

CORRESPONDENCE

From: Joe Gilbert [<mailto:hiddenemp@aol.com>]

Sent: Friday, January 21, 2022 10:21 AM

To: melanie.griffin@state.ma.us; Eric Reid <ericreidri@gmail.com>; Tom Nies <tnies@nefmc.org>

Cc: Travis Ford <travis.ford@noaa.gov>

Subject: Fwd: Atlantic Sea Scallop Fishery

Dear Ms Griffin, Mr. Reid, and Mr. Nies,

I am forwarding a letter I sent to Michael Pentony on Monday regarding the scallop fishery. He suggested that I share it with you as well. Please see my original email below and let me know how we can continue this conversation.

Best Regards,

Joe Gilbert

On Mon, Jan 17, 2022 at 12:02 PM Joe Gilbert <hiddenemp@aol.com> wrote:

Mr. Michael Pentony

Greater Atlantic Regional Fisheries Office

55 Great Republic Drive

Gloucester, MA 01930

January 4, 2022

Dear Director Pentony,

I am writing to you as a member of the limited access scallop fleet. My entire career has been in fisheries and aquaculture. Like most in my position, I must be familiar with science, fisheries management, oceanography, environmental study, electronics, supply chains, administration, diesel mechanics, hard work, and finally fisheries.

The Atlantic Sea Scallop fishery is one of the best managed fisheries in the world. The path to today's position is well documented and relied on many factors. In the 1990s, the fishery was in collapse and the government was buying back capacity. Then a dedicated group from industry stepped forward to work with the regulators, researchers, and legislators to save the fishery. The group from industry was comprised of folks with broad backgrounds, vast experience, expertise in the scallop fishery, financial desperation, and most importantly, a willingness and desire to preserve the fishery and the way of life.

The challenges they faced were formidable. These folks, in partnership and collaboration with researchers and regulators, followed the science and over the years have helped design the fishery as we recognize it today.

A constant in the world is change. Things are changing in the ocean and the scallop industry must evolve.

Today's challenges are many. Climate change, ocean development, and the unknown effects that are certain to come are all of great concern to our industry. Taking the wait-and-see passive approach will only make us reactionary as we face challenges. I encourage industry and regulators to take an active approach and to think, manage, and innovate toward growing our resource, increasing yields, reducing uncertainty, and creating resiliency and stability in the resource, the fishery, and the downstream markets.

I believe we are perfectly positioned and there has never been a better time to begin the discussion of evolving scallop fishery resource management. Technology has advanced and there are new ways of observing and assessing the resource, habitats, and ocean chemistry.

Ideas have been brought to proof of concept and now need regulatory support to be scaled to effective implementation. Many more ideas are dismissed too easily at the review level. These ideas are ready to be explored by industry partnering with researchers. Unfortunately, the ideas that industry believes will offer insights into our future are too often not chosen for approval.

Within industry there are many owners, operators, and shoreside support that have broad backgrounds, vast experience, and expertise who regularly collaborate with universities and foundations on fisheries science. These industry members have demonstrated dedication to supporting scientific efforts to maintain and grow a healthy scallop fishery in a changing environment. Many have offered financial support and use of vessels and crew at their own expense for worthy research projects. The resulting outcomes and data have been instrumental in guiding and informing regulation and future science.

The following are topics relevant to evolving the fishery:

- Changes to FMP to facilitate more active management
- How to make FMP changes in a timely manner
- Redefine/define our 5, 10, and 20 year goals for the resource and the fishery
- Supporting initiatives in the area of resource enhancement, including but not limited to seed transplanting, spat survival, and predator controls
- Support applied science directed at expanding the resource and creating resiliency within the fishery

I have looked at examples of resource management from other countries and while none of those examples are a perfect fit, there are many noteworthy practices. I believe the US sea scallop fishery can be stabilized and grown if we dedicate ourselves to innovative research & development. A change in how we perceive our fishery and its management is the first step.

Please advise me as to the best way to begin these discussions.

Best Regards,

Joseph J. Gilbert

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New England Fishery Management Council

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Eric Reid, Chair | Thomas A. Nies, *Executive Director*

January 14, 2022

Mr. Michael Pentony
Regional Administrator
National Marine Fisheries Service
Greater Atlantic Regional Fisheries Office
55 Great Republic Drive
Gloucester, MA 01930

Dear Mike:

In accordance with provisions of the Magnuson-Stevens Act, I reviewed the draft regulatory text for Framework 34 to the Scallop FMP to deem whether it is consistent with the action's text and the Council's intent. The review was based on the draft regulatory text provided to the Council staff by email on December 23, 2021. The review focused only on the regulatory changes resulting from Framework 34, and not other modifications NMFS made under other authorities. As a result of discussion with your staff, several clarifications were made to the text provided to the Council. They have been incorporated and are reflected in the following enclosure. I deem the regulatory text in the enclosure consistent with Council intent for implementing measures proposed by Framework 34.

Please feel free to call me with any concerns.

Sincerely,

A handwritten signature in black ink, appearing to be 'ER' or similar initials, written in a cursive style.

Eric Reid
Council Chair

§ 648.11 Monitoring Coverage.

Atlantic sea scallop observer program -

(1) **General.** Unless otherwise specified, owners, operators, and/or managers of vessels issued a Federal scallop permit under [§ 648.4\(a\)\(2\)](#), and specified in [paragraph \(a\)](#) of this section, must comply with this section and are jointly and severally responsible for their vessel's compliance with this section. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access, LAGC IFQ, and LAGC NGOM permits are required to comply with the additional notification requirements specified in [paragraph \(k\)\(2\)](#) of this section. When NMFS notifies the vessel owner, operator, and/or manager of any requirement to carry an observer on a specified trip in either an Access Area, Open Area, or NGOM as specified in [paragraph \(k\)\(3\)](#) of this section, the vessel may not fish for, take, retain, possess, or land any scallops without carrying an observer. Vessels may only embark on a scallop trip without an observer if the vessel owner, operator, and/or manager has been notified that the vessel has received a waiver of the observer requirement for that trip pursuant to [paragraphs \(k\)\(3\)](#) and [\(k\)\(4\)\(ii\)](#) of this section.

(2) *Vessel notification procedures -*

(i) **Limited access vessels.** Limited access vessel owners, operators, or managers shall notify NMFS/FSB by telephone not more than 10 days prior to the beginning of any scallop trip of the time, port of departure, open area, NGOM, or specific Sea Scallop Access Area to be fished, and whether fishing as a scallop dredge, scallop trawl, or general category vessel.

(ii) **LAGC IFQ vessels.** LAGC IFQ vessel owners, operators, or managers must notify the NMFS/FSB by telephone by 0001 hr of the Thursday preceding the week (Sunday through Saturday) that they intend to start any open area or access area scallop trip and must include the port of departure, open area or specific Sea Scallop Access Area to be fished, and whether fishing as a scallop dredge, scallop trawl vessel. If selected, up to two trips that start during the specified week (Sunday through Saturday) can be selected to be covered by an observer. NMFS/FSB must be notified by the owner, operator, or vessel manager of any trip plan changes at least 48 hr prior to vessel departure.

(iii) **LAGC vessels fishing NGOM.** LAGC IFQ and NGOM vessel owners, operators, or managers must notify the NMFS/FSB by telephone by 0001 hr of the Thursday preceding the week (Sunday through Saturday) that they intend to start a NGOM scallop trip and must include the port of departure. If selected, up to two trips that start during the specified week (Sunday through Saturday) can be selected to be covered by an observer. NMFS/FSB must be notified by the owner, operator, or vessel manager of any trip plan changes at least 48 hr prior to vessel departure

(3) **Selection of scallop trips for observer coverage.** Based on predetermined coverage levels for various permit categories and areas of the scallop fishery that are provided by NMFS in writing to all observer service providers approved pursuant to [paragraph \(h\)](#) of this section,

NMFS shall notify the vessel owner, operator, or vessel manager whether the vessel must carry an observer, or if a waiver has been granted, for the specified scallop trip, within 24 hr of the vessel owner's, operator's, or vessel manager's notification of the prospective scallop trip, as specified in [paragraph \(k\)\(2\)](#) of this section. Any request to carry an observer may be waived by NMFS. All waivers for observer coverage shall be issued to the vessel by VMS so as to have on-board verification of the waiver. A vessel may not fish in an area with an observer waiver confirmation number that does not match the scallop trip plan that was called in to NMFS. Confirmation numbers for trip notification calls are only valid for 48 hr from the intended sail date.

(4) *Procurement of observer services by scallop vessels.*

(i) An owner of a scallop vessel required to carry an observer under [paragraph \(k\)\(3\)](#) of this section must arrange for carrying an observer certified through the observer training class operated by the NMFS/FSB from an observer service provider approved by NMFS under [paragraph \(h\)](#) of this section. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 48-hr notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip. The observer service provider will notify the vessel owner, operator, or manager within 18 hr whether they have an available observer. A list of approved observer service providers shall be posted on the NMFS/FSB website:

<https://www.fisheries.noaa.gov/resource/data/observer-providers-northeast-and-mid-atlantic-programs>. The observer service provider may take up to 48 hr to arrange for observer deployment for the specified scallop trip.

(ii) An owner, operator, or vessel manager of a vessel that cannot procure a certified observer within 48 hr of the advance notification to the provider due to the unavailability of an observer may request a waiver from NMFS/FSB from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel manager has contacted all of the available observer service providers to secure observer coverage and no observer is available. NMFS/FSB shall issue such a waiver within 24 hr, if the conditions of this [paragraph \(g\)\(4\)\(ii\)](#) are met. A vessel may not begin the trip without being issued a waiver.

(5) *Cost of coverage.* Owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit or reduced DAS accrual rate. The owners of vessels that carry an observer may be compensated with a reduced DAS accrual rate for limited access open area scallop trips or additional scallop catch per day for limited access Sea Scallop Access Area trips or additional catch per open area or access area trip for LAGC IFQ trips or additional catch per NGOM trip in order to help defray the cost of the observer, under the program specified in [§§ 648.53](#) and [648.60](#).

(i) Observer service providers shall establish the daily rate for observer coverage on a scallop vessel on an Access Area trip or open area DAS or IFQ trip or NGOM trip consistent with paragraphs (k)(5)(i)(A) and (B), respectively, of this section.

(A) Access Area trips.

(1) For purposes of determining the daily rate for an observed scallop trip on a limited access vessel in a Sea Scallop Access Area when that specific Access Area's observer set-aside specified in [§ 648.60\(d\)\(1\)](#) has not been fully utilized, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where “day” is defined as a 24-hr period, or any portion of a 24-hr period, regardless of the calendar day. For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time at sea equals 27 hr, which would equate to 2 full “days.”

(2) For purposes of determining the daily rate in a specific Sea Scallop Access Area for an observed scallop trip on a limited access vessel taken after NMFS has announced the industry-funded observer set-aside in that specific Access Area has been fully utilized, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where “day” is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time spent at sea equals 27 hr, which would equate to 1 day and 3 hr.

(3) For purposes of determining the daily rate in a specific Sea Scallop Access Area for observed scallop trips on an LAGC vessel, regardless of the status of the industry-funded observer set-aside, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where “day” is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time spent at sea equals 27 hr, which would equate to 1 day and 3 hr.

(B) Open area scallop trips. For purposes of determining the daily rate for an observed scallop trip for DAS or LAGC IFQ open area trips, regardless of the status of the industry-funded observer set-aside, a service provider shall charge dock to dock where “day” is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on the July 1st at 10 p.m. and lands on July 3rd at 1 a.m., the time at sea equals 27 hr, so the provider would charge 1 day and 3 hr.

(C) NGOM scallop trips. For purposes of determining the daily rate in the NGOM for observed scallop trips on a limited access or LAGC vessel, regardless of the status of the industry-funded observer set-aside, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where “day” is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time spent at sea equals 27 hr, which would equate to 1 day and 3 hr.

(ii) NMFS shall determine any reduced DAS accrual rate and the amount of additional pounds of scallops on Sea Scallop Access Area, LAGC IFQ, and NGOM trips based on the economic conditions of the scallop fishery, as determined by best available information. Vessel owners and observer service providers shall be notified through the Small Entity Compliance Guide of any DAS accrual rate changes and any changes in additional pounds of scallops determined by the Regional Administrator to be necessary. NMFS shall notify vessel owners and observer providers of any adjustments.

(iii) Owners of scallop vessels shall pay observer service providers for observer services within 45 days of the end of a fishing trip on which an observer deployed.

(6) **Coverage and cost requirements.** When the available set-aside for observer coverage is exhausted, vessels shall still be required to carry an observer as specified in this section, and shall be responsible for paying for the cost of the observer, but shall not be authorized to harvest additional pounds or fish at a reduced DAS accrual rate.

§ 648.14 Prohibitions.

No changes.

§ 648.50 Shell-height standard.

No changes.

§ 648.51 Gear and crew restrictions.

No changes.

§ 648.52 Possession and landing limits.

No changes.

§ 648.53 Overfishing limit (OFL), acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), annual projected landings (APL), DAS allocations, and individual fishing quotas (IFQ).

(a) The following determinations and allocations for the sea scallop rotational areas are defined as follows and shall be established through the specifications or framework adjustment process:

(1) **OFL.** OFL shall be based on an updated scallop resource and fishery assessment provided by either the Scallop PDT or a formal stock assessment. OFL shall include all sources of scallop mortality and shall include an upward adjustment to account for catch of scallops in state waters by vessels not issued Federal scallop permits. The fishing mortality rate (*i.e.* F) associated with OFL shall be the threshold F, above which overfishing is occurring in the scallop fishery. The F associated with OFL shall be used to derive specifications for ABC, ACL, and ACT, as defined in [paragraph \(a\)](#) of this section.

(2) The specification of ABC, ACL, and ACT shall be based upon the following overfishing definition: The F shall be set so that in access areas, averaged for all years combined over the period of time that the area is closed and open to scallop fishing as an access area, it does not exceed the established F threshold for the scallop fishery; in open areas it shall not exceed the F threshold for the scallop fishery; and for access and open areas combined, it is set at a level that has a 75-percent probability of remaining below the F associated with ABC, as defined in [paragraph \(a\)\(3\)](#) of this section, taking into account all sources of fishing mortality in the limited access and LAGC fleets of the scallop fishery.

(3) **Overall ABC/ACL and APL -**

(i) **Overall ABC/ACL.** The overall ABC for sea scallop fishery shall be the catch level that has an associated F that has a 75-percent probability of remaining below the F associated with OFL. The overall ACL shall be equal to the ABC for the scallop fishery, minus discards (an estimate of both incidental and discard mortality). The ABC/ACL, after the discards and deductions specified in [paragraph \(a\)\(4\)](#) of this section are removed, shall be divided as sub-ACLs between limited access vessels, limited access vessels that are fishing under a LAGC permit, and LAGC vessels as defined in [paragraphs \(a\)\(5\)](#) and [\(6\)](#) of this section, after the deductions outlined in [paragraph \(a\)\(4\)](#) of this section.

(ii) **APL.** The APL shall be equal to the combined projected landings by the limited access and LAGC IFQ, in open areas, access areas, and Northern Gulf of Maine management area after set-asides (RSA, NGOM, and observer) and incidental landings are accounted for, for a given fishing year. Projected scallop landings are calculated by estimating the landings that will come from open area, access area, and Northern Gulf of Maine effort combined for both limited access and LAGC IFQ fleets. These projected landings shall not exceed the overall ABC/ACL and ACT, as described in [paragraph \(a\)](#) of this section.

(4) **Deductions from ABC/ACL.** Incidental catch, as defined in [paragraph \(a\)\(7\)](#) of this section, shall be removed from ABC/ACL. One percent of ABC/ACL shall be removed from ABC/ACL for observer set-aside. Scallop catch equal to the value specified in [§ 648.56\(d\)](#) shall be removed from ABC/ACL for research set-aside. These deductions for incidental catch, observer set-aside, and research set-aside, shall be made prior to establishing sub-ACLs for the limited access and LAGC fleets, as specified in [paragraphs \(a\)\(5\)](#) and [\(6\)](#) of this section.

(5) **Limited access fleet sub-ACL and sub-ACT -**

(i) **Limited access fleet sub-ACL.** After applying the deductions as specified in [paragraph \(a\)\(4\)](#) of this section, the limited access scallop fleet shall be allocated a sub-ACL equal to 94.5 percent of the ABC/ACL.

(ii) **Limited access fleet sub-ACT.** The ACT for the limited access fishery shall be set at a level that has an associated F with a 75-percent probability of remaining below the F associated with ABC/ACL.

(6) LAGC IFQ fleet sub-ACL, sub-ACT, and annual allocation -

(i) **LAGC IFQ fleet sub-ACL.** After applying the deductions as specified in [paragraph \(a\)\(4\)](#) of this section, the LAGC IFQ fleet shall be allocated a sub-ACL equal to 5.5 percent of the ABC/ACL, so that 5 percent of ABC/ACL is allocated to the LAGC fleet of vessels that do not also have a limited access scallop permit, and 0.5 percent of the ABC/ACL is allocated to the LAGC fleet of vessels that have limited access scallop permits. This specification of sub-ACLs shall not account for catch reductions associated with the application of AMs or adjustment of the sub-ACL as a result of the limited access AM exception as specified in [paragraph \(c\)\(1\)](#) of this section.

(ii) **LAGC IFQ fleet sub-ACT.** The LAGC IFQ fishery sub-ACT shall be equal to the LAGC IFQ fishery's sub-ACL. The sub-ACT for the LAGC IFQ fishery for vessels issued only a LAGC IFQ scallop permit shall be equal to 5 percent of the ABC/ACL specified in [paragraph \(a\)\(3\)](#) of this section, after applying the deductions as specified in [paragraph \(a\)\(4\)](#) of this section. The sub-ACT for the LAGC IFQ fishery for vessels issued both a LAGC IFQ scallop permit and a limited access scallop permit shall be 0.5 percent of the ACL specified in [paragraph \(a\)\(3\)](#) of this section, after applying the deductions as specified in [paragraph \(a\)\(4\)](#) of this section.

(iii) LAGC IFQ fleet annual allocation.

(A) The annual allocation for the LAGC IFQ fishery for vessels issued an LAGC IFQ scallop permit and not also issued a limited access permit shall be equal to 5 percent of the APL. The annual allocation for the LAGC IFQ fishery for vessels issued both a LAGC IFQ scallop permit and a limited access scallop permit shall be 0.5 percent of the APL.

(B) Standardized default LAGC IFQ allocation. Unless otherwise specified by the Council through the framework adjustment or specifications process defined in [§ 648.55](#), after the first-year allocation expires, the second-year default allocation, as described in [§ 648.55\(a\)](#), shall be set at 75 percent of the first-year allocation for all vessels issued an LAGC IFQ scallop permit and not also issued a limited access permit and for vessels issued both an LAGC IFQ scallop permit and a limited access scallop permit. After the second-year default allocation expires, the third year allocation would be set to zero until replaced by subsequent allocations.

(7) **Scallop incidental landings target TAL.** The annual incidental landings target TAL is the catch available for harvest for vessels with incidental catch scallop permits. This incidental catch target will be removed from the ABC/ACL defined in [paragraph \(a\)\(3\)](#) of this section prior to establishing the limited access and LAGC IFQ sub-ACLs and sub-ACTs defined in [paragraphs \(a\)\(5\)](#) and [\(6\)](#) of this section.

(8) **Northern Gulf of Maine Total Allowable Landings (TAL).**

Beginning in fishing year 2022, the NGOM TAL is the landings available for harvest from the NGOM Management Area. The TAL shall be set by applying a fishing mortality rate of $F=0.15$ to $F=0.25$ to exploitable biomass estimated from open areas of the NGOM.

(i) **NGOM Observer Set-Aside.** The NGOM TAL shall be reduced by 1 percent to off-set monitoring costs for vessels fishing in this area. The NGOM monitoring set-aside would be added to the fishery-wide observer set-aside, as described in paragraph (g) of this section.

(ii) **NGOM Research Set-Aside.** The NGOM TAL shall be reduced by 25,000 lb (11,340 kg) to be added to the fishery-wide research set-aside, as described in § 648.56(d).

(iii) **Northern Gulf of Maine Set-Aside.** Beginning in fishing year 2022, the NGOM Set-Aside shall be the portion of the NGOM TAL that is available for harvest by the LAGC IFQ and NGOM fleets at 200 pounds per trip per day as set through specifications. After the observer and research set-asides are removed, the first 800,000 lb (362,874 kg) of the NGOM TAL shall be allocated to the NGOM Set-Aside. For all allocation above 800,000 lb (362,874 kg), 5 percent shall go to the NGOM Set-Aside, and 95 percent shall go to the NGOM Annual Projected Landings.

(iv) **NGOM Annual Projected Landings (APL).** Beginning in fishing year 2022, the NGOM APL shall be the portion of the NGOM TAL that is available for harvest for the limited access and LAGC IFQ fleets set through specifications after the observer and research set-asides are removed and the first 800,000 lb (362,874 kg) of the NGOM TAL are allocated to the NGOM Set-Aside. For all allocation above 800,000 lb (362,874 kg), 5 percent shall go to the NGOM set-aside, and 95 percent shall go to the NGOM APL. The method in which the limited access and LAGC IFQ components will access the NGOM APL will be determined in future specifications.

(9) **Scallop fishery catch limits.** The following catch limits will be effective for the 2022 and 2023 fishing years:

Table 1 to Paragraph (a)(9) - Scallop Fishery Catch Limits

| Catch limits | 2022 (mt) | 2023 (mt) ¹ |
|--------------|--------------|---------------------------|
| OFL | 38,271 | 34,941 |

| Catch limits | 2022 (mt) | 2023 (mt) ¹ |
|--|--------------|---------------------------|
| ABC/ACL (discards removed) | 25,724 | 23,200 |
| Incidental Landings | 23 | 23 |
| RSA | 578 | 578 |
| Observer Set-Aside | 257 | 232 |
| NGOM Set-Aside | 282 | 221 |
| ACL for fishery | 24,865 | 22,367 |
| Limited Access ACL | 23,498 | 21,137 |
| LAGC Total ACL | 1,368 | 1,230 |
| LAGC IFQ ACL (5 percent of ACL) | 1,243 | 1,118 |
| Limited Access with LAGC IFQ ACL (0.5 percent of ACL) | 124 | 112 |
| Limited Access ACT | 20,365 | 18,318 |
| APL (after set-asides removed) | 14,251 | (1) |
| Limited Access APL (94.5 percent of APL) | 13,467 | (1) |
| Total IFQ Annual Allocation (5.5 percent of APL) ² | 784 | 588 |
| LAGC IFQ Annual Allocation (5 percent of APL) ² | 713 | 534 |
| Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) ² | 71 | 53 |

¹ The catch limits for the 2023 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2023 that will be based on the 2022 annual scallop surveys. The 2023 default allocations for the limited access component are defined for DAS in [paragraph \(b\)\(3\)](#) of this section and for access areas in [§ 648.59\(b\)\(3\)\(i\)\(B\)](#).

² As specified in [paragraph \(a\)\(6\)\(iii\)\(B\)](#) of this section, the 2023 IFQ annual allocations are set at 75 percent of the 2022 IFQ Annual Allocations.

(b) ***DAS specifications and allocations.*** DAS specifications and allocations for limited access scallop trips in open areas are defined as follows and shall be specified through the specifications or framework adjustment processes defined in [§ 648.55](#), as follows:

(1) ***DAS allocations.*** DAS allocations shall be determined by distributing the portion of the limited access APL defined in [paragraph \(a\)\(3\)](#) of this section, as reduced by access area allocations defined in [§ 648.59](#), by applying estimates of open area landings per unit effort (LPUE) projected through the specifications or framework adjustment processes used to set annual allocations and dividing that amount among vessels in the form of DAS calculated.

(2) ***Assignment to DAS categories -***

(i) Limited access vessels shall be categorized as full-time, part-time, or occasional. Allocations for part-time and occasional scallop vessels shall be 40 percent and 8.33 percent of the full-time DAS allocations, respectively.

(ii) Subject to the vessel permit application requirements specified in [§ 648.4](#), for each fishing year, each vessel issued a limited access scallop permit shall be assigned to the DAS category (full-time, part-time, or occasional) it was assigned to in the preceding year, except as provided under the small dredge program specified in [§ 648.51\(e\)](#).

(3) **DAS allocations.** The DAS allocations for limited access scallop vessels for fishing years 2022 and 2023 are as follows:

Table 2 to Paragraph (b)(3) - Scallop Open Area DAS Allocations

| Permit category | 2022 | 2023 ¹ |
|-----------------|-------|-------------------|
| Full-Time | 24.00 | 18.00 |
| Part-Time | 9.60 | 7.20 |
| Occasional | 2.00 | 1.5 |

¹ The DAS allocations for the 2023 fishing year are subject to change through a future specifications action or framework adjustment. The 2023 DAS allocations are set at 75 percent of the 2022 allocation as a precautionary measure.

(4) Standardized default DAS allocations. Unless otherwise specified by the Council through the framework adjustment or specifications process defined in [§ 648.55](#), after the first-year allocations expire, the second-year default limited access DAS allocations, as described in [§ 648.55\(a\)](#), shall be set at 75 percent of the first-year allocation. After the second-year default allocation expires, the third year allocation would be set to zero until replaced by subsequent allocations.

(c) **Accountability measures (AM) for limited access vessels.** Unless the limited access AM exception is implemented in accordance with the provision specified in [paragraph \(c\)\(1\)](#) of this section, if the limited access sub-ACL defined in [paragraph \(a\)\(5\)](#) of this section is exceeded for the applicable fishing year, the DAS for each limited access vessel shall be reduced by an amount equal to the amount of landings in excess of the sub-ACL divided by the applicable LPUE for the fishing year in which the AM will apply as projected by the specifications or framework adjustment process specified in [§ 648.55](#), then divided by the number of scallop vessels eligible to be issued a full-time limited access scallop permit. For example, assuming a 300,000-lb (136-mt) overage of the limited access fishery's sub-ACL in Year 1, an open area LPUE of 2,500 lb (1.13 mt) per DAS in Year 2, and 313 full-time vessels, each full-time vessel's DAS for Year 2 would be reduced by 0.38 DAS (300,000 lb (136 mt)/2,500 lb (1.13 mt) per DAS = 120 lb (0.05 mt) per DAS/313 vessels = 0.38 DAS per vessel). Deductions in DAS for part-time and occasional scallop vessels shall be 40 percent and 8.33 percent of the full-time DAS deduction, respectively, as calculated pursuant to [paragraph \(b\)\(2\)](#) of this section. The AM shall take effect in the fishing year following the fishing year in which the

overage occurred. For example, landings in excess of the limited access fishery's sub-ACL in Year 1 would result in the DAS reduction AM in Year 2. If the AM takes effect, and a limited access vessel uses more open area DAS in the fishing year in which the AM is applied, the vessel shall have the DAS used in excess of the allocation after applying the AM deducted from its open area DAS allocation in the subsequent fishing year. For example, a vessel initially allocated 32 DAS in Year 1 uses all 32 DAS prior to application of the AM. If, after application of the AM, the vessel's DAS allocation is reduced to 31 DAS, the vessel's DAS in Year 2 would be reduced by 1 DAS.

(1) **Limited access AM exception.** If NMFS determines that the fishing mortality rate associated with the limited access fleet's landings in a fishing year is less than 0.39, the AM specified in [paragraph \(c\)](#) of this section shall not take effect. The fishing mortality rate of 0.39 is the fishing mortality rate that is one standard deviation below the fishing mortality rate for the scallop fishery ACL, currently estimated at 0.45.

(2) **Limited access fleet AM and exception provision timing.** The Regional Administrator shall determine whether the limited access fleet exceeded its sub-ACL, defined in [paragraph \(a\)\(5\)](#) of this section, by July of the fishing year following the year for which landings are being evaluated. On or about July 1, the Regional Administrator shall notify the New England Fishery Management Council of the determination of whether or not the sub-ACL for the limited access fleet was exceeded, and the number of landings in excess of the sub-ACL. Upon this notification, the Scallop Plan Development Team (PDT) shall evaluate the overage and determine if the fishing mortality rate associated with total landings by the limited access scallop fleet is less than 0.39. On or about September 1 of each year, the Scallop PDT shall notify the Council of its determination, and the Council, on or about September 30, shall make a recommendation, based on the Scallop PDT findings, concerning whether to invoke the limited access AM exception. If NMFS concurs with the Scallop PDT's recommendation to invoke the limited access AM exception, in accordance with the Administrative Procedure Act (APA), the limited access AM shall not be implemented. If NMFS does not concur, in accordance with the APA, the limited access AM shall be implemented as soon as possible after September 30 each year.

(d) **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\(a\)\(2\)\(i\)\(J\)](#) for the entire fishing year preceding the carry-over year, limited access vessels that have unused open area DAS on the last day of March 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. Carry-over DAS are accounted for in setting the sub-ACL for the limited access fleet, as defined in [paragraph \(a\)\(5\)\(ii\)](#) of this section. Therefore, if carry-over DAS result or contribute to an overage of the ACL, the limited access fleet AM specified in [paragraph \(c\)](#) of this section would still apply, provided the AM exception specified in [paragraph \(c\)\(1\)](#) of this section is not invoked.

(e) **Accrual of DAS.** All DAS fished shall be charged to the nearest minute. A vessel carrying an observer and authorized to be charged fewer DAS in Open Areas based on the total

available DAS set aside under [paragraph \(g\)](#) of this section shall be charged at a reduced rate as specified in [paragraph \(g\)\(1\)](#) of this section.

(f) ***DAS credits*** -

(1) ***Good Samaritan credit.*** A limited access vessel operating under the DAS program and that spends 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.

(2) ***Canceled trip DAS credit.*** A limited access vessel operating under the DAS program and that ends a fishing trip prior to setting and/or hauling fishing gear for any reason may request a cancelled trip DAS credit for the trip based on the following conditions and requirements:

(i) There is no fish onboard the vessel and no fishing operations on the vessel were initiated, including setting and/or hauling fishing gear; and

(ii) The owner or operator of the vessel fishing under a DAS program and required to use a VMS as specified under [§ 648.10\(b\)](#) makes an initial trip cancellation notification from sea, at the time the trip was canceled, or at the earliest opportunity prior to crossing the demarcation line as defined at [§ 648.10\(a\)](#). These reports are in the form of an email to NMFS Office of Law Enforcement and include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement by the operator that no fish were onboard and no fishing activity occurred; and

(iii) The owner or operator of the vessel operating under the DAS program required to use the IVR call in as specified under [§ 648.10\(h\)](#) makes an initial trip cancellation notification to NMFS by calling the IVR back at the time the trip was canceled, or at the earliest opportunity prior to returning to port. This request must include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator that no fish were onboard and no fishing activity occurred; and

(iv) The owner or operator of the vessel requesting a canceled trip DAS credit, in addition to the requirements in [paragraphs \(f\)\(2\)\(ii\)](#) and [\(iii\)](#) of this section, submits a written DAS credit request form to NMFS within 30 days of the vessel's return to port from the canceled trip. This application must include at least the following information: Date and time when the vessel canceled the fishing trip; date and time of trip departure and landing; operator name; owner/corporation name; permit number; hull identification number; vessel name; date and time notification requirements specified under [paragraphs \(f\)\(2\)\(ii\)](#) and [\(iii\)](#) of this section were made; reason for canceling the trip; and owner/operator signature and date; and

(v) The vessel trip report for the canceled trip as required under [§ 648.7\(b\)](#) is submitted along with the DAS credit request form; and

(vi) For DAS credits that are requested near the end of the fishing year as defined at [§ 648.2](#), and approved by the Regional Administrator, the credited DAS apply to the fishing year in which the canceled trip occurred. Credited DAS that remain unused at the end of the fishing year or that are not credited until the following fishing year may be carried over into the next fishing year, not to exceed the maximum number of carryover DAS as specified under [paragraph \(d\)](#) of this section.

(3) Limited access scallop vessels fishing under the DAS program and landing scallops at a port located at or south of 39° N. Lat. If landing scallops at a port located at or south of 39° N. lat., a limited access vessel participating in the scallop DAS program may end its DAS trip once shoreward of the VMS Demarcation Line at or south of 39° N. lat. by declaring out of the scallop fishery. Once declared out of the scallop fishery, the vessel may cross seaward of the VMS Demarcation Line and steam to ports at or south of 39° N. lat., to land scallops while not on a DAS, provided that the vessel complies with the following requirements:

(i) The vessel must submit a Scallop Pre-landing Notification Form, as specified at [§ 648.10\(f\)\(4\)\(iv\)](#);

(ii) The vessel's fishing gear is stowed and not available for immediate use as defined in [§ 648.2](#);

(iii) The vessel must return directly to port and offload scallops;

(iv) The vessel must land scallops at a port located at or south of 39° N. lat.; and

(v) The vessel may not possess in-shell scallops.

(g) Set-asides for observer coverage.

(1) To help defray the cost of carrying an observer, 1 percent of the ABC/ACL defined in paragraph (a)(3) of this section and 1 percent of the NGOM ABC/ACL shall be set aside to be used by vessels that are assigned to take an at-sea observer on a trip. This observer set-aside is specified through the specifications or framework adjustment process defined in [§ 648.55](#).

(2) At the start of each scallop fishing year, the observer set-aside specified in [paragraph \(g\)\(1\)](#) of this section initially shall be divided proportionally by access and open areas, based on the amount of effort allocated into each area, in order to set the compensation and coverage rates. NMFS shall monitor the observer set-aside usage and may transfer set-aside from one area to another if one area is using more or less set-aside than originally anticipated. The set-aside may be transferred from one area to another, based on NMFS in-house area-level monitoring that determines whether one area will likely have excess set-aside while another may not. The set-aside shall be considered completely harvested when the full one percent is landed, at which point there would be no more compensation for any observed scallop trip, regardless of area. NMFS shall continue to proactively adjust

compensation rates and/or observer coverage levels mid-year in order to minimize the chance that the set-aside would be harvested prior to the end of the FY. Utilization of the set-aside shall be on a first-come, first-served basis. When the set-aside for observer coverage has been utilized, vessel owners shall be notified that no additional scallop catch or DAS remain available to offset the cost of carrying observers. The obligation to carry and pay for an observer shall not be waived if set-aside is not available.

(3) ***DAS set-aside for observer coverage.*** A limited access scallop vessel carrying an observer in open areas 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 be charged 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 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. This DAS adjustment factor may also be changed during the fishing year if fishery conditions warrant such a change. The number of DAS that are deducted from each trip based on the adjustment factor shall be deducted from the observer set-aside amount in the applicable fishing year.

(h) ***Annual IFQs -***

(1) ***IFQ restriction.*** For each fishing year of the IFQ program, a vessel issued an IFQ scallop permit may only harvest and land the total amount of scallop meats allocated in accordance with this subpart. Unless otherwise specified in this part, a vessel allocated scallop IFQ may not exceed the possession limits specified in [§ 648.52](#) on any trip.

(2) ***Calculation of IFQ.*** The LAGC IFQ fleet annual allocation as defined in [paragraph \(a\)\(6\)\(iii\)](#) of this section, shall be used to determine the IFQ of each vessel issued an IFQ scallop permit. Each fishing year, the Regional Administrator shall provide the owner of a vessel issued an IFQ scallop permit issued pursuant to [§ 648.4\(a\)\(2\)\(ii\)](#) with the scallop IFQ for the vessel for the upcoming fishing year.

(i) ***IFQ.*** The IFQ for an IFQ scallop vessel shall be the vessel's contribution percentage as specified in [paragraph \(h\)\(2\)\(iii\)](#) of this section and determined using the steps specified in [paragraph \(h\)\(2\)\(ii\)](#) of this section, multiplied by the LAGC IFQ fleet annual allocation as defined in [paragraph \(a\)\(6\)\(iii\)](#) of this section.

(ii) ***Contribution factor.*** An IFQ scallop vessel's contribution factor is calculated using the best year, years active, and index factor as specified in [paragraphs \(h\)\(2\)\(ii\)\(A\)](#) through [\(C\)](#) of this section. A vessel's contribution factor shall be provided to the owner of a qualified limited access general category vessel following initial application for an IFQ scallop permit as specified in [§ 648.4\(a\)\(2\)\(ii\)\(E\)](#), consistent with confidentiality restrictions of the Magnuson-Stevens Act specified at [16 U.S.C. 1881a](#).

(A) ***Best year determination.*** An eligible IFQ scallop vessel's highest scallop landings in any scallop fishing year that the vessel was issued a general category scallop permit

between March 1, 2000, and November 1, 2004, shall be determined using NMFS dealer reports. Scallop landings in the 2004 fishing year must have occurred on or before November 1, 2004. If a dealer reported more than 400 lb (181.4 kg) of scallops landed on a trip, only 400 lb (181.4 kg) will be credited for that trip toward the best year calculation. For dealer reports that indicate clearly that the landings were bushels of in-shell scallops, a conversion of 8.33 lb (3.78 kg) of scallop meats per bushel shall be used to calculate meat-weight, up to a maximum of 400 lb (181.4 kg) per trip.

(B) **Years active.** For each eligible IFQ scallop vessel, the total number of scallop fishing years during the period March 1, 2000, through November 1, 2004, in which the vessel had a general category scallop permit and landed at least 1 lb (0.45 kg) of scallop meats, or in-shell scallops, shall be counted as active years based on NMFS dealer reports. Scallop landings in the 2004 fishing year must have occurred on or before November 1, 2004.

(C) **Index to determine contribution factor.** For each eligible IFQ scallop vessel, the best year as determined pursuant to [paragraph \(a\)\(2\)\(ii\)\(E\)\(1\)](#) of this section shall be multiplied by the appropriate index factor specified in the following table, based on years active as specified in [paragraph \(a\)\(2\)\(ii\)\(E\)\(2\)](#) of this section. The resulting contribution factor shall determine its IFQ for each fishing year based on the allocation to general category scallop vessels as specified in [paragraph \(a\)\(4\)](#) of this section and the method of calculating the IFQ provided in [paragraph \(h\)](#) of this section.

Years active Index factor

| | |
|---|-------|
| 1 | 0.75 |
| 2 | 0.875 |
| 3 | 1.0 |
| 4 | 1.125 |
| 5 | 1.25 |

(D) **Contribution factor example.** If a vessel landed 48,550 lb (22,022 kg) of scallops in its best year, and was active in the general category scallop fishery for 5 years, the vessel's contribution factor is equal to 60,687 lb (27,527 kg) (48,550 lb (22,022 kg) * 1.25).

(iii) **Contribution percentage.** A vessel's contribution percentage shall be determined by dividing its contribution factor by the sum of the contribution factors of all vessels issued an IFQ scallop permit. Continuing the example in [paragraph \(h\)\(1\)\(ii\)\(D\)](#) of this section, the sum of the contribution factors for 380 IFQ scallop vessels is estimated for the purpose of this example to be 4.18 million lb (1,896 mt). The contribution percentage of the above vessel is 1.45 percent (60,687 lb (27,527 kg)/4.18 million lb (1,896 mt) = 1.45 percent). The contribution percentage for a vessel that is issued an IFQ scallop permit and whose owner has permanently transferred all of its IFQ to another IFQ vessel, as specified in [paragraph \(h\)\(5\)\(ii\)](#) of this section, shall be equal to 0 percent.

(iv) ***Vessel IFQ Example.*** Continuing the example in [paragraphs \(h\)\(1\)\(ii\)\(D\)](#) and [\(h\)\(1\)\(iii\)](#) of this section, with an ACL allocated to IFQ scallop vessels estimated for this example to be equal to 2.5 million lb (1,134 mt), the vessel's IFQ would be 36,250 lb (16,443 kg) (1.45 percent * 2.5 million lb (1,134 mt)).

(v) ***End-of-year carry-over for IFQ.***

(A) With the exception of vessels that held a Confirmation of Permit History as described in [§ 648.4\(a\)\(2\)\(ii\)\(L\)](#) for the entire fishing year preceding the carry-over year, LAGC IFQ vessels that have unused IFQ on the last day of March of any year may carry over up to 15 percent of the vessel's original IFQ plus the total of IFQ transferred to such vessel minus the total IFQ transferred from such vessel (either temporary or permanent) IFQ into the next fishing year. For example, a vessel with a 10,000-lb (4,536-kg) IFQ and 5,000-lb (2,268-kg) of leased IFQ may carry over 2,250 lb (1,020 kg) of IFQ (*i.e.*, 15 percent of 15,000 lb (6,804 kg)) into the next fishing year if it landed 12,750 lb (5,783 kg) (*i.e.*, 85 percent of 15,000 lb (6,804 kg)) of scallops or less in the preceding fishing year. Using the same IFQ values from the example, if the vessel landed 14,000 lb (6,350 kg) of scallops, it could carry over 1,000 lb (454 kg) of scallops into the next fishing year.

(B) [Reserved]

(3) ***IFQ ownership restrictions -***

(i) ***IFQ scallop vessel IFQ cap.***

(A) Unless otherwise specified in paragraphs (h)(3)(i)(B) and (C) of this section, a vessel issued an IFQ scallop permit or confirmation of permit history shall not be issued more than 2.5 percent of the IFQ-only annual allocation to the IFQ scallop vessels as described in paragraph (a)(6) of this section.

(B) A vessel may be initially issued more than 2.5 percent of the IFQ-only annual allocation allocated to the IFQ scallop vessels as described in paragraph (a)(6) of this section, if the initial determination of its contribution factor specified in accordance with [§ 648.4\(a\)\(2\)\(ii\)\(E\)](#) and paragraph (h)(2)(ii) of this section, results in an IFQ that exceeds 2.5 percent of the IFQ-only annual allocation to the IFQ scallop vessels as described in paragraph (a)(6) of this section. A vessel that is allocated an IFQ that exceeds 2.5 percent of the IFQ-only annual allocation to the IFQ scallop vessels as described in paragraph (a)(6) of this section, in accordance with this paragraph (h)(3)(i)(B), may not receive IFQ through an IFQ transfer, as specified in paragraph (h)(5) of this section. All scallops that have been allocated as part of the original IFQ allocation or transferred to a vessel during a given fishing year shall be counted towards the vessel cap.

(C) A vessel initially issued a 2008 IFQ scallop permit or confirmation of permit history, or that was issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 2009 and thereafter, in compliance with the ownership restrictions in [paragraph \(h\)\(3\)\(i\)\(A\)](#) of this section, is eligible to renew such permit(s) and/or

confirmation(s) of permit history, regardless of whether the renewal of the permit or confirmations of permit history will result in the 2.5-percent IFQ cap restriction being exceeded.

(ii) ***IFQ ownership cap.***

(A) For any vessel acquired after June 1, 2008, a vessel owner is not eligible to be issued an IFQ scallop permit for the vessel, and/or a confirmation of permit history, and is not eligible to transfer IFQ to the vessel, if, as a result of the issuance of the permit and/or confirmation of permit history, or IFQ transfer, the vessel owner, or any other person who is a shareholder or partner of the vessel owner, will have an ownership interest in more than 5 percent of the sub-ACL allocated to the IFQ scallop vessels as described in [paragraph \(a\)\(6\)](#) of this section.

(B) Vessel owners who were initially issued a 2008 IFQ scallop permit or confirmation of permit history, or who were issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 2009 and thereafter, in compliance with the ownership restrictions in [paragraph \(h\)\(3\)\(ii\)\(A\)](#) of this section, are eligible to renew such permits(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permits or confirmations of permit history will result in the 5-percent ownership restriction being exceeded.

(C) Having an ownership interest includes, but is not limited to, persons who are shareholders in a vessel owned by a corporation, who are partners (general or limited) to a vessel owner, or who, in any way, partly own a vessel.

(iii) ***Limited access scallop vessels that have been issued an IFQ scallop permit.*** The IFQ scallop vessel IFQ cap and IFQ ownership cap specified in this [paragraph \(h\)\(3\)](#) do not apply to limited access scallop vessels that are also issued a limited access general category scallop permit because such vessels are already subject to an ownership limitation, as specified in [§ 648.4\(a\)\(2\)\(i\)\(M\)](#).

(4) ***IFQ cost recovery.*** A fee, not to exceed 3 percent of the ex-vessel value of IFQ scallops harvested, shall be collected to recover the costs associated with management, data collection, and enforcement of the IFQ program. The owner of a vessel issued an IFQ scallop permit and subject to the IFQ program specified in this [paragraph \(h\)\(4\)](#), shall be responsible for paying the fee as specified by NMFS in this [paragraph \(h\)\(4\)](#). An IFQ scallop vessel shall incur a cost recovery fee liability for every landing of IFQ scallops. The IFQ scallop permit holder shall be responsible for collecting the fee for all of its vessels' IFQ scallop landings, and shall be responsible for submitting this payment to NMFS once per year. The cost recovery fee for all landings, regardless of ownership changes throughout the fishing year, shall be the responsibility of the official owner of the vessel, as recorded in the vessel permit or confirmation of permit history file, at the time the bill is sent.

(i) ***Cost recovery fee determination.*** The ex-vessel value of scallops shall be determined as an average of the ex-vessel value, as determined by Northeast Federal dealer reports, of all

IFQ scallops landed between March 1 and September 30 of the initial year of the IFQ scallop program, and from October 1 through September 30 of each year thereafter.

(ii) ***Fee payment procedure.*** On or about October 31 of each year NMFS shall mail a cost recovery bill to each IFQ scallop permit holder for the previous cost recovery period. An IFQ scallop permit holder who has incurred a fee must pay the fee to NMFS within 60 days from the date of mailing of the recovery bill. Cost recovery payments shall be made electronically via the Federal web portal, www.pay.gov, or other internet sites as designated by the Regional Administrator. Instructions for electronic payment shall be available on both the payment website and the paper bill. Payment options shall include payment via a credit card, as specified in the cost recovery bill, or via direct automated clearing house (ACH) withdrawal from a designated checking account. Payment by check may be authorized by NMFS if it has determined that electronic payment is not possible (for example, if the geographical area of an individual(s) is affected by catastrophic conditions).

(iii) ***Payment compliance.*** An IFQ scallop permit holder that has incurred an IFQ cost recovery fee must pay the fee to NMFS within 60 days from the date of mailing. If the cost recovery payment, as determined by NMFS, is not made within 60 days from the date of mailing, NMFS may deny the renewal of the IFQ scallop permit until full payment is received. If, upon preliminary review of the accuracy and completeness of a fee payment, NMFS determines the IFQ scallop permit holder has not paid the full amount due, NMFS shall notify the IFQ scallop permit holder by letter. NMFS shall explain the discrepancy and provide the IFQ scallop permit holder 30 days to either pay the amount specified by NMFS or to provide evidence that the amount paid was correct. If the IFQ scallop permit holder submits evidence in support of his/her payment, NMFS shall determine if there is any remaining disagreement as to the appropriate IFQ fee, and prepare a Final Administrative Determination (FAD). The FAD shall set out the facts, discuss those facts within the context of the relevant agency policies and regulations, and decide as to the appropriate disposition of the matter. A FAD shall be the final agency action, and, if the FAD determines that the IFQ scallop permit holder is out of compliance, the FAD shall require payment within 30 days. If a FAD is not issued until after the start of the fishing year, the IFQ scallop permit holder may be authorized to fish temporarily by the Regional Administrator until the FAD is issued, at which point the permit holder shall have 30 days to comply with the terms of the FAD or the IFQ scallop permit shall not be issued until such terms are met. If NMFS determines that the IFQ scallop permit holder owes additional fees for the previous cost recovery period, and the IFQ scallop permit has already been renewed, NMFS shall issue a FAD, at which point the permit holder shall have 30 days to comply with the terms of the FAD or NMFS may withdraw the issuance of the IFQ scallop permit until such terms are met. If such payment is not received within 30 days of issuance of the FAD, NMFS shall refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection, and no IFQ permit held by the permit holder may be renewed until the terms of the FAD are met. If NMFS determines that the conditions of the FAD have been met, the IFQ permit holder may renew the IFQ scallop permit(s). If NMFS does not receive full payment prior to the end of the fishing year, the IFQ scallop permit shall be considered voluntarily abandoned, pursuant to [§ 648.4\(a\)\(2\)\(ii\)\(K\)](#), unless otherwise determined by the Regional Administrator.

(5) Transferring IFQ -

(i) **Temporary IFQ transfers.** (A) *IFQ-only vessels.* Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit may temporarily transfer (*e.g.*, lease) its entire IFQ allocation, or a portion of its IFQ allocation, to another IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit. Temporary IFQ transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed. IFQ can be temporarily transferred more than once (*i.e.*, re-transferred). For example, if a vessel temporarily transfers IFQ to a vessel, the transferee vessel may re-transfer any portion of that IFQ to another vessel. There is no limit on how many times IFQ can be re-transferred in a fishing year. The Regional Administrator has final approval authority for all temporary IFQ transfer requests.

(B) **Limited access vessels with LAGC IFQ.** Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of a limited access vessel with LAGC IFQ (and/or a limited access permit with LAGC IFQ in confirmation of permit history) may temporarily transfer (*e.g.*, lease) its entire IFQ allocation, or a portion of its IFQ allocation, to an IFQ-only scallop vessel that does not have a limited access permit. Temporary IFQ transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed. IFQ can be temporarily transferred more than once (*i.e.*, re-transferred). The Regional Administrator has final approval authority for all temporary IFQ transfer requests.

(ii) **Permanent IFQ transfers.**

(A) Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit may transfer IFQ permanently to or from another IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit. Any such transfer cannot be limited in duration and is permanent as to the transferee, unless the IFQ is subsequently permanently transferred to another IFQ scallop vessel. IFQ may be permanently transferred to a vessel and then be re-transferred (temporarily transferred (*i.e.*, leased) or permanently transferred) by such vessel to another vessel in the same fishing year. There is no limit on how many times IFQ can be re-transferred in a fishing year. Limited access vessels with LAGC IFQ permits are prohibited from permanently transferring or receiving IFQ.

(B) If a vessel owner permanently transfers the vessel's entire IFQ to another IFQ vessel, the LAGC IFQ scallop permit shall remain valid on the transferor vessel, unless the owner of the transferor vessel cancels the IFQ scallop permit. Such cancellation shall be considered voluntary relinquishment of the IFQ permit, and the vessel shall be ineligible for an IFQ scallop permit unless it replaces another vessel that was issued an IFQ scallop permit. The Regional Administrator has final approval authority for all IFQ transfer requests.

(iii) ***IFQ transfer restrictions.*** The owner of an IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit may transfer that vessel's IFQ to another IFQ scallop vessel, regardless of whether or not the vessel has fished under its IFQ in the same fishing year. Requests for IFQ transfers cannot be less than 100 lb (46.4 kg), unless that the transfer reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. IFQ may be temporarily or permanently transferred to a vessel and then temporarily re-transferred (*i.e.*, leased) or permanently re-transferred by such vessel to another vessel in the same fishing year. There is no restriction on how many times IFQ can be re-transferred. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2.5 percent of the allocation to IFQ-only scallop vessels. A transfer of an IFQ, whether temporary or permanent, may not result in the transferee having a total ownership of, or interest in, general category scallop allocation that exceeds 5 percent of the allocation to IFQ-only scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not permanently transfer or receive IFQ. Further, they may not temporarily receive IFQ.

(iv) ***Application for an IFQ transfer.*** The owners of vessels applying for a transfer of IFQ must submit a completed application form obtained from the Regional Administrator. The application must be signed by both parties (transferor and transferee) involved in the transfer of the IFQ, and must be submitted to the NMFS Northeast Regional Office at least 30 days before the date on which the applicants desire to have the IFQ effective on the receiving vessel. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time during the scallop fishing year, regardless of whether or not the vessel has fished under its IFQ in the same fishing year. Applications for temporary transfers received less than 45 days prior to the end of the fishing year may not be processed in time for a vessel to utilize the transferred IFQ, if approved, prior to the expiration of the fishing year.

(A) ***Application information requirements.*** An application to transfer IFQ must contain at least the following information: Transferor's name, vessel name, permit number, and official number or state registration number; transferee's name, vessel name, permit number, and official number or state registration number; total price paid for purchased IFQ; signatures of transferor and transferee; and date the form was completed. In addition, applications to transfer IFQ must indicate the amount, in pounds, of the IFQ allocation transfer. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery. If the applicants are requesting a transfer of IFQ that has already been transferred in a given fishing year, both parties must be up-to-date with all data reporting requirements (e.g., all necessary VMS catch reports, VTR, and dealer data must be submitted) in order for the application to be processed.

(B) ***Approval of IFQ transfer applications.*** Unless an application to transfer IFQ is denied according to [paragraph \(h\)\(5\)\(iii\)\(C\)](#) of this section, the Regional Administrator shall issue confirmation of application approval to both parties involved in the transfer within 30 days of receipt of an application.

(C) **Denial of transfer application.** The Regional Administrator may reject an application to transfer IFQ for any of the following reasons: The application is incomplete; the transferor or transferee does not possess a valid limited access general category permit; the transferor's or transferee's vessel or IFQ scallop permit has been sanctioned, pursuant to a final administrative decision or settlement of an enforcement proceeding; the transfer will result in the transferee's vessel having an allocation that exceeds 2.5 percent of the ACL allocated to IFQ scallop vessels; the transfer will result in the transferee having a total ownership of, or interest in, a general category scallop allocation that exceeds 5 percent of the ACL allocated to IFQ scallop vessels; or any other failure to meet the requirements of the regulations in [50 CFR part 648](#). Upon denial of an application to transfer IFQ, the Regional Administrator shall send a letter to the applicants describing the reason(s) for the rejection. The decision by the Regional Administrator is the final agency decision, and there is no opportunity to appeal the Regional Administrator's decision. An application that was denied can be resubmitted if the discrepancy(ies) that resulted in denial are resolved.

§ 648.54 State waters exemption.

No Changes.

§ 648.55 Specifications and framework adjustments to management measures.

No Changes.

§ 648.56 Scallop research.

No Changes.

§§ 648.57-648.58 [Reserved]

§ 648.59 Scallop Rotational Area Management Program and Scallop Access Area Program requirements.

(a) The Scallop Rotational Area Management Program consists of Scallop Rotational Areas, as defined in [§ 648.2](#). Guidelines for this area rotation program (*i.e.*, when to close an area and reopen it to scallop fishing) are provided in [§ 648.55\(a\)\(6\)](#). Whether a rotational area is open or closed to scallop fishing in a given year, and the appropriate level of access by limited access and LAGC IFQ vessels, are specified through the specifications or framework adjustment processes defined in [§ 648.55](#). When a rotational area is open to the scallop fishery, it is called an Access Area and scallop vessels fishing in the area are subject to the Scallop Access Area Program Requirements specified in this section. Areas not defined as Scallop Rotational Areas specified in [§ 648.60](#), Habitat Management Areas specified in [§ 648.370](#), or areas closed to

scallop fishing under other FMPs, are governed by other management measures and restrictions in this part and are referred to as Open Areas.

(1) When a Scallop Rotational Area is closed to scallop fishing, a vessel issued any scallop permit may not fish for, possess, or land scallops in or from the area unless the vessel is transiting pursuant to [paragraph \(a\)\(2\)](#) of this section. A vessel may fish for species other than scallops within the rotational closed areas, provided the vessel does not fish for, catch, or retain scallops or intend to fish for, catch, or retain scallops. When a Scallop Rotational Area is open to scallop fishing (henceforth referred to as an Access Area), a scallop vessel may not fish for, possess, or land scallops in or from the area unless it is participating in, and complies with the requirements of, the Scallop Access Area Program Requirements defined in [paragraphs \(b\)](#) through [\(g\)](#) of this section or the vessel is transiting pursuant to [paragraph \(a\)\(3\)](#) of this section.

(2) ***Transiting a Scallop Rotational Closed Area.*** No vessel possessing scallops may enter or be in the area(s) specified in this section when those areas are closed, as specified through the specifications or framework adjustment processes defined in [§ 648.55](#), unless the vessel is transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in [§ 648.2](#), or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II-East Scallop Rotational Area, as defined in [§ 648.60\(d\)](#), if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in [§ 648.2](#).

(3) ***Transiting a Scallop Rotational Access Area.*** Any sea scallop vessel that has not declared a trip into the Scallop Access Area Program may enter a Scallop Access Area, and possess scallops not caught in the Scallop Access Areas, for transiting purposes only, provided the vessel's fishing gear is stowed and not available for immediate use as defined in [§ 648.2](#). Any scallop vessel that has declared a trip into the Scallop Area Access Program may not enter or be in another Scallop Access Area on the same trip except such vessel may transit another Scallop Access Area provided its gear is stowed and not available for immediate use as defined in [§ 648.2](#), or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Scallop Rotational Area, as defined in [§ 648.60\(b\)\(1\)](#), if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in [§ 648.2](#).

(b) A limited access scallop vessel may only fish in the Scallop Rotational Areas, defined in [§ 648.60](#), when the areas are open (*i.e.*, Access Areas), as specified through the specifications or framework adjustment processes defined in [§ 648.55](#), subject to any additional restrictions specified in [§ 648.60](#), provided the vessel complies with the requirements specified in [paragraphs \(b\)\(1\)](#) through [\(b\)\(9\)](#), and [\(c\)](#) through [\(f\)](#) of this section. An LAGC scallop vessel may fish in the Scallop Rotational Areas, defined in [§ 648.60](#), when the areas are open (*i.e.*, Access Areas), as specified through the specifications or framework adjustment processes defined in [§ 648.55](#), subject to any additional requirements specified in [§ 648.60](#), provided the vessel complies with the requirements specified in [paragraph \(g\)](#) of this section.

(1) **VMS.** Each vessel participating in the Scallop Access Area Program must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10, and paragraphs (b)(9) and (f) of this section.

(2) Vessels participating in the Scallop Access Area Program must comply with the trip declaration requirements specified in § 648.10(f) and vessel notification requirements specified in § 648.11(k) for observer deployment.

(3) **Scallop Rotational Access Area Allocations -**

(i) **Limited access vessel allocations and possession limits.**

(A) Except as provided in paragraph (c) of this section, the specifications or framework adjustment processes defined in § 648.55 determine the total amount of scallops, in weight, that a limited access scallop vessel may harvest from Scallop Access Areas during applicable seasons specified in § 648.60. A vessel may not possess or land in excess of its scallop allocation assigned to specific Scallop Access Areas, unless authorized by the Regional Administrator, as specified in paragraph (d) of this section, unless the vessel owner has exchanged an area-specific scallop allocation with another vessel owner for additional scallop allocation in that area, as specified in paragraph (b)(3)(ii) of this section. A vessel may harvest its scallop allocation on any number of trips in a given fishing year, provided that no single trip exceeds the possession limits specified in the specifications or framework adjustment processes defined in § 648.55, unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section. No vessel declared into the Scallop Access Areas may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Scallop Rotational Area boundaries defined in § 648.60.

(B) The following access area allocations and possession limits for limited access vessels shall be effective for the 2022 and 2023 fishing years:

(1) **Full-time vessels.**

(i) For a full-time limited access vessel, the possession limit and allocations are:

Table 1 to Paragraph (b)(3)(i)(B)(1)(i)

| Rotational access area | Scallop possession limit | 2022 Scallop allocation | 2023 Scallop allocation (default) |
|--------------------------------|-------------------------------|-------------------------|-----------------------------------|
| Closed Area II | 15,000 lb (6,804 kg) per trip | 30,000 lb (13,608 kg) | 15,000 lb (6,804 kg). |
| Nantucket Lightship-South-Deep | 15,000 lb (6,804 kg) per trip | 15,000 lb (6,804 kg) | 0 lb (0 kg). |

| Rotational access area | Scallop possession limit | 2022 Scallop allocation | 2023 Scallop allocation (default) |
|------------------------|--------------------------|-------------------------|-----------------------------------|
| Total | | 45,000 lb (20,412 kg) | 15,000 lb (6,804 kg). |

(ii) [Reserved]

(2) Part-time vessels.

(i) For a part-time limited access vessel, the possession limit and allocations are as follows:

Table 2 to Paragraph (b)(3)(i)(B)(2)(i)

| Rotational access area | Scallop possession limit | 2022 Scallop allocation | 2023 Scallop allocation (default) |
|--------------------------------|------------------------------|-------------------------|-----------------------------------|
| Closed Area II | 9,000 lb (4,082 kg) per trip | 9,000 lb (4,082 kg) | 9,000 lb (4,082 kg) |
| Nantucket Lightship-South-Deep | 9,000 lb (4,082 kg) per trip | 9,000 lb (4,082 kg) | 0 lb (0 kg) |
| Total | | 18,000 lb (8,165 kg) | 9,000 lb (4,082 kg) |

(ii) [Reserved]

(3) Occasional limited access vessels.

(i) For the 2022 fishing year only, an occasional limited access vessel is allocated 3,750 lb (1,701 kg) of scallops with a trip possession limit at 3,750 lb of scallops per trip (1,701 kg per trip). Occasional limited access vessels may harvest the 3,750 lb (1,701 kg) allocation from either the Nantucket Lightship-South-Deep or Closed Area II Access Area.

(ii) For the 2023 fishing year, occasional limited access vessels are allocated 1,250 lb (567 kg) of scallops in Closed Area II Access Area with a trip possession limit of 1,250 lb of scallops per trip (567 kg per trip).

(ii) Limited access vessels' one-for-one area access allocation exchanges -

(A) Full-time limited access vessels.

(1) The owner of a vessel issued a full-time limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another vessel's

unharvested scallop pounds allocated into another scallop access area. These exchanges may be made only in 7,500-lb (3,402-kg) increments. For example, a full-time vessel may exchange 7,500 lb (3,402 kg) from one access area for 7,500 lb (3,402 kg) allocated to another full-time vessel for another access area. Further, a full-time vessel may exchange 15,000 lb (6,804 kg) from one access area for 15,000 lb (6,804 kg) allocated to another full-time vessel for another access area. In addition, these exchanges may be made only between vessels with the same permit category: A full-time vessel may not exchange allocations with a part-time vessel, and vice versa. Vessel owners must request these exchanges by submitting a completed Access Area Allocation Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Access Area Allocation Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has enough unharvested allocation remaining in a given access area to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the allocation exchange has been made effective. A vessel owner may exchange equal allocations in 7,500-lb (3,402-kg) increments between two or more vessels of the same permit category under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange allocations between another vessel and the vessel for which a Confirmation of Permit History has been issued.

(2) [Reserved]

(B) ***Part-time limited access vessels.*** The owner of a vessel issued a part-time limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another part-time vessel's unharvested scallop pounds allocated into another scallop access area. These exchanges may be made only for the amount of the current trip possession limit, as specified in [paragraph \(b\)\(3\)\(i\)\(B\)\(2\)](#) of this section. For example, if the access area trip possession limit for part-time limited access vessels is 9,000 lb (4,082 kg), a part-time limited access vessel may exchange no more or less than 9,000 lb (4,082 kg), from one access area for no more or less than 9,000 lb (4,082 kg) allocated to another vessel for another access area. In addition, these exchanges may be made only between vessels with the same permit category: A full-time limited access vessel may not exchange allocations with a part-time vessel, and vice versa. Vessel owners must request these exchanges by submitting a completed Access Area Allocation Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Access Area Allocation Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has enough unharvested allocation remaining in a given access area to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the allocation exchange has been made effective. A part-time limited access vessel owner may exchange equal allocations up to the current possession limit between two or more vessels under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange

allocations between another vessel and the vessel for which a Confirmation of Permit History has been issued.

(4) **Area fished.** While on a Scallop Access Area trip, a vessel may not fish for, possess, or land scallops in or from areas outside the Scallop Access Area in which the vessel operator has declared the vessel will fish during that trip, and may not enter or exit the specific declared Scallop Access Area more than once per trip unless there is a compelling safety reason. A vessel on a Scallop Access Area trip may not enter or be in another Scallop Access Area on the same trip except such vessel may transit another Scallop Access Area as provided for under [paragraph \(a\)\(3\)](#) of this section.

(5) **NE multispecies possession limits -**

(i) **Maximum possession limit of NE Multispecies combined.** A vessel owner or operator of a limited access scallop vessel issued a valid NE multispecies permit as specified in [§ 648.4\(a\)\(1\)](#), that has declared into a Scallop Access Area and fishes within the open Scallop Rotational Area boundaries defined in [§ 648.60](#), may fish for, possess, and land, per trip, up to a maximum of 1,000 lb (453.6 kg) of all NE multispecies combined, excluding yellowtail flounder, subject to the minimum commercial fish size restrictions specified in [§ 648.83\(a\)\(1\)](#), and the additional restrictions for Atlantic cod, haddock, and yellowtail flounder specified in [paragraphs \(b\)\(5\)\(ii\)](#) through [\(iv\)](#) of this section.

(ii) **Atlantic cod.** Such vessel may bring onboard and possess only up to 100 lb (45.4 kg) of Atlantic cod per trip, provided such fish is intended for personal use only and cannot be not sold, traded, or bartered.

(iii) **Haddock.** Such vessel may possess and land haddock up to the overall possession limit of all NE multispecies combined, as specified in [paragraph \(b\)\(5\)\(ii\)](#) of this section, except that such vessel are prohibited from possessing or landing haddock from January 1 through June 30.

(iv) **Yellowtail flounder.** Such vessel is prohibited from fishing for, possessing, or landing yellowtail flounder.

(6) **Gear restrictions.**

(i) The minimum ring size for dredge gear used by a vessel fishing on a Scallop Access Area trip is 4 inches (10.2 cm) in diameter. Dredge or trawl gear used by a vessel fishing on a Scallop Access Area trip must be in accordance with the restrictions specified in [§ 648.51\(a\)](#) and [\(b\)](#).

(ii) Vessels fishing in the Closed Area I, Closed Area II, Closed Area II Extension, and Nantucket Lightship Scallop Rotational Areas defined in [§ 648.60](#) are prohibited from fishing with trawl gear as specified in [§ 648.51\(f\)\(1\)](#).

(7) **Transiting.** While outside a Sea Scallop Access Area (*i.e.*, in open areas) on a Scallop Access Area trip, the vessel must have all fishing gear stowed and not available for immediate use as defined in [§ 648.2](#), unless there is a compelling safety reason to be transiting open areas without gear stowed. Regulations pertaining to transiting Scallop Rotational Areas are provided for under [paragraph \(a\)\(3\)](#) of this section.

(8) **Off-loading restrictions.** The vessel may not offload its catch from a Scallop Access Area trip at more than one location per trip.

(9) **Reporting.** The owner or operator must submit scallop catch reports through the VMS, as specified in [§ 648.10\(f\)\(4\)\(i\)](#), and limited access scallop access area pre-landing notification forms, as specified in [§ 648.10\(f\)\(4\)\(iii\)](#).

(c) **Scallop Access Area scallop allocation carryover.** With the exception of vessels that held a Confirmation of Permit History as described in [§ 648.4\(a\)\(2\)\(i\)\(J\)](#) for the entire fishing year preceding the carry-over year, a limited access scallop vessel may fish any unharvested Scallop Access Area allocation from a given fishing year within the first 60 days of the subsequent fishing year if the Scallop Access Area is open, unless otherwise specified in this section. However, the vessel may not exceed the Scallop Rotational Area trip possession limit. For example, if a full-time vessel has 7,000 lb (3,175 kg) remaining in the Closed Area II Access Area at the end of fishing year 2021, that vessel may harvest those 7,000 lb (3,175 kg) during the first 60 days that the Closed Area II Access Area is open in fishing year 2022 (April 1, 2022 through May 30, 2023).

(d) **Possession limit to defray the cost of observers.** The Regional Administrator may increase the sea scallop possession limit through the specifications or framework adjustment processes defined in [§ 648.55](#) to defray costs of at-sea observers deployed on area access trips subject to the limits specified [§ 648.53\(g\)](#). An owner of a scallop vessel shall be notified of the increase in the possession limit through a permit holder letter issued by the Regional Administrator. If the observer set-aside is fully utilized prior to the end of the fishing year, the Regional Administrator shall notify owners of scallop vessels that, effective on a specified date, the increase in the possession limit is no longer available to offset the cost of observers. Unless otherwise notified by the Regional Administrator, vessel owners shall be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit. If a vessel does not land its additional allowance on the trip while carrying an observer, the additional allowance will be added to the vessel's IFQ allocation or the vessel's allocation for the Scallop Rotational Area that was fished. The vessel may land the remainder of its allowance on a subsequent trip. However, the vessel may not exceed the IFQ or Scallop Rotational Area trip possession limit, as described in [§ 648.52\(a\)](#) or [§ 648.59\(b\)](#), respectively, unless it is actively carrying an observer.

(e) **Sea Scallop Research Set-Aside Harvest in Scallop Access Areas.** Unless otherwise specified, RSA may be harvested in any access area that is open in a given fishing year, as specified through a specifications action or framework adjustment and pursuant to [§ 648.56](#). The amount of scallops that can be harvested in each access area by vessels participating in

approved RSA projects shall be determined through the RSA application review and approval process. The access areas open for RSA harvest for fishing years 2022 and 2023 are:

(1) 2022: Nantucket Lightship-South-Deep, Closed Area I, and Closed Area II Scallop Rotational Areas.

(i) For fishing year 2022, vessels may only harvest RSA compensation from Closed Area II from June 1, 2022 through August 14, 2022.

(ii) [Reserved]

(2) 2023: No access areas.

(f) **VMS polling.** For the duration of the Sea Scallop Area Access Program, as defined in this section, all sea scallop vessels equipped with a VMS unit shall be polled at a minimum of twice per hour, regardless of whether the vessel is enrolled in the Sea Scallop Area Access Program. Vessel owners shall be responsible for paying the costs of polling twice per hour.

(g) **Limited Access General Category vessels.**

(1) An LAGC scallop vessel may only fish in the scallop rotational areas specified in [§ 648.60](#) or in [paragraph \(g\)\(3\)\(iv\)](#) of this section, subject to any additional restrictions specified in [§ 648.60](#), subject to the possession limit and access area schedule specified in the specifications or framework adjustment processes defined in [§ 648.55](#), provided the vessel complies with the requirements specified in [paragraphs \(b\)\(1\), \(2\), and \(6\)](#) through [\(9\), \(d\), \(e\), \(f\), and \(g\)](#) of this section. A vessel issued both a NE multispecies permit and an LAGC scallop permit may fish in an approved SAP under [§ 648.85](#) and under multispecies DAS in the Closed Area I, Closed Area II, Closed Area II-East, and Nantucket Lightship-South-Deep Scallop Rotational Areas specified in [§ 648.60](#), when open, provided the vessel complies with the requirements specified in [§ 648.59](#) and this [paragraph \(g\)](#), but may not fish for, possess, or land scallops on such trips.

(2) **Limited Access General Category Gear restrictions.** An LAGC IFQ scallop vessel authorized to fish in the Scallop Rotational Areas specified in [§ 648.60](#) that lay east of 72°30' W. lat. must fish with dredge gear only. The combined dredge width in use by, or in possession on board of, an LAGC scallop vessel fishing in these areas may not exceed 10.5 ft (3.2 m). The combined dredge width in use by, or in possession on board of, an LAGC scallop vessel fishing in the remaining Scallop Rotational Areas defined in [§ 648.60](#) may not exceed 31 ft (9.4 m). Dredge width is measured at the widest point in the bail of the dredge.

(3) **LAGC IFQ Access Area trips.**

(i) An LAGC scallop vessel authorized to fish in the Scallop Rotational Areas specified in [§ 648.60](#) or in [paragraph \(g\)\(3\)\(iv\)](#) of this section may land scallops, subject to the possession limit specified in [§ 648.52\(a\)\(2\)](#), unless the Regional Administrator has issued a notice that the number of LAGC IFQ access area trips have been or are projected to be

taken. All LAGC IFQ access area trips must be taken in the fishing year that they are allocated (*i.e.*, there are no carryover trips). The total number of LAGC IFQ trips in an Access Area is specified in the specifications or framework adjustment processes defined in [§ 648.55](#).

(ii) Scallops landed by each LAGC IFQ vessel on an access area trip shall count against the vessel's IFQ.

(iii) Upon a determination from the Regional Administrator that the total number of LAGC IFQ trips in a specified Access Area have been or are projected to be taken, the Regional Administrator shall publish notification of this determination in the Federal Register, in accordance with the Administrative Procedure Act. Once this determination has been made, an LAGC IFQ scallop vessel may not fish for, possess, or land scallops in or from the specified Access Area after the effective date of the notification published in the Federal Register.

(iv) **Allocation of Scallop Access Area Trips.** Unless otherwise specified by the Council through the framework adjustment or specifications process defined in [§ 648.55](#), the LAGC IFQ access area trip allocations, specified in [paragraph \(v\)](#) of this section, shall be set at 5.5 percent of the total expected access area harvest for each year.

(v) **LAGC IFQ access area allocations.** The following LAGC IFQ access area trip allocations will be effective for the 2022 and 2023 fishing years:

Table 3 to Paragraph (g)(3)(v)

| Scallop access area | 2022 | 2023 ¹ |
|--------------------------------|-------|-------------------|
| Closed Area I | 714 | 357 |
| Nantucket Lightship-South-Deep | 357 | 0 |
| Total | 1,071 | 357 |

¹ The LAGC IFQ access area trip allocations for the 2023 fishing year are subject to change through a future specifications action or framework adjustment.

(4) **Possession limits -**

(i) **Scallops.**

(A) A vessel issued a NE multispecies permit and a general category scallop permit that is fishing in an approved SAP under [§ 648.85](#) under multispecies DAS, and that has not declared into the Scallop Access Area Program, is prohibited from possessing scallops.

(B) An LAGC scallop vessel authorized to fish in the Scallop Rotational Areas specified in [§ 648.60](#) may possess scallops up to the possession limit specified in [§ 648.52\(a\)](#), unless otherwise authorized pursuant to [paragraph \(d\)](#) of this section.

(ii) **Other species.** Unless issued an LAGC IFQ scallop permit and fishing under an approved NE multispecies SAP under NE multispecies DAS, an LAGC IFQ vessel fishing in the Closed Area I, Closed Area II, Closed Area II Extension, and Nantucket Lightship Rotational Areas specified in [§ 648.60](#), and the Nantucket Lightship North Scallop Access Area specified in [paragraph \(g\)\(3\)\(iv\)](#) of this section is prohibited from possessing any species of fish other than scallops and monkfish, as specified in [§ 648.94\(c\)\(8\)\(i\)](#). Such a vessel may fish in an approved SAP under [§ 648.85](#) and under multispecies DAS in the scallop access area, provided that it has not declared into the Scallop Access Area Program. Such a vessel is prohibited from fishing for, possessing, or landing scallops.

§ 648.60 Sea Scallop Rotational Areas.

(a) **New York Bight Scallop Rotational Area.** The New York Bight Scallop Rotational 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):

Table 1 to Paragraph (a)

| Point | N latitude | W longitude |
|-------|------------|-------------|
| NYB1 | 40°00' | 73°20' |
| NYB2 | 40°00' | 72°30' |
| NYB3 | 39°20' | 72°30' |
| NYB4 | 39°20' | 73°20' |
| NYB1 | 40°00' | 73°20' |

(b) **Closed Area II Scallop Rotational Area -**

(1) **Closed Area II Scallop Rotational Area boundaries.** The Closed Area II Scallop Rotational 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):

Table 2 to Paragraph (b)(1)

| Point | N latitude | W longitude | Note |
|-------|------------|------------------|------------------|
| CAII1 | 41°11' | 67°20' | |
| CAII2 | 41°11' | 66°41' | |
| CAII3 | 41°0' | 66°41' | |
| CAII4 | 41°0' | (¹) | (²) |

| Point | N latitude | W longitude | Note |
|-------|------------|------------------|------------------|
| CAII5 | 40°40' | (³) | (²) |
| CAII6 | 40°40' | 67°20' | |
| CAII1 | 41°11' | 67°20' | |

¹ The intersection of 41°0' N lat. and the U.S.-Canada Maritime Boundary, approximately 41°0' N lat. and 66°09.33' W long.

² From Point CAIISWE 4 connected to Point CAIISWE5 along the U.S.-Canada Maritime Boundary.

³ The intersection of 40°40' N lat. and the U.S.-Canada Maritime Boundary, approximately 40°40' N lat. and 65°52.61' W long.

(2) *Season.*

(i) A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Closed Area II Scallop Rotational Area, defined in [paragraph \(b\)\(1\)](#) of this section, during the period of August 15 through November 15 of each year the Closed Area II Access Area is open to scallop vessels, unless transiting pursuant to [§ 648.59\(a\)](#).

(ii) [Reserved]

(c) ***Closed Area I Scallop Rotational Area.*** The Closed Area I Scallop Rotational 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):

Table 3 to Paragraph (c)

| Point | N latitude | W longitude |
|-------|------------|-------------|
| CAIA1 | 41°30' | 68°30' |
| CAIA2 | 40°58' | 68°30' |
| CAIA3 | 40°54.95' | 68°53.37' |
| CAIA4 | 41°30' | 69°23' |
| CAIA1 | 41°30' | 68°30' |

(d) ***Closed Area II-East Scallop Rotational Area.*** The Closed Area II-East Scallop Rotational Area is defined by straight lines, except where noted, connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Table 4 to Paragraph (d)

| Point | N latitude | W longitude | Note |
|--------|------------|------------------|------------------|
| CAIIE1 | 41°30' | 67°20' | |
| CAIIE2 | 41°30' | (¹) | (²) |
| CAIIE3 | 41°00' | (³) | (²) |
| CAIIE4 | 41°00' | 66°41' | |
| CAIIE5 | 41°11' | 66°41' | |
| CAIIE6 | 41°11' | 67°20' | |
| CAIIE1 | 41°30' | 67°20' | |

¹ The intersection of 41°30' N lat. and the U.S.-Canada Maritime Boundary, approximately 41°30' N lat., 66°34.73' W long.

² From Point CAIIE2 connected to Point CAIIE3 along the U.S.-Canada Maritime Boundary.

³ The intersection of 41°00' N lat. and the U.S.-Canada Maritime Boundary, approximately 41°00' N lat. and 66°09.33' W long.

(e) ***Nantucket Lightship-South-Deep Scallop Rotational Area.*** The Nantucket Lightship South-Deep Rotational 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):

Table 5 to Paragraph (e)

| Point | N latitude | W longitude |
|--------|------------|-------------|
| NLSSD1 | 40°22' | 69°30' |
| NLSSD2 | 40°15' | 69°30' |
| NLSSD3 | 40°15' | 69°00' |
| NLSSD4 | 40°28' | 69°00' |
| NLSSD5 | 40°28' | 69°17' |
| NLSSD1 | 40°22' | 69°30' |

(f) [Reserved]

(g) ***Nantucket Lightship-North Scallop Rotational Area.*** The Nantucket Lightship North Scallop Rotational 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):

Table 7 to Paragraph (g)

| Point | N latitude | W longitude |
|-------|------------|-------------|
| NLSN1 | 40°50' | 69°30' |
| NLSN2 | 40°50' | 69°00' |
| NLSN3 | 40°28' | 69°00' |
| NLSN4 | 40°28' | 69°30' |
| NLSN1 | 40°50' | 69°30' |

(h) *Nantucket Lightship-Triangle Scallop Rotational Area.* The Nantucket Lightship Triangle Scallop Rotational 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):

Table 8 to Paragraph (h)

| Point | N latitude | W longitude |
|-------|------------|-------------|
| NLST1 | 40°28' | 69°30' |
| NLST2 | 40°28' | 69°17' |
| NLST3 | 40°22' | 69°30' |
| NLST1 | 40°28' | 69°30' |

(i) *Nantucket Lightship-West Scallop Rotational Area.* The Nantucket Lightship-West Scallop Rotational 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):

Table 9 to Paragraph (i)

| Point | N latitude | W longitude |
|-------|------------|-------------|
| NLSW1 | 40° 43.44' | 70° 20' |
| NLSW2 | 40° 43.44' | 70° 00' |
| NLSW3 | 40° 43.44' | 69° 30' |
| NLSW4 | 40° 20' | 69° 30' |
| NLSW5 | 40° 20' | 70° 00' |
| NLSW6 | 40° 26.63' | 70° 20' |
| NLSW1 | 40° 43.44' | 70° 20' |

§ 648.61 [Reserved]

§ 648.62 Northern Gulf of Maine (NGOM) Management Program.

(a) The NGOM scallop management area is the area north of 42°20' N lat. and within the boundaries of the Gulf of Maine Scallop Dredge Exemption Area as specified in [§ 648.80\(h\)\(3\)\(i\)](#). To fish for or possess scallops in the NGOM scallop management area, a vessel must have been issued a scallop permit as specified in [§ 648.4\(a\)\(2\)](#).

(1) If a vessel has been issued a NGOM scallop permit, the vessel is restricted to fishing for or possessing scallops only in the NGOM scallop management area.

(2) Scallop landings by vessels issued NGOM permits shall be deducted from the NGOM Set-Aside, as defined in § 648.53(a)(8)(iii), and specified in paragraph (b)(1) of this section, when vessels fished all or part of a trip in the Federal waters portion of the NGOM. If a vessel with a NGOM scallop permit fishes exclusively in state waters within the NGOM, scallop landings from those trips will not be deducted from the NGOM Set-Aside.

(3) Scallop landings by all vessels issued LAGC IFQ scallop permits and fishing in the NGOM scallop management area against the NGOM Set-Aside, as defined in § 648.53(a)(8)(iii), shall be deducted from NGOM Set-Aside specified in paragraph (b)(1) in this section. Scallop landings by LAGC IFQ scallop vessels fishing in the NGOM scallop management area shall be deducted from their respective scallop IFQs. Landings by vessels with incidental permits shall not be deducted from the NGOM total allowable catch specified in [paragraph \(b\)](#) of this section.

(4) [Reserved]

(5) Scallop landings by all vessels issued scallop permits and fishing in the NGOM under the scallop RSA program (as specified in [§ 648.56](#)) shall be deducted from the overall RSA allocation.

(b) **NGOM Scallop Fishery Landings Limits.** (1) The following landings limits will be effective for the NGOM for the 2022 and 2023 fishing years.

Table 1 to Paragraph (b)(1)

| Landings Limits | 2022 | 2023 ⁽¹⁾ |
|----------------------------------|-------------------------|-------------------------|
| NGOM TAL | 661,387 lb (300,000 kg) | 504,384 (228,785 kg) |
| 1 percent NGOM ABC for Observers | 15,080 lb (6,840 kg) | 13,404 (6,080 kg) |
| RSA Contribution | 25,000 lb (11,340 kg) | 25,000 lb (11,340 kg) |
| NGOM Set-Aside | 621,307 lb (281,820 kg) | 465,980 lb (211,365 kg) |
| NGOM APL | 0 lb (0 kg) | - |

¹ The landings limits for the 2023 fishing year are subject to change through a future specifications action or framework adjustment.

(2) Unless a vessel has fished for scallops outside of the NGOM scallop management area and is transiting the NGOM scallop management area with all fishing gear stowed and not available for immediate use as defined in [§ 648.2](#), no vessel issued an LAGC scallop permit pursuant to [§ 648.4\(a\)\(2\)](#) may possess, retain, or land scallops in the NGOM scallop management area once the Regional Administrator has provided notification in the Federal Register that the NGOM Set-Aside in accordance with [paragraph \(b\)\(1\)](#) of this section has been reached, unless the vessel is participating in the scallop RSA program as specified in [§ 648.56](#) and has been allocated NGOM RSA pounds. Once the NGOM Set-Aside is reached, a vessel issued a NGOM permit may no longer declare a state-only NGOM scallop trip and fish for scallops exclusively in state waters within the NGOM, unless participating in the state waters exemption program as specified in [§ 648.54](#). A vessel that has not been issued a Federal scallop permit that fishes exclusively in state waters is not subject to the closure of the NGOM scallop management area.

(3) If the NGOM Set-Aside is exceeded, the amount of NGOM scallop landings in excess of the NGOM Set-Aside specified in [paragraph \(b\)\(1\)](#) of this section shall be deducted from the NGOM Set-Aside for the subsequent fishing year, or, as soon as practicable, once scallop landings data for the NGOM management area is available.

(c) **VMS requirements.** Except scallop vessels issued a Federal scallop permit pursuant to [§ 648.4\(a\)\(2\)\(i\)](#) that have declared a NGOM trip under the scallop RSA program, a vessel issued a scallop permit pursuant to [§ 648.4\(a\)\(2\)](#) that intends to fish for scallops in the NGOM scallop management area or fishes for, possesses, or lands scallops in or from the NGOM scallop management area, must declare a NGOM scallop management area trip and report scallop catch through the vessel's VMS unit, as required in [§ 648.10](#). If the vessel has a NGOM or IFQ permit, the vessel must declare either a Federal NGOM trip or a state-waters NGOM trip. If a vessel intends to fish any part of a NGOM trip in Federal NGOM waters, it may not declare into the state water NGOM fishery.

(d) **Gear restrictions.** Except scallop vessels issued a limited access scallop permit pursuant to [§ 648.4\(a\)\(2\)\(i\)](#) that have properly declared a NGOM trip under the scallop RSA program, the combined dredge width in use by, or in possession on board, LAGC scallop vessels fishing in the NGOM scallop management area may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

§ 648.63 General category Sectors and harvesting cooperatives.

No changes.

§ 648.64 Flounder Stock sub-ACLs and AMs for the scallop fishery.

No changes.



Mr. Thomas A. Nies
Executive Director
New England Fishery Management Council
50 Water St., Mill 2
Newburyport, MA 01950

January 4, 2021

Dear Mr. Nies,

The Scallop Plan Development Team (PDT) is scheduled to meet on January 18, 2022, and the agenda includes, “Scoping for Limited Access leasing: review a draft scoping document and discuss the process that the Council plans to use to gather public input on this topic”. The Scallopers Campaign looks forward to working with Council staff and the PDT to provide you with any information we have gathered over the past three years on the leasing issue.

Based on the Council’s approved 2022 scallop priorities, we understand the Council’s scoping process is intended to assess the need for a leasing program and what a leasing program should consider.

With respect to the first question, over the course of the past year, the [economic](#), safety, and [environmental benefits](#) of leasing have become increasingly clear to those who manage the fishery. Additionally, for over three years we have worked with industry to demonstrate the need for the flexibility a leasing program can provide. This was recently demonstrated by public letters of support for a leasing option signed by nearly 70 percent of the limited access scallop vessel fleet, with wide geographic representation and across all types of operations. We believe a robust scoping process will further demonstrate this broad support for a LA leasing program from small to large operators and across a wide geographic distribution.

Regarding the second question, over the last few years the Campaign has identified and articulated shortcomings of the current FMP and its lack of operational flexibility. We’ve also developed principles and objectives to address those shortcomings. We hope that these basic principles will inform the development of a leasing program.

Proposed Principles for a Voluntary Leasing Program:

- Promote flexibility and fairness for the benefit of the sea scallop fleet;
- Improve the economic performance and resiliency of the fishery;
- Improve crew safety in the scallop fishery;
- Ensure conservation neutrality;
- Maintain the individual identity of each LA scallop permit;
- Include a commitment and measures to ensure “No Harm” to non-participating scallop vessels;
- Recognize and address the diversity and characteristics of the LA scallop fleet, including multi-fishery vessels;

- Include a commitment and measures (e.g. sideboards) to protect other fisheries from negative impacts of any approved program;
- Reflect and include the existing caps on ownership and control; and
- Limit the amount of leasing to a maximum of one additional full allocation per vessel, so that no vessel may fish more than two allocations.

Finally, we note that in the A21 scoping process there were nine in-person meetings – from Rockland, ME to Hampton, VA – and one virtual meeting. We ask that you organize a similar number of opportunities for the LA fleet to participate and that you include North Carolina, since a number of LA vessels operate from the state. We understand the uncertainties resulting from the pandemic and look forward to working with you to maximize stakeholder input and participation.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey R. Pike". The signature is fluid and cursive, with the first name "Jeffrey" being the most prominent.

Jeffrey R. Pike
Scallopers Campaign



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
Eric Reid, *Chair* | Thomas A. Nies, *Executive Director*

December 22, 2021

Mr. Michael Pentony
Regional Administrator
Greater Atlantic Regional Fisheries Office
National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 01930

Dear Mike:

Today, my staff electronically sent a decision draft of Framework 34 to the Scallop Fishery Management Plan (FMP) to your staff in the Sustainable Fisheries Divisions at the Greater Atlantic Regional Fisheries Office. We hope that the decision draft enclosed with this letter will enable you to complete and publish the proposed rule in a more expedited manner.

The Council took final action on Framework 34 on December 9, 2021. Since that meeting our staff has updated the document to include the information you requested for this expedited review. Specifically, the draft NEPA document the Council used to make final recommendations has been updated to include identification and rationale for the Council preferred alternatives, and an initial regulatory flexibility analysis has been drafted for Executive Order 12866 (Regulatory Impact Review).

In the coming weeks our staff will continue to update the Environmental Assessment for Framework 34 to the Scallop FMP for the pre-submission and formal submission process. The Council website will be updated with these documents as they are available. Please let me know if any questions come up.

Sincerely,

A handwritten signature in cursive script that reads "Thomas A. Nies".

Thomas A. Nies
Executive Director

MARKEY & WALSH

ATTORNEYS AT LAW

JOHN A. MARKEY**
TIMOTHY P. WALSH

Admitted in RI* CT* FL*

OF COUNSEL
HON. RICHARD T. MOSES
HON. JOHN A. MARKEY
WALTER SMITH
ROGER STANFORD
IRENE B. SCHALL*

December 8, 2021

Chairman Eric Reid
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950

Dear Mr. Reid and Members of the Council,

This office represents a number of independent owners of a commercial scallopers and a number of related shore side businesses who are dependent upon the long-term viability of the commercial limited access (LA) sea scallop fishery. On behalf of these individuals and corporations, I respectfully ask that the New England Fishery Management Council respond to the recommendations from the Scallop Committee regarding Fishing Year (FY) 2022 priorities in two particular ways so that the priorities are properly focused on the interests of the entire scallop industry and the long-term health of the fishery – rather than the business plans of the wealthy few.

First, we respectfully ask that you re-order the priorities for FY 2022 to list the following four items as the top four priorities for the scallop fishery: (i) Framework 34 Specifications; (ii) Evaluation of Rotational Management; (ii) Adjustment of GB Yellowtail Restrictions; and (iv) Access to the Northern Edge. [see attached: Memorandum of Proposed FY 2022 Priorities]

Second, to the extent that the issue of leasing is to be explored during FY 2022, we ask that you proceed with the scheduling *listening sessions* on the topic, rather than proceeding with formal *scoping sessions* for a leasing program within the scallop fishery.

Chairman Eric Reid

December 8, 2021

Page Two

As for the first request, the attached Memorandum proposes four priorities which set forth the concerns of all permit owners and all shore side businesses associated with the scallop fishery. In contrast, the issue of leasing which is being lobbied for by a vocal group of larger fleet owners seeks to promote their business plans and to further bolster their well-positioned businesses. The four priorities described on the Memorandum and that my clients propose as the top four priorities focus on the health of the entire fishery and they will promote the interests of both the fishery's long-term viability and the business interests of the large and small permit holders along with the related shore side support businesses.

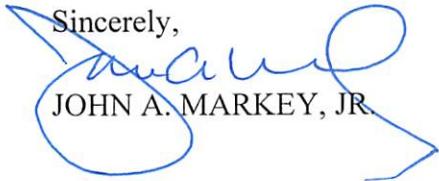
As for the second request, it is my understanding that *listening sessions* are preferred because *scoping* would essentially place the fishery on a path which presumes that a leasing program is desirable. That would be inappropriate since a leasing program may not be beneficial to the smaller scallop boat owners and the many small shore-side businesses that have worked for decades to diligently to support the small independent and non-vertically integrated boat owners. It appears that the effort to accelerate a change in regulations by starting with *scoping* for a leasing is the result of lobbying efforts by the large fleet owners and investors who run vertically integrated operations seeking to form an oligopoly of the wealthy placing the smaller boat owners and the shore side businesses at risk.

There are many stakeholders that should be heard on the issue of leasing before the Council makes a commitment to begin a path for a leasing program by *scoping*. Over the last twenty years, the scallop fishery has functioned very well with the current non-leasing system and resource management allowing a full generation of fishermen and independent boat owners to thrive and to provide for their families.

Further, the *scoping* process would involve more formal procedures which would needlessly divert the attention of the Council and its staff from the fishery-wide initiatives that should be its real priorities. It is my clients' view that the staff's limited time and resources would be better spent focused upon more pressing issues which impact all boat owners such as: the low recruitment and biomass; wind farms; and climate change issues.

Thank you for taking a moment to consider these priorities and issues. I look forward to working with the Council in the future on this issue.

Sincerely,


JOHN A. MARKEY, JR.

Proposed Top Four Scallop Priorities for FY 2022

1. Framework 34 Specifications

This priority is a legal requirement that will set the catch limits for all permit holders for Fishing Year (FY) 2022 and the default catch limits for FY 2023. If the Council fails to complete this important work, Framework 33 would automatically allocate 75% of 2021 DAS [18 DAS] and reduce access area trips to one in the the MAAA for each limited access scallop permit. Failure to complete this work would also result in there being no default allocation for fishing year 2023.

2. Evaluation of Rotational Management

This item was a 2020 priority that is near completion with the goal of evaluating the effectiveness of the rotational management system used in recent years. Since the passage of OAH2, more than 50% of the value of the scallop fishery has resulted from the access area trips associated with the Rotational Management Program. It is critical for the fishery and for the industry to fully understand best practices in the area of Rotational Management by studying what is working and what could be improved upon to better manage this program.

3. Set Georges Bank Yellowtail ACL at Zero

The issue of Georges Bank (GB) Yellowtail presents a very complicated scientific and policy issue. The GB Yellowtail stock has been declining for many years. Unfortunately, it is showing little sign of recovering. At the present time, the fishery has a very low ACL. This creates a major challenge for the scallop fishery which is assigned only 16% of the low ACL for by-catch while harvesting scallops on GB, primarily in Closed Area II (access area and open bottom), to continue accessing scallops in this area, the scallop fleet will need to address the GB Yellowtail issue. If the Council opted to set the GB Yellowtail ACL at zero, it would make GB Yellowtail a by-catch only stock which would significantly assist the scallop fleet to access the substantial scallop resource located in Closed Area II.

4. Access to Northern Edge

Access to the Northern Edge of Closed Area II on GB is unfinished business of OAH2. This is an action encouraged to be done thru a framework in coordination with the Habitat Committee by the agency at the conclusion of OAH2. Closed Area II has shown the highest recruitment of scallops in recent years and the Northern Edge is likely holding a substantial amount of three-year old scallops. With the low recruitment in the access areas to the south, access to the Northern Edge would be a huge benefit to the entire scallop fleet.

From: Craig Tomlin <fishhunterllc@gmail.com>
Sent: Tuesday, December 7, 2021 12:34 PM
To: info <info@nefmc.org>
Subject: Sea Scallops

New England Fisheries Management Council

Some years ago the New England Fisheries Management Council changed the regulations on Sea Scallops. These changes have seemed to provide a steady income for commercial fisherman while keeping an eye on the stock. This is shown by the status of the stock not being overfished and the great dockside value that scallops fetch up and down the coast.

However there was a small negative impact of the regulations. The recreational sector that visits federal waters were no longer able to keep Sea Scallops. Prior to said regulation changes a diver could land scallops for personal consumption. As you can imagine this was a very small portion of the overall catch of Sea Scallops.

I would like to propose that you take into consideration a hand only recreational fishery for Sea Scallops. I believe that based on the following factors this "new" fishery will have little to no impact on the status of the stock or commercial fisheries.

- As you know Sea Scallops are usually found at depths of greater than 100 feet in the Mid-Atlantic States, this puts them at the bitter end of recreational diving limits.
- Divers congregate near structure, and this is where they would find the Sea Scallops. Sea Scallops this close to structure are not readily available to the dredge fishery.
- Because it would be hand harvest only, the bottom will not be disturbed.
- Also do to hand harvest you could set minimum size limits with no by catch.
- There could be a max number, weight or volume per person per trip or per vessel per trip in order to insure no negative impacts.

I hope that you consider this as an option for the near future and I would enjoy a discussion with anyone that would like to discuss.

Thank You

Craig Tomlin

Craig Tomlin

(609)602-1455

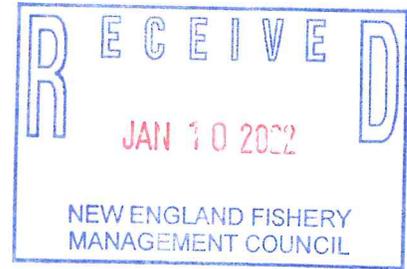
fishhunterllc@gmail.com

c.c.

Jonathon Pero

Sam Asc
Janice Plante

Chairman Eric Reid
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950



Dear Mr. Reid,

I am an owner of a shoreside business supporting the limited access (LA) fleet of the Atlantic Sea Scallop fishery. I would like to voice my opposition to the development of an amendment for leasing within this fishery. This particular fishery has remained one of the most prosperous fisheries in the world, mostly due to the current management structure. Changing the management of this fishery could not only harm independent owners, but also the shore support industry that rely on them. Most limited access permit holders in favor of leasing own vertically integrated companies and are primarily self-sufficient and have little necessity for outside shore support businesses.

My small business currently employs individuals whose families' livelihoods rely upon my success. We believe that the council's time would be more productive and beneficial for all stakeholders in addressing other issues plaguing the fishery such as low recruitment and declining biomass.

Thank you for allowing us to be heard on matters that impact us and our families.

Sincerely,

Cape Fish & Lobster