

Fishery Conservation and Management

§ 648.58

under section 305(e) of the Magnuson Act.

[61 FR 34968, July 3, 1996, as amended at 62 FR 1404, Jan. 10, 1997; 64 FR 14839, Mar. 29, 1999]

§ 648.57 Closed and regulated areas.

(a) *Hudson Canyon Sea Scallop Access Area.* Through February 28, 2003, except as provided in §§ 648.52 and 648.58, no vessel may fish for scallops in or land scallops from the area known as the Hudson Canyon Sea Scallop Access Area, and no vessel may possess scallops in the Hudson Canyon Sea Scallop Access Area, unless such vessel is only transiting the area with all fishing gear unavailable for immediate use as defined in § 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. The Hudson Canyon Sea Scallop Access Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
H1	39 30' N.	73 10' W.
H2	39 30' N.	72 30' W.
H3	38 30' N.	73 30' W.
H4	38 40' N.	73 50' W.

(b) *Virginia Beach Sea Scallop Access Area.* Through February 28, 2003, except as provided in §§ 648.52 and 648.58, no vessel may fish for scallops in or land scallops from the area known as the Virginia Beach Sea Scallop Access Area, and no vessel may possess scallops in the Virginia Beach Sea Scallop Access Area, unless such vessel is only transiting the areas with all fishing gear unavailable for immediate use as defined in § 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. The Virginia Beach Sea Scallop Access Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
V1	37 00' N.	74 55' W.
V2	37 00' N.	74 35' W.

Point	Latitude	Longitude
V3	36 25' N.	74 45' W.
V4	36 25' N.	74 55' W.

[66 FR 45785, Aug. 30, 2001]

§ 648.58 Sea Scallop Area Access Program.

(a) *Eligibility.* Vessels issued a limited access scallop permit are eligible to participate in the Sea Scallop Area Access Program, and may fish in the Sea Scallop Access Areas, as described in § 648.57 of this section, for the times specified in paragraph (c)(1) of this section, when fishing under a scallop DAS, and while complying with the requirements of this section. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(b) *Sea Scallop Access Areas—(1) Hudson Canyon Sea Scallop Access Area.* Eligible vessels, as specified in paragraph (a) of this section, may fish for, possess, and retain sea scallops in excess of the possession limit specified in § 648.52(e) in or from in the Hudson Canyon Sea Scallop Access Area, which is the area described in § 648.57(a).

(2) *Virginia Beach Sea Scallop Access Area.* Eligible vessels, as specified in paragraph (a) of this section, may fish for, possess, and retain sea scallops in excess of the possession limit specified in § 648.52(e) in or from the Virginia Beach Sea Scallop Access Area, which is the area described in § 648.57(b).

(c) *Sea Scallop Area Access Season and Requirements.* To fish in the Sea Scallop Access Areas under the Sea Scallop Area Access Program, eligible vessels must fish during the Season specified in paragraph (c)(1) of this section and must comply with the requirements specified in paragraphs (c)(2) through (c)(4) of this section:

(1) *Season—(i) Fishing year 2001.* From May 1, 2001 through February 28, 2002, vessels participating in the Sea Scallop Area Access Program may fish for or possess sea scallop in or from the respective Sea Scallop Access Areas specified in § 648.57 of this section, unless access to these areas is terminated as specified in paragraph (f) of this section.

(ii) *Fishing year 2002.* From March 1, 2002, through February 28, 2003, vessels

participating in the Sea Scallop Area Access Program may fish in the respective Sea Scallop Access Areas specified in § 648.57 of this section, unless access to these areas is terminated as specified in paragraph (f) of this section. Should the 2001 fishing year season be closed early, as described in paragraph (c)(1) of this section, the Sea Scallop Area Access Program season for fishing year 2002 will begin on April 1, 2002.

(2) *VMS*. The vessel must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10 and paragraph (h) of this section.

(3) *Declaration*. (i) Prior to the 25th day of the month preceding the month in which fishing is to take place, the vessel must submit a monthly report through the VMS e-mail messaging system of its intention to fish in the Hudson Canyon or Virginia Beach Sea Scallop Access Areas, 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 each Sea Scallop Access Area in which it intends to fish. The Regional Administrator may waive a portion of this notification period for trips into the Sea Scallop Access Areas in April or May, 2001. Notification of this waiver of a portion of the notification period will be provided to the vessel through a permit holder letter issued by the Regional Administrator.

(ii) In addition to the requirements described in paragraph (c)(3)(i) of this section, and for the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the time, port of departure, and specific Sea Scallop Access Area to be fished, at least 5 working days prior to the beginning of any trip on which it declares into the Sea Scallop Area Access Program.

(iii) On the day the vessel leaves port to fish under the Sea Scallop Area Access 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 the vessel leaving port.

(4) *Number of trips*—(i) *Full and part-time vessels*. Full and part-time vessels

are restricted to a total of three trips into the Sea Scallop Access Areas, unless otherwise authorized by the Regional Administrator as specified in paragraph (e)(2) of this section. A trip to either area counts as one trip.

(A) *Distribution of trips for the 2001 fishing year*. For fishing year 2001, full-time and part-time vessels participating in the Sea Scallop Area Access Program may start no more than two of their three allowed Area Access Program trips before June 1, 2001. To be eligible for any additional trips allocated under paragraph (e)(4) of this section, at least one trip must begin by September 1, 2001.

(B) *Distribution of trips for 2002 fishing year*. For fishing year 2002, full-time and part-time vessels participating in the Sea Scallop Area Access Program may start no more than one of their three allowed Area Access Program trips before May 1, 2002, and no more than two of their three allowed Area Access Program trips before June 1, 2002.

(ii) *Occasional scallop vessels*. Occasional vessels may fish only one trip per fishing year in 2001 and 2002 under the Sea Scallop Area Access Program. The one allowed trip may be conducted in either the Hudson Canyon or Virginia Beach Sea Scallop Access Area specified in § 648.57 of this section at any time during the season, as specified in paragraph (c)(1) of this section.

(5) *Area fished*. A vessel that has declared a trip into the Sea Scallop Area Access Program must not fish for, possess, or land scallops from outside the specific Sea Scallop Access Area fished during that trip and must not enter or exit the specific Sea Scallop Access Area fished more than once per trip. A vessel that has declared a trip into the Sea Scallop Area Access Program must not exit one Sea Scallop Access Area and transit to, or enter, the other Sea Scallop Access Area on the same trip.

(6) *Possession and landing limits*—(i) *Fishing year 2001*. Unless otherwise authorized by the Regional Administrator as specified in paragraph (e) of this section, after declaring into the Sea Scallop Area Access Program in fishing year 2001 a vessel owner or operator may fish for, possess and land up to 17,000 lb (7,711.1 kg) of scallop meats

per trip, with a maximum of 400 lb (181.4 kg) of the possession limit originating from 50 bu (17.62 hl) of in-shell scallops.

(ii) *Fishing year 2002.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (e) of this section, after declaring into the Sea Scallop Area Access Program in fishing year 2002, a vessel owner or operator may fish for, possess, and land up to 18,000 lb (8,164.7 kg) of scallop meats per trip, with a maximum of 400 lb (181.4 kg) of the possession limit originating from 50 bu (17.62 hl) of in-shell scallops.

(7) *Gear restrictions.* The vessel must fish with or possess scallop dredge or trawl gear only in accordance with the restrictions specified in § 648.51(a) and (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.* While outside of the Sea Scallop Access Areas specified in § 648.57, all fishing gear must be unavailable for immediate use as defined in § 648.23(b), unless there is a compelling safety reason.

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

(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 Sea Scallop Area Access Program, including trips accompanied by a NMFS-approved observer. The reports must be submitted in 24-hour intervals, for each day beginning at 0000 hours and ending at 2400 hours. The reports must be submitted by 0900 hours of the following day and must include the following information:

(i) Total pounds/kilograms of scallop meats kept, total number of tows and the Fishing Vessel Trip Report log page number.

(ii) [Reserved]

(d) *Accrual of DAS.* A scallop vessel that has declared a fishing trip into the Sea Scallop Area Access 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) *Adjustments to possession limits and number of trips—(1) Adjustment process for sea scallop possession limits for Hudson Canyon and the Virginia Beach Sea Scallop Access Areas.* The Regional Administrator may adjust the sea scallop possession limit at any time during the Sea Scallop Area Access Program. This adjustment may be made if the Regional Administrator determines that such adjustment will likely allow the scallop TAC to be reached without exceeding it. Notification of this adjustment to the possession limit will be provided to the vessel through a permit holder letter issued by the Regional Administrator.

(2) *Adjustment process for number of trips for Hudson Canyon and the Virginia Beach Sea Scallop Access Areas.* On or after October 1 for fishing years 2001 and 2002, if the scallop catch in the Hudson Canyon and/or Virginia Beach Sea Scallop Access Areas is less than the scallop TACs specified for fishing years 2001 and 2002 in paragraphs (f)(1) and (f)(2) of this section, respectively, the Regional Administrator may allocate one or more additional trips for the Hudson Canyon and/or Virginia Beach Sea Scallop Access Areas for full and part-time limited access sea scallop vessels that declared into and began a trip under the Sea Scallop Area Access Program prior to September 1 for the respective fishing year. This adjustment may be made if the Regional Administrator determines that such adjustment will likely allow the scallop TAC to be reached without exceeding it. Notification of this adjustment to the trip limit will be provided to the vessel through a permit holder letter issued by the Regional Administrator. Unused trips after September 30, 2001, may not be carried over into the 2002 Sea Scallop Area Access Program. Vessels with occasional permits would not be allocated an additional trip.

(3) *Increase of possession limit to defray costs of observers—(1) Defraying the costs of observers.* The Regional Administrator may increase the sea scallop

possession limit specified in paragraph (c)(6) of this section to defray costs of observers by areas subject to the limits specified in paragraph (e)(3)(ii) of this section and to the limit on the cumulative amount of sea scallops allocated for a vessel that has declared a fishing trip into the Sea Scallop Area Access Program with a NMFS-approved observer on board. Notification of this increase of the possession limit will be provided to the vessel through a Letter of Authorization issued by the Regional Administrator which must be kept on board the vessel. 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, regardless of whether the vessel lands or sells sea scallops on that trip.

(ii) *Observer set-aside limits on increases of possession limits by area.* The cumulative amount of scallops authorized under this part to be taken by vessels in excess of the possession limits specified in paragraph (c)(6) of this section to defray the cost of an observer shall not exceed 2-percent of the overall TAC for each Sea Scallop Access Area. The following amounts represent 2 percent of those TACs:

(A) Hudson Canyon Sea Scallop Access Area, 2001 area access program - 127 mt;

(B) Virginia Beach Sea Scallop Access Area, 2001 area access program - 6 mt;

(C) Hudson Canyon Sea Scallop Access Area, 2002 area access program - 128 mt;

(D) Virginia Beach Sea Scallop Access Area, 2002 area access program - 5 mt.

(iii) *Notification of observer set-aside limit.* NMFS shall publish notification in the FEDERAL REGISTER of the date that the Regional Administrator projects that the observer set-aside limit will be caught.

(4) *Adjustments to possession limits and/or number of trips to defray the costs of sea scallop research—(i) Defraying the costs of sea scallop research.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (c)(6) of this section or allow additional trips into a Sea Scallop Ac-

cess Area, subject to the limits on the cumulative amount of sea scallops allocated to defray costs for sea scallop research specified in paragraph (e)(4)(ii) of this section.

(ii) *Research set-aside limits on adjustments to possession limits and number of trips by area.* The cumulative amount of scallops authorized to be taken by vessels in excess of the possession limits specified in paragraph (c)(6) of this section for purposes of defraying the cost of sea scallop research shall not exceed 1 percent of the overall TAC for each Sea Scallop Access Area. The following amounts represent 1 percent of those TACs:

(A) Hudson Canyon Sea Scallop Access Area, 2001 area access program - 63 mt;

(B) Virginia Beach Sea Scallop Access Area, 2001 area access program - 3 mt;

(C) Hudson Canyon Sea Scallop Access Area, 2002 area access program - 64 mt;

(D) Virginia Beach Sea Scallop Access Area, 2002 area access program - 3 mt.

(iii) NMFS shall publish notification in the FEDERAL REGISTER of the date that the Regional Administrator projects that the scallop research set-aside limits will be caught.

(iv) *Adjustment procedure.* (A) Determinations as to which vessel may be authorized to take more than the trip limits specified in paragraph (c)(6) of this section, or to take additional trips for the purposes of defraying sea scallop research costs, shall be made by NMFS, in cooperation with the Council. At a minimum, applicants shall submit a scallop proposal under this program and a project summary that includes: The project goals and objectives, relationship of sea scallop research to management needs or priorities identified by the Council, project design, participants other than applicant, funding needs, breakdown of costs, and the vessel(s) for which authorization is requested.

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(B) NMFS will make the final determination as to what proposals are approved and which vessels are authorized to take scallops in excess of possession limits or additional trips. Authorization to increase possession limits and/or number of trips will be provided to the vessel by Letter of Authorization issued by the Regional Administrator which must be kept on board the vessel.

(v) *Project Report Procedure.* Upon completion of his/her sea scallop research, the researcher of approved projects must provide the Council with a report of his/her findings, which include:

(A) A detailed description of methods of data collection and analysis;

(B) A discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; and

(C) A detailed final accounting of all funds used to conduct the sea scallop research.

(f) *Termination of the Sea Scallop Area Access Program—(1) Fishing year 2001 area access program—(i) Hudson Canyon Sea Scallop Access Area.* The Hudson Canyon Sea Scallop Access Area fishery for fishing year 2001 shall be terminated as of the date the Regional Administrator projects that 6,204 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Hudson Canyon Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the FEDERAL REGISTER.

(ii) *Virginia Beach Sea Scallop Access Area.* The Virginia Beach Sea Scallop Access Area fishery for fishing year 2001 shall be terminated as of the date the Regional Administrator projects that 277 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Virginia Beach Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the FEDERAL REGISTER.

(2) *Fishing year 2002 area access program.* (i) *Hudson Canyon Sea Scallop Access Area.* The Hudson Canyon Sea Scallop Access Area fishery for fishing year 2002 shall be terminated as of the date the Regional Administrator

projects that 6,287 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Hudson Canyon Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the FEDERAL REGISTER.

(ii) *Virginia Beach Sea Scallop Access Area.* The Virginia Beach Sea Scallop Access Area fishery for fishing year 2002 shall be terminated as of the date the Regional Administrator projects that 268 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Virginia Beach Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the FEDERAL REGISTER.

(g) *Transiting.* Limited access sea scallop vessels fishing under a scallop DAS that have not declared a trip into the Sea Scallop Area Access Program may not fish in the areas known as the Hudson Canyon and Virginia Beach Sea Scallop Access Areas described in §648.57, and may not enter or be in such areas unless the vessel is transiting the area and the vessel's fishing gear is unavailable for immediate use as defined in §648.23(b), or there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use.

(h) *VMS Polling.* For the duration of the Sea Scallop Area Access Program, as described under this section, all sea scallop limited access vessels equipped with a VMS unit will be polled twice per hour, regardless of whether the vessel is enrolled in the Sea Scallop Area Access Program.

[66 FR 24057, May 11, 2001]

Subpart E—Management Measures for the Atlantic Surf Clam and Ocean Quahog Fisheries

§ 648.70 Annual individual allocations.

(a) *General.* (1) For each fishing year, the Regional Administrator shall determine the allocation of surf clams and ocean quahogs for each vessel owner issued an allocation for the preceding fishing year, by multiplying the quotas specified for each species by the Regional Administrator under §648.71