

PASSAMAQUODDY TRIBE
Fisheries Management Plan
Governing Salt Water Hunting, Fishing and Gathering

(II) Marine organisms subject to seizure by law enforcement officers or forfeiture proceedings in the Passamaquoddy Tribal Court to be provided to to elder food programs first and then to other community organizations or others identified in section 1.4., B.,

(III) any marine organism subject to seizure by law enforcement officers or forfeiture proceedings in the Passamaquoddy Tribal Court which is not subject to an order for final disposition to entities identified in Section 1.4., B., may be sold to any licensed dealer, provided

(IV) the monetary value of any marine organism subject to disposition through seizure, forfeiture proceedings in the Passamaquoddy Court, or sale, shall serve as the financial portion of any penalties for violations of the fisheries management plan and may be in addition to other penalty provisions as may be adopted by the Passamaquoddy Joint Council, except that the Passamaquoddy Joint Tribal Council zero tolerance policy shall be applied to all criminal violations established in Section 1.9., A., B, and C of this part and any other part relating to fisheries specific management plans establishing criminal provisions in accordance with section 1.9, A., B and C. of this part.

(V) any marine organism subject to seizure or forfeiture for which taking would not otherwise be authorized, shall be immediately released into the marine environment alive, or if an organism cannot be released into the marine alive then disposed of in accordance with a department marine organism disposal procedure designed to prevent the possession, use or distribution of any marine organisms taken in violation of this plan if the taking or possession by a license or permit holder would have been prohibited in accordance with any of the provisions of this fisheries management plan.

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2.1. Commercial lobster fishing;

- A. the Passamaquoddy Commercial Lobster fishing year shall commence April 1 of each Calendar year and end on March 31 on the following year. For purposes of this ordinance the 2012 Commercial lobster fishing year shall commence on April 1, 2012 and end on March 31st. 2013.
- B. Passamaquoddy tribal members are permitted to obtain more than one commercial lobster fishing permit to be assigned to individual vessels for commercial lobster fishing, provided,
- C. not more than one Passamaquoddy commercial lobster fishing permit shall be issued to a tribal member or tribal member owned corporation or tribal member owned or controlled vessel for any areas, waters or zones within three nautical miles of the state of Maine.

2.2 Commercial lobster permit; May be issued to members of the Passamaquoddy tribe who;

- a) Are listed on the official census roll of the Passamaquoddy tribe, and
- b) have complied with all application and qualification procedures of the tribe and

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- c) own or operate a vessel suitable for use in commercial lobster fishing and
- d) (if applying for a commercial lobster permit to fish in any zone or area within three nautical miles of the Maine coast) whose right to engage in commercial fishing is not under suspension and
- e) have been a resident of Maine for six months preceding issuance and or
- f) have been designated by a Sakom and Council of the Passamaquoddy tribe to use a tribally owned commercial lobster permit for the economic benefit of that reservation, and
- g) held a commercial lobster license during the preceding calendar year, and
- h) If fishing within three nautical miles of the Maine coast, has previously held an apprentice lobster/crab permit issued by the tribe or any state or tribe with a comparable apprentice lobster/crab program.
- i) Has completed a tribal approved lobster apprentice program,
- j) Or qualifies under exemptions provided by this part.

2.3. Terms and conditions for issuing commercial lobster fishing permits;

A. application/renewal period;

1. The commercial lobster fishing permit application/renewal period is hereby established as commencing January 1, 2012 through March 31st. 2012 and shall remain in effect until changed by the committee adjustment to management framework.
2. Beginning commercial lobster fishing year 2012 all commercial lobster fishing permit and renewal applications shall be submitted to the department before the application period beginning January 1st of each calendar year
3. No later than December 15th of each calendar year, the department shall notify (by notice of reminder) all commercial lobster fishing permit holders of the application and permit renewal period and requirements
4. If the holder of a commercial lobster fishing permit does not submit a renewal application before the application renewal period, after have been given notice in accordance with subsection 3, of this part, and has not submitted an application for waiver
5. the department shall notify the permit holder in writing within 14 days of the commencement of the application/renewal period, by way of a “notice to permit holder”
 - l) that the permit they have been issued is not in compliance with subsection 2 of this part and
 - i) Shall instruct the permit holder to submit a permit renewal application within 14 days of the date of notice, subject to all necessary fees and eligibility requirements,
 - ii) Or submit a written request for waiver of the permit/application renewal requirements.

B. Waiver; the department may grant a waiver to permit application/renewal period requirement, if

- 1) the permit holder demonstrates in writing that, illness, loss or other circumstances beyond their control have prevented them from meeting application/renewal requirements of this part, or

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- 2) the permit holder has been called to active military duty at any time during a commercial fishing year for which they held a valid commercial lobster fishing permit, or
- 3) The vessel upon which the commercial lobster fishing permit was placed has been rendered inoperable due to accident, breakdown, and loss to sinking or is being replaced.
- 4) The department may request more information from a permit holder who makes application for a waiver in order to verify any information provided in the application for waiver, or
- 5) If the department reasonably determines that circumstances exist which may otherwise lead a reasonable person to believe that any or all of the information provided in the application for waiver may be false or inaccurate, or
- 6) that the circumstances leading to the loss may be associated with or in furtherance of a crime or fraudulent activity on the part of the permit holder or others with whom the permit holder is associated

B. compliance period;

1. if after consideration of a permit holder application for waiver, the department finds that the circumstances contributing to the initial noncompliance are such that a waiver to any part of the renewal requirements would be in the best interest of the tribe, then the department shall,
 - (i) after consultation with the permit holder and depending upon the nature of the circumstances involved, establish an adjusted compliance period, and
 - (ii) cooperate with any law enforcement or regulatory agency having an investigative interest in the circumstances leading to any damage, loss or injury resulting from the disablement or sinking of a permit holders vessel
 - (iii) prepare or obtain a report from the Passamaquoddy department of public safety or an appropriate division to be submitted to the department within 30 days of the conclusion of the adjusted compliance period
2. or if the department determines that the information provided in the application for waiver does not meet the conditions of reasonable consideration for the granting of a waiver, the department shall notify the permit holder of their noncompliance by way of notice of noncompliance, at which time the permit holder shall have 30 days from the date of notice of noncompliance to submit a completed application for permit renewal,
 - a. if an applicant fails or refuses to submit a completed commercial lobster fishing permit renewal application before or during the application renewal period established by this section, and has not been granted a waiver in accordance with this part, the department shall provide the permit holder a written final notice of noncompliance, and

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- b. if after 14 days of providing a permit holder with a final notice of noncompliance the department has not received a complete commercial lobster fishing permit renewal application, then
- c. The permit shall be determined to have been voluntarily surrendered and shall be placed in the Passamaquoddy Commercial Lobster fishing permit allocation pool.

C. Application, Permit/ Trap tag fees and maintenance

- 1.** Beginning, in commercial lobster fishing year 2012 and commercial lobster fishing permit application/renewal period commencing January 1st 2012 an application for commercial lobster fishing permit/renewal shall be deemed to be complete upon the submission of complete permit/renewal application form subject to the following fee schedules;
 - a. Beginning commercial lobster fishing year 2012, and commencing during the 2012 commercial lobster fishing application/renewal period, (January, 1, 2012) and each fishing year thereafter, the fee for a commercial lobster fishing application for all areas shall be set at **\$99.00**
 - b. Beginning commercial lobster fishing year 2012 and commencing during the 2012 commercial lobster fishing permit application/renewal period, the commercial lobster trap tag fee
 - I) for commercial lobster fishing management areas 1 and 3 shall be set at **\$.50 per tag**
 - II) For commercial lobster fishing area 2 tags shall be set at **\$.50 per tag**
 - III) For commercial lobster fishing area 4 tags shall be set at **\$.75 for each commercial lobster fishing tag applied for regardless of the number of commercial lobster fishing management areas the applicant elects.**

2. Use and maintenance of permits/tags;

- a. commercial lobster fishing permits must be maintained (used) during the commercial lobster fishing year for which the permit was issued, and
- b. all permit fees, trap tag fees and commercial operators permit fees shall be paid in full for the fishing year for which the permit has been applied, and
- c. If a permit holder elects more than one Commercial Lobster fishing management area or declares into additional commercial lobster fishing management areas, then all fees associated with any additional commercial lobster management areas shall apply, and
- d. There shall be no waiver of fees for non-use or maintenance.
- e. Any commercial lobster permit found to remain unused for a period of three years shall be deemed to have been voluntarily surrendered, unless a waiver has been issued in accordance with **2.3, subsection C**, of this ordinance.
- f. If a tribal government owned permit is issued to a qualified tribal member then that member shall be responsible for the payment of all permit application and trap tag fees,

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- g. A tribal member who has been issued a tribal government owned commercial lobster fishing permit shall not be issued a waiver under section 2.3, subsection C.
- h. Any tribal government owned commercial lobster permit which has been issued to a tribal member and has remained unused by the holder for any one year period shall be considered abandoned and shall be retained by the tribal government owner.

3. Exceptions to use and maintenance requirements; an exception to the use and maintenance requirements can be provided by waiver by the department, if

- a. The permit holder is on active military duty at any time during the fishing year during which they held a commercial lobster/crab dishing permit, or
- b. A person on active military duty or entering military service may voluntarily surrender their commercial lobster permit without prejudice
- c. or with approval from the department cause a qualified family member or other authorized persons to operate the permit on an authorized vessel, and
- d. The person for whom authorization is being applied, is
 - (i) the holder of a commercial lobster/crab fishing permit, or
 - (ii) held a commercial lobster/crab fishing permit during the preceding fishing year and
 - (iii) can demonstrate the capacity to operate or cause another person's permit to be operated

Commercial fisheries/lobster apprentice program established;

A commercial fishing/lobster apprentice permit will be issued to any tribal member for entry into the commercial fisheries/lobster apprentice program who, is

- a) at least 15 years old and listed on the official census of the Passamaquoddy tribe, and
- b) Who meets all qualification requirements of the tribal commercial fisheries/lobster apprentice program, and
- c) Presents an endorsement signed by the holder of a commercial fisheries/lobster permit, and
- d) Agrees to take, (at their expense) any commercial fishing safety and educational courses as may from time to time be required by the department, and
- e) Whose right to such permit is not under suspension or revocation by the tribe, and
- f) If a minor under the age of 18 has written permission from a parent or legal guardian authorization such person to obtain a commercial fisheries/lobster apprentice permit

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2.3. Commercial fisheries/lobster apprentice program component requirements; the commercial fisheries/lobster apprentice program shall consist of the following requirements, and shall be subject to verification by the department;

- a) Instruction and proficiency in basic commercial fisheries safety and survival course
- b) manual visual and electronic navigation (international rules of the road)
- c) commercial fishing or lobster gear configuration, construction, maintenance requirements and techniques,
- d) Practical commercial/lobster fishing experience, verified by the Passamaquoddy Fisheries department, or tribal, federal, state or provincial marine enforcement agents.
- e) No less than two years participation for commercial lobster or crab fishing and
- f) One year for general category (including anadromous fish) commercial fishing
- g) Any other requirements as may from time to time be instituted by the department
- h) The holder of a commercial fisheries/lobster apprentice permit shall not be required to possess a tribal commercial fishing vessel operators permit while accompanied by the sponsor

2.4. Exemption by waiver for commercial fishing experience;

A. The department may waive any part or all of the practical fishing experience component (including commercial lobster fishing) or the program length for a person before that person enters the apprentice program if the person,

- 1) Provides a written request for exemption by waiver to the department, and executes authorization for the release of information,
- 2) Can provide sufficient evidence of practical experience within the specific fishery to which the tribal member is making application for entry,
- 3) Either individually, with or for another person engaged in commercial fishing within the respective fishery for which the applicant is applying during any consecutive two year period
- 4) has fished as a designated holder of a tribal economic development commercial fishing or commercial lobster fishing permit for at least **two years**
- 5) has fished as the designated sustenance lobster fisher for no less than **four** tribal members for a period of at least **two years** and is the holder of a valid sustenance permit

B. A person who is provided a waiver subject to sub parts 4, and 5, above shall be allocated 250 commercial lobster tags during the first year and 100 tags during subsequent years that the person maintains a valid commercial lobster permit issued by the department.

C. An exemption by waiver for commercial fishing experience does not constitute an exemption or waiver from any other provisions of this ordinance.

D. Sufficient evidence; shall include, but is not limited to;

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- 1) affidavit from at least three individuals of sound mind and character attesting to the applicants experience, including but not limited to,
- 2) the owner of a vessel the applicant claims to have fished on, (if possible)
- 3) other individuals having direct knowledge of the applicants fishing experience, and
- 4) information, which upon examination by the department, would constitute sufficient evidence of commercial fishing, lobster or crab fishing history during the period claimed,
- 5) proof of ownership of vessel(s) suitable for commercial fisheries, lobster or crab fishing during the period claimed, and
- 6) landings records, dealer reports and income tax returns demonstrating income derived primarily from commercial fisheries, lobster or crab fishing during the period claimed, and
- 7) The department may request additional information be provided by an applicant for waiver or others, if
- 8) the person(s) for whom an applicant claims to have fished with or for refuses to provide a supporting affidavit, is incapacitated, deceased, or
- 9) Evidence provided by the applicant or others is incomplete, illegible, unclear or insufficient in evidentiary form to cause the department to determine that sufficient evidence of practical commercial fisheries, lobster and crab fishing experience does exist.

2.5 commercial lobster management areas established

1. **Areas established;** The following lobster management areas are hereby established in accordance with Passamaquoddy Joint Tribal Council Resolutions adopted 19 July 1995 and 10 July 2010 and constitute the official operating boundaries for all commercial lobster fisheries management of the Passamaquoddy Tribe within such areas, regions and zones otherwise referred to as the Exclusive Economic Zone (EEZ), Gulf of Maine (GOM), Northern Gulf of Maine (NGOM) Georges Bank, Georges Basin (GB), Bay of Fundy (Fundy) (Scotia Fundy) Maine Conservation Zone and other locations.
 - a. **Passamaquoddy lobster management area 1.** Is comprised entirely of the waters within Passamaquoddy fisheries management area 1 north east, as defined by part A, Section 2.
 - b. **Passamaquoddy lobster management area 2** is comprised entirely of the waters within Passamaquoddy fisheries management area 2 northwest as defined by section xxxxx
 - c. **Passamaquoddy lobster management area 3.** Is comprised entirely of the waters within Passamaquoddy fisheries management area 3 southeast as defined by section xxxxx
 - d. **Passamaquoddy lobster management area 4.** Is comprised entirely of the waters within Passamaquoddy fisheries management area 4 southwest as defined by section xxxxx **note:** special gear requirements are in place to reduce large whale entanglements, please refer to ALWTRP 2010, a copy of which is available from the Passamaquoddy fisheries department or the tribal clerk at each reservation.

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2. Exclusion zones;

- a) Those waters within Passamaquoddy commercial lobster management areas 2 and 4 which are within three nautical miles of the coast of Massachusetts and New Hampshire shall be closed to all Passamaquoddy commercial lobster fishing permit holders who are residents of Maine and are engaged in commercial lobster fishing under Passamaquoddy permit within three Nautical miles of the coast of Maine.
- b) Those waters within Passamaquoddy commercial lobster management areas 2 and 4 which are within three nautical miles of the coast of Maine shall be closed to all Passamaquoddy commercial lobster fishing permit holders who are residents of Massachusetts and are engaged in commercial lobster fishing under Passamaquoddy permit within three nautical miles of the coast of Massachusetts.
- c) Those waters within Passamaquoddy commercial lobster management areas 2 and 4 which are within three nautical miles of the coast of Maine shall be closed to all Passamaquoddy commercial lobster fishing permit holders who are residents of New Hampshire and are engaged in commercial lobster fishing under Passamaquoddy permit.
- d) Those waters within Passamaquoddy commercial lobster management areas 2 and 4 shall be closed to all Passamaquoddy commercial lobster fishing permit holders who have declared both commercial lobster management areas 2 and 3.
- e) The department shall provide charts, maps or other documents to holders of Passamaquoddy commercial lobster fishing permits indicating the boundaries of each Passamaquoddy lobster management zone, **including latitudinal and longitudinal delineation of fisheries management zones and specific exclusion zones in accordance with the 2010 ALWTRP**

3. Election of management area;

- a. an applicant for a commercial lobster fishing permit shall elect a lobster management area within which commercial lobster fishing is to be undertaken, provided that once an applicant has elected into a management area, that applicant shall not be permitted to opt out of the elected management area for the remainder of the fishing year.
- b. If an applicant elects a Passamaquoddy lobster management area which overlaps areas under any United States, Canadian, federal, state, provincial or regional lobster management plans, then the applicant shall identify the letter or number designation for such overlapped area or zone and include such designation on his or her commercial lobster fishing application.

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- c. (for example, if a person or entity make application for a commercial lobster fishing permit within Passamaquoddy lobster management area 2, and there is an overlap with Maine zone (F) and federal lobster management area (1) and Canadian lobster fisheries area 35,
- d. then the applicant shall include the number and letter designation for state zone F and federal Atlantic lobster management area 1 and Canadian lobster fisheries area 35 on his or her application)
 - (1) an applicant would under this example indicate on his or her application; Passamaquoddy, 2-F-1-35 or PQDY- 2-F-1-35
 - (2) or if an applicant elects PLMA-4 and Federal lobster management area -3- and Canadian Lobster fisheries area 32 and there is no state overlap then the applicant shall indicate on his or her application; PQDY-4-3-32
 - (3) be responsible for knowing and understanding all lobster management plans in place wherever the Passamaquoddy lobster management area overlaps with any other federal, state, provincial or regional lobster management areas or zones, and
 - (4) shall be required by this ordinance to adhere to the more restrictive management measures in place within the overlapping areas and zones, including minimum and maximum size limitations, gear configuration, tag Placement on traps, buoy marking and identification requirements, and
 - (5) Any conservation measure which is not found by the Passamaquoddy Joint Tribal Council to be inconsistent with or in conflict with the cultural interests of the Passamaquoddy Tribe.
- e. A Passamaquoddy commercial lobster fishing permit holder may elect into any lobster management area as authorized by this ordinance provided that not more than one Passamaquoddy commercial lobster fishing permit shall be issued to any tribal member or tribal member owned corporation or vessel operating in any Maine lobster zone.

SECTION; 3, LIMITS ON FISHING AND PROHIBITED ACTS:

Lobster measurement measures by area;

3.1 size limits by management area;

- a. a person may not buy, sell, give away, transport, and ship or possess any lobsters taken from any Passamaquoddy lobster management areas 1 and 2 (PLMA 1,2) that is less than the minimum 3 and 8/32 inches and more than the maximum 5 inches in length, and

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- B. for Passamaquoddy lobster management area 3 and 4 (PMA 3, 4) the minimum size shall be established at 3-1/2 inches and the maximum size shall be 6 inches.

3.2. Trap limit by management area;

- A. the trap limit for Passamaquoddy Commercial Lobster Management Area 1 (PLMA-1) shall be set at 300 traps for each permit issued
- B. the trap limit for Passamaquoddy Commercial Lobster Management Area 2 (PLMA-2) shall be set at 800 for each permit issued
- C. the trap limit for Passamaquoddy Commercial Lobster Management Area 3 (PLMA-3) shall be set at 300 traps for each permit issued
- D. the trap limit for Passamaquoddy Commercial Lobster Management Area 4 (PLMA-4) shall be set at 900 traps for each permit issued.

3.3 Trap limits for fishing in multiple management areas;

- a. applicants for commercial lobster fishing permits shall be permitted to elect more than one Passamaquoddy commercial lobster management area provided;
- b. No assignment of multi area permits shall result in the applicant having the ability to fish more than 1,200 traps.
- c. Not more than two Passamaquoddy commercial lobster fishing management areas shall be authorized for each permit issued to a qualified vessel.
- d. Once an applicant has elected into one or more commercial lobster fishing areas, they shall not be permitted to opt out of that area election or to fish traps from one area elected to another area not elected, for the remainder of the fishing year.
 - i. **Election of areas 1 and 2;** If an applicant elects both commercial lobster management areas 1 and 2, for any fishing year, then the trap limit shall be 300 traps for area 1 and 700 traps for area 2,
 - ii. **Election of areas 1 and 3;** if an applicant elects both commercial lobster management areas 1 and 3 then the trap limit shall be set at 300 traps for area 1 and 300 traps for area 3, or a total trap limit of 600 for both areas, combined
 - iii. **Election of areas 2, and 3,** if an applicant elects both commercial lobster management areas 2 and 3 then the trap limit shall be 700 traps for area 1 and 300 traps for area 3, for a total allocation of 1,000 traps.

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- iv. **Election of areas 1 and 4**, if an applicant elects both commercial lobster management areas 1 and 4 then the trap limit shall be for area 1 shall be 300 traps and the trap limit for area 4 shall be 700 traps
- v. **Election of areas 3 and 4**, if an applicant elects both commercial lobster management areas 3 and 4, then the trap limit for area 3 shall be 300 traps and the trap limit for area 4 shall be 900 traps for a total of 1,100 traps combined.
- vi. A person may not elect to fish in more than two Passamaquoddy Lobster fishing management areas on one commercial lobster fishing application.

3.4 Tag system; during the 2012 commercial lobster fishing year the department shall develop rules for administering a commercial lobster trap tag system under which all lobster fishing license and or permit holders must purchase tags for the purpose of identifying and tracking traps.

1. Beginning in 2012 the department may recommend a per tag fee to cover the cost of trap tags, the costs of administering and enforcing a lobster trap tag system.
2. The fishing year shall be displayed on each tag as the first mark immediately preceding,
3. The phrase PQDY which shall constitute the official marking for all types of lobster trap tags as a Passamaquoddy lobster trap tag.
4. The third mark on the tag shall designate the activity authorized i.e.; SUSTENANCE, CEREMONIAL, or COMMERCIAL, each of which may be abbreviated.
5. For commercial lobster fishing, the fourth mark on the tag shall designate the Passamaquoddy commercial lobster fishing management area(s), first, then
6. If an applicant elects more than one Passamaquoddy commercial lobster fishing management area, the tag shall display those management areas beginning with the areas or zones closest to shore, then
7. Followed by any other areas or zones, which overlap with a Passamaquoddy commercial lobster fishing area.
8. (EXAMPLE) if an applicant elects Passamaquoddy commercial Lobster fishing management areas 1 and 2, then the tag shall display “ 2012 PQDY COMM 1-2
9. If those areas overlap other areas or zones then those areas or zones shall be displayed on the tag following the department’s designation in the following, example,
10. 2012 PQDY COMM 1-A-1-34, after the Passamaquoddy designation PQDY (Maine Zone A) would be displayed then whichever other management area is next, whether it be an American or Canadian area or zone.
11. Sustenance or ceremonial tags shall only display the Passamaquoddy designations similar to a commercial tag excluding any display of overlapping areas or zones.
12. There shall be no fee for sustenance or ceremonial lobster fishing tags.

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3.5 Commercial Lobster fishing license/permit, conditions/fees;

- A.** the Passamaquoddy commercial lobster management plan is designed to provide access and opportunity for tribal members and their families to enter the Passamaquoddy commercial lobster fishery,
1. To support tribal member self-sufficiency and to provide greater economic independence through participation in a culturally relevant industry,
 2. because limited opportunity exists for tribal members to enter the commercial lobster fishery, it is necessary to ensure that the greatest opportunity exist for
 3. Qualified tribal members to obtain possess and maintain a commercial lobster fishing license or permit which ensures to the greatest extent possible.
 4. That safe and responsible commercial lobster harvesting practices are utilized in a manner that protects the resource for future generations, while providing opportunity for tribal members and their families today.
- B. terms and conditions;**
- (1) The department shall issue all commercial lobster fishing permits to qualified tribal members for the duration of a single commercial lobster fishing year.
 - (2) A commercial lobster fishing permit must be maintained (used) by the person to whom it was issued during the fishing year for which it was issued, unless
 - (3) the holder of the permit requests an exception in accordance with this part, subject to the restrictions of other provisions of this ordinance
 - (4) Should a tribal member not utilize a commercial lobster fishing permit during any consecutive three year period, then the permit shall be deemed to have been involuntarily surrendered to the department, to be placed in the Passamaquoddy commercial lobster fishery permit pool.
 - (5) Commercial lobster fishing permits which have been involuntarily surrendered shall be re issued to qualified tribal members in accordance with the rules and regulations established for the issuance of commercial lobster fishing permits.

PART 3: PELAGIC AND ANADROMOUS FISHERIES

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- 1. Definition,** as used in this part, “pelagic or anadromous fish” means Atlantic herring, Atlantic menhaden, whiting, spiny dogfish, Atlantic mackerel, blueback herring, squid, butterfish, scup, black sea bass, smelt and shad.
- 2. License required.** A person may not engage in the activities authorized by this section without a current;
 - A. Passamaquoddy commercial fishing vessel operators permit, or a commercial fishing vessel operators permit issued in accordance with this ordinance
 - B. Commercial pelagic and anadromous fishing license for a resident tribal operator
 - C. Commercial pelagic and anadromous fishing license for a resident tribal operator and all crew members; or
 - D. Commercial pelagic and anadromous fishing license for a nonresident Tribal member and all crew members; or
 - E. Commercial pelagic and anadromous fishing license for a non-Passamaquoddy tribal member operator with crew
- 3. Licensed activity.** The holder of a Passamaquoddy commercial pelagic and anadromous fishing license may fish for or take or possess ship, transport or sell pelagic or anadromous fish that the holder has taken.
- 4.** The department shall recommend to the committee to determine what crew members may fish under a commercial pelagic and anadromous fishing license that provides for members.
- 5.** Rules shall be adopted in accordance with the adjustments to management measures procedures specified in section x.xx of this ordinance.
- 7. Exemption.** The licensing requirement under section 2 does not apply to a person or persons who fishes for, takes, possesses or transports any pelagic or anadromous fish that have been taken for communal, sustenance or ceremonial use.
- 8. Eligibility.** A pelagic and anadromous fishing license may only be issued to a member of the Passamaquoddy tribe or to a tribal member owned corporation or to a member of another tribe which has executed a fisheries and trade agreement with the Passamaquoddy tribe.
- 9. Fees.** There shall be no fee for communal, Sustenance or Ceremonial pelagic and anadromous fish licenses.
 - a. Beginning in commercial fishing year 2012, commencing April 1st 2012,
 - b. The fee for commercial pelagic and anadromous fishing licenses shall be Fifty dollars for a Passamaquoddy tribal member commercial operator.

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- c. One hundred twenty five dollars for a Passamaquoddy tribal member operator with crew.

PART 4: Atlantic Sea Scallop Fishery Management

1. Shell-height standard.

- (a) Minimum shell height. The minimum shell height for in-shell scallops that may be landed or possessed at or after landing is 4 inches. Shell height is a straight line measurement from the hinge to the part of the shell that is farthest away from the hinge.
- (b) Compliance and sampling. Any time at landing or after, including when the scallops are received or possessed by a dealer or person acting in the capacity of a dealer, compliance with the minimum shell-height standard shall be determined as follows: Samples of 40 scallops each shall be taken at random from the total amount of scallops in possession. The person in possession of the scallops may request that as many as 10 sample groups (400 scallops) be examined. A sample group fails to comply with the standard if more than 10 percent of all scallops sampled are shorter than the shell height specified. The total amount of scallops in possession shall be deemed in violation of this subpart and subject to forfeiture, if the sample group fails to comply with the minimum standard.

2. Gear and crew restrictions.

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- (a) Dredge vessel gear restrictions. All vessels issued Passamaquoddy Atlantic Sea Scallop permits and fishing with scallop dredges, with the exception of hydraulic clam dredges and mahogany quahog dredges in possession of 400 lb. (181.44 kg), or less, of scallops, must comply with the following restrictions, unless otherwise specified:
- (b) Maximum dredge width. The combined dredge width in use by or in possession on board such vessels shall not exceed 31 ft. (9.4 m) measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section. However, component parts may be on board the vessel such that they do not conform with the definition of “dredge or dredge gear”, i.e., the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and such that no more than one complete spare dredge could be made from these component's parts.
- (c) Minimum mesh size. The mesh size of a net, net material or any other material on the top of a scallop dredge (twine top) possessed or used by vessels fishing with scallop dredge gear shall not be smaller than 10-inch (25.4-cm) square or diamond mesh.
- (d) Minimum ring size. (i) unless otherwise required by the **Passamaquoddy Joint Tribal Council** FMP Sea Scallop Program, the ring size used in a scallop dredge possessed or used by vessels issued **Passamaquoddy** Atlantic Sea scallop permits shall not be smaller than 4 inches (10.2 cm).
- (ii) Ring size is determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement shall not include normal welds from ring manufacturing or links. The rings to be measured will be at least five rings away from the mouth, and at least two rings away from other rigid portions of the dredge.
- (e) Chafing gear and other gear obstructions — (i) Chafing gear restrictions. No chafing gear or cookies shall be used on the top of a scallop dredge.
- (ii) Link restrictions. No more than double links between rings shall be used in or on all parts of the dredge bag, except the dredge bottom. No more than triple linking shall be used in or on the dredge bottom portion and the diamonds. Damaged links that are connected to only one ring, i.e., “hangers,” are allowed, unless they occur between two links that both couple the same two rings. Dredge rings may not be attached via links to more than four adjacent rings. Thus, dredge rings must be rigged in a configuration such that, when a series of adjacent rings are held horizontally, the neighboring rings form a pattern of horizontal rows and vertical columns. A copy of a diagram showing a schematic of a legal dredge ring pattern is available from the Passamaquoddy Fisheries Department upon request.
- (iii) Dredge or net obstructions. No material, device, net, dredge, ring, or link configuration or design shall be used if it results in obstructing the release of scallops that would have passed through a legal sized and configured net and dredge, as described in this part, that did not have in use any such material, device, net, dredge, ring link configuration or design.

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- (iv) Twine top restrictions. In addition to the minimum twine top mesh size specified in paragraph (2, C) of this section; vessels issued Passamaquoddy Atlantic Sea scallop fishing permits that are fishing for scallops under the Passamaquoddy Atlantic Sea Scallop Fishing Regulations are also subject to the following restrictions:
- (A) If a vessel is rigged with more than one dredge, or if a vessel is rigged with only one dredge and such dredge is greater than 8 ft. (2.4 m) in width, there must be at least seven rows of non-overlapping steel rings unobstructed by netting or any other material between the terminus of the dredge (club stick) and the net material on the top of the dredge (twine top).
- (B) If a vessel is rigged with only one dredge, and such dredge is less than 8 ft. (2.4 m) in width, there must be at least four rows of non-overlapping steel rings unobstructed by netting or any other material between the club stick and the twine top of the dredge. (A copy of a diagram showing a schematic of a legal dredge with twine top is available from the Passamaquoddy Fisheries Department upon request).
- (v) Measurement of twine top mesh size. Twine top mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches) and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 8 kg (17.64 lb.). The mesh size is the average of the measurements of any series of 20 consecutive meshes for twine tops having 75 or more meshes, and 10 consecutive meshes for twine tops having fewer than 75 meshes. The mesh in the twine top must be measured at least five meshes away from where the twine top mesh meets the rings, running parallel to the long axis of the twine top.
- (C) Crew restrictions, vessels participating in or subject to Passamaquoddy scallop Fishing Days Allocation (DAS) program may have no more than seven people aboard, including the operator, when not docked or moored in port, except as follows:
- (1) There is no restriction on the number of people on board for vessels participating in the Passamaquoddy Atlantic Sea Scallop Area Access Program;
- (2) Vessels participating in the small dredge program are restricted as specified in paragraph (e) of this section;
- (3) The Department may authorize additional people to be on board through issuance of a letter of authorization.
- (4) A department approved at-sea fisheries observer is on board;
- (5) A vessel is harvesting under a communal sustenance or ceremonial permit in accordance with sustenance and ceremonial permit restrictions and any other conditions of this ordinance.
- (d) Sorting and shucking machines. (1) Shucking machines are prohibited on all vessels in possession of more than 400 lb. (181.44 kg) of scallops,

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- (2) Sorting machines are prohibited on limited access vessels fishing under the scallop program.
- (e) Small dredge program restrictions. Any vessel owner whose vessel is assigned to either the part-time or Occasional (inshore) category may request, in the application for the vessel's annual permit, to be placed in one category higher. Vessel owners making such request may be placed in the appropriate higher category for the entire year, under the following conditions,
 - (1) The vessel must fish exclusively with one dredge no more than 10.5 ft. (3.2 m) in width.
 - (2) The vessel may not use more than one dredge.
 - (3) The vessel may have no more than five people, including the operator, on board, except as follows:
 - (i) there is no restriction on the number of people on board for vessels participating in the Passamaquoddy Atlantic Sea Scallop Area Access Program;
 - (ii) The department may authorize additional people to be on board through issuance of a letter of authorization.
 - (iii) A department approved fisheries observer is on board,
 - (f) Restrictions on the use of trawl nets. (1) A vessel issued a Passamaquoddy Atlantic Sea Scallop permit fishing for scallops under the Passamaquoddy scallop fishing days program may not fish with, possess on board, or land scallops while in possession of a trawl net, A limited access scallop vessel may not fish with a trawl net in the Access Areas specified
- (3) Possession and landing limits.
 - (a) A vessel issued a Passamaquoddy individual fisheries quota (IFQ) scallop permit 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 within three nautical miles of the Maine shore, or shoreward of any state conservation zone line, unless such possession is authorized,. 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 Passamaquoddy IFQ scallop trip.
 - (b) A vessel issued a Passamaquoddy northern region scallop permit by the department, or an IFQ scallop permit that is declared into the Northern region scallop fishery as authorized by the Passamaquoddy Joint Tribal Council, 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

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of the VMS demarcation line on a Northern region scallop fishery trip authorized by the Passamaquoddy Joint Tribal Council.

- (c) A vessel issued a sustenance scallop permit, or an IFQ or Passamaquoddy Northern region scallop permit that is not declared into the Passamaquoddy IFQ or Northern region Sea Scallop fishery as required by this ordinance unless authorized by the department in accordance with the sustenance and ceremonial provisions of this ordinance, 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 Passamaquoddy limited access scallop permit that have properly declared into the Passamaquoddy Sea Scallop Program as described in this ordinance 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 established in these ordinances.
 - (e) Owners or operators of vessels issued Passamaquoddy limited access Scallop 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 any of the state waters determinations.
 - (f) A vessel that is declared into the Passamaquoddy Sea Scallop Area Access Program as described in this ordinance, may not possess more than 50 bu (17.6 hL) of in-shell scallops outside of the Access Areas described in this ordinance.
 - (g) Possession limit to defray the cost of certified tribal fisheries observers in Access Areas for Passamaquoddy LAGC IFQ vessels. A Passamaquoddy LAGC IFQ vessel with a certified tribal fisheries observer on board may retain, per observed trip, up to 1 day's allowance of the possession limit allocated to limited access vessels, as established by the Passamaquoddy Joint Tribal Council, provided the observer set-aside has not been fully utilized. For example, if the Passamaquoddy limited access vessel daily possession limit to defray the cost of an observer is 220 lb. (100 kg); the LAGC IFQ possession limit to defray the cost of an observer would be 220 lb. (100 kg) per trip, regardless of trip length.
- (4) Target total allowable catch, DAS allocations, and individual fishing quotas.
- (a) Target total allowable catch (TAC) for the Passamaquoddy Sea Scallop Fishery. The annual target total TAC for the Passamaquoddy Sea Scallop Fishery shall be established by the Passamaquoddy Joint Tribal Council.

The Passamaquoddy Joint Tribal Council annual target TAC shall include the TAC for all Passamaquoddy permitted Atlantic Sea Scallop vessels fishing in open areas and Sea Scallop Access Areas, but shall exclude the TAC established for the Passamaquoddy Northern

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region/Northern Gulf of Maine Scallop Management Area as specified in the Passamaquoddy Joint Tribal Council Northern region/northern Gulf of Maine Sea Scallop access program.

After deducting the total estimated incidental catch of scallops, as specified in this ordinance , by vessels issued Passamaquoddy sustenance, communal sustenance, ceremonial, 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 the Passamaquoddy Tribe Joint Tribal Council 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) 2012 fishing year target TAC for Passamaquoddy Atlantic Sea scallop fishery. The 2012 fishing year TAC is 1,200 mt, 94.5 percent of which shall be allocated to the limited access fishery, 5 percent of which shall be allocated to IFQ scallop vessels, and 0.5 percent of which shall be issued to limited access vessels also issued IFQ scallop permits and that are fishing under general category regulations. These percentages reflect the TAC allocations prior to the deduction of set-asides for Tribal observer coverage, ceremonial, sustenance and research.
- (2) 2013 fishing year target TAC for scallop fishery. The 2013 fishing year TAC 2,500 mt, 90 percent of which shall be allocated to the limited access fishery, 10 percent of which shall be allocated to IFQ scallop vessels and that are fishing under general category regulations. These percentages reflect the TAC allocations prior to the deduction of set aside for tribal observer coverage ceremonial, sustenance and research.
- 3) Access area TAC. The TAC for each Access Area shall be determined by the Passamaquoddy Joint Tribal Council fisheries advisory committee as described in and specified by this ordinance. The TAC set-asides for observer coverage, ceremonial, sustenance 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 general category permits shall be specified in accordance with these ordinances.
- (4) Open area target TAC for Passamaquoddy limited access vessels. The open area TAC specified in this paragraph (a)(4) excludes the open area DAS set-aside specified in (g)(1) and (2) of this section, the access area TACs and access area set-asides specified in sections (d) and (e).
- (l) 2012 fishing year. The target TAC for limited access vessels fishing under the Passamaquoddy scallop DAS program specified in this section is xxxxx mt, including open area DAS for tribal observer, ceremonial, sustenance and research set-aside TACs.

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- (ii) 2012 fishing year. The target TAC for limited access vessels fishing under the Passamaquoddy scallop DAS program specified in this section is xxxxxx mt, including open areas DAS for tribal observer, ceremonial, sustenance and research set-aside TACs.
- (5) TACs for Passamaquoddy IFQ scallop vessels. The TACs specified in this paragraph (a)(5) have accounted for the access area set-asides specified in xxxxxx (d) and (e).
 - (I) IFQ vessels without a limited access scallop permit. For the 2012 fishing year, such vessels are allocated 1,000 mt, which includes both the open area and the access area TACs specified in this ordinance.
 - (ii) IFQ scallop vessels with a Passamaquoddy limited access scallop permit. Such vessels that are fishing under an IFQ scallop permit outside of the scallop DAS and Area Access programs as a limited access vessel shall be allocated 0.5 percent of the annual target TAC specified in accordance with this paragraph (a). For the 2012 fishing year, the IFQ TAC for IFQ vessels with a limited access scallop permit is 50 mt.xxxxxxxxxxxxxxxxxx and 100 mt for the 2013 fishing year
- (6) Passamaquoddy Northern region and Northern Gulf of Maine Scallop Fishery. The TAC for the Passamaquoddy Northern Gulf of Maine Scallop Fishery shall be specified by the Passamaquoddy Joint Tribal Council fisheries advisory committee framework adjustment process specified in this ordinance. The Passamaquoddy Northern region, northern Gulf of Maine Scallop Fishery TAC is specified in sections (b) (1).
- (7)— (8) [Reserved]
- (9) Scallop incidental catch target TAC. The 2012 incidental catch target TAC for vessels with Passamaquoddy incidental catch scallop permits is 50,000 lb. (22,680 kg).
- (10) Scallop incidental catch target TAC. The 2013 incidental catch target TAC for vessels with Passamaquoddy incidental catch scallop permits is 100,000 lb. (45,360 kg).
- (b) DAS allocations. (1) Total DAS to be used in all areas shall be specified by the Passamaquoddy Joint Tribal Council fisheries advisory committee as specified in this ordinance, using the target TAC for open areas specified in paragraph (a) of this section and estimated catch per unit effort. The total DAS for 2012 are xxxxx. After accounting for applicable set-asides, the total DAS allocated the limited access fishery are xxxxx.
 - (I) Using the target TAC for open areas specified in paragraph (a) of this section and estimated catch per unit effort. The total DAS for 2012 are xxxxx. After accounting for applicable set-asides, the total DAS allocated to the limited access fishery are xxxxx.
 - (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 Tribally certified 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.

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- (3) Assignment to DAS categories. For each fishing year beginning in 2012, each vessel issued a limited access scallop permit shall be assigned to the DAS category (full-time, part-time, or occasional) except as provided under the small dredge program specified in this ordinance.
- (4) Each vessel qualifying for one of the three Passamaquoddy 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. A vessel whose owner/operator has declared out of the scallop fishery, pursuant to the provisions of §648.10, or that has used up its maximum allocated DAS, may leave port without being assessed a DAS, as long as it has made an appropriate notification to the Passamaquoddy Fisheries Department and VMS declaration, as specified in §648.10(f), does not fish for or land per trip, or possess at any time, more than 400 lb. (181.4 kg) of shucked or 50 bu (17.6 hL) of in-shell scallops, and complies with all other requirements of this part. Except that any vessel qualifying for one of the three Passamaquoddy DAS categories specified in the table in this paragraph (b) (4) (Full-time, Part-time, or Occasional) shall qualify to harvest scallops under sustenance and ceremonial permit authorized by this ordinance without being assessed a DAS, provided such vessel has on board a tribally certified observer at all times during the communal ceremonial or sustenance harvest. 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 category2012

Full-time 45

Part-time 21

Occasional 3

- (i) A limited access vessel that lawfully uses more open area DAS in the 2012 fishing year than specified in this section shall have the DAS used in excess of the 2012 allocation specified in this paragraph (b)(4) deducted from its 2013 open area DAS allocation.
- (ii) A limited access vessel that lawfully used more open area DAS in the 2012 fishing year than specified in this section shall have the DAS used in excess of the 2012 allocation specified in this paragraph (b) (4) deducted from the 2013 open area DAS allocation.
- (5) Additional open area DAS. If a TAC for yellowtail flounder specified in this ordinance (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.

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- (i) Whenever an Access Area closes due to the yellowtail flounder by catch TAC, for each remaining complete trip in the closed Access Area, a full-time vessel may fish an additional 7 DAS in open areas, a part-time vessel may fish an additional 5 DAS in open areas, and an occasional vessel may fish an additional 2 DAS 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). If a vessel has unused broken trip compensation trip(s), as specified in §648.60(c), when an Access Area closes due to the yellowtail flounder by catch TAC, it will be issued additional DAS in proportion to the unharvested possession limit. For example, if a full-time vessel had an unused 9,000-lb (4,082-kg) Access Area compensation trip (half of the possession limit) at the time of an Access Area yellowtail flounder by catch TAC closure, the vessel would be allocated 3.5 DAS (half of 7 DAS).
- (ii) [Reserved]
- (6) DAS allocations and other management measures are specified by the Passamaquoddy Joint Tribal Council fisheries advisory committee 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 2 fishing years through biennial framework adjustments as specified by the Passamaquoddy Joint Tribal Council. If a biennial framework action is not undertaken by the fisheries advisory committee and implemented by the Passamaquoddy Joint Tribal Council, the DAS allocations and Access Area trip allocations from the most recent fishing year shall remain in effect for the next fishing year. The department or any Sakom and Council of the Passamaquoddy Tribe may also recommend adjustments to DAS allocations through a framework action at any time. If a framework action is requested by the department or any Sakom and Council of the Passamaquoddy Tribe, then the Joint Tribal Council fisheries advisory committee shall conduct framework adjustment procedures as specified by this ordinance.
- (d) End-of-year carry-over for open area DAS. With the exception of vessels that held a Confirmation of Passamaquoddy Permit History 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. Unless otherwise authorized by the department. 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 a tribally certified 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.

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- (f) Good Samaritan credit. Limited access vessels fishing under the DAS program and that spend time at sea assisting in a Tribal Law Enforcement or USCG search and rescue operation or assisting a Tribal Law Enforcement or the USCG in towing a disabled vessel, and that can document the occurrence through any appropriate tribal law enforcement agency or the USCG, will not accrue DAS for the time documented.
- (g) Limited access vessels fishing under the days at sea program shall not be charged DAS when fishing under special, communal sustenance or ceremonial Permit, provided they have on board at all times a certified tribal observer.
- (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 this ordinance 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 Passamaquoddy Fisheries Department shall provide the owner of a vessel issued an IFQ scallop permit with the scallop IFQ for the vessel for the upcoming fishing year following initial application for an IFQ scallop permit as specified by tribal law consistent with confidentiality restrictions concerning internal matters of the Passamaquoddy tribe, its laws and ordinances.
- (3) LAGC Ownership restrictions IFQ ownership restrictions —(i) IFQ scallop vessel IFQ cap. (A) Unless otherwise specified in this ordinance.
- (C) A person or entity who qualifies for a Passamaquoddy Scallop Permit may be issued only one Full-time DAS or limited access scallop permit during any calendar year. Provided no person or entity that is issued a Passamaquoddy scallop permit may under any circumstances transfer ownership of any scallop permit or control of any permit issued by the Passamaquoddy Tribe to any person or entity without the express written authorization of the Passamaquoddy Fisheries Department. The Passamaquoddy Fisheries Department shall issue a letter of qualification to a member of the Passamaquoddy tribe or to a Passamaquoddy tribal member owned corporation or partnership, subject to the provisions contained in sub part (i) (ii) (iii) and (iv) of this paragraph.
- (i) **For purposes of this section;**
- 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

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way partly own a vessel, whether or not that person or corporation is identified as an owner by tribal registration, official coast guard documentation, Canadian department of transportation or state registration certificate. **Majority ownership** is defined as having no less than 51% percent ownership interest in a vessel or no less than 51% ownership interest in a corporation if that corporation is the registered owner of a vessel. **Control of a vessel**, for purposes of this ordinance, having control of a vessel, Includes but is not limited to ownership as defined in paragraph **C (i)**, lease, purchase, lease/ purchase, rent, rent to own or lend.

- (ii) Operational control. For purposes of this ordinance, operational control of a vessel includes but is not limited to, contract or rental agreements from which a member of the Passamaquoddy tribe or a Passamaquoddy tribal member owned corporation or partnership has full operational control and responsibility over a vessel(s), including, liability insurance in the name of the tribal member or if a tribal member owned corporation or partnership in the name of the corporation or partnership for the vessel, trip settlement ledgers or receipts demonstrating responsibility for the purchase of supplies and sale of products associated with the operation of the vessel.
 - (iii) For purposes of this ordinance a non-tribal entity is a person not a member of the Passamaquoddy Tribe, or a business corporation, partnership or other business agreement or arrangement in which a tribal member holds less than 51% percent ownership interest or control.
 - (iv) Limited access scallop vessels that have been issued a Passamaquoddy 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.
- (4) IFQ cost recovery. A fee, not to exceed 5 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), shall be responsible for paying the fee as specified by the Passamaquoddy Joint Tribal Council 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 his/her own fee for all of his/her IFQ scallop landings, and shall be responsible for submitting this payment to the Passamaquoddy Fisheries Department once every three months of each year.
- (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. Beginning on or about October 31 of each year, the Passamaquoddy Fisheries Department 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

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fee to the Passamaquoddy Fisheries Department within 30 days of receipt of the cost recovery bill. Cost recovery payments shall be made electronically by wire transfer, or other methods as designated by the Passamaquoddy fisheries department. Instructions for electronic payment shall be available on both the department 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 certified bank draft or check may be authorized by the Passamaquoddy Fisheries Department if it has been 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 the Passamaquoddy Fisheries Department by the date specified in the cost recovery bill and all payments must be made in full by the date specified in the bill. If the cost recovery payment, as determined by the Department, is not made by the date specified, the Department shall 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, the Department determines the IFQ scallop permit holder has not paid the full amount due, the Department shall notify the IFQ scallop permit holder by letter. The Department shall explain the discrepancy and provide the IFQ scallop permit holder 30 days to either pay the amount specified in the bill or to provide evidence that the amount paid was correct. If the IFQ scallop permit holder submits evidence in support of his/her payment, the Department 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 Passamaquoddy Joint Council Fisheries regulations, and make a determination as to the appropriate disposition of the matter. A FAD shall be the final 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 department 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 the department 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, the department shall issue a FAD, at which point the permit holder shall have 30 days to comply with the terms of the FAD or the department 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, the department shall refer the matter to the appropriate authorities within the Passamaquoddy tribe 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 the department determines that the conditions of the FAD have been met, the IFQ permit holder may renew the IFQ scallop permit(s). If the department does not receive full payment prior to the end of the fishing year, the IFQ scallop permit shall be considered voluntarily abandoned, pursuant to tribal law unless otherwise determined by the department.

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- (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 Passamaquoddy Fisheries Department 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 only transfer one or more entire IFQs permanently to or from another Passamaquoddy Joint Tribal Council permitted IFQ scallop vessel. A vessel permanently transferring its IFQ to another vessel may transfer all of its limited access permits for which it is eligible to the qualified transferee vessel or permanently cancel such permits. Any such transfer cannot be limited in duration and is permanent unless the IFQ is subsequently transferred to another Passamaquoddy Joint Tribal Council permitted IFQ scallop vessel, other than the originating IFQ scallop vessel, in a subsequent fishing year. The department has final approval authority for all IFQ transfer requests.
- (iii) IFQ transfer restrictions. The owner of a IFQ scallop vessel not issued a Passamaquoddy Joint Tribal Council 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. 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 10 percent of the Passamaquoddy Joint Tribal Council TAC 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 10 percent of the TAC 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.
- (iv) **Application for an IFQ transfer.** The owner of vessels applying for a transfer IFQ must submit a completed application form obtained from the Passamaquoddy Fisheries Department. The application must be signed by both parties (transferor and transferee) involved in the transfer of the IFQ, and must be submitted to the department at least 30 days before the date on which the applicants desire to have the IFQ effective on the receiving vessel. The department 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

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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, tribal or State registration number; transferee's name, vessel name, permit number, and official number, tribal 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 temporarily 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. If applicable, an application for a permanent IFQ transfer must be accompanied by verification, in writing, that the transferee is a member of the Passamaquoddy Tribe and is qualified to be issued a Passamaquoddy IFQ and that transferees vessel is qualified to be issued a Passamaquoddy IFQ.
- (B) **Approval of IFQ transfers/ applications.** Unless an application to transfer IFQ is denied according to paragraph (h)(5)(iii)(C) of this section, the department 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 department may reject an application to transfer IFQ for the following reasons: The application is incomplete; the transferor or transferee does not possess a valid Passamaquoddy 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 10 percent ownership of the TAC allocated to IFQ scallop vessels; the transfer will result in the transferee having a total ownership of or interest in general category scallop allocation that exceeds 10 percent of the TAC allocated to Passamaquoddy IFQ scallop vessels; or any other failure to meet the requirements of this subpart, or other parts relating to vessel ownership requirements and restrictions. Upon denial of an application to transfer IFQ, the department shall send a letter to the applicants describing the reason(s) for the rejection. The decision, by the department is the final decision and there is no opportunity to appeal the decision of the Passamaquoddy fisheries department.

5. State waters determination.

- (1) The Passamaquoddy Joint tribal council fisheries advisory committee shall determine which states have a scallop fishery and which of those states have a scallop conservation program that

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does not jeopardize the biomass and fishing mortality/effort limit objectives of the Passamaquoddy Joint Tribal Council Scallop FMP. In such case, the department shall publish such a determination in accordance with the laws and ordinances of the Passamaquoddy tribe identifying those states having a sea scallop management plan which meets the objectives of the Passamaquoddy Joint Tribal Council Scallop FMP.

- (2) if a determination is made by the committee that a state's conservation program jeopardizes the biomass and fishing mortality/effort limit objectives of the Passamaquoddy Joint Tribal Council scallop FMP, or that the state no longer has a scallop fishery, by notice to all Passamaquoddy Scallop permit holders, that such state waters are closed to all vessels issued Passamaquoddy limited access scallop permit, LAGC NGOM, or an LAGC IFQ scallop permits, until such time as a final determination is formerly adopted by the joint tribal council.
- (3) The Passamaquoddy Joint Tribal Council has determined that the State of Maine has a scallop fishery conservation program for its scallop fishery that does not meet the biomass and fishing mortality/effort limit objectives of the Passamaquoddy tribal Scallop FMP. Or the cultural interests of the Passamaquoddy tribe. A vessel fishing in State of Maine waters may fish under the State of Maine management rules provided the vessel is in compliance with paragraphs (d) through (g) of this section.
 - (b) Limited access scallop vessel exemption. Any vessel issued a Passamaquoddy limited access scallop permit is exempt from the DAS requirements specified in (b) while fishing exclusively landward of the outer boundary of the waters of a state that has been provided a determination under paragraph (a)(4) of this section, provided the vessel complies with paragraphs (d) through (g) of this section.
 - (c) Gear and possession limit restrictions. Any vessel issued a Passamaquoddy limited access scallop permit, an LAGC NGOM, or an LAGC IFQ scallop permit is exempt from the minimum twine top mesh size for scallop dredge gear specified in 1(b)(4)(iv) while fishing exclusively landward of the outer boundary of the waters of the State of Maine under the Tribal determination specified in paragraph (a)(4) of this section, provided the vessel is in compliance with paragraphs (d) through (g) of this section.
 - (d) Notification requirements. Vessels fishing under the tribal determination specified in paragraph (b) and/or (c) of this section must notify the department in accordance with the provisions of (e).
 - (e) Restriction on fishing in the EEZ. A vessel fishing under a tribal state waters determination may not fish seaward of the outer boundary of the State of Maine during the time in which it is fishing under the tribal state waters determination, as declared under the notification requirements of this section.

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- (f) Duration of determination. A tribal state waters determination expires upon a change in the vessel's name or ownership, or upon notification in writing or through VMS by the participating vessel's owner.
- (g) Applicability of other provisions of this part. A vessel fishing under the exemptions provided by paragraphs (b) and/or (c) of this section remains subject to all other requirements of this part.

6. Framework adjustments to Atlantic Sea Scallop management measures.

- (a) Biennially, or upon request from the Passamaquoddy fisheries advisory committee, the department shall provide the fisheries advisory committee with information on the status of the scallop resource. Within 30 days of receipt of that information, the committee shall assess the condition of the scallop resource to determine the adequacy of the management measures to achieve scallop resource conservation and responsible stewardship objectives. Based on this information, the committee shall prepare a Fishery Evaluation Report that provides the information and analysis needed to evaluate potential management adjustments. Based on this information and analysis, the fisheries advisory committee shall initiate necessary adjustments to establish or revise total allowable catch, DAS allocations, rotational management plans, percentage allocations for limited access general category vessels in Sea Scallop Access Areas, scallop possession limits, or other measures to achieve tribal FMP objectives and limit fishing mortality. If the department recommends more than one access area then the committee'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 25 percent. Areas should be considered for Sea Scallop Access Areas where the projected annual change in scallop biomass is less than 15 percent.
- (b) The preparation of the Fisheries Evaluation Report shall begin on or about June 1 of the year preceding the fishing year in which measures will be adjusted. If the biennial framework action is not undertaken by the Committee, or if a final rule is not adopted by the joint tribal council with an effective date on or before March 1, the measures from the most recent fishing year shall continue, beginning March 1 of each fishing year.
- (c) In the FER, the committee shall review and evaluate the existing management measures to determine if the measures are achieving the tribal FMP objectives and optimum yield from the scallop resource as a whole. In doing so, the committee shall consider the effects of any closed areas, temporary, indefinite, or permanent, on the ability of the tribal FMP to prevent overfishing on a continuing basis, as required by Passamaquoddy Joint Tribal Council ordinances governing the taking of marine resources (Atlantic Sea Scallop Fishery Management Plan). If the existing management measures are deemed insufficient to achieve tribal FMP objectives and/or are not expected to prevent overfishing on a continuing basis, the committee shall recommend

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to the Joint Tribal Council appropriate measures and alternatives that will meet tribal FMP objectives and prevent overfishing on a continuing basis.

(d) In order to assure that overfishing is prevented, on a continuing basis, the committee shall recommend management measures necessary to achieve optimum yield-per-recruit from the exploitable components of the resource (e.g. , those components available for harvest in the upcoming fishing years), taking into account at least the following factors:

- (1) Differential fishing mortality rates for the various spatial components of the resource;
- (2) Overall yields from the portions of the scallop resource available to the fishery;
- (3) Outlook for phasing in and out closed or controlled access areas under the Area Rotation Program; if the Joint Tribal Council adopts an area rotational program and
- (4) Potential adverse impacts on EFH.

(e) After considering findings and recommendations of the fisheries advisory committee, or at any other time, if the Passamaquoddy Joint Tribal Council determines that adjustments to, or additional management measures are necessary, it shall direct the committee to develop and analyze appropriate management actions over the span of at least two regularly scheduled Joint Tribal Council meetings. To address interactions between the scallop fishery and other protected species, such adjustments may include proactive measures including, but not limited to, the timing of Passamaquoddy Sea Scallop Access Area openings, seasonal closures, gear modifications, increased tribal observer coverage, and additional research. The department shall provide tribal members with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them at public hearing prior to and at the second Joint Council meeting. The committee'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;

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- (8) Permitting restrictions;
- (9) Crew limits;
- (10) Small mesh line;
- (11) Tribal 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, including 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;

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- (31) Modifications to provisions associated with tribal observer set-asides; observer coverage; observer deployment; observer service provider; and/or the observer certification regulations;
 - (32) Specifications for tribal IFQs for limited access general category vessels;
 - (33) Revisions to the cost recovery program for IFQs;
 - (34) Development and/or modification of general category fishing industry areas and fishing cooperatives;
 - (35) Adjustments to the Passamaquoddy Atlantic Sea scallop fishery measures;
 - (36) VMS requirements; and
 - (37) Any other management measures currently included in the tribal FMP.
- (f) The committee must select an alternative that will prevent overfishing on a continuing basis, and which is consistent with tribal culture, tradition, economic interests and tribal law. If the committee fails to act or does not recommend an approvable alternative, the Passamaquoddy Joint Tribal Council may select an alternatives developed and recommended by the Passamaquoddy fisheries department, which would achieve optimum yield and prevent overfishing on a continuing basis and is consistent with the tribal FMP, and shall direct the department to implement such alternative pursuant to this ordinance.
- (g) The Passamaquoddy fisheries department may make recommendations to the fisheries advisory committee to implement measures in accordance with the procedures described in this subpart to address gear conflict as defined under this chapter. In developing such recommendation, the department shall define gear management areas and seek industry comments by holding public meetings seeking comments from affected fishers and develop findings and recommendations on addressing the gear conflict. After receiving the department's findings and recommendations, or at any other time, the committee shall determine whether it is necessary to adjust or add management measures to address gear conflicts and which tribal FMPs must be modified to address such conflicts. If the committee determines that adjustments or additional measures are necessary, it shall direct the department to develop and analyze appropriate management actions for the relevant tribal FMPs over the span of at least two consecutive Joint Tribal Council meetings. The department shall provide the public with advance notice of the availability of the recommendation, the appropriate justification and economic and biological analyses, and opportunity to comment on them prior to and at the second or final Joint Tribal Council meeting before final action. The department recommendation on adjustments or additions to management measures for gear conflicts must come from one or more of the following categories:
- (1) Monitoring of a radio channel by fishing vessels.
 - (2) Fixed gear location reporting and plotting requirements.

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- (3) Standards of operation when gear conflict occurs.
 - (4) Fixed gear marking and setting practices.
 - (5) Gear restrictions for specific areas (including time and area closures).
 - (6) VMS.
 - (7) Restrictions on the maximum number of fishing vessels or amount of gear.
 - (8) Special permitting conditions.
 - (9) Recommendations from the Passamaquoddy fishers
- (h) The proposed measures shall be presented to the fisheries advisory committee for the affected tribal FMPs prior to being presented to the joint tribal council. If there is disagreement between the committee and the department, the Joint Tribal Council may return the proposed framework adjustment to the committee for further review and discussion.
- (i) Unless otherwise specified, after developing a framework adjustment and receiving public testimony, the department shall make a recommendation to the fisheries advisory committee. The department's recommendation to the fisheries advisory committee must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation on whether to propose the framework adjustment to the Joint Tribal Council as an amendment to the FMP. If the committee recommends the framework adjustment as a final rule, the committee may consider at least the following factors:
- (1) Whether the availability of data on which the recommended management measures are based allows for adequate time to adopt a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.
 - (2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry, consistent with tribal law, in the development of the department's recommendations
 - (3) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.
 - (4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.
- (j) If the department's recommendation includes adjustments or additions to management measures, and if, after reviewing the department's recommendation and supporting

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information and after meeting its obligations to ensure tribal member and resource user input through the public meeting process

- (1) The fisheries advisory committee approves the department's recommended management measures, the committee, for good cause found pursuant to tribal law; waive the requirement for a proposed rule and opportunity for public comment in usual manner. The committee, in doing so, shall publish only the final rule. Submission of a recommendation by the Committee for a final rule at the request of the department does not affect the department's responsibility to comply with all applicable tribal laws; or
- (2) The committee approves the department recommendation and determines that the recommended management measures should be proposed to the Joint Tribal Council as a proposed rule, the action shall be published as a proposed rule in accordance with joint tribal council bylaws and the administrative procedures established in this ordinance. After additional public comment, if the committee concurs with the department recommendation, the action shall be proposed to the joint tribal council as a final rule with written notice forwarded by the department to all holders of tribal permits within the affected fisheries ; or
- (3) The committee does not concur; the Joint Tribal Council shall be notified, in writing, of the reasons for the non-concurrence.
- (k) Nothing in this section is meant to derogate from the authority of the department to take emergency action when it is determined that such action is necessary to prevent overfishing, gear conflict or in the interest of safety an emergency action is warranted.

Scallop research.

- (a) Annually, the Passamaquoddy fisheries department shall prepare and issue a Request for Proposals (RFP) that identifies research priorities for projects to be conducted by vessels issued Passamaquoddy Joint Tribal Council scallop fishing or research permits using research set-aside as specified in **xxxxxxx**
- (b) Proposals submitted in response to the RFP will be restricted to vessels issued Passamaquoddy commercial scallop fishing or research permits and must include the following information, as well as any other specific information required within the RFP:

A project summary that includes the project goals and objectives; the relationship of the proposed research to scallop research priorities and/or management needs; project design; participants other than the applicant, funding needs, breakdown of costs, and the vessel(s) for which authorization is requested to conduct research activities.

- (c) In accordance with tribal procurement policy, the Passamaquoddy Department of fisheries shall make the final determination as to what proposals are approved and which vessels are authorized to take scallops in excess of possession limits, utilize DAS set-aside for research, or take additional trips into Access Areas. The department shall provide authorization of such

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activities to specific qualified vessels by letter of acknowledgement, letter of authorization, or Exempted Fishing Permit issued by the department, which must be kept on board the vessel.

- (d) Upon completion of scallop research projects approved under this part, researchers must provide the Passamaquoddy Department of Fisheries with a report of research findings, which must include: A detailed description of methods of data collection and analysis; a discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; and a detailed final accounting of all funds used to conduct the sea scallop research.

Sea scallop area rotation program.

If the Joint Tribal Council directs the fisheries advisory committee to establish an area rotation program for the scallop fishery, such program shall include areas closed to scallop fishing defined in this ordinance, and/or Sea Scallop Access Areas; subject to the Sea Scallop Area Access program requirements specified in this ordinance, Areas not defined as Rotational Closed Areas, Sea Scallop Access Areas, EFH Closed Areas, or areas closed to scallop fishing under other tribal FMPs, are open to scallop fishing as governed by the other management measures and restrictions in this part. The Committee's development of area rotation programs shall include the requirements specified by the Joint Tribal Council, including the Area Rotation Program factors included in (a). The percentage of the total allowable catch for each Sea Scallop Access Area that is allocated to Passamaquoddy Joint Council permitted limited access scallop vessels and limited access general category scallop vessels shall be specified through the framework adjustment process specified.

Rotational Closed Areas

- (a) Hudson Canyon Closed Area. No vessel issued a Passamaquoddy Commercial Sea Scallop Fishing Permit may fish for scallops in, or possess or land scallops from, the area known as the Hudson Canyon Closed Area. No vessel may possess scallops in the Hudson Canyon Closed Area, unless such vessel is only transiting the area as provided in paragraph (c) of this section. The Hudson Canyon Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the department upon request.

Point Latitude Longitude

H139°30' N.73°10' W.

H239°30' N.72°30' W.

H338°30' N.73°30' W.

H438°50' N.73°30' W.

H538°50' N.73°42' W.

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H139°30' N.73°10' W.

(b) [Reserved]

(c) **Transiting.** No vessel possessing scallops may enter or be in the area(s) specified in paragraphs (a) and (b) of this section unless the vessel is transiting the area and the vessel's fishing gear is unavailable