

(1) Name of the U.S. citizen requesting the authorization,

(2) A description of the activity, the dates of the activity, and the specific location of the activity, and

(3) Plans to monitor the behavior and effects of the activity on marine mammals.

(d) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of pinnipeds.

#### **§ 216.157 Letters of Authorization.**

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 216.158.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

#### **§ 216.158 Renewal of Letters of Authorization.**

(a) A Letter of Authorization issued under §§ 216.106 and 216.157 for the activity identified in § 216.150 will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.156 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under § 216.155(e), and the Letter of Authorization issued under § 216.157, which has been reviewed and accepted by NMFS; and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§ 216.154 and 216.155 and the Letter of Authorization issued under §§ 216.106 and 216.157, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under

§ 216.106 and this section indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register**.

#### **§ 216.159 Modifications of Letters of Authorization.**

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§ 216.106 and 216.157 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.158, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.150(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.157 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action. [FR Doc. E9-12948 Filed 6-2-09; 8:45 am]

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[Docket No.070817467-8554-02]

RIN 0648-XP59

### **Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Elephant Trunk Scallop Access Area to General Category Scallop Vessels**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS announces that the Elephant Trunk Scallop Access Area (ETAA) is closed effective 0001, June 1, 2009, to general category scallop vessels for the remainder of the 2009 fishing year. This action is based on the determination that allowing the ETAA to remain open when the Quarter II LAGC IFQ fishery opens on June 1, 2009, will result in an overrun of trip and catch quotas for that access area. This action is being taken to prevent the allocation of general category trips in the ETAA from being exceeded during the 2009 fishing year, in accordance with the regulations implementing Framework 19 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and the Magnuson-Stevens Fishery Conservation and Management Act.

**DATES:** The closure of the ETAA to all general category scallop vessels is effective 0001, June 1, 2009, through February 28, 2010.

**FOR FURTHER INFORMATION CONTACT:** Don Frei, Fishery Management Specialist, (978) 281-9221, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:** Regulations governing fishing activity in the Sea Scallop Access Areas are found at §§ 648.59 and 648.60. Regulations specifically governing general category scallop vessel operations in the ETAA are specified at § 648.59(e)(4)(ii). These regulations authorize vessels issued a valid general category scallop permit to fish in the ETAA under specific conditions, including a total of 1,964 trips that may be taken by general category vessels during the 2009 fishing year. The regulations at § 648.59(e)(4)(ii) require the ETAA to be closed to general category scallop vessels once the

Northeast Regional Administrator has determined that the allowed number of trips are projected to be taken.

Based on VMS declaration and analysis of fishing effort through May 15, 2009, 1,826 trips were completed by general category scallop vessels fishing in the ETAA, leaving 138 allotted trips when the Quarter II LAGC IFQ fishery opens on June 1, 2009. It is projected that the remaining 138 allocated trips would be taken by June 2, 2009, based on an average number of trips per day to date. This would result in only a 24-hour opening of the ETAA. A 24-hour opening could create a derby fishery situation, which would likely result in an overrun of the trip and catch quota, and could also create unsafe conditions for LAGC IFQ vessels. Therefore, as of 0001, June 1, 2009, the ETAA is closed and will remain closed for the remainder of the 2009 fishing year, in accordance with the regulations at § 648.59(e)(4)(ii) to all general category scallop vessels.

#### Classification

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

This action closes the ETAA to all general category scallop vessels, as of 0001, June 1, 2009, for the remainder of the 2009 fishing year. The regulations at § 648.59(e)(4)(ii) allow such action to ensure that general category scallop vessels do not take more than their allocated number of trips in the ETAA. The ETAA opened for the 2009 fishing year at 0001 hours on March 1, 2009. Data indicating the general category scallop fleet has taken all of the ETAA trips have only recently become available. To allow general category scallop vessels to continue to take trips in the ETAA during the period necessary to publish and receive comments on a proposed rule would result in vessels taking much more than the allowed number of trips in the ETAA. Excessive trips and harvest from

the ETAA would result in excessive fishing effort in the ETAA, where effort controls are critical, thereby undermining conservation objectives of the FMP. Should excessive effort occur in the ETAA, future management measures would need to be more restrictive. Based on the above, under 5 U.S.C. 553(d)(3), proposed rulemaking 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: May 29, 2009

**Kristen C. Koch,**

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