

the manufacturer exercised due care, it would not be subject to civil penalties for manufacturing and selling a noncomplying vehicle.

Moreover, a manufacturer need not conduct these operations itself. Manufacturers can utilize the services of independent engineers and testing laboratories. They can also join together through trade associations to sponsor testing or analysis. Another alternative is for manufacturers, such as trailer manufacturers, to rely on testing and analysis performed by other parties, such as the valve manufacturers. Valve manufacturers perform extensive analyses and tests of their products and, because they seek to sell those products, have a strong incentive to provide their customers (the trailer manufacturers) with information that the trailer manufacturer can use to certify the vehicle to the applicable standards. For example, Bendix currently provides this type of information to vehicle manufacturers regarding Bendix's new valve for the new pressure control requirements. Based on the above considerations, NHTSA believes that a trailer manufacturer can certify compliance with the control pressure differential amendments without facing an unreasonable cost burden.

After reexamining this matter in response to Mr. Crail's petition, NHTSA reaffirms its conclusion that the new control line pressure balance requirements will result in relatively small costs for trailer manufacturers. The agency also believes that its conclusions in the final rule are appropriate. Accordingly, the petitioner's request to reconsider the amendment to Standard No. 121 is denied.

Issued on January 12, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

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## DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 930828-3324; I.D. 080593A]

RIN 0648-AC39

### Atlantic Sea Scallop 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 the conservation and management measures contained in Amendment 4 to the Fishery

Management Plan (FMP) for the Atlantic Sea Scallop Fishery. Amendment 4 substantially revises the management of the Atlantic Sea Scallop Fishery, especially regarding effort control in the fishery, permits, and reporting and recordkeeping requirements. The intent of this Amendment is to reduce the fishing mortality rate to eliminate the overfished condition of Atlantic sea scallops.

**EFFECTIVE DATE:** March 1, 1994.

**ADDRESSES:** Copies of Amendment 4, its regulatory impact review (RIR), initial regulatory flexibility analysis (IRFA), and the final supplemental environmental impact statement (FSEIS) are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (U.S. Rte. 1), Saugus, MA 01906-1097, telephone 617-565-8937. Copies of the Finance Handbook may be obtained from Mr. Joseph Giza, Chief, Fiscal Policy and Quality Assurance Branch, NOAA Financial Management Division, Caller Service No. 8025, 20020 Century Boulevard, Germantown, Maryland 20874, telephone 301-443-8795.

Comments regarding the burden-hour estimates or any other aspect of the collection-of-information requirements contained in this final rule should be sent to Richard B. Roe, Regional Director, One Blackburn Drive, Gloucester, MA 01930, and the Office of Management and Budget (OMB) (Attention NOAA Desk Officer), Washington, DC 20503.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

Amendment 4 to the Atlantic Sea Scallop Fishery Management Plan (FMP) was prepared by the New England Fishery Management Council (Council) in consultation with the Mid-Atlantic and South Atlantic Fishery Management Councils, under the provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act) as amended, 16 U.S.C. 1801 *et seq.* A notice of availability for the proposed Amendment was published on August 10, 1993, (58 FR 42522) and a proposed implementing rule was published on September 2, 1993, (58 FR 46606).

#### Approval of Amendment 4

Amendment 4 was approved on November 5, 1993. However, concerns were raised about the potential for Amendment 4 to cause excessive harvest of small sea scallops the first few years of implementation, if a supplemental average minimum meat count measure were not included as a management measure in the Amendment. The Assistant Administrator for Fisheries, NOAA (AA), approved the Amendment, concurring with the Regional Director who stated that the issue of increased mortality on small scallops in the early years of the program was considered by the Council during deliberations by the Plan Development Team (where representatives of both the Northeast Fisheries Science Center and the NMFS Northeast Regional Office participate), the Sea Scallop Oversight Committee, and the Council. The rebuilding schedule and effort reductions in the Amendment are designed to strike a balance between an accelerated rate of recovery and the minimization of economic and social disruption to the fishery.

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 Regional Director's approval letter to the Council, dated November 5, 1993, which advised the Council that the Regional Director will be carefully monitoring the initial impact of the Amendment on fishing mortality rates of small sea scallops. If fishing mortality rates increase beyond anticipated levels, the Council is expected to implement immediately adjustments under the framework measures of the Amendment to protect sea scallop stocks adequately.

#### Overfishing Definition

Amendment 4 includes a definition of overfishing and a determination that the sea scallop resource is overfished. The preamble to the proposed rule included the definition of overfishing. It is not repeated here.

To reduce fishing mortality below the overfishing definition threshold, the Council will reduce fishing effort by approximately 40 percent over seven years. Because the impact of effort controls and gear restrictions on the resource is uncertain, the Council estimates that actual effort reduction needed could be as low as 35 percent or as high as 70 percent.

### Approved Vessel Tracking System (VTS) Vendors

In the proposed rule for Amendment 4, NMFS requested that vendors interested in having their VTS certified for use in this fishery submit information showing that the VTS meets the specifications contained in the proposed rule. NMFS has reviewed the information submitted by several vendors and will make available to interested parties the names and addresses of those vendors who appear to meet the specifications. The opportunity remains open for interested parties to submit their information to the NMFS and to be added to the list of approved vendors if it appears to the NMFS that they can meet the specifications. It is not the intent of the NMFS to assure that the acquisition and installation of a VTS unit from any one of these vendors meets the requirement of this rule as specified at § 650.25. Vessel owners must demonstrate that the system purchased, from the list of approved vendors, is capable of meeting the operational requirements of the regulations by providing information on vessel position and vessel status. It is the intent of the NMFS that until the vessel owner can demonstrate to the satisfaction of the Regional Director that the VTS unit is fully operational and is providing the required information to the NMFS, the vessel owner/operator will not be eligible to receive a permit unless the Regional Director authorizes the use of a call-in system in accordance with § 650.26(a)(3).

### Effective Date of Management Measures

The specific management measures that will be used to achieve the necessary reduction in fishing effort include the following: A moratorium on most new entrants into the scallop fishery; allocations of days-at-sea (DAS) that vessels may fish for scallops based on three vessel groups (Full-time, Part-time, and Occasional); a requirement to purchase and install a VTS unit for Full-time and Part-time vessels and a call-in system for Occasional vessels to monitor DAS; permits for vessel operators and dealers; an open access scallop permit for vessels landing no more than 400 pounds (181.44 kg) of shucked scallops or no more than 50 U.S. bushels (17.62 hl) of in-shell scallops per trip; limitations on upgrading of vessel size and engine horsepower; a prohibition on acquiring more than a 5 percent ownership interest in the total number of limited access scallop vessels; mandatory reporting for permitted vessels and dealers; crew-size limits; maximum dredge and trawl sweep size

restrictions; minimum ring and mesh size restrictions; framework measures to adjust the effort control and other measures; a minimum shell height restriction; and an annual option for vessels in the Part-time or Occasional category to fish in the next higher vessel group if they use only one dredge no more than 10.5 feet (3.2 m) in width and their crew complement (including the operator) is five or less. The preamble to the proposed rule described the management measures and their rationale, which are not repeated here.

NMFS is implementing the measures in the Amendment and proposed rule as of March 1, 1994, in order to provide opportunity for the industry to convert to 3¼ inch rings and acquire and install VTS units; and because of the administrative burden imposed on the NMFS by these collective measures, e.g., implementation of a VTS; the need to issue thousands of new permits for operators, dealers and vessels; the need to establish an appeal process for vessel owners who feel their DAS allocation is in error and/or for vessels that do not qualify; and the need to establish details of the recordkeeping and reporting requirements required under § 650.7 and the DAS monitoring set forth in § 650.25. While the VTS is being put in place and the initial problems with that new system are being worked out, a call-in procedure will be used to implement the DAS allocations. Existing regulations, including the meat count measure, will remain in effect until March 1, 1994.

On March 1, 1994, the effective date of these regulations, all scallop vessel owners and operators and all scallop dealers must have an appropriate permit, as specified under §§ 650.4, 650.5, and 650.6 in order to participate in the fishery. In order to ensure being issued a permit, if eligible, by that date all owners, operators, and dealers should apply for a permit as soon as possible. Application forms are available now and NMFS will attempt to mail such forms to all known scallop vessel owners and operators and scallop dealers as soon as possible. Applications will be processed as received. Early application, i.e., one filed before February 1, 1994, will help assure that the permit is issued by March 1, 1994.

As provided in § 650.26(a)(3), until any VTS vendor is approved and the system is available, all permitted vessels fishing under the DAS program must comply with the call-in notification provisions of § 650.26(b).

### Comments and Responses

NMFS received comments on the proposed rule from one member of the Congress of the United States, five fishing industry associations, and eight individuals. All of the comments were carefully considered during the formulation of the final rule. Specific comments are discussed and responded to below.

**Comment:** A member of Congress of the United States and an individual opposed the allocation of DAS because it takes Virginia, North Carolina, and New Jersey fishermen longer to reach their fishing grounds than it takes New England fishermen. These individuals offered days fished or a total allowable catch as an alternative. The commenters stated that the DAS rule gives a distinct advantage to one area over another, whereas, days fished provides a level playing field for all scallopers.

**Response:** The Council analyzed the days fished system before deciding on the DAS program, using the NMFS weighout database, and determined that DAS is a fair reflection of a vessel's historical time at sea because it takes into consideration the number of days a vessel spent traveling to and from the fishing grounds. The Council also determined the database could not accurately show actual days fishing. However, the final rule includes a measure that would allow the adoption of a days-fished system through a regulatory amendment, if data become available to support such a system.

**Comment:** Two industry associations requested an extension of the comment period to October 28, 1993, because the proposed rule was published in the *Federal Register* on September 2, 1993, and their associations did not receive a copy of the rule until the third week in September 1993.

**Response:** The Magnuson Act requires the Secretary of Commerce (Secretary) to follow a mandated time schedule for approval of a plan amendment once it has been submitted by a Fishery Management Council. On July 30, 1993, the New England Fishery Management Council submitted its plan amendment to NMFS, thereby triggering under the Magnuson Act the 95-day time period in which the Secretary must approve or disapprove the amendment. Because of this limited time frame to consider and respond to public comment and prepare the final rule for publication, NMFS allows for 45 days of public comment. NMFS believes the 45 days given for comment are adequate.

**Comment:** Two industry associations stated that they do not support staggering of implementation dates for

measures contained in the amendment and recommend that the meat count system remain in effect until all management measures contained in Amendment 4 are implemented.

*Response:* The final rule retains the meat count measure until the new measures are implemented.

*Comment:* Two industry associations commented that the requirement to submit applications for Operator permits 30 days prior to the date on which the permits are desired is unreasonable and recommended issuing permits locally or by FAX.

*Response:* Due to the projected initial volume of applications for Operator permits required under Amendment 4, the NMFS needs the flexibility to take 30 days to process and mail permits. However, NMFS will make every effort to process permits sooner. NMFS will make available permit applications well in advance of March 1, 1994, in order to maximize the likelihood that all participants in the scallop fishery will have the ability to obtain a permit before March 1, 1994.

*Comment:* One industry association commented that the requirement to provide written notice of changes in application information sections for Vessel, Operator, and Dealer permits was ambiguous and recommended that the changes be sent by registered or certified mail.

*Response:* The sections have been rewritten and now require that within 15 days after a change in the application information, a written report of the change be submitted and received by the Regional Director. Requiring all changes to be sent by registered or certified mail would be too burdensome. Nevertheless, permit holders could choose to send the notice of change by registered or certified mail, return receipt requested, if they want to verify that timely notification occurred.

*Comment:* Two industry associations and three individuals requested that the requirement of no more than double links between rings of a scallop dredge be changed to allow the placement of a new link between any two worn out ones or that the requirement be limited only to the apron of the dredge.

*Response:* Requiring double links between rings throughout the entire dredge is necessary to insure the escapement of small sea scallops in order to mitigate the impact of removing the meat-count-age-of-entry requirement. The NMFS recognizes that this may require some change in industry practices but considers these measures to be necessary to the overall success of the management program.

*Comment:* Two industry associations commented that the vessel recording and reporting requirements were burdensome and unnecessary.

*Response:* A mandatory real-time data collection system including census coverage is necessary to assess the effectiveness of the new management measures and to make the necessary adjustments through the framework system.

*Comment:* An industry association objected to the requirement, under the recordkeeping and reporting requirements of § 650.7 (a)(1) and (b)(1), to provide any other information required by the Regional Director.

*Response:* This requirement provides NMFS the flexibility to obtain the information necessary for management, and is not open-ended since the Regional Director must demonstrate that any additional data requested is necessary to manage the fishery.

*Comment:* An individual objected to the prohibition on transferring scallops at sea because it would not allow the transfer of sea scallop product to freezer vessels at sea.

*Response:* The transfer prohibition reflects the Council intent to control and equalize the amount of fishing pressure associated with allocated DAS. From an enforcement perspective, the prohibition is considered critical because it would be difficult to detect violations unless all transfers are prohibited.

*Comment:* Two industry associations requested that the at-sea observer requirements under § 650.28 be deleted because the provisions of this section were not clear regarding observer and vessel responsibilities.

*Response:* A high level of monitoring is required to ensure the effectiveness of the management program and to avoid imposing more restrictive measures than necessary on the industry because of insufficient data. This provision gives the Regional Director the discretion to require a vessel to carry an observer to enhance data collection, if necessary. In most cases where observer coverage is considered necessary, the Regional Director will first attempt to enlist voluntary participation. Observers would be provided through existing NMFS observer programs. The vessel would not have to pay the salary for the observer but would have to provide adequate accommodations and food. Neither NMFS nor the government is responsible for providing insurance coverage for the observer; each vessel should provide appropriate coverage.

*Comment:* Two industry associations supported the framework measures as described under § 650.40.

*Response:* Comment noted.

*Comment:* An individual opposed, based on efficiency and safety concerns, limiting scallop vessel crews to no more than nine people, including the operator, while fishing under the scallop DAS program.

*Response:* Most scallop dredge vessels currently have their crew members shuck scallop meats by hand while at sea. The amount and size of scallops selected for shucking is a function of the crew size and the catch rates. The crew size restriction reflects the Council's intention to cap the fishing power of these vessels at sea by limiting their processing (shucking) capacity.

Currently, the average crew size on sea scallop vessels is nine; in the past, crew sizes were larger but this was a reflection of the condition of the resource. NMFS is not aware of any data or information indicating that the limitation on crew size will affect safety at sea.

*Comment:* An individual opposed the use of vessel landings in 1988 or 1989 as a criterion for limiting access to participation in the fishery and stated that this measure does not meet the requirements of the Magnuson Act.

*Response:* This requirement complies with the Magnuson Act for establishing a system for limited access to a fishery. If a system for limiting access to a fishery is included in a plan, the Magnuson Act requires the Council and the Secretary to "take into account" such factors as present participation in the fishery, historical fishing practices and dependence on the fishery, and capability of vessels to be used in other fisheries. The Council and NMFS considered all of these factors in establishing criteria required to qualify for full participation in the scallop fishery. A control date was announced on March 2, 1989, which gave notice to participants and potential participants of the fact that future participation in the fishery may be limited for vessels that entered the fishery after the control date.

The purpose of the control date was to discourage speculative entry into the fishery while development of Amendment 4 progressed. In deciding to add the requirement that a vessel must have landed more than 400 pounds of scallops on at least one trip in 1988-1989 in order to be eligible to participate in the fishery, the Council was addressing the factor of historical fishing practices and dependence on the fishery. Later in its deliberations, the Council recognized that not all participants may have received timely notice of the control date and, therefore, allowed a limited exception for vessels

purchased after the control date if the vessels had any participation in the fishery between 1982 and 1990. With respect to determining allocations of DAS, the Council expanded historical participation to include 1985–1990 in order to recognize longstanding historical dependence on the fishery.

The rule also adopts a Council recommendation to establish an exemption to the limited access fishery for vessels that land less than 400 pounds of scallops per day, in order to provide some opportunity for small-scale operations and new entrants to participate in the scallop fishery. Therefore, the Council's and NMFS's decision to rely on the criteria contained in the final rule represents a balancing of present and historical participation in the fishery with the need to reduce fishing mortality by limiting the number of full-time participants in the fishery.

**Comment:** One individual was opposed to the minimum ring size of 3¼ inches and another individual stated that the ring size must remain at 3¼ inches. Both individuals were opposed to further increases to 3½ inches under § 650.21.

**Response:** This requirement is necessary to provide protection for small scallops and to help control the amount of fishing mortality associated with a DAS. This measure is designed to help mitigate the impact of removal of the meat count which provides age-at-entry controls. It is not expected, however, to afford age-at-entry protection equal to the current meat count system.

**Comment:** Three industry associations and three individuals commented about a currently ongoing ring size experimental study being done under a Saltonstall/Kennedy grant and what impact it would have on Amendment 4.

**Response:** NMFS contacted William D. DuPaul, Ph.D., of the Virginia Institute of Marine Science, principal investigator on the experimental study, regarding the comments received. He commented that the first fishing trip of the experiment had recently been completed by a commercial vessel out of the port of New Bedford and that the larger rings allowed for significantly more escapement than the 3-inch rings currently in use by the industry. DuPaul also commented that the study is ongoing and that it is too early to draw any conclusions from the one trip taken. Final results on the experiment are not expected until work is completed in late winter of 1994. Therefore, NMFS has not considered the preliminary results of the ongoing experiment for the purposes of this rule.

Based on the best scientific information available at this time, however, there seems to be a correlation between ring size and size of scallops retained by scallop dredges. Because removing the meat count measure effectively removes all age-at-entry controls, the Council and NMFS have determined that implementation of minimum ring size requirements simultaneously with removal of the meat count measure is critical to the achievement of the amendment's objectives. Failure to provide some age-at-entry limitations could seriously jeopardize the ability of the management measures to achieve plan objectives in the time required.

**Comment:** Two individuals commented that vessel owners should be allowed to combine limited access scallop permits and DAS allocations on one vessel and that ownership interest should not be limited to 5 percent of the total number of scallop vessels qualifying under the moratorium.

**Response:** National Standard 5, 16 U.S.C. 1851(a)(5), states that conservation and management measures, where practicable, should promote efficiency. This standard also provides, however, that the goals of efficiency may be balanced against other factors such as social and biologic. In its deliberations, the Council explicitly considered possible gains in efficiency in allowing DAS to be combined, but ultimately rejected such a measure because of socioeconomic concerns of preserving current fishing practices and traditions at the outset of the management program. The Council was concerned that allowing combination or transfer of DAS allocations, at this time, may precipitously lead to aggregation of fishing rights in the hands of a few, thereby challenging the current type of fishing operations associated with the northeast region. Moreover, it would be impracticable to allow such fishing rights to be transferred, at this time, before the effectiveness of the management measures could be assessed. The Council did provide, however, that measures that may enhance efficiency can be considered and adopted through the framework procedure specified in the rule. NMFS concurs in the Council's deliberations and conclusions concerning these measures.

**Comment:** Two industry associations were opposed to allowing changes to the moratorium under the framework provisions of the regulations if fishing mortality declines faster than anticipated.

**Response:** The rule does not pre-determine whether the moratorium will

be lifted. The rule provides only that the Council may consider such a measure. If and when the Council considers such a measure, the plan requires that it be subject to public comment and that commenters have adequate opportunity to respond. If the Council decides to address this subject under the framework specifications all interested parties will be contacted and will have the opportunity to comment. The Council could adopt such measures only if it can be demonstrated that they are necessary to meet the goals and objectives of the FMP, including socioeconomic goals.

**Comment:** An industry association was opposed to allowing changes to the management measures through the framework specifications without considering appropriate analysis.

**Response:** The Council must provide the appropriate rationale and economic and biological analysis when determining whether adjustments, or additional management measures, are necessary to meet the goals and objectives of the rebuilding program of the FMP.

**Comment:** An industry association requested clarification of the regulations relating to when a DAS starts and ends.

**Response:** § 650.24(c)(2) has been modified to explain more clearly how DAS accrue under both the VTS and the call-in monitoring system.

**Comment:** An industry association requested that the Regional Director send notices to permit holders regarding VTS performance criteria and approval, including costs.

**Response:** In addition to publishing a list of approved VTS vendors in the Federal Register, all sea scallop permit holders will receive the information by letter from the Regional Director. As to costs, vessel owners will have to contact the individual vendors.

**Comment:** An industry association questioned the necessity for VTS vendors to have the capacity to archive vessel position histories and suggested that the requirement, with its related cost imposed on a non-fishing industry, is not within the realm of the Magnuson Act.

**Response:** This requirement only applies to vendors that volunteer to meet the specifications and provide VTS units to vessels in the fishery. The specification is necessary to comply with the Council's intent to provide NMFS with the capability to monitor and enforce the number of DAS used by each individual vessel issued DAS allocations.



### Changes From the Proposed Rule

Changes were made to several sections of the proposed rule to clarify the measures and to ensure consistency with other regulations. In addition, substantive changes were made to the following sections:

In § 650.2, the definitions for *Authorized officer*, *Fishing*, or *to fish*, and *NMFS* were deleted because they are set forth in 50 CFR part 620, which provides general Magnuson Act provisions.

In § 650.2, the definition of an *Operator* was modified to add the phrase "or other individual on board", to clarify further the person in charge of the vessel while fishing.

In § 650.2, the definition of a *Vessel Tracking System* was modified to add the phrase "as set forth in § 650.25(a)(2) and approved", to clarify further the meaning of a *Vessel Tracking System*.

In § 650.3, paragraph (b) was added to clarify the relationship between state and Federal regulations for Atlantic sea scallops.

In § 650.4, the narrative within the first paragraph and paragraph (a) was modified to add the phrase "and carry on board an authorizing letter issued under § 650.4(a)(9)(vi)(D)", to clarify how vessels appealing a denial of a limited access scallop permit may continue to fish.

In § 650.4, paragraph (a)(1)(i), the phrase "and its owner" was added in order to be consistent with following sections that refer to both vessel and vessel owner.

In § 650.4, paragraph (a)(1)(i)(D), the phrase "and the vessel meets the criteria described in paragraph (a)(4) of this section." was deleted because it was not accurate.

In § 650.4, paragraph (a)(1)(iii) and (d), the phrase "Applications for limited access scallop permits under this section will not be accepted after 12 months after the effective date of the final regulations for Amendment 4." was replaced with "Applications for limited access scallop permits under this section will not be accepted after December 31, 1994.", to clarify that applications for 1994 permits must be received by the end of the calendar year.

In § 650.4, paragraph (a)(4)(ii), the sentence "For undocumented vessels, net tonnage does not apply." was added to clarify further the requirements for replacement vessels.

In § 650.4, paragraph (a)(5)(ii) was modified to add the sentence, "This type of upgrade may be done separately from an engine horsepower upgrade.", in order to clarify further the requirements for upgrading a vessel.

In § 650.4, paragraph (a)(7) (i) and (ii), "March 1, 1994," was added for clarification and consistency with the beginning effective date of the moratorium on limited access scallop permits.

In § 650.4, paragraph (a)(9)(vi), the heading was modified to add the phrase "of a limited access scallop permit denial" in order to clarify that the appeal process under this paragraph applies only to limited access scallop permit denial. The paragraph was further modified to add the phrase "if the vessel has on board a letter of authorization from the Regional Director" to clarify the requirements that vessels fishing under appeal must carry on board the letter issued under § 650.4(a)(9)(vi)(D).

In § 650.4, paragraph (a)(9)(vi)(D) was modified to add the sentence, "If the appeal is denied, The Regional Director shall send a notice of denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.", to clarify how vessel owners will be notified in the event of a denial of the appeal of a limited access scallop permit.

In § 650.5, paragraph (c) was modified to add the sentence, "Further, such operators must agree as a condition of this permit that if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be on board any fishing vessel issued a Federal Fisheries Permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading." This phrase was included under § 650.5(n) in the proposed rule and is repeated in this section in the final rule to increase awareness of this provision.

In § 650.5, paragraph (n) was modified to add the phrase "while the vessel is at sea or engaged in offloading", to allow vessel operators to conduct business activity on board a vessel when the vessel is not engaged in any type of fishing activity.

In § 650.6, paragraph (g) was modified to add the phrase, "or ownership changes," to clarify that the permit does not transfer with the change in ownership of the business.

In § 650.7, paragraph (a)(1) was modified to replace "provide" with "mail" to clarify the way in which the reports will be submitted. The paragraph was further modified to contain the phrase, "name and permit number of the vessels from which fish are landed or received;" and the sentence, "If no fish is purchased during the week, a report so stating must be submitted.", to clarify reporting requirements for dealers and to be

consistent with the reporting requirements of other regulations.

In § 650.7, paragraph (a)(2) was modified to read, "Required data are the number of employees handling fishery products by month. Reports for a given calendar year shall be submitted to: NMFS Statistics, 166 Water Street, Woods Hole, MA 02543, and must be postmarked by February 10 of the following year." This change further details the requirements for this reporting requirement.

In § 650.7, paragraph (a)(5) was modified to add the following sentence, "If no product was purchased during a week, a report so stating must be submitted."

In § 650.9, paragraph (b)(1) was subdivided into paragraphs (i) and (ii). Paragraph (b)(1)(ii) was added in order to clarify paragraph (b)(1)(i) by prohibiting more than one trip per calendar day.

In § 650.9, paragraph (b)(11), (b)(12), (b)(13), (b)(17), and (c)(4), the phrase "Possess on board or" was added to clarify the prohibition.

In § 650.9, the following changes were made to clarify the prohibitions. Paragraph (c) was subdivided into paragraphs (c)(1) through (c)(7). Paragraph (d)(4) was changed to paragraph (d)(4)(i), and a new paragraph, (d)(4)(ii), was added. Paragraphs (d)(10) through (d)(15) were redesignated as paragraphs (d)(11) through (d)(16), and a new paragraph (d)(10) was added.

In § 650.20, paragraph (a) was modified to add the phrase, "that may be landed, or possessed at or after landing," in order to clarify that the minimum shell height size is not an at-sea measure. Parallel changes were made to sections 650.20(b) and 650.9(a)(1) to reflect this clarification.

In § 650.21, paragraph (a) was modified to add the phrase "in possession of more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 l) of in-shell scallops, or fishing for scallops," to clarify that certain trawl gear restrictions are also possession restrictions applicable to any vessel possessing more than 40 pounds of shucked scallops or 5 bushels of in-shell scallops. Similar changes were made to § 650.21(a) (1)-(2) and § 650.9(b)(8).

In § 650.21, paragraph (b) was modified by deleting the phrase "holding a Federal sea scallop permit under § 650.4 and" and adding the phrases "of more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 l) of in-shell scallops" and all vessels issued limited access scallop permits and fishing under the

DAS allocation program," to clarify that the dredge restrictions apply to all dredge vessels in possession of more than 40 pounds of shucked scallops or 5 bushels of in-shell scallops. In § 650.21, paragraphs (b) (1)–(3) were modified to add the phrase "in use by or in possession of such vessels" to clarify that the dredge restrictions are possession restrictions also. The corresponding prohibition sections to these restrictions, § 650.9, paragraphs (b) (11)–(15) and § 650.9, paragraphs (c) (2)–(6), were changed accordingly to reflect these clarifications.

In § 650.21, paragraph (b)(iii), the sentence, "The ring size will be the average of the measurements of any series of 20 consecutive rings," was deleted. This provision had been added by NMFS with the intent of facilitating enforcement. However, upon further consideration, it was determined that allowing an average minimum ring size would necessitate difficult and problematic measuring requirements and possibly would not be consistent with the Council's intent that no rings should be less than 3¼ inches. NMFS is developing a standard measuring device and procedures to determine minimum ring sizes and will publish a description of such device and procedures in the Federal Register.

In § 650.21, paragraph (e) was modified to add the phrase, "in addition to or notwithstanding other restrictions in this Part" to clarify that vessels operating under the small dredge program are still subject to other restrictions in § 650 unless modified by the special provisions of this section.

In § 650.24, paragraph (c)(2)(ii) was expanded to clarify the process for counting days at sea under the call-in system.

In § 650.24, paragraph (f)(6) was modified to add the phrase "if the vessel has on board an authorizing letter from the Regional Director".

In § 650.25, paragraph (b) was modified to cross reference correctly the call-in procedures described in § 650.26(b).

In § 650.26, paragraph (a) was modified to correctly cross reference the small dredge program in § 650.21(e).

In § 650.26, paragraphs (a)(1) and (a)(2) were modified to indicate that the Regional Director is to be notified "through the VTS".

In § 650.26, paragraph (a)(3) was modified to add the phrase "or not functional".

In § 650.26, paragraph (b) was modified to add language that is more specific regarding the call-in notification requirements of the vessel owner or authorized representative.

In § 650.26, paragraphs (b)(2) and (b)(4), the requirement that vessel owners or their authorized representative call-in 2 hours prior to leaving port and within 1 hour of returning to port was replaced with the provision that the DAS will begin and end upon receipt of the call. The Regional Director has determined that this less restrictive requirement is supportable by current technology without compromising the enforceability of this measure.

In § 650.40, paragraph (c), the phrase "After considering the PDT's findings and recommendations, or at any other time," was added in order to clarify the Council's procedures when it is considering changes in management measures.

In § 650.40, paragraph (e)(3), the sentence "The Council may reconsider its prior action and recommend a new action under paragraph (d) of this section." was deleted because it is considered to be unnecessary.

#### Classification

The Secretary of Commerce (Secretary) determined that the FMP amendment that this rule would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, has taken into account the information, views, and comments received during the comment period.

The Council prepared a final supplemental environmental impact statement (FSEIS) for Amendment 4, which was filed by the Environmental Protection Agency with the Office of the Federal Register. The Environmental Protection Agency has recommended that the National Marine Fisheries Service conduct studies in the near future to monitor the effect of scallop dredges on bottom habitat. The AA has determined that the preferred alternative of Amendment 4 versus the status quo is environmentally preferable upon review of the FSEIS and public comments. The FSEIS demonstrates that the preferred alternative contains management measures to rebuild the stock of Atlantic sea scallops, provides positive economic and social benefits to the fishing industry in the long term, and provides balance in the ecosystem in terms of the sea scallop resource.

NMFS certified to the Small Business Administration that this rule may have significant effects on a substantial number of small entities under the Regulatory Flexibility Act. For the purposes of the RFA, the RIR is retitled as a RIR/regulatory flexibility analysis (RFA). According to the RIR/RFA

prepared by the Council, the management measures will have some negative impact on small entities. There are approximately 400–600 vessels that rely on scallops for a portion of their revenue. All are considered small entities. Of these, more than 150 vessels would not qualify for the vessel moratorium and may have to redirect effort into other fisheries.

Approximately 63 percent of the 150 vessels, however, depend on sea scallops for 15 percent or less of their total revenue and may be able to compensate by participating in the general scallop fishery (no moratorium, landings up to 400 pounds (181.44 kg) per trip). For those vessels qualifying for the limited access fishery, there are significant short-term losses in revenue that are offset by long-term gains.

The rule contains eight new collection-of-information requirements and also revises four existing requirements previously approved by OMB under Control Numbers 0648–0202 and 0648–0229 and 0648–0018. These collection-of-information requirements have been approved by OMB. Nevertheless, public comments are invited on the burden-hour estimates for the collection of information requirements as listed below.

The new reporting requirements are:

- (1) Dealer permits (§ 650.6—OMB Approval Number 0648–0202) (5 minutes/response);
- (2) Operator permits (§ 650.5—OMB Approval Number 0648–0202) (1 hour/response);
- (3) Notice requirements for observer deployment (§ 650.28—OMB Approval Number 0648–0202) (2 minutes/response);
- (4) Proof of installation of vessel tracking system, (§ 650.25—OMB Approval Number 0648–0202) (2 minutes/response);
- (5) Automated vessel tracking system (§ 650.25—OMB Approval Number 0648–0202) (0 minutes/response);
- (6) Vessel call-in requirement (§ 650.25—OMB Approval Number 0648–0202) (2 minutes/response);
- (7) Days-at-sea exemption program (§ 650.27—OMB Approval Number 0648–0202) (2 minutes/response);
- (8) Vessel logbooks (§ 650.7—OMB Approval Number 0648–0212) (5 minutes/response).

Revisions to existing requirements are:

- (1) Limited access scallop permit appeals—appeal of denied permits will require written submission (§ 650.24—OMB Approval Number 0648–0202) (3 hours/response);

(2) Days-at-sea appeals—appeal of the days-at-sea allocation will require written submission (§ 650.24—OMB Approval Number 0648-0202) (5 hours/response);

(3) Dealer purchase reports (§ 650.7—OMB Approval Number 0648-0229) (2 minutes/response);

(4) Annual processed products reports (§ 650.7—OMB Approval Number 0648-0018) (2 minutes/response).

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

Fisheries, Reporting and recordkeeping requirements.

Dated: January 12, 1994.

**Rolland A. Schmitt,**  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

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

### PART 650—ATLANTIC SEA SCALLOP FISHERY

#### Subpart A—General Provisions

- Sec.
- 650.1 Purpose and scope.
  - 650.2 Definitions.
  - 650.3 Relation to other laws.
  - 650.4 Vessel permits.
  - 650.5 Operator permits.
  - 650.6 Dealer permits.
  - 650.7 Recordkeeping and reporting.
  - 650.8 Vessel identification.
  - 650.9 Prohibitions.
  - 650.10 Facilitation of enforcement.
  - 650.11 Penalties.

#### Subpart B—Management Measures

- 650.20 Shell-height standard.
- 650.21 Gear and crew restrictions.
- 650.22 Possession restrictions.
- 650.23 Transfer-at-sea.
- 650.24 Days-at-sea (DAS) allocations.
- 650.25 Monitoring requirements.
- 650.26 DAS notification program.
- 650.27 DAS exemption program.
- 650.28 At-sea observer coverage.
- 650.29 Experimental fishing exemption.

#### Subpart C—Framework Adjustments to Management Measures

- 650.40 Framework specifications.

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 the Atlantic Sea Scallop Fishery (FMP), which was 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.

##### § 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.

*Chafing gear* or *cookies* mean steel, rubberized or other types of donut rings, disks, washers, twine, or other material attached to or between the steel rings of a sea scallop dredge.

*COLREGS Demarcation Lines* mean the lines of demarcation delineating those waters upon which mariners must comply with the International Regulations for Preventing Collisions at Sea, 1972 (33 CFR part 80), and those waters upon which mariners must comply with the Inland Navigation Rules.

*Council* means the New England Fishery Management Council.

*Day(s)-at-sea (DAS)* means each 24-hour period of time during which a fishing vessel is absent from port for purposes of scallop fishing.

*Dealer* means any person who receives scallops for a commercial purpose from the owner or operator of a vessel, other than exclusively for transport on land.

*Dredge* or *dredge gear* means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any other modification to this design, that can be or is used in the harvest of Atlantic sea scallops.

*Dredge top* means the mesh panel in the top of a dredge and immediately adjacent rings and links found between the bail of the dredge, the club stick and the two side panels. The bail of the dredge is the rigid structure of the forward portion of the dredge that connects to the warp and holds the dredge open. The club stick is the rigid bar at the tail of the dredge bag that is attached to the rings.

*Dredge vessel* means any fishing vessel that is equipped for fishing using dredge gear and that is capable of catching Atlantic sea scallops.

*Fishery Management Plan (FMP)* means the Fishery Management Plan for Atlantic Sea Scallops, as amended.

*Gross registered tonnage* means the gross registered tonnage specified on the U.S. Coast Guard documentation for a vessel.

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

*Net tonnage* means the net tonnage specified on the U.S. Coast Guard documentation for a vessel.

*Offload* means to begin to remove, to remove, to pass over the rail, or

otherwise take away fish from any vessel.

*Operator* means the master or captain of the vessel, or other individual on board the vessel, who is in charge of that vessel's operations.

*Postmark* means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt, or receipt received upon hand delivery to an authorized representative of NMFS.

*Regional Director* means the Director, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930-2298, or a designee.

*Reporting month* means a period of time beginning at 0001 hours local time on the first day of each calendar month and ending at 2400 hours local time on the last day of each calendar month.

*Reporting week* means a period of time beginning at 0001 hours local time on Sunday; and ending at 2400 hours local time the following Saturday.

*Re-rig or re-rigged* means physical alteration of the vessel or its gear in order to transform the vessel into one capable of fishing commercially for sea scallops.

*Sea Scallop Plan Development Team (PDT)* means a team of technical experts appointed by the Council.

*Shell height* is a straight line measurement from the hinge to the outermost part of the shell, that is, the edge furthest away from the hinge.

*Shucking or to shuck* means opening or to open a scallop and removing the meat or the adductor muscle from the shell.

*Shucking machine* means any mechanical device that automatically removes the meat or the adductor muscle from a scallop shell.

*Sorting machine* means any mechanical device that automatically sorts whole scallops by shell height, size, or other physical characteristics.

*Transfer* means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel and move them to another vessel.

*Trawl* means gear consisting of a net that is towed and is capable of catching sea scallops, including Danish and Scottish seine gear.

*Trawl sweep* means the total length of the footrope on a trawl net that is directly attached to the webbing of a net.

*Trip* is the period of time during which a fishing vessel is absent from port, beginning when the vessel leaves port and ending when the vessel returns to port.

*Under agreement for construction* means that the keel has been laid and

that there is a written agreement to construct a fishing vessel.

*Vessel registered length* means the registered length specified on the U.S. Coast Guard documentation for a vessel or on the state registration for a vessel not required to be documented under Title 46 U.S.C., if the state-registered length is verified by an authorized officer.

*Vessel Tracking System (VTS)* means a vessel tracking system as set forth in § 650.25(a)(2) and approved by NMFS for use by scallop vessels as required by this part.

*VTS unit* means a device installed on board a vessel used for vessel tracking and transmitting the tracked position as required by this part.

#### § 650.3 Relation to other laws.

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

(b) Nothing in these regulations shall supersede more restrictive state management measures for Atlantic sea scallops.

#### § 650.4 Vessel permits.

Any vessel of the United States that fishes for, possesses, or lands per trip Atlantic sea scallops in quantities greater than 40 pounds (18.14 kg) shucked scallops or 5 bushels (176.2 l) in-shell, except vessels that fish exclusively in state waters for sea scallops, must have been issued and carry on board an authorizing letter issued under § 650.4(a)(9)(vi)(D), a valid limited access scallop permit or a valid general scallop permit, issued under this section.

(a) *Limited access scallop permits.* Any vessel of the United States that possesses or lands per trip more than 400 pounds (181.44 kg) of shucked scallops or the equivalent amount of in-shell scallops (50 U.S. bushels (17.62 hl)), except vessels that fish exclusively in state waters for sea scallops, must have been issued and carry on board an authorizing letter issued under § 650.4(a)(9)(vi)(D), or a valid Federal limited access scallop permit. To qualify for a limited access scallop permit a vessel must meet the following criteria, as applicable:

(1) *Eligibility in 1994.* (i) To be eligible to obtain a limited access scallop permit for 1994, a vessel must meet one of the following criteria:

(A) The vessel had been issued a Federal scallop permit in 1988 or 1989, and the vessel landed more than 400 pounds (181.44 kg) of shucked scallops or the equivalent amount of in-shell scallops (50 U.S. bushels (17.62 hl)) on

at least one trip completed during 1988 or 1989; or,

(B) The vessel was under written agreement for construction or for re-rigging on or prior to March 2, 1989, and the vessel was issued a Federal scallop permit and landed scallops between March 2, 1989, and March 2, 1990; or,

(C) The vessel was purchased between March 2, 1989, and November 28, 1990; it had been issued a Federal scallop permit and landed scallops between January 1, 1982, and January 1, 1988; and it had been issued a Federal scallop permit and landed more than 400 pounds (181.44 kg) of scallops on any one trip completed in 1990; or,

(D) The vessel is replacing a vessel that meets any of the criteria set forth in paragraph (a)(1)(i)(A), (a)(1)(i)(B) or (a)(1)(i)(C) of this section.

(ii) No more than one vessel may qualify, at any one time, for a limited access scallop permit based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access scallop permit, based on one vessel's fishing and permit history, the Regional Director shall determine who is entitled to qualify for the limited access scallop permit and the DAS allocation according to paragraph (a)(3) of this section.

(iii) A limited access scallop permit for 1994 will not be issued unless the application for such permit is received by the Regional Director on or before December 31, 1994.

(2) *Eligibility in 1995 and thereafter.* To be eligible to renew or apply for a limited access scallop permit after 1994, a vessel must have been issued a limited access scallop permit for the preceding year, or the vessel must be replacing a vessel that had been issued a limited access scallop permit for the preceding year, and, if applicable, the vessel must meet the criteria set forth in paragraph (a)(4) of this section. If more than one vessel owner claims eligibility to apply for a limited access scallop permit based on one vessel's fishing and permit history after 1994, the Regional Director shall determine who is entitled to qualify for the limited access scallop permit and the DAS allocation according to paragraph (a)(3) of this section.

(3) *Change in ownership.* The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel fishing and permit

history for purposes of replacing the vessel.

(4) *Replacement vessels.* To be eligible to replace a vessel that has been issued a limited access scallop permit, the replacement vessel must meet the following criteria:

(i) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel it is replacing as of the date the vessel it is replacing was initially issued a 1994 limited access scallop permit as specified on a valid application for a permit under this section; except that, the horsepower of the replacement vessel may not exceed the horsepower of the vessel being replaced if the horsepower of the vessel being replaced has been increased through upgrade or vessel replacement from that specified when the vessel being replaced initially applied for a 1994 limited access scallop permit; and,

(ii) The replacement vessel's length, gross registered tonnage, and net tonnage may not exceed by more than 10 percent the length, gross registered tonnage, and net tonnage of the vessel being replaced, based on specifications provided in the initial 1994 application for a limited access scallop permit; except that, the length, gross registered tonnage, and net tonnage of the replacement vessel may not exceed the length, gross registered tonnage, and net tonnage of the vessel initially issued a limited access scallop permit if any or all of these specifications have been increased through upgrade or vessel replacement from that specified when the vessel being replaced initially applied for a 1994 limited access scallop permit. For purposes of this paragraph, a vessel not required to be documented under Title 46, U.S.C. will be considered to be 5 gross registered tons. For undocumented vessels, net tonnage does not apply.

(5) *Upgraded vessel.* To remain eligible to retain a valid limited access scallop permit, or to apply for, or renew a limited access scallop permit, a vessel may be upgraded, whether through refitting or replacement, only if the upgrade complies with the following limitations:

(i) The vessel's horsepower may be increased, whether through refitting or replacement, only once. Such an increase may not exceed 20 percent of the horsepower of the vessel initially issued a 1994 limited access scallop permit as specified in that vessel's permit application for a 1994 limited access scallop permit; and,

(ii) The vessel's length, gross registered tonnage and net tonnage may be upgraded, whether through refitting



or replacement, only once. Such an increase shall not exceed 10 percent each of the length, gross registered tonnage, and net tonnage of the vessel initially issued a 1994 limited access scallop permit as specified in that vessel's application for a 1994 limited access scallop permit. This limitation allows only one upgrade, at which time any or all three specifications of vessel size may be increased. This type of upgrade may be done separately from an engine horsepower upgrade.

(iii) A replacement of a vessel that does not result in increasing horsepower, length, gross registered tonnage or net tonnage is not considered an upgrade for purposes of this section.

(6) *Notification of eligibility for 1994.*

(i) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence that they meet the criteria described in paragraph (a)(1) of this section, that they qualify for a limited access scallop permit if they meet the requirements contained in paragraphs (c) through (g) of this section.

(ii) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access scallop permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access scallop permit by meeting the requirements described under paragraphs (d) and (e) of this section and by submitting the information described in paragraphs (a)(1) through (a)(5) of this section. In the event the application is denied, the applicant may appeal as specified in paragraph (a)(9) of this section. If, through either of these procedures, the Regional Director determines that the vessel meets the eligibility criteria, a limited access scallop permit will be issued to the vessel.

(7) *Percentage ownership restrictions.*

(i) Any vessel owner is eligible to apply for and be issued a 1994 limited access scallop permit for any vessel owned as of March 1, 1994, provided that the vessel meets all pertinent criteria in this part regardless of the owner's ownership in other scallop vessels on March 1, 1994.

(ii) For any vessel acquired after March 1, 1994, except as provided in paragraph (a)(7)(iii) of this section, a vessel owner is not eligible to be issued a limited access scallop permit for the vessel if the issuance of the permit will result in the vessel owner, or any person who is a shareholder or partner of the vessel owner, having an ownership interest in limited access scallop vessels in excess of 5 percent of the number of

all limited access scallop vessels at the time of permit application.

(iii) Vessel owners who were initially issued a 1994 limited access scallop permit, or were issued or renewed a limited access scallop permit for a vessel in 1995 and thereafter in compliance with the ownership restrictions in paragraph (a)(7)(ii) of this section, are eligible to renew such permit(s), regardless of whether the renewal of the permits will exceed the 5 percent ownership restrictions.

(iv) Having an ownership interest includes, but is not limited to, persons who are shareholders in a vessel owned by a corporation, who are partners (general or limited) to a vessel owner, or who, in any way, partly own a vessel.

(8) *Consolidation restriction.* Limited access scallop permits and DAS allocations may not be combined or consolidated.

(9) *Appeal of denial of limited access scallop permit.* (i) Any applicant denied a limited access scallop permit, may appeal the denial to the Regional Director within 30 days of the notice of denial. Any such appeal must be based on one or more of the following grounds, must be in writing, and must state the grounds for the appeal:

(A) The information used by the Regional Director was based on mistaken or incorrect data;

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make the initial decision on the appeal.

(iii) The appellant may request a review of the initial decision by the Regional Director by so requesting in writing within 30 days of the notice of initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision shall become the final administrative action of the Department of Commerce. The appellant's request for review must elect either to have the review conducted by a hearing officer appointed by the Regional Director or by an Advisory Appeals Board if established pursuant to paragraph (a)(9)(iv)(B) of this section.

(iv) *Recommendations to the Regional Director.* (A) *Hearing Officer.* If the initial decision is reviewed by a hearing officer, the hearing officer shall make findings and a recommendation to the Regional Director which shall be advisory only.

(B) *Advisory Appeals Board.* The Regional Director may establish, or request the Council to establish, an Advisory Appeal Board. If such a board

is established and approved by the Regional Director, an appellant may request that the initial decision of his/her appeal be reviewed by the Appeals Board. If such a request is made, the Regional Director shall forward the request to the Appeals Board within 15 days after receipt. Any initial decision reviewed by an Appeals Board made up of other than Federal employees shall be open to the public, including all documentation presented to support the appeal. The Appeals Board shall make findings and a recommendation to the Council, which shall be advisory only. The Council in turn shall make findings and an advisory-only recommendation to the Regional Director.

(v) Upon receiving the findings and a recommendation, the Regional Director will issue a final decision on the appeal. The Regional Director's decision is the final administrative action of the Department of Commerce.

(vi) *Status of vessels pending appeal of a limited access scallop permit denial.* A vessel for which an application has been completed and an appeal has been initiated may fish under one of the following DAS allocation categories based on which criteria is applicable, pending a final decision on the appeal, if the vessel has on board a letter of authorization from the Regional Director.

(A) A vessel owner appealing under this part who can establish credible evidence, or NMFS records, that his/her vessel completed at least 10 trips, each landing more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops, in any consecutive 12-month period during 1991-1992, may fish under the Full-time DAS allocation, pending a final decision on the appeal.

(B) A vessel owner appealing under this part who cannot meet the criteria specified in paragraph (a)(9)(vi)(A), but who can establish through credible evidence, or NMFS records, that his/her vessel completed at least 5 trips, each landing more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops, in any 12 consecutive month period during 1991-1992, may fish under the Part-time DAS allocation, pending a final decision on the appeal.

(C) A vessel owner appealing under this part who cannot meet the criteria specified in paragraph (a)(9)(vi)(A) or (a)(9)(vi)(B), but who can establish through credible evidence, or NMFS records, that their vessel completed at least one trip, landing more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops, during 1991-1992, may fish

under the Occasional DAS allocation, pending a final decision on the appeal.

(D) The decision and notification whether to allow any vessel that presents evidence under paragraphs (a)(9)(vi)(A) through (a)(9)(vi)(C) of this section to fish under one of the three categories of DAS, pending a final decision on the appeal, will be provided by the Regional Director in an authorizing letter. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity pending a final decision on the appeal. The authorizing letter must be carried on board the vessel while participating in the DAS program. If the appeal is finally denied, the Regional Director shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

(b) *General scallop permit.* Any vessel of the United States that is not in possession of a limited access scallop permit, and that possesses, or lands per trip, more than 40 pounds (18.14 kg) and less than or including 400 pounds (181.44 kg), of shucked meats, or the equivalent amount of in-shell scallops (5 and 50 U.S. bushels (176.2 l and 17.62 hl), respectively), except vessels that fish exclusively in state waters for scallops, must carry on board a valid general scallop permit.

(c) *Condition.* Vessel owners who apply for a permit under this section must agree as a condition of the permit that the vessel and vessel's fishing, catch, crew size, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part, unless exempted from such requirements under § 650.27. The vessel and all such fishing, catch, crew size, and gear shall remain subject to all applicable state or local requirements. If a requirement of this part and a management measure required by state or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

(d) *Vessel permit application.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Director. The application must be signed by the owner of the vessel, or the owner's authorized representative, and be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any

deficiency in the application pursuant to this section. Applicants for limited access scallop permits who have not been notified of eligibility by the Regional Director shall provide information with the application sufficient for the Regional Director to determine whether the vessel meets the eligibility requirements specified under paragraph (a)(1) of this section. Applications for 1994 limited access scallop permits under this section will not be accepted after December 31, 1994. Acceptable forms of proof include, but are not limited to, state weigh-out records, packout forms, settlement sheets, grocery receipts, fuel receipts, and bridge logs.

(e) *Information requirements.* (1) In addition to applicable information required to be provided by paragraph (d) of this section, an application for either a limited access or general scallop permit must contain at least the following information, and any other information required by the Regional Director: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a copy of vessel's U.S. Coast Guard documentation or, if undocumented, state registration number and a copy of the state registration; home port and principal port of landing; length; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish-hold capacity; type of fishing gear used by the vessel; number of crew; permit category; if the owner is a corporation, a copy of the Certificate of Incorporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners having owned more than 25 percent interest; and name and signature of the owner or the owner's authorized representative.

(2) Applications for a limited access scallop permit must also contain the following information:

(i) For every person named by applicants for limited access scallop permits pursuant to paragraph (e)(1) of this section, the names of all other vessels in which that person has an ownership interest and for which a limited access scallop permit has been issued or applied for;

(ii) The engine horsepower of the vessel as specified in the vessel's permit documentation as of August 3, 1992; or, if the engine horsepower is different from that stated in the vessel's Federal

scallop permit as of August 3, 1992, sufficient documentation to ascertain the different engine horsepower;

(iii) If applying for Full-time or Part-time limited access scallop permit, or if opting to use a VTS unit although not required, a copy of the vendor installation receipt from a NMFS-approved VTS vendor as described in § 650.25(a); and

(iv) If applying for the small dredge program set forth under § 650.21(e), an annual declaration into the program.

(f) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee shall be calculated in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (g) of this section.

(g) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904 and under § 650.4(a)(9), the Regional Director shall issue a Federal scallop vessel permit within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a completed application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received and the applicant has submitted all applicable reports specified at § 650.7; or,

(ii) The application was not received by the Regional Director by the deadlines set forth in paragraphs (a)(1)(iii) and (p) of this section; or,

(iii) The applicant and applicant's vessel failed to meet all eligibility requirements described in paragraphs (a)(1) and (a)(2) of this section; or,

(iv) For applicants applying for a Full-time or Part-time limited access scallop permit, the applicant has failed to meet all of the VTS requirements as described in § 650.25; or,

(v) The applicant has failed to meet any other application requirements stated in 50 CFR part 650.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(h) *Expiration.* A permit will expire upon the renewal date specified in the permit.

(i) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or until it otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as specified in paragraph (l) of this section. Federal fishing vessel permits must be renewed annually and unless renewed will expire upon the renewal date specified in the permit.

(j) *Replacement.* Replacement permits, for an otherwise valid permit, may be issued by the Regional Director when requested in writing by the owner or authorized representative, stating the need for replacement, the name of the vessel, and the Federal Fisheries Permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged for issuance of the replacement permit.

(k) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the vessel and owner to whom it is issued.

(l) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written notice of the change must be submitted to the Regional Director. If the written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

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

(n) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

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

(p) *Limited access scallop permit renewal.* To renew or apply for a limited access scallop permit in 1995 and thereafter, a completed application must be received by the Regional Director by December 31 of the year before the permit is needed. For example, to receive a limited access scallop permit for 1996, vessel owners must apply by December 31, 1995. Failure to renew a limited access scallop permit in any year bars the renewal of the permit in subsequent years.

(q) *Abandonment or voluntary relinquishment of limited access scallop permits.* If a vessel's limited access scallop permit is voluntarily relinquished to the Regional Director, or

abandoned through failure to renew or otherwise, no limited access scallop permit may be re-issued or renewed based on that vessel's history or to any vessel relying on that vessel's history.

#### **§ 650.5 Operator permits.**

(a) *General.* Any operator of a vessel issued a Federal limited access scallop permit under § 650.4, or any operator of a vessel fishing for scallops in the EEZ or in possession of more than 40 pounds (18.14 kg) of shucked scallops, or 5 U.S. bushels (176.2 l) of in-shell scallops, in or harvested from the EEZ, must carry on board a valid operator's permit issued under this part.

(b) *Operator application.* Applicants for a permit under this section must submit a completed permit application on an appropriate form obtained from the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Condition.* Vessel operators who apply for an operator's permit under this section must agree as a condition of this permit that the operator and vessel's fishing, catch, crew size, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part while fishing in the EEZ or on board a vessel permitted under § 650.4, unless exempted from such requirements under § 650.27. The vessel and all such fishing, catch, crew size, and gear will remain subject to all applicable state or local requirements. Further, such operators must agree as a condition of this permit that if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be on board any fishing vessel issued a Federal Fisheries Permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading. If a requirement of this part and a management measure required by state or local law differ, any operator issued a permit under this part must comply with the more restrictive requirement.

(d) *Information requirements.* An applicant must provide at least all the following information and any other information required by the Regional Director: name, mailing address, and telephone number; date of birth, hair color, eye color, height, weight, social

security number (optional) and signature of the applicant. The applicant must also provide two color passport size photographs.

(e) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Financial Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (f) of this section.

(f) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director shall issue an operator's permit within 30 days of receipt of a completed application if the criteria specified herein are met. 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 30 days following the date of notification, the application will be considered abandoned.

(g) *Expiration.* A permit will expire upon the renewal date specified in the permit.

(h) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or the applicant has failed to report a change in the information on the permit application to the Regional Director as specified in paragraph (k) of this section.

(i) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal operator permit number assigned. An applicant for a replacement permit must also provide two color passport size photos of the applicant. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(j) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom it is issued.

(k) *Change in application information.* Notice of a change in the permit holder's name, address, or telephone number must be submitted in writing to, and received by, the Regional Director within 15 days of the change in information. If written notice of the

change in information is not received by the Regional Director within 15 days, the permit is void.

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

(m) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(n) *Sanctions.* Vessel operators with suspended or revoked permits may not be on board a Federally permitted fishing vessel in any capacity while the vessel is at sea or engaged in offloading. Procedures governing enforcement related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(o) *Vessel owner responsibility.* Vessel owners are responsible for ensuring that their vessels are operated by an individual with a valid operator's permit issued under this section.

#### § 650.6 Dealer permits.

(a) All dealers must have been issued and have in their possession a valid permit issued under this part.

(b) *Dealer application.* Applicants for a permit under this section must submit a completed application on an appropriate form provided by the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Information requirements.* Applications must contain at least the following information and any other information required by the Regional Director: Company name, place(s) of business, mailing address(es) and telephone number(s); owner's name; dealer permit number (if a renewal); and name and signature of the person responsible for the truth and accuracy of the report. If the dealer is a corporation, a copy of the certificate of incorporation must be included with the application. If a partnership, a copy of the Partnership Agreement and the names and addresses of all partners must be included with the application.

(d) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form.

The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section.

(e) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to an applicant unless the applicant has failed to submit a completed application. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified in § 650.7(a). 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 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* A permit will expire upon the renewal date specified in the permit.

(g) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as required by paragraph (j) of this section.

(h) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal dealer permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(i) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom, or other business entity to which, it is issued.

(j) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written report of the change must be submitted to, and received by, the Regional Director. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

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

(l) *Display.* Any permit, or a valid duplicate thereof, issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(m) *Federal versus state requirements.* If a requirement of this part differs from a fisheries management measure required by state law, any dealer issued a Federal dealer permit must comply with the more restrictive requirement.

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

#### § 650.7 Recordkeeping and reporting.

(a) *Dealers—(1) Weekly report.* Dealers shall mail at least the following information to the Regional Director, or official designee, on a weekly basis on forms supplied by or approved by the Regional Director. Or, if authorized in writing by the Regional Director, dealers may submit reports electronically or through other media. The following information, and any other information required by the Regional Director, must be provided: Name and mailing address of dealer; dealer number; name and permit number of the vessels from which fish are landed or received; dates of purchases; pounds by species; price by species; and port landed. If no fish is purchased during the week, a report so stating must be submitted.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section are required to complete the "Employment Data" section of the Annual Processed Products Reports; the other information on that form is voluntary. Required data are the number of employees handling fishery products by month. Reports for a given calendar year shall be submitted to: NMFS Statistics, 166 Water Street, Woods Hole, MA 02543, and must be postmarked by February 10 of the following year.

(3) *Inspection.* The dealer shall make available copies of the required reports that have been submitted, or should have been submitted, and the records upon which the reports were based, immediately upon request for inspection by an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections.

(4) *Record retention.* Copies of reports, and records upon which the reports were based, must be retained and available for review for one year after the date of the last entry on the report. The dealer shall retain such reports and records at its principal place of business.

(5) *Submitting reports.* Reports must be received or postmarked, if mailed, within 3 days after the end of each reporting week. Each dealer will be sent forms and instructions, including the address to which to submit reports,

shortly after receipt of a dealer permit. If no product was purchased during a week, a report so stating must be submitted.

(b) *Vessel owners*—(1) *Fishing log reports*. The owner of any vessel holding a Federal scallop permit under § 650.4 shall maintain, on board the vessel, and submit an accurate daily fishing log report for all fishing trips regardless of species fished for or taken, on forms supplied by or approved by the Regional Director. If authorized in writing by the Regional Director, vessel owners may submit reports electronically, using the VTS, or other media. At least the following information, and any other information required by the Regional Director, must be provided: Vessel name; U.S. Coast Guard (USCG) documentation number (or state registration number if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds by species of all species landed and discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator permit number.

(2) *When to fill in the log*. Such log reports must be filled in, except for information required but not yet ascertainable, before offloading has begun. At the end of a fishing trip all information in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection*. Owners and operators shall make, immediately upon request, the fishing log reports currently in use or to be submitted available for inspection by an authorized officer, or an employee of the NMFS designated by the Regional Director to make such inspections, at any time during or after a trip.

(4) *Record retention*. Copies of fishing log reports must be retained and available for review for one year after the date of the last entry on the report.

(5) *Submitting reports*. Fishing log reports must be received or postmarked, if mailed, within 15 days after the end of each reporting month. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a Federal Fisheries Permit. If no fishing trip is made during a month, a report so stating must be submitted.

#### § 650.8 Vessel Identification.

(a) *Vessel name*. Each fishing vessel subject to this part and that is over 25 feet (7.6 m) in length must display its name on the port and starboard sides of its bow and, if possible, on its stern.

(b) *Official number*. Each fishing vessel subject to this part that is over 25 feet (7.6 m) in length must display its official number on the port and starboard sides of its deckhouse or hull, and on an appropriate weather deck, so as to be visible from above by enforcement vessels and aircraft. The official number is the U.S. Coast Guard documentation number or the vessel's state registration number for vessels not required to be documented under title 46 of U.S. Code.

(c) *Numerals*. The official number must be permanently affixed in contrasting block Arabic numerals at least 18 inches (45.7 cm) in height for vessels over 65 feet (19.8 m), and at least 10 inches (25.4 cm) in height for all other vessels over 25 feet (7.6 m) in length.

(d) *Duties of owner and operator*. The owner and 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.

#### § 650.9 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a limited access scallop permit or a general scallop permit under § 650.4, or a letter under § 650.4(a)(9)(vi)(D), to do any of the following:

(1) Land, or possess at or after landing, in-shell sea scallops smaller than the minimum size specified in § 650.20(a). All Atlantic sea scallops will be subject to inspection and enforcement, in accordance with the compliance and sampling procedures specified in § 650.20(b), up to and including the time when a dealer receives or possesses sea scallops for a commercial purpose.

(2) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, and other requirements of § 650.7(b).

(3) Fish for, possess, or land sea scallops unless the operator of the vessel has been issued an operator's permit under § 650.5, and the permit is on board the vessel and is valid.

(4) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application as required under § 650.4(l) or § 650.5(k).

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

(6) Fail to affix and maintain permanent markings as required by § 650.8.

(7) Sell or transfer, or attempt to sell or transfer, to a dealer any sea scallops unless the dealer has a valid Federal Dealer's Permit issued under § 650.6.

(8) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove, or otherwise transfer Atlantic sea scallops or fish from one vessel to another vessel.

(b) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a limited access scallop permit under § 650.4(a), or a letter under § 650.4(a)(9)(vi)(D), to do any of the following:

(1)(i) Possess, or land per trip, more than 400 pounds (181.44 kg) of shucked sea scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 650.26, unless exempted from DAS allocations as provided in § 650.27.

(ii) Land scallops on more than one trip per calendar day after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 650.26, unless exempted from DAS allocations as provided in § 650.27.

(2) Fail to have an approved, operational, and functioning VTS unit that meets the specifications of § 650.25(a) on board the vessel at all times, unless the vessel is not subject to the VTS requirements specified in § 650.26.

(3) If the vessel is not subject to VTS requirements specified in § 650.26, fail to comply with any aspect of the call-in system as specified in § 650.26(b).

(4) Combine, transfer, or consolidate DAS allocations.

(5) Have an ownership interest in more than 5 percent of the total number of vessels issued limited access scallop permits, except as provided in § 650.4(a)(7)(iii).

(6) Fish for, possess, or land Atlantic sea scallops with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 650.4(a)(5).



(7) Fish for, possess, or land Atlantic sea scallops with or from a vessel that has had the length, gross registered tonnage, or net tonnage of such vessel or its replacement increased or upgraded in excess of limitations specified in § 650.4(a)(5).

(8) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops while in possession of, or fish under the DAS allocation program with, trawl nets that have a maximum sweep exceeding 144 feet (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net.

(9) Fish under the DAS allocation program with, or have available for immediate use, trawl nets of mesh smaller than the minimum size, as specified in § 650.21(a)(2).

(10) Fish under the DAS allocation program with trawl nets that use chafing gear or other means or devices that violate the provisions of § 650.21(a)(3).

(11) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops while in possession of, or fish under the DAS allocation program with, dredge gear that has a maximum combined dredge width exceeding 31 feet (9.4 m), measured at the widest point in the bail of each dredge.

(12) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops while in possession of, or fish under the DAS allocation program with, dredge gear that uses net or net material on the top half of the dredge of a minimum mesh size smaller than that specified in § 650.21(b)(2).

(13) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops while in possession of, or fish under the DAS allocation program with, dredge gear containing rings that have minimum sizes smaller than those specified in § 650.21(b)(3).

(14) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops while in possession of, or fish under the DAS allocation program with, dredge gear that uses more than double links between rings of the gear.

(15) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops while in possession of, or fish under the DAS allocation program with, dredge gear that uses cookies, chafing gear or other gear, means, or devices on the top half of a dredge that obstruct the openings in or between the rings, other

than double links as specified and described in § 650.21(b)(4).

(16) Fish under the DAS allocation program with more than 9 persons, including the operator, on board the vessel, unless otherwise authorized by the Regional Director.

(17) Fish under the small dredge program as specified in § 650.21(e), with, or while in possession of, a dredge that exceeds 10 feet 6 inches (3.2 m) in overall width, as measured at the widest point in the bail of the dredge.

(18) Fish under the small dredge program as specified in § 650.21(e) with more than 5 persons, including the operator, on board the vessel, unless otherwise authorized by the Regional Director.

(19) To have a shucking machine on board a vessel, or a sorting machine on board a vessel that shucks scallops at sea while fishing under the DAS allocation program, unless otherwise authorized by the Regional Director.

(20) Refuse or fail to carry an observer if requested to do so by the Regional Director.

(21) Interfere with or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer conducting his or her duties aboard a vessel.

(22) Fail to provide an observer with the required food, accommodations, access, and assistance, as specified in § 650.28.

(23) Fail to comply with any requirement for declaring in and out of the DAS allocation program as specified in § 650.26.

(24) Fail to comply with any requirement for participating in the DAS Exemption Program as specified in § 650.27.

(c) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a general scallop permit under § 650.4(b) to do any of the following:

(1) Possess, or land per trip, more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops;

(2) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that has a maximum combined dredge width exceeding 31 feet (9.4 m), measured at the widest point in the bail of each dredge;

(3) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses net

or net material on the top half of the dredge of a minimum mesh size smaller than that specified in § 650.21(b)(2);

(4) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops while in possession of, or fish for scallops with, dredge gear containing rings that have minimum sizes smaller than those specified in § 650.21(b)(3);

(5) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses more than double links between rings of dredge gear;

(6) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses cookies, chafing gear or other gear, means, or devices on the top half of a dredge that obstruct the openings in or between the rings, other than double links as specified and described in § 650.21(b)(4);

(7) Fish for, or land more than 40 pounds of, scallops on more than one trip per calendar day.

(d) In addition to the general prohibitions specified in § 620.7 of this chapter and the prohibitions specified in paragraphs (a), (b) and (c) of this section, it is unlawful for any person to do any of the following:

(1) Possess, or land per trip, sea scallops in excess of 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 l) of in-shell scallops unless:

(i) The scallops were harvested by a vessel that has been issued and carries on board a general or limited access scallop permit under § 650.4, or a letter under § 650.4(a)(9)(vi)(D), or,

(ii) The scallops were harvested by a vessel without a Federal scallop permit and that fishes for scallops exclusively in state waters;

(2) Possess, or land per trip, sea scallops in excess of 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops unless:

(i) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit under § 650.4(a), or a letter under § 650.4(a)(9)(vi)(D), or,

(ii) The scallops were harvested by a vessel without a Federal scallop permit and that fishes for scallops exclusively in state waters;

(3) Possess, or land per trip, sea scallops in excess of 40 pounds (18.14 kg) of shucked scallops or 5 U.S.

bushels (176.2 l) of in-shell scallops unless:

(i) The scallops were harvested by a vessel with an operator on board who has been issued an operator's permit under § 650.5 and the permit is on board the vessel and is valid, or,

(ii) The scallops were harvested by a vessel not issued a Federal scallop permit and that fishes for scallops exclusively in state waters;

(4)(i) Land, offload, cause to be offloaded, sell, or transfer, or attempt to land, offload, cause to be offloaded, sell or transfer sea scallops, from a fishing vessel, whether on land or at sea, as an owner or operator without accurately preparing and submitting, in a timely fashion, the documents required by § 650.7, unless the scallops were harvested by a vessel without a Federal scallop permit and that fishes for scallops exclusively in state waters;

(ii) To have a shucking machine on board a vessel, or a sorting machine on board a vessel that shucks scallops at sea while in possession of more than 400 pounds (181.44 kg) of shucked scallops; or, the vessel fishes exclusively in state waters and has not been issued a Federal scallop permit.

(5) Purchase or receive scallops, or attempt to purchase or receive scallops, whether on land or at sea, as a dealer without accurately preparing, submitting and retaining, in a timely fashion, the documents required by § 650.7;

(6) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer, Atlantic sea scallops from one vessel to another;

(7) Sell, barter or trade, or otherwise transfer, or attempt to sell, barter or trade, or otherwise transfer, for a commercial purpose any sea scallops from a trip whose catch is 40 pounds (18.14 kg) of shucked scallops or less, or 5 U.S. bushels (176.1 l) of in-shell scallops unless the vessel has been issued a valid Federal general or limited access scallop permit under § 650.4, or a letter under § 650.4(a)(9)(vi)(D), or the scallops were harvested by a vessel without a Federal scallop permit that fishes for scallops exclusively in state waters;

(8) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, in the capacity of a dealer, sea scallops taken from a fishing vessel, unless in possession of a valid dealer's permit issued under § 650.6;

(9) Purchase, possess, or receive for commercial purposes, or attempt to purchase or receive for commercial

purposes, sea scallops caught by a vessel other than one issued a valid federal general or limited access sea scallop permit under § 650.4, or a letter under § 650.4(a)(9)(vi)(D), unless the scallops were harvested by a vessel without a Federal scallop permit and that fishes for scallops exclusively in state waters;

(10) To be or act as an operator of a vessel fishing for or possessing Atlantic sea scallops in or from the EEZ, or issued a Federal scallop permit under § 650.4, without having been issued and possessing a valid operator's permit issued under § 650.5.

(11) Assault, resist, oppose, impede, harass, intimidate, or interfere with either a NMFS-approved observer aboard a vessel, or an authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part;

(12) 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;

(13) Make any false statement on any report required to be submitted or maintained under § 650.7;

(14) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VTS unit or VTS signal required to be installed on, or transmitted by, Full-time and Part-time limited access scallop vessels or any other vessel required to use a VTS by this part;

(15) Violate any provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

(e) Any person possessing, or landing per trip, sea scallops in excess of 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops at or prior to the time when those scallops are received or possessed by a dealer is subject to all of the prohibitions specified in paragraphs (a), (b) and (c) of this section, unless the scallops were harvested by a vessel without a Federal scallop permit and that fishes for scallops exclusively in state waters.

(f) *Presumption.* Sea scallops that are possessed, or landed at or prior to the time when the scallops are received by a dealer, or sea scallops that are possessed by a dealer, are presumed to be harvested from the EEZ. A preponderance of all submitted evidence, that such scallops were harvested by a vessel without a Federal scallop permit and fishing exclusively for scallops in state waters, will be sufficient to rebut the presumption.

#### § 650.10 Facilitation of enforcement.

See § 620.8 of this chapter.

#### § 650.11 Penalties.

See § 620.9 of this chapter.

### Subpart B—Management Measures

#### § 650.20 Shell-height standard.

(a) The minimum shell height for in-shell Atlantic sea scallops that may be landed, or possessed at or after landing, is 3½ inches (89 mm).

(b) *Compliance and sampling.* Compliance with the specified shell-height standards will be determined by inspection and enforcement at or after landing, including, the time when the scallops are received or possessed by a dealer or person acting in the capacity of a dealer, as follows: 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 all scallops sampled are less than the shell height specified by the standard. The shell height shall be measured in a straight line from the hinge of the scallop to the outermost part of the curve on the leading edge. 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.

#### § 650.21 Gear and crew restrictions.

(a) *Trawl vessel gear restrictions.* Trawl vessels in possession of more than 40 pounds (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, must comply with the following:

(1) *Maximum sweep.* The trawl sweep in use by or in possession of such vessels shall not exceed 144 feet (43.9 m) as measured by the total length of the footrope that is directly attached to the webbing of the net.

(2) *Net requirements—(i) Minimum mesh size in 1994 and 1995.* In 1994 and 1995, the mesh size shall not be smaller than 5 inches (12.7 cm) south of a line commencing at the shoreline and proceeding easterly along 39°10' N. Latitude until it intersects the outer boundary of the EEZ, and 5½ inches (13.97 cm) for any scallop trawl net north of this line.

(ii) *Minimum mesh sizes in 1996 and beyond.* In 1996 and beyond, the mesh size for any scallop trawl net in all areas shall not be smaller than 5½ inches (13.97 cm).

(iii) *Mesh stowage.* No vessel may have available for immediate use any net, or any piece of a net, not meeting the requirements specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this section. A net that conforms to one of the following specifications and that can be shown not to have been in recent use is considered to be not "available for immediate use":

(A) A net stowed below deck, provided:

(1) It is located below the main working deck from which the net is deployed and retrieved;

(2) The towing wires, including the "leg" wires, are detached from the net;

(3) It is fan-folded (flaked) and bound around its circumference.

(B) A net stowed and lashed down on deck, provided:

(1) It is fan-folded (flaked) and bound around its circumference;

(2) It is securely fastened to the deck or rail of the vessel; and

(3) The towing wires, including the leg wires, are detached from the net.

(C) A net that is on a reel and is covered and secured, provided:

(1) The entire surface of the net is covered with canvas or other similar material that is securely bound;

(2) The towing wires, including the leg wires, are detached from the net; and

(3) The codend is removed from the net and stored below deck.

(D) Nets that are secured in a manner authorized in writing by the Regional Director.

(iv) *Measurement of mesh size.* Mesh size is measured by using a wedge-shaped gauge having a taper of two centimeters in eight centimeters and a thickness of 2.3 millimeters, inserted into the meshes under a pressure or pull of five kilograms. The mesh size will be the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net will be measured at least five meshes away from the lacings, running parallel to the long axis of the net.

(3) *Chafing gear and other gear obstructions—(i) Net obstruction or constriction.* A fishing vessel may not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and

rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. "The top of the trawl net" means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the trawl net.

(ii) *Mesh obstruction or constriction.* A fishing vessel may not use any mesh configuration, mesh construction, or other means on, or in, the top of the net, as defined in paragraph (a)(3)(i) of this section, if it obstructs the meshes of the net in any manner.

(iii) No vessel may use or possess a net capable of catching sea scallops in which the bars entering or exiting the knots twist around each other.

(b) *Dredge vessel gear restrictions.* All dredge vessels fishing for or in possession of more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 l) of in-shell scallops, and all dredge vessels issued a limited access scallop permit and fishing under the DAS Program, with the exception of hydraulic clam dredges and mahogany quahog dredges in possession of 400 pounds or less (181.44 kg) of sea scallops, must comply with the following restrictions:

(1) *Maximum dredge width.* The combined dredge width in use by or in possession of such vessels shall not exceed 31 feet (9.4 m) measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section.

(2) *Minimum mesh size.* (i) The mesh size of net material on the top of a scallop dredge in use by or in possession of such vessels shall not be smaller than 5½ inches (13.97 cm).

(ii) Mesh size is measured as provided in paragraph (a)(2)(iv) of this section.

(3) *Minimum ring size.* (i) For 1994 and 1995, the inside ring size of a scallop dredge in use by or in possession of such vessels shall not be smaller than ¾ inches (83 mm).

(ii) For 1996 and thereafter, the inside ring size of a scallop dredge in use by or in possession of such vessels shall not be smaller than ¾ inches (89 mm).

(iii) Ring sizes are determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement shall not include normal welds from ring manufacturing or links. The rings to be measured will be at least five rings away from the mouth, and at

least two rings away from other rigid portions of the dredge.

(4) *Chafing gear and other gear obstructions—(i) Chafing gear restrictions.* No chafing gear or cookies shall be used on the top of a scallop dredge;

(ii) *Link restrictions.* No more than double links between rings shall be used in or on scallop dredges;

(iii) *Dredge and net obstructions.* No material, device, net, or dredge configuration or design shall be used if it results in obstructing the release of scallops that would have passed through a legal size net and dredge that did not have in use any such material, device, or net or dredge configuration or design.

(c) *Crew restrictions.* Limited access vessels fishing under or subject to the scallop DAS allocation program may have no more than nine people, including the operator, on board unless fishing under the small dredge program specified in § 650.21(e), or otherwise authorized by the Regional Director.

(d) *Sorting and shucking machines.* (1) Shucking machines are prohibited on all limited access vessels fishing under the scallop DAS program or any vessel in possession of more than 400 pounds (181.44 kg) of scallops, unless the vessel has not been issued a Federal limited access scallop permit and fishes exclusively in state waters.

(2) Sorting machines are prohibited on limited access vessels fishing under the scallop DAS program that shuck scallops at sea.

(e) *Small dredge program restrictions.* Any vessel owner whose vessel is assigned to either the Part-time or Occasional category may request to be placed in one category higher on the annual vessel permit application as described under § 650.4(e)(2)(iv). Vessel owners making such a request will be placed in the appropriate category, for the entire year, if they agree to comply with the following restrictions, in addition to and notwithstanding other restrictions of this part, when fishing under the DAS program described in § 650.24, or are in possession of more than 400 lbs (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops:

(1) The vessel must fish exclusively with one dredge no more than 10.5 feet (3.2 m) in width;

(2) The vessel is prohibited from having more than one dredge on board or in use; and,

(3) The vessel may have no more than five people, including the operator, on board.

**§ 650.22 Possession restrictions.**

(a) Owners or operators of vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 650.26, or have used up their DAS allocations and vessels possessing a general scallop permit, unless exempted under the DAS exemption program described under § 650.27, are prohibited from possessing or landing per trip, more than 400 pounds (181.44 kg) of shucked scallops, or 50 U.S. bushels (17.62 hl) of in-shell scallops, with not more than one scallop trip allowable in any calendar day.

(b) Owners or operators of vessels without a Federal sea scallop permit, except vessels fishing for scallops exclusively in state waters, are prohibited from possessing or landing per trip, more than 40 pounds (18.14 kg) of shucked sea scallops, or 5 U.S. bushels (176.2 l) of in-shell sea scallops. Owners or operators of vessels without Federal scallop permits are prohibited from selling, bartering, or trading sea scallops harvested from Federal waters.

**§ 650.23 Transfer-at-sea.**

(a) Owners or operators of vessels permitted under § 650.4 are prohibited from transferring or attempting to transfer fish from one vessel to another vessel.

(b) All persons are prohibited from transferring or attempting to transfer sea scallops from one vessel to another vessel.

**§ 650.24 Days-at-sea (DAS) allocations.**

Each vessel issued a limited access scallop permit shall be assigned to a DAS category based on evidence and criteria as specified in paragraph (a) of this section. Limited access scallop permits will indicate which category the vessel is assigned to. Vessels are prohibited from fishing for, landing per trip, or possessing more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops once their allocated number of DAS, as specified under paragraph (c) of this section, are used up.

(a) *Criteria for assigning DAS categories.* All vessels qualifying for a limited access scallop permit under the criteria specified in § 650.4(a) shall be assigned to the Full-time, Part-time, or Occasional DAS category based on the formulas specified in paragraph (b) of this section and the following:

(1) *Full-time.* A vessel shall be assigned to the Full-time category if that vessel has averaged at least 150 days of directed scallop fishing annually according to the formulas specified in paragraph (b) of this section;

(2) *Part-time.* A vessel shall be assigned to the Part-time category if that vessel has averaged more than 37 days but less than 150 days of directed scallop fishing annually according to the formulas specified in paragraph (b) of this section;

(3) *Occasional.* A vessel shall be assigned to the Occasional category if that vessel has averaged 37 days or less of directed scallop fishing annually according to the formulas specified in paragraph (b) of this section.

(b) *DAS formulas.* A vessel's average number of days of directed scallop fishing for purposes of assigning the vessel to one of the categories specified in paragraph (a) of this section shall be determined by applying one of the following formulas to the data, information, or other credible evidence available to the Regional Director. Scallop DAS for this purpose is defined as the total days at sea on trips with landings of more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops.

(1) The following formulas apply to all vessels qualifying for limited access scallop permits, with the exception of vessels that qualify under paragraph § 650.4(a)(1)(i)(C). The DAS formula applicable to that group of vessels is specified in paragraph (b)(2) of this section. Vessel owners may choose their 1990 history under paragraph (b)(1)(i) of this section, or a calculation based on the 1985–1990 history, as applicable, under paragraph (b)(1)(ii) of this section. DAS are calculated from the formulas below and the result is applied to the DAS categories described in paragraph (a) of this section.

(i) *1990 fishing history.* For any vessel that fished for scallops in 1990, the number of scallop DAS may be determined by calculating the total number of DAS on scallop trips ending in 1990; or,

(ii) *1985–1990 fishing history.* For vessels with history in the scallop fishery between 1985 and 1990, inclusive, the number of years history is determined as follows. With the exception of the adjustments specified under paragraphs (b)(1)(iii) and (b)(1)(iv) of this section, vessels whose calculated scallop history is based on a formula below must use their entire history in the scallop fishery and may not elect to use a formula based on fewer years history in the fishery.

(A) *Four or more years history.* Calculate the total number of scallop DAS for each year, exclude the high and low years of days at sea and average the remaining years; or

(B) *Three year history.* Calculate the total number of scallop DAS for each year, average the high and low years of days at sea, and then average the result with the third year; or

(C) *Two year history.* Calculate the total number of scallop DAS for each year, average the two years' DAS; or

(D) *One year history.* Calculate the actual number of scallop DAS for that year.

(iii) *Pro-ration.* If a limited access vessel entered the scallop fishery for the first time during the relevant time period, the first year shall be pro-rated to a full year by pro-rating on an annual basis the number of DAS the vessel actually incurred on trips landing more than 400 pounds (181.44 kg) of shucked scallops or more than 50 U.S. bushels (17.62 hl) of in-shell scallops to determine the number of days at sea the vessel would have incurred had the vessel been in the fishery for the full year. The pro-ration formula is as follows: The total number of scallop DAS in that year is divided by the percentage of the year the vessel was in the fishery (by month). In pro-rating the days for such vessels, the Regional Director shall take into account the date the vessel entered the fishery, the vessel's subsequent fishing history, and other relevant information.

(iv) *New owner.* Vessel owners who purchased their vessel during the 1985–1990 time period may request that the DAS formulas be based solely on their individual history in the scallop fishery, excluding all previous owner's scallop histories. Under this option a vessel's first year in the fishery may be pro-rated based on the criteria specified in paragraph (b)(1)(iii) of this section.

(2) For vessels qualifying for a limited access scallop permit under paragraph § 650.4(a)(1)(i)(C), pro-rate to a full year the total number of DAS for trips the vessel would have fished and landed over 400 pounds (181.44 kg) of shucked scallops or more than 50 U.S. bushels (17.62 hl) of in-shell scallops in 1990 based on the actual number of DAS the vessel did fish in 1990 and the criteria specified in paragraph (b)(1)(iii) of this section. Then, calculate the average number of DAS for trips landing more than 400 pounds (181.44 kg) of shucked scallops or more than 50 U.S. bushels (17.62 hl) of in-shell scallops for the years 1991 and 1992. The number of days to determine the category shall be the lower number between the pro-rated 1990 days and the average of DAS in 1991 and 1992.

(c) *DAS allocations.* Each vessel qualifying for one of the three categories specified in paragraph (a) of this section shall be allocated, annually, the

maximum number of DAS it may participate in the limited access scallop fishery, according to the category for which it qualifies. A vessel whose owner/operator has declared it out of the scallop fishery pursuant to the

provisions of § 650.26, or has used up its allocated DAS, may leave port without being assessed a DAS as long as it does not possess or land more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.61 hl) of

in-shell scallops and complies with the other requirements of this part.

(1) *Annual DAS allocations.* The annual allocations of DAS for each category of vessel specified in paragraph (a) of this section shall be as follows:

DAS category	1994	1995-96	1997	1998-99	2000+
Full-time .....	204	182	164	142	120
Part-time .....	91	82	66	57	48
Occasional .....	18	16	14	12	10

(2) *Accrual of DAS.* DAS shall accrue in hourly increments, with all partial hours counted as full hours. A DAS is calculated beginning when a vessel leaves port and ending when the vessel returns to port as follows:

(i) DAS for vessels that are under the VTS monitoring system described in § 650.26(a) are counted beginning with the first hourly location signal received showing that the vessel crossed the COLREGS Demarcation Line leaving port and ending with the first hourly location signal received showing that the vessel crossed the COLREGS Demarcation Line upon its return to port.

(ii) DAS for vessels fishing under the call-in notification system described in § 650.26(b) are counted beginning once the phone call has been received and confirmation given by the Regional Director. A DAS ends when after returning to port, the phone call has been received, and confirmation given by the Regional Director.

(d) *Adjustments in annual DAS allocations.* Adjustments or changes in annual DAS allocations, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(e) *Notice of initial DAS category.* The Regional Director will attempt to notify all owners of vessels that are deemed eligible to be issued a limited access scallop permit pursuant to § 650.4(a)(6) as to which category the vessel qualifies for based on data, information and other evidence available to the Regional Director.

(f) *Appeal of DAS category.* (1) *Appeal criteria.* A vessel's owner may appeal his/her vessel's initial placement into a vessel category to the Regional Director within 30 days of receipt of the notice of a vessel's DAS category. Any such appeal must be based on one or more of the following grounds, must be in writing, and must state the grounds for the appeal:

(i) The information used by the Regional Director was based on mistaken or incorrect data;

(ii) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(iii) The applicant has new or additional information.

(2) The Regional Director will appoint a designee who will make an initial decision on the appeal.

(3) The appellant may request a review of the initial decision by the Regional Director by so requesting in writing within 30 days of the notice of initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision shall become the final administrative action of the Department of Commerce. The appellant's request for review must elect either to have the review conducted by a hearing officer appointed by the Regional Director or by an Advisory Appeals Board if established pursuant to paragraph (a)(9)(iv)(B) of this section.

(4) *Recommendations to the Regional Director—(i) Hearing Officer.* If the initial decision is reviewed by a hearing officer, the hearing officer shall make findings and a recommendation to the Regional Director which shall be advisory only.

(ii) *Advisory Appeals Board.* If an Advisory Appeals Board is established under § 650.4(a)(9)(iv), an appellant may request that the initial decision of his/her appeal be reviewed by the Appeals Board. If such a request is made, the Regional Director shall forward the request to the Appeals Board within 15 days after receipt. Any initial decision reviewed by an Appeals Board made up of other than Federal employees shall be open to the public, including all documentation presented to support the appeal. The Appeals Board shall make findings and a recommendation to the Council, which shall be advisory only. The Council in turn shall make findings and an advisory-only recommendation to the Regional Director.

(5) Upon receiving the findings and recommendation, the Regional Director will issue a final decision on the appeal.

The Regional Director's decision is the final administrative action of the Department of Commerce.

(6) *Status of vessels pending appeal of DAS allocations.* A vessel, for which an appeal of its DAS category has been initiated, may fish under the DAS allocation allowed under the next higher category than the vessel's initial category placement if the vessel has on board a letter of authorization from the Regional Director, regardless of what category the vessel is appealing to be placed in, and is subject to all requirements applicable to such category of vessels unless otherwise exempted. That is, if a vessel was initially placed in the Part-time category, that vessel may fish up to the maximum number of DAS allocated to Full-time vessels until the Regional Director has made a final determination on the appeal. If a vessel is initially placed in the Occasional category, that vessel may fish up to the DAS allocated to Part-time vessels, regardless of what category the Occasional vessel is appealing to be placed in, until the Regional Director has made a final determination on the appeal. Any DAS spent fishing for scallops shall be counted against the DAS allocation of the category that the vessel is ultimately placed in. If, before this appeal is decided, a vessel exceeds the number of DAS it is finally allocated after appeal, the excess DAS will be subtracted from the vessel's allocation of DAS in 1995.

(g) *End-of-year carry-over.* Limited access vessels with unused DAS on December 31 of any year may carry-over a maximum of 10 DAS into the next year. At no time may more than 10 DAS be carried over.

(h) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea for one of the following reasons, and that can document the occurrence through the Coast Guard, will not accrue DAS for the time documented:

- (1) Time spent assisting in a Coast Guard search and rescue operation; or
- (2) Time spent assisting the Coast Guard in towing a disabled vessel.



**§ 650.25 Monitoring requirements.**

(a) *Full-time and Part-time limited access vessels.* To be issued a Full-time or Part-time limited access scallop permit as specified in § 650.4(a), all vessels must provide documentation to the Regional Director that the vessel has an operational VTS unit on board that is part of an approved VTS as specified in paragraph (a)(1) of this section and meets the minimum performance criteria specified in paragraph (a)(2) of this section, or as modified annually as specified in paragraph (a)(1) of this section.

(1) *Approval.* The Regional Director will annually approve VTSs that meet minimum performance criteria specified in paragraph (a)(2) of this section. Any changes to the performance criteria will be published annually in the **Federal Register** and a list of approved VTSs will be published in the **Federal Register** upon addition or deletion of a VTS from the list. In the event that a VTS is deleted from the list, vessel owners that purchased a VTS unit that is part of that VTS prior to publication of the revised list will be considered to be in compliance with the requirement to have an approved unit unless otherwise notified by the Regional Director.

(2) *Minimum VTS performance criteria.* The basic required features of the VTS are as follows:

(i) The VTS shall be tamper proof, *i.e.*, shall not permit the input of false positions; furthermore, if a system uses satellites to determine position, satellite selection should be automatic to provide an optimal fix and should not be capable of being manually overridden by any person on board a fishing vessel or by the vessel owner;

(ii) The VTS shall be fully automatic and operational at all times regardless of weather and environmental conditions;

(iii) The VTS shall be capable of tracking vessels in all U.S. waters in the Atlantic Ocean from the shoreline of each coastal state to a line 215 nautical miles offshore and shall provide position accuracy to within 400 meters (1,300 feet);

(iv) The VTS shall be capable of transmitting and storing information including vessel identification, date, time, and latitude/longitude;

(v) The VTS shall provide accurate hourly position transmissions every day of the year. In addition, the VTS shall allow polling of individual vessels or any set of vessels at any time and receive position reports in real time. For the purposes of this specification, "real time" shall constitute data that reflect a delay of 15 minutes or less between the

displayed information and the vessel's actual position;

(vi) The VTS shall be capable of providing network message communications between the vessel and shore. The VTS shall allow NMFS to initiate communications or data transfer at any time;

(vii) The VTS vendor shall be capable of transmitting position data to a NMFS-designated computer system via a modem at a minimum speed of 9600 baud. Transmission shall be in ASCII text in a file format acceptable to NMFS;

(viii) The VTS shall be capable of providing vessel locations relative to international boundaries and fishery management areas;

(ix) The VTS vendor shall be capable of archiving vessel position histories for a minimum of one year and providing transmission to NMFS of specified portions of archived data in response to NMFS requests and in a variety of media (tape, floppy, etc.).

(3) *Operating requirements.* All required VTS units must transmit a signal indicating the vessel's accurate position at least every hour, 24 hours a day, throughout the year.

(4) *Presumption.* Failure of a VTS unit to transmit an hourly signal of a vessel's position shall be presumed to be a DAS, or fraction thereof, for as long as the unit fails to transmit a signal. A preponderance of evidence that the failure to transmit was due to an unavoidable malfunction or disruption of the transmission that occurred while the vessel was declared out of the scallop fishery or was not at sea will be sufficient to rebut the presumption.

(5) *Replacement.* Should a VTS unit require replacement, a vessel owner must submit documentation to the Regional Director, within 3 days of installation and prior to the vessel's next trip, verifying that the new VTS unit is an operational approved system as described under paragraph (a)(1) of this section.

(6) *Access.* As a condition to obtaining a limited access scallop permit, all vessel owners must allow the NOAA/NMFS, the U.S. Coast Guard, and their authorized officers or designees access to the vessels' DAS and location data obtained from its VTS at the time of or after its transmission to the vendor or receiver, as the case may be.

(7) *Tampering.* Tampering with a VTS, a VTS unit, or a VTS signal, is prohibited. Tampering includes any activity that is likely to affect the unit's:

(i) Ability to operate properly;

(ii) Signal; or

(iii) Accuracy of computing the vessel's position fix.

(b) *Occasional limited access vessels.* Vessels qualifying for a DAS allocation under the Occasional category as described under § 650.24(a)(3), may participate in either the DAS notification program using the VTS procedures described in § 650.26(a) or the call-in procedures described in § 650.26(b).

**§ 650.26 DAS notification program.**

(a) *VTS notification.* Owners of scallop vessels with Full-time or Part-time limited access scallop permits, owners of vessels with Occasional limited access scallop permits that have elected to fish under the VTS monitoring system specified in § 650.25(a), and owners of vessels fishing under the small dredge program specified in § 650.21(e), shall be subject to the following presumption and requirements:

(1) Full-time scallop vessels at sea are presumed to be fishing under the DAS allocation program unless they declare out of the sea scallop fishery for a specific time period by notifying the Regional Director through the VTS.

(2) Owners of Part-time scallop vessels may not fish in the DAS allocation program unless they declare into the scallop fishery for a specific time period by notifying the Regional Director through the VTS.

(3) If the VTS is not available or not functional, and if authorized by the Regional Director, a vessel owner must notify as required in paragraphs (a)(1) and (a)(2) of this section and report using the call-in notification system described under paragraph (b) of this section.

(b) *Call-in notification.* Owners of vessels qualifying for a DAS allocation under the Occasional category as described under § 650.24(a)(3) or fishing in the Part-time category under the Appeal Program described in § 650.24(f), who have not elected to fish under the VTS monitoring system described in § 650.25, and vessels fishing pending an appeal as specified in § 650.4(a)(9)(vi)(D), shall be subject to the following requirements:

(1) The vessel owner or authorized representative shall notify the Regional Director prior to leaving port that the vessel will be participating in the DAS program by calling (508-281-9335) and providing the following information: Owner and caller name and phone number; the vessel's name and permit number; the type of trip to be taken, and that the vessel is beginning a trip.

(2) A scallop DAS begins once the call has been received and confirmation given by the Regional Director.

(3) Upon returning to port, the vessel owner or owner's representative shall notify the Regional Director that the trip has ended by calling 508-281-9335 and providing the following information: owner and caller name and phone number; the vessel's name and permit number; and that the trip has ended.

(4) A DAS ends when the call has been received and confirmation given by the Regional Director.

(5) Any vessel that possesses or lands per trip more than 400 pounds of scallops shall be deemed in the DAS program for purposes of counting DAS whether or not the vessel's owner or authorized representative provided adequate notification as required by this part.

#### **§ 650.27 DAS exemption program.**

Any vessel holding a limited access scallop permit under § 650.4(a) may request an exemption from the DAS Program, as follows, while scallop fishing exclusively landward of the outer boundary of a state's waters. Any such exemption granted will exempt the vessel from the DAS requirements specified under § 650.24(c).

(a) *VTS notification.* Vessel owners requesting a DAS exemption via a VTS shall:

(1) Notify NMFS, via their VTS, prior to the vessel's first trip under the DAS exemption program, that the vessel will be fishing exclusively in state waters for scallops; and,

(2) Notify NMFS, via their VTS, prior to the vessel's first planned trip in the EEZ, that the vessel is to resume fishing under the vessel's DAS allocation.

(b) *Other methods of notification.* Vessel owners opting to request entry into the DAS exemption program via fax or phone shall:

(1) Notify NMFS by calling 508-281-9335 or faxing 508-281-9135 the following information at least 7 days prior to the date on which the exemption is requested: owner and caller name and address; vessel name and permit number; and beginning and ending dates of the exemption period;

(2) Remain in the exemption program a minimum of 7 days; and,

(3) If an exemption holder has been in the program a minimum of 7 days and wishes to withdraw earlier than the designated end of the exemption period, the exemption holder must notify the Regional Director of early withdrawal from the program. Notification of withdrawal is made by calling 508-281-9335 or by faxing 508-281-9135. When providing notice, the exemption holder will specify that the request is for withdrawal from the program and provide the vessel name and permit

number, and the name and phone number of the caller. The exemption holder may not leave port to fish for scallops in the EEZ until 48 hours after notification of early withdrawal is received by the Regional Director.

(c) A vessel participating in the DAS exemption program may not fish in the EEZ during the participation period.

(d) Participation in the DAS exemption program expires when the owner's or vessel's name changes.

(e) Vessels participating in the DAS exemption program continue to be subject to all the other requirements of this part.

#### **§ 650.28 At-sea observer coverage.**

(a) The Regional Director may require observers for any vessel holding a Federal sea scallop permit.

(b) Owners of vessels selected for observer coverage must notify the appropriate Regional or Center Director, as specified by the Regional Director, before commencing any fishing trip that may result in the harvest of any Atlantic sea scallops. Notification procedures will be specified in selection letters to vessel owners.

(c) An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew;

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties;

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position;

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish; and

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

#### **§ 650.29 Experimental fishing exemption.**

(a) 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.

### **Subpart C—Framework Adjustments to Management Measures**

#### **§ 650.40 Framework specifications.**

(a) Annually, upon request from the Council, but at a minimum in the years 1996 and 1999, the Regional Director will provide the Council with information on the status of the sea scallop resource.

(b) Within 60 days of receipt of that information, the Council's Plan Development Team (PDT) shall assess the condition of the Atlantic sea scallop resource to determine the adequacy of the total allowable DAS reduction schedule, described in § 650.24(c), to achieve the target fishing mortality rate. In addition, the PDT shall make a determination whether other resource conservation issues exist that require a management response in order to meet the goals and objectives outlined in the FMP. The PDT shall report its findings and recommendations to the Council. In its report to the Council, the PDT shall provide the appropriate rationale and economic and biological analysis for its recommendation utilizing the most current catch, effort, and other relevant data from the fishery.

(c) After receiving the PDT findings and recommendations, the Council shall determine whether adjustments to, or additional, management measures are necessary to meet the goals and objectives of the FMP. After considering the PDT's findings and recommendations, or at any other time, if the Council determines that adjustments to, or additional, management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior

to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must come from one or more of the following categories:

- (1) DAS changes;
- (2) Shell height;
- (3) Offloading window re-instatement;
- (4) Effort monitoring;
- (5) Data reporting;
- (6) Trip limits;
- (7) Gear restrictions;
- (8) Permitting restrictions;
- (9) Crew limits;
- (10) Small mesh line;
- (11) on board observers;
- (12) Any other management measures currently included in the FMP.

(d) After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Director. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(3) Whether there is an immediate need to protect the resource; and,

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(e) If the Council's recommendation includes adjustments or additions to management measures, and if after reviewing the Council's recommendation and supporting information:

(1) The Regional Director concurs with the Council's recommended management measures and determines that the recommended management measures may be published as a final rule based on the factors specified in paragraph (d) of this section, the action will be published in the Federal Register as a final rule; or,

(2) The Regional Director concurs with the Council's recommendation and

determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the Federal Register. After additional public comment, if the Regional Director concurs with the Council recommendation, the action will be published as a final rule in the Federal Register; or

(3) The Regional Director does not concur, the Council will be notified, in writing, of the reasons for the non-concurrence.

(f) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson Act.

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BILLING CODE 3510-22-P

## 50 CFR Part 650

[I.D. 010394A]

### Atlantic Sea Scallop Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary adjustment of the meat count/shell height standards.

**SUMMARY:** NMFS issues this notice to implement a temporary adjustment of the meat count and shell height standards for the Atlantic sea scallop fishery. Its purpose is to take into account the fact that at the end of the spawning season, the scallop resource is dominated by small scallops. This action increases the average meat count standard to 33 meats per pound (MPP) (33 meats per 0.45 kg) and the shell height standard to  $2\frac{1}{16}$  inches (94 mm).

**EFFECTIVE DATES:** February 1, 1994, through February 28, 1994.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Jones, Resource Policy Analyst, Fishery Management Operations, NMFS, Northeast Regional Office, 508-281-9273.

**SUPPLEMENTARY INFORMATION:** Regulations at 50 CFR part 650 implementing the Fishery Management Plan for Atlantic sea scallops (FMP) authorize the Director, Northeast Region, NMFS (Regional Director), to adjust temporarily the meat count/shell height standards (standards) upon finding that specific criteria are met. These criteria, which appear at § 650.22(c), include the finding that: (1) The objective of the FMP would be achieved more readily, or would be

better served through an adjustment of the 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) 50 percent of the harvestable biomass is at scallop sizes smaller than those consistent with the prevailing standards, and a temporary relaxation of the standards would not jeopardize future recruitment to the fishery. Adjustments of the standards may remain in effect for up to twelve months.

After consideration of the criteria, the Regional Director made a proposal to adjust the standards. In accordance with the regulations, a public hearing was held during the December 9, 1993, New England Fishery Management Council (Council) meeting and comments on this recommendation were solicited. Attendance at the public hearing was low; only one State Director and one member of the industry commented. The comments were in support of the recommended adjustment. No written comments were received on the recommendation.

After consideration of the full record, including: (1) Comments from the public, (2) comments from the Council, (3) new resource and assessment information, and (4) available information on the fishery and the industry, the Regional Director has decided to adjust the standards to 33 MPP (0.45 kg) with a corresponding shell height standard of  $3\frac{1}{16}$  inches (94 mm) for the period February 1, 1994, through February 28, 1994.

This adjustment to the standards coincides with the end of the 10 percent spawning season adjustment approved under Amendment 2 to the FMP (53 FR 23634). This action was also taken in 1990, 1991, 1992, and 1993, at the end of the spawning season adjustment period. Survey information shows that abundance and recruitment values for the sea scallop resource are down and that the resource is dominated by small scallops. This makes attaining an average MPP standard difficult because of the scarcity of large scallops available for mixing. Vessel costs increase because additional time and fuel must be spent in search of large scallops, discard mortality increases on small scallops, and landings decrease. These factors conflict with the objectives of the FMP and, therefore, criterion 1 outlined above.

This action meets criterion 2 because it is not expected to reduce catch over