

Federalism

We have analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132 (Federalism) and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. These regulations have no substantial effects on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among local officials. Therefore, consultation with State and local officials is not necessary.

Executive Order 13175

MARAD does not believe that this rulemaking will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Environmental Impact Statement

We have analyzed this rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions in section 4.05 of Maritime Administrative Order (MAO) 600-1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this rulemaking is required.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This rule is the least burdensome alternative that achieves this objective of U.S. policy.

Paperwork Reduction Act

This rule contains information collection requirements covered by the Office of Management and Budget approval number 2133-0529. The changes have no impact on the reporting burden.

List of Subjects in 46 CFR 388

Administrative practice and procedure, Maritime carriers, Passenger vessels, Reporting and recordkeeping requirements.

■ Accordingly, the Maritime Administration amends 46 CFR chapter II, subchapter J, by amending part 388 as follows.

PART 388—ADMINISTRATIVE WAIVERS OF THE COASTWISE TRADE LAWS

■ 1. The authority citation for part 388 continues to read as follows:

Authority: 46 App. U.S.C. 1114(b); Pub. L. 105-383, 112 Stat. 3445 (46 U.S.C. 12106 note); 49 CFR 1.66.

■ 2. Amend § 388.3 by revising paragraph (a)(1) and the introductory text of paragraph (a)(2) to read as follows:

§ 388.3 Application and fee.

(a) * * *

(1) The application form contained on MARAD's Web site at <http://www.marad.dot.gov> may be submitted electronically with credit card or Automated Clearinghouse (ACH) payment of the \$500 application fee.

(2) Alternatively, applicants may send written applications to Small Vessel Waiver Applications, Office of Ports and Domestic Shipping, MAR-830, Room 7201, 400 7th St., SW., Washington, DC 20590. Written applications need not be in any particular format, but must be signed, be accompanied by a check for \$500 made out to the order of "Maritime Administration", and contain the following information:

* * * * *

Dated: October 31, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05-21924 Filed 11-2-05; 8:45 am]

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 051028281-5281-01; I.D. 101705C]

RIN 0648-AT99

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends current regulatory text regarding boundaries for the essential fish habitat (EFH) closures that were established by Framework 16 to the Atlantic Sea Scallop (Scallop) Fishery Management Plan (FMP) and Framework 39 to the Northeast Multispecies (NE Multispecies) FMP (Joint Frameworks 16/39) in order to reflect recent court orders in *Oceana v. Evans*, vacating such text and reinstating boundaries for EFH closures established by Amendment 10 to the Scallop FMP (Amendment 10). This final rule also revises the Scallop Access Area boundaries to be consistent with the redefined EFH closed areas.

DATES: Effective November 3, 2005.

ADDRESSES: Copies of Amendment 13 to the NE Multispecies FMP, Amendment 10, Joint Frameworks 16/39, their Regulatory Impact Reviews (RIR), including the Initial Regulatory Flexibility Analyses (IRFA), and the Environmental Assessment and Environmental Impact Statements are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>.

FOR FURTHER INFORMATION CONTACT:

Peter W. Christopher, Fishery Policy Analyst, (978) 281-9288; fax (978) 281-9135.

SUPPLEMENTARY INFORMATION: On May 1, 2004, NMFS implemented approved measures in Amendment 13 to the NE Multispecies FMP (Amendment 13), which was developed and recommended by the New England Fishery Management Council (NEFMC) (69 FR 22906, April 27, 2004). Among the implemented measures was a description of boundaries of certain areas of the ocean closed to all mobile fishing gear for the protection of NE multispecies EFH (§ 648.81(h)). Subsequent to the implementation of Amendment 13, on July 23, 2004, NMFS implemented approved measures in Amendment 10, which was also developed and recommended by the NEFMC (69 FR 35194, June 23, 2004). Amendment 10 also included a description of boundaries of certain areas of the ocean closed to scallop fishing for the protection of NE multispecies, and EFH for other species, from the effects of scallop fishing gear (§ 648.61). The Amendment 10 EFH

closures were defined by somewhat different boundaries than the EFH closures implemented by Amendment 13. Because the EFH closures under Amendment 10 were designed primarily to protect multispecies EFH, the NEMFC, through Joint Frameworks 16/39, recommended that the Amendment 10 EFH closed area boundaries be identical to the Amendment 13 EFH closed area boundaries. On November 2, 2004, NMFS implemented the recommended Joint Frameworks 16/39 EFH closed area boundaries, thereby replacing the boundaries contained in regulations implementing Amendment 10 (69 FR 63460, November 2, 2004).

Oceana, Inc., challenged Amendment 10 and Joint Frameworks 16/39 in *Oceana v. Evans*, et al., (Civil Action No. 04-810, D.D.C., August 2, 2005, and October 6, 2005), on several grounds, including the validity of changing the Amendment 10 EFH closed area boundaries through a framework procedure, namely Joint Frameworks 16/39. On August 2, 2005, the court ruled that Amendment 10 EFH closed area boundaries could not be changed through a framework procedure. Based on this finding, the Court ordered the vacatur of Joint Frameworks 16/39 regulations, which changed the EFH closed area boundaries and stated that the “practical result of the Court’s holding is that, for the time being, both the habitat closures in Amendment 10 and the habitat closure in Amendment 13 will remain in place.” (*Oceana v. Evans*, (Order #73, August 2, 2005) p. 87). NMFS subsequently asked the Court for clarification on whether this statement meant that Amendment 10 EFH closures are automatically reinstated by the Court’s order. On October 6, 2005, the Court issued another order in response to the request for clarification stating “the Court’s August 2, 2005 Order [#73] is clarified to the extent that it reinstates the habitat area closures established by Amendment 10 so it is not necessary for defendants to repromulgate those closures” (*Oceana v. Evans*, (Order #83, October 6, 2005) p. 1).

This final rule is necessary to ensure that the **Federal Register** and Code of Federal Regulations accurately reflects the Court’s order reinstating Amendment 10 EFH closures and to make the Scallop Access Area boundaries specified in § 648.59 consistent with the redefined EFH closed areas. This rule provides sufficient notice to the scallop industry and the public of the effect of the Court’s order. As a result, it is more likely the scallop industry will come into immediate compliance with the

Amendment 10 EFH closures and NMFS’s ability to enforce violations of this rule effectively will be enhanced.

Classification

The Regional Administrator previously determined that Amendment 10 is necessary for the conservation and management of the Atlantic sea scallop fishery and is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law. This action does not change that determination.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

The requirement for notice and comment rulemaking is waived for good cause pursuant to 5 U.S.C. 553(b)(B) because it would be unnecessary and impracticable. Notice and comment rulemaking for this rule is unnecessary and impracticable because the agency must act immediately in order to bring regulations into compliance with the court order in *Oceana v. Evans*. The agency, therefore, has no discretion as to the substance or timing of this rule. Accordingly, notice and comment rulemaking would serve no purpose and would inappropriately delay amending regulations necessary to reflect the court order. Because the agency must act immediately to bring regulations into compliance with the court order, it has no discretion to delay the rule’s effectiveness. Therefore, there is good cause to waive the requirement to delay effectiveness of the rule pursuant to 5 U.S.C. 553(d)(3).

This final rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: October 28, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons stated 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 § 648.59, paragraphs (b)(3), and (d)(3) are revised to read as follows:

§ 648.59 Sea Scallop Access Areas.

* * * * *

(b) * * *

(3) The Closed Area I Access Area is defined the straight lines connecting the points in the order stated in the following table (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
CAIA1	41°26' N.	68°30' W.
CAIA2	41°09' N.	68°30' W.
CAIA3	41°4.54' N.	69°0.9' W.
CAIA1	41°26' N.	68°30' W.

* * * * *

(d) * * *

(3) The Nantucket Lightship Sea Scallop Access Area is defined by straight lines connecting the points in the order stated in the following table (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
NLSA1	40°50' N.	69°00' W.
NLSA2	40°30' N.	69.00' W.
NLSA3	40°30' N.	69°14.5' W.
NLSA4	40°50' N.	69°29.5' W.
NLSA1	40°50' N.	69°00' W.

* * * * *

■ 3. Section 648.61 is revised to read as follows:

§ 648.61 EFH closed areas.

Notwithstanding any other provision of this part, the following areas identified in paragraphs (a) through (e) of this section are closed to scallop fishing to protect EFH from adverse effects of scallop fishing (copies of charts depicting these areas are available from the Regional Administrator upon request):

(a) *Closed Area I EFH Closure.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Closed Area I EFH Closure. No vessel may possess scallops in the Closed Area I EFH Closure, unless such vessel is only transiting the area as provided in paragraph (e) of this section. The Closed Area I EFH Closure consists of two sections, defined by straight lines connecting the points in the order stated in the following table:

SECTION 1

Point	Latitude	Longitude
CAIE1	41°30' N.	69°23' W.
CAIE2	41°30' N.	68°35' W.
CAIE3	41°08' N.	69°4.2' W.
CAIE4	41°30' N.	69°23' W.

SECTION 2

Point	Latitude	Longitude
CAIE5	41°04.5' N.	69°1.2' W.
CAIE6	41°09' N.	68°30' W.
CAIE7	40°45' N.	68°30' W.
CAIE8	40°45' N.	68°45' W.
CAIE5	41°04.5' N.	69°1.2' W.

(b) *Closed Area II EFH Closure.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Closed Area II EFH Closure. No vessel may possess scallops in the Closed Area II EFH Closure, unless such vessel is only transiting the area as provided in paragraph (e) of this section. The Closed Area II EFH Closure is defined by straight lines connecting the points in the order stated in the following table:

Point	Latitude	Longitude
CAIIE1	42°22' N.	67°20' W. ¹
CAIIE2	41°30' N.	66°34.8' W. ¹
CAIIE3	41°30' N.	67°20' W. ¹
CAIIE1	42°22' N.	67°20' W. ¹

¹ The U.S/Canada Maritime Boundary

(c) *Nantucket Lightship Closed Area EFH Closure.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Nantucket Lightship Closed Area EFH Closure. No vessel may possess scallops in the Nantucket Lightship Closed Area EFH Closure, unless such vessel is only transiting the area as provided in paragraph (e) of this section. The Nantucket Lightship Closed Area EFH Closure is defined by straight lines connecting the points in the order stated in the following table:

Point	Latitude	Longitude
NLSE1	40°50' N.	70°20' W.
NLSE2	40°50' N.	69°29.5' W.
NLSE3	40°30' N.	69°14.5' W.
NLSE4	40°30' N.	69°00' W.
NLSE5	40°20' N.	69°00' W.
NLSE6	40°20' N.	70°20' W.
NLSE1	40°50' N.	70°20' W.

(d) *Western Gulf of Maine EFH Closure.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Western Gulf of Maine EFH Closure. No vessel may possess scallops in the Western Gulf of Maine EFH Closure, unless such vessel is only transiting the area as provided in paragraph (e) of this section. The Western Gulf of Maine EFH Closure is defined by straight lines connecting the points in the order stated in the following table:

Point	Latitude	Longitude
WGOM1	43°15' N.	70°15' W.
WGOM2	43°15' N.	69°55' W.
WGOM3	42°15' N.	69°55' W.
WGOM4	42°15' N.	70°15' W.
WGOM1	43°15' N.	70°15' W.

(e) *Transiting.* A vessel may transit the area(s) specified in paragraphs (a), (c), and (d) of this section, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel may transit the area specified in paragraph (b) of this section, in accordance with § 648.81(b)(2)(iv).

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