

MEMORANDUM

TO: Council, SSC and AP Members  
FROM: Clarence G. Pautzke  
Executive Director  
DATE: December 1, 1997  
SUBJECT: Scallop Management

ESTIMATED TIME  
3 HOURS

**ACTION REQUIRED**

Final review of Amendment 3.

**BACKGROUND**

Amendment 3 - Defer Management to State

The Scallop fishery off Alaska is currently managed under a State-Federal management regime established by Amendment 1 to the Scallop FMP. This regime is cumbersome in that each State regulation and management action must be duplicated by a parallel Federal action. In discussing Amendment 1, the Council noted that it could serve as a temporary program to prevent unregulated fishing in Federal waters until changes in the Magnuson-Stevens Act would provide the Council with the authority to delegate to the State authority to manage the scallop fishery in Federal waters.

Amendments to Magnuson-Stevens Act now enable the Council to delegate to the State, (with a three-quarter majority vote), the authority to manage some or all aspects of the scallop fishery in Federal waters off Alaska. The EA/RIR, which was distributed for public review in October, examines three alternatives that would delegate to the State authority to manage the scallop fishery in the Federal waters off Alaska. An executive summary and relevant tables are attached as Item D-4(a).

Alternative 1: No Action. Under this alternative, ADF&G and NMFS would continue to maintain duplicate regulations and mirror each other's management actions.

Alternative 2: This alternative would delegate to the State authority to manage all aspects of the scallop fishery in Federal waters off Alaska except limited access. Under this alternative, limited access management would remain a Federal responsibility under the FMP, and would require an FMP amendment to change. All other Federal scallop regulations would be repealed and the authority to manage all other aspects of the scallop fishery would be delegated to the State under the FMP, including the authority to regulate any vessels not registered under the laws of the State.

Alternative 3: This alternative would delegate to the State authority to manage all aspects of the scallop fishery in Federal waters off Alaska. Under this alternative, all Federal regulations governing the scallop fishery off Alaska would be repealed and authority to manage all aspects of the scallop fishery would be delegated to the State under the FMP, including the authority to limit access and to regulate any vessel not registered under the laws of the State.

Kent Lind, NMFS Alaska Region, will be on hand to review the analysis.

## EXECUTIVE SUMMARY

The Scallop fishery off Alaska is currently managed under a cumbersome State-Federal management regime established by Amendment 1 to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP) under which each State regulation and management action must be duplicated by a parallel Federal action. In discussing this amendment, the Council noted that it could serve as a temporary program to prevent unregulated fishing in Federal waters until changes in the Magnuson-Stevens Act would provide the Council with the authority to delegate to the State authority to manage the scallop fishery in Federal waters. While this management regime has enabled NMFS to reopen Federal waters to fishing for scallops, it has proven to be cumbersome in practice. NMFS inseason management staff must draft and publish Federal Register notices that duplicate every State scallop management action, and State scallop managers are constrained in their ability make rapid management decisions because they must coordinate each action with NMFS and provide sufficient lead-time for publication of the action in the Federal Register.

Amendments to Magnuson-Stevens Act in 1996 now enable the Council to delegate to the State, with a three-quarter majority vote, the authority to manage some or all aspects of the scallop fishery in Federal waters off Alaska. This document examines two alternatives, in addition to the requisite "no action" alternative, for an Amendment 3 to the FMP that would delegate to the State authority to manage the scallop fishery in the Federal waters off Alaska.

**Alternative 1: No Action.** Under this alternative, the cooperative State-Federal management regime established by Amendment 1 would remain unchanged. ADF&G and NMFS would continue to maintain duplicate regulations and mirror each other's management actions to provide for the orderly management of the scallop fishery off Alaska.

**Alternative 2: Delegate to the State authority to manage all aspects of the scallop fishery in Federal waters off Alaska except limited access.** Under this alternative, limited access management would remain a Federal responsibility under the FMP, and would require an FMP amendment to change. All other Federal scallop regulations would be repealed and the authority to manage all other aspects of the scallop fishery would be delegated to the State under the FMP, including the authority to regulate any vessels not registered under the laws of the State. Two categories of management measures would be established. Limited access measures would be designated as Category 1 measures. Such measures would be fixed in the FMP, reserved for Federal implementation, and would require an FMP amendment to change. All other management measures would be designated as Category 2 measures and would be delegated to the State for implementation.

**Alternative 3: Delegate to the State authority to manage all aspects of the scallop fishery in Federal waters off Alaska.** Under this alternative, all Federal regulations governing the scallop fishery off Alaska would be repealed and authority to manage all aspects of the scallop fishery would be delegated to the State under the FMP, including the authority to limit access and to regulate any vessel not registered under the laws of the State.

With respect to the environmental effects of Amendment 3, the purpose of Amendment 3 is to eliminate an unnecessary and duplicate layer of regulation without altering the manner in which the fishery is currently managed by the State. Consequently, neither of the alternatives to the status quo is expected to alter the nature of the scallop fishery in a manner that would affect the human environment or impact other fisheries off Alaska.

Alternatives 2 and 3 differ only with respect to limited access management. Under Alternative 2, the scallop fishery would continue to be governed by the Federal scallop vessel moratorium under which 18 vessels qualify for moratorium permits. The current State scallop vessel moratorium program would apply only to State waters as is the case under the status quo. Under Alternative 3, the Federal moratorium would be repealed and the State would be authorized to extend its moratorium program to Federal waters. Under Alternative 3, eight vessels that qualify to participate under the Federal moratorium would be excluded from the fishery. Four of these vessels are currently participating in the 1997 scallop fishery.

**Table 2. Landings and effort in the Alaska weathervane scallop fishery, 1980 - 1996.**

<i>Year</i>	<i>Number of Vessels</i>	<i>Landings (lb shucked meats)</i>	<i>Price (\$/lb)</i>
1980	8	633,000	4.32
1981	18	924,000	4.05
1982	13	914,000	3.77
1983	6	194,000	4.88
1984	10	390,000	4.47
1985	8	648,000	3.12
1986	9	683,000	3.66
1987	4	583,000	3.38
1988	4	341,000	3.49
1989	7	526,000	3.68
1990	9	1,489,000	3.37
1991	7	1,191,000	3.76
1992	7	1,811,000	3.88
1993	15	1,429,000	5.00
1994	16	1,235,000	6.00
1995	10	283,000	n/a
1996	9	728,424	6.38

Source: Alaska Department of Fish and Game.

**Table 3. Comparison of Federal and State scallop vessel moratorium programs.**

	<i>Federal Moratorium</i>	<i>State Moratorium</i>
<i>Moratorium period</i>	July 1, 1997 - June 30, 2000	July 1, 1997 - June 30, 2001
<i>Qualifying Criteria</i>	A vessel must have made a legal landing of scallops from any waters off Alaska during 1991, 1992, or 1993, or during at least 4 separate years from 1980 through 1990.	<u>Statewide</u> : A vessel must have landed at least 1,000 lbs of scallops from statewide waters during 1995 or 1996, and during each of at least 4 years between 1984 and 1996 inclusive.  <u>Cook Inlet</u> : A vessel must have landed at least 1,000 lbs of scallops from Cook Inlet during 1994 or 1996, and during each of at least 3 years between 1984 and 1996 inclusive.
<i>Area endorsements</i>	Separate endorsements are needed for Area H (Cook Inlet) and statewide waters outside Area H. Once a vessel meets the qualifying criteria for a moratorium permit, a single legal landing of scallops from an area during the qualifying period is required to receive an endorsement for that area.	Separate permits are required for Area H (Cook Inlet) and statewide waters outside Area H. A vessel must meet the qualifying criteria in each area to receive a permit for that area.
<i>Vessel reconstruction</i>	Vessels may be reconstructed or lengthened, however length may not exceed a maximum length overall (LOA) of 1.2 times the length of the vessel on January 23, 1993. This maximum LOA will be listed on all moratorium permits.	No limits on vessel lengthening or reconstruction.
<i>Vessel replacement</i>	A permit holder may use a moratorium permit on any vessel that does not exceed maximum LOA listed on the permit	A vessel owner may transfer a moratorium permit to another vessel that does not exceed the LOA or horsepower rating of the originally permitted vessel.
<i>Permit transfers</i>	Moratorium permits may be transferred to any person and used on any vessel not exceeding the maximum LOA listed on the permit.	Except as provided for under vessel replacement, permits may not be transferred to a new owner except through sale of the permitted vessel.
<i>Qualifying recipient</i>	In the case of multiple owners of a single vessel, the moratorium permit will be issued to the most recent owner of the vessel who made a qualifying landing during the moratorium period such that each vessel generates only one permit.	Permits are issued to the current owner of a qualifying vessel. However, a vessel owner who does not own a vessel that qualifies for a moratorium permit may receive a moratorium permit if he owned two or more vessels whose combined participation in the scallop fishery would satisfy qualifying criteria. In such a case, the moratorium permit would be issued to the last vessel that made qualifying landings.
<i>Fees</i>	none	Annual fee of \$1000 per permit.

**Table 4. Scallop vessels qualifying for moratorium permits under the Federal and State Vessel Moratorium Programs (preliminary)<sup>1</sup>.**

<i>Vessel Name</i>	<i>Federal Moratorium</i>		<i>State Moratorium</i>	
	<i>Statewide</i>	<i>Cook Inlet</i>	<i>Statewide</i>	<i>Cook Inlet</i>
ALASKA BEAUTY		Y	Y	Y
ARCTIC QUEEN (Formerly the JACQUELINE & JOSEPH)	Y		Y	
SEAWIND (formerly the ARCTIC ROSE)	Y			
CAROLINA BOY	Y		Y	
CAROLINA GIRL II	Y		Y	
FORTUNE HUNTER	Y			
FORUM STAR	Y			
KILKENNY		Y		
LA BRISA <sup>2</sup>			Y	Y
LORRAINE CAROL	Y			
MISTER. BIG	Y			
NORTHERN EXPLORER		Y	Y	Y
OCEAN HUNTER	Y			
PHOENIX	Y			
PROVIDER	Y		Y	
PURSUIT	Y		Y	
RUSH	Y		Y	
TRADE WIND	Y		Y	
MIRANDA ROSE (Formerly named WAYWARD WIND) <sup>2</sup>	Y	Y		

<sup>1</sup>This list should be considered preliminary. Eligibility was determined using the State's fish ticket files according to the eligibility criteria established for each moratorium program. Additional vessels could be eligible if it is determined through adjudicatory hearings that the fish ticket records do not accurately represent a vessel's participation history in the scallop fishery.

<sup>2</sup>The owner of the LA BRISA also owned the MIRANDA ROSE. Both vessels participated in the scallop fishery. Under the State moratorium program, the combined participation of both vessels qualifies the last vessel fished, the LA BRISA, for a State moratorium permit. Under the Federal moratorium program, the MIRANDA ROSE qualifies for a moratorium permit but not the LA BRISA which entered the scallop fishery after the end of the qualifying period for the Federal moratorium. As a result, the vessel owner is eligible for one moratorium permit under either moratorium program.

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

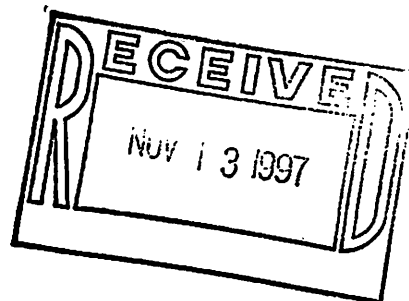
## DEPARTMENT OF FISH AND GAME

Board Support Section

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November 7, 1997

Richard Lauber (Chairman)  
North Pacific Fishery Management Council  
605 W. 4th Avenue Suite 306  
Anchorage, AK 99510



Dear Chairman Lauber:

The North Pacific Fishery Management Council (Council) is scheduled to take final action on Amendment 3 to the Council's scallop Fishery Management Plan (FMP) during its December, 1997, meeting. This amendment proposes three alternatives for Council consideration.

Alternative 1 is the no action alternative, which is unacceptable to both the State and the National Marine Fisheries Service (NMFS). Alternative 2 delegates authority to the State to manage all aspects of the scallop fishery in federal waters off Alaska, except limited access provisions (i.e., moratorium, limited entry or IFQs). Alternative 3 delegates authority to the State to manage all aspects of the scallop fishery in federal waters off Alaska. Under all three alternatives, a Council FMP will remain in place to assure that a "Mr. Big" incident does not occur again.

The structure of the delegation under Alternative 2 is most similar to the Bering Sea\Aleutians Islands Area (BSAI) king and Tanner crab FMP. The Alaska Board of Fisheries (Board) is concerned that this alternative will render an unnecessary and duplicative layer of regulation without likely altering the manner in which the fishery is prosecuted. It will mean that a portion of the already limited staff and budget of the NMFS and Council will be directed to scallop management. Correspondingly, Alaska Department of Fish and Game (ADF&G) staff and budget will need to be dedicated to resolving scallop fishery issues in the federal arena. Additionally, as the Council actively develops scallop limited access proposals, it is likely that scallop fishermen seeking to "cover their bets" will pursue the duplicative council avenue of administrative remedy by requesting amendments and expansion the federal FMP to include other management measures.

The Board is most supportive of Alternative 3, which is similar to the salmon FMP. While this alternative still maintains a scallop FMP, the

full range of management options are provided to the State. There is no partitioning of the regulatory authority as occurs under Alternative 2, so that the managing agency can develop comprehensive regulations.

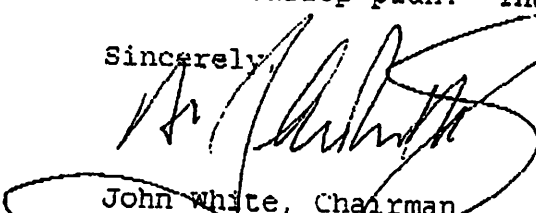
Lastly, under the current duplicative regime, two moratorium programs are in place. The limited entry moratorium developed by the Council was implemented at a time of increasing participation. Since its adoption by the Council, a number of the qualifying vessels have returned to the East Coast and a number of permits who qualified under the federal plan have remained latent. Because the Council adopted its moratorium during a period of increasing participation and selected qualifying years which included latent permits, the number of recipients (18) was larger than the Council's staff "break-even" economic analysis. The Council analysis indicated that the fishery could support only nine vessels when the guideline harvest level (GHL) was 1.3 million pounds and the price was \$6.02/lb. (understanding that the number of vessels would fluctuate a bit with varying price and guideline harvest level).

The Alaska State Legislature adopted a more restrictive moratorium for state waters (which would expand into federal waters upon delegation) using more recent participation. This reduced the number of vessels qualifying from 18 to 10. Though the final qualifiers may yet to be adjusted slightly through the appeals process, the state moratorium is more reflective of the current fleet and approaches the Council "break-even" number of participants.

Many commercially utilized scallop beds straddle state and federal waters. It is therefore important for state and federal effort limitation programs be compatible. Enforcement of all commercial scallop fishing regulations will be difficult, if not impossible, if different vessels are allowed to fish in state and federal waters.

For these reasons, the Board encourages the Council to adopt Alternative 3 to the scallop plan. Thank you for your consideration.

Sincerely,



John White, Chairman  
Alaska Board of Fisheries



## Regarding Cook Inlet Scallop Fisheries

Dear Advisory Panel and Council Members,

My name is Tom Hogan and I own and operate the fishing boat Kilkenny out of Homer. We fished scallops in Cook Inlet 1993, 1994, 1996 and 1997 (no boats fished 1995). The last scallop landings in Cook Inlet prior to 1993 were made in 1987. Our catch record is as follows:

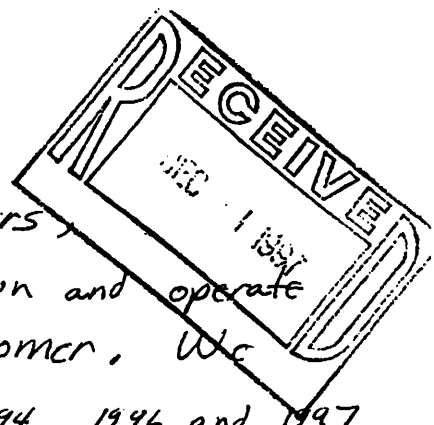
1993	2537 lbs.
1994	630 lbs.
1996	4309 lbs.
1997	5241 lbs.

Requirements for the State Moratorium for Cook Inlet only read as follows: "A vessel must have landed at least 1,000 lbs of scallops from Cook Inlet during 1994 or 1996, and during each of at least 3 years between 1984 and 1996 inclusive."

As you can see, we are 370 lbs. short in 1994 of satisfying the second part of the requirements.

After the 1993 season, we were contacted by DEC (Dept. of Environmental Conservation) before the 1994 season. We were given a list of requirements, many of which were fulfilled, to qualify us for processing at sea.

When we were inspected in the summer of 1994 we were informed that there was no way a wooden fish hold could be approved (the Kilkenny is a wooden fishboat). So that summer we did not process at sea but did a trip and brought back whole iced scallops and shucked



The experiment was successful in that all the scallops were in fine shape but the huge inflow of totes of live scallops and totes of waste for a relatively small amount of finished product was more than the processor wanted to try again.

So in the winter of 1995 we did a major fiberglassing job in our fishhold and have been DEC approved for the 1996 and 1997 season. There was considerable other expense involved in meeting DEC approval.

Under the new state moratorium, we would be the only boat out of 4 to be excluded. This is not a fisheries that the resources or environment would be protected by this exclusion. I ask you to consider this and the fact that we have been a serious and consistent participant in this fishery. We would like to remain in it.

Thank You  
Tom Hoyan  
Box 1457  
Homer, AK 99603

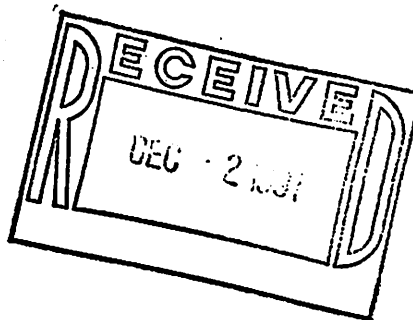
**WELLS *Scallop* COMPANY**

POST OFFICE BOX 600 • SEAFORD, VIRGINIA 23696-0600

Bill Wells, Jr.  
Bill Wells III

(804) 898-8512

1 December 1997

Mr. Richard Lauber, Chairman  
North Pacific Fishery Management Council  
605 West 4th Ave., Suite 306  
Anchorage, AK 99501-2252

Re: Amendment 3 to the Scallop FMP

Dear Chairman Lauber and Members of the NPFMC:

This letter is to provide our support for Alternative 2 as described in the EA/RIR/IRFA for Amendment 3 to the Scallop FMP off Alaska. We support the proposed delegation of management authority to the State of Alaska. We support the Council's retention of License Limitation Measures and continued federal oversight of state management under the auspices of the FMP.

As you know, Wells Scallop Company supported development of the original Scallop FMP as a means of assuring that sound management practices are applied fairly to all participants in this fishery. We have supported all facets of state and federal management including the use of our vessels for at-sea research, and have participated fully in both the Council and Alaska Board of Fisheries regulatory process. We have endured through significant financial difficulties as we waited for federal waters to reopen following the Mister Big incident, and we will continue to work with both federal and state agencies in the development of a fishery management framework that will stabilize this fishery and guide it for the long term.

In this light, we support Alternative 2 because we believe it is the best solution to the management problem. The duplication required by having both NMFS and ADF&G agencies directly involved in day-to-day management is unnecessary and a waste of valuable staff and money. We recommend you adopt Alternative 2 since it will delegate this routine management responsibility to ADF&G staff best suited to do the work. Federal staff released from these duties could be used to develop a permanent limited entry and individual vessel bycatch program for the scallop fishery off Alaska.

Adoption of Alternative 2 would also ensure that state management complies with the National Standards specified in the Magnuson-Stevens Act, and would provide access to the Council should there ever be a need.

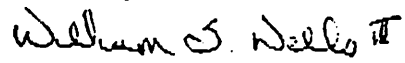
Adoption of Alternative 2 is also the fairest thing to do. Over the past 6 years there has been considerable debate concerning the future of this fishery and the number of vessels that should be allowed to participate. The Council's decisions on qualifying criteria for the moratorium were designed to recognize those individuals who invested in vessels and who established a legitimate catch history as scallop fishermen. Alternative 3 would permit the extension of the State's moratorium into federal waters. This moratorium is more restrictive than the one previously approved by the Council. While Wells Scallop Company's three vessels would all qualify under the State's plan, we support the Council's moratorium as being the best for federal waters because other fishermen, like ourselves, have worked hard in this fishery and deserve a chance to participate should they be able to get their finances in order.

Mr. Richard Lauber, Chairman  
North Pacific Fishery Management Council

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We will be attending the December Council meeting and would be pleased to elaborate on these comments at that time.

Sincerely,

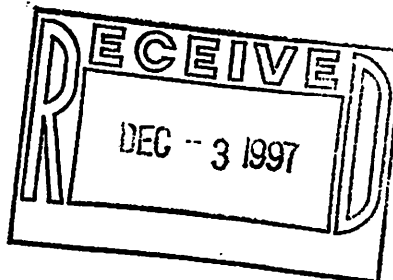


William S. Wells, III

F/V Arctic Queen  
F/V Carolina Boy  
F/V Carolina Girl II

**KODIAK FISH  
COMPANY**104 Center Avenue, Suite 205, Kodiak, Alaska 99615  
907.486.3309 Fax 907.486.36762977 Fox Road, Ferndale, WA 98248  
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December 3, 1997

Mr. Clarence Pautzke  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Avenue, Suite 306  
Anchorage, AK 99501-2252**Subject: Amendment 3 - Scallop FMP**

Dear Clarence:

Following are our comments on the EA/RIR for Amendment 3 to the Scallop Fishery Management Plan.

From our perspective, this proposal involves two distinct issues. First, whether the scallop fishery will continue to be managed by the State with duplicative rulemaking issued by NMFS or if the scallop fishery will be managed solely by the State. Second, which entity – the State of Alaska or NMFS – will have the authority to establish and manage a license limitation program for the portion of the fishery that occurs outside of three miles. I will address each separately.

**DELEGATION OF MANAGEMENT AUTHORITY TO THE STATE OF ALASKA.** At present, the State of Alaska manages all aspects of the scallop fishery. Observers report to the Alaska Department of Fish and Game. Announcements of GHl's and season opening dates are set by ADF&G and the Board of Fish. In-season management decisions are made by ADF&G biologists. Due to the federal FMP requirements, ADF&G alerts NMFS in-season management of upcoming openings and closures so that NMFS can prepare the appropriate federal documents. NMFS takes no role in assessing the fishery, briefing or debriefing observers, managing the fishery for bycatch of psc's or of TAC. Their only role is to issue duplicative notices required in the federal system.

Our preference is to turn management over to the State for the following reasons. No federal effort exists at any level to manage the fishery and no budget is available to fund any future efforts. In-season management personnel at NMFS must prepare notices for the federal process based on allowable federal actions. For example, ADF&G closes areas to scallop fishing based on reduced CPUE of vessels. Closing a fishery on this basis is very difficult for NMFS. I was asked at one point this year if it was okay for NMFS to close an area because it reached the crab bycatch limit although the area was closed by ADF&G for reduced CPUE. A closure based on attainment of some number was much easier for in-season management to get through the NMFS regulatory system. Of course, I objected. Regardless of the underlying motivations, I'd just as soon not see a closure notice posted for psc reasons if that was not the problem. As our resource in many areas of importance to the fishery is either on the decline or is stable at a level below historical averages, the closures based on declining CPUE are likely to be on the increase for the foreseeable future.

Moreover, ADF&G has made extensive use of their "hot spot authority" to pull vessels off of high bycatch areas and generally to reduce the possibility of exceeding either GHl's or psc caps. This type of micro management isn't possible with NMFS regulations. In fact, in conversations with other currently participating scallopers, it seems there can be consensus among us in devising methods of reducing our bycatch and extending the fishery in areas that are bycatch driven. I have discussed various possibilities with ADF&G and they are enthusiastic about working with us on these voluntary initiatives. Having ADF&G as a participant in these programs could be extremely helpful to us as our fishery is so small and so spread out in time and space.

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As you may recall, in the beginning of this process, we maintained that we didn't care who managed the fishery as long as it was actively managed for the long-term stability of the scallop resource and the fishery. We believe the Council and ADF&G together with the Board of Fish and NMFS have made giant strides in that direction. This may be the only example of a successful State/federal relationship in a time when other fisheries have caused some strain between the two systems. This cooperation is immeasurably important when you consider that, in its absence, we could be living through one of the worst of the "bust" periods. As it is, the surviving fleet is able to survive a time when poor reproduction and overfishing that occurred before stepped up controls have reduced our opportunities considerably. The Statewide catch for 1997 is likely to be at the 700,000 to 750,000 pound level – less than 50% of the top end of the GHL of 1.6 million pounds. Yet, even with these reduced opportunities and some absurd bycatch caps (such as a cap of ten red king crab in the Dutch Harbor area), the fishery was managed within those caps and those of us who depend on it for our entire livelihood eked out 100 days of fishing. We'd rather have more, but we can survive on that.

We can't ignore this success when deliberating on the alternatives suggested in this amendment. We urge the Council to delegate authority to the State of Alaska to manage the scallop fishery in Alaska.

LIMITED ACCESS IN THE SCALLOP FISHERY. Again, the decision of who retains the management of any limited access programs should depend on who can best do the job. This issue is not so clear cut due to limits in regulatory authorities. First, the federal system can only enact limited access programs outside of State waters. In some areas of the State, this is unimportant as no fishery exists inside three miles. In some areas, there is, in some years, a portion of the resource inside three miles. In the Yakutat area, much of the fishery can occur right on the line. In those areas where the scallop resource straddles the three-mile line, it would be extremely important that the universe of permit holders inside and outside of State waters be the same. In Kodiak, in the Bering Sea, and in Cook Inlet where the preponderance or all of the resource is outside of State waters, the need for consistency between State and federal permit holders is less important.

On the other hand, the nature of the scallop fishery is that permit holders (operators) are almost entirely not the owners of the vessel. Currently, the State of Alaska's Commercial Fishery Entry Commission has no regulatory authority to grant licenses to vessels rather than permit holders. If licenses were granted to permit holders in the scallop fishery, the number of permits would double or quadruple and would effectively put the fishery back into open access status. The State recognizes this limitation and has initiated the process of modifying their regulations to allow permits to go to vessels rather than permit holders. The State has already proven their dedication to make this change by proposing and passing legislation giving moratorium permits to vessels rather than permit holders in two fisheries – hair crab and scallops.

In the process of the State's enactment of a scallop moratorium, though, another drawback to a dual license system became apparent. Due to a number of factors – but most importantly timing – it is virtually impossible to create a dual system containing the exact same pool of participants. The federal moratorium was approved by the Council in April of 1994 and included current participants from the years 1991 through 1993 as well as those vessels that proved historical dependence on the fishery by four years of landings in the period 1980 through 1993. The federal moratorium was finally implemented in July of 1997 while before early 1997, no similar limit existed in State waters. In order to close this loophole and without the regulatory authority for CFEC to implement a vessel moratorium, the State had to work through the legislature. Even though it was a legislative fix, criteria used to set the qualifying periods were very similar to those used by the Council in that recent participation received the heaviest weight.

After the Mr. Big closure which lasted from February 13, 1995 through August 1, 1996, a few of the vessels which had been active prior to the Mr. Big closure (including, incidentally, the Mr. Big) left the fishery and returned to the East Coast. Some of those of the eighteen vessels qualifying under the federal moratorium had been inactive before the Mr. Big closure and did not reenter the fishery. Two vessels which have their primary income derived from other fisheries, crab and pollock respectively, did not participate in the limited state waters fisheries that were conducted during the Mr. Big closure nor did they reenter the federal fishery when it opened in August of 1996. Both of those vessels fished for a month or two in 1997 leaving

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the scallop fishery in time for the vessel to re-rig and enter their primary fisheries of crab and pollock. The State moratorium excluded these two vessels as they were inactive in the years that constituted recent participation. Those years were 1995 through the enactment of the legislation in the spring of 1997. The only exception made was the same exception that the Council had made when it enacted its own moratorium, which was for the former owners of the Wayward Wind.

This illustrates the problems of having a dual license limitation system – in this scenario, someone will always be unhappy if they have a right for one area and not for the other – even if they have never fished in the area in which they have no license. In our view, this is a problem as it causes enough concern that a license limitation system having any teeth could be delayed past the moratorium expiration date. We would like to see a permanent limited entry program for scallops that would be Statewide and the same for vessels inside three miles as in federal waters. We would like to see this program enacted quickly to encompass the universe of current participants and eliminate as many of the inactive permits as feasible. Only in this way do we feel all of us – the fully dependent boats such as ours, the part timers who rely on a month or two of scalloping to supplement income from their primary fisheries and the small boats who like to have the option to try fishing outside of Cook Inlet – will be able to have a reliable source of income and a stable resource to derive it from.

The question is, which alternative gets to this solution. Under current regulations, neither can do this. The federal can't due to an inability to limit licenses in State waters and the State program can't because right now it can only issue licenses to permit holders. The next question is, can either of these restrictions be changed? The federal program will never be allowed to enact a program in State waters, this has been made clear to me. However, the State has indicated and demonstrated their intention to change their regulations to allow licenses to go to vessels rather than permit holders.

Our chief concern is timing – we do not want to see the fishery go back to open access. Particularly in three years when the sacrifices we've made may result in a good year for the fishery and open access would result in another incursion of new vessels into the fishery. We really don't have a lot of time between now and when that will happen – 2000 for the federal side and 2001 for the State side. We'd like to see a commitment from the State that an appropriate system can be in place in a timely manner and a commitment from them to move ahead on a license limitation program for scallops. With such a commitment, we would support Alternative 3.

Thanks for the opportunity to comment.

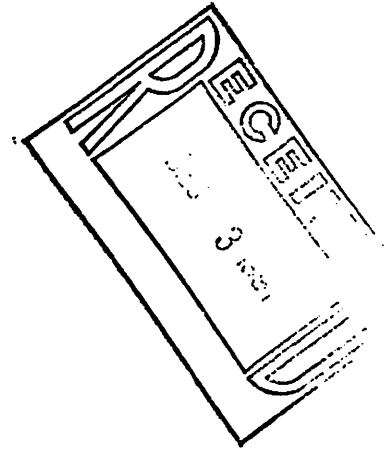
Sincerely,

*Teressa Kandianis*  
*Mark Kandianis*

Mark and Teressa Kandianis  
Kodiak Fish Company

IS RELEASE (97-135)  
Steven Pennoyer  
907-586-7221

December 3, 1997  
2:10 p.m.  
For Immediate Release



NMFS PROPOSES TO CHANGE THE SCALLOP SEASON DATES  
IN REGISTRATION AREA D (YAKUTAT)  
AND REGISTRATION AREA E (PRINCE WILLIAM SOUND)

The National Marine Fisheries Service (NMFS) proposes a July 1 - February 15 fishing season for the scallop fishery in Registration Areas D and E according to Steven Pennoyer, Administrator, Alaska Region. The current fishing season in Registration Areas D and E is January 10 - June 30.

This proposed change has been published for comment in the Federal Register (62 FR 34429, November 24, 1997). Comments are invited through December 9, 1997.

To obtain information about the proposed rule, consult the Federal Register notice, or contact the Fisheries Management Division, NMFS, 907-586-7228.