

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: October 26, 2004.

David I. Maurstad,

*Acting Director, Mitigation Division,
Emergency Preparedness and Response
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 041021287-4287-01; I.D. 101804E]

RIN 0648-AS82

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Control Date

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

ACTION: Advance notice of proposed rulemaking; notice of a control date for the purposes of controlling entry in the general category Atlantic sea scallop fishery.

SUMMARY: NMFS announces that it is considering, and is seeking public comment on, proposed rulemaking to control future access to the open access vessel permit category (general category) Atlantic sea scallop fishery if a management regime is developed and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to limit the number of participants in this sector of the scallop fishery. This sector of the fishery includes vessels with general category permits, as well as vessels with limited access scallop permits that land scallops while not on a scallop day-at-sea (DAS). This announcement is intended, in part, to promote awareness of potential eligibility criteria for future access so as to discourage speculative entry into the fishery while the New England Fishery Management Council (Council) considers whether and how access to the general category sea scallop fishery should be controlled. The date of publication of this notice, November 1, 2004, shall be known as the "control date" and may be used for establishing eligibility criteria for determining levels of future access to the sea scallop fishery subject to Federal authority.

DATES: Written comments must be received on or before 5:00 p.m., local time, December 1, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: sccontroldate@NOAA.gov.

Include in the subject line the following: "Comments on the Atlantic Sea Scallop Control Date Notice."

- Federal e-Rulemaking Portal: <http://www.regulations.gov>.

- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Atlantic Sea Scallop Control Date Notice."

- Fax: (978) 281-9135.

FOR FURTHER INFORMATION CONTACT:

Peter W. Christopher, Fishery Policy Analyst, 978-281-9288; fax 978-281-9135. email: peter.christopher@noaa.gov.

SUPPLEMENTARY INFORMATION: The Atlantic sea scallop is a benthic bivalve shellfish that supports a major commercial fishery on the Atlantic coast. Its distribution in Federal waters ranges from the international boundary with Canada, west to Georges Bank and southern New England, and then south to near the North Carolina/Virginia border. Sporadic concentrations of scallops are also found in the Gulf of Maine and south to areas off North Carolina. As scallop populations have rebuilt from being overfished, inshore areas have become more important to smaller commercial scallop fishing vessels. Notable areas where this inshore fishery takes place include the Gulf of Maine; the Great South Channel near Cape Cod, Massachusetts; the Nantucket Lightship Area; off Long Island, New York; off the central New Jersey coast; and off the Delmarva Peninsula.

Landings of scallop meats were 54.9 million lb (24.9 million kg) in 2003 (an increase of 8.1 percent compared to 2002), with a dockside value of \$224.3 million. Of this amount, 1.9 million lb (861,826 kg) (3.5 percent) of scallop meats were landed by 335 vessels with general category scallop permits. Of this general category fishing activity, 175 vessels with general category permits used scallop dredges to land 1.3 million lb (589,670 kg) of scallops, according to Federal dealer reports. In addition to the 660,000 lb (299,371 kg) that vessels with general category permits were reported to have landed during March 1 to December 31, 2002, limited access vessels landed an additional 96,000 lb (43,545 kg) (12.7 percent of the general

category landings) while fishing under general category rules, according to the analysis in the Atlantic Sea Scallop Fishery Management Plan (FMP) Amendment 10 document.

Further, the number of general category scallop permits issued between 2000 and 2004 is higher than the number of permits issued between 1994 and 1999. During the years 1994 to 1999 the number of permits issued ranged from 1,960 (in 1994) to 2,074 (in 1999). During the years 2000 to 2004 the number of permits issued ranged from 2,247 (in 2000) to 2,536 (in 2003). Since March 1, 2004, general category permits issued during the 2004 fishing year stand at 2,367.

According to the stock projections in the Framework 16 to the Atlantic Sea Scallop FMP and Framework 39 to the Northeast Multispecies FMP analysis, the current sea scallop Maximum Sustainable Yield (MSY) estimate is about 55 million lb (25 million kg) of meats. Annual landings are expected to vary considerably from this amount at times, due to natural variability in scallop recruitment. The Council notes that current capacity in the scallop fishery is sufficient to harvest or exceed MSY, and additional fishing by vessels that fish under general category rules has the potential to cause overfishing. The Council is also concerned that such fishing may change the historic distribution of landings among vessels, reduce the number of fishing days allocated to limited access vessels, and allow vessels that are not traditional participants in the scallop fishery to enter the fishery in response to improving scallop resource conditions coupled with increasing restrictions and declining prices in other fisheries.

The Council's original intent in establishing the general category scallop permit implemented in 1994 through Amendment 4 to the Atlantic Sea Scallop FMP, was to accommodate customary scallop bycatch in other fisheries and allow a flexible program for seasonal or opportunistic fisheries targeting inshore scallops. In response to recent concerns raised to the Council about expansion of directed scallop fishing under general category rules, the Council may consider development of an amendment to the Atlantic Sea Scallop FMP or framework action that could restrict access in the general category scallop fishery to control harvest capacity. Future entry into the general category fishery may be based on levels of participation (e.g., permit categories based on historic harvest levels of a vessel) or other criteria related to overall harvest capacity.

The control date is intended to discourage speculative entry into the general category scallop fishery while controlled access restrictions are considered by the Council. The control date will help to distinguish established participants from speculative entrants to the fishery. Although entering the fishery after the control date will not ensure fishing vessels of future access to the sea scallop resource on the grounds of previous participation, additional and/or other qualifying criteria may also be applied. The Council may choose different and variably weighted methods to qualify participants based on the type and length of participation in the general category scallop fishery.

This notification established November 1, 2004, as the control date for potential use in determining

historical or traditional participation in the general category scallop fishery. Consideration of a control date does not commit the Council or NMFS to develop any particular management system or criteria for participation in this fishery. The Council may choose a different control date, or may choose a management program that does not make use of such a date.

Fishers are not guaranteed future participation in the fishery, regardless of their entry dates or level of participation in this fishery before or after the control date. The Council may choose to give variably weighted consideration to fishers active in the fishery before and after the control date. The Council may also choose to take no further action to control entry or access to the fishery, in which case the control date may be

rescinded. Any action by the Council will be taken pursuant to the requirements for the development of FMP amendments established under the Magnuson-Stevens Act.

This notification also gives the public notice that interested participants should locate and preserve records that substantiate and verify their participation in the general category scallop fishery in Federal waters.

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

Dated: October 27, 2004.

Rebecca Lent,

*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

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