

Rouge area did not attain the 8-hour ozone NAAQS by the applicable attainment date, to reclassify the Baton Rouge area as a moderate ozone nonattainment area and to adjust applicable deadlines.

#### List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

**Authority:** 42 U.S.C. 7401, *et seq.*

Dated: October 22, 2007.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No.: 070817468-7594-01]

RIN 0648-AV91

#### Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 20

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Framework Adjustment 20 (Framework 20) to the Atlantic Sea Scallop Fishery Management Plan (FMP), which was developed by the New England Fishery Management Council (Council). Framework 20 would maintain in effect the interim measures that were enacted by NMFS on June 21, 2007, to reduce the potential for overfishing the Atlantic sea scallop (scallop) resource and excessive scallop mortality resulting from deck loading. The action reduces the number of scallop trips to the Elephant Trunk Access Area (ETAA), and prohibits the retention of more than 50 U.S. bushels (17.62 hL) of in-shell scallop outside of the boundaries of the ETAA. The proposed rule also clarifies that the current restriction on landing no more than one scallop trip per calendar day for vessels fishing under general category rules does not prohibit a vessel from leaving on a scallop trip on the same calendar day that the vessel landed scallops. Framework 20 would extend these interim measures, which

are scheduled to expire on December 23, 2007, through the end of the scallop fishing year on February 29, 2008.

Framework 20 would make the clarification of the restriction on landing more than one trip per calendar day permanent under the Scallop FMP.

**DATES:** Comments must be received at the appropriate address or fax number (see **ADDRESSES**) by 5 p.m., local time, on November 14, 2007.

**ADDRESSES:** You may submit comments, identified by RIN number 0648-AV91, by any one of the following methods:

- Electronic submission: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>;
- Fax: (978) 281-9135;
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Scallop Framework 20."

Instructions: all comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publically accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachment to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file format only.

Copies of Framework 20 and its Regulatory Impact Review (RIR), including the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>.

**FOR FURTHER INFORMATION CONTACT:** Don Frei, Fishery Management Specialist, 978-281-9221; fax 978-281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

Interim measures currently in effect were enacted to supercede measures that were scheduled to go into effect on January 1, 2007, under Framework 18 to the FMP (Framework 18). The interim action was enacted in response to findings of the Scallop Plan Development Team (PDT), which advised the Council on November 7, 2006, that reducing the number of trips

in the ETAA, delaying the opening, and prohibiting "deckloading," would reduce the potential for overfishing the scallop resource in 2007. The Council voted in November 2006 to recommend that NMFS implement interim measures consistent with the PDT's memorandum. On December 22, 2006, (71 FR 76945) NMFS implemented an interim final rule adopting these recommendations. This interim final rule was extended on June 21, 2007, (72 FR 29889) and is scheduled to expire on December 23, 2007.

Framework 20 would maintain the provisions of the interim action that: (1) Reduced the number of trips from five trips to three trips for full-time scallop vessels in the ETAA (scallop possession limit would remain at 18,000 lb); (2) reduced the number of trips from three trips to two trips (for all access areas) for part-time scallop vessels in the ETAA (scallop possession limit for part-time vessels would be increased from 16,800 lb (7,620 kg) per trip to 18,000 lb (8,165 kg) per trip); (3) reduced the occasional vessel possession limit from 10,500 lb (4,763 kg) per trip to 7,500 lb (3,402 kg) per trip; (4) reduced the general category scallop fleet ETAA trip allocation from 1,360 trips to 865 trips; and (5) prohibited the retention or deck loading (i.e., leaving a high volume of scallops on deck after leaving an access area so that the scallops can be shucked on the way in) of more than 50 U.S. bushels (17.62 hL) of in-shell scallop outside of the boundaries of the ETAA.

The Council developed Framework 20 to prevent the Framework 18 measures from reverting back into effect when the interim measures expire on December 23, 2007. If this were to happen, it would restore the higher trip allocations and allow additional effort by the fleet, resulting in overfishing for the last 2 months (January and February 2008) of the 2007 fishing year (FY). Such an outcome would undermine the effect of the interim measures in preventing overfishing.

#### Proposed Measures

##### 1. ETAA Trip Reduction

Framework 20 would maintain the reduction in the number of trips from five trips to three trips for full-time scallop vessels in the ETAA (scallop possession limit would remain at 18,000 lb (8,165 kg)); the reduction in the number of trips from three trips to two trips (for all access areas) for part-time scallop vessels in the ETAA (scallop possession limit for part-time vessels remains at 16,800 lb (7,620 kg) per trip); and the reduction in the occasional vessel possession limit from 10,500 lb

(4,763 kg) per trip to 7,500 lb (3,402 kg) per trip. The regulations at § 648.60(a)(5) published for Framework 18 specified that an occasional vessel's possession limit is 7,500 lb (3,402 kg) per trip. However, Framework 18 intended and analyzed a possession limit of 10,500 lb (4,763 kg) per trip for the 2007 FY. Framework 20 would also maintain the reduction in the general category scallop fleet trip allocation from 1,360 to 865 trips in the ETAA.

Reducing the number of trips for scallop vessels in the ETAA would address the concern that overfishing of the scallop resource may occur in 2007. Although the biomass in the ETAA remains very high relative to the rest of the scallop resource, it is less abundant than was projected in Framework 18. As a result, even though the fishing mortality is expected to be lower than the target fishing mortality in the area, it would be high enough at the lower biomass to contribute to overfishing in 2007. Part-time vessels would have a trip reduction with an increase in the possession limit to ensure that the total access area catch for part-time vessels remains at 40 percent of the full-time access area catch, as intended by the FMP. Occasional vessels would have one trip to any access area, but have a possession limit of 7,500 lb (3,402 kg) for the trip, ensuring that the total access area catch for occasional vessels remains at 8.3 percent of the full-time access area catch. Reducing trips in the ETAA was contemplated in Framework 18 and the potential impacts of the trip reductions were fully analyzed in Framework 18.

## 2. Prohibition on Deckloading

Framework 20 maintains the prohibition on the retention of more than 50 U.S. bushels (17.62 hL) of in-shell scallop outside of the boundaries of the ETAA for vessels on ETAA trips. Deckloading is the practice of loading the deck of a vessel with the scallop catch from several tows. Under the current Access Area regulations, vessels can deckload and leave the area, and the vessel crews can spend the time steaming home sorting and shucking scallops, thereby reducing overall trip costs. This can result in a vessel having more scallops on board than are necessary to achieve the possession limit. The excess scallops are discarded. In addition, due to deckloading, scallops remain on deck longer, increasing discard mortality. In the ETAA, deckloading may cause even higher scallop mortality, since catch rates are expected to be very high, there is a mix of scallop sizes in the area, and scallop crews may discard smaller

scallops in favor of larger scallops. Although the amount of additional mortality cannot be estimated, prohibiting deckloading on ETAA trips is a complementary measure that will help prevent additional scallop mortality.

## 3. Regulatory Change

Framework 20 would also implement a regulatory change to make the regulations consistent with the original intent of Amendment 4 to the FMP (Amendment 4). Amendment 4 intended that general category scallop vessels could not land scallops on more than one trip per calendar day. NMFS implemented the scallop regulations consistent with this intent until it was recently discovered that the regulations, as written, prohibit such vessels from "fishing for" scallops more than once per calendar day. This prohibited a vessel from leaving on a scallop trip on a calendar day if scallops had previously been landed that day. The general category scallop industry is concerned that interpreting the regulation this way may encourage unsafe fishing behavior to avoid the "one trip per calendar day" restriction. Therefore, to make the regulations consistent with Amendment 4, NMFS is proposing a regulatory change that would prohibit a general category scallop vessel from landing scallops on more than one trip per calendar day, but would allow vessels to depart on a subsequent scallop trip on the same calendar day that the vessel landed scallops.

## Classification

NMFS has determined that this proposed rule is consistent with the FMP and has preliminarily determined that the rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An initial IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of this analysis is available from the Council (see **ADDRESSES**). A summary of the analysis follows.

## Description of the Small Business Entities

The proposed regulations implementing Framework 20 would affect vessels with limited access scallop and general category permits. According to NMFS Northeast Region permit data as of October 2006, 351 vessels were issued limited access scallop permits, with 318 full-time, 32 part-time, and 1 occasional limited access permit issued. In addition, 2,501 open access general category permits were issued. All of the vessels in the Atlantic sea scallop fishery are considered small business entities because all of them grossed less than \$3 million according to landings data for the period 2004 to 2006. According to this information, annual revenue from scallops averaged over a million dollars per limited access vessel in 2005. Total revenues per vessel were higher when revenues from species other than scallops were included, but still averaged less than \$3 million per vessel. Average scallop revenue per general category vessel was \$88,702 in 2005, though it exceeded \$240,000 when revenue from other species was included.

## Proposed Reporting, Recordkeeping, and Other Compliance Requirements

There are no new reporting, recordkeeping, or other compliance requirements associated with the measures proposed in Framework 20.

## Economic Impacts of the Proposed Measures and Alternatives

The proposed regulations implementing Framework 20 were developed to ensure that scallop landings and economic benefits would be kept to sustainable levels. Therefore, overall positive economic impacts are expected as a result of preventing overfishing. The prohibition on deckloading on ETAA trips is expected to help prevent additional scallop mortality associated with discards and thus would improve yield, revenues, and economic benefits from the resource. The owners of vessels that fish for scallops would benefit over the long-term if overfishing is prevented. There was strong industry support for the proposed action in public testimony before the Council at the meeting when it adopted Framework 20.

A range of alternatives was considered in Framework 18 including: Scallop fishery specifications for 2006 and 2007 (open area days-at-sea and scallop access area trip allocations); scallop area rotation program adjustments; a seasonal closure of the

ETAA; and revisions to management measures that would improve administration of the FMP. Most of the alternatives in Framework 18 were not considered by the Council in Framework 20 because they would have been outside the scope of the action intended to implement the interim measures through the end of the 2007 fishing year. The only measure in Framework 18 relevant to Framework 20 is the measure that allowed the Regional Administrator to reduce the number of ETAA trips through a rulemaking procedure based on biomass trigger points and resulting trip reductions that were included in the scallop regulations. NMFS could not use that procedure because the trip reduction recommended by the Council was based on overall fishing mortality, not the specified trigger points in the regulations, and NMFS promulgated the interim rule for the ETAA. The economic impacts of the reduction of ETAA trips through the Framework 18 rulemaking procedure, and the no action alternative to that measure, were fully analyzed in Framework 18 and are the basis of the economic impacts analysis of Framework 20.

The only other alternative the Council considered in Framework 20 was therefore to take no action. If no action had been taken, the Framework 18 measures would revert back into effect, which would increase the number of trips for full-time scallop vessels in the ETAA to five trips (an increase of two trips) and general category vessels would be allocated 1,360 trips (an increase of 495 trips). There is a very high likelihood that the additional trips would be taken because the scallops can be caught efficiently in the ETAA and the value of scallops is high. This would increase the potential that the additional fishing activity during January and February 2008 would lead to overfishing in the 2007 FY. Overfishing would have had negative impacts on scallop biomass, with landings, revenues and economic benefits likely to decline in future years as a result. The Council found this to be unacceptable and adopted the reduced number of trips in the ETAA under Framework 20 to prevent this outcome. NMFS proposes regulations consistent with the Council's recommendation for the same reasons.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 24, 2007.

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

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

**PART 648—FISHERIES OF THE  
 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 § 648.14, paragraph (i)(1) is removed and reserved, paragraph (i)(2) is revised, and paragraphs (h)(27), (i)(13), and (i)(14) are added to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(h) \* \* \*

(27) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(d), outside the boundaries of the Elephant Trunk Access Area specified in § 648.59(e) by a vessel that is declared into the Elephant Trunk Access Area under the Area Access Program as specified in § 648.60.

(i) \* \* \*

(1) [Reserved]

(2) Land scallops on more than one trip per calendar day.

\* \* \* \* \*

(13) Fish for or land per trip, or possess at any time, in excess of 400 lb (181.4 kg) of shucked, or 50 bu (17.62 hL) of in-shell scallops, unless the vessel is participating in the Area Access Program specified in § 648.60, is carrying an observer as specified in § 648.11, and an increase in the possession limit is authorized as specified in § 648.60(d)(2).

(14) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(d), outside the boundaries of the Elephant Trunk Access Area specified in § 648.59(e) by a vessel that is declared into the Elephant Trunk Access Area under the Area Access Program as specified in § 648.60.

\* \* \* \* \*

3. In § 648.52, paragraph (e) is added to read as follows:

**§ 648.52 Possession and landing limits.**

\* \* \* \* \*

(e) Owners or operators of a vessel that is declared into the Elephant Trunk Access Area Sea Scallop Area Access Program as described in § 648.60, are prohibited from possessing more than 50 bu (17.62 hL) of in-shell scallops outside of the Elephant Trunk Access Area described in § 648.59(e).

**§ 648.58 [Amended]**

4. In § 648.58, paragraph (a) is removed and reserved.

5. In § 648.59, paragraphs (e)(1) and (e)(4) are revised to read as follows:

**§ 648.59 Sea Scallop Access Areas.**

\* \* \* \* \*

(e) \* \* \*

(1) From March 1, 2007, through February 29, 2012, and subject to the seasonal restrictions specified in paragraph (e)(3) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Elephant Trunk Sea Scallop Access Area, described in paragraph (e)(2) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

\* \* \* \* \*

(4) *Number of trips*—(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Elephant Trunk Sea Scallop Access Area between March 1, 2007, and February 29, 2008, as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains an Elephant Trunk Sea Scallop Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Elephant Trunk Access Area trip that was terminated early, as specified in § 648.60(c).

(ii) *General category vessels.* Subject to the possession limits specified in §§ 648.52(a) and (b), and 648.60(g), a vessel issued a general category scallop permit may not enter in, or fish for, possess, or land sea scallops in or from the Elephant Trunk Sea Scallop Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that the 865 trips allocated for the period March 1, 2007, through February 29, 2008, have been taken, in total, by all general category scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken.

\* \* \* \* \*

6. In § 648.60, paragraphs (a)(3)(i), (a)(3)(ii)(B), (a)(5)(i), (d)(1)(v), (e)(1)(v), and (g)(3)(iv) are revised to read as follows:

**§ 648.60 Sea scallop area access program requirements.**

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(i) *Limited Access Vessel trips.* (A)

Except as provided in paragraph (c) of this section, paragraphs (a)(3)(i)(B) through (E) specify the total number of trips that a limited access scallop vessel may take into Sea Scallop Access Areas during applicable seasons specified in § 648.59. The number of trips per vessel in any one Sea Scallop Access Area may not exceed the maximum number of trips allocated for such Sea Scallop Access Area as specified in § 648.59, unless the vessel owner has exchanged a trip with another vessel owner for an additional Sea Scallop Access Area trip, as specified in paragraph (a)(3)(ii) of this section, has been allocated a compensation trip pursuant to paragraph (c) of this section.

(B) *Full-time scallop vessels.* In the 2007 fishing year, a full-time scallop vessel may take one trip in the Closed Area I Access Area, one trip in the Nantucket Lightship Access Area, and three trips in the Elephant Trunk Access Area.

(C) *Part-time scallop vessels.* In the 2007 fishing year, a part-time scallop vessel may take one trip in the Closed Area I Access Area and one trip in the Nantucket Lightship Access Area; or one trip in the Closed Area I Access Area and one trip in the Elephant Trunk Access Area; or one trip in the Nantucket Lightship Access Area and one trip in the Elephant Trunk Access Area; or two trips in the Elephant Trunk Access Area.

(D) *Occasional scallop vessels.* An occasional scallop vessel may take one trip in the 2007 fishing year into any of the Access Areas described in § 648.59 that is open during the specified fishing years.

(E) *Hudson Canyon Access Area trips.* In addition to the number of trips

specified in paragraphs (a)(3)(i) (B) and (C) of this section, vessels may fish remaining Hudson Canyon Access Area trips allocated for the 2005 fishing year in the Hudson Canyon Access Area in the 2006 and/or 2007 fishing year, as specified in § 648.59(a)(3). The maximum number of trips that a vessel could take in the Hudson Canyon Access Area in the 2005 fishing year was three trips, unless a vessel acquired additional trips through an authorized one-for-one exchange as specified in paragraph (a)(3)(ii) of this section. Full-time scallop vessels were allocated three trips into the Hudson Canyon Access Area. Part-time vessels were allocated two trips that could be distributed among Closed Area I, Closed Area II, and the Hudson Canyon Access Areas, not to exceed one trip in the Closed Area I or Closed Area II Access Areas. Occasional vessels were allocated one trip that could be taken in any Access Area that was open in the 2005 fishing year.

(ii) \* \* \*

(B) *Limited access scallop vessels* involved in an exchange of Closed Area II and/or Nantucket Lightship Closed Area Access Area trips for the 2006 fishing year, and Elephant Trunk Access Area trips for the 2007 fishing year shall be subject to a reduction of the vessels' allocated trips so that the total number of allocated Elephant Trunk Access Area trips between two vessels that were involved in such an exchange shall be six for full-time vessels and four for part-time vessels in the 2007 fishing year. Reductions will be applied equally to both vessels' resulting Elephant Trunk Access Area allocation for the 2007 fishing year after the exchange is taken into account, unless the vessel giving Elephant Trunk Access Area trips to another vessel has one or zero Elephant Trunk Access Area trips remaining after the exchange. In such a case, the vessel that received the Elephant Trunk Access Area trips will

be subject to a reduction of up to four Elephant Trunk Access Area trips.

\* \* \* \* \*

(5) \* \* \*

(i) *Scallop possession limits.* Unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section, after declaring a trip into a Sea Scallop Access Area, a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, scallops, up to the maximum amounts specified in paragraphs (a)(5)(i)(A) and (B) of this section. No vessel declared into the Elephant Trunk Access Area as described in § 648.59(e) may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Elephant Trunk Access Area described in § 648.59(e).

(A) Up to 18,000 lb (8,165 kg) of shucked scallops for full-time and part-time scallop vessels.

(B) Up to 7,500 lb (3,402 kg) of shucked scallops for occasional scallop vessels.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(v) *Elephant Trunk Access Area.* From March 1, 2007, through February 29, 2008, the observer set-aside for the Elephant Trunk Access Area is 173,100 lb (78.5 mt).

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(v) *Elephant Trunk Access Area.* From March 1, 2007, through February 29, 2008, the research set-aside for the Elephant Trunk Access Area is 346,200 lb (157 mt).

\* \* \* \* \*

(g) \* \* \*

(3) \* \* \*

(v) *Elephant Trunk Access Area.* 346,000 lb (157 mt) in 2007.

\* \* \* \* \*