

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 071130780801302]

RIN 0648XQ05

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Closed Area II 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 Closed Area II Scallop Access Area (CA II) 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 CA II by June 29, 2009. Effective 0001 hours, June 29, 2009, vessels may not fish for scallops in the CA II. Vessels on a CA II scallop trip at the time of this announcement must leave the CA II prior to 0001 hour, June 29, 2009. This action is being taken to prevent the scallop fleet from exceeding the yellowtail TAC allocated to the CA II for the 2009 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 CA II to all scallop vessels is effective 0001 hr local time, June 29, 2009, until June 15, 2010.

FOR FURTHER INFORMATION CONTACT:

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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 CA II, the RA has made a determination that the CA II yellowtail TAC of 349,358 lb (148.47 mt) is projected to be caught on June 29, 2009. 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 June 29, 2009, federally permitted scallop vessels are prohibited from declaring or initiating a trip into the CA II until June 15, 2010.

If a vessel with a limited access scallop permit has an unused trip(s) into CA II, it will be allocated 7.9 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 9,000lb CA II compensation trip (half of the full possession limit) at the time of a CA II yellowtail TAC closure, the vessel will be allocated 3.95 DAS (half of the 7.9 DAS that would be allocated for a full CA II trip). A separate letter will be sent to notify vessel owners of their allocations for unused trips in the CA II.

#### 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 CA II 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 CA II opened for the 2009 fishing year on June 15, 2009. Data indicating the scallop fleet has taken, or is projected to take, all of the CA II yellowtail TAC have only recently become available. To allow scallop vessels to continue to take trips in the CA II 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 CA II would result in excessive fishing effort on the Georges Bank 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: June 25, 2009

Alan D. Risenhoover,

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

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