

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

Issued: June 23, 1995.

**Frank H. Thomas,**

*Deputy Associate Director, Mitigation Directorate.*

[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

scallops. Traditional net fishers, especially those from the Mid-Atlantic area, voiced concern regarding a prohibition on trawl nets. However, all agreed that an exemption for traditional net vessels from the ban on nets, would address concerns of net fishermen, while providing adequate protection to the resource.

**Classification**

The Assistant Administrator for Fisheries, NOAA (AA), finds there is good cause to waive prior notice and opportunity for comments under 5 U.S.C. 553(b)(B). Three Council meetings held by the Council to discuss management measures implemented by this rule provided adequate prior notice opportunity for public comment to be made and considered. Thus additional opportunity for public comment is unnecessary. Because prior notice and an opportunity for comment is not required for this rule, no regulatory flexibility analysis is required or was prepared.

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

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

Fisheries, Reporting and recordkeeping requirements.

Dated: June 23, 1995.

**Richard H. Schaefer,**

*Acting 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—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. Section 650.9 is amended by revising paragraphs (a)(5) and (d)(13) and adding paragraphs (b)(25) and (b)(26) to read as follows:

**§ 650.9 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(5) Make any false statement in connection with an application or declaration under § 650.4, § 650.5 or § 650.21.

(b) \* \* \*

(25) Fish with, possess on board, or land scallops while in possession of trawl nets, when fishing for scallops

under the DAS allocation program unless exempted as provided for in § 650.21(f).

(26) Fail to comply with the restriction on twine top described in § 650.21(b)(4)(iv).

\* \* \* \* \*

(d) \* \* \*

(13) Make any false statement on any report or declaration under § 650.7 or under § 650.21.

3. Section 650.21 is amended by revising paragraph (a) introductory text and adding paragraphs (b)(4)(iv) and (f) to read as follows:

**§ 650.21 Gear and crew restrictions.**

(a) *Trawl vessel gear restrictions.* Trawl vessels in possession of more than 40 lb (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 l) of in-shell scallops, trawl vessels fishing for scallops, and trawl vessels issued a limited access scallop permit under § 650.4(a), while fishing under or subject to the DAS allocation program for sea scallops and authorized to fish with or possess on board trawl nets pursuant to § 650.21(f), must comply with the following:

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(iv) *Twine top restrictions.* Vessels issued limited access scallop permits that are fishing for scallops under the DAS Program are also subject to the following restrictions: For dredges greater than 8 ft (2.44 m) in width or for dredges on a vessel rigged with more than one dredge, regardless of size, at least seven rows of nonoverlapping steel rings unobstructed by netting or any other material, must be between the terminus of the dredge (club stick) and the net material on the top of the dredge (twine top). For dredges less than 8 ft (2.44 m) in width, used singly, at least four rows of nonoverlapping steel rings unobstructed by netting or any other material must be between the club stick and the twine top of the dredge (Figure 2).

\* \* \* \* \*

(f) *Restriction on the use of trawl nets.*

(1) Beginning on August 28, 1995 vessels issued a limited access scallop permit fishing for scallops under the DAS allocation program may not fish with, possess on board, or land scallops while in possession of trawl nets unless such vessels have been determined to be eligible to use trawl nets and have on board a valid letter of authorization as specified and provided for under paragraphs (f)(2) and (3) of this section.

(2) *Determination of eligibility to use trawl nets.* To be eligible for an exemption from the restriction described in paragraph (f) of this

section, a vessel may not have fished for scallops with a scallop dredge from January 1, 1988, to the present. NMFS will contact all limited access permit holders to notify them of their initial determination of eligibility for an exemption from the prohibition on the use of trawl nets based on information currently available to NMFS. If a vessel owner agrees with an initial determination that the vessel is eligible to use a trawl net, the owner must, within 30 days of receipt of the initial determination, sign and submit to NMFS a declaration, provided by NMFS, stating that the vessel has not fished for scallops with a scallop dredge from January 1, 1988, to the present. If the vessel owner disagrees with an initial determination that the vessel is not eligible to use a trawl net, the owner must, within 30 days of receipt of the initial determination, sign and submit to NMFS a declaration, provided by NMFS, stating that the vessel has not fished for scallops with a scallop dredge from January 1, 1988, to the present. The signed declaration shall serve as a rebuttable presumption that the vessel qualifies for an exemption from the prohibition on the use of trawl nets. This exemption applies only to vessels that have been issued 1995 limited access scallop permits or that are eligible to be issued such a permit, and for which a determination has been

made in 1995, except as provided in paragraph (f)(4) of this section.

(3) *Authorization to use trawl nets.* Vessels determined to have met the criteria for exemption from the prohibition on the use of trawl nets, pursuant to paragraph (f)(2) of this section, shall be issued a letter of authorization by the Regional Director. Such letter must be carried on board the vessel at all times. In subsequent years, eligibility for this exemption will be indicated on the vessel's permit.

(4) *Authorization to use trawl nets by replacement vessels.* To be eligible for an exemption from the restriction described in paragraph (f) of this section, any replacement vessel of a vessel authorized to fish for scallops with trawl nets must meet the eligibility requirements and have on board a valid letter of authorization as specified and provided under paragraphs (f)(2) and (f)(3) of this section. The letter of authorization must be requested at the time the vessel owner initially applies for a permit for the replacement vessel. The determination of a replacement vessel's eligibility for a letter of authorization shall be made in accordance with, and as specified in paragraph (f)(2) of this section.

\* \* \* \* \*

4. Figure 2 to part 650 is added to part 650 to read as follows:

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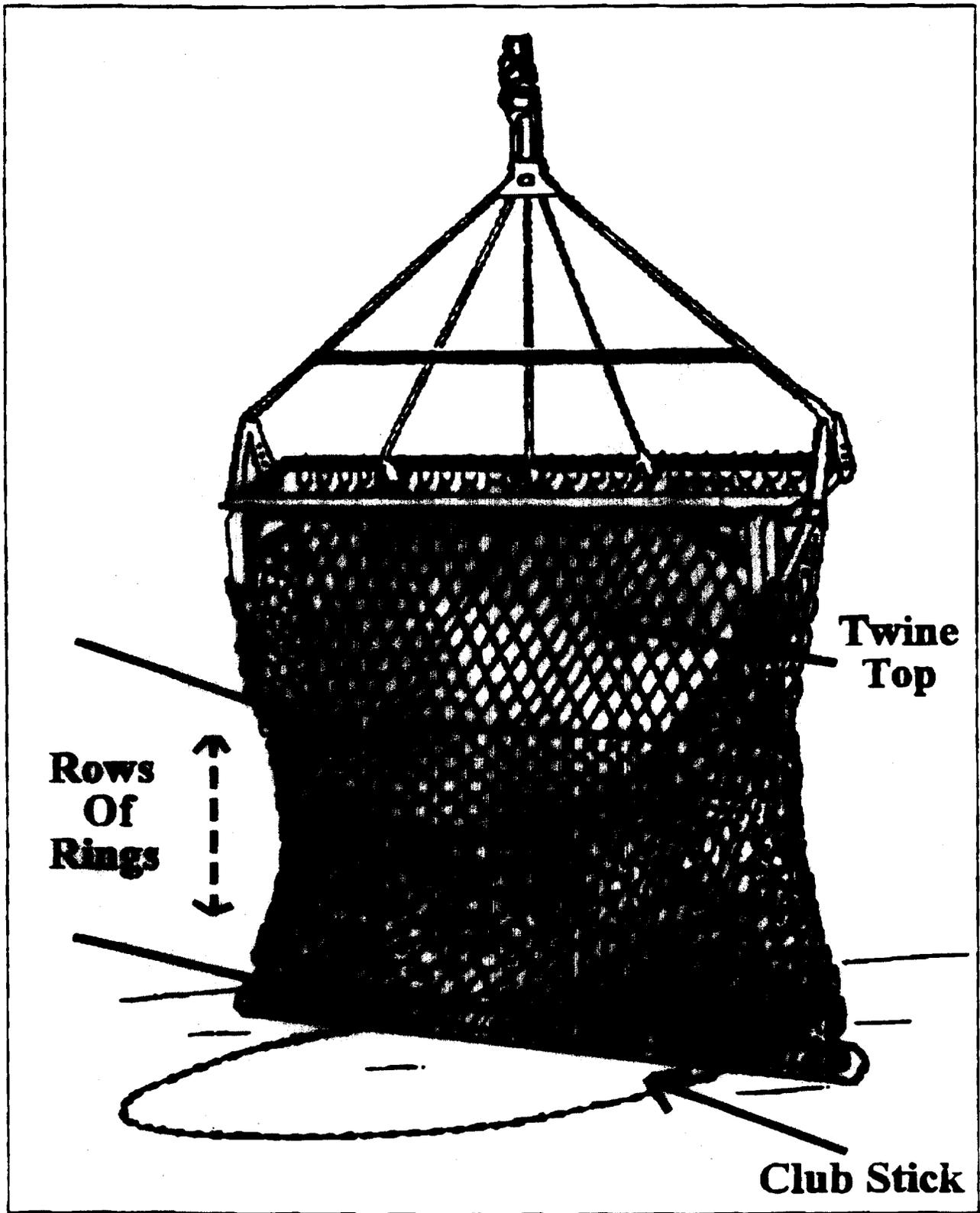


Figure 2 to Part 650—Schematic example of a legal dredge with twine top. Not Drawn to scale

[FR Doc. 95-16007 Filed 6-28-95; 8:45 am]

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