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[Proposed Rules]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D.062804C]

Fisheries of the Northeastern United States; Atlantic Sea **Scallop** Fishery; Petition for Rulemaking; Request for Comments

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

ACTION: Notice of receipt of a petition for rulemaking; request for comments.

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SUMMARY: NMFS announces receipt of a petition for rulemaking from the Fisheries Survival Fund (FSF) and the Garden State Seafood Association (GSSA) (Petitioners), both of which represent participants in the commercial fishing industry. The Petitioners request that NMFS develop and implement an emergency rule pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to require specific modifications to the fishing gear used by Atlantic sea **scallop** vessels fishing south of Long Island and north of Cape Hatteras, from May 1 through October 15. The gear measures requested are the installation of a chain mesh configuration ('`turtle chains'') in dredge gear and the installation of turtle excluder devices (TEDs) in trawl gear. These measures would be required for any Atlantic sea **scallop** vessel, whether fishing under a Limited Access or General Category permit, to protect sea turtles from incidental capture.

DATES: Comments will be accepted through August 6, 2004.

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

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

Follow the instructions for submitting comments.

Email: [SCAPetition@noaa.gov](mailto:SCAPetition@noaa.gov). Include in the subject line of the e-mail comment the following identifier: **Scallop** Gear Petition

Mail: Patricia A. Kurkul, Regional Administrator,  
Northeast Regional Office, National Marine Fisheries Service, One  
Blackburn Drive, Gloucester, MA 01930-2298

Fax: 978-281-9135

Copies of this petition may be obtained by contacting the NMFS  
Northeast Regional Office at the above address.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Policy  
Analyst, 978-281-9288; fax 978-281-9135.

SUPPLEMENTARY INFORMATION: On June 17, 2004, the Petitioners submitted a petition for rulemaking requesting that NMFS promulgate an emergency rule pursuant to section 305(c) of the Magnuson-Stevens Act. The Petitioners assert that sea turtle captures in the **scallop** fishery, ``represent a recently-emerging and relatively modest phenomenon.'' Petitioners state that, after incidental sea turtle captures were documented in 2001, the FSF began working with Dr. William DuPaul of the Virginia Institute of Marine Sciences (VIMS) and Captain Ronald Smolowitz, a gear researcher, to design and test a chain configuration for the front of the **scallop** dredge to reduce or eliminate the catch of sea turtles in **scallop** dredges. The petition describes the 2 years of field trials during which the experimental dredge recorded no takes of sea turtles, while the control dredge recorded nine takes. The petition references an interim report authored by W. DuPaul, D. Rudders, and R. Smolowitz, ``Interim Report: Industry Trials of a Modified Sea **Scallop** Dredge to Minimize the Catch of Sea Turtles,'' VIMS Marine Research Report No. 2004-08 (May 2004).

The Petitioners note that the VIMS Sea Grant Program and FSF have developed instruction cards for vessel captains, which set forth specifications for use of the turtle chains. They also have developed and distributed instruction cards on how to handle the dredge to reduce interactions with sea turtles not actually caught in the dredge and to minimize potential injury or mortality to any turtle brought to the surface.

The Petitioners request that NMFS initiate immediately emergency rulemaking to require use of the modified gears and encourage adherence to the specifications set forth on the instruction cards, on all vessels fishing for sea scallops south of Long Island and north of Cape Hatteras. The Petitioners request that **scallop** dredge vessels be required to use ``turtle chains'' and that **scallop** trawl vessels be required to install an effective TED to fish in the specified area from May 1 through October 15.

The Assistant Administrator for Fisheries, NOAA (AA) has determined that the petition contains enough information to enable NMFS to consider the substance of the petition. NMFS will consider public comments received in determining whether to proceed with the development of the regulations requested by the Petitioners. Upon

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determining whether to initiate the requested rulemaking, the AA will publish in the Federal Register a notice of the agency's final disposition of the Petitioner's request.

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

Dated: June 30, 2004.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 04-15396 Filed 7-6-04; 8:45 am]

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