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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170301213-7869-02]

RIN 0648-BG70

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 vessels with Federal Limited Access General Category Individual Fishing Quota permits from the State of Maine and the Commonwealth of Massachusetts. This exemption enables the vessels to continue fishing in their respective state waters once NMFS has announced that the Federal Northern Gulf of Maine total allowable catch has been fully harvested in a given year. Additionally, Massachusetts has requested that Federal Limited Access General Category Northern Gulf of Maine permits also be included in its exemption. Both states have requested this exemption as part of the Scallop State Water Exemption Program. This program 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 and

Massachusetts have submitted, NMFS has determined that both states qualify 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 of publication in the Federal Register*].

ADDRESSES: Documents supporting this action, including the State of Maine and Commonwealth of Massachusetts requests for the exemption, the Categorical Exclusion, and Framework Adjustment 28 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.

Copies of the Permit Holder Letter 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: Shannah Jaburek, Fisheries Management Specialist, 978-282-8456.

SUPPLEMENTARY INFORMATION:

Background

The Scallop State Waters Exemption Program, described at §648.54, 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 (IFQ), 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 (82 FR 29470; June 29, 2017) for this action. We are not repeating that information here.

We received a request from Maine to expand its current exemptions to allow the four IFQ-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 TAC to be fully harvested. Massachusetts also sent a request to exempt LAGC IFQ and NGOM-federally permitted vessels that also hold a state permit. Only the northern portion of Massachusetts state waters, approximately Boston and north, fall within the NGOM management area. The fishery in this area has traditionally been split between a handful of state-only vessels and 12 vessels with both Federal and state permits to fish for scallops. Of these LAGC vessels with dual permits, six traditionally fish in both Federal and state waters while the other six only fish in Federal waters. We do not anticipate any other vessels would fish under this exemption because it would not be economically beneficial. This provision allows vessels to continue to fish in state waters along with state permitted vessels that do not have Federal permits.

Scallop effort has increased in the NGOM in recent years as the stock has improved in both state and Federal waters. In 2016, the NGOM management area TAC was fully harvested and was closed for the first time since the management area was created in 2008. In 2017, the area was closed on March 23, just over three weeks into the new fishing year and approximately two months earlier than in 2016. State-only permitted scallop vessels are able to fish in state waters after the Federal closure and this provision would allow those vessels with the requested Federal permit to continue to fish in state waters along with vessels without Federal permits.

Based on the information Maine and Massachusetts submitted regarding their scallop conservation programs, and considering comments received during the public comment period, we determined that both states qualify for the NGOM state waters exemption under the Scallop FMP. Maine's regulations are the same as when they applied for this exemption for NGOM-permitted vessels in 2015. Massachusetts restricts scallop fishing activity in its waters with limited entry by requiring the state Coastal Access Permit, for which there is currently a moratorium and is only transferrable with the approval of the Director of Marine Fisheries. Therefore, increased additional effort in the future is not a significant concern. Vessels fishing for scallops in Massachusetts state waters also have a daily scallop possession limit of 200 lb (90.7 kg). This possession limit is equivalent to the NGOM management area, but more restrictive than the 600-lb (272.2-kg) Federal possession limit for IFQ vessels south of the NGOM area in Federal waters. Both Maine and Massachusetts'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 Federal portion of the resource. In addition, LAGC IFQ vessels cannot land scallops beyond the vessel's yearly allocation or any additional quota that is leased in. Maine and Massachusetts are the only states that have requested a NGOM closure exemption, and only for state permit holders that also hold a Federal LAGC IFQ or NGOM scallop permit. As such, all other federally permitted scallop vessels would be prohibited from retaining, possessing, and landing scallops from within the NGOM management area, in both Federal and state waters, once the NGOM TAC is fully harvested.

Comments and Responses

We received eight comments on the proposed rule during the public comment period. Four of the eight comments were from industry members. Two were from industry-based organizations (the Maine Coast Fishermen's Association (MCFA) and The Cape Cod Commercial Fisherman's Alliance (CCFA)). Two comments from the public had no relevance to the rule and are not addressed further.

Comment 1: One industry member commented that IFQ vessels should be allowed to land scallops beyond their IFQ allocations when fishing in state waters because scallops from within state waters are not considered in setting the NGOM TAC or the overall overfishing limit/annual biological catch.

Response: Extending the exemption to allow LAGC IFQ permits land scallops over their IFQ limits was not requested by Maine or Massachusetts. Even if it were, extending the exemption is beyond the scope of the state waters exemption program because it would alter the underpinnings of the current LAGC IFQ program and would require consideration by the New

England Fishery Management Council, likely as part of an amendment to the FMP. Moreover, allowing harvesting of scallops over the limit of the Federal quota for these vessels would not be consistent with the current Federal management program.

Comment 2: The CCCFA, MCFA, and two members of the industry commented that these exemptions would give the industry members more flexibility and stability, and it will support shoreside operations and businesses.

Response: We agree.

Comment 3: MCFA's comment implied that Limited Access permits were included in the exemption, in addition to LAGC IFQ and NGOM permits.

Response: To clarify MCFS's comment, the exemption in this rule only includes NGOM and LAGC IFQ-permitted vessels. Maine did not request any exemptions for limited access vessels. Limited access vessels fishing in state waters in Maine currently are not subject to days at sea, but have no other exemptions in state waters or in other states.

Comment 4: One member of the industry expressed frustration with the disparity of how we manage the NGOM Management Area between the LAGC and Limited Access (LA) fleets in relation to the NGOM TAC.

Response: The allocations for the NGOM TAC for both the LA and LAGC fleets and how they are currently managed is beyond the scope of the state waters exemption program and this rule. However, for the 2018-2019 scallop fishing year, the New England Fishery Management Council has made the future management of the NGOM a priority.

Changes From the Proposed Rule

There are no changes from the proposed rule.

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 Assistant Administrator for Fisheries has determined that the need to implement these measures in an expedited manner, in order to relieve restrictions on the scallop fleet, constitutes good cause, under authority contained in 5 U.S.C. 553(d)(1) and (3) to waive the 30-day delay in effectiveness so that the State Waters Program exemptions become effective upon publication in the *Federal Register*.

The exemptions approved under this final rule for the State Waters Program will allow Maine and Massachusetts permitted scallop LAGC and NGOM vessels to continue fishing operations that would not be possible without this rule. The NGOM area was closed to fishing by LAGC vessels on March 23, 2017, and without this exemption would remain closed to these vessels until April 1, 2018. As long as this area is closed, the LAGC NGOM permitted vessels can no longer fish in the NGOM, including in state waters. LAGC IFQ vessels with homeports north of the NGOM boundary must now travel further from home in order to harvest scallops.

Longer trips mean more operating expenses and less profits for individual vessels. Delaying the implementation of the exemptions in this rule would delay the positive economic benefits of resumed fishing activity to these vessels. For these reasons, there is good cause to implement this rule immediately.

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.

This final rule is considered an E.O. 13771 deregulatory action. As noted above and in the proposed rule, this rule will allow Maine vessels with an LAGC IFQ permit and Massachusetts vessels with LAGC IFQ and NGOM permits to continue fishing in their respective state's waters after the federal NGOM TAC has been harvested. When the NGOM TAC is harvested and the area closes, the LAGC NGOM permitted vessels can no longer fish and the LAGC IFQ vessels must travel further from home in order to harvest scallops; therefore, the vessel's individual income is affected. Massachusetts estimates that with this exemption, vessels could harvest up to an additional 100,000 lb worth an estimated \$1.23 million dollars per year at a 2015 average price of \$12.26/lb. Maine estimates that with this exemption, the four vessels would save on fuel, food, and maintenance costs associated with steaming to fishing grounds outside of the NGOM management area by fishing closer to individual homeports.

These cost savings would vary by individual vessel, the number of vessels that participate in the exemption, and the given fishing year, but will have an overall positive economic benefit.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: October 19, 2017.

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 and Commonwealth of Massachusetts both have 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 or Limited Access General Category Individual Fishing Quota permit fishing in State of Maine or Commonwealth of Massachusetts waters may fish under their respective 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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