



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
E.F. "Terry" Stockwell III, *Chairman* | Thomas A. Nies, *Executive Director*

DRAFT MEMORANDUM

DATE: April 8, 2016
TO: Council
FROM: Staff
SUBJECT: **Background information for Council discussion of scallop fishing in the Northern Gulf of Maine**

The Scallop Committee met on March 23, 2016 and discussed recent increases in scallop fishing in the Northern Gulf of Maine management area (NGOM). The Committee received two letters of correspondence on this issue and both the Scallop Advisory Panel (AP) and Committee discussed the topic under other business at their March meetings. In general, concerns have been raised that scallop fishing has increased dramatically in the southern part of the NGOM since the beginning of FY2016. Some LAGC NGOM vessels are concerned that the TAC will be reached early before the winter months, when many NGOM vessels fish in federal waters. Other LAGC NGOM and LAGC IFQ vessels are concerned that LA fishing activity in the NGOM is not sustainable for the resource in that area, since landings from those vessels do not apply toward the TAC and are not under a possession limit.

At the AP level three motions were drafted, but two were ultimately tabled and one motion passed to recommend the Committee develop an action to prohibit LA vessels from having more than 50 bushels of in-shell scallop product inside the VMS line north of 42 20 N (Vote: 10:0:0). Other ideas were discussed as well but did not have the wide support of AP members. For example, emergency action to close the NGOM, modify the southern boundary of the NGOM area farther north, sub-divide the NGOM area into smaller areas, change the opening date from March 1 to later in the winter, have a consistent possession limit and/or consistent gear restrictions for all vessels in the NGOM, increase the TAC, etc. Some of these could be addressed in the annual specifications package, but most would require a framework, or even Amendment to the Scallop FMP.

The Committee did not take action on this topic. Instead, there was a lengthy discussion with public testimony and the Committee requested additional information be available for a discussion at the April Council meeting. Council staff has worked with staff at GARFO to summarize the current regulations and fishing activity in the NGOM. Updated information is summarized in this memo. The attached information includes more detail on: 1) current regulations in the NGOM; 2) scallop landings and DAS usage in the NGOM by permit type; 3) fishing location information.

1.0 REGULATIONS IN THE GULF OF MAINE

Amendment 11 implemented the NGOM management program in 2008. This program was developed with separate measures and qualification criteria to preserve a fishery that was in the area in the past and may return in the future. Measures were developed to recognize the unique characteristics of the fishery in this area, and allow additional fishers to qualify to fish in the area that may not have qualified under the IFQ program, while preventing overharvest of a unique portion of the resource.

The final rule explains that the abundance of scallops in the NGOM fluctuates more widely, supporting sporadic fisheries, and scallops are confined to small “patchy” areas throughout the area. There are times and areas within the NGOM that have sufficient abundance of scallops in small areas to support a substantial fishery and other times and areas that do not. The NGOM scallop management area measures establish scallop fishing controls appropriate for the fishery while protecting the resource in the area from overharvest, if and when scallops are present in the area.

A separate permit was established with no landings criteria, vessels only needed to have a general category permit on the control date of November 1, 2004. Below is a list of some of the major elements of the program.

- 1) Hard TAC of 70,000 pounds
- 2) Possession limit of 200 pounds for all LAGC IFQ and NGOM vessels
- 3) LAGC IFQ catch is applied against the TAC as well as individual IFQ
- 4) LAGC Incidental catch is not applied against the TAC, 40 pound possession limit
- 5) LA catch is not applied against the TAC, vessels under DAS management
- 6) Once the TAC is reached, all federal vessels are prohibited to fish in NGOM area

1.1 LA FISHING IN THE NGOM

Limited access scallop vessels may fish in the Northern Gulf of Maine (NGOM) while on a day-at-sea (DAS) and not have their landing applied against the Federal NGOM total allowable catch (TAC). However, once the NGOM TAC is reached and the area is closed, limited access vessels are prohibited from fishing in the area. The following regulations support this statement and were implemented through Amendment 11 to the Scallop Fishery Management Plan (73 FR 20090; April 14, 2008):

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

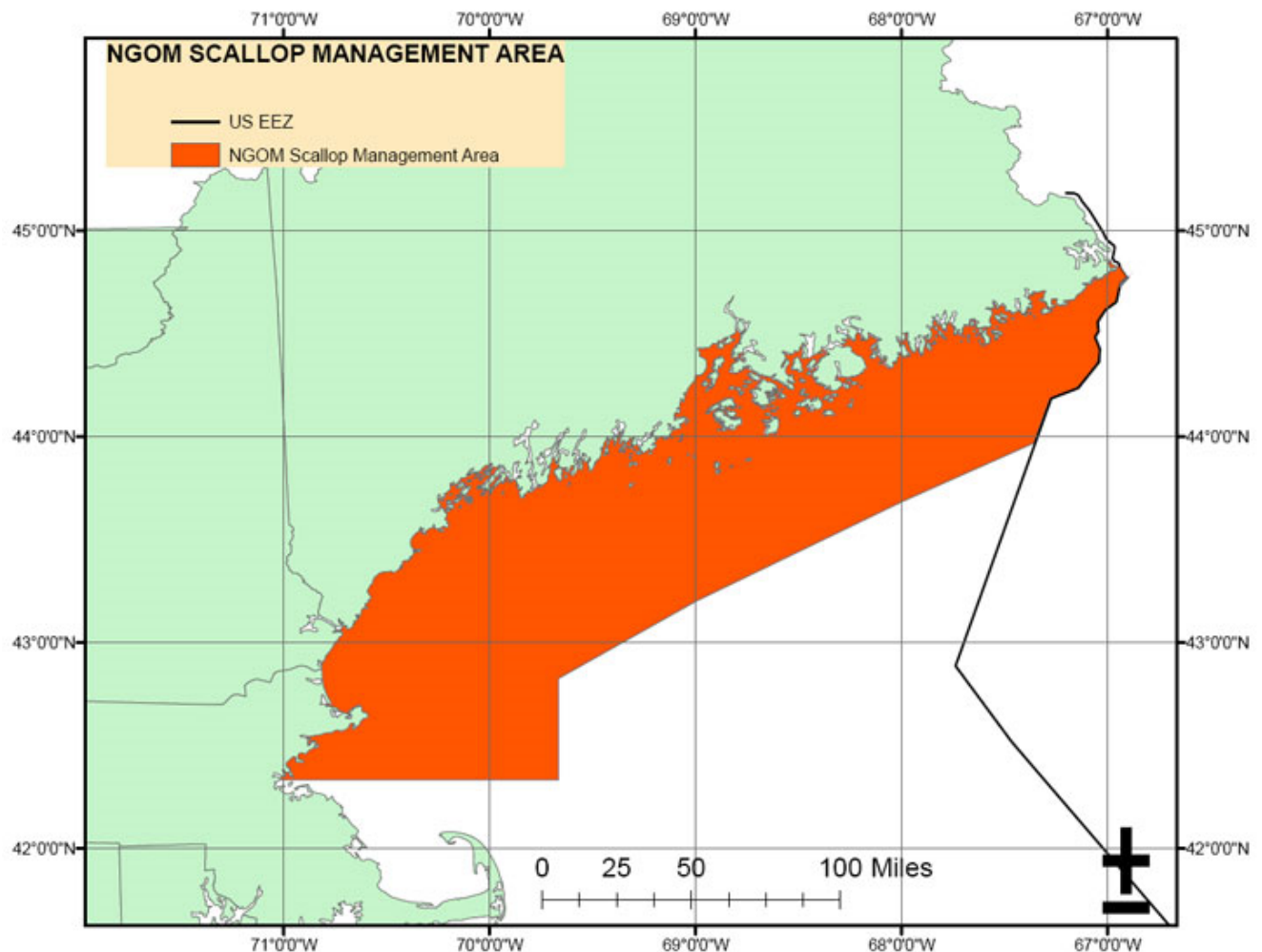
(a)(3) Scallop landings by all vessels issued LAGC IFQ scallop permits and fishing in the NGOM scallop management area shall be deducted from the NGOM scallop total allowable catch specified in paragraph (b) of this section. Scallop landings by IFQ scallop vessels fishing in the NGOM scallop management area shall be deducted from their respective scallop IFQs.

Landings by incidental catch scallop vessels and limited access scallop vessels fishing under the scallop DAS program shall not be deducted from the NGOM total allowable catch specified in paragraph (b) of this section.

(b)(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 a 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 scallop total allowable catch in accordance with this paragraph (b) has been reached.** Once the NGOM hard TAC 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. 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.

Figure 1 – NGOM management area



1.2 POSSESSION OF INSHELL SCALLOPS

When fishing exclusively north of 42°20' N. lat. (i.e., in the NGOM management area), a limited access vessel is exempted from the prohibition that restricts vessels from possessing more than 50 bu of in-shell scallops once inside the VMS Demarcation Line. To be exempted from this restriction, a vessel cannot fish any part of its trip or transit the area south of 42°20' N. lat. at any time during a trip. This statement is based on the following regulations implemented through Framework 14 to the Scallop Fishery Management Plan (66 FR 24052; May 11, 2001).

§ 648.14 – Prohibitions

(i)(2) *Limited access scallop vessel permit holders.* It is unlawful for any person owning or operating a vessel issued a limited access scallop permit under §648.4(a)(2) to do any of the following:

(iii)(B) Fish for, possess, or land more than 50 bu (17.62 hL) of in-shell scallops once inside the VMS Demarcation Line on or by a vessel that, at any time during the trip, fished in or transited any area south of 42°20' N. lat; or fished in any Sea Scallop Area Access Program specified in §648.60, except as provided in the state waters exemption, as specified in §648.54.

§ 648.52 – Possession and landing limits.

(e) Owners or operators of vessels issued limited access permits fishing in or transiting the area south of 42°20' N. lat. at any time during a trip are prohibited from fishing for, possessing, or landing per trip more than 50 bu (17.6 hl) of in-shell scallops shoreward of the VMS Demarcation Line, unless when fishing under the state waters exemption specified under §648.54.

From Framework 14:

3.1.4.1 Restrict Possession of Shell Stock Inshore of the Day-At-Sea Monitoring Line

If a vessel with a limited access or general category scallop permit fishes or transits any are south of 42°20' N latitude during any portion of a trip, it will be prohibited from possessing more than 50 US bushels when inshore of the day-at-sea monitoring line and from landing more than 50 US bushels from a fishing trip. Scallop shell stock must be compliant with the 3½-inch minimum size shell height standards (§648.50).

Any vessel fishing in the state waters exemption program (§648.54) would also be exempt from the scallop shell stock limit. NMFS would monitor trips through the VMS program for vessels that are required to have or voluntarily participate in the VMS day-at-sea monitoring program. A trip will be presumed to occur south of 42°20' N latitude and the shell stock limit will apply unless no VMS signals on the trip come from south of 42°20' N latitude. Scallop vessels that do not have VMS and have not declared into the state waters exemption will need to notify NMFS via call-in to be exempt from the shell stock possession limit.

Rationale: The FMP relies on day-at-sea restrictions and crew limits to achieve its mortality targets and prevent overfishing. As catch rates rise, it becomes more attractive for vessels to deckload sea scallops and shuck them inside of the day-at-sea monitoring line, thereby circumventing the regulation's intent. Another adverse effect is that the discarded scallop shells and viscera may also cover important habitats and foul inshore waters, especially where temperatures are high and currents are slow. This measure will prevent scallop vessels from

possessing excessive amounts of shell stock inshore of the day-at-sea monitoring line, eliminating the incentive to deckload and shuck scallops “off the clock”. The 50 US bushel limit will enable the vessels to bring a moderate amount of shell stock in to avoid poor weather and/or to land some shell stock for a small market for whole scallops or scallop parts.

The purpose and need section goes on further to explain other consequences of deckloading.

Another undesirable outcome if vessels circumvent the scallop management measures by bringing shellstock inside the day-at-sea monitoring lines is that the shallow waters there are prone to fouling by the discarded scallop shells and viscera. Because of paralytic shellfish poisoning (PSP), only the scallop adductor muscle (meat) can be landed without rigorous and expensive testing for PSP. Areas inshore of the day-at-sea monitoring line can also have slower currents, fresh-water stratification, and/or higher temperatures. Coupled with the decaying scallop viscera, it could raise biological oxygen demand (BOD) to unhealthful levels and have harmful effects on inshore marine resources like clams and oysters.

Finally, in the response to comments section there is some discussion of the 42 20 line.

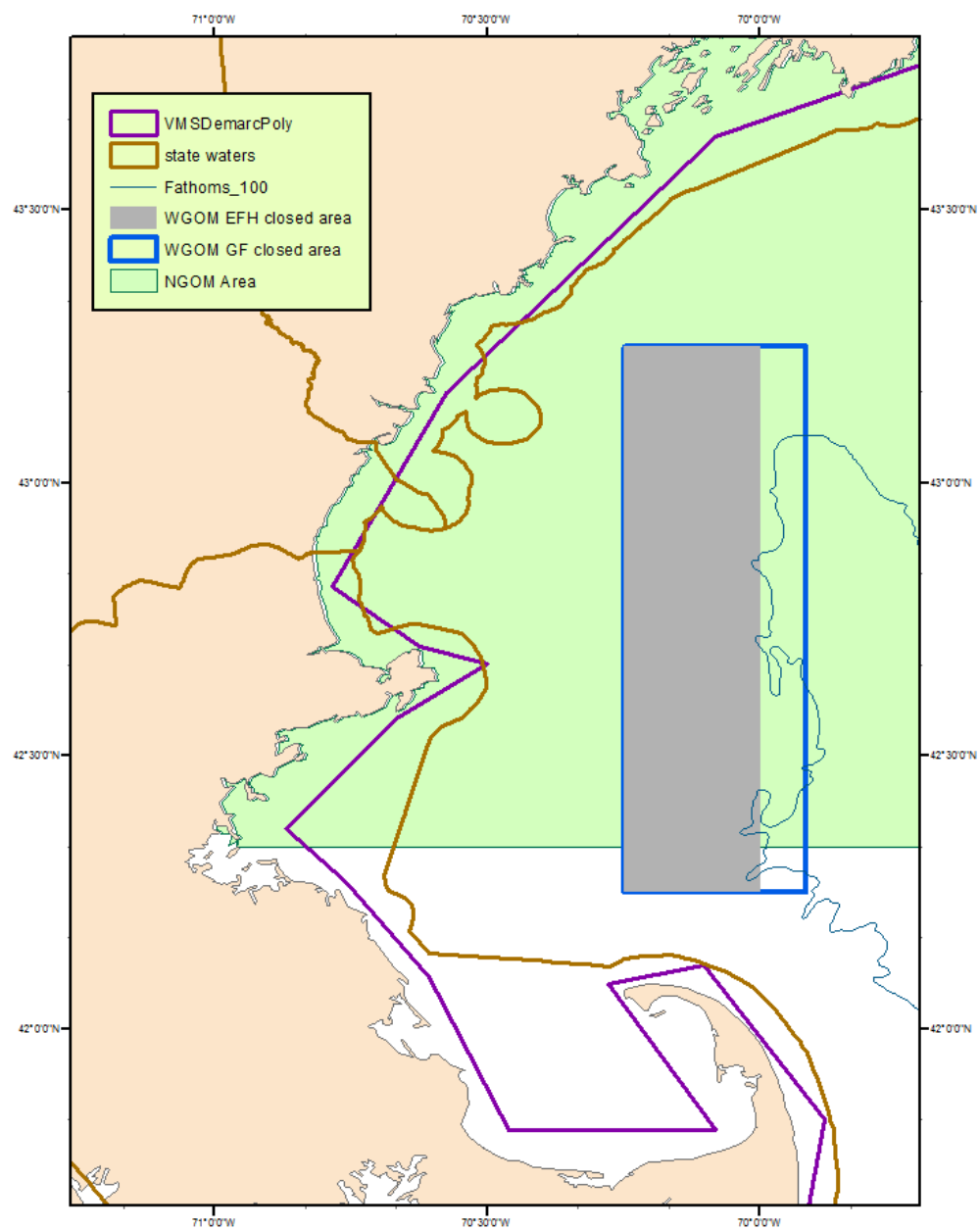
31. Accommodating a in-shell scallop market without compromising the day-at-sea management of the general scallop fishery will require more substantial [management] changes than can be made in a framework adjustment

The Council agrees that ignoring this loophole could significantly compromise the day-at-sea program and crew limits that have successfully controlled the fishery since 1994. The Council developed allowances that will still allow a small market for in-shell scallops landed by limited access vessels and also accommodated the near-shore scallop fishery in the Gulf of Maine which does not affect the fishing mortality rates for the Georges Bank and Mid-Atlantic scallop stocks. Presently, shell stocking or landing in-shell scallops from the Gulf of Maine stock has not jeopardized the management of that stock. It is important to note that there is nothing in the FMP or this Framework Adjustment that prevents vessels from landing roe-on sea scallops, provided all other regulations regarding landing other sea scallop parts are met.

And the preamble from the rule includes:

Vessels fishing north of 42°20' N. latitude will be exempt from this restriction, provided they do not enter the area south of 42°20' N. latitude. This exemption is intended to allow a limited fishery to continue north of 42°20' N. latitude by some vessels that have traditionally landed in-shell scallops.

Figure 2 – VMS and state waters in the southern part of NGOM management area



1.3 MASSACHUSETTS STATE WATERS

This memo includes information about Massachusetts state water regulations because the recent federal scallop fishing effort has been in waters adjacent to MA state waters. Concerns have been raised about LA vessels going inside the VMS demarcation line with product onboard with the intent to shuck scallop off the clock, to avoid DAS charges. However, there are state water regulations in place that reference what federal vessels are permitted to do in state waters with more than the state possession limit onboard. The rationale for these regulations was likely not related to deckloading; however, they exist nonetheless.

Section 6.05 Atlantic Sea Scallop Management

(3) Possession and Landing Limits.

a. Possession and Landing Limits:

- i. Shucked Sea Scallops. It shall be unlawful for any commercial fisherman to, at any time, possess or land more than 200 lbs of shucked sea scallops;
- ii. Whole In-Shell Sea Scallops. It shall be unlawful for any commercial fisherman to, at any time, possess or land more than 2,000 lbs of whole in-shell sea scallops
 1. Possession Equivalency. For any commercial fisherman landing both whole in-shell sea scallops and shucked sea scallops the weight of whole in-shell sea scallops shall be multiplied by .10 to determine compliance with the possession and landing limits.
 2. Volumetric Equivalency.
 - a. All whole in-shell sea scallops shall be placed in level filled standard fish totes upon landing;
 - b. A level filled standard fish tote shall represent 100 lbs of whole in-shell sea scallops
- iii. **Exemption. Vessels permitted by the National Marine Fisheries Service to commercially harvest and land Atlantic sea scallops may possess and land more than the state possession and daily landing limits provided:**
 - 1. The vessel transits directly through the waters under the jurisdiction of the Commonwealth for the purpose of landing sea scallops;**
 - 2. The vessel makes no stops unless otherwise directed by the Massachusetts Environmental Police for the purpose of boarding and inspection;**
 3. The dredge gear is out of the water and properly stowed on board; and
 4. The vessel, crew, gear and catch is otherwise in compliance with the applicable federal regulations.

2.0 SCALLOP LANDINGS IN THE NGOM

2.1 LAGC ACTIVITY

Both LAGC NGOM and LAGC IFQ vessels have fished in the NGOM area (Table 1). LAGC IFQ activity has almost exclusively been in southern area (north of Cape Ann and along southern boundary). NGOM effort focused on Platt's Bank effort in 2013 and 2014. The average landings per trip for NGOM and IFQ vessels very similar, about 100 pounds, and more LAGC NGOM permits are fishing in the area compared to IFQ vessels, and that number has increased over the years (Table 2). LAGC incidental scallop catch has been less than 100 pounds each year since adoption of the program.

Table 1 – NGOM scallop landings (in pounds) by permit type for LAGC fishery

	LAGC IFQ		LAGC NGOM		Total
2009	0	0%	5,793	100%	5,793
2010	4,762	55%	3,877	45%	8,639
2011	6,092	88%	816	12%	6,908
2012	894	12%	6,546	88%	7,440
2013	8,907	16%	46,501	84%	55,408
2014	11,911	22%	43,003	78%	54,914
2015	25,549	36%	45,982	64%	71,531

Table 2 – Average landings (lbs) per trip and number of vessels active by fishing year in the NGOM

FISHING YEAR	AVERAGE LANDING LGC_IFQ	AVERAGE LANDING LGC_NGOM	NPERMITS LGC_IFQ	NPERMITS LGC_NGOM	TOTAL LANDINGS
2011	76	51	6	4	6,908
2012	128	115	3	6	7,440
2013	87	122	7	11	55,408
2014	86	108	8	16	54,914
2015	103	104	8	20	71,420

Scallop landings have increased for LAGC vessels in FY2016. Between March 1, 2016 and March 30, 2016 about 15,000 pounds have been landed by LAGC vessels, about 7,500 pounds for each permit type, 50% by LAGC IFQ and 50% by LAGC NGOM vessels. The average pounds per trip has increased to about 160 for IFQ vessels and 200 pounds for NGOM vessels. When landings were updated through April 7, total landings for NGOM increased to over 23,000 pounds or 33% of the TAC.

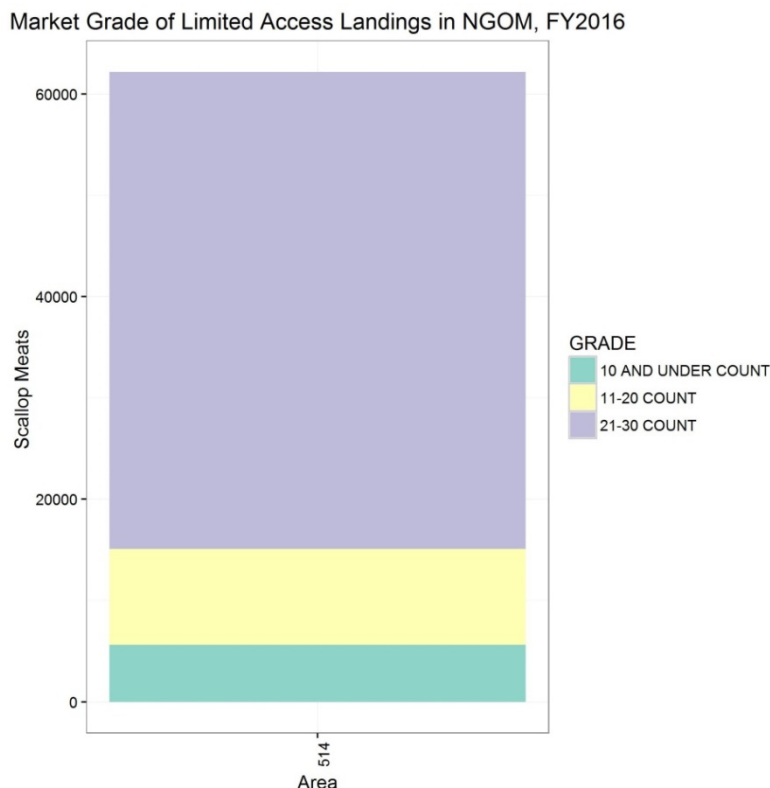
2.2 LA ACTIVITY

There has been no fishing in the NGOM management area by LA vessels since the program was adopted until FY2016. Between March 1, 2016 and March 30, 2016 four vessels have reported five trips from that area, for a total of 62,000 pounds to date. However, more trips have taken place in that area based on VMS data, but the landings records for those trips are not available yet. According to VMS data, eight LA vessels have fished at least a portion of twelve individual trips within the NGOM area between March 1, 2016 and April 6, 2016. About half of these vessels had full-time double dredge permits, and the other half were single dredge vessels. Total catch from NGOM by LA vessels is expected to increase when data are updated through dealer and VTR databases.

VMS data for the first twelve trips do show that LA vessels on trips in the NGOM spent time behind the VMS demarcation line during each trip. The amount of time varied, some spent less than 10% of a total trip behind the VMS line, and others spent more time behind the VMS line than seaward of the line. It needs to be noted that vessels may go inside demarcation for a number of reasons, of which shucking is one, but weather could be another factor as well. Therefore, it should not be assumed that all the time spent inside demarcation is for shucking off the clock. However, individuals did provide testimony at the Scallop Committee meeting that was the case in some situations.

Based on the dealer data available for the first five trips, about 8% of the landings reported to date from the five available trips were u10s, about 14% u20s, and the remaining 78% 20-30 count (Figure 3). According to NEFOP, three LA vessels have been observed with tows in NGOM, but these data are not available yet.

Figure 3 – Market grade of LA landings in NGOM to date (only first 5 trips included)



3.0 FISHING LOCATIONS IN THE NGOM

Figure 4 through

Figure 7 show fishing location heatmaps for FY2013 – March 2016. Maps show concentration/dispersal of effort in terms of number of trips for LAGC (LGC A) and Northern Gulf of Maine (LGC B) in each year. Scale indicates the volume of trips, i.e., 80 indicates 80% of trips occurred within this range. Heatmaps do not show counts of trips; they show how tightly concentrated or widely dispersed trips within the permit category were for that year. Similar maps for LA effort have not been created yet; however, the effort by those vessels in March 2016 is concentrated in the same general areas as the LAGC effort in FY2016 to date.

Figure 4 - Annual fishing location for LAGC IFQ (left) and LAGC NGOM (right) for FY2013

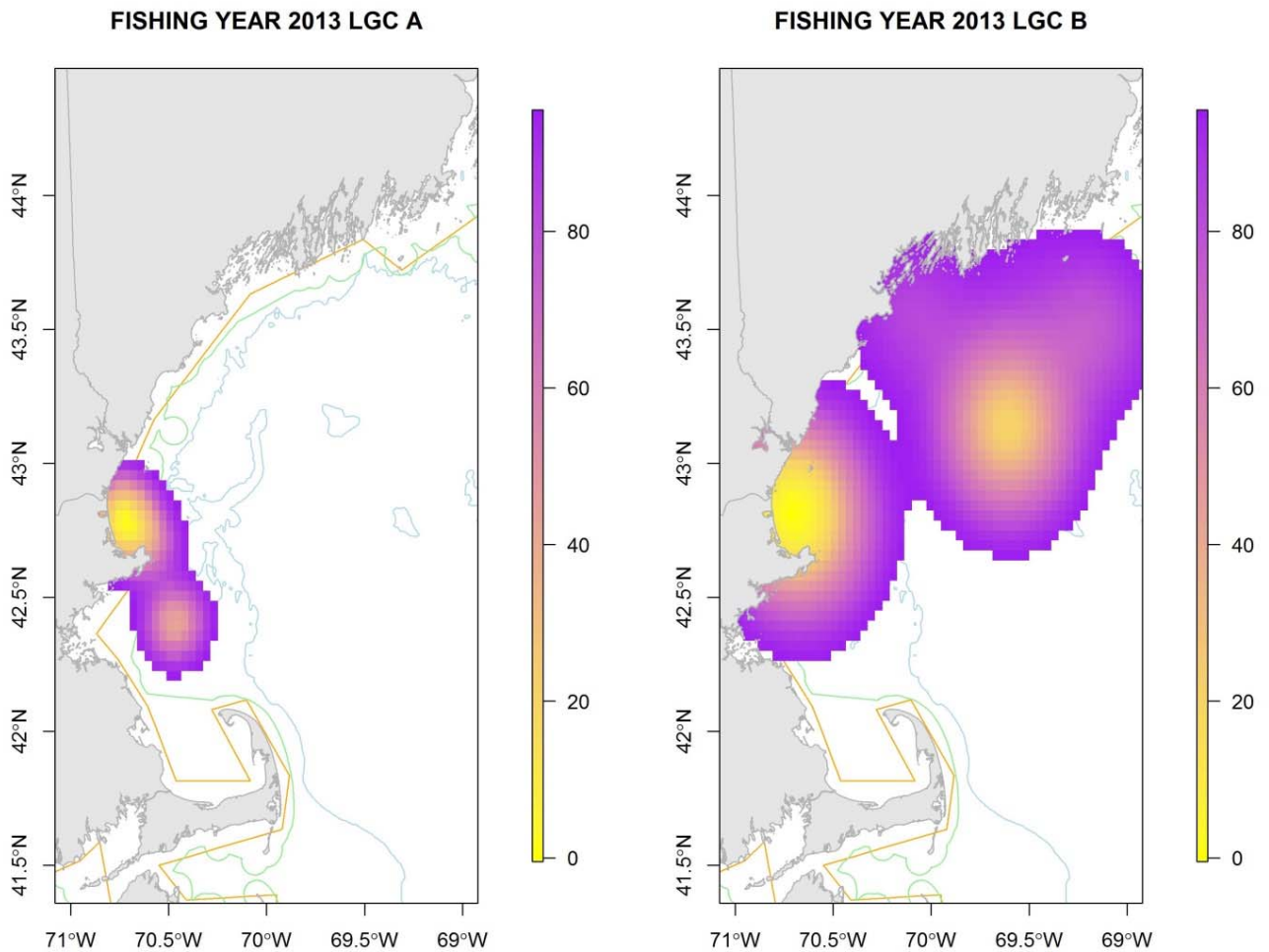


Figure 5 - Annual fishing location for LAGC IFQ (left) and LAGC NGOM (right) for FY2014

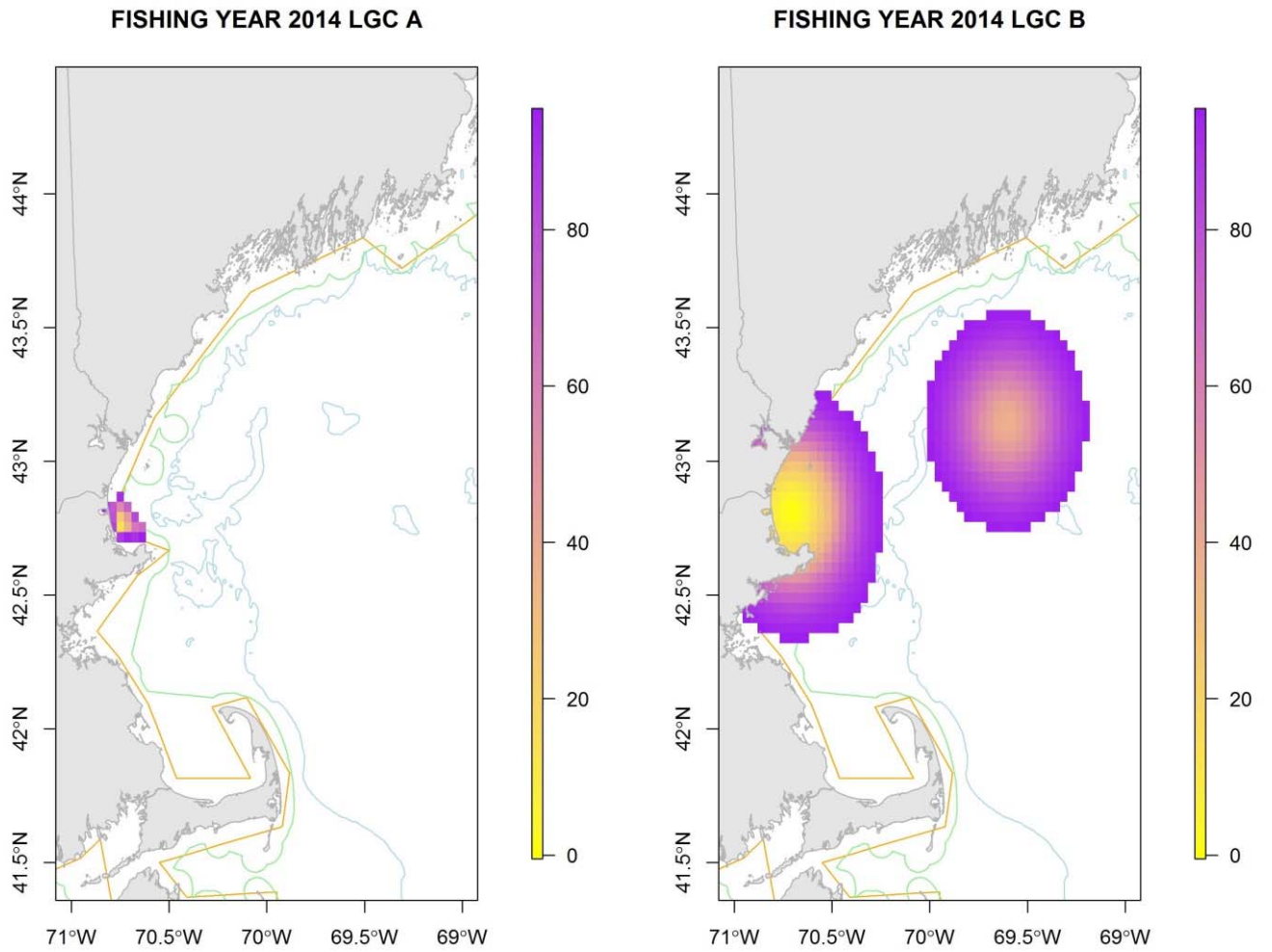


Figure 6 - Annual fishing location for LAGC IFQ (left) and LAGC NGOM (right) for FY2015

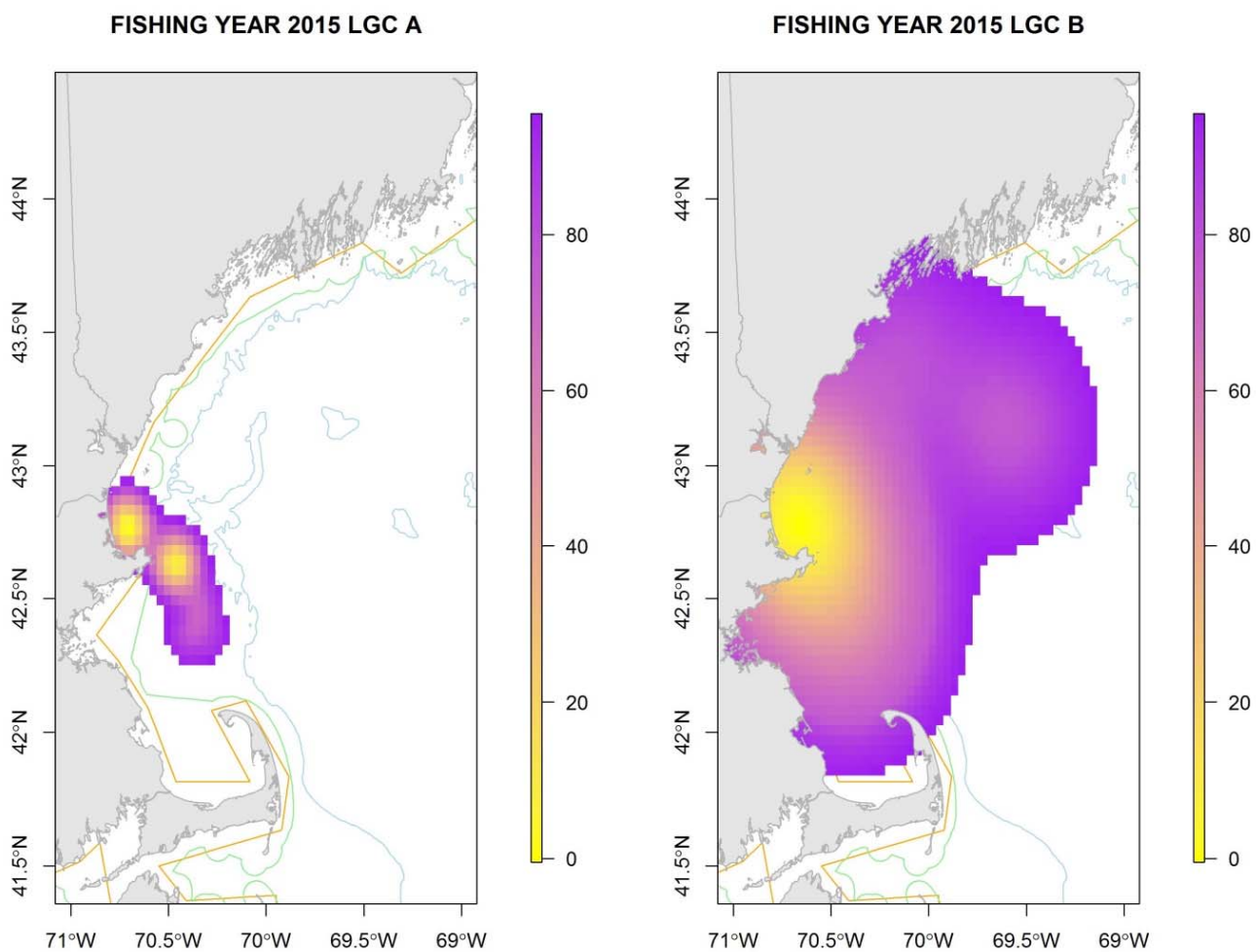


Figure 7 - Annual fishing location for LAGC IFQ (left) and LAGC NGOM (right) for March 2016 to date

