

barndoor skate, monkfish, and other skates).

**Response:** National Standard 9 requires that FMPs minimize, to the extent practicable, bycatch and bycatch mortality. Measures currently in place in the scallop fishery, and the measures included in Framework 15, take practicable steps to reduce bycatch in the sea scallop fishery. Gear restrictions, i.e. increasing the minimum twine top mesh size to 10 inches (25.40 cm), in the Area Access Program are intended to reduce bycatch in scallop dredge gear. NMFS is attempting to improve observer coverage in this and other fisheries, i.e. increased percentage coverage in access areas (10–20 percent) although a large increase in observer coverage is limited by Agency resources. Limiting the number of trips by month in the Area Access Program is also designed to reduce bycatch. In addition, maintaining groundfish closed areas will reduce bycatch of such species as yellowtail flounder and skates in the scallop fishery overall. Oceana/CLF specifically noted that much bycatch is unaccounted for due to lack of observer coverage. The lack of more specific information about bycatch and how to avoid it complicates efforts to develop specific management measures to reduce it. In light of the limited scope and context of Framework 15, NMFS has determined that Framework 15 complies with the Magnuson-Stevens Act concerning bycatch requirements. The specific concerns raised by Oceana/CLF have been addressed in Framework 15.

In response to reports of sea turtle takes in the sea scallop fishery, NMFS reinitiated consultation under section 7 of the ESA on December 21, 2001. NMFS completed a BO for the scallop fishery as a whole, including the measures included in Framework 15, on [insert date BO completed]. The BO concluded that the continued implementation of the scallop fishery and the proposed activity may adversely affect but is not likely to jeopardize the continued existence of loggerhead, Kemp's ridley, green, and leatherback sea turtles. In the BO, NMFS provides an incidental take statement allowing the annual take of 88 loggerhead (up to 25 lethal), 7 Kemp's ridley (2 lethal), and 1 green (lethal or non-lethal) sea turtles in the sea scallop dredge fishery. In addition, the incidental take statement allows the lethal or non-lethal observed annual take of one loggerhead, Kemp's ridley, green, or leatherback sea turtles in the scallop trawl fishery.

### Changes From the Proposed Rule

One change to the regulatory text in the proposed rule has been made. In § 648.58, paragraph (c)(6) is revised to more clearly address the intent of the prohibition to prevent vessels participating in the Area Access Program from loading up on shell-stock and then shucking the scallops inside the VMS demarcation line.

### Classification

The Administrator, Northeast Region, NMFS, determined that Framework 15 is necessary for the conservation and management of the Atlantic sea scallop fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

For the reasons stated below, the Assistant Administrator for NOAA (AA) waives the 30-day delay in effectiveness for the Framework 15 measures under 5 U.S.C. 553(d)(1) because this rule relieves a restriction.

This action implements DAS allocations of 120, 48, and 10 DAS for full-time, part-time, and occasional scallop vessels, respectively, and continues the Hudson Canyon and Mid-Atlantic Area Access Program with an increase in the possession limit for vessels participating in the Area Access Program. Scallop vessels are precluded from: exceeding the DAS that are allocated to the vessel based on its permit category; fishing in the Hudson Canyon or Virginia Beach Access Areas unless they are participating in the Area Access Program; fishing for more than three trips in the Area Access Program; possessing more than the sea scallop possession limit in the Area Access Program; and violating any provisions of the regulations of the Northeastern United States that are not modified by this action.

The annual DAS allocations implemented in this final rule are less restrictive than the DAS allocations that would otherwise go into effect on March 1, 2003. The DAS scheduled to take effect on March 1, 2003, would have considerable negative economic and social impacts because limited access scallop vessels would only be able to fish 45 full-time, 18 part-time, and 4 occasional DAS, as compared to 120 full-time, 48 part-time and 10 occasional DAS under the preferred alternative. Further, the DAS allocation under Framework 15 would be the same as the allocation last year and therefore would be no more restrictive. In addition, the Area Access Program is a continuation of the program that has been in place for the last 2 years. The only change to the program is an increase in the possession

limit. The Council prepared an environmental assessment (EA) for this framework and the Assistant Administrator for Fisheries, NMFS, concluded that there will be no significant impact on the human environment as a result of this rule. This action will result in a minor increase in fishing mortality on sea scallops and will allow continued economic viability of the fishery. The Area Access Program will provide an incentive for vessels to direct fishing effort away from more sensitive open areas in the Mid-Atlantic. A copy of the EA is available from the Council (see **ADDRESSES**).

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

Pursuant to 5 U.S.C. 604(a) of the Regulatory Flexibility Act, NMFS prepared an FRFA for Framework 15, which consists of the IRFA, comments and responses contained in this final rule, and a summary of the analyses prepared in support of this final rule. A copy of the FRFA is available from the Regional Administrator (see **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here. A copy of the IRFA is available from the Council (see **ADDRESSES**).

The reasons why action by the agency is being considered and the objectives of the action are explained in the preambles to the proposed rule and this final rule and are not repeated here. This action does not contain reporting and recordkeeping requirements. It will not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Fishery Conservation and Management Act and regulations at 50 CFR part 648.

### Public Comments

Two sets of comments were received on the proposed rule and are responded to in this rule. One comment addressed indirectly the results of the IRFA and the second set of comments related to issues other than economic impacts. In this comment, the FSF urged timely implementation of the Framework 15 measures in order to avoid "economically devastating" default DAS reductions. NMFS agrees with the FSF that the DAS reductions included in Amendment 7 to the FMP and scheduled to take effect on March 1, 2003, under the no action alternative will have substantially negative economic impacts for vessels participating in the sea scallop fishery and would not be necessary, given the