

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director



ESTIMATED TIME 6 Hours

DATE: May 30, 1995

SUBJECT: Scallop Management

ACTION REQUIRED

- (a) Review status of FMP that continues closure of EEZ.
- (b) Consider final action on Amendment 1 to the FMP.

BACKGROUND

Status of FMP

In April, the Council took steps to prevent unregulated and uncontrolled scallop harvests by adopting a fishery management plan (FMP), which closed the EEZ to scallop fishing for up to one year. The FMP and its implementing regulations were submitted to the Secretary on April 20. The proposed rule (Agenda Item D-1(a)) was published in the *Federal Register* on May 10. The public comment period ends June 19. Implementation is scheduled before the emergency rule expires on August 28, 1995.

Amendment 1

Without a change to the Magnuson Act, management in federal waters cannot simply be deferred to the State, without risking a recurrence of the "Mr. Big" incident of this past February. The FMP submitted in April closes the EEZ. Amendment 1 will provide federal regulations to allow a scallop fishery in 1996. The analysis for the amendment was sent public review on May 26, 1995. Two alternatives are considered:

Alternative 1: Status Quo -- Continue closure of the EEZ for up to one year to all scallop fishing. Scallops could not be harvested in the EEZ until August 28, 1996, and would be considered a prohibited species in the EEZ. Because there would be no fishing allowed for scallops, no in-season management and monitoring of the fishery would be necessary.

Alternative 2: Amend the FMP to allow for a federally controlled fishery to occur in the EEZ. This alternative would require Federal regulations to complement management by the State. In-season management and monitoring of the fishery could be similar to the way groundfish are managed. Management measures would include permit requirements, limited access, regulatory and reporting areas, districts and sections, scallop catch limits, inseason adjustments, reporting requirements, observer requirements, fishing seasons, closed waters, gear restrictions, efficiency limits, and prohibited species

catch limits. A number of options for some of these management measures are analyzed, including a vessel moratorium as a limited access measure. Many of these options are those previously adopted by the Council, or currently regulated by the State of Alaska.

An executive summary is attached as Agenda Item D-1(b). Federal management measures for the scallop fishery are necessary to provide for a controlled fishery and to prevent over exploitation of the stocks after the 1-year closure expires (August 28, 1996). If final action were to be taken at this meeting, a fishery may occur in early 1996.

Magnuson Act Changes

Language is in the House bill to extend state jurisdiction into federal waters under certain circumstances. It reads as follows:

SEC. 12. STATE JURISDICTION.

(b) STATE AUTHORITY.--Section 306(b) (16 U.S.C. 1856(b)) is amended by adding at the end the following:

(3) "For any fishery occurring off the coasts of Alaska for which there is no Federal fishery management plan approved and implemented pursuant to this Act, or pursuant to delegation to a State in a fishery management plan, a State may enforce its laws or regulations pertaining to the taking of fish in the exclusive economic zone off that State or the landing of fish caught in the exclusive economic zone providing there is a legitimate State interest in the conservation and management of that fishery, until a Federal fishery management plan is implemented. Fisheries currently managed pursuant to a Federal fishery management plan shall not be removed from Federal management and placed under State authority without the unanimous consent (except for the Regional Director of the National Marine Fisheries Service) of the Council which developed the fishery management plan."

Draft for Public Review

**ENVIRONMENTAL ASSESSMENT/
REGULATORY IMPACT REVIEW/
INITIAL REGULATORY FLEXIBILITY ANALYSIS
of**

Amendment 1

**to the
FISHERY MANAGEMENT PLAN
for the
SCALLOP FISHERY
off Alaska**

NOTE: The Council is scheduled to take final action on this amendment at it's June 1995 meeting. However, reviewers should note that there are a number of policy decisions regarding State and Federal management that need to be resolved before management measures considered by this amendment could be implemented. Also note that several management measures proposed under the alternative to the status quo contain more than one option. The suite of management measures and options identified under Alternative 2 in this document are subject to change when the Council takes final action.

**Prepared by staff of the
National Marine Fisheries Service
North Pacific Fishery Management Council
Alaska Department of Fish & Game**

May 26, 1995

EXECUTIVE SUMMARY

Background. The scallop fishery in the Exclusive Economic Zone (EEZ) (3 to 200 nautical miles offshore) and in Alaskan state waters has been managed by the State of Alaska (State) since a fishery began in 1968. These regulations established guideline harvest levels (GHLs) for different scallop registration areas, fishing seasons, open and closed fishing areas, observer coverage requirements, gear restrictions, and measures to limit the processing efficiency of undersized scallops that include a ban on the use of mechanical shucking machines and a limitation on crew size. A federal Fishery Management Plan (FMP) was adopted by the Council in April 1995, which essentially closed the EEZ to scallop fishing for a period of up to one year. The FMP, if approved by the Secretary, is scheduled to be implemented by August 28, 1995.

Purpose and Need for the Action. Management measures for the Alaskan scallop fishery need to be implemented to allow for a controlled fishery for scallops. The FMP adopted by the Council in April set OY at zero, meaning that no fishery would occur for a period of up to one year. This action was taken to prevent further over exploitation of the fishery. Under the FMP, Federal regulations would expire August 28, 1996, allowing for uncontrolled fishing for scallops and attendant overfishing concerns after that period of time. Although the State has managed the scallop fishery in the past, the State cannot limit effort of vessels fishing in the scallop fishery that are not registered with the State. At least one non-Alaska registered vessel has fished for scallops exclusively in the EEZ, with indications others may follow. The longevity of the species, its low mortality rate, and the generally unknown status of these stocks indicate they are susceptible to local and general overfishing. Along with unregulated fishing, the over capitalization of the fishery has highlighted the potential for quickly overfishing this resource and demonstrated the need for controlling the effort of all vessels fishing in the EEZ. It is incumbent on the Secretary of Commerce (Secretary) to provide a conservative, risk averse strategy to manage scallop stocks and the fishery.

Alternatives Considered. There were two basic alternatives considered. Alternative 2 would allow for a federally managed scallop fishery to occur in the EEZ off Alaska.

Alternative 1: Status Quo -- Continue closure of the EEZ for up to a 1-year period to all scallop fishing. This alternative would continue the closure that prohibits fishing for Alaskan scallops in Federal waters. Under this alternative, scallops would not be harvested in the EEZ until August 28, 1996. Scallops would be considered a prohibited species and retention would not be allowed in the EEZ. Because there would be no fishing allowed for scallops, no in-season management and monitoring of the fishery would be necessary. Federal regulations would expire August 28, 1996, allowing for uncontrolled fishing for scallops and attendant overfishing concerns after that period of time.

Alternative 2: Amend the FMP for Alaskan scallops to allow for a federally controlled fishery to occur in the EEZ. This alternative would require Federal regulations to complement management by the State. In-season management and monitoring of the fishery could be similar to the way groundfish are managed, (or more intense like than in-season management, of the scallop fishery by the State). This approach requires that a suite of management measures be implemented to support a controlled fishery for scallops in Federal waters. These measures include permit requirements, limited access, registration (regulatory) and reporting areas, districts and sections, scallop catch limits, inseason adjustments, reporting requirements, observer requirements, fishing seasons, closed waters, gear restrictions, efficiency limits, and prohibited species catch limits. A number of options for some of these management measures are analyzed, including a vessel moratorium as a limited access measure. Many of these options are those previously adopted by the Council, or currently regulated by the State of Alaska. The suite of management measures and options is subject to change when the Council takes final action on this amendment, however.

Management Regime Considered under Alternative 2

Management Measure	Effect of Measure
Permits requirements	Would require federal permits to scallop in EEZ
Limited access	Would include vessel moratorium based on criteria Council adopted in April 1994, and reaffirmed in January 1995. 18 vessels qualify.
Registration (Regulatory) areas	Would create regulatory areas that are the same as State registration areas. Spreads out harvest geographically.
Districts and sections	Would create districts that are the same as State areas for Prince William Sound, Cook Inlet, and Kodiak areas. Allows for fine scale management.
Scallop catch limits	Would create annual specification process to set ABC and TAC Option 1: set limits for EEZ and State together Option 2: set limits for EEZ waters only
Inseason adjustments	Would allow NMFS Regional Director to adjust TAC, ABC, or close area to keep scallop stocks from being overfished.
Reporting requirements	Would require vessels to report catch, area fished, etc.
Observer requirement	Would require vessels to carry observers as specified by the Research Plan or other observer program.
Fishing seasons	Would set opening dates for each regulatory area. Closing dates would be December 31.
Closed waters	Would close areas to protect crab populations and crab habitat. Option 1: closes EEZ areas currently established under State regulations to scallop fishing. Option 2: closes three areas in the EEZ currently established under Federal regulations for trawling to protect crabs.
Gear restrictions	Would restrict gear same a State regulations. Dredges with 15' maximum width, fished 2 at a time are allowed. In Kamishak District of Cook Inlet only 1 dredge with a 6' maximum would be allowed.
Efficiency limits	Would restrict efficiency same a State regulations. Limits include a 12 person crew limit on scallop vessels and mandatory manual scallop shucking for weathervane scallops.
PSC limits for crab	Would restrict the number of crab the scallop fishery takes as bycatch. Option 1: set PSC limits for EEZ and State together Option 2: set PSC limits for EEZ waters only

Policy Issues regarding Alternative 2 This analysis assumes that all management of scallops in the EEZ will be done by the NMFS, without assistance from the State of Alaska. It should be noted that NMFS budget is constrained, such that duties of existing personnel would need to be re-prioritized to allow for management of a scallop fishery. Management of the scallop fishery has proven to be quite costly, and the ADF&G has indicated that all current management measures should be adopted at a minimum. Given that the State has previously managed the fishery, perhaps a cooperative arrangement could be pursued. However, a cooperative agreement with the State may also require Federal funds to support. In the event that NMFS headquarters does not provide the support necessary for Federal management of the scallop fishery off Alaska, continued closure of the EEZ may be another alternative that may need to be explored.

Another policy issue exists regarding potential dual management of the scallop fishery by the State and NMFS. Alternative 2 is structured similar to the Council's old Tanner crab plan, which was repealed in 1986. The Tanner crab plan essentially federalized state regulations, and was amended each year to keep up with changes to the State's management regime. Practice showed that even the RD field order authority, and daily contact with NMFS and ADF&G staff, prohibited timely changes to management actions. Federal management could not keep up with State changes, and in January 1986, NOAA GC argued that the plan did not comply with National Standards 5, 6, and 7, and should be suspended. Implementing regulations failed to promote efficiency in the utilization of fishery resources, failed to minimize costs and avoid unnecessary duplication.

NOAA General Council has advised that Federal scallop harvest limits should apply to Federal waters only, and not extend into State waters, as is the case with groundfish. However, if NMFS were to manage the EEZ, and the State to manage within 3 miles, numerous problems may be created similar to the repealed Tanner crab plan. A dual system would require two sets of harvest limits, two sets of crab bycatch caps, two observer programs, two registration procedures, and two sets of regulatory requirements. In some areas, scallop beds straddle both State and Federal waters (Yakutat, for example). Vessels move freely across the 3 mile line during the harvesting process. Two sets of regulations administered by two management agencies may facilitate confusion among management agencies, fishermen, and observers. Such a dual regulatory management regime may run counter to National Standard 7, which states that conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication. One possible solution to this problem would be to have the State or the NMFS manage scallops from the shore out to 200 miles.

Alternatives not Considered An alternative not considered would be to wait and see if changes are made to the Magnuson Act. Changes recently approved by the U.S. House committee include language to the effect that fisheries off Alaska not managed by the NMFS could be managed by the State, and the State's jurisdiction could extend into the EEZ. Thus, in the case of the scallop fishery, the State could require all vessels to register and follow all State laws, even when fishing in the EEZ. The FMP recently adopted by the Council may need to be rescinded, however, and a vessel moratorium may not be able to be implemented under federal regulations. This alternative was not considered at this time because Magnuson Act approval may not occur until September or later. If the Magnuson Act fails to be amended, and decision on federal management programs has not been made prior to December 1995, there is the possibility that a regulatory hiatus would again occur after August 1996, and scallop fishing may not be allowed prior to that date.

Impacts on Scallops. The biological and environmental impacts on the scallop resource will depend on the alternative chosen. Under Alternative 1, the status quo, there would be no regulation that prevents vessels and fishermen not licensed by the State, to fish for scallops in the EEZ after the August 28, 1996 closure expires. State authority and jurisdiction for fisheries in the EEZ depends on vessels being registered with the State. Since the State cannot extend its jurisdiction to non-State registered vessels in the EEZ, scallop stocks can be potentially over harvested by non-licensed crew and vessels, which could make landings in states other than Alaska. Under Alternative 2, a controlled fishery with sustained yields would occur in the EEZ.

Impacts on Benthic Communities, the Physical Environment, Bycatch of Non-target Species and Catch of Allocated Groundfish. Given the best available information, the alternatives to the status quo are not reasonably expected to allow substantial damage to the ocean and coastal habitats, or to jeopardize the long-term productive capability of crab, herring, or groundfish stocks. Scallop dredges may have some potential, in some situations, to affect other organisms comprising benthic communities; however, these effects are not likely to be substantial for the relatively small scale scallop fisheries in Alaska.

Impacts on Endangered Species and Marine Mammals. Species that are listed, or proposed to be listed, under the Endangered Species Act (ESA) that may occur in the Bering Sea and Aleutian Islands area (BSAI) or Gulf of Alaska (GOA) include the endangered fin whale (*Balaenoptera physalus*); sei whale (*Balaenoptera borealis*); humpback whale (*Megaptera novaeangliae*); sperm whale (*Physeter catodon*); Snake River sockeye salmon (*Oncorhynchus nerka*) and short-tailed albatross (*Diomedea albatrus*); the threatened Steller sea lion (*Eumetopias jubatus*); Snake River fall and spring-summer chinook salmon (*O. tshawytscha*); and spectacled eider (*Somateria fischeri*). In summary, listed species of salmon, seabirds, and whales under the ESA will not be affected by the proposed alternative.

Fishery Status. Traditionally, the scallop fishery had been prosecuted by a small number of vessels, targeting exclusively on weathervane scallops. However, information indicated that stocks of weathervane scallops were fully exploited in 1992 and that an increase in effort was likely. Because scallops are highly susceptible to overfishing and boom/bust cycles world-wide, concern was raised over projected increases in effort. The North Pacific Fishery Management Council (Council) established a control date of January 20, 1993 in the event of a moratorium. In March 1993, the State established quotas (GHLs) for the 1993 fishery and beyond. NMFS announced a control date of April 24, 1994 after which scallop harvests made in the EEZ may not apply as catch history for purposes of any future IFQs or licenses in anticipation of a future limited access program for this fishery. In 1993, 15 vessels landed scallops in the State and in 1994, 16 vessels landed scallops. Catches were reduced under State management, and signs of overcapitalization were apparent. In February, 1995 a non-Alaska registered vessel was discovered fishing in the EEZ. Because the vessel was not registered under the laws of the State of Alaska, it was not subject of State regulations and no Federal regulations existed to control fishing for scallops in Federal waters. The fishery was closed by emergency regulation February 23, 1995, but not before the vessel individually took the equivalent of the entire GHL for the registration area in which it was located. On April 19, 1995, the Council approved and submitted to the Secretary a FMP which continues the closure of the EEZ to scallop fishing for up to a one year period.

Impacts of the Status Quo. Retaining the status quo in the scallop fishery to not allow a fishery in the EEZ, would cause financial hardship for fishermen, and may result in a net loss to the nation. Another major impact of the status quo (assuming the FMP is adopted that authorizes closure of Federal waters for 1 year) is that Federal regulations would expire August 28, 1996, allowing for uncontrolled fishing for scallops and attendant overfishing concerns after that period of time.

Impacts of Federalizing State Management. The effects of federal fishery management of Alaskan scallops on existing users also depends upon the particular suite of management measures and regulations adopted.

Impacts of a Moratorium. Data indicate that the scallop fishery is overcapitalized (too many vessels) given current scallop prices and quotas. A moratorium will reduce the potential for new vessels to enter the fishery, and may thus positively affect those participants that are qualified. Those vessels that entered or planned to enter after the cutoff date will be negatively impacted.

Costs and Benefits. Administrative, enforcement, and information costs for alternative 2 would depend on the suite of management measures adopted. In 1993 and 1994, the State incurred considerable expense to intensely manage the scallop fishery in the EEZ. An additional \$540,000 may be needed for an initial scientific survey of scallops. Recurring funding on the order of \$60,000 for data analysis has also been estimated; this could be more depending on the level of monitoring adopted. Enforcement costs could be

\$100,000/year or more for a federally managed fishery in the EEZ. There may be additional costs to the State associated with implementing federal management measures for the scallop fishery. These may include preparation and presentation of reports at Council meetings, scallop plan team meetings, preparation of SAFE documents, assessments of overfishing, and other management functions. Benefits of this action will be the preservation and maintenance of a viable scallop fishery under any of the alternatives.

(4) Vehicles—Waivers would be limited to the operation of Group C vehicles, as defined in 49 CFR 383.91, provided that the vehicle operated has a GVWR of less than 10,001 pounds.

(5) Area—Waivers would be granted to operate the vehicles described above within a 300-mile radius from the driver's work reporting location. Neighboring States may recognize such waivers provided the driver and the vehicle are operating within the 300-mile radius.

(6) Convictions—Waivers would only be granted to drivers who have not been convicted of a "serious traffic violation" as defined in 49 CFR 383.5, in any type of motor vehicle during the preceding 12 month period.

The Petitioner claims that the conditions and restrictions imposed on the grant of waiver authority will ensure that the safe operation of CMVs is not diminished. Drivers participating in the waiver program would be part-time non-professional drivers, operating vehicles that would not be considered CMVs except for the nature of the cargo. These drivers would be required to have a good driving record and would be licensed, knowledgeable and trained in the handling of the hazardous materials to be carried. It also appears that the waiver restrictions related to driver documentation, duration, and area of operation (mileage) will ensure that implementation, regulation and enforcement of the waivers' requirements by the States is not unduly burdensome. Moreover, the final decision on whether to implement a waiver program will rest with the States.

Request for Public Comment

The FHWA is requesting specific views, information, and data that it should consider when determining whether or not the proposed waiver would be contrary to the public interest or would diminish the safe operation of CMVs. Commenters are strongly encouraged to provide any additional facts or views pertaining to the proposed waiver.

(Title XII of Pub. L. 99-570, 100 Stat. 3207-170; 49 U.S.C. 31502; 49 U.S.C. 31136; 49 CFR 1.48; 49 CFR 383.7; 23 U.S.C. 315)

Issued on: May 4, 1995.

Rodney E. Slater,

Federal Highway Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 673

[Docket No. 950428123-5123-01; I.D. 042595A]

RIN 0648-A100

* Scallop Fishery off Alaska; Closure of Federal Waters to Protect Scallop Stocks

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 a Fishery Management Plan for the Scallop Fishery Off Alaska (FMP). The FMP would specify the long-term optimum yield (OY) for the scallop fishery in Federal waters off Alaska as a numerical range of 0-1.1 million lbs (0-499 metric tons (mt)) of shucked scallop meats. The only management measure authorized under the FMP would be an interim closure of Federal waters off Alaska to fishing for scallops. The closure of Federal waters would remain effective for up to 1 year and is necessary to prevent overfishing of scallop stocks during the period of time an alternative FMP is prepared that would allow the controlled harvest of scallops in Federal waters. This action is intended to promote the objective of preventing overfishing of the scallop resource that could otherwise result from unregulated fishing for scallops in Federal waters.

DATES: Comments must be received by June 19, 1995.

ADDRESSES: Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of the proposed FMP and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the FMP may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Susan Salvesson, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The scallop resource off Alaska has been commercially exploited for almost 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 lbs (907 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 harvests came from waters of the State of Alaska (State). Since 1991, Alaska scallop harvests have increasingly occurred in Federal waters. In 1994, only 14 percent of the 1.2 million lbs (544 mt) landed were harvested in State waters, with the remainder harvested in Federal waters off Alaska.

The State has managed the scallop fishery in State and Federal waters, consistent with section 306(a)(3) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act), which indicates that a state may regulate any fishing vessel outside state waters, if the vessel is registered under the laws of that state. The North Pacific Fishery Management Council (Council) had until recently concluded that the scallop management program implemented by the State provided sufficient conservation and management of the Alaska scallop resource and did not need to be duplicated by direct Federal regulation. Therefore, no Federal regulations were implemented to govern the scallop fishery in Federal waters.

The Council currently is considering options for an FMP for the scallop fishery off Alaska that would authorize a moratorium on vessel entry into the fishery. A vessel moratorium cannot be implemented under Alaska State regulations given existing State statutes. At its April, 1994, meeting, the Council requested NMFS initiate rulemaking to implement an FMP for the scallop fishery off Alaska that would establish a vessel moratorium and defer most other routine management measures to the State. The Council was informed that section 306(a)(3) of the Magnuson Act prohibits a state from regulating a fishing vessel in Federal waters, unless the vessel is registered under the laws of that state. As a result, routine management measures deferred to the State under the Council's proposed FMP could not be applied in Federal waters to vessels not 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 under the laws of the State. Therefore, the Council recommended that NMFS proceed with

implementing the Council's proposed FMP, given that all vessels used to fish for scallops off Alaska had been registered with the State and that no information was available to indicate that vessels would not continue to register with the State.

During the period of time that NMFS was developing regulations to implement the Council's proposed FMP, the State informed NMFS that a fishing vessel was fishing for scallops in Federal waters of the Prince William Sound management area closed by the State, and that the vessel was not registered under the laws of the State. As a result, the vessel operator was not subject to State regulations governing the scallop fishery, including requirements to carry an observer at all times to monitor scallop catch and crab bycatch. The State could not stop this uncontrolled fishing activity because the vessel was not registered with the State and was, therefore, operating outside the State's regulatory authority.

On February 17, 1995, the Council held a teleconference to address concerns about uncontrolled fishing for scallops in Federal waters by one or more vessels fishing beyond the reach 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. Subsequent to the Council's recommendation, the U.S. Coast Guard boarded an unregistered vessel fishing for scallops and was informed that 54,000 lbs (24.5 mt) of shucked scallop meat was on board. This amount exceeded the State's guideline harvest level for the Prince William Sound area (50,000 lbs (22.7 mt)) by over 100 percent. NMFS issued an emergency interim rule to close Federal waters off Alaska to fishing for scallops on February 23, 1995 (60 FR 11054, March 1, 1995), to respond to concerns that continued uncontrolled harvest of scallops in Federal waters would result in localized overfishing of the scallop resource.

Based on recent events in the scallop fishery that warranted the emergency interim rule, the Council's proposed FMP no longer is an appropriate option for the management of the scallop fishery in Federal waters. Recent participation in the scallop fishery by at least one unregistered vessel, contemplation by other vessel owners of fishing in Federal waters outside State regulations governing the scallop fishery, and the likelihood that uncontrolled fishing for scallops could occur anywhere off Alaska by the highly mobile scallop processor fleet now requires that Federal regulations be

implemented to control scallop fishing activity by vessels that do not register with the State.

At its April 1995 meeting, the Council adopted for submission to NMFS an alternative FMP for the Scallop Fishery off Alaska with the intent that this FMP could be reviewed and implemented before the anticipated 90-day extension of the emergency interim rule expires on August 28, 1995. The FMP would authorize an interim closure of Federal waters to fishing for scallops that would continue until the earlier of 1 year or the issuance of a superseding management regime. The intent of the FMP is to prevent an unregulated and uncontrolled fishery for scallops in Federal waters that could result in overfishing of scallop stocks during the period of time an amendment to the FMP is prepared to authorize fishing for scallops under a Federal management regime. The Council has pursued this approach because it has 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 expires. Instead, the FMP was prepared to protect the long-term productivity of scallops stocks off Alaska necessary to support the future harvest of OY on a continuing basis without the "boom and bust" syndrome that has occurred historically in many other scallop fisheries.

A historical description of the scallop fishery off Alaska, as well as harvest amounts and the number of vessels annually participating in the fishery, is presented in the FMP (see ADDRESSES). The following discussion presents a summary of the FMP and the management measure proposed to meet its objective, as well as preliminary determinations about the consistency of the FMP with the seven national standards for fishery conservation and management set forth in section 301(a) of the Magnuson Act.

Management Area and Fishery

The management area covered under the FMP includes all Federal waters of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands area (BSAI). The GOA is defined as the exclusive economic zone (EEZ) of the North Pacific Ocean, exclusive of the Bering Sea, between the eastern Aleutian Islands at 170° W. long. and Dixon Entrance at 132°40' W. long. The BSAI is defined as the EEZ south of the Bering Strait to the Alaska Peninsula and Aleutian Islands and extending south of the Aleutian Islands west of 170° W. long.

All commercial fisheries for Alaska scallops take place in relatively shallow waters (less than 200 meters (109 fathoms)) of the Continental Shelf. Areas fished during the 1994 scallop fishery included beds in the Bering Sea, off the Alaska Peninsula, in Shelikof Strait, on the east side of Kodiak Island, and along the GOA coast from Yakutat to Kayak Island.

In both the GOA and BSAI, scallops are part of a diverse benthic community. Besides scallops, several other species of invertebrates are commercially harvested off Alaska, including clams, crabs, octopus, squid, and shrimp. In addition to these fisheries, large fisheries for groundfish also exist using pot, longline, jig, and trawl gear.

The weathervane scallop (*Patinopecten caurinus*) is the primary commercial scallop species harvested off Alaska and is distributed from Point Reyes, California, to the Pribilof Islands, Alaska. Although the weathervane scallop has been the principal commercial species, several other species of scallop found in Federal waters off Alaska have commercial potential. These scallops, thought to be closely related to the Icelandic scallops (*Chlamys islandica*) of the North Atlantic, grow to smaller sizes than weathervanes, and thus have not been extensively exploited in Alaska. *Chlamys behringiana* inhabit the Chukchi Sea to the Western Bering Sea. *Chlamys albida* are distributed from the Bering Sea and Aleutian Islands to the Japan Sea. Pink scallops, *Chlamys rubida*, range from California to the Pribilof Islands. Spiny scallops, *Chlamys hastata*, are found in coastal regions from California to the Gulf of Alaska. Rock scallops, *Crassadoma gigantea*, range from Mexico to Unalaska Island. The abundance of this species is not known, and a commercial fishery has never been developed.

Scallop Biology and Resource Management

A description of the general life cycle of weathervane scallops is presented in the FMP and the EA prepared for the FMP. Scallops spawn in May to July, depending on location. Larvae are pelagic and drift for about 1 month until metamorphosis to the juvenile stage. The "post-larvae" settle and attach to a hard surface on the bottom with strings called "byssal threads." Young juveniles may remain attached, or they may become mobile by use of a "foot," or they may swim. Within a few months the shell develops pigmentation, and juveniles then resemble the adult in appearance.

Weatherwane scallops mature by age 3 at about 7.6 cm (3 inches) in shell height, and virtually all scallops are mature by age 4. Weatherwane scallops are long-lived and may reach an age of 28 years or more. The natural mortality rate (M) is thought to be low, although estimates vary. Based on a 28-year maximum life span, M is estimated to be 0.16.

The stock structure of weatherwane scallops has not been studied. Contrary to traditional assumptions about benthic invertebrates generally being "open" populations that are well-connected through the dispersion of pelagic larvae by ocean currents, recent evidence suggests that the scallop resource may consist of multiple, discrete, self-sustaining populations that should be viewed as separate stock units for management purposes. Additional study will be required to explore this concept relative to the scallop resources off Alaska.

Only limited information on biological productivity is available for weatherwane scallops; such information is important to provide for the conservation of stocks and a sustainable yield in the fishery. Much of this information was collected during the early years of the fishery; the only assessment survey since 1972 was conducted in 1984 in lower Cook Inlet. In addition to a lack of good abundance estimates, no routine biological or fishery sampling programs have been conducted on weatherwane scallops. Data collected by a new observer program, instituted by the State in July, 1993, may provide better abundance information. The distribution of scallops in Alaskan waters is rather well-known, but insufficient information on abundance, exploitation rates, recruitment, and other key population dynamics parameters hampers fishery management based on population dynamics.

State Management of the Scallop Fishery

The Alaska Department of Fish and Game (ADF&G) initiated development of a management plan for the scallop fishery in response to overfishing concerns resulting from recent changes in the weatherwane scallop fishery off Alaska. Weatherwane scallops possess biological traits (e.g., longevity, low natural mortality rate, and variable recruitment) that render them vulnerable to overfishing. Record landings occurred in the late 1960's (about 1.8 million lb (816 mt) shucked scallop meat), followed by a significant decline in catch through the 1970's and 1980's when landed catch ranged

between 0.2 and 0.9 million lbs (91–408 mt). The ADF&G believes this decline is due, in part, to reduced abundance of scallop stocks. Landings since 1989 have increased to near record levels. During this period, the number of vessels fishing for scallops has not increased (about 10–15 vessels annually), although an increase in fishing power is evidenced by a substantial increase in average vessel length (from 84 ft (25.6 m) registered length in 1981 to 110 ft (33.5 m) in 1991), a predominance of full-time scallop vessels, and an increased number of deliveries. Until 1993, the State did not have a data collection program, although some indication exists that overfishing, or at least localized depletion, may have occurred. Data voluntarily submitted by participants in the scallop fishery during the early 1990's showed that an increase in meat counts per pound has occurred, indicating that smaller scallops now account for a greater proportion of the harvest. These data also suggest that catch per unit of effort in traditional fishing grounds has decreased.

Limited age data suggest that the scallop stock historically exploited off west Kodiak Island experienced an age-structure shift from predominately age 7 and older scallops in the late 1960's to an age structure dominated by scallops less than age 6 during the early 1970's. This shift indicated that harvest amounts had exceeded sustainable levels. Changes in fleet distribution from historical fishing grounds primarily in State waters to previously unfished grounds in Federal waters compounded management concerns.

In response to these concerns, the ADF&G implemented a management plan for the scallop fishery in 1993–94, which established a total of nine fishery registration areas corresponding to the Southeastern, Yakutat, Prince William Sound, Cook Inlet, Kodiak, Alaska Peninsula, Dutch Harbor, Adak, and Bering Sea portions of the State. To prevent overfishing and maintain reproductive potential of scallop stocks, ADF&G established a guideline harvest range (GHR) for each of the traditional weatherwane scallop fishing areas. In the absence of biomass estimates needed to implement an exploitation rate harvest strategy, the upper limit of the GHR is specified as the long-term productivity (catch) from each of the traditional harvest areas.

If a GHR for a registration area is not specified, ADF&G would authorize fishing for weatherwane or other scallop species under special use permits that generally include location and duration

of harvests, gear limitations and other harvest procedures, periodic reporting or logbook requirements, requirements for onboard observers, and scallop catch or crab bycatch limits.

The ADF&G also has implemented king and Tanner crab bycatch limits to constrain the mortality of Tanner crab and king crab incidentally taken by scallop dredge gear. Generally, crab limits are set at 1 percent of total crab population for those management areas where crab stocks are healthy enough to support a commercial fishery. In areas closed to commercial fishing for crab, the crab bycatch limits for the scallop fishery are set at 0.5 percent of the total crab population.

Specified waters are closed to fishing for scallops to prevent scallop dredging in biologically critical habitat areas, such as locations of high bycatch of crab or nursery areas for young fish and shellfish. State regulations also require each vessel to carry an observer at all times to provide timely data for monitoring scallop catches relative to GHRs and for monitoring crab bycatch. Observers also collect scientific data on scallop catch rates, size distribution, and age composition. This information is required by ADF&G for potential adjustment of GHRs based on changes in stock status and productivity.

Last, ADF&G regulations establish gear specifications to minimize the catch of undersized scallops and efficiency controls to reduce the economic feasibility of harvesting scallops much smaller than sizes associated with OY. Current efficiency controls include a ban on automatic shucking machines and a crew limit of 12 persons.

Management Objective of the FMP

The objective of the FMP is to prevent localized overfishing of scallop stocks and protect the long-term productivity of the resource to allow for the achievement of OY on a continuing basis. This objective is based on the premise that uncontrolled fishing for scallops in Federal waters could result in irreversible damage to the resource's ability to recover in a reasonable period of time. Fishing on a stock at a level that severely compromises that stock's future productivity is counter to the goals of the Magnuson Act and seriously jeopardizes the opportunity to harvest OY on a continuing basis under a future management regime that would authorize a regulated fishery for scallops in Federal waters. Conservative management of the scallop resource is warranted given (1) unprecedented scallop fishing operations in Federal waters outside State jurisdiction and not

subject to State regulation, (2) the harvesting and processing capacity of the scallop fleet, which, if allowed to fish unregulated in Federal waters, could exceed State harvest guidelines by several orders of magnitude, (3) inadequate data on stock status and biology, and (4) the vulnerability of the scallop resource to localized depletion.

Optimum Yield (OY)

Under the Magnuson Act guidelines for FMPs (50 CFR part 602), the most important limitation on the specification of OY is that the choice of OY and the conservation and management measures proposed to achieve it must prevent overfishing. The determination of OY requires a specification of maximum sustainable yield (MSY). However, biomass estimates for scallops are lacking, and the continuing exploratory nature of this fishery into new areas makes numerical estimation of MSY for weathervane and other scallop species not possible at this time. NMFS recognizes that cases exist where the specification of MSY may either be impossible or irrelevant. This may be due to lack of assessment data, or because biological resiliency or high fecundity of some stocks or other fishery characteristic may allow OY to become a descriptive statement only, making a numerical calculation of MSY unnecessary. Nonetheless, the OY still should be based on the best scientific information available (50 CFR 602.10(f)(4)(v)).

Instead of specifying OY as a fishing rate or constant catch level, the long-term OY specification for the scallop resource in Federal waters off Alaska (all species) is specified as a numerical range. In the absence of biomass estimates needed to implement an exploitation rate harvest strategy, the OY is specified as the long-term productivity. The OY range proposed is 0 to 1,100,000 lb (0–499 mt) of shucked scallop meats, and is derived from historical catches harvested from Federal waters. The low end of the range is the lowest catch on record (zero pounds in 1978). The high end of the OY approximates the highest catch taken from Federal waters since the "fishing up" period (1,087,450 lb (493.3 mt) in 1993). During the period of time Federal waters are closed to fishing for scallops under the FMP, OY would be equal to zero for the same reasons that support the closure (see "Management measures," below).

Overfishing Level

Overfishing is a level of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to

produce MSY on a continuing basis.

The definition of overfishing for a stock or stock complex may be expressed in terms of maximum level of fishing mortality or other measurable standard designed to ensure the maintenance of the stock's productive capacity. Overfishing must be defined in a way to enable the Council and NMFS to monitor and evaluate the condition of the stock or stock complex relative to the definition. Overfishing definitions must be based on the best scientific information available and reflect appropriate consideration of risk. Risk assessments should take into account uncertainties in estimating harvest levels, stock conditions, or the effects of environmental factors.

The lack of biological information on Alaska scallops inhibits the numerical specification of overfishing. Although it is difficult to define precisely the level at which fishing jeopardizes recovery of a stock, indicators of existing or impending overfishing are available that should be heeded. For the reasons discussed above that led to the current ADF&G scallop management program, harvest levels of scallops off Alaska in the 1980's and early 1990's may not be sustainable. This concern, as well as other uncertainties about the scallop biomass and stock dynamics, must be taken into account in developing an overfishing definition. Although overfishing could be defined as a fishing mortality rate for weathervane scallops based on existing life history data, the lack of stock assessment information (surveys, population age, or size structure) limits the use of an overfishing rate at this time. As in the case of other stocks where very little biological information is available, overfishing can be defined as landings that exceed OY. As data collected from the fisheries and/or assessment surveys of the scallop resource are analyzed, overfishing for scallops may be defined on a fishing mortality rate basis. Until better information becomes available, overfishing is defined as landings that exceed OY.

Management Measures

To control fishing effort and avoid overfishing of scallop stocks, the only management measure authorized under the proposed FMP would be an interim closure of Federal waters off Alaska to fishing for scallops. Such a closure would protect the scallop resource from unregulated fishing and localized overfishing while more long-term measures are prepared that are expected to allow for controlled harvesting of scallops in Federal waters. An interim closure of Federal waters is a necessary

and appropriate interim measure for the protection and promotion of the long-term health of the scallop resource. Such action is expected to promote the stability of the scallop fishery under an anticipated future FMP or FMP amendment authorizing fishing for scallops in Federal waters. An interim closure of Federal waters to prevent an unregulated fishery also would mitigate any potentially adverse impact crab bycatch in the scallop fishery may have on either crab stocks or their habitat off Alaska.

Given that NMFS intends the interim closure to be superseded by a long-term FMP or FMP amendment, the closure would be effective until either (1) a date 1 year from the date the regulations implementing the FMP become effective, or (2) the measures in this FMP are superseded by a future FMP or FMP amendment that contains management measures to allow the controlled harvest of scallops in Federal waters without overfishing.

Data Collection and Assessment

NMFS and other management agencies should initiate efforts to identify and gather the data needed to improve understanding of the dynamics of the scallop resource and the effect of exploitation on the capacity of scallop stocks to produce MSY on a continuing basis. The type of information that should be pursued, in coordination with the State, includes: (1) Stock abundance and size/age structure; (2) scallop biology, life history, and stock production parameters; (3) analyses of population thresholds and recruitment overfishing; (4) estimation of optimum dredge ring size or minimum shell height based on studies of rates of growth and mortality; (5) investigations of exploitation rates and alternative management strategies; (6) genetic stock structure; and (7) new gear designs to reduce bycatch and to minimize adverse effects on bottom habitat. This objective may be attained, in part, with data collected by the Alaska State observer program. However, assessments of the scallop resource off Alaska, as well as the conduct of other scallop research, will be dependent on Federal funding, State of Alaska general fund appropriations, or future amendments to the FMP that would authorize experimental fishing under Federal permit conditions.

Impacts of the FMP on the Alaska Scallop Fishery

Closure of the Federal waters to fishing for scallops would cause substantial impact to participants in the Alaska scallop fisheries. Of the 16

vessels making landings of scallops in 1994, 11 vessels landed no other catch, indicating their dependence on this resource. These vessels accounted for 88 percent of the scallops harvested in Federal and State waters during 1994, or approximately 1.1 million lbs (499 mt) of shucked scallop meats. Using the 1994 average exvessel price of \$6.00/lb and assuming that 14 percent of the total annual scallop landings would continue to come from State waters, this would equate to an annual foregone revenue of about \$ 5.7 million. During 1994, an additional five vessels landed 0.1 million lbs (45 mt) of shucked scallop meats, equating to the potential for another \$0.52 million in foregone revenue under the proposed closure. The scallop catch by these five vessels ranged from less than 1 percent to 46 percent of these vessels' total 1994 landed catch of all species, including groundfish and crab. Taken together, a 1-year closure of Federal waters off Alaska could result in a foregone revenue that approaches \$6 million. However, this short-term impact is justified by the need to prevent overfishing of the scallop resource and ensure the long-term productivity of the scallop resource necessary to support the harvest of OY on a continuing basis under a future management regime that authorizes a regulated fishery in Federal waters.

Consistency Determinations With the National Standards

NMFS preliminarily has determined that the proposed FMP is consistent with the seven national standards for fishery conservation and management set forth under section 301(a) of the Magnuson Act. A summary of these determinations follows.

National standard 1. The proposed interim closure of Federal waters to fishing for scallops would be a conservation measure to control fishing effort and prevent overfishing of scallop stocks until an alternative management regime may be implemented, which is expected to authorize a regulated fishery in Federal waters. The proposed interim closure would be effective for a 1-year period unless superseded earlier by an alternative management regime. During this interim closure, data should be assessed and collected on which to base a Federal management program for the Alaska scallop fishery. Prevention of overfishing during this interim period would help guarantee achievement of OY from a healthy, productive scallop resource when the fishery is authorized to open under a future management regime. Furthermore, OY would be achieved on a continuing basis, given

that weathervane scallops are a long-lived species with a low natural mortality rate, and the resource harvest foregone during the period Federal waters are closed largely would be available to the fishery after a 1-year period. NMFS recognizes that the economic impact on scallop fishermen could be substantial and that the potential foregone revenue to scallop fishermen could approach \$6 million if Federal waters remain closed for the entire 1-year period. However, this short-term impact is justified by the need to prevent overfishing of the scallop resource and ensure the long-term productivity of the scallop resource necessary to support the harvest of OY on a continuing basis under a future management regime that authorizes a regulated fishery in Federal waters.

National standard 2. The proposed FMP is based on the best information available on the status of the scallop resource off Alaska. This information is partially based on inference derived from knowledge of scallop resources elsewhere in the world. Other information is based on fishery data collected under the State scallop management program. Although this information is the best information available currently, NMFS acknowledges that additional data needs to be collected and assessed to improve the management and understanding of the scallop resource and the fishery that depends upon it. The type of information that NMFS intends to pursue, in coordination with the State, is listed above under "Data Collection and Assessment."

National standard 3. A single OY range is proposed for all scallop species off Alaska, although scientific evidence suggests that the scallop resource may consist of multiple, self-sustaining stocks. At this time, insufficient information exists to determine how many separate scallop stocks exist off Alaska and what their distribution is. NMFS anticipates that the future Federal management regime for the scallop fishery may need to establish separate management districts with separate scallop total allowable catch amounts, and crab bycatch limits, to address the stock distribution of Alaska scallops and the potential impact of the scallop fishery on different crab stocks, and to prevent localized depletion of the scallop resource.

National standard 4. Neither the proposed FMP nor its implementing regulations would allocate fishing privileges or discriminate between residents of different states. The proposed interim closure of Federal

waters to fishing for scallops would apply to all vessels, regardless of a vessel owner's state of residency.

National standard 5. An interim closure of Federal waters to prevent overfishing of the scallop resource is intended to maintain the health and productivity of Alaska scallop stocks while a Federal management regime is developed and implemented to control the long-term harvest of this resource and to reduce the probability of an inefficient "boom and bust" fishery. The proposed FMP does not contain a provision for an economic allocation of fishing rights or other limited access program.

National standard 6. The proposed FMP would close Federal waters to fishing for scallops as an effective risk-adverse management measure to prevent overfishing of the scallop resource, which could otherwise occur in an unregulated and uncontrolled fishery. The need for conservative management measures is strengthened, given the uncertainty surrounding the current level of understanding of scallop stock dynamics and the effect of fishery exploitation on those dynamics. The closure of Federal waters is a short-term measure that will expire within a 1-year period, affording an opportunity to develop and implement management measures to allow a regulated fishery for scallops in Federal waters.

National standard 7. The proposed FMP is necessary to prevent an uncontrolled and unregulated fishery for scallops in Federal waters, which could result in overfishing of scallop stocks. The State has actively managed the scallop fishery in State and Federal waters under section 306(a)(3) of the Magnuson Act. However, the State does not have the jurisdiction to stop uncontrolled fishing for scallops in Federal waters by vessels that are not registered with the State. A Federal FMP is the only means to control an unregulated fishery in Federal waters and must be implemented to protect the scallop resource for the long-term benefit of the resource and the fishery that depends upon it. The costs associated with foregone harvest of scallops in Federal waters during the period of time the closure is effective may be substantial to scallop fishermen. However, NMFS anticipates that the Council will immediately begin to develop an alternative management regime that would allow for a scallop fishery in Federal waters.

Classification

Section 304(a) of the Magnuson Act requires NMFS to publish regulations implementing an FMP within 15 days of

receipt of the FMP and regulations from the Council for consideration and review. At this time, NMFS has not determined that the FMP these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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

NMFS prepared an IRFA as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. As discussed above under "Impacts of the FMP on the Alaska Scallop Fishery," closure of Federal waters off Alaska to fishing for scallops could result in a significant economic impact to nearly all participants in the Alaskan scallop fishery that could approach \$6 million in foregone revenues during the 1-year period the closure is effective. Conversely, the long-term impact of not closing Federal waters to fishing for scallops could be substantially greater, given that overfishing of scallop stocks would result in significantly reduced catch or long-term fishery closures. This

short-term impact is justified by the need to prevent overfishing of the scallop resource and ensure the long-term productivity of the scallop resource necessary to support the harvest of OY on a continuing basis under a future management regime that authorizes a regulated fishery in Federal waters. A copy of the IRFA is available from NMFS (see ADDRESSES).

List of Subjects in 50 CFR Part 673

Fisheries.

Dated: May 5, 1995.

Gary Matlock,
Program Management Officer, National
Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 673 is proposed to be added as follows:

1. Part 673 is added to Chapter VI of 50 CFR to read as follows:

PART 673—SCALLOP FISHERY OFF ALASKA

Sec.

673.1 Purpose and scope.

673.2 Definitions.

673.3 Prohibitions.

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

§ 673.1 Purpose and Scope.

(a) These regulations implement Federal authority under the Magnuson Act to manage the scallop fishery in the exclusive economic zone off Alaska.

(b) Regulations in this part govern commercial fishing for scallops in the exclusive economic zone off Alaska.

§ 673.2 Definitions.

In addition to the definitions in the Magnuson Act and in 50 CFR part 620, the terms in 50 CFR part 673 have the following meanings:

Exclusive Economic Zone (EEZ) (see § 620.2 of this chapter)

Scallop(s) means any species of the family Pectinidae, including, without limitation, weathervane scallops (*Patinopecten caurinus*).

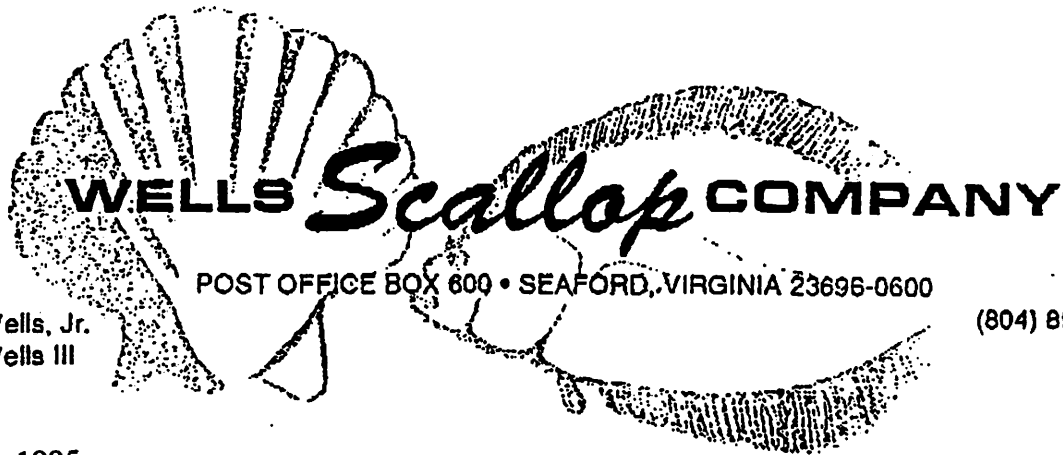
§ 673.3 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to take or retain any scallops in the EEZ seaward of Alaska during the time period that extends through the earlier of [Insert date 1 year after the effective date of this final rule.] or until superseded by other management measures.

[FR Doc. 95-11460 Filed 5-5-95; 2:12 pm]

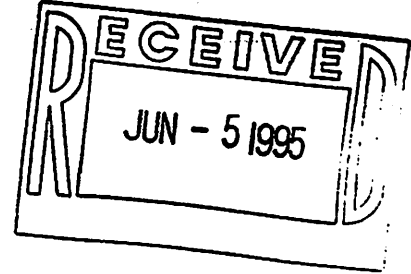
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COMMENTS RECEIVED
ON
SCALLOP MANAGEMENT



June 1, 1995

Richard Lauber, Chairman
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, AK 99510



RE: Amendment 1 Scallop FMP

Dear Chairman Lauber and members of the NPFMC:

This letter comes at a time of crisis within the Alaskan scallop industry. As you probably are well aware, since the Council's April 1995 meeting, the State of Alaska has determined that its state-water scallop fishery will be extremely limited, and in fact closed in the Kodiak area. As a result, there will be only a small harvest (at best) and a harvest incapable of supporting the fleet. I speak not only for myself but for the entire scallop industry when I say that the management actions taken so far in 1995 will likely force many of us into bankruptcy.

It is with these thoughts in mind that I encourage the Council to do whatever it can to expedite Amendment 1 to the Scallop FMP so that federal waters can reopen as soon as possible.

I have carefully reviewed the Amendment 1 package and commend the effort of the staff to assemble the analysis so quickly. I have several comments to make with the amendment in general, followed by comments concerning technical issues. I will be attending the June meeting and will be prepared to elaborate on this letter at that time.

First of all, I support doing whatever is necessary to get the EEZ reopened to commercial scallop fishing. The steps you take will be guided by the advice you receive from NOAA General Counsel. The draft mentions that with regard to several of the management options listed, NOAA-GC has already advised that guideline harvest levels and prohibited species catch limits be limited to the EEZ only, and not include state waters. At the same time the document describes the duplication in administration, bureaucracy, management, and enforcement should the Council's final course of action require the day-to-day involvement of two government agencies. It was clear from Mr. Krygier's comments at the last meeting, that ADF&G will not favor "joint management" to the degree which may be forced upon them by the limitation of management measures to the EEZ only. Mr. Krygier has also mentioned the fiscal constraints

of ADF&G and that federal monies may need to be reallocated to support scallop management. These policy issues need to be worked out, and I hope they can so the amendment can be advanced and the EEZ reopened. The last thing the scallop fishermen (or the American public) want to see is a fishery bankrupt due to the inadequacies of the government.

I can see the merit of only one agency having the lead role in management. As a fisherman, I prefer to have consistency in regulations by having uniform registration areas, one set of reporting and gear requirements, etc. As expressed in my March 30, 1994 letter to the Council, I favor a federal FMP that defers management authority to the State of Alaska with Council oversight. I view Amendment 1 as being the next best alternative in light of events which occurred earlier this year. The staff's attempt to "federalize" the current ADF&G management regime is a good one. I do find fault with several of the general principles which can either be addressed now (at the cost of delaying the amendment further), or later once the amendment is implemented and the fishery reopened.

What do we know about the size and age composition of the Alaska scallop resource, and do we know enough to set defensible GHGs? Current GHGs are based on a review of landings data which, until 1993, had never been constrained by a quota. Many fishermen believe that current GHGs are improperly set. Yakutat, for example, could likely be increased. The Kodiak GHG should probably be decreased. We don't have a clue what the GHG should be in the relatively unexplored Bering Sea.

I recommend that the Council consider as part of its scallop FMP, a cooperative industry-agency survey which would provide credible scientific data to managers for use in setting GHGs and PSCs, as well as provide some cash-flow to vessels participating in the survey. A conceptual outline for such a survey was given to you at the April meeting (attached), and it would go a long way to answering some fundamental questions while partially addressing the survey cost issue mentioned in the draft document.

Clearly, there is a need for a thorough stock assessment of the Alaskan scallop resource. A survey combined with a fishery would provide the information needed to set overfishing definitions, ABCs, TACs, and PSCs. It could also address the overcapitalization issue.

The draft document contains a discussion which states that the scallop fishery was determined overcapitalized in 1993. This was the first year the ADF&G managed the fishery with a GHG. The GHG in 1993 was set at a level 50% less (to 890,000 lbs) than the 1992 catch (1.8 million lbs). Certainly, there now exists more vessels necessary to harvest the reduced GHG. But must the GHG be this low? If the GHG were higher would we have an overcapitalized fleet?

Last year the Council (and the industry) went through a gut-wrenching process of determining the qualifying criteria for the scallop moratorium. Concessions were made on all sides which would prevent new entrants from entering the fishery while satisfying the MFCMA National Standards. I recommend that you reaffirm your preferred alternatives in reference to the moratorium and include the moratorium as part of Amendment 1. At the last meeting there was some indication that the Council may want to revisit its earlier decision. I can assure you that since the April 1994 meeting, many of us within the industry have made business decisions which were based on your actions. Any changes now to the moratorium would adversely affect my company.

Chairman Lauber
June 1, 1995
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Specific Comments on Draft Amendment 1

Amend the Scallop FMP

The Wells Scallop Company supports Alternative 2 to amend the FMP to allow for a federally-controlled fishery to occur in the EEZ. We support the development of a cooperative agreement between NMFS and ADF&G in order to share the burden of management.

Federal Permit Requirements

We support federal permit requirements. Such a permit would be required to fish or transport scallops in the EEZ. Had a federal scallop permit been required earlier this year, the Council and the industry would have avoided the current crisis.

Scallop Harvest Limits

We support the framework concept of setting harvest limits. Such an approach should be modeled after the groundfish specification process, where biomass, Acceptable Biological Catch, and Total Allowable Catch limits are determined. As new information and fishery data are collected, ABCs and the OY range would be reanalyzed for possible revision (up or down).

Observer Requirements

We support the domestic observer program and have voluntarily taken agency and academic scientists on our vessels as well. Clearly, more information is needed for making both management and business decisions. We question whether 100% coverage is needed during the fishery when many of the vessels in the fleet work the same fishing grounds simultaneously. Certainly, 100% coverage is needed if the vessels were participating in a scientifically designed survey. The draft notes that ADF&G will oppose any coverage less than 100%. Perhaps this attitude is due to the fact that State of Alaska observer programs are more oriented toward meeting enforcement objectives rather than the data collection objectives of the federal program. Some discussion, and possibly a compromise, between NMFS and ADF&G is warranted.

Fishing Seasons

We support the continued use of fishing seasons as a management tool. However, there appears little logic in continuing to open the Yakutat, Southeast, and Prince William Sound seasons on January 10 when weather is terrible and vessel safety is a real concern. Under current GHs these seasons only last a few weeks and gearing up for such a short season adds unjustified costs to the fishery. I had intended to bring this issue up next year with the Alaska Board of Fisheries, but should there be a possibility of implementing this Amendment on the fast-track, we would strongly recommend that the Council approve setting the openings for these areas at

Chairman Lauber
June 1, 1995
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June 1 or perhaps concurrent with the opening of the westward areas (July 1) for the reasons just described.

Closed Waters

We support Option 2 which would adopt, as closed waters to scallop fishing, only those waters of the EEZ closed to groundfish trawling to protect crabs and their habitat. We want to see crab stocks recover and are willing to abide by regulations to enhance their recovery. However, we see no reason why scallop fishing cannot occur in areas where bottom trawling is also permitted. The bycatch caps proposed for the scallop fishery have severely constrained scalloping in some areas. These caps are intended to protect the crab resource from excessive mortality and so adopting inconsistent "closed waters" regulations between the fisheries is not justified.

Prohibited Species Catch Limits

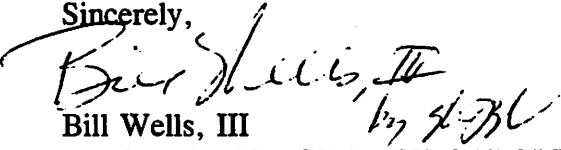
We are of the opinion that a king crab bycatch cap set at 0.00176% to 0.0176% of the king crab biomass does little to affect the status of the crab population while significantly constraining the scallop fishery. Much has been said about the lack of knowledge on the size and distribution of scallops in Alaska waters. Without a comprehensive survey, managers and fishermen rely on explorations conducted by the fishing vessels themselves. With such constraining bycatch limits, a fisherman has little choice but to continue fishing "known grounds" because he knows that a couple of tows in unknown grounds could put the fishery in jeopardy relative to the cap.

We have yet to find a crab biologist who claims that fishery-induced mortality at levels as high as 1.0% would have any detrimental effect on king crab stocks. We support a floating percentage that fluctuates with the condition of the king crab population. We believe that a higher, more accommodating bycatch percentage would not only aid the scallop fishery but the groundfish fishery as well.

We support setting crab bycatch limits for the EEZ only.

Thank you for allowing me to share these comments with you. As already mentioned, I will attend the June 13-18, 1995 meeting and will be glad to provide you with any clarification that you need.

Sincerely,


Bill Wells, III
FV CAROLINA GIRL, FV CAROLINA BOY,
FV JACQUELINE AND JOSEPH

attachment

RECOMMENDED ELEMENTS OF A COOPERATIVE GOVERNMENT-INDUSTRY SCALLOP SURVEY

*Prepared by: Steve Davis, LGL Alaska Research Associates, Inc.
Prepared for: Wells Scallop Company (Owner/Operator of three Alaskan vessels)
and Misty Seas Company (Owner/Operator of two Alaskan vessels)*

Background

Following the Spring 1994 meetings of both the Alaska Board of Fisheries and the North Pacific Fishery Management Council, initial discussions were held between LGL and representatives of the scallop industry about "the next logical step" in the evolution of scallop management in Alaska. At that time, both the Board and the Council had just addressed the moratorium issue (i.e., "who's in, and who's out"), the Board had adopted a crew size limit and a prohibition of automated shucking machines, and the Council had approved a framework FMP which would delegate much of the day-to-day management responsibility to the State of Alaska.

One unaddressed issue which remained in the minds of industry concerned the issue of quota. Most fishermen believe that there exist greater harvest opportunities for scallops in Alaskan waters. These opportunities could be in the form of unexplored grounds (such as in the Bering Sea), or by higher exploitation rates where appropriate. Both possibilities are hindered by the lack of good scientific information on the scallop resource.

Currently the major gaps in our knowledge are:

1. We know nothing as to the size (i.e., biomass) of the scallop resource.
2. We know nothing as to the population structure of this resource (Are we looking at one or several discreet stocks?).
3. We know little of the scallop life history and growth patterns.

To achieve the objective of scientifically defensible quotas, managers need to know stock size and structure in order to determine biologically sound exploitation rate strategies. This information is critical if the Board and the Council are to seriously consider departing from current quotas/harvest guidelines (which are based on an analysis of historical catch data; see Kruse 1993).

What is clearly needed is a comprehensive scallop survey. Results from this survey could be used to determine whether area quotas are appropriate and if the harvest guidelines should be increased, decreased, or remain unchanged. This survey would provide information on habitat type, crab bycatch areas, etc. which could similarly be used by managers in determining areas for closure and appropriate bycatch limits.

Preliminary discussion with scientific staff of the Council, NMFS, and ADF&G over the last year suggest that it is unlikely that either agency has the funds necessary to support such a survey on its own.

LGL's recommendation to the scallop industry was to consider jointly sponsoring a survey with the government. Such a survey must:

1. Be scientifically designed, using proven statistical methods.
2. Be performed following a specified grid of survey stations, where standardized dredging methods would be employed.
3. All vessels of the scallop fleet would be provided an opportunity to participate in the survey. Each vessel would be assigned predetermined survey stations and would carry fishery scientists and/or observers.
4. Financing the survey would be a cost shared by both government and industry. The relatively small size of the scallop fleet makes the cost of the survey too high to bear alone. LGL recommends that the agencies provide start-up survey funds. Each participating vessel's marketable catch would be sold and put into the scallop survey fund. At the end of the survey, the Fund would be split equally among the participating vessels. Should funds be generated which exceed the cost of the survey, those funds would be directed to the agencies to support survey analysis.

Such a funding policy would ensure that those vessels assigned to areas which prove to provide little or no marketable catch are fairly compensated. Some vessels would by chance, generate considerable income. Applying all survey proceeds into a general fund assures that there are "no highliners" and that no "commercial fishing" for the sake of making money has occurred.

5. This conceptual survey plan differs from ADF&G's "exploratory fishery policy" in that it will produce data that can be used to address the gaps in our knowledge described above.
6. The cooperative survey is a "win-win" for both managers and the industry alike. The agencies win because they receive scientific information that given current funding constraints they could not get any other way. The industry wins because they finally know the size of the resource and can make business decisions based on that information. The data would enable an evaluation of quotas, closed areas, bycatch limits. It would provide both the Board and Council with the information it needs to further develop the FMP.

Prior to the recent events it was the intent of LGL to fully flesh out the conceptual design of a cooperative survey, and submit it to both the industry at-large and ADF&G for review. It was planned that during the course of the year, ADF&G and scallop fishermen could meet to discuss the technical design of the survey plan. Such a plan was to be presented to the Board next March when it is scheduled to again address scallop management. It was envisioned that the survey would be conducted outside the normal fishing seasons.

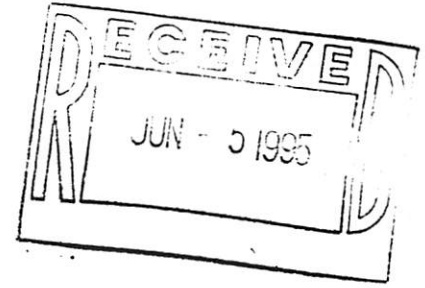
Now, with the possibility of no scallop fishery being allowed in federal waters later this year, perhaps an accelerated schedule could be developed whereby the agencies and the scallop industry can rapidly move forward to implement a research scallop plan for 1995. A Council committee, comprised of agency and industry representatives could be assembled to meet as soon as possible to discuss survey design and logistics. Such a research plan could be presented to the Council by the June meeting. A research plan could provide some income to fishermen that otherwise would not be available.

Wells Scallop Company

FV Carolina Girl
FV Carolina Boy
FV Jacqueline and Joseph

Misty Seas

FV Lorraine Carol
FV Fortune Hunter



May 30, 1995

Rick Lauber
Chairman
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Dear Mr. Chairman:

Re: Alaska Scallop Fishery

We have just received a copy of the Alaska Department of Fish and Game news release dated May 10. The guideline harvest for the main areas of scallop fishing is so small that it will be devastating to all of us who have worked so long to harvest and develop a high quality market for Alaska scallops.

It is a long political process to get where we are now to I.T.Q.'s and I am deeply concerned about how the boats that pioneered the fishery are going to survive. My company will also suffer severe economic hardship as the Alaska scallop has become a signature item for Nova Fisheries for which we are well known in markets around the world. The catch from the F/V Provider and the F/V Pursuit has been limited the last several years because of the overcapitalization of the fleet and the increasingly restrictive quotas. Now we are faced with the prospect of having no Alaska scallops to offer our customers ending the market and reputation we have worked so hard to develop.

At your June meeting, I urge you to find another solution than just shutting the fishery down so that the people who have worked within the system to try to prevent the resource being wiped out can survive. Surely there is something that can be worked out to enable the original vessels based in Alaska to make it to the point when I.T.Q.'s finally come into effect. **Please work out a reasonable allocation for the scallopers.**

I can't believe there is any valid scientific justification for shutting down the fishery completely for an entire year. Thank you for your consideration.

Yours Truly,

Blair Culter

c.c. Gov. Tony Knowles, Sen. Ted Stevens, Sen. Frank Murkowski, Rep. Don Young

NOVA Fisheries, Inc.
5309 Shilshole Avenue Northwest
Seattle, Washington 98107 USA

TELEPHONE 206.781.2000

FAX 206.781.9000

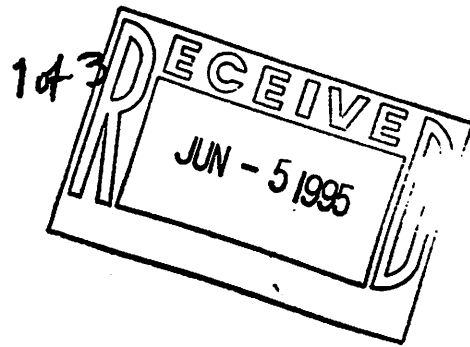
Rep. Don Young

An affiliate of

SUN-WAVE



DAVID HILLSTRAND
BOX 1500
HOMER, ALASKA 99603
(907) 235-8706



**NORTH PACIFIC FISHERIES MANAGEMENT COUNCIL
ATTENTION: RICHARD LAUBER**

Addressing the Scallop Fisheries off Alaska

The landing requirements on pg#12; that is, Made at least one landing in 91,92,93 or must have participated for at least four years between January 1, 1980- January 20, 1993.

The NPFMC ability to create landing requirements that will create a fleet that is close to the number of vessels historically fishing, and who are economically reliant upon the fisheries is a prudent choice. I encourage the NPFMC to take the time to set these multi-landing requirements up. Consider adding landings in each of the four years. I would encourage this for the crab fisheries as well.

Fishing Seasons Page #20; The seasons should start in August 15th were there is a tolerance allowing crab bycatch. This is because of the molting that has occurred in the spring and the soft shell stage of the crab up until late September. I consider August because it is also considered in the crab fisheries. Take in mind that these crab are handled with pots in these times, and careful release methods are applied. Most of the vessels that harvest scallops are larger vessels and can handle the weather, September 15th would be a better time for the fisheries in Bristol Bay and the Aleutian Islands.

Closed Waters Pg# 21,22; Option two; it is consistent with areas closed already. An additional area in Unimak Bight needs to be closed. The crab in these areas are highly valuable and are usually shipped out live to Japan. Their abundance has declined dramatically! 70-85 fathoms of water for the larger species of Baridi in this area, and 20-55 fathoms of water for the smaller crab that will recruit into the fisheries. I believe that the Baridi abundance will rebound to large numbers if this area is closed to trawling and dredging. From what I have seen around the State of Alaska this stock is the most hardy and aggressive. Their numbers should have exceeded all other areas of production; yet have not! I contribute it to the additional pressure of bycatch! Areas with high bycatch of crab should be closed until the rebuilding of the stocks occur and it is seen in the NMFS surveys of abundance.

Prohibited Species Catch Limits Pg# 23-25; This issue is probably the most contested issue to date. I would like for it to be straightened out, to establish a PSC that is best for each gear type and for the species in which we harvest.

The floating cap is going in the right direction; that being a percentage of the biomass. Yet when bycatch occurs it is mainly in larger crab. To set this right the PSC should be the % of the biomass of those size of crab that are retained in the trawl or dredges. This is calculated very easily by NMFS and their survey estimates. The quotas are set for exploitation of the stocks for the crab fishing industry on only these legal size crab. For us to retain crab under a certain size is illegal. I am encouraging the PSC be allowed only on the % of the biomass of legal size crab. If females or smaller crab are retained then they are counted against that number as well.

Page# 3 of 3

Pg.# 23 has wording similar to what I would want to see in the PSC wording. Prince William Sound, last paragraph. "crab bycatch was set at 1/2 percent of the last three years targeted crab catch". This establishes that PSC can be set at only the targeted legal size male crab.

David Hiltzham

COMMERCIAL FISHERIES



NEWS RELEASE

ALASKA DEPARTMENT
OF FISH & GAME



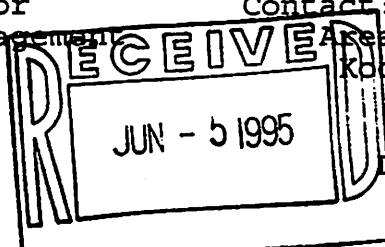
STATE OF ALASKA
Department of Fish and Game
Frank Rue, Commissioner

Westward Region
211 Mission Road
Kodiak, AK 99615

Robert C. Clasby, Director
Commercial Fisheries Management
and Development Division

Contact: James A. Spalinger
Alaska Shellfish Biologist
Kodiak\Alaska Peninsula

IMMEDIATE RELEASE



Date: May 30, 1995

ATTENTION SCALLOP FISHERMEN

The Alaska Department of Fish and Game announced today that state waters of the Bering Sea will not open to scallop fishing during the 1995/96 season. Although scheduled to open on July 1, 1995, the season was closed due to:

- (1) concern for crab bycatch in the shallow nearshore waters north of the Alaska Peninsula;
- (2) lack of weathervane scallop habitat in Bering Sea state waters;
- (3) lack of industry interest in exploring for scallops with little chances of finding new fishing grounds.

The ADF&G announced in a May 10, 1995 news release the openings and closures for scallop fishing in the Westward Region state waters. The decision regarding a scallop fishery in Bering Sea state waters had been delayed until this news release. For further details contact the Department of Fish and Game at 486-1840.



NORTH PACIFIC FISHERY
MANAGEMENT COUNCIL
P.O. BOX 103136
ANCHORAGE AK 99510
FX 907/271/2817

DEAR SIR,

I FEEL THAT THE STAFF SHOULD BE COMPLEMENTED ON EFFORT FOR AMENDMENT 1 TO THE FISHERY MANAGEMENT PLAN FOR THE SCALLOP FISHERY OFF ALASKA. THE SCALLOP INDUSTRY SHOULD BE ALLOWED TO WORK.

THE SSC AND THE AP SHOULD RECEIVE A COPY OF THE EMERGENCY ACTION AND 1995 DRAFT FISHERY MANAGEMENT PLAN CLOSING THE EEZ BY JAMES KIRKLEY & WILLIAM De PAUL.

THE INFORMATION THAT THE AMENDMENT 1 IS BASED ON IS FAULTY, KIRKLEY AND DePAULS, FOLLOWING 115 PAGE WILL SUPPORT THIS STATEMENT.

COMMENTS ON MANAGEMENT REGIMES CONSIDERED UNDER ALTERNATIVE 2:
PERMITS REQUIREMENTS, YES. LIMITED ACCESS, 3 BOATS HAVE RETURNED TO THE EAST COAST (15 BOATS) UNTIL MORE INFORMATION IS AVAILABLE ON HARVEST LEVELS QUALIFIED YES. REGISTRATION AREAS, YES. DISTRICTS AND SECTIONS, NOT NECESSARY IF FISHING INDUSTRY IS ALLOWED TO DO SURVEY WORK FOR NEXT THREE YEARS.

SCALLOP CATCH LIMITS, IF BASED ON 6 MILLION POUNDS + OR - YES BUT FOR EEZ ONLY. IN SEASON ADJUSTMENTS, NOT NECESSARY. REPORTING AND OBSERVER REQUIREMENTS (YES) SOME VESSELS SHOULD CARRY SCIENTIST FOR BETTER GATHERING OF INFORMATION.

FISHING SEASONS, NOT NECESSARY, IF EACH VESSEL GIVEN AN ALLOCATION OF THE TOTAL HARVEST, LET VESSEL HARVEST WHEN AND WHERE THEY WANT (CALLS FOR CRAB ALLOCATION TO EACH VESSEL)

CLOSED WATERS, OPTION 2: CRAB ALLOCATION TO VESSEL WOULD MAKE THIS REDUNDANT. GEAR RESTRICTIONS (YES) ADD 4 INCH RINGS (ALLOW LINERS FOR RESEARCH TOWS)

EFFICIENCY LIMITS: SHOULD BE BASED ON LENGTH OF VESSEL; 12 PERSON CREW GIVES ADVANTAGE TO SMALLER VESSEL DISADVANTAGE TO LARGER VESSELS, THIS IS DISCRIMINATORY TO LARGER VESSELS, WOULD BE UNNECESSARY IF VESSELS GIVEN ALLOCATIONS. PSC FOR CRABS SHOULD BE IN FORM OF ALLOCATION TO VESSEL TO ENCOURAGE DEVELOPMENT OF CRAB EXCLUDERS BY VESSELS.

ALLOCATIONS: EACH VESSEL TO RECEIVE A GIVEN AMOUNT (SCALLOPS AND CRAB BY-CATCH) CANNOT BE SOLD AND OR TRADED, VESSEL MUST HARVEST. OWNERS OF 3 VESSELS THAT HAVE RETURNED TO EAST COAST SHOULD BE ALLOWED TO HARVEST THOSE VESSELS ALLOCATION WITH VESSELS REMAINING IN THE ALASKAN AREA.

PO
BOX 369

WANCHESE
NORTH
CAROLINA
27981

919
473-5001

919
473-5004
FAX

PLEASE NOTE THE HARVEST LIMITS BY KIRKLEY AND DePAUL ARE SIMILAR TO THOSE PROPOSED BY INDUSTRY. IT SHOULD BE TAKEN INTO CONSIDERATION THAT MUCH OF THE INFORMATION IN COUNCIL RECORDS FROM INDIVIDUAL COULD BE SELF SERVING. CLOSE EXAMINATION OF INFORMATION IN THE RECORD FROM INDIVIDUAL LEADS TO THE CONCLUSION THAT THEY WERE TRYING TO LIMIT PARTICIPATION IN THE SCALLOP FISHING INDUSTRY. IT SHOULD BE NOTED THAT THESE PARTICULAR VESSELS HAVE BEEN RESPONSIBLE FOR CLOSURES, MANIPULATION OF BY-CATCH, BY CATCHING AN EXCESSIVE No. OF CRABS, FORCING THE SEASON TO END EARLY. CONSIDERATION SHOULD BE GIVEN TO ALLOCATIONS IN ORDER TO PREVENT THIS MANIPULATION OF THE COUNCIL AND ESPECIALLY THE STATE OF ALASKA IN THIS MANOR OR METHOD BY SELF SERVING INDIVIDUALS.

SINCERELY,

James Fletcher

JAMES FLETCHER,
CONSULTANT FOR WANCHESE FISH CO.

PH 919 473 3287

PAGES 117

**Emergency Action and 1995 Draft Fishery Management
Plan Closing the Exclusive Economic Zone Weathervane,
Patinopecten caurinus, Scallop Fishery: A Review of
Current and Proposed Regulatory Actions¹**

James E. Kirkley²

William D. DuPaul²

¹Conclusions and analyses presented in this report do not necessarily represent the opinions of the College of William and Mary, School of Marine Science, or the Virginia Institute of Marine Science. This report, however, was prepared with the permission of the College of William and Mary, School of Marine Science, and Virginia Institute of Marine Science.

²College of William & Mary, School of Marine Science, Virginia Institute of Marine Science, Gloucester Point, VA 23062.

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Executive Summary

Effective February 23, 1995, the National Marine Fisheries Service (NMFS) imposed an emergency action closure of the exclusive economic zone (EEZ) off Alaska to the harvesting of weathervane, *Patinopecten caurinus*, scallops (Federal Register (FR) DOC. 95-5033 Filed 2-28-95; 8:45 am). NMFS claims the action was necessary to control an unregulated scallop fishery in the EEZ until a federal fishery management plan (FMP) can be implemented. Allowing an unregulated fishery, NMFS claimed, would cause localized overfishing of scallop stocks.

In April 1995, the National Marine Fisheries Service, North Pacific Fishery Management Council (NPFMC), and Alaska Department of Fish and Game (ADF&G) developed a draft fishery management plan that closed the exclusive economic zone to harvesting weathervane and other species of scallops until either (1) a date two years from the date the regulations implementing the FMP become effective, or (2) the FMP is superseded by a future FMP or FMP amendment that implements management measures that would allow the uncontrolled harvest of scallops in federal waters without overfishing.

A review of the emergency action document and the 1995 draft FMP indicate that there is insufficient information to assess whether or not there is an emergency and whether or not the emergency and 1995 draft FMP will improve resource conditions and benefit the nation. There has been no stock

assessment of the resource in recent years. The structure of the stock is not defined; that is, is the resource characterized as an open population or defined in terms of discrete, localized, and self-contained populations?

There is no apparent information on catch and effort or meat counts. Both the emergency action and the 1995 draft FMP refer to voluntary data submitted by members of the scallop fishery and anecdotal information. The NMFS indicates that the anecdotal and voluntary information suggest a resource problem because the number of meats per pound (MPP)--meat count--has increased and catch-per-unit-effort (CPUE) has declined in recent years.

We demonstrate in this report that the meat count, even if it has increased, could be the result of many factors. One factor which is alluded to but not discussed in the 1995 draft FMP or emergency action is that scallop vessels have increasingly exploited the federal waters or EEZ. The water depth is typically deeper in the EEZ or offshore; scallops from deep water typically have lower yields or higher counts than scallops of the same size for shallow water areas. We also point out that even if the counts have increased or fishermen are harvesting smaller scallops, that is not sufficient evidence to support an emergency or even a resource problem. The North Pacific Fishery Management Council (NPFMC) has no information on pre-recruits; it is possible that the number of pre-recruits which would not be observed in the state's mandatory observer program could be extremely high. Alaskan regulations and commercial gear allow escapement of small scallops.

We further illustrate and discuss the use of catch per unit effort (CPUE) as an indicator of resource abundance or size of the scallop stock. We note that neither NMFS, the Council, nor the Alaska Department of Fish and Game have appropriate information on the level of pressure or inputs used to harvest scallops (e.g., days at sea or number of hours fished by each scallop vessel). That is, information on fishing effort does not appear to be regulated collected by the management agencies. We point out that numerous researchers have, however, published papers demonstrating that CPUE is not a valid indicator of abundance for most shellfish stocks, particularly scallops. Based on that alone, changes in CPUE cannot be used to prove that the weathervane resource off Alaska has declined to a level that warrants an emergency action. However, if the meat count has decreased, then it would be expected that CPUE, as measured in terms of pounds of meat per unit of fishing effort (e.g., number of days at sea or hours fished), would also decline. This conclusion, if actually real, however, also does not indicate that there is a resource problem. The apparent consensus of scallop researchers is that CPUE is not a valid indicator of the resource abundance of scallops.

We also demonstrate that the Alaskan management regime may be contributing to a decline in CPUE. Quotas as used by Alaska to regulate the weathervane scallop fishery are notorious inefficient. They cause vessels to engage in derby-style fishing practices. Alternatively, they create a race to fish by each participant so that each vessel can harvest scallops before the fishery

is closed. This type of fishing strategy has been shown throughout the fisheries literature to cause a decline in the CPUE and to create technical and economic inefficiency. We posit, in fact, that the Alaskan regulations violate National Standard 5 "promote efficiency in the utilization of fishery resources."

A major concern posed by NMFS and the North Pacific Fishery Management Council is that allowing one vessel to fish in the EEZ could cause serious biological overfishing. Without any information on resource conditions and vessel performance measures, it is not possible to state whether or not a single vessel could contribute to overfishing. The emergency action in the Federal Register (1995) states that there is no specific information available on the vessel's harvesting activity. It is highly unlikely that one vessel could cause biological overfishing.

The emergency action and 1995 draft FMP suggest that the vessel exploiting the EEZ has the potential to harvest 65,000 pounds (29.48 mt) of meats per week. Time budget studies conducted in 1993 on weathervane scallop vessels working off Alaska indicate that an individual crew member can shuck approximately 20 weathervane scallops per minute (DuPaul and Carnegie 1994). Alternatively, it takes about three seconds to shuck a weathervane scallop. Crew can shuck a maximum of approximately 40 minutes out of each hour. The only way a crew could harvest and process 65,000 pounds or more over a seven day period would be to have a crew of 14 or more individuals and a resource comprised of scallops having meat counts

mostly less than 20 meats per pound.

For example, a crew of 14 in which each crew member works 18 hours per day, seven days a week, and the captain and mate each work on deck for six hours per day has the potential to process 62,160 pounds of 20 meat count scallops. Of course, if the counts were 20 meats per pound (MPP), there would be no age or size-class distribution problem with the resource.

If we consider a 20 person crew with the same work schedule (e.g., 18 hour days per crew member and captain and mate shuck six hours a day), it is not possible for the crew to manually (no automatic shucking or sorting machines) process 65,000 pounds of 30 MPP scallops. We estimate the upper limit to be 60,800 pounds of 30 MPP scallops for a 20 person crew. Again, however, if the catch were dominated by 30 MPP scallops, there would be no age or size class problem with the resource.

In summary, it is not feasible for a crew of 20 or fewer individuals to process 65,000 pounds of meats over a seven day period unless the meat count is very low. If the count is low enough to permit 65,000 pounds of product, the scallops must be five years of age or older. In this case, there are no age class or size distribution problems with the resource.

The 1995 draft FMP argues that it is necessary to close the fishery because there is insufficient information available to regulate the fishery. It has been shown in the scientific literature (particularly Hilborn and Walters 1992) that little information necessary for resource management can be

obtained when the fishery is managed or regulated by extremely conservative strategies (e.g., an area closure). With this in mind, it may not be possible for NMFS to ever reopen the EEZ if the opening depends upon a plan based on sound scientific information. The interim closure limits the collection of information necessary for sound resource management.

The national standards state that resource management shall achieve the optimum yield (OY) and that all conservation and resource measures shall be based on the best scientific information available. The 1995 draft FMP specifies an OY of 1,100,000 pounds of meats; the OY equals the highest estimated harvest from the EEZ. The draft FMP provides no proof that the OY will be achieved on a continuing basis. Using information contained in the draft FMP, we estimate a maximum sustainable yield of approximately 6.3 million pounds of meats. Although the estimate is not statistically significant, it is based on the best scientific information available--landings and number of trips over time.

The weathervane scallop is distributed from California to Alaska and there are commercial fisheries in Oregon and Washington state. National Standards 3 and 6 require that an individual stock of fish shall be managed as a unit throughout its range and management measures shall take into account and allow for variations among, and contingencies in fisheries, fishery resources, and catches. The emergency action and 1995 draft FMP do not indicate that any effort was made to consult with the states of Oregon and

Washington or with the Pacific Fishery Management Council (PFMC) in Portland, Oregon. It is thus possible that the emergency action and draft FMP, if implemented, would be in violation of several National Standards.

In essence, we are unable to determine that there is a resource emergency or that an interim closure as proposed in the 1995 draft FMP would maximize benefits to the nation. It appears that 2 or more of the National Standards would be violated with the draft FMP. An interim closure would limit the collection of information necessary for sound resource management. The possibility that a single vessels could process 65,000 pounds of meats per week is very unlikely; it would require a crew size larger than 20 or extremely large scallops. If the scallops were large, there would be no age or size-class distribution problems. Changes in CPUE over time are not likely indicative of changes in resource abundance; changes in CPUE are more likely reflecting the effects of quota-based management and increased exploitation of weathervane scallops in the EEZ.

The available biological, social, and economic information is inadequate to ascertain the status of the stocks or resource conditions and the fishery. We are unable to ascertain what the levels of fishing effort, as defined by traditional measures such as days at sea or hours fished, have been in this fishery. We conclude that the available data do not support an emergency situation for the weathervane scallop off Alaska. We also suggest that if NMFS and the NPFMC believe there is an emergency and a federal FMP is

necessary, they will have to underwrite a large and expensive research program. If this research program has not yet begun, it will be a long time before a good FMP can be developed for the fishery.

We also offer that numerous alternative regulations could have been imposed by NMFS and the North Pacific Fishery Management Council. Why not just impose a quota in the EEZ equal to 1,100,000 or more pounds and require observers aboard every vessel? When the quota was reached, NMFS or the NPFMC could close the fishery. If the concern was on derby-style fishing, the NPFMC and NMFS could impose daily or weekly quotas; they could impose vessel-specific quotas or allocations.

ATT: *Richard Lauber*

D-1

June 12th, 1995
Fax 508-888-9179

TO: North Pacific Fishery Management Council
RE: FMP For Scallops

Having just received a copy of Scallop Amendment 1, dated May 26 and forwarded to me on June 10th, I would like to be able to offer some comments on the regulations as they will affect the ability of my boat to participate in the fishery.

As owner and operator of one of the vessels qualified under the terms of the scallop fishery moratorium, I would like to comment on the pending regulations as they pertain to Replacement of Vessels during Moratorium, (p. 41, Scallop amendment 1, May 1995)

The justification for restricting to a 20% increase the reconstruction or replacement of vessels is based, as stated in the proposal, on the need to 1). "stabilize the capacity of the fleet," but yet 2). allow for improvement of "safety and efficiency" of individual boats. The inclusion of vessels as qualified was based on history of landings, without consideration of vessel size. They range from 90' to upwards of 160', all that is except for the Rush at 64'8".

The existing regulations which limit the boats to the use of 15' dredges and twelve crew, and forbid the use of shucking machines, make all vessels equal in production capacity. All, except for the Rush. The rest of the boats, 90' or larger, are able to fish in strong currents and severe weather, and make longer trips..

F/V Rush at its present size can not fish in the strong currents of Shellikof Straits, west of Kodiak, or in the Bering Sea, nor in the severe weather in Jan and Feb. when the last scallop openings were set, without endangering boat and crew. Previous to these recent openings, the boat had fished only in Areas A and D during the months of April through October.

This year, during the January only opening, the F/V Rush attempted to join the fleet and was forced to stay in port due to weather while the rest of the large boats continued to fill the quota.

The regulatory commission in deciding on the areas and the time of year for the taking of scallops, but creating regulations which would not allow the Rush to be exchanged for a boat comparable to the next smallest vessel in the qualified fleet (90'), would make it impossible for the F/V Rush to participate in the fishery, and, in effect, render its permit meaningless for reasons of safety and efficiency. This size limitation does not have the same disqualifying effect on any other boat in the fleet: with a limit on dredge size, number of crew and use of shucking machines, no boat over 90' would need to increase its size for the sake of either safety or efficiency. Thus the proposed regulations limiting vessel size increase to 20%, are not necessary either to stabilize the fleet or to create safer or more efficient vessels.

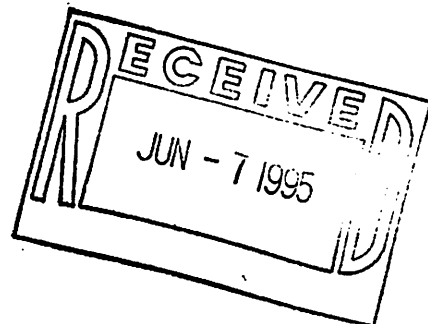
If the size increase regulation is to remain as proposed, we respectfully request that in the interest of safety and to make it possible to participate in the fishery it has been qualified for under the new regulations, the F/V Rush be allowed to be replaced by a vessel of 90' to 120', which is the average size of the qualified fleet, or alternatively that the state buy out the vessel as it has been deprived of its ability to participate in the fishery by the 20% size increase limitation, and it is now neither safe nor efficient under the new rules.

Sincerely, *Robert F. Keese*
Cap't Robert F. Keese
F/V RUSH Inc.
POB 6121, Sitka, AK.99835

MISTY SEAS, INC.

919322 AGENDA D-1
JUNE 1995 - SUPPLEMENTAL**Rough Seas, Inc. Misty Seas, Inc.****Michael E. Ireland, Sr.
P. O. Box 518 Ruth Drive
Aurora, N. C. 27808**

June 3, 1995

**Richard Lauber, Chairman
North Pacific Fishery Management Council
P. O. Box 103136
Anchorage, AK 99510**

Dear Chairman Lauber:

The purpose of this letter is to support your efforts in doing whatever possible to reopen federal waters off Alaska to scallop fishing. As we all discussed at the last meeting, the Council and the fishing industry have been forced to take actions as a result of a single operator exploiting a regulatory loophole. As a result, we have seen federal waters closed to scallop fishing and state waters severely restricted. I can't tell you how difficult these past few months have been for me, my crew, and our families. With no significant scallop fishing opportunities on our horizon, the current state of affairs will likely financially devastate the fleet.

I am in support of the scallop FMP approved by the Council in April 1994 and fine-tuned by the Council in January 1995. I don't understand why we couldn't amend that plan so that a federal permit is required to fish in the EEZ. The lawyers have told us that we instead need something like Amendment 1 to accomplish the same goal. I wish they had given us that advice last year and perhaps we could have avoided this entire mess.

At your request, I have reviewed Amendment 1 and support this amendment; or whatever action, is necessary to reopen the fishery. I do, however, also want to mention that my support of this amendment doesn't imply that I think this federalized plan is the "best we can do". I think it is a necessary first step toward developing an improved management regime, whereby a variety of problems are addressed including quotas, by-catch, and limited entry.

Using the enclosed table from the draft which summarizes the proposed management regime, I recommend that the Council use the moratorium as a temporary measure to provide time to develop a more considered management plan for this fishery.

The qualifying criteria adopted by the Council last April and reaffirmed again in January is the best solution to a difficult social problem. It was the right decision to make. It was fair and equitable to all of us who had made irreversible commitments to this fishery. The qualifying criteria was that a vessel had to have made at least one landing in either 1991, 1992, or 1993, OR have made landings in at least four years during the period January 1, 1980 to January 20, 1993. This criteria recognizes that vessels have come and gone over this fishery's short history and that in addition to current participants, there were some boats that had been in the fishery but for a variety of reasons did not make landings.

In April, a couple of Council members mentioned that they wanted to reconsider these qualifying criteria. I can't help but mention that even if turning back the clock was possible, it is more than likely that the "real winner" from such a change will be the lone operator that this year turned the Alaska fishery upside down. Business decisions have been made and monies spent due directly to the vote took by the Council last April 1994, to include years 1991, 1992, 1993 in the moratorium. Therefore, I recommend that you move forward with the moratorium as reaffirmed by the Council last January, and do what you can to expedite this amendment through Secretarial review.

Sincerely,



Michael Ireland

Owner: F/V Lorraine Carol

F/V Fortune Hunter

enclosure

mi/mb

Management Regime Considered under Alternative 2

Management Measure	Effect of Measure
Permits requirements	Would require federal permits to scallop in EEZ
Limited access	Would include vessel moratorium based on criteria Council adopted in April 1994, and reaffirmed in January 1995. 18 vessels qualify.
Registration (Regulatory) areas	Would create regulatory areas that are the same as State registration areas. Spreads out harvest geographically.
Districts and sections	Would create districts that are the same as State areas for Prince William Sound, Cook Inlet, and Kodiak areas. Allows for fine scale management.
Scallop catch limits	Would create annual specification process to set ABC and TAC Option 1: set limits for EEZ and State together Option 2: set limits for EEZ waters only
Inseason adjustments	Would allow NMFS Regional Director to adjust TAC, ABC, or close area to keep scallop stocks from being overfished.
Reporting requirements	Would require vessels to report catch, area fished, etc.
Observer requirement	Would require vessels to carry observers as specified by the Research Plan or other observer program.
Fishing seasons	Would set opening dates for each regulatory area. Closing dates would be December 31.
Closed waters	Would close areas to protect crab populations and crab habitat. Option 1: closes EEZ areas currently established under State regulations to scallop fishing. Option 2: closes three areas in the EEZ currently established under Federal regulations for trawling to protect crabs.
Gear restrictions	Would restrict gear same a State regulations. Dredges with 15' maximum width, fished 2 at a time are allowed. In Kamishak District of Cook Inlet only 1 dredge with a 6' maximum would be allowed.
Efficiency limits	Would restrict efficiency same a State regulations. Limits include a 12 person crew limit on scallop vessels and mandatory manual scallop shucking for weathervane scallops.
PSC limits for crab	Would restrict the number of crab the scallop fishery takes as bycatch. Option 1: set PSC limits for EEZ and State together Option 2: set PSC limits for EEZ waters only