

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530, concerning the allotments. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-506, adopted May 12, 1988, and released June 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments, is amended under Indiana, by adding Princeton, Channel 263A and Washington, Channel 300A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-14207 Filed 6-22-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-467; RM-5959]

Radio Broadcasting Services; Ennis, Montana

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 254C2 to Ennis, Montana, as that community's first FM broadcast service, in response to a petition filed by Big M Broadcast Associates. The coordinates for this allotment are 45-21-12 and 111-44-06. With this action, this proceeding is terminated.

DATES: Effective July 25, 1988; the window period for filing applications will open on July 26, 1988, and close on August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-467, adopted May 11, 1988, and released June 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Montana is amended by adding Channel 254C2 at Ennis.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-14208 Filed 6-22-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 80467-8110]

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this rule to implement Amendment 2 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP). Amendment 2 (1) specifies a 10 percent increase in the meat count standard during the months of October, November, December, and January, the primary period when spawning causes reduction in individual meat weight of scallops that have reached harvestable age; and (2) provides a framework regulatory mechanism to change the magnitude and/or the timing of the adjustment of the meat count standard during the

spawning season. The purpose of Amendment 2 is to provide regulatory relief to the industry. This rule also makes minor editorial and technical changes to the regulations.

EFFECTIVE DATE: July 22, 1988.

ADDRESS: Copies of the amendment, the environmental assessment, and the regulatory impact review are available from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Peter Colosi, (Chief, Plan Administration Branch NMFS), 617-281-3600, ext. 232.

SUPPLEMENTARY INFORMATION: The FMP is implemented by regulations appearing at 50 CFR Part 650. The principal objectives of the FMP are (1) restoration of adult stock abundance and age distribution, (2) enhancement of yield per recruit of each stock, and (3) minimization of regulatory and management costs. The primary management measure used to achieve these objectives is the requirement that scallops harvested and shucked at sea must, on average, meet a meat count standard of no more than 30 meats per pound. When the FMP was developed it was believed that scallops grew at a constant rate and upon reaching an age of four years (harvestable age), sufficient growth had occurred to allow the scallops to be harvested at a size consistent with the 30 meat count standard and the objectives of the FMP. Recent scientific studies show that during the fall months, sexually mature scallops (three years old and older) lose meat weight due to spawning activity. This meat weight loss is not regained until late winter when the spawning season is over. The loss in meat weight during the fall months results in significantly fewer scallops of harvestable age that meet the 30 meat count standard.

Amendment 2: (1) implements a 10 percent increase in the meat count standard during October, November, December, and January, the primary period when spawning causes the reduction in individual meat weight of scallops which have reached harvestable age; and (2) provides a framework regulatory mechanism to change the magnitude and/or the timing of the adjustment of the meat count standard during the spawning season. Amendment 2 will provide regulatory relief to the industry.

This rule makes minor technical changes to the regulations by changing all references to the fishery conservation zone (FCZ) to the

exclusive economic zone (EEZ), in accordance with the 1986 amendments to the Magnuson Fishery Conservation and Management Act (Magnuson Act), and by clarifying the definitions of the term *Land*. Non-substantive editorial changes clarify the framework regulatory mechanism.

The notice of availability of Amendment 2 was published on March 30, 1988 (53 FR 4982). A proposed rule to implement the Amendment was published on April 18, 1988 (53 FR 12709). Comments were invited until April 29, 1988. Further background information and the rationale for this rule were given in the proposed rule and are not repeated here.

Comments and Responses

Public comments were received from Mid-Atlantic Fisheries, Inc., Eastern Fisheries, Inc. and the East Coast Fisheries Association. All three support the rulemaking and added additional comments which are discussed below. In addition, the review of the amendment by the Secretary of Commerce through NMFS required by the Magnuson Act raised comments of a technical nature requiring clarification or additional statements in the FMP amendment to ensure accuracy and better understanding of the proposed action. These clarifications and statements do not change the substance of the FMP amendment. The staff of the New England Fishery Management Council (Council), the analysts and drafters of Amendment 2, have addressed these technical/scientific comments.

Public and Other Comments and Responses

Comment: Mid-Atlantic Fisheries, Inc., urged NMFS to consider a standard of 35 meats per pound with a 10 percent tolerance and an additional 10 percent tolerance during spawning, to bring the regulations into alignment with the real harvesting practices in the fishery.

Response: A standard of 35 meats per pound with a 10 percent tolerance results in an effective standard of 38.5 meats per pound during non-spawning periods; an additional 10 percent tolerance during spawning results in a standard of 42.4 meats per pound. This recommendation could not be supported by NMFS because it runs counter to the FMP's management objective of enhancing yield per recruit from the resource. The FMP indicates that, under prevailing exploitation conditions in the sea scallop fishery, an industry average meat count of 30 or 25 meats per pound will result in significantly greater harvestable yield from all resource

components compared to a 40 meats per pound standard.

Comment: Eastern Fisheries, Inc. hopes that in the future the Council will abandon the meat count approach in favor of effort control in the fishery. They argue that the marketplace would then become a more effective tool for conservation.

Response: This comment provides an optional direction for future scallop management, and has been forwarded to the Council.

Comment: The East Coast Fisheries Association commented that recent data collection shows a "growing recognition" of a spring scallop spawning period in addition to the fall spawning. The Association asks that the adjustment season not be constrained by the fall period, and that, for greater flexibility, two separate periods (up to six months total) could be considered.

Response: This new information concerning a second spawning period is useful and may be confirmed by current research. It is not possible at this time, however, to eliminate the seasonal constraint for the meat count adjustment period because it is based upon the best scientific information now available. The Council may wish to address this new information in the future.

Comment: The U.S. Coast Guard commented that the resubmitted FMP amendment lacks inclusion of the Coast Guard's safety comments, but does include a discussion of vessel safety.

Response: The Council and NMFS regret this omission. In keeping with present NMFS guidance, any comments henceforth received from the Coast Guard will be included in or appended to any final FMP or amendment submitted for Secretarial review.

Concerns of NMFS' Northeast Fisheries Center and Responses by the Council

Comment: Although the current meat count standard does not explicitly incorporate a seasonal change in meat count, the issue of seasonal adjustments has been considered, analyzed, and discussed by the Council since November 1983.

Response: It is true that the issue of seasonal adjustments to the meat count standard has been discussed by the Council for several years; however, the sea scallop management program, which was implemented in August 1982, adopted a maximum average meat count standard that does not provide for any adjustment for seasonal loss in meat weight. This action is the first to address the seasonality issue.

Comment: The burdens or negative effects on fishermen, as a result of continuing the management program

without the seasonal adjustment, should be more formally described.

Response: The FMP amendment identifies a \$2.2 million loss in revenue to fishermen in the first year, relative to the revenue that was originally expected, if the preferred alternative is not taken. To offset this loss, fishermen would either have to fish other areas or employ additional fishing effort, incurring additional operating costs in either case.

Comment: The Council asserts that 4-year-old scallops are denied to the fishery until after meat weight recovers following the spawning period. No scallops of any size or age are denied to the fishery at any time under the maximum average meat count standard.

Response: The Council notes that, based upon current data, age 4 sea scallops, during the months of October through January have meat counts exceeding 40 per pound and that age 3 scallops during the same period have meat counts in excess of 100 per pound. In the absence of significant older age classes in the population to make it feasible to mix and still achieve a 30 count trip standard, few age 4 scallops may be legally taken by shuckers until meat weights have recovered after spawning. During the period being addressed, October through January, age 3 scallops are too small to be practically harvested under any mixing schedule (See Figure 1 of Amendment 2).

Comment: Is there any long-term conservation benefit to the resource by leaving some (more) scallops in the ocean?

Response: The long-term economic benefit of "no action" is estimated to be \$5.3 million over the next eight years. This represents only one-half of one percent of projected total revenues during this period. The long-term conservation benefit, however, is negligible, inasmuch as most of the underweight scallops have already spawned.

Comment: Any increase in meat count standard will allow enhanced mixing of smaller scallops.

Response: The meat count adjustment simply makes it possible for the fishermen legally to retain the same age cohorts of scallops that they would have been catching had there not been a loss of meat weight.

Comment: Lower yield per scallop in the fall versus higher yield per scallop in late winter/early spring is advantageous to scallopers who are willing to postpone their catch.

Response: Vessels able to work uninterruptedly through the winter months are not willing to postpone

harvesting until spring. Thus, the only way to postpone the harvest would be to close the fishery; this has not been proposed.

Comment: Shouldn't the shell height change seasonally with the meat count?

Response: The intention of the management program is to achieve an average age of entry to the fishery of four years regardless of which fleet sector (shell stockers and shuckers) is harvesting scallops. Shell sizes are not subject to seasonal variation due to spawning. The shell height and meat weight measures are only intended to be compatible in their long-term effect.

Comment: In what way does adjusting the meat count above 30 on a seasonal basis better achieve that objective?

Response: Failure to adjust the average meat count results in an increase in the average age at entry to the fishery which is not consistent with the objectives contemplated in the FMP. Further, the seasonal adjustment promotes compliance with the management measures, which is critical to the success of any fishery management plan. The objective of the FMP is to optimize the social and economic benefits to the Nation. The Council has concluded that the slight loss in conservation benefits is outweighed by the reduced burden on the fishermen and the potential for improved compliance by fishermen with the FMP's regulations.

Comment: Data are not adequately presented in the document to support contentions of foregone catch, inequality among vessels, and promoting non-compliance associated with existing management programs.

Response: Foregone catch is illustrated in Figures 2A and 2B and the associated text of Amendment 2. Inequity among vessels is presented in Table I of Amendment 2, and non-compliance is documented in the public record.

Comment: Preliminary biological data suggest that the long-term biological yield losses associated with the seasonal meat count adjustment, as compared to the status quo, may be underestimated.

Response: Included in the preferred alternative is a flexible regulatory mechanism which facilitates the timely incorporation of the best available scientific information into the management program. As the preliminary data referenced become conclusive, the FMP will be updated accordingly. The Council has sponsored regional efforts to acquire better data on the biology of the sea scallop resource and the conduct of the sea scallop fishery.

Comment: Evidence is not given to support the contention that compliance with scallop regulations is compromised by failure to adopt the seasonal change in the meat count standard.

Response: The Council believes that the erosion of compliance as a consequence of the seasonal decrease in meat weight has been well documented in the public record.

Classification

The Director, Northeast Region, NMFS, has determined that the amendment to be implemented by this rule is consistent with the Magnuson Act, the national standards, and other applicable law.

The Council prepared an environmental assessment (EA) for Amendment 2. The Assistant Administrator for Fisheries, NOAA, concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the EA and finding of no significant impacts may be obtained from the Council at the address above.

The Under Secretary of Commerce, NOAA, determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: June 17, 1988.

James E. Douglas, Jr.,
Deputy Assistant Administrator For
Fisheries, National Marine Fisheries Service.

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

PART 650—[AMENDED]

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

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

2. In § 650.2, the definition of *Land* is revised, to read as follows:

§ 650.2 Definitions.

Land means to begin offloading fish, to offload fish, or to enter port with fish.

§ 650.7 [Amended]

3. In § 650.7(m), the initials "FCZ" are revised to read "EEZ".

4. In § 650.20, in paragraph (a), the reference "and (c)" is added after "(b)" and a new paragraph (c) is added, to read as follows:

§ 650.20 Meat-count and shell-height standards.

(c)(1) The meat count standard in paragraph (a) of this section will be adjusted upward by 10 percent during the months of October through January each year.

(2) The adjustment of the meat count standard specified in paragraph (c)(1) of this section is made to account for the natural reduction of meat weight during and after the spawning season. The corresponding minimum shell height will not be adjusted.

(3) The Regional Director may act to modify the adjustment to the meat count standard during the spawning period, as set forth in the procedures and criteria of § 650.24. Any modification will become the operative spawning adjustment for purposes of paragraph (c)(1) of this section for succeeding years unless it is further modified according to § 650.24.

5. A new § 650.24 is added to read as follows:

§ 650.24 Modification of the spawning season adjustment.

(a) *Procedure.* (1) The Council may request that the Regional Director modify the spawning season adjustment as specified in § 650.20(c)(3), if he makes the findings required by paragraph (b) of this section after considering the information specified in paragraph (c) of this section.

(2) A modification to the spawning season adjustment may not exceed 30 percent of the meat count established under § 650.20(a) and is limited to a time period of up to 6 months beginning no earlier than September 1.

(3) Following a request by the Council for a modification, the Regional Director will:

(i) Provide for public input by holding a hearing in conjunction with a Council meeting at which the matter is discussed; and

(ii) Take into consideration public comments and information regarding the enforcement and administrative implications of any modification.

(4) After consideration of the full record required by this section, the

Regional Director may modify the spawning adjustment under this section by publishing a notice in the Federal Register.

(b) *Criteria.* The Regional Director must find that:

(1) New scientific information exists that is significantly different from the information contained in the FMP respecting sea scallop growth and/or spawning activity;

(2) The proposed adjustment is within the ranges of period, starting date, and magnitude set forth in paragraph (a)(2) of this section; and

(3) The proposed adjustment is consistent with the management objectives of the FMP.

(c) *Sources of information.* The Regional Director will consider all available resource and assessment information, especially the most recently completed NMFS resource survey and assessment, when preparing any report or recommendation under this section. He will also consider reports and records maintained by fishermen and made available as a part of the fishery statistics program, other fishery statistics, and any other available information which improves understanding of prevailing conditions of the stock, the fishery, and the industry.

[FR Doc. 88-14199 Filed 6-22-88; 8:45 am]
BILLING CODE 3510-22-M