

CORRESPONDENCE



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 3, 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 preliminary submission draft of Amendment 21 to the Atlantic Sea Scallop Fishery Management Plan and associated appendices.

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.

Upon review of the Amendment 21 pre-submission document, please communicate any comments and/or need for further revisions directly to me in writing. To help expedite the review process, my staff would appreciate if requested changes could be provided back to us as “track changes.” We also request that NMFS differentiate between edits that are ‘required’ versus those that are ‘suggested.’ Please contact me if you have any questions.

Sincerely,

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

Thomas A. Nies
Executive Director



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

May 4, 2021

Dear Mr. Nies,

On January 15, 2021, the Scallopers Campaign requested that the Secretary of Commerce prepare an amendment to the Atlantic Sea Scallop Fishery Management Plan (FMP) that would authorize leasing in the limited access (LA) sea scallop fishery. On March 10, 2021, GARFO Regional Administrator Michael Pentony wrote to the New England Fishery Management Council asking for its review and comments on the Scallopers Campaign request. Specifically, Mr. Pentony's letter asked the Council to respond to the assertion that the current FMP fails to comply with National Standards 5 and 10 of the *Magnuson Stevens Fishery Conservation and Management Act* (MSA) and, therefore, prevents permit holders from efficiently operating their vessels; eliminating operational redundancies; and reducing overcapacity.

Mr. Pentony made clear in his letter that it is appropriate to work through the Council process when considering changes to an FMP. He also asked the Council how it intends to address the issues raised in the petition. Most importantly, Mr. Pentony stated that, "if the Council decides to not take action, it should nevertheless consider the current limited access program and compare the benefits and drawbacks of developing a leasing program."

We agree with Mr. Pentony's approach to the Council. While it will always be a challenge to conduct an analysis of a program that has yet to be developed, it is important to begin this process when it comes to leasing in the scallop fishery. Over the last few years, the Campaign has identified and articulated shortcomings of the current FMP and its lack of operational flexibility, and we've developed and publicized principles and objectives to address those shortcomings. We are aware the Council has included this issue on its June meeting agenda, so we've included these below to assist Council and staff in responding to Mr. Pentony's request.

Proposed Principles for a Voluntary Leasing Program:

- Promote flexibility and fairness for the benefit of the sea scallop fleet;
- Improve the economic performance and resiliency of the fishery;
- Improve crew safety in the scallop fishery;
- Ensure conservation neutrality;
- Maintain the individual identity of each LA scallop permit;

- Include a commitment and measures to ensure “No Harm” to non-participating scallop vessels;
- Recognize and address the diversity and characteristics of the LA scallop fleet, including multi-fishery vessels;
- Include a commitment and measures (e.g. sideboards) to protect other fisheries from negative impacts of any approved program;
- Reflect and include the existing caps on ownership and control; and
- Limit the amount of leasing to a maximum of one additional full allocation per vessel, so that no vessel may fish more than two allocations.

For more detail on our objectives, you can visit the Scallopers Campaign website at www.scalloperscampaign.org.

After extensive discussions within the industry, we believe an effective leasing program would bring the LA sea scallop fleet a necessary degree of operational flexibility and would strengthen the fishery’s economic resilience. Leasing would allow the fishery to conserve economic inputs and reduce the cost redundancies in their fishing operations as mandated under the current FMP. Eliminating these inefficiencies and improving the economic performance of the fishery would substantially improve the FMP’s compliance with MSA National Standard 5, and would position the fleet for a sustainable future.

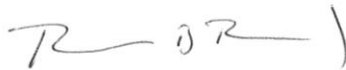
As the Scallopers Campaign recommended last year for the 2021 prioritization cycle, the Council’s scoping process would have allowed the Council to engage the industry on the subject of leasing in order to understand the need for an effective leasing program in this critical fishery. Scoping would also allow the Council to identify key elements of a leasing program that would require additional focus within the Council process.

We support the Council taking up Mr. Pentony’s challenge of comparing the benefits and limitations of a potential leasing program within the LA fishery. This work would be of immediate value in informing the Sea Scallop Advisory Panel and Committee as they shape their priorities for 2022, and it would at long last provide a sense of direction to the scallop fishery. It would also allow Council members to have a more complete picture when they weigh in on Committee recommendations this fall. In support of this work, the Scallopers Campaign offers you and your staff whatever assistance we can provide.

Sincerely,



Jeffrey R. Pike



Rick Robins



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northeast Fisheries Science Center
166 Water Street
Woods Hole, MA 02543-1026

April 24, 2021

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

Dear Tom:

Thank you for your letter of April 1, 2021, regarding the Council's request for assistance to ensure that qualitative or quantitative information on the status of Georges Bank yellowtail flounder is available for presentation at the appropriate time, so that it may be considered when the TRAC develops management advice. As you are aware, this year's terms of reference for yellowtail flounder will examine both the empirical approach and constant quota approach, using a limiter.

The three RSA projects you describe are limited spatially, as none of them sample in Canadian waters. This limits their ability to draw conclusions on the full stock. However, as noted in the 2019 TRAC Proceedings, the VIMS scallop dredge survey, and by extension the SMAST video trawl survey and Coonamessett Farm Foundation dredge survey, can provide confirmation of the overall trends seen in the NMFS and DFO bottom trawl surveys. Working papers from any or all of these projects would be welcomed for discussion under the TOR "Due to the impact of COVID-19, examine qualitatively or quantitatively, readily available research and fishery data that TRAC determines could provide valuable context in the absence of trawl surveys." We request that working papers be submitted at least three weeks in advance of the meeting (June 21, 2021) to U.S. TRAC co-chair Tara Trinko Lake (tara.trinko@noaa.gov), in order for timely distribution to meeting participants and addition to the meeting agenda.

Additionally, the Yellowtail flounder research track is currently scheduled for 2024. We encourage NEFMC participation and data sharing with this working group when it explores relevant data sets and modeling approaches. If you have questions or would like to discuss this further, please don't hesitate to give me a call.

Sincerely,

Jonathan A. Hare, Ph.D.
Science and Research Director

cc: M. Pentony





New England Fishery Management Council

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

April 7, 2021

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

Dear Mike:

Today, my staff electronically sent the final submission of Framework 33 to the Scallop Fishery Management Plan (FMP), including the Environmental Assessment (EA) and associated appendices. A preliminary submission draft was sent to your staff on February 26, 2021.

We received your letter dated April 5, 2021 with several issues identified for us to address to ensure the document is consistent with applicable laws. My staff completed analyses for this action consistent with previous guidance and prior scallop actions. On April 6, 2021, my staff discussed issue #6 from your letter with several NMFS staff:

“Section 6.6.1, describes two reasonable baselines: “No Action” baseline (which are default measures from Framework 32) and “Status Quo” (rolling over the 2020 regulations to 2021). Including both of these baselines in the environmental assessment is essential to help the reader understand how the proposed changes will impact communities. Throughout Section 6.6, please evaluate each alternative relative to both the No Action and the Status Quo alternatives. Specific examples will be provided by the Social Science Branch.”

The outcome of that call was that staff agreed that: 1) Framework 33 would be updated to clarify that the comparisons to No Action and Status Quo are completed for specifications alternatives (Action 3); and 2) other measures in the document would not be changed to compare both the No Action and Status Quo, as was suggested initially. We have provided a brief summary of FY2020 measures where applicable to further illustrate the proposed actions with Status Quo. This suggestion will require additional discussion before it is adopted in future actions.

We have revised this final submission document to reflect all other requested revisions contained in your April 5, 2021 letter.

The measures proposed in Framework 33 adjust fishing year 2021 and 2022 (default) scallop fishery specifications. This action also includes measures that are designed to mitigate impacts on Georges Bank yellowtail flounder and Northern windowpane flounder.

Please contact me if you have any questions. Since the 2021 scallop fishing year began on April 1, 2021, the Council requests the measures proposed in this framework adjustment be implemented as soon as possible.

Sincerely,

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

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

April 5, 2021

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

RE: Comments on Framework Adjustment 33 to the Atlantic Sea Scallop Fishery Management Plan

Dear Tom:

The Council submitted a preliminary draft of Framework 33 on February 26, 2021. We completed a review of the draft document, and the document is extremely well written. There are some issues that must be addressed to ensure the document is consistent with applicable law, which we have outlined below:

1. In Section 3.2, please include language on which National Environmental Policy Act (NEPA) regulations are being used in the preparation of this document. There is suggested language in the interim guidance provided to the Council.
2. In Sections 5.4, 5.4.1, and 5.4.2.1.3, please update section and references using language provided by Protected Resources Division (PRD) staff. Remove the sentence with outdated information about protected species and critical habitat. Insert the new description of sea scallop trawl gear on sea turtles provided by PRD and incorporate the updated references and footnotes provided.
3. In Sections 5.4.2, 7.2.2, and 7.4, please update the reference to the new PRD memo (March 24, 2021) that concluded that allowing the scallop fishery to continue during the reinitiation period will not increase the likelihood of interactions with Endangered Species Act-listed species above the amount that would otherwise occur if consultation had not been reinitiated.
4. In Sections 5.4.2.1.1 and 5.4.2.2.1, please add a new paragraph including the status/trend of the affected species in the Affected Environment so it better clarifies the magnitude of the impact.
5. In Section 6.4, please update language with specific references to turtles and Atlantic sturgeon and modify the impact descriptions from low to slight. Incorporate the suggested text provided by PRD staff throughout the section.
6. Section 6.6.1, describes two reasonable baselines: “No Action” baseline (which are default measures from Framework 32) and “Status Quo” (rolling over the 2020 regulations to 2021). Including both of these baselines in the environmental assessment is essential to help the reader understand how the proposed changes will impact communities. Throughout Section 6.6, please evaluate each alternative relative to both



the No Action and the Status Quo alternatives. Specific examples will be provided by the Social Science Branch.

7. In Sections 6.7.2.1.4, 6.7.3, and 6.7.6, please update with language provided by PRD staff. Update Table 88 and Table 89 with language provided by PRD staff. Based on comments provided in Section 6.4, the impacts to protected species may need to be revised.
8. In Section 6.7.5.4, please update this section to focus only on turtles and Atlantic sturgeon with text provided by PRD staff.
9. In Sections 7.2.2 and 7.3, please update with text provided by PRD staff (questions 9 & 11 in 7.2.2). In 7.3, change “affect” to “impact.”
10. In Section 7.11, please update references in the Executive Order 12898 (Environmental Justice) section.

My staff will be discussing these revisions with your staff this week. If you have questions on the comments provided, or on the review of Framework 33, please contact Travis Ford at (978) 281-9233. We appreciate your quick turnaround of this document so we can implement these measures as soon as possible.

Sincerely,



Michael Pentony
Regional Administrator



New England Fishery Management Council

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

April 2, 2021

Mr. Wesley Brighton
14 Smith Lane
Chilmark, MA 02552

Dear Wesley:

The New England Fishery Management Council's Executive Committee approved your application to serve a term as a Scallop Committee advisor through 2022. A well-qualified group of advisors with various experiences and areas of expertise will be a great asset to the Council as they develop Fishery Management Plans.

As an advisor, the Council relies on you to participate in the decision-making process and assist in the development of plans, which achieve conservation, are fair and equitable, and cause the least economic hardship. The Scallop Advisory Panel is typically asked to meet ahead of each Committee meeting to provide guidance. In some cases, the advisory panel may meet jointly with the Plan Development Team or the Committee.

You will find enclosed the Council's policies on Advisory Panels and Travel Authorization and Reimbursement. Please review them carefully as they concern appointments, termination, operations, etc. as well as information on travel to the advisory panel meetings. For our advisory panel process to be successful, your attendance at every scheduled meeting is essential. It is the Council's policy that you may be replaced if you are absent from two consecutive meetings without giving adequate notification or reason to the Executive Director. Repeated absences even with adequate notification may lead to your replacement. In addition, you will need to notify the Executive Director should you receive any marine violations during your three-year tenure as an advisor.

On behalf of the Council, as well as the Scallop Committee, I would like to thank you for your interest and willingness to serve in this capacity. Please feel free to contact Jonathon Peros (jperos@nefmc.org) or myself if you have any questions.

Sincerely,

Thomas A. Nies
Executive Director

Enclosures (2)



New England Fishery Management Council

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

April 2, 2021

Mr. Jay Elsner
15 Cape Street
New Bedford, MA 02740

Dear Jay:

The New England Fishery Management Council's Executive Committee approved your application to serve a term as a Scallop Committee advisor through 2022. A well-qualified group of advisors with various experiences and areas of expertise will be a great asset to the Council as they develop Fishery Management Plans.

As an advisor, the Council relies on you to participate in the decision-making process and assist in the development of plans, which achieve conservation, are fair and equitable, and cause the least economic hardship. The Scallop Advisory Panel is typically asked to meet ahead of each Committee meeting to provide guidance. In some cases, the advisory panel may meet jointly with the Plan Development Team or the Committee.

You will find enclosed the Council's policies on Advisory Panels and Travel Authorization and Reimbursement. Please review them carefully as they concern appointments, termination, operations, etc. as well as information on travel to the advisory panel meetings. For our advisory panel process to be successful, your attendance at every scheduled meeting is essential. It is the Council's policy that you may be replaced if you are absent from two consecutive meetings without giving adequate notification or reason to the Executive Director. Repeated absences even with adequate notification may lead to your replacement. In addition, you will need to notify the Executive Director should you receive any marine violations during your three-year tenure as an advisor.

On behalf of the Council, as well as the Scallop Committee, I would like to thank you for your interest and willingness to serve in this capacity. Please feel free to contact Jonathon Peros (jperos@nefmc.org) or myself if you have any questions.

Sincerely,

Thomas A. Nies
Executive Director

Enclosures (2)



New England Fishery Management Council

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

April 1, 2021

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

Dear Dr. Hare:

This summer, the Transboundary Resource Assessment Committee (TRAC) faces unusual challenges because several trawl surveys were not completed in 2020. This is recognized as a particular problem for Georges Bank (GB) yellowtail flounder because the current assessment relies on swept area biomass estimates. As a result, the terms of reference include guidance to “...examine qualitatively or quantitatively, any readily available research and fishery data that {TRAC} determine{s} could provide valuable context in the absence of trawl surveys.” I believe that research supported by the Scallop Research Set-Aside (RSA) program is applicable to this TOR and ask your assistance in making sure it is discussed and considered during the assessment.

For several years, the Council has recommended bycatch research as a priority for the Scallop RSA program. Several Scallop RSA-funded projects have conducted industry-based surveys within the GB yellowtail flounder stock area and collect information on finfish bycatch. My staff spoke with several RSA-funded research groups regarding the upcoming assessment. The following groups have expressed interest in submitting their research for consideration in the GB yellowtail assessment:

- **Virginia Institute of Marine Science (VIMS) Dredge Survey:** VIMS has conducted dredge surveys of eastern Georges Bank in 2005-2008, 2011-2013, and 2016-2020. These surveys have focused primarily on the scallop resource, but also collect extensive data on finfish, including GB yellowtail flounder, as a secondary objective. As described in a recent TRAC working paper submitted by VIMS (Rudders and Roman 2019), dredge survey data have been used to inform total catch, relative abundance, length-frequency distribution, and the spatial distribution of GB yellowtail within the survey domain. VIMS has communicated that they will be conducting their dredge survey in the GB yellowtail stock area from June 8 – June 14, 2021. With some coordination and planning, TRAC could consider data from 2021. *Point of Contact: Dr. David Rudders, rudders@vims.edu*
- **University of Massachusetts Dartmouth, School for Marine Science and Technology (SMAST) Video Trawl Survey of Closed Area II:** SMAST has conducted spring and fall video trawl surveys of Closed Area II since 2013 following the methodology described in DeCelles et al. 2017. These industry-based surveys have examined the abundance of important flatfish bycatch species in the scallop fishery, including GB yellowtail flounder. Data products from this survey related to GB yellowtail include area-swept abundance and biomass estimates, length-frequency data, length-weight relationships, and maps showing the

spatial distribution within the survey domain. SMAST has communicated that they will be conducting their video trawl survey of eastern Georges Bank in mid-April 2021. With some coordination and planning, TRAC could consider data from 2021. *Point of Contact: Dr. Kevin Stokesbury, kstokesbury@umassd.edu*

- **Coonamessett Farm Foundation (CFF) Seasonal Dredge Survey of Georges Bank:** CFF has conducted industry-based seasonal dredge surveys of Georges Bank since 2011. The primary focus of these surveys relates to scallop biology as well as examining seasonal trends of bycatch species encountered by the scallop fishery, including GB yellowtail flounder (Winton et al. 2017). Data products from this survey related to GB yellowtail include length-weight relationships and reproductive data. *Point of Contact: Quinn McWatters, qmcwatters@cfarm.org*

I recognize that these RSA projects are not designed as finfish surveys. Nevertheless, all of them do collect information that may provide qualitative or quantitative information on the status of GB yellowtail flounder. Since consideration of such information is specifically called for by this year's TORs, I ask your assistance in making sure that this information is presented at the appropriate time so that it may be considered when TRAC develops management advice. I would like to avoid a repeat of our experience in 2019, where analyses contracted and paid for by the Council were not considered until after management advice was crafted. As a result, it had no influence on the discussion and its presentation was pointless.

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

Sincerely,



Thomas A. Nies
Executive Director

cc: Michael Pentony, Tara Trinko-Lake

References:

- DeCelles GR, Keiley EF, Lowery TM, Calabrese NM, Stokesbury KD (2017) Development of a video trawl survey system for New England groundfish. *Transactions of the American Fisheries Society* 146(3):462-77.
- Roman S, & Rudders D (2019) Georges Bank Yellowtail Flounder Estimates from VIMS Industry-Based Scallop Dredge Surveys of Closed Area II and Surrounds. *Marine Resource Report No. 2019-9*. Virginia Institute of Marine Science, William & Mary. doi:10.25773/vkmm-b485
- Winton M, Huntsberger C, Rudders D, DeCelles G, Thompson K, Goetting K, Smolowitz R (2017) Spatiotemporal patterns of flatfish bycatch in two scallop access areas on Georges Bank. *J. Northw. Atl. Fish. Sci.* 1;49:23-37



New England Fishery Management Council

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

March 25, 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 Framework 33 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 March 3rd, 2021. The review focused only on the regulatory changes resulting from Framework 33, and not other modifications NMFS made under other authorities. As a result of discussion with your staff, several clarifications were made to the text provided to the Council. They have been incorporated and are reflected in the following enclosure. I deem the regulatory text in the enclosure consistent with Council intent for implementing measures proposed by Framework 33.

Please feel free to call me with any concerns.

Sincerely,

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

Dr. John Quinn
Council Chairman

Enclosure

Enclosure 1:

§ 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.*

(A) Fish for or land 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:

(I) In excess of 40 lb (18.1 kg) of shucked scallops at any time, 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line, or 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line, unless:

(i) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(ii) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit and is properly declared into the scallop DAS, Area Access program, or the NGOM management area.

(iii) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit and is properly declared into the IFQ scallop fishery or is properly declared into the NE multispecies, Atlantic surfclam or quahog fishery, or other fishery requiring a VMS declaration, and is not fishing in a sea scallop access area.

(iv) The scallops were harvested by a vessel that has been issued and carries on board an NGOM or IFQ scallop permit, and is properly declared into the NGOM scallop management area, and the LAGC portion of the NGOM TAC specified in § 648.62 has not been harvested.

(v) [Reserved]

(2) In excess of 200 lb (90.7 kg) of shucked scallops at any time, 25 bu (8.8 hL) of in-shell scallops inside the VMS Demarcation Line, or 50 bu (17.6 hL) of in-shell scallops seaward of the VMS Demarcation Line, unless:

(i) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(ii) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit and is properly declared into the scallop DAS or Area Access program.

(iii) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii)(A), is fishing outside of the NGOM scallop management area, and is properly declared into the general category scallop fishery or is properly declared into the NE multispecies, or Atlantic surfclam or quahog fishery, or other fishery requiring a VMS declaration, and is not fishing in a sea scallop access area.

(iv) The scallops were harvested by a vessel that has been issued and carries on board a scallop permit and the vessel is fishing in accordance with the provisions of the state waters exemption program specified in § 648.54.

(v) [Reserved]

(3) In excess of 600 lb (272.2 kg) of shucked scallops at any time, 75 bu (26.4 hL) of in-shell scallops per trip South of 42°20' N. Lat. and shoreward of the VMS Demarcation Line or 100 bu (35.2 hL) in-shell scallops South of 42°20' N. Lat. and seaward of the VMS Demarcation Line, unless:

(i) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(ii) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit issued pursuant to § 648.4(a)(2)(i) and is properly declared into the scallop DAS or Area Access program.

(iii) The scallops were harvested by a vessel that has been issued and carries on board a scallop permit and the vessel is fishing in accordance with the provisions of the state waters exemption program specified in § 648.54.

(iv) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit, is carrying an at-sea observer, and is authorized by the Regional Administrator to have, and the vessel does not exceed, an increased possession limit to compensate for the cost of carrying the observer.

(4) Fish for, possess, or retain scallops in Federal waters of the NGOM management area on a vessel that has been issued and carries on board a NGOM permit and has declared into the state waters fishery of the NGOM management area.

(5) Fish for, possess, or retain scallops in the Stellwagen Bank Scallop Closed Area, as described in § 648.62(e), unless transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(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) [Reserved]

(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 without a scallop permit and 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 an 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 Sea Scallop Access Area by a vessel that is declared into the Area Access Program as specified in § 648.59.

(E) Fish for, possess, or land scallops in or from any Sea 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) Fish for scallops in, or possess scallops or land scallops from, the yellowtail flounder accountability measure closed areas specified in § 648.64 during the period specified in the notice announcing the closure and based on the closure table specified in § 648.64.

(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.

(C) Declare into the NGOM scallop management area after the effective date of a notification published in the Federal Register stating that the LAGC portion of the NGOM scallop management area TAC 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.

(D) Fish for, possess, or land scallops in or from the NGOM scallop management area after the effective date of a notification published in the Federal Register that the LAGC portion of the NGOM scallop management area TAC has been harvested, as specified in § 648.62, unless the vessel possesses or lands scallops that were harvested south of 42°20' N lat., the vessel is transiting the NGOM scallop management area, and the vessel's fishing gear is properly stowed and not available for immediate use in accordance with § 648.2 or 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) 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(b).

(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 Sea Scallop Access Area specified at § 648.60, unless declared into the Sea Scallop Access Area Program.

(D) Fish for, possess, or land scallops in or from any Sea 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 600 lb (272.2 kg) of shucked, or 75 bu (26.4 hL) of in-shell scallops per trip, or 100 bu (35.2 hL) in-shell scallops seaward of the VMS Demarcation Line, unless the vessel is carrying an observer as specified in § 648.11 and an increase in the possession limit is authorized by the Regional Administrator and not exceeded by the vessel, as specified in §§ 648.52(g) and 648.59(d).

(B) Fish for or land per trip, or possess at any time, in excess of 200 lb (90.7 kg) of shucked or 25 bu (8.8 hL) of in-shell scallops in the NGOM scallop management area, unless the vessel is seaward of the VMS Demarcation Line and in possession of no more than 50 bu (17.6 hL) of in-shell scallops, or when the vessel is not declared into the NGOM scallop management area and is transiting the NGOM scallop management area with gear properly stowed and unavailable for immediate use in accordance with § 648.23.

(C) Declare into the NGOM scallop management area after the effective date of a notification published in the Federal Register stating that the LAGC share of the NGOM scallop management area TAC 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.

(D) Possess more than 100 bu (35.2 hL) of in-shell scallops seaward of the VMS Demarcation Line and not be participating in the Access Area Program, or possess or land per trip more than 50 bu (17.6 hL) of in-shell scallops shoreward of the VMS Demarcation Line, unless exempted from DAS allocations as provided in § 648.54.

(E) [Reserved]

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

(G) Fish for, possess, or land more than 40 lb (18.1 kg) of shucked scallops, or 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line, or 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line, when the vessel is not declared into the IFQ scallop fishery, unless the vessel is fishing in compliance with all of the requirements of the state waters exemption program, specified at § 648.54, 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.

(H) Land scallops more than once per calendar day.

(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)(8).

(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)(8).

(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.

(ii) Fish for or land per trip, or possess at any time, in excess of 200 lb (90.7 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops in or from the NGOM scallop management area, or seaward of the VMS Demarcation Line more than 50 bu (17.6 hL) of in-shell scallops.

(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 scallop management area TAC 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.

(6) *Incidental scallop permit.* It is unlawful for any person owning or operating a vessel issued an Incidental scallop permit to fish for, possess, or retain, more than 40 lb (18.1 kg) of shucked scallops, or 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line, or 10 bu (3.52 hL) of in-shell scallops while seaward of the VMS Demarcation Line.

Subpart D - Management Measures for the Atlantic Sea Scallop Fishery

§ 648.50 Shell-height standard.

No changes

§ 648.51 Gear and crew restrictions.

(a) *Trawl vessel gear restrictions.* Trawl vessels issued a limited access scallop permit under § 648.4(a)(2) while fishing under or subject to the DAS allocation program for scallops and authorized to fish with or possess on board trawl nets pursuant to § 648.51(f), any trawl vessels in possession of more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops in or from the EEZ, and any trawl vessels fishing for scallops in the EEZ, must comply with the following:

(1) *Maximum sweep.* The trawl sweep of nets shall not exceed 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing, unless the net is stowed and not available for immediate use, defined in § 648.2, or unless the vessel is fishing under the Northeast multispecies or monkfish DAS programs.

(2) *Net requirements -*

(i) *Minimum mesh size.* Subject to applicable minimum mesh size restrictions for other fisheries as specified under this part, the mesh size for any scallop trawl net in all areas shall not be smaller than 5.5 inches (13.97 cm).

(ii) *Measurement of mesh size.* Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches) and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater than,

120 mm (4.72 inches). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings running parallel to the long axis of the net.

(3) *Chafing gear and other gear obstructions* -

(i) *Net obstruction or constriction.* A fishing vessel may not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. "The top of the trawl net" means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph (a)(3), head ropes shall not be considered part of the top of the trawl net.

(ii) *Mesh obstruction or constriction.* A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (a)(3)(i) of this section, if it obstructs the meshes of the net in any manner.

(iii) A fishing vessel may not use or possess a net capable of catching scallops in which the bars entering or exiting the knots twist around each other.

(b) *Dredge vessel gear restrictions.* All vessels issued limited access and General Category scallop permits and fishing with scallop dredges, with the exception of hydraulic clam dredges and mahogany quahog dredges in possession of 600 lb (181.44 kg), or less, of scallops, must comply with the following restrictions, unless otherwise specified:

(1) *Maximum dredge width.* The combined dredge width in use by or in possession on board such vessels shall not exceed 31 ft (9.4 m), measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section, in § 648.59(g)(2), and the scallop dredge exemption areas specified in § 648.80(h). However, component parts may be on board the vessel such that they do not conform with the definition of "dredge or dredge gear" in § 648.2, *i.e.*, the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and such that no more than one complete spare dredge could be made from these component's parts.

(2) *Minimum mesh size.* The mesh size of a net, net material, or any other material on the top of a scallop dredge (twine top) possessed or used by vessels fishing with scallop dredge gear shall not be smaller than 10-inch (25.4-cm) square or diamond mesh.

(3) *Minimum ring size.*

(i) Unless otherwise required under the Sea Scallop Area Access program specified in § 648.59(b)(6), the ring size used in a scallop dredge possessed or used by scallop vessels shall not be smaller than 4 inches (10.2 cm).

(ii) Ring size is determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement shall not

include normal welds from ring manufacturing or links. The rings to be measured will be at least five rings away from the mouth, and at least two rings away from other rigid portions of the dredge.

(4) Chafing gear and other gear obstructions -

(i) *Chafing gear restrictions.* No chafing gear or cookies shall be used on the top of a scallop dredge.

(ii) *Link restrictions.* No more than double links between rings shall be used in or on all parts of the dredge bag, except the dredge bottom. No more than triple linking shall be used in or on the dredge bottom portion and the diamonds. Damaged links that are connected to only one ring, *i.e.*, “hangers,” are allowed, unless they occur between two links that both couple the same two rings. Dredge rings may not be attached via links to more than four adjacent rings. Thus, dredge rings must be rigged in a configuration such that, when a series of adjacent rings are held horizontally, the neighboring rings form a pattern of horizontal rows and vertical columns. A copy of a diagram showing a schematic of a legal dredge ring pattern is available from the Regional Administrator upon request.

(iii) *Dredge or net obstructions.* No material, device, net, dredge, ring, or link configuration or design shall be used if it results in obstructing the release of scallops that would have passed through a legal sized and configured net and dredge, as described in this part, that did not have in use any such material, device, net, dredge, ring link configuration or design.

(iv) *Twine top restrictions as a proactive accountability measure for bycatch.* In addition to the minimum twine top mesh size specified in paragraph (b)(2) of this section, limited access and limited access general category IFQ vessels may not fish for scallops with a dredge having more than seven rows of non-overlapping steel rings unobstructed by netting or any other material between the terminus of the dredge (club stick) and the net material on the top of the dredge (twine top) (a copy of a diagram showing a schematic of a legal dredge with twine top is available from the Regional Administrator upon request).

(v) *Measurement of twine top mesh size.* Twine top mesh size is measured by using a wedge-shaped gauge having a taper of 0.79 inches (2 cm) in 3.15 inches (8 cm) and a thickness of 0.09 inches (2.3 mm), inserted into the meshes under a pressure or pull of 17.64 lb (8 kg). The mesh size is the average of the measurements of any series of 20 consecutive meshes for twine tops having 75 or more meshes, and 10 consecutive meshes for twine tops having fewer than 75 meshes. The mesh in the twine top must be measured along the length of the twine top, running parallel to a longitudinal axis, and be at least five meshes away from where the twine top mesh meets the rings, running parallel to the long axis of the twine top.

(5) Restrictions applicable to sea scallop dredges in the mid-Atlantic -

(i) *Requirement to use chain mats.* See § 223.206(d)(11) of this chapter for chain mat requirements for scallop dredges.

(ii) *Requirement to use a turtle deflector dredge (TDD) frame -*

(A) From May 1 through November 30, any limited access scallop vessel using a dredge, regardless of dredge size or vessel permit category, or any LAGC IFQ scallop vessel fishing with a dredge with a width of 10.5 ft (3.2 m) or greater, that is fishing for scallops in waters west of 71° W. long., from the shoreline to the outer boundary of the EEZ, must use a TDD. The TDD requires five modifications to the rigid dredge frame, as specified in paragraphs (b)(5)(ii)(A)(1) through (5) of this section. See paragraph (b)(5)(ii)(D) of this section for more specific descriptions of the dredge elements mentioned below.

(1) The cutting bar must be located in front of the depressor plate.

(2) The acute angle between the plane of the bale and the strut must be less than or equal to 45 degrees.

(3) All bale bars must be removed, except the outer bale (single or double) bars and the center support beam, leaving an otherwise unobstructed space between the cutting bar and forward bale wheels, if present. The center support beam must be less than 6 inches (15.24 cm) wide. For the purpose of flaring and safe handling of the dredge, a minor appendage not to exceed 12 inches (30.5 cm) in length may be attached to each of the outer bale bars. If the flaring bar is attached in a u-shape, none of the three sides of the flaring bar shall exceed 12 inches (30.5 cm) in length. The appendage shall at no point be closer than 12 inches (30.5 cm) to the cutting bar.

(4) Struts must be spaced 12 inches (30.5 cm) apart or less from each other, along the entire length of the frame.

(5) Unless exempted, as specified in paragraph (b)(5)(ii)(B) of this section, the TDD must include a straight extension (“bump out”) connecting the outer bale bars to the dredge frame. This “bump out” must exceed 12 inches (30.5 cm) in length, as measured along the inside of the bale bar from the front of the cutting bar to the first bend in the bale bar.

(B) A limited access scallop vessel that uses a dredge with a width less than 10.5 ft (3.2 m) is required to use a TDD, except that such a vessel is exempt from the “bump out” requirement specified in paragraph (b)(5)(ii)(A)(5) of this section. This exemption does not apply to LAGC vessels that use dredges with a width of less than 10.5 ft (3.2 m), because such vessels are exempted from the requirement to use a TDD, as specified in paragraph (b)(5)(ii) of this section.

(C) A vessels subject to the requirements in paragraph (b)(5)(ii) of this section transiting waters west of 71° W. long., from the shoreline to the outer boundary of the EEZ, is exempted from the requirement to only possess and use TDDs, provided the dredge gear is stowed and not available for immediate use as defined in § 648.2.

(D) *TDD-related definitions.*

(1) The cutting bar refers to the lowermost horizontal bar connecting the outer bails at the dredge frame.

(2) The depressor plate, also known as the pressure plate, is the angled piece of steel welded along the length of the top of the dredge frame.

(3) The struts are the metal bars connecting the cutting bar and the depressor plate.

(c) *Crew restrictions.* A limited access vessel participating in or subject to the scallop DAS allocation program may have no more than seven people aboard, including the operator, and a limited access vessel participating in the Sea Scallop Area Access Program as specified in § 648.59 may have no more than eight people aboard, including the operator, when not docked or moored in port, except as follows:

(1) A vessel fishing in the Nantucket Lightship-South-Deep Access Area, as described in § 648.60(e), may have no more than 10 people aboard, including the operator, when not docked or moored in port.

(2) A vessel participating in the small dredge program is restricted as specified in paragraph (e) of this section.

(3) The Regional Administrator may authorize additional people to be on board through issuance of a letter of authorization.

(4) A certified at-sea observer is on board, as required by § 648.11(k).

(d) *Sorting and shucking machines.*

(1) Shucking machines are prohibited on all limited access vessels fishing under the scallop DAS program, or any vessel in possession of more than 600 lb (272.2 kg) of scallops, unless the vessel has not been issued a limited access scallop permit and fishes exclusively in state waters.

(2) Sorting machines are prohibited on limited access vessels fishing under the scallop DAS program.

(e) *Small dredge program restrictions.* Any vessel owner whose vessel is assigned to either the part-time or Occasional category may request, in the application for the vessel's annual permit, to be placed in one category higher. Vessel owners making such request may be placed in the appropriate higher category for the entire year, if they agree to comply with the following restrictions, in addition to, and notwithstanding other restrictions of this part, when fishing under the DAS program described in § 648.53:

(1) The vessel must fish exclusively with one dredge no more than 10.5 ft (3.2 m) in width.

(2) The vessel may not use or have more than one dredge on board. However, component parts may be on board the vessel such that they do not conform with the definition of “dredge or dredge gear” in § 648.2, *i.e.*, the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and no more than one complete spare dredge could be made from these component's parts.

(3) The vessel may have no more than five people, including the operator, on board, except as follows:

(i) A vessel participating in the Sea Scallop Area Access Program as specified in § 648.60 may have no more than six people, including the operator, on board.

(ii) The Regional Administrator may authorize additional people to be on board through issuance of a letter of authorization.

(iii) A certified at-sea observer is on board, as required by § 648.11(k).

(iv) A vessel fishing in the Nantucket Lightship-South-Deep Access Area, as described in § 648.60(e), may have no more than 8 people aboard, including the operator, when not docked or moored in port.

(f) *Restrictions on the use of trawl nets.*

(1) A vessel issued a limited access scallop permit fishing for scallops under the scallop DAS allocation program may not fish with, possess on board, or land scallops while in possession of a trawl net, unless such vessel has been issued a limited access trawl vessel permit that endorses the vessel to fish for scallops with a trawl net. A limited access scallop vessel issued a trawl vessel permit that endorses the vessel to fish for scallops with a trawl net and general category scallop vessels enrolled in the Area Access Program as specified in § 648.59, may not fish for scallops with a trawl net in the Closed Area 1, Closed Area II, Closed Area II-East, and Nantucket Lightship-South-Deep Rotational Areas specified in § 648.60.

(2) *Replacement vessels.* A vessel that is replacing a vessel authorized to use trawl nets to fish for scallops under scallop DAS may also be authorized to use trawl nets to fish for scallops under scallop DAS if it meets the following criteria:

(i) Has not fished for scallops with a scallop dredge after December 31, 1987; or

(ii) Has fished for scallops with a scallop dredge on no more than 10 trips from January 1, 1988, through December 31, 1994, has an engine horsepower no greater than 450.

§ 648.52 Possession and landing limits.

No changes.

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

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

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

associated with OFL shall be used to derive specifications for ABC, ACL, and ACT, as defined in paragraph (a) of this section.

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

(3) Overall ABC/ACL and APL -

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

(ii) *APL.* The APL shall be equal to the combined projected landings by the limited access and LAGC IFQ fleets in both the open area and access areas, after set-asides (RSA 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 and access area 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) *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)(8) - Scallop Fishery Catch Limits

Catch limits	2021 (mt)	2022 (mt) ¹
Overfishing Limit	45,392	41,926
Acceptable Biological Catch/ACL (discards removed)	30,517	28,074
Incidental Catch	23	23
Research Set-Aside (RSA)	567	567
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 Projected Landings (94.5 percent of APL)	16,319	(1)
Total IFQ Annual Allocation (5.5 percent of APL) ²	950	712
LAGC IFQ Annual Allocation (5 percent of APL) ²	863	648
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) ²	86	65

¹ 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).

² 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 ¹
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.5

¹ 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 ($300,000 \text{ lb (136 mt)} / 2,500 \text{ lb (1.13 mt) per DAS} = 120 \text{ lb (0.05 mt) per DAS} / 313 \text{ vessels} = 0.38 \text{ DAS per vessel}$). 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 0.36, the AM specified in paragraph (c) of this section shall not take effect. The fishing mortality rate of 0.36 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 0.36. 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 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 cancelation 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 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)(I) 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

Years active	Index factor
2	0.875
3	1.0
4	1.125
5	1.25

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

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

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

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

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

(vi) *AM for the IFQ fleet.* If a vessel exceeds its IFQ, including all temporarily and permanently transferred IFQ, in a fishing year, the amount of landings in excess of the vessel's IFQ, including all temporarily and permanently transferred IFQ, shall be deducted from the vessel's IFQ as soon as possible in the fishing year following the fishing year in which the vessel exceeded its IFQ. If the AM takes effect, and an IFQ vessel lands more scallops than allocated after the AM is applied, the vessel shall have the IFQ landed in excess of its IFQ after applying the AM deducted from its IFQ in the subsequent fishing year. For example, a vessel with an initial IFQ of 1,000 lb (453.6 kg) in 2010 that lands 1,200 lb (544.3 kg) of scallops in 2010, and is initially allocated 1,300 lb (589.7 kg) of scallops in 2011 would be subject to an IFQ reduction equal to 200 lb (90.7 kg) to account for the 200 lb (90.7 kg) overage in 2010. If that vessel lands 1,300 lb (589.7 kg) of scallops in 2011 prior to application of the 200 lb (90.7 kg) deduction, the vessel would be subject to a deduction of 200 lb (90.7 kg) in 2012. For vessels involved in a temporary IFQ transfer, the entire deduction shall apply to the vessel that acquired IFQ, not the transferring vessel. A vessel that has an overage that exceeds its IFQ in the subsequent fishing year shall be subject to an IFQ reduction in subsequent years until the overage is paid back. For example, a vessel with an IFQ of 1,000 lb (454 kg) in each year over a 3-year period that harvests 2,500 lb (1,134 kg) of scallops the first year would have a 1,500-lb (680-kg) IFQ deduction, so that it would have zero pounds to harvest in year 2, and 500 lb (227 kg) to harvest in year 3. A vessel that has a “negative” IFQ balance, as described in the example, could lease or transfer IFQ to balance the IFQ, provided there are no sanctions or other enforcement penalties that would prohibit the vessel from acquiring IFQ.

(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 sub-ACL allocated 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 sub-ACL 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 sub-ACL allocated 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 sub-ACL allocated 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)(i)(A) of this section, are eligible to renew such permits(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permits or confirmations of permit history will result in the 5-percent ownership restriction being exceeded.

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

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

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

(i) *Cost recovery fee determination.* The ex-vessel value of scallops shall be determined as an average of the ex-vessel value, as determined by Northeast Federal dealer reports, of all IFQ scallops landed between March 1 and September 30 of the initial year of the IFQ scallop program, and from October 1 through September 30 of each year thereafter.

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

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

(5) *Transferring IFQ -*

(i) *Temporary IFQ transfers.* 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. 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.

(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. 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.

(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 ACL allocated to IFQ 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 ACL allocated to IFQ scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not transfer to or receive IFQ from another IFQ scallop vessel.

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

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

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

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

§ 648.54 State waters exemption.

No Changes

§ 648.55 Specifications and framework adjustments to management measures.

No Changes

§ 648.56 Scallop research.

(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 1.25 million lb (567 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.

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

(a) The Sea 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 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 Area Access 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)

Rotational access area	Scallop possession limit	2021 Scallop allocation	2022 Scallop allocation (default)
Closed Area II	18,000 lb (8,165 kg) per trip	27,000 lb (812,247 kg)	0 lb (0 kg).
Nantucket Lightship-South-Deep	18,000 lb (8,165 kg) per trip	27,000 lb (812,247 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).

Rotational access area	Scallop possession limit	2021 Scallop allocation	2022 Scallop allocation (default)
Total		72,000 lb (32,659 kg)	18,000 lb (8,165 kg).

(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)

Rotational access area	Scallop possession limit	2021 Scallop allocation	2022 Scallop allocation (default)
Closed Area II or Nantucket Lightship- South	14,400 lb (5,443 kg) per trip	14,400 lb (6,532 kg)	0 lb (0 kg)
Mid-Atlantic	14,400 lb (5,443 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)

¹ 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.

(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.*

(I) 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.

(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. 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.

(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), (b)(2), (b)(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), 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 ¹
Closed Area I	856	0
Nantucket Lightship-South-Deep	856	0
Mid-Atlantic	571	571
Total	2,283	571

¹ 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 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 Sea Scallop Access Area specified in paragraph (g)(3)(iv) of this section is prohibited from possessing any species of fish other than scallops and monkfish, as specified in § 648.94(c)(8)(i). Such a vessel may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided that it has not declared

into the Scallop Access Area Program. Such a vessel is prohibited from fishing for, possessing, or landing scallops.

§ 648.60 Sea Scallop Rotational Areas.

(a) *Mid-Atlantic Scallop Rotational Area.* The Mid-Atlantic Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Expand Table

Table 1 to Paragraph (a)

Point	N latitude	W longitude
MAA1	39°30'	73°10'
MAA2	39°30'	72°30'
MAA3	38°30'	73°30'
MAA4	38°10'	73°30'
MAA5	38°10'	74°20'
MAA6	38°50'	74°20'
MAA7	38°50'	73°42'
MAA1	39°30'	73°10'

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

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

Expand Table

Table 2 to Paragraph (b)(1)

Point	N latitude	W longitude	Note
CAII1	41°11'	67°20'	
CAII2	41°11'	66°41'	
CAII3	41°0'	66°41'	
CAII4	41°0'	(¹)	(²)
CAII5	40°40'	(³)	(²)
CAII6	40°40'	67°20'	
CAII1	41°11'	67°20'	

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

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

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

(2) *Season.*

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

(ii) For the 2021 scallop fishing year, a vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Closed Area II Scallop Rotational Area, defined in paragraph (b)(1) of this section, during the period of November 16 through November 30, unless transiting pursuant to § 648.59(a).

(c) *Closed Area I Scallop Rotational Area.* The Closed Area I Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Expand Table

Table 3 to Paragraph (c)

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

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

Expand Table

Table 4 to Paragraph (d)

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

¹ The intersection of 41°00' N lat. and the U.S.-Canada Maritime Boundary, approximately 41°00' N lat. and 66°09.33' W long.

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

³ The intersection of 41°30' N lat. and the U.S.-Canada Maritime Boundary, approximately 41°30' N lat., 66°34.73' W long.

(e) *Nantucket Lightship-South-Deep Scallop Rotational Area*. The Nantucket Lightship South-Deep Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Expand Table

Table 5 to Paragraph (e)

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

(f) [Reserved]

(g) *Nantucket Lightship-North Scallop Rotational Area*. The Nantucket Lightship North Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Expand Table

Table 7 to Paragraph (g)

Point	N latitude	W longitude
NLSN1	40°50'	69°30'

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

(h) *Nantucket Lightship-Triangle Scallop Rotational Area*. The Nantucket Lightship Triangle Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Expand Table

Table 8 to Paragraph (h)

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

§ 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'
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



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

March 10, 2021

Dr. John F. Quinn, Chairman
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, Massachusetts 01950

Dear John:

On January 15, 2021, the Scallopers Campaign submitted a letter asking the Secretary of Commerce to prepare an amendment to the Atlantic Sea Scallop Fishery Management Plan (FMP) that would authorize leasing in the limited access sea scallop fishery (see enclosure). As noted in the Scallopers Campaign's letter, the Council has considered addressing leasing in the limited access fleet, but the issue has not made it above the line because of other competing priorities. I am requesting that the Council carefully consider the letter, including the merits of this request. In its letter, the Scallopers Campaign asserts that the Council has failed to act in a reasonable period of time to submit an amendment to the Scallop FMP that achieves the goals of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and fails to comply with National Standards 5 and 10. The Scallopers Campaign suggests that the management measures in place prevent permit holders from efficiently operating their vessels, eliminating operational redundancies, and reducing overcapacity.

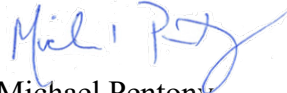
The Magnuson-Stevens Act authorizes regional fishery management councils to develop fishery management measures and specifically vests the Council with the authority to manage Atlantic sea scallops. It is appropriate to work through the Council process when we are considering this request and before we make a final determination on the petition for rulemaking. In its review of the letter, the Council should consider the merits of the request and how/if it intends to address the issues raised in the petition should it find merit in the request. If the Council decides to not take action, it should nevertheless consider the current limited access program and compare the benefits and drawbacks of developing a leasing program.

We intend to take into account the Council's input on addressing the Scallopers Campaign's request when we determine whether the request has merit and whether to proceed with rulemaking through Secretarial action. If we determine to proceed with a Secretarial action, we will request the consideration, comments, and recommendations of the Council, but development of alternatives, approval, and implementation would be the responsibility of NOAA's National Marine Fisheries Service.



I look forward to discussing this at upcoming Council meetings and working with the Council on this request. If you have any questions, please contact Travis Ford, Scallop Policy Analyst, at 978-281-9233.

Sincerely,



Michael Pentony
Regional Administrator

Cc: Tom Nies, Executive Director, New England Fishery Management Council
Dr. Jon Hare, Director, Northeast Fisheries Science Center

Enclosure



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*

March 3, 2021

Ms. Jessica Blaylock
Northeast Fisheries Science Center
166 Water Street
Woods Hole, MA 02543

Dear Jessica:

Branch Chief, Katherine McArdle has recommended to me that you represent the Northeast Fisheries Science Center on the Council's Scallop Plan Development Team (PDT). In May 2022, the Council will begin the process of developing specifications for the 2022/2023 fishing years. Your past experience with discard estimation and stock assessments, and your work leading the scallop IFS team will be very valuable to the PDT.

PDT members are expected to contribute to discussion, analysis, and document preparation, often under difficult timelines. I appreciate your willingness to assist in these tasks. Further, PDTs are tasked with providing objective analyses to the Council. For this reason, PDT members are not allowed to address the Committee or Council to advocate for any specific Council decisions unless they are presenting a PDT position. This task is normally the responsibility of the PDT Chair.

Jonathon Peros, Scallop PDT Chair, will be contacting you shortly with more information. Feel free to contact him at your convenience by email (jperos@nefmc.org) or telephone: 978-465-0492, ext. 117.

I am pleased to appoint you to the Scallop PDT. We appreciate your assistance and technical support for the Scallop Fishery Management Plan. Please contact me if you have any additional questions or concerns.

Sincerely,

Thomas A. Nies
Executive Director

cc: Katherine McArdle



New England Fishery Management Council

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

February 26, 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 preliminary submission draft of Framework 33 to the Scallop Fishery Management Plan (FMP), including the Environmental Assessment (EA) and associated appendices.

The measures proposed in Framework 33 adjust 2021 and 2022 (default) scallop fishery specifications and rotational management and adjust the TAC and management measures in the Northern Gulf of Maine Management Area. This action also includes measures that are designed to mitigate impacts on Georges Bank yellowtail flounder and northern windowpane flounder.

Upon review of the Framework 33 pre-submission document, please communicate any comments and/or need for further revisions directly to me in writing. To help expedite the review process, my staff would appreciate if requested changes could be listed and categorized as 'required' or 'suggested.' Please contact me if you have any questions.

Sincerely,

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

Thomas A. Nies
Executive Director