


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver   
Executive Director

DATE: March 24, 2004

SUBJECT: Scallop FMP

ESTIMATED TIME 2 HOURS
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**ACTION REQUIRED**

Develop alternatives to modify the license limitation program.

**BACKGROUND**

At the February 2004 meeting, the Council initiated analysis of possible revisions to the scallop license limitation program (LLP). This proposed analysis would examine modifying or eliminating the 6 foot dredge size gear endorsement. The dredge gear endorsement was approved as part of the original LLP, which was adopted as Amendment 4 to the Scallop FMP and implemented in 2000. This gear restriction may have disproportionate impacts on only one fishery participant, so measures are being evaluated to modify or eliminate this restriction.

The Council requested that staff prepare a discussion paper reviewing the background of the scallop LLP and proposing draft alternatives to modify the current LLP endorsements. This discussion paper is attached as Item D-1(a). At this meeting, the Council will review the background of the LLP and establish alternatives to be examined in an EA/RIR/IRFA for modifying the LLP endorsements. Concurrent with this analysis, staff will update the FMP to better reflect the current status of scallop biology and management.

## **Discussion Paper on the background on the Scallop License Limitation Program**

### **Purpose of evaluating the existing Scallop LLP**

Beginning in 2001, a Federal Scallop License Limitation Program (LLP) license is required on board any vessel deployed in scallop fisheries in Federal waters off Alaska. Under the LLP, 7 vessel owners are licensed to fish statewide (outside Cook Inlet Registration Area) utilizing two 15 foot dredges, and two vessels owners are licensed to fish statewide with a single 6-foot dredge. All 9 licenses permit vessel owners to fish inside Cook Inlet with a single 6-foot dredge.

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### **Background on the State and Federal Scallop Management measures and initiation of the LLP**

The perceived need to limit access to the fishery was the primary motivation for the Council to begin its consideration of Federal management of the scallop fishery in 1992. Following a specific incident of unregulated fishing activity in Prince William Sound which resulting in the State's GHF being exceeded by more than 100 percent, the Council requested that NMFS implement an emergency rule to close Federal waters to fishing for scallops to prevent overfishing of the scallop stocks. NMFS approved the Council's request and closed Federal waters off Alaska to fishing for scallops by emergency rule on February 23, 1995 (60 FR 11054, March 1, 1995).

To respond to the need for Federal management of the scallop fishery once the emergency rule expired, the Council prepared and adopted an FMP which was approved by NMFS on July 26, 1995. The only management measure authorized and implemented under the FMP was an interim 1 year closure of Federal waters off Alaska to fishing for scallops (60 FR 42070, August 15, 1995). The interim closure prevented uncontrolled fishing for scallops in Federal waters while the Council developed a Federal scallop management program.

### **Summary of FMP amendments leading to the LLP (amendment 4)**

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

Amendment 1 was approved by NMFS on July 10, 1996 (61 FR 38099). Amendment 1 established a joint State- Federal management regime under which NMFS implemented Federal scallop regulations that duplicated most State scallop regulations, including definitions of scallop registration areas and districts, scallop fishing seasons, closed waters, gear restrictions, efficiency limits, crab bycatch limits, scallop catch limits, in-season adjustments, and observer coverage requirements. This joint State-Federal management regime was designed as a temporary measure to prevent unregulated fishing in Federal waters until changes in the Magnuson-Stevens Act would enable the Council to delegate management of the fishery to the State. Federal waters were re-opened to fishing for scallops on August 1, 1996.

*Amendment 2: Vessel Moratorium*

Amendment 2 to the FMP, establishing a temporary moratorium on the entry of new vessels into the scallop fishery in Federal waters off Alaska was approved on April 11, 1997 (62 FR 17749). To qualify its owner for a moratorium permit, a vessel must have made a legal landing of scallops during 1991, 1992, or 1993, or during at least 4 separate years from 1980 through 1990. The moratorium was intended to remain in effect through June 30, 2000, or until replaced by a permanent limited access system. Eighteen vessel owners qualified for moratorium permits under the Federal vessel moratorium.

*Amendment 3: Delegate Management Authority to the State*

Amendment 3 delegated to the State the authority to manage all aspects of the scallop fishery in Federal waters, except limited access, including the authority to regulate vessels not registered under the laws of the State. The final rule implementing Amendment 3 was published on July 17, 1998 (63 FR 38501). Amendment 3 simplified scallop management in the Federal waters off Alaska by eliminating the unnecessary duplication of regulations at the State and Federal levels.

*Amendment 4: License Limitation Program*

In December 1996, the Council initiated analysis of a license limitation program for the scallop fishery. Section 303(b)(6) of the Magnuson-Stevens Act provides authority to limit access to a fishery "...to achieve optimum yield if, in developing such a system, the Council and Secretary take into account:

- A. present participation in the fishery
- B. historical fishing practices in, and dependence on, the fishery,
- C. the economics of the fishery,
- D. the capability of fishing vessels used in the fishery to engage in other fisheries,
- E. the cultural and social framework relevant to the fishery, and,
- F. any other relevant considerations."

A LLP was proposed to limit access to the fishery, because re-entry of latent capacity would adversely affect the economic viability of the current participants in the fishery. The EA for Amendment 4 to the Scallop LLP considered a range of 6 alternatives and two options for analysis. The problem statement, and suite of the original six alternatives and options is attached as Attachment 1.

The suite of alternatives examined by the Council ranged from no action, which would have returned the fishery to an open access status, to issuing between nine and eighteen licenses based on qualification by state and federal moratorium permit holdings and a range of recent and historical participation. The two options under these alternatives dealt with specifying area endorsements and vessel reconstruction and replacement.

Option 1 regarding area endorsements was developed to address concerns about having separate scallop fleets inside and outside of Cook Inlet. Originally, the designation of separate licenses was intended to protect the Homer small boat fleet from competition by larger outside vessels. Three factors were cited in public testimony from February 1998 indicating that this protection was no longer necessary. First, the season opening dates for Yakutat and PWS have been changed from January to July 1, providing for additional fishing opportunities for larger vessels in the summer months. The second reason is that Cook Inlet requires the use of a single 6 foot dredge, which would not be economical to fish with a larger vessel and an 11 person crew. The third reason cited is that the Cook Inlet (Kamishak) quota had remained very small relative to outside areas, ranging from 20,000 to 28,000 pounds during that time period. Since 1997, the GHR ceiling for the Cook Inlet Registration area has been limited to 20,000 pounds.

Option 1A separated area endorsements for Cook Inlet and statewide areas based on either recent activity (Option 1A(1)) or recent or historic activity (Option 1A(2)). These options had economic costs to the handful of vessels that were moratorium qualified for Cook Inlet because it limited their opportunities to catch scallops elsewhere. However, Option 1A also had benefits to the vessels that were moratorium qualified to fish outside of Cook Inlet because it reduced their competition for scallop quota. The difference between Option 1A(1) and Option 1A(2) was one vessel, the F/V Wayward Wind (owned by the same owners as the La Brisa), that fished outside Cook Inlet during the historic qualifying period, but not in the recent qualifying period.

Option 1B had no area endorsements and thus all licenses would be statewide. This had exactly the reverse effect of Option 1A. Under Option 1B, Cook Inlet vessels stood to benefit, whereas vessels fishing outside Cook Inlet would have been subject to additional competition. Note that three vessels from Cook Inlet would have been allowed to fish in outside waters under Option 1B. Although those vessels at that time were fishing one 6-foot dredge and carrying a small crew (2-5 persons), it was considered possible that they could fish larger dredges and carry larger crews if they were allowed to fish in other areas of the state. This would result in an increase in effort in statewide waters from the recent qualifying period and allow Cook Inlet vessels to increase capacity from the recent qualifying period. Increasing capacity in statewide waters was contrary to the Council's problem statement.

Option 1C was a compromise between having a separate fleet (Option 1A) and a single fleet (Option 1B). Option 1C allowed the Cook Inlet qualified vessels to fish in other areas but limited these vessels to fishing only one 6-foot dredge. Testimony at the February 1998 meeting indicated that this could be a non-economically viable option if the restricted vessels were required to carry observer in the statewide areas. In the EA for Amendment 4 it was acknowledged that: "*Option 1C would allow vessels to fish in the outside waters with a gear restriction, but the observer costs would be prohibitive, and none of the Cook Inlet vessels would be expected to participate in areas outside Cook Inlet. The difference between Option 1C(1) and Option 1C(2) is one vessel, the F/V Wayward Wind, that fished outside Cook Inlet during the historic qualifying period, but not in the recent qualifying period. Option 1C(1) would limit this vessel to fishing one 6-foot dredge outside of Cook Inlet.*" (NPFMC, 1999).

The Council adopted Alternative 6 of the analysis, which limited the fishery to a total of 9 licenses (Attachment 2). Only one license was issued for each qualifying vessel. Only those holders of moratorium permits who made legal landings of scallops from a vessel in two of the three years 1996, 1997, or 1998 received a license. The Council further adopted several options from the analysis, including Option 1C(1) and a modified Option 2D, which specified license restrictions and limits on vessel replacement size.

In deciding upon Option 1C(1), the Council debated the need to limit capacity in the fishery based upon historical precedent and the vulnerability of the resource. While discussion in the Council debate recognized that the difference between adopting either Option 1C(1) or Option 1C(2) would only impact one vessel owner, the Council chose to adopt Option 1C(1), the more restrictive license limitation option available to them, given the concerns regarding the overcapacity of the fleet and the potential to overfish the scallop resource at that time.

In adopting Option 1C(1), while all licenses are statewide, license holders who never made a legal landing of scallops from outside Cook Inlet during the qualifying period were restricted to a single 6 ft dredge in all areas. Federal regulations under 50 CFR 679.4(g)(3) state that "A scallop license authorizes the license holder to catch and retain scallops only if the vessel length and gear used do not exceed the vessel length and gear endorsements specified on the license...". This is the specific restriction that has been brought to the attention of the Council. Testimony received by Max and Scott Hulse indicates that they are economically disadvantaged as the only scallop fishery participants in the statewide fishery that are restricted to the use

of a single 6 ft dredge. Apparently, the other 6 ft dredge endorsed license, for Thomas Hogan, is only being used to fish within Cook Inlet. All of the other seven license holders are able to use the full complement of two 15 ft dredges in the statewide fishery.

### **Potential Alternatives for modifying the LLP**

In an environmental assessment to evaluate modifying the current LLP, the Council will need to look at a reasonable range of alternative actions. A proposed list of three alternatives to examine is as follows:

Alternative 1: Status Quo. Maintain the current 6 ft dredge restriction endorsement.

Alternative 2: Modify the current 6 ft dredge restriction to allow vessels with the current endorsement to fish in statewide waters outside of Cook Inlet with a maximum of two ten-foot dredges (or two dredges with a combined width of no more than 20 feet).

Alternative 3: Eliminate the current 6 ft dredge restriction such that there are no gear restrictions on any Scallop LLP for fishing in statewide waters outside of Cook Inlet.

Alternative 1, status quo, represents the current LLP as approved by NMFS, which includes the 6 ft dredge size restriction for vessels that fished only in Cook Inlet during the qualifying period as stated in the EA for Amendment 4 to the Scallop FMP. Alternative 2 represents the proposed dredge size (10 ft) submitted in public testimony by Max and Scott Hulse on page three of their public testimony submitted to the Council in February 2004. Alternative 3 would allow all LLP holders to utilize the full complement of gear, two 15 ft dredges, in statewide waters outside of Cook Inlet. Current state regulations limit scallop vessels to a maximum of two, 15 ft dredges.

As mentioned previously, there are only two license holders who would be impacted by any modification to the 6 ft gear endorsement under the current LLP program. The EA/RIR/IRFA for Amendment 4 (NPFMC 1999) acknowledged that the cost of carrying an observer in statewide waters for those vessels with the 6 ft dredge restriction could be prohibitively high. An EA/RIR/IRFA for any proposed changes to the LLP would also examine the relative costs and benefits of the range of alternatives.

Once alternatives are established by the Council at this meeting, an EA/RIR/IRFA would be prepared by staff and presented to the Council for initial review at a future meeting. Concurrent with a NEPA analysis of this range of alternatives would be an update to the whole FMP in order to increase clarity and update the information within the FMP on the biology and management of the scallop stocks. As discussed at the February 2004 meeting, the current scallop FMP has been amended seven times since its' approval in 1995 and has not undergone a major revision since that time.

### **Reference:**

NPFMC, NMFS, ADF&G. 1999. Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for Amendment 4 to the Fishery Management Plan for the Scallop Fishery Off Alaska to establish a License Limitation Program. North Pacific Fishery Management Council, 605 Weest 4<sup>th</sup> Avenue, Anchorage, Alaska, 99501-2252. February, 1999.

**Attachment 1: Problem statement and suite of alternatives and options examined by the Council in the Environmental Assessment to analyze elements of a license limitation program to replace the existing vessel moratorium.**

**Problem Statement adopted by the Council at its February 1998 meeting, and revised in October.**

The Council is dealing with a sensitive resource and overcapitalized fishery. In 1993 the Council determined, through the moratorium, that "unrestricted access to the fishery can be harmful to the resource and cause net loss to the nation." With the moratorium set to expire, the number of latent permits in existence, which if activated, would exacerbate the problem. Additional participation or increased harvesting capacity may impose significant economic hardship to current participants.

The alternatives analyzed were as follows:

- Alternative 1: No Action. Under this alternative, the scallop vessel moratorium would expire in 2000, and the fishery would revert back to open access.
- Alternative 2: Vessel owners who qualify for Federal moratorium permits would receive a license. Under this alternative, a total of 18 licenses would be issued; one for each vessel.
- Alternative 3: Vessel owners who qualify for State moratorium permits would receive a license. Under this alternative, a total of 10 licenses would be issued; one for each vessel.
- Alternative 4: Holders of either Federal or State moratorium permits that used their moratorium permits to make legal landings of scallops in 1996 or 1997 would receive a license. The federal or state moratorium qualification period would serve as the historic qualifying period and the years 1996 and 1997 would serve as the recent qualifying period. Under this alternative, a total of 10 licenses would be issued; one for each vessel.
- Alternative 5: Holders of either Federal or State moratorium permits that used their moratorium permits to make legal landings of scallops in 1996, 1997, or 1998 (through 10/9/98) would receive a license. The federal or state moratorium qualification period would serve as the historic qualifying period and the years 1996, 1997, and 1998 would serve as the recent qualifying period. Under this alternative, a total of 11 licenses would be issued; one for each vessel.
- Alternative 6: (**Preferred**) Holders of either Federal or State moratorium permits that used their moratorium permits to make legal landings of scallops in two of the three years (1996, 1997, 1998 through 10/9) would receive a license. The federal or state moratorium qualification period would serve as the historic qualifying period and the years 1996, 1997 and 1998 would serve as the recent qualifying period. Under this alternative, a total of 9 licenses would be issued; one for each vessel.

In addition, two options, applicable to Alternatives 2-6, were analyzed.

Option 1: Area Endorsements

- A: (1) Separate endorsements for Cook Inlet and statewide areas based on recent activity.  
(2) Separate endorsements for Cook Inlet and statewide areas based on recent or historic activity.
- B: No area endorsement. All licenses are statewide.
- C: (1) **(Preferred)** No area endorsements. All licenses are statewide, but Cook Inlet vessels would be restricted to a single 6 ft dredge in all areas based on recent activity.  
(2) No area endorsements. All licenses are statewide, but Cook Inlet vessels would be restricted to a single 6 ft dredge in all areas based on recent or historic activity.

Option 2: Vessel Reconstruction and Replacement

- A. No restrictions on reconstruction or replacement.
- B: Maximum LOA restricted to 120% of the length of the vessel on January 23, 1993
- C: Maximum LOA restricted to 120% of the LOA of the vessel on which the permit was used in 1996 or 1997.
- D. **(Preferred)** No increases in vessel length allowed. Maximum vessel length will be restricted to 100% of the LOA of the qualifying vessel on February 8 1999, unless the moratorium permit was used on a longer vessel in the recent qualifying period in which case the license will be limited to 100% of the LOA of the longest vessel used in the recent qualifying period.

## Attachment 2: List of Scallop License Limitation Permits

National Marine Fisheries Service  
PO Box 21668  
Restricted Access Management  
Juneau, Alaska 99802-1668  
800-304-4846

Prepared: January 9, 2003

### Scallop License Limitation Permits

#### Issued by National Marine Fisheries Service - Restricted Access Management

<u>License</u>	<u>License Holder</u>	<u>MLOA</u>	<u>Transferable?</u>	<u>Gear Restrictions</u>
009	Carolina Boy, Inc.	95'	Yes	None
010	Alaska Scallop, LLC	96'	Yes	None
002	Forum Star, Inc.	97'	Yes	None
003	Hogan, Thomas C.	75'	Yes	Single 6' (1.8m) scallop dredge
004	Hulse, Max et al.	79'	Yes	Single 6' (1.8m) scallop dredge
005	Ocean Fisheries LLC	100'	Yes	None
006	Thomas Gilmartin	70'	Yes	None
008	Provider, Inc.	124'	Yes	None
007	Pursuit, Inc.	101'	Yes	None

Note: these licenses do not have expiration dates. Interim licenses remain valid until Final Agency Action is taken on claims.