

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: June 5, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: June 17, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9-15347 Filed 6-29-09; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 071130780-8013-02]

RIN 0648-XQ05

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: Don Frei, Fishery Management Specialist, (978) 281-9326, fax (978) 281-9135.

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 9,000-lb 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.

[FR Doc. E9-15432 Filed 6-25-09; 4:15 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 090421699-91029-02]

RIN 0648-XO74

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications Modification

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to adjust the harvest specifications for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of January 1, 2009, through December 31, 2009. This final rule increases the tonnage of Pacific sardine allocated for industry conducted research from 1200 metric tons (mt) to 2400 mt and decreases the second and third period directed harvest allocations by 750 mt and 450 mt, respectively.

DATES: Effective July 1 through December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980-4034.

SUPPLEMENTARY INFORMATION: On February 20, 2009, NMFS published a final rule implementing the harvest guideline (HG) and annual specifications for the 2009 Pacific sardine fishing season off the U.S. West Coast (74 FR 7826) under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson-Stevens Act). These specifications and associated management measures were

based on recommendations adopted by the Pacific Fishery Management Council (Council) at their November 2008 public meeting in San Diego, California (73 FR 60680). For the 2009 Pacific sardine fishing season, the Council adopted, and NMFS approved, an acceptable biological catch (ABC) or maximum HG of 66,932 mt. This ABC/HG was determined according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) (50 CFR part 660, subpart I). The Council also recommended, and NMFS approved, that 1,200 mt be initially subtracted from the ABC and reserved for an industry-conducted research project, which is planned but not yet approved. This 1,200 mt set-aside was intended to allow research fishing, which is planned for the second seasonal period (July 1 - September 15, 2009), to continue if that period's allocation is reached and directed fishing is closed. As stated in the final rule implementing the 2009 specifications, the use of the 1,200 mt would require NMFS to issue an Exempted Fishing Permit (EFP) because fishing would occur after the directed fishery is closed.

At the Council's March 2009 public meeting the Council reviewed two industry research/EFP proposals for conducting Pacific sardine biomass surveys and moved the two proposals forward for public comment with the recommendation that industry combine the proposals to create a single EFP application to be reviewed for final adoption at the June 2009 Council meeting. After hearing the research proposals and public comment, the Council then recommended, and NMFS issued a **Federal Register** notice proposing, that the original 1200 mt set-aside be increased to 2400 mt (74 FR 20897). To account for the additional 1,200 mt, the second and third period directed fishery allocations were proposed to be reduced by 750 mt and 450 mt respectively. This is approximately a proportional reduction in the two allocations. That proposed rule is being adopted as a final rule by this notice.

NMFS will publish a notice in the **Federal Register** requesting comments

on the proposed EFP in the near future and a decision on whether to issue an EFP for the use of the research set-aside will be made near the start of the second seasonal period (July 1, 2009). If NMFS determines that an EFP cannot be issued, then the set-aside will be re-allocated to the third period's directed harvest allocation.

NMFS received two comments regarding this action. Both comments stated support for the action and expressed the belief that increasing the industry research set-aside, as this rule does, would result in better science from the proposed survey.

Classification

The Administrator, Southwest Region, NMFS, determined that this final rule is necessary for the conservation and management of the CPS fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

NMFS finds good cause under 5 U.S.C. 553(d)(3) to waive the 30 day delay in effective date for this final rule. This action reduces the available harvest amounts (quotas) for the second and third allocation periods. As explained in this rule, this action could not be taken sooner because although the Council developed their original recommendations for the 2009 Pacific sardine fishing season at their November public meeting, the recommendation to adjust those specifications, as set forth in this rule, was made to NMFS after their March meeting and was the result of new public testimony received at that meeting. Additionally due to the in-season nature of this action NMFS wanted to provide a robust comment period on the proposed action and this comment period ended on June 5, 2009. The beginning of the second allocation period is July 1, 2009, which is less than 30 days from the publication date of this final rule. The quota for the second allocation period will be taken quickly and likely before 30 days after the publication date of this final rule. If the second period quota is taken before this rule is effective then when the rule does become effective it would cause the

second period's allocation quota to be exceeded. This overage in the second period would then be assessed against the third and final period's quota; which is already the smallest quota of the fishing season and a period of intense fishing. Maintaining these seasonal harvest levels are important mechanisms in preventing overfishing and managing the fishery at optimum yield. Therefore NMFS finds it is necessary that this action is made effective before 30 days has elapsed to ensure the sardine fishery in the second period does not exceed the reduced quota available before this rule becomes effective. Providing an earlier effectiveness date facilitates both the effective management of the fishery as well as compliance by the fishermen. To assist the affected public in preparing for this rule, during the proposed rule comment period, NMFS mailed letters to all Pacific sardine permit holders. NMFS will also widely publicize this final rule through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies. Therefore, NMFS finds good cause to waive the 30-day delay in effectiveness in this circumstance.

This final rule is exempt from Office of Management and Budget review under Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council 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.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 24, 2009.

John Oliver,

Deputy Assistant Administrator For Operations, National Marine Fisheries Service.

[FR Doc. E9-15464 Filed 6-29-09; 8:45 am]

BILLING CODE 3510-22-S