

Dated: November 30, 2007.

**Kenneth Stansell,**

*Acting Director, Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 071130780-7564-01]

RIN 0648-AU32

#### Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 11

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement measures in Amendment 11 to the Atlantic Sea Scallop Fishery Management Plan (FMP). Amendment 11 was developed by the New England Fishery Management Council (Council) to control the capacity of the open access general category fleet.

Amendment 11 would establish a new management program for the general category fishery, including a limited access program with individual fishing quotas (IFQs) for qualified general category vessels, a specific allocation for general category fisheries, and other measures to improve management of the general category scallop fishery.

**DATES:** Public comments must be received no later than 5 p.m., eastern standard time, on January 31, 2008.

**ADDRESSES:** A final supplemental environmental impact statement (FSEIS) was prepared for Amendment 11 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Amendment 11, the FSEIS, and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>.

You may submit comments, identified by 0648-AU32, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the

Federal eRulemaking Portal <http://www.regulations.gov>

- Fax: (978) 281-9135, Attn: Peter Christopher

- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Scallop Amendment 11 Proposed Rule."

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this proposed rule should be submitted to the Regional Administrator at the address above and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

#### FOR FURTHER INFORMATION CONTACT:

Peter Christopher, Fishery Policy Analyst, phone 978-281-9288, fax 978-281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

The general category scallop fishery is currently an open access fishery that allows any vessel to fish for up to 400 lb (181.44 kg) of Atlantic sea scallops (scallops), provided the vessel has been issued a general category or limited access scallop permit. This open access fishery was established in 1994 by Amendment 4 to the FMP (Amendment 4) to allow vessels fishing in non-scallop fisheries to catch scallops as incidental catch, and to allow a small-scale scallop fishery to continue outside of the limited access and effort control programs aimed at the large-scale scallop fishery. Over time, the overall participation in the general category fishery has increased. In 1994, there were 1,992 general category permits issued. By 2005 that number had increased to 2,950. In 1994, there were 181 general category vessels that landed scallops, while in 2005 there were over 600.

Out of concern about the level of fishing effort and harvest from the

general category scallop fleet, the Council recommended that a **Federal Register** notice should be published to notify the public that the Council would consider limiting entry to the general category scallop fishery as of a specified control date. NMFS subsequently established the control date of November 1, 2004. In January 2006, the Council began the development of Amendment 11 to evaluate alternatives for a limited access program and other measures for general category vessels. The Council held 35 meetings open to the public on Amendment 11 between January 2006 and June 2007. After considering a wide range of issues, alternatives, and public input, the Council adopted a draft supplemental environmental impact statement (DSEIS) for Amendment 11 on April 11, 2007. Following the close of the public comment period on June 18, 2007, the Council adopted Amendment 11 on June 20, 2007.

Amendment 11 would establish criteria and authority for determining the percentage of scallop catch allocated to the general category fleet and would establish the IFQ program. However, these specific allocation amounts have been being developed by the Council as part of Framework 19 to the FMP (Framework 19) which will establish scallop fishery management measures for the 2008 and 2009 fishing years. After proposing the allowable levels of fishing based on updated survey information and fishing mortality targets, the total allowable catches (TACs) described below would be specified through a separate rulemaking for Framework 19. Framework 19 also would specify management measures for the 2008 and 2009 fishing years that would be recommended if Amendment 11 is not approved.

A Notice of Availability (NOA) for Amendment 11 was published on November 30, 2007. The comment period on the NOA ends on January 29, 2008.

#### Proposed Measures

The proposed regulations are based on the description of the measures in Amendment 11. NMFS has noted several instances where it has interpreted the language in Amendment 11 to account for any missing details in the Council's description of the proposed measures. NMFS seeks comments on all of the measures in Amendment 11, particularly the noted instances.

### *Limited Access Program for the General Category Fishery*

Amendment 11 would require vessels to be issued a limited access general category (LAGC) scallop permit in order to land scallops under general category rules. All general category permits would be limited access, requiring that a vessel owner submit an application demonstrating that the vessel is eligible for the permit. The current general category permits (1A- non VMS, and 1B-VMS permits) would be replaced with three types of LAGC scallop permits: IFQ LAGC scallop permit (IFQ scallop permit); Northern Gulf of Maine (NGOM) LAGC scallop permit (NGOM scallop permit); and incidental catch LAGC scallop permit (Incidental scallop permit).

A vessel would be eligible to be issued an IFQ scallop permit if the owner could document landings of at least 1,000 lb (454 kg) of scallop meats, as verified by NMFS records or documented through dealer receipts, in any fishing year between March 1, 2000, and November 1, 2004, and issuance of a general category scallop permit to the vessel during the fishing year in which the landings were made.

The owner of a vessel who cannot qualify for an IFQ scallop permit, or who elects not to apply for an IFQ scallop permit, could instead be issued a NGOM scallop permit. The NGOM scallop permit would allow the vessel to fish in the NGOM exclusively, defined as the waters north of 42° 20' N. Lat. A vessel would qualify for the NGOM scallop permit if it had been issued a valid general category scallop permit as of November 1, 2004. There would be no landings eligibility criteria. Vessels issued this permit would be subject to additional restrictions outlined in the description of the NGOM Scallop Management Area below.

A vessel would qualify for an Incidental scallop permit if it had been issued a valid general category scallop permit as of November 1, 2004. There would be no landings eligibility criteria. This provision is intended to allow an incidental level of scallop catch for vessels that meet the permit eligibility, but not the landings criteria. This permit would allow such vessels to possess and land up to 40 lb (18.14 kg) of scallops per trip, and is intended to allow landing of incidental scallop catch. Some vessels that could qualify for an IFQ scallop permit may opt for the Incidental scallop permit because it permits vessels to land an incidental catch of scallops on an unlimited number of trips. In drafting the proposed rule, NMFS presumed that the

limited access permit restrictions specified below apply to all three types of LAGC scallop permit, unless specifically excluded in Amendment 11.

#### *Initial Application for a LAGC Scallop Permit*

A vessel owner would be required to submit an initial application for a LAGC scallop permit or confirmation of permit history within 90 days of the effective date of the final regulations. The Council recommended the shorter than usual application period to expedite the transition to the IFQ program. The IFQ program cannot be implemented until all IFQ permits are issued because the number of vessels and the contribution factors for all qualified IFQ scallop vessels will be used to determine each vessel's IFQ share of the TAC allocated to IFQ scallop vessels (see "IFQs for Limited Access General Category Scallop Vessels" below).

#### *Limited Access Vessel Permit Provisions*

Amendment 11 would establish measures to govern future transactions related to limited access vessels, such as purchases, sales, or reconstruction. These measures would apply to all LAGC scallop vessels. Except as noted, the provisions proposed in this amendment are consistent with those that govern most of the other Northeast region limited access fisheries; there are some differences in the limited access program for American lobster.

##### 1. Initial Eligibility

Initial eligibility for an LAGC scallop permit would have to be established during the first year after the implementation of Amendment 11. A vessel owner would be required to submit an application for an LAGC scallop permit or CPH within 90 days of the effective date of the final regulations.

##### 2. Landings History

Amendment 11 specifies landings and permit history criteria that a vessel would have to meet to qualify for LAGC permits. It also specifies that an IFQ scallop vessel would be allocated IFQ based on its best year of scallop landings and the number of fishing years active during the qualification period of March 1, 2000, through November 1, 2004. Amendment 11 specifies that qualifying landings would have to be from the same scallop fishing year (March 1 through February 28/29) that a vessel was issued a general category scallop permit during the qualification period. Therefore, this proposed rule requires that, for any landings to be used in determining

eligibility, best year of fishing, years active, and the resulting contribution factor, the vessel must have been issued a general category scallop permit in the fishing year the landings were made.

The best year of scallop landings would be the scallop fishing year during the qualification period with the highest amount of scallop meats landed, provided the vessel was issued a general category scallop permit. Years active would be the number of scallop fishing years during the qualification period that the vessel landed at least 1lb (0.45 kg) of scallops provided the vessel was issued a general category scallop permit. In-shell scallop landings would be converted to meat-weight using the formula of 8.33 lb (3.78 kg) of scallop meats for each U.S. bushel of in-shell scallops, for qualification purposes.

NMFS landings data from dealer reports would be used to determine a vessel's eligibility for an IFQ scallop permit, a qualified IFQ scallop vessel's best year of scallop landings, and years active in the general category scallop fishery. The NMFS permit database would be used to determine permit criteria eligibility for all LAGC scallop permits. Applicants would be allowed to dispute the denial of an LAGC permit, or contribution factor (based on best year and years active), through the eligibility appeals process described below.

##### 3. Confirmation of Permit History (CPH)

A person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, or been destroyed, or transferred to another person, would be required to apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. Such an application would have to be made within 90 days of the effective date of the final regulations for Amendment 11. The CPH provides a benefit to a vessel owner by securing limited access eligibility through a registration system when the individual does not currently own a vessel. To be eligible to obtain a CPH, the applicant would have to show that the qualifying vessel meets the eligibility requirements for the applicable LAGC permit, and that all other permit restrictions described below are satisfied. Issuance of a valid CPH would preserve the eligibility of the applicant to apply for an LAGC permit for a replacement vessel based on the qualifying LAGC scallop vessel's fishing and permit history at a subsequent time. A CPH would have to be applied for in order for the applicant to preserve the LAGC scallop permit eligibility of the qualifying vessel.

Vessel owners who were issued a CPH could obtain a vessel permit for a replacement vessel based upon the previous vessel's history that would utilize the CPH. IFQ associated with a CPH would count toward a vessel owner's overall ownership of IFQ, and would be restricted under the 5-percent ownership cap.

#### 4. Permit Transfers

An LAGC scallop permit and fishery history would be presumed to transfer with a vessel at the time it is bought, sold, or otherwise transferred from one owner to another, unless it is retained through a written agreement signed by both parties in the vessel sale or transfer.

#### 5. Permit Splitting

Amendment 11 adopts the permit splitting provision currently in effect for other limited access fisheries in the region. Therefore, an LAGC scallop permit may not be issued to a vessel if the vessel's permit or fishing history has been used to qualify another vessel for a limited access permit. This means all limited access permits, including LAGC scallop permits, must be transferred as a package when a vessel is replaced or sold. However, Amendment 11 explicitly states that the permit-splitting provision would not apply to the transfer/sale of general category scallop fishing history prior to the implementation of Amendment 11, if any limited access permits were issued to the subject vessel. Thus, vessel owners who sold vessels with limited access permits and retained the general category scallop fishing history with the intention of qualifying a different vessel for the LAGC scallop permit would be allowed to do so under Amendment 11. This differs from the current permit splitting provisions of other limited access fishery regulations, and specifically the Atlantic herring limited access permit splitting provision recently implemented under Amendment 1 to the Atlantic Herring FMP. A vessel with an existing limited access scallop permit (i.e., full-time, part-time, or occasional) that also qualifies for an LAGC scallop permit could not split the LAGC scallop permit from the existing limited access scallop permit.

#### 6. Qualification Restriction

Consistent with previous limited access programs, no more than one vessel would be able to qualify, at any one time, for a limited access permit or CPH based on that or another vessel's fishing and permit history, unless more than one owner has independently

established fishing and permit history on the vessel during the qualification period and has either retained the fishing and permit history, as specified above, or owns the vessel at the time of initial application under Amendment 11. If more than one vessel owner claimed eligibility for a limited access permit or CPH, based on a vessel's single fishing and permit history, the NMFS Regional Administrator would determine who is entitled to qualify for the permit or CPH.

#### 7. Appeal of Permit Denial

Amendment 11 specifies an appeals process for applicants who have been denied an LAGC scallop permit. Such applicants would be able to appeal in writing to the Regional Administrator within 30 days of the denial, and any such appeal would have to be based on the grounds that the information used by the Regional Administrator was incorrect.

The appeals process would allow an opportunity for a hearing before a hearing officer designated by the Regional Administrator. The owner of a vessel denied an LAGC scallop permit could fish for scallops under the applicable general category scallop regulations, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the LAGC scallop permit category. The Regional Administrator would issue such a letter for the pendency of any appeal. If the appeal was ultimately denied, the Regional Administrator would send a notice of final denial to the vessel owner; and the authorizing letter would become invalid 5 days after receipt of the notice of denial, but no longer than 10 days after the date that the denial letter is sent.

#### 8. Vessel Upgrades

A vessel issued an LAGC scallop permit would not be limited by vessel size upgrade restrictions if the owner wished to modify or replace the vessel. However, if that vessel has also been issued limited access permits under § 648.4 that have upgrade restrictions (i.e., all other limited access permits issued in accordance with § 648.4), the upgrade restrictions for that fishery would apply to any modification or replacement, unless the permit with the restrictions were permanently relinquished as specified under "voluntary relinquishment of eligibility," below.

#### 9. Vessel Baselines

A vessel's baseline refers to those specifications (length overall, gross registered tonnage net tonnage, and horsepower) from which any future vessel size change is measured. Because there are no vessel size upgrade restrictions, a vessel issued an LAGC scallop permit would not have baseline size and horsepower specifications. However, if that vessel has also been issued limited access permits under § 648.4 that have upgrade restrictions, any size change would be restricted by those baseline specification requirements, unless those permits were permanently relinquished as specified in "Voluntary relinquishment of eligibility" below.

#### 10. Vessel Replacements

The term vessel replacement (vessel replacement), in general, refers to replacing an existing limited access vessel with another vessel. This rule would require that the same entity must own both the LAGC scallop vessel (or fishing history) that is being replaced, and the replacement vessel. Unlimited upgrades of vessel size and horsepower through a vessel replacement would be allowed, unless the vessel to be replaced is restricted on upgrades because it has been issued other limited access permits pursuant to § 648.4.

#### 11. Ownership Cap

A vessel issued an IFQ scallop permit could not be allocated more than 2 percent of the TAC allocated to the fleet of vessels issued IFQ scallop permits. In addition, an individual could not have ownership interest in more than 5 percent of the TAC allocated to the fleet of vessels issued IFQ scallop permits. The only exceptions to these ownership cap provisions are if a vessel's initial contribution factor results in the ownership of more than 2 percent of the overall TAC initially upon initial application for the IFQ scallop permit, or if the vessel owner owns more than 5 percent of the overall TAC initially upon initial application for the IFQ scallop permits. This restriction would not apply to existing limited access scallop vessels that also have been issued an IFQ scallop permit since such vessels are already subject to the 5-percent ownership cap for limited access permits and because such vessels would not be permitted to transfer IFQ between vessels.

#### 12. Voluntary Relinquishment of Eligibility

A vessel owner could voluntarily exit the LAGC fishery by permanently relinquishing the permit. In some

circumstances, it could allow vessel owners to choose between different permits with different restrictions without being bound by the more restrictive requirement (e.g., lobster permit holders may choose to relinquish their other Northeast Region limited access permits to avoid being subject to the reporting requirements associated with those other permits). If a vessel's LAGC scallop permit or CPH is voluntarily relinquished to the Regional Administrator, no LAGC scallop permit could ever be reissued or renewed based on that vessel's permit and fishing history.

### 13. Permit Renewals and CPH Issuance

A vessel owner must maintain the limited access permit status for an eligible vessel by renewing the permits on an annual basis or applying for issuance of a CPH. All LAGC scallop permits must be issued on an annual basis by the last day of the fishing year for which the permit is required, unless a CPH has been issued. However, as a condition of the permit, the vessel may not fish for, catch, possess, or land, in or from Federal or state waters, any species of fish authorized by the permit, unless and until the permit has been issued or renewed in any fishing year, or the permit either has been voluntarily relinquished or otherwise forfeited, revoked, or transferred from the vessel. A complete application for such permits must be received no later than 30 days before the last day of each fishing year. A CPH does not need to be renewed annually. Once a CPH has been issued to an individual who has retained the LAGC scallop permit and fishing history of a vessel, it remains valid until it is replaced by a vessel permit through the vessel replacement process.

A vessel's LAGC scallop permit history would be cancelled due to the failure to renew, in which case, no LAGC scallop permit could ever be reissued or renewed based on that vessel's permit and fishing history.

Amendment 11 would implement a cost recovery program, with the payment procedures and details to be established in Framework 19. Under the IFQ program, vessels would be required to pay up to 3 percent of their revenue from scallop landings to offset the cost of managing, enforcing, and implementing the IFQ program, as required by the Magnuson-Stevens Act. Failure to pay cost recovery fees by the specified due date would result in NMFS action invalidating the IFQ scallop permit. If the invalidation of the IFQ scallop permit due to failure to pay for cost recovery fees is not resolved in the course of the applicable fishing year,

no IFQ scallop permit could ever be reissued or renewed based on that vessel's permit and fishing history.

### *Limited Access Scallop Vessels Fishing Under General Category Rules*

A vessel issued one of the existing limited access scallop permits (i.e., a full-time, part-time, or occasional scallop permit) may also be eligible to be issued a LAGC scallop permit if it meets the qualification criteria described above. Such a vessel would be allowed to fish under general category regulations when not fishing under the scallop DAS or Area Access programs. Existing limited access scallop vessels were not required to be issued a general category scallop permit. Therefore, to be issued an Incidental or NGOM scallop permit, the limited access vessel would have to have been issued a valid limited access scallop permit as of November 1, 2004. To be issued the IFQ scallop permit, an existing limited access scallop vessel would have to have been issued a valid limited access scallop permit during the period March 1, 2000, through November 1, 2004, and have documented landings of at least 1,000 lb (454 kg) of scallop meats when not fishing under the DAS or Area Access programs, as verified by NMFS records or documentation through dealer receipts. A limited access scallop vessel that does not qualify for a LAGC scallop permit could not fish for, possess, or retain scallops when not fishing under the scallop DAS and Area Access programs. Limited access scallop vessels that also qualify for an IFQ scallop permit would not be permitted to transfer IFQ. Therefore, the general category maximum allocation restriction or the maximum percentage ownership restriction for general category TAC would not apply. The limited access general category permit and IFQ scallop permit could not be split from the limited access scallop permit.

### *Allocation of the Total Annual Projected Scallop Catch to the General Category Fishery under the IFQ Program*

Once the IFQ program is implemented, 5 percent of the total projected annual scallop catch would be allocated to vessels with IFQ scallop permits. This would be calculated by taking the total projected annual scallop catch, then deducting estimated catch by incidental catch general category vessels and the total allowable catch (TAC) in the NGOM. Five percent of the resultant catch would then be allocated to the IFQ scallop fishery. IFQs for IFQ scallop vessels would be derived from the 5-percent TAC allocation. The 5-percent allocation would not apply to

current limited access vessels that also have IFQ scallop permits. Limited access scallop vessels with IFQ scallop permits would be allocated 0.5 percent of the total projected annual scallop catch after deduction of incidental catch and the NGOM TAC. IFQs for these vessels would be derived from the 0.5-percent TAC allocation. The remaining 94.5 percent of the total projected annual scallop catch, after deduction of incidental catch and the NGOM TAC, would be allocated for harvest by the current limited access scallop fishery.

### *IFQs for Limited Access General Category Scallop Vessels*

A vessel issued an IFQ scallop permit would be allocated a percentage of the TAC allocated to the IFQ scallop fishery based on the vessel's "contribution factor." The contribution factor for each vessel would be determined by multiplying a vessel's best fishing year of landings during the March 1, 2000, through November 1, 2004, qualification period by an index factor based on the number of years the vessel was active in the scallop fishery during the qualification period. A vessel would be determined to be active in the scallop fishery if it landed at least 1 lb (0.45 kg) of scallops. The index factors for varying levels of participation during the qualification period are: 0.75 for 1 year; 0.875 for 2 years; 1.0 for 3 years; 1.125 for 4 years; and 1.25 for 5 years. The index factor is intended to provide more weight in calculating the allocation for vessels that have been participating in the general category fishery for a longer period of time. A vessel's contribution percentage will be determined by dividing its contribution factor by the sum of the contribution factors of all vessels issued a limited access general category scallop permit. A vessel's IFQ would be determined by multiplying the TAC for IFQ scallop vessels by the vessel's contribution percentage. IFQ would be issued to owners of CPHs since that vessel's contribution would be included in the determination of IFQs as described below. IFQ associated with CPHs would be transferable.

The following is an example of how a vessel's IFQ would be determined using hypothetical values: A vessel landed 48,550 lb (22,023 kg) of scallops in its best year, and was active in the general category scallop fishery for 5 years. The vessel's contribution factor would be equal to 48,550 lb (22,023 kg) \* 1.25 = 60,687 lb (27,527 kg). For this example, the highest total scallop landings is assumed to be 3.8 million lb (1,724 mt), and the number of qualifying vessels is assumed to be 380. The sum

of the contribution factors for limited access general category scallop vessels is assumed to be 4.18 million lb (1,896 mt). The contribution percentage of the above vessel would therefore be 1.45 percent (60,687 lb (27,527 kg) / 4.18 million lb (1,896 mt) = 1.45 percent). The vessel's IFQ would be the vessel's contribution percentage (1.45 percent) multiplied by the TAC allocated to all IFQ scallop vessels. Assuming a TAC 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)).

The IFQ program cannot be implemented until all IFQ scallop permits and CPHs have been issued because the calculation of the IFQ shares requires the contribution factors for all qualified IFQ scallop vessels to be totaled. However, eligibility, best year, and the contribution factor for each vessel would be determined upon initial application for a limited access general category scallop permit. This issue is discussed under the "Measures for the transition period to IFQ" description below.

#### *IFQ Transfers*

IFQ scallop vessel and CPH owners would be allowed to transfer IFQ on a temporary or permanent basis. A temporary IFQ transfer (or lease) would allow one IFQ scallop vessel to combine IFQs to increase fishing opportunity for a single fishing year. A permanent IFQ transfer would permanently move the IFQ from one vessel to another. Since a permanent IFQ transfer would require the vessel to transfer the IFQ scallop permit (and any other permits) to the transferee, the transferring vessel would not be eligible to enter into an agreement to transfer IFQ back to the vessel, unless the vessel replaced another IFQ scallop vessel. Each IFQ allocation would have to be transferred in full before it is utilized, and a vessel that used IFQ in a fishing year could not transfer its IFQ during that fishing year. An IFQ transfer would not be approved if it would result in the receiving IFQ scallop vessel having a share of more than 2 percent of the total TAC allocation to the IFQ fishery. IFQ transfers would not be permitted for existing limited access scallop vessels that also have been issued an IFQ scallop permit.

#### *IFQ Cost Recovery*

The Magnuson-Stevens Act requires any IFQ program to include a cost recovery program, whereby NMFS would collect up to 3 percent of ex-vessel value of landed product to cover actual costs directly related to

enforcement and management of an IFQ program. The authority and procedures for collection of cost recovery fees would be established in this rule. Further details of the cost recovery program will be proposed in Framework 19, in which TACs would be established for LAGC scallop vessels. As recommended in Amendment 11, the IFQs would be rounded up to the nearest 10-lb unit. The cost recovery fee for an IFQ that was temporarily transferred to another IFQ scallop vessel would be the responsibility of the owner of the transferring IFQ scallop vessel, not the owner of the receiving IFQ scallop vessel.

#### *Measures for the Transition Period to IFQ*

Amendment 11 recognizes that it would take between 12 to 24 months to determine the universe of qualified vessels that would be issued an IFQ scallop permit. The time is necessary to accommodate applicants who pursue permits through the appeals process. As a result, it would not be possible to implement an IFQ program at the same time that NMFS is in the process of determining eligibility and contribution factors. Recognizing the problem, Amendment 11 specifies measures for a transition period. The transition measures include a quarterly TAC equal to 10 percent of the total projected scallop catch. Vessels that qualify for an IFQ scallop permit and vessels under appeal for an IFQ scallop permit would be authorized to fish for scallops, subject to the quarterly TAC, with all landings counted toward the TAC. When the TAC is projected to be attained, the general category fishery would close for the remainder of the quarter. Any underage or overage of the first quarter would be applied to the third quarter, and any underage or overage of the second quarter would be applied to the fourth quarter. The quarterly TACs for the 2008 fishing year, beginning March 1, 2008, will be specified in Framework 19. A quarterly TAC is proposed rather than an annual TAC due to concerns about derby fishing. This quarterly distribution of TAC is intended to reduce the negative effects of a race to take the TAC. The 10-percent allocation would result in a TAC that would be consistent with recent projections for scallop mortality from the general category fishery and would account for additional effort expected from vessels under the appeals process.

#### *Mechanism to Allow Voluntary Sectors in the General Category Fishery*

The proposed action includes a mechanism to allow the owners of IFQ scallop vessels to form voluntary sectors that would manage their own fishing activity as a group. This rule outlines the procedures that would be used to form a sector, and the sector program requirements. The sector provision includes: Restrictions on participation; definition and requirements for operations plans; specifications for the review, approval, and revocation process; allocation of TAC to sectors; sector share determination; restrictions on sector membership changes; restrictions on interaction between sectors; monitoring and enforcement provisions for sectors; a prohibition on trading of allocation between sectors; restrictions on vessel movement between sectors; a 20-percent maximum total allocation for a single sector. The 400-lb (181.44-kg) possession limit would be maintained for vessels in a sector. The formation of sectors is intended to provide greater flexibility for participants and create outcomes that are more socially and economically relevant for fishing groups within the biological limitations of the fishery (TACs). The 20-percent cap on a sector's share of the IFQ is intended to prevent one sector from controlling an excessive percentage of the general category allocation. Unlike the sector program for the Northeast multispecies fishery, Amendment 11 would not allow sectors to be exempt from any scallop regulations, except that participating vessels would not be restricted by their IFQs.

#### *NGOM Scallop Management Area*

The NGOM scallop management area would be waters north of 42°20' N. Lat. The NGOM scallop management area would be managed separately, because the Council concluded that it has unique characteristics such as smaller vessels and sporadic fishable resource. The NGOM scallop management area would establish scallop fishing controls appropriate for the fishery while protecting the resource in the area from overharvest, if and when scallops are present in the area. Measures include the separate NGOM general category scallop permit and qualification criteria; a TAC based on historical landings from Federal waters in the NGOM; a possession limit of 200 lb (90.72 kg) of scallops per trip, with one trip per calendar day allowed; a provision that an IFQ vessel fishing in the NGOM scallop management area would have scallop landings deducted from its IFQ

and the NGOM scallop management area TAC; and a prohibition on possession of scallops by any vessel, once the NGOM scallop management area TAC is harvested. Amendment 11 does not include specific restrictions for vessels fishing under scallop DAS in the NGOM, except that such vessels could not continue fishing in the NGOM once the TAC for the area has been reached.

#### *Monitoring*

All LAGC scallop vessels would be required to install and operate a VMS unit and would be required to declare a general category trip or other fishing activity code, as appropriate. In addition, IFQ and NGOM scallop vessels would be required report scallop landings through VMS. This provision would improve monitoring of an IFQ program by requiring vessels to report their catch, approximate time of landing, and port of landing before crossing the VMS demarcation line in order to enhance enforcement of the IFQ program and NGOM scallop fishery. The report submitted through VMS would include the VTR serial number, amount of scallops on-board, the port of landing, and the approximate time of arrival in port. This monitoring requirement would enable NMFS to monitor the TAC and IFQs on a more real-time basis.

#### *Change Issuance Date of General Category Permit*

The issuance date of general category permits would be changed from May 1 to March 1 of each year to be consistent with the scallop fishing year. Synchronizing the issuance of general category scallop permits with the scallop fishing year would make this permit consistent with the existing limited access scallop permit issuance date.

#### *Other Measures*

This action would clarify that vessels that are fishing under a Northeast multispecies or monkfish DAS would not be restricted to the 144-ft (43.9-m) net sweep restriction at § 648.52 that currently specifies that a vessel using a net with a sweep greater than 144 ft (43.9 m) cannot fish for, possess, retain, or land more than 40 lb (18.14 kg) of shucked or 5 bu (1.76 hL) of in-shell scallops. The Council recommended this change because the 144-ft (43.9-m) restriction was not intended to apply to vessels fishing for other species that would have an incidental catch of scallops, provided the vessel is issued the appropriate LAGC scallop permit.

Amendment 11 proposes to allow an IFQ scallop vessel to possess up to 100 bu (35.24 hL) of in-shell scallops

seaward of the VMS demarcation line only. Once shoreward of the VMS demarcation line, a vessel could possess only 50 bu (17.62 hL) of in-shell scallops. This measure is proposed because scallop vessel owners and operators testified that it often takes more than 50 bu (17.62 hL) of in-shell scallops to yield 400 lb (181.44 kg) of scallop meats. NMFS notes that similar increases were not specified by the Council for the NGOM possession limits of 200 lb (90.72 kg) of shucked or 25 bu (8.8 hL) in-shell scallops or the 40 lb (18.14 kg) of shucked or 5 bu (1.76 hL) of in-shell scallops. However, given the rationale for the increased possession limit, it would be inconsistent to apply the increased possession limit for only one LAGC scallop permit category or declared fishing activity. Therefore, this proposed rule specifies that vessels fishing for scallops up to 200 lb (90.72 kg) or 25 bu (8.80 hL), or up to 40 lb (18.14 kg) or 5 bu (1.76 hL), could possess up to 50 bu (17.62 hL) or 10 bu (3.52 hL), respectively, seaward of the VMS Demarcation Line.

Finally, this proposed rule would clarify the ownership cap restriction on current limited access vessels specified at § 648.4(a)(2)(i)(M). The ownership cap restriction was implemented through Amendment 4 (59 FR 2757, January 19, 1994). Currently, the regulation states that an individual may not own, or have an ownership interest in, more than 5 percent of limited access scallop vessels. The provision in Amendment 4 is as follows: "No entity or individual may have ownership interest in more than 5 percent of the total number of scallop permits issued at implementation and through the appeal process." However, the current regulations are not clear whether this cap applies to CPHs. Provisions for CPH were implemented in 1995 (60 FR 62224, December 5, 1995), after the 5-percent cap provision in Amendment 4 was implemented. The current regulation does not mention CPHs, which represent sunken or destroyed vessels, or vessels that were sold without fishing and permit history, that are eligible for limited access scallop permits. In terms of future ownership, a CPH is equivalent to a limited access permit. Since it is clear that the Council intended the ownership cap to restrict an owner to having an ownership interest in no more than 5 percent of all limited access scallop permits, this proposed rule would clarify that an individual cannot own more than 5 percent of the limited access permit eligibilities in the form of a limited access permit or CPH. This clarification

would make the regulations consistent with the Council's original intent under Amendment 4.

Public comments are solicited on Amendment 11 and its incorporated documents through the end of the comment period, January 29, 2008, stated in the NOA for Amendment 11 (72 FR 67691, November 30, 2007). Public comments on this proposed rule must be received by January 29, 2008, the end of the comment period specified in the NOA for Amendment 11, to be considered in the approval/disapproval decision on the amendment. All comments received by January 29, 2008, whether specifically directed to Amendment 11 or the proposed rule, will be considered in the approval/disapproval decision on Amendment 11. Comments received after that date will not be considered in the decision to approve or disapprove Amendment 11, but will be responded to in the final rule.

#### **Classification**

At this time, NMFS has not determined that the amendment this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an FSEIS for Amendment 11; an NOA was published on October 19, 2007. The FSEIS describes the impacts of the proposed Amendment 11 measures on the environment. Since most of the measures would determine whether or not fishers can continue fishing for scallops, and at what level in the future, the majority of the impacts are social and economic. Although the impacts may be negative in the short term, particularly at an individual fisher level, the long-term benefits of a sustainable scallop fishery would be positive. Elimination of the open access fishery is expected to have positive impacts on the biological and physical environment.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). Public reporting burden for these collections of information are estimated to average as follows:

1. Initial application for an IFQ scallop permit - 30 min per response;

2. Initial application for an NGOM or Incidental scallop permit - 15 min per response;

3. Completion of ownership cap form for IFQ scallop vessel owners - 5 min per response;

4. Appeal for an LAGC scallop permit and IFQ scallop vessel contribution factor - 2 hr per response;

5. Application for a vessel replacement or confirmation of permit history - 3 hr per response;

6. Purchase and installation of a VMS unit for general category scallop vessels—2 hr per response;

7. IFQ scallop vessel VMS trip notification requirements—2 min per response;

8. NGOM scallop fishery VMS trip notification requirements—2 min per response;

9. Incidental catch vessel VMS trip notification requirements—2 min per response;

10. Pre-landings VMS notification requirements—5 min per response;

11. Application for an IFQ transfer—10 min per response;

12. Electronic payment of cost recovery payment—2 hr per response;

13. LAGC scallop fishery sector applications—150 hr per response; and

14. Sector operations plans—100 hr per response.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Regional Administrator as specified in **ADDRESSES** above, and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility

Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities, with data analyzed on a fishing year basis (March 1 through February 28/29). A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the **SUMMARY**. A summary of the IRFA follows:

#### *Description and Estimate of Number of Small Entities to Which the Rule Would Apply*

The vessels in the Atlantic sea scallop fishery are considered small business entities because all of them grossed less than \$4.5 million according to the dealer's data for the 2004 and 2005 fishing years. Therefore, there are no differential impacts between large and small entities. According to this information, annual total revenue averaged about \$940,065 per limited access vessel in 2004, and over \$1 million per limited access vessel in 2005. Total revenues per vessel, including revenues from species other than scallops, exceeded these amounts, but were less than \$4.5 million per vessel. Average scallop revenue per general category vessel was \$35,090 in 2004 and \$88,702 in 2005 fishing years. Average total revenue per general category vessel was higher, exceeding \$240,000 in 2004 and 2005. According to the preliminary estimates, average revenues per vessel were lower in the first 11 months of 2006 for all permit categories, because of lower scallop landings and prices.

The measures proposed in Amendment 11 would affect vessels with limited access scallop and general category permits. Section 4.4 (Fishery-related businesses and communities) of the Amendment 11 document provides extensive information on the number and size of vessels and small businesses that will be affected by the proposed regulations, by port and state. These affected entities are the owners of 318 vessels that were issued full-time permits in 2006, (including 55 small-dredge and 14 scallop trawl permits); 32 part-time; and 1 occasional limited access permit. In addition, 2,501 permits were issued to vessels in the open access General Category, and more than 500 of these vessels landed scallops during the last 2 years.

#### *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

This action contains several new collection-of-information, reporting, and

recordkeeping requirements. The following describes these requirements.

#### 1. Application Process

NMFS estimates that there would be 500 applicants for an IFQ scallop permit, 200 applicants for a NGOM scallop permit, and 500 applicants for an Incidental scallop permit. Each IFQ scallop permit application would take approximately 30 min per application, while each NGOM and Incidental scallop permit application would take approximately 15 min to process. Consequently, the total time burden for the initial applications would be 425 hr. Amendment 11 estimates that 370 IFQ scallop permit, 190 NGOM scallop permit, and 465 Incidental scallop vessels are expected to qualify and consequently renew their application each year. Permit renewal is estimated to take 15 min per application, on average, for a total burden of 256 hr per year. The 3-year average total public time burden for IFQ, NGOM, and Incidental scallop permit initial applications, and permits renewals would be 312 hr. The labor cost, at an hourly rate of \$15, would be \$4,680.

To implement the 5-percent IFQ ownership cap, vessel owners would be required to submit an ownership form with each permit renewal. Since there would be an estimated 370 IFQ permits, there would be 370 ownership forms each year. NMFS estimates that it would take 5 min to complete each ownership form; therefore, the annual reporting burden would be 31 hr, or 21 hr, averaged over the first 3 years. At an hourly rate of \$15, the annualized time burden would be approximately \$315.

About 80 applicants are expected to appeal the denial of their permit application over the course of the 3-month application period. The appeals process is estimated to take 2 hr per appeal, on average, for a total burden of 160 hr. The burden of this one-time appeal, annualized over three years, would be 54 hr. At an hourly rate of \$15, the time burden would be approximately \$810.

#### 2. Vessel Replacement, Upgrade, and Permit History Applications

A standard form for vessel replacements, upgrades, and permit history applications (RUPH application) would be used for LAGC scallop permits, although vessel upgrades would not apply for LAGC scallop vessels unless the vessel is issued other limited access fishery permits that have upgrade restrictions. With the exception of upgrade restrictions, LAGC scallop vessels would be subject to similar replacement and permit history

restrictions as other Northeast Region limited access fisheries. Completion of an RUPH application requires an estimated 3 hr per response. It is estimated that 100 RUPH applications would be received annually. The resultant burden would be up to 300 hr. At an hourly rate of \$15 per hour, the total public cost burden for RUPH applications would be \$4,500 per year.

### 3. *New VMS Requirements*

This action would require vessels issued any of the LAGC scallop permits to install VMS. Most vessels that qualify for an IFQ scallop permit would have been participating in the directed general category scallop fishery, which already has VMS requirements prior to the implementation of Amendment 11. Therefore, it is likely that most vessels that will qualify for an IFQ permit already have VMS. Vessels that qualify for an Incidental or NGOM scallop permit would not likely be participating in the directed general category scallop fishery. However, vessels that qualify for an Incidental or NGOM scallop permit may already have VMS reporting requirements through other fisheries, particularly the Northeast multispecies fishery. It is possible that some new permit holders would decide to purchase and install new VMS units in order to participate in one of these fisheries. Therefore, NMFS estimates that up to 10 vessels would purchase and install VMS units as a result of Amendment 11. NMFS estimates that it would take 2 hr to purchase each unit, for a total time burden of 20 hr; annualized over 3 years, the burden would be about 7 hr per year. NMFS anticipates that a vessel owner would hire a VMS technician to install the VMS unit; therefore there would be no installation time burden for the vessel owner. At an hourly rate of \$15 per hour, the total public cost burden for VMS purchases would be \$105 per unit. Since position polling is automated, there is no associated time burden with this reporting requirement.

### 4. *Trip Notification Requirements*

Each time a LAGC scallop vessel leaves port or is moved from the dock or mooring, the operator must submit a VMS trip declaration code to notify NMFS of the vessel's fishing activity.

According to 2007 VMS trip declaration data for 1B scallop vessels, approximately 40 percent of the time general category 1B vessels declare a general category scallop trip; the remainder are codes for other activities (if a vessel leaves port, general category regulations require it to declare a trip, regardless of the fishing activity). The

2008 scallop harvest specifications have not yet been finalized, but the proposed IFQ quota is 2.5 million lb (1,134 mt). Assuming each trip harvests the 400-lb (181.4-kg) possession limit, there would be an estimated 6,250 IFQ trip declarations per year, with an additional 9,375 trip declarations for some activity other than scallop fishing, for a total of 15,625 trip declarations. Following each trip, NMFS assumes that the vessel operator would submit a power-down code to reduce polling costs and conserve battery power. NMFS estimates that it takes approximately 2 min to submit a trip declaration or power-down code. NMFS estimates that the IFQ fleet would submit 31,250 VMS declaration codes (15,625 trip declarations and 15,625 corresponding power-down code submissions); therefore, the annual IFQ trip declaration time burden would be 1,042 hr per year. At an hourly rate of \$15, this burden would be \$15,630.

### 5. *NGOM Notification Requirements*

The proposed NGOM TAC is expected to be 64,000 to 100,030 lb (29,030 to 45,373 kg) each year. Assuming each trip lands the 200-lb (90.72-kg) possession limit, and using the upper limit of the proposed TAC, it is projected that there would be up to 500 NGOM trip declarations per year. For economic purposes it is unlikely that a vessel owner would incur the cost of a VMS unit solely to have a NGOM permit. Therefore, assuming these vessels already have VMS reporting requirements for other fisheries, VMS declaration reporting requirements for activities other than NGOM activity have already been accounted for in other PRA collections. The increased reporting burden resulting from the NGOM permit category would be approximately 500 trip declarations and 500 power-down declarations. Assuming each declaration takes approximately 2 min, the annual NGOM trip declaration time burden would be approximately 34 hr. At an hourly rate of \$15, this burden would be \$510.

### 6. *Incidental Scallop Vessel VMS Notification Requirements*

In 2004 and 2005, dealer data indicated that the percent of scallops landed in quantities of 40 lb (18.14 kg) or less was 0.02% and 0.06%, respectively, of the total scallop landings. The average scallop landings on these trips in 2004 and 2005 was 19,363 lb (8,783 kg). Using this average, NMFS estimates that there were approximately 500 general category trips that landed scallops incidental to other fishing. Assuming this rate would

remain approximately the same, there would be an estimated 500 Incidental trip declarations made annually. As previously noted, for economic purposes it is unlikely that a vessel owner would incur the cost of a VMS unit solely to have an Incidental scallop permit. Therefore, assuming these vessels already have VMS reporting requirements for other fisheries, VMS declaration reporting requirements for activities other than Incidental scallop permit activity have already been accounted for in other PRA collections. The increased reporting burden resulting from the Incidental scallop permit category would be approximately 500 trip declarations and 500 power-down declarations. Assuming each trip declaration takes approximately 2 min, the annual Incidental scallop trip declaration time burden would be approximately 34 hr. At an hourly rate of \$15, this burden would be \$510.

### 7. *Pre-landing Notification Requirements*

VMS pre-landing notification forms would be required for each IFQ and NGOM scallop trip. Therefore, there would be 6,250 IFQ and 500 NGOM scallop vessel pre-landing notification forms submitted annually. NMFS estimates that it would take 5 min for each of the 6,750 reports, for an annual pre-landing notification time burden of 563 hr. At an hourly rate of \$15, this burden would be \$8,445.

### 8. *State Waters Exemption Program Requirements*

The state waters exemption program enrollment form is estimated to take 5 min to submit through the VMS, the same amount of time as it has taken to enroll through interactive voice response system currently used. State waters exemption program trip declaration requirements are already accounted for in an approved collection under OMB Control No. 0648-0202. Therefore, this burden would not increase the cost to vessel owners declaring into the state waters exemption program.

### 9. *IFQ Transfers*

IFQ transfers would apply to IFQ scallop vessels, except that current limited access scallop vessels that also have been issued an IFQ scallop permit would not be permitted to transfer IFQ. Using the Northeast Region's Northeast Multispecies DAS leasing program (OMB Control No. 0648-0475) as a proxy for the response rate for the IFQ transfer program, NMFS anticipates that there would be approximately 75 temporary transfers annually. Each

application would include information from both parties involved in the temporary transfer; therefore there would be two responses per application. NMFS estimates that it would take 5 min per response, or 10 min per temporary IFQ transfer application. Therefore, the estimated burden would be 13 hr. At an hourly rate of \$15 / hour, the total public cost burden for temporary IFQ transfer applications would be \$195.

The Northeast Multispecies DAS Permanent Transfer Program cannot be easily correlated with the general category permanent transfer program because the Northeast Multispecies Program has a 20-percent conservation tax on all transfers, while there would be no conservation tax on scallop IFQ transfers. Although NMFS anticipates that there would be more IFQ transfers than DAS transfers, IFQ transfers would be restricted by the requirement that no IFQ vessel owner could have an ownership interest in more than 5 percent of the total TAC for IFQ scallop vessels, and no vessel could have more than 2 percent of the total TAC for IFQ scallop vessels at any time. NMFS anticipates that there would be approximately 10 permanent IFQ transfers per year. Each application would include information from both parties involved in the transfer; therefore there would be two responses per application. It is estimated that it would take 5 min per response, or 10 min per permanent transfer application. Therefore, the estimated permanent IFQ transfer burden would be 2 hr. At an hourly rate of \$15 per hour, the total public cost burden for permanent quota transfer applications would be \$30.

#### 10. Cost Recovery

Since cost recovery for the scallop IFQ program is new, and there are no other current cost recovery programs in Northeast Region fisheries, the burden per response used by the Alaska Region's Alaska Individual Fishing Quota Cost-Recovery Program Requirements (OMB Control No. 0648-0398) was used as a proxy for the scallop IFQ program. Each IFQ permit holder would be required to submit a cost recovery payment once annually, which would take 2 hr per response. Therefore, 370 payments would take 740 hr. At an hourly rate of \$15 / hour, the total public cost burden for cost recovery would be \$11,100.

#### 11. LAGC Sector Program

NMFS estimates that there could be up to nine sector proposals received over the next three years (2008–2009); five in the first year, two in the 2nd

year, and two in the 3rd year. The earliest that the sectors proposed in the 2008 year could be implemented would be the 2009 fishing year. Therefore, these sectors would be required to submit operation plans for the 2010 fishing year.

Any person could submit a sector allocation proposal for a group of LAGC scallop vessels to the Council at least 1 year in advance of anticipated start of a sector program, and request that the sector be implemented through a framework procedure specified at § 648.55. Based upon consultations with the Northeast multispecies sector program, it is estimated it would take 150 hr to prepare and submit a sector proposal. Therefore, the 3-year average annualized time burden for sector proposals would be 450 hr per year. At an hourly rate of \$15 per hour, the total public cost burden for sector proposals would be \$6,750.

A sector is required to resubmit its operations plan to the Regional Administrator no later than December 1 of each year, whether or not the plan has changed. Based upon consultations with the Northeast multispecies sector program, each operations plan takes approximately 100 hr. The earliest sector operation plans would be submitted in 2010 for the proposals submitted in 2008. Therefore, NMFS estimates it would take 500 hr to submit 5 operation plans. The 3-year average annualized time burden would be 167 hr per year. At an hourly rate of \$15 per hour, the annual time burden cost would be approximately \$2,500.

#### *Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives*

##### 1. Summary of the Combined Economic Impacts of the Limited Access Measures

In summary, the proposed limited access program could have negative economic impacts in the short-term on the estimated 373 vessels that would not qualify for a LAGC scallop permit, with adverse impacts compared to 2005 scallop revenue estimated to be less than 5 percent for 119 vessels, 5 to 49 percent for 58 vessels, and 50 percent or more for 196 vessels. The measures would also have negative impacts on about 153 out of 369 vessels that are estimated to qualify for the IFQ scallop permit, with adverse impacts compared to 2005 scallop revenue estimated to be less than 5 percent for 26 of these vessels, 5 to 50 percent for 70 vessels, and over 50 percent for 57 vessels. Altogether, the proposed measures could reduce total revenues of 381 vessels of more than 5 percent in the

short-term. There are several measures in the proposed action, however, to help mitigate and reduce the potential negative impacts on these vessels, as discussed above. Qualifying vessels would be permitted to stack allocation up to 2 percent of the entire general category allocation and to transfer (i.e., lease or buy) IFQ on a permanent or temporary basis. This would enable vessel owners who do not receive an adequate amount of allocation to increase their scallop revenue to mitigate negative impacts. Furthermore, there is a provision to allow the formation of voluntary sectors. It may be beneficial for a group of vessels from a fishing community, for example, to organize and apply for a sector in the general category fishery. Negative impacts on some vessel owners may be mitigated if a vessel would qualify for a NGOM scallop permit that authorizes it to fish for scallops at a reduced level. In addition, many of the vessels that would not qualify for the IFQ scallop permit would qualify for an Incidental scallop permit that would authorize the vessel to land up to 40 lb (18.14 kg) of scallops per trip.

Continuation of the open access fishery under the no action alternative would not guarantee that the affected vessel owners would get more scallop revenue than they could with the proposed limited access program. With continued open access, there would always be the risk of more vessels entering the fishery, with the potential for overfishing of the scallop resource. Overfishing would likely cause a reduction in landings per unit effort, an increase in fishing costs per pound of scallops, and dissipation of the profits for all limited access and general category vessels.

There were also possible future negative effects on the existing limited access scallop vessels with the continuation of the open access program because the need to prevent an increase in overall fishing mortality would at some point reduce the DAS allocations for the limited access fleet to compensate for projected general category catch. Assuming a scallop harvest of 50 million lb (22,680 mt), an increase in the share of general category landings to 20 percent of the total scallop landings would result in a decline of 17 percent to 21 percent of the net vessel share (as a proxy for profits) for the limited access vessels. Given that, in 2005, the general category landings increased to 14 percent of the total landings from about 5 percent in 2004, a further increase in general category effort could occur without a limited access program. Section 5.4.17.1

and Table 166 of the Amendment 11 document provide details about these impacts.

Because it would prevent further expansion of the general category fishery, the economic impacts of the proposed measures on the 351 existing limited access vessels would be positive both in the short and the long term. Reducing the general category catch from recent levels could increase the total DAS allocations for those vessels, resulting in approximately a 7-percent increase in their revenues compared to the status quo levels. Similarly, the general category limited access program would benefit the current limited access vessels that qualify for an IFQ permit, although the proposed 0.5-percent allocation of the total scallop TAC could lower their landings compared to recent levels (1.5 percent and 0.75 percent of overall scallop landings in 2005 and 2006, respectively).

The overall economic impacts of the limited entry in the medium to long term are expected to be positive for the sea scallop fishery as a whole, compared to taking no action. The proposed action would restrict the estimated number of participants in the general category fishery to 369 vessels that meet the IFQ permit qualification criteria. The allocation of a 5-percent TAC for the general category would cap the fishing mortality from this component of the fleet. The limited access program would also prevent the profits of the qualifiers and limited access vessels from dissipating due to an increase in fleet capacity that would likely occur with continued open access.

## 2. Summary of the Economic Impacts of the Individual Measures

Two alternatives to the proposed landings qualification criteria were considered: Cumulative annual landings of 100 lb (45.4 kg); and 5,000 lb (2,268 kg). The 100-lb (45.4-kg) landing qualification criteria is estimated to qualify more vessels (548) for limited access and have a lower negative impact on the recent participants than the proposed alternative. On the other hand, by increasing the number of participants, this alternative would result in a lower share of general category TAC for each qualifier and would thus have a negative impact on individual vessels, especially on vessel owners that have a high dependence on scallop revenue as a source of income. For example, the average allocation per vessel would decline from 5,429 lb (2,462 kg) to 3,650 lb (1,656 kg) per vessel if the poundage criterion was set at 100 lb (45.4 kg) instead of at 1,000 lb (454 kg) for a general category TAC of

2 million lb (907 mt). The alternative 5,000-lb (2,268-kg) landings qualification criterion is estimated to qualify only 188 vessels for limited access and, thus, would increase the share of each qualifier in general category TAC. As a result, average allocation per vessel would increase to 10,638 lb (4,825 kg) with a 2-million-lb (907-mt) general category TAC. Although this alternative would have positive economic impacts on the vessels that had a much higher historical dependence on scallops as a source of their income, it would deny eligibility to a much larger number of vessels that historically derived some revenue from scallop fishery. The proposed 1,000-lb (454-kg) alternative would deny eligibility to a large number of boats that have small landings of scallops (i.e., that landed between 100 and 999 lb (45.4 kg to 453 kg)), while qualifying vessels that depend on scallops to a larger degree.

### *Qualification Time Period*

Eligibility for limited access would require a vessel to have made the required amount of landings in any scallop fishing year during a specified time period. In addition to the proposed March 1, 2000, through November 1, 2004, qualification period, the Council considered two alternative qualification periods: March 1, 1994, through November 1, 2004; and March 1, 2003, through November 1, 2004. The economic impacts of qualification period, combined with the landing criteria, are analyzed in several subsections of Section 5.4 of the Amendment 11 document and summarized here. The impacts on the general category permit holders and vessels that qualify for limited access are analyzed in Section 5.4.3 of the Amendment 11 document. The impacts on revenues, fishing costs, average net revenues, crew and vessel shares are analyzed in Section 5.4.5 of the Amendment 11 document, for various levels of general category TAC. The impacts of the proposed 5-yr qualification period and other alternatives on recent participants in the general category fishery are analyzed in Section 5.4.6 of the Amendment 11 document.

The proposed 5-yr qualification period, combined with the 1,000-lb (454-kg) landings criteria, is expected to have positive economic impacts in the short and long term on vessel owners with vessels that qualify for limited access. It would provide access to those general category vessels that were active in the fishery in recent years, as well as to historical participants that were

active from March 1, 2000, through November 1, 2004. The proposed 1000-lb (454-kg) poundage criteria and the 5-yr qualification period would qualify 369 vessels, but would deny eligibility to 90 vessels that meet the 1,000-lb (454-kg) criteria for their activity during 1994–1999 fishing years. The economic impacts on these historic participants would be negative in terms of a loss in future potential revenue from scallops, unless they buy a vessel that qualifies for limited access. The proposed 5-yr qualification period would not have any impact on the current income of most of these vessels, given that most have not been active since 2000; only 10 vessels are estimated to have participated in the fishery after the control date (November 1, 2004). The longer qualification period would cause the general category TAC to be divided among a larger number of vessels, most of which were not recently active in the fishery, and vessels that depend on scallops would receive a smaller share than they would with the proposed 5-yr qualification period. This would have negative economic impacts on the vessels that depend on scallops to a larger degree. There are also some measures included in the proposed action that could mitigate some of these adverse economic impacts on non-qualifiers. If these vessels had a permit before the control date, they could obtain an incidental catch permit and land up to 40 lb (18.14 kg) per trip, thus still earn some revenue from scallops. Other vessel owners could choose to obtain an NGOM scallop permit and participate in the NGOM fishery, subject to a possession limit of 200 lb (90.72 kg) per trip and a hard TAC.

The 2-yr qualification period alternative would have restricted eligibility to 277 general category vessels that landed 1,000 lb (454 kg) or more of scallops during the period March 1, 2003, through November 1, 2004, instead of 369 vessels under the proposed action. Although this alternative would result in a larger share per vessel qualified for limited access, it was found to be inequitable to participants who did not fish for scallops in 2003–2004, but did fish in recent years since 2000.

### *IFQ Vessel Contribution Factor*

Under the proposed action, each IFQs vessel's contribution factor would be determined by identifying the year with the highest landings during the qualification time period, and multiplying it by an index that increases as the number of years in which the vessel landed scallops during the qualification time period increases. For example, the index is 0.75 if the vessel

landed scallops in 1 year, and 1.25 if the vessel landed scallops in 5 years. Therefore, the proposed action would allocate more pounds to those vessels that were active in the fishery for a longer period of time.

In addition to the proposed measure, the Council considered three alternatives to calculate the contribution factor. One alternative used the vessel's best year of landings during the qualification time period. Another alternative used the vessel's best year multiplied by a lower range of index factor than the proposed action. The third alternative used either the best year of landings during the qualification time period, or the indexed best year of landings during the qualification time period, but capped the contribution at 50,000 lb (22,680 kg) of scallops. The economic impacts of the contribution factor alternatives are analyzed in Section 5.4.7.1 through 5.4.7.2 of the Amendment 11 document.

The alternatives to the proposed option would have distributional economic impacts less favorable to the vessels that were active in the fishery for many years. The alternative that used a lower range of index values (0.9 to 1.10, rather than 0.75 to 1.25) would provide only a slight increase in IFQ share for vessels that were active in the fishery for a long period of time, while only slightly decreasing share for vessels that were in the general category scallop fishery for only 1 year. This would have had more negative impacts on a larger number of vessels that had a longer history in the general category scallop fishery. The alternative allocation based on best year (Section 3.1.2.3.1 of the Amendment 11 document) would have had negative economic impacts on those vessels that had a longer history of participation, since allocation would be determined regardless of years active. For the same reason, this alternative would have had positive economic impacts on those vessels that had a shorter history of participation. The final alternative, which would establish the 50,000-lb (22,680-kg) cap on a vessel's contribution factor, would prevent a vessel from getting a larger share of the fishery even if it had very high historical landings. This alternative would have impacted vessels with higher landings more severely than vessels with lower landings, and was therefore not selected. The proposed alternative using the best-year indexed by the number of years active is intended to help reduce the negative impacts on those participants with an established history and long-term investment in scallop fishing.

#### *Scallop Allocation for LAGC Scallop Vessels*

The Council considered several ways of allocating IFQ to vessels that qualify for a LAGC scallop permit (excluding NGOM and Incidental scallop vessels). These included: Allocations by vessel in pounds of scallops or number of trips per vessel; allocations to two allocation tiers where every vessel in a tier would receive the same allocation; allocation to three allocation tiers; a fleetwide hard TAC; and a fleetwide hard TAC allocated into either quarters or trimesters. The Council also considered a stand-alone IFQ alternative that would confer eligibility on IFQ vessels based only on past permit issuance, and would use the contribution factor alternative adopted by the Council to allocate a vessel's IFQ. The economic impacts of the allocation alternatives are analyzed in section 5.4.8 of the Amendment 11 document.

Under the proposed action, NMFS would calculate a vessel's IFQ by multiplying the overall general category TAC by the vessel's contribution factor. An example demonstrating the calculation of a vessel's IFQ is provided in the "IFQs for limited access general category scallop vessels" section of the preamble of this proposed rule.

The allocation of IFQ would eliminate the derby fishing effect that results from a TAC because an IFQ assures that each vessel can land a given quantity anytime during the fishing year. Vessel owners would have the flexibility to select the time and the area to fish in order to minimize their costs and/or maximize their revenues. Since the fishing effort would be spread over a longer period of time, the price of scallops would be more stable throughout the season. This, combined with the availability of a fresh and/or higher quality scallops over a longer season, would benefit consumers as well as producers. Therefore, the proposed allocation alternative would have positive economic impacts on the vessels that qualify for limited access general category fishery. Although maintaining the 400-lb (181.44-kg) possession limit would cause some inefficiencies and result in higher costs compared to a higher possession limit (alternative 2,000 lb (907 kg) per trip), this provision is intended to help preserve the historical small-boat character of this fleet.

The non-selected alternative that would have allocated a number of trips to each scallop vessel has an advantage over the IFQ alternative because it is easier to monitor and enforce, but could result in either reduced revenue or increased costs for vessels that catch

less than 400 lb (181.44 kg) of scallops on any trip, because the trip would have been considered to be used irrespective of amount landed. Another non-selected alternative would have established two permit tiers to which vessels would be assigned based on the level of historical scallop landings. Vessels that had historical landings of less than 5,000 lb (2,268 kg) would have a possession limit of 200 lb (90.72 kg), while vessels that had historical landings greater than 5,000 lb (2,268 kg) would have a scallop possession limit of 400 lb (181.44 kg) per trip. The alternative did not restrict the number of trips that could be taken or pounds that could be landed by vessels within a tier. This alternative would have negative economic impacts on vessels that landed less than 5,000 lb (2,268 kg) and would be restricted to a 200-lb (90.72-kg) possession limit because it would reduce landings from recent historical levels. The three-tiered allocation alternative would allocate equal pounds or trips to each vessel within one of three tiers based on the vessel's historical level of landings, with the pounds or trips allocated to each tier based on the average amount of scallops landed by vessels in each tier. As a result, this alternative would have negative impacts on a vessel in a tier that landed a higher amount of scallops than the average for the tier. The stand-alone alternative would allocate IFQ to a larger number of vessels, but would have negative distributional impacts on vessels that have had higher recent annual landings of scallops. Instead of individual allocation, the alternative that would establish a hard TAC with limited entry vessel permits could lead to a race to fish and market gluts. This could have negative economic impacts, especially on smaller vessels that fish seasonally and cannot access all areas due to the constraints on their capacity. A fleet-wide hard TAC allocated by trimester or by quarter would extend the fishing season and reduce negative impacts from derby fishing and market gluts, to some extent. These alternatives would have larger negative distributional impacts on some vessels compared to the proposed IFQ program, and other vessel allocation alternatives considered, because the opportunity to fish and land scallops would be dependent upon the level of fishing by other vessels. For example, a vessel may not get the opportunity to fish for scallops at all under a quarterly fleetwide TAC alternative if other general category vessels quickly harvest the entire TAC. If such a vessel had landings of scallops before Amendment 11, the vessel would experience scallop

revenue losses compared to alternatives that would allow the vessel to fish for scallops regardless of the scallop fishing activity of other vessels.

#### *Limited Entry Permit Provisions*

Amendment 11 includes most of the provisions adopted in other limited access fisheries in the Northeast Region to govern the initial qualification process, future ownership changes, and vessel replacements. For the most part, there is no direct economic impact. The nature of a limited access program requires rules for governing the transfer of limited access fishing permits. The procedures have been relatively standard for previous limited access programs, which makes it easier for a vessel owner issued permits for several limited access fisheries to undertake vessel transactions. The standard provisions adopted in Amendment 11 are those governing change in ownership; replacement vessels; CPH; abandonment or voluntary relinquishment of permits; and appeal of denial of permits. In addition, IFQ scallop vessels would be restricted to a cap on the amount of IFQ they could own. This ownership cap restriction is based on a similar ownership cap provision for current limited access vessels. This action would modify some of the other provisions for LAGC scallop vessels. LAGC scallop vessels would not have any vessel size and horsepower upgrade restrictions for vessel modifications or vessel replacements (unless the vessel has other limited access permits). This action would also allow a vessel owner to retain a general category scallop fishing history prior to the implementation of Amendment 11 to be eligible for issuance of the LAGC scallop permit based on the eligibility of the vessel that was sold, even if the vessel was sold with other limited access permits.

The economic impacts of the limited access permit provisions are analyzed in section 5.4.9 of the Amendment 11 document. Measures allowing vessel owners to appeal limited access permit denials would indirectly benefit all participants by ensuring that only those vessels that provide verification of permit and landings history would qualify and receive allocation based on accurate records. The proposed regulations regarding qualification with retained vessel histories would have positive economic impacts for participants that sold their vessel to another but retained the fishing history. The proposed action would allow a vessel owner to modify a LAGC scallop vessel's size or horsepower without any upgrade restriction, provided that there

are no other limited access permits issued to the vessel. This would provide flexibility for the vessel owners to adjust their fishing power under changing fishery conditions. Flexibility with a vessel's size and horsepower could also improve safety at sea. Since the vessels would be allocated individual pounds, this is not expected to impact the total scallop landings or provide an unfair advantage to larger vessels.

Amendment 11 would allow a vessel owner to obtain permanent or temporary transfers of IFQ, up to 2 percent of the total general category allocation per vessel. This would help vessel owners to maintain an economically viable operation if the allocations for separate vessels are too low to generate revenue to cover variable and fixed expenses. It could also allow a vessel owner to sell or lease a small IFQ to another vessel owner, which would generate income from the IFQ without operating costs. This measure, combined with a restriction that an individual could not have an ownership interest in more than 5 percent of the overall TAC, would also prevent a few individuals or corporations from dominating the fishery and would help to redistribute gains from the limited access more equitably among more fishermen. Non-preferred alternatives considered other ways to limit the accumulation of IFQ. One would have allowed two allocations only to be combined, and the other set a cap of 60,000 lb (27,216 kg) total allocation. The selected alternative provided more flexibility while maintaining an overall limit on the amount of IFQ that could be held by a single vessel.

Non-preferred alternatives would have prohibited IFQ transfers, would have maintained vessel size and horsepower upgrade restrictions consistent with other limited access permits (allowed upgrades up to 10 percent in length, and gross and net tonnage, and 20 percent in horsepower), and would have prohibited IFQ transfers, providing less flexibility for vessel owners and reduced economic benefits.

#### *Sectors*

Amendment 11 proposes to allow participants in the IFQ scallop fishery to organize voluntary fishing sectors. Amendment 11 specifies sector requirements and the process through which proposals would be submitted to the Council and NMFS. Amendment 11 does not establish sectors—just the process under which future sectors could be proposed. The proposed sector process would provide an opportunity for fishermen to benefit from an

economically viable operation when the allocations of individual vessels are too small to make scallop fishing profitable. In comparison, the only alternative to the proposed action would not allow the formation of sectors, decreasing flexibility and eliminating any possible future economic benefits of forming sectors.

#### *Measures for Transition to the IFQ program*

Amendment 11 specifies measures that would be implemented for at least 1 year, while the eligibility process for IFQ scallop permits is underway to establish the fleet of IFQ scallop vessels. The economic impacts of the transition period alternatives are analyzed in section 5.4.12 of the Amendment 11 document. The proposed interim alternative would establish the following measures. These would help to prevent a short-term increase in overfishing of the scallop resource by limiting the general category landings to 10 percent of the total scallop landings through specification of a TAC. The proposed action would prevent further expansion in the general category catch and benefit the participants of the general category fishery by providing some adjustment time for general category vessels until the transition period is over. The allocation amounts for many IFQ scallop vessels are likely to be lower with the proposed 5-percent TAC for the IFQ fishery than their recent landings. Although management of the general category fishery by a fleetwide TAC during the transition period would create some derby fishing, the allocation of the total TAC into quarters would reduce derby effects to some extent, and lessen the negative economic impacts associated with derby fishing. A 10-percent fleetwide TAC may not constitute a significant constraint on recent landings, given that only those vessels that qualify for an IFQ permit, or that are under appeal for an IFQ permit, would be authorized to fish during the transition period. General category scallop landings by those vessels that had a permit before the control date were approximately 11 percent of total landings in 2005.

An alternative was considered that would have established an annual fleetwide TAC. It was not selected because the Council believed it would increase the derby effect, with potential negative economic and safety implications. It would increase the likelihood that a vessel would not have the opportunity to fish for scallops because other vessels could rapidly harvest the TAC. Another alternative proposed that the transition year would

have no TAC. It would eliminate the incentives for derby style fishing and the economic impacts of this alternative compared to the status quo would be negligible, provided participation by general category vessels that had a permit before the control date does not increase significantly above the recent levels. On the other hand, it is possible for the number of appeals to be greater than the number of vessels that fished during the recent years, resulting in more vessels participating in the fishery. If this were to happen, and the general category scallop landings increase above 10 percent of total scallop harvest, there could be short-term unexpected increase in fishing mortality on the scallop resource.

#### *NGOM Scallop Management Area*

Amendment 11 includes management measures specific to the NGOM scallop management area intended to allow a level of scallop fishing activity to occur outside of the constraints of the IFQ program and some other Amendment 11 provisions for general category vessels. Measures include the establishment of a TAC for the area derived from the Federal portion of the resource; a 200-lb (90.72-kg) possession limit for NGOM and IFQ scallop vessels; a restriction on dredge size; a restriction that catch by IFQ scallop vessels fishing in the area would be deducted from the IFQ scallop vessel's IFQ and from the NGOM TAC; trip declaration requirements; and a closure of the NGOM to all scallop vessels (including current limited access scallop vessels and incidental scallop vessels) when the NGOM TAC is reached. The economic impacts of the NGOM Scallop Management Area are analyzed in section 5.4.14.4 of the Amendment 11 document. The proposed NGOM Scallop Management Area alternative would have positive economic impacts on a large number of vessels that are not estimated to qualify for the IFQ permit but are estimated to qualify for an NGOM permit. These vessels would have an opportunity to land scallops in this area when the resource conditions are favorable. It would reduce the possession limit for NGOM and IFQ scallop vessels to 200 lb (90.72 kg) per trip to reduce incentives for larger vessels targeting scallops in this area. Although reducing the possession limit would have negative economic impacts on some vessels, the majority of the active vessels that would qualify for the NGOM permit general category permit landed 200 lb (90.72 kg) or less of scallops from any one trip, therefore would not be negatively impacted from 200 lb (90.72 kg) possession limit. In

comparison, the no action alternative would have had negative economic impacts for vessels that could not qualify for the IFQ scallop permit.

Under one alternative, Amendment 11 provisions would not have applied to NGOM and the general category vessels would have retained the opportunity to fish for scallops in NGOM and land up to 400 lb (181.44 kg) per trip. The lack of a TAC to limit landings, and the higher possession limit, would have had positive economic impacts on these vessels compared to the proposed alternative. On the other hand, because this alternative would let any vessel obtain a permit to fish in the area, it could lead to an influx of vessels from other areas to participate in the open access fishery in the NGOM. This would have negative impacts on the resource that made it unacceptable.

Another alternative proposed that to qualify for an NGOM scallop permit, a vessel would have to have landed 100 lb (45.4 kg) of scallops during the period March 1, 1994, through November 1, 2004. The NGOM TAC under this alternative would be based on all landings of scallops from the NGOM area (not exclusively the Federal portion of the resource, as in the proposed action). This alternative also would have allowed vessels to continue fishing for up to 40 lb (18.14 kg) of scallops after harvest of the NGOM TAC. This alternative would also provide an advantage to IFQ scallop vessels by allowing them to land 400 lb (181.44 kg) per trip from this area, whereas NGOM scallop vessels could possess and land only up to 200 lb (90.72 kg) per trip. This alternative was not adopted because the qualification criteria would have had very little restriction on participation, would have had excessive administrative costs, and would not promote conservation of the scallop resource within the Gulf of Maine or overall. While it would have qualified more vessels than the proposed measure, the economic opportunity for those vessels would have been diluted by a very large number of qualified vessels fishing for a relatively small TAC.

The no action alternative for the NGOM Scallop Management Area would not distinguish this area from other areas, and all Amendment 11 measures would apply equally throughout the range of the scallop resource. It was not selected because it would have negative impacts on vessels that traditionally fish in the NGOM and that could not qualify for the IFQ permit.

#### *Monitoring Provisions*

The economic impacts of monitoring provisions proposed in Amendment 11 are analyzed in section 5.4.15 of the Amendment 11 document. Since general category vessels that land over 40 lb (18.14 kg) are already required to have a VMS onboard, the compliance costs of this action are not expected to be significant. Vessels operating in the Northeast multispecies fishery are also required to have operational VMS units. Some of these vessel also have general category scallop permits and would be expected to qualify for one of the LAGC scallop permits. The majority of general category scallop vessels currently operate VMS as required either by the scallop regulations or the Northeast multispecies fishery regulations. The non-selected interactive voice reporting (IVR) alternative does not have a distinct advantage compared to reporting through VMS. The no action alternative would not have the associated costs of reporting landings, but reporting of scallop catch for each trip is essential to monitor and enforce the IFQ and NGOM scallop fishery measures.

#### *Impacts of Limited Access Fishing under General Category Rules*

Amendment 11 provides the opportunity for current limited access vessels (i.e., full-time, part-time, or occasional limited access scallop vessels) to also be issued a LAGC scallop permit, if the vessel meets the qualification criteria. The economic impacts of allowing limited access vessels to continue to fish under general category rules are analyzed in section 5.4.16.1 of the Amendment 11 document. The proposed action would have positive economic impacts on 57 limited access vessels (38 full-time, and 19 part-time and occasional) that Amendment 11 estimates would qualify for an IFQ scallop permit. One non-selected alternative would prevent any limited access vessel from having a general category permit and another would prevent current full-time limited access scallop vessels from fishing under general category rules. This would result in negative economic impacts compared to the proposed alternative for those vessels noted above that have a historical level of participation in the general category fishery while fishing outside of scallop DAS.

Under the proposed allocation to LAGC scallop vessels, 0.5 percent of the overall scallop TAC would be allocated to vessels with IFQ scallop permits that also have been issued a full-time, part-

time, or occasional limited access scallop permit. IFQs for these vessels would be determined from the 0.5–percent TAC allocation. Under the transition measure before the IFQ program is implemented, IFQ scallop vessels that have also been issued a full-time, part-time, or occasional limited access scallop permit would fish under the 10–percent TAC allocated to the general category fleet. The proposed action would have positive economic impacts on those vessels. The 0.5–percent TAC for the limited access qualifiers is less than the percentage share of these vessels in total general category scallop landings in recent years, but almost equal to what was reported in the 2004 fishing year. Under one alternative, scallops landed by limited access vessels under general category rules would be deducted from the 5–percent TAC allocated to the IFQ vessels, negatively impacting the general category vessels that qualify for limited access, with small positive economic impacts on the limited access scallop fleet. This alternative was therefore not selected, and the separate 0.5–percent TAC is proposed.

#### *Allocation Between Limited Access and General Category Fisheries*

The Council considered alternative values for the TAC that would be allocated to IFQ scallop vessels (excluding IFQ scallop vessels also issued a full-time, part-time, or occasional limited access scallop permit), equal to 2.5, 5.0, 7.0, 10.0, and 11.0 percent of the overall projected scallop catch. The economic impacts of the various levels of TAC allocation between the limited access and LAGC fishery are analyzed in section 5.4.17 of the Amendment 11 document and have different distributional impacts. The proposed 5–percent general category TAC would have negative economic impacts on many general category vessels compared to status quo management because the fishery landed twice that level in both the 2005 and 2006 fishing years. On the other hand, the 5–percent TAC is higher than the long-term average percentage share of total scallop landings for the general category scallop fishery, which is 2.5 percent of overall scallop landings. The 5–percent allocation corresponds to the highest level reached by the general category fishery before the control date. Therefore, this allocation is consistent with the Council's decision in 2004 to implement a control date recognizing that the substantial increase in general category fishing effort could lead to overfishing of the scallop resource and reduce economic benefits

for everyone. The short-term and long-term economic impacts of the 5–percent TAC, combined with the limited entry program, compared to other alternative allocation amounts are discussed extensively above and are not repeated here.

The proposed action includes several measures that could mitigate some of the adverse economic impacts of the limited access program for general category including the 5–percent TAC. The separate limited entry program for the NGOM is expected to provide an opportunity for owners of vessels that would not qualify for the IFQ scallop permit, but who have historically participated in the NGOM scallop fishery, to fish for scallops at a reduced scale (at a lower possession limit of 200 lb (90.72 kg) per trip) when the resource conditions in this area become favorable. The incidental catch permit would provide opportunity for the vessels that land scallops occasionally up to 40 lb (18.14 kg) per trip, including some vessels that qualify for limited access but received allocations lower than what they could land annually with the incidental permit.

Furthermore, Amendment 11 includes a provision to allow vessel owners to combine IFQ allocations through the IFQ transfer program, up to 2 percent of the TAC allocated to the IFQ scallop fishery, so that vessel owners can buy or lease additional IFQ. Similarly, the proposed action to establish a process for sectors in the general category fishery would provide an opportunity for fishermen to benefit from an economically viable operation when the allocations of individual vessels are too small to make scallop fishing profitable.

A lower TAC for general category would have larger negative proportional impacts on general category vessels while potentially increasing the revenues of the limited access fishery by a small percentage. A higher percentage TAC would reduce the negative impacts on general category vessels, but would lower the positive economic impacts on the current limited access.

#### *Incidental Catch Permit*

The economic impacts of the proposed Incidental catch permit are analyzed in section 5.4.18 of the Amendment 11 document. The proposed action would create an incidental catch permit for vessels to retain and sell up to 40 lb (18.14 kg) of scallop meats per trip, provided they had been issued a general category scallop permit as of November 1, 2004. The economic impacts of this alternative would be positive on vessels that do not qualify for the IFQ permit

because it would allow them to still earn some income from scallops under the incidental catch permit. This measure could also benefit some vessels that qualify for the IFQ permit with low allocations. The owner of such a vessel might elect the Incidental scallop permit because the vessel could land more total pounds of scallops on several 40–lb (18.14–kg) trips than it could under its IFQ.

The only alternative considered was no action, which would allow vessels to possess and land, but not sell, an incidental catch of scallops. This alternative would not provide any source of revenue for vessels that do not qualify for the IFQ or NGOM scallop permit. It also would complicate the Council's and NMFS's ability to determine the overall level of scallop catch from a fleet of vessels without scallop permits because none of the reporting and compliance measures would apply to non-permitted vessels. This could result in more cautious management measures in the future, with possible negative economic impacts on all vessels issued scallop permits.

#### *Changing of the Issuance Date of General Category Permits*

Amendment 11 proposes to change the permit issuance date for general category scallop permits from May 1 to March 1, to better align the general category scallop fishery with the scallop fishing year of March 1 through February 28/29. The economic impacts of changing the date that general category permits are issued are analyzed in section 5.4.19 of the Amendment 11 document. Changing the general category permit to March 1 is an administrative change and procedural adjustment for owners accustomed to a May 1 permit renewal. The proposed measure would allow, however, better estimation of the number of participants, the level of effort in the fishery and allocation of TAC by aligning the issuance date with date for the limited access fishery. As a result, the proposed action would have indirect positive economic impacts on the sea scallop fishery.

The Council considered revising the start of the fishing year to May 1 or August 1. This would have had some positive impacts over the long term by better aligning the fishing year with the scallop survey, resulting in updated information on which to base the following year's management. This would increase the confidence in the effectiveness of scallop fishery management measures relative to the scallop fishing mortality goals of the

FMP. On the other hand, these alternatives were strongly opposed by the scallop industry because it would require a change in the business plans of the scallop vessel owners.

#### *Other Measures Included in Amendment 11*

Amendment 11 proposes two changes to scallop regulations, including a clarification that the maximum sweep length for trawl gear under the FMP would not apply to vessels fishing for Northeast multispecies or monkfish, and an allowance for general category vessels to possess up to 100 bu (35.24 hL) of in-shell scallops seaward of the VMS demarcation line. The economic impacts of these measures are analyzed in sections 5.4.20 and 5.4.21 of the Amendment 11 document. Clarification of trawl gear restriction for vessels fishing under a multispecies or monkfish DAS would have positive economic impacts on those general category vessels that catch scallops only incidentally, compared to no action. Setting the possession limit at 100 bu (35.24 hL) seaward of the demarcation line would have positive economic impacts on the general category vessels when they catch scallops with lower meat yield. The only alternative to both of these measures is the no action alternative, which does not provide the benefits of the proposed action noted above.

#### **Change to Ownership Cap Restriction to Account for CPHs**

This proposed rule includes a change to the ownership cap restriction for current limited access scallop vessels to clarify that the regulation was intended to apply to limited access scallop permits and CPHs. Currently, if a vessel owner has been issued a CPH, that owner cannot activate that CPH on a vessel if they already own 5 percent of the limited access scallop permits. That owner would therefore have to sell a vessel to activate the CPH. This clarification of the ownership cap to include CPH's does not change this, or the economic impacts of the ownership cap restrictions. There are no alternatives to clarifying the regulation, since the result would be that the scallop regulations would continue to be inconsistent with the intent of the original ownership cap restrictions included in the FMP.

#### **List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 7, 2007.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

#### **PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 648.2, definitions for “limited access general category (LAGC) scallop vessel” and “limited access scallop vessel” are added in alphabetical order to read as follows:

#### **§ 648.2 Definitions.**

\* \* \* \* \*

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

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

\* \* \* \* \*

3. In § 648.4, paragraphs (a)(1)(i)(I)(3), (a)(2) introductory text, (a)(2)(i) introductory text, (a)(2)(i)(M)(1), (a)(2)(i)(M)(2), (a)(2)(ii), and (e)(1)(iv) are revised, and paragraph (a)(2)(i)(P) is added to read as follows:

#### **§ 648.4 Vessel permits.**

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(I) \* \* \*

(3) With the exception of combination vessels, a vessel issued a limited access sea scallop dredge permit pursuant to paragraph (a)(2)(i) of this section is not eligible for limited access multispecies permits. This restriction is not applicable to vessels issued an LAGC scallop permit pursuant to paragraph (a)(2)(ii) of this section, unless such vessel has also been issued a limited access scallop permit pursuant to paragraph (a)(2)(i) of this section.

\* \* \* \* \*

(2) Atlantic sea scallop vessels—Any vessel of the United States that fishes for, possesses, or lands Atlantic sea scallops, except vessels that fish exclusively in state waters for scallops,

must have been issued and carry on board a valid scallop vessel permit pursuant to this section.

(i) *Limited access scallop permits.* Any vessel of the United States that possesses or lands more than 400 lb (181.44 kg) of shucked scallops, or 50 bu (17.62 hL) of in-shell scallops per trip, or possesses more than 100 bu (35.24 hL) seaward of the VMS Demarcation Line, except vessels that fish exclusively in state waters for scallops, must have been issued and carry on board a valid limited access scallop permit.

\* \* \* \* \*

(M) *Percentage ownership restrictions.*

(1) For any vessel acquired after March 1, 1994, a vessel owner is not eligible to be issued a limited access scallop permit for the vessel, or a confirmation of permit history, if, as a result of the issuance of the permit or confirmation of permit history, the vessel owner, or any other person who is a shareholder or partner of the vessel owner, will have an ownership interest in a total number of limited access scallop vessels and limited access scallop confirmations of permit history in excess of 5 percent of the number of all limited access scallop vessels and confirmations of permit history at the time of permit application.

(2) Vessel owners who were initially issued a 1994 limited access 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 1995 and thereafter, in compliance with the ownership restrictions in paragraph (a)(2)(i)(M)(1) of this section, are eligible to renew such permits(s) 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.

\* \* \* \* \*

(P) *VMS requirement.* A vessel issued a limited access scallop permit, as specified in paragraph (a)(2)(i) of this section, except a vessel issued an occasional scallop permit that is not fishing in a sea scallop access area, must have an operational VMS installed. Prior to issuance of a limited access scallop permit, NMFS must receive a signed VMS certification from the vessel owner and be notified by the VMS vendor that the unit has been installed and is operational.

(ii) *LAGC scallop permits.* With the exception of any vessel that fishes exclusively in state waters for scallops, any vessel of the United States that is not in possession of a limited access scallop permit pursuant to paragraph

(a)(2)(i) of this section, and any vessel issued a limited access scallop permit that fishes for scallops outside of the scallop DAS program described in § 648.53 or the Area Access program described in § 648.60, any vessel that fishes for, possesses, or lands scallops must be issued an LAGC scallop permit and must comply with the permit requirements described in paragraphs (a)(2)(ii)(A), (B), or (C) of this section. To be issued an LAGC scallop permit, a vessel owner must meet the qualification criteria specified in paragraphs (a)(2)(ii)(D) or (F) of this section and must comply with the application procedures specified in paragraph (a)(2)(ii)(H) of this section.

(A) *Individual fishing quota LAGC permit.* To possess or land up to 400 lb (181.44 kg) of shucked meats, or 50 bu (17.62 hL) of in-shell scallops per trip, or possess up to 100 bu (35.24 hL) of in-shell scallops seaward of the VMS demarcation line, a vessel must have been issued an individual fishing quota LAGC scallop permit (IFQ scallop permit). Issuance of an initial IFQ scallop permit is contingent upon the vessel owner submitting the required application and other information to demonstrate that the vessel meets the eligibility criteria specified in paragraph (a)(2)(ii)(D) of this section.

(B) *Northern Gulf of Maine LAGC permit.* To possess or land up to 200 lb (90.72 kg) of shucked or 25 bu (8.81 hL) in-shell scallops per trip, or to possess up to 50 bu (17.62 hL) seaward of the VMS demarcation line, a vessel must have been issued a Northern Gulf of Maine LAGC scallop permit (NGOM scallop permit). A vessel issued a NGOM scallop permit may not fish for scallops south of 42°20'N. Lat, and may not possess or land more than 200 lb (90.72 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops at any time, except the vessel may possess up to 50 bu (17.62 hL) of in-shell scallops seaward of the VMS demarcation line. Issuance of an initial NGOM scallop permit is contingent upon the vessel owner submitting the required application and other information to demonstrate that the vessel meets the eligibility criteria specified in paragraph (a)(2)(ii)(F) of this section.

(C) *Incidental catch LAGC permit.* To possess or land up to 40 lb (18.14 kg) of shucked or 5 bu (1.76 hL) in-shell scallops per trip, or possess up to 10 bu (3.52 hL) in-shell scallops per trip seaward of the VMS demarcation line, but not more than these amounts per trip, a vessel must have been issued an incidental catch general category scallop permit (Incidental scallop permit). A vessel issued an incidental catch general

scallop permit may not possess or land more than 40 lb (18.14 kg) of shucked or 5 bu (1.76 hL) of in-shell scallops at any time, except the vessel may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS demarcation line. Issuance of an initial incidental catch category scallop permit is contingent upon the vessel owner submitting the required application and other information to demonstrate that the vessel meets the eligibility criteria specified in paragraph (a)(2)(ii)(G) of this section.

(D) *Eligibility for an IFQ scallop permit.* A vessel is eligible for and may be issued an IFQ scallop permit if it meets both eligibility criteria specified in paragraphs (a)(2)(ii)(D)(1) and (2) of this section, or is replacing a vessel that meets both the eligibility criteria specified in paragraphs (a)(2)(ii)(D)(1) and (2) of this section. A vessel owner may appeal NMFS's determination that a vessel does not meet the requirements specified in paragraphs (a)(2)(ii)(D)(1) and (2) of this section by complying with the appeal process, as specified in paragraph (a)(2)(ii)(O) of this section.

(1) *Permit criteria.* A vessel must have been issued a general category scallop permit in at least one scallop fishing year, as defined in § 648.2, between March 1, 2000, and November 1, 2004.

(2) *Landings criteria.* A vessel must have landed at least 1,000 lb (454 kg) of shucked scallops in any one year when the vessel also held a general category scallop permit as specified in paragraph (a)(2)(ii)(D)(1) of this section. NMFS dealer data will be used to make the initial determination of vessel eligibility. If a dealer reported more than 400 lb (181.44 kg) of scallops on a trip, 400 lb (181.44 kg) will be credited toward the landings criteria. 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 will be used to calculate meat-weight, up to the maximum of 400 lb (181.44 kg) per trip.

(E) *Contribution factor for determining a vessel's individual fishing quota.* An eligible IFQ scallop vessel's best year of scallop landings, as specified in § 648.53(h)(2), and the vessel's number of years active, as specified in § 648.53(h)(3), shall be used to calculate a vessel's contribution factor, as specified in § 648.53(h)(1). A vessel owner that has applied for an IFQ scallop permit will be notified of the vessel's contribution factor at the time of issuance of the IFQ scallop permit. A vessel owner may appeal NMFS's determination of the IFQ scallop vessel's contribution factor by complying with the appeal process as

specified in paragraph (a)(2)(ii)(O) of this section.

(F) *Eligibility for NGOM or Incidental scallop permit.* A vessel that is not eligible for, or for which the vessel's owner chooses not to apply for an IFQ scallop permit, may be issued either a NGOM scallop permit or an Incidental scallop permit if the vessel held a general category scallop permit on November 1, 2004, or if the vessel is replacing a vessel that held a general category scallop permit on November 1, 2004. A vessel owner may appeal NMFS's determination that a vessel does not meet this criteria by complying with the appeal process as specified in paragraph (a)(2)(ii)(O) of this section.

(G) *LAGC permit restrictions—(1) Change of permit category. (i) IFQ scallop permit.* A vessel issued an IFQ scallop permit may not change its general category scallop permit category at any time without voluntarily relinquishing its IFQ scallop permit eligibility as specified in paragraph (a)(2)(ii)(M) of this section. If the vessel owner has elected to relinquish the vessel's IFQ permit and instead be issued an NGOM or Incidental scallop permit, the IFQ permit shall be permanently relinquished.

(ii) *NGOM and Incidental scallop permit.* A vessel may be issued either an NGOM or Incidental scallop permit for each fishing year, and a vessel owner may not change his/her LAGC scallop permit category during the fishing year, except as specified in this paragraph, (a)(2)(ii)(G)(1)(ii). The owners of a vessel issued an NOGM or Incidental scallop permit must elect a permit category in the vessel's permit application and shall have one opportunity to request a change in its permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit. After that date, the vessel must remain in that permit category for the duration of the fishing year.

(2) *VMS requirement.* A vessel issued a LAGC permit must have an operational VMS installed. Issuance of an Atlantic sea scallop permit requires the vessel owner to submit a copy of the vendor's installation receipt or provide verification of vendor activation from a NMFS-approved VMS vendor as described in § 648.9.

(H) *Application/renewal restrictions.* See paragraph (a)(1)(i)(B) of this section. Applications for a LAGC permit described in paragraph (a)(2)(ii) of this section must be postmarked no later than [date 90 days from the date the Final Rule is published in the FEDERAL REGISTER]. Applications for LAGC

permits that are not postmarked on or before [date 90 days from the date the Final Rule is published in the FEDERAL REGISTER] may be denied and returned to the sender with a letter explaining the denial. Such denials may not be appealed and shall be the final decision of the Department of Commerce.

(I) *Qualification restriction.* (1) See paragraph (a)(1)(i)(C) of this section for restrictions applicable to limited access scallop permits.

(2) Notwithstanding paragraph (a)(1)(i)(L) of this section, scallop landings history generated by separate owners of a single vessel at different times during the qualification period for LAGC scallop permits may be used the qualify more than one vessel, provided that each owner applying for an LAGC scallop permit demonstrates that he/she created distinct fishing histories, that such histories have been retained, and if the vessel was sold, that each applicant's eligibility and fishing history is distinct.

(3) Notwithstanding paragraph (a)(1)(i)(L) of this section, vessel owners applying for a LAGC permit who sold a vessel with non-scallop limited access permits, as specified in paragraph (a)(1)(i)(D) of this section, and retained only the general category scallop history as specified in paragraph (a)(1)(i)(D) of this section, before [DATE FINAL RULE PUBLISHED IN THE FEDERAL REGISTER], may use the general category scallop history to qualify a vessel for the initial IFQ scallop permit.

(J) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(K) *Replacement vessels.* A vessel owner may apply to replace a qualified LAGC vessel with another vessel that he/she owns. There are no size or horsepower restrictions on replacing general LAGC vessels, unless the qualified vessel that will be replaced is subject to such restriction because of other limited access permits issued pursuant to § 648.4. In order for a LAGC that also has other limited access permits issued pursuant to § 648.4 to be replaced by a vessel that does not meet the replacement and upgrade restrictions specified for those other limited access permits, the other limited access permits must be permanently relinquished, as specified in paragraph (a)(1)(i)(K) of this section.

(L) *Confirmation of Permit History.* See paragraph (a)(1)(i)(J) of this section.

(M) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(N) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

(O) *Appeal of denial of permit—(1) Eligibility.* Any applicant eligible to

apply for an LAGC scallop permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial. Any such appeal may only be based on the grounds that the information used by the Regional Administrator was incorrect. The appeal must be in writing, must state the specific grounds for the appeal, and must include information to support the appeal.

(2) *Contribution factor appeals.* Any applicant eligible to apply for a IFQ scallop permit who disputes NMFS's determination of the vessel's contribution factor specified in paragraph (a)(2)(ii)(E) of this section may appeal NMFS's determination to the Regional Administrator within 30 days of the notification of the vessel's best year and years active. Any such appeal may only be based on the grounds that the information used by the Regional Administrator was incorrect. The appeal must be in writing, must state the specific grounds for the appeal, and must include information to support the appeal. A vessel owner may appeal both the eligibility criteria and the contribution factor and must submit the appeal for both at the same time. An appeal of contribution factor determinations shall be reviewed concurrently with an eligibility appeal, if applicable.

(3) *Appeal review.* The Regional Administrator shall appoint a designee who shall make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Administrator by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Administrator. The hearing officer shall make findings and a recommendation to the Regional Administrator, which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator shall issue a final decision on the appeal. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

(4) *Status of vessels pending appeal.* A vessel denied an LAGC scallop permit may fish while under appeal, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access general category permit. The Regional

Administrator shall issue such a letter that shall be effective during the pendency of any appeal. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial, but no later than 10 days from the date of the letter of denial.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iv) An applicant applying for a limited access multispecies combination vessel or individual DAS permit, a limited access scallop permit (except an occasional scallop permit), an LAGC scallop permit, or electing to use a VMS, has failed to meet all of the VMS requirements specified in §§ 648.9 and 648.10; or

\* \* \* \* \*

4. In § 648.5, paragraph (a) is revised as follows:

**§ 648.5 Operator permits.**

(a) *General.* Any operator of a vessel fishing for or possessing: Atlantic sea scallops, NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surfclam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, black sea bass, or Atlantic bluefish, harvested in or from the EEZ; tilefish harvested in or from the EEZ portion of the Tilefish Management Unit; skates harvested in or from the EEZ portion of the Skate Management Unit; or Atlantic deep-sea red crab harvested in or from the EEZ portion of the Red Crab Management Unit, issued a permit, including carrier and processing permits, for these species under this part, must have been issued under this section, and carry on board, a valid operator permit. An operator's permit issued pursuant to part 622 or part 697 of this chapter satisfies the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

\* \* \* \* \*

5. In § 648.9, paragraphs (c)(1)(iii) and (c)(2)(i)(D) are revised to read as follows:

**§ 648.9 VMS requirements.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(iii) At least twice per hour, 24 hr a day, throughout the year, for vessels issued a scallop permit and subject to the requirements of § 648.4(a)(2)(ii)(B).

(2) \* \* \*

(i) \* \* \*

(D) The vessel has been issued a general scallop permit, is not in

possession of any scallops onboard the vessel, is tied to a permanent dock or mooring, the vessel operator has notified NMFS through VMS by transmitting the appropriate VMS power-down code, that the VMS will be powered down, and the vessel is not required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such a vessel must repower the VMS and submit a valid VMS activity declaration prior to moving from the fixed dock or mooring. VMS codes and instructions are available from the Regional Administrator upon request.

\* \* \* \* \*

6. In § 648.10, paragraphs (b)(1)(i); and (b)(2)(i) and (ii), and (c) introductory text are revised; paragraphs (b)(1)(iii) and (iv) are removed and reserved; and paragraphs (b)(4)(i) through (iv) are added as follows:

**§ 648.10 DAS and VMS notification requirements.**

\* \* \* \* \*

(b) \* \* \*  
(1) \* \* \*

(i) A scallop vessel issued a Full-time or Part-time limited access scallop permit or an LAGC scallop permit;

\* \* \* \* \*

(2) \* \* \*

(i) A vessel subject to the VMS requirements of § 648.9 and this paragraph (b) that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the DAS program, the general category scallop fishery, or other fishery requiring the operation of VMS as applicable, unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying NMFS by transmitting the appropriate VMS code through the VMS, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area as described in § 648.85(a)(3)(ii) under the provisions of that program.

(ii) Notification that the vessel is not fishing under the DAS program, the general category scallop fishery, or other fishery requiring the operation of VMS, must be received prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip.

\* \* \* \* \*

(4) \* \* \*

(i) *IFQ scallop vessels.* An IFQ scallop vessel that has crossed the VMS

Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the IFQ program, unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery (i.e., the vessel will not possess, retain, or land scallops) for a specific time period by notifying the Regional Administrator through the VMS. An IFQ scallop vessel that is fishing north of 42°20' N. Lat. is deemed to be fishing under the NGOM scallop fishery unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery as specified in paragraphs (b)(2)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops.

(ii) *NGOM scallop fishery.* An NGOM scallop vessel is deemed to be fishing under the NGOM scallop fishery unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of all fisheries as specified in paragraphs (b)(2)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops.

(iii) *Incidental scallop fishery.* An Incidental scallop vessel that has crossed the demarcation line on any declared fishing trip for any species is deemed to be fishing under the Incidental scallop fishery unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of all fisheries as specified in paragraphs (b)(2)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops.

(iv) *Catch reports.* All scallop vessels fishing in the Sea Scallop Area Access Program as described in § 648.60 are required to submit a daily report through VMS of scallops kept and yellowtail flounder caught (including discarded yellowtail flounder) on each Access Area trip. A vessel issued an IFQ or NGOM scallop permit must report through VMS the amount of scallops kept on each trip declared as a scallop trip or on trips that are not declared through VMS as a scallop trip, but on which scallops are caught incidentally. VMS catch reports by such vessels must be sent prior to crossing the VMS demarcation line on the way into port at the end of the trip and must include the amount of scallop meats to be landed, the estimated time of arrival in port, the port at which the scallops will be landed, and the vessel trip report serial number recorded from that trip's vessel trip report.

(c) *Call-in notification.* The owner of a vessel issued a limited access monkfish or red crab permit who is

participating in a DAS program and who is not required to provide notification using a VMS, and a scallop vessel qualifying for a DAS allocation under the occasional category that has not elected to fish under the VMS notification requirements of paragraph (b) of this section and is not participating in the Sea Scallop Area Access program as specified in § 648.60, and any vessel that may be required by the Regional Administrator to use the call-in program under paragraph (d) of this section, are subject to the following requirements:

\* \* \* \* \*

7. In § 648.14, paragraphs (a)(56), (a)(57), (a)(61), (f), (h)(1), (h)(6), (h)(9), (h)(19), (h)(27), (i), and (s) are revised, and paragraphs (a)(180) and (h)(28) are added to read as follows:

**§ 648.14 Prohibitions.**

(a) \* \* \*

(56) 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) and having declared into the scallop fishery 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;

(57) 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:

(i) In excess of 40 lb (18.14 kg) shucked scallops at any time, 5 bu (1.76 hl) 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:

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

(B) 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) and is properly declared into the IFQ scallop fishery;

(C) The scallops were harvested by a vessel that has been issued and carries on board an NGOM scallop permit issued pursuant to § 648.4(a)(2)(ii)(B), and is properly declared into the NGOM scallop management area, and the NGOM TAC specified in § 648.62 has not been harvested; and/or

(D) The scallops were harvested by a vessel that has been issued and carries on board an Incidental scallop permit allowing up to 40 lb (18.14 kg) of shucked or 5 bu (1.76 hL) of in-shell scallops, is carrying an at-sea observer, and is authorized by the Regional

Administrator to have an increased possession limit to compensate for the cost of carrying the observer.

(ii) In excess of 200 lb (90.72 kg) shucked scallops at any time, 25 bu (25x hl) in-shell scallops inside the VMS Demarcation Line, or 50 bu (17.62 hL) of in-shell scallops seaward of the VMS Demarcation Line, unless:

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

(B) 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;

(C) 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;

(D) 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; and/or

(E) The scallops were harvested by a vessel that has been issued and carries on board an NGOM scallop permit allowing up to 200 lb (90.72 kg) of shucked or 25 bu (25x hL) of in-shell scallops, is carrying an at-sea observer, and is authorized by the Regional Administrator to have an increased possession limit to compensate for the cost of carrying the observer.

(iii) In excess of 400 lb (181.4 kg) shucked scallops at any time, 50 bu (17.6 hl) in-shell scallops shoreward of the VMS Demarcation Line, or 100 bu (35.24 hL) in-shell scallops seaward of the VMS Demarcation Line, unless:

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

(B) 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;

(C) 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;

(D) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit that has also been issued an IFQ scallop

permit, and is properly declared into the IFQ program; and/or

(E) 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 an increased possession limit to compensate for the cost of carrying the observer.

(61) Sell, barter or trade, or otherwise transfer, or attempt to sell, barter or trade, or otherwise transfer, for a commercial purpose, scallops, 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.

(180) Fail to comply with the requirements and restrictions for general category scallop sectors specified in § 648.63.

(f) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a scallop permit under § 648.4(a)(2) to land, or possess at or after landing, in-shell scallops smaller than the minimum shell height specified in § 648.50(a).

(h) \* \* \*

(1) 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 Area Access program pursuant to § 648.10, unless the vessel has been issued an LAGC scallop permit pursuant to § 648.4(a)(2)(ii), has properly declared into a general category scallop fishery, and does not exceed the allowed possession limit for the LAGC scallop permit issued to the vessel as specified in § 648.52, or unless exempted from DAS allocations as provided in § 648.54.

(6) 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).

(9) Possess more than 40 lb (18.14 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.

(19) Fail to comply with any requirement for participating in the State Waters Exemption Program specified in § 648.54.

(27) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(f), outside the boundaries of the Elephant Trunk Access Area specified in § 648.59(e) by a vessel that is properly declared into the Elephant Trunk Access Area under the Area Access Program as specified in § 648.60.

(28) Fish for or land per trip, or possess at any time, scallops in the NGOM scallop management area after notification in the **Federal Register** that 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 unavailable for immediate use.

(i) *LAGC scallop vessels.* (1) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (f), and (g) of this section, it is unlawful for any person owning or operating a vessel issued an LAGC scallop permit to do any of the following:

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

(ii) Fish for, possess, or land scallops on more than one trip per calendar day;

(iii) Possess in-shell scallops while in possession of the maximum allowed amount of shucked scallops specified for each LAGC scallop permit category in § 648.62;

(iv) Fish for, possess, or land scallops on a vessel that is declared out of scallop fishing;

(v) 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;

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

(vii) Refuse, or fail, to carry an observer after being requested to carry an observer by the Regional Administrator;

(viii) Fail to provide an observer with required food, accommodations, access, and assistance, as specified in § 648.11;

(ix) Fail to comply with the notification requirements specified in § 648.11(g)(2) or refuse or fail to carry an observer after being requested to carry an observer by the Regional Administrator or Regional Administrator's designee;

(x) Fail to comply with any of the VMS requirements specified in § 648.10 and 648.60;

(xi) Fail to comply with any requirement for declaring in or out of the general category scallop fishery or other notification requirements specified in § 648.10(b);

(xii) Fail to comply with any of the requirements specified in § 648.60;

(xiii) Declare into or leave port for an area specified in § 648.59(b) through (d) after the effective date of the notification published in the **Federal Register** stating that the general category scallop TAC has been harvested as specified in § 648.60;

(xiv) Declare into or leave port for an area specified in § 648.59(b) through (d) after the effective date of the notification published in the **Federal Register** stating that the number of general category trips have been taken as specified in § 648.60;

(xv) Declare into or leave port for an area specified in § 648.59(b) through (d) after the effective date of the notification published in the **Federal Register** stating that the yellowtail flounder TAC has been harvested as specified in § 648.85(c);

(xvi) Declare into or leave port for the NGOM scallop management area specified in § 648.62 after the effective date of the notification published in the **Federal Register** stating that the general category scallop TAC has been harvested as specified in § 648.62;

(xvii) Fish for, possess, or land scallops in or from the NGOM scallop management area after the effective date of the notification published in the **Federal Register** that 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 unavailable for immediate use;

(xviii) Fail to comply with any of the requirements and restrictions for general category sectors and harvesting cooperatives specified in § 648.63; or

(xix) Fish for, land, or possess scallops at any time after 10 days from being notified that his or her appeal for

an LAGC scallop permit has been denied and that the denial is the final decision of the Department of Commerce.

(2) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (f), and (g) of this section, it is unlawful for any person owning or operating a vessel issued an IFQ scallop permit to do any of the following:

(i) Fish for or land per trip, or possess at any time, in excess of 400 lb (181.4 kg) of shucked, or 50 bu (17.62 hL) of in-shell scallops, unless the vessel is participating in the Area Access Program specified in § 648.60, is carrying an observer as specified in § 648.11, and an increase in the possession limit is authorized as specified in § 648.60(d)(2);

(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 the NGOM scallop management area, unless the vessel is seaward of the VMS Demarcation Line and in possession of no more than 50 bu (17.62 hL) in-shell scallops, when not declared into the NGOM scallop management area, or is transiting the NGOM scallop management area with gear properly stowed and unavailable for immediate use.

(iii) Possess more than 100 bu (35.24 hL) of in-shell scallops seaward of the VMS demarcation line, or possess, or land per trip, more than 50 bu (17.62 hL) of in-shell scallops shoreward of the VMS demarcation line, unless exempted from DAS allocations as provided in § 648.54;

(iv) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(d), outside the boundaries of the Elephant Trunk Access Area specified in § 648.59(e) by a vessel that is properly declared into the Elephant Trunk Access Area under the Area Access Program as specified in § 648.60;

(v) Fish for, possess, or land scallops after the effective date of the notification in the **Federal Register** that the quarterly TAC specified in § 648.53(a)(7) has been harvested;

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

(vii) Have an ownership interest in vessels that collectively is more than 5 percent of the total IFQ scallop TAC specified in accordance with § 648.53(a), except as provided in § 648.4(h)(4);

(viii) Have an IFQ allocation on an IFQ scallop vessel of more than 2 percent of the total IFQ scallop TAC specified in accordance with § 648.53(a), except as provided in § 648.4(h)(4);

(ix) 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 TAC, except as provided in § 648.53(h)(4).

(x) Apply for an IFQ transfer that will result in the receiving vessel having an IFQ allocation in excess of 2 percent of the total IFQ scallop TAC, except as provided in § 648.53(h)(4);

(xi) Fish for, possess, or land transferred IFQ prior to approval of the transfer by the Regional Administrator as specified in § 648.53(h)(4)(ii);

(xii) Provide false information in relation to or on an application for an IFQ transfer required under § 648.53(h)(4);

(xiii) Sub-lease scallop IFQ;

(xiv) Transfer scallop IFQ to another IFQ scallop vessel after the transferring vessel has landed scallops;

(xv) Transfer a portion of a vessel's scallop IFQ; or

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

(3) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (f), and (g) of this section, 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 leave port for a scallop trip, or fish for or possess scallops south of 42°20' N. Lat.;

(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, except when seaward of the VMS Demarcation Line and in possession of no more than 50 bu (17.62 hL) in-shell scallops; or

(iii) Fish for, possess, or land scallops after the effective date of notification in the **Federal Register** that the NGOM scallop management area TAC has been harvested;

(4) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (f), and (g) of this section, 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 (18.14 kg) of shucked scallops, or 5 bu (1.76 hL) of in-shell scallops, except the vessel may possess up to 10 bu (3.52 hL) of in-shell scallops while seaward of the VMS Demarcation Line.

\* \* \* \* \*

(s) Any person fishing for, possessing, or landing scallops at or prior to the time when those scallops are received or

possessed by a dealer, is subject to all of the scallop prohibitions specified in this section, unless the scallops were harvested by a vessel without a scallop permit that fishes for scallops exclusively in state waters.

\* \* \* \* \*

8. In § 648.51, paragraphs (a)(1) and (a)(2)(i) are revised to read as follows:

**§ 648.51 Gear and crew restrictions.**

(a) \* \* \*

(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, as specified in § 648.23, or unless the vessel is fishing under the Northeast multispecies or monkfish DAS programs.

(2) \* \* \*

(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).

\* \* \* \* \*

9. Section 648.52 is revised to read as follows:

**§ 648.52 Possession and landing limits.**

(a) A vessel issued an IFQ scallop permit that is declared into the IFQ scallop fishery as specified in § 648.10(b), unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 400 lb (181.44 kg) of shucked scallops, or possess more than 50 bu (17.62 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may fish for, possess, or land scallops only once in any calendar day. Such a vessel may possess up to 100 bu (35.24 hL) of in-shell scallops seaward of the VMS demarcation line on a properly declared IFQ scallop trip.

(b) A vessel issued an NGOM scallop permit, or an IFQ scallop permit that is declared into the NGOM scallop fishery as described in § 648.62, unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 200 lb (90.7 kg) of shucked, or 25 bu (8.81 hL) of in-shell scallops. Such a vessel may not fish for scallops more than once in any calendar day. Such a vessel may possess up to 50 bu (17.62 hL) of in-shell scallops seaward of the VMS demarcation line on a properly declared NGOM scallop fishery trip.

(c) A vessel issued an Incidental scallop permit, or an IFQ or NGOM scallop permit that is not declared into the IFQ or NGOM scallop fishery as required under § 648.10(b)(4), unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 40 lb (18.14 kg) of shucked, or 5 bu (1.76 hL) of in-shell scallops. Such a vessel may not fish for scallops more than once in any calendar day. Such a vessel may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS demarcation line.

(d) Owners or operators of vessels with a limited access scallop permit that have properly declared into the Sea Scallop Area Access Program as described in § 648.60 are prohibited from fishing for or landing per trip, or possessing at any time, scallops in excess of any sea scallop possession and landing limit set by the Regional Administrator in accordance with § 648.60(a)(5).

(e) Owners or operators of vessels issued limited access permits fishing in or transiting the area south of 42° 20' N. Lat. at any time during a trip are prohibited from fishing for, possessing, or landing per trip more than 50 bu (17.62 hL) of in-shell scallops shoreward of the VMS Demarcation Line, unless when fishing under the state waters exemption specified under § 648.54.

(f) A vessel that is declared into the Elephant Trunk Access Area Sea Scallop Area Access Program as described in § 648.60, may not possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Elephant Trunk Access Area described in § 648.59(e).

10. Section 648.53 is revised to read as follows:

**§ 648.53 Total allowable catch, DAS allocations, and Individual Fishing Quotas.**

(a) *Total allowable catch.* The annual target total allowable catch for the scallop fishery shall be established through the framework adjustment process specified in § 648.55. The annual target total allowable catch shall include the total allowable catch for all scallop vessels fishing in open areas and access areas, but shall exclude the total allowable catch established for the Northern Gulf of Maine Scallop Management Area as specified in § 648.62. After deducting the total estimated incidental catch of scallops by vessels issued incidental catch general category scallop permits, and limited access and limited access general category scallop vessels not declared into the scallop fishery, the annual target total allowable catch for open and access areas shall each be divided

between limited access vessels, limited access vessels that are fishing under a limited access general category permit, and limited access general category vessels as specified in paragraphs (a)(1) through (a)(4) of this section.

(1) *Access area total allowable catch.* The TAC for each access area specified in § 648.59 shall be determined through the framework adjustment process described in § 648.55 and shall be specified in § 648.59 for each access area. The TAC set-asides for observer coverage and research shall be deducted from the TAC in each Access Area prior to assigning the target total allowable catch and trip allocations for limited access scallop vessels, and prior to allocating TAC to limited access general category vessels. The percentage of the TAC for each Access Area allocated to limited access vessels, limited access general category vessels, and limited access vessels fishing under limited access general category permits shall be specified in accordance with § 648.60 through the framework adjustment process specified in § 648.55.

(2) *Open area TAC for limited access vessels.* For the 2008 fishing year, the target total allowable catch for limited access vessels fishing under the scallop DAS program specified in this section shall be equal to 90 percent of the target total allowable catch specified in accordance with paragraph (a) of this section, minus the total allowable catch for all access areas specified in accordance with paragraph (b)(5) of this section. Beginning March 1, 2009, unless the implementation of the IFQ program is delayed beyond March 1, 2009, as specified in paragraph (a)(5) of this section, the target total allowable catch for limited access vessels fishing under the scallop DAS program specified in this section shall be equal to 94.5 percent of the target total allowable catch specified in accordance with paragraph (a) of this section, minus the total allowable catch for all access areas specified in accordance with paragraph (b)(5) of this section. The target total allowable catch for limited access vessels fishing under the DAS program shall be used to determine the DAS allocation for full-time, part-time, and occasional scallop vessels will receive after deducting the DAS set-asides for observer coverage and research.

(3) *Open area TAC for IFQ scallop vessels—(i) 2008 fishing year, and beyond if necessary.* IFQ scallop vessels, and limited access scallop vessels that are fishing under an IFQ scallop permit outside of the scallop DAS and Area Access programs shall be allocated 10 percent of the annual target total

allowable catch specified in accordance with paragraph (a) of this section, minus the total allowable catch for all access areas specified in accordance with paragraph (b)(5) of this section.

(ii) *2009 fishing year and beyond for IFQ scallop vessels without a limited access scallop permit.* The total allowable catch for IFQ scallop vessels without a limited access scallop permit shall be equal to 5 percent of the target total allowable catch specified in accordance with paragraph (a) of this section, minus the total allowable catch for all access areas specified in accordance with paragraph (b)(5) of this section. If the IFQ program implementation is delayed beyond March 1, 2009, as specified in paragraph (a)(5) of this section, the quarterly fleetwide total allowable catch (TAC) specified in paragraph (a)(6) of this section would remain in effect until March 1, 2010, or beyond if necessary.

(iii) *2009 fishing year and beyond for IFQ scallop vessels with a limited access scallop permit.* Limited access scallop vessels that are fishing under an IFQ scallop permit outside of the scallop DAS and Area Access programs shall be allocated 0.5 percent of the annual target total allowable catch specified in accordance with paragraph (a) of this section, minus the total allowable catch for all access areas specified in accordance with paragraph (b)(5) of this section. If the IFQ program implementation is delayed beyond March 1, 2009, as specified in paragraph (a)(5) of this section, the quarterly fleetwide TAC specified in paragraph (a)(6) of this section would remain in effect until March 1, 2010, or beyond if necessary.

(4) *Northern Gulf of Maine Scallop Fishery.* The total allowable catch for the Northern Gulf of Maine Scallop Fishery shall be specified in accordance with § 648.62, through the framework adjustment process specified in § 648.55.

(5) *Delay of the IFQ program.* If the IFQ program implementation is delayed beyond March 1, 2009, as specified in paragraph (a)(5) of this section, the quarterly fleetwide TAC specified in paragraph (a)(6) of this section would remain in effect until March 1, 2010, or a subsequent date, if necessary. The Regional Administrator shall provide notice to all scallop permit holders if the IFQ program is delayed beyond March 1, 2009. If the Regional Administrator determines that the IFQ program cannot be implemented on March 1, 2009, NMFS shall inform all scallop vessel owners that the IFQ program shall not take effect on March 1, 2009, and that the quarterly TACs

specified in paragraph (a)(6) of this section shall remain in effect until March 1, 2010. The Regional Administrator shall inform LAGC scallop vessel owners of a decision to delay the IFQ program no later than January 1, 2009, 2010, or subsequent year, if necessary.

(6) *Distribution of transition period total allowable catch—(i) Allocation.* For the 2008 fishing year, and subsequent fishing years until IFQs are implemented as specified in paragraph (j) of this section, the total allowable catch for IFQ scallop vessels shall be allocated as specified in paragraphs (a)(1) through (4) of this section into quarterly periods. The percentage allocation for each period allocated to the IFQ scallop vessels, including limited access vessels fishing under an IFQ scallop permit and vessels under appeal for a IFQ scallop permit pursuant to § 648.4(a)(2)(ii) shall be specified in the framework adjustment process as specified in § 648.55 and are specified in the following table:

Quarter	Percent	TAC
I. March-May	To Be Determined	To Be Determined
II. June-August	To Be Determined	To Be Determined
III. September-November	To Be Determined	To Be Determined
IV. December-February	To Be Determined	To Be Determined

(ii) *Deductions of landings.* All landings by IFQ scallop vessels and limited access vessels fishing under an IFQ scallop permit shall be deducted from the TAC allocations specified in the table in paragraph (a)(6)(i) of this section.

(b) *DAS allocations.* (1) Total DAS to be used in all areas other than those specified in § 648.59, shall be specified through the framework adjustment process as specified in § 648.55, using the target total allowable catch for open areas specified in paragraph (a) of this section, and estimated catch per unit effort.

(2) Prior to setting the DAS allocations specified in paragraph (b)(4) of this section, 1 percent of total available DAS will be set aside to help defray the cost of observers, as specified in paragraph (h)(1) of this section. Two percent of total available DAS will be set aside to pay for scallop related research, as outlined in paragraph (h)(2) of this section.

(3) *Assignment to DAS categories.* 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).

(4) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(2) (Full-time, Part-time, or Occasional) shall be allocated the maximum number of DAS for each fishing year it may participate in the open area limited access scallop fishery, according to its category. A vessel whose owner/operator has properly declared out of the scallop DAS fishery, pursuant to the provisions of § 648.10, including vessels that have used up their maximum allocated DAS, may leave port without being assessed a DAS, as long as it has made appropriate VMS declaration as specified in § 648.10(b)(4), possesses, fishes for, or retains the amount of scallops allowed by its general category permit, does not possess, fish for, or retain any scallops if the vessel does not have a general category scallop permit, and complies with all other requirements of this part. The annual open area DAS allocations for each category of vessel for the fishing years indicated, after deducting DAS for observer and research DAS set-asides, are as follows:

DAS category	2007	2008
Full-time	51	To Be Determined
Part-time	20	To Be Determined
Occasional	4	To Be Determined

(5) *Additional open area DAS.* If a TAC for yellowtail flounder specified in § 648.85(c) is harvested for an Access Area specified in § 648.59(b) through (d), a scallop vessel with remaining trips in the affected Access Area shall be allocated additional open area DAS according to the calculations specified in paragraphs (b)(5)(i) through (iii) of this section.

(i) For each remaining complete trip in Closed Area I, a vessel may fish an additional 5.5 DAS in open areas during the same fishing year. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). For example, a full-time scallop vessel with two complete trips remaining in Closed Area I would be allocated 11 additional open area DAS ( $2 \times 5.5 = 11$  DAS) if the TAC for yellowtail flounder allocated to the scallop fishery for Closed Area I is harvested in that area. Vessels allocated compensation trips as specified in § 648.60(c) that cannot be made because the yellowtail TAC in Closed Area I allocated to the scallop fishery is

harvested shall be allocated 0.458 additional DAS for each unused DAS in Closed Area I. Unused DAS shall be calculated by dividing the compensation trip possession limit by 1,500 lb (680 kg), (the catch rate per DAS). For example, a vessel with a 10,000-lb (4,536-kg) compensation trip remaining in Closed Area I would be allocated 3.05 additional open area DAS in that same fishing year (0.458 times 10,000 lb (4,536 kg)/1,500 lb (680 kg) per day).

(ii) For each remaining complete trip in Closed Area II, a vessel may fish an additional 5.4 DAS in open areas during the same fishing year. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). For example, a full-time scallop vessel with two complete trips remaining in Closed Area II would be allocated 10.8 additional open area DAS (2 5.4 = 10.8 DAS) if the TAC for yellowtail flounder allocated to the scallop fishery in Closed Area II is harvested in that area. Vessels allocated compensation trips as specified in § 648.60(c) that cannot be made because the yellowtail TAC in Closed Area II allocated to the scallop fishery is harvested shall be allocated 0.450 additional DAS for each unused DAS in Closed Area II. Unused DAS shall be calculated by dividing the compensation trip possession limit by 1,500 lb (680 kg) (the catch rate per DAS). For example, a vessel with a 10,000-lb (4,536-kg) compensation trip remaining in Closed Area II would be allocated 3 additional open area DAS in that same fishing year (0.450 times 10,000 lb (4,536 kg)/1,500 lb (680 kg) per day).

(iii) For each remaining complete trip in the Nantucket Lightship Access Area, a vessel may fish an additional 4.9 DAS in open areas during the same fishing year. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). For example, a full-time scallop vessel with two complete trips remaining in Nantucket Lightship Access Area would be allocated 9.8 additional open area DAS (2 4.9 = 9.8 DAS) if the TAC for yellowtail flounder allocated to the scallop fishery in the Nantucket Lightship Access Area is harvested in that area. Vessels allocated compensation trips as specified in § 648.60(c) that cannot be made because the yellowtail TAC in Nantucket Lightship Access Area allocated to the scallop fishery is harvested shall be allocated 0.408 additional DAS for each unused DAS in the Nantucket Lightship Access Area. Unused DAS shall be

calculated by dividing the compensation trip possession limit by 1,500 lb (680 kg) (the catch rate per DAS). For example, a vessel with a 10,000-lb (4,536-kg) compensation trip remaining in Nantucket Lightship Access Area would be allocated 2.7 additional open area DAS in that same fishing year (0.408 times 10,000 lb (4,536 kg)/1,500 lb (680 kg) per day).

(6) DAS allocations and other management measures are specified for each scallop fishing year, which begins on March 1 and ends on February 28 (or February 29), unless otherwise noted. For example, the 2006 fishing year refers to the period March 1, 2006, through February 28, 2007.

(c) *Adjustments in annual DAS allocations.* Annual DAS allocations shall be established for 2 fishing years through biennial framework adjustments as specified in § 648.55. If a biennial framework action is not undertaken by the Council and implemented by NMFS, the DAS allocations and Access Area trip allocations from the most recent fishing year shall remain in effect for the next fishing year. The Council may also recommend adjustments to DAS allocations through a framework action at any time.

(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)(1)(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 February 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. DAS sanctioned vessels will be credited with unused DAS based on their unused DAS allocation, minus total DAS sanctioned.

(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)(1) of this section, shall be charged at a reduced rate as specified in paragraph (g)(1) of this section.

(f) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend 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.

(g) *DAS set-asides—(1) DAS set-aside for observer coverage.* As specified in paragraph (b)(2) of this section, to help defray the cost of carrying an observer, 1 percent of the total DAS shall be set aside from the total DAS available for allocation, to be used by vessels that are assigned to take an at-sea observer on a trip other than an Area Access Program trip. The DAS set-aside for observer coverage for the 2007 fishing year is 165 DAS. Vessels carrying an observer 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 DAS 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. The number of DAS that are deducted from each trip based on the adjustment factor shall be deducted from the observer DAS set-aside amount in the applicable fishing year. Utilization of the DAS set-aside shall be on a first-come, first-served basis. When the DAS set-aside for observer coverage has been utilized, vessel owners shall be notified that no additional DAS remain available to offset the cost of carrying observers. The obligation to carry and pay for an observer shall not be waived due to the absence of set-aside DAS allocations.

(2) *DAS set-aside for research.* As specified in paragraph (b)(2) of this section, to help support the activities of vessels participating in certain research, as specified in § 648.56; the DAS set-aside for research for the 2007 fishing year is 330 DAS. Vessels participating in approved research shall be authorized to use additional DAS in the applicable fishing year. Notification of allocated additional DAS shall be provided through a letter of authorization, or Exempted Fishing Permit issued by NMFS, or shall be added to a participating vessel's open area DAS allocation, as appropriate.

(h) *Annual Individual fishing quotas—(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 total allowable catch allocated to IFQ scallop vessels, and the total allowable catch allocated to limited access scallop vessels issued IFQ scallop permits, as specified in paragraphs (a)(3)(ii) and (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) *Individual fishing quota.* 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 paragraphs (h)(2)(ii) of this section, multiplied by the TAC allocated to the IFQ scallop fishery, or limited access vessels issued an IFQ scallop permit, as specified in paragraphs (a)(3)(ii) and (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)(1)(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).

(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. If a dealer reported more than 400 lb (181.44 kg) of scallops landed on a trip, only 400 lb (181.44 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 (181.44 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.

(C) *Index to determine contribution factor.* For each eligible IFQ scallop vessel, the best year as determined pursuant to paragraph (a)(2)(ii)(E)(1) of this section shall be multiplied by the

appropriate index factor specified in the following table, based on years active as specified in paragraph (a)(2)(ii)(E)(2) of this section. The resulting contribution factor shall determine its IFQ for each fishing year based on the allocation to general category scallop vessels as specified in § 648.53(a)(2) and the method of calculating the IFQ provided in § 648.53(j).

Years Active	Index Factor
1	0.75.
2	0.875.
3	1.0.
4	1.125.
5	1.25.

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

(iii) *Contribution percentage.* A vessel's contribution percentage will be determined by dividing its contribution factor by the sum of the contribution factors of all vessels issued an IFQ scallop permit. The sum of the contribution factors shall be determined when all IFQ scallop vessels are identified. 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).

(iv) *Vessel IFQ Example.* Continuing the example in paragraphs (h)(1)(ii)(D) and (h)(1)(iii) of this section, with a TAC 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)).

(3) *IFQ ownership restrictions—(i) IFQ scallop vessel IFQ cap.* A vessel issued an IFQ scallop permit or confirmation of permit history shall not be issued more than 2 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section.

(ii) *IFQ ownership cap.* An owner of more than one IFQ scallop vessel may not have an aggregate ownership interest in more than 5 percent of the TAC allocated to all IFQ scallop vessels and may not be issued an IFQ scallop permit for a vessel that would result in the individual owning more than 5 percent of the TAC allocated to IFQ scallop vessels. A confirmation of

permit history shall be counted toward an individual's ownership. Vessel owners that were initially issued an IFQ scallop permit or were issued or renewed an IFQ scallop permit for a vessel in any fishing year following the 2008 fishing year, in compliance with this 5 percent ownership restriction, is eligible to renew the IFQ scallop permit for his or her vessel regardless of whether the renewal of the permit(s) will result in the 5-percent IFQ ownership cap being exceeded.

(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.* The owner of a vessel issued an IFQ scallop permit and subject to the IFQ program specified in paragraph (h) of this section must pay a portion of the proceeds from scallop fishing to NMFS to help NMFS recover up to 3 percent of the cost of administering and enforcing the IFQ program. The specific cost recovery provisions shall be specified in the first framework implementing the specifications for the IFQ program, including the overall total allowable catch and eligible vessels' IFQs. Payment of cost recovery funds shall be through electronic means unless otherwise notified by the Regional Administrator.

(5) *Transferring IFQ—(i) Temporary IFQ transfers.* Unless otherwise restricted in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel may temporarily transfer one or more entire IFQ from another IFQ scallop vessel. Temporary IFQ transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed. The Regional Administrator has final approval authority for all temporary IFQ transfer requests.

(ii) *Permanent IFQ transfers.* Unless otherwise restricted in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel may transfer one or more entire IFQ indefinitely from another IFQ scallop vessel. The Regional Administrator has final approval authority for all IFQ transfer requests.

(iii) *IFQ transfer restrictions.* The owner of an IFQ scallop vessel may transfer entire IFQ allocations only. The owner of an IFQ scallop vessel that has fished under its IFQ may not transfer

that vessel's IFQ to another IFQ scallop vessel. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2 percent of the total allowable catch allocated to IFQ scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not transfer or receive IFQ from another IFQ scallop vessel. A vessel permanently transferring its IFQ to another vessel must transfer all of its Federal limited access permits for which it is eligible to the transferee vessel in accordance with the vessel replacement restrictions under § 648.4, or permanently cancel such permits.

(iv) *Application for an IFQ transfer.* The owner of vessels applying for a transfer 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, provided the vessel transferring the IFQ to another vessel has not utilized any of its own IFQ. Applications for temporary transfers received 45 days prior to the end of the fishing year may not be processed in time for a vessel to utilize the transferred IFQ prior to the expiration of the fishing year for which the IFQ transfer, if approved, would be effective.

(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. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery. If applicable, an application for a permanent IFQ transfer must be accompanied by verification, in writing, that the transferor either has requested cancellation of all limited access Federal fishing permits, or has applied for a transfer of all of its limited access permits in accordance with the vessel replacement restrictions under § 648.4.

(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 45 days of receipt of an application.

(C) *Denial of lease or transfer application.* The Regional Administrator may reject an application to transfer IFQ for 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 an enforcement proceeding; the transferor's or transferee's vessel is prohibited from fishing; the transfer will result in the transferee's vessel having an allocation that exceeds 2 percent of the total allowable catch allocated to IFQ scallop vessels; the transfer will result in the transferee having ownership of general category scallop allocation that exceeds 5 percent of the total allowable catch allocated to IFQ scallop vessels; or any other failure to meet the requirements of this subpart. 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.

11. In § 648.54, paragraphs (b), (c)(3) and (f) are revised to read as follows:

**§ 648.54 State waters exemption.**

\* \* \* \* \*

(b) LAGC scallop vessel gear and possession limit restrictions. Any vessel issued an LAGC scallop permit is exempt from the gear restrictions specified in § 648.51(a), (b), (e)(1), and (e)(2), and the applicable possession limits specified in § 648.52, while fishing exclusively landward of the outer boundary of the waters of a state that has been issued a state waters exemption, provided the vessel complies with paragraphs (d) through (g) of this section.

\* \* \* \* \*

(c) \* \* \*

(3) Prior to Amendment 11 to the FMP, which became effective [date 30 days from publication of the Final Rule in the Federal Register], Maine, New Hampshire, and Massachusetts were determined by the Regional Administrator to have scallop fisheries and scallop conservation programs that do not jeopardize the biomass and

fishing mortality/effort limit objectives of the FMP. States must resubmit information describing their scallop fishery conservation programs so that the Regional Administrator can determine if such states continue to have scallop fisheries and scallop conservation programs that do not jeopardize the biomass and fishing mortality/effort limit objectives of the FMP. In addition, these states must immediately notify the Regional Administrator of any changes in their respective scallop conservation program. The Regional Administrator shall review these changes and, if a determination is made that the state's conservation program jeopardizes the biomass and fishing mortality/effort limit objectives of the FMP, or that the state no longer has a scallop fishery, the Regional Administrator shall publish a rule in the **Federal Register**, in accordance with the Administrative Procedure Act, amending this paragraph (c)(3) to eliminate the exemption for that state. The Regional Administrator may determine that other states have scallop fisheries and scallop conservation programs that do not jeopardize the biomass and fishing mortality/effort limit objectives of the FMP. In such case, the Regional Administrator shall publish a rule in the **Federal Register**, in accordance with the Administrative Procedure Act, amending this paragraph (c)(3) to provide the exemption for such states.

\* \* \* \* \*

(f) *Duration of exemption.* An exemption expires upon a change in the vessel's name or ownership, or upon notification through VMS by the participating vessel's owner.

\* \* \* \* \*

12. In § 648.55, paragraphs (a) and (e) are revised to read as follows:

**§ 648.55 Framework adjustments to management measures.**

(a) Biennially, or upon a request from the Council, the Regional Administrator shall provide the Council with information on the status of the scallop resource. Within 60 days of receipt of that information, the Council PDT shall assess the condition of the scallop resource to determine the adequacy of the management measures to achieve the stock-rebuilding objectives. Based on this information, the PDT shall prepare a Stock Assessment and Fishery Evaluation (SAFE) Report that provides the information and analysis needed to evaluate potential management adjustments. Based on this information and analysis, the Council shall initiate a framework adjustment to establish or revise total allowable catch, DAS

allocations, rotational area management programs, percentage allocations for limited access general category vessels in Sea Scallop Access Areas, scallop possession limits, or other measures to achieve FMP objectives and limit fishing mortality. The Council's development of an area rotation program shall take into account at least the following factors: General rotation policy; boundaries and distribution of rotational closures; number of closures; minimum closure size; maximum closure extent; enforceability of rotational closed and re-opened areas; monitoring through resource surveys; and re-opening criteria. Rotational Closures should be considered where projected annual change in scallop biomass is greater than 30 percent. Areas should be considered for Sea Scallop Access Areas where the projected annual change in scallop biomass is less than 15 percent.

\* \* \* \* \*

(e) After considering the PDT's findings and recommendations, or at any other time, if the Council determines that adjustments to, or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings. To address interactions between the scallop fishery and sea turtles and other protected species, such adjustments may include proactive measures including, but not limited to, the timing of Sea Scallop Access Area openings, seasonal closures, gear modifications, increased observer coverage, and additional research. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must include measures to prevent over fishing of the available biomass of scallops and ensure that OY is achieved on a continuing basis, and must come from one or more of the following categories:

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

(13) VMS Demarcation Line for DAS monitoring;

(14) DAS allocations by gear type;

(15) Temporary leasing of scallop DAS requiring full public hearings;

(16) Scallop size restrictions, except a minimum size or weight of individual scallop meats in the catch;

(17) Aquaculture enhancement measures and closures;

(18) Closed areas to increase the size of scallops caught;

(19) Modifications to the opening dates of closed areas;

(20) Size and configuration of rotation management areas;

(21) Controlled access seasons to minimize bycatch and maximize yield;

(22) Area-specific trip allocations;

(23) TAC specifications and seasons following re-opening;

(24) Limits on number of area closures;

(25) TAC or DAS set-asides for funding research;

(26) Priorities for scallop-related research that is funded by a TAC or DAS set-aside;

(27) Finfish TACs for controlled access areas;

(28) Finfish possession limits;

(29) Sea sampling frequency;

(30) Area-specific gear limits and specifications;

(31) Modifications to provisions associated with observer set-asides; observer coverage; observer deployment; observer service provider; and/or the observer certification regulations;

(32) Specifications for IFQs for limited access general category vessels;

(33) Revisions to the cost recovery program for IFQs;

(34) Development of general category fishing industry sectors and fishing cooperatives;

(35) Adjustments to the Northern Gulf of Maine scallop fishery measures;

(36) VMS requirements; and

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

\* \* \* \* \*

13. Section 648.57 is revised to read as follows:

**§ 648.57 Sea scallop area rotation program.**

An area rotation program is established for the scallop fishery, which may include areas closed to scallop fishing defined in § 648.58, and/or Sea Scallop Access Areas defined in § 648.59, subject to the Sea Scallop Access program requirements specified in § 648.60. Areas not defined as Rotational Closed Areas, Sea Scallop Access Areas, EFH Closed Areas, or areas closed to scallop fishing under other FMPs, are open to scallop fishing

as governed by the other management measures and restrictions in this part.

The Council's development of area rotation programs is subject to the framework adjustment process specified in § 648.55, including the Area Rotation Program factors included in § 648.55(a). The percentage of the total allowable catch for each Sea Scallop Access Area that is allocated to limited access scallop vessels and limited access general category scallop vessels shall be specified in § 648.59 through the framework adjustment process specified in § 648.55.

14. In § 648.59, paragraphs (b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(6)(ii) are revised to read as follows:

**§ 648.59 Sea Scallop Access Areas.**

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(ii) *LAGC scallop vessels.* (A) The percentage of the Closed Area I total allowable catch allocated to LAGC scallop vessels shall be specified in this paragraph (b)(5)(ii) through the framework adjustment process. The resulting total allowable catch allocated to LAGC scallop vessels shall be specified in this paragraph (b)(5)(ii) and shall determine the number of trips specified in paragraph (b)(5)(ii)(B) of this section.

(B) Except as provided in paragraph (b)(5)(ii)(C) of this section, subject to the possession limit specified in §§ 648.52(a) and (b), and 648.60(g), and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, an LAGC scallop vessel may not enter in, or fish for, possess, or land sea scallops in or from the Closed Area I Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), the date on which 216 trips are projected to be taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2007 fishing year.

(C) A vessel issued a NE Multispecies permit and a LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (b)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(c) \* \* \*

(5) \* \* \*

(ii) *LAGC scallop vessels*—(A) The percentage of the Closed Area II total allowable catch allocated to LAGC scallop vessels shall be specified in this paragraph (c)(5)(ii) through the framework adjustment process. The resulting total allowable catch allocated to LAGC scallop vessels shall be specified in this paragraph (c)(5)(ii) and shall determine the number of trips specified in paragraph (c)(5)(ii)(B) of this section.

(B) Except as provided in paragraph (c)(5)(ii)(C) of this section, subject to the possession limits specified in §§ 648.52(a) and (b), and 648.60(g), and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, an LAGC scallop vessel may not enter in, or fish for, possess, or land sea scallops in or from the Closed Area II Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), of the date on which the total number of trips is projected to be taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken.

(C) A vessel issued a NE Multispecies permit and an LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (c)(5)(ii)(A) of this section provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(d) \* \* \*

(5) \* \* \*

(ii) *LAGC scallop vessels*. (A) The percentage of the Nantucket Lightship Access Area total allowable catch allocated to LAGC scallop vessels shall be specified in this paragraph (d)(5)(ii) through the framework adjustment process. The resulting total allowable catch allocated to LAGC scallop vessels shall be specified in this paragraph (d)(5)(ii) and shall determine the number of trips specified in paragraph (d)(5)(ii)(B) of this section.

(B) Except as provided in paragraph (d)(5)(ii)(C) of this section, subject to the possession limits specified in §§ 648.52(a) and (b), and 648.60(g), an LAGC scallop vessel may not enter in, or fish for, possess, or land sea scallops in or from the Nantucket Lightship Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance

with § 648.60(g)(4), of the date on which 394 trips are projected to be taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2007 fishing year.

(C) A vessel issued a NE Multispecies permit and an LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (d)(5)(ii)(A) of this section provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(e) \* \* \*

(6) \* \* \*

(ii) *LAGC scallop vessels*. (A) The percentage of the Elephant Trunk Access Area total allowable catch allocated to LAGC scallop vessels shall be specified in this paragraph (e)(6)(ii) through the framework adjustment process. The resulting total allowable catch allocated to limited access general category vessels shall be specified in this paragraph (e)(6)(ii) and shall determine the number of trips specified in paragraph (e)(6)(ii)(B) of this section.

(B) Subject to the possession limits specified in §§ 648.52(a) and (b), and 648.60(g), an LAGC scallop vessel may not enter in, or fish for, possess, or land sea scallops in or from the Elephant Trunk Sea Scallop Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), of the date on which 865 trips allocated March 1, 2007, are projected to be taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken.

\* \* \* \* \*

15. In § 648.60, paragraph (a) introductory text, paragraphs (g)(1) and (2), and paragraph (g)(3) introductory text are revised to read as follows:

**§ 648.60 Sea scallop area access program requirements.**

(a) A limited access scallop vessel may only fish in the Sea Scallop Access Areas specified in § 648.59, subject to the seasonal restrictions specified in § 648.59, when fishing under a scallop DAS, provided the vessel complies with the requirements specified in paragraphs (a)(1) through (a)(9), and (b)

through (f) of this section. An LAGC scallop vessel may fish in the Sea Scallop Access Areas specified in § 648.59, subject to the seasonal restrictions specified in § 648.59, provided the vessel complies with the requirements specified in paragraph (g) of this section.

\* \* \* \* \*

(g) \* \* \*

(1) An LAGC scallop vessel, except a vessel issued a NE Multispecies permit and an LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS that has not enrolled in the LAGC Access Area fishery, may only fish in the Closed Area I, Closed Area II, and Nantucket Lightship Sea Scallop Access Areas specified in § 648.59(b) through (d), subject to the seasonal restrictions specified in § 648.59(b)(4), (c)(4), and (d)(4), and subject to the possession limit specified in § 648.52(a), and provided the vessel complies with the requirements specified in paragraphs (a)(1), (a)(2), (a)(6) through (a)(9), (d), (e), (f), and (g) of this section, and § 648.85(c)(3)(ii). A vessel issued a NE Multispecies permit and an LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS that has not enrolled in the Sea Scallop Area Access program as specified in paragraph (a)(2) of this section is not subject to the restrictions and requirements specified in § 648.59(b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and this paragraph (g), and may not fish for, possess, or land scallops on such trips.

(2) *Gear restrictions*. An LAGC scallop vessel authorized to fish in the Access Areas specified in § 648.59(b) through (d) must fish with dredge gear only. The combined dredge width in use by, or in possession on board, LAGC scallop vessels fishing in the Access Areas described in § 648.59(b) through (d) may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(3) *Scallop TAC*. An LAGC scallop vessel authorized to fish in the Access Areas specified in § 648.59(b) through (e) may land scallops, subject to the possession limit specified in § 648.52(a), unless the Regional Administrator has issued a notice that the scallop TAC specified in § 648.59(b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii) in the Access Area has been or is projected to be harvested. Upon a determination from the Regional Administrator that the scallop TAC for a specified Access Area, as specified in this paragraph (g)(3), has been, or is projected to be harvested, the Regional Administrator shall publish notification of this determination in the

**Federal Register**, in accordance with the Administrative Procedure Act.

\* \* \* \* \*

16. Section 648.62 is added to read as follows:

**§ 648.62 Northern Gulf of Maine (NGOM) scallop management area.**

(a) The NGOM scallop management area is the area north of 42° 20' N. Lat. To fish for or possess scallops in the NGOM scallop management area, a vessel must be 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 all vessels issued LAGC scallop permits, including IFQ scallop permits, and fishing in the NGOM scallop management area shall be deducted from the NGOM scallop total allowable catch specified in paragraph (b) of this section. Scallop landings by an IFQ scallop vessels and fishing in the NGOM scallop management area shall be deducted from their respective scallop IFQ. Landings by limited access scallop vessels fishing under the scallop DAS program shall not be deducted from the NGOM total allowable catch specified in paragraph (b) of this section.

(3) A vessel issued a NGOM or IFQ scallop permit that fishes in the NGOM may fish for, possess, or retain up to 200 lb (90.72 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops, and may possess up to 50 bu (17.62 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.

(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 total allowable catch and allocations as specified 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 total allowable catch and allocations specified in § 648.53(a).

(1) *NGOM total allowable catch.* To be determined.

(2) Unless a vessel has fished for scallops outside of the NGOM scallop management area and is transiting the area north of 42° 20' N. Lat. with all fishing gear stowed in accordance with § 648.23(b), no vessel issued a scallop permit pursuant to § 648.4(a)(2) may possess, retain, or land scallops in the NGOM scallop management area once the Regional Administrator has provided notification in the **Federal Register** that the NGOM scallop total allowable catch in accordance with this paragraph (b) has been reached. 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.

(c) *VMS requirements.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have declared a trip under the scallop DAS program, a vessel issued a scallop permit pursuant to § 648.4(a)(2) that intend 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.

(d) *Gear restrictions.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have properly declared a trip under the scallop DAS 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.

17. Section 648.63 is added to read as follows:

**§ 648.63 General category sectors and harvesting cooperatives.**

(a) *Procedure for implementing Sector allocation proposals.* (1) Any person may submit a Sector allocation proposal for a group of LAGC scallop vessels to the Council, at least 1 year in advance of the start of the proposed sector, and request that the Sector be implemented through a framework procedure specified at § 648.55, in accordance with the conditions and restrictions of this section.

(2) Upon receipt of a Sector allocation proposal, the Council must decide whether to initiate such framework. Should a framework adjustment to authorize a Sector allocation proposal

be initiated, the Council shall follow the framework adjustment provisions of § 648.55. Any framework adjustment developed to implement a Sector allocation proposal must be in compliance with the general requirements specified in paragraphs (b) and (c) of this section. Vessels that do not join a Sector would remain subject to the LAGC scallop vessel regulations for non-Sector vessels specified under this part.

(b) *General requirements applicable to all Sector allocations.* All Sectors approved under the provisions of paragraph (a) of this section must submit the documents specified under paragraphs (a)(1), and (c) of this section, and comply with the conditions and restrictions of this paragraph (b).

(1) *Participation.* (i) Only LAGC scallop vessels are eligible to form Sectors and Sectors may choose which eligible permit holders to include or exclude in the sector, consistent with all applicable law. A Sector may establish additional criteria for determining its membership, provided such criteria are specified in the operations plan and are consistent with all applicable law. Any interested group that meets the eligibility criteria may submit a proposal for a sector. To initiate the process of sector creation, a group (two or more) of permit holders must agree to cooperate and submit a binding plan for management of that sector's allocation of total allowable catch. Vessels that do not choose to participate in a sector will fish under the IFQ program and remain in the non-sector scallop fishery.

(ii) Participation by incidental catch or NGOM scallop vessels in the Sector is subject to approval by the New England Fishery Management Council as part of the action that implements the Sector allocation, provided the details of such participation are specified in the Sector's operations plan. A Sector allocation may be harvested by non-Sector members, provided the Sector operations plan specifies that the Sector may authorize non-Sector vessels to harvest the Sector allocation. In this case, if the Sector is approved, the landings history of the participating non-Sector vessels may not be used in the calculation of future Sector shares and may not be used as scallop catch history for such vessels. The operations plan must specify how such participating non-Sector shall be subject to the rules of the Sector.

(iii) Once a vessel operator and/or vessel owner signs a binding contract to have his/her vessel participate in a Sector, that vessel must remain in the Sector for the remainder of the fishing year.

(iv) Vessels that fish in the LAGC scallop fishery outside the Sector allocation in a given fishing year may not participate in a Sector during that same fishing year, unless the Operations Plan provides an acceptable method for accounting for IFQ used, or catch by the vessel, prior to implementation of the Sector.

(v) Once a vessel operator and/or vessel owner has agreed to participate in a Sector as specified in paragraph (b)(1)(iii) of this section, that vessel must remain in the Sector for the entire fishing year. If a permit is transferred by a Sector participant during the fishing year, the new owner must also comply with the Sector regulations for the remainder of the fishing year.

(vi) Vessels and vessel operators and/or vessel owners removed from a Sector for violation of the Sector rules will not be eligible to fish under the scallop regulations for non-Sector vessels specified under this part either for any period specified in the final decision of penalty or sanction.

(vii) If a pre-existing Sector accepts a new member, the percentage share brought to the Sector is based on that vessel's average qualification landings at the time it joins the Sector (i.e., the vessel is treated as a 'Sector of one' and a share based on the appropriate adjusted TACs is calculated). This new single-vessel-Sector share is added to the existing Sector. If a vessel leaves a Sector, that Sector's share is reduced by the individual vessel share the exiting vessel had when it joined the Sector.

(viii) A vessel may not be a member of more than one Sector. Once a vessel enters into a Sector, it cannot fish during that fishing year under the regulations that apply to the common pool. Additionally, vessels cannot shift from one Sector to another during a single fishing year. Therefore, if a vessel leaves a Sector for any reason, it cannot participate in the general category scallop fishery during the remainder of that fishing year.

(2) *Allocation of TAC to Sectors.* (i) The Sector allocation shall be equal to a percentage share of the TAC allocation for IFQ scallop vessels specified in § 648.53(a), similar to a IFQ scallop vessel's IFQ as specified in § 648.53(h). The Sector's percentage share of the IFQ scallop fishery TAC catch shall not change, but the amount of allocation based on the percentage share will change based on the TAC specified in § 648.53(a).

(ii) *Sector share determination.* When a Sector proposal is submitted, NMFS shall verify the contribution percentage as specified in § 648.53(h)(3) for each vessel listed as a Sector member. The

Sector's share shall be the sum of the participating vessels' contribution percentages.

(iii) A Sector shall not be allocated more than 20 percent of the TAC for IFQ vessels specified in § 648.53(a).

(3) Once a Sector's allocation is projected to be harvested, Sector operations will be terminated for the remainder of the fishing year.

(4) If a Sector's allocation is exceeded in a given fishing year, the Sector, each vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanction pursuant to 15 CFR part 904. If a Sector exceeds its allocation in more than one fishing year, the Sector's authorization to operate may be withdrawn.

(5) A vessel operator and/or vessel owner participating in a Sector is not subject to the limit on the vessel's catch based on the vessel's own IFQ or contribution percentage as defined in § 648.53(h), provided the vessel is participating in the Sector and carries on board a Letter of Authorization to participate in the Sector. The Sector shall determine how the Sector's allocation will be divided between its participating vessels, regardless of whether the catch by a participating vessel exceeds that vessel's own IFQ.

(6) Each vessel operator and/or vessel owner fishing under an approved Sector must comply with all scallop management measures of this part and other applicable law, except the vessel's own IFQ as specified in paragraph (b)(11) of this section. Each vessel and vessel operator and/or vessel owner participating in a Sector must also comply with all applicable requirements and conditions of the Operations Plan specified in paragraph (c) of this section and the Letter of Authorization issued pursuant to paragraph (b)(11) of this section. It shall be unlawful to violate any such conditions and requirements and each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904.

(7) Approved Sectors must submit an annual year-end report to NMFS and the Council, within 60 days of the end of the fishing year, that summarizes the fishing activities of its members, including harvest levels of all federally managed species by Sector vessels, enforcement actions, and other relevant information required to evaluate the performance of the Sector.

(8) It shall be the responsibility of each Sector to track its activity and internally enforce any provisions

adopted through procedures established in the operations plan and agreed to through the Sector contract. Sector contracts should describe graduated sanctions including grounds for expulsion of Sector member vessels. A Sector is a legal entity, and participating Sector vessels shall be subject to NMFS enforcement action for violations of the regulations pertaining to Sectors and other regulations under 50 CFR part 648. Vessels operating within a Sector are responsible for judgments against the Sector. Sector operations plans shall specify how a Sector will monitor its landings to assure that Sector landings do not exceed the Sector allocation. At the end of the fishing year, NMFS will evaluate landings using VMS, and any other available information to determine whether a Sector has exceeded any of its allocations based on the list of participating vessels submitted in the operations plan. If a Sector exceeds its TAC, the Sector may be subject to enforcement action and may have its authorization as a Sector be withdrawn by the Regional Administrator, after consultation with the New England Fishery Management Council.

(9) Permanent or temporary transfers of allocation between Sectors or between Sector and non-Sector participants is prohibited. For purposes of harvesting a Sector allocation only, vessels under contract to a Sector are assumed to be part of that Sector for the duration of that contract.

(10) The Sector allocation proposal must contain an appropriate analysis that assesses the impact of the proposed Sector, in compliance with the National Environmental Policy Act.

(11) If a Sector is approved as specified in paragraph (d)(3) of this section, the Regional Administrator shall issue a Letter of Authorization to each vessel operator and/or owner for the participating Sector vessel. The Letter of Authorization shall authorize participation in the Sector operations and shall exempt the participating vessel from the requirement that the vessel cannot exceed its own IFQ. The Letter of authorization may include requirements and conditions deemed necessary to ensure effective administration of and compliance with the Sector's operations plan and the Sector's allocation.

(c) *Operations plans.* (1) A group that wants to form a Sector and receive an allocation must submit a legally binding operations plan to the Council and the Regional Administrator. The operations plan must be agreed upon and signed by all members of the Sector and, if approved, shall constitute a contract.

(2) The operations plan among all of the Sector members must have, at a minimum, the following components:

- (A) A list of all participants;
- (B) A contract signed by all participants indicating their agreement to abide by the operations plan;
- (C) An entity name, address, phone number, and the name and contact information for a Sector representative (a manager or director) that NMFS can contact regarding Sector management issues;
- (D) A plan explaining how the Sector will harvest its allocation, including methods to inform NMFS of changes in those arrangements over the year;
- (E) The original distribution of catch history of vessels in the Sector (maintaining vessel data confidentiality);
- (F) A plan detailing how the Sector will avoid exceeding its allocated TACs, including provisions for monitoring and enforcement of the Sector regulations, and documenting all landings and discards;
- (G) Rules for entry to and exit from the Sector, including sanctions and procedures for removing members who do not comply with the operations plan;
- (H) Procedure for notifying NMFS if a member is no longer part of the Sector and the reason for leaving;

(I) The process through which the operations plan can be amended by Sector members;

(J) If the Sector plans to authorize non-Sector vessels to harvest scallops allocated to the Sector, details of such arrangements must be described in the operations plan;

(K) Any documents and analyses necessary to comply with the National Environmental Protection Act must be submitted to NMFS. The development of the analytical document is the responsibility of the applicants.

(d) *Sector review, approval, and revocation.* (1) A Sector shall submit its operations plan and any NEPA documents to the Regional Administrator and the New England Fishery Management Council no less than 1 year prior to the date that it wishes to begin operations under the Sector. The New England Fishery Management Council shall consider this plan in the course of the periodic framework adjustment or specification process and may, if approved, implement it through either of those processes. After New England Fishery Management Council approval of a Sector, the details of its operation shall be addressed between the Sector and NMFS, although the New England Fishery Management Council may

review and provide comment on the proposed details.

(2) The Regional Administrator may withdraw approval of a Sector at any time if he/she, in consultation with the New England Fishery Management Council, determines that Sector participants are not complying with the requirements of an approved operations plan or that the continuation of the operations plan will undermine achievement of fishing mortality objectives of the FMP. Withdrawal of approval of a Sector shall be completed after notice and comment rulemaking, pursuant to the Administrative Procedure Act.

(3) A Sector is required to resubmit its operations plan to the Regional Director no later than December 1 of each year, whether or not the plan has changed. NMFS may consult with the Council and will solicit public comment on the operations plan for at least 15 days, through proposed rulemaking in the **Federal Register**. Upon review of the public comments, the Regional Administrator may approve or disapprove Sector operations, through a final determination pursuant to the Administrative Procedure Act.

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