

the DAS allocations and Access Area trip allocations from the most recent fishing year shall remain in effect for the next fishing year. The Council may also recommend adjustments to DAS allocations through a framework action at any time.

(e) *End-of-year carry-over for open area DAS.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused Open Area DAS on the last day of February of any year may carry over a maximum of 10 DAS, not to exceed the total Open Area DAS allocation by permit category, into the next year. DAS carried over into the next fishing year may only be used in Open Areas. DAS sanctioned vessels will be credited with unused DAS based on their unused DAS allocation, minus total DAS sanctioned.

(f) *Accrual of DAS.* Unless the vessel is carrying an observer and is authorized to be charged fewer DAS in Open Areas based on the total available DAS set aside under paragraph (h)(1) of this section, and unless participating in the Area Access Program described in § 648.60, DAS shall accrue to the nearest minute.

(g) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented.

(h) *DAS set-asides—(1) DAS set-aside for observer coverage.* As specified in paragraph (b)(3) of this section, to help defray the cost of carrying an observer, 1 percent of the total DAS shall be set aside from the total DAS available for allocation, to be used by vessels that are assigned to take an at-sea observer on a trip other than an Area Access Program trip. The DAS set-aside for observer coverage for the 2006 and 2007 fishing years is 165 DAS for each fishing year. Vessels carrying an observer shall be compensated with reduced DAS accrual rates for each trip on which the vessel carries an observer. For each DAS that a vessel fishes for

scallops with an observer on board, the DAS shall accrue at a reduced rate based on an adjustment factor determined by the Regional Administrator on an annual basis, dependent on the cost of observers, catch rates, and amount of available DAS set-aside. The Regional Administrator shall notify vessel owners of the cost of observers and the DAS adjustment factor through a permit holder letter issued prior to the start of each fishing year. The number of DAS that are deducted from each trip based on the adjustment factor shall be deducted from the observer DAS set-aside amount in the applicable fishing year. Utilization of the DAS set-aside shall be on a first-come, first-served basis. When the DAS set-aside for observer coverage has been utilized, vessel owners shall be notified that no additional DAS remain available to offset the cost of carrying observers. The obligation to carry and pay for an observer shall not be waived due to the absence of set-aside DAS allocations.

(2) *DAS set-aside for research.* As specified in paragraph (b)(3) of this section, to help support the activities of vessels participating in certain research, as specified in § 648.56; the DAS set-aside for research for the 2006 and 2007 fishing years is 330 DAS for each fishing year. Vessels participating in approved research shall be authorized to use additional DAS in the applicable fishing year. Notification of allocated additional DAS shall be provided through a letter of authorization, or Exempted Fishing Permit issued by NMFS, or shall be added to a participating vessel's open area DAS allocation, as appropriate.

[69 FR 35215, June 23, 2004, as amended at 69 FR 63473, Nov. 2, 2004; 71 FR 33226, June 8, 2006]

§ 648.54 State waters exemption.

(a) *Limited access scallop vessel exemption—(1) DAS requirements.* Any vessel issued a limited access scallop permit is exempt from the DAS requirements specified in § 648.53(b) while fishing exclusively landward of the outer boundary of a state's waters, provided the vessel complies with paragraphs (d) through (g) of this section, and the notification requirements of § 648.10(e).

(2) *Gear and possession limit restrictions.* Any vessel issued a limited access scallop permit that is exempt from the DAS requirements of §648.53(b) under paragraph (a) of this section, and that has complied with the notification requirements of §648.10(e), is also exempt from the gear restrictions specified in §648.51(a), (b), (e)(1) and (e)(2), and the possession restrictions specified in §648.52(a), while fishing exclusively landward of the outer boundary of the waters of a state that has been issued a state waters exemption, provided the vessel complies with paragraphs (d) through (g) of this section.

(b) *General scallop vessel gear and possession limit restrictions.* Any vessel issued a general scallop permit is exempt from the gear restrictions specified in §648.51(a), (b), (e)(1) and (e)(2), and the possession limit specified in §648.52(a), while fishing exclusively landward of the outer boundary of the waters of a state that has been issued a state waters exemption, provided the vessel complies with paragraphs (d) through (g) of this section. Vessels issued a VMS general scallop permit must be declared out of the general category scallop fishery as described in §648.10(e).

(c) *State eligibility for exemption.* (1) A state may be eligible for the state waters exemption if it has a scallop fishery and a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP.

(2) The Regional Administrator shall determine which states have a scallop fishery and which of those states have a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP.

(3) Maine, New Hampshire, and Massachusetts have been determined by the Regional Administrator to have scallop fisheries and scallop conservation programs that do not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. These states must immediately notify the Regional Administrator of any changes in their respective scallop conservation program. The Regional Administrator shall review these changes and, if a determination is

made that the state's conservation program jeopardizes the biomass and fishing mortality/effort limit objectives of the Scallop FMP, or that the state no longer has a scallop fishery, the Regional Administrator shall publish a rule in the FEDERAL REGISTER, in accordance with the Administrative Procedure Act, amending this paragraph (c)(3) to eliminate the exemption for that state. The Regional Administrator may determine that other states have scallop fisheries and scallop conservation programs that do not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. In such case, the Regional Administrator shall publish a rule in the FEDERAL REGISTER, in accordance with the Administrative Procedure Act, amending this paragraph (c)(3) to provide the exemption for such states.

(d) *Notification requirements.* Vessels fishing under the exemptions provided by paragraph(s) (a)(1) and/or (a)(2) of this section must notify the Regional Administrator in accordance with the provisions of §648.10(e).

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

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

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

[69 FR 35215, June 23, 2004, as amended at 71 FR 33227, June 8, 2006]

§ 648.55 Framework adjustments to management measures

(a) Biennially, or upon a request from the Council, the Regional Administrator shall provide the Council with information on the status of the scallop resource. Within 60 days of receipt of that information, the Council PDT shall assess the condition of the scallop resource to determine the adequacy of