

issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Delaware for the remainder of calendar year 1996, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of Delaware that the quota has been harvested and to advise vessel and dealer permit holders that no commercial quota is available for landing summer flounder in that state.

**EFFECTIVE DATE:** July 19, 1996, through December 31, 1996.

**FOR FURTHER INFORMATION CONTACT:** Regina Spallone, Fishery Policy Analyst, 508-281-9221.

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are found at 50 CFR part 648, Subparts A and G. The regulations require annual specification of a commercial quota that is apportioned among the states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100. Amendment 7 to the FMP (November 24, 1995, 60 FR 57955) revised the fishing mortality rate reduction schedule for summer flounder, and the revised schedule was the basis for establishing the 1996 quota. The total commercial quota for summer flounder for the 1996 calendar year was adopted to ensure achievement of the appropriate fishing mortality rate of 0.41 for 1996, and is set equal to 11,111,298 pounds (5,040,000 kg) (January 4, 1996, 61 FR 291). The percent allocated to vessels landing summer flounder in Delaware is 0.01779 percent or 1,977 pounds (897 kg).

Section 648.100(d)(2) provides that any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year. In calendar year 1995, a total of 3,072 pounds (1,393 kg) were landed in Delaware. The amount allocated for Delaware landings in 1995 was 2,614 pounds (1,186 kg), creating an overage of 458 pounds (208 kg) that was deducted from the amount allocated for landings in that state during 1996 (April 05, 1996, 61 FR 15199). The resulting quota for Delaware is 1,519 pounds (689 kg).

Section 648.101(b) requires the Regional Director, Northeast Region (Regional Director) to monitor state commercial quotas and to determine when a state commercial quota is harvested. The Regional Director is further required to publish a notice in

the Federal Register advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. Because the available information indicates that Delaware has exceeded its quota for 1996, the Regional Director has determined that the 1996 summer flounder quota allocations for vessels landing in Delaware has been harvested.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Director has determined no longer has commercial quota available. Therefore, effective 0001 hours July 19, 1996, further landings of summer flounder in Delaware by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1996 calendar year, unless additional quota becomes available through a transfer and is announced in the Federal Register. Federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the remainder of the calendar year, or until additional quota becomes available, effective the date above.

#### Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: July 18, 1996.

Richard W. Surdi,  
*Acting Director, Office of Conservation and Management, National Marine Fisheries Service.*

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#### 50 CFR Part 648

[Docket No. 950615156-6193-02; I.D. 070196C]

RIN 0648-AI02

#### Fisheries of the Northeastern United States; Framework Adjustment 8 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 8 to the Fishery

Management Plan for the Atlantic Sea Scallop Fishery (FMP). This rule expands the qualification criteria for limited access vessels fishing under the scallop days-at-sea (DAS) program to use trawl nets to include vessels with an engine of no greater than 450 horsepower that have used a scallop dredge on no more than 10 trips from January 1, 1988, through December 31, 1994. Presently, only vessels that have not used a scallop dredge after December 31, 1987, are qualified to use trawl nets to fish for scallops. The intent of this action is to allow certain limited access vessels that cannot practically use a dredge to fish for scallops to use trawl nets.

**EFFECTIVE DATE:** July 19, 1996.

**ADDRESSES:** Copies of Amendment 4, its regulatory impact review, the initial regulatory flexibility analysis, the final supplemental environmental impact statement, and the supporting documents for Framework Adjustments 5 and 8 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. Amendment 4 also included framework measures to implement adjustments to the effort control and other additional management measures considered necessary to meet the goals and objectives of the FMP. Although the amendment was approved, NMFS raised concerns about the level of protection of small sea scallops in its approval letter to the New England Fishery Management Council (Council).

Framework Adjustment 5 (60 FR 33757, June 29, 1995) prohibited limited access scallop vessels from using trawl nets while fishing under the scallop DAS program except for vessels that have not used a scallop dredge after December 31, 1987. The intended effect of the prohibition was to minimize the number of vessels that could fish for scallops with trawl nets and to prevent 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 the FMP's objectives.

During the March 21, 1996, Scallop Oversight Committee meeting several owners of vessels not meeting the qualification criteria asked the Council to relax the criteria. The Committee reviewed NMFS' records on scallop dredge/trawl trips and vessel horsepower and recommended that the Council consider a framework adjustment to expand the criteria.

Framework Adjustment 8 expands the number of vessels qualified to fish for scallops with trawl nets by including limited access vessels with an engine no greater than 450 horsepower that have fished for scallops with a scallop dredge on no more than 10 trips from January 1, 1988, through December 31, 1994. The new criteria of no more than 10 trips and an engine horsepower of no greater than 450 are intended to qualify only those vessels that may have towed or attempted to tow a scallop dredge in the past, but could not practically do so due to their lack of sufficient engine horsepower and/or proper construction. The number of such vessels is projected to be small, and, therefore, allowing such vessels to fish for scallops with trawl nets is not anticipated to have any significant impact on the stock.

All limited access scallop vessels not issued a letter of authorization or a permit endorsed to fish for scallops with trawl nets under the old criterion will be notified by NMFS of its determination, based on information currently available to NMFS, as to whether the vessel qualifies under the new criteria. If a vessel owner agrees with NMFS' determination that the vessel is qualified and signs a declaration, furnished by NMFS, to that effect, NMFS will issue the vessel a letter of authorization to use trawl nets for the 1996–97 fishing year. If a vessel does not obtain a letter of authorization for the 1996–97 fishing year, it loses its eligibility for subsequent years. A permit endorsement will be the authorizing instrument in future years.

Replacement vessels for vessels qualified under either the old criterion or the additional criteria must themselves meet the limitations on fishing for scallops with scallop dredges that the vessel it is replacing met.

Supplemental rationale and analyses of expected biological effects, economic impacts, impacts on employment, and safety concerns are contained within the supporting documents for Framework Adjustments 5 and 8 (see **ADDRESSES**).

The Council requests publication of the management measures as a final rule after considering the required factors stipulated in the regulations governing

the sea scallop fishery and providing supporting analysis for each factor considered. The Director, Northeast Region, NMFS, concurs with the Council's recommendation and has determined that Framework Adjustment 8 should be published as a final rule.

NMFS is adjusting the scallop regulations following the procedure for framework adjustments established by Amendment 4 and codified in 50 CFR part 648. The Council followed this procedure when making adjustments to the FMP, by developing and analyzing the actions over the span of a minimum of at least two Council meetings, on April 17, 1996, and June 6, 1996.

#### Comments and Responses

The April 17, 1996, Council meeting was the first of two meetings that provided an opportunity for public comment on Framework Adjustment 8. A draft document containing the proposed management measures and their rationale was available to the public on June 6, 1996, and mailed to 260 people, including those serving as scallop industry advisors to the Council. The final public hearing was held on June 6, 1996. Testimony provided by industry members at the public hearing favored the framework adjustment. Only one written comment was received by the Council, which favored the framework adjustment.

#### Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

This rule is implemented in compliance with all procedural requirements established by the Administrative Procedure Act. The Regional Director concurs with the Council's request for publication of the management measures as a final rule after considering the required factors stipulated under the procedure for framework adjustments in the final rule for Amendment 4 and providing supporting analysis for each factor considered. Public meetings held by the Council to discuss the management measures implemented by this rule provided adequate opportunity for public comment to be considered. Thus, the Assistant Administrator for Fisheries, NOAA, finds there is good cause to waive prior notice under 5 U.S.C. 553(b)(B). Under 5 U.S.C. 553(d)(1), because this rule relieves a restriction by allowing some fishermen to resume their traditional fishing method not available to them since August 1, 1995, it is not subject to a 30-day delay in effective date.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 18, 1996.

Gary Matlock,  
Program Management Officer, National Marine Fisheries Service.

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

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

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

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

2. In § 648.51, paragraph (f) is revised to read as follows:

#### **§ 648.51 Gear and crew restrictions.**

\* \* \* \* \*

(f) *Restrictions on use of trawl nets—*  
(1) *Prohibition on use of trawl nets.* A vessel issued a limited access scallop permit fishing for scallops under the scallop DAS allocation program may not fish with, possess on board, or land scallops while in possession of, trawl nets unless such vessel has on board a valid letter of authorization or permit endorsed to fish for scallops with trawl nets.

(2) *Eligibility to use trawl nets.* (i) A vessel is eligible for a letter of authorization or a permit endorsement to fish for scallops with trawl nets if the vessel:

(A) Has not fished for scallops with a scallop dredge after December 31, 1987, and, as of July 19, 1996, has a letter of authorization or permit endorsed to fish for scallops with trawl nets;

(B) Has fished for scallops with a scallop dredge on no more than 10 trips from January 1, 1988, through December 31, 1994, has an engine horsepower no greater than 450, and is eligible for or has been issued a 1996 limited access scallop permit (if the vessel does not obtain a letter of authorization or a permit endorsed to fish for scallops with trawl nets for the 1996–97 scallop fishing year, the vessel shall not be eligible under this provision for subsequent fishing years); or

(C) Is a replacement vessel for a vessel described in paragraph (f)(2)(i)(A) or (B) of this section.

(ii) NMFS will contact the owners of all vessels with limited access scallop permits that have not previously been issued a letter of authorization or permit endorsed to fish for scallops with trawl nets as to whether, based on information available to NMFS on July 19, 1996, their vessels are eligible under paragraph (f)(2)(i)(B) of this section for

a letter of authorization or permit endorsed to fish for scallops with trawl nets. If a vessel owner agrees with NMFS' determination that the vessel is eligible under paragraph (f)(2)(i)(B) of this section to fish for scallops with trawl nets, the owner must, within 30 days of receipt of the determination, sign and submit to NMFS a declaration, provided by NMFS, stating that the vessel has fished for scallops with a scallop dredge on no more than 10 trips from January 1, 1988, through December 31, 1994, and has an engine with no greater than 450 horsepower. The signed declaration shall serve as a rebuttable presumption that the vessel qualifies for a letter of authorization or permit endorsement to fish for scallops with trawl nets. Any replacement vessel must meet the limitations on fishing for scallops with scallop dredges that the vessel it is replacing met. The letter of authorization or permit endorsement must be requested by the vessel owner at the time the vessel owner initially applies for a permit for the replacement vessel.

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