

## 1.0 MONITORING AND CATCH ACCOUNTING

The Scallop PDT has continued work on this priority since the April Council meeting.

### 1.1 Background Discussion

The genesis of this work priority came from a narrowly defined issue of low VMS reporting compliance among LAGC IFQ vessels which came up during the LAGC IFQ 5-year program review. Since the Council voted on 2018 priorities (December 2017), NOAA fisheries has moved forward a civil case against Carlos Rafael that alleges several scallop violations. These violations include failing to report the purchase of scallops, falsifying vessel trip reports, providing false information to NOAA on a broken trip adjustment sheet, and failure to transmit vessel position twice per hour through VMS. Following the announcement of civil case, the F/V Dinah Jane was cited by the Massachusetts Environmental Police for illegally possessing scallops over the trip limit.<sup>1</sup>

Several other monitoring initiatives are currently underway within the Council process (i.e. industry funded monitoring amendment, groundfish Amendment 23, fishery dependent data workshop).

### 1.2 Updates:

#### 1.2.1 April Council Meeting

The Council passed two motions in April 2018 to send letters to NOAA Fisheries. Final versions of these letters are contained in Appendix A. The strawman described in **Table 2** has been updated to reflect the Council's actions.

#### **SCALLOP COMMITTEE**

11. Mr. Balzano moved on behalf of the Committee:  
that the Council send a letter to NOAA suggesting that NOAA complete development and implement real-time online IFQ quota transfers.

The motion *carried* on a show of hands (16/0/1).

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<sup>1</sup> <http://www.savingseafood.org/news/enforcement/another-new-bedford-scallop-boat-affiliated-carlos-rafael-caught-cheating-scallop-landings/>

12. Mr. Balzano moved on behalf of the Committee:  
that the Council send a letter to NOAA that makes the following suggestions:  
NOAA should enforce regulations that are on the books;  
Request that NOAA review penalty schedules and consider an increasing penalty schedule for VMS pre-land non-compliance;  
NOAA pursue technical solutions to assist with quota compliance (e.g.: automatic notifications, updates on quota balance when vessels go to make declarations/part of new PTNS system).

The motion *carried* on a show of hands (14/0/3).

#### 1.2.2 New information on monitored offloads

On June 15, 2017 the Council approved the LAGC IFQ program review as complete and final. In section 4.6.3 Enforcement: Monitored Offloads, the report notes that proportion of trips that had an offload monitored by enforcement was very low (<1% of offloads in all years considered). The data presented in Table 52 of this report suggests that there were 65 total monitored offloads by NOAA OLE over a six-year period.

On May 8, 2018, Mr. Timothy Donovan, the Assistant Director for Enforcement met with the Scallop PDT to address several questions (see Section 1.2.3). Through Mr. Donovan's explanation of NOAA's Joint Enforcement Agreement (JEA) with state enforcement agencies, and the structure of databases used to track enforcement cases, it became clear that the actual number of offloads monitored by a deputized officer were higher than the number reported in the IFQ program review (see May 8, 2018 Scallop PDT meeting summary).

**Key Finding:** Based on available information, the actual number of monitored offloads is higher than reported in the LAGC IFQ 5-Year Program Review.

#### 1.2.3 Potential tactics/measures to address unknown removals from the fishery and a lack of adherence to trip limits and allocations

##### 1.2.3.1 Expand the VMS pre-land requirement to LA open area trips

Currently, Limited Access vessels are required to submit VMS pre-land notifications on access area trips, but not open area trips. Pre-land notifications are required for all trips taken by LAGC IFQ and LAGC NGOM vessels.

#### **PDT Recommendation:**

- As the purpose of VMS pre-land requirements are to provide advance notice for the monitoring of offloads, the PDT recommends that this requirement be expanded to cover LA open area trips.

1.2.3.2 Vessels and dealers jointly report overages; forfeit landings in excess of trip limit  
NOAA OLE reported at the May 8, 2018 PDT meeting that other regions have self-reporting measures in place that allow for vessels and dealers to voluntarily account for landings overages and forfeit landings in excess of the trip limit. If the Committee is interested in pursuing this concept, the PDT can gather additional information on aspects of this program on the West Coast.

**Table 1 - Strawman of Monitoring Problems, Goals, Objectives, and Measures**

<b>Problem (for discussion)</b>	<b>Why do we think this is a problem? (Supporting data/information)</b>	<b>Goal</b>	<b>Objective</b>	<b>Tactic/Measure</b>
Poor compliance with VMS hail requirements	LAGC IFQ Program Review, June 2017. Data from OLE re: VMS compliance	100% compliance with VMS hail requirements	Improve VMS hail compliance from 2015 levels	Council: Sent letter to NMFS recommending continued enforcement and technical solutions.
Lack of adherence to trip limits and allocations	NOAA civil penalties against Carlos Rafael, et al. Counts 21 – 35 January 10, 2018	100% compliance with landings limits. Equity among fishery participants.	Full compliance with scallop regulations.	<b>IDEAS:</b> <b>Expand the pre-land requirement to LA open area trips.</b>
Unknown removals from fishery	MA Environmental Police report of F/V Dinah Jane overage.	Precise accounting of total removals from fishery. Dealer reports are a true census of landings.		<b>Vessel and Dealer self-report overages (used on the West Coast)</b>
IFQ vessels participating in fishery with a negative quota balance.	OLE reminder to permit holders on 2/20/18: 50 CFR 648.14(i)(4) states that it is unlawful to possess or land scallops in excess of a vessel's IFQ, or fish for scallops without IFQ	Equity among fishery participants. 100% compliance with regulations.	Full compliance with scallop regulations.	Council: sends letter to NMFS recommending technical solutions and real-time online quota transfers.

### 1.3 Summary of Discussion with Tim Donovan at May 8, 2018 PDT meeting

OLE Responses can also be found in the PDT meeting summary from May 8, 2018.

The following is a summary of the Scallop PDT's discussion with OLE representatives Tim Donovan, Shawn Eusebio, and Don Frei related to the Council's monitoring and catch accounting priority:

1. *The mechanics of the joint enforcement agreement in the Northeast region. How does it work in practice? Are all states involved? How do states communicate with NOAA? Are there state databases that track enforcement efforts? Are these compatible with NOAA enforcement databases?*

*OLE Response:* In New England there are 10 joint enforcement agreements (JEAs), including all coastal states from Maine to Virginia. Annual appropriations are distributed by OLE to participating state agencies to support this program. The current Presidential budget being considered has defunded this agreement and translates to an approximate 18 million dollar cut to OLE's budget. The JEA model has recently shifted to base activity and associated state appropriation on OLE priority execution. Specifically, JEA participants must dedicate 75% of effort to enforcing OLE priorities to receive money; this process works on a monthly basis and states must submit reports which detail enforcement activity (i.e. number of boats boarded, number of tickets issued, etc.) relative to OLE priorities. OLE 5-year priorities were organized this year and include a range of fishery enforcement issues that apply to all federal fisheries. Currently, the OLE database is not accessible by JEA participating states; however, efforts are moving towards making enforcement databases consistent across the board so that information may be shared between JEA agencies. North Carolina is part of the Southeast OLE district, but the Northeast OLE office stationed in Virginia does provide some coverage in North Carolina.

The OLE database is not currently able to specify enforcement efforts by OLE officers vs. JEA officers.

OLE officers and JEA officers document all monitored offloads that are in violation of fishery regulations. All monitored LA access area offloads are documented regardless of whether they were in violation of NOAA regulations. With LAGC IFQ offloads, officers may not necessarily report every monitored offload that was compliant with the regs; for example, during a saturation effort, officers may board/monitor as many as one hundred vessels in a short time period, making documentation of both compliant and non-compliant cases very difficult. After action reports can summarize both compliant and non-compliant cases; however, compliant cases are not always specified in the database like non-compliant cases are. In other words, OLE records are focused on tracking cases on non-compliance. Due to this, it was suggested that the metric of compliance described in both the LAGC IFQ report and Doc.2a Monitoring and catch accounting discussion document (i.e. the proportion of all monitored offloads reported by OLE that were non-compliant) may be higher than reality and a misrepresentation of overall compliance in the scallop fishery.

2. *Your thoughts on revising the VMS non-compliance penalty schedule. Will this be a deterrent?*

*OLE Response:* OLE has already prioritized addressing VMS non-compliance and LAGC IFQ vessels fishing without quota. Tim Donovan noted that OLE cannot make a recommendation on adjusting the penalty schedule until these enforcement efforts pan out. NOAA General Counsel (GC) assists with the development of penalty schedules.

How a documented violation translates to the penalty schedule varies on a case by case basis and has a lot to do with officer discretion. For example, there could be a compliance assistance effort that isn't documented such as a written or verbal warning. In a situation of non-compliance with prior instances of violation(s), cases are usually referred to GC and handled through the notice of violation and assessment (NOVA) process.

Only OLE officers have the authority to issue a NOAA violation ticket. JEA officers and the US Coast Guard must make a recommendation to OLE and then OLE will issue a ticket or refer the case to GC.

3. *Many regulations are developed without direct input from OLE (we often don't ask for input). Are scallop regulations generally enforceable? Are there policies that can be developed to improve enforceability?*

*OLE Response:* Scallop regulations are generally enforceable and easy to understand, especially compared to groundfish and monkfish regulations. Field officers have noted an increase in compliance over the past several years—this increase in compliance is mostly based on qualitative observations, such as industry actively engaging more with OLE and taking steps to ensure they are following the rules. OLE has held informal 'captains meetings' in recent years to clarify the regulations prior to the start of the fishing year; these workshops are usually well attended and helpful to the industry.

OLE does not make formal recommendations on how to shape regulations that are enforceable. Generally, enforcement activity focused on the scallop fishery has decreased over time because compliance appears to be improving. The scallop fishery is always of interest to OLE because it is a high value fishery and therefore has an increased likelihood of criminal behavior.

4. *There have been several reports of scallop violations on Facebook, and in the news. Are the number of violations consistent with past years, but we are seeing more media coverage? Are scallops more of an enforcement priority?*

*OLE Response:* The recent increase in reports of scallop violations and enforcement efforts is because of social media and is not an indicator of actual compliance.

5. *Do you have any general opinions on dock-side monitoring, electronic monitoring, and bag tags? Are there issues with any of these concepts that the Council should consider if it wants to take further action?*

*OLE Response:* OLE representatives support dockside monitoring programs because it is helpful to verify an offload being complete and accurate; however, it was noted that NOAA OLE could not run a dockside monitoring program on its own due to a lack of resources. OLE also noted that dockside monitors in other fisheries are not deputized by OLE. A member of the PDT suggested that if a dockside monitoring program were developed, it could be funded by industry like other Set-Aside programs currently in place (i.e. RSA, Observer).

With regard to ongoing efforts to develop Electronic Monitoring (EM) programs, OLE representatives noted that they are awaiting conclusive results on the effectiveness of this tool before commenting; however, it was noted that having eyes on vessels always helps with compliance.

OLE has had preliminary discussion around developing a self-reporting protocol to help compliance with possession limit overages; similar programs are being used in the Alaska region and seem to be working well. In theory, if a possession limit overage occurs, both the vessel and dealer would report it to OLE and the landings would be forfeited. Though the working details are still being discussed, the goal of a self-reporting program would be to better account for possession limit overages that would otherwise go unreported.

*General discussion:*

Enforcement officers have access to pre-land reports and use them to plan monitoring efforts. In practice, OLE primarily uses the pre-land reports to support ongoing investigations. Limited access vessels are required to submit pre-land reports only for access area trips (i.e. no pre-land requirement for open-area trips). It was suggested that requiring pre-lands for all trips may be helpful for enforcement and ensuring compliance.

Pre-land reports are submitted in real time while dealers are allowed one week after a vessel lands to submit a report. It was noted that misreporting issues are often attributed to dealers. In light of this, an OLE representative suggested that increasing the accountability of dealers in the reporting process may help compliance.

*Key outcomes/PDT recommendations:*

1. Report to the Scallop Committee that the actual number of monitored offloads is higher than reported in the LAGC IFQ 5-Year Program Review.
2. The pre-land notification requirement should be expanded to LA open area trips.
3. OLE will review the pre-land compliance, but in general felt that the current penalty schedule for pre-land non-compliance is robust.
4. Feedback from OLE was that regulations are generally enforceable in scallop fishery.
5. OLE provided the PDT with suggestion a on how to account for landings overages: both dealer and vessel report the overage and the landings are forfeited. They felt that this

concept needed additional discussion, and were open to working with the Council on this issue.

6. Compliance and reporting issues in the scallop fishery are consistent with issues in other IFQ fisheries.

## 1.4 Data

### 1.4.1 IFQ Quota Overage information from LAGC IFQ program review:

The LAGC IFQ program review looked at the total number of LAGC IFQ MRI's with quota overages, and the total overage by fishing year.

**Table 2 - Number of scallop LAGC IFQ MRI's with quota overages, and total overage by FY.**

FY	Total MRI	Overage Total
2012	23	17,507
2013	14	35,118
2014	19	38,760
2015	6	5,426
Total		96,811

### Potential areas for follow-up on quota overages:

1. Expand the time series. Update the data for 2016, and 2017 when it becomes available.
  - a. Are the two most recent years similar to the overages in 2015? Are trends emerging in number of overages and total quota overages?
  - b. Consider the geographic distribution of where overages are occurring. Is this a port problem?

### 1.4.2 Concentration of Scallop Landings

*Note:* The following information was discussed by the PDT on February 28, 2018, and May 8, 2018.

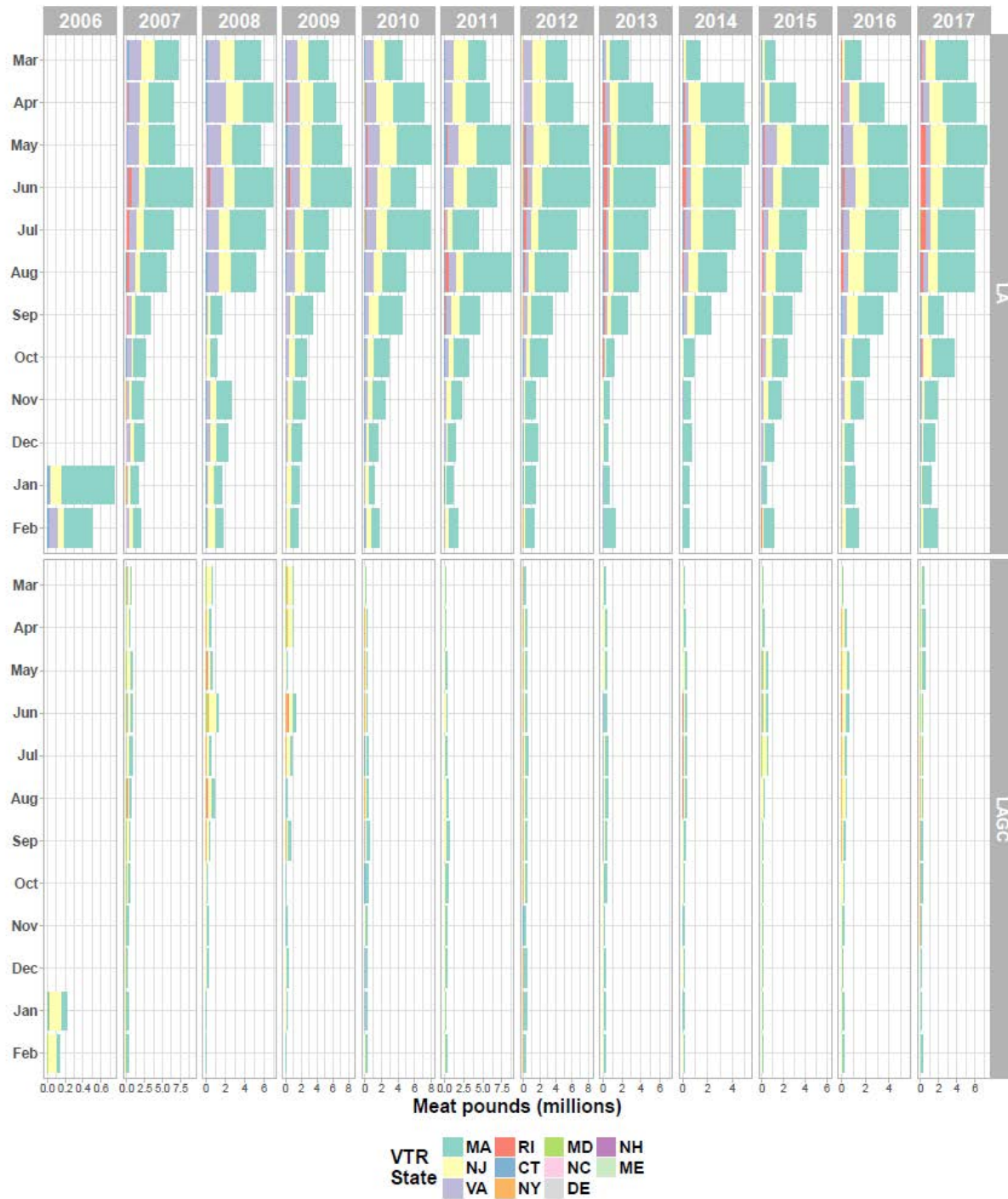
- The majority of scallop landings (~90%) are landed in the “top 10” ports (ranked by landings) since 2010. (Table 4)
- Landings ports may vary depending on rotational management.
- Almost all LA and LAGC IFQ landings were attributed to 5 states: Massachusetts, New Jersey, Virginia, Connecticut, and Rhode Island. (Figure 1 and Figure 2)

**Table 3 - Percentage of scallop harvest landed at 'top 10' ports (ranked by landings).**

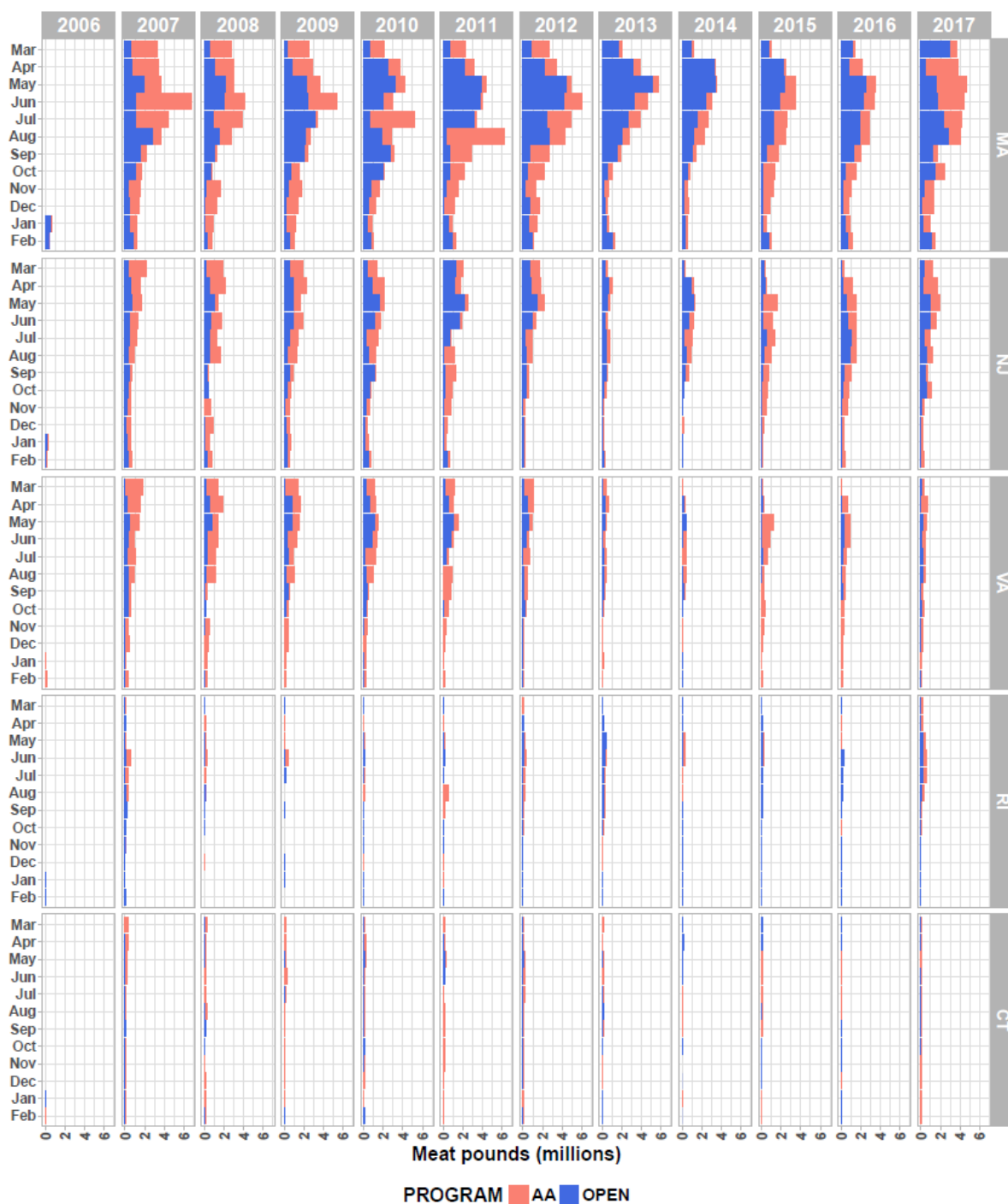
FY	Top 10 ports landing %	Other ports landing %
2006	83%	17%
2007	87%	13%
2008	86%	14%
2009	86%	14%
2010	91%	9%
2011	89%	11%
2012	90%	10%
2013	90%	10%
2014	91%	9%
2015	90%	10%
2016	89%	11%
2017	92%	8%



Figure 1 - LA and LAGC IFQ landings by state and month



**Figure 2 - LA and LAGC IFQ landings (combined) by state and access area vs. open area and fishing year.**



#### 1.4.3 Number of Ports where Scallops are Landed

*Note:* The following information was discussed by the PDT on February 28, 2018 and presented to the Committee on March 22, 2018.

- The PDT used VTR reports to tabulate the total number of ports where scallops are landed, and the number of ports where fewer than three vessels reported landing.

- The total ports where scallop landings were reported ranged from 59 – 77 since 2010 (High: FY2016).
- The number of ports where less than 3 total scallop vessels reported landing ranged from 37 to 52 during the same time period (High: FY2016).
- See Table 5.
- From FY2013-2017, the majority of LA landings were attributed to New Bedford, MA followed by Cape May, NJ. LAGC IFQ landings were distributed across several ports and appeared to follow where this component was operating in a given year (i.e. years with a lot of trips to the MAAA had most landings in NJ, years with trips to the NLS showed an increase in landings on Cape Cod, MA).
  - 2017 data is shown in Figure 3.

**Table 4 - Total number of ports with scallop landings (VTR records) from 2006 - 2017.**

FY	Total Ports	Ports under 3 vessels
2006	43	26
2007	83	53
2008	73	45
2009	42	24
2010	61	42
2011	59	37
2012	59	41
2013	59	37
2014	66	41
2015	67	43
2016	77	52
2017	63	42



#### 1.4.4 VMS Pre-Land Compliance

Council staff requested data on compliance with VMS hails and notifications for LA and LAGC IFQ components from the enforcement group at the Greater Atlantic Regional Office.

The following figures are intended to describe the percentage of LA and LAGC IFQ trips that were non-compliant with VMS pre-land notifications. Trips are considered non-compliant if a pre-land notification was not sent. The report provided to Council staff included data from 2012 – 2017. The 2017 compliance rate is not shown in the following figures because the FY was not complete when this report was run, and is subject to change.

**Figure 4 – LAGC IFQ Pre-Land Notification Non-Compliance for Access Area Trips (2012 – 2017).**



Figure 5 - LAGC IFQ Pre-Land Notification Non-Compliance for Open Area Trips (2012 - 2017)

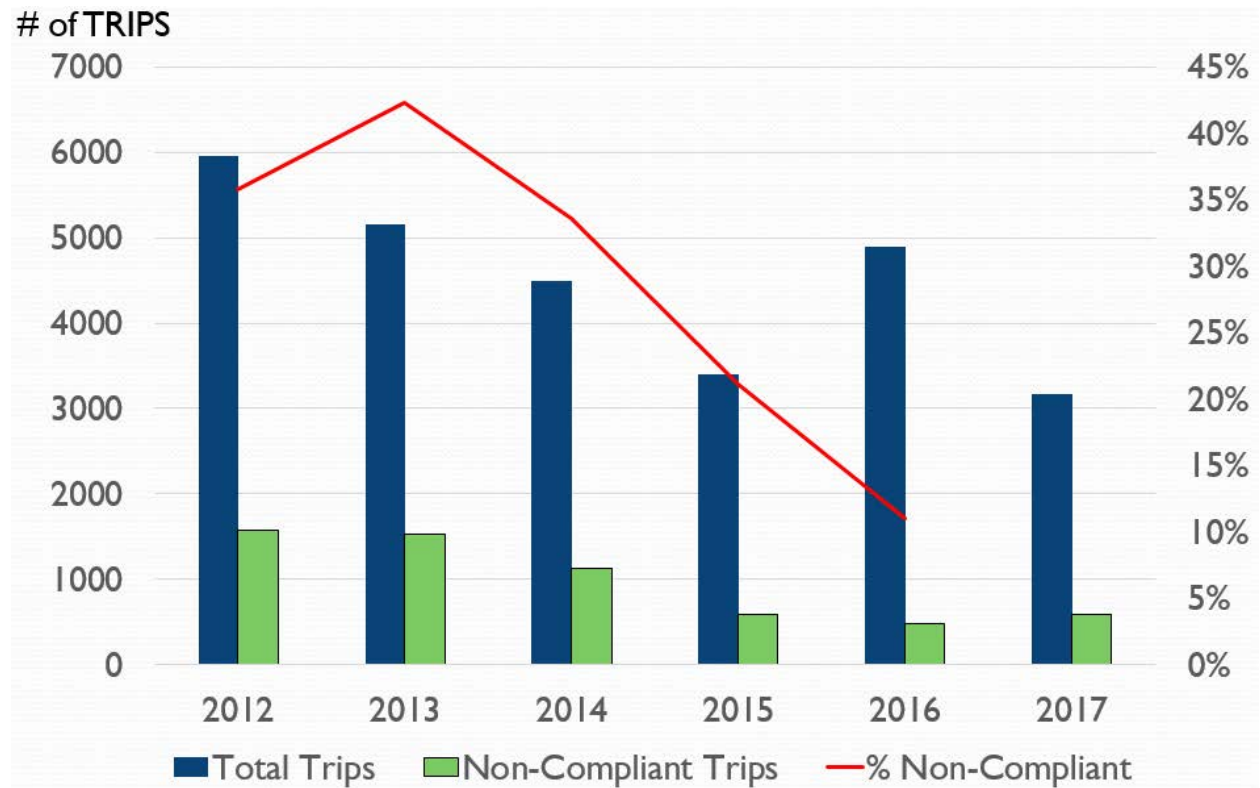
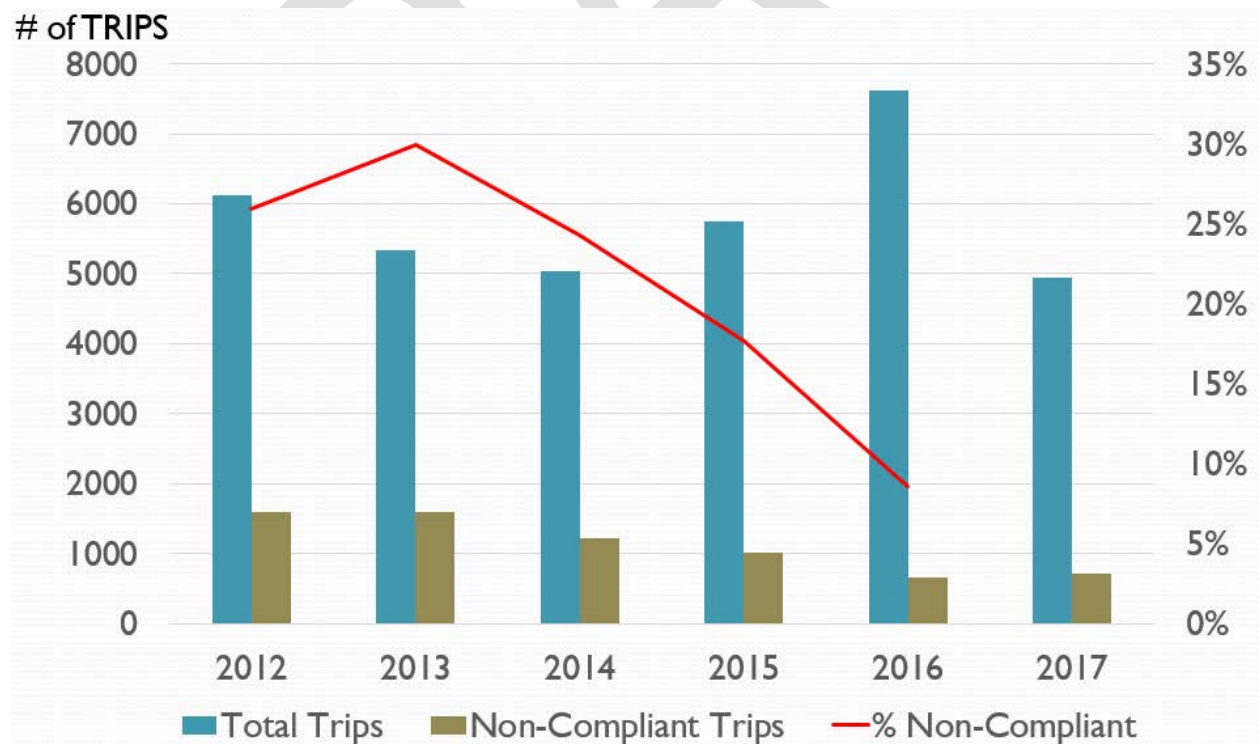
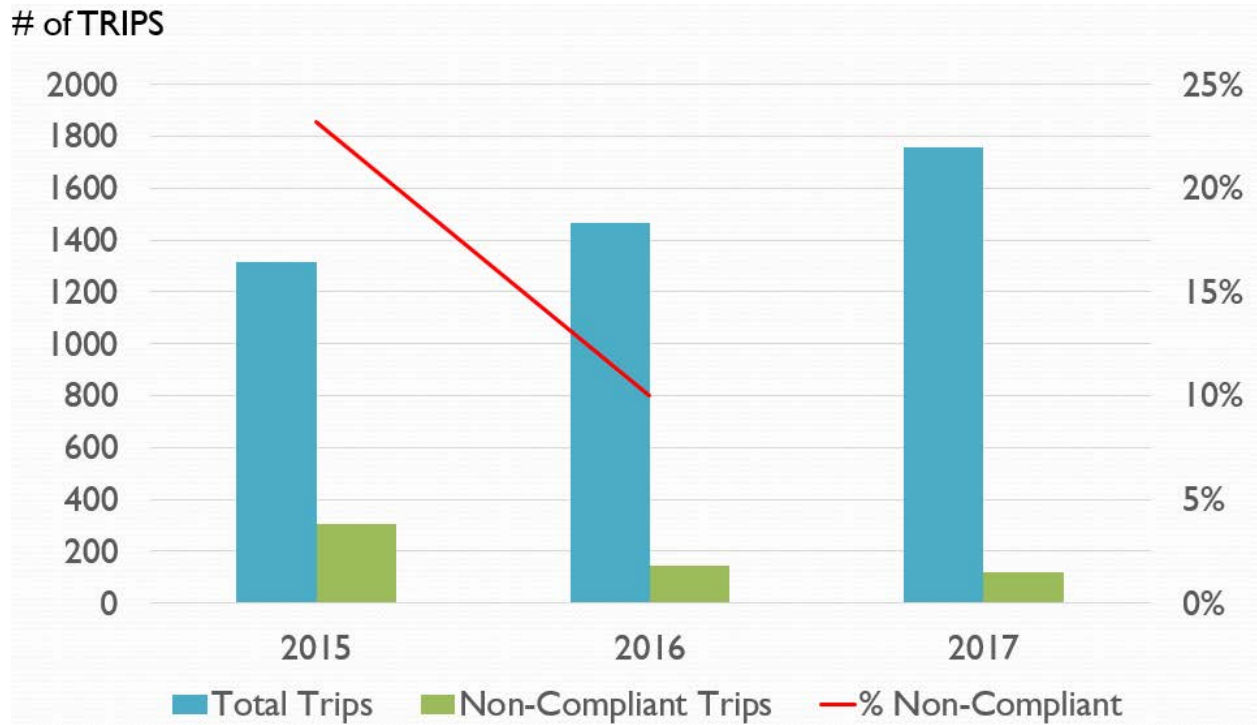


Figure 6 - LAGC IFQ Pre-Land Notification Non-Compliance for All trips (2012 - 2017)

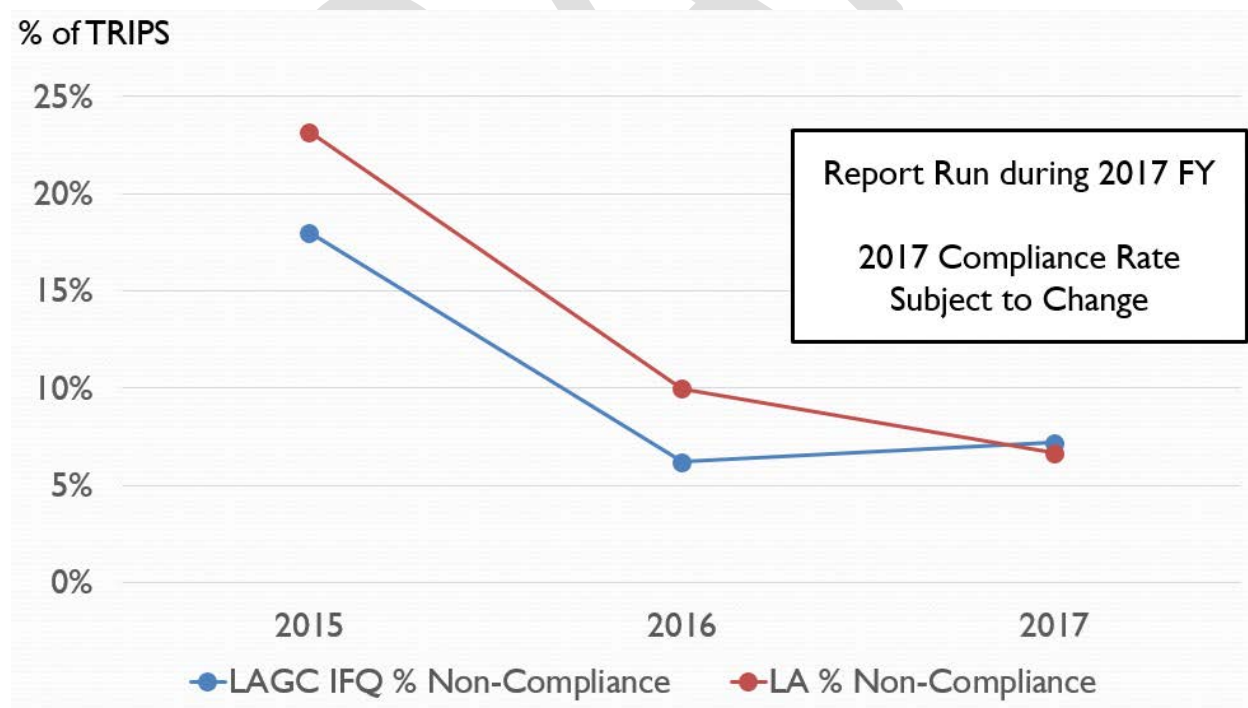




**Figure 7 – Limited Access Pre-Land Notification Non-Compliance for Access Area Trips (2015 – 2017).**



**Figure 8 - Comparison of LA and LAGC IFQ pre-land notification non-compliance for access area trips (2015 - 2017).**



## 1.5 Existing Reporting Requirements in Scallop Fishery

Participants in the scallop fishery are required to complete reporting requirements before, during, and after a trip. Similarly, dealers that receive scallop landings are required to report to NOAA Fisheries. The Council may wish to evaluate existing reporting requirements for the fishery (Figure 9 and Figure 10) as it considers work on this priority.

With existing reporting requirements, there should be general agreement between estimated catches during the trip and dealer reports. For example:

- On multi-day trips, the SUM of daily catch reports  $\approx$  VMS pre-land catch estimate
- VMS pre-land catch estimate  $\approx$  VTR landings estimate
- VTR landings estimate  $\approx$  Dealer report to SAFIS

With existing reporting requirements, if all reporting is completed on time, managers should know:

- When and where the vessel sailed from
- Planned fishing operations
- Daily catch (general LPUE)
- Vessel position every 30 minutes (done automatically through on-board VMS unit)
- Estimated total landings
- When and where the vessel plans to land and estimate landings
- Confirmation of landed catch with weights (dealer report)

The schematics of existing reporting requirements (Figure 9 and Figure 10) include elements of the strawman (Table 2) such as “problems” identified, and “measures/tactics” that could be pursued to achieve goals and objectives.



Figure 9 - Overview of existing reporting requirements before and during a fishing trip.

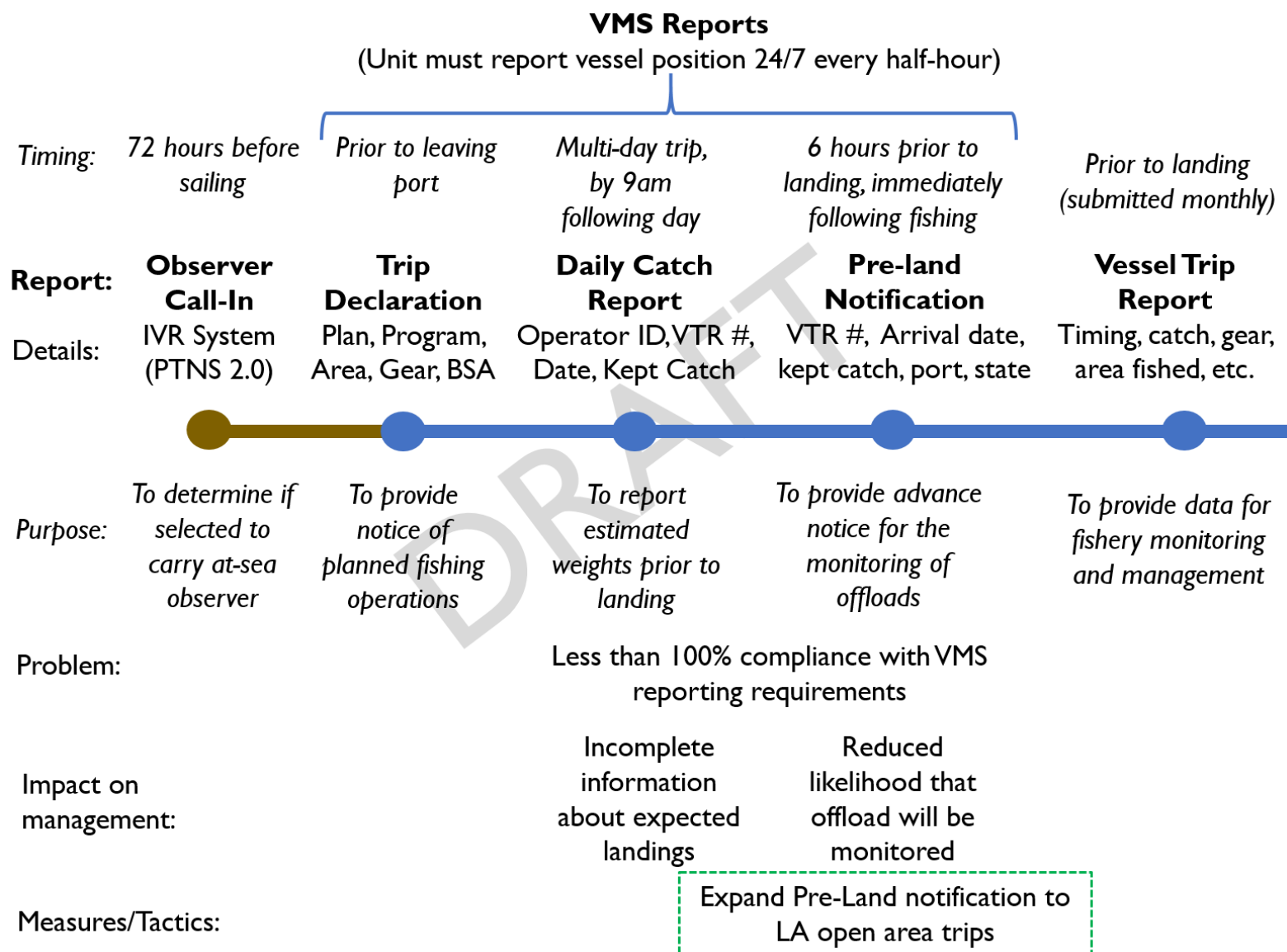
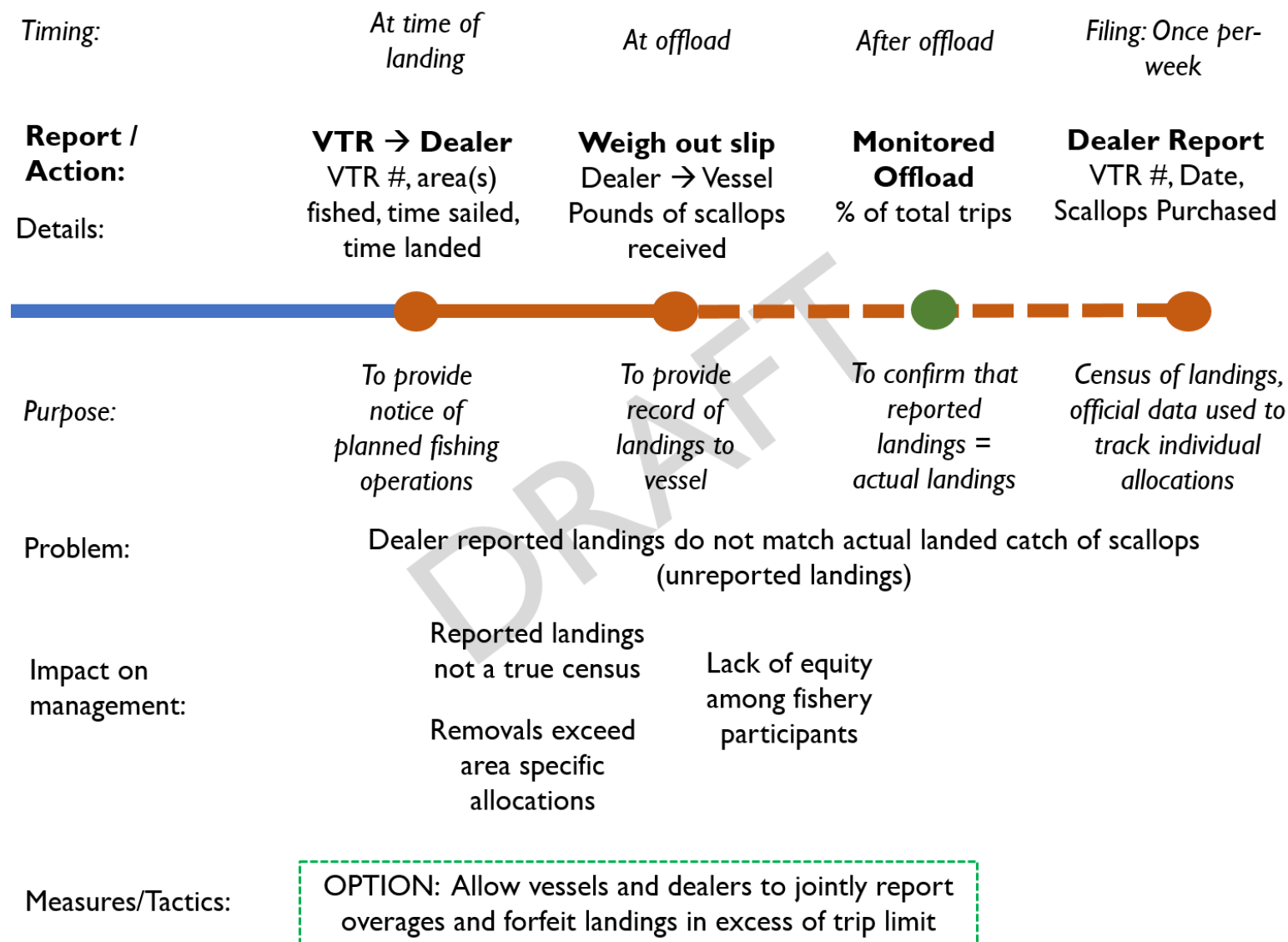


Figure 10 - Overview of existing reporting requirements for vessels and dealers at the time of offload.





## New England Fishery Management Council

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John F. Quinn, J.D., Ph.D., *Chairman* | Thomas A. Nies, *Executive Director*

May 14, 2018

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

Mr. Timothy Donovan  
Assistant Director, Enforcement  
Greater Atlantic Regional Fisheries Office  
National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930

Dear Mike and Tim:

This year the Council is working to address monitoring and catch accounting in the scallop fishery. It is clear that compliance outreach and effective enforcement are necessary components of any catch accounting system. As discussion of these issues has taken place, concerns were raised that existing provisions of the management plan could be re-emphasized by NOAA Fisheries. Please consider the following Council recommendations.

On April 17, 2018 the Council passed the following motion:

- Motion:** that the Council send a letter to NOAA that makes the following suggestions:
- NOAA should enforce regulations that are on the books;
  - Request that NOAA review penalty schedules and consider an increasing penalty schedule for VMS pre-land non-compliance;
  - NOAA pursue technical solutions to assist with quota compliance (e.g.: automatic notifications, updates on quota balance when vessels go to make declarations/part of new PTNS system).

The motion carried (14-0-3).

I would like to explain each element of this motion. Over the last year there have been several scallop fishery reporting violations. While acknowledging that education and compliance assistance is an integral part of fishery enforcement, the Council also believes that the successful management of the Atlantic sea scallop fishery is enabled by fishery participants abiding by rules and regulations. Consistent with existing priorities, the Council urges NOAA Fisheries to emphasize the enforcement of reporting requirements in this fishery.

The management plan requires pre-landing notification reports using the Vessel Monitoring System (VMS) which detail the time, location, and estimated amount of a trip's landings. Failure to submit required VMS reports creates gaps in vessel trip data that can undermine the successful management of the fishery. Full compliance would provide the reliable, timely stream of data on scallop landings that is needed for quota monitoring and enforcement. Combined with our request for increased enforcement efforts, the Council requests that NOAA Fisheries review the current penalty schedule for non-compliance and consider more severe penalties for repeat violations. The Council notes that the existing schedule begins at a \$100 fine per missed notification up to \$2,500 for the first violation, and then transitions to a notice of violation and assessment (NOVA) process for second and third offenses.

In the agency's review of the current penalty schedule, the Council requests that the agency communicate how often first violations result in a fine, and how second, and third violations have been addressed through the NOVA process.

Managing quota balances is the responsibility of each LAGC IFQ permit holder. At the height of the season when vessels are sailing several times a week, it is critical that owners and captains track their quota balance. NOAA Fisheries should explore opportunities to assist their efforts by automatically notifying owners and captains when their quota balance reaches a certain level or goes negative. For example, owners and operators could be updated on their quota balance when declaring into fisheries that permit landing scallops using IFQ, or as part of a future online pre-trip notification system (PTNS 2.0) for the industry-funded observer program. The Council views this as complimentary to our earlier request (April 20, 2018 letter) that NOAA Fisheries pursue additional technical solutions to assist with quota compliance

Thank you for considering this input. Please contact me if you have questions.

Sincerely,

A handwritten signature in black ink that reads "Thomas A. Nies". The signature is written in a cursive, slightly slanted style.

Thomas A. Nies  
Executive Director



## New England Fishery Management Council

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John F. Quinn, J.D., Ph.D., *Chairman* | Thomas A. Nies, *Executive Director*

April 20, 2018

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

Dear Mike:

The Council is working to address monitoring and catch accounting in the scallop fishery in 2018. The Council is aware that NOAA Fisheries is in the process of developing an online platform that allows for real-time transfers of quota in the Limited Access General Category IFQ scallop fishery. On April 17, 2018 the Council passed a motion by a 16-0-1 vote in support of NOAA completing and implementing real-time online quota transfers to help address the issue of LAGC IFQ vessels fishing for or possessing scallops without quota.

On February 20, 2018 the NOAA Fisheries Office of Law Enforcement sent the following message via e-mail to stakeholders under the subject line of SCALLOP IFQ ALLOCATION REMINDER:

“NMFS reminds all owners and operators of IFQ-permitted vessels that 50 CFR 648.14(i)(4) states that it is unlawful to possess or land scallops in excess of a vessel’s IFQ, or fish for scallops without IFQ. Violations may result in fines, catch seizure, and/or permit sanctions. For questions, contact OLE at 978-281-9213.”

NOAA Fisheries has 30 days to complete requested quota transfers. The time lag between when a transfer is initiated and completed can leave LAGC IFQ vessels tied to dock, and unable to prosecute the fishery. Conversely, owners and operators that participate in the fishery without quota can disadvantage compliant vessels by fishing a limited number of fleetwide access area trips, or by attempting to lease-in quota at a lower price later in the fishing year to correct a negative quota balance.

The implementation of a real-time online quota transfer system for the LAGC IFQ fishery represents a business-friendly technical solution to assist with quota compliance and ensure equity among participants. By allowing quota to move between permits instantaneously, vessels should be able to remain compliant with 50 CFR 648.14(i)(4) throughout the fishing year.

Thank you for considering this input. Please contact me if you have questions.

Sincerely,

A handwritten signature in dark ink, reading "Thomas A. Nies". The signature is written in a cursive style with a large initial 'T' and a stylized 'N'.

Thomas A. Nies  
Executive Director