

published on July 1, 1994 (59 FR 34271), we will rely on the best and most comprehensive technical information available; gather and impartially evaluate information that disputes official positions; document evaluation of information; use, retain, and reference primary and original sources of information; and conduct management-level review of documents to verify and assure the quality of the science used to make the critical habitat designations. We will review all comments and information resulting from this ANPR prior to making any proposed designations and will include such documents in our public record. The public may review information submitted by contacting NMFS (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**) or via the internet at <http://www.fakr.noaa.gov/>.

Dated: April 7, 2009.

**James W. Balsiger,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. E9-8519 Filed 4-13-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 090224231-9594-01]

RIN 0648-AX54

#### Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; State Waters Exemption

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to allow an exemption from the minimum twine-top mesh size for vessels issued Federal scallop permits and fishing exclusively in State of Maine (ME) waters. In addition, the state waters exemption would provide an exemption from scallop days-at-sea (DAS) for limited access DAS scallop vessels, provided the vessel owner declares that the vessel will fish exclusively in ME state waters. The scallop fishery regulations specify that a state may be eligible for a state waters exemption if it has a scallop fishery and a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the

Atlantic Sea Scallop Fishery Management Plan (FMP). The regulations further state that the Regional Administrator, Northeast Region, NMFS (RA), shall determine which states meet those criteria and shall authorize the exemption for such states by publishing a rule in the **Federal Register**.

**DATES:** Comments must be received by 5 p.m., local time, on May 14, 2009.

**ADDRESSES:** Documents supporting this action, including ME's request for the exemption, Amendment 11 to the FMP, and Framework 19 to the FMP, are available upon request from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

You may submit comments, identified by 0648-AX54, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- **Fax:** (978) 281-9135, Attn: Peter Christopher.

- **Mail:** Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Maine State Waters Exemption."

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Peter Christopher, Policy Analyst, 978-281-9288; fax 978-281-9135.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Amendment 11 to the FMP (Amendment 11), implemented on June 1, 2008 (73 FR 20090, April 14, 2008), includes a comprehensive new management program for the general category scallop fleet. Amendment 11 created a Northern Gulf of Maine Scallop Management Area (NGOM Area) that includes a total allowable catch (TAC), gear restrictions, and a possession limit for the NGOM Area that are more restrictive than previous

regulations for the area. Under Amendment 11, NMFS determined that the exemptions for ME, New Hampshire (NH), and Massachusetts (MA), should be suspended, pending submission of additional information from those states regarding their state waters fisheries and the potential effects of allowing state waters exemptions under the Amendment 11 scallop regulations. In response, ME requested a state waters exemption and provided background information on the State's current scallop fishery management measures, the potential state waters scallop fishery, and information regarding potential new measures that the State was developing at the time.

The scallop fishery regulations at 50 CFR 648.54(c) specify that a state may be eligible for the state waters exemption if it has a scallop fishery and a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the FMP. The regulations further state that the RA shall determine which states meet those criteria and shall publish a rule in the **Federal Register**, in accordance with the Administrative Procedure Act, to provide the exemption for such states.

Based on the information submitted, NMFS has preliminarily determined that ME state waters qualify for the state waters exemption program under the FMP. The majority of ME's scallop fishery restrictions are either equally or more restrictive than Federal scallop fishing regulations. The exception is that ME allows vessels to use a minimum mesh size of 5.5-in (14-cm) twine tops on scallop dredges, while the Federal regulations require a 10-in (25.4-cm) minimum twine-top mesh size. The state waters exemption would therefore allow an exemption from the 10-in (25.4-cm) minimum twine-top mesh size. In addition, the state waters exemption would provide an exemption from scallop DAS for limited access DAS scallop vessels, but would not exempt such vessels from any other Federal restrictions other than the minimum twine-top mesh size as noted above. To fish under the exemption, owners of scallop vessels would be required to declare their intent to fish exclusively in ME state waters, subject to more restrictive state measures if applicable. Vessels with Federal Incidental Catch scallop permits would still be confined to the 40-lb (18-kg) limit under Federal regulations. The target total allowable catch was set at 50,000 lb (22,680 kg) for these vessels based partly on the very low possession limit. Allowing these vessels to harvest

more than 40 lb per trip could therefore compromise the TAC.

As required by the scallop fishery regulations, exemptions can only be granted if the state's scallop fishery would not jeopardize the biomass and fishing mortality/effort limit objectives of the FMP. The exemption from the Federal twine-top restriction and DAS would have no impact on the effectiveness of Federal management measures for the scallop fishery overall on the NGOM Area because the remainder of ME's scallop fishery regulations are more restrictive and would limit mortality and effort beyond the Federal management program. The twine top minimum mesh size restrictions are designed to help reduce bycatch in the scallop fishery. In particular, larger twine top mesh size is effective at reducing the bycatch of flatfish, including yellowtail, winter, and summer flounder in various areas. Exempting vessels in this program from the 10-in twine top mesh size is not expected to increase bycatch or be inconsistent with the Scallop FMP or Magnuson-Sevens Act. The use of 5.5 in (14-cm) twine top mesh size in the ME fishery is confined to approximately 2 months. The possession limit of 200 lb (90.7 kg) in ME's waters also limits overall fishing time. In addition, vessels with Federal scallop permits may decide not to replace the 10-in (25.4-cm) twine tops for the limited amount of time they might fish in ME state waters. Yellowtail and summer flounder are not common in most of ME state waters, and winter flounder concentrations are offshore primarily during winter months when ME's scallop fishery is open. Low concentrations of these flounder species would limit exposure of these species to the scallop dredge fishing under the exemption. For these reasons, exempting vessels from the 10-in (25.4-cm) twine top mesh size is consistent with the FMP's overall objectives and National Standard 9 requirement of minimizing bycatch and bycatch mortality to the extent practicable. Compliance with other National Standards would not be affected by the proposed exemption since it is fully consistent with the Scallop FMP which has been determined to be consistent with the Magnuson-Stevens Act, including the National Standards and required provisions.

ME is the only state that has requested an exemption. MA has not requested an exemption, and NH state agency staff worked with staff at the Northeast Regional Office to determine that new possession limit restrictions in NH state

waters alleviated the need for the exemption program in NH waters.

#### Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

Final Regulatory Flexibility Analyses (FRFAs) were completed for both Amendment 11 and Framework 19 (implemented in June 2008) that analyze the economic impacts of current FMP measures on small entities, including Federally permitted scallop vessels that would fish in both state and Federal waters. The proposed action would not generate any additional fishing effort and would not have any additional impacts on Federally permitted vessels than were analyzed in prior Amendment 11 and Framework 19. The exemption would only facilitate fishing in ME state waters, where vessels with Federal scallop permits would fish in ME waters without the exemption. Therefore, the proposed action would not create any additional economic impacts that were not considered in the prior FRFAs.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

#### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 8, 2009.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

#### **PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.54, paragraphs (a), (b), (c), (d), and (g) are revised to read as follows:

##### **§ 648.54 State waters exemption.**

(a) *State eligibility for exemption.* (1)

A state may be eligible for a state waters exemption if it has a scallop fishery and

a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP.

(2) The Regional Administrator shall determine which states have a scallop fishery and which of those states have a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. In such case, the Regional Administrator shall publish a rule in the **Federal Register**, in accordance with the Administrative Procedure Act, to provide the exemption for such states.

(3) A state that has been issued a state waters exemption under paragraph (a)(4) of this section must immediately notify the Regional Administrator of any changes in its scallop conservation program. The Regional Administrator shall review these changes and, if a determination is made that the state's conservation program jeopardizes the biomass and fishing mortality/effort limit objectives of the FMP, or that the state no longer has a scallop fishery, the Regional Administrator shall publish a rule in the **Federal Register**, in accordance with the Administrative Procedure Act, to eliminate the exemption for that state.

(4) The Regional Administrator has determined that the State of Maine has a scallop fishery conservation program for its scallop fishery that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. A vessel fishing in State of Maine waters may fish under the State of Maine state waters exemption, subject to the exemptions specified in paragraphs (b) and (c) of this section provided the vessel is in compliance with paragraphs (d) through (g) of this section.

(b) *Limited access scallop vessel exemption.* Any vessel issued a limited access scallop permit is exempt from the DAS requirements specified in § 648.53(b) while fishing exclusively landward of the outer boundary of the waters of a state that has been issued a state waters exemption under paragraph (a)(4) of this section, provided the vessel complies with paragraphs (d) through (g) of this section.

(c) *Gear and possession limit restrictions.* Any vessel issued a limited access scallop permit, an LAGC NGOM, or an LAGC IFQ scallop permit is exempt from the minimum twine top mesh size for scallop dredge gear specified in § 648.51(b)(4)(iv) while fishing exclusively landward of the outer boundary of the waters of the State of Maine under the state waters exemption specified in paragraph (a)(4)

of this section, provided the vessel is in compliance with paragraphs (d) through (g) of this section.

(d) *Notification requirements.* Vessels fishing under the exemptions specified in paragraph (b) and/or (c) of this section must notify the Regional Administrator in accordance with the provisions of § 648.10(e).

\* \* \* \* \*

(g) *Applicability of other provisions of this part.* A vessel fishing under the exemptions provided by paragraphs (b) and/or (c) of this section remains subject to all other requirements of this part.

[FR Doc. E9-8526 Filed 4-13-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 071102641-9595-03]

RIN 0648-AR06

#### Fisheries of the Exclusive Economic Zone Off Alaska; Revision of Single Geographic Location Requirement in the Bering Sea Subarea

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to increase the number of times per year that a stationary floating processor (SFP) that is qualified under the American Fisheries Act (AFA) may move within State of Alaska waters in the Bering Sea (BS) subarea to process pollock harvested in the BS subarea directed pollock fishery. This action also would require AFA SFPs to process all Gulf of Alaska (GOA) pollock and GOA Pacific cod where they processed these species in 2002. This action is necessary to increase operational flexibility for AFA SFPs that process pollock caught in the BS subarea directed fishery while continuing to limit the competitive advantage of AFA SFPs in the GOA pollock and GOA Pacific cod fisheries. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plans for Groundfish of the GOA and for Groundfish of the Bering Sea and Aleutian Islands Management Area, and other applicable laws.

**DATES:** Comments on the proposed rule must be received no later than the close of business on May 29, 2009.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by “RIN 0648-AR06” by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>.

- Fax: 907-586-7557.

- Mail: P. O. Box 21668, Juneau, AK 99802.

- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, Alaska.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for this action are available from the NMFS Alaska Region website at <http://www.alaskafisheries.noaa.gov> or from the mailing and street addresses listed above.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Becky Carls, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) and the GOA under the Fishery Management Plans (FMPs) for groundfish in the respective areas. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

#### Background and Need for Action

The current single geographic location provisions apply to SFPs, which can be AFA or non-AFA qualified. An SFP, as defined at § 679.2, is a vessel of the United States operating as a processor in State of Alaska (State) waters that remains anchored or otherwise remains stationary in a single geographic location while receiving or processing groundfish harvested in the GOA or BSAI. There are two AFA SFPs that are the two largest SFPs operating in Alaska, and six AFA onshore processors. It is unlikely that there will be more AFA SFPs because the regulatory requirements to qualify as an AFA SFP are unlikely to be met by other entities. The two AFA SFPs are semi-permanently moored in protected anchorages in the Aleutian Islands less than 45 nautical miles (nm) (83 km) apart. The F/V *Arctic Enterprise* is located in Akutan Bay, and the F/V *Northern Victor* is located in Beaver Inlet.

#### History of Single Geographic Location Provisions

In 1992, the final rule implementing Amendment 18 to the BSAI FMP and Amendment 23 to the GOA FMP was published (57 FR 61326, December 24, 1992). Under Amendments 18/23, the Council adopted resource allocations of BSAI and GOA pollock and GOA Pacific cod between inshore and offshore components in response to concerns of one component preempting another in harvesting the total allowable catch in those fisheries. Amendments 18/23 also established the single geographic location provisions for the inshore pollock processing sector to discourage offshore catcher/processors and motherships from entering the inshore sector. Any operational advantage over the shore-based processors due to the offshore processors' mobility would be lost by being limited to one location. The prohibition on processing fish in more than a single geographic location applied on a fishing-year basis and only to vessels processing catch from target pollock and GOA Pacific cod fisheries. A processing vessel could leave the specified inshore fixed geographic location within State waters to process other species of groundfish. If, later, the processor was needed to process catch from target BSAI or GOA pollock or GOA Pacific cod fisheries, the processing vessel would first have to