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

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 071130780–8013–02]

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: Final rule.

SUMMARY: NMFS is implementing approved measures contained in Amendment 11 to the Atlantic Sea Scallop Fishery Management Plan (FMP), developed by the New England Fishery Management Council (Council). Amendment 11 was developed by the Council to control the capacity of the open access general category fleet. Amendment 11 establishes a new management program for the general category scallop 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: Effective June 1, 2008.

ADDRESSES: A final supplemental environmental impact statement (FSEIS) was prepared for Amendment 11 that describes the action and other considered alternatives and provides a thorough analysis of the impacts of the approved measures and alternatives. Copies of Amendment 11 and the FSEIS 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.nero.noaa.gov/nero/hotnews/scallamend11/.*

Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this final rule should be submitted to the Regional Administrator at 1 Blackburn Drive, Gloucester, MA 01930, and by e-mail to *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

Prior to the implementation of Amendment 11, the general category scallop fishery was an open access fishery allowing any vessel to fish for up to 400 lb (181.4 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 that applied to the large-scale scallop fishery. Over time, 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, 181 general category vessels landed scallops, while in 2005 more than 600 did.

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 be published to notify the public that the Council was considering limiting entry to the general category scallop fishery as of a specified control date. NMFS subsequently established the control date of November 1, 2004 (69 FR 63341). 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 public meetings 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. Amendment 11 was adopted by the Council on June 20, 2007. The Notice of Availability (NOA) for Amendment 11 was published on November 30, 2007, (72 FR 67691) with a comment period ending on January 29, 2008. A proposed rule for Amendment 11 was published on December 17, 2007 (72 FR 71315), with a comment period ending on January 31, 2008. On February 27, 2008, NMFS approved Amendment 11 on behalf of the Secretary of Commerce.

Amendment 11 establishes criteria and authority for determining the percentage of scallop catch allocated to the general category fleet, and establishes the IFQ program. However, these specific allocation amounts have been 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.

Approved Measures

In a comment letter on the proposed rule, the Council suggested interpretations of the Council's intent regarding some of the measures and regulations. NMFS has accepted some of the Council's interpretations and clarifications which are reflected in the descriptions of the management measures and in the regulatory text in this final rule. Responses to comments identify whether NMFS agreed or disagreed with the Council's recommendations. Changes in the descriptions of the management measures from the proposed rule's descriptions are noted below. Changes in the regulatory text from the proposed rule are noted under ''Changes from Proposed Rule to Final Rule'' in the preamble of this final rule.

The FSEIS for Amendment 11 included a description of each of the measures approved by the Council, but the description of the measures lack the regulatory detail necessary to ensure effective implementation and administration of the approved management measures. Under its authority granted by section 305(d) of the Magnuson-Stevens Act (16 U.S.C. § 1855(d)), NMFS added regulatory provisions in the proposed rule and in this final rule to ensure that the regulations are sufficiently detailed to ensure effective implementation, administration, and enforcement of the approved measures. While most of the measures described below required such additional regulatory detail, the most prominent regulatory additions appear in the limited access permit program, IFQ transfers, transition to IFQ, and Sector provisions.

Limited Access Program for the General Category Fishery

Amendment 11 requires 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 are 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) are 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 is eligible to be issued an IFQ scallop permit if NMFS records verify that the vessel landed at least 1,000 lb (454 kg) of scallop meats in any fishing year between March 1, 2000, and November 1, 2004, and a general category scallop permit had been issued 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 can instead choose to apply for and be issued an NGOM or Incidental scallop permit. These permits have the same qualification requirement but have different restrictions. A vessel owner might choose the NGOM scallop permit if he or she wanted to land up to 200 lb (90.7 kg) per trip and fish exclusively within the most Northern portion of the scallop resource. A vessel owner might choose the Incidental scallop permit if he or she wants to retain up to 40 lb (18.1 kg) of scallops per trip while fishing for other species.

A vessel qualifies for the NGOM or Incidental scallop permit if it was issued a valid general category scallop permit as of November 1, 2004. There are no landings eligibility criteria. The NGOM scallop permit allows the vessel to fish in the NGOM exclusively, defined as the waters north of 42°20′ N. lat. and within the Gulf of Maine Scallop Dredge Exemption Area as defined in § 648.80(a)(11), and are subject to additional restrictions outlined in the description of the NGOM Scallop Management Area below. The Incidental scallop permit allows a vessel to possess and land up to 40 lb (18.1 kg) of scallops per trip in all areas and is intended to allow landing of incidental scallop catch. The Council also indicated in its description of this measure that some vessels that qualify for an IFQ scallop permit may opt for the Incidental scallop permit because it allows vessels to land an incidental catch of scallops on an unlimited number of trips. In response to the proposed rule, the Council commented that a vessel that qualifies for an IFQ permit, but for which the owner elects to be issued an NGOM or Incidental scallop permit, automatically qualifies for an NGOM scallop permit. This clarification was necessary because a vessel that qualifies for an IFQ scallop permit would not necessarily meet the requirement that it held a general category scallop permit as of November 1, 2004 (*i.e.*, it could have been issued a general category only in 1 year prior to the 2004 fishing year). However, the Council intended that the NGOM and Incidental Catch scallop permits have more liberal qualification requirements, allowing a qualified IFQ scallop vessel to choose the other permit category.

Initial Application for a LAGC Scallop Permit

A vessel owner is required to submit an initial application for a LAGC scallop permit or confirmation of permit history (CPH) 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 establishes measures to govern future transactions related to limited access vessels, such as purchases, sales, or reconstruction. These measures apply to all LAGC scallop vessels. The Council clarified that this was the Council's intent. Except as noted, the provisions in Amendment 11 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 must be established during the first year after the implementation of Amendment 11. A vessel owner is required to submit an application for an LAGC scallop permit or CPH no later than 90 days from effective date of this final rule.

2. Landings History

Amendment 11 specifies landings and permit history criteria that a vessel must meet to qualify for LAGC permits. It also specifies that an IFQ scallop vessel will be allocated IFQ based on its best year of scallop landings and the number of fishing years it was active during the qualification period of March 1, 2000, through November 1, 2004. Amendment 11 specifies that qualifying landings must be from the same scallop fishing year (March 1 through February 28/29, or through November 1, 2004, for the 2004 fishing year) that a vessel was issued a general category scallop permit during the qualification period. Therefore, this final 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 is 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 is the number of scallop fishing years during the qualification period (through November 1, 2004) that the vessel landed at least 1 lb (0.45 kg) of scallops, provided the vessel was issued a general category scallop permit. In-shell scallop landings reported in pounds of scallops are converted to meat-weight using the formula of 8.33 lb (3.78 kg) of scallop meats for each pound of in-shell scallops, for qualification purposes. In-shell scallop landings reported in bushels of scallops are converted to meat-weight using the formula of 8 lb (3.63 kg) of scallop meats per bushel of in-shell scallops.

NMFS landings data from dealer reports will 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 shall be used to determine permit criteria eligibility for all LAGC scallop permits. Applicants are allowed to appeal the denial of an LAGC permit, or contribution factor (based on best year and years active), through the eligibility appeals process described below.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) restricts the release of confidential fishery information to anyone other than the owner of the vessel at the time the data were compiled. Due to this restriction, for qualifying vessel IFQ information, for vessels that are currently owned by someone other than the owner of the vessel that made the landings, NMFS may be restricted in the release of the contribution factor if the release of such information is inconsistent with the MSA. NMFS understands that this may add complexity to the qualification and appeals process, but will work with vessel owners to ensure fairness in the appeals process.

3. Confirmation of Permit History

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, is required to apply for and receive a CPH if the fishing and permit

history of such vessel has been retained lawfully by the applicant and the applicant wishes to maintain eligibility for an LAGC scallop permit. An application for a CPH to establish the initial LAGC qualification of a vessel must 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 must 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 preserves 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 must be applied for in order for the applicant to preserve the LAGC scallop permit eligibility of the qualifying vessel. IFQ would be issued for IFQ scallop vessels in CPH, and IFQ associated with a CPH can be transferred. IFQ associated with a CPH counts toward a vessel owner's overall ownership of IFQ, and is restricted under the 5-percent ownership cap.

4. Permit Transfers

An LAGC scallop permit and fishery history is 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 includes the permit-splitting provision currently in effect for other limited access fisheries in the Northeast region for transactions occurring after the initial qualification and permit issuance period. Therefore, after the initial issuance of an LAGC scallop permit, it cannot 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 does 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, with the exception of limited access vessels that qualify for an LAGC scallop permit. 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 are allowed to do so under Amendment 11. 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 cannot split the LAGC scallop permit or fishing history from the limited access scallop permit.

6. Qualification Restriction

Except as provided under the permit splitting provision above, consistent with previous limited access programs, no more than one vessel can 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 Northeast Regional Administrator (Regional Administrator) will 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 may appeal in writing to the Regional Administrator within 30 days of the denial, and any such appeal must be based on the grounds that the information used by the Regional Administrator was incorrect.

The appeals process allows an opportunity for a hearing before a hearing officer designated by the Regional Administrator. The owner of a vessel denied an LAGC scallop permit can 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 shall issue such a letter for the pendency of any appeal, if requested. If the appeal is ultimately denied, the Regional Administrator shall 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 is not 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 shall 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 does 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 shall 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 final rule requires 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 is 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 may not be allocated more than 2 percent of the TAC allocated to the fleet of vessels issued IFQ scallop permits. In addition, an individual may 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 does 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 can voluntarily exit the LAGC fishery by permanently relinquishing the permit. In some circumstances, doing so would 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 can 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 shall be cancelled due to the failure to renew, in which case no LAGC scallop permit can ever be reissued or renewed based on that vessel's permit and fishing history.

Amendment 11 establishes an IFQ cost recovery program, with the payment procedures and details to be established in Framework 19. Under the IFQ program, up to 3 percent of the ex-vessel value of IFQ scallop landings will be collected by NMFS to offset the cost of managing, enforcing, and implementing the IFQ program, as required by the Magnuson-Stevens Act. NMFS will not renew an IFQ scallop permit for a subsequent fishing year for a vessel for which the owner failed to pay cost recovery fees by the specified due date. If a vessel owner fails to pay his or her cost recovery fee by the end of the fishing year for which the IFQ scallop permit has not been renewed due to failure to pay the cost recovery fee, no IFQ scallop permit could ever be reissued or renewed based on that vessel's permit and fishing history. The Council has proposed detailed cost recovery provisions as part of Framework 19 to the FMP.

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 is 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 must 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 must have been issued a valid limited access scallop permit during the period March 1, 2000, through November 1, 2004, and must meet the landings criteria specified in ''Limited Access Program for the General Category Fishery'' and ''Landings History'' above. LAGC scallop permit eligibility established while the vessel was also a limited access scallop vessel cannot be split from the limited access vessel. Limited access scallop vessels that also qualify for an IFQ scallop permit cannot transfer IFQ. Therefore, neither the general category maximum allocation restriction nor the maximum percentage ownership restriction for general category TAC apply. The limited access general category permit and IFQ scallop permit cannot be split from the limited access scallop permit. A limited access scallop vessel that does not qualify for a LAGC scallop permit cannot fish for, possess, or retain scallops when not fishing under the scallop DAS and Area Access programs.

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 will be allocated to vessels with IFQ scallop permits. This will be calculated by deducting estimated catch by Incidental scallop vessels from the total projected annual scallop catch. Five percent of the resultant catch will then be allocated to the IFQ scallop fishery. IFQs for IFQ scallop vessels will be derived from the 5-percent TAC allocation. The 5-percent allocation will not apply to current limited access vessels that also have IFQ scallop permits. Limited access scallop vessels with IFQ scallop permits will be allocated 0.5 percent of the total projected annual scallop catch after deduction of incidental catch. IFQs for these vessels will 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, shall be allocated for harvest by the current limited access scallop fishery. Based on a comment from the Council, NMFS has clarified that the NGOM TAC will not be deducted from the overall TACs, as was incorrectly described in the proposed rule preamble.

IFQs for Limited Access General Category Scallop Vessels

A vessel issued an IFQ scallop permit will 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 will 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 will be determined to have been active in the scallop fishery if it landed at least 1 lb (0.45 kg) of scallops. Landings to determine the best year and years active must have been from November 1, 2004, or earlier during the March 1, 2000, through November 1, 2004, qualification period. 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 participated 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 shall be determined by multiplying the TAC for IFQ scallop vessels by the vessel's contribution percentage. The IFQs will be rounded up to the nearest 10 lb (4.5 kg). IFQ will 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 a CPH is transferable.

The following is an example of how a vessel's IFQ will 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 60,687 lb (27,527 kg) (48,550 lb (22,023 kg) × 1.25 = 60,687 lb (27,527 kg)). In 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) = 36,250 lb (16,443 kg)).

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 will 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 can transfer IFQ on a temporary or permanent basis. A temporary IFQ transfer (or lease) allows one IFQ scallop vessel to combine IFQs to increase fishing opportunity for a single fishing year. A permanent IFQ transfer permanently moves the IFQ from one vessel to another. Since a permanent IFQ transfer requires the vessel to transfer the IFQ scallop permit (and any other permits) to the transferee, the transferring vessel is not eligible to enter into an agreement to transfer IFQ back to the vessel, unless the vessel replaced another IFQ scallop vessel. Each IFQ allocation must be transferred in full before it is utilized, and a vessel that uses IFQ in a fishing year cannot transfer its IFQ during that fishing year. An IFQ can be transferred only once in a fishing year. An IFQ transfer will 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 will 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 Limited Access Privilege Program which includes IFQ programs 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 management, data collection, and enforcement of an IFQ program. The authority and procedures for collection of cost recovery fees are established in this rule. Further details of the cost recovery program have been proposed in Framework 19, in which TACs would be established for LAGC scallop vessels. The proposed rule for Amendment 11 specified that 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. However, in developing the actual IFQ cost recovery provisions in Framework 19, NMFS has determined that both vessel owners involved in IFQ transfers may be held responsible for non-payment of cost recovery fees. Therefore, this final rule clarifies that the transferor and transferee would be held jointly and severally responsible for non-payment of the cost recovery fee.

Measures for the Transition Period to IFQ

Amendment 11 recognizes that it will take 12 to 24 months, or longer, 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 will 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 timing issue, Amendment 11 specifies measures for a transition period. During the transition period, the general category scallop fishery will be allocated 10 percent of the total projected scallop catch. The resulting TAC will be divided by quarter (Q1: March through May; Q2: June through August; Q3: September through November; Q4: December through February). Framework 19 proposes the percentage allocation of the TAC for each quarter. Vessels that qualify for an IFQ scallop permit and vessels under appeal for an IFQ scallop permit will 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 will close for the remainder of the quarter. Any underage or overage of the first quarter will be applied to the third quarter, and any underage or overage of the second and/or third quarter will 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 will result in a TAC that is intended to be consistent with recent projections for scallop mortality from the general category fishery and will account for additional effort expected from vessels under the appeals process.

Although there appears to be some confusion based on the comment from the Council about the level of scallop TAC to be allocated to the general category scallop fishery in the unlikely event that the IFQ program is not implemented by the start of the 2010 fishing year, Amendment 11 clearly states that the level should be 10 percent for the entire transition period, without regard to how long it takes. Therefore, NMFS has specified in this final rule that the 10-percent allocation of TAC to the general category scallop fishery, divided by quarter, would continue beyond the 2009 fishing year if the IFQ program cannot be implemented.

Mechanism To Allow Voluntary Sectors in the General Category Fishery

Amendment 11 includes a mechanism to allow the owners of IFQ scallop vessels to form voluntary sectors that could manage their own fishing activity as a group. This rule outlines the procedures that must be used to form a sector, and the sector program requirements. The sector provisions include: 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 interactions between sectors; monitoring and enforcement provisions for sectors; a prohibition on trading of allocation between sectors; restrictions on vessel movement between sectors; and a 20-percent maximum total allocation for a single sector. The 400-lb (181.4-kg) possession limit is 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. 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 does not allow sectors to be exempt from any scallop regulations, except that participating vessels would not be restricted by their IFQs. Amendment 11 specified the sector provisions but omitted some of the details necessary for implementation of sector provisions. Under its authority granted by section 305(d) of the Magnuson-Stevens Act (16 U.S.C. 1855(d)), NMFS has included regulations in the Sector provisions in § 648.63 that are necessary to ensure effective implementation and administration of the Sector provisions, and to ensure consistency with some of the Sector provisions for the NE Multispecies FMP.

NGOM Scallop Management Area

The NGOM scallop management area is defined as waters north of 42°20′ N. lat. and within the Gulf of Maine Scallop Dredge Exemption Area specified in § 648.80(a)(11). The proposed rule for Amendment 11 specified that the NGOM Scallop Management Area was all areas north of 42°20′ N. lat., but the Council commented that Amendment 11 specifies that the area is confined within the Gulf of Maine Scallop Dredge Exemption Area as well. The NGOM scallop management area is managed separately, because the Council clarified that the fishery there has unique characteristics. The abundance of scallops in the NGOM fluctuates more widely, supporting sporadic fisheries, and scallops are confined to small ''patchy'' areas throughout the area. There are times and areas within the NGOM that have sufficient abundance of scallops in small areas to support a substantial fishery and other times and areas that do not. The NGOM scallop management area measures establish scallop fishing controls appropriate for the fishery while protecting the resource in the area from overharvest, if and when scallops are present in the area. 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 (90.7 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 shall 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 cannot continue fishing in the NGOM once the TAC for the area has been reached.

Monitoring

All LAGC scallop vessels are required to install and operate a vessel monitoring system (VMS). Operators of IFQ and NGOM scallop vessels are required to declare a general category trip or other fishing activity code, as appropriate. In addition, IFQ and NGOM scallop vessels are required to report scallop landings through VMS. This provision improves monitoring of the 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 includes the vessel trip report (VTR) serial number, amount of scallops on-board, the port of landing, and the approximate time of arrival in port, and any other information relevant to a general category trip as required by the Regional Administrator. This monitoring requirement enables 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 is 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 makes this permit consistent with the existing limited access scallop permit issuance date.

Other Measures

This action clarifies that vessels that are fishing under a Northeast multispecies or monkfish DAS are not 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 (18.1 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.

This action allows an IFQ scallop vessel to possess up to 100 bu (35.2 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 (17.6 hL) of in-shell scallops. This measure is included because scallop vessel owners and operators testified that it often takes more than 50 bu (17.6 hL) of in-shell scallops to yield 400 lb (181.4 kg) of scallop meats. NMFS noted in the proposed rule that similar increases were not specified by the Council for the NGOM possession limits of 200 lb (90.7 kg) of shucked or 25 bu (8.8 hL) in-shell scallops, or the 40 lb (18.1 kg) of shucked or 5 bu (1.76 hL) of in-shell scallops. However, given the rationale for the increased possession limit, NMFS noted that would be inconsistent to apply the increased possession limit for only one LAGC scallop permit category or declared fishing activity. Under its authority granted by section 305(d) of the Magnuson-Stevens Act (16 U.S.C. § 1855(d)), NMFS specified that vessels fishing for scallops up to 200 lb (90.7 kg) or 25 bu (8.8 hL), or up to 40 lb (18.1 kg) or 5 bu (1.76 hL), could possess up to 50 bu (17.6 hL) or 10 bu (3.52 hL), respectively, seaward of the VMS Demarcation Line. The Council reviewed this issue in the proposed rule and concluded that NMFS's interpretation was correct.

Finally, this final rule clarifies 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 appeals process.'' However, the regulations were 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 regulations did 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 final rule clarifies 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 makes the regulations consistent with the Council's original intent under Amendment 4. This issue was not recommended by the Council as part of Amendment 11. Rather, NMFS proposed the clarification in the Amendment 11 proposed rule as a regulatory amendment. No comments, other than from the Council verifying that the change is appropriate, were received on this proposed measure.

Comments and Responses

A total of 24 relevant comment letters were received from general category scallop vessel owners, industry representatives, and other interested public on Amendment 11 and the proposed rule. Four comments were also received from a general category vessel owner, two industry representatives, and the Council on the proposed rule after the close of the NOA comment period. All but one of these comments addressed the regulatory text included in the proposed rule. Comments on the proposed rule received after the close of the NOA comment period that addressed issues in Amendment 11 are reflected in the comments and responses below. The Council provided comments and recommendations on Amendment 11 based on review by the Council's Scallop Oversight Committee (Committee) and staff through a letter signed by the Executive Director of the Council.

General Comments

Comment 1: Two individuals requested an extension of the comment period on Amendment 11 and the proposed rule.

Response: NMFS has a statutory requirement to approve, partially approve, or disapprove an amendment within 95 days from the date that the amendment has been officially transmitted to NMFS; otherwise, the amendment is automatically approved. The day by which NMFS had to make the decision for Amendment 11 was February 28, 2008. In order to ensure that NMFS considers public comments within that statutory time period, it must limit comment periods to 60 days for the amendment NOA and 45 days for the proposed rule (the Magnuson-Stevens Act requires 15 to 60 days for the proposed rule comment period, but NMFS typically allows 45 days). If the comment period on the proposed rule ends after the NOA comment period, those comments received on the proposed rule but after the end of the NOA comment period may be excluded from NMFS's consideration relative to the decision on the amendment. Therefore, NMFS cannot extend the comment period on an amendment NOA, and prefers to keep the proposed rule comment period consistent with the NOA comment period. Moreover, given that Amendment 11 has been in development in the public arena by the Council for approximately 2 years, NMFS considers the public comment period to be adequate.

Comment 2: One commenter appeared to oppose Amendment 11, but urged overall management changes to protect the oceans for future generations. The commenter stated that ''* * * total take should be banned * * *'' and that ''* * * a moratorium on all catch of this should be in effect for 5 years for species regeneration * * *.'' The same individual commented that the total overall quota should be cut by 50 percent this year, and by 10 percent each year thereafter, to let all species recover. The commenter provided no additional details or suggestions on the relevance of the comments to Amendment 11.

Response: NMFS approved Amendment 11 because it is consistent with the Magnuson-Stevens Act and promotes a sustainable scallop fishery. Banning or reducing scallop catch as suggested by the commenter would be inconsistent with NMFS's responsibilities under the Magnuson-Stevens Act.

Comment 3: One individual addressed several issues relative to the historical development of the general category fishery and the differences between the limited access and general category fleets. Another commenter stated that the continuation of a directed, full-time general category fishery is not consistent with the original intent of the general category fleet as a part-time fishery for vessels that did not qualify for, or did not want to participate in, the limited access scallop permits in 1994.

Response: The Council recognized more recent developments in the general category fishery, which resulted in the development of Amendment 11. The general category fishery has changed since its inception in 1994, and the Council considered the recent growth in the general category scallop fishery after the control date to be its primary concern, regardless of whether the fishery was historically a directed scallop fishery or not. Amendment 4 to the FMP did not guarantee that general category scallop vessels would be able to continue fishing without controls on the number of overall participants. Without specific restrictions against it in any FMP action, including and since Amendment 4, the general category scallop fishery was allowed to expand beyond what some believe was the original intent of Amendment 4. Amendment 11 recognizes the expansion while providing general category fishery participants that developed a directed fishery the ability to continue fishing at levels consistent with their recent participation. Amendment 11 also prevents future expansion of the fishery.

Comment 4: Several commenters stated that some parties involved in the development of Amendment 11 made biased decisions based on personal gain or agenda.

Response: There is no evidence to suggest bias of various participants in the development of Amendment 11. The Council's decisions were based on numerous meetings open to the public and on information, comments, and input provided by the public.

Comment 5: Several individuals urged no action on Amendment 11.

Response: The analysis supporting Amendment 11 demonstrates that uncontrolled entry and effort levels in the general category fishery cannot continue. Maintaining a large number of

general category vessels would continue to allow catch levels by this component of the fishery to expand and compromise the ability to effectively manage the scallop fishery overall. Uncontrolled, the general category fishery could contribute to excess fishing mortality on the scallop resource. Although one of the most difficult management programs to implement due to the level of controversy, limited access and the associated measures in Amendment 11 are necessary to ensure a sustainable scallop fishery. Furthermore, the Council could not accurately establish catch limits in the future, now a requirement of the Magnuson-Stevens Act, without controls on the level of catch and effort in this segment of the fishery.

The impacts of Amendment 11 are largely social and economic and will be positive in the long term. The measures will have direct negative economic impacts on vessel owners that do not have a qualifying vessel or that have fished more intensely recently than during the qualifying time period. However, as more fully discussed below, a control date announcing the possibility of a limited access program was published on November 1, 2004. The control date's purpose was to provide fishers with advance notice that they may not qualify for entry into, or full participation in, the general category scallop fishery. The intent of the control date was to deter individuals from unduly investing in or relying on this fishery without full and fair warning of the consequences of future limitation on access to the fishery.

The social and economic impacts on qualified vessels and all of the fishery participants will be positive over time as the general category fishery is better integrated into the management program of the FMP, which strives to maximize yields through Area Rotation Program, effort controls, and restrictions on the general category fleet. Although limited access is one of the most controversial management programs to implement, limited access and the associated measures in Amendment 11 are necessary to ensure a sustainable scallop fishery.

Comment 6: Several commenters stated that Amendment 11 will eliminate the small vessels in the fishery and allow large vessels and large fishing operations to continue. Commenters urged NMFS to allow both small and large vessel operations to continue in the scallop fishery. One commenter believes that Amendment 11 will do irreparable harm to several small fishing businesses that do not deserve to be closed out and believes that many provisions in Amendment 11 may be inconsistent with Federal laws mandating equal treatment of permit holders.

Response: The source of concern that small vessels will be eliminated is not clear. The Council recognized this potential impact, particularly with an IFQ fishery, and designed Amendment 11 consistent with its vision to ''* * * maintain a fleet made up of relatively small vessels, with possession limits to maintain the historical character of the fleet * * *.'' To achieve this, Amendment 11 includes provisions to promote the continued operations of small operations. A vessel may only be allocated up to 2 percent of the TAC allocated to all IFQ vessels combined, and an individual may own only up to 5 percent of the TAC allocated to all IFQ vessels. The 400-lb (181.4-kg) possession limit also remains under Amendment 11. These factors should ensure only minimal shifting to large-scale operations and that the small-vessel character of the fleet is maintained. While some consolidation is possible through the IFQ transfer program, it is unlikely, with the percentage allocation limits, that the fishery will evolve into a large vessel or large-scale operations fishery. Based on these analyses, NMFS determined that Amendment 11 is consistent with all National Standards, including National Standard 4 (which requires management measures to be fair and equitable, but which recognizes that fishing privileges may need to be allocated among fishermen), and National Standard 8 (requiring management measures to minimize adverse economic impacts, to the extent practicable, on fishing communities).

Comment 7: An individual representing fishing vessel owners from New Jersey commented on behalf of the fishermen that they are supportive of the proposed amendment and options implementing a limited access program with IFQs, in trips or pounds, based on a vessel's landings in its best year from 2000 to 2004. The group of fishermen supported measures in Amendment 11, except that they would prefer a qualification landings criterion of 5,000 lb (2,268 kg), rather than 1,000 lb (453.6 kg), because it would allow the IFQs to be better distributed among a smaller number of vessels. The comment urged NMFS to implement IFQs as soon as possible and provided suggestions on how appeals could be handled to expedite the process during the transition period. Other suggestions on alternatives were also provided in the comment letter.

Response: NMFS agrees with the comments supporting Amendment 11 measures and approved Amendment 11. However, under the Magnuson-Stevens Act, NMFS cannot implement substantial measures that were not adopted by the Council or that are inconsistent with Amendment 11. NMFS may only approve, disapprove, or partially approve an amendment submitted by the Council. NMFS will ensure that the IFQ program is implemented as soon as possible. NMFS intends that the IFQ program will be implemented on March 1, 2009, as intended in Amendment 11.

Comment 8: One individual commented that some scallop permit holders are not aware of how Amendment 11 will impact them.

Response: Amendment 11 was developed over the course of approximately 2 years through a public process, including 35 meetings open to the public. The Council's development was well publicized by the Council and general and industry-focused media. Therefore, it is not clear how any individual with a stake in the fishery could have been completely unaware of Amendment 11 and its impacts. Once adopted by the Council, NMFS published a proposed rule and made the FSEIS available for public review. The FSEIS described and analyzed the impacts of all of the measures and alternatives and has been available in its final form since November 2007. In such a highly regulated fishery, it is a vessel owner's responsibility to understand current and upcoming regulations and the impacts that the proposed regulations may have on the vessel's ability to continue fishing.

Comment 9: One individual commented that Amendment 11 does not address problems that it will create in terms of loss of jobs.

Response: NMFS acknowledges that Amendment 11 will have some negative impacts, particularly on owners of vessels that do not qualify for the limited access general category scallop permit. However, NMFS concluded that the limited access program, including the use of the November 1, 2004, control date as a cutoff for eligibility, is a necessary component of a comprehensive management approach to control capacity and fishing mortality in the general category scallop fishery. NMFS considered all of the impacts relative to the sustainability of the scallop fishery and the FMP's objective to maximize scallop yield, as well as the impacts on fishery participants. The analysis supporting Amendment 11 demonstrates that uncontrolled entry and effort levels in the general category

fishery cannot continue. Without controls on access to the fishery, a large number of vessels would continue to exceed estimated catch levels and compromise our ability to effectively manage the scallop fishery overall. Also, without the constraints in Amendment 11, the general category fishery could contribute to excess fishing mortality on the scallop resource. Amendment 11 concludes that the long-term economic and social impacts would be negative if open access continues in the general category fishery. Based on these analyses, NMFS determined that Amendment 11 is consistent with National Standard 4, regarding fairness and equity, and National Standard 8, requiring measures to minimize adverse impacts, to the extent practicable, on fishing communities.

Comment 10: One individual commented that the general category fishery has less environmental impact on the ocean than the limited access component of the fishery and that Amendment 11 is therefore not necessary.

Response: An FSEIS, describing and analyzing the environmental impacts of the proposed and alternative measures, was completed for this action. Although reduced fishing time associated with the relatively low 400-lb (181.4-kg) possession limit has less environmental impact compared to higher catches associated with DAS vessels, the general category fishery as a whole contributes to the environmental impacts of the fishery, both in terms of effects on essential fish habitat (EFH) and bycatch. While it may be true that a general category vessel may not have as much impact on the environment as a DAS vessel, the commenter's argument is not valid in the context of Amendment 11. The effects of Amendment 11 are cumulative, in particular if participation and effort expand under an open access fishery.

Comment 11: One individual commented that analyses in Amendment 11 are flawed; specifically those that conclude that general category vessels are less efficient and can fish more days per year than limited access vessels, that Amendment 11 would provide benefits to the nation, and positive impacts on general category vessels overall.

Response: Amendment 11 includes thorough descriptions of the scallop fishery and participating vessels, and analyses of the impacts. Analytical models predict the economic benefits and costs of all of the alternatives considered in Amendment 11. The analyses and models are based on information gathered throughout the development of Amendment 11. These analyses were revised and perfected throughout the development process and were available for public review during the public meetings held on Amendment 11.

Comment 12: One commenter stated that controls on the general category fishery were considered by the Council initially out of concern over a large increase in active vessels, but not as a result of overfishing caused by the general category fleet.

Response: The relatively rapid and large increase in the size of the active general category fleet concerned both NMFS and the Council and resulted in the development of Amendment 11. The reason that such an increase was a concern is that the level of general category fishing continually exceeded the estimated level of fishing that was incorporated into annual management measures that were designed to achieve target fishing mortality rates. By exceeding the estimated catch, the unconstrained general category fishery was a threat to meeting the fishing mortality targets and the Magnuson-Stevens Act requirement to prevent overfishing. Therefore, while overfishing may not have been caused only by the general category fleet, the unconstrained expansion and effort in the fishery, combined with full utilization of effort and trips by the limited access fleet, contributed to overfishing in the years when overfishing was occurring.

Comment 13: One individual stated that Amendment 11 allows an inequity to continue by maintaining more restrictive gear size restrictions in the Southern New England (SNE), Gulf of Maine, and Great South Channel sea scallop exemption areas that do not apply west of 72°20′ N. lat. In addition, the commenter stated that there are differences in bycatch in these areas that were not addressed in Amendment 11. The commenter believes that the perceived inequity will do serious harm to many vessels in the northern half of the general category scallop fishery.

Response: The scallop dredge exemption areas referenced in the comment have been implemented under the Northeast Multispecies Fishery Management Plan (NE Multispecies FMP) to ensure that bycatch of regulated multispecies in the scallop dredge fishery does not compromise rebuilding efforts in the NE Multispecies FMP. Other than the dredge size restriction in the NGOM Scallop Management Area, Amendment 11 does not have different gear restrictions for different areas. However, Amendment 11 does recognize that the NE Multispecies FMP has restricted when and where general category scallop vessels can fish in terms of the description of the fishery and by incorporating data from the fishery overall. Nevertheless, modifying gear restrictions that have been implemented under the NE Multispecies FMP is outside of the scope of Amendment 11.

Comment 14: Several comments suggested that Amendment 11 is not necessary because the scallop resource is in good condition. Many references were made to the 45th Stock Assessment Workshop and Stock Assessment Review Committee report (June 2007) (SAW 45), which concluded that the scallop fishery was not overfished in 2006 and overfishing was not occurring that year. Commenters stated that, based on the conclusions of SAW 45, the measures in Amendment 11 are not necessary because the general category fishery is not causing overfishing. One individual commented that, with general category landings only equal to about 12 percent of the catch, the adverse impacts of these vessels are unclear.

Response: Amendment 11 does not state that the general category fishery caused overfishing historically. Until Amendment 11, an estimated amount of fishing effort and fishing mortality from the general category fleet was calculated into estimated catch levels and effort allocations for the limited access scallop fleet. Amendment 11 recognizes that, without controls on the number of participants, the general category fleet can expand, especially when the resource conditions are very good. In these instances, the effort and catch in the general category fishery would likely be underestimated and could contribute to overfishing if combined with full utilization of limited access effort. Other types of controls, such as an overall TAC, were considered in Amendment 11 and prior FMP actions (Framework 18 and Amendment 10, specifically), but rejected because, without a limit on the number of participants, the general category fleet would have the capacity to rapidly harvest the TAC. This would not maximize yield, would promote derby and unsafe fishing conditions, and would be inconsistent with the FMP.

Comment 15: Several individuals commented that general category vessel caught scallops are fresher and are more in demand than scallops from limited access boats that are at sea for several days at a time. Commenters were concerned that Amendment 11 would eliminate this higher quality product from the markets.

Response: The FMP does not manage the scallop resource relative to condition of the scallops for sale to the seafood market. While other Federal programs are focused on ensuring seafood quality, the role of the FMP is to maximize yield from the resource while maintaining a sustainable fishery. Landings of scallops from both the limited access and general category fleets command a high market price, and high product quality is sought in all markets. The relative quality of the landings between the general category and limited access fleets is not a factor in the decision on Amendment 11.

Comment 16: One commenter stated that scallop trip boats have control over the scallop fishery, which creates hardship on general category scallop vessel owners and families who depend on this for their livelihood.

Response: It is not clear from the comment how the limited access fleet and fishery creates hardships on the general category fleet and the vessel owners' families. Since the implementation of limited access in 1994, vessels with limited access scallop permits have historically landed as much as 98 percent of the scallop catch, and about 85 percent of the catch, more recently. The limited access scallop fleet, therefore, does control, and has the most impact on, many aspects of the fishery, including market price, fishing mortality, and overall impacts. However, the general category fishery is an important component of the scallop fishery that contributes to overall fishing mortality and conditions in the fishery that the Council and NMFS must address. Amendment 11 achieves this goal, while allowing both the limited access and general category fleets to harvest the portion of the catch that reflects historical average shares (with a slight increase in the general category share and decrease in average limited access share).

Comment 17: One individual commented that flexibility in fishing practices is necessary for small vessel owners to continue to make a living fishing. The commenter stated that, if a fishery becomes difficult or impossible to pursue, the small vessel must shift to another fishery, but that Amendment 11 would take away the opportunity to shift between fisheries.

Response: NMFS must manage the scallop fishery to ensure that the fishery remains sustainable. While NMFS understands that fishing opportunities are becoming more limited, it cannot compromise the sustainability of one fishery in order to allow vessel owners to enter another fishery.

Control Date and Limited Access

Comment 18: Several commenters supported the inclusion of the control date as a qualification criterion for the general category fishery.

Response: NMFS has approved the limited access program based on the November 1, 2004, control date.

Comment 19: Two individuals commented that, because they were not aware of the November 1, 2004, control date, they purchased vessels and/or scallop fishing equipment, investing substantial amounts of money into the fishery. These comments indicated that NMFS's Federal fishery permit application packages should have included information about the control date to warn applicants. They expressed concern that Amendment 11 would eliminate them from the fishery because they entered after the control date and asked that NMFS not use the control date or qualification criteria to qualify vessels.

Response: Not including the control date information on permit application packages does not invalidate the control date, nor does it warrant expansion of the limited access qualification criteria to include the period after the control date. The control date was published in the **Federal Register** on November 1, 2004, announced to all permit holders, and posted on the NMFS Northeast Region's Web site. It was also announced and discussed in various fisheries publications throughout the region (e.g., Commercial Fisheries News and National Fisherman, two of the most widely known publications for fisheries in the region and nationwide). Individuals that are engaged in a Federal fishery should be aware of the highly regulated nature of the industry. While there is no legal requirement to establish a control date, the control date's purpose was to provide fishers with advance notice that they may not qualify for entry into, or full participation in, the general category scallop fishery, with the intent that individuals would not unduly invest in or rely on this fishing without full and fair warning of the consequences of a limited access fishery. Based on the increase in catch and vessels demonstrated in the Amendment 11 FSEIS, it appears that even the period after the control date was viewed as an opportunity to fish for scallops and accrue income, even if temporary. Despite their knowledge of the control date, a large number of vessel owners entered the fishery because of the short-term profits that could be accrued. This post-control date expansion of the fishery was a primary concern of the Council during development of Amendment 11.

Comment 20: One individual commented that NMFS should have stopped issuing general category permits in 2004.

Response: NMFS cannot implement a moratorium on permits (*i.e.*, a limited access permit program) without the approval of the majority of the voting members of the Council, as specified in section 304(c)(3) of the Magnuson-Stevens Act. After publication of the control date, NMFS encouraged the Council to develop management measures to control the general category fishery with consideration of the control date.

Comment 21: One commenter suggested that vessels in the SNE region be allowed to appeal for a lower qualification amount based on investment in the fishery and some unspecified amount of landings, since an area in SNE was opened to general category scallop vessels in May 2004. The commenter stated that allowing such vessels to qualify through expanded qualification criteria or through the appeals process would not add many vessels, but could help a few vessels that depend on the scallop fishery for some of the year. The commenter believes that additional effort from these vessels would be minimal, and that the NGOM should not be treated differently than other areas.

Response: The reasons that area-specific management and qualification criteria were not considered, with the exception of the NGOM Scallop Management Area, are described in the responses to Comments 12 and 42.

Comment 22: A general category vessel owner expressed concern that Amendment 11 does not evaluate the number of qualifying vessels that have been inactive since the 2000 through 2004 qualification period, and does not consider the impact on the fishery or current participants.

Response: Amendment 11 enables vessels that have not been active since the qualification period to qualify for an LAGC permit based on their fishing history prior to the control date. The Amendment 11 FSEIS fully analyzes the impacts on qualifying vessels, which the FSEIS evaluates based on fishing history during the qualification period. During NMFS's review of permit applications, some vessels may emerge that have not been recently active, but the Amendment 11 FSEIS has evaluated the impacts on the resource, the fishery, the participants, and the environment relative to the vessels that meet the qualification criteria, which includes

vessels that have not been active after the control date.

Comment 23: Two general category scallop vessel owners expressed concern about the lack of broad appeals criteria in Amendment 11 that would allow appeals outside of simple discrepancies between dealer and owner records, and to address circumstances relative to re-rigging and new construction, which would protect fishermen who were in the re-rigging process when the control date was implemented. The commenters question the exclusion of such a provision when the scallop resource is in good condition, whereas it was adopted in Amendment 4 to the FMP when the resource was in one of its worst historical conditions. The commenters raised concern about the decisions of managers involved in the process, relative to the qualification and appeals process.

Response: This issue was discussed during the Council's development of Amendment 11 and the final Amendment 11 document did not include a re-rigging provision. The Council determined that it would be difficult to consider legitimate re-rigging for scallops, given the ease of converting a vessel to be a scallop vessel. In addition, the Council was concerned about the large influx of vessels and increased landings in 2005, which presumably included vessels that re-rigged for scalloping in 2004. The Council was concerned that, if a re-rigging clause were included, and vessel owners could show landings in 2005, it would be easy for someone to claim that they were re-rigging their vessel prior to the control date. The high landings in 2005 would result in more qualifiers and less ability to allocate IFQ consistent with qualifiers' historical levels of landings. Although re-rigging provisions were considered in other limited access programs, the Council had no obligation to include such a provision in Amendment 11, and provided a valid reason for excluding the provision in Amendment 11.

Comment 24: An individual commented that VTR data should be able to distinguish between a vessel's state and Federal waters landings to avoid qualifying vessels, or setting their IFQs, based on landings from state waters.

Response: It is not clear why qualifying a vessel that had state waters landings of scallops while it held a Federal general category scallop permit is inconsistent with the goals of Amendment 11. If a vessel was issued a Federal scallop permit, all landings would have been considered for determinations of fishing mortality for the scallop resource overall.

Comment 25: One individual commented that limited access scallop vessels should not be allowed to continue to fish with a general category permit or under general category rules under Amendment 11. The commenter believes that the issue was not sufficiently considered by the Council.

Response: Amendment 11 was the second action in which the Council considered restrictions on limited access vessels fishing under general category rules. Under Amendment 10 to the FMP, the Council recommended that the limited access fleet be prohibited from landing scallops outside of DAS or access area trips. However, the Council recommended this measure as a way to prevent overfishing despite information showing that the limited access fleet harvested less than one half of a percent of the scallop catch while fishing outside of DAS. NMFS disapproved the measure because the reason the Council provided for including the measure was not supported by the information in Amendment 10. Amendment 11 recognizes that some limited access vessels, including part-time and occasional scallop vessels, have relied on this portion of their catch historically. Therefore, maintaining the allowance for limited access vessels to harvest scallops with an LAGC scallop permit is consistent with Amendment 11's goal to preserve the historical participants in the general category scallop fishery.

Comment 26: One individual commented that he has fished for scallops for approximately 30 years and will not qualify for an LAGC permit. The commenter expressed concern that Amendment 11 does not allow appeals based on hardships.

Response: NMFS has opposed ''hardship'' grounds for appeal unless the Council recommends objective criteria for determining what qualifies as ''hardship.'' Without such criteria, NMFS would be forced to determine which vessels qualify and which do not by exercising its discretion in a very subjective way. This would lead to unpredictable numbers of qualifying vessels, which would make it difficult, if not impossible, to predict the efficacy of the limited access system achieving its objectives. NMFS believes that this kind of decision should be made and recommended by the Council, consistent with the Magnuson-Stevens Act. Because ''hardship'' is very difficult to define in advance and apply in one case to another, the Council has not been able, or willing, to develop such appeal criteria. Therefore, Amendment 11 contains only objective appeal criteria, allowing appeals to be based only on the grounds that the denial of the application for an LAGC scallop permit was based on incorrect information.

Comment 27: One individual commented that the control date caused the increase in fishing effort in the general category fishery after it was announced.

Response: NMFS and the Council acknowledge that fishing effort and participation in the general category fishery increased substantially after the control date, although one of the express purposes of the control date was to curtail speculative entry into the fishery. Based on the increase in catch and active general category vessels identified in the Amendment 11 FSEIS, it appears that even the period after the control date was viewed as an opportunity to fish for scallops and accrue income, even if temporary. Despite the knowledge of the control date, and the fair warning they received concerning the potential ineligibility to fish, a large number of vessel owners entered the fishery to reap the short-term profits that could be accrued. This post-control date expansion of the fishery was a primary concern of the Council during development of Amendment 11 and guided it, in part, in choosing management measures. Allocation between IFQ scallop vessels and limited access scallop vessels.

Comment 28: An individual commented that Amendment 11 violates National Standard 4 because limited access vessels receive a disproportionately high allocation and that, under Amendment 11, one individual limited access boat owner will be allowed to harvest more than the entire general category fleet combined. Another commenter was concerned that the allocation of 5 percent to the general category fleet is disproportionately high.

Response: Amendment 11 developed an allocation for the general category fleet that is consistent with the historical average catch while allowing some expansion to account for the growth in the fishery. Limited access vessels have been allocated the majority of the scallop catch through DAS and access area trips. To allocate substantially more scallop catch than the historical average to the general category fleet would not be equitable because it would not be consistent with catch in the limited access fishery or the general category fishery. Amendment 11 allocates 5 percent of the total scallop catch to general category vessels based on the historical average landings. While that average is about 2.5 percent,

Amendment 11 allocates 5 percent in recognition of the changes that the general category fishery has experienced, and to allow some expansion from the historical average. This rationale is entirely consistent with National Standard 4 guidelines, which allow allocating fishing privileges to some, at the expense of others, in order to achieve biological objectives; and it is consistent with section 303(b)(6) of the Magnuson-Stevens Act, which allows establishment of a limited access system after taking into account such factors as historical fishing practices, present participation, and economics of the fishery.

Comment 29: One commenter opposed an allocation of scallop TAC to the general category fishery, including the quarterly TAC during the transition period, and supported a target TAC that would be maintained through continuation of the 400-lb (181.4-kg) possession limit. The commenter believes that it is inappropriate to establish a TAC for the general category fishery until inequities involving vessels that fished more recently in the SNE scallop dredge exemption area. The commenter stated that the quarterly TAC during the transition would result in southern states rapidly harvesting the TAC, thus disadvantaging vessels from New England.

Response: Without an overall TAC, the general category fishery would continue to be unconstrained. Furthermore, new Magnuson-Stevens Reauthorization Act provisions for annual catch limits require that all catch from fisheries managed by FMPs be accounted for, and that measures to prevent exceeding that catch level must be implemented. Although these new requirements must be implemented by 2011 for the FMP, including provisions to meet the new requirement in Amendment 11 reduces the amount of issues the Council will need to consider in a future action to bring the FMP into compliance with the new requirement.

Comment 30: One commenter opposed the cost recovery program included in Amendment 11 because the commenter does not believe that general category vessel owners should be required to pay to go to work. The commenter questioned why the general category fishery would be the first fishery that would be subject to the requirement, when fuel and insurance costs are increasing.

Response: The Magnuson-Stevens Act requires NMFS to implement a cost recovery program to collect up to 3 percent of the ex-vessel value of IFQ landed scallops to help recover costs directly related to the management, data collection, and enforcement of the IFQ program. The cost recovery program in the IFQ general category scallop fishery will be one of the first cost recovery programs in the Northeast Region; cost recovery programs are also in development for the surfclam and ocean quahog ITQ program and a tilefish ITQ program being developed by the Mid-Atlantic Fishery Management Council. Similar programs have already been implemented in the Alaska and Southeast Regions.

Comment 31: A general category scallop vessel owner commented that the allocation of 5 percent to the general category fleet under Amendment 11 only recognizes bycatch of scallops in other fisheries and does not represent an equitable allocation to vessels that direct fishing on scallops.

Response: Amendment 11 analyzed a range of allocations from 2 to 11 percent of the total scallop catch and recommended a level that fairly reflects past and current landings. These values were based on historical landings by the general category fleet, and as such, included directed trips and trips on which scallops were caught as incidental catch. Although an allocation of 5 percent of the catch is less than the catch by the general category fishery in recent years, it is higher than the historical average of 2.5 percent and allows for some expansion from historical fishing levels.

Comment 32: One individual commented that the Council should have used recent years and future projections to determine the general category share of the scallop catch, rather than basing the catch on a level consistent with a depleted resource.

Response: Amendment 11 included a range of allocation for the general category scallop fishery, from 2 to 11 percent, based on historical amount of catch, including more recent levels. The Council determined that 5 percent would best reflect the historical level of general category catch while accommodating some expansion from the historical level. The Council determined that the higher level of catch would not reflect the historical average catch of the fishery.

Comment 33: An industry representative commented that Amendment 11 included a 10-percent allocation to the general category fleet while the fishery is in transition to the IFQ program for the 2008 fishing year only. The industry representative commented that the Council authorized up to a 2 fishing year transitional 10-percent allocation in Amendment 11, but recommended a 1-year transitional 10-percent allocation in Framework 19.

Response: NMFS disagrees that the transitional period was intended to be in place only for the 2008 fishing year. The Amendment 11 document is clear in Section 3.1.2.8 that the transition period, regardless of length, would have the same allocation strategy. While the Council and NMFS do not expect the IFQ program to be delayed beyond the 2009 fishing year, NMFS cannot predict the amount of time that it will actually take to determine all of the qualified IFQ scallop vessels and cannot therefore confirm that the IFQ program can be implemented in the 2010 fishing year at the latest. Because the Amendment 11 document does not specify that transition measures would be different after 2009 fishing year, the final rule specifies that the 10-percent allocation, divided into quarterly TACs, would remain in effect for the duration of the transition period, regardless of when the transition period ends. The Council's decisions relative to allocations in Framework 19 presumed that the IFQ program would be in place, but do not supersede the decision in Amendment 11 to have consistent management measures in place for the duration of the transitional period.

Comment 34: An industry representative commented that the appeals process during the transition should not result in a delay of the IFQ program. The commenter believes that all categories of appeal should be able to be addressed relatively quickly by NMFS and questions whether the 10-percent allocation during the transition to accommodate appealing vessels is justified, since the majority of appellants would be appealing to make the minimal qualification amount of 1,000 lb (453.6 kg).

Response: In order to allocate IFQs with the formula adopted by the Council, NMFS must know every qualifying IFQ vessel, since each vessel's IFQ is based, in part, on every other vessel's contribution to the overall scallop landings. For a period of time after implementation, NMFS will be conducting appeals and issuing new permits to vessels as appeals are approved. Appeals can be difficult to complete quickly, regardless of the reason. NMFS cannot predict how long the process of determining every qualified IFQ vessel will take. Based on previous limited access programs implemented by NMFS, it is possible that finalizing appeals will take more than 1 year. NMFS will attempt to resolve appeals in time to implement the IFQ program on March 1, 2009. The Council also provided no mechanism to allow the IFQ to be implemented mid-year.

IFQ

Comment 35: One individual commented that the IFQ referendum required under the reauthorized Magnuson-Stevens Act should have been completed, despite the fact that the Council approved Amendment 11 before the referendum was required.

Response: The referendum was not required for any IFQ program for which final action had been taken by the Council before July 11, 2007, 6 months after the Magnuson-Stevens Act was reauthorized. This delay allowed the Council to continue considering an IFQ program, which it had included in Amendment 11 well before the Magnuson-Stevens Act was reauthorized, without having to be concerned about how a referendum would be handled and what the impacts might be.

Comment 36: One comment, endorsed by 31 general category and limited access scallop vessel owners, stated that Amendment 11 would result in a reduction in catch of about 40 percent or more to a fisherman that is 100-percent dependent on the fishery.

Response: A vessel's IFQ will be based on its best year during the qualification period, indexed by a factor based on the number of years the vessel was active during the qualification period. Because landings have increased in the years since the control date, including overall landings and landings by vessel, it is likely that some vessels may not be allocated catch that is consistent with recent landings. However, such reductions are necessary to ensure that all IFQ vessels are allocated a fair share of the TAC allocated to the IFQ fleet, and that TAC objectives are met. Amendment 11 fully analyzed the impacts of these measures on fishing fleets.

Comment 37: One individual commented that IFQs are an attempt to try to hide overfishing that is presently occurring in the scallop fishery.

Response: The measures in Amendment 11, including the limited access and IFQ programs, are intended to prevent overfishing. It is not clear why an IFQ program would ''hide'' overfishing.

Comment 38: One commenter preferred that IFQ could be stacked on a vessel up to 2.5 percent of the TAC, rather than the 2 percent proposed. The commenter stated that allowing 2.5 percent of the TAC to be combined on one vessel would make the general category fishery more efficient, more manageable, and more sustainable, and would result in fewer vessels in the fishery, less paperwork, and would make the fishery more fuel efficient. The comment stated that there should not be a limit on the number of permits that can be stacked to achieve the 2.5-percent limit in order to allow fishermen that depend on the fishery to achieve a higher share or stake in the fishery if they decide to. The commenter stated that this would give back to the general category dependant fisherman more of his/her historical participation. The comment was endorsed by 31 general category and limited access scallop vessel owners.

Response: Although the Council did not specifically consider an alternative that would allow stacking up to 2.5 percent, it did consider a sufficient range of levels and NMFS approved the level selected. Under the Magnuson-Stevens Act, NMFS cannot implement an alternative as part of Amendment 11 that was not recommended by the Council. The Council did consider a cap of 60,000 lb (27,216 kg) or 150 trips per vessel, but determined that, if the overall TAC was very low in a particular year, setting the cap in pounds or trips could result in excessive (or insufficient) consolidation on one vessel. The cap in terms of percent of overall TAC allowed the value of the cap to adjust consistent with the TAC.

Comment 39: A general category vessel owner preferred a 10-percent index value for best year and stated that a vessel that has fished multiple years and is being rated by its best year should not be given a baseline number that is more than that of a vessel that has fished only 1 year, if a weighted average must be chosen.

Response: These types of concerns and different alternatives were weighed and considered by the Council in developing Amendment 11 and by NMFS in approving the amendment. Amendment 11 recognizes that some vessels relied more on the scallop fishery than others and provides those vessels with more weight in their IFQ determination based on the importance of the fishery to the vessel. The approved index values result in IFQ allocations that give more weight to vessels that depended on the fishery for more time during the qualification period.

Comment 40: One commenter opposed the IFQ contribution factor because of inequities between various regions of the fishery (particular focus on the SNE scallop fishery), and suggested that there should be a SNE exemption to alleviate the problems. The commenter stated that allocation should be one-to-one, presumably meaning that the amount caught during the historical period would be the amount allocated. The commenter stated that, with the contribution factor based on best year and years active, SNE vessels should be exempt with a one-to-one allocation. Another general category scallop vessel owner echoed this comment, stating that the reason that such vessels should be exempted from the contribution factor is that the SNE exemption was only open for 6 months prior to the control date.

Response: These types of concerns and alternatives were weighed and considered by the Council in developing Amendment 11 and by NMFS in approving the amendment. Some of the reasons that area-specific management and qualification criteria were not selected, with the exception of the NGOM Scallop Management Area, are described in the responses to Comments 12 and 42. Amendment 11 includes an index factor based on the years a vessel was active during the qualification period to adjust a vessel's contribution to the IFQ. This adjustment provides additional contribution for vessels that were active in, and relied more on, the scallop fishery for a longer period of time. A one-to-one contribution may not represent a fair allocation. As an example, a one-to-one contribution factor would make a vessel with only 1 year active in the scallop fishery equal to a vessel with the same best year landings but that was active for 5 years during the qualification period.

Comment 41: An industry representative commented that the qualification criteria and individual allocation in pounds would help ensure that more active participants will achieve more significant allocations while scaling back general category effort overall. The industry representative commented that the scale-back of effort is appropriate, given the reductions in effort for the limited access fleet. The industry representative also commented that individual allocations and the IFQ transfer provisions accommodate general category vessel owners' concerns about maintaining participation in the fishery.

Response: NMFS agrees that the qualification criteria and allocations provide for appropriate distribution of the IFQ scallop fishery TAC to qualifiers and that the TAC represents an appropriate reduction of catch relative to more recent years in the general category scallop fishery. NMFS also agrees that the IFQ provisions, including the IFQ transfer provisions, provide IFQ scallop vessel owners with sustainable fishing opportunities under Amendment 11.

Sectors

Comment 42: Several commenters supported sectors, but one individual expressed concern that NMFS and fishermen are not prepared for their complexity for management and enforcement.

Response: NMFS is concerned about the potential for increased volume in sector proposals from both the scallop and multispecies industry. However, NMFS has approved the sector mechanism under Amendment 11 because it can result in effective and cooperative management of the IFQ scallop fishery. NMFS is preparing for the expansion of sector management through its Amendment 11 implementation strategy, combined with efforts to improve review and coordination of sector proposals and plans in the Northeast Regional Office.

Comment 43: An industry representative supports the prohibition on exemptions under the sector provisions.

Response: Although the Council could consider exemptions under the sector provisions consistent with its sector guidelines, it chose not to include exemptions in order to preserve the characteristics of the historical general category scallop fishery while allowing sector management.

NGOM Scallop Management Area

Comment 44: A fishing industry representative urged NMFS to disapprove the NGOM Scallop Management Area because it would have disproportionate and negative impacts on vessels that qualify for an IFQ scallop permit that also have a history of fishing in the NGOM area. The representative states that, for IFQ scallop vessels, the lower possession limit in the NGOM area disadvantages IFQ scallop vessels because it is inconsistent with the higher (400-lb (181.4-kg)) possession limit in the rest of the general category scallop fishery. The commenter was concerned because the proposed rule implied that a vessel qualified for an IFQ scallop permit could opt for an incidental scallop permit instead, allowing the vessel to take ''unlimited'' trips at 40 lb (18.1 kg) each, although this would not apply to the NGOM where the fishery would be closed to all scallop harvest once the TAC is harvested.

Response: The comment implies that vessels that qualify for IFQ scallop permits that have fished in the NGOM are confined to fishing within that area and there are no other alternatives for such vessels. To the contrary, the IFQ scallop permit allows maximum fishing flexibility within the general category scallop fishery under Amendment 11. Not only can IFQ scallop vessels fish under their IFQ in any area open to scallop fishing, but if an owner chooses, he/she can transfer the IFQ to another IFQ scallop vessel. This provides an owner the option of fishing in other areas, or negotiating a business agreement to transfer the IFQ. On the other hand, vessels that do not qualify for the IFQ scallop permit have only the option of fishing in the NGOM or under the Incidental scallop permit. Further, the FSEIS for Amendment 11 demonstrates that the reliance on the Gulf of Maine for a scallop fishery during the qualification period, and more recently, has been extremely low. The majority of scallop landings originate from more southern areas of the Gulf of Maine, and from Georges Bank, SNE, and Mid-Atlantic general category scallop fisheries. In addition, Amendment 11 estimates that 70 vessels from Maine and 148 vessels from Massachusetts and New Hampshire would qualify for an IFQ scallop permit, with the majority of landings by those vessels coming from outside the boundaries of the NGOM scallop management area. To disapprove the NGOM for the advantage of the minority of the IFQ scallop fleet would result in no additional protective measures in the NGOM, where the fishery is distinct. This would be ineffective and would not meet the goal of the NGOM scallop management area to preserve the fishery in the area for any future fisheries that may occur. NMFS has therefore determined that the measures for the NGOM scallop management area are necessary and appropriate for the management of the scallop fishery. With respect to the implication that Incidental scallop vessels can take unlimited number of 40-lb (18.1 kg) trips, NMFS will clarify that would not be possible in the NGOM scallop management area because incidental catch is counted against the TAC and the possession of scallops in the NGOM scallop management area after the TAC has been reached is prohibited.

Comment 45: An individual commented that the NGOM Scallop Management Area was created solely for residents of Maine, and that the NGOM Scallop Management Area is inconsistent with National Standard 4 of the Magnuson-Stevens Act.

Response: National Standard 4 states that measures shall not discriminate between residents of different states. The NGOM Scallop Management Area does not base any measures on being a resident of the State of Maine. Although the area is adjacent to the entire coast of Maine and may attract more Maine fishers, it also includes waters off of Massachusetts and New Hampshire. Furthermore, any LAGC vessel could fish in the NGOM Scallop Management Area under Amendment 11. The area is a special management area, similar to the Sea Scallop Access Areas, which aims to prevent overharvest of a unique portion of the scallop resource and was designed to allow additional fishers to qualify to fish in the area that may not have qualified for the IFQ scallop permit. The NGOM Scallop Management Area measures are therefore consistent with National Standard 4.

Comment 46: The State of Maine commented on the proposed NGOM TAC specification. Although the comment is specific to the actual TAC recommended by the Council under Framework 19, the comment appears to take issue with the foundation of the TAC, in that it excludes landings from state waters. The comment provides details regarding how the State of Maine would prefer that the TAC be established, primarily by including landings by federally permitted vessels in state waters and landings by limited access vessels fishing in the NGOM area. Maine believes that, by including these sources of landings, the TAC should be 126,000 lb (57,153 kg) as opposed to the 70,000 lb (31,751 kg) TAC proposed by the Council under Framework 19. A fishing industry representative commented that the TAC in the NGOM cannot be calculated without an assessment of the biomass and appropriate fishing mortality rate in the area.

Response: The value of the TAC is not specified in Amendment 11, but is instead proposed in Framework 19. The Council deliberated this issue at length for both Amendment 11 and Framework 19. Proponents argued, and Amendment 11 explains, that the NGOM Scallop Management Area is necessary as a placeholder for future scallop fishing Federal waters in the event that a large amount of harvestable scallops return to the Gulf of Maine. Based on this rationale, the Council determined that the TAC for the NGOM Scallop Management Area would be based on the ''Federal portion of the resource only,'' meaning that landings from state waters would be excluded. Furthermore, landings by limited access vessels fishing under DAS were excluded because they are not a component of the general category landings or TAC.

Comment 47: One commenter stated that the NGOM measures are useless in Amendment 11 because there are no scallops in the NGOM to be fished.

Response: The NGOM Scallop Management Area would provide for limited fishing opportunities for vessels that do not qualify for IFQ scallop permits. It was also designed to be a placeholder for a future Federal waters fishery in the area, should the scallop resource become more abundant in the area. Although not currently surveyed by NMFS or other entities, the Gulf of Maine contains scallops and has supported a small fishery in recent years.

Comment 48: One commenter supported the creation of the NGOM scallop management area but believes that the SNE area also deserves the same exemption status, with a 400-lb (181.4-kg) possession limit, because the area was closed to scallop fishing from 1996 through May 2004.

Response: The SNE exemption was implemented under the NE Multispecies FMP in May 2004. The NGOM Scallop Management Area appears to have highlighted the SNE exemption because the Council adopted area-specific measures only for the NGOM but excluded qualification criteria specific to the area or for vessels that fished in the area. The NGOM Scallop Management Area was developed because the fishery in the area is different from the rest of the fishery (it is patchy and sporadic). Although the SNE exemption area was not opened to scalloping until 2004, there are no noteable differences in the fishery in that area that would warrant special management measures. The fishery in the NGOM is not integrated into the overall scallop fishery to the extent other areas, including the SNE, are. In addition, the NGOM area is not fished as actively and consistently as the SNE area has been recently. In addition, there would be no fair or equitable way to allow more lenient qualification criteria for vessels that fished within the SNE exemption area. Vessels that fished only in the SNE exemption area for scallops would have relied on the scallop fishery only between May and November, when the area was opened and the vessels first began to fish for scallops. Excluding a provision specific to these vessels is consistent with Amendment 11's goal to limit the fishery and allocation to vessels that had a reliance on the scallop fishery prior to the control date.

Other Measures

Comment 49: One commenter agrees that VMS should be required, but expressed concern about the cost of operating VMS units.

Response: VMS are necessary in the general category fishery to track landings and activity relative to IFQs, the NGOM Scallop Management Area, and access areas. Most LAGC vessels are already operating a VMS under existing FMP requirements, or requirements under the NE Multispecies FMP (for vessels that do not qualify for an IFQ scallop permit). NMFS has estimated the cost of all new trip declarations and catch reports for all IFQ vessels combined to be approximately $15,000 annually (or about $42 per vessel annually, assuming 369 qualified IFQ scallop vessels). The increase in VMS operating costs would therefore be just over $3.00 per month, which NMFS considers a reasonable cost. A detailed description of the costs for new information collection requirements is included in the Final Regulatory Flexibility Analysis (FRFA).

Comment 50: An industry representative supported continuation of the 400-lb (181.4-kg) possession limit to prevent against consolidation of general category effort and capitalization of a new offshore scallop vessel fleet.

Response: NMFS agrees that the 400-lb (181.4-kg) possession limit is necessary to prevent capitalization of a new type of general category scallop fishery that is inconsistent with the Council's vision to maintain the small-scale characteristics of the general category fishery.

Comment 51: An industry representative supports the 40-lb (18.1-kg) possession limit for Incidental scallop vessels to allow for incidental catch in other fisheries while discouraging directed fishing with the low limit.

Response: NMFS agrees that the 40-lb (18.1-kg) possession limit for Incidental Catch scallop vessels is important to ensure that this sector of the general category fishery continues to focus on incidental catch and does not expand into a directed fishery.

Comments on Proposed Measures and Regulations

1. Vessel Permits

Comment 52: An industry representative suggested a revision to § 648.4(a)(2)(i)(I) to clarify that a limited access scallop vessel could also be issued an LAGC scallop permit because, as written, the industry representative believed that the regulation prohibited a limited access vessel from also being issued an LAGC scallop permit.

Response: NMFS recognizes this ambiguity in the proposed rule and has revised the regulation to allow a limited access scallop vessel to be issued an LAGC scallop permit as well.

Comment 53: An industry representative commented that in § 648.4, paragraph (a)(2)(i)(P) should be redesignated as paragraph (a)(2)(i)(R), because paragraphs (a)(2)(i)(P) and (Q) already are designated.

Response: NMFS disagrees. In § 648.4, paragraph (a)(2)(i)(O) was the final paragraph, and is now followed by paragraph (a)(2)(i)(P).

Comment 54: An industry representative recommended that, in § 648.4, paragraph (a)(2)(ii) should be reworded to more clearly convey the intent.

Response: NMFS agrees and has reworded the regulation to be more clear.

Comment 55: An industry representative commented that, in § 648.4, paragraph (a)(2)(ii)(E) contains an incorrect reference to best year and years active regulations in § 648.53.

Response: NMFS agrees and has corrected the references.

Comment 56: The Council commented that it is not clear in § 648.4(a)(2)(ii)(F) that a vessel that qualifies for an IFQ permit can choose not to apply for an IFQ scallop permit and instead qualify for a NGOM or Incidental Catch scallop permit. The Council stated that Amendment 11 specifies that an NGOM and Incidental Catch scallop permit requires a vessel to have a general category scallop permit as of November 1, 2004, but a vessel that qualifies for an IFQ scallop permit may not meet that criterion if it had a permit prior to, but not on, the control date. The Council confirmed that, since the qualification for the NGOM and Incidental Catch scallop permits are intended to be less restrictive, a vessel that qualifies for an IFQ permit can choose to apply for an NGOM or Incidental Catch scallop permit and would qualify for the less restrictive permit. The Council recommended that the regulation reflect this intent.

Response: NMFS has revised regulatory text in § 648.4(a)(2)(ii) to clarify that a vessel that qualifies for an IFQ scallop permit could be issued an NGOM or Incidental Catch scallop permit instead, even if the vessel did not have a permit as of the November 1, 2004, control date.

Comment 57: The Council agreed with NMFS's interpretation in the proposed rule that limited access permit provisions would apply to all LAGC scallop permits.

Response: The regulations reflect this comment and no change to the regulations is necessary.

Comment 58: The Council suggested that the regulations pertaining to landings qualification for the IFQ

scallop permit be explicit that landings must have occurred as of the November 1, 2004, control date and not beyond in the 2004 fishing year.

Response: NMFS has revised the regulations to be clear that all landings must have occurred as of the November 1, 2004, control date for qualification, best year, and years active determinations.

Comment 59: The Council commented that the proposed rule preamble should not have stated that a vessel's IFQ scallop permit would be invalidated for failure to pay cost recovery fees, but rather that the permit would not be renewed for the subsequent fishing year.

Response: NMFS has clarified the regulations. However, these provisions were more specifically discussed under the Council's development of Framework 19 to the FMP. Proposed regulations for Framework 19 describe in detail the process and consequences for non-payment of IFQ cost recovery fees.

2. Transition to IFQ

Comment 60: The Council commented that regulations at § 648.53(a)(2) and (3) in the proposed rule do not clearly present the transition measures that would apply in 2009. The Council also commented that the regulations should indicate that the 10-percent allocation to general category fleet during the transition to IFQ should be in effect no longer than through the 2009 fishing year. After 2009, the general category fleet would be allocated 5 percent of the scallop catch. The Council commented that it never intended the transition to extend longer than 2 years. An industry representative also commented that the regulations pertaining to allocations for the 2008 and 2009 fishing years, particularly with respect to the transition to IFQ, are inconsistent with the Council's intent to allow transition to IFQs for no more than 2 years. The industry representative stated that NMFS does not have the authority to extend the transition measures beyond 2 years because such measures were not adopted by the Council.

Response: NMFS has clarified the allocations and transition measures for the 2009 fishing years consistent with the Council's intent. However, as justified in the response to Comment 33, NMFS has clarified in this final rule that the 10-percent allocation divided by quarter would remain in place for the duration of the transition period, even if the transition period extends beyond the 2009 fishing year. Despite the comments and recommendations by the Council and industry representative, the Amendment 11 document and discussion clearly supports the continuation of the transition period allocation of 10 percent to the general category fishery for any period after 2009 that remains under transition. Although it is clear that the Council expects the transition period to last up to 2 years, there are no specifications in Amendment 11 for measures beyond the 2009 fishing year if the transition period continues. NMFS is not extending the transition period through the measures in this final rule, but rather is specifying that the Council's approved transition period measures would remain in place if the IFQ program cannot be implemented after the 2009 fishing year. Although NMFS does not expect the IFQ program to be delayed beyond the 2009 fishing year, it cannot predict how long it will take to identify the universe of IFQ scallop vessels in order to implement the IFQ program.

3. IFQ

Comment 61: The Council agreed with NMFS's interpretation in the proposed rule that a CPH would be issued IFQ and that the IFQ associated with a CPH could be transferred.

Response: The regulations reflect this comment and no change to the regulations is necessary.

Comment 62: An industry representative commented that, in § 648.53(h)(4), NMFS incorrectly characterized the cost recovery requirement of the Magnuson-Stevens Act by stating that ''The owner of a vessel issued an IFQ scallop permit and subject to the IFQ program specified in * * * 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 industry representative pointed out that this is inconsistent with the Magnuson-Stevens Act and the proposed rule preamble, which provide that industry may be charged up to 3 percent of the value of the landed product to cover actual costs related to the IFQ program and its enforcement.

Response: NMFS agrees and has clarified this statement in this final rule.

4. NGOM

Comment 63: The Council and an industry representative commented that the proposed rule does not consistently and properly state that the NGOM TAC is separate from the rest of the scallop fishery's overall TAC.

Response: NMFS agrees and has clarified in this final rule that the NGOM Scallop Management Area TAC is separate from the TACs for the rest of the general category scallop fishery.

Comment 64: The Council and an industry representative commented that the area definition for the NGOM must be corrected to include the area north of 42°20′ N. Lat. and within the Gulf of Maine Scallop Dredge Exemption Area, as approved by the Council.

Response: NMFS agrees that the NGOM Scallop Management Area should be confined to the area north of 42°20′ N Lat. and within the Gulf of Maine Scallop Dredge Exemption Area and has made that change in the final rule.

Comment 65: The Council commented that scallop catch by Incidental Catch scallop vessels should count against the NGOM TAC, consistent with the proposed rule.

Response: The regulations reflect this comment and no change to the regulations is necessary.

5. Sectors

Comment 66: An industry representative commented that, in § 648.63(b)(6), a phrase prohibiting the exemption from the 400-lb (181.4 kg) possession limit should be included to provide ''absolute clarity that no vessel operating in a sector is exempt from the 400-lb possession limit.''

Response: This revision is not necessary. The paragraph is clear that no exemption can be granted to sectors under the FMP except for relief of a vessel's own limitation of its IFQ. Singling out one provision for which an exemption cannot be issued would be confusing, since one could question why other provisions are not equally emphasized.

6. Other Measures

Comment 67: An industry representative commented that, in § 648.9, the use of the phrase ''general scallop permit'' is inconsistent with the use of ''LAGC scallop permit'' in all other sections of the proposed rule.

Response: NMFS agrees and has changed ''general scallop permit'' to ''LAGC scallop permit.''

Comment 68: An industry representative commented that the use of ''general category scallop fishery'' in § 648.10 is unclear and questioned whether the phrase has utility in light of changes in the proposed rule to LAGC and other new references to the limited access general category scallop fishery.

Response: NMFS has not modified the regulations based on this comment. The ''general category fishery'' describes the fishery that is conducted by LAGC scallop vessels.

Comment 69: An industry representative questioned the elimination of the regulation in § 648.10 requiring the use of VMS by small dredge category scallop vessels.

Response: While NMFS has eliminated the specific regulation at § 648.10(b)(1)(iii) in the Amendment 11 final rule, § 648.10(b)(1)(i) requires that all scallop vessels, except occasional scallop vessels that do not fish in access areas, must operate VMS units. No change is therefore necessary.

Comment 70: An industry representative commented that, in § 648.14, paragraph (a)(57)(iii)(D) appears to allow an IFQ scallop vessel that also holds a limited access scallop permit to possess more than 400 lb (181.4 kg) of scallops while fishing under the IFQ scallop permit and outside of scallop DAS or the Area Access Program. The industry representative suggested deleting the paragraph.

Response: NMFS agrees and has removed the paragraph and re-designated paragraph (a)(57)(iii)(E) as (a)(57)(iii)(D).

Comment 71: An industry representative commented that, in § 648.55(a), the scallop regulations should no longer refer to ''the adequacy of management measures to achieve the stock-rebuilding objectives.''

Response: NMFS agrees that references to rebuilding the scallop resource may be misleading since the scallop resource is currently rebuilt. NMFS has revised this section of the regulation to be more generic to the conservation objectives of the FMP.

Comment 72: An industry representative suggested that, in § 648.55, paragraph (e)(1) should be revised to read ''Target total allowable catch and DAS changes.''

Response: NMFS disagrees that this change is necessary. By changing the regulation to allow changes to target TACs and DAS, the Council would be precluded from establishing the hard TACs for the general category fleet through the framework process, since no other framework provision listed in § 648.55(e) would allow such specification. NMFS concludes that ''Total allowable catch'' can be either a target or hard TAC.

Comment 73: The Council agreed with NMFS's interpretation that the increase of the possession limit of in-shell scallops seaward of the VMS demarcation line should apply to all LAGC scallop permitted vessels rather than just the IFQ scallop vessels.

Response: The regulations reflect this comment and no change to the regulations is necessary.

Comment 74: The Council commented that, while it did not recall specific discussion of the change in the ownership cap, as proposed by NMFS in the proposed rule, it agrees with the regulatory change so that the regulations are consistent with the original provision in Amendment 4.

Response: NMFS brought this issue to the attention of the Scallop Committee and the Council during the final development of Amendment 11. NMFS used the Amendment 11 proposed rule as a mechanism to propose, under its authority granted by section 305(d) of the Magnuson-Stevens Act (16 U.S.C. § 1855(d)), the regulatory amendment to make the ownership cap and CPH regulations consistent with the intent of Amendment 4 to the FMP. As a regulatory amendment promulgated under the authority of the Secretary, the Council need not deem the regulation necessary and appropriate. NMFS generally confines regulatory amendments to those issues that are clarifications of existing regulations to improve consistency with an FMP's provisions or original intent of a measure that was inadvertently misrepresented in the final regulations implementing the measure.

Changes From Proposed Rule to Final Rule

In § 648.4, paragraph (a)(2)(i)(O) is revised to correct the reference to the vessel replacement provisions in paragraph (a)(1)(i)(E) of that section.

In § 648.4, paragraph (a)(2)(ii) is revised to clarify that all vessels fishing for scallops must have an LAGC scallop permit, or a limited access scallop permit.

In § 648.4, paragraph (a)(2)(ii)(B) is revised to clarify the requirement that NGOM scallop vessels must fish within the NGOM scallop management area boundaries defined in § 648.62.

In § 648.4, paragraph (a)(2)(ii)(D)(*2*) is revised to clarify that scallop landings must have occurred on or before November 1, 2004, and to specify the conversion rates for in-shell scallops to meat-weight.

In § 648.4, paragraph (a)(2)(ii)(E) is revised to correct references to § 648.53(h) for IFQ calculations.

In § 648.4, paragraph (a)(2)(ii)(F) is revised to clarify the requirement to have a general category scallop permit as of November 1, 2004, and that a vessel that qualifies for an IFQ scallop permit automatically qualifies for an NGOM or Incidental scallop permit if the owner of the IFQ scallop vessel elects instead to be issued an NGOM or Incidental scallop permit.

In § 648.4, paragraph (a)(2)(ii)(G)(*3*) is revised to clarify the restriction on permit splitting prior to the effective date of Amendment 11.

In § 648.4, paragraph (a)(2)(ii)(N) is revised to clarify the permit splitting restriction.

In § 648.4, paragraph (a)(2)(ii)(O)(4) is revised to clarify the provision allowing vessels to fish under a temporary letter of authorization while an appeal is pending.

In § 648.9(c)(2)(D), ''general category scallop permit'' is replaced with ''LAGC scallop permit.''

In § 648.10, paragraph (b)(4)(iv) is revised to clarify the requirement for daily catch reports through VMS by vessels fishing in the Area Access Program.

In § 648.14, paragraph (a)(56) reference to the trip declaration is deleted to avoid requiring Incidental scallop vessels from declaring a general category scallop trip.

In § 648.14, the text in paragraph (a)(57)(iii)(D) is replaced with the text of paragraph (a)(57)(iii)(E), and paragraph (a)(57)(iii)(E) is removed. Paragraph (a)(57)(iii)(D) is revised by deleting the trip declaration requirement to avoid requiring Incidental scallop vessels from declaring a general category scallop trip.

In § 648.14, the revision of paragraph (h)(19) has been re-designated as a revisions to paragraph (h)(20).

In § 648.14, paragraph (i)(1)(ii) is revised to prohibit a vessel from landing scallops more than once per calendar day, rather than from fishing for, possessing, or landing scallops more than once per calendar day.

In § 648.14, paragraph (i)(1)(iv) is revised to clarify that declaration requirements do not apply to Incidental scallop vessels.

In § 648.14, paragraph (i)(2)(xiii) is revised by eliminating the term ''sub-lease'' since ''lease'' is not used elsewhere in the scallop regulations pertaining to IFQ transfers.

In § 648.52, paragraphs (a), (b), and (c) are revised to restrict a vessel to landing scallops only once per calendar day, rather than fishing for, possessing, or landing scallops only once per calendar day.

In § 648.53, paragraph (a) is revised in its entirety to clarify the TAC allocations and the transition measures to IFQ.

In § 648.53, paragraph (a)(9) is added to specify the incidental catch TAC.

In § 648.53, paragraphs (h)(2)(ii)(A) and (B) are revised to clarify that landings of scallops for ''best year'' and ''years active'' determinations must have occurred on or before November 1, 2004.

In § 648.53, paragraph (h)(3)(i) is revised to specify that a vessel can exceed the 2-percent IFQ limit if its contribution percentage specified during the initial application process results in the vessel's allocation exceeding 2 percent.

In § 648.53, paragraph (h)(3)(i) is revised to specify that a vessel owner can exceed the 5-percent ownership cap if the total IFQ for all of the vessels combined upon initial application/issuance of the IFQ scallop permit results in the owner having an ownership interest in more than 5 percent of the TAC allocated to the IFQ scallop fleet.

In § 648.53, paragraph (h)(4) is revised to clarify that the cost recovery fee is equal to 3 percent of the value of landed scallops, not 3 percent of the cost of administering the IFQ program. In addition, this paragraph clarifies the general requirements for IFQ vessel owners involved in a temporary transfer of IFQ to pay cost recovery fees.

In § 648.53, paragraph (h)(5)(ii) is revised to specify that a permanent transfer cannot be limited in duration.

In § 648.53, the term ''lease'' has been removed from the heading of paragraph (h)(5)(iv)(C) to be consistent with terminology for the IFQ transfer program throughout the scallop regulations.

In § 648.55, paragraph (a) is revised by replacing ''rebuilding objectives'' with ''scallop resource conservation objectives.''

In § 648.59, paragraphs (b)(5)(i), (c)(5)(i), (d)(5)(i), and (e)(6)(i) are revised to include a provision to specify the TACs for each access area that would be used to determine the number of limited access trips per area and for each category of limited access scallop trips.

In § 648.59, paragraphs (b)(5)(ii)(B), (c)(5)(ii)(B), and (d)(5)(ii)(B) are revised to reflect the 2008 fishing year specifications.

In § 648.59, paragraph (e)(6)(i) and (ii) are re-designated as paragraphs (e)(4)(i) and (ii). Paragraph (e)(6) is no longer included in § 648.59.

In § 648.62, paragraph (a) is revised to clarify that the NGOM scallop management area is defined as the area north of 42°20′ N. lat. and within the Gulf of Maine Scallop Dredge Exemption Area.

In § 648.62, paragraph (b)(2) is revised to clarify the reference to the NGOM scallop management area definition.

In § 648.63, paragraph (c)(1)(L) is added to require submission of other necessary and appropriate information as part of the Sector operations plan.

In § 648.63, paragraph (d)(3) is revised to reflect current timing requirements for submission of annual operations plans by Sectors. The December 1 date specified in the proposed rule would not provide NMFS with sufficient time to complete all associated review requirements for Sector operations plan submissions. This change is consistent with current provisions accepted for the NE Multispecies FMP Sector policy and operating provisions.

Classification

NMFS has determined that the amendment this final rule implements is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, has taken into account the data, views, and comments received during the comment period.

This 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 final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0529. Public reporting burden for these collections of information are estimated to average as follows:

Add PRA Approval Number to Req's—Need OMB Approval First

1. Initial application for an IFQ scallop permit, OMB #0648–0491—30 min per response;

2. Initial application for an NGOM or Incidental scallop permit, OMB #0648–0491—15 min per response;

3. Completion of ownership cap form for IFQ scallop vessel owners, OMB #0648–0491—5 min per response;

4. Appeal for an LAGC scallop permit and IFQ scallop vessel contribution factor, OMB #0648–0491—2 hr per response;

5. Application for a vessel replacement or confirmation of permit history OMB #0648–0491—3 hr per response;

6. Purchase and installation of a VMS unit for general category scallop vessels, OMB #0648–0491—2 hr per response;

7. IFQ scallop vessel VMS trip notification requirements, OMB #0648–0491—2 min per response;

8. NGOM scallop fishery VMS trip notification requirements, OMB #0648–0491—2 min per response;

9. Incidental catch vessel VMS trip notification requirements, OMB #0648–0491—2 min per response;

10. Pre-landings VMS notification requirements, OMB #0648–0491—5 min per response;

11. Application for an IFQ transfer, OMB #0648–0491—10 min per response;

12. Electronic payment of cost recovery payment, OMB #0648–0491—2 hr per response;

13. LAGC scallop fishery sector applications, OMB #0648–0491—150 hr per response; and

14. Sector operations plans, OMB #0648–0491—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. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *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.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has prepared a FRFA in support of Amendment 11. The FRFA describes the economic impact that this final rule, along with other non-preferred alternatives, will have on small entities.

The FRFA incorporates the economic impacts and analysis summarized in the IRFA for the proposed rule to implement Amendment 11, the comments and responses in this final rule, and the corresponding economic analyses prepared for Amendment 11 (e.g., the FSEIS and the RIR). The contents of these incorporated documents are not repeated in detail here. A copy of the IRFA, the RIR, and the FSEIS are available upon request (see **ADDRESSES**). A description of the reasons for this action, the objectives of

the action, and the legal basis for this final rule are found in Amendment 11 and the preamble to the proposed and final rules.

Statement of Need for This Action

The purpose of this action is to improve the management of the general category scallop fishery and the scallop fishery overall.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

Fishing privileges will be assigned based on a vessel's fishing history and vessels that do not meet the qualification requirements for an LAGC scallop permit will no longer be eligible to fish for scallops unless the vessel replaces a vessel that is qualified for on the of the LAGC scallop permits. The allocation of scallop catch to the general category fleets will further restrict the amount of revenues derived from scallop landings by the general category fleet while ensuring that fishing mortality objectives of the FMP are achieved. The impacts of Amendment 11 are therefore largely social and economic. The measures will have direct negative economic impacts on vessel owners that do not have a qualifying vessel or that have fished more intensely recently than during the qualifying time period. As a result, the majority of comments opposing Amendment 11 that are described in the ''Comments and Responses'' section of the preamble of this final rule addressed issues relative to the IRFA in that commenters expressed concern directly and indirectly about the economic impacts of the measures and the impacts on small-scale vessel operations. NMFS's assessment of the issues raised in comments and responses is provided in the ''Comments and Responses'' section of the preamble of this final rule and are not repeated here. After taking all public comments into consideration, NMFS approved Amendment 11 on February 27, 2008.

Description and Estimate of Number of Small Entities To Which the Rule Would Apply

All vessels in the Atlantic sea scallop fishery are considered small business entities because all of them grossed less than $4.5 million according to dealer data for the 2004 and 2005 fishing years. Therefore, there are no disproportionate impacts on 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 fishing year (FY) 2004 and $88,702 in FY 2005. Average total revenue per general category vessel was higher, exceeding $240,000 in FY's 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 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 will 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 will take approximately 30 min per application, while each NGOM and Incidental scallop permit application will take approximately 15 min to process. Consequently, the total time burden for the initial applications will be approximately 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 approximately 256 hr per year. The 3-year average total public time burden for IFQ, NGOM, and Incidental scallop permit initial applications, and permits renewals is expected to be approximately 312 hr. The labor cost, at an hourly rate of $15, will to be $4,680.

To implement the 5-percent IFQ ownership cap, vessel owners will be required to submit an ownership form with each permit renewal. Since there will be an estimated 370 IFQ permits, there will be about 370 ownership forms each year. NMFS estimates that it will take 5 min to complete each ownership form; therefore, the annual reporting burden will be about 31 hr, or 21 hr, averaged over the first 3 years. At an hourly rate of $15, the annualized time burden will 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 3 years, will be about 54 hr. At an hourly rate of $15, the time burden will be approximately $810.

2. Vessel Replacement, Upgrade, and Permit History Applications

A standard form for vessel replacements, upgrades, and permit history applications (RUPH application) will be used for LAGC scallop permits, although vessel upgrades will 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 will 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 will be received annually. The resultant burden will be up to 300 hr. At an hourly rate of $15 per hour, the total public cost burden for RUPH applications will be about $4,500 per year.

3. New VMS Requirements

This action will require vessels issued any of the LAGC scallop permits to install VMS. Most vessels that qualify for an IFQ scallop permit have been participating in the directed general category scallop fishery, which already had 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 will 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 NE multispecies fishery. It is possible that some new permit holders will 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 will purchase and install VMS units as a result of Amendment 11. NMFS estimates that it will take 2 hr to purchase each unit, for a total time burden of 20 hr; annualized over 3 years, the burden will be about 7 hr per year. NMFS anticipates that a vessel owner will hire a VMS technician to install the VMS unit; therefore there will 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 will 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 will 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 per year. NMFS assumes that the vessel operator will submit a power-down code to reduce polling costs and conserve battery power following each trip. NMFS estimates that it takes approximately 2 min to submit a trip declaration or power-down code. NMFS estimates that the IFQ fleet will 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 will be 1,042 hr. At an hourly rate of $15, this burden will 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 (90.7-kg) possession limit, and using the upper limit of the proposed TAC, it is projected that there will be up to 500 NGOM trip declarations per year. For economic purposes it is unlikely that a vessel owner will 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 approved PRA collections. The increased reporting burden resulting from the NGOM permit category will be approximately 500 trip declarations and 500 power-down declarations. Assuming each declaration takes approximately 2 min, the annual NGOM trip declaration time burden will be approximately 34 hr. At an hourly rate of $15, this burden will be $510.

6. Incidental Scallop Vessel VMS Notification Requirements

In 2004 and 2005, dealer data indicated that the percentage of scallops landed in quantities of 40 lb (18.1 kg) or less was 0.02 and 0.06 percent, respectively, of the total scallop landings. The average scallop landings on these trips in FY 2004 and 2005 was 19,363 lb (8,783 kg). Using this average, NMFS estimates that approximately 500 general category trips landed scallops incidental to other fishing. Assuming this rate will remain approximately the same, an estimated 500 Incidental trip declarations will be made annually. As previously noted, for economic purposes it is unlikely that a vessel owner will 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 approved PRA collections. The increased reporting burden resulting from the Incidental scallop permit category will 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 will be approximately 34 hr. At an hourly rate of $15, this burden will be $510.

7. Pre-Landing Notification Requirements

VMS pre-landing notification forms will be required for each IFQ and NGOM scallop trip. Therefore, there will be 6,250 IFQ and 500 NGOM scallop vessel pre-landing notification forms submitted annually. NMFS estimates that it will 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 will 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 will not increase the cost to vessel owners declaring into the state waters exemption program.

9. IFQ Transfers

IFQ transfers will apply to IFQ scallop vessels, except that current limited access scallop vessels that also have been issued an IFQ scallop permit will 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 will be approximately 75 temporary transfers annually. Each application will include information from both parties involved in the temporary transfer; therefore there will be two responses per application. NMFS estimates that it will take 5 min per response, or 10 min per temporary IFQ transfer application. Therefore, the total estimated annual burden will be 13 hr. At an hourly rate of $15/hour, the total public cost burden for temporary IFQ transfer applications will be $195 per year.

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 will be no conservation tax on scallop IFQ transfers. Although NMFS anticipates that there will be more IFQ transfers than DAS transfers, IFQ transfers will 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 will be approximately 10 permanent IFQ transfers per year. Each application will include information from both parties involved in the transfer; therefore there will be two responses per application. It is estimated that it will take 5 min per response, or 10 min per permanent transfer application. Therefore, the estimated permanent IFQ transfer burden will be 2 hr per year. At an hourly rate of $15 per hour, the total public cost burden for permanent quota transfer applications will be $30 per year.

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 will be required to submit a cost recovery payment once annually, which will take 2 hr per response. There will be 370 payments (one per qualified IFQ scallop vessel) that will take approximately 740 hr in total. At an hourly rate of $15/hour, the total public cost burden for cost recovery will be $11,100 per year.

11. LAGC Sector Program

NMFS estimates that there could be up to nine sector proposals received over the next 3 years (2008–2009)—five in the first year, two in the second year, and two in the third year. The earliest that the sectors proposed in the 2008 year could be implemented is the 2009 fishing year. Therefore, these sectors will 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 the anticipated start of a sector program, and request that the sector be implemented through the framework procedure specified at § 648.55. Based upon consultations with the Northeast multispecies sector program, it is estimated it will take 150 hr to prepare and submit a sector proposal. Therefore, the 3-year average annualized time burden for sector proposals will be 450 hr per year. At an hourly rate of $15 per hour, the total public cost burden for sector proposals will be $6,750 per year.

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 will be submitted in 2010 for the proposals submitted in 2008. Therefore, NMFS estimates it will take 500 hr to submit five operation plans. The 3-year average annualized time burden will be 167 hr per year. At an hourly rate of $15 per hour, the annual time burden cost will be approximately $2,500.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

The following discussion also includes a description of the economic impacts of the proposed action compared to significant non-selected alternatives as required under the RFA for inclusion in the FRFA.

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, approved Amendment 11 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. 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 (18.1 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 overcapitalization of the scallop fishery and 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 would also be 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.

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 being dissipated due to an increase in fleet capacity that would likely occur with continued open access.

NMFS evaluated the Council's proposed measures relative to compliance with the Magnuson-Stevens Act, including national standards, required provisions, and the discretionary provision pertaining to limited access programs, as well as with applicable laws and the FMP. NMFS has determined that Amendment 11 is consistent with all National Standards, including National Standard 4 (which requires management measures to be fair and equitable, but which recognizes that fishing privilege may need to be allocated among fishermen), and National Standard 8 (requiring management measures to minimize adverse economic impacts, to the extent practicable, on fishing communities). Without Amendment 11 and the controls on access to the fishery, estimated catch levels would continue to be exceeded, compromising NMFS's ability to effectively manage the scallop fishery overall. Uncontrolled, the general category fishery could contribute to excess fishing mortality on the scallop resource. As a result, the long-term economic and social impacts would be negative for the scallop fishery as a whole. All general category fishermen are small scale fishermen, given the vessels' relatively low level of scallop catch compared to vessels in the limited access fleet. All scallop fishing vessels are small entities as defined by the RFA.

Amendment 11 measures will impact all scallop vessels to varying degrees. General category scallop landings and revenues since the November 1, 2004, control date have been the highest on record. Amendment 11 will curtail this recent ramp-up in effort, thus having a negative impact on revenues of some fishermen. Amendment 11 will have short-term negative economic and social impacts on vessel owners that fished more intensely recently than they did during the qualifying time period. Vessel owners with historical landings and participation similar to current levels will be the least impacted.

Negative impacts on non-qualified vessels (*i.e.*, post-control date entrants) will be most severe, since their revenues from scallop landings will be terminated. Amendment 11 contains no provisions specifically designed to minimize negative impacts on non-qualified vessels, although various alternatives to allow such vessels to continue fishing were considered and rejected by the Council because they were not consistent with the goal of Amendment 11 to reduce capacity and mortality in the general category fishery. These vessels entered the fishery after the November 1, 2004, control date, despite the control date's intent to deter individuals from unduly investing in, or relying on this fishery. In order for the effort reduction to be meaningful, while allowing remaining fishery participants to have reasonable opportunities to fish, some vessels must be eliminated. NMFS has concluded that the historic participants should have the opportunity to continue to fish.

The evaluation of Amendment 11 measures concluded that the suite of measures; in particular the limited access program, the IFQ program, IFQ transfer provisions, and sector provisions; combine to minimize the negative impacts on qualified vessels. Positive impacts on the qualified participants, as well as the existing limited access fleet, are expected as the harvest capacity of, and fishing mortality by the general category fleet is controlled.

A description of significant alternatives to the measures approved as part of Amendment 11 which affect the impact on small entities and the reasons why these other alternatives were not adopted follows.

Landings Criteria

Two alternatives to the proposed landings qualification criteria were considered: Scallop landings on one trip during the qualification period of 100 lb (45.4 kg) or more; and cumulative annual landings of 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 preferred 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 vessels 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 the qualification period, combined with the landing criteria, are analyzed in several sub-sections of Section 5.4 of the Amendment 11 document and are 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 1,000-lb (454-kg) poundage criterion 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) criterion for their activity during FY 1994–1999. 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 (18.1 kg) per trip, and 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 (90.7 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 who 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 LACG 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 (181.4-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 (181.4 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 (90.7 kg), while vessels that had historical landings greater than 5,000 lb (2,268 kg) would have a scallop possession limit of 400 lb (181.4 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 (90.7-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 of these provisions. 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. Amendment 11 allows the general category fishing history to be retained and split from other limited access permits prior to the effective date of Amendment 11. This is a departure from other limited access permit programs that prohibit such histories from being split from other fishing history. Allowing the splitting avoids complicated ownership disputes between individuals that completed vessel sale transactions that effectively split fishing history before and during the development of Amendment 11.

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 (90.7-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 that 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 (90.7 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 (90.7 kg) or less of scallops from any one trip, therefore would not be negatively impacted from 200 lb (90.7 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 (181.4 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 (18.1 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 (181.4 kg) per trip from this area, whereas NGOM scallop vessels could possess and land only up to 200 lb (90.7 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 (18.1 kg) of scallops 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 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.

Limited Access Vessels 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 FY 2004. 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 FY 2005 and FY 2006. 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 in the fishery. 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 (90.7 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 (18.1 kg) per trip, including some vessels that qualify for limited access but that 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 (18.1 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 (18.1-kg) trips than it could under its IFQ.

The only other 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 (35.2 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 (35.2 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 final 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 he/she already owns 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.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the Atlantic scallop fishery. In addition, copies of this final rule and guide (*i.e.*, permit holder letter) are available from the Regional Administrator and are also available from NMFS, Northeast Region (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 7, 2008.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 648 is 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)(i)(O), (a)(2)(ii), and (e)(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 (181.4 kg) of shucked scallops, or 50 bu (17.6 hL) of in-shell scallops per trip, or possesses more than 100 bu (35.2 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) * * *

(*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, and/or a confirmation of permit history, if, as a result of the issuance of the permit and/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) and/or confirmation(s) of permit history, regardless of whether the renewal of the permits or confirmations of permit history will result in the 5-percent ownership restriction being exceeded.

* * * * *

(O) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(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.* Any vessel of the United States that has not been issued 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(b) or the Area Access program described in § 648.60, that possesses, retains, or lands scallops in or from Federal waters, 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 (181.4 kg) of shucked meats, or 50 bu (17.6 hL) of in-shell scallops per trip, or possess up to 100 bu (35.2 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 that demonstrates 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 (90.7 kg) of shucked or 25 bu (8.81 hL) in-shell scallops per trip, or to possess up to 50 bu (17.6 hL) seaward of the VMS demarcation line in the NGOM Scallop Management Area, 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 outside of the NGOM Scallop Management Area as defined in § 648.62, and may not possess or land more than 200 lb (90.7 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 (17.6 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 that demonstrates 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 (18.1 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 (18.1 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 that demonstrates 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 criterion.* 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 criterion.* 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. To qualify, scallop landings in the 2004 fishing year must have occurred on or before November 1, 2004. NMFS dealer data shall be used to make the initial determination of vessel eligibility. If a dealer reported more than 400 lb (181.4 kg) of scallops on a trip, only 400 lb (181.4 kg) will be credited toward the landings criteria. For dealer reports that indicate that the landings were bushels of in-shell scallops, a conversion of 8 lb (3.63 kg) of scallop meats per bushel will be used to calculate meat-weight, up to the maximum of 400 lb (181.4 kg) per trip. For dealer reports that indicate that the landings were reported in pounds of in-shell scallops are converted to meat-weight using the formula of 8.33 lb (3.78 kg) of scallop meats for each pound of in-shell scallops, up to the maximum of 400 lb (181.4 kg) per trip, for qualification purposes.

(E) *Contribution factor for determining a vessel's IFQ.* An eligible IFQ scallop vessel's best year of scallop landings during the qualification period of March 1, 2000, through November 1, 2004, as specified in § 648.53(h)(2)(ii)(a), and the vessel's number of years active, as specified in § 648.53(h)(2)(ii)(B), shall be used to calculate a vessel's contribution factor, as specified in § 648.53(h)(2)(ii)(C). 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, consistent with confidentiality restrictions of the Magnuson-Stevens Act specified at 16 U.S.C. 1881a. 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 was issued a general category scallop permit as of November 1, 2004, or if the vessel is replacing a vessel that was issued a general category scallop permit as of November 1, 2004. A vessel owner may appeal NMFS's determination that a vessel does not meet this criterion by complying with the appeal process as specified in paragraph (a)(2)(ii)(O) of this section. A vessel that qualifies for an IFQ scallop permit automatically qualifies for an NGOM or Incidental scallop permit if the vessel's owner chooses to be issued an NGOM or Incidental scallop permit instead of the IFQ scallop permit.

(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 each fishing year 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 an LAGC permit described in paragraph (a)(2)(ii) of this section must be postmarked no later than August 30, 2008. Applications for LAGC permits that are not postmarked on or before August 30, 2008, 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 to 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, a vessel owner applying for a LAGC permit who sold or transferred 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 of such vessel as specified in paragraph (a)(1)(i)(D) of this section, before April 14, 2008, may use the general category scallop history to qualify a different vessel for the initial IFQ scallop permit, regardless of whether the history from the sold or transferred vessel was used to qualify another vessel for another limited access 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.* Except as provided in paragraphs (a)(2)(ii)(I)(*2*) and (*3*) of this section, paragraph (a)(1)(i)(L) of this section applies.

(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 temporarily authorizing the vessel to fish under the limited access general category permit. The Regional Administrator shall issue such a letter that shall be effective only during the pendency of any appeal. The temporary letter of authorization must be carried on board the vessel and all requirements of the permit category for which the appeal has been made shall apply. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the temporary 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, regardless of the date of the owner's receipt of the denial.

* * * * *

(e) * * *

(1) * * *

(iv) An applicant 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 to read 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 hrs. 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 an LAGC 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 (c) introductory text are revised; paragraphs (b)(1)(iii) and (iv) are removed and reserved; and paragraphs (b)(2)(i), and (ii), and (b)(4)(i) through (iv) are added to read 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;

* * * * *

(iii)–(iv) [Reserved]

* * * * *

(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. The VMS catch reporting requirements are specified in § 648.60(a)(9). 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 IFQ and NGOM scallop 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)(20), (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), 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 (18.1 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; 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 (18.1 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 (90.7 kg) shucked scallops at any time, 25 bu (8.8 hl) in-shell scallops inside the VMS Demarcation Line, or 50 bu (17.6 hL) of in-shell scallops seaward of the VMS Demarcation Line, unless:

(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; 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 (90.7 kg) of shucked or 25 bu (8.8 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 (35.2 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; or

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

* * * * *

(20) 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 in accordance with § 648.23.

(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) 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 unless the vessel has been issued an Incidental scallop permit;

(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 or designee;

(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 in accordance with § 648.23;

(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 (17.6 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 (8.8 hl) of in-shell scallops in the NGOM scallop management area, unless the vessel is seaward of the VMS Demarcation Line and in possession of no more than 50 bu (17.6 hL) 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 in accordance with § 648.23;

(iii) Possess more than 100 bu (35.2 hL) of in-shell scallops seaward of the VMS demarcation line, or possess, or land per trip, more than 50 bu (17.6 hL) of in-shell scallops shoreward of the VMS demarcation line, unless exempted from DAS allocations as provided in § 648.54;

(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)(8) 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)(5)(ii) and (iii), except as provided in § 648.4(h)(3)(ii);

(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)(5)(ii) and (iii), except as provided in § 648.4(h)(3)(i);

(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)(3)(ii).

(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)(3)(i);

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

(xii) Provide false information in relation to or on an application for an IFQ transfer required under § 648.53(h)(5)(iv);

(xiii) Request to transfer IFQ that has already been temporarily transferred from an IFQ scallop vessel in the same fishing year;

(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 outside of the NGOM Scallop Management Area as defined in § 648.62;

(ii) Fish for or land per trip, or possess at any time, in excess of 200 lb (90.7 kg) of shucked or 25 bu (8.81 hl) of in-shell scallops in or from the NGOM scallop management area, except when seaward of the VMS Demarcation Line and in possession of no more than 50 bu (17.6 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 (18.1 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 (181.4 kg) of shucked scallops, or possess more than 50 bu (17.6 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 100 bu (35.2 hl) of in-shell scallops seaward of the VMS demarcation line on a properly declared IFQ scallop trip.

(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 land scallops only once in any calendar day. Such a vessel may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS demarcation line on a properly declared NGOM scallop fishery trip.

(c) 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 (18.1 kg) of shucked, or 5 bu (1.76 hL) of in-shell scallops. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS demarcation line.

(d) 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 (17.6 hl) of in-shell scallops shoreward of the VMS Demarcation Line, unless when fishing under the state waters exemption specified under § 648.54.

(f) 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 (17.6 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) *Target total allowable catch (TAC) for scallop fishery.* The annual target total TAC for the scallop fishery shall be established through the framework adjustment process specified in § 648.55. The annual target TAC shall include the TAC for all scallop vessels fishing in open areas and Sea Scallop Access Areas, but shall exclude the TAC established for the Northern Gulf of Maine Scallop Management Area as specified in § 648.62. After deducting the total estimated incidental catch of scallops, as specified at § 648.53(a)(9), 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 TAC for open and Sea Scallop 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)(3) through (a)(6) of this section. In the event that a framework adjustment does not implement an annual TAC for a fishing or part of a fishing year, the preceding fishing year's scallop regulations shall apply.

(1) *2008 fishing year target TAC for scallop fishery.* To be determined.

(2) *2009 fishing year target TAC for scallop fishery.* To be determined.

(3) *Access area TAC.* 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 TAC 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.

(4) *Open area target TAC for limited access vessels.*—(i) *2008 fishing year.* For the 2008 fishing year, the target TAC for limited access vessels fishing under the scallop DAS program specified in this section is equal to 90 percent of the target TAC specified in accordance with this paragraph (a), minus the TAC for all access areas specified in accordance with paragraph (a)(3) of this section.

(ii) *2009 fishing year.* Beginning March 1, 2009, unless the implementation of the IFQ program is delayed beyond March 1, 2009, as specified in paragraph (a)(7) of this section, the target TAC for limited access vessels fishing under the scallop DAS program specified in this section is equal to 94.5 percent of the target TAC specified in accordance with this paragraph (a), minus the TAC for all access areas specified in accordance with paragraph (a)(3) of this section. The target TAC 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.

(5) *Open area TAC for IFQ scallop vessels*—(i) *2008 fishing year.* For the 2008 fishing year, 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 TAC specified in accordance with paragraph (a) of this section minus the TAC for all access areas specified in accordance with paragraph (a)(3) of this section.

(ii) *2009 fishing year and beyond for IFQ scallop vessels without a limited access scallop permit.* For the 2009 fishing year, unless the IFQ program is delayed beyond March 1, 2009, as specified in paragraph (a)(7) of this section, the TAC for IFQ scallop vessels without a limited access scallop permit shall be equal to 5 percent of the target TAC specified in accordance with this paragraph (a), minus the TAC for all access areas specified in accordance with paragraph (a)(3) of this section. If the IFQ program implementation is delayed beyond March 1, 2009, the allocation of TAC to IFQ scallop vessels is specified in paragraph (a)(7) of this section.

(iii) *2009 fishing year and beyond for IFQ scallop vessels with a limited access scallop permit.* For the 2009 fishing year, unless the IFQ program is delayed beyond March 1, 2009, as specified in paragraph (a)(7) of this section, 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 TAC specified in accordance with this paragraph (a)

minus the TAC for all access areas specified in accordance with paragraph (a)(3) of this section. If the IFQ program implementation is delayed beyond March 1, 2009, the allocation of TAC to IFQ scallop vessels is specified in paragraph (a)(7) of this section.

(6) *Northern Gulf of Maine Scallop Fishery.* The TAC 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. The Northern Gulf of Maine Scallop Fishery TAC is specified in § 648.62(b)(1).

(7) *Delay of the IFQ program.* If the IFQ program implementation is delayed beyond March 1, 2009, IFQ scallop vessels, including vessels fishing under temporary letter of authorization while their appeal for an IFQ scallop permit is pending, 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 TAC specified in accordance with paragraph (a) of this section minus the TAC for all access areas specified in accordance with paragraph (a)(3) of this section until the IFQ program is implemented. The distribution of the TAC as specified in paragraph (a)(8) of this section would remain in effect. If the Regional Administrator determines that the IFQ program cannot be implemented by March 1, 2009, NMFS shall inform all scallop vessel owners that the IFQ program shall not take effect.

(8) *Distribution of transition period TAC—(i) Allocation.* For the 2008 fishing year, and 2009 fishing year, and beyond, if the IFQ program is not implemented as specified in paragraph (a)(7) of this section, the TAC for IFQ scallop vessels shall be allocated as specified in paragraphs (a)(5) of this section into quarterly periods. The percentage allocations for each period allocated to the IFQ scallop vessels, including limited access vessels fishing under an IFQ scallop permit and vessels under appeal for an IFQ scallop permit pursuant to § 648.4(a)(2)(ii) shall be specified in the framework adjustment process in § 648.55 and are specified in the following table:

Quarter	Percent	TAC
I. March-May	35	To be determined.
II. June-August	40	To be determined.
III. September-November	15	To be determined.
IV. December-February	10	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)(8)(i) of this section.

(iii) *Closure of fishery for the quarter.* No vessel issued an IFQ scallop permit, or vessel issued a temporary letter of authorization to fish for scallops while their appeal for an IFQ scallop permit is pending pursuant to § 648.4(a)(2)(ii), may possess, retain, or land scallops once the Regional Administrator has provided notification in the **Federal Register** that the scallop total allowable catch for the specified quarter, in accordance with this paragraph (a)(8) has been reached.

(iv) *Overages and underages of quarterly TACs.* Any overage or underage of catch during quarter 1 as specified in this paragraph (a)(8) shall be applied to the third quarter TAC as specified in this paragraph (a)(8). Any overage or underage of catch during quarters 2 and 3, as specified in this paragraph (a)(8), shall be applied to the fourth quarter TAC as specified in this paragraph (a)(8).

(9) *Scallop incidental catch target TAC.* To be determined.

(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 times 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 times 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), consistent with confidentiality restrictions of the Magnuson-Stevens Act specified at 16 U.S.C. 1881a.

(A) *Best year determination.* An eligible IFQ scallop vessel's highest scallop landings in any scallop fishing year that the vessel was issued a general category scallop permit between March 1, 2000, and November 1, 2004, shall be determined using NMFS dealer reports. Scallop landings in the 2004 fishing year must have occurred on or before November 1, 2004. If a dealer reported more than 400 lb (181.4 kg) of scallops landed on a trip, only 400 lb (181.4 kg) will be credited for that trip toward the best year calculation. For dealer reports that indicate clearly that the landings were bushels of in-shell scallops, a conversion of 8.33 lb (3.78 kg) of scallop meats per bushel shall be used to calculate meat-weight, up to a maximum of 400 lb (181.4 kg) per trip.

(B) *Years active.* For each eligible IFQ scallop vessel, the total number of scallop fishing years during the period March 1, 2000, through November 1, 2004, in which the vessel had a general category scallop permit and landed at least 1 lb (0.45 kg) of scallop meats, or in-shell scallops, shall be counted as active years based on NMFS dealer reports. Scallop landings in the 2004 fishing year must have occurred on or before November 1, 2004.

(C) *Index to determine contribution factor.* For each eligible IFQ scallop vessel, the best year as determined pursuant to paragraph (a)(2)(ii)(E)(*1*) of this section shall be multiplied by the appropriate index factor specified in the following table, based on years active as specified in paragraph (a)(2)(ii)(E)(*2*) of this section. The resulting contribution factor shall determine its IFQ for each fishing year based on the allocation to general category scallop vessels as specified in § 648.53(a)(2) and the method of calculating the IFQ provided in § 648.53(h).

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) Unless otherwise specified in paragraph (h)(3)(i)(B) and (C) of this section, a vessel issued an IFQ scallop permit or confirmation of permit history shall not be issued more than 2 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section.

(B) A vessel may be initially 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, if the initial determination of its contribution factor specified in accordance with § 648.4(a)(2)(ii)(E) and paragraph (h)(2)(ii) of this section, results in an IFQ that exceeds 2 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section. A vessel that is allocated an IFQ that exceeds 2 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section in accordance with this paragraph (h)(3)(i)(B), may not transfer IFQ to that vessel, as specified in paragraph (h)(5) of this section.

(C) A vessel initially issued a 2008 IFQ scallop permit or confirmation of permit history, or issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 2009 and thereafter, in compliance with the ownership restrictions in paragraph (h)(3)(i)(A) of this section, are eligible to renew such permits(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permits or confirmations of permit history will result in the 2-percent ownership restriction being exceeded.

(ii) *IFQ ownership cap.* (A) For any vessel acquired after June 1, 2008, a vessel owner is not eligible to be issued an IFQ scallop permit for the vessel, and/or a confirmation of permit history, and is not eligible to transfer IFQ to the vessel, if, as a result of the issuance of

the permit and/or confirmation of permit history, or IFQ transfer, the vessel owner, or any other person who is a shareholder or partner of the vessel owner, will have an ownership interest in more than 5 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section.

(B) Vessel owners who were initially issued a 2008 IFQ scallop permit or confirmation of permit history, or who were issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 2009 and thereafter, in compliance with the ownership restrictions in paragraph (h)(3)(ii)(A) of this section, are eligible to renew such permits(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permits or confirmations of permit history will result in the 5-percent ownership restriction being exceeded.

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

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

(4) *IFQ cost recovery.* NMFS shall collect a fee, not to exceed 3 percent of the ex-vessel value of fish harvested in a fishing year, to recover the costs associated with management, data collection, and enforcement of the IFQ program. Owners of IFQ scallop vessels shall be responsible for paying the fee as required by NMFS. For IFQ scallop vessel owners involved in a temporary transfer of IFQ as specified in paragraph (h)(5) of this section, the transferor and transferee shall be joint and severally responsible for any failure to pay cost recovery fees. By agreeing to and accepting the transfer of IFQ, the transferee waives confidentiality of information associated with landings of the transferred IFQ for the use of the transferor only. 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.* Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel not issued a limited access scallop permit may temporarily transfer one or more entire IFQs to or 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.* Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel not issued a limited access scallop permit may transfer one or more entire IFQs permanently to or 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. Any such transfer cannot be limited in duration and is permanent unless the IFQ is subsequently transferred to another IFQ scallop vessel, other than the originating IFQ scallop vessel, in a subsequent fishing year. The Regional Administrator has final approval authority for all IFQ transfer requests.

(iii) *IFQ transfer restrictions.* The owner of an IFQ scallop vessel not issued a limited access scallop permit may transfer entire IFQ allocations only. The owner of an IFQ scallop vessel not issued a limited access scallop permit that has fished under its IFQ in a fishing year may not transfer that vessel's IFQ to another IFQ scallop vessel in the same fishing year. 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, either temporarily or permanently. 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 in that fishing year. 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 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, 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, 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, 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 scallop resource conservation 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 overfishing 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 rotational management areas;

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

(22) Area-specific trip allocations;

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

(24) Limits on number of area closures;

(25) 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 Area 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)(i), (b)(5)(ii), (c)(5)(i), (c)(5)(ii), (d)(5)(i), (d)(5)(ii), (e)(4)(i), and (e)(4)(ii) are revised to read as follows:

§ 648.59 Sea Scallop Access Areas.

* * * * *

(b) * * *

(5) * * *

(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area I Access Area as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area I Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area I Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area I Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in this paragraph (b)(5)(i).

(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 2008 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) * * *

(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area II Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area II Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area II Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area II Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in this paragraph (c)(5)(i).

(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) * * *

(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Nantucket Lightship Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Nantucket Lightship Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Nantucket Lightship Closed Area Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Nantucket Lightship Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in this paragraph (d)(5)(i).

(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 the total number of 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.

(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) * * *

(4) * * *

(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Elephant Trunk Sea Scallop Access Area, as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains an Elephant Trunk Sea Scallop Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Elephant Trunk Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Elephant Trunk Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in this paragraph (e)(4)(i).

(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)(4)(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)(4)(ii) and shall determine the number of trips specified in paragraph (e)(4)(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, 2008, 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), but 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. Once this determination has been made, and LAGC scallop vessel may not fish for, possess, or land scallops in or from the specified Access Area.

* * * * *

■ 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. and within the boundaries of the Gulf of Maine Scallop Dredge Exemption Area as specified in § 648.80(a)(11). To fish for or possess scallops in the NGOM scallop management area, a vessel must have been issued a scallop permit as specified in § 648.4(a)(2).

(1) If a vessel has been issued a NGOM scallop permit, the vessel is restricted to fishing for or possessing scallops only in the NGOM scallop management area.

(2) Scallop landings by 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 IFQ scallop vessels fishing in the NGOM scallop management area shall be deducted from their respective scallop IFQs. 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 (90.7 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops, and may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS Demarcation Line. A vessel issued an incidental catch general category scallop permit that fishes in the NGOM may fish for, possess, or retain only up to 40 lb of shucked or 5 U.S. bu (1.76 hL) of in-shell scallops, and may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line.

(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 NGOM scallop management area 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 intends to fish for scallops in the NGOM scallop management area or fishes for, possesses, or lands scallops in or from the NGOM scallop management area, must declare a NGOM scallop management area trip and report scallop catch through the vessel's VMS unit, as required in § 648.10.

(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 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 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 Sector's 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 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)(2)(iii) 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)(5)(ii) or (iii).

(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)(2)(iii), provided the vessel is participating in the Sector and carries on board a Letter of Authorization to participate in the Sector and exempts the vessel from its IFQ limit and any other related measures. 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, unless exempted under a Letter of Authorization, 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. The Sector 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 shall 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 have its authorization as a Sector withdrawn by the Regional Administrator, after consultation with the Council, and may be subject to enforcement action.

(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 may exempt the participating vessel from the requirement that the vessel cannot exceed its own IFQ and related measures. 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:

(i) A list of all participants;

(ii) A contract signed by all participants indicating their agreement to abide by the operations plan;

(iii) 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;

(iv) A plan explaining how the Sector will harvest its allocation, including methods to inform NMFS of changes in those arrangements over the year;

(v) The original distribution of catch history of vessels in the Sector (maintaining vessel data confidentiality);

(vi) 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;

(vii) Rules for entry to and exit from the Sector, including sanctions and procedures for removing members who do not comply with the operations plan;

(viii) Procedure for notifying NMFS if a member is no longer part of the Sector and the reason for leaving;

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

(x) 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;

(xi) 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.

(xii) Any other information determined to be necessary and appropriate.

(d) *Sector review, approval, and revocation.* (1) A Sector shall submit its operations plan and any NEPA documents to the Regional Administrator and the Council no less than 1 year prior to the date that it wishes to begin operations under the Sector. The 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 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 Administrator no later than July 1 of each year, whether or not the plan has changed. Once the submission documents specified under paragraphs (a)(1) and (c)(2) of this section have been determined to comply with the requirements of this section, NMFS may consult with the Council and shall approve or disapprove Sector operations consistent with applicable law.

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