



Figure 2 to Part 380—The Use of Streamer Lines to Minimize the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research Operations in the Convention Area (see § 380.27 for specifications on use)

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## 50 CFR Part 650

[Docket No. 9602226047-6047-01; I.D. 020696B]

RIN 0648-A137

### Atlantic Sea Scallop Fishery; Reduction in Crew Size Limit

**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 7 to the Atlantic Sea Scallop Fishery Management Plan (FMP). This framework adjustment permanently reduces the maximum crew size from nine to seven.

**EFFECTIVE DATE:** March 11, 1996.

**ADDRESSES:** Copies of Amendment 4, its regulatory impact review and the final regulatory flexibility analysis contained therein, the final supplemental environmental impact statement (SEIS), and the supporting documents for Framework Adjustment 7 are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906-1097.

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

**SUPPLEMENTARY INFORMATION:**

### Background

The final rule implementing Amendment 4 to the FMP was published on January 19, 1994 (59 FR 2777), with implementation of most measures on March 1, 1994. The amendment retained the FMP's objectives to: (1) Restore adult stock abundance and age distribution; (2) increase yield-per-recruit for each stock; (3) evaluate plan research, development, and enforcement costs; and (4) minimize adverse environmental impacts on sea scallops.

Amendment 4 changed the primary management strategy from a meat count (size) control to effort control. The amendment controls total fishing effort through limited access permits and a schedule of reductions in allowable days at sea (DAS). Supplemental measures include limits on increases in vessel fishing power to control the amount of fishing pressure and to help control the size of scallops landed, gear restrictions, and limits on the number of crew members. Additionally, the amendment includes a framework procedure for adjusting the management measures in the FMP. Initially, the maximum crew size was set at nine.

In response to very high levels of recruitment documented in the Mid-Atlantic resource area, the New England Fishery Management Council (Council) recommended lowering the maximum crew size from nine to seven, because a

smaller crew lowers shucked-scallop production. This reduced production is exacerbated if a vessel operator is targeting small scallops. Thus, this restriction provides an incentive to target larger scallops in order to obtain the same amount of yield from fewer scallops. Framework Adjustments 1 (59 FR 36720, July 19, 1994) and 4 (59 FR 36720, April 5, 1995), temporarily lowered the maximum crew size from nine to seven. The current framework adjustment 4 expires on February 29, 1996.

Because the conditions that justified lowering the maximum crew size to seven still exist, the Council recommended reducing the maximum crew-size permanently from nine to seven, until changed by plan amendment or other action.

In Framework 1, the 7-member crew limit was expected to increase yield-per-recruit, which would be realized during 1995 and 1996. No preliminary 1995 data are available to document that year's yield-per-recruit results. Yields would increase and spawning stock biomass would be greatly enhanced, but only during 1994. With an extension of the 7-member crew limit, similar results are expected as analyzed in Framework 1. Increased yield-per-recruit would occur during 1997 and 1998, and spawning stock biomass would be enhanced during 1996.

The extension of the 7-member crew limit is expected to reduce total

landings of sea scallops, resulting in an increase in ex-vessel prices in 1996. The increase in ex-vessel prices should mitigate the decrease in landings. During 1997 and 1998, landings and ex-vessel revenues are expected to increase. After 1998, the projected impact of the 7-member crew limit on ex-vessel revenues is projected to be negligible when compared with projected ex-vessel revenues associated with the 9-member crew limit.

The adjustments being made through the framework process (§ 650.40) are within the scope of analyses contained in Amendment 4 and the final SEIS. 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 1, 4, and 7 (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 (§ 650.40) and providing supporting analysis for each factor considered. The Director, Northeast Region, NMFS concurs with the Council's recommendation and has determined that Framework 7 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 650, subpart C. 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 December 13, 1995, and January 25, 1996.

#### Comments and Responses

In accordance with the regulations, public comments on the framework adjustment were taken by the Council during its December 13, 1995, and January 25, 1996, meetings. Four members of the industry and two fishing organizations commented at the December and January meetings. The comments were in support of the recommended adjustment and urged timely implementation to avoid a hiatus when the current restriction expires.

Written comments were also received from four individuals. One comment was in favor of the 7-member crew limit and requires no response. The remaining comments and responses follow.

*Comment 1:* All commenters questioned the safety aspects of the maximum crew size.

*Response:* The analysis included in the Council's framework package suggests that, based on recent U.S. Coast Guard information (contained in a November 8, 1995, letter, with enclosure, from Captain P. J. Howard) about the scallop fishery, there is no relationship between the size of the crew and accidents aboard scallop vessels. Fishers have stated publicly that most New Bedford scallop boats carried less than seven crew members in the winter of 1994-95, simply because scallop stocks were low. Many fishers have also stated that there is nothing inherently dangerous about using a 7-person crew and that safety ultimately depends upon on-board safety practices rather than crew size. The Coast Guard reported to the Council in the above-mentioned November 8 letter and enclosure that there was no statistical evidence that the number of personnel casualties has increased due to the maximum crew restrictions.

*Comment 2:* The 7-person crew limit discriminates against those who have larger, more expensive vessels. Crew size limits, if required, should be based on horsepower, vessel length, tonnage, and size of gear fished.

*Response:* The Council's policy is to treat all vessels, within the full-time, part-time, and occasional categories, equally. The 7-person crew limit is based on the typical full-time vessel, which generally includes the largest, most expensive vessels and is intended to reduce the incentive to target small scallops. Although there may be smaller, less expensive vessels in the full-time category that already use 7-person crews, or less, it is unlikely due to their limited crew that these vessels pursue small scallops.

*Comment 3:* Wheelhouses are unmanned during haulbacks because of the 7-person crew limit.

*Response:* Members of the Council's Sea Scallop Industry Advisory Committee have reported that unmanned wheelhouses are a practice found regardless of crew size, in both dredges and groundfish trawls. The First Coast Guard District reported to the Council that this is a common practice among many fishing vessel operators and not unique to the scallop fishery. In any event, the decision not to man the wheelhouse is not a result of the 7-member crew limit but rather an operational decision of the captain.

#### Adherence to Framework Procedure Requirements

Neither data availability nor the need to have the 7-person crew limit in place for the entire harvesting season were factors considered by the Council in its

decision to recommend publishing the adjusted management measures as a final rule.

The public had adequate opportunity to express opinions at several meetings. The crew-limit issue was discussed at the Scallop Oversight Committee meeting held in East Boston, MA, on November 6, 1995, and at the Council meetings held in Danvers, MA, on December 13, 1995, and January 24 and 25, 1996.

There is an immediate need to protect the resource by reducing the crew limit to seven before March 11, 1996, when the current temporary crew limit expires. Unnecessary delay in effecting this adjustment would significantly increase the danger to the new incoming year-class during early spring.

The Council will continue to evaluate the effectiveness of this crew-size limit. This continuing evaluation will be made on the basis of landings data and enforcement activity.

NMFS has determined that the framework adjustment to the FMP that this rule would implement is consistent with the national standards, other provisions of the Magnuson Fishery Conservation and Management Act, and other applicable law. NMFS, in making that determination, has taken into account the information, views, and comments received during the comment period of the FMP's framework adjustment mechanism in 50 CFR 650.40.

#### Classification

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

In that this regulation is not subject to the requirement to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law, this rule is exempt from the requirement to prepare an initial or final regulatory flexibility analysis under the Regulatory Flexibility Act. As such, none has been prepared.

This rule is implemented in compliance with all procedural requirements established by the Administrative Procedure Act. The Council requests publication of the management measures as a final rule after considering the required factors stipulated under the Framework Measures 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. The Assistant Administrator (AA) for

Fisheries, NOAA, finds there is good cause to waive prior and an opportunity for public comment notice under 5 U.S.C. 553(b)(B) as such notice and public procedure thereon are unnecessary.

The AA finds that under 5 U.S.C. 553(d) the need to protect the resource by having the regulation in place by March 1, 1996, when the current temporary crew-size limit expires, constitutes good cause to waive the 30-day delay in effectiveness of this rule. Delay in effecting this crew-size limit would significantly increase the danger to the new incoming year class of sea scallops during early spring.

#### List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: February 28, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 650 is amended as follows:

#### PART 650—ATLANTIC SEA SCALLOP FISHERY

1. The authority citation for part 650 continues to read as follows:

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

2. In § 650.21, paragraph (c) is revised to read as follows:

##### § 650.21 Gear and crew restrictions.

\* \* \* \* \*

(c) *Crew restrictions.* Limited access vessels participating in or subject to the scallop DAS allocation program may have no more than seven people aboard, including the operator, when not docked or moored in port, unless participating in the small dredge program specified in paragraph (e) of this section, or otherwise authorized by the Director, Alaska Region, NMFS.

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#### 50 CFR Part 651

[Docket No. 960226048-6048-01; I.D. 020996A]

RIN 0648-A179

#### Northeast Multispecies Fishery

**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 14 to Amendment 5 of the Northeast Multispecies Fishery Management Plan (FMP). This rule implements a spring closure for gillnet gear in the Revised Mid-coast Closure Area and establishes a new Cape Cod South Closure Area off Southern New England. The intent of this rule is to further reduce harbor porpoise mortality in the Gulf of Maine sink gillnet fishery to meet the New England Fishery Management Council's (Council) bycatch reduction goals.

**EFFECTIVE DATES:** The addition of § 651.32(a)(1)(iv) and Figure 9 is effective March 8, 1996. The amendment to § 651.32(a)(1)(ii)(B) is effective March 25, 1996.

**ADDRESSES:** Copies of Amendment 5, its regulatory impact review (RIR) and the final regulatory flexibility analysis (FRFA) contained with the RIR, its final supplemental environmental impact statement (FSEIS), and Framework Adjustment 14 are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097.

**FOR FURTHER INFORMATION CONTACT:** E. Martin Jaffe, 508-281-9272.

#### SUPPLEMENTARY INFORMATION:

##### Background

Regulations implementing Amendment 5 to the FMP were published on March 1, 1994 (59 FR 9872). One of Amendment 5's principal objectives was to reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery by the end of Year 4 of plan implementation to a level not to exceed 2 percent of the population, based on the best available estimates of abundance and bycatch. In addition, Amendment 5 established a requirement that by September 15 of each year, the Council's Harbor Porpoise Review Team (HPRT) complete an annual review of harbor porpoise bycatch and abundance data in the Gulf of Maine and evaluate the impacts of other measures that reduce harbor porpoise take. It also encouraged the HPRT to make recommendations on other "reduction-of-take" measures to achieve the harbor porpoise mortality reduction goals and established a framework procedure for timely implementation of appropriate measures.

With the issuance of implementing regulations for Framework Adjustment 4 to Amendment 5 of the Northeast Multispecies Fishery Management Plan (59 FR 26972, May 25, 1994), a series of time and area closures to sink gillnet

gear were implemented based on an analysis by the Northeast Fisheries Science Center (NEFSC) of the seasonal and spatial distribution of harbor porpoise and sink gillnet fishing activity in the Gulf of Maine.

This action is necessary in order to make further progress toward the Council's bycatch reduction goals for Year 2 (1995-96) of the Program. The target adopted by the Council was a 40 percent reduction in the bycatch or approximately 780 animals. Due in part to the increased bycatch rates in the Mid-coast region, incidental take of harbor porpoise for that year may still exceed 1,500 animals. This information and the fact that porpoise takes had also been well documented in late March, April and May of 1995 in the Revised Mid-coast Closure Area creates a situation in which total bycatch for the 1994-95 season had likely exceeded target levels. Prior to the proposed framework adjustment, there have been no closures implemented to reduce entanglement as animals move northward into the northern Gulf of Maine and the Bay of Fundy in the spring.

This final rule implements a spring closure from March 25 through April 25 in the Revised Mid-coast Closure Area (see Figure 8), establishes an additional closure area—the Cape Cod South Closure Area—south of Massachusetts and Rhode Island (Figure 9), and implements the closure of that area from March 8 through March 30 in 1996 and from March 1 through March 30 in subsequent years. These closure areas will be monitored to determine whether displaced gillnet activity, if it occurs, results in increased harbor porpoise takes.

#### Revised Mid-coast Closure Area—Figure 8

This area is closed from March 25 through April 25 for each fishing year.

Point	Latitude	Longitude
MC1 .....	42°30' N	Massachusetts shoreline.
MC2 .....	42°30' N.	70°15' W.
MC3 .....	42°40' N.	70°15' W.
MC4 .....	42°40' N.	70°00' W.
MC5 .....	43°00' N.	70°00' W.
MC6 .....	43°00' N.	69°30' W.
MC7 .....	43°15' N.	69°30' W.
MC8 .....	43°15' N.	69°00' W.
MC9 .....	Maine shoreline	69°00' W.

#### Cape Cod South Closure Area—Figure 9

This area is closed from March 1 through March 30 of each fishing year, except in 1996 when the area is closed from March 8 through March 30.