

Stevens Act and concludes that such areas must be identified and described as EFH under the relevant FMPs. In addition, the petition states that deep-sea coral and sponge habitats should be identified as HAPCs because they meet the definition of HAPC and satisfy one or more of the criteria set forth in the EFH guidelines for creating HAPCs. Further, the petition argues that the Magnuson-Stevens Act requires NMFS to protect areas identified as EFH and HAPC and that such protection, as articulated in the petition, is “practicable.” Finally, the petition asserts that deep-sea coral and sponge habitats must be protected for its own sake, meaning if the Secretary does not protect such habitats through existing FMPs, the Magnuson-Stevens Act requires the Secretary and the Regional Fishery Management Councils to develop FMPs specifically for the protection of deep-sea corals and sponges.

The petition specifically requests that NMFS immediately initiate rulemaking to protect deep-sea coral and sponge habitats in the U.S. EEZ by taking the following measures:

1. Identify, map, and list all known sponge areas containing high concentrations of deep-sea coral and sponge habitats;

2. Designate all known areas containing high concentrations of deep-sea coral and sponge habitat as both EFH and ‘habitat areas of particular concern’ (HAPC) and close these HAPC to bottom trawling;

3. Identify all areas not fished within the last three years with bottom-tending mobile fishing gear, and close these areas to bottom trawling;

4. Monitor bycatch to identify areas of deep-sea coral and sponge habitat that are currently fished, establish appropriate limits or caps on bycatch of deep-sea coral and sponge habitat, and immediately close areas to bottom trawling where these limits or caps are reached, until such time as the areas can be mapped, identified as EFH and HAPC, and permanently protected;

5. Establish a program to identify new areas containing high concentrations of deep-sea coral and sponge habitat through bycatch monitoring, surveys, and other methods, designate these newly discovered areas as EFH and HAPC, and close them to bottom trawling;

6. Enhance monitoring infrastructure, including observer coverage, vessel monitoring systems, and electronic logbooks for vessel fishing in areas where they might encounter high concentrations of deep-sea coral and sponge habitat (including encountering HAPC);

7. Increase enforcement and penalties to prevent deliberate destruction of deep-sea coral and sponge habitat and illegal fishing in already closed areas; and

8. Fund and initiate research to identify, protect, and restore damaged deep-sea coral and sponge habitat.

The exact and complete assertions of legal responsibilities under Federal law are contained in the text of Oceana’s petition, which is available via the internet at the following NMFS web address: [http://www.nmfs.noaa.gov/habitat/habitatconservation/DSC\\_petition/Oceana](http://www.nmfs.noaa.gov/habitat/habitatconservation/DSC_petition/Oceana). Also, anyone may obtain a copy of this petition by contacting NMFS (see **ADDRESSES**).

The Assistant Administrator for Fisheries, NOAA 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 Oceana. Additionally, NMFS, by separate letter, has requested each Regional Fishery Management Council assist in evaluating this petition. Upon determining whether to initiate the requested rulemaking, the Assistant Administrator for Fisheries, NOAA, will publish in the **Federal Register** a notice of the agency’s final disposition of the Oceana petition request.

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

Dated: August 24, 2004.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 082404B]

### Taking of Marine Mammals Incidental to Commercial Fishing Operations; Tuna Purse Seine Vessels in the Eastern Tropical Pacific Ocean (ETP)

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

**ACTION:** Notification of change of final finding of dolphin-safe tuna.

**SUMMARY:** This Notice announces that on August 9, 2004, the United States District Court for the Northern District of California issued an order which set aside the final finding made on December 31, 2002, by the Assistant Administrator for Fisheries, NMFS, (Assistant Administrator). Under the terms of this Order, the labeling standard for “dolphin-safe” tuna shall be governed by the provisions of the Dolphin Protection Consumer

Information Act. Under that provision, tuna are deemed dolphin safe if “no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphins, and no dolphins were killed or seriously injured during the sets in which the tuna were caught.”

**DATES:** Effective on August 9, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Jeremy Rusin, Office of Protected Resources, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California, 90802-4213; Phone 562-980-3248; Fax 562-980-4027.

**SUPPLEMENTARY INFORMATION:** The Dolphin Protection Consumer Information Act (DPCIA) (16 U.S.C. 1385), as amended by the International Dolphin Conservation Program Act, requires the Secretary of Commerce (Secretary) to make a finding based on the results of scientific research, information obtained under the International Dolphin Conservation Program, and any other relevant information, as to whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a “significant adverse impact” on any depleted dolphin stock in the eastern tropical Pacific Ocean (ETP). On December 31, 2002, the Assistant Administrator, on behalf of the Secretary of Commerce, issued a final finding under section (g)(2) of the DPCIA, and published notification in the **Federal Register** on January 15, 2003 (68 FR 2010).

In the final finding, the Assistant Administrator determined that the chase and intentional deployment on or encirclement of dolphins with purse seine nets is not having a significant adverse impact on depleted dolphin stocks in the ETP. The final finding changed the definition of “dolphin-safe” for tuna products containing tuna harvested in the ETP by purse seine vessels with carrying capacity greater than 400 short tons and sold in the United States. Based upon the final finding, the definition of dolphin-safe for such tuna is governed by the provisions of section (h)(1) of the DPCIA. Under this definition, “dolphin-safe” means that dolphins can be encircled or chased during the trip in which tuna was harvested, but that no dolphins can be killed or seriously injured in the set in which the tuna was harvested.

On December 31, 2002, Earth Island Institute, eight organizations, and one individual person (Plaintiffs), filed a complaint in the United States District Court for the Northern District of

California. This complaint challenged the Assistant Administrator's final finding and sought to enjoin any change in the dolphin-safe labeling standard for tuna harvested with purse seine nets.

On January 21, 2003, the Court, at the request of all parties, issued an order that stayed the implementation of the final finding. Under the terms of the order, the labeling standard for "dolphin-safe" tuna was governed by the provisions of (h)(2) of the DPCIA. Under that provision, tuna are deemed dolphin safe if "no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphins, and no dolphins were killed or seriously injured during the sets in which the tuna were caught." The terms of the order further provided that this labeling standard would remain in effect for 90 days from the date of the order or until the Court issued a ruling on a motion for a preliminary injunction, whichever was earlier.

On April 10, 2003, the Court granted the Plaintiff's motion for preliminary injunction. Under the Court's order, NMFS was prohibited from taking any action under the DPCIA to allow any tuna product to be labeled as "dolphin-safe" that was harvested using purse seine nets intentionally set on dolphins in the ETP. As a result of the terms of the Court's order, the definition of dolphin-safe continued to mean that "no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphins, and no dolphins were killed or seriously injured during the sets in which the tuna were caught" until further order of the Court.

On May 24, 2004, all parties simultaneously motioned the Court for summary judgment. On August 9, 2004, the Court ruled on the motions for summary judgment and found that the final finding made by the Assistant Administrator on December 31, 2002, was "arbitrary, capricious, an abuse of discretion and contrary to law pursuant to the Administrative Procedure Act, 5 U.S.C. 706(c)." Under the terms of this order, the labeling standard for "dolphin-safe" tuna shall be governed by the provisions of (h)(2) of the DPCIA. Under that provision, tuna are deemed dolphin safe if "no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphins, and no dolphins were killed or seriously injured during the sets in which the tuna were caught."

Dated: August 25, 2004.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 082304B]

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) will hold a three-day Council meeting on September 14–16, 2004, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

**DATES:** The meeting will be held on Tuesday, September 14, 2004 beginning at 9 a.m. and on Wednesday and Thursday, September 15 and 16, beginning at 8:30 a.m.

**ADDRESSES:** The meeting will be held at the Holiday Inn Express, 110 Middle Street, Fairhaven, MA 02719; telephone: (508) 997-1281.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

#### SUPPLEMENTARY INFORMATION:

*Tuesday, September 14, 2004*

Following introductions, the Council will hold elections for 2004–05 officers. The Council's Habitat/Marine Protected Area Committee will present its recommendations for essential fish habitat measures to be included in Amendment 2 to the Monkfish Fishery Management Plan (FMP). The recommendations will be followed by a brief public comment period during which any member of the public may bring forward items relevant to Council business but not otherwise listed on the agenda for this meeting. The remainder of the day will be spent on sea scallop issues. During the Scallop Committee Report the Council will receive management advice from the Scallop Plan Development Team based on the most recent scallop assessment and

discuss the possible initiation of a special framework adjustment to address new management issues during the 2005 fishing year. Management issues under consideration relate to overfishing, sea turtle bycatch mitigation measures, actions to cap or reduce general category scallop landings and/or improve reporting, and measures that would change the 2005 open area days-at-sea allocation as the result of management actions taken in Framework Adjustment 16/39.

*Wednesday, September 15, 2004*

During the Wednesday morning session the Council will receive reports from the Council Chairman and Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. The Monkfish Committee will then ask for final approval of measures to be included in Amendment 2 to the Monkfish FMP. This will occur following review and discussion of Monkfish Advisory Panel and Oversight Committee recommendations and public comments submitted to the Council. This joint FMP also requires approval by the Mid-Atlantic Fishery Management Council prior to the submission of final documents.

*Thursday, September 16, 2004*

The Research Steering Committee will ask the Council for approval of criteria/standards for determining whether research projects have undergone a sufficient technical review before information is used for management purposes. Other recommendations to be forwarded to the Council address day-at-sea use, the disposition of catch and vessel compensation when boats are engaged in cooperative research. The Red Crab Committee will offer its recommendations for specifications for the 2005 fishing year and for Framework Adjustment 1 to the FMP, an action that could modify the annual review and specification process. The Groundfish Committee will provide an update on the development of Framework Adjustment 40B to the Northeast Multispecies FMP including a review of proposed management measures and grouping of measures into alternatives. In addition, there will be a briefing of recent reports of juvenile haddock incidental catches in the herring mid-water trawl fishery. The Council's Transboundary Management Guidance Committee will report on its recent