

(1) Subpart A, "General Rules of Practice and Procedure". (§§ 1.1 to 1.117).

(2) Subpart B, "Hearing Proceedings". (§§ 1.201 to 1.364).

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[FR Doc. 2011-28144 Filed 11-15-11; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070817467-8554-02]

RIN 0648-XA789

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Hudson Canyon Access Area to General Category Individual Fishing Quota Scallop Vessels

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the Hudson Canyon Scallop Access Area will close to Limited Access General Category IFQ scallop vessels for the remainder of the 2011 fishing year. As of November 12, 2011, no scallop vessel fishing under Limited Access General Category IFQ regulations may declare its intent to enter or fish for, possess, or land scallops in or from the Hudson Canyon Scallop Access Area. This action will prevent the allocation of LAGC IFQ trips in the Hudson Canyon Scallop Access Area from being exceeded during the 2011 fishing year.

DATES: Effective November 12, 2011, through February 29, 2012.

FOR FURTHER INFORMATION CONTACT: Christopher Biegel, Fishery

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SUPPLEMENTARY INFORMATION:

Regulations governing fishing activity in the Sea Scallop Access Areas are found in §§ 648.59 and 648.60, which authorize vessels issued a valid LAGC IFQ scallop permit to fish in the Hudson Canyon Scallop Access Area under specific conditions, including a total of 593 trips that may be taken by LAGC IFQ vessels during the 2011 fishing year. Section 648.59(a)(3)(ii) requires the Hudson Canyon Scallop Access Area to be closed to LAGC IFQ vessels once the NMFS Northeast Regional Administrator has determined that the allowed number of trips are projected to be taken.

Based on trip declarations by LAGC IFQ scallop vessels fishing in the Hudson Canyon Scallop Access Area, and analysis of fishing effort, a projection concluded that 593 trips will have been taken on November 12, 2011. Therefore, in accordance with § 648.59(a)(3)(ii), the Hudson Canyon Scallop Access Area is closed to all LAGC IFQ scallop vessels as of November 12, 2011. No scallop vessel fishing under LAGC IFQ regulations may declare its intent to enter or fish for, possess, or land scallops in or from the Hudson Canyon Scallop Access Area after November 12, 2011. Any vessel that has declared into the LAGC IFQ Hudson Canyon Access Area scallop fishery, complied with all trip notification and observer requirements, and crossed the VMS demarcation line on the way to the area before 0001, November 12, 2011, may complete the trip. This closure is in effect for the remainder of the 2011 scallop fishing year under current regulations.

Classification

This action is required by § 648 and is exempt from review under Executive Order 12866.

Section 648.59(e)(4)(ii) requires this closure to ensure that LAGC IFQ scallop vessels do not take more than their allocated number of trips in the Hudson

Canyon Scallop Access Area. The Hudson Canyon Scallop Access Area opened for the 2011 fishing year on March 1, 2011. The projections of the date on which the LAGC IFQ fleet will have taken all of their allocated trips in an Access Area become more accurate with more trips into the area and as activity trends begin to appear. As a result, an accurate projection is only available very close to when the fleet has taken all of its trips. This prevents earlier announcement and making the closure announcement available for public comment before final action. In addition, proposing a closure would likely increase activity, triggering an earlier closure than predicted. To allow LAGC IFQ scallop vessels to continue to take trips in the Hudson Canyon Scallop Access Area during the period necessary to publish and receive comments on a proposed rule would likely result in vessels taking much more than the allowed number of trips in the Hudson Canyon Scallop Access Area. Excessive trips and harvest from the Hudson Canyon Scallop Access Area would result in excessive fishing effort in the Hudson Canyon Scallop Access Area, where effort controls are critical, thereby undermining conservation objectives of the FMP and requiring more restrictive future management measures. Based on the above proposed rulemaking is waived under 5 U.S.C. 553(d)(3), 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: November 10, 2011.

Steven Thur,

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

[FR Doc. 2011-29583 Filed 11-10-11; 4:15 pm]

BILLING CODE 3510-22-P