

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

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- Medley, M.E. 1980. Status report on *Apios priceana*. Provided under contract to the U.S. Fish and Wildlife Service, Southeast Region, Atlanta, Georgia. 30 pp.
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- Robinson, B.L. 1898. A new species of *Apios* from Kentucky. Bot. Gaz. 450-453.
- Seabrook, J.A., and L.A. Dionne. 1976. Studies in the genus *Apios*. I. Chromosome number and distribution of *Apios americana* and *A. priceana*. Can. J. Bot. 54:2567-2572.
- Walter, W.M., E.M. Croom, Jr., G.L. Catignani, and W.C. Thresher. 1986. Compositional study of *Apios priceana* tubers. Jour. Agr. Food Chem. 34:39-41.
- Woods, M. 1988. A revision of *Apios* and *Cochlianthus* (Leguminosae). Ph.D. Dissertation. Southern Illinois University, Carbondale. 153 pp.
- Yanovsky, E. 1936. Food plants of the North American Indians. USDA, Washington, D.C. Misc. Pub. No. 237. 84 pp.

Author

The primary author of this final rule is Cary Norquist (see ADDRESSES section) 601/965-4900 or FTS 490-4900.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation**PART 17—[AMENDED]**

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407, 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Fabaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

(h) * * *

SPECIES		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Pea family.						
<i>Apios priceana</i>	Price's potato-bean.....	U.S.A. (AL, IL, KY, MS, TN).....	T	372	NA	NA

Dated: November 27, 1989.

Knut Knudson, Jr.,

Deputy Assistant Secretary—Fish and Wildlife and Parks.

[FR Doc. 90-283 Filed 1-4-90; 8:45 am]

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 650**

[Docket No. 90524-9274]

RIN 0648-AC44

Atlantic Sea Scallop Fishery

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

ACTION: Final rule.

SUMMARY: NOAA issues this final rule implementing Amendment 3 (Amendment) to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP). This rule requires: (1) All sea scallop dredge vessels and all vessels landing more

than 5 bushels (176.2 L) of sea scallops in the shell to offload all fish (as defined in 50 CFR 620.2, which includes sea scallops) within a specified 12-hour offloading period; and (2) all other vessels landing more than 40 pounds (18.1 kg) of shucked scallops to offload all sea scallops within a specified 12-hour offloading period.

This Amendment also includes a mechanism for modifying offloading periods. The purpose of the Amendment is to improve compliance with the meat count/shell height standards of the FMP and to enhance the efficiency and effectiveness of NMFS enforcement efforts in the Atlantic sea scallop fishery.

EFFECTIVE DATE: February 5, 1990.

ADDRESSES: Copies of the Amendment, which incorporates the environmental assessment and the regulatory impact review (RIR), 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: Patricia A. Kurkul, Resource Policy

Analyst, Plan Administration Branch, NMFS Northeast Regional Office, 508-281-9331.

SUPPLEMENTARY INFORMATION: The FMP is implemented by regulations appearing at 50 CFR Part 650. The FMP has been amended three times; twice by the Council and once by the Secretary. Amendment 1 (published November 6, 1985; 50 FR 46069) was to become effective on January 1, 1986, but its effectiveness was delayed until December 29, 1986, by a series of emergency regulations; a Secretarial Amendment superseding Amendment 1 became effective December 30, 1986 (published January 14, 1987; 52 FR 1462); Amendment 2 became effective July 22, 1988 (published June 23, 1988; 53 FR 23634).

Amendment 3 and proposed regulations for its implementation were initially submitted by the Council to the Secretary for review on April 7, 1989. Upon review of the Council's proposed regulations by NOAA General Counsel and NMFS Northeast Region Enforcement, it was determined that strict measures would be necessary for

effective implementation of Amendment 3. Under authority of section 304(a)(1)(D)(i) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, 16 U.S.C. 1854(a)(1)(D)(i), the proposed regulations submitted by the Council were changed to explain more fully the scope of Amendment 3 and the enforcement measures necessary for its implementation; a proposed rule was published on May 19, 1989 (54 FR 21640). Because the changes made in the first submission of Amendment 3 broadly applied offloading restrictions to all sea scallop permit holders, the Council voted on May 24, 1989, to withdraw Amendment 3 from further Secretarial review. A notice of withdrawal of Amendment 3 was published on June 30, 1989 (54 FR 27656). After further development of the implementing regulations and consultation with NMFS, the Council resubmitted Amendment 3 for Secretarial review on August 18, 1989. The proposed rule for Amendment 3 was published on October 2, 1989 (54 FR 40463) and public comments were invited until November 13, 1989.

The principal objective of the FMP is to maximize, over time, the joint social and economic benefits from the sea scallop resource. Sub-objectives to achieve this goal are: (1) Restoration of the adult stock abundance and age distribution in order to reduce the year-to-year fluctuations in stock abundance caused by variation in recruitment; and (2) enhancement of yield per recruit for each stock.

The Council believes that it is necessary to take steps to improve the level of compliance with the meat count/shell height standards, in order to achieve the biological and conservation objectives of the FMP. The purpose of Amendment 3 is to improve compliance by establishing offloading periods during which scallop vessels and sea scallops can legally be offloaded, and to enhance the efficiency and effectiveness of NMFS enforcement efforts in the Atlantic sea scallop fishery.

Amendment 3 requires: (1) All sea scallop dredge vessels and all vessels landing more than 5 bushels (178.2 L) of sea scallops in the shell to offload all fish within a 12-hour offloading period specified for the state of offloading; and (2) all other vessels landing more than 40 pounds (18.1 kg) of shucked sea scallops to offload all sea scallops within the applicable specified offloading period. Offloading outside an applicable offloading period constitutes a separate violation of the regulations, regardless of the meat count/shell height

measurements of the scallops being offloaded. The proposed 12-hour offloading periods are as follows:

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.

The Amendment also includes a mechanism for changing the timing of the 12-hour offloading periods when it is determined to be necessary and appropriate, and after public comment.

If any catch subject to the offloading period is observed or identified on a vessel by an authorized officer at the close of an offloading period, and is not present on that vessel at any time prior to the next authorized offloading period, there is a presumption that such catch was unlawfully offloaded.

Amendment 3 is expected to have two results of direct benefit to the biological status of the stock: (1) The number of sea scallops surviving to sexual maturity should increase as the harvest of illegal scallops decreases, and (2) average yield per recruit should increase as the harvest of small scallops decreases.

Further background information and the rationale for this rule were given in the preamble of the proposed rule and are not repeated here.

Comments and Responses

Written comments were submitted by the Harbor Development Commission of New Bedford, Massachusetts, two New Bedford commercial fisheries organizations, a New Bedford fuel and marine supplier, a marine insurance claims manager, and from the Port of New Bedford. Additionally, a petition opposing Amendment 3 was submitted; this petition contained 167 signatures, primarily from New Bedford/Fairhaven, Massachusetts. The comments were as follows:

Comment: All of the commenters expressed concern over congestion problems this Amendment may create in the port of New Bedford, Massachusetts. One of the commenters suggested that increased congestion would create a safety problem in this port.

Response: This issue was considered by the Council in the Amendment. The Council concluded that, based on historical landings and on the number of available offloading facilities in New Bedford, the probability that congestion will occur as a result of the Amendment is low. The Council believes that industry practices can be adjusted to the offloading schedule without significant

adverse impacts and without increased safety risks.

Comment: One commercial fishing organization commented that requiring offloading periods for just the scallop fishery was discriminatory under the national standards.

Response: National standard 4 states that conservation and management measures should not discriminate between residents of different states. This Amendment applies to all states where Atlantic sea scallops are offloaded and, as such, complies with national standard 4.

Comment: The same commercial fishing organization suggested that this Amendment was a restraint of trade.

Response: This Amendment does not in any way restrict the sale of a vessel's catch. This Amendment does require those vessels that are presently offloading during the night to adjust their practices. Because a typical sea scallop trip out of the port of New Bedford is 10-12 days long, the Council does not believe that this is likely to have a significant impact on product quality, the availability of markets, or prices.

Changes from the Proposed Rule

The word "dredge" was inadvertently omitted from the definition of "Sea scallop dredge vessel" in the regulatory text published in the proposed rule for Amendment 3 (54 FR 40463); the preamble of the proposed rule correctly described those vessels affected. No other changes have been made.

Classification

The Director, Northeast Region, NMFS, has determined that the Amendment is necessary for the conservation and management of the Atlantic sea scallop fishery and that it is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law.

The Council prepared within Amendment 3 an environmental assessment (EA). Based on this EA, the Assistant Administrator for Fisheries, NOAA, found that there will be no significant impact on the environment as a result of this rule. A copy of the EA and finding of no significant impacts may be obtained from the Council (see ADDRESSES).

The Under Secretary for Oceans and Atmosphere, NOAA, has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291 (E.O. 12291). This rule is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in

costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. 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.

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, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Florida. Georgia does not have an approved coastal zone management program. This determination has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. New Hampshire, Massachusetts, Connecticut, New York, Delaware, North Carolina, and South Carolina have agreed with the Council's determination. None of the other states commented within the statutory time period, and therefore, consistency is automatically implied. All measures approved were included in this amendment, therefore, this determination remains applicable.

This rule does not contain policies with federalism implications sufficient to warrant a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: December 29, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries.

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 50 CFR part 650 continues to read as follows:

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

2. In § 650.2, the definition of "Non-conforming Atlantic sea scallops" is revised and definitions of "Offload" and "Sea scallop dredge vessel" are added in alphabetical order to read as follows:

§ 650.2 Definitions.

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.

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.

3. In § 650.7, paragraphs (b) through (f) are redesignated (d) through (h), and new paragraphs (b) and (c) are added to read as follows:

§ 650.7 Prohibitions.

(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 § 650.2(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).

4. In § 650.21, the section heading is revised and new paragraphs (c), (d) and (e) are added to read as follows:

§ 650.21 Compliance and sampling.

(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.

5. A new § 650.25 is added to read as follows:

§ 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.

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