research.

* * * * *

(c) NOAA 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, Access Areas, or the NGOM management area. 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) and (4), respectively. Approved RSA projects shall be allocated an amount of scallop pounds that can be harvested in open areas, available access areas, and the NGOM. The specific access areas that are open to RSA harvest and the amount of NGOM allocation to be landed through RSA harvest shall be specified through the framework process as identified in § 648.59(e)(1). In a year in which a framework adjustment is under review by the Council and/or NMFS, NMFS shall make RSA awards prior to approval of the framework, if practicable, based on total scallop pounds needed to fund each research project. Recipients may begin compensation fishing in open areas prior to approval of the framework, or wait until NMFS approval of the framework to begin compensation fishing within approved access areas.

* * * * *

5. In § 648.62:

- a. Revise paragraphs (a)(2) through (a)(4);
- b. Add paragraph (a)(5); and
- c. Revise paragraphs (b) through (d).

The revisions and addition read as follows:

§ 648.62 Northern Gulf of Maine (NGOM) Management Program.

(a) * * *

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

(3) Scallop landings by all vessels issued LAGC IFQ scallop permits and fishing in the NGOM scallop management area shall be deducted from the LAGC portion of the NGOM scallop total allowable catch specified in the specifications or framework adjustment processes defined in § 648.55. Scallop landings by LAGC IFQ scallop vessels fishing in the NGOM scallop management area shall be deducted from their respective scallop IFQs. Landings by incidental catch scallop vessels shall not be deducted from the NGOM total allowable catch specified in paragraph (b) of this section.

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

(5) Scallop landings by all vessels issued scallop permits and fishing in the NGOM under the scallop RSA program (as specified in § 648.56) shall be deducted from the limited access portion of the NGOM scallop total allowable catch.

(b) *Total allowable catch.* The total allowable catch for the NGOM scallop management area shall be specified through the framework adjustment process. The total allowable catch for the NGOM scallop management area shall be based on the Federal portion of the scallop resource in the NGOM. The total allowable catch shall be determined by historical landings until additional information on the NGOM scallop resource is available, for example through an NGOM resource survey and assessment. The ABC/ACL as defined in § 648.53(a) shall not include the total allowable catch for the NGOM scallop management area, and landings from the NGOM scallop management area shall not be counted against the ABC/ACL defined in § 648.53(a). The total allowable catch shall be divided between the limited access and the LAGC fleets.

(1) *NGOM annual hard TACs.* The LAGC and the limited access portions of the annual hard TAC for the NGOM 2018 and 2019 fishing years are as follows:

Fleet	2018		2019 (default)	
	lb	kg	Lb	kg
LAGC	135,000	61,235	102,500	46,493
Limited access	65,000	29,484	32,500	14,742
Total	200,000	90,718	135,000	61,235

(2) Unless a vessel has fished for scallops outside of the NGOM scallop management area and is transiting the NGOM scallop management area with all fishing gear stowed and not available for immediate use as defined in § 648.2, no vessel issued an LAGC or limited access

scallop permit pursuant to § 648.4(a)(2) may possess, retain, or land scallops in the NGOM scallop management area once the Regional Administrator has provided notification in the *Federal Register* that the vessel's respective portion(s) of the NGOM scallop total allowable catch in accordance with paragraph (b)(1) of this section has been reached, unless the vessel is participating in the scallop RSA program as specified in § 648.56, has been allocated NGOM RSA pounds, and the limited access portion of the NGOM TAC has not been reached. Once the NGOM hard TAC is reached, a vessel issued a NGOM permit may no longer declare a state-only NGOM scallop trip and fish for scallops exclusively in state waters within the NGOM, unless participating in the state waters exemption program as specified in § 648.54. A vessel that has not been issued a Federal scallop permit that fishes exclusively in state waters is not subject to the closure of the NGOM scallop management area.

(3) If either the LAGC or the limited access portion of the annual NGOM TAC is exceeded, the amount of NGOM scallop landings in excess of the portion of the TAC specified in paragraph (b)(1) of this section shall be deducted from the respective portion(s) of the NGOM TAC which has been exceeded for the subsequent fishing year, as soon as practicable, once scallop landings data for the NGOM management area is available.

(c) *VMS requirements.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have declared a NGOM trip under the scallop RSA program, a vessel issued a scallop permit pursuant to § 648.4(a)(2) that intends to fish for scallops in the NGOM scallop management area or fishes for, possesses, or lands scallops in or from the NGOM scallop management area, must declare a NGOM scallop management area trip and report scallop catch through the vessel's VMS unit, as required in § 648.10. If the vessel has a

NGOM permit, the vessel must declare either a Federal NGOM trip or a state-waters NGOM trip. If a vessel intends to fish any part of a NGOM trip in Federal NGOM waters, it may not declare into the state water NGOM fishery.

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

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