

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: June 23, 1995.

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[FR Doc. 95-15976 Filed 6-28-95; 8:45 am]

BILLING CODE 6718-21-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 650

[Docket No. 950615156-5156-01; I.D. 050295A]

RIN 0648-A102

#### Atlantic Sea Scallop Fishery; Framework 5 Gear Restrictions

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement measures contained in Framework Adjustment 5 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP). This rule implements measures that prohibit limited access vessels, fishing under the days-at-sea (DAS) program, from using trawl nets, with the exception of vessels that have not used a scallop dredge since January 1, 1988, to the present, and requires all dredges to have a minimum number of rows of steel rings extending from the "after end" to the club stick. The intent is to protect against the overharvest of small, immature sea scallops.

**EFFECTIVE DATE:** July 31, 1995.

**ADDRESSES:** Copies of Amendment 4, its regulatory impact review, initial regulatory flexibility analysis (IRFA), the final supplemental environmental impact statement, and the supporting documents for Framework Adjustment 5 are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (U.S. Route 1), Saugus, MA 01906-1097, telephone 617-231-0422.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Jones, Fishery Policy Analyst, 508-281-9273.

#### SUPPLEMENTARY INFORMATION:

##### Background

Amendment 4 to the FMP was implemented on March 1, 1994 (59 FR 2757, January 19, 1994). The

amendment established controls on total fishing effort through limited entry and a schedule of reductions in allowable time at sea. Although the amendment was approved, NMFS remains concerned about the near-term level of protection of small sea scallops. This concern is reflected in the Director's, Northeast Region, NMFS (Regional Director), approval letter to the New England Fishery Management Council (Council), dated November 5, 1993, that advised the Council that the Regional Director will be monitoring carefully the initial impact of the amendment on fishing mortality rates of small sea scallops. If fishing mortality rates increased beyond anticipated levels, the Council was expected to consider immediately, adjustments for implementation under the framework measure provisions of the amendment.

##### Ban on Trawl Nets

The final rule prohibits limited access vessels fishing under the DAS program from using trawl nets except for vessels that have not used a scallop dredge since January 1, 1988. The intended effect of this prohibition is to prevent current scallop dredge vessels from switching to trawl nets, a switch that would likely result in a significant increase in the harvest of small scallops in contravention of Amendment 4 objectives. Many of the current dredge operators have commented that the replacement of dredges with trawl nets, in the sea scallop fishery, may result in the further depletion of the resource. The Council's Scallop Plan Development Team supports this concern in its finding that the use of trawl nets tends to circumvent the limits on fishing gear selectivity intended by the regulatory 3¼ (83 mm) and 3½ inch (89 mm) minimum ring size restrictions for dredges. Furthermore, at least one study has shown that trawl nets are not as selective as dredges in regard to the harvest of smaller scallops and that larger numbers of smaller scallops are killed during landing, while on deck, or during or after discarding in the trawl fishery than in the dredge fishery.

For purposes of allowing traditional fishing practices to continue, as analyzed in connection with Amendment 4, Framework Adjustment 5 allows vessels that have not used a scallop dredge since January 1, 1988, to fish for scallops using trawl nets. This exemption will apply only to vessels for which an eligibility determination has been made in 1995. This criterion is intended to allow only those vessels that are incapable of towing dredges due to their lack of sufficient engine power and/or proper construction to

participate in the trawl net segment of the fishery. The number of such vessels is projected to be small and, therefore, allowing such vessels to continue to fish with trawl nets is anticipated not to have any significant impact on the stock.

##### Restrictions on Dredge Configuration

Amendment 4 prohibits the use of any material, device, or net or dredge configuration or design that results in obstructing the release of scallops that would have passed through a legal size net and dredge that did not use any such material, device, or net or dredge configuration or design. The Council is aware of a recent practice of running the twine top along the back of the dredge to the club stick. This practice limits the ability of the dredge to open up as the mesh stretches shut, thereby restricting the escapement of smaller scallops. Framework Adjustment 5 specifies the acceptable twine top configuration for dredges in use by limited access vessels under the DAS program. Specifically, the framework adjustment refines the dredge vessel gear restrictions to require that all dredges that are wider than 8 ft (2.44 m) and all dredges used on double-rigged vessels have at least seven rows (regardless of ring size) of nonoverlapping steel rings between the after end of the twine top and the club stick. Additionally, all single dredges of 8 ft (2.44 m) or less width must have at least four rows (regardless of ring size) of nonoverlapping steel rings between the after end of the twine top and the club stick.

##### Public Comment

The December 8, 1994, Council meeting was the first of the required public meetings under the framework adjustment process as announced in the **Federal Register** on December 2, 1994 (59 FR 61878). A draft document containing the proposed management measures and their rationale was available to the public on December 28, 1994, and mailed to 260 people, including those serving as scallop industry advisors to the Council. Two subsequent public hearings were held jointly with Council meetings occurring on January 12, 1995, and March 30, 1995. Five written sets of comments were received by the Council. Four commenters favored the framework, while one was opposed to an exemption for traditional net vessels.

Testimony provided by industry members and other interested parties mirrored the concern of the Council regarding net trawls, dredge configuration, and the taking of small