

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990527146-9146-01; I.D. 052099B]

RIN 0648-AM24

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery, Framework Adjustment 11; Northeast Multispecies Fishery, Framework Adjustment 29

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 11 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and Framework Adjustment 29 to the Northeast Multispecies FMP. This final rule creates a 1999 seasonal Georges Bank Sea Scallop Exemption Area (Exemption Area) in and adjacent to Closed Area II and includes the following primary measures for vessels fishing in the Exemption Area: A possession limit of up to 10,000 lb (4,536.0 kg) of scallop meats per trip; a maximum of three trips for full and part-time vessels and a maximum of one trip for occasional vessels; an automatic minimum deduction of 10 days-at-sea (DAS) for each trip; a minimum mesh twine-top of 10 inches (25.40 cm); a total allowable catch (TAC) of yellowtail flounder of 387 metric tons (mt); and an increase in the regulated species possession limit from 300 lb (136.1 kg) to 500 lb (226.8 kg), among other measures. In addition, this rule implements a minimum mesh twine top of 8 inches (20.32 cm) for vessels under a scallop DAS when fishing outside the Exemption Area. The primary intent of this action is to provide scallop vessels with a short-term strategy to access Closed Area II without compromising multispecies rebuilding or habitat protection, while the New England Fishery Management Council (Council) develops an amendment that would implement a sea scallop area rotational management plan.

DATES: Effective June 15, 1999, except for § 648.51(b)(2)(ii), which is effective December 16, 1999.

ADDRESSES: Copies of Framework Adjustment 11/Framework Adjustment 29 to the Atlantic Sea Scallop/Northeast

Multispecies FMPs, its Environmental Assessment (EA), and regulatory impact review are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA, 01906-1097.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Jon C. Rittgers, Acting Regional Administrator, Northeast Region, One Blackburn Drive, Gloucester, MA 01930-2298, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 978-281-9252.

SUPPLEMENTARY INFORMATION: On December 12, 1994, NMFS implemented an emergency action that closed three large areas with historically high concentrations of several multispecies: Two Georges Bank closures (Closed Area I and Closed Area II), and one closure in southern New England (Nantucket Lightship Closed Area). These areas were closed to all vessels capable of catching groundfish, including scallop vessels, because of their ability to catch significant amounts of juvenile flatfish, and because of concern that scallop dredge gear disrupts groundfish spawning activity. The emergency action was subsequently implemented on a continuous basis through measures included in Framework 9 to the Northeast Multispecies FMP (60 FR 19364, April 18, 1995).

In March 1997, results from the 23rd Stock Assessment Workshop determined that the Atlantic sea scallop resource was at a low level of biomass and that catches were driven primarily by variations in the number of recruits entering the fishery. However, the report also noted that for Georges Bank, abundance and fishing mortality were at moderate levels due to half the primary scallop area on Georges Bank and in the Great South Channel being closed since December 1994. In fact, at the time of the assessment, i.e., after 20 months of protection, biomass increases in the closed areas were approximately three-fold and increasing.

In 1998, the Center for Marine Science and Technology of the University of Massachusetts, Dartmouth (CMAST) requested an experimental fishery to determine the abundance and distribution of sea scallops in Closed Area II. A cooperative experimental research fishery was conducted by NMFS' Northeast Fisheries Science Center, CMAST, and the fishing

industry, using commercial sea scallop vessels.

At its April 14-15, 1999, meeting, the Council voted to limit sea scallop access to Closed Area II for one fishing year and selected a sea scallop target TAC based on an intermediate harvestable biomass estimate (4,300 mt) for this area. The Council also voted to recommend opening only certain portions of Closed Area II to minimize the possible impact on finfish bycatch and habitat. Detailed information on finfish bycatch levels caught by scallop dredge vessels during the 1998 cooperative experimental research fishery showed that during the months August through October, the time period when this experiment was conducted, virtually no cod or haddock—two of the three primary groundfish species of particular concern—were caught. However, results from the experiment demonstrated significant bycatch levels of yellowtail flounder, the third primary groundfish species. Although recent information indicates that some rebuilding of Georges Bank cod, haddock, and yellowtail flounder stocks has occurred, recruitment remains poor and the most recent scientific advice is to keep fishing mortality at or below the multispecies Amendment 7 objective for these stocks.

After deliberating three different area options developed to address habitat and bycatch concerns, the Council recommended to open that portion of Closed Area II south of 41°30' N. lat., an option recommended by the Habitat Committee, where scallop dredge vessels are considered to have the least impact on the bottom. Although data from the cooperative experimental fishery demonstrated that this alternative had a slightly higher bycatch of yellowtail flounder when compared to the other area options, bycatch of all species combined was lowest for this area.

This action adopts a sea scallop target TAC of 4,300 mt of meat weight for vessels fishing under the Georges Bank Sea Scallop Exemption Program (Exemption Program). Of this target TAC, a total of 4,257 mt will be designated for use as a directed sea scallop allocation. Forty-three mt of the 4,300 mt (1 percent) will be set aside for funding research of this fishery, if research programs are adopted, and an additional 43 mt, over and above the 4,300 mt allocated, will be set aside to help fund the cost of observers.

To minimize groundfish bycatch and habitat impacts, this action opens the portion of Closed Area II that lies south of 41°30' N. lat. from June 15, 1999, through December 31, 1999. In addition,

this framework sets a TAC of 387 mt for yellowtail flounder that may be harvested from this area, 15 percent of the 1999 yellowtail flounder target TAC. This provision requires that when the yellowtail flounder TAC for the Exemption Program is projected to be reached, access by scallop dredge vessels into this exempted area must be discontinued.

This action implements a buffer zone adjacent to that portion of Closed Area II south of 41°30'N. lat., comprising a larger zone referred to as the Georges Bank Sea Scallop Exemption Area. This buffer zone is established at 67°40'W. long. and has a northern boundary line of 42°12' N. lat., intersecting with Closed Area II, and a southern boundary line of 40°24' N. lat., intersecting the outer boundary of the exclusive economic zone, respectively. Vessels fishing under the Exemption Program may not fish for or harvest sea scallops outside of the Exemption Area during that trip, nor may they enter the Exemption Area more than once per trip. Scallop vessels fishing under a scallop DAS, but that are not fishing under this Exemption Program, will be prohibited from entering the Exemption Area, unless transiting for safety reasons in accordance with the provisions of § 648.81(e).

All limited access scallop vessels, including vessels that hold a scallop Confirmation of Permit History, will be eligible to fish for the sea scallop target TAC in the Exemption Area. Full-time and part-time scallop vessels will each be allowed up to three trips into the Exemption Area of up to 10,000 lb (4,536.0 kg) of meats per trip, and occasional vessels will be allowed one trip of up to 10,000 lb (4,356.0 kg) of meats. Note that the 10,000 lb (4,356.0 kg) of meats per trip is a possession limit rather than a landing limit to help ensure the enforceability of this measure.

All scallop vessels fishing in the Exemption Program must have installed on board an operational Vessel Monitoring System (VMS) unit that meets the minimum performance criteria as specified in the regulations (occasional permitted vessels are the only limited access scallop vessels not currently required to have a VMS). Scallop vessels planning to fish on an Exemption Area trip must so declare by notifying the Administrator, Northeast Region, NMFS (Regional Administrator), through the VMS. Vessels will be provided with instructions on procedures for this notification requirement. For each trip declared, a minimum of 10 DAS will automatically be deducted. A fundamental objective of

this action is to ensure that the 1999 fishing year target fishing mortality of 0.83, established by Amendment 7 to the Atlantic Sea Scallop FMP, will not be exceeded. Analysis indicates that by assessing each exemption trip a minimum of 10 DAS, conservation neutrality will be maintained, i.e., fishing mortality should not increase beyond status quo.

On or after October 1, 1999, after taking into account data on the number of eligible vessels participating and the total number of trips taken, the Regional Administrator may adjust the scallop possession limit, if necessary, and/or allocate one or more additional trips, if enough of the sea scallop target TAC remains to warrant such an adjustment or allocation, for full- and part-time permitted vessels that declared a trip under the Exemption Program prior to September 1. Occasional vessels would not be allocated an additional trip, regardless of whether they declared a trip under the Exemption Program before September 1.

At the discretion of the Regional Administrator, scallop vessels may be allocated an additional amount of sea scallops (not to exceed a cumulative total of 43 mt) for each trip on which an observer is taken in order to help defray costs. The vessel owner will be responsible for paying for the cost of the observer.

This action increases the regulated multispecies incidental catch allowance from 300 lb (136.1 kg) to 500 lb (226.8 kg) per trip for scallop vessels when fishing under the Exemption Program and authorizes the Regional Administrator to make mid-season adjustments, if necessary, to reduce regulatory discards. Because vessels are expected to catch more groundfish (specifically yellowtail flounder) in the Exemption Area, increasing the allowance of regulated species will help reduce discards. In addition, vessels that have an observer on board would be allowed to retain all regulated species caught, provided the fish caught in excess of the possession limit is donated to charity.

Each vessel operator is required to inform NMFS of his/her intention to fish in the Exemption Area on a monthly basis through the VMS e-mail system to facilitate placement of observers. This and the following information must be reported prior to the 15th of the month preceding the month in question: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for the month in question. In addition, any vessel selected for

observer coverage must provide 5 working days notice prior to departure of any trip declared under the Exemption Program. Vessels will be provided with additional information by mail regarding all notification requirements.

Each vessel participating in this program is required to report information on a daily basis through the VMS. On all trips to the Exemption Area, vessels must report their daily pounds (kilograms) of scallop meats kept. In addition, vessels on observed trips must provide a separate report of the daily pounds (kilograms) of scallop meats kept and the pounds (kilograms) of yellowtail flounder caught on tows that were observed.

Vessels that have declared a trip under the Exemption Program are prohibited from possessing more than 50 U.S. bushels (400 lb (181.4 kg) of meats) of shell stock when outside of the designated Exemption Area specified in this framework. This 400-lb (181.4 kg) scallop meat limit for shell stock is considered part of the 10,000-lb (4,536.0-kg) meat weight possession limit. A limit on the amount of sea scallops landed in the shell is a necessary enforcement tool for purposes of monitoring the 10,000-lb (4,536.0-kg) meat weight possession limit requirement. Allowing vessels to retain a relatively minor amount of shell stock will help satisfy a market for large, live scallops, yet not compromise the enforceability of the possession limit.

All scallop vessels, including those currently fishing with nets, that are fishing under the Exemption Program must use scallop dredge gear that conforms to the current sea scallop dredge vessel gear restrictions specified in § 648.51, with the exception of the twine top mesh size restrictions. For vessels fishing in the Exempted Area, twine tops must have a minimum mesh size of 10-inch (25.40-cm) square or diamond mesh. Vessels not fishing in the Exempted Area and fishing under a scallop DAS are required to have a minimum mesh twine top of 8-inch (20.32-cm) square or diamond mesh. This 8-inch (20.32-cm) minimum mesh twine top requirement does not expire at the end of the fishing year, but continues indefinitely. It has a delayed effective date of December 16, 1999, to allow industry time to order and purchase this gear. The purpose of increasing the twine top measurement is to reduce bycatch of groundfish and other finfish. Recent research demonstrates that this increase may significantly reduce bycatch of certain species, especially flatfish species.

Vessels fishing under the Exemption Program are prohibited from off-loading their scallop catch at more than one location. This measure will help in monitoring the TAC as well as aid enforcement in tracking landings and in enforcing the trip limit.

Disapproved Measure

The framework action proposed to restrict vessels to a maximum of 10 DAS when fishing east of a buffer zone established at 67°40' W. long. This restriction would require additional compliance monitoring to ensure vessels remain within the 10 DAS limit. With certain exceptions, current regulations at § 648.51(c) limit crew size to a maximum of seven persons, including the operator. However, some vessel operators are considering taking fewer crew as a cost saving measure. Fewer crew may require longer trips that could possibly exceed 10 DAS if it were allowed. Therefore, because this measure would disrupt alternative approaches by some vessel owners or operators to reduce costs and increase efficiency, while having no discernable conservation benefit, it violates national standard 5 and national standard 7 of the Magnuson-Stevens Fishery Conservation and Management Act. National standard 5 requires conservation and management measures consider efficiency in the harvesting of fishery resources. National standard 7 requires conservation and management measures minimize costs where practicable. Therefore, this measure is disapproved.

In addition to disapproving this measure, NMFS is unable to guarantee observer coverage to the degree that the Council recommends in the framework document. At its April 1999 meeting, the Council voted to include a statement in the document that observer coverage should occur on at least 25 percent of the scallop trips in the Exemption Area. By this statement, the Council clearly is sending a strong message about its serious concerns regarding the need to monitor this fishery for compliance purposes, including accurate finfish bycatch reports. NMFS shares this concern but cannot, at this time, fund a domestic observer program to the level recommended by the Council. NMFS is currently exploring several options that would fund observer coverage, including the 43-mt set aside recommended by the Council for this purpose.

Abbreviated Rulemaking

NMFS is making these revisions to the regulations under the framework abbreviated rulemaking procedure

codified at 50 CFR part 648, subpart F. This procedure requires the Council, when making specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings. The Council must provide the public with advance notice of both the proposals and the analysis, and an opportunity to comment on them prior to and at a second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Regional Administrator that the measures be published as a final rule if certain conditions are met. NMFS may publish the measures as a final rule, or as a proposed rule if additional public comment is needed.

The public was provided the opportunity to express comments on allowing access by scallop vessels into the multispecies closed areas at numerous meetings. The following list includes all meetings, including plan development team meetings, at which this action was on the agenda, discussed, and public comment was heard:

| Date | Meeting |
|--|---|
| 1997: October 17 | Scallop and Multispecies PDT |
| 1998: June 17 July 28–29 | Scallop Advisory Panel Scallop Oversight Committee |
| 1999: January 8 January 25–26 January 27–28 February 4 | Scallop PDT Scallop PDT Council Habitat Committee and Habitat Advisory Panel |
| February 8 February 9 | Scallop Advisory Panel Scallop Oversight Committee |
| February 11 | Multispecies Oversight Committee |
| February 11 February 12 February 23 | Scallop PDT Gear Conflict Committee Science and Statistical Committee |
| February 24–25 March 9 | Council Habitat Committee and Habitat Advisory Panel |
| March 16 March 17–18 March 22–23 | Multispecies PDT Scallop PDT Joint Multispecies Oversight Committee/Multispecies Advisory Panel |
| March 29 | Enforcement Oversight Committee |
| April 8–9 | Scallop Oversight Committee |
| April 14–15 | Council |

Documents summarizing the Council's proposed action, and the analysis of biological and economic impacts of this and alternative actions,

were available for public review 1 week prior to the final Council meeting, as is required under the framework adjustment process. Written comments were accepted up to, and during that meeting.

Comments and Responses

Comment 1: Several commenters stated that this action should remain conservation neutral, i.e., there should be no net increase in fishing mortality for sea scallops.

Response: The framework analyses demonstrate that total fishing mortality will not increase, except in the unlikely event that a large portion of inactive vessels, including vessels that hold a Confirmation of Permit History, begin fishing.

Comment 2: Many industry participants requested that this framework serve as a cornerstone for a more permanent rotational scallop fishing strategy.

Response: The framework action's intent is to allow temporary access to Closed Area II to scallop fishing while the Council develops an amendment that may, as a portion of the management plan, include a formal area rotation strategy. The scallop fishery for Closed Area II will provide an opportunity to collect needed information to make this strategy possible.

Comment 3: Some industry members commented that the sea scallop management measures proposed for Closed Area II are too restrictive and that fishing effort, consequently, would remain in the open areas.

Response: The Council has accounted for the benefits, costs, and risks associated with the closed area fishery when choosing this action. The EA shows that, currently, it would be more economical for scallopers to fish in the Exemption Program than in the existing open areas.

Comment 4: Several comments were received regarding the shortsightedness of reopening Closed Area II regarding several important fishery resources.

Response: As noted earlier, the EA concludes that there will be no net increase in fishing mortality for scallops. One of the more critical groundfish stocks, Georges Bank yellowtail, has recovered considerably from its once highly depleted condition. While continued rebuilding is necessary, this action takes the necessary steps to protect this valuable resource through implementation of a TAC, which, when reached, will result in eliminating access to Closed Area II by scallop vessels. The action also promotes fishing effort reduction in

areas where scallops are depleted and increases yield, while at the same time minimizing habitat impacts by keeping some important areas closed. This action will thus promote rebuilding of the scallop resource by reducing effort on small, fast-growing scallops and minimize impacts on other rebuilding stocks. This action, therefore, takes a meaningful step toward achieving optimum yield, considering both the Sea Scallop and the Multispecies FMPs.

Comment 5: Some commenters expressed concern regarding the destruction to the ocean floor that could be caused by scallop dredge vessels in Closed Area II.

Response: This action re-opens only those areas in Closed Area II that are believed to have the lowest habitat value within this area. The bottom of the re-opened portion primarily consists of a high-energy sand and shell bottom. While not devoid of other species, the habitat in this area is not as complex and diverse as the habitats to the north within Closed Area II, which will remain closed to scallop fishing.

Although the proposed action will increase impacts in the area to be opened for scallop fishing, the compensating effect will be to reduce scallop fishing effort in areas that are now open. Some of these presently open areas have significantly more complex and diverse habitat than that found in the southern portion of Closed Area II. The biological impacts of this trade-off are discussed in the EA. On balance, therefore, this action was determined to be consistent with Essential Fish Habitat objectives.

A portion of the scallop target TAC has been set aside as a source of funding for experiments that may help to identify more selective fishing gears or gears that have less habitat impacts.

Comment 6: Several commenters noted that the Georges Bank closed areas were closed to scallop dredge gear partly because this gear disrupts spawning activity of groundfish.

Response: This action restricts access by scallop dredge vessels into Closed Area II to a time frame when groundfish spawning activity is considered to be minimal; i.e., June 15, 1999, to December 31, 1999. Scallop vessel access to Closed Area I and the Nantucket Lightship Closed Area are not allowed under this action at this time because of concern regarding issues such as groundfish spawning activity.

Comment 7: Some commenters stated that any economic gain derived from scallop fishing in Closed Area II will be offset or lost by the setback to cod, yellowtail flounder, and other recovering species.

Response: This action sets a yellowtail flounder TAC, which, when reached, results in termination of the Exemption Program. The yellowtail TAC will ensure that the proposed closed area fishery will not cause a setback to the species' rebuilding schedule. Cod and haddock do not appear to be vulnerable to scallop fishing with dredges within Closed Area II during the proposed fishing season. Furthermore, increasing the twine top mesh and the expected effort transfers from areas now open to scallop fishing will limit the impacts on other species. By suspending the fishery when certain thresholds are exceeded and by requiring different fishing gear, this action will mitigate the negative impacts on species even though a net increase in mortality is expected.

Comment 8: Several industry members commented that the yellowtail flounder TAC will likely force an early closure of the Georges Bank Sea Scallop Exemption Program.

Response: This action includes a 10-inch (25.40-cm) twine top mesh for scallop dredge vessels that declare into the Exemption Program. This larger mesh is expected to reduce yellowtail flounder bycatch substantially. If coupled with voluntary industry efforts to change fishing methods to avoid bycatch, these actions could delay suspension of the fishery due to excess bycatch.

Comment 9: Questions were raised about barndoor skate and how this exemption program may further impact this species.

Response: NMFS is currently considering a petition to list the barndoor skate as an endangered species. Although bycatch information on this species was derived from the 1998 experimental fishery, until the barndoor skate population is assessed and more information becomes available, the Council and NMFS are unable to determine the impacts on the population.

Comment 10: Industry commented that the groundfish closure areas compromise approximately half of the Georges Bank scallop grounds by area and that scallop vessels should be able to regain access to these areas.

Response: Under current conditions, the biomass within the closed areas on Georges Bank includes much more than half of the scallop biomass of the Georges Bank stock. This imbalance has arisen mainly due to the excessively high fishing mortality on scallops within areas now open to scallop fishing.

The Council and NMFS agree that access by scallopers could be allowed

into the closed areas if it does not jeopardize the rebuilding schedule for groundfish or scallops and minimizes impacts on habitat as much as possible. Since these issues have been adequately addressed for Closed Area II, this action allows access to a portion of this area under certain conditions.

Comment 11: Industry commented that gear research for the purposes of reducing bycatch should be encouraged and suggested that a portion of the TAC used to fund this.

Response: This action sets aside 1 percent of the scallop target TAC (43 mt) as a means to fund research projects such as new gears or gear modifications that would reduce bycatch by scallop dredge vessels.

Comment 12: Several industry members requested that the northeast corner of the Nantucket Lightship Closed Area be open for scallop fishing.

Response: This action does not reopen the Nantucket Lightship Closed Area or portions of this area due to uncertainty about the scallop and habitat resources in this area and, more particularly, because of concern regarding the poor condition of the Southern New England yellowtail flounder stock.

Comment 13: Due to the potential of gear conflicts, lobster industry members requested that the closed area(s) to be reopened be modified in such a way as to avoid areas with concentrations of lobster pot gear.

Response: Smaller area options within Closed Area II were rejected to give the scallop industry maximum flexibility to avoid stationary gear and research experiments, as well as avoid finfish bycatch. Fortunately, the experimental fishery showed that there are relatively fewer scallops in most areas with dense concentrations of lobster pot gear. The Council believes, and NMFS concurs, that it is better to let the industry develop working arrangements in small, specific areas where lobster gear might temporarily coincide with areas of higher scallop abundance.

Comment 14: One commenter asked why the intermediate harvestable sea scallop biomass estimate (4,300 mt) was selected over the high biomass estimate (6,300 mt).

Response: The Council chose, and NMFS is implementing by this action, a target scallop TAC that represents an intermediate harvestable biomass estimate provided by scientists. These biomass figures were based on different dredge efficiency estimates. Because of uncertainty surrounding the correct dredge efficiency to use, combined with a Scallop Plan Development Team recommendation against choosing the high biomass figure because of risk

factors associated with historically high catch levels, this action adopts the intermediate estimate of 4,300 mt.

Comment 15: Safety issues were raised regarding the concentration of scallop vessels into small reopened portions of Closed Area II.

Response: This action allows access to the largest area that was under consideration during the development of Framework Adjustment 11/29. This larger area gives the fleet the most flexibility to avoid bycatch and reduces the potential for problems caused by crowding.

Comment 16: Concern was expressed that this exemption program would encourage a "derby-style" fishery.

Response: Although a derby-style fishery could ensue, the scallop possession limit to some extent addresses this concern.

Comment 17: Many people have commented that the high biomass of scallops in Closed Area II represents an important opportunity to learn how to manage an essentially rebuilt stock for optimum yield, as national standard 1 requires.

Response: Additional data collected during the closed area scallop fishery could be an important source of information for developing an area rotation management strategy, contemplated for Amendment 10 to the Atlantic Sea Scallop FMP.

Comment 18: Industry commented that they cannot accommodate the required gear modification in time for the planned implementation of the framework adjustment. The proposed action will cause substantial amounts of inventory to become obsolete and the gear cannot be used for other purposes.

Response: A primary reason for requiring 8-inch (20.32-cm) mesh twine tops in all areas outside of the Exemption Area is to compensate for the increased bycatch expected in the closed area scallop fishery. Although only limited studies of its effectiveness are available, preliminary indications are that substantial bycatch reductions can be expected (especially for flounders), without losing many scallops in areas now open to fishing. This gear is expected to have additional, but unquantified long-term benefits that will be realized through reducing unwanted bycatch or bycatch that cannot be legally landed.

Implementation of the 8-inch (20.32-cm) twine top requirement will be delayed until December 16, 1999, to allow time to obtain adequate supplies.

The cost of purchasing new twine tops is minimal when compared to the benefits and increased profits expected from this measure. Vessels that are not

able to obtain 10-inch (25.40-cm) mesh twine tops will be able to take their three closed area trips later in the season, provided that the fishery is not suspended for exceeding the yellowtail flounder target TAC.

Comment 19: Industry commented that early access to the closed area is necessary to avoid adverse fall weather and corresponding safety issues, as well as to improve scallop yield.

Response: This action will allow access for scallop fishing in Closed Area II starting June 15, 1999. Although full-time scallop vessels generally fish year-round, part-time and occasional vessels, which tend to be smaller, less seaworthy vessels, would benefit from this early opening since it will allow them to take all of their trips during the summer months when weather is often favorable and scallop yield is high.

Classification

Notice and opportunity for public comment were provided to discuss the management measures implemented by this rule. Comments were received from members of the fishing industry and are responded to in the preamble of this rule. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), under 5 U.S.C. 553(b)(B), finds for good cause that additional prior notice and additional opportunity for public comment is unnecessary and for the reasons set forth below it would be contrary to the public interest to delay this rule in order to provide further notice and further opportunity for public comment.

Recently, Amendment 7 to the Atlantic Sea Scallop FMP became effective (64 FR 14835, March 29, 1999). This amendment, which addresses the new Sustainable Fisheries Act requirements, substantially reduces the level of fishing for scallops through the year 2008 by revising the current fishing effort reduction schedule. Although a less severe reduction is proposed for fishing year 1999, failure to allow scallop vessels access to Closed Area II as soon as finfish bycatch concerns would be mitigated to the largest extent possible, i.e., June 15, will increase costs to scallop vessels fishing in currently open areas where scallop biomass is low and where the stock is dominated by small scallops. Furthermore, an earlier opening date will allow more time for smaller vessels to fish their allotted trips during good weather. Accordingly, the AA also finds that under 5 U.S.C. 553(d), the need to have this regulation in place by June 15, 1999, is good cause to waive part of the 30-day delay in effectiveness of this regulation.

Because a general notice of proposed rulemaking as specified in 5 U.S.C. 533 is not being published as explained above, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. While a regulatory flexibility analysis is not required and none has been prepared, the socioeconomic impacts on affected fishers and alternatives to mitigate such impacts were considered by the Council and NMFS. The primary intent of this action is to allow scallop vessels an opportunity to remain economically viable, while ensuring that the fishing mortality for the entire sea scallop stock does not exceed the F target of F=0.83 in the FMP for 1999.

This final rule has been determined to be significant for the purposes of E.O. 12866.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This rule contains three new collection-of-information requirements and revises three current collection-of-information requirements. The collection of this information has been approved through emergency clearance by OMB under OMB control number 0648-0385. The estimated response times are as follows:

New Collection-of-Information Requirements

1. Monthly reporting of intention to fish in the Georges Bank Sea Scallop Exemption Program through the VMS e-mail messaging system (§ 648.58(c)(3)(i))(10 minutes/response).
2. Daily reporting of sea scallops kept and, for observed trips, sea scallops kept and yellowtail flounder caught on observed tows through the VMS e-mail messaging system for vessels fishing in the Georges Bank Sea Scallop Exemption Program (§ 648.58(c)(10))(10 minutes/response).
3. Notice requirements for observer deployment (§ 648.58(c)(3)(iii))(2 minutes/response).

Revised Collection-of-Information Requirements 1. Documentation of installation of a VMS unit (§ 648.10(b)) (2 minutes/response).

2. Declaration into the Georges Bank Sea Scallop Exemption Program through the VMS prior to leaving the dock (§ 648.58(c)(3)(ii))(2 minutes/response)

3. Installation of a VMS unit on board the vessel (§ 648.10(b))(1 hour/response).

The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding: Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding any of these burden estimates or any other aspect of the collection-of-information to NMFS and OMB (see ADDRESSES).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 7, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

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

§ 648.10 DAS notification requirements.

(b) *VMS Notification.* Multispecies vessels issued an Individual DAS or Combination Vessel permit, scallop vessels issued a full-time or part-time limited access scallop permit, and scallop vessels issued an occasional limited access permit when fishing under the Georges Bank Sea Scallop Exemption Program specified in § 648.58, or scallop vessels fishing under the small dredge program specified in § 648.51(e), or vessels issued a limited access multispecies or scallop permit and whose owners elect to fish under the VMS notification of this paragraph (b), unless otherwise authorized or required by the Regional Administrator under § 648.10(d), must

have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b) or as modified in § 648.9(a). Owners of such vessels must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS installed on board that meets those criteria. If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the an operational VMS unit that meets the criteria to be installed on board the vessel and for the owner to provide documentation of such installation to the Regional Administrator. Vessels that are required to or have elected to use a VMS unit shall be subject to the following requirements and presumptions:

3. In § 648.14, paragraphs (a)(39) and (h)(13) are revised and paragraphs (h)(27) and (h)(28) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *
(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided by § 648.58, during the time and in the portion of Closed Area II specified in § 648.58 or 648.81(b)(2).

(h) * * *
(13) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, or fish under the DAS allocation program, while in possession of dredge gear that uses net or net material, or any other material, on the top half of the dredge with a mesh size smaller than that specified in § 648.51(b)(2), unless otherwise prohibited under paragraph (h)(27) of this section.

(27) Enter or be in the area described in § 648.58(b) when fishing under a scallop DAS, with a net, net material, or any other material on the top half of the dredge with mesh size smaller than that specified in § 648.58(c)(7).

(28) Fail to comply with any of the provisions and specifications of § 648.58.

4. In § 648.51, paragraph (b) introductory text, and paragraph (b)(2) are revised to read as follows:

§ 648.51 Gear and crew restrictions.

(b) *Dredge vessel gear restrictions.* All dredge vessels fishing for or in

possession of more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, all trawl vessels fishing for scallops, and all dredge vessels issued a limited access scallop permit and fishing under the DAS program with the exception of hydraulic clam dredges and mahogany quahog dredges in possession of 400 lb (181.44 kg), or less, of scallops, must comply with the following restrictions, unless otherwise specified:

* * * * *
(2) *Minimum mesh size.* (i) From June 15, 1999, through December 15, 1999, for vessels fishing under a scallop DAS, unless otherwise restricted under § 648.58, and from June 15, 1999, and beyond, for all vessels not fishing under the scallop DAS program, the mesh size of a net, net material, or any other material on the top of a scallop dredge in use by or in possession of such vessels shall not be smaller than 5.5 inches (13.97 cm) square or diamond mesh.

(ii) Starting December 16, 1999, unless otherwise restricted under § 648.58, the mesh size of a net, net material, or any other material on the top of a scallop dredge possessed or used by vessels fishing under a scallop DAS shall not be smaller than 8-inch (20.32-cm) square or diamond mesh.

(iii) Mesh size is measured as provided in paragraph (a)(2)(iii) of this section.

* * * * *
5. In § 648.52, paragraph (c) is added to read as follows:

§ 648.52 Possession limits.

* * * * *
(c) Owners or operators of vessels with a limited access scallop permit that have declared into the Georges Bank Sea Scallop Exemption Program as described in § 648.58 are prohibited from possessing or landing per trip more than the sea scallop possession limit specified in § 648.58(c)(6).

6. Section 648.58 is added to read as follows:

§ 648.58 Georges Bank Sea Scallop Exemption Program.

(a) *Eligibility.* (1) During the period June 15, 1999, through December 31, 1999, all scallop vessels issued a limited access scallop permit may fish in the Georges Bank Sea Scallop Exemption Area, defined in paragraph (b) of this section, when fishing under a scallop DAS, provided the vessel complies with the requirements of paragraph (c) of this section.

(2) Except for scallop vessels fishing under a scallop DAS that have not declared a fishing trip into the Georges

Bank Sea Scallop Exemption Program, as specified under paragraph (c)(3)(i) of this section, vessels may fish in that portion of the exemption area described in paragraph (b) of this section that lies outside of Closed Area II, as described

in § 648.81(b), provided the vessel complies with all applicable regulations.

(b) *Georges Bank Sea Scallop Exemption Area.* The Georges Bank Sea Scallop Exemption Area (copies of a

map depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

GEORGES BANK SEA SCALLOP EXEMPTION AREA

| Point | N. Lat. | W. Long. |
|-------|------------|--|
| DA1 | 40°24.000' | 67°40.000' |
| DA2 | 40°24.000' | 65°43.121'(on U.S./Canada Maritime Boundary) |
| G6 | 41°30.000' | 66°34.728'(on U.S./Canada Maritime Boundary) |
| G7 | 41°30.000' | 67°20.000' |
| DA4 | 42°12.000' | 67°20.000' |
| DA5 | 42°12.000' | 67°40.000' |
| DA1 | 40°24.000' | 67°40.000' |

(c) *Requirements.* To fish in the Georges Bank Sea Scallop Exemption Area under the Georges Bank Sea Scallop Exemption Program an eligible vessel must comply with the following requirements:

(1) *Season.* The vessel may only fish in the Georges Bank Sea Scallop Exemption Area under the Georges Bank Sea Scallop Exemption Program only from June 15 through December 31, 1999, unless otherwise specified by notification in the **Federal Register**.

(2) *VMS.* The vessel must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b) or as modified in § 648.9(a).

(3) *Declaration.* (i) The vessel must submit a monthly report through the VMS e-mail messaging system, prior to the 15th of the month preceding the month in question, of its intention to fish in the exemption area, along with the following information: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for the month in question.

(ii) In addition, on the day the vessel leaves port to fish under the Georges Bank Sea Scallop Exemption Program, the vessel owner or operator must declare into the Program through the VMS, in accordance with instructions to be provided by the Regional Administrator prior to leaving port.

(iii) A vessel selected for observer coverage must provide notice to NMFS, in accordance with the notification requirements specified under § 648.11(b), as to the time and port of departure at least 5 working days prior to the beginning of any trip on which it declares into the Georges Bank Sea Scallop Exemption Program.

(4) *Number of trips.* If the vessel is a full or part-time scallop vessel, it must not fish more than three trips in the

Georges Bank Sea Scallop Exemption Area during the season described in paragraph (c)(1) of this section, unless otherwise specified by notification in the **Federal Register**. If the vessel is an occasional scallop vessel, it must not fish more than one trip in the Georges Bank Sea Scallop Exemption Area during the season described in paragraph (c)(1) of this section.

(5) *Area fished.* A vessel that has declared a trip into the Georges Bank Sea Scallop Exemption Program must not fish for, catch, or harvest scallops from outside of the Georges Bank Sea Scallop Exemption Area and must not enter or exit the Exemption Area more than once per trip.

(6) *Possession limits.* (i) Unless otherwise authorized by the Regional Administrator as specified in paragraph (e) of this section, a vessel declared into the Georges Bank Sea Scallop Exemption Program may possess and land up to 10,000 lb (4,536.0 kg) of scallop meats per trip, with a maximum of 400 lb (181.4 kg) of the possession limit originating from 50 bu (176.1 L) of in-shell scallops.

(ii) The vessel may possess and land up to 500 lb (226.8 kg) of regulated multispecies, unless otherwise restricted under § 648.86(a)(2)(i) or (b), or the vessel is carrying a NMFS approved sea sampler or observer on board the vessel. A vessel carrying an approved sea sampler or observer may possess all regulated multispecies caught, provided the regulated multispecies in excess of 500 lb (226.8-kg) are donated to charity. A vessel subject to the 500-lb (226.8-kg) possession limit must separate all regulated multispecies onboard from other species of fish so as to be readily available for inspection.

(7) *Gear restrictions.* The vessel must fish with or possess scallop dredge gear only in accordance with the dredge

vessel restrictions specified under § 648.51(b), except that the mesh size of a net, net material, or any other material on the top of a scallop dredge in use by or in possession of the vessel shall not be smaller than 10.0 inches (25.40 cm) square or diamond mesh.

(8) *Transiting.* When transiting to and from the Georges Bank Sea Scallop Exemption Area, all gear on board must be properly stowed and not available for immediate use in accordance with the provisions of § 648.81(e).

(9) *Off-loading restrictions.* The vessel may not off-load its sea scallop catch at more than one location.

(10) *Reporting.* The owner or operator must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared in the Georges Bank Sea Scallop Exemption Program. The reports must be submitted in 24-hour intervals, beginning at 0000 hours and ending at 2400 hours each day, and include the following information:

(i) Total pounds/kilograms of scallop meats kept; and

(ii) For each trip that the vessel has a NMFS approved observer on board, the total pounds/kilograms of scallop meats kept and total pounds/kilograms of yellowtail flounder caught on tows that were observed by a NMFS approved observer.

(d) *Accrual of DAS.* A scallop vessel that has declared a fishing trip into the Georges Bank Sea Scallop Exemption Program of this section shall have a minimum of 10 DAS deducted from its DAS allocation, regardless of whether the actual number of DAS used during the trip is less than 10. Trips that exceed 10 DAS will be counted as actual time.

(e) *Possession limit increase.* The Regional Administrator may increase the sea scallop possession limit specified under paragraph (c)(6) of this section for a vessel that has declared a

fishing trip into the Georges Bank Sea Scallop Exemption Program and on which a NMFS approved sea sampler or observer is on board the vessel, or on which a NMFS approved research project is being conducted. Notification of this increase of the possession limit will be provided to the vessel with the observer selection notification. The amount of the possession limit increase will be determined by the Regional Administrator and the vessel owner will be responsible for paying the cost of the observer and/or defraying the cost of the research project, whichever is applicable, regardless of whether the vessel lands or sells sea scallops on that trip.

(f) *In-season adjustments.* (1) *Adjustment process for sea scallop possession limit and number of trips under the Georges Bank Sea Scallop Exemption Program.* On or after October 1, 1999, the Regional Administrator may adjust the sea scallop possession limit, and/or allocate one or more additional trips for full and part-time limited access sea scallop vessels that declared into and began a trip under the Georges Bank Sea Scallop Exemption Program prior to September 1, 1999. Occasional permitted vessels would not be allocated an additional trip regardless of whether or not they declared or began an exempted trip before September 1, 1999.

(2) *Termination of Georges Bank Sea Scallop Exemption Program because of yellowtail flounder bycatch/incidental catch.* NMFS shall publish notification in the **Federal Register** that the Georges Bank Sea Scallop Exemption Program is terminated as of the date the Regional Administrator projects that the 387 mt of yellowtail flounder will be caught by vessels fishing in the Georges Bank Sea Scallop Exemption Program described in this section.

(g) *Transiting.* Limited access sea scallop vessels intending to fish for scallops under a scallop DAS that have not declared a trip into the Georges Bank Sea Scallop Exemption Program may not enter, fish, or be in the area known as the Georges Bank Sea Scallop Exemption Area described in paragraph (b) of this section, unless:

- (1) The operator has determined that there is a compelling safety reason; and
- (2) The vessel's fishing gear is stowed in accordance with the requirements of § 648.81(e).

7. In § 648.80, paragraph (h)(1) is revised to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(h) * * * (1) Except as provided in paragraph (h)(2) of this section and in § 648.58(c)(6)(ii), a scallop vessel that possesses a limited access scallop permit and either a multispecies combination vessel permit or a scallop multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip, and provided the vessel has at least one standard tote on board, unless otherwise restricted by § 648.86(a)(2).

* * * * *

8. In § 648.81, paragraph (b)(1) introductory text is revised to read as follows:

§ 648.81 Closed areas.

* * * * *

(b) * * * (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (copies of a map depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(2) of this section, or unless exempt under the Georges Bank Sea Scallop Exemption Program specified under § 648.58 during the time and in the portion of Closed Area II described in § 648.58(b):

* * * * *

9. In § 648.86, the section heading and paragraphs (a)(2)(iii) and (c) are revised to read as follows:

§ 648.86 Possession restrictions.

* * * * *

(a) * * *

(2) * * *

(iii) Except for vessels fishing under the Georges Bank Sea Scallop Exemption Program from July 1 through December 31, 1999, as provided in § 648.58(c)(6)(ii), scallop dredge vessels or persons owning or operating a scallop dredge vessel that is fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock, provided that the vessel has at least one standard tote on board. This restriction does not apply to vessels issued NE multispecies Combination Vessel permits that are fishing under a multispecies DAS. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

* * * * *

(c) *Other possession restrictions.* Vessels are subject to all other applicable possession limit restrictions as specified under § 648.58(c)(6), § 648.82(b)(3), § 648.83(b)(1), § 648.88(a) and (c), and § 648.89(c).

10. In § 648.88, paragraph (c) is revised to read as follows:

§ 648.88 Open access permit restrictions.

* * * * *

(c) *Scallop multispecies possession limit permit.* Unless otherwise prohibited in § 648.86(b), and except as provided in § 648.58(c)(6)(ii) for vessels fishing under the Georges Bank Sea Scallop Exemption Program, a vessel that has been issued a valid open access scallop multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip, and that the vessel does not fish for, possess, or land haddock from January 1 through June 30 as specified under § 648.86(a)(2)(i), and provided the vessel has at least one standard tote on board.

* * * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062-9062-01; I.D. 060499C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Western Regulatory Area in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the amount of the 1999 Pacific cod total allowable catch (TAC) allocated to vessels catching Pacific cod for processing by the offshore component in this area.