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

[Docket No. 161118999-7280-02]

RIN 0648-XF409

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Elephant Trunk Flex 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 Elephant Trunk Flex Scallop Access Area will close to Limited Access General Category Individual Fishing Quota scallop vessels for the remainder of the 2017 fishing year as of the effective date below. After the effective date, no vessel issued a Limited Access General Category Individual Fishing Quota permit may fish for, possess, or land scallops from the Elephant Trunk Flex Scallop Access Area. Regulations require this action once it is projected that 100 percent of trips allocated to the Limited Access General Category Individual Fishing Quota scallop vessels for the Elephant Trunk Flex Scallop Access Area will be taken.

DATES: Effective 0001 hr local time, June 12, 2017, through March 31, 2018.

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fishery Management Specialist, (978) 282-8456.

SUPPLEMENTARY INFORMATION: The reader can find regulations governing fishing activity in the Sea Scallop Access Areas in 50 CFR 648.59 and 648.60. These regulations authorize vessels issued a

valid Limited Access General Category (LAGC) Individual Fishing Quota (IFQ) scallop permit to fish in the Elephant Trunk Flex Scallop Access Area under specific conditions, including a total of 697 trips that may be taken by LAGC IFQ vessels during the 2017 fishing year. Section 648.59(g)(3)(iii) requires the Elephant Trunk Flex Scallop Access Area to be closed to LAGC IFQ permitted vessels for the remainder of the fishing year once the NMFS Greater Atlantic Regional Administrator determines that the allowed number of trips for fishing year 2017 are projected to be taken.

Based on trip declarations by LAGC IFQ scallop vessels fishing in the Elephant Trunk Flex Scallop Access Area, and analysis of fishing effort, NMFS projects that 697 trips will be taken as of June 12, 2017. Therefore, in accordance with § 648.59(g)(3)(iii), NMFS is closing the Elephant Trunk Flex Scallop Access Area to all LAGC IFQ scallop vessels as of June 12, 2017. No vessel issued an LAGC IFQ permit may fish for, possess, or land scallops in or from the Elephant Trunk Flex Scallop Access Area after 0001 local time, June 12, 2017. Any LAGC IFQ vessel that has declared into the Elephant Trunk Flex Scallop Access Area scallop fishery, complied with all trip notification and observer requirements, and crossed the vessel monitoring system demarcation line on the way to the area before 0001, June 12, 2017, may complete its trip. This closure is in effect for the remainder of the 2017 scallop fishing year.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

NMFS finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest and impracticable. The Elephant Trunk Flex Access Area opened for the 2017 fishing year on March 23, 2017. The regulations at § 648.59(g)(3)(iii) require this closure to ensure that LAGC IFQ scallop vessels do

not take more than their allocated number of trips in the Elephant Trunk Flex Scallop Access Area. The projections of the date on which the LAGC IFQ fleet will have taken all of its allocated trips in an Access Area become apparent only as trips into the area occur on a real-time basis and as activity trends begin to appear. As a result, NMFS can only make an accurate projection very close in time to when the fleet has taken all of its trips. In order to propose a closure for purposes of receiving prior public comment, NMFS would need to make a projection based on very little information, which would result in a closure too early or too late. To allow LAGC IFQ scallop vessels to continue to take trips in the Elephant Trunk Flex 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 Elephant Trunk Flex Scallop Access Area. Excessive trips and harvest from the Elephant Trunk Flex Scallop Access Area would result in excessive fishing effort in the area, where effort controls are critical, thereby undermining conservation objectives of the Atlantic Sea Scallop Fishery Management Plan and requiring more restrictive future management measures. Also, the public had prior notice and full opportunity to comment on this closure process when we put these provisions in place. Current regulations prohibit LAGC IFQ scallop vessels from fishing for, possessing, or landing scallops from this area after the effective date of this notification published in the **Federal Register**. NMFS further finds, pursuant to 5 U.S.C 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: June 8, 2017.

Margo B. Schulze-Haugen,

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

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