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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 150626556-5886-02]

RIN 0648-BF20

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: Final rule.

SUMMARY: NMFS approves and implements an exemption for Northern Gulf of Maine federally permitted vessels with state-waters permits issued from the State of Maine to continue fishing in the Maine state-waters portion of the Northern Gulf of Maine management area once NMFS has announced that the Federal total allowable catch has been fully harvested in a given year. Maine requested this exemption as part of the Scallop State Water Exemption Program, which specifies that a state may be eligible for a state waters exemption to specific Federal regulations 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. Based on the information that Maine has submitted, NMFS has determined

that Maine qualifies for this exemption and that this exemption will not have an impact on the effectiveness of Federal management measures for the scallop fishery overall or within the Northern Gulf of Maine management area.

DATES: Effective [*insert date 30 days after date of publication in the **Federal Register***].

ADDRESSES: Documents supporting this action, including the State of Maine's request for the exemption and Framework Adjustment 26 to the Atlantic Sea Scallop Fishery Management Plan (FMP) are available upon request from John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. The Framework 26 Environmental Assessment and Initial Regulatory Flexibility Analysis are also accessible via the Internet at <http://www.nefmc.org/scallops/index.html> or <http://www.greateratlantic.fisheries.noaa.gov/regs/2015/March/15scalfw26turtlepr.html>.

Copies of the small entity compliance guide are available from John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930-2298, or available on the Internet at <http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/scallop/>.

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, 978-281-9244.

SUPPLEMENTARY INFORMATION:

Background

The Scallop State Waters Exemption Program specifies that a state with a scallop fishery may be eligible for state waters exemptions if it has a scallop conservation program that does not jeopardize the biomass and fishing mortality and effort limit objectives of the Scallop FMP.

Under the Program, if NMFS determines that a state is eligible, federally permitted scallop vessels fishing in state waters may be exempted from specific Federal scallop regulations. One of these exemptions enables some scallop vessels to continue to fish in state waters within the Northern Gulf of Maine (NGOM) management area once the Federal NGOM total allowable catch (TAC) is reached. Any state interested in applying for this exemption must identify the scallop-permitted vessels that would be subject to the exemption (i.e., limited access, limited access general category (LAGC) individual fishing quota, LAGC incidental, or LAGC NGOM). No vessel is permitted to fish for scallops in the Federal portion of the NGOM once the TAC is harvested. We provided a broader description of the Scallop State Waters Exemption Program in the preamble of the proposed rule (80 FR 46531; August 5, 2015) for this action and are not repeating that information here.

NMFS received a request from Maine to expand its current exemptions to allow federally NGOM-permitted vessels with Maine state-waters permits to fish in the Maine state-waters portion of the NGOM management area once we project the Federal NGOM TAC to be fully harvested. This provision allows those vessels to continue to fish in state waters along with state permitted vessels that do not have Federal permits. Although the 70,000-lb (31,751-kg) NGOM Federal TAC has never been exceeded since the NGOM management area was created in 2008, there is now a higher potential that the TAC will be reached because scallop effort has increased in the NGOM in recent years as the stock has improved, particularly in state waters. Without this exemption, federally permitted vessels are unable to participate in Maine's state water fishery if the Federal NGOM TAC is reached; state-only permitted scallop vessels are able to continue to fish in state waters after the Federal closure.

Based on the information Maine submitted regarding its scallop conservation program, as outlined in the preamble to the proposed rule, and considering comments received during the public comment period, NMFS determines that the state qualifies for the NGOM state waters exemption under the Scallop FMP. Maine's scallop fishery restrictions are as restrictive as Federal scallop fishing regulations and this exemption will not jeopardize the biomass and fishing mortality and effort limit objectives of the FMP. Allowing for this NGOM exemption will have no impact on the effectiveness of Federal management measures for the scallop fishery overall or within the NGOM management area because the NGOM Federal TAC is set based only on the portion of the resource in Federal waters.

This exemption applies only to vessels with Federal NGOM permits. All other federally permitted scallop vessel categories are prohibited from retaining, possessing, and landing scallops from within the NGOM management area, in both Federal and state waters, once the NGOM hard TAC is fully harvested.

Comments and Responses

NMFS received two comment letters in response to the proposed rule, one from from the Maine Department of Marine Resources and the other from a member of the general public. We provide responses below to the issues these commenters raised.

Comment 1: The Maine Department of Marine Resources stated its support of NMFS issuing this exemption and provided information on the current scallop regulations in its waters.

Response: NMFS is satisfied that Maine meets the criteria for this NGOM exemption and thanks Maine for submitting the necessary information to make this determination.

Comment 2: One individual was against issuing Maine this exemption, generally stating that overfishing is substantial. The commenter provided no other rationale to deny the permit.

Response: There is no evidence in the record to support the claim that the scallop stock is not in a stable condition. The most recent stock assessment (July 2013) concluded that scallop resource is not overfished and overfishing is not occurring. As we discuss in the preambles to both the proposed and final rules, allowing for this NGOM exemption will not jeopardize the effectiveness of Federal management measures for the scallop fishery overall or within the NGOM management area because the NGOM Federal TAC is set based only on the portion of the resource in Federal waters.

Classification

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

The Office of Management and Budget (OMB) has determined that this rule is not significant according to Executive Order (E.O.) 12866.

This final rule does not contain policies with federalism or “takings” implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not

repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: September 30, 2015

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is 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, paragraph (a)(4) is revised to read as follows:

§ 648.54 State waters exemption.

(a) * * *

(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 (e) through (g) of this section. In addition, a vessel issued a Federal Northern Gulf of Maine permit fishing in State of Maine waters may fish under the State of Maine state waters exemption specified in paragraph (d) of this section, provided the vessel is in compliance with paragraphs (e) through (g) of this section.

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