

**DEPARTMENT OF COMMERCE****International Trade Administration****North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews**

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of decision of panel.

**SUMMARY:** On August 11, 2006, the binational panel issued its decision in the review of the final determination made by the International Trade Administration, respecting Oil Country Tubular Goods from Mexico Final Antidumping Duty Administrative Review and Determination not to Revoke, Secretariat File No. USA-MEX-2001-1904-05. The binational panel remanded the determination to the International Trade Administration. Copies of the panel decision are available from the U.S. Section of the NAFTA Secretariat.

**FOR FURTHER INFORMATION CONTACT:** Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of the final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules.

**Panel Decision:** The Panel concluded that the Department acted in an arbitrary and capricious fashion when it failed to adequately justify its determination that Hylsa did not ship the subject matter goods in commercial quantities during the periods of review

in question. We therefore are remanding the matter to the Department for further consideration, in light of the issues raised by the Panel. This is necessary because of our decision that the results of the ninth administrative review cannot be taken into account by the Department in its decision in the fourth review, leaving the commercial quantities determination the sole basis for its refusal to revoke the antidumping order against Hylsa.

For the foregoing reasons the Panel orders that this matter be remanded to the Department of Commerce to reconsider its determination that Hylsa did not ship in commercial quantities consistent with the findings of the Panel.

The Department shall report the results of its remand decision within 45 days of the date of the opinion or not later than September 25, 2006.

Dated: August 14, 2006.

**Caratina L. Alston,**

*United States Secretary, NAFTA Secretariat.*

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[I.D. 081106A ]

**Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)**

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

**ACTION:** Notification of a proposal for an EFP; request for comments.

**SUMMARY:** The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject Exempted Fishing Permit (EFP) proposal contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic Sea Scallop Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow vessels to conduct fishing operations that are

otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from Atlantic sea scallop open area days-at-sea (DAS), in the event that there is an insufficient number of trips in the scallop access area made available to compensate research authorized under the Sea Scallop Research Set-aside Program (RSA Program).

**DATES:** Comments on this document must be received on or before September 1, 2006.

**ADDRESSES:** Written comments should be submitted by any of the following methods:

- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on sea scallop RSA EFP proposal;"
- E-mail: [SC-RSA-006@noaa.gov](mailto:SC-RSA-006@noaa.gov), include "Comments on sea scallop RSA EFP proposal" in the subject line of the e-mail;
- Fax: (978) 281-9135.

**FOR FURTHER INFORMATION CONTACT:** Ryan Silva, Fishery Management Specialist, phone: 978-281-9326, fax: 978-281-9135.

**SUPPLEMENTARY INFORMATION:**

Regulations currently allocate 0.2 percent of the Southern New England and Georges Bank YT TACs to the Nantucket Lightship Scallop Access Area (NLCA) and Closed Area II Scallop Access Area (CAII), respectively, for research and/or compensation trips conducted under the RSA program. RSA YT bycatch TACs are 644 lb (292 kg) for the NLCA, and 9,127 lb (4,140 kg) for CAII. Seven RSA projects have been recommended by the Regional Administrator for funding through the 2006 RSA Program. Six of these projects will be allocated scallops set-aside from the NLCA and/or CAII, pending approval of the projects through the NOAA Grants Review Process. If one or both of the Access Areas were closed as a result of the attainment of the RSA YT bycatch TAC, a project may become substantially under-funded, and be unable to accomplish the objectives it was intended to achieve.

For the commercial scallop fishery, the YT bycatch TACs are monitored using scallop data provided by vessel operators, and scallop and YT bycatch data provided by at-sea observers. NMFS determines a YT bycatch rate from these data in order to determine the status of the bycatch TAC. The NLCA was closed on July 20, 2006, for the remainder of the 2006 scallop fishing year (FY) to commercial scallop

vessels due to the attainment of the YT bycatch TAC. Since there will be no additional observer bycatch data for the NLCA due to this closure, the final bycatch rate will be applied to NLCA RSA Program compensation trips. For example, with a YT bycatch rate of 0.65 percent (i.e., for every 100 lb (45.4 kg) of scallops caught, 0.65 lb (0.29 kg) of yellowtail are caught), approximately 43 percent, or 100,000 lb (45,359 kg), of the NLCA set-aside scallops can be harvested before the 644 lb (292 kg) YT bycatch TAC is caught. About 57 percent, or 130,000 lb (58,967 kg), of the scallops that have been preliminarily allocated to RSA projects to fund research will not be available.

As of August 8, 2006, the CAII commercial YT bycatch TAC had not been caught. Although the current CAII YT bycatch rate does not indicate the 9,127-lb (4,140 kg) CAII RSA YT bycatch TAC will be caught, the bycatch rate could increase, and CAII could close to RSA compensation trips before all of the set-aside scallops are harvested. There is an additional 130,201 lb (59,058 kg) of scallops available from CAII that were not allocated to any RSA project.

If a project is unable to harvest its allocated scallop compensation due to a YT bycatch TAC closure, project coordinators would have the option to take unused compensation from either CAII, if available, or open scallop areas. Since scallop catch rates are greater in CAII (approximately 2,600 lb (1,179 kg) per day fished) than open areas (approximately 1,880 lb (853 kg) per day fished), it is likely project coordinators will request scallops from CAII before open areas. However, if the CAII YT bycatch rate increases enough to trigger a closure before sufficient scallop compensation can be harvested, researchers would need to harvest scallops from open areas to offset the costs of research. If scallops need to be harvested from open areas, vessels will need an EFP to exempt them from scallop open area DAS as specified at § 648.53(b)(2). Vessels authorized to take an open area trip will have a scallop possession limit consistent with the amount of compensation authorized in the access area(s).

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on proposed EFPs. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and minimal so as

not to change the scope or impact of the initially approved EFP request.

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

Dated: August 11, 2006.

**James P. Burgess,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 081106B]

#### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

**ACTION:** Notification of a proposal for an EFP to conduct experimental fishing; request for comments.

**SUMMARY:** The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject Exempted Fishing Permit (EFP) application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic Sea Scallop Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow one or more vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the northeastern United States. The EFP would allow for exemptions from certain Atlantic sea scallop possession and landings restrictions.

**DATES:** Comments on this document must be received on or before September 1, 2006.

**ADDRESSES:** Written comments should be submitted by any of the following methods:

- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on

Coonamessett Farm Inc. EFP Proposal (DA6-187);"

- E-mail: [DA6-187@noaa.gov](mailto:DA6-187@noaa.gov), include "Comments on Coonamessett Farm Inc. EFP Proposal" in the subject line of the e-mail;

- Fax: (978) 281-9135.

#### FOR FURTHER INFORMATION CONTACT:

Ryan Silva, Fishery Management Specialist, phone: 978-281-9326, fax: 978-281-9135.

**SUPPLEMENTARY INFORMATION:** This project would attempt to observe, using video surveillance, how sea turtles interact with two scallop dredge designs. The control dredge would be a standard 13-ft (3.9-m) New Bedford-style scallop dredge. The experimental dredge will be a 13-ft (3.9-m) New Bedford-style scallop dredge with modifications to the cutting bar and bale strengthening bars to reduce the likelihood of turtle entrapment in the area between the depressor plate and the cutting bar.

The proposed research activity would occur between August 1, 2006, and July 31, 2007. The exempted vessel(s) would fish in areas open to general category vessels on the continental shelf off the coasts of New Jersey, Maryland, and Virginia. The vessel would be allowed to fish a maximum of 20 days under this EFP, with a total scallop catch not to exceed 8000 lb (3,629 kg) (400 lb/day / (181 kg/day)). The vessel would conduct approximately 150 tows ranging from 15 - 49 minutes each, at speeds around 4 knots. Previous research in this area has shown bycatch to be limited. It is expected that fish bycatch may consist of 5,000 lb (2,268 kg) of little skate, less than 50 lb (22.7 kg) of monkfish, and approximately 300 lb (136 kg) of flatfish. All marketable scallops, and allowed retention of multispecies and monkfish, would be sold. Vessels will not be allowed to exceed the possession limit for any species other than sea scallops. All other incidental catch would be returned to the sea.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs. The applicant may place requests for minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and minimal so as not to change the scope or impact of the initially approved EFP request.

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