

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat.

3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

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

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

January 1, 1986. However, its effectiveness was delayed until December 29, 1986, by a series of emergency regulations which continued the management measures originally established in the FMP. A full discussion regarding the use of the emergency authority granted under section 305(e) of the the Magnuson Fishery Conservation and Management Act (Magnuson Act) can be found in the preamble of the proposed rule to implement this Secretarial Amendment (50 FR 40468, November 7, 1986).

At the request of the Council, the Secretary of Commerce (Secretary) prepared this Secretarial Amendment to supersede Amendment 1 and to include a provision for experimental fishing. In response to industry concerns, the Council has begun to explore alternative management measures, such as gear modifications and closed areas, to replace the maximum average meat count and shell height standards of the FMP. The Secretarial Amendment, which this rule implements, is intended to ensure that the Council has adequate time to develop and analyze alternative management measures that are appropriate and acceptable in meeting the objectives of the FMP. The experimental fishing provision of the Secretarial Amendment is intended to facilitate the Council's development of alternative measures.

This Secretarial Amendment establishes the meat count standard for shucked Atlantic sea scallops at 30 meats per pound and the shell height equivalent for scallops landed in the shell at 3 1/2 inches.

Response to Public Comment

One written comment, from the Council, was received during the public comment period for this rule.

Comment: At its December meeting, the Council voted unanimously to eliminate the bipartite sampling criteria in the regulations which determine violation and establish the averaged meat count of all samples taken as the sole basis for determining a meat count violation. The Council requested that this change be made through this final rule. Currently the regulations at § 650.21(a) state that a violation results "if the number of meats in each of any three one-pound samples exceeds the standard, or if the averaged meat count for the entire sample group exceeds the standard."

Response: NOAA has adopted the Council's suggestion to establish a single sampling criterion for determining a meat count violation based upon the averaged meat count for the entire

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Flacourtiaceae— Flacourtia family. <i>Banara vanderbilii</i> .	Palo de Ramon.....	U.S.A. (PR)	E	254	NA	NA
Piperaceae—Pepper family: <i>Peperomia</i> <i>wheelerii</i> .	Wheeler's peperomia.....	U.S.A. (PR)	E	254	NA	NA

Dated: December 31, 1986.

P. Daniel Smith,
Acting Assistant Secretary for Fish and
Wildlife and Parks.

[FR Doc. 87-784 Filed 1-13-87; 8:45 am]

BILLING CODE 4310-55-M

ADDRESS: Copies of the Secretarial Amendment are available from Richard H. Schaefer, Acting Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Carol J. Kilbride, Resource Policy Analyst, 671-281-3600 extension 331.

SUPPLEMENTARY INFORMATION:

Background

The FMP was prepared by the New England Fishery Management Council (Council) in consultation with the Mid-Atlantic and South Atlantic Fishery Management Councils. The final rule implementing the FMP (47 FR 35990, August 18, 1982) established a maximum average meat count standard which may be specified between a range of 40 to 25 meats per pound (at increments of 5), with a corresponding minimum shell height requirement for sea scallops landed in the shell. Enforcement of this standard was limited up to and including the point of first transaction in the United States.

The Council prepared Amendment 1 to the FMP which was approved by the Administrator of NOAA on October 17, 1985. Amendment 1 established a minimum meat weight standard (the four-ounce standard) to replace a maximum average meat count standard and extended enforcement beyond the point of first transaction. Its purpose was to reduce the taking of small sea scallops.

The final rule implementing Amendment 1 (50 FR 46069, November 6, 1985) was to become effective on

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 51222-6240]

Atlantic Sea Scallop Fishery

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

ACTION: Final rule.

SUMMARY: NOAA issues this final rule implementing a Secretarial Amendment to (1) supersede Amendment 1 to the Fishery Management Plan for Atlantic Sea Scallops (FMP), (2) provide authority to the Director, Northeast Region, NMFS (Regional Director) to grant exemptions from the regulations for the conduct of experimental fishing operations beneficial to the sea scallop resource or fishery and (3) make a change in the sampling criteria used to measure compliance with the meat count standard. This action is intended to continue the management measures of the original FMP and facilitate the development of an alternative management program for the fishery.

EFFECTIVE DATE: December 30, 1986.

sample group. NOAA believes that this change does not alter the intent of the FMP or Secretarial Amendment, which is for the meat count measure to represent a maximum average value on a trip basis. The change relieves a perceived restriction, that operationally, will have no effect on the implementation and administration of the FMP.

Changes to the Proposed Rule

The final rule differs from the proposed rule in order to adopt the Council's request, as discussed above, by eliminating the language in § 650.21(a) which states that a sample group fails to comply with the standard "if the number of meats in each of any three one-pound samples exceeds the standard."

Additionally, the final rule has been changed to clarify that the exemption provision, in § 650.23, applies to management-oriented research, and not scientific research as defined in the Magnuson Act. In the final rule, the term "experimental fishing" has replaced the word "research" which was used in the proposed rule. NOAA has determined that this change does not alter the intent of the Council, NMFS, or the Secretarial Amendment.

For the reasons stated above, this final rule (1) supersedes the changes of Amendment 1 affecting §§ 650.1, 650.2, 650.7, 650.20, 650.21, and 650.22 and (2) adds a new § 650.23 providing authority to grant exemptions for experimental fishing purposes.

Classification

The Administrator of NOAA determined that the Secretarial Amendment is necessary for the conservation and management of the Atlantic Sea Scallop Fishery and that it is consistent with the Magnuson Act and other applicable law.

This action is categorically excluded, by NOAA Directive 02-10, from the requirement to prepare an environmental assessment.

The Administrator of NOAA determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The current regulatory measures of the FMP restored by this action and their impacts are not changed. This action continues the management measures under which the fishery had been operating.

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

action is simply a restoration of the regulatory measures originally in effect. As a result, a regulatory flexibility analysis was not prepared.

The Assistant Administrator for Fisheries, NOAA, determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program. The Assistant Administrator also finds, for continuity within the management program and to avoid any disruption within the industry, that it is impractical and contrary to public interest to delay for 30 days the effective date of the final rule as required under section 553(d) of the Administrative Procedure Act.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements

Dated: January 9, 1987

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

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

PART 650—[AMENDED]

1. The authority citation for 50 CFR Part 650 continues to read as follows:

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

2. The table of contents is amended by revising the titles of §§ 650.20 and 650.22, and adding a new § 650.23 title, to read as follows:

Sec.

650.20 Meat-count and shell-height standards.

650.22 Review of resource status; temporary adjustment of standards

650.23 Experimental fishing exemption.

3. In § 650.1, a sentence is added at the end of the paragraph, to read as follows:

§ 650.1 Purpose and scope.

*** These regulations govern fishing for Atlantic sea scallops within that portion of the Atlantic ocean over which the United States exercises fishery management authority.

4. In § 650.2, the definitions for *Bag*, *Four-ounce standard*, and *Landed form* are removed; the definition of *Non-conforming Atlantic sea scallops* is revised, to read as follows:

§ 650.2 Definitions.

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

5. In § 650.7, paragraph (a) is revised to read as follows:

§ 650.7 Prohibitions.

(a) To possess, at or prior to the first transaction in the United States, any non-conforming Atlantic sea scallops. All Atlantic sea scallops will be subject to inspection and enforcement for non-conformity, in accordance with the compliance and sampling procedures specified in § 650.21, up to and including the first transaction in the United States.

6. Section 650.20 is revised, to read as follows:

§ 650.20 Meat-count and shell-height standards.

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

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

7. Section 650.21 is revised, to read as follows:

§ 650.21 Compliance and sampling procedures.

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

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

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

8. Section 650.22 is revised, to read as follows:

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

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

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

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

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

Council meeting at which the recommendation is discussed.

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

(5) Adjustments of the meat count and shell height standards may remain in effect for up to twelve months. No later than twelve months after the implementation of the most recent adjustment to the meat count and shell height standards, the Regional Director must review such adjustments. The Regional Director may renew the adjustment upon making a finding consistent with § 650.22(c).

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

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

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

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

(4) Inconsistencies exist in the management measures applied to sea scallop stocks in areas harvested by both domestic and foreign fishermen, and those inconsistencies provide foreign fishermen with an advantage over domestic fishermen which can be demonstrated to adversely affect the domestic fishery; or analysis of the size distribution of sea scallops shows that more than 50 percent of the harvestable sea scallop biomass is at sizes smaller than those consistent with the prevailing standards and that a temporary

relaxation of the standards would not jeopardize future recruitment to the fishery.

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

9. A new § 650.23 is added, to read as follows:

§ 650.23 Experimental fishing exemption.

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

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

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

(2) Create significant enforcement problems.

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

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