

## Fishery Conservation and Management

## § 650.1

tions in this part that serves to create an escape portal not less than 3¼ inches (9.53 cm) by 3¼ inches (9.53 cm).

(e) *Enforcement action.* (1) Unidentified, unmarked, unvented, or improperly vented lobster traps will be seized and disposed of in accordance with the provisions of 50 CFR part 219.

(2) Following the effective date of each carapace length increase set forth in §649.20(b) of this part, any dealer/wholesaler will have 180 days in which to dispose of any lobsters purchased or received in the prior year which do not meet the new minimum carapace length increase.

[51 FR 19212, May 28, 1986; 51 FR 22940, June 24, 1986, as amended at 52 FR 46091, Dec. 4, 1987; 54 FR 48618, Nov. 24, 1989; 56 FR 19317, Apr. 26, 1991; 57 FR 215, Jan. 3, 1992; 58 FR 34001, June 23, 1993]

### § 649.22 Exemption and area closure.

(a) *Exemption.* (1) Upon the recommendation of the New England Fishery Management Council, the Regional Director may exempt any person or vessel from the requirements of this part for the conduct of research or education beneficial to the lobster resource or lobster fishery.

(2) The Regional Director may not grant such exemption unless he determines that the purpose, design and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act and other applicable law, and that granting the exemption will not—

(i) Have a detrimental effect on the lobster resource and fishery; or

(ii) Create significant enforcement problems.

(3) Each vessel participating in any exempt activity is subject to all provisions of this part except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

(b) *Area closure.* (1) Upon the recommendation of the New England Fishery Management Council, the Regional Director may close an area of the EEZ to fishing, through a regulatory

amendment, for the conduct of scientific research provided that such closure will not—

(1) Increase gear conflicts; or

(ii) Interfere significantly with common fishing practices.

(2) If the area to be closed is within the jurisdiction of the Mid-Atlantic Fishery Management Council, then that Council must concur with the recommendation of the New England Fishery Management Council before the Regional Director may close the area.

[51 FR 19212, May 28, 1986, as amended at 52 FR 46091, Dec. 4, 1987; 53 FR 24657, June 29, 1988]

## PART 650—ATLANTIC SEA SCALLOP FISHERY

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

### Subpart A—General Provisions

#### § 650.1 Purpose and scope.

The purpose of this part is to implement the Fishery Management Plan for Atlantic Sea Scallops, prepared and adopted by the New England Fishery Management Council in consultation with the Mid-Atlantic and South Atlantic Fishery Management Councils, and approved by the Assistant Administrator for Fisheries (NOAA). These regulations govern fishing for Atlantic sea scallops within that portion of the

Atlantic ocean over which the United States exercises fishery management authority.

[47 FR 35992, Aug. 18, 1982, as amended at 50 FR 46071, Nov. 6, 1985; 52 FR 1463, Jan. 14, 1987]

**§ 650.2 Definitions.**

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

*Atlantic sea scallop* or *scallop* means the species *Placopecten magellanicus* throughout its range.

*Council* means the New England, Fishery Management Council.

*First transaction in the United States* means the time and place at which Atlantic sea scallops.

(a) After being landed in the United States in the shell, are shucked;

(b) After being landed in the United States shucked, are mixed, sorted, or processed in any way; or

(c) Are certified, through a procedure specified by the Regional Director, to have been taken under a management system which the Regional Director finds to be substantially consistent with the conservation objectives of the FMP and these regulations.

*Fishery Management Plan (FMP)* means the Fishery Management Plan for Atlantic Sea Scallops and any amendments thereto.

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

*Meat* means the retained part of the scallop adductor muscle.

*Meat count* means the number of scallop meats required to make one pound of meats. A meat count of thirty means that one pound of scallops contains thirty meats. As the average scallop size increases, the meat count declines.

*Non-conforming Atlantic sea scallops* means scallops that do not meet the standards specified in § 650.20 of these regulations, unless such scallops have been certified (through a procedure specified by the Regional Director) to have been taken under a management system that the Regional Director finds to be substantially consistent with the conservation objectives of the FMP and these regulations, and also means any scallops that are offloaded

or received from a vessel by any person at any time other than during the offloading periods as specified in §§ 650.21 (c) and (d) of these regulations.

*Offload* means to enter port and remove (i.e., to pass over the rail or otherwise take away) fish from any vessel.

*Regional Director* means the Regional Director, Northeast Region, National Marine Fisheries Service, NOAA, or a designee.

*Sea scallop dredge vessel* means any fishing vessel that is equipped for fishing using dredge gear in the Atlantic sea scallop fishery. For the purposes of this rule, dredge gear is that gear that consists of a mouth frame attached to a holding bag constructed of steel rings, or any other modification to this design that can be used in the harvest of Atlantic sea scallops.

*Shell height* is a straight line measurement from the umbo on the hinge, or anterior wing of the shell, to the outermost part of the curve of the leading edge.

*Shucking* or *to shuck* means opening scallops and separating the meat from the shell.

*Trip* is the period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel begins to offload fish in port.

[47 FR 35992, Aug. 18, 1982, as amended at 50 FR 46071, Nov. 6, 1985; 52 FR 1463, Jan. 14, 1987; 53 FR 23636, June 23, 1988; 53 FR 24655, June 29, 1988; 55 FR 435, Jan. 5, 1990]

**§ 650.3 Relation to other laws.**

The relation of this part to other laws is set forth in § 620.3 of this chapter.

[53 FR 24655, June 29, 1988]

**§ 650.4 Vessel permits.**

(a) *General.* Any vessel of the United States harvesting Atlantic sea scallops in quantities greater than 5 bushels in the shell or 40 pounds of meats per trip shall have a permit required by this part on board the vessel.

(b) *Application.* An application for a fishing vessel permit under this section shall be submitted and signed by the vessel owner on an appropriate form which may be obtained from the Regional Director. The application shall

be submitted to the Regional Director and shall contain the

(1) The name, mailing address, and telephone number of the applicant and the vessel's master;

(2) The name of the vessel;

(3) The vessel's official number;

(4) The home port, gross tonnage, and net tonnage of the vessel;

(5) The engine horsepower of the vessel;

(6) The approximate fish-hold capacity of the vessel in pounds of meats or unshucked scallops as appropriate;

(7) The type, quantity and size of fishing gear used by the vessel, including a statement as to whether all scallops harvested will be shucked at sea, or a portion of the catch will be landed in the shell; and

(8) The size of the crew, which may be stated in terms of a range.

(c) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a completed application, the Regional Director must issue a permit within 30 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within ten days following the date of notification, the application must be considered abandoned.

(d) *Expiration.* A permit expires on December 31, or when the owner or name of the vessel changes.

(e) *Duration.* A permit is valid until it expires or is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(f) *Alteration.* Any permit which has been altered, erased, or mutilated is invalid.

(g) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(h) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the vessel for which it is issued.

(i) *Display.* Any permit issued under this part must be carried on board the fishing vessel at all times. The permit must be prominently displayed in the pilot house or offered for inspection upon request of any Authorized Officer.

(j) *Sanctions.* Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(k) *Fees.* No fee is required for any permit under this part.

(1) *Change in application information.* Any change in the information specified in paragraph (b) of this section, such as the vessel owner or gear configuration, must be reported to the Regional Director within 15 days of the change.

[47 FR 35992, Aug. 18, 1982, as amended at 48 FR 34762, Aug. 1, 1983; 49 FR 1043, Jan. 6, 1984; 52 FR 46485, Dec. 8, 1987]

**§ 650.5 Recordkeeping and reporting.  
[Reserved]**

**§ 650.6 Vessel identification.**

(a) *Official number.* Each fishing vessel subject to this part over 25 feet in length must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from above.

(b) *Numerals.* The official number must be permanently affixed to each vessel subject to this part. Numbers must contrast with the background and be in block Arabic numerals at least 18 inches in height for vessels over 65 feet, and at least 10 inches in height for all other vessels over 25 feet in length. The length of a vessel, for purposes of this section, is that length set forth in U.S. Coast Guard or state records.

(c) *Duties of operator.* The operator of each vessel subject to this part shall:

(1) Keep the vessel name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

[47 FR 35992, Aug. 18, 1982]

**§ 650.7 Prohibitions.**

In addition to the general prohibitions specified in §620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Possess, at or prior to the first transaction in the United States, any non-conforming Atlantic sea scallops.

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All Atlantic sea scallops will be subject to inspection and enforcement for non-conformity, in accordance with the compliance and sampling procedures specified in § 650.21, up to and including the first transaction in the United States.

(b) Offload any fish from a sea scallop dredge vessel, or from a vessel landing more than 5 bushels (176.2 L) of Atlantic sea scallops in the shell, at any time other than during the applicable time specified in § 650.21(c).

(c) Offload Atlantic sea scallops from any vessel landing more than 40 pounds (18.1 kg) of shucked Atlantic sea scallops at any time other than the times specified in § 650.21(c).

(d) Use any vessel for taking, catching, harvesting, or landing any Atlantic sea scallops in excess of the amounts prescribed in § 650.4(a), unless the vessel has a valid permit issued under this part, and the permit is on board the vessel.

(e) Make any false statement in connection with an application under § 650.4, or to fail to report to the Regional Director, within 15 days, any change in the information contained in a permit application for a vessel.

(f) Fail to affix and maintain permanent markings as required by § 650.6.

(g) Make any false statement, oral or written, to an Authorized Officer, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any Atlantic sea scallops.

(h) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this part.

[47 FR 35992, Aug. 18, 1982, as amended at 52 FR 1463, Jan. 14, 1987; 53 FR 24657, June 29, 1988; 55 FR 435, Jan. 5, 1990; 55 FR 2201, Jan. 22, 1990]

## § 650.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

## § 650.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

## 50 CFR Ch. VI (10-1-93 Edition)

### Subpart B—Management Measures

#### § 650.20 Meat-count and shell-height standards.

(a) Except as provided in paragraphs (b) and (c) of this section, the meat count for shucked Atlantic sea scallops must not exceed 30 meats per pound; the corresponding minimum shell height is 3½ inches (89 mm).

(b) The Regional Director may temporarily adjust the meat count and shell height standards in accordance with the procedures and criteria provided in § 650.22.

(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.

[52 FR 1463, Jan. 14, 1987, as amended at 53 FR 23636, June 23, 1988]

#### § 650.21 Compliance and sampling.

Compliance with the specified meat-count and shell-height standards will be determined by inspection and enforcement up to and including the first transaction in the United States as follows:

(a) *Shucked meats.* The Authorized Officer will take one-pound samples at random from the total amount of scallops in possession. The person in possession of the scallops may request that as many as ten one-pound samples be examined as a sample group. A sample group fails to comply with the standard if the averaged meat count for the entire sample group exceeds the

standard. The total amount of scallops in possession will be deemed in violation of this regulation if the sample group fails to comply with the standard.

(b) *Scallops in the shell.* The Authorized Officer will take samples of forty scallops each at random from the total amount of scallops in possession. The person in possession of the scallops may request that as many as ten samples (400 scallops) be examined as a sample group. A sample group fails to comply with the standard if more than ten percent of the number of scallops in the sample group are less than the shell height specified by the standard. The total amount of scallops in possession will be deemed in violation of this regulation and subject to forfeiture if the sample group fails to comply with the standard.

(c) All sea scallop dredge vessels and all vessels landing more than 5 bushels (176.2 L) of Atlantic sea scallops in the shell must offload all fish each day within the applicable 12-hour offloading period as specified below:

State of Offloading	Period
ME, NH, NC, SC, GA, & FL .....	7 a.m. to 7 p.m.
MA, RI & CT .....	5 a.m. to 5 p.m.
NY, NJ, DE, MD, VA, & PA .....	6 a.m. to 6 p.m.

(d) All other vessels not covered by paragraph (c) of this section, landing more than 40 pounds (18.1 kg) of shucked Atlantic sea scallops, must offload the scallops within the applicable offloading period specified in paragraph (c) of this section.

(e) *Presumption.* Fish not offloaded from vessels subject to the provisions of paragraph (c), and shucked Atlantic sea scallops not offloaded from vessels subject to the provisions of paragraph (d), of this section during the offloading period must remain on the vessel until the following offloading period. There shall be a presumption of unlawful offloading for any such catch that is observed or identified on such a vessel by an authorized officer at the close of the previous offloading period, if such catch is not found on that vessel at the beginning of the following offloading period.

[52 FR 1463, Jan. 14, 1987, as amended at 55 FR 435, Jan. 5, 1990; 56 FR 12358, Mar. 25, 1991]

**§ 650.22 Review of resource status; temporary adjustment of standards.**

(a) *Review of resource status.* The Regional Director will review the status of the Atlantic sea scallop resource on a continuing basis, and will, at least annually, prepare a report concerning the status of the fishery and possible changes in the resource, fishery, or industry which might require adjustment of the management program, or amendment of the FMP. The Council may, at any time, request that such a report be prepared within sixty days.

(b) *Temporary adjustment of standards.*

(1) The Regional Director may recommend that the standards contained in § 650.20 be adjusted, if he makes the finding required by paragraph (c) of this section after considering the information specified in paragraph (d) of this section.

(2) The standards can be adjusted only within a range from 25 to 40 meats per pound (with appropriate and consistent shell height adjustment), and may be adjusted by no more than 5 meats per pound by any one adjustment.

(3) The Regional Director will solicit and consider any recommendation of the Council regarding adjustment of standards, and, with the Council, will provide for public notice and comment, and hold a public hearing on the recommendation in conjunction with the Council meeting at which the recommendation is discussed.

(4) The Regional Director may modify his recommendation on the basis of comments from the Council or the public. After consideration of the full record, the Regional Director may adjust the standards contained in § 650.20, and will publish in the FEDERAL REGISTER notice of such change and the date when the adjusted standard will revert to a 30 meat count. Notice of any such adjustment will be mailed to each holder of a permit issued under § 650.4.

(5) Adjustments of the meat count and shell height standards may remain in effect for up to twelve months. No later than twelve months after the implementation of the most recent ad-

justment to the meat count and shell height standards, the Regional Director must review such adjustments. The Regional Director may renew the adjustment upon making a finding consistent with § 650.22(c).

(c) *Criteria.* The Regional Director may adjust the standards specified in § 650.20 if he finds that:

(1) The objective of the FMP would be achieved more readily, or would be better served through an adjustment of the prevailing standards;

(2) The recommended alteration in the standards would not reduce expected catch over the following year by more than 5 percent from that which would have been expected under the prevailing standard;

(3) The recommended standards for meat count and shell height are consistent with each other; and

(4) Inconsistencies exist in the management measures applied to sea scallop stocks in areas harvested by both domestic and foreign fishermen, and those inconsistencies provide foreign fishermen with an advantage over domestic fishermen which can be demonstrated to adversely affect the domestic fishery; or analysis of the size distribution of sea scallops shows that more than 50 percent of the harvestable sea scallop biomass is at sizes smaller than those consistent with the prevailing standards and that a temporary relaxation of the standards would not jeopardize future recruitment to the fishery.

(d) *Sources of information.* The Regional Director will consider all available resource and assessment information, especially the most recently completed survey and assessment, when preparing any report or recommendation under this section. The Regional Director 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 increases understanding of prevailing conditions of the stock, the fishery, and the industry.

[52 FR 1464, Jan. 14, 1987; 52 FR 39537, Oct. 22, 1987]

**§ 650.23 Experimental fishing exemption.**

(a) Upon the recommendation of the Council, the Regional Director may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing beneficial to the management of the sea scallop resource or fishery.

(b) The Regional Director may not grant such exemption unless it is determined that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not

(1) Have a detrimental effect on the sea scallop resource and fishery; or

(2) Create significant enforcement problems.

(c) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of this part except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

[52 FR 1464, Jan. 14, 1987]

**§ 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.

[53 FR 23636, June 23, 1988]

**§ 650.25 Modification of offloading period.**

(a) The daily timing of the 12-hour offloading period in any state(s) may be adjusted by the Regional Director, if the Regional Director determines, and recommends to the Council, that such an adjustment is necessary and appropriate after reviewing any changes in the resource, fishery, or industry in accordance with § 650.22(a). The Council may, at any time, request that a change in an offloading period be evaluated by the Regional Director within 60 days. The Regional Director will solicit and consider any recommendation of the Council regarding adjustment of the timing of an offloading period, and,

with the Council, will provide for public notice and comment, and hold a public hearing on any recommended change in conjunction with the Council meeting at which the recommended change is discussed. The Regional Director will publish a notice of the public hearing and the recommended change in the FEDERAL REGISTER.

(b) After consideration of the full record; including comments at the public hearing, written comments, and comments from the Council; the Regional Director may accept, modify, or reject the recommended adjustment for the daily timing of the 12-hour offloading period. Notice of the Regional Director's decision, and the date such decision will take effect, will:

(1) Be published in the FEDERAL REGISTER; and

(2) Be mailed to each holder of a permit issued under § 650.4 of this chapter.

[55 FR 435, Jan. 5, 1990]

**PART 651—NORTHEAST MULTISPECIES FISHERY**

**Subpart A—General Provisions**

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**Subpart B—Management Measures**

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- 651.27 Cultivator Shoal whiting (silver hake) fishery (Figure 5).

**FIGURES—PART 651**

- FIGURE 1—EXEMPTED FISHING AREA
- FIGURE 2—GEORGES BANK CLOSED AREAS
- FIGURE 3—SOUTHERN NEW ENG./MID-ATLANTIC CLOSURE