

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 071130780-8013-02]

RIN 0648-XJ51

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Nantucket Lightship Scallop Access Area to Scallop Vessels

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the closure of the Nantucket Lightship Scallop Access Area (NLCA) to scallop vessels until June 15, 2010. This closure is based on a determination by the Northeast Regional Administrator (RA) that scallop vessels will have caught the yellowtail flounder (yellowtail) total allowable catch (TAC) for the NLCA on August 3, 2008. Effective 0001 hours, August 4, 2008, vessels may not fish for scallops in the NLCA. Vessels on a NLCA scallop trip at the time of this announcement must leave the NLCA prior to 0001 hour, August 4, 2008. This action is being taken to prevent the scallop fleet from exceeding the yellowtail TAC allocated to the NLCA for the 2008 scallop fishing year in accordance with the regulations implementing the Atlantic Sea Scallop Fishery Management Plan (FMP), Northeast (NE) Multispecies FMP and the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: The closure of the NLCA to all scallop vessels is effective 0001 hr local time, August 4, 2008, until June 15, 2010.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, (978) 281-9326, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Commercial scallop vessels fishing in access areas are allocated 9.8 percent of the annual yellowtail TACs established in the (NE) Multispecies FMP. Given current fishing effort by scallop vessels in the NLCA, the RA has made a determination that the NLCA yellowtail TAC of 67,409 lb (30.58 mt) is projected to be caught on August 3, 2008. Pursuant to 50 CFR 648.60(a)(5)(ii)(C) and 648.85(c)(3)(ii), this **Federal Register** notice notifies scallop vessel owners that, effective 0001 hours on August 4, 2008, federally permitted scallop vessels are prohibited from declaring or initiating a trip into the NLCA until June 15, 2010.

If a vessel with a limited access scallop permit has an unused trip(s) into the NLCA, it will be allocated 7.7 additional open areas days-at-sea (DAS) for each unused trip. If a vessel has been allocated a broken trip compensation trip that cannot be made, it will be allocated prorated open area DAS based on the remaining allocation and the above listed access area DAS conversion rate. For example, if a full-time vessel had an unused 9,000-lb NLCA compensation trip (half of the full possession limit) at the time of a NLCA yellowtail TAC closure, the vessel would be allocated 3.85 DAS (half of the 7.7 DAS that would be allocated for a full NLCA trip). A separate letter will be sent to notify vessel owners of their allocations for unused trips in the NLCA.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Due to the need to take immediate action to close the NLCA once the yellowtail TAC has been taken, pursuant to 5 U.S.C. 553(b)(3) proposed rulemaking is waived because it would be impracticable and contrary to the public interest to allow a period for public comment. The NLCA opened for the 2008 fishing year on June 15, 2008. Data indicating the scallop fleet has taken, or is projected to take, all of the NLCA yellowtail TAC have only recently become available. To allow scallop vessels to continue to take trips in the NLCA during the period necessary to publish and receive comments on a proposed rule would result in vessels taking more yellowtail than allocated to the scallop fleet. Excessive yellowtail harvest from the NLCA would result in excessive fishing effort on the Southern New England/Mid-Atlantic yellowtail stock, where tight effort controls are critical for the rebuilding program. Should excessive fishing effort occur, future management measures may need to be more restrictive. Based on the above, under 5 U.S.C. 553(d)(3), proposed rule making is waived because it would be impracticable and contrary to the public interest to allow a period for public comment. Furthermore, for the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for this action.

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

Dated: July 30, 2008.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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