

of vehicles, mileage traveled, number of companies involved.

(b) Type and scope of the requirement to which the exception or exemption would apply.

(c) Safety performance of that specific industry (e.g., accident frequency, rates and comparative figures).

(d) Inspection information (e.g., number of violations per inspection, driver and vehicle out-of-service information).

(e) Other CMV safety regulations enforced by other State agencies not participating in the MCSAP.

(f) Commodity transported (e.g., livestock, grain).

(g) Similar variations granted and the circumstances under which they were granted.

(h) Justification for the exception or exemption.

(i) Identifiable effects on safety.

(j) State's economic environment and its ability to compete in foreign and domestic markets.

§ 350.345 How does a State apply for additional variances from the tolerance guidelines?

Any State may apply to the FHWA Administrator for a variance from the tolerance guidelines. The variance will be granted only if the State satisfactorily demonstrates that the State law, regulation or enforcement practice:

(a) Achieves substantially the same purpose as the similar Federal regulation,

(b) Does not apply to interstate commerce, and

(c) Is not likely to have an adverse impact on safety.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 061998C]

Fisheries of the Northeastern United States; Decision on Petition for Rulemaking for Sea Scallop Management

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

ACTION: Decision on petition for rulemaking.

SUMMARY: NMFS announces its decision not to undertake the rulemaking

requested in a petition submitted by David Frulla (Petitioner) of Brand, Lowell & Ryan on behalf of the Fisheries Survival Fund. Petitioner petitioned the Secretary of Commerce (Secretary) to determine where scallops are large in size and number and where primary groundfish are more susceptible to scallop gear in the Georges Bank Closed Area the Petitioner believes that this combination of information would optimize scallop fishing while still maximizing recovery of primary groundfish stocks. After the data have been collected, the Petitioner requested that the Secretary take emergency action to open portions of Georges Bank currently closed to scallop fishing. To balance these openings, the Petitioner proposed to close some currently open areas. The decision to deny the petition at this time is based on public comments received on this petition for rulemaking and the progress being made on this management issue by the New England Fishery Management Council (Council).

FOR FURTHER INFORMATION CONTACT: Gary C. Matlock, Ph.D., Director, Office of Sustainable Fisheries, (301) 713-2344, or Mark R. Millikin, (301) 713-2344.

SUPPLEMENTARY INFORMATION: On June 30, 1998 (63 FR 35560), NMFS issued a notice of receipt of petition for rulemaking submitted by the Petitioner on behalf of the Fisheries Survival Fund. The petition included a request that an experimental fishery be conducted to determine where sea scallops that are large in number and size might exist in the Georges Bank Closed Area. Also, when the data have been collected, the petitioner requested that the Secretary take emergency action to open portions of Georges Bank currently closed to scallop fishing. These openings could be balanced by closing some currently open areas. The comment period for this notice of receipt of petition ended on August 31, 1998. NMFS announced that it was reopening the public comment period for this petition for rulemaking in the **Federal Register** from September 9, 1998, through October 9, 1998 (63 FR 48167; September 9, 1998). This reopening of the public comment period was in response to requests during the initial 60-day comment period.

Public Comments Received

Nine commenters support taking emergency action to reopen portions of the Closed Area on Georges Bank to scallop harvest on a rotational basis because it would have immediate economic benefits to the sea scallop industry. Six commenters opposed

taking Secretarial emergency action as described in the petition for rulemaking based on concerns related to one or more of the following: Groundfish bycatch, gear conflict, and habitat issues. Some of the commenters opposing the petition for rulemaking felt that the Council's open forum process is the best vehicle to ensure that all relevant issues are adequately addressed and an opportunity for public comment is provided.

Before this petition for rulemaking was received, NMFS began working with researchers from the Center for Marine Science and Technology of the University of Massachusetts Dartmouth and the Virginia Institute of Marine Science on a collaborative experimental fishery in Closed Area II of Georges Bank to evaluate, on a limited basis, areas of abundance of sea scallops (in number and size), rates of bycatch of groundfish, and habitat considerations. The experimental fishery was conducted from August 28, 1998, through October 5, 1998, and the results are currently being evaluated.

Amendment 7 to the Fishery Management Plan for Atlantic Sea Scallops was approved by NMFS on February 18, 1999, and contains a measure that allows the Council to implement framework action to establish and modify closed areas. Therefore, this measure can be used to implement rotational area openings and closures. The Council held the first of two Council meetings on February 24-25, 1999, scheduled to consider short-term framework options for scallop vessels to gain access to scallops in some groundfish closed areas as soon as possible. These framework actions are Frameworks 11 and 29 to the Atlantic Sea Scallop and Northeast Multispecies Fishery Management Plans (FMP), respectively. If approved, the actions could be effective this summer. These framework actions would be followed by a more comprehensive FMP amendments to fully address a rotational harvest strategy of opening and closing areas of to scallop fishing.

NMFS believes that the public should be given an opportunity to participate in rulemaking to address the complex issues surrounding reopening portions of closed areas, including: economic needs in the sea scallop fishery, safeguarding against further overfishing of sea scallops, bycatch of juvenile groundfish, critical habitat concerns for sea scallops and groundfish, and possible conflicts between mobile and fixed gear. Therefore, the Petitioner's request for emergency action to reopen portions of Georges Bank Closed Areas to sea scallop harvest is denied at this

time in favor of the deliberative process and opportunity for public comment provided by framework rulemaking that can be undertaken by the Council.

Dated: March 3, 1999.

Gary C. Matlock,

*Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.*

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