

# CORRESPONDENCE



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
GREATER ATLANTIC REGIONAL FISHERIES OFFICE  
55 Great Republic Drive  
Gloucester, MA 01930

September 9, 2021

Guy B. Simmons  
Senior Vice President  
Sea Watch International  
8978 Glebe Park Drive  
Easton, MD 21601

Dear Mr. Simmons:

As you are aware, we published a *Federal Register* notice soliciting public comments on your application for an exempted fishing permit (EFP) to conduct at-sea paralytic shellfish poisoning (PSP) testing in the Closed Area II scallop access area. After a review of the project proposal and the comments submitted from the New England Fishery Management Council, several issues must be addressed before proceeding with the EFP request at this time.

In the initial proposal and in conversation with my staff, you indicated that the purpose of this project was to conduct at-sea PSP testing in the Closed Area II scallop access area to explore potential expansion of the fishable area for at-sea certified testing vessels. The project proposal estimated a total of 416 trips for four surfclam vessels would be needed for the duration of the project. We are unclear why this requested level of effort is necessary to determine whether clams are free of PSP and safe for consumption. This level of effort is significantly higher than the amount of effort that is occurring annually in the open portion of Georges Bank (approximately 160 trips). In 2008, before the open area of Georges Bank was approved, we issued an EFP for a single vessel with a harvest of 176,000 bu of surfclams and 80,000 bu of ocean quahogs to determine if at-sea PSP testing was feasible in that area. This equates to approximately 60 full trips (32 bu per cage, 134 cages per trip). A level of effort aligned with the original EFP that was issued to open the area of Georges Bank would be more appropriate to address the stated purpose of the project.

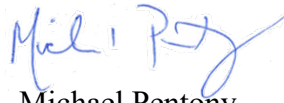
Additionally, there are other modifications to the project proposal that will ensure the project gathers data and information that would be useful when, and if, we consider the potential for expansion into Closed Area II. The New England Council expressed concerns with potential impacts of this project on scallops and groundfish species. The scallop access area in Closed Area II is set up as a rotational access area to minimize impacts on scallop beds and to ensure that younger scallops can grow to maturity. We recommend that any closed area access for surfclam vessels should correspond to the rotational access area(s) and schedule of the scallop fishery. Additionally, there is a closure of the scallop access area from August 15, 2021, through November 30, 2021, to protect spawning flatfish. We also suggest observer coverage for 5-10 percent of the proposed EFP trips to document species composition of the catch and bycatch from the clam dredge, in addition to the degree to which surfclams in the area test positive for



PSP. This coverage would help ensure the reliability of bycatch information on these trips and could be used when evaluating the potential for continued access to the area. This recommendation would represent observer coverage outside of the Northeast Fisheries Observer Program that the project would need to secure.

In order to move forward with your EFP request, please submitted a revised application that considers these suggestions. Please contact Laura Hansen ([Laura.Hansen@noaa.gov](mailto:Laura.Hansen@noaa.gov)) if you have any questions or would like to discuss the additional information we need to complete consideration of the EFP application.

Sincerely,



Michael Pentony  
Regional Administrator

Cc: Thomas Nies, NEFMC Executive Director  
Christopher Moore, MAFMC Executive Director



## New England Fishery Management Council

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

August 13, 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 final submission of Amendment 21 to the Atlantic Sea Scallop Fishery Management Plan, including the Environmental Assessment (EA) and associated appendices. A preliminary submission draft was sent to your staff on June 3, 2021.

We received your letter dated August 10, 2021 with several issues identified for us to address to ensure the document is consistent with applicable laws. We have revised this final submission document to reflect all requested revisions contained in that letter.

After considering feedback from NMFS staff and the issues identified in your letter, we have decided to remove an appendix that covered scenario analyses of the LAGC IFQ possession limits and annual lease prices. Section 6.6.1.7 of Amendment 21 was updated with information previously provided in the appendix, and it is no longer needed.

The measures proposed in Amendment 21 address three areas: 1) adjustments to the management measures for scallop fishing in the NGOM management area; 2) modifications to the LAGC IFQ possession limits; and 3) allowing Limited Access vessels with IFQ to transfer quota to LAGC IFQ only vessels.

Please contact me if you have any questions.

Sincerely,

Thomas A. Nies  
Executive Director



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
GREATER ATLANTIC REGIONAL FISHERIES OFFICE  
55 Great Republic Drive  
Gloucester, MA 01930

August 10, 2021

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

RE: Comments on Amendment 21 to the Atlantic Sea Scallop Fishery Management Plan

Dear Tom:

The Council submitted a preliminary draft of Amendment 21 on June 3, 2021. We completed a review of the draft document. There are some issues that must be addressed to ensure the document is consistent with applicable law, which we have outlined below.

My staff will be discussing these revisions with your staff. If you have questions on the comments provided, or on the review of Amendment 21, please contact Travis Ford at (978) 281-9233.

Sincerely,

A handwritten signature in blue ink that reads "Michael Pentony".

Michael Pentony  
Regional Administrator



Section(s)	Group	Comments
5.4	Protected Resources Division (PRD)	Add oceanic whitetip sharks to Endangered Species Act listed species table (Table 15).
5.4.2, 6.4, 7.2.2, 7.4	PRD	Update language to reflect the 2021 Biological Opinion.
5.4.2.1.3	PRD	Update environmental assessment with information on sea turtle bycatch in trawl gear for Mid-Atlantic Bight and Georges Bank.
5.6	Social Science Branch (SSB)	Correct Table 18 by using the correct symbol to show which year Closed Area I carryover was applied to the Annual Projected Landings.
Throughout 6.4	PRD	When describing potential impacts to Atlantic sturgeon and sea turtles in the Gulf of Maine, avoid using “no observed interactions” to support a low level of co-occurrence or interaction risk to the species. There has been no observer coverage in this portion of the fishery over the past 10 years.
6.4.1, 6.4.4, 6.4.9, 6.4.10	PRD	Clarify that these actions are administrative and are not anticipated to result in any direct or indirect impacts to protected species.
6.4.2, 6.4.3, 6.4.5, 6.4.6	PRD	While these actions may not directly affect the risk of an interaction with a protected species, describe the potential impacts that could result from the alternatives under various resource conditions (i.e., biomass) and levels of effort.
Throughout 6.4	PRD	The overall assessment of impacts of an alternative should occur before a comparison of impacts between alternatives is made.
6.4.3.2, 6.4.3.3	PRD	Modify text to reflect that these alternatives would result in a moderate positive indirect impact to protected resources.
6.4.6.1.2, 6.4.6.1.3	PRD	Change overall impact of Alt. 2 and Alt. 3 from "slight negative negligible" to "moderate negative to negligible." Modify relative impacts to: <ul style="list-style-type: none"> <li>Alt 2 relative to Alt 1=negligible to moderate negative</li> <li>Alt 2 relative to Alt 3=negligible (appears to have the same level of risk/impacts).</li> </ul>
6.4.7	PRD	Expand on whether an increased possession limit might result in a detectable change in effort, timing or area of fishing, and resulting impact to protected species.
6.4.7.2	PRD	Change overall impact of Alt. 2 from "slightly positive to negligible" to "slightly negative to negligible."
6.6.1.2.1	SSB	Add a sentence explicitly describing the economic impact of the alternative, as was done in 6.6.1.1.1.

6.6.1.7 & Appendix 1	SSB	The econometric model of quota prices in Appendix 1 is used for the analysis of Alternative 7 is not appropriate. SSB staff have discussed possible solutions with Council staff including (a) assuming a constant quota price, (b) using the parameter estimates from Table 9 of Appendix A to the scallop IFQ report, simulating changes in “net price,” and then applying those to get a new predicted quota price, or (c) using the “profit” coefficients from Table 3 or Table 4 of Jin, Lee, and Thunberg (2019) to get the effects of a change in prices and costs on the predicted quota price. Council staff indicated that they plan to correct using approach (c). Staff also discussed removing Appendix 1 and making necessary changes to the Amendment 21 document.
6.6.1.7	SSB	Update the analysis to 2019 dollars from 2017 dollars, using the consumer price index provided by SSB.
6.6.1.7.4	SSB	Update text to describe the impacts of a possession limit increase on quota holders who do not fish, consistent with earlier sections of 6.6.1.7.
6.7	PRD	Update cumulative effects section to be consistent with required changes in 6.4, as necessary.
6.7.5.3	National Environmental Policy Act (NEPA)	Fishing activity degrades habitat condition, and does not have positive effects on the resource. Please revise to clarify that fishery management cumulatively may have had negligible or slight change in level of impact on habitat from scallop fishing activity.
7.2.2	NEPA	Update Finding of No Significant Impact statement for Amendment 21.
7.12.2.4	SSB	In light of the Office of Information and Regulatory Affairs’ recent significance determination for Framework 33 to this fishery management plan, please remove the parenthetical reference to 2001 dollars in the Executive Order 12866 analysis. This reference does not change the underlying conclusion that the net benefits from the action are on the order of <2% of the \$25mil total net revenue achieved by the entities affected by this action.



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116  
John F. Quinn, J.D., Ph.D., *Chairman* | Thomas A. Nies, *Executive Director*

August 5, 2021

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 Amendment 21 to the Scallop FMP in order 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 July 7<sup>th</sup>, 2021. The review focused only on the regulatory changes resulting from Amendment 21, 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. Also as discussed by our staffs, the Council's intent for Amendment 21 is that the proposed measures become effective in concordance with updated specifications for fishing year 2022, which are currently under development through Framework 34 and have a target implementation date of April 1, 2022. I deem the regulatory text in the enclosure consistent with Council intent for implementing measures proposed by Amendment 21.

Please feel free to call me with any concerns.

Sincerely,

Dr. John Quinn  
Chairman



Enclosure 1:

**§ 648.2 Definitions.**

In addition to the definitions in the Magnuson Act and in [§ 600.10 of this chapter](#), the terms used in this part have the following meanings:

*Alewife* means *Alosa pseudoharengus*.

*American lobster* or *lobster* means *Homarus americanus*.

*American shad* means *Alosa sapidissima*.

*Annual catch entitlement (ACE)*, with respect to the NE multispecies fishery, means the share of the annual catch limit (ACL) for each NE multispecies stock that is allocated to an individual sector or state-operated permit bank based upon the cumulative fishing history attached to each permit participating in that sector or held by a state-operated permit bank in a given year. This share may be adjusted due to penalties for exceeding the sector's ACE for a particular stock in earlier years, or due to other violations of the FMP, including the yearly sector operations plan. When a sector's or state-operated permit bank's share of a NE multispecies stock, as determined by the fishing histories of vessels participating in that sector or permits held by a state-operated permit bank, is multiplied by the available catch, the result is the amount of ACE (live weight in pounds) that can be harvested (landings and discards) by participants in that sector or transferred by a state-operated permit bank, during a particular fishing year.

*At-sea monitor*, with respect to the NE multispecies fishery, means any person responsible for observing, verifying, and reporting area fished, catch, and discards of all species by gear type for sector trips as part of an approved sector at-sea monitoring program.

*Atlantic butterfish* or *butterfish* means *Peprilus triacanthus*.

*Atlantic Chub Mackerel Management Unit* means an area of the Atlantic Ocean in which the United States exercises exclusive jurisdiction over all Atlantic chub mackerel fished for, possessed, caught, or retained in or from that is bounded on the west and north by the coastline of the United States; bounded on the east by the outer limit of the U.S. EEZ; and bounded on the south by a line following the lateral seaward boundary between North Carolina and South Carolina from the coast to the Submerged Lands Act line, approximately 33°48'46.37" N lat., 78°29'46.46" W long., and then heading due east along 33°48'46.37" N lat. to the outer limit of the U.S. Exclusive Economic Zone.

*Atlantic croaker* means *Micropogonias undulatus*.

*Atlantic deep-sea red crab (red crab)* means *Chaceon quinquegens*.

*Atlantic hagfish* means *Myxine glutinosa*.

*Atlantic herring* means *Clupea harengus*.

*Atlantic herring carrier* means a fishing vessel that may receive and transport herring caught by another fishing vessel, provided the vessel has been issued a herring permit, does not have any gear on board capable of catching or processing herring, and that has on board a letter of authorization from the Regional Administrator to transport herring caught by another fishing vessel or has declared an Atlantic herring carrier trip via VMS consistent with the requirements at [§ 648.4\(a\)\(10\)\(ii\)](#).

*Atlantic herring dealer* means:

- (1) Any person who purchases or receives for a commercial purpose other than solely for transport or pumping operations any herring from a vessel issued a Federal Atlantic herring permit, whether offloaded directly from the vessel or from a shore-based pump, for any purpose other than for the purchaser's own use as bait;
- (2) Any person owning or operating a processing vessel that receives any Atlantic herring from a vessel issued a Federal Atlantic herring permit whether at sea or in port; or
- (3) Any person owning or operating an Atlantic herring carrier that sells Atlantic herring received at sea or in port from a vessel issued a Federal Atlantic herring permit.

*Atlantic herring offload* means to remove, begin to remove, to pass over the rail, or otherwise take Atlantic herring off of or away from any vessel issued an Atlantic herring permit for sale to either a permitted at-sea Atlantic herring dealer or a permitted land-based Atlantic herring dealer.

*Atlantic herring processor* means a person who receives unprocessed Atlantic herring from a fishing vessel issued a Federal Atlantic herring permit or from an Atlantic herring dealer for the purposes of processing; or the owner or operator of a fishing vessel that processes Atlantic herring; or an Atlantic herring dealer who purchases Atlantic herring from a fishing vessel with a Federal Atlantic herring permit for resale as bait.

*Atlantic herring transfer at-sea* means a transfer from the hold, deck, codend, or purse seine of a vessel issued an Atlantic herring permit to another vessel for personal use as bait, to an Atlantic herring carrier or at-sea processor, to a permitted transshipment vessel, or to another permitted Atlantic herring vessel. Transfers between vessels engaged in pair trawling are not herring transfers at-sea.

*Atlantic mackerel* means *Scomber scombrus*.

*Atlantic salmon* means *Salmo salar*.

*Atlantic sea scallop* or *scallop* means *Placopecten magellanicus*, throughout its range.

*Beam trawl* means gear, consisting of a twine bag attached to a beam attached to a towing wire, designed so that the beam does not contact the bottom. The beam is constructed with sinkers or shoes on either side that support the beam above the bottom or any other modification so that the beam does not contact the bottom. The beam trawl is designed to slide along the bottom rather than dredge the bottom.

*Black sea bass* means *Centropristis striata*.

*Black Sea Bass Monitoring Committee* means a committee made up of staff representatives of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils, the Northeast Regional Office of NMFS, the Northeast Fisheries Science Center, and Commission representatives. The Council Executive Director or his designee chairs the Committee.

*Black sea bass pot or black sea bass trap* means any such gear used in catching and retaining black sea bass.

*Blowfish (puffer)* means any species in the family Tetraodontidae.

*Blueback herring* means *Alosa aestivalis*.

*Bluefish* means *Pomatomus saltatrix*.

*Bluefish Monitoring Committee* means a committee made up of staff representatives of the Mid-Atlantic Fishery Management Council, the New England Fishery Management Council, and South Atlantic Fishery Management Council, the NMFS Northeast Regional Office, the NMFS Northeast Fisheries Science Center, and the Commission. The Mid-Atlantic Fishery Management Council's Executive Director or a designee chairs the committee.

*Blueline tilefish* means *Caulolatilus microps*.

*Bonito* means *Sarda sarda*.

*Border transfer (BT)* means the amount of herring specified pursuant to [§ 648.200](#) that may be transferred to a Canadian transport vessel that is permitted under the provisions of [Pub. L. 104-297](#), section 105(e).

*Bottom-tending mobile gear*, means gear in contact with the ocean bottom, and towed from a vessel, which is moved through the water during fishing in order to capture fish, and includes otter trawls, beam trawls, hydraulic dredges, non-hydraulic dredges, and seines (with the exception of a purse seine).

*Bridles* connect the wings of a bottom trawl to the ground cables. The ground cables lead to the doors or otter boards. The doors are attached to the towing vessel via steel cables, referred to as wires or warps. Each net has two sets of bridles, one on each side.

*Brush-sweep trawl gear* means trawl gear consisting of alternating roller discs and bristle brushes that are strung along cables, chains, or footropes, and aligned together to form the sweep of the trawl net, designed to allow the trawl sweep to maintain contact with the ocean floor, or any modification to trawl gear that is substantially similar in design or effect.

*Bushel (bu)* means a standard unit of volumetric measurement deemed to hold 1.88 ft<sup>3</sup> (53.24 L) of surfclams or ocean quahogs in shell, or 1.24 ft<sup>3</sup> (35.24 L) of in-shell Atlantic sea scallops.

*Cage* means a container with a standard unit of volumetric measurement containing 60 ft<sup>3</sup> (1,700 L). The outside dimensions of a standard cage generally are 3 ft (91 cm) wide, 4 ft (122 cm) long, and 5 ft (152 cm) high.

*Calendar day*, with respect to the squid and butterfish fisheries, means the 24-hr period beginning at 0001 hours and ending at 2400 hours,

*Chafing gear* or *cookies*, with respect to the scallop fishery, means steel, rubberized or other types of donut rings, disks, washers, twine, or other material attached to or between the steel rings of a sea scallop dredge.

*Charter* or *party boat* means any vessel that carries passengers for hire to engage in recreational fishing and, with respect to multispecies, that is not fishing under a DAS.

*Circle hook*, with respect to the NE multispecies fishery, means a fishing hook with the point turned perpendicularly back to the shank, or an offset circle hook where the barbed end of the hook is displaced relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

*Combination vessel* means a vessel that has fished in any one calendar year with scallop dredge gear and otter trawl gear during the period 1988 through 1990, and that is eligible for an allocation of individual DAS under the NE Multispecies FMP and has applied for or been issued a limited access scallop permit.

*Commercial fishing* or *fishing commercially* means fishing that is intended to, or results in, the barter, trade, transfer, or sale of fish.

*Commission* means the Atlantic States Marine Fisheries Commission.

*Common pool trip*, with respect to the NE multispecies fishery, means any trip taken by a common pool vessel under a NE multispecies DAS or under the provisions of a limited access NE multispecies Small Vessel or Handgear A permit, or an open access Handgear B permit that lands regulated species or ocean pout.

*Common pool vessel*, with respect to the NE multispecies fishery, means any vessel issued a limited access NE multispecies permit or open access NE multispecies Handgear B permit that is not a member of an approved sector for a particular fishing year and that is not operating under the provisions of an approved sector operations plan. Such vessels must use a NE multispecies DAS, or be fishing under the provisions of a limited access NE multispecies Small Vessel or Handgear A permit, or an open access Handgear B permit, to land regulated species or ocean pout, and must comply with effort controls, trip limits, gear restricted areas, and other provisions specified in this part. Vessels fishing under the provisions of the common pool are also referred to as non-sector vessels.

*Conger eel* means *Conger oceanicus*.

*Council* means the New England Fishery Management Council (NEFMC) for the Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, NE multispecies, monkfish, and NE skate fisheries; or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, Atlantic chub mackerel, *Illex* squid, longfin squid, and butterfish; Atlantic surfclam and ocean quahog; summer flounder, scup, and black sea bass; spiny dogfish; Atlantic bluefish; and tilefish fisheries.

*Councils* with respect to the monkfish fishery and spiny dogfish fishery means the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC).

*Cunner* means *Tautoglabrus adspersus*.

*DAS flip*, with respect to the NE multispecies fishery, means ending fishing under a Regular B DAS and beginning fishing under a Category A DAS.

*DAS Lease*, with respect to the NE multispecies limited access fishery, means the transfer of the use of DAS from one limited access NE multispecies vessel to another limited access NE multispecies vessel for a period not to exceed a single fishing year.

*DAS Lessee*, with respect to the NE multispecies limited access fishery, means the NE multispecies limited access vessel owner and/or the associated vessel that acquires the use of DAS from another NE multispecies limited access vessel.

*DAS Lessor*, with respect to the NE multispecies limited access fishery, means the NE multispecies limited access vessel owner and/or the associated vessel that transfers the use of DAS to another NE multispecies limited access vessel.

*Day(s)-at-Sea (DAS)*, with respect to the NE multispecies and monkfish fisheries (except as described in [§ 648.82\(k\)\(1\)\(iv\)](#)), and the Atlantic sea scallop fishery, means the 24-hr period of time or any part thereof during which a fishing vessel is absent from port to fish for, possess, or land, or fishes for, possesses or lands, regulated species, monkfish, or scallops.

*Dealer* means any person who receives, for a commercial purpose (other than solely for transport on land), from the owner or operator of a vessel issued a valid permit under this part, any species of fish, the harvest of which is managed by this part, unless otherwise exempted in this part.

*Dealer code* means a confidential five-digit number assigned to each dealer required to submit purchases using the IVR system for the purpose of maintaining the integrity of the data reported through the IVR system.

*De-hooker*, with respect to the NE multispecies hook gear fishery, means the fairlead rollers when used in a manner that extracts fish hooks from caught fish, also known as “crucifiers.”

*Directed fishery*, with respect to the longfin squid, *Illex* squid, and butterfish fisheries, means commercial fishery operations in which more than an incidental catch of each species, as defined in this section, is retained by a vessel.

*Dockside/roving monitor*, with respect to the NE multispecies fishery, means any person responsible for observing/verifying the offloads of all species by common pool or sector vessels either directly to a federally permitted dealer or to a truck for later delivery to a federally permitted dealer, and for certifying the accuracy of landed weights, as reported by federally permitted dealers, pursuant to this part.

*Dredge* or *dredge gear*, with respect to the scallop fishery, means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any other modification to this design, that can be or is used in the harvest of scallops.

*Dredge bottom*, with respect to scallops, means the rings and links found between the bail of the dredge and the club stick, which, when fishing, would be in contact with the sea bed. This includes the triangular shaped portions of the ring bag commonly known as “diamonds.”

*Dredge top*, with respect to the scallop fishery, means the mesh panel in the top of a dredge and immediately adjacent rings and links found between the bail of the dredge, the club stick, and the two side panels. The bail of the dredge is the rigid structure of the forward portion of the dredge that connects to the warp and holds the dredge open. The club stick is the rigid bar at the tail of the dredge bag that is attached to the rings.

*Dredge vessel*, with respect to the scallop fishery, means any fishing vessel that is equipped for fishing using dredge gear and that is capable of catching scallops.

*Electronic monitoring* means a network of equipment that uses a software operating system connected to one or more technology components, including, but not limited to, cameras and recording devices to collect data on catch and vessel operations. With respect to the NE multispecies fishery, electronic monitoring means any equipment that is used to monitor area fished and the amount and identity of species kept and discarded in lieu of at-sea monitors as part of an approved Sector at-sea monitoring program.

*Electronic monitoring data* means the data that are created in the collection of fishery-dependent data by electronic monitoring systems during fishing operations, including the video, images, and other sensor data, as well as the metadata that provides information (*e.g.*, trip sail date, vessel information) about the raw data.

*Exempted gear*, with respect to the NE multispecies fishery, means gear that is deemed to be not capable of catching NE multispecies, and includes: Pelagic hook and line, pelagic longline, spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dipnets, stop nets, pound nets, pelagic gillnets, pots and traps, shrimp trawls (with a properly configured grate as defined under this part), and surfclam and ocean quahog dredges.

*Fishing circle*, with respect to the NE multispecies limited access fishery, means the calculated circumference of a bottom trawl based on the number of meshes and stretched mesh length at the narrow, aft end of the square of the net.

*Fishing trip* or *trip* means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

*Fishing year* means:

(1) For the Atlantic deep-sea red crab fishery, from March 1 through the last day of February of the following year.

(2) Beginning in 2018, for the Atlantic sea scallop fishery, from April 1 through March 31 of the following year (for 2017, the Atlantic sea scallop fishing year will be from March 1, 2017, through March 31, 2018).

(3) For the NE multispecies, monkfish and skate fisheries, from May 1 through April 30 of the following year.

(4) For the golden tilefish fishery, from November 1 through October 31 of the following year.

(5) For all other fisheries in this part, from January 1 through December 31.

*Fixed gear*, for the purposes of the Atlantic herring fishery, means weirs or stop seines.

*Flatfish gillnets* means gillnets that are either constructed with no floats on the float line, or that are constructed with floats on the float line and that have tie-down twine between the float line and the lead line not more than 48 inches (18.90 cm) in length and spaced not more than 15 feet (4.57 m) apart.

*FMP* means fishery management plan.

*Fourspot flounder* means *Paralichthys oblongus*.

*Full-processing (fully process or fully processed)*, with respect to the Atlantic deep-sea red crab fishery, means any activity that removes meat from any part of a red crab.

*Gillnet gear capable of catching multispecies* means all gillnet gear except pelagic gillnet gear specified at [§ 648.81\(b\)\(2\)\(ii\)](#) and [\(d\)\(5\)\(ii\)](#) and pelagic gillnet gear that is designed to fish for and is used to fish for or catch tunas, swordfish, and sharks.

*Golden tilefish* means *Lopholatilus chamaeleonticeps*.

*Gross registered tonnage (GRT)* means the gross registered tonnage specified on the USCG documentation for a vessel.

*Ground cables* on a bottom trawl run between the bridles, which attach directly to the wings of the net, and the doors, or otter boards. The doors are attached to the towing vessel via steel cables, referred to as wires or warps.

*Hagfish* means *Myxine glutinosa*.

*Hail Weight* means a good-faith estimate in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded for each trip.

*Handgear*, with respect to the NE multispecies fishery, means handline gear, rod and reel gear, and tub-trawl gear.

*Handline* or *handline gear* means fishing gear that is released by hand and consists of one main line to which is attached no more than two leaders for a total of no more than three hooks. Handlines are retrieved only by hand, not by mechanical means.

*Harbor porpoise* means *Phocoena phocoena*.

*Harbor Porpoise Review Team (HPRT)* means a team of scientific and technical experts appointed by the NEFMC to review, analyze, and propose harbor porpoise take mitigation alternatives.

*Hickory shad* means *Alosa mediocris*.

*Hook gear* means fishing gear that is comprised of a hook or hooks attached to a line and includes, but is not limited to, longline, setline, jigs, troll line, rod and reel, and line trawl.

*Illex* means *Illex illecebrosus* (short-finned or summer squid).

*Incidental catch*, with respect to the longfin squid, *Illex* squid, and butterfish fisheries, means less than 250 lb (113 kg) of longfin squid, 10,000 lb (4,536 kg) of *Illex* squid, or 600 lb (272 kg) of butterfish retained on board the vessel.

*Incidental Total Allowable Catch (TAC)*, with respect to the NE multispecies fishery, means the total amount of catch (both kept and discarded) of a regulated groundfish stock of concern that can be taken by vessels fishing under Category B DAS.

*Individual Transferable Quota (ITQ) Program* means, for the Atlantic surfclam and ocean quahog fishery, the annual individual allocation of quota specified at [§ 648.74](#).

*Inshore exempted species* means the following species:

Bay scallop - *Aequipecten irradians*.

Blood arc clam - *Anadara ovalis*.

Blood worm - *Glycera dibranchiata*.

Blue crab - *Callinectes similis* and *Callinectes sapidus*.

Blue mussel - *Mytilus edulis*.

Green crab - *Carcinus maenas*.

Hermit crab - *Clibanarius vittatus*, *Pagurus pollicaris* and *Pagurus longicarpus*.

Japanese shore crab - *Hemigrapsus sanguineus*.

Oyster - *Crassostrea virginica* and *Ostrea edulis*.

Quahog - *Mercenaria mercenaria*.

Razor clam - *Ensis directus*.

Sand worm - *Nereis virens*.

Soft clam - *Mya arenaria*.

Spider crab *Libinia emarginata*.



*Interest in an IFQ allocation* means: An allocation of quota share or annual IFQ allocation held by an individual; or by a company in which the individual is an owner, part owner, officer, shareholder, or partner; or by an immediate family member (an individual's parents, spouse, children, and siblings).

*IVR System* means the Interactive Voice Response reporting system established by the Regional Administrator for the purpose of monitoring harvest levels for certain species.

*Jigging*, with respect to the NE multispecies fishery, means fishing for regulated species with handgear, handline, or rod and reel using a jig, which is a weighted object attached to the bottom of the line used to sink the line and/or imitate a baitfish, which is moved (“jigged”) with an up and down motion.

*John Dory* means *Zenopsis conchifera*.

*JVPt, with respect to the Atlantic herring fishery*, means the specification of the total amount of herring available for joint venture processing by foreign vessels in the EEZ and state waters.

*Land* means to begin offloading fish, to offload fish, or to enter port with fish.

*Lessee* means:

(1) A vessel owner who receives temporarily transferred NE multispecies DAS from another vessel through the DAS Leasing Program specified at [§ 648.82\(k\)](#); or

(2) A person or entity eligible to hold golden tilefish IFQ allocation, who receives temporarily transferred golden tilefish IFQ allocation, as specified at [§ 648.294\(e\)\(1\)](#).

*Lessor* means:

(1) A vessel owner who temporarily transfers NE multispecies DAS to another vessel through the DAS Leasing Program specified at [§ 648.82\(k\)](#); or

(2) An IFQ allocation permit holder who temporarily transfers golden tilefish IFQ allocation, as specified at [§ 648.294\(e\)\(1\)](#).

*Limited access general category (LAGC) scallop vessel* means a vessel that has been issued an individual fishing quota (IFQ), Northern Gulf of Maine (NGOM), or incidental catch LAGC scallop permit pursuant to [§ 648.4\(a\)\(2\)\(ii\)](#). An LAGC scallop vessel may also be issued a limited access scallop permit.

*Limited access herring vessel* means a vessel that has been issued a valid permit for any type of limited access herring vessel permit described in [§ 648.4](#).

*Limited access scallop vessel* means a vessel that has been issued a limited access full-time, part-time, or occasional scallop permit pursuant to [§ 648.4\(a\)\(2\)\(i\)](#). A limited access scallop vessel may also be issued an LAGC scallop permit.

*Liner* means a piece of mesh or any other material rigged inside or outside the main or outer net or dredge that restricts the mesh or ring size or otherwise reduces escapement.

*Link*, with respect to the sea scallop fishery, means the material, usually made of a 3/8-inch (10-mm) or 7/16-inch (11-mm) diameter metal rod, that joins two adjacent rings within the ring bag of a dredge.

*Little tunny* means *Euthynnus alleteratus*.

*Longfin squid* means *Doryteuthis (Amerigo) pealeii* (formerly *Loligo pealeii*).

*Longhorn sculpin* means *Myoxocephalus octodecimspinosus*.

*Longline gear* means fishing gear that is or is designed to be set horizontally, either anchored, floating, or attached to a vessel, and that consists of a main or ground line with three or more gangions and hooks.

*Mackerel, Squid, and Butterfish Monitoring Committee* means the committee made up of staff representatives of the MAFMC and the NEFMC, and the Greater Atlantic Regional Fisheries Office and NEFSC of NMFS. The MAFMC Executive Director or a designee chairs the Committee.

*Mahogany Quahog* see *Ocean Quahog*

*Maine bushel* means a standard unit of volumetric measurement equal to 1.2445 cubic feet (35.24 L) of ocean quahogs in the shell.

*Maine mahogany quahog zone* means the area bounded on the east by the U.S.-Canada maritime boundary, on the south by a straight line at 43°50' N. latitude, and on the north and west by the shoreline of Maine.

*MCSP* means a Mobile Communications Service Provider, which is an operator of a mobile communications service used to provide wireless connectivity between mobile platforms and fixed platforms, and enables location transmission and two-way message exchange between the vessel and NMFS, when using a compatible MTU.

*Menhaden* means Atlantic menhaden, *Brevoortia tyrannus*.

*Mid-Atlantic forage species* means the following species and species groups:

(1) Anchovies (family Engraulidae), including but not limited to the following species:

(i) Striped anchovy-*Anchoa hepsetus*.

(ii) Dusky anchovy-*Anchoa lyolepis*.

(iii) Bay anchovy-*Anchoa mitchilli*.

(iv) Silver anchovy-*Engraulis eurystole*.

(2) Argentines (family Argentinidae), including but not limited to the following species:

(i) Striated argentine-*Argentina striata*.

(ii) Pygmy argentine-*Glossanodon pygmaeus*.

(3) Greeneyes (family Chlorophthalmidae), including but not limited to the following species:

(i) Shortnose greeneye-*Chlorophthalmus agassizi*.

(ii) Longnose greeneye-*Parasudis truculenta*.

(4) Halfbeaks (family Hemiramphidae), including but not limited to the following species:

(i) Flying halfbeak-*Euleptorhamphus velox*.

(ii) Balao-*Hemiramphus balao*.

(iii) Ballyhoo-*Hemiramphus brasiliensis*.

(iv) False silverstripe halfbeak/American halfbeak/Meek's halfbeak-*Hyporhamphus meeki*.

(5) Herrings and Sardines (family Clupeidae). With the exception of other herring and sardine species managed under this part, including American shad, Atlantic herring, blueback herring, hickory shad, and river herring/alewife, as defined in this section, the following herring and sardine species are Mid-Atlantic forage species:

(i) Round herring-*Etrumeus teres*.

(ii) Scaled sardine-*Harengula jaguana*.

(iii) Atlantic thread herring-*Opisthonema oglinum*.

(iv) Spanish sardine-*Sardinella aurita*.

(6) Lanternfishes (family Myctophidae), including but not limited to the following species:

(i) Horned lanternfish-*Ceratoscopelus maderensis*.

(ii) Dumril's headlightfish-*Diaphus dumerilii*.

(iii) Crocodile lanternfish-*Lampanyctus crocodilus*.

(iv) Doflein's false headlightfish-*Lobianchia dofleini*.

(v) Spotted lanternfish-*Myctophum punctatum*.

(7) Pearlsides (family Sternoptychidae), including but not limited to the following species:

(i) Atlantic silver hatchetfish-*Argyropelecus aculeatus*.

(ii) Muller's pearlside-*Maurolicus muelleri*.

(iii) Weizman's pearlside-*Maurolicus weitzmani*.

(iv) Slope hatchetfish-*Polyipnus clarus*.

(8) Sand lances (family Ammodytidae), including but not limited to the following species:

(i) American/inshore sand lance-*Ammodytes americanus*.

- (ii) Northern/offshore sand lance-*Ammodytes dubius*.
- (9) Silversides (family Atherinopsidae), including but not limited to the following species:
  - (i) Rough silverside-*Membras martinica*.
  - (ii) Inland silverside-*Menidia beryllina*.
  - (iii) Atlantic silverside-*Menidia menidia*.
- (10) Cusk-eels (order Ophidiiformes), including but not limited to the following species:
  - (i) Chain pearlfish-*Echiodon dawsoni*.
  - (ii) Fawn cusk-eel-*Lepophidium profundorum*.
  - (iii) Striped cusk-eel-*Ophidion marginatum*.
- (11) Atlantic saury-*Scomberesox saurus*.
- (12) Pelagic mollusks and cephalopods, excluding sharptail shortfin squid (*Illex oxygonius*), but including the following pelagic mollusc species:
  - (i) Neon flying squid-*Ommastrephes bartramii*.
  - (ii) European flying squid-*Todarodes sagittatus*.
  - (iii) Atlantic brief squid-*Lolliguncula brevis*.
  - (iv) Bobtail squids (family Sepiolidae), including but not limited to the following species:
    - (A) Odd bobtail squid-*Heteroteuthis dispar*.
    - (B) Big fin bobtail squid-*Rossia megaptera*.
    - (C) Warty bobtail squid-*Rossia palpebrosa*.
    - (D) Lesser bobtail squid-*Semirossia tenera*.
    - (E) Butterfly bobtail squid-*Stoloteuthis leucoptera*.
  - (v) Sea angels and sea butterflies (orders Gymnosomata and Thecosomata).
  - (vi) Tuberculate pelagic octopus-*Ocythoe tuberculata*.
- (13) Species under one inch as adults, including but not limited to the following species groups:
  - (i) Copepods (subclass Copepoda).
  - (ii) Krill (order Euphausiacea).
  - (iii) Amphipods (order Amphipoda).
  - (iv) Ostracods (class Ostracoda).
  - (v) Isopods (order Isopoda).

(vi) Mysid shrimp (order Mysidacea).

*Midwater trawl gear* means trawl gear that is designed to fish for, is capable of fishing for, or is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time. The gear may not include discs, bobbins, or rollers on its footrope, or chafing gear as part of the net.

*Mobile gear* means trawls, beam trawls, and dredges that are designed to maneuver with that vessel.

*Monkfish*, also known as *anglerfish* or *goosefish*, means *Lophius americanus*.

*Monkfish gillnets* means gillnet gear with mesh size no smaller than 10-inches (25.4 cm) diamond mesh that is designed and used to fish for and catch monkfish while fishing under a monkfish DAS.

*Monkfish Monitoring Committee* means a team of scientific and technical staff appointed by the NEFMC and MAFMC to review, analyze, and recommend adjustments to the management measures. The team consists of staff from the NEFMC and the MAFMC, NMFS Northeast Regional Office, NEFSC, the USCG, two fishing industry representatives selected by their respective Council chairman (one from each management area with at least one of the two representing either the Atlantic sea scallop or northeast multispecies fishery), and staff from affected coastal states, appointed by the Atlantic States Marine Fisheries Commission. The Chair is elected by the Committee from within its ranks, subject to the approval of the Chairs of the NEFMC and MAFMC.

*Monkfish-only DAS* means monkfish DAS allocated to a limited access monkfish Category C, D, F, G, or H permit that are in excess of that permit's initial allocation of Northeast multispecies Category A DAS at the beginning of a fishing year.

*MTU* means a Mobile Transmitting Unit, which is a transceiver or communications device, including antennae, dedicated message terminal and display, and an input device such as a keyboard installed on a fishing vessel participating in the VMS program.

*Mullet* means any species in the family Mugilidae.

*Multispecies frames*, also known as multispecies racks, means the remains of the multispecies finfish after it has been filleted or processed, not including the fillet.

*Multispecies Monitoring Committee* means a team of scientific and technical staff appointed by the NEFMC to review, analyze, and recommend adjustments to the measurement measures. The team consists of staff from the NEFMC and the MAFMC, NMFS Northeast Region Office, NEFSC, the USCG, an industry representative, and no more than two representatives, appointed by the Commission, from affected states.

*NAFO* means Northwest Atlantic Fisheries Organization.

*NAFO Convention Area* means the waters of the Northwest Atlantic Ocean north of 35°00' N. lat. and west of a line extending due north from 35°00' N. lat. and 42°00' W. long. to 59°00' N.

lat., thence due west to 44°00' W. long., and thence due north to the coast of Greenland and the waters of the Gulf of St. Lawrence, Davis Strait and Baffin Bay south of 78°10' N. lat.

*NAFO Regulatory Area* means the part of the NAFO Convention Area which lies beyond the 200-mile zone of the coastal states.

*NEFSC* means the Northeast Fisheries Science Center, NMFS.

*NE Skate Complex (skates)* means *Leucoraja ocellata* (winter skate); *Dipturus laevis* (barndoor skate); *Amblyraja radiata* (thorny skate); *Malacoraja senta* (smooth skate); *Leucoraja erinacea* (little skate); *Raja eglanteria* (clearnose skate); and *Leucoraja garmani* (rosette skate).

*Net tonnage (NT)* means the net tonnage specified on the USCG documentation for a vessel.

*Non-exempt gillnet fishery* means a fishery which uses gillnet gear capable of catching multispecies.

*Non-exempt species* means species of fish not included under the GOM, GB and SNE Regulated Mesh Area exempted fisheries, as specified in [§ 648.80\(a\)\(5\)](#); (a)(6); (a)(9) through (14); (b)(3)(i) and (ii); (b)(5) through (8); and (d), (e), (h), and (i).

*Northeast (NE) multispecies or multispecies* means the following species:

American plaice - *Hippoglossoides platessoides*.

Atlantic cod - *Gadus morhua*.

Atlantic halibut - *Hippoglossus hippoglossus*.

Atlantic wolffish - *Anarhichas lupus*.

Haddock - *Melanogrammus aeglefinus*.

Ocean pout - *Macrozoarces americanus*.

Offshore hake - *Merluccius albidus*.

Pollock - *Pollachius virens*.

Redfish - *Sebastes fasciatus*.

Red hake - *Urophycis chuss*.

Silver hake (whiting) - *Merluccius bilinearis*.

White hake - *Urophycis tenuis*.

Windowpane flounder - *Scophthalmus aquosus*.

Winter flounder - *Pleuronectes americanus*.

Witch flounder - *Glyptocephalus cynoglossus*.

Yellowtail flounder - *Pleuronectes ferruginea*.

*Northern shrimp* means *Pandalus borealis*.

*Not available for immediate use* means that the gear is not being used for fishing and is stowed in conformance with one of the following methods:

(1) *Nets* -

(i) *Below-deck stowage*.

(A) The net is stored below the main working deck from which it is deployed and retrieved;

(B) The net is fan-folded (flaked) and bound around its circumference.

(ii) *On-deck stowage*.

(A) The net is fan-folded (flaked) and bound around its circumference;

(B) The net is securely fastened to the deck or rail of the vessel; and

(C) The towing wires, including the leg wires, are detached from the net.

(iii) *On-reel stowage*.

(A) The net is on the net reel;

(B) The codend of the net is removed from the net and stored below deck; and

(C) The entire surface of the net is covered and securely bound by:

1. (1) Canvas of other similar opaque material; or

2. (2) A highly visible orange or yellow mesh material that is not capable of catching fish or being utilized as fishing gear. An example of highly visible orange or yellow mesh includes but is not limited to the orange fence material commonly used to enclose construction sites.

(iv) *On-reel stowage for vessels transiting the Gulf of Maine Rolling Closure Areas and the Georges Bank Seasonal Closure Area*.

(A) If a vessel is transiting the *Gulf of Maine Rolling Closure Areas and the Georges Bank Seasonal Closure Area*, not available for immediate use also means, the net is on the net reel;

(B) No containment rope, codend tripping device, or other mechanism to close off the codend is attached to the codend;

(C) The entire surface of the net is covered and securely bound by:

3. (1) Canvas of other similar opaque material; or

4. (2) A highly visible orange or yellow mesh material that is not capable of catching fish or being utilized as fishing gear. Highly visible orange or yellow mesh includes but is not limited to the orange fence material commonly used to enclose construction sites.

(2) *Scallop dredges*.

(i) The towing wire is detached from the scallop dredge, the towing wire is completely reeled up onto the winch, the dredge is secured, and the dredge or the winch is covered so that it is rendered unusable for fishing; or

(ii) The towing wire is detached from the dredge and attached to a bright-colored poly ball no less than 24 inches (60.9 cm) in diameter, with the towing wire left in its normal operating position (through the various blocks) and either is wound back to the first block (in the gallows) or is suspended at the end of the lifting block where its retrieval does not present a hazard to the crew and where it is readily visible from above.

(3) *Hook gear (other than pelagic)*. All anchors and buoys are secured and all hook gear, including jigging machines, are covered.

(4) *Sink gillnet gear*. All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck or rail, and all buoys larger than 6 inches (15.24 cm) in diameter, high flyers, and anchors are disconnected.

(5) *Other methods of stowage*. Any other method of stowage authorized in writing by the Regional Administrator and subsequently published in the Federal Register.

*Observer or monitor* means any person certified by NMFS to collect operational fishing data, biological data, or economic data through direct observation and interaction with operators of commercial fishing vessels as part of NMFS' Northeast Fisheries Observer Program. Observers or monitors include NMFS-certified fisheries observers, at-sea monitors, portside samplers, and dockside monitors.

*Observer/sea sampler* means any person certified/approved by NMFS to collect operational fishing data, biological data, or economic data through direct observation and interaction with operators of commercial fishing vessels as part of NMFS' Northeast Fisheries Observer Program and Northeast At-sea Monitoring Program. Observer/sea samplers are also referred to as fisheries observers, fisheries observers/sea samplers, and NMFS-certified fisheries observers/sea samplers.

*Ocean quahog* means the species *Arctica islandica*.

*Offload or offloading* means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel. For purposes of the surfclam and ocean quahog fishery, it means to separate physically a cage from a vessel, such as by removing the sling or wire used to remove the cage from the harvesting vessel.

*Open areas*, with respect to the Atlantic sea scallop fishery, means any area that is not subject to restrictions of the Scallop Access Area Program specified in §§ 648.59 and 648.60, the Northern Gulf of Maine Management Area specified in § 648.62, Habitat Management Areas specified in §648.370, Dedicated Habitat Research areas specified in § 648.371, the Frank R. Lautenberg Deep-Sea Coral Protection Area described in § 648.372, or the New England Deep-Sea Coral Protection Area in § 648.373.



*Operational discards in the Atlantic herring fishery* means small amounts of fish that cannot be pumped on board and remain in the codend or seine at the end of pumping operations. Leaving small amounts of fish in the codend or seine at the end of pumping operations is operationally discarding catch.

*Operator* means the master, captain, or other individual on board a fishing vessel, who is in charge of that vessel's operations.

*Out of the monkfish fishery* means the period of time during which a vessel is not fishing for monkfish under the monkfish DAS program.

*Out of the multispecies fishery* means the period of time during which a vessel is not fishing for regulated species under the NE multispecies DAS program.

*Ownership interest*, in the NE multispecies fishery, includes, but is not limited to holding share(s) or stock in any corporation, any partnership interest, or membership in a limited liability company, or personal ownership, in whole or in part, of a vessel issued a limited access NE multispecies permit or confirmation of permit history (CPH), including any ownership interest in any entity or its subsidiaries or partners, no matter how far removed.

*Pair trawl or pair trawling* means to tow a single net between two vessels.

*Parlor trap/pot* means any structure or other device, other than a net, with more than one compartment inside designed to impede escape of lobsters or crabs from the device or structure, which is placed, or designed to be placed, on the ocean bottom and is designed for, or is capable of, catching lobsters and/or red crabs.

*Pelagic hook and line gear* means handline or rod and reel gear that is designed to fish for, or that is being used to fish for, pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time.

*Pelagic longline gear* means fishing gear that is not fixed, nor designed to be fixed, nor anchored to the bottom and that consists of monofilament main line (as opposed to a cable main line) to which gangions are attached.

*Permit year* means:

- (1) For the Atlantic deep-sea red crab fishery, from March 1 through the last day of February of the following year;
- (2) Beginning in 2018, for the Atlantic sea scallop fishery, from April 1 through the last day of March of the following year (for 2017, the Atlantic sea scallop permit year will be from March 1, 2017, through March 31, 2018);
- (3) For all other fisheries in this part, from May 1 through April 30 of the following year.

*Personal use*, with respect to the surfclam or ocean quahog fishery, means harvest of surfclams or ocean quahogs for use as bait, for human consumption, or for other purposes (not including sale or barter) in amounts not to exceed 2 bu (106.48 L) per person per fishing trip.

*Person who receives bluefish for commercial purposes* means any person (excluding representatives of governmental agencies) engaged in the sale, barter, or trade of bluefish received from a fisherman, or one who transports bluefish from a fisherman.

*Postmark* means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt, or receipt received upon hand delivery to an authorized representative of NMFS.

*Potential Sector contribution (PSC)*, with respect to the NE multispecies fishery, means an individual vessel's share of the ACL for each stock of regulated species or ocean pout that is derived from the fishing history associated with the permit issued to that particular vessel for the purposes of participating in a sector and contributing to that sector's ACE for each stock allocated to sectors under the NE Multispecies FMP.

*Prior to leaving port*, with respect to the call-in notification system for NE multispecies, and the call-in notification system for monkfish vessels that are fishing under the limited access monkfish Category C, D, F, G, or H permit provisions that are also fishing under a NE multispecies DAS, means no more than 1 hour prior to the time a vessel leaves the last dock or mooring in port from which that vessel departs to engage in fishing, including the transport of fish to another port. With respect to the call-in notification system for monkfish vessels that are fishing under the limited access monkfish Category A or B permit provisions, it means prior to the last dock or mooring in port from which a vessel departs to engage in fishing, including the transport of fish to another port.

*Private recreational fishing vessel*, with respect to the NE multispecies fishery, means a vessel engaged in recreational fishing that has not been issued a Federal NE multispecies permit, does not sell fish, and does not take passengers for hire.

*Processing, or to process, with respect to the Atlantic herring fishery*, means the preparation of Atlantic herring to render it suitable for human consumption, bait, commercial uses, industrial uses, or long-term storage, including but not limited to cooking, canning, roe extraction, smoking, salting, drying, freezing, or rendering into meat or oil.

*Processor, with respect to the Atlantic surfclam and ocean quahog fisheries*, means a person who receives surfclams or ocean quahogs for a commercial purpose and removes them from a cage.

*Purse seine gear* means an encircling net with floats on the top edge, weights and a purse line on the bottom edge, and associated gear, or any net designed to be, or capable of being, used in such fashion.

*Quota-managed species* means any species of finfish managed under this part by an annual or seasonal quota, by annual target or actual TAC, or by DAH limits.

*Raw*, with respect to electronic monitoring, means the original, unaltered video footage, images, and other sensor data collected by an electronic monitoring system.

*Records*, with respect to records required to be kept by [§ 648.7](#), means those that include, but are not limited to, any written, recorded, graphic, electronic, or digital material; as well as other information stored in or accessible through a computer or other information retrieval system; worksheets; weighout slips; preliminary, interim, and final tally sheets; tags; notes; logbooks; statements; receipts; checks; ledgers; notebooks; diaries; spreadsheets; diagrams; graphs; charts; tapes; disks; or computer printouts.

*Recreational fishing* means fishing that is not intended to, nor results in the barter, trade, or sale of fish.

*Recreational fishing vessel*, with respect to the scup fishery, means any vessel from which no fishing other than recreational fishing is conducted. Charter and party boats are considered recreational fishing vessels for purposes of the scup minimum size requirement.

*Red Crab Management Unit* means an area of the Atlantic Ocean from 35° 15.3' N. Lat., the approximate latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, extending eastward from the shore to the outer boundary of the exclusive economic zone and northward to the U.S.-Canada border in which the United States exercises exclusive jurisdiction over all Atlantic deep-sea red crab fished for, possessed, caught, or retained in or from such area.

*Red crab trap/pot* means any structure or other device, other than a net or parlor trap/pot, that is placed, or designed to be placed, on the ocean bottom and is designed for, or is capable of, catching red crabs.

*Red crab trip*, with respect to the Atlantic deep-sea red crab fishery, means a trip on which a vessel fishes for, possesses, or lands, or intends to fish for, possess, or land red crab in excess of the incidental limit, as specified at [§ 648.263\(b\)\(1\)](#).

*Regional Administrator* means the Administrator, Northeast Region, NMFS, or a designee.

*Regulated fishery* means any fishery of the United States which is regulated under the Magnuson-Stevens Act.

*Regulated species*, means the subset of NE multispecies that includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, white hake, Atlantic halibut, and Atlantic wolffish. Regulated species is also referred to as regulated NE multispecies.

*Reporting month* means the period of time beginning at 0001 hours local time on the first day of each calendar month and ending at 2400 hours local time on the last day of each calendar month.

*Reporting week* means the period of time beginning at 0001 local time on Sunday and ending at 2400 hours local time the following Saturday.

*Re-rig or re-rigged* means physical alteration of the vessel or its gear in order to transform the vessel into one capable of fishing commercially for a species in the applicable fishery.

*Rigged hooks* means hooks that are baited, or only need to be baited, in order to be fished. Unsecured, unbaited hooks and gangions are not considered to be rigged.

*River herring* means alewife (*Alosa pseudoharengus*) and blueback herring (*Alosa aestivalis*).

*Rockhopper and roller gear* means trawl gear configured with disks, rollers, or other similar shaped devices that are attached to the bottom belly of the trawl, contact the sea bottom, and that are designed to raise the bottom panel of the trawl off the ocean bottom so as to enable the gear to be fished on hard bottom.

*Rod and reel* means a hand-held (including rod holder) fishing rod with a manually operated reel attached.

*Roundfish gillnets* means gillnets that are constructed with floats on the float line and that have no tie-down twine between the float line and the lead line.

*Runaround gillnet or encircling gillnet* means a rectangular net placed upright in the water column in a circular fashion with an opening equal to or less than 1/4 the length of the net or with an opening greater than 1/4 the length of the net, if the opening is obstructed in any fashion.

*Scallop dredge vessel* means any fishing vessel, other than a combination vessel, that uses or is equipped to use scallop dredge gear.

*Slippage in the Atlantic herring fishery* means discarded catch from a vessel issued an Atlantic herring permit that is carrying a NMFS-certified observer or monitor prior to the catch being brought on board or prior to the catch being made available for sampling and inspection by a NMFS-certified observer or monitor after the catch is on board. Slippage also means any catch that is discarded during a trip prior to it being sampled portside by a portside sampler on a trip selected for portside sampling coverage by NMFS. Slippage includes releasing catch from a codend or seine prior to the completion of pumping the catch aboard and the release of catch from a codend or seine while the codend or seine is in the water. Fish that cannot be pumped and remain in the codend or seine at the end of pumping operations are not considered slippage. Discards that occur after the catch is brought on board and made available for sampling and inspection by a NMFS-certified observer or monitor are also not considered slippage.

*Scup* means *Stenotomus chrysops*.

*Scup Monitoring Committee* means a committee made up of staff representative of the MAFMC, NEFMC, South Atlantic Fishery Management Council, the NMFS Northeast Regional Office, the NEFSC, and the Commission. The MAFMC Executive Director or a designee chairs the committee.

*Scup pot or trap* means a pot or trap used in catching and retaining scup.

*Sea Scallop Access Area, Scallop Access Area, or Access Area*, with respect to the Atlantic sea scallop fishery, means an area that has been designated under the Atlantic Sea Scallop Fishery Management Plan as a sea scallop rotational area that is open to the scallop fishery in a given fishing year.

*Sea Scallop Plan Development Team (PDT)* means a team of technical experts appointed by the NEFMC.

*Sea Scallop Rotational Area, Scallop Rotational Area, or Rotational Area*, with respect to the Atlantic sea scallop fishery, means an area that has been designated under the Atlantic Sea Scallop Fishery Management Plan as part of the Sea Scallop Rotational Management Program. A rotational area may be closed or open to the scallop fishery in a given fishing year. A rotational area open to the scallop fishery is termed a Sea Scallop Access Area and has area-specific management measures that are designed to control fishing effort and mortality on only the portion of the scallop resource within the area. Such measures are not applicable as defined in [§ 648.2](#) in the definition to Open Areas.

*Sea raven* means *Hemitripterus americanus*.

*Searobin* means any species of the family Triglidae.

*Sector*, with respect to the NE multispecies fishery, means a group of persons holding limited access NE multispecies permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and that have been allocated a portion of the TACs of species managed under the NE Multispecies FMP to achieve objectives consistent with the applicable goals and objectives of the FMP. Each sector must meet the sector eligibility and minimum size requirements specified in [§ 648.87\(a\)\(3\)](#) and

(4) to be approved by NMFS.

*Sector trip*, with respect to the NE multispecies fishery, means any trip taken by a sector vessel subject to the restrictions and conditions of an approved sector operations plan, as specified in [§ 648.87\(c\)](#), in which the vessel declared its intent to fish in the NE multispecies fishery pursuant to [§ 648.10](#).

*Sector vessel*, with respect to the NE multispecies fishery, means any vessel assigned a permit that is a member of an approved sector for a particular fishing year and that is subject to the restrictions and conditions of an approved sector operations plan, as specified in [§ 648.87](#).

*Set-only trip* means a fishing trip on which any federally permitted vessel deploys gear with the intention of retrieving it on a separate trip and does not haul-back or retrieve any gear capable of catching fish on the set-only trip.

*Shad* means American shad (*Alosa sapidissima*) and hickory shad (*Alosa mediocris*).

*Shucking* or *to shuck* means opening or to open a scallop, surfclam, or ocean quahog and removing the meat or the adductor muscle from the shell.

*Shucking machine* means any mechanical device that automatically removes the meat or the adductor muscle from a scallop, surfclam, or ocean quahog shell.

*Sink gillnet* or *bottom-tending gillnet* means any gillnet, anchored or otherwise, that is designed to be, or is fished on or near, the bottom in the lower third of the water column.

*Skate* means members of the Family Rajidae, including: *Leucoraja ocellata* (winter skate); *Dipturus laevis* (barndoor skate); *Amblyraja radiata* (thorny skate); *Malacoraja*

*sentia* (smooth skate); *Leucoraja erinacea* (little skate); *Raja eglanteria* (clearnose skate); and *Leucoraja garmani* (rosette skate).

*Skate Management Unit* means an area of the Atlantic Ocean from 35°15.3' N. lat., the approximate latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, extending eastward from the shore to the outer boundary of the EEZ and northward to the U.S.-Canada border in which the United States exercises exclusive jurisdiction over all skates fished for, possessed, caught, or retained in or from such area.

*Slip(s) or slipping catch in the Atlantic herring fishery* means discarded catch from a vessel issued an Atlantic herring permit that is carrying a NMFS-certified observer or monitor prior to the catch being brought on board or prior to the catch being made available for sampling and inspection by a NMFS-certified observer or monitor after the catch is on board. Slip(s) or slipping catch also means any catch that is discarded during a trip prior to it being sampled portside by a portside sampler on a trip selected for portside sampling coverage by NMFS. Slip(s) or slipping catch includes releasing fish from a codend or seine prior to the completion of pumping the fish on board and the release of fish from a codend or seine while the codend or seine is in the water. Slippage or slipped catch refers to fish that are slipped. Slippage or slipped catch does not include operational discards, discards that occur after the catch is brought on board and made available for sampling and inspection by a NMFS-certified observer or monitor, or fish that inadvertently fall out of or off fishing gear as gear is being brought on board the vessel.

*Small-mesh multispecies* means the subset of Northeast multispecies that includes silver hake, offshore hake, and red hake.

*Smooth dogfish* means *Mustelis canis*.

*Sorting machine, with respect to the Atlantic sea scallop fishery*, means any mechanical device that automatically sorts whole scallops by shell height, size, or other physical characteristics.

*Spiny dogfish* means *Squalus acanthias*.

*Spiny Dogfish Monitoring Committee* means a committee made up of staff representatives of the MAFMC, NEFMC, the NMFS Northeast Regional Office, the Northeast Fisheries Science Center, and the states, as well as two ex-officio industry members (one from each Council jurisdiction). The MAFMC Executive Director or a designee chairs the committee.

*Spot* means *Leiostomus xanthurus*.

*Square mesh*, with respect to the NE multispecies fishery, means mesh in which the horizontal bars of the mesh run perpendicular to the long axis of the net so when the net is placed under a strain the mesh remains open to a square-like shape. Square mesh can be formed by hanging diamond mesh “on the square,” if the resulting mesh conforms with the above description of square mesh.

*Squid* means longfin squid (*Doryteuthis (Amerigo) pealeii*, formerly *Loligo pealeii*) or *Illex illecebrosus*.

*Standard tote* means a box typically constructed of plastic, designed to hold 100 lb (45.3 kg) of fish plus ice, and that has a liquid capacity of 70 L, or a volume of not more than 4,320 cubic in (2.5 cubic ft or 70.79 cubic cm).

*State-operated permit bank* means a depository established and operated by a state through an agreement between NMFS and a state in which Federal grant funds have been used by the state to obtain Federal fishing vessel permits so that the fishing access privileges associated with those permits may be allocated to qualified persons and that meets the requirement of [§ 648.87\(e\)](#).

*Static gear*, with respect to the NE multispecies fishery, means stationary gear, usually left for a period of time in one place, that depends on fish moving to the gear, and includes gillnets, longlines, handgear, traps, and pots.

*Stock of concern*, with respect to the NE multispecies fishery, means a stock that is in an overfished condition, or that is subject to overfishing.

*Stocks targeted by the default measures*, with respect to the NE multispecies fishery, are: American plaice, and SNE/MA yellowtail flounder for the 2006 fishing year; and American plaice, GB cod, GOM cod, CC/GOM yellowtail flounder, SNE/MA yellowtail flounder, white hake and SNE/MA winter flounder for the 2009 fishing year.

*Straight line*, with regard to regulated areas, means a rhumb line, unless explicitly stated otherwise.

*Stretched mesh*, with respect to the NE multispecies Rulle Trawl, means mesh that is pulled so that slack in the mesh is eliminated and the mesh opening is closed.

*Sub-lease*, with respect to the NE multispecies fishery, means the leasing of DAS that have already been leased to another vessel.

*Summer flounder* means *Paralichthys dentatus*.

*Summer Flounder Monitoring Committee* means a committee made up of staff representatives of the MAFMC, NEFMC, and SAFMC, the NMFS Northeast Regional Office, the NEFSC, the Southeast Science Center, and the Commission. The MAFMC Executive Director or a designee chairs the committee.

*Surfclams* means Atlantic surfclams of the species *Spisula solidissima*.

*Sweep*, with respect to the NE multispecies limited access fishery, means the part of a bottom trawl that, during normal use, is in contact with the sea floor along the outer edges of the lower webbing of the net.

*Swordfish* means *Xiphias gladius*.

*Target total allowable catch (TAC)* means the annual domestic harvest targets for regulated species.

*Tautog* (blackfish) means *Tautoga onitas*.

*Tied up to the dock or tying up at a dock* means tied up at a dock, on a mooring, or elsewhere in a harbor.

*Tilefish* means golden tilefish and blueline tilefish, collectively, unless otherwise noted.

*Tilefish FMP Monitoring Committee* means a committee made up of staff representatives of the MAFMC, the NMFS Greater Atlantic Regional Fisheries Office, the Northeast Fisheries Science Center, up to three state representatives (the New England states having one representative and the Mid-Atlantic states having a maximum of two representatives) and one non-voting industry member. The MAFMC Executive Director or his designee chairs the committee.

*Tilefish Management Unit* means an area of the Atlantic Ocean from the latitude of the VA and NC border (36°33.36' N. Lat.), extending eastward from the shore to the outer boundary of the exclusive economic zone and northward to the United States-Canada border in which the United States exercises exclusive jurisdiction over all golden tilefish (*Lopholatilus chamaeleonticeps*) and blueline tilefish (*Caulolatilus microps*) fished for, possessed, caught or retained in or from such area.

*Total Length (TL)* means the straight-line distance from the tip of the snout to the end of the tail (caudal fin) while the fish is lying on its side. For black sea bass, *Total Length (TL)* means the straight-line distance from the tip of the snout to the end of the tail (caudal fin), excluding any caudal filament, while the fish is lying on its side.

*Transboundary Management Guidance Committee (TMGC)*, with respect to the NE multispecies fishery, means the technical sub-committee that provides non-binding guidance to the U.S./Canada Steering Committee, comprised of government and industry representatives from U.S. and Canada.

*Transboundary Resource Advisory Committee (TRAC)*, with respect to the NE multispecies fishery, means a committee consisting of scientific staff from NMFS and Canada's Department of Fisheries and Oceans that jointly assess the status of the shared U.S./Canada stocks of cod, haddock, and yellowtail flounder.

*Transfer* means to begin to remove, to remove, to pass over the rail, or to otherwise take away fish from any vessel and move them to another vessel.

*Transferee* means a vessel owner who receives permanently transferred NE multispecies DAS and potentially other permits from another vessel through the DAS Transfer Program specified at [§ 648.82\(l\)](#).

*Transferor* means a vessel owner who permanently transfers NE multispecies DAS and potentially other permits to another vessel through the DAS Transfer Program specified at [§ 648.82\(l\)](#).

*Trawl* means gear consisting of a net that is towed, including but not limited to beam trawls, pair trawls, otter trawls, and Danish and Scottish seine gear.



*Trawl sweep* means the total length of the footrope on a trawl net that is directly attached to the webbing of a net.

*Trip Identifier* means the complete serial number of the vessel logbook page completed for that trip.

*Tub-trawl*, with respect to the NE multispecies fishery, means gear designed to be set horizontally on the bottom, with an anchored mainline to which are attached three or more gangions and hooks. Tub-trawls are retrieved only by hand, not by mechanical means.

*Tuna purse seine gear*, with respect to the NE multispecies fishery, means encircling gear designed and utilized to harvest pelagic tuna.

*Under construction* means that the keel had been laid or the vessel was under written agreement for construction or the vessel was under written contract for purchase.

*Upon returning to port*, means, for purposes of the call-in notification system for the NE multispecies and monkfish fisheries, upon first tying up at a dock at the end of a fishing trip.

*U.S. at-sea processing (USAP)*, with respect to the Atlantic herring fishery, means the specification, pursuant to [§ 648.200](#), of the amount of herring available for processing by U.S. vessels issued an Atlantic herring processing permit as described in [§ 648.4\(a\)\(10\)\(ii\)](#).

*U.S./Canada Steering Committee*, with respect to the NE multispecies fishery, means the joint U.S./Canada committee consisting of staff from NMFS and Canada's Department of Fisheries and Oceans that has overall responsibility for the U.S./Canada Resource Sharing Understanding.

*Used DAS baseline*, with respect to the NE multispecies fishery, means the number of DAS that represent the historic level of DAS use associated with a particular limited access permit, as described in [§ 648.82\(l\)](#).

*Vessel length* means the length specified on the USCG documentation for a vessel or on the state registration for a vessel not required to be documented under title 46 U.S.C., if the state length is verified by an authorized officer or NMFS official.

*Vessel Monitoring System (VMS)* means a vessel monitoring system or VMS unit as set forth in [§ 648.9](#) and approved by NMFS for use on Atlantic sea scallop, NE multispecies, monkfish, Atlantic herring, and Atlantic surfclam and ocean quahog vessels, as required by this part.

*Video reviewer* means any electronic monitoring service provider staff approved/certified by NMFS for providing electronic monitoring video review services consistent with electronic monitoring program requirements.

*VMS unit* means a device installed on board a vessel used for vessel monitoring and transmitting the vessel's position as required by this part.

*Weakfish* means *Cynoscion regalis*.

*Whiting* means *Merluccius bilinearis*.

*Whiting Monitoring Committee (WMC)* means a team appointed by the NEFMC to review, analyze, and recommend adjustments to the management measures addressing small-mesh multispecies. The team consists of staff from the NEFMC and MAFMC, NMFS Northeast Regional Office, the NEFSC, the USCG, at least one industry representative from each geographical area (northern New England, southern New England, and the Mid-Atlantic), and no more than two representatives, appointed by the Commission, from affected states.

#### **§ 648.14 Prohibitions.**

(i) *Atlantic sea scallops* -

(1) *All persons.* It is unlawful for any person to do any of the following:

(i) *Permit requirement.* Fish for, possess, or land, scallops without the vessel having been issued and carrying onboard a valid scallop permit in accordance with § 648.4(a)(2), unless the scallops were harvested by a vessel that has not been issued a Federal scallop permit and fishes for scallops exclusively in state waters.

(ii) *Gear and crew requirements.* Have a shucking or sorting machine on board a vessel while in possession of more than 600 lb (272.2 kg) of shucked scallops, unless that vessel has not been issued a scallop permit and fishes exclusively in state waters.

(iii) *Possession and landing.* Fish for, land, or possess on board a vessel per trip, or possess at any time prior to a transfer to another person for a commercial purpose, other than solely for transport on land in excess of any of the possession and/or landing limits described in §§ 648.52 and 648.59.

(iv) *Transfer and purchase.*

(A) Land, offload, remove, or otherwise transfer; or attempt to land, offload, remove or otherwise transfer; scallops from one vessel to another, unless that vessel has not been issued a scallop permit and fishes exclusively in state waters.

(B) Sell, barter, or trade, or otherwise transfer scallops from a vessel; or attempt to sell, barter or trade, or otherwise transfer scallops from a vessel; for a commercial purpose, unless the vessel has been issued a valid scallop permit pursuant to § 648.4(a)(2), or the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(C) Purchase, possess, or receive for commercial purposes; or attempt to purchase or receive for commercial purposes; scallops from a vessel other than one issued a valid limited access or LAGC scallop permit, unless the scallops were harvested by a vessel that has not been issued a Federal scallop permit and fishes for scallops exclusively in state waters.

(D) Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any scallops harvested from the EEZ by a vessel issued a Federal scallop permit, unless the transferee has a valid scallop dealer permit.

(v) *Ownership cap.* Have an ownership interest in more than 5 percent of the total number of vessels issued limited access scallop permits and confirmations of permit history, except as provided in § 648.4(a)(2)(i)(M).

(vi) *Closed area requirements -*

(A) *Habitat Management Areas.*

(1) Fish for scallops in, or possess or land scallops from, the Habitat Management Areas specified in § 648.370.

(2) Transit or enter the Habitat Management Areas specified in § 648.370, except as provided by § 648.61(b).

(B) *Scallop Rotational Areas.*

(1) Fish for scallops in, or possess or land scallops from, the Scallop Rotational Areas closed to the scallop fishery through the specifications or framework adjustment processes specified in § 648.55.

(2) Transit or enter the Scallop Rotational Areas, except as provided by § 648.59(a) or (b).

(vii) *Scallop sectors.* Fail to comply with any of the requirements or restrictions for general category scallop sectors specified in § 648.63.

(viii) *Scallop research.*

(A) Fail to comply with any of the provisions specified in § 648.56 or the conditions of a letter of authorization issued under § 648.56.

(B) Fish for scallops in, or possess or land scallops from the NGOM, unless allocated NGOM RSA allocation as described in § 648.56(d) and fishing on a scallop research set aside compensation trip.

(ix) *Observer program.*

(A) Refuse, or fail, to carry onboard an observer after being requested to by the Regional Administrator or the Regional Administrator's designee.

(B) Fail to provide information, notification, accommodations, access, or reasonable assistance to a NMFS-certified observer conducting his or her duties aboard a vessel, as specified in § 648.11.

(C) Fail to comply with the notification, observer services procurement, and observer services payment requirements of the sea scallop observer program specified in § 648.11(k).

(x) *Presumption.* For purposes of this section, the following presumption applies: Scallops that are possessed or landed at or prior to the time when the scallops are received by a dealer, or scallops that are possessed by a dealer, are deemed to be harvested from the EEZ, unless the preponderance of evidence demonstrates that such scallops were harvested by a vessel fishing exclusively for scallops in state waters.

(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:

(i) *Minimum shell height.* Land, or possess at or after landing, in-shell scallops smaller than the minimum shell height specified in § 648.50(a).

(ii) *Vessel, gear, and crew restrictions.*

(A) Possess more than 40 lb (18.1 kg) of shucked, or 5 bu (1.76 hL) of in-shell scallops, or participate in the scallop DAS or Area Access programs, while in the possession of trawl nets that have a maximum sweep exceeding 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net, except as specified in § 648.51(a)(1), unless the vessel is fishing under the Northeast multispecies or monkfish DAS program.

(B) While under or subject to the DAS allocation program, in possession of more than 40 lb (18.1 kg) of shucked scallops or 5 bu (1.76 hL) of in-shell scallops, or fishing for scallops in the EEZ:

(1) Fish with, or have available for immediate use, trawl nets of mesh smaller than the minimum size specified in § 648.51(a)(2).

(2) Fail to comply with any chafing gear or other gear obstruction restrictions specified in § 648.51(a)(3).

(3) Fail to comply with the turtle deflector dredge vessel gear restrictions specified in § 648.51(b)(5), and turtle dredge chain mat requirements in § 223.206(d)(11) of this title.

(4) Fish under the small dredge program specified in § 648.51(e), with, or while in possession of, a dredge that exceeds 10.5 ft (3.2 m) in overall width, as measured at the widest point in the bail of the dredge.

(5) Fish under the small dredge program specified in § 648.51(e) with more persons on board the vessel, including the operator, than specified in § 648.51(e)(3), unless otherwise authorized by the Regional Administrator.

(6) Participate in the DAS allocation program with more persons on board the vessel than the number specified in § 648.51(c), including the operator, when the vessel is not docked or moored in port, unless otherwise authorized by the Regional Administrator.

(7) Fish in a Sea Scallop Access Area, as described in § 648.60, with more persons on board the vessel than the number specified in § 648.51(c) or § 648.51(e)(3)(i), unless otherwise authorized by the Regional Administrator.

(8) Have a shucking or sorting machine on board a vessel that shucks scallops at sea while fishing under the DAS allocation program, unless otherwise authorized by the Regional Administrator.

(9) Fish with, possess on board, or land scallops while in possession of trawl nets, when fishing for scallops under the DAS allocation program, unless exempted as provided for in § 648.51(f).

(10) Fail to comply with the gear restrictions described in § 648.51.

(iii) *Possession and landing.*

(A) Land scallops after using up the vessel's annual DAS allocation or land scallops on more than one trip per calendar day when not participating under the DAS allocation program pursuant to § 648.10, unless exempted from DAS allocations as provided in the state waters exemption, specified in § 648.54.

(B) Fish for, possess, or land more than 50 bu (17.62 hL) of in-shell scallops inside the VMS Demarcation Line on or by a vessel, except as provided in the state waters exemption, as specified in § 648.54.

(C) Fish for, possess, or land per trip, at any time, scallops in excess of any sea scallop possession and landing limit set by the Regional Administrator in accordance with § 648.59(b)(3) when properly declared into the Sea Scallop Area Access Program as described in § 648.59.

(D) Fish for, possess, or land yellowtail flounder from a vessel on a scallop fishing trip.

(E) Fish for, possess, or land scallops from the NGOM, unless on a scallop RSA compensation trip and allocated NGOM RSA allocation as described in § 648.56(d).

(iv) *DAS.*

(A) Fish for, possess, or land scallops after using up the vessel's annual DAS allocation and Access Area trip allocations, or when not properly declared into the DAS or an Area Access program pursuant to § 648.10, unless the vessel has been issued an LAGC scallop permit pursuant to § 648.4(a)(2)(ii) and is lawfully fishing in a LAGC scallop fishery, unless exempted from DAS allocations as provided in state waters exemption, specified in § 648.54.

(B) Combine, transfer, or consolidate DAS allocations, except as allowed for one-for-one Access Area trip exchanges as specified in § 648.59(b)(3)(ii).

(C) Fail to comply with any requirement for declaring in or out of the DAS allocation program or other notification requirements specified in § 648.10.

(D) Fail to comply with any requirements for declaring out of the DAS allocation program and steaming to land scallops at ports located at or south of 39° N. lat., as specified in § 648.53(f)(3).

(E) Possess on board or land in-shell scallops if declaring out of the DAS allocation program and steaming to land scallops at ports located at or south of 39° N. lat.

(v) *VMS requirements.*

(A) Fail to have an approved, operational, and functioning VMS unit that meets the specifications of § 648.9 on board the vessel at all times, unless the vessel is not subject to the VMS requirements specified in § 648.10.

(B) If the vessel is not subject to VMS requirements specified in § 648.10(b), fail to comply with the requirements of the call-in system specified in § 648.10(c).

(C) If a limited access scallop vessel declares a scallop trip before first crossing the VMS Demarcation Line, but not necessarily from port, in accordance with § 648.10(f), fail to declare out of the fishery in port and have fishing gear not available for immediate use as defined in § 648.2, until declared into the scallop fishery.

(D) Once declared into the scallop fishery in accordance with § 648.10(f), change its VMS declaration until the trip has ended and scallop catch has been offloaded, except as specified at § 648.53(f)(3).

(E) Fail to submit a scallop access area pre-landing notification form through VMS as specified at § 648.10(f)(4)(iii).

(vi) *Scallop Rotational Area Management Program and Scallop Access Area Program requirements.*

(A) Fail to comply with any of the provisions and specifications of § 648.59.

(B) Transit the Closed Area II Scallop Rotational Area or the Closed Area II-East Scallop Rotational Area, as defined in § 648.60(d), unless 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.

(C) Fish for, possess, or land scallops in or from a Scallop Access Area in excess of the vessel's remaining specific allocation for that area as specified in § 648.59(b)(3) or the amount permitted to be landed from that area.

(D) Possess more than 50 bu (17.6 hL) of in-shell scallops outside the boundaries of a Scallop Access Area by a vessel that is declared into the Scallop Access Area Program as specified in § 648.59.

(E) Fish for, possess, or land scallops in or from any Scallop Access Area without an observer on board, unless the vessel owner, operator, or manager has received a waiver to carry an observer for the specified trip and area fished.

(F-G) [Reserved]

(vii) *State waters exemption program.* Fail to comply with any requirement for participating in the State Waters Exemption Program specified in § 648.54.

(viii) [Reserved]

(ix) Fish for scallops in the Mid-Atlantic Accountability Measure Area, described in § 648.64(b)(2) with gear that does not meet the specifications described in § 648.64(c) during the period specified in the notice announcing the Southern New England/Mid-Atlantic Yellowtail Flounder or the Southern Windowpane Flounder Gear Restricted Area described in § 648.64(e) and (g), respectively.

(x) Fish for scallops in the Georges Bank Accountability Measure Area described in § 648.64(b)(1), with gear that does not meet the specifications described in § 648.64(c) during the period specified in the notice announcing the Georges Bank Yellowtail Flounder or the Northern Windowpane Flounder Gear Restricted Area described in § 648.64(d) and (f), respectively.

(3) *LAGC scallop vessels*. It is unlawful for any person owning or operating a vessel issued an LAGC scallop permit to do any of the following:

(i) *Permit requirements*.

(A) Fail to comply with the LAGC scallop permit restrictions as specified in § 648.4(a)(2)(ii)(G) through (O).

(B) [Reserved]

(ii) *Gear requirements*.

(A) Possess or use trawl gear that does not comply with any of the provisions or specifications in § 648.51(a), unless the vessel is fishing under the Northeast multispecies or monkfish DAS program.

(B) Possess or use dredge gear that does not comply with any of the provisions or specifications in § 648.51(b).

(iii) *Possession and landing*.

(A) Land scallops more than once per calendar day (B) Possess in-shell scallops while in possession of the maximum allowed amount of shucked scallops specified for each LAGC scallop permit category in § 648.52.

(iv) *VMS requirements*.

(A) Fail to comply with any of the VMS requirements specified in §§ 648.10, 648.59, or 648.62.

(B) Fail to comply with any requirement for declaring in or out of the LAGC scallop fishery or other notification requirements specified in § 648.10(f).

(C) If an LAGC scallop vessel declares a scallop trip shoreward of the VMS Demarcation Line, but not necessarily from port, in accordance with § 648.10(f), fail to declare out of the fishery in port and have fishing gear not available for immediate use as defined in § 648.2, until declared into the scallop fishery.

(D) Once declared into the scallop fishery in accordance with § 648.10(f), change its VMS declaration until the trip has ended and scallop catch has been offloaded.

(v) *Scallop rotational area management program and scallop access area program requirements.*

(A) Fail to comply with any of the requirements specified in § 648.59.

(B) Declare into or leave port for an area specified in § 648.60 after the effective date of a notification published in the Federal Register stating that the number of LAGC trips have been taken, as specified in § 648.59.

(C) Fish for or land per trip, or possess in excess of 40 lb (18.1 kg) of shucked scallops at any time in or from any Scallop Access Area specified at § 648.60, unless declared into the Scallop Access Area Program.

(D) Fish for, possess, or land scallops in or from any Scallop Access Area without an observer on board, unless the vessel owner, operator, or manager has received a waiver to carry an observer for the specified trip and area fished.

(E) Transit the Closed Area II Scallop Rotational Area or Closed Area II-East Scallop Rotational Area, as defined in § 648.60(d), unless 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.

(vi) *Sectors.* Fail to comply with any of the requirements and restrictions for General Category sectors and harvesting cooperatives specified in § 648.63.

(4) *IFQ scallop permit.* It is unlawful for any person owning or operating a vessel issued an IFQ scallop permit to do any of the following:

(i) *Possession and landing.*

(A) Fish for or land per trip, or possess at any time, in excess of the possession and landing limits described in § 648.52(a).

(B) [Reserved]

(C) Declare into the NGOM scallop management area and fish against the NGOM Set-Aside after the effective date of a notification published in the Federal Register stating that after the NGOM Set-Aside has been harvested as specified in § 648.62, unless the vessel is fishing exclusively in state waters, declared a state-waters only NGOM trip, and is participating in an approved state waters exemption program as specified in § 648.54, or unless the vessel is participating in the scallop RSA program as specified in § 648.56.

(E) [Reserved]

(F) Fish for, possess, or land scallops in excess of a vessel's IFQ.

(ii) *Owner and allocation cap.*



(A) Have an ownership interest in vessels that collectively are allocated more than 5 percent of the total IFQ scallop APL as specified in § 648.53(a)(9).

(B) Have an IFQ allocation on an IFQ scallop vessel of more than 2.5 percent of the total IFQ scallop APL as specified in § 648.53(a)(9).

(iii) *IFQ Transfer Program.*

(A) Apply for an IFQ transfer that will result in the transferee having an aggregate ownership interest in more than 5 percent of the total IFQ scallop ACL.

(B) Apply for an IFQ transfer that will result in the receiving vessel having an IFQ allocation in excess of 2.5 percent of the total IFQ scallop ACL as specified in § 648.53(a)(4)(i).

(C) Fish for, possess, or land transferred IFQ prior to approval of the transfer by the Regional Administrator as specified in § 648.53(h)(5).

(D-F) [Reserved]

(G) Transfer scallop IFQ to, or receive scallop IFQ from, a vessel that has not been issued a valid IFQ scallop permit.

(iv) *Cost Recovery Program.* Fail to comply with any of the cost recovery requirements specified under § 648.53(g)(4).

(v) Fish for scallops in the Mid-Atlantic Accountability Measure Area, described in § 648.64(b)(2) with gear that does not meet the specifications described in § 648.64(c) during the period specified in the notice announcing the Southern New England/Mid-Atlantic Yellowtail Flounder or the Southern Windowpane Flounder Gear Restricted Area described in § 648.64(e) and (g), respectively.

(vi) Fish for scallops in the Georges Bank Accountability Measure Area described in § 648.64(b)(1), with gear that does not meet the specifications described in § 648.64(c) during the period specified in the notice announcing the Georges Bank Yellowtail Flounder or the Northern Windowpane Flounder Gear Restricted Area described in § 648.64(d) and (f), respectively.

(5) *NGOM scallop permit.* It is unlawful for any person owning or operating a vessel issued an NGOM scallop permit to do any of the following:

(i) Declare into, or fish for or possess scallops outside of the NGOM Scallop Management Area as defined in § 648.62.

(iii) Fish for, possess, or land scallops in state or Federal waters of the NGOM management area after the effective date of notification in the Federal Register that the LAGC share of the NGOM Set-Aside has been harvested as specified in § 648.62, unless the vessel is fishing exclusively in state waters, declared a state-waters only NGOM trip, and is participating in an approved state waters exemption program as specified in § 648.54, or unless the vessel is participating in the scallop RSA program as specified in § 648.56.

(iv) Fish for, possess, or retain scallops in Federal waters of the NGOM after declaring a trip into NGOM state waters.

#### **Subpart D - Management Measures for the Atlantic Sea Scallop Fishery**

##### **§ 648.50 Shell-height standard.**

No changes

##### **§ 648.51 Gear and crew restrictions.**

No changes

##### **§ 648.52 Possession and landing limits.**

###### *(a) IFQ trips.*

(1) *Open area trips.* A vessel issued an IFQ scallop permit that is declared into the IFQ scallop fishery in the open area, as specified in § 648.10(f), or on a properly declared NE multispecies, surfclam, or ocean quahog trip (or other fishery requiring a VMS declaration) and not fishing in a scallop access area, unless as specified in paragraph (g) of this section or exempted under the state waters exemption program described in § 648.54, may not possess or land, per trip, more than 600 lb (272.2 kg) of shucked scallops, or possess more than 75 bu (26.4 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 100 bu (35.2 hL) of in-shell scallops seaward of the VMS Demarcation Line on a properly declared IFQ scallop trip, or on a properly declared NE multispecies, surfclam, or ocean quahog trip, or other fishery requiring a VMS declaration, and not fishing in a scallop access area.

(2) *Access areas trips.* A vessel issued an IFQ scallop permit that is declared into the IFQ Scallop Access Area Program, as specified in § 648.10(f), may not possess or land, per trip, more than 800 lb (362.9 kg) of shucked scallops, or possess more than 100 bu (35.2 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 100 bu (35.2 hL) of in-shell scallops seaward of the VMS Demarcation Line on a properly declared IFQ scallop access area trip. Vessels fishing the 2022 default access area trips shall be subject to a 600 pound possession limit, as described in 648.59(g)(3)(v).

(b) *NGOM trips.* A vessel issued an NGOM scallop permit, or an IFQ scallop permit that is declared into the NGOM scallop fishery and fishing against the NGOM Set-Aside as described in § 648.62, unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 200 lb (90.7 kg) of shucked scallops, or possess more than 25 bu (8.81 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS demarcation line on a properly declared NGOM scallop fishery trip.

(c) *Incidental trips.* A vessel issued an Incidental scallop permit, or an IFQ scallop permit that is not declared into the IFQ scallop fishery or on a properly declared NE multispecies, surfclam, or ocean quahog trip or other fishery requiring a VMS declaration as required under § 648.10(f), unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 40 lb (18.1 kg) of shucked scallops, or possess more than 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line.

(d) *Limited access vessel access area trips.* Owners or operators of vessels with a limited access scallop permit that have properly declared into the Scallop Access Area Program as described in § 648.59 are prohibited from fishing for or landing per trip, or possessing at any time, scallops in excess of any sea scallop possession and landing limit set by the Regional Administrator in accordance with § 648.59(b)(5).

(e) *Limited access vessel open area in-shell scallop possession limit.* Owners or operators of vessels issued limited access permits 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.

(f) *Limited access vessel access area in-shell scallop possession limit.* A limited access vessel that is declared into the Scallop Area Access Program as described in § 648.59, may not possess more than 50 bu (17.6 hL) of in-shell scallops outside of the Access Areas described in § 648.60.

(g) *Possession limit to defray the cost of observers for LAGC IFQ vessels.* An LAGC IFQ vessel with an observer on board may retain, per observed trip, an allowance of scallops in addition to the possession limit, as established by the Regional Administrator in accordance with § 648.59(d), provided the observer set-aside specified in § 648.59(d)(1) has not been fully utilized. For example, if the LAGC IFQ vessel possession limit is 600 lb (272.2 kg) and the additional allowance to defray the cost of an observer is 200 lb (90.7 kg), the vessel could retain up to 800 lb (362.9 kg) when carrying an observer, regardless of trip length. 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, and it may land it on a subsequent trip. However, the vessel may not exceed the IFQ trip possession limit as described in § 648.52(a) unless it is actively carrying an observer.

**§ 648.53 Overfishing limit (OFL), acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), annual projected landings (APL), DAS allocations, 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 catch target TAC*. The annual incidental catch target TAC 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 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 of the NGOM TAL shall be allocated to the NGOM Set-Aside. For all allocation above 800,000 lb, 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 of the NGOM TAL are allocated to the NGOM Set-Aside. For all allocation above 800,000 lb, 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 2021 and 2022 fishing years:

Expand Table

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

Catch limits	2021 (mt)	2022 (mt) <sup>1</sup>
OFL	45,392	41,926
ABC/ACL (discards removed)	30,517	28,074
Incidental Catch	23	23
RSA	567	567

<b>Catch limits</b>	<b>2021 (mt)</b>	<b>2022 (mt) <sup>1</sup></b>
Observer Set-Aside	305	281
ACL for fishery	29,622	27,203
Limited Access ACL	27,993	25,707
LAGC Total ACL	1,629	1,496
LAGC IFQ ACL (5 percent of ACL)	1,481	1,360
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	148	136
Limited Access ACT	24,260	22,279
APL (after set-asides removed)	17,269	(1)
Limited Access APL (94.5 percent of APL)	16,319	(1)
Total IFQ Annual Allocation (5.5 percent of APL) <sup>2</sup>	950	712
LAGC IFQ Annual Allocation (5 percent of APL) <sup>2</sup>	863	648
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) <sup>2</sup>	86	65

<sup>1</sup> The catch limits for the 2022 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2022 that will be based on the 2021 annual scallop surveys. The 2022 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).

<sup>2</sup> As specified in paragraph (a)(6)(iii)(B) of this section, the 2022 IFQ annual allocations are set at 75 percent of the 2021 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 ACT defined in paragraph (a)(3) of this section, as reduced by access area allocations defined in § 648.59, and dividing that amount among vessels in the form of DAS calculated by applying estimates of open area landings per unit effort (LPUE) projected through the specifications or framework adjustment processes used to set annual allocations.

(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 2021 and 2022 are as follows:

Expand Table

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

Permit category	2021	2022 <sup>1</sup>
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.5

<sup>1</sup> The DAS allocations for the 2022 fishing year are subject to change through a future specifications action or framework adjustment. The 2022 DAS allocations are set at 75 percent of the 2021 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-ACT 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.

Expand Table

Years active	Index factor
1	0.75
2	0.875
3	1.0
4	1.125

Years active	Index factor
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](http://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.**

(a) *Specifications.*

(1) The Scallop Plan Development Team (PDT) shall meet at least every two years to assess the status of the scallop resource and to develop and recommend the following specifications for a period of up to 2 years, as well as second or third-year default measures, for consideration by the New England Fishery Management Council's Atlantic Sea Scallop Oversight Committee and Advisory Panel: OFL, overall ABC/ACL, sub-ACLs, sub-ACTs, DAS open area allocations, possession limits, modifications to rotational area management (e.g., schedule, rotational closures and openings, seasonal restrictions, modifications to boundaries, etc.), access area limited access poundage allocations and LAGC IFQ fleet-wide trip allocations, annual incidental catch target TAC, and NGOM TAL.

(2) Based on the PDT recommendations and any public comments received, the Atlantic Sea Scallop Oversight Committee shall recommend appropriate specifications to the New England Fishery Management Council.

(3) The Council shall review these recommendations and, after considering public comments, shall recommend appropriate specifications for up to 2 years, as well as second or third-year default measures, to NMFS. NMFS shall approve, disapprove, or partially approve the specifications recommended by the Council and publish the approved specifications in the Federal Register in accordance with the APA.

(4) The PDT shall prepare a Stock Assessment and Fishery Evaluation (SAFE) Report at least every two years that provides the information and analysis needed to evaluate potential management adjustments. The preparation of the SAFE Report shall begin on or about June 1 of the year preceding the fishing year in which measures will be adjusted.

(5) The PDT will meet at least once during the interim years to review the status of the stock relative to the overfishing definition if information is available to do so. If the Council determines, based on information provided by the PDT or other stock-related information, that the approved specifications should be adjusted during the 2-year time period, it can do so through the same process outlined in paragraphs (a)(2) through (a)(4) of this section during the interim year.

(6) *Rotational area management guidelines.* The Council's development of rotational area management adjustments shall take into account at least the following factors: General rotation policy; boundaries and distribution of rotational closures; number of closures; minimum closure size; maximum closure extent; enforceability of rotational closed and re-opened areas; monitoring through resource surveys; and re-opening criteria. Rotational closures should be considered where projected annual change in scallop biomass is greater than 30 percent. Areas should be considered for Sea Scallop Rotational Areas where the projected annual change in scallop biomass is less than 15 percent.

(7) *Second and Third-year default specifications.* The specifications action shall include default specifications that shall be effective in the second year after 1-year specifications and the third year after the 2-year specifications expire until replaced by the measures included in the next specifications action. If the specifications action is not published in the Federal Register with an effective date on or before April 1, the following year's default specifications shall be effective beginning April 1 of each fishing year until any new specifications action is implemented and made effective during the second or third year, or for the entire fishing year if the specifications action is not completed or is not implemented by NMFS during the following year. The specifications action shall specify the measures necessary to address inconsistencies between specifications and default allocations for the period after April 1 but before the specifications action is implemented for that year. The default specifications, if implemented, shall remain in effect until they are revised through a subsequent specifications action.

(b) [Reserved]

(c) *OFL, overall ABC/ACL, sub-ACLs, and sub-ACTs.* The Council shall specify OFL, ABC, ACL, and ACT, as defined in § 648.53, for each year covered under the specifications.

(d) *Yellowtail flounder and windowpane flounder sub-ACLs.* The Council shall specify the yellowtail flounder and windowpane flounder sub-ACLs allocated to the scallop fishery through the framework adjustment process specified in § 648.90.

(e) Reserved]

(f) *Framework adjustments.* The Council may at any time initiate a framework adjustment to add or adjust management measures within the Scallop FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the FMP. The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. To address interactions between the scallop fishery and sea turtles and other protected species, such adjustments may include proactive measures including, but not limited to, the timing of Scallop Access Area openings, seasonal closures, gear modifications, increased observer coverage, and additional research. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures may include specifications measures specified in paragraph (a) of this section, which must satisfy the criteria set forth § 648.53(a) in order to prevent overfishing of the available biomass of scallops and ensure that OY is achieved on a continuing basis. Other measures that may be changed or implemented through framework action include:

- (1) Total allowable catch and DAS changes;
- (2) Shell height;
- (3) Offloading window reinstatement;
- (4) Effort monitoring;
- (5) Data reporting;
- (6) Trip limits;
- (7) Gear restrictions;
- (8) Permitting restrictions;
- (9) Crew limits;
- (10) Small mesh line;
- (11) Onboard observers;
- (12) Modifications to the overfishing definition;
- (13) VMS Demarcation Line for DAS monitoring;
- (14) DAS allocations by gear type;

- (15) Temporary leasing of scallop DAS requiring full public hearings;
- (16) Scallop size restrictions, except a minimum size or weight of individual scallop meats in the catch;
- (17) Aquaculture enhancement measures and closures;
- (18) Closed areas to increase the size of scallops caught;
- (19) Modifications to the opening dates of closed areas;
- (20) Size and configuration of rotational management areas;
- (21) Controlled access seasons to minimize bycatch and maximize yield;
- (22) Area-specific trip allocations;
- (23) TAC specifications and seasons following re-opening;
- (24) Limits on number of area closures;
- (25) Set-asides for funding research;
- (26) Priorities for scallop-related research that is funded by research TAC set-aside;
- (27) Finfish TACs for controlled access areas;
- (28) Finfish possession limits;
- (29) Sea sampling frequency;
- (30) Area-specific gear limits and specifications;
- (31) Modifications to provisions associated with observer set-asides; observer coverage; observer deployment; observer service provider; and/or the observer certification regulations;
- (32) Specifications for IFQs for limited access general category vessels;
- (33) Revisions to the cost recovery program for IFQs;
- (34) Development of general category fishing industry sectors and fishing cooperatives;
- (35) Adjustments to the Northern Gulf of Maine scallop fishery measures;
- (36) VMS requirements;
- (37) Increases or decreases in the LAGC possession limit;
- (38) Adjustments to aspects of ACL management, including accountability measures;
- (39) Adjusting EFH closed area management boundaries or other associated measures;
- (40) Changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer

sea-day allocations, reports, and/or industry-funded observers or observer set-aside programs;  
and

(41) Any other management measures currently included in the FMP.

(g) The Council may make recommendations to the Regional Administrator to implement measures in accordance with the procedures described in this section to address gear conflict as defined under § 600.10 of this chapter. In developing such recommendation, the Council shall define gear management areas, each not to exceed 2,700 mi<sup>2</sup> (6,993 km<sup>2</sup>), and seek industry comments by referring the matter to its standing industry advisory committee for gear conflict, or to any ad hoc industry advisory committee that may be formed. The standing industry advisory committee or ad hoc committee on gear conflict shall hold public meetings seeking comments from affected fishers and develop findings and recommendations on addressing the gear conflict. After receiving the industry advisory committee findings and recommendations, or at any other time, the Council shall determine whether it is necessary to adjust or add management measures to address gear conflicts and which FMPs must be modified to address such conflicts. If the Council determines that adjustments or additional measures are necessary, it shall develop and analyze appropriate management actions for the relevant FMPs over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of the recommendation, the appropriate justification and economic and biological analyses, and opportunity to comment on them prior to and at the second or final Council meeting before submission to the Regional Administrator. The Council's recommendation on adjustments or additions to management measures for gear conflicts must come from one or more of the following categories:

- (1) Monitoring of a radio channel by fishing vessels;
- (2) Fixed-gear location reporting and plotting requirements;
- (3) Standards of operation when gear conflict occurs;
- (4) Fixed-gear marking and setting practices;
- (5) Gear restrictions for specific areas (including time and area closures);
- (6) VMS;
- (7) Restrictions on the maximum number of fishing vessels or amount of gear; and
- (8) Special permitting conditions.

(h) The measures shall be evaluated and approved by the relevant committees with oversight authority for the affected FMPs. If there is disagreement between committees, the Council may return the proposed framework adjustment to the standing or ad hoc gear conflict committee for further review and discussion.

(i) Unless otherwise specified, after developing a framework adjustment and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are

recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to publish the framework adjustment as a final rule. If the Council recommends that the framework adjustment should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry, consistent with the Administrative Procedure Act, in the development of the Council's recommended management measures;

(3) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(j) If the Council's recommendation includes adjustments or additions to management measures, and if, after reviewing the Council's recommendation and supporting information:

(1) The Regional Administrator approves the Council's recommended management measures, the Secretary may, for good cause found pursuant to the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the Federal Register. The Secretary, in doing so, shall publish only the final rule. Submission of a recommendation by the Council for a final rule does not affect the Secretary's responsibility to comply with the Administrative Procedure Act; or

(2) The Regional Administrator approves the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action shall be published as a proposed rule in the Federal Register. After additional public comment, if the Regional Administrator concurs with the Council recommendation, the action shall be published as a final rule in the Federal Register; or

(3) The Regional Administrator does not concur, the Council shall be notified, in writing, of the reasons for the non-concurrence.

(k) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

#### **§ 648.56 Scallop research.**

(a) At least biennially, in association with the biennial framework process, the Council and NMFS shall prepare and issue an announcement of Federal Funding Opportunity (FFO) that identifies research priorities for projects to be conducted by vessels using research set-aside as specified in paragraph (d) of this section and § 648.59(e), provides requirements and instructions for applying for funding of a proposed RSA project, and specifies the date by which applications



must be received. The FFO shall be published as soon as possible by NMFS and shall provide the opportunity for applicants to apply for projects to be awarded for 1 or 2 years by allowing applicants to apply for RSA funding for the first year, second year, or both.

(b) Proposals submitted in response to the FFO must include the following information, as well as any other specific information required within the FFO: A project summary that includes the project goals and objectives, the relationship of the proposed research to scallop research priorities and/or management needs, project design, participants other than the applicant, funding needs, breakdown of costs, and the vessel(s) for which authorization is requested to conduct research activities.

(c) NOAA shall make the final determination as to what proposals are approved and which vessels are authorized to take scallops in excess of possession limits, or take additional trips into Open, Access Areas, or the NGOM management area. NMFS shall provide authorization of such activities to specific vessels by letter of acknowledgement, letter of authorization, or Exempted Fishing Permit issued by the Regional Administrator, which must be kept on board the vessel.

(d) Available RSA allocation shall be 1.275 million lb (578 mt) annually, which shall be deducted from the ABC/ACL specified in § 648.53(a) prior to setting ACLs for the limited access and LAGC fleets, as specified in § 648.53(a)(3) and (4), respectively. Approved RSA projects shall be allocated an amount of scallop pounds that can be harvested in open areas, available access areas, and the NGOM. The specific access areas that are open to RSA harvest and the amount of NGOM allocation to be landed through RSA harvest shall be specified through the framework process as identified in § 648.59(e)(1). In a year in which a framework adjustment is under review by the Council and/or NMFS, NMFS shall make RSA awards prior to approval of the framework, if practicable, based on total scallop pounds needed to fund each research project. Recipients may begin compensation fishing in open areas prior to approval of the framework, or wait until NMFS approval of the framework to begin compensation fishing within approved access areas.

(e) If all RSA TAC is not allocated in a fishing year, and proceeds from compensation fishing for approved projects fall short of funds needed to cover a project's budget due to a lower-than-expected scallop price, unused RSA allocation can be provided to that year's awarded projects to compensate for the funding shortfall, or to expand a project, rather than having that RSA go unused. NMFS shall identify the process for the reallocation of available RSA pounds as part of the FFO for the RSA program. The FFO shall specify the conditions under which a project that has been awarded RSA could be provided additional RSA pounds as supplemental compensation to account for lower-than-expected scallop price or for expansion of the project, timing of reallocation, and information submission requirements.

(f) If all RSA pounds awarded to a project cannot be harvested during the applicable fishing year, RSA TAC awarded to that project may be harvested through June 30 of the fishing year subsequent to the fishing year in which the set-aside is awarded.

(g) Vessels conducting research under an approved RSA project may be exempt from crew restrictions specified in § 648.51, seasonal closures of access areas specified in § 648.60, and the

restriction on fishing in only one access area during a trip specified in § 648.59(b)(4). The RSA project proposal must list which of these measures for which an exemption is required. An exemption shall be provided by Letter of Authorization issued by the Regional Administrator. RSA compensation fishing trips and combined compensation and research trips are not eligible for these exemptions.

(h) Upon completion of scallop research projects approved pursuant to this section and the applicable NOAA grants review process, researchers must provide the Council and NMFS with a report of research findings, which must include at least the following: A detailed description of methods of data collection and analysis; a discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; and a detailed final accounting of all funds used to conduct the sea scallop research.

#### **§§ 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 Closed Scallop Rotational 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 Scallop Rotational Area or 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 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(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.

(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 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 2021 and 2022 fishing years:

(1) *Full-time vessels.*

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

Expand Table

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

<b>Rotational access area</b>	<b>Scallop possession limit</b>	<b>2021 Scallop allocation</b>	<b>2022 Scallop allocation (default)</b>
Closed Area II	18,000 lb (8,165 kg) per trip	27,000 lb (12,247 kg)	0 lb (0 kg).
Nantucket Lightship-South-Deep	18,000 lb (8,165 kg) per trip	27,000 lb (12,247 kg)	0 lb (0 kg).
Mid-Atlantic	18,000 lb (8,165 kg) per trip	18,000 lb (8,165 kg)	18,000 lb (8,165 kg).
Total		72,000 lb (32,659 kg)	18,000 lb (8,165 kg).

(ii) [Reserved]

(2) *Part-time vessels.*

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

Expand Table

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

<b>Rotational access area</b>	<b>Scallop possession limit</b>	<b>2021 Scallop allocation</b>	<b>2022 Scallop allocation (default)</b>
Closed Area II or Nantucket Lightship-South <sup>1</sup>	14,400 lb (6,532 kg) per trip	14,400 lb (6,532 kg)	0 lb (0 kg)
Mid-Atlantic	14,400 lb (6,532 kg) per trip	14,400 lb (6,532 kg)	7,200 lb (3,266 kg)
Total		28,800 lb (13,063 kg)	7,200 lb (3,266 kg)

<sup>1</sup> Part-Time vessels must choose to take this trip in either Closed Area II or Nantucket Lightship-South-Deep. Once a vessel declares a trip into either area, the entirety of the 14,400-lb (6,532-kg) allocation can only be taken from the same area.

(ii) [Reserved]

(3) *Occasional limited access vessels.*

(i) For the 2021 fishing year only, an occasional limited access vessel is allocated 6,000 lb (2,722 kg) of scallops with a trip possession limit at 6,000 lb of scallops per trip (2,722 kg per trip). Occasional limited access vessels may harvest the 6,000 lb (2,722 kg) allocation from the Mid-Atlantic, Nantucket Lightship-South-Deep, or Closed Area II Access Area.

(ii) For the 2022 fishing year, occasional limited access vessels are allocated 1,500 lb (680 kg) of scallops in the Mid-Atlantic Access Area only with a trip possession limit of 1,500 lb of scallops per trip (680 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

9,000-lb (4,082-kg) increments. For example, a full-time vessel may exchange 9,000 lb (4,082 kg) from one access area for 9,000 lb (4,082 kg) allocated to another full-time vessel for another access area. Further, a full-time vessel may exchange 18,000 lb (8,165 kg) from one access area for 18,000 lb (8,165 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 9,000-lb (4,082-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 14,400 lb (6,532 kg), a part-time limited access vessel may exchange no more or less than 14,400 lb (6,532 kg), from one access area for no more or less than 14,400 lb (6,532 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 Mid-Atlantic Access Area at the end of fishing year 2020, that vessel may harvest those 7,000 lb (3,175 kg) during the first 60 days that the Mid-Atlantic Access Area is open in fishing year 2021 (April 1, 2021 through May 30, 2021).

(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 2021 and 2022 are:

(1) 2021: Mid-Atlantic, Nantucket Lightship-South-Deep, Closed Area I, and Closed Area II Scallop Rotational Areas.

(i) For fishing year 2021, vessels may only harvest RSA compensation from Closed Area II from June 1, 2021 through August 14, 2021.

(ii) [Reserved]



(2) 2022: 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 2021 and 2022 fishing years:

Expand Table

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

Scallop access area	2021	2022 <sup>1</sup>
Closed Area I	856	0
Nantucket Lightship-South-Deep	856	0
Mid-Atlantic	571	571
Total	2,283	571

<sup>1</sup> The LAGC IFQ access area trip allocations for the 2022 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.**

No changes

**§ 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 LAGC portion of the NGOM scallop total allowable catch 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 Federal NGOM quota.

(3) Scallop landings by all vessels issued LAGC IFQ scallop permits and fishing in the NGOM scallop management area shall be deducted from the LAGC portion of the NGOM scallop total allowable catch specified in the specifications or framework adjustment processes defined in § 648.55. Scallop landings by LAGC IFQ scallop vessels fishing in the NGOM scallop management area shall be deducted from their respective scallop IFQs. Landings by incidental catch scallop vessels shall not be deducted from the NGOM total allowable catch specified in paragraph (b) of this section.

(4) A vessel issued a NGOM or LAGC IFQ scallop permit that fishes in the NGOM may fish for, possess, or retain up to 200 lb (90.7 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops, and may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS Demarcation Line. A vessel issued an incidental catch general category scallop permit that fishes in the NGOM may fish for, possess, or retain only up to 40 lb of shucked or 5 U.S. bu (1.76 hL) of in-shell scallops, and may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line.

(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 limited access portion of the NGOM scallop total allowable catch.

(b) *Total allowable catch.* The total allowable catch for the NGOM scallop management area shall be specified through the framework adjustment process. The total allowable catch for the NGOM scallop management area shall be based on the Federal portion of the scallop resource in

the NGOM. The total allowable catch shall be determined by historical landings until additional information on the NGOM scallop resource is available, for example through an NGOM resource survey and assessment. The ABC/ACL as defined in § 648.53(a) shall not include the total allowable catch for the NGOM scallop management area, and landings from the NGOM scallop management area shall not be counted against the ABC/ACL defined in § 648.53(a). The total allowable catch shall be divided between the limited access and the LAGC fleets.

(1) The LAGC and the limited access portions of the annual hard TAC for the NGOM 2021 and 2022 fishing years are as follows:

Expand Table

Table 1 to Paragraph (b)(1)

Fleet	2021		2022 (default)	
	lb	kg	lb	kg
LAGC	119,222	54,078	72,000	32,659
Limited access	52,500	23,814	2,000	907
Total	171,722	77,892	74,000	33,566

(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 or limited access 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 vessel's respective portion(s) of the NGOM scallop total allowable catch 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, has been allocated NGOM RSA pounds, and the limited access portion of the NGOM TAC has not been reached. Once the LAGC share of the NGOM 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, 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 either the LAGC or the limited access portion of the annual NGOM TAC is exceeded, the amount of NGOM scallop landings in excess of the portion of the TAC specified in paragraph (b)(1) of this section shall be deducted from the respective portion(s) of the NGOM TAC which

has been exceeded for the subsequent fishing year, 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.

(e) *Stellwagen Bank Scallop Closed Area.*

(1) Unless a vessel has fished for scallops outside of the Stellwagen Bank scallop management area and is transiting the area with all fishing gear stowed and not available for immediate use as defined in § 648.2, no vessel issued a Federal scallop permit pursuant to § 648.4(a)(2) may possess, retain, or land scallops in the Stellwagen Bank Scallop Closed Area.

(2) The Stellwagen Bank Scallop Closed 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):

Expand Table

Table 2 to Paragraph (e)(2)

Point	N latitude	W longitude
SB1	42°26'	70°27'
SB2	42°26'	70°15'
SB3	42°20'	70°15'
SB4	42°20'	70°27'

<b>Point</b>	<b>N latitude</b>	<b>W longitude</b>
SB1	42°26'	70°27'

**§ 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. Michael Pentony  
Regional Administrator  
Greater Atlantic Regional Fisheries Office  
National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930-2276

July 29, 2021

Dear Mike,

The Scallopers Campaign (Campaign) has reviewed the response from the New England Fishery Management Council (Council) to your letter dated March 10, 2021 requesting its views on the Campaign's request for Secretarial action to implement a voluntary leasing program in the limited access (LA) sea scallop fishery. What the Scallopers Campaign has consistently sought is a discussion of LA leasing issues. This should be done through the Council process, and we hope that the Council takes up the issue as a priority in 2022—just as we hoped it would in 2018, 2019, 2020, and 2021.

We must begin our response by disagreeing with the Council's characterization of the process and history related to leasing; a review of the Campaign's [timeline of working with the Council](#) clearly identifies significant discrepancies. To make sure that the NOAA Fisheries and the Council understand the position of the Scallopers Campaign, there are a few points that deserve clarification.

#### **Excess Fishing Capacity and Amendment 15**

The primary drivers for seeking a leasing program are to reduce fuel use and carbon output, operational costs, redundancies, and excess fishing capacity—while promoting crew safety and operational flexibility. The Council has acknowledged the existence of excess fishing capacity both during the establishment of the LA program in 1994 and again during development of Amendment #15 (A15). However, the Council failed to remedy the issue through A15, and nothing has been done to change the fact that there is significant excess fishing capacity in the fleet. One of the benefits of a leasing program would be to reduce fishing capacity while also reducing the carbon footprint of the LA scallop fishery. Climate change was not part of the A15 discussions; this threat alone merits a serious discussion of leasing within the Council, as leasing represents one of the most effective actions that could be taken now to significantly reduce the carbon footprint of the scallop fleet.

#### **Compliance with National Standard 5**

The Council appears to side-step the issue regarding compliance with National Standard #5 and the requirement to consider efficiency and the wise use and conservation of all resources involved—not just fish stocks. Their letter states, “While management has evolved since 1994, the key measures enacted through Amendment 4 have remained, including the one-permit-one-vessel restriction, resulting in the scallop resource rebounding from an overfished status to record high biomass, landings, and revenue. The unnecessary burdens that increase costs and limit operational flexibility that the Scallopers Campaign

believes the Council has imposed on the scallop fishery are, in fact, a key chapter in the story of the scallop fishery's rise to becoming one of the most valuable in the world.”

The facts are clear, however, that the one-permit-one-vessel restriction was not a conservation mechanism within Amendment 4 and did not improve productivity of the fishery. Instead, Amendment 4 controlled effort by limiting the total number of permits that could fish in the fishery. These controls on total effort, combined with larger ring sizes to facilitate escapement, and eventually rotational management—rather than the one-permit-one-vessel restriction—transformed the fishery into a sustainable and productive fishery. ***The idea that in order to maintain an extremely valuable fishery, vessel owners must waste money, fuel, and other resources to maintain excess fishing capacity is misguided, does not comport to economic theory, and fails to address the Council's obligations to consider efficiency under the MSA.***

### **Ownership within the LA Fleet**

In addressing the issue of ownership, the Council letter states, “We feel it is important to clearly state the range of ownership interest so that members of the public can make their own judgements around the number of limited access vessel owners in the fishery today.” The Campaign couldn't agree more. In fact, earlier this year, we requested help from GARFO in developing an ownership profile for the LA fleet.<sup>1</sup> Unfortunately, the Council has used the data provided by GARFO to present at best a confusing picture of fleet ownership.

The Council's letter claims there are a total of 239 persons with ownership interest in the LA fleet; 118 of these individuals—or 49%—with ownership interest they deem as “single boat owners.” While footnote #1 in the Council letter attempts to clarify that there are not 118 sole boat owners, the letter clearly gives the impression that there are significantly more single boat operators than there are in reality. The GARFO LA permit ownership data totals 936 individuals, and there are only 348 LA permits, so the dataset clearly includes numerous fractional permit owners. The Council then uses its mischaracterization of the ownership of the fleet to dismiss the benefits of a leasing program: “This might occur, but this option would be most readily available only to owners of multiple permits and thus any fleet-wide benefits would be limited.”

We also must point out that the Council only used one of the two ownership charts provided by GARFO. The excluded chart reveals that 276 out of the 345 total LA permits are owned by corporations with a single vessel, and we note that it is common for multi-vessel owners to incorporate their vessels individually.<sup>2</sup> ***The clear implication is that most of the fleet is owned and managed by multi-vessel owners.***

### **Flexibility, Fairness, and Safety**

The Council acknowledges in its letter that the Campaign has developed a [series of general principles](#) it believes should be included in a voluntary leasing program, such as conservation neutrality, no harm to other fisheries, and maintaining each permit's individual identity. However, the Council letter contends that there is no reason to expect the Council's final design would include these measures. Regrettably the Council letter also states that, “the Campaign's proposal will result in the distribution of the economic ownership benefits to fewer active ownership entities.” This statement is without foundation and purely speculative.

---

<sup>1</sup> See included chart provided to the Campaign from GARFO on April 5, 2021.

<sup>2</sup> Ibid



***Since the program has yet to be discussed by the Council, let alone designed, it is impossible to conclude there will be fewer active ownership entities. To suggest that the Campaign “has not even acknowledged this issue” is false.*** Years ago, the Council approved an ownership cap of 5% as part of the Scallop FMP, and the Campaign’s organizing principles explicitly support maintaining the ownership cap and extending the cap to any leasing program.

**Council Process Offers Best Path Forward**

For years, the Campaign has urged the Council to take up the issue of leasing within the LA scallop fishery, so it should come as no surprise that we agree that the Council process is the best way to develop a leasing program. The Council letter states, “often the Council does not choose to select management actions suggested by the public” as if that was the basis for the Campaign’s request for Secretarial action. ***What their letter fails to mention is that leasing was recommended as a priority by the Council’s own Scallop AP and Committee and these recommendations have been blunted by Council leadership.***


The fleet must have options and flexibility available to meet the many future challenges such as resource variability, impacts of climate change, and the loss of valuable fishing grounds from the industrialization of the eastern seaboard by offshore wind development. We urge action, not reaction. ***After spending 3.5 years on A21, which dealt with just 5% of the fishery, the LA fleet believes it is time for the Council to address the concerns of the other 95% of the fishery.***

We ask that you delay your response to the Campaign’s petition to see whether the Council identifies development of a LA DAS and AA leasing program as a multi-year priority in 2022 before deciding about proceeding with a Secretarial amendment.

Sincerely,



Jeffrey R. Pike



George LaPointe

Enclosure (GARFO ownership chart)

DOC/NOAA FISHERIES/GARFO  
 APSD MONITORING & ANALYSIS DIVISION  
 OWNERSHIP INTERESTS IN LA SCALLOP VESSELS  
 FROM GARFO PERMIT DATABASE

Number of People	That Own This Many Vessels
118	1
31	2
13	3
16	4
5	5
7	6
3	7
1	8
31	11
2	12
4	14
8	17

Number of Corporations	That Own This Many Vessels:
276	1
17	2
1	3
1	4
1	11
1	17



## New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116

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

July 19, 2021

Mr. Michael Pentony  
Regional Administrator  
NMFS/GARFO  
55 Great Republic Drive  
Gloucester, MA 01930-2276

Dear Mike:

Thank you for providing the New England Fishery Management Council (Council; NEFMC) the January 15, 2021, letter submitted by the Scallopers Campaign to the Assistant Administrator for Fisheries. The letter requested that the Secretary of Commerce prepare an amendment to the Scallop Fishery Management Plan (FMP) that would authorize leasing in the limited access scallop fishery. We carefully reviewed the petition and other correspondence submitted by the Scallopers Campaign. We do not agree that action is needed by the Secretary. The Scallopers Campaign has mischaracterized the Council process and history of the Council's discussion on leasing in the limited access fishery. As a result, we do not believe that the petition for rulemaking has merit and wish to clarify the administrative record on Council proceedings related to this matter.

The Atlantic Sea Scallop fishery is widely recognized as a success story. Close cooperation between the Council, the National Marine Fisheries Service (NMFS), and the scallop industry has resulted in a highly profitable and sustainable industry. Innovative management practices – such as rotational access areas, a research set-aside program, and industry funded monitoring – were developed through the efforts of all three partners. Even with this fishery, because of limited resources, the Council is forced to make choices on which actions it will pursue each year. These choices are made through a structured and transparent process that reflects the judgment of the entire Council and provides numerous opportunities for public input, including from the Council's advisory panels. Ultimately, however, the decisions are made by the Council members. Often the Council does not choose to select management actions that are suggested by the public. This reflects the need to prioritize management actions and does not reflect a lack of compliance with the Magnuson-Stevens Act (MSA). At its most basic level, this request from the Scallopers Campaign for a secretarial amendment does not identify violations of the MSA, but reflects dissatisfaction with the Council's choice of management priorities.

With respect to the scallop leasing issue, it is worth first reviewing the actual record and correcting the errors in the letter from the Scallopers Campaign. Leasing for the limited access fleet was most recently considered by the Council in Amendment 15. After three and a half years developing the amendment, the leasing and stacking options were rejected by the Council in a close vote in September 2010. Attachment 1 details subsequent efforts to have the Council consider a leasing program. This summary highlights and corrects the numerous errors in the Scallopers Campaign letter.

With the correct record in mind, it is worth addressing the arguments made to justify the need for a Secretarial Amendment. These are:

- The FMP is not consistent with National Standards 5 and 10;
- The Council is ignoring the wishes of a "supermajority" of the industry and the Scallop Advisory Panel.

The Magnuson-Stevens Act requires that Councils prepare fishery management plans to be consistent with all ten national standards identified in Section 301 of 16 U.S.C. 1851. The NEFMC has done so in the Atlantic Sea Scallop FMP by working collaboratively with the fishery stakeholders NMFS. It is worth noting that the Secretary of Commerce has reviewed 4 amendments and 17 framework adjustment actions for the Scallop FMP since 2004 and concluded that all approved measures met the requirements of the MSA and applicable laws. Contrary to the claim in the letter, the determination has repeatedly been made that the FMP is consistent with the National Standards. The following section will rebut the argument in more detail.

The Scallopers Campaign argument that the Scallop FMP includes measures that are inconsistent with National Standard 5 is inaccurate. The Council has not imposed unnecessary burdens that increase costs and limit operational flexibility. The primary purpose of establishing the limited access program, including the one-permit-one-vessel criteria, was to reduce fleet capacity to better control fishing mortality on what was, at that time, an over exploited resource. Development of the limited access program was done in tandem with a suite of other measures that significantly changed how the scallop fishery was managed. The effort reduction through Amendment 4 established the foundation of a management framework still used today. Those changes were a necessary shift in how the fishery was administered in the hopes that the scallop resource and industry would thrive in the future. The one-permit-one-vessel approach was maintained during the establishment of rotational management and managing fishing mortality through annual catch limits. While management has evolved since 1994, the key measures enacted through Amendment 4 have remained, including the one-permit-one-vessel restriction, resulting in the scallop resource rebounding from an overfished status to record high biomass, landings, and revenue. The “unnecessary burdens that increase costs and limit operational flexibility” that the Scallopers Campaign believes the Council has imposed on the scallop fishery are, in fact, a key chapter in the story of the scallop fishery’s rise to becoming one of the most valuable and highly regarded fisheries in the world. As noted in the Scallopers Campaign’s letter, the rebuilding success has resulted in a full-time scallop fleet of “multi-million-dollar” vessels generating hundreds of millions of dollars in revenue each year.

Other claims that the Scallop FMP is not consistent with National Standard 5 are simply not true. Working collaboratively with the fishing industry, the Council has increased flexibility and efficiency for the limited access component over the past several decades, including but not limited to measures such as (50 CFR §648.50 through 50 CFR §648.65): allowing additional crew on access area trips, allowing “broken trips”, allowing limited access vessels to obtain groundfish permits, creating the ability for limited access vessels to exchange partial trips to facilitate fishing opportunities in access areas of preference, establishing an expedited specification implementation process, facilitating access to groundfish and former habitat closures, modifying the southern boundary of the days-at-sea (DAS) demarcation line to allow vessels in the southern extent of the fishery to better utilize open area DAS allocations, establishing an open area DAS carryover provision, allowing access area allocations to be harvested in the first 60 days of the following fishing year, establishing standard default measures, etc. All of the above are examples of measures that improve efficiency in the scallop fishery. While a leasing program is not included on this list, there is nothing in National Standard

5, or anywhere in the MSA for that matter, that states a leasing program must be established in order for a fishery to be considered efficient.

Perhaps in order to counter the argument that leasing may conflict with the National Standard 5 prohibition on measures whose sole purpose is economic allocation, the Campaign looks to National Standard 10 to argue that leasing will improve vessel safety. The Council remains committed to working with the scallop industry to promote safety at sea, as it does when considering any proposed change to the FMP, many of which are listed in the previous paragraph. The Scallopers' Campaign claims that safety hazards (National Standard 10) associated with vessel age, and one crew working multiple vessels in a year, could be reduced through the development of a leasing program. The theory is that older vessels would be retired or replaced with newer vessels that would be safer, and that new or existing vessels would fish more days, reducing the need for crews to transfer between multiple boats. This might occur, but this option would be most readily available only to owners of multiple permits and thus any fleet-wide benefits would be limited. The Council's direct experience with this theory is that adoption of leasing in the Limited Access General Category Individual Fishing Quota (LAGC IFQ) component did not result in a substantial amount of new vessel builds. The LAGC IFQ program review for 2010 to 2015 found that the introduction of a catch share program with leasing did not lead to immediate investment in building new vessels, even though a substantial number of active LAGC IFQ vessels were also built immediately after the implementation of the MSA and are over 40 years old.

The Scallopers Campaign has repeatedly claimed that development of a leasing program has been supported by a "supermajority" of limited access vessel owners. The term "supermajority" is not defined in the Magnuson-Stevens Act; however, we assume that the Scallopers Campaign means much more than half of all limited access vessel owners. This claim is difficult to corroborate, as the Scallopers Campaign's summary of a 2020 survey states that responses were received from only 29 owners. Understanding ownership interest by entities in the scallop fishery is nuanced, what we know is that the spread of ownership interest in terms of the number of single or multiple vessel owners is diverse (Table 1). There are a total of 239 people with ownership interest in the limited access fleet; 49% of all individuals with ownership interest in the limited access fleet (i.e., 118 individuals) are considered "single boat owners"<sup>1</sup>. We feel it is important to clearly state the range of ownership interest so that members of the public can make their own judgements around the number of limited access vessel owners in the fishery today.

Regardless of where ownership interests lie and aside from the specific topic of leasing, what is most important to the Council is ensuring that all interested parties have the opportunity to deliberate controversial issues in a public forum. This is where the Council process thrives, but where the secretarial action process falls short. Should you choose to respond positively to the Scallopers Campaign's petition for secretarial action, you would be choosing to side-step the Council process, which is designed to address such controversial and complex allocation issues. This is not to say the Council will choose to prioritize this issue in the future, but rather to say that the Council is the most appropriate body to undertake such a large issue. The Council is also the appropriate body for determining the priority of management actions. You acknowledged this

---

<sup>1</sup> Table 1 is based on data provided to the Scallopers Campaign on April 5, 2021 by GARFO APSD in response to a request related to ownership interests in the limited access fishery. The information shown is the total number of individuals that have ownership interest in limited access scallop vessels. This includes vessels that are jointly owned by multiple individuals. For example, Table 1 is not suggesting that there are 118 individuals that are sole owners of one vessel each, but rather that 118 individuals are considered "single vessel owners" because they have an interest in only one vessel, either through sole ownership of a single vessel or shared ownership with other individuals of a single vessel.

in the outset of your March 10, 2021 letter to the Council by stating that the Magnuson-Stevens Act specifically vests the Council with the authority to manage Atlantic sea scallops.

In your March 10, 2021 letter you ask the Council to consider the current limited access program and compare the benefits and drawbacks of developing a leasing program. We do not believe it is possible to make such a comparison until the details of the leasing program are known. A leasing program could be developed in any number of ways, and therefore there could be a wide range of drawbacks or benefits compared to how the scallop fishery is currently managed. It is worth noting that the Council did develop a range of consolidation alternatives in Amendment 15 (2011), including measures that considered allowing leasing in the limited access fishery. The fishery has evolved since that time, but the impacts of these measures were analyzed and could be used as an approximate reference in the place of the more ambiguous evaluation requested in your March 10, 2021 letter. What is clear from the Amendment 15 discussion is that the benefits and drawbacks are determined by the details of the leasing program. The open-area leasing program in Amendment 15, for example, was shown to increase or decrease scallop landings depending on the size of an adjustment to leased DAS. Amendment 15 also estimated that DAS allocations might need to be reduced for all permit holders if adjustments were not made for fishing power and increased efficiency. Operating costs were generally found to decline, but the analyses also highlighted negative impacts on regional jobs. These results may not be applicable to a future leasing program but do illustrate the difficulty in comparing a leasing program with an unknown design to the current program.

We recognize that the Scallopers Campaign has outlined several aspects of what a leasing program might look like, including in a letter to the Council on May 4, 2021. While that is one option for a program, it is not the only one, nor is there any reason to expect the Council's final design would match this suggestion. Clearly, the Scallopers Campaign's proposal will result in the distribution of the economic ownership benefits to fewer active ownership entities, and without carefully designed safeguards, would reduce the number of valuable active fishing opportunities that would be available to other individuals and entities in the U.S. in the future. To date, the leasing proposal has not even acknowledged this issue, which is very important and time-consuming to address.

We find no merit to the claim that the Council has sidelined its responsibility to be responsive to requests from the industry. The Council and the Scallop Committee have consistently made time on meeting agendas to entertain discussion on this topic, even when it was not identified as a work priority. For example, between February 2020 and January 2021, the Scallopers Campaign either took the opportunity to provide comment on the leasing proposal, or discussion related to the leasing proposal was held, at all Scallop Advisory Panel meetings (6 of 6), all Scallop Committee meetings (6 of 6), and 4 out of the 6 Council meetings that convened during this time. Also during that time, Mr. Pike and the Scallopers Campaign corresponded with Council members and Council staff on a fairly regular basis, often times seeking guidance on how best to advocate for the leasing proposal through the Council's priority process. While the leasing proposal was given serious consideration at all levels throughout the 2021 priority process, the Council, weighing the overall management needs of the fishery, and after careful and thoughtful deliberation, has simply come to a different conclusion than the Scallopers Campaign about what issues should be pursued. The Council is actively addressing key management questions that are directly related to the success of the Limited Access (LA) component, such as the evaluation of rotational management and an evaluation of scallop projection models in 2023. In our view, the results of these efforts would enrich the discussion about a leasing program for the LA component.

The Council is poised to begin the 2022 priorities process in September. The initial list of possible work priorities will include two options for addressing leasing from last year's process: a multi-year priority to "develop limited access vessel DAS and access area trip leasing suggested by the Scallopers Campaign" and an annual work priority to "conduct scoping or listening sessions on a LA DAS and access area trips leasing program to assess the need for a leasing program and whether to move forward with developing an amendment." We encourage the Scallopers Campaign to continue to work within the Council priority setting process to advocate for this issue, but we emphasize that the decision on what actions to pursue rests with the Council.

Sincerely,

A handwritten signature in black ink, appearing to read "John F. Quinn". The signature is fluid and cursive, with a long horizontal stroke at the end.

Dr. John Quinn  
Chairman

*Table 1 – The number of people that have ownership interest in limited access scallop vessels by the number of vessels owned (source: GARFO APSD, 4/5/2021).*

Number of People	That have Ownership interest This Many Vessels	% That Own This Many Vessels
118	1	<b>49%</b>
31	2	<b>13%</b>
13	3	<b>5%</b>
16	4	<b>7%</b>
5	5	<b>2%</b>
7	6	<b>3%</b>
3	7	<b>1%</b>
1	8	<b>0%</b>
31	11	<b>13%</b>
2	12	<b>1%</b>
4	14	<b>2%</b>
8	17	<b>3%</b>



## **Attachment 1 – Council Discussion Related to Leasing/Consolidation post-Amendment 15**

In August 2017, the East Coast Scallop Harvester Association (ECSHA) requested the Council consider leasing and consolidation in the scallop fishery. At that time, the request was that the Council initiate an amendment to establish a voluntary sector-style management system that would allow individuals who do not share common ownership of limited access vessels to receive scallop allocations in pounds (i.e., output control) as opposed to open area days at sea (i.e., input control), and to allow allocations to be transferred within and among sectors. Any and all requests for potential work priorities are added to a list for consideration by the Council's Advisory Panels, Oversight Committees, and the Council itself when discussing work priorities. This was the case in 2017 for the ECSHA request, which the Scallop Advisory Panel voted to not pursue as a work priority in 2018 on two separate occasions. The Scallop Committee also considered the request on two separate occasions in 2017 and unanimously recommended that the Council take up other important work priorities during 2018. The Council ranked the ECSHA request last on the list of priorities for 2018 and ultimately prioritized developing specifications, modifying access areas following changes to essential fish habitat (EFH) designations through Omnibus Habitat Amendment 2, and addressing persisting issues in the LAGC fishery (i.e., the Northern Gulf of Maine, LAGC IFQ possession limit) through Amendment 21.

Both the Scallop AP and Scallop Committee had initial discussions about 2019 priorities in September 2018 and neither group recommended adding the ECSHA request to the list for consideration. Instead, both groups recommended (by consensus) that "evaluation of the rotational management program" and "evaluate options for harvesting the slow growing scallops in the Nantucket Lightship South Deep" be added to the list for the Council's consideration. No correspondence was received prior to the September 2018 Council meeting related to the request, though a letter detailing private port meetings that were held to discuss problems and issues facing the scallop fishery was delivered to the Council at its September 2018 meeting. The letter essentially requested that the Council begin scoping the problems and issues facing the scallop fishery that were raised during privately held port meetings earlier that year. In October 2018, the AP recommended that "ECSHA – problems and challenges in fishery" be ranked 4<sup>th</sup> in the list of 2019 scallop priorities and the Committee ranked scoping on this issue last in its list of priorities (6<sup>th</sup> of 6) recommended to the Council. The Executive Committee considered the list in November 2018 and noted that Council members had ranked the request for scoping 80<sup>th</sup> out of 82 priorities overall. The Scallop AP and Committee met after the Executive Committee discussed 2019 priorities, and neither the AP or Committee agendas noticed that the priorities discussion that concluded in October 2018 would be revisited. The Committee chose not to revisit the priorities discussion because they had already made their recommendations to the Council, and because the public was not notified that the discussion would be reopened for debate. Prior to the December 2018 Council meeting, several letters were submitted asking the Council to prioritize scoping efforts that could lead to an amendment to address issues facing the scallop industry; however, similar to the year before, the Council considered the request along with other work items, accounted for staff resources available, and ultimately felt that other issues important to the scallop fishery were of higher priority for 2019, such as specifications, supporting the RSA process, evaluating the rotational management program, tracking bycatch inseason, mitigating impacts to Georges Bank yellowtail flounder, specifying allocation review triggers, and the multi-year work item that focused on the Northern Gulf of Maine Management area and the LAGC IFQ component of the fishery.

At the outset of work on 2019 priorities, the AP and Committee revisited priorities in light of an emerging issue that was impactful to the entire scallop fishery: developing ways to access the small, slow growing scallops in the Nantucket Lightship South Deep area. At the spoken support for this issue at the AP and Committee, the Council understood the need for work on this item

and decided to prioritize it and drop “evaluation of the rotational management program” as a priority given the limited staff resources available to make progress on the lengthy list of 2019 priorities. At that time, at least one Council member noted that while the Nantucket Lightship South Deep was a more pressing item to be addressed, evaluation of the rotational management program was important to revisit and should not be put on the shelf forever. Later that year, the Council considered a full list of work items that could be potentially worked on in 2020. This list included a variation of past requests from the ECSHA, different in that it requested the Council begin developing a pilot project for leasing in the limited access fishery. While the AP did recommend this as a #3 priority for 2020 at their October 2019 meeting, the Committee offered this item as a lower recommendation on the list because there were other items that were more important to address at the time, including but not limited to work on Amendment 21, a major action to the Scallop FMP that continues to take considerable staff resources to this day to complete. While many spoke in support of the AP’s recommendation at the October 2019 Committee meeting, many industry members (including owners of limited access scallop vessels) spoke against prioritizing the pilot leasing project. Furthermore, the Committee never specified which priorities were “above or below the line” in their October 2019 recommendation to the Council. Much like the year before, the AP reaffirmed their support for prioritizing the pilot leasing project at the November 2019 meeting; however, because revisiting priority recommendations was not noticed on the November 2019 Committee agenda, the Committee elected to not revisit the discussion. In December 2019, the Council again considered the lengthy list of potential work priorities for the following year, accounted for staff time and available resources, and decided that other work items were of higher priority to be worked on in 2020, including several items that were widely supported by all industry members such as developing specifications, supporting the RSA process, tracking bycatch in-season, and completing Amendment 21 to the Scallop FMP. The Council did consider the ECSHA request to develop a pilot leasing program (i.e., ranked 85<sup>th</sup> of 86 by the Council overall) through a motion to amend, but that motion failed 2/13/1.

Moving forward to 2020, Mr. Pike communicated to the Council through various forms of correspondence on what was then rebranded as the “Scallopers Campaign” and updated the Council on private outreach conducted throughout the course of the year. A July 24, 2020 letter requests that the Council initiate development of an amendment for leasing in the limited access fishery including a very high-level statement of purpose and need for such a program. In fall of 2020, the AP and Committee did move forward recommend that listening sessions for development of a leasing program be prioritized for 2021. In October 2020, the Executive Committee discussed the Scallop Committee’s recommendation to prioritize listening sessions and did not come to a consensus on which scallop priorities to recommend to the Council. Following discussion around several items, including listening sessions to assess the need for a leasing program, the Executive Committee did agree that their debate was a choice between two work items: 1) conduct scoping/listening sessions to assess the need for a leasing program, or 2) evaluate the rotational management program and do not conduct scoping/listening sessions on leasing. The Council held a special meeting in late October 2020 to address 2021 priorities. Consistent with the Executive Committee’s discussion early that month between two potential scallop priorities, a motion to substitute was put forward to prioritize evaluation of rotational management in place of listening sessions to assess the need for a leasing program in the limited access fishery. As is always the case in the Council’s public process, all interested parties had the opportunity to speak to the substitute motion before the Council ultimately decided to vote in favor of adding evaluation of rotational management over the leasing work item. This was done in consideration of the lengthy list of potential priorities, accounting for staff time and available resources, and seeing other work items that were of higher priority that were supported across the board by industry members and Council members alike. The final list of 2021 priorities included completing on-going actions that were delayed as a result of the pandemic (i.e., FW33, A21),

developing specifications, supporting the RSA process, tracking bycatch in-season, reviewing and implementing recommendations from the 2015 scallop survey review panel, and considering modifications to the methods used to count LAGC IFQ access area trips. The Council also moved forward a recommendation to start work on developing an action to revise habitat management areas on the Northern Edge of Georges Bank, a priority that has been widely supported by all scallop fishermen since the start of Omnibus Habitat Amendment 2.



## New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116  
John F. Quinn, J.D., Ph.D., *Chairman* | Thomas A. Nies, *Executive Director*

June 25, 2021

Dr. Jonathan Hare  
Science and Research Director  
Northeast Fisheries Science Center  
166 Water Street  
Woods Hole, MA 02543

Dear Jon:

On June 22, 2021 the Council discussed research priorities for the next Scallop Research Set-Aside (RSA) announcement. The attached list includes the Council's recommendations for Scallop RSA research priorities for the 2022/2023 award cycle. This year, the Council recommended resource surveys as the highest priority. The Council also identified two research areas as high priority (i.e., scallop biology and sea turtle research), and three general research needs (i.e., scallop recruitment supplementation, bycatch, gear). The high priority and general research needs are not listed in rank order and are of equal importance within their respective categories. The Scallop Plan Development Team, Advisory Panel, and Oversight Committee all provided input to the Council ahead of the June 2021 meeting.

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

Sincerely,

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

Thomas A. Nies  
Executive Director

cc: Michael Pentony, GARFO  
enclosure: (1)

## Attachment

### SURVEYS (Highest Priority)

#### 1. Survey Related Research

Survey results must be available by early August of the year in which the survey is conducted (e.g., survey results that would inform 2023 fishing effort decisions must be available by mid-August 2022). The survey or surveys do not need to be carried out by a single grant recipient. Survey data will be used to develop estimates of total and exploitable biomass to be used for setting fishery catch limits and allocations. Successful projects may be asked to provide data in a standardized format. The primary objective of these surveys would be to provide length-frequencies, abundance and biomass estimates that are used by the Scallop Plan Development Team.

1a. An intensive industry-based survey of each of the relevant scallop rotational areas (In rank order: Closed Area II, Elephant Trunk and Hudson Canyon, Nantucket Lightship, Closed Area I) that will provide estimates of total and exploitable biomass to be used for setting fishery catch limits under the rotational area management program.

1b. an intensive industry-based survey of areas of importance (i.e., open areas with scallop recruitment or areas of importance to the fishery). For 2022, the priority areas are where scallop recruitment was observed during recent surveys, and areas of the Gulf of Maine that have recently been or are likely to be fished, specifically the closure area on Stellwagen Bank.

1c. a resource wide industry-based survey of scallops within Georges Bank and/or Mid-Atlantic resource areas. The Georges Bank area includes areas east of Cape Cod, and the area of the Gulf of Maine south of the Northern Gulf of Maine management area.

#### High Priority Non-survey research (equal priority – not in ranked order)

2. Scallop Biology: Research on scallop biology, including studies aimed at understanding recruitment processes (e.g., reproduction, timing of spawning, larval and early post-settlement stages, age and growth, and yield), spatial population dynamics of the scallop resource, and examination of environmental stressors on reproduction and growth. This priority also includes research on natural mortality processes, such as scallop predation (e.g., starfish, crab, snails), discard mortality, juvenile mortality events, and disease and parasites. The results of biology research should be informative to scallop stock assessments and projection models (current and future) and to support decision-making by fishery managers.

3. Turtles: Research to support the investigation of turtle behavior in the Mid-Atlantic and Georges Bank (via satellite tagging or other means). This could include, but is not limited to, research to understand their seasonal movements, vertical habitat utilization, and the status and range of the population in response to climate change. This could also include research on gear design to reduce incidental takes of ESA-listed species. This research could assist in the collection of data that may be required by current or future biological opinions, to address reasonable and prudent measures of the biological opinion and could be used to evaluate current turtle regulations (EX: timing and spatial extent of gear modifications).

General Research Needs (equal priority - not in rank order)

4. Scallop Recruitment Supplementation: Research to develop the tools, such as spat collection, grow out of juvenile scallops, predator control, and offshore seeding, to supplement natural recruitment of scallops for the federally managed scallop fishery. Research could focus on the development of standards and best practices for using husbandry techniques to enhance the wild capture fishery or could evaluate the economic feasibility of enhancement efforts.

5. Bycatch: Identification and evaluation of methods to reduce the impacts of the scallop fishery with respect to bycatch of small scallops and non-target species. This would include projects that determine seasonal bycatch rates of non-target species, characterize spatial and temporal distribution patterns, collect and analyze catch and bycatch data on a near-real time basis, as well as the associated discard mortality rates of key bycatch species. Research efforts focusing on non-target bycatch should provide results that would help the scallop industry avoid pending or potential implementation of accountability measures. Projects should consider the enforceability and feasibility of regulations in the commercial fishery.

6. Gear: Commercial dredge research to improve scallop catch efficiency, improve scallop size selectivity, reduce scallop damage (discard and incidental mortality), reduce non-target species bycatch, and to reduce fuel consumption.