

(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

the management measures to achieve the stock-rebuilding objectives. Based on this information, the PDT shall prepare a Stock Assessment and Fishery Evaluation (SAFE) Report that provides the information and analysis needed to evaluate potential management adjustments. Based on this information and analysis, the Council shall initiate a framework adjustment to establish or revise DAS allocations, rotational area management programs, TACs, scallop possession limits, or other measures to achieve FMP objectives and limit fishing mortality. The Council's development of an area rotation program shall take into account at least the following factors: General rotation policy; boundaries and distribution of rotational closures; number of closures; minimum closure size; maximum closure extent; enforceability of rotational closed and reopened areas; monitoring through resource surveys; and re-opening criteria. Rotational Closures should be considered where projected annual change in scallop biomass is greater than 30 percent. Areas should be considered for Sea Scallop Access Areas where the projected annual change in scallop biomass is less than 15 percent.

(b) The preparation of the SAFE Report shall begin on or about June 1 of the year preceding the fishing year in which measures will be adjusted. If the biennial framework action is not undertaken by the Council, or if a final rule resulting from a biennial framework is not published in the FEDERAL REGISTER with an effective date on or before March 1, in accordance with the Administrative Procedure Act, the measures from the most recent fishing year shall continue, beginning March 1 of each fishing year.

(c) In the SAFE Report, the Scallop PDT shall review and evaluate the existing management measures to determine if the measures are achieving the FMP objectives and OY from the scallop resource as a whole. In doing so, the PDT shall consider the effects of any closed areas, either temporary, indefinite, or permanent, on the ability of the FMP to achieve OY and prevent overfishing on a continuing basis, as required by National Standard 1 of the Magnuson-Stevens Act. If the existing

management measures are deemed insufficient to achieve FMP objectives and/or are not expected to achieve OY and prevent overfishing on a continuing basis, the PDT shall recommend to the Council appropriate measures and alternatives that will meet FMP objectives, achieve OY, and prevent overfishing on a continuing basis. When making the status determination in the SAFE Report, the PDT shall calculate the stock biomass and fishing mortality for the entire unit stock and consider all sources of scallop mortality to compare with the minimum biomass and maximum fishing mortality thresholds.

(d) In order to assure that OY is achieved and overfishing is prevented, on a continuing basis, the PDT shall recommend management measures necessary to achieve optimum yield-per-recruit from the exploitable components of the resource (*e.g.*, those components available for harvest in the upcoming fishing years), taking into account at least the following factors:

(1) Differential fishing mortality rates for the various spatial components of the resource;

(2) Overall yields from the portions of the scallop resource available to the fishery;

(3) Outlook for phasing in and out closed or controlled access areas under the Area Rotation Program; and

(4) Potential adverse impacts on EFH.

(e) After considering the PDT's findings and recommendations, or at any other time, if the Council determines that adjustments to, or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings. To address interactions between the scallop fishery and sea turtles and other protected species, such adjustments may include proactive measures including, but not limited to, the timing of Sea Scallop Access Area openings, seasonal closures, gear modifications, increased observer coverage, and additional research. The Council shall provide the public with advance notice

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of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must include measures to prevent overfishing of the available biomass of scallops and ensure that OY is achieved on a continuing basis, and must come from one or more of the following categories:

- (1) DAS changes.
- (2) Shell height.
- (3) Offloading window reinstatement.
- (4) Effort monitoring.
- (5) Data reporting.
- (6) Trip limits.
- (7) Gear restrictions.
- (8) Permitting restrictions.
- (9) Crew limits.
- (10) Small mesh line.
- (11) Onboard observers.
- (12) Modifications to the overfishing definition.
- (13) VMS Demarcation Line for DAS monitoring.
- (14) DAS allocations by gear type.
- (15) Temporary leasing of scallop DAS requiring full public hearings.
- (16) Scallop size restrictions, except a minimum size or weight of individual scallop meats in the catch.
- (17) Aquaculture enhancement measures and closures.
- (18) Closed areas to increase the size of scallops caught.
- (19) Modifications to the opening dates of closed areas.
- (20) Size and configuration of rotation management areas.
- (21) Controlled access seasons to minimize bycatch and maximize yield.
- (22) Area-specific DAS or trip allocations.
- (23) TAC specifications and seasons following re-opening.
- (24) Limits on number of area closures.
- (25) TAC or DAS set-asides for funding research.
- (26) Priorities for scallop-related research that is funded by a TAC or DAS set-aside.
- (27) Finfish TACs for controlled access areas.
- (28) Finfish possession limits.
- (29) Sea sampling frequency.

(30) Area-specific gear limits and specifications.

(31) Modifications to provisions associated with observer set-asides; observer coverage; observer deployment; observer service provider; and/or the observer certification regulations.

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

(f) The Council must select an alternative that will achieve OY and prevent overfishing on a continuing basis, and which is consistent with other applicable law. If the Council fails to act or does not recommend an approvable alternative, the Regional Administrator may select one of the alternatives developed and recommended by the PDT, which would achieve OY and prevent overfishing on a continuing basis and is consistent with applicable law, and shall implement such alternative pursuant to the Administrative Procedure Act.

(g) The Council may make recommendations to the Regional Administrator to implement measures in accordance with the procedures described in this subpart to address gear conflict as defined under §600.10 of this chapter. In developing such recommendation, the Council shall define gear management areas, each not to exceed 2,700 mi<sup>2</sup> (6,993 km<sup>2</sup>), and seek industry comments by referring the matter to its standing industry advisory committee for gear conflict, or to any ad hoc industry advisory committee that may be formed. The standing industry advisory committee or ad hoc committee on gear conflict shall hold public meetings seeking comments from affected fishers and develop findings and recommendations on addressing the gear conflict. After receiving the industry advisory committee findings and recommendations, or at any other time, the Council shall determine whether it is necessary to adjust or add management measures to address gear conflicts and which FMPs must be modified to address such conflicts. If the Council determines that adjustments or additional measures are necessary, it shall develop and analyze appropriate management actions for the relevant FMPs over the span of at least two Council meetings. The Council shall provide the public with advance

notice of the availability of the recommendation, the appropriate justification and economic and biological analyses, and opportunity to comment on them prior to and at the second or final Council meeting before submission to the Regional Administrator. The Council's recommendation on adjustments or additions to management measures for gear conflicts must come from one or more of the following categories:

- (1) Monitoring of a radio channel by fishing vessels.
- (2) Fixed gear location reporting and plotting requirements.
- (3) Standards of operation when gear conflict occurs.
- (4) Fixed gear marking and setting practices.
- (5) Gear restrictions for specific areas (including time and area closures).
- (6) VMS.
- (7) Restrictions on the maximum number of fishing vessels or amount of gear.
- (8) Special permitting conditions.

(h) The measures shall be evaluated and approved by the relevant committees with oversight authority for the affected FMPs. If there is disagreement between committees, the Council may return the proposed framework adjustment to the standing or ad hoc gear conflict committee for further review and discussion.

(i) Unless otherwise specified, after developing a framework adjustment and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to publish the framework adjustment as a final rule. If the Council recommends that the framework adjustment should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

- (1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to

be in place for an entire harvest/fishing season.

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry, consistent with the Administrative Procedure Act, in the development of the Council's recommended management measures.

(3) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(j) If the Council's recommendation includes adjustments or additions to management measures, and if, after reviewing the Council's recommendation and supporting information:

(1) The Regional Administrator approves the Council's recommended management measures, the Secretary may, for good cause found pursuant to the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the FEDERAL REGISTER. The Secretary, in doing so, shall publish only the final rule. Submission of a recommendation by the Council for a final rule does not effect the Secretary's responsibility to comply with the Administrative Procedure Act; or

(2) The Regional Administrator approves the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action shall be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if the Regional Administrator concurs with the Council recommendation, the action shall be published as a final rule in the FEDERAL REGISTER; or

(3) The Regional Administrator does not concur, the Council shall be notified, in writing, of the reasons for the non-concurrence.

(k) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action

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under §305(c) of the Magnuson-Stevens Act.

[69 FR 35215, June 23, 2004, as amended at 69 FR 63474, Nov. 2, 2004; 71 FR 33228, June 8, 2006; 72 FR 32559, June 13, 2007]

**§ 648.56 Scallop research.**

(a) Annually, the Council and NMFS shall prepare and issue a Request for Proposals (RFP) that identifies research priorities for projects to be conducted by vessels using research set-aside as specified in §§648.53(b)(3) and 648.60(e).

(b) Proposals submitted in response to the RFP must include the following information, as well as any other specific information required within the RFP: A project summary that includes the project goals and objectives; the relationship of the proposed research to scallop research priorities and/or management needs; project design; participants other than the applicant, funding needs, breakdown of costs, and the vessel(s) for which authorization is requested to conduct research activities.

(c) NMFS shall make the final determination as to what proposals are approved and which vessels are authorized to take scallops in excess of possession limits, utilize DAS set-aside for research, or take additional trips into Access Areas. NMFS shall provide authorization of such activities to specific vessels by letter of acknowledgement, letter of authorization, or Exempted Fishing Permit issued by the Regional Administrator, which must be kept on board the vessel.

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

**§ 648.57 Sea scallop area rotation program.**

(a) An area rotation program is established for the scallop fishery, which may include areas closed to scallop

fishing defined in §648.58, and/or Sea Scallop Access Areas defined in §648.59, subject to the Sea Scallop Area Access program requirements specified in §648.60. Areas not defined as Rotational Closed Areas, Sea Scallop Access Areas, EFH Closed Areas, or areas closed to scallop fishing under other FMPs, are open to scallop fishing as governed by the other management measures and restrictions in this part. The Council's development of area rotation programs is subject to the framework adjustment process specified in §648.55, including the Area Rotation Program factors included in §648.55(a).

**§ 648.58 Rotational Closed Areas.**

(a) *Elephant Trunk Closed Area.* Through December 31, 2006, no vessel may fish for scallops in, or possess or land scallops from, the area known as the Elephant Trunk Closed Area. No vessel may possess scallops in the Elephant Trunk Closed Area, unless such vessel is only transiting the area as provided in paragraph (c) of this section. The Elephant Trunk Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
ET1 .....	38°50' N.	74°20' W.
ET2 .....	38°10' N.	74°20' W.
ET3 .....	38°10' N.	73°30' W.
ET4 .....	38°50' N.	73°30' W.
ET1 .....	38°50' N.	74°20' W.

(b) *Delmarva Closed Area.* From January 1, 2007, through February 28, 2010, no vessel may fish for scallops in, or possess or land scallops from, the area known as the Delmarva Closed Area. No vessel may possess scallops in the Delmarva Closed Area, unless such vessel is only transiting the area as provided in paragraph (b) of this section. The Delmarva Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
DMV1 .....	38°10' N.	74°50' W.