

Fishery Conservation and Management

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For example, if the limited access vessel daily possession limit to defray the cost of an observer is 180 lb (82 kg), the LAGC IFQ possession limit to defray the cost of an observer would be 180 lb (82 kg) per trip, regardless of trip length.

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§ 648.53 Acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), DAS allocations, and individual fishing quotas (IFQ).

(a) *Scallop fishery ABC.* The ABC for the scallop fishery shall be established through the framework adjustment process specified in § 648.55 and is equal to the overall scallop fishery ACL. The ABC/ACL shall be divided as sub-ACLs 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) and (a)(4) of this section, after deducting the scallop incidental catch target TAC specified in paragraph (a)(2) of this section, observer set-aside specified in paragraph (g)(1) of this section, and research set-aside specified in Section 648.56(d). The ABC/ACL for the 2013 fishing year is subject to change through a future framework adjustment.

(1) ABC/ACL for fishing years 2011 through 2013 shall be:

- (i) 2011: 27,269 mt.
- (ii) 2012: 28,961 mt.
- (iii) 2013: 28,700 mt.

(2) *Scallop incidental catch target TAC.* The incidental catch target TAC for vessels with incidental catch scallop permits is 50,000 lb (22.7 mt) for fishing years 2011, 2012, and 2013.

(3) *Limited access fleet sub-ACL and ACT.* The limited access scallop fishery shall be allocated 94.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). ACT for the limited access scallop fishery shall be established through the framework adjustment process described in § 648.55. DAS specified in paragraph (b) of this section shall be

based on the ACTs specified in paragraph (a)(3)(ii) of this section. The limited access fleet sub-ACL and ACT for the 2013 fishing year are subject to change through a future framework adjustment.

(i) The limited access fishery sub-ACLs for fishing years 2011 through 2013 are:

- (A) 2011: 24,954 mt.
- (B) 2012: 26,537 mt.
- (C) 2013: 26,293 mt.

(ii) The limited access fishery ACTs for fishing years 2011 through 2013 are:

- (A) 2011: 21,431 mt.
- (B) 2012: 23,546 mt.
- (C) 2013: 19,688 mt.

(4) *LAGC fleet sub-ACL.* The sub-ACL for the LAGC IFQ fishery shall be equal to 5.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). The LAGC IFQ fishery ACT shall be equal to the LAGC IFQ fishery's ACL. The ACL for the LAGC IFQ fishery for vessels issued only a LAGC IFQ scallop permit shall be equal to 5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). The ACL for the LAGC IFQ fishery for vessels issued only both a LAGC IFQ scallop permit and a limited access scallop permit shall be 0.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). The LAGC ACLs for the 2013 fishing year are default allocations and are subject to change through a future framework adjustment.

(i) The ACLs for fishing years 2011 through 2013 for LAGC IFQ vessels without a limited access scallop permit are:

- (A) 2011: 1,320 mt.
- (B) 2012: 1,404 mt.
- (C) 2013: 1,391 mt.

(ii) The ACLs for fishing years 2011 through 2013 for vessels issued both a LAGC and a limited access scallop permits are:

- (A) 2011: 132 mt.
- (B) 2012: 140 mt.
- (C) 2013: 139 mt.

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(b) *DAS allocations.* DAS allocations for limited access scallop trips 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 ACT specified in paragraph (a)(3)(ii) of this section. A vessel's DAS shall be determined and specified in paragraph (b)(4) of this section by dividing the total DAS specified in the framework adjustment by the landings per unit effort (LPUE) specified in paragraph (b)(1) of this section, then dividing by the total number of vessels in the fleet.

(1) *Landings per unit effort (LPUE).* LPUE is an estimate of the average amount of scallops, in pounds, that the limited access scallop fleet lands per DAS fished. The estimated LPUE is the average LPUE for all limited access scallop vessels fishing under DAS, and shall be used to calculate DAS specified in paragraph (b)(4) of this section, the DAS reduction for the AM specified in paragraph (b)(4)(ii) of this section, and the observer set-aside DAS allocation specified in paragraph (g)(1) of this section. LPUE shall be:

- (i) 2011 fishing year: 2,441 lb/DAS.
- (ii) 2012 fishing year: 2,662 lb/DAS.
- (iii) 2013 fishing year: 2,676 lb/DAS.

(2) [Reserved]

(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)(4) (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, excluding carryover DAS in accordance with paragraph (d) of this section. DAS allocations shall be determined by distributing the portion of ACT specified in paragraph (a)(3)(ii), as reduced by access area allocations specified in § 648.59, and dividing that amount among vessels in the form of

DAS calculated by applying estimates of open area LPUE specified in paragraph (b)(1) of this section. Allocation for part-time and occasional scallop vessels shall be equal to 40 percent and 8.33 percent of the full-time DAS allocations, respectively. DAS allocations for the 2013 fishing year are default allocations and are subject to change through a future framework adjustment. The annual open area DAS allocations for each category of vessel for the fishing years indicated are as follows:

SCALLOP OPEN AREA DAS ALLOCATIONS

Permit category	2011	2012	2013
Full-Time	32	34	26
Part-Time	13	14	11
Occasional	3	3	3

(i) If, prior to the implementation of Framework 22, a limited access vessel uses more open area DAS in the 2011 fishing year than specified in this section, such vessel shall have the DAS used in excess of the 2012 fishing year allocation specified in this paragraph (b)(4) deducted from its fishing year 2012 open area DAS allocation.

(ii) *Accountability measures (AM).* Unless the limited access AM exception is implemented in accordance with the provision specified in paragraph (b)(4)(iii) of this section, if the ACL specified in paragraph (a)(3)(i) of this section is exceeded for the applicable fishing year, the DAS specified in paragraph (b)(4) of this section for each limited access vessel shall be reduced by an amount equal to the amount of landings in excess of the ACL divided by the applicable LPUE for the fishing year in which the AM will apply as specified in paragraph (b)(1) of this section, then divided by the number of scallop vessels eligible to be issued a full-time limited access scallop permit. For example, assuming a 300,000-lb (136-mt) overage of the ACL in 2011, an open area LPUE of 2,500 lb (1.13 mt) per DAS in 2012, and 313 full-time vessels, each full-time vessel's DAS would be reduced by 0.38 DAS (300,000 lb (136 mt)/2,500 lb (1.13 mt) per DAS = 120 lb (0.05 mt) per DAS/313 vessels = 0.38 DAS per vessel). Deductions in DAS for part-time and occasional scallop vessels

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shall be equal to 40 percent and 8.33 percent of the full-time DAS deduction, respectively, as calculated pursuant to this paragraph (b)(4)(ii). The AM shall take effect in the fishing year following the fishing year in which the overage occurred. For example, landings in excess of the ACL in fishing year 2011 would result in the DAS reduction AM in fishing year 2012. If the AM takes effect, and a limited access vessel uses more open area DAS in the fishing year in which the AM is applied, the vessel shall have the DAS used in excess of the allocation after applying the AM deducted from its open area DAS allocation in the subsequent fishing year. For example, a vessel initially allocated 32 DAS in 2011 uses all 32 DAS prior to application of the AM. If, after application of the AM, the vessel's DAS allocation is reduced to 31 DAS, the vessel's DAS in 2012 would be reduced by 1 DAS.

(iii) *Limited access AM exception*—If NMFS determines, in accordance with paragraph (b)(4)(ii) of this section, that the fishing mortality rate associated with the limited access fleet's landings in a fishing year is less than 0.28, the AM specified in paragraph (b)(4)(ii) of this section shall not take effect. The fishing mortality rate of 0.28 is the fishing mortality that is one standard deviation below the fishing mortality rate for the scallop fishery ACL, currently estimated at 0.32.

(iv) *Limited access fleet AM and exception provision timing*. The Regional Administrator shall determine whether the limited access fleet exceeded its ACL specified in paragraph (a)(3)(i) of this section by July of the fishing year following the year for which landings are being evaluated. On or about July 1, the Regional Administrator shall notify the New England Fishery Management Council (Council) of the determination of whether or not the ACL for the limited access fleet was exceeded, and the amount of landings in excess of the ACL. Upon this notification, the Scallop Plan Development Team (PDT) shall evaluate the overage and determine if the fishing mortality rate associated with total landings by the limited access scallop fleet is less than 0.28. On or about September 1 of each year, the Scallop PDT shall notify the

Council of its determination, and the Council, on or about September 30, shall make a recommendation, based on the Scallop PDT findings, concerning whether to invoke the limited access AM exception. If NMFS concurs with the Scallop PDT's recommendation to invoke the limited access AM exception, in accordance with the APA, the limited access AM shall not be implemented. If NMFS does not concur, in accordance with the APA, the limited access AM shall be implemented as soon as possible after September 30 each year.

(v) The Elephant Trunk Access Area shall change to an open area starting in fishing year 2011. For reference, the Elephant Trunk Access Area was defined by straight lines connecting the following points in the order stated (copies of a chart depicting the area previously known as the Elephant Trunk Access Area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
ETAA1	38°50' N	74°20' W
ETAA2	38°10' N	74°20' W
ETAA3	38°10' N	73°30' W
ETAA4	38°50' N	73°30' W
ETAA1	38°50' N	74°20' W

(vi) If, prior to the implementation of Framework 22, a vessel lands all or part of an Elephant Trunk Access Area trip that was allocated at the start of the 2011 fishing year, any pounds landed from that declared Elephant Trunk Access Area trip would be converted to DAS and deducted from the vessel's open area DAS allocations in fishing year 2012. This DAS deduction would be equal to the scallop fishing mortality resulting from the open area DAS allocation. For example, if a full-time vessel lands the full 18,000-lb (8,165-kg) possession limit from an Elephant Trunk Access Area trip allocated at the start of the 2011 fishing year, the pounds landed would be converted to DAS and deducted from the vessel's 2012 fishing year DAS allocation as follows: The 18,000 lb (8,165-kg) would first be multiplied by the estimated average meat count in the Elephant Trunk Access Area (18.4 meats/lb) and then divided by the estimated open area average meat count (also 18.4 meats/lb) and

by the estimated open area LPUE for fishing year 2011 (2,441 lb/DAS), resulting in a DAS deduction of 7.4 DAS ((18,000 lb × 18.4 meats/lb)/(18.4 meats/lb × 2,441 lb/DAS) = 7.4 DAS). This amount would be deducted from that vessel's 2012 fishing year (*i.e.*, 34 DAS minus 7.4 DAS), resulting in a total 2012 fishing year DAS allocation of 26.6 DAS. Similarly, Part-time and occasional vessels shall receive deductions of 5.9 DAS and 2.5 DAS, respectively, based on their respective possession limits, for landing their full trip possession limits from the area formerly known as the Elephant Trunk Access Area. If a vessel only lands a portion of its full possession limit, the applicable DAS reduction shall be proportional to those landings. For example, if a full-time vessel lands 9,000 lb (4,082 kg) during a declared Elephant Trunk Access Area trip, that vessel's fishing year 2012 DAS allocation would be reduced by 3.7 DAS (*i.e.*, half of the DAS that would be deducted for a full trip).

(vii) If, prior to the implementation of Framework 22, a vessel owner exchanges an Elephant Trunk Access Area trip for another access area trip as specified in § 648.60(a)(3)(ii) in fishing year 2011, the vessel that receives an additional Elephant Trunk Access Area trip would receive a DAS credit of 7.4 DAS in FY 2011, resulting in a total fishing year 2011 DAS allocation of 39.4 DAS (32 DAS plus 7.4 DAS). This DAS credit from unused Elephant Trunk Access Area trip gained through a trip exchange is based on a full-time vessel's 18,000-lb (8,165-kg) possession limit and is calculated by using the formula specified in paragraph (b)(4)(vi) but the DAS conversion is applied as a DAS credit in the 2011 fishing year, rather than as a DAS deduction in fishing year 2012. Similarly, using the same calculation with a 14,400-lb (6,532-kg) possession limit, part-time vessels would receive a credit of 5.9 DAS if the vessel owner received an additional Elephant Trunk Access Area trip

through a trip exchange in the interim between the start of the 2011 fishing year and the implementation of Framework 22 and did not use it. If a vessel fishes any part of an Elephant Trunk Access Area trip gained through a trip exchange, those landings would be deducted from any DAS credit applied to the 2011 fishing year. For example, if a full-time vessel lands 10,000 lb (4,536 kg) from an Elephant Trunk Access Area trip gained through a trip exchange, the pounds landed would be converted to DAS and deducted from the trip-exchange credit as follows: The 10,000 lb (4,536 kg) would first be multiplied by the estimated average meat count in the Elephant Trunk Access Area (18.4 meats/lb) and then divided by the estimated open area average meat count (also 18.4 meats/lb) and by the estimate open area LPUE for fishing year 2011 (2,441 lb/DAS), resulting in a DAS deduction of 4.1 DAS ((10,000 lb × 18.4 meats/lb)/(18.4 meats/lb × 2,441 lb/DAS) = 4.1 DAS). Thus, this vessel would receive a reduced DAS credit in FY 2011 to account for the Elephant Trunk Access Area trip exchange of 3.3 DAS (7.4 DAS – 4.1 DAS = 3.3 DAS).

(5) *Additional open area DAS.* (i) When Closed Area I, Closed Area II, and/or the Nantucket Lightship Access Areas close due to the yellowtail flounder TAC, for each remaining complete trip in each of these Access Areas, a full-time, part-time, or occasional vessel may fish an additional DAS in open areas during the same fishing year. Part-time and occasional vessel shall only receive additional DAS if there are no other access areas available in which to take an access area trip. 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). The Access Area DAS trip conversion for fishing years 2011 and 2013 are specified in paragraph (b)(5)(ii) of this section.

(ii) *Access Area Trip Conversion to Open Area DAS.*

ACCESS AREA TRIP CONVERSION TO OPEN AREA DAS

Permit category	FY	CAI	CAII	NLAA
Full-Time	2011	4.3	5.7	N/A
	2012	4.4	5.4	4.3
	2013	N/A	5.4	4.9
Part-Time	2011	3.4	4.5	N/A

ACCESS AREA TRIP CONVERSION TO OPEN AREA DAS—Continued

Permit category	FY	CAI	CAII	NLAA
Occasional	2012	3.6	4.3	3.4
	2013	N/A	4.3	3.9
	2011	1.4	1.9	N/A
	2012	1.5	1.8	1.4
	2013	N/A	1.8	1.6

(iii) If a vessel has unused broken trip compensation trip(s), as specified in §648.60(c), when Closed Area I, Closed Area II, and/or Nantucket Lightship Access Areas close due to the yellowtail flounder TAC, it will be issued additional open area DAS in proportion to the unharvested possession limit. For example, if a full-time vessel had an unused 9,000-lb (4,082-kg) Nantucket Lightship Access Area compensation trip (half of the possession limit) at the time of a Nantucket Lightship Access Area yellowtail flounder TAC closure in FY 2012, the vessel will be allocated 2.15 DAS (half of 4.3 DAS).

(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.

(c) *Adjustments in annual DAS allocations.* Annual DAS allocations shall be established for 3 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 before the beginning of the third year of each biennial adjustment, the third-year measures specified in the biennial framework adjustment shall remain in effect for the next fishing year. If a new biennial or other framework adjustment is not implemented by NMFS by the conclusion of the third year, the management measures from that third year would remain in place until a new action is implemented. The Council may also recommend adjustments to DAS allocations or other measures through a framework adjustment 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)(2)(i)(J) for the entire fishing year preceding the carry-over year, limited access ves-

sels 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. Carry-over DAS are accounted for in setting the ACT for the limited access fleet, as specified in paragraph (a)(3)(ii) of this section. Therefore, if carry-over DAS result or contribute to an overage of the ACL, the limited access fleet AM specified in paragraph (b)(4)(ii) of this section would still apply, provided the AM exception specified in paragraph (b)(4)(iii) of this section is not invoked.

(e) *Accrual of DAS.* All DAS fished shall be charged to the nearest minute. A vessel carrying an observer and authorized to be charged fewer DAS in Open Areas based on the total available DAS set aside under paragraph (g)(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) *Set-asides for observer coverage.* (1) To help defray the cost of carrying an observer, 1 percent of the ABC/ACL specified in paragraph (a)(1) of this section shall be set aside to be used by vessels that are assigned to take an at-sea observer on a trip. The total TAC for observer set aside is 273 mt in fishing year 2011, 290 mt in fishing year 2012, and 287 mt in fishing year 2013. This 1 percent is divided proportionally into access areas and open areas, as specified in §648.60(d)(1) and paragraph (g)(2) of this section, respectively. The

total observer set-aside TAC specified for fishing year 2013 is a default allocation and is subject to change through a future framework adjustment

(2) *DAS set-aside for observer coverage.* For vessels assigned to take an at-sea observer on a trip other than an Access Area Program trip, the open-area observer set-aside TACs are 139 mt, 161 mt, and 136 mt for fishing years 2011, 2012, and 2013, respectively. The DAS set-aside shall be determined by dividing these amounts by the LPUE specified in paragraph (b)(1)(i) of this section for each specific fishing year. The DAS set-aside for observer coverage is 137 DAS for the 2011 fishing year, 133 DAS for the 2012 fishing year, and 112 DAS for the 2013 fishing year. A vessel 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. This DAS adjustment factor may also be changed during the fishing year if fishery conditions warrant such a change. The number of DAS that are deducted from each trip based on the adjustment factor shall be deducted from the observer 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 if set-aside is not available.

(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 TAC allocated to limited access scallop vessels issued IFQ scallop permits, as specified in paragraphs (a)(5)(i) and (ii) 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)(2)(ii)(A) through (C) of this section. A vessel's contribution factor shall be provided to the owner of a qualified limited access general category vessel following initial application for an IFQ scallop permit as specified in § 648.4(a)(2)(ii)(E), consistent with confidentiality restrictions of the Magnuson-Stevens Act specified at 16 U.S.C. 1881a.

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

landings were bushels of in-shell scallops, a conversion of 8.33 lb (3.78 kg) of scallop meats per bushel shall be used to calculate meat-weight, up to a maximum of 400 lb (181.4 kg) per trip.

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

(C) *Index to determine contribution factor.* For each eligible IFQ scallop vessel, the best year as determined pursuant to paragraph (a)(2)(ii)(E)(1) of this section shall be multiplied by the appropriate index factor specified in the following table, based on years active as specified in paragraph (a)(2)(ii)(E)(2) of this section. The resulting contribution factor shall determine its IFQ for each fishing year based on the allocation to general category scallop vessels as specified in §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 shall be determined by dividing its contribution factor by the sum of the contribution factors of all vessels issued an IFQ scallop permit. Continuing the example in paragraph (h)(1)(ii)(D) of this section, the sum of the contribution factors for 380 IFQ scallop vessels is estimated for the purpose of this example to be 4.18 million lb (1,896 mt). The contribution percentage of the above vessel is 1.45 percent (60,687 lb (27,527 kg)/

4.18 million lb (1,896 mt) = 1.45 percent). The contribution percentage for a vessel that is issued an IFQ scallop permit and whose owner has permanently transferred all of its IFQ to another IFQ vessel, as specified in paragraph (h)(5)(ii) of this section, shall be equal to 0 percent.

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

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

(B) For accounting purposes, the combined total of all vessels' IFQ carry-over shall be added to the LAGC IFQ fleet's applicable ACL for the carry-over year. Any IFQ carried over that is landed in the carry-over fishing year shall be counted against the ACL specified in paragraph (a)(4)(i) of this section, as increased by the total carry-over for all LAGC IFQ vessels, as specified in this paragraph (h)(2)(v)(B). IFQ carry-over shall not be applicable to the calculation of the IFQ cap specified in paragraph (h)(3)(i) of this section and the ownership cap specified in paragraph (h)(3)(ii) of this section.

(vi) *AM for the IFQ fleet.* If a vessel exceeds its IFQ, including all temporarily and permanently transferred

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

(3) *IFQ ownership restrictions*—(i) *IFQ scallop vessel IFQ cap*. (A) Unless otherwise specified in paragraphs (h)(3)(i)(B) and (C) of this section, a vessel issued an IFQ scallop permit or confirmation of permit history shall not be issued more than 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section.

(B) A vessel may be initially issued more than 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section, if the initial determination of its contribution factor specified in accordance with § 648.4(a)(2)(ii)(E) and paragraph (h)(2)(ii) of this section, results in an IFQ that exceeds 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section. A vessel that is allocated an IFQ that exceeds 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section, in accordance with this paragraph (h)(3)(i)(B), may not receive IFQ through an IFQ transfer, as specified in paragraph (h)(5) of this section.

(C) A vessel initially issued a 2008 IFQ scallop permit or confirmation of permit history, or that was issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 2009 and thereafter, in compliance with the ownership restrictions in paragraph (h)(3)(i)(A) of this section, is eligible to renew such permits(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permit or confirmations of permit history will result in the 2.5-percent IFQ cap restriction being exceeded.

(ii) *IFQ ownership cap*. (A) For any vessel acquired after June 1, 2008, a vessel owner is not eligible to be issued an IFQ scallop permit for the vessel, and/or a confirmation of permit history, and is not eligible to transfer IFQ to the vessel, if, as a result of the issuance of the permit and/or confirmation of permit history, or IFQ transfer, the vessel owner, or any other person who is a shareholder or partner of the vessel owner, will have an ownership interest in more than 5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section.

(B) Vessel owners who were initially issued a 2008 IFQ scallop permit or confirmation of permit history, or who were issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 2009 and thereafter, in compliance with the ownership restrictions in paragraph

(h)(3)(ii)(A) of this section, are eligible to renew such permits(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permits or confirmations of permit history will result in the 5-percent ownership restriction being exceeded.

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

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

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

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

(ii) *Fee payment procedure.* On or about October 31 of each year, NMFS shall mail a cost recovery bill to each IFQ scallop permit holder for the previous cost recovery period. An IFQ scallop permit holder who has incurred a fee must pay the fee to NMFS by January 1 of each year. Cost recovery payments shall be made electronically via the Federal web portal, *www.pay.gov*, or other Internet sites as designated by the Regional Administrator. Instructions for electronic payment shall be available on both the payment Web site and the paper bill. Payment options shall include payment via a credit card, as specified in the cost recovery bill, or via direct automated clearing house (ACH) withdrawal from a designated checking account. Payment by check may be authorized by NMFS if it has determined that electronic payment is not possible (for example, if the geographical area of an individual(s) is affected by catastrophic conditions).

(iii) *Payment compliance.* An IFQ scallop permit holder that has incurred an IFQ cost recovery fee must pay the fee to NMFS by January 1 of each year. If the cost recovery payment, as determined by NMFS, is not made by January 1, NMFS may deny the renewal of the IFQ scallop permit until full payment is received. If, upon preliminary review of the accuracy and completeness of a fee payment, NMFS determines the IFQ scallop permit holder has not paid the full amount due, NMFS shall notify the IFQ scallop permit holder by letter. NMFS shall explain the discrepancy and provide the IFQ scallop permit holder 30 days to either pay the amount specified by NMFS or to provide evidence that the amount paid was correct. If the IFQ scallop permit holder submits evidence in support of his/her payment, NMFS shall determine if there is any remaining disagreement as to the appropriate IFQ fee, and prepare a Final Administrative Determination (FAD). The FAD shall set out the facts, discuss those facts within the context of the relevant agency policies and regulations, and make a determination as to the appropriate disposition of the matter. A FAD shall be the final agency action, and, if the FAD determines that the

IFQ scallop permit holder is out of compliance, the FAD shall require payment within 30 days. If a FAD is not issued until after the start of the fishing year, the IFQ scallop permit holder may be authorized to fish temporarily by the Regional Administrator until the FAD is issued, at which point the permit holder shall have 30 days to comply with the terms of the FAD or the IFQ scallop permit shall not be issued until such terms are met. If NMFS determines that the IFQ scallop permit holder owes additional fees for the previous cost recovery period, and the IFQ scallop permit has already been renewed, NMFS shall issue a FAD, at which point the permit holder shall have 30 days to comply with the terms of the FAD or NMFS may withdraw the issuance of the IFQ scallop permit until such terms are met. If such payment is not received within 30 days of issuance of the FAD, NMFS shall refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection, and no IFQ permit held by the permit holder may be renewed until the terms of the FAD are met. If NMFS determines that the conditions of the FAD have been met, the IFQ permit holder may renew the IFQ scallop permit(s). If NMFS does not receive full payment prior to the end of the fishing year, the IFQ scallop permit shall be considered voluntarily abandoned, pursuant to § 648.4(a)(2)(ii)(K), unless otherwise determined by the Regional Administrator.

(5) *Transferring IFQ*—(i) *Temporary IFQ transfers*. Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel not issued a limited access scallop permit may temporarily transfer its entire IFQ allocation, or a portion of its IFQ allocation, to another IFQ scallop vessel. Temporary IFQ transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed. IFQ can be transferred only once during a given fishing year. Temporary IFQ transfers must be in the amount of at least 100 lb (45 kg), or the entire allocation may be transferred to another vessel. If a vessel has previously transferred a portion of its IFQ and the remaining allocation

is less than 100 lb (45 kg), the remaining IFQ may be transferred in full to another vessel. 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 IFQ permanently to or from another IFQ scallop vessel. 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. If a vessel owner permanently transfers the vessel's entire IFQ to another IFQ vessel, the LAGC IFQ scallop permit shall remain valid on the transferring vessel, unless the owner of the transferring vessel cancels the IFQ scallop permit. Such cancellation shall be considered voluntary relinquishment of the IFQ permit, and the vessel shall be ineligible for an IFQ scallop permit unless it replaces another vessel that was issued an IFQ scallop permit. The Regional Administrator has final approval authority for all IFQ transfer requests.

(iii) *IFQ transfer restrictions*. The owner of an IFQ scallop vessel 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. Requests for IFQ transfers cannot be less than 100 lb (46.4 kg), unless that value reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. IFQ can be transferred only once during a given fishing year. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2.5 percent of the ACL allocated to IFQ scallop vessels. A transfer of an IFQ, whether temporary or permanent, may not result in the transferee having a total ownership of, or interest in, general category scallop allocation that exceeds 5 percent of the ACL allocated to IFQ scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not transfer to or receive IFQ from another IFQ scallop vessel.

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

(A) *Application information requirements.* An application to transfer IFQ must contain at least the following information: Transferor's name, vessel name, permit number, and official number or state registration number; transferee's name, vessel name, permit number, and official number or state registration number; total price paid for purchased IFQ; signatures of transferor and transferee; and date the form was completed. In addition, applications to transfer IFQ must indicate the amount, in pounds, of the IFQ allocation transfer, which may not be less than 100 lb (45 kg) unless that value reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery.

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

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

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§ 648.54 State waters exemption.

(a) *State eligibility for exemption.* (1) A state may be eligible for a state waters exemption if it has a scallop fishery and a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP.

(2) The Regional Administrator shall determine which states have a scallop fishery and which of those states have a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. In such case, the Regional Administrator shall publish a rule in the FEDERAL REGISTER, in accordance with the Administrative