

central processing unit used to perform the search added to the computer operator's salary cost (hourly rate plus 16 percent) equals two hours of the computer operator's salary costs (hourly rate plus 16 percent).

(b) A fee is not to be charged for any time spent searching for a record requested under subpart C of this part if the records are not for commercial use and the requestor is a representative of the news media, an educational institution whose purpose is scholarly research, or a non-commercial scientific institution whose purpose is scientific research.

(c) A fee is not to be charged for duplication of the first 100 pages (standard paper, not larger than 8.5x14 inches) of records provided to any requestor in response to a request under subpart C of this part unless the records are requested for commercial use.

(d) A fee is not to be charged to any requestor under subpart C of this part to determine whether a record is exempt from mandatory disclosure unless the record is requested for commercial use. A review charge may not be charged except with respect to an initial review to determine the applicability of a particular exemption to a particular record or portion of a record. A review charge may not be assessed for review at the administrative appeal level. When records or portions of records withheld in full under an exemption that is subsequently determined not to apply are reviewed again to determine the applicability of other exemptions not previously considered, this is considered an initial review for purposes of assessing a review charge.

(e) Documents will be furnished without charge or at a reduced charge if the official having initial denial authority determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor.

(f) Factors to be considered by DOT officials authorized to determine whether a waiver or reduction of fees will be granted include:

(1) Whether the subject matter of the requested records concerns the operations or activities of the Federal government;

(2) Whether the disclosure is likely to contribute to an understanding of Federal government operations or activities;

(3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual

understanding of the requestor or a narrow segment of interested persons;

(4) Whether the contribution to public understanding of Federal government operations or activities will be significant;

(5) Whether the requestor has a commercial interest that would be furthered by the requested disclosure; and

(6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure that disclosure is primarily in the commercial interest of the requestor.

(g) Documents will be furnished without charge or at a reduced charge if the official having initial denial authority determines that the request concerns records related to the death of an immediate family member who was, at the time of death, a DOT employee or a member of the Coast Guard.

(h) Documents will be furnished without charge or at a reduced charge if the official having initial denial authority determines that the request is by the victim of a crime who seeks the record of the trial or court-martial at which the requestor testified.

#### **§ 7.45 Transcripts.**

Transcripts of hearings or oral arguments are available for inspection. Where transcripts are prepared by a nongovernmental contractor, and the contract permits DOT to handle the reproduction of further copies, § 7.43 applies. Where the contract for transcription services reserves the sales privilege to the reporting service, any duplicate copies must be purchased directly from the reporting service.

#### **§ 7.46 Alternative sources of information.**

In the interest of making documents of general interest publicly available at as low a cost as possible, alternative sources will be arranged whenever possible. In appropriate instances, material that is published and offered for sale may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; U.S. Department of Commerce's National Technical Information Service (NTIS), Springfield, Virginia 22151; or National Audio-Visual Center, National Archives and Records Administration, Capital Heights, MD 20743-3701.

Issued in Washington, DC, on March 26, 1998.

**Rodney E. Slater,**

*Secretary of Transportation.*

[FR Doc. 98-10044 Filed 4-15-98; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR 679

[Docket No. 980402084-8084-01; I.D. 032398B]

RIN 0648-AJ51

### Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery off Alaska; Amendment 3

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 3 to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP), which would delegate to the State of Alaska (State) the authority to manage all aspects of the scallop fishery, except limited access. This proposed rule would repeal all Federal regulations governing the scallop fishery off Alaska, except for the scallop vessel moratorium program. This action is necessary to eliminate duplicate regulations and management programs at the State and Federal levels if Amendment 3 is approved and is intended to further the goals and objectives of the FMP.

**DATES:** Comments on the proposed rule must be received by June 1, 1998.

**ADDRESSES:** Send comments to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the proposed FMP amendment and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for Amendment 3 are available from NMFS at the same address, or by calling the Alaska Region, NMFS, at 907-586-7228. **FOR FURTHER INFORMATION CONTACT:** Kent Lind, 907-586-7228 or kent.lind@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The scallop fishery off Alaska is managed by NMFS and the State under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Federal regulations governing the scallop fishery appear at 50 CFR parts 600 and 679. State regulations governing the scallop fishery appear in the Alaska

Administrative Code (AAC) at 5 AAC Chapter 38—Miscellaneous Shellfish.

The Council has submitted Amendment 3 for Secretarial review, and a Notice of Availability of the amendment was published March 31, 1998 (63 FR 15376) with comments on the FMP amendment invited through June 1, 1998. Comments may address the FMP amendment, the proposed rule, or both, but must be received by June 1, 1998, to be considered in the approval/disapproval decision on the FMP amendment. All comments received by June 1, 1998, whether specifically directed to the FMP amendment or to the proposed rule, will be considered in the approval/disapproval decision on the FMP amendment.

### **Management Background and Need for Action**

#### *Historic Management of the Scallop Fishery*

The scallop resource off Alaska has been commercially exploited for over 30 years. Weathervane scallop stocks off Alaska were first commercially explored by a few vessels in 1967. The fishery grew rapidly over the next 2 years with about 19 vessels harvesting almost 2 million lb (907.2 metric tons (mt)) of shucked meat. Since then, vessel participation and harvests have fluctuated greatly, but have remained below the peak participation and harvests experienced in the late 1960's. Between 1969 and 1991, about 40 percent of the annual scallop harvest came from State waters. Since 1991, Alaska scallop harvests have increasingly occurred in Federal waters. In 1994, only 14 percent of the 1.2 million lb (544.3 mt) landed were harvested in State waters, with the remainder harvested in Federal waters. Prior to 1990, about two-thirds of the scallop harvest was taken off Kodiak Island and about one-third from the Yakutat area, with other areas making minor contributions to overall landings. The increased harvests in the 1990's occurred with new exploitation in the Bering Sea. The fishery has occurred almost exclusively in Federal waters in recent years, but some fishing in State waters occurs off Yakutat, Dutch Harbor, and Adak.

Alaska scallop vessels average 90 to 110 ft (27.4 m–33.5 m) long and harvest scallops using dredges of standard design. Weathervane scallops are processed at sea by manual shucking, with only the meats (adductor muscles) retained. Scallops harvested in Cook Inlet are bagged and iced, whereas scallops harvested from other areas of Alaska are generally block frozen at sea.

Between 1968 and 1995, the State, through the Alaska Department of Fish and Game (ADF&G), managed the scallop fishery in State and Federal waters off Alaska. Under the Magnuson-Stevens Act, the State may regulate any fishing vessel outside State waters if the vessel is registered under the laws of the State. Prior to 1995, all vessels participating in the Alaska scallop fishery were registered under the laws of the State. In the 1980s, the Council concluded that the State's scallop management program provided sufficient conservation and management of the Alaska scallop resource and did not need to be duplicated by Federal regulation.

#### *Initial Federal Involvement in the Fishery*

By 1992, fishery participants and management agencies developed growing concerns about overcapitalization and overexploitation in the scallop fishery. The Council was presented with information indicating that the stocks of weathervane scallops were fully exploited and any increase in effort could be detrimental to the stocks. Information indicated that dramatic changes in age composition had occurred after the fishing-up period (1980–90), with commensurate declines in harvest. In the early 1990s, many fishermen abandoned historical fishing areas and searched for new areas to maintain catch levels. Increased numbers of small scallops were reported. These events raised concerns because scallops are highly susceptible to overfishing and boom/bust cycles worldwide.

The need to limit access was the primary motivation for the Council to begin consideration of Federal management of the scallop fishery in 1992. The Council believed that Federal action was necessary because existing State statutes precluded a State vessel moratorium and, at that time, the State did not have authority under the Magnuson-Stevens Act to limit access in Federal waters. The Council began analysis of a variety of options for Federal management of the scallop fishery in Federal waters off Alaska, and a vessel moratorium was proposed as an essential element of a Federal management regime to stabilize the size and capitalization of the scallop fleet while the Council considered permanent limited entry alternatives for the fishery. In September 1993, the Council tentatively identified its preferred alternative of a Federal FMP for the scallop fishery—a Federal vessel moratorium and shared management authority with the State. A draft FMP

and analysis were released to the public in November 1993.

In April 1994, the Council and its advisory bodies reviewed the draft FMP, received public testimony, and approved the draft FMP for the scallop fishery, which would establish a vessel moratorium and defer most other routine management measures to the State. Under the draft FMP, non-limited access measures were deferred to the State based on the premise that all vessels fishing for scallops in the Federal waters off Alaska would also be registered with the State. The Council recognized the potential problem of unregistered vessels fishing in Federal waters, but noted that all vessels fishing for scallops in Federal waters were registered in Alaska and that no information was available to indicate that vessels would not continue to register with the State.

#### *Unregulated Fishing and the Closure of Federal Waters*

During the time NMFS was developing regulations to implement the Council's proposed FMP, a vessel that had canceled its State registration began fishing for scallops in Federal waters in the Prince William Sound Registration Area. These waters had been previously closed by the ADF&G to fishing by State-registered vessels because the guideline harvest level of 50,000 lb (22.7 mt) of shucked meats had already been taken. Because the vessel was outside State jurisdiction, the ADF&G was unable to stop this uncontrolled fishing activity. The U.S. Coast Guard boarded the vessel in question and was informed that 54,000 lb (24.5 mt) of shucked scallop meat were on board. This amount, combined with the 50,000 lb (22.7 mt) of shucked meats that had already been taken by State-registered vessels meant that the State's guideline harvest level for the Prince William Sound Registration Area was exceeded by over 100 percent. On February 17, 1995, the Council held an emergency teleconference to address concerns about uncontrolled fishing for scallops in Federal waters by vessels fishing outside the jurisdiction of State regulations and requested that NMFS implement an emergency rule to close Federal waters to fishing for scallops to prevent overfishing of the scallop stocks. NMFS approved the Council's request and closed Federal waters off Alaska to fishing for scallops by emergency rule on February 23, 1995 (60 FR 11054, March 1, 1995).

After the unregulated fishing event that warranted the emergency interim rule, the Council and NMFS determined that the Council's draft FMP was no longer an appropriate option for the

management of the scallop fishery in Federal waters. As a result, the draft FMP was not submitted for review by the Secretary of Commerce. To respond to the need for Federal management of the scallop fishery once the emergency rule expired, the Council prepared a second FMP for the scallop fishery, which was subsequently approved by NMFS on July 26, 1995. The only management measure authorized and implemented under the FMP was an interim closure of Federal waters off Alaska to fishing for scallops for 1 year (60 FR 42070, August 15, 1995). The purpose of the interim closure was to prevent uncontrolled fishing for scallops in Federal waters while a Federal scallop management program was developed. The Council recommended this approach because it determined that the suite of alternative management measures necessary to support a controlled fishery for scallops in Federal waters could not be prepared, reviewed, and implemented before the emergency rule expired.

#### *Amendment 1: State-Federal Management Regime*

During 1995, the Council prepared Amendment 1 to the FMP to replace the interim closure with a joint State-Federal management regime. Amendment 1 was approved by NMFS on July 10, 1996. Federal waters were re-opened to fishing for scallops on August 1, 1996. Amendment 1 established a joint State-Federal management regime under which NMFS implemented Federal scallop regulations that duplicate most State scallop regulations, including definitions of scallop registration areas and districts, scallop fishing seasons, closed waters, gear restrictions, efficiency limits, crab bycatch limits, scallop catch limits, inseason adjustments, and observer coverage requirements. This joint State-Federal management regime was designed as a temporary measure to prevent unregulated fishing in Federal waters until changes in the Magnuson-Stevens Act would enable the Council to delegate management of the fishery to the State.

#### *Amendment 2: Vessel Moratorium*

On March 5, 1997, NMFS approved Amendment 2 to the FMP, which established a moratorium on the entry of new vessels into the scallop fishery in Federal waters off Alaska. A final rule implementing the vessel moratorium was published on April 11, 1997 (62 FR 17749). The moratorium runs from July 1, 1997, through June 30, 2000, or until repealed or replaced by a permanent limited access program. Eighteen vessels

qualify for moratorium permits under the Federal vessel moratorium.

#### *Problems with the Current Management Regime*

While the joint State-Federal management regime established under Amendment 1 has enabled NMFS to reopen the EEZ to fishing for scallops, it has proven to be cumbersome in practice. Every management action, including inseason openings and closures, must be coordinated so that State and Federal actions are simultaneously effective. NMFS must draft and publish in the **Federal Register** inseason actions that duplicate every State inseason scallop action. State scallop managers are now constrained in their ability to implement rapidly management decisions because they must coordinate each action with NMFS and provide sufficient lead-time for publication of the action in the **Federal Register**.

The only purpose of maintaining duplicate regulations at the State and Federal level is to prevent unregulated fishing by vessels not registered under the laws of the State. The State-Federal management regime established under Amendment 1 is no longer necessary to prevent unregulated fishing for scallops in Federal waters because the Sustainable Fisheries Act of 1996, which amended the Magnuson-Stevens Act, now provides authority for the Council to delegate to the State management responsibility for the scallop fishery in Federal waters off Alaska.

#### **Regulatory Changes Proposed Under Amendment 3**

In December 1997, the Council adopted Amendment 3 to the FMP by a 10 to 1 vote. Amendment 3 would delegate to the State the authority to manage all aspects of the scallop fishery in Federal waters, except limited access, including the authority to regulate vessels not registered under the laws of the State. Section 306(a)(3)(B) of the Magnuson-Stevens Act, as amended, requires that such a delegation of authority be made through an FMP amendment and be approved by a three-quarters majority vote of the Council.

The proposed rule to implement Amendment 3 would remove subpart F of 50 CFR part 679. Subpart F contains all the Federal regulations specific to the scallop fishery off Alaska, with the exception of the scallop vessel moratorium program, which is set out under permit requirements at 50 CFR 679.4(g). The Federal scallop vessel moratorium program established under Amendment 2 to the FMP would not be affected by the proposed rule. These

changes would simplify scallop management in the Federal waters off Alaska by eliminating the unnecessary duplication of regulations at the State and Federal levels.

The proposed rule would also make minor changes to 50 CFR 679.1(h) to accommodate the delegation of management authority to the State and would add a definition of Scallop Registration Area H (Cook Inlet) to the definitions at 50 CFR 679.2 because this definition is necessary for the scallop vessel moratorium program.

#### **Statutory Requirements for Delegation of Authority to a State**

Section 306(a)(3) of the Magnuson-Stevens Act provides:

(3) A State may regulate a fishing vessel outside the boundaries of the State in the following circumstances:

(A) The fishing vessel is registered under the law of that State, and (i) there is no fishery management plan or other applicable Federal fishing regulations for the fishery in which the vessel is operating; or (ii) the State's laws and regulations are consistent with the fishery management plan and applicable Federal fishing regulations for the fishery in which the vessel is operating.

(B) The fishery management plan for the fishery in which the fishing vessel is operating delegates management of the fishery to a State and the State's laws and regulations are consistent with such fishery management plan. If at any time the Secretary [of Commerce] determines that a State law or regulation applicable to a fishing vessel under this circumstance is not consistent with the fishery management plan, the Secretary shall promptly notify the State and the appropriate Council of such determination and provide an opportunity for the State to correct any inconsistencies identified in the notification. If, after notice and opportunity for corrective action, the State does not correct the inconsistencies identified by the Secretary, the authority granted to the State under this subparagraph shall not apply until the Secretary and the appropriate Council find that the State has corrected the inconsistencies. For a fishery for which there was a fishery management plan in place on August 1, 1996[,] that did not delegate management of the fishery to a State as of that date, the authority provided by this subparagraph applies only if the Council approves the delegation of management of the fishery to the State by a three-quarters majority vote of the voting members of the Council.

(C) The fishing vessel is not registered under the law of the State of Alaska and is operating in a fishery in the exclusive economic zone off Alaska for which there was no fishery management plan in place on August 1, 1996, and the Secretary and the North Pacific Council find that there is a legitimate interest of the State of Alaska in the conservation and management of such fishery. The authority provided under this subparagraph shall terminate when a fishery

management plan under this Act is approved and implemented for such fishery.

Paragraph (3)(B) applies to the scallop fishery off Alaska because the FMP was approved by the Secretary on July 26, 1995, with the closure of Federal waters to fishing for scallops as the sole management measure.

#### Classification

At this time, NMFS has not determined that Amendment 3 is consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

An RIR was prepared for this proposed rule that describes the management background, the purpose and need for action, the management action alternatives, and the social impacts of the alternatives. The RIR also estimates the total number of small entities affected by this action and analyzes the economic impact on those small entities. As a result of this analysis, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed rule would not have a significant economic impact on a substantial number of small entities. A substantial number of small entities would be affected by implementation of this rule, namely all 18 scallop vessels eligible to fish in Federal waters under the Federal vessel moratorium. However, the proposed rule would not have a significant economic impact on these affected small entities. Compared to the status quo, the proposed action only eliminates duplicative Federal regulations. The fishery would continue to be governed under existing State scallop regulations. All

vessels currently participating in the fishery are registered with the State and subject to these State regulations at present.

Consequently, none of the participants in the fishery would face a meaningful regulatory change compared to the status quo. For this reason, the proposed action would not change annual gross revenues by more than 5 percent, total costs of production by more than 5 percent, compliance costs for small entities by at least 10 percent compared with compliance costs as a percent of sales for large entities, and would not force any small entities out of business. In addition, participation in the fishery would continue to be governed by the existing Federal moratorium program. No new vessels would be allowed to enter the fishery and no existing vessels would be eliminated. As a result, a regulatory flexibility analysis was not prepared.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Administrator, Alaska Region, NMFS determined that fishing activities conducted under this rule would not affect endangered and threatened species listed or critical habitat designated pursuant to the Endangered Species Act in any manner not considered in prior consultations on the scallop fisheries off Alaska.

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 9, 1998.

**David L. Evans,**

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

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

#### PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.1, paragraph (h) is revised to read as follows:

#### § 679.1 Purpose and scope.

\* \* \* \* \*

(h) *Fishery Management Plan for the Scallop Fishery off Alaska.* (1) Regulations in this part govern commercial fishing for scallops in the Federal waters off Alaska by vessels of the United States (see subpart A of this part).

(2) State of Alaska laws and regulations that are consistent with the FMP and with the regulations in this part apply to vessels of the United States that are fishing for scallops in the Federal waters off Alaska.

\* \* \* \* \*

3. In § 679.2, a definition "Scallop Registration Area H Cook Inlet" is added, in alphabetical order, to read as follows:

#### § 679.2 Definitions.

\* \* \* \* \*

*Scallop Registration Area H (Cook Inlet)* means all Federal waters of the GOA west of the longitude of Cape Fairfield (148°50' W. long.) and north of the latitude of Cape Douglas (58°52' N. lat.).

\* \* \* \* \*

4. In § 679.3, paragraph (g) is added to read as follows:

#### § 679.3 Relation to other laws.

\* \* \* \* \*

(g) *Scallops.* Additional regulations governing conservation and management of scallops off Alaska are contained in Alaska Statutes A.S. 16 and Alaska Administrative Code at 5 AAC Chapter 38.

#### §§ 679.60–679.65 (subpart F) [Removed and Reserved]

5. Sections 679.60–679.65, subpart F, are removed and reserved.

[FR Doc. 98–10138 Filed 4–15–98; 8:45 am]

BILLING CODE 3510–22–F