


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director 

DATE: November 28, 1994

SUBJECT: Scallop Management

ESTIMATED TIME 2 HOURS

ACTION REQUIRED

Review proposed rule to implement scallop FMP and vessel moratorium. Clarify intent on several issues and recommend changes as necessary.

BACKGROUND

Scallop FMP and Moratorium

In April, the Council adopted a Federal fishery management plan for the scallop fishery in the Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BSAI) areas. The plan covers all scallop species and the fishery will be managed by cooperative agreement between State and Federal agencies. Federal management authority will encompass permit requirements, Federal observer requirements, limited access, and bycatch limits in the Bering Sea. The State will retain authority over legal gear, minimum size limits, reporting requirements, guideline harvest levels, in-season adjustments, districts and sections, seasons, State observer requirements, registration areas, bycatch limits in the GOA and Aleutian Islands areas, efficiency limits, and other necessary management measures consistent with the FMP. It is the Council's intent that these measures would apply to all vessels fishing in Federal waters. Authority over closed waters will be shared by both agencies. Optimum Yield will range from zero to 1.8 million pounds of shucked scallop meats.

The Council also approved a three-year moratorium on the entry of new vessels for all scallop species. To qualify under the moratorium, vessels must have made at least one landing in 1991 or 1992 or 1993, or must have made landings in four years during the period January 1, 1980 to January 20, 1993. A total of 18 vessels qualify under these criteria. It was the Council's intent that permits will be issued to the owner of each vessel at the time of qualifying. If two owners qualify for a single vessel, the most recent owner qualifies, such that each vessel generates only one license. Vessels that made landings from Cook Inlet only would receive permits for that area only, and no crossovers between Cook Inlet and other areas will be allowed unless a vessel qualifies for both areas. The Council approved moratorium elements are listed in Table 1. A Control Date of April 24, 1994 was set for a possible cutoff date for IFQ history or licenses in areas outside Cook Inlet, in anticipation of a future rationalization program for this fishery.

The NMFS is in the process of drafting the proposed rule to implement the scallop FMP and moratorium. Several issues have surfaced that need clarification from the Council, prior to publishing the proposed rule in the Federal Register. NMFS staff will be available to discuss these issues.

Table 1. Scallop fishery moratorium elements adopted by the Council.

Qualifying Criteria: Vessels must have participated (made at least one landing) in 1991 or 1992 or 1993, or must have participated for at least four years between January 1, 1980 and January 20, 1993. Vessels that were in the "pipeline" to fish for Alaskan scallops (i.e., under construction, being refitted, relocated, etc.) but had not made a required landing, would not qualify under the moratorium.

Length of Moratorium: The moratorium will remain in effect until the Council rescinds or replaces; not to exceed 3 years from date of implementation, but Council may extend for two years if a permanent limited access program is imminent.

Crossovers: Crossovers to other fisheries (groundfish, crab, or halibut) during the moratorium will not be allowed, except for vessels that were qualified under both the scallop and groundfish moratoria.

Reconstruction: Vessels may be reconstructed during the moratorium. If physical reconstruction started on or after January 20, 1993, the new size is restricted to a 20% increase in vessel length. Only one upgrade is allowed.

Replacement: Qualifying vessels can be replaced with non-qualifying vessels as often as desired so long as the replaced vessel leaves the fishery or bumps another qualifying vessel out in the case of multiple transactions. Vessel size can be increased as many times as desired, but is restricted to a 20% maximum increase in original qualifying vessel length. For vessels lost or destroyed before or during the moratorium, qualifying vessels can be replaced with non-qualifying vessels subject to a 20% maximum increase in vessel length. Replaced vessels cannot be salvaged and come back into the fishery.

Exemptions: Vessels 26 feet or less in the GOA and vessels 32 feet or less in the BSAI are exempted from the moratorium only if they use gear other than dredges or trawls (hence, diving would be allowed from these vessels).

Appeals: The appeals procedures will be similar to those for the sablefish and halibut IFQ program. It would be a two-tier process allowing appeal of an initial administrative determination to the appellate officer, and appeal of the appellate officer's decision to the NMFS Regional Director.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

November 30, 1994

Agenda D-1
Dec 1994

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

Dear Rick,

At its December 1994 meeting, the North Pacific Fishery Management Council (Council) is scheduled to clarify issues raised during the preparation of the proposed rule to implement the Fishery Management Plan for the Scallop Fishery off Alaska (the FMP). We have prepared a draft proposed rule (enclosed) that addresses the "Category 1" management measures that the Council wished to include under Federal authority. These include vessel permit requirements, Federal observer requirements, bycatch limits in the Bering Sea, and limited access. Authority over closed waters would be shared by NMFS and the State of Alaska. All remaining management measures (Category 2 measures) would be deferred to the State of Alaska.

The attached proposed rule provides a basis for discussion on six different issues that require either concurrence or clarification by the Council on Category 1 management measures. These issues are presented below in the order they appear in the proposed rule, but the most crucial issue is discussed under item 5, moratorium qualification criteria. A final issue is raised under item 7 that requires Council clarification on its intent for the annual scallop SAFE document and assumptions for management agency obligations that may be required to carry out scallop resource assessments.

1. Bycatch limits in the Bering Sea. The Council recommended that bycatch limits in the Bering Sea be established as a Category 1 measure, i.e., under Federal authority. However, the Council also will need to recommend specific bycatch limits for king and Tanner crab if its intent is to establish these limits in the FMP. Any change to crab bycatch limits would require an FMP amendment. Crab bycatch limits need not be specified in Federal regulations as long as the authority to specify, monitor, and enforce the bycatch limits is deferred to the State.



Recommendation for Council Action: We recommend that the the FMP clearly establish a Bering Sea king crab (all species) bycatch limit of 17,000 crab and a Bering Sea Tanner crab (all species) bycatch limit of 260,000 crab. These limits currently are set out in the Alaska Department of Fish and Game's (ADF&G's) draft Fishery Management Plan for Commercial Scallop Fisheries in Alaska.

2. Closed waters. The Council recommended that authority over closed waters be shared by NMFS and the State of Alaska. This shared authority would require that closed waters be identified in the FMP and that any change to closed areas would require an FMP amendment. Similar to bycatch limits, closed areas in Federal waters need not be specified in Federal regulations as long as the authority to specify, monitor, and enforce the closed areas is deferred to the State.

Recommendation for Council action: We recommend that the FMP be clarified to clearly establish closed areas in Federal waters as they currently exist under Alaska State regulations. As a follow-up action, the Council may wish to note that areas closed to nonpelagic trawl gear to protect crab habitat (e.g. the Pribilof Islands closure or statistical areas 512 and 516 in Zone 1 of the Bering Sea) may also be considered in the future for closure to fishing for scallops with dredge gear if scallop fishing effort in these areas is sufficiently high to pose a concern.

3. Vessel Permit requirements (§ 673.4). The proposed rule would require the owner of a vessel participating in the scallop fishery in Federal waters to obtain an annual fisheries permit from NMFS. During the period of time the proposed vessel moratorium is effective, qualified catcher vessels and catch/processor vessels would be issued a single permit for the duration of the moratorium.

Recommendation for Council Action: We recommend the Council concur in the proposed Federal regulations requiring owners of all vessels participating in the scallop fishery (including tender vessels, support vessels and mothership processor vessels) to obtain an annual Federal fisheries permit to fish for scallops in Federal waters. This provision would provide information on the number of vessels participating in harvesting, processing or support operations.

4. Federal observer coverage requirements (§ 673.10). The Council should clarify whether it intends observer coverage requirements for the scallop fishery in Federal waters to fall under the North Pacific Fishery Research Plan (Research Plan). If that is the intent, Research Plan fees would be assessed against the exvessel value of scallops harvested in Federal waters, and the Regional Director would implement observer

coverage requirements for the scallop fishery in consultation with the Council and the Commissioner of ADF&G during the annual Research Plan specification process. The Regional Director also would implement any in-season changes to observer coverage in Federal waters, in consultation with the Commissioner.

This action would require an amendment to the Research Plan, thus triggering a requirement for public hearings in Alaska, Washington, and Oregon during the public comment period on the proposed rule.

Recommendation for Council action: We recommend that the Research Plan be amended to include the scallop fishery. Observer coverage requirements in State waters would continue to be governed by the State. Ideally, State and Federal observer coverage requirements would be consistent.

5. Moratorium Qualification Criteria (§ 673.23). The Council recommended a three-year moratorium on the entry of new vessels into the Alaska scallop fishery. To qualify under the moratorium, vessels must have made at least one landing in 1991 1992 or 1993 or must have made landings in four years during the period January 1, 1980 through December 31, 1992. The Council also recommended that the permit for a qualified vessel be issued to the most recent owner of a qualified vessel during the period of time it made qualified landings, even though that person may no longer own the vessel.

Issuance of vessel permits to persons who no longer own the vessel or no longer are participants in the scallop fishery creates several concerns. The legitimacy and magnitude of these concerns and the potential impact on the current qualified vessel fleet cannot be ascertained until the history of ownership of each qualifying vessel is examined. The Council will need to undertake this exercise if it wishes to pursue this course of action. Several examples of the complications created by the Council's proposed action that would need to be addressed follow:

(a) A person who owned a vessel during the period of time it made qualifying landings later sold the vessel and died. The current owner of the qualified vessel wishes to use the vessel to participate in the scallop fishery, but is not eligible to apply for a permit because he did not own the vessel when it made qualifying landings. As a result, the qualifying vessel would not be permitted to fish during the moratorium.

(b) A vessel was owned by a partnership comprised of two or more persons during the period of time it made qualifying landings and the vessel later was sold and the qualifying owners no longer participate in the fishery. How does NMFS

issue vessel permits to the two or more people who no longer own the vessel in a manner that only generates one permit? Can these people build a new boat equal to or less than the maximum LOA of the qualifying vessel and reenter the fishery? If so, the result is that the original qualifying vessel could not be used by its current owner to fish for scallops during the moratorium.

(c) A vessel was owned by a person when it made qualifying landings during the 12-year qualification period of 1980 - 1992. The boat was sold in 1990 and a second owner made a single landing of scallops during the second qualification period of 1991 - 1993 and then sold the vessel to a third owner in 1992. The third and current owner made landings of scallops in 1994. Under this scenario, the current owner could not use his qualified vessel to fish for scallops because he did not use the vessel to make a qualified landing. Although two different persons owned the vessel during different qualifying periods when the vessel was used to make qualifying landings, only the most recent owner who made a single landing of scallops would receive a vessel permit that he could sale or use to build a new vessel to enter the fishery.

(d) A corporation owned a vessel and leased the vessel to a fishermen who made qualifying landings during the period 1980 - 1992. The corporation sold the vessel in 1992 and dissolved. The vessel operator who actually made the qualified landings of scallops would not be eligible to receive a permit because he was not the owner. The current owner of the qualified vessel could not use the vessel to fish for scallops because he was not the owner during the qualification period.

Based on the above examples, the Council's recommended design of qualifying criteria moves the moratorium away from a simple vessel moratorium to a moratorium on a person's access to fishing rights based on the potentially tangled history of ownership of a qualified vessel. If the Council wishes to pursue this approach, adequate analyses must be developed to assess the potential effects and to better ascertain the number of historical vessel owners who would be eligible to obtain a vessel to fish for scallops during the moratorium period.

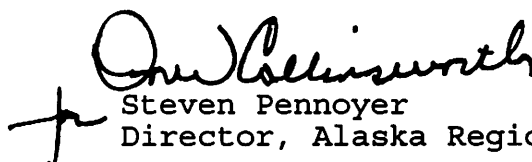
Recommendation for Council Action. From the perspective of simplicity, implementation concerns, and the Council's desire to implement the moratorium as quickly as possible, NMFS recommends that permits be issued to the current owner of a qualifying vessel. This approach has been assessed in the current analyses prepared on the moratorium and is set out in the draft proposed rule.

6. Effective Date of the moratorium. Pending approval of the FMP and the three-year scallop vessel moratorium, we recommend that the effective date of the moratorium be January 1, 1996 through - December 31, 1999. Although a final rule implementing the FMP hopefully could be published in the Federal Register by mid summer, 1995, a January 1, 1996, effective date for the moratorium would provide NMFS sufficient time to develop a database on qualifying vessels, distribute and review permit applications, and issue Federal fishing permits to qualified vessel owners in time for the 1996 fishing year.

7. Council assumptions for agency responsibility for research and resource survey costs. Under the proposed FMP, an annual scallop SAFE document would be required. This document would present the best information available on the status of the scallop resource as reflected in the annual management report by ADF&G. The draft FMP repeatedly notes the scarcity of information about the scallop resource that would directly affect the quality and precision of biological information on the status of stocks that would be needed to support a Federally-sponsored management system. Input from the State of Alaska is needed on whether it can/cannot provide the personnel/financial support for such a management effort. The estimated cost of a "good comprehensive survey" is \$540,000 (page 64 of the FMP). For a similar management effort delegated to the State of Alaska under the crab FMP, the State asked for NMFS' direct financial support as a condition to accepting the delegation of management authority from NMFS. Given this record of State expectation of financial support and the current NMFS funding problems, the Council should discover if any such conditions are involved or implied as part the State acceptance of delegation of authority under the scallop FMP.

The FMP will need to be revised to clarify these and minor technical issues before it is submitted to NMFS for review and approval. We request Council input on whether it wishes to review the revised FMP before it is submitted for Secretarial review.

Sincerely,


Steven Pennoyer
Director, Alaska Region

Enclosure

**DRAFT REGULATIONS TO IMPLEMENT THE FISHERY MANAGEMENT PLAN FOR
THE SCALLOP FISHERY OFF ALASKA**

For the reasons set out in the preamble, a new 50 CFR part 673 is proposed to be added and parts 676 and 677 are proposed to be amended as follows:

1. A new part 673 is added to chapter VI of 50 CFR to read as follows:

PART 673--SCALLOP FISHERY OFF ALASKA

Subpart A--General Provisions

Sec.

- 673.1 Purpose and scope
- 673.2 Definitions
- 673.3 Relation to other laws
- 673.4 Permits
- 673.5 Reserved
- 673.6 Reserved
- 673.7 Prohibitions
- 673.8 Facilitation of enforcement
- 673.9 Penalties
- 678.10 Observer requirements

Subpart B - Management measures

Sec.

- 673.20 General limitations
- 673.21 Commercial and personal use fishing for scallops
- 673.22 Reserved
- 673.23 Moratorium on Entry

Figures--Part 673.

Figure 1--Federal Fisheries Permit

Figure 2--

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

Subpart A--General Provisions

§ 673.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Scallop Fishery in the Gulf of Alaska and the Bering Sea and Aleutian Islands management area. The FMP was developed by the North Pacific Fishery Management Council under the Magnuson Act.

(b) Regulations in Subpart A govern commercial fishing for scallops in the Gulf of Alaska and the Bering Sea and Aleutian Islands management area.

(c) Except as provided under this part, State of Alaska regulations set out under Chapter 38 of the Alaska Administrative Code are not preempted for vessels regulated under this part fishing for scallops in Federal waters off Alaska and which are registered under the laws of the State.

§ 675.2 Definitions

In addition to the definitions in the Magnuson Act and in 50 CFR parts 620, 672, 675, 676, and 677, the terms in 50 CFR part 673 have the following meanings:

ADF&G means the Alaska Department of Fish and Game.

Bering Sea and Aleutian Islands management area is defined at § 675.2.

Bering Sea means the Bering Sea subarea as defined at § 675.2.

Catcher/processor vessel is defined at § 672.2.

Catcher vessel is defined at § 672.2.

Commercial fishing means fishing for scallops for sale or barter.

Dive gear means any type of hard hat or skin diving equipment.

Gulf of Alaska (GOA) is defined at § 672.2.

King crab means any Paralithodes species or Lithodes species.

Scallop(s) means any scallop species in the GOA or BSAI.

Scallop dredge means a dredge-type device designed specifically for and capable of taking scallops by being towed along the ocean floor.

Tanner crab means Chionoecetes species or hybrids of these species.

§ 673.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b) through (f) of this section.

(b) Domestic fishing for groundfish. Regulations governing the conservation and management of Alaska groundfish in Federal waters are set out at parts 620, 672, and 675 of this chapter.

(c) Limited access. Regulations governing access to commercial fishery resources are set out at part 676 of this chapter.

(d) North Pacific Fisheries Research Plan. Regulations implementing the North Pacific Fisheries Research Plan are set out at part 677 of this chapter.

(e) Marine mammals. Regulations governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals are set out at parts 216.24 and 229 of this chapter.

(f) This part 673 will be administered in close coordination with ADF&G's administration for the State of

Alaska's regulations governing the scallop fishery off Alaska. Fishing for scallops by vessels registered under the laws of the State of Alaska will be subject to Alaska State management authority.

§ 673.4 Permits

§ 672.4 Fisheries Permits.

(a) General. No vessel of the United States may fish for scallops in the GOA or in the BSAI without first obtaining a fisheries permit issued under this part. Fisheries permits are issued without charge.

(b) Federal Fisheries Permit; Federal Processor Permit Application (Form 1 of this part)--(1) Request for application and permit. An application (Form 1 of this part) for a fisheries permit required under paragraph (a) of this section may be requested from:

National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802
FAX number: 907-586-7465.

(2) Completed application. The fisheries permit required under paragraph (a) of this section may be obtained by submitting a written permit application (see Form 1 of this part) to the address given in paragraph (b)(1) of this section. The owner of a vessel must answer each question on the permit application in the manner required in instructions for the permit application set forth in Form 1 of this part.

(3) Application deficiency. Upon receipt of an incomplete or improperly completed fisheries permit application, the Regional Director will notify the applicant of the deficiency in the permit application. If the applicant fails to correct the deficiency, the permit will not be issued. No permit will be issued to an applicant until a complete application is submitted.

(c) Fisheries Permit issuance. Except as provided in § 673.24 of this part and in Subpart D of 15 CFR part 904, upon receipt of a properly completed permit application, the Regional Director will issue a fisheries permit required by paragraph (a) of this section.

(d) Vessel operations category. (1) A fisheries permit issued under § 672.4(c) will authorize a vessel to conduct operations as follows:

- (i) Catcher Vessel;
- (ii) Catcher/Processor;
- (iii) Mothership;
- (iv) Tender Vessel; or
- (v) Support vessel.

(2) A vessel may be issued a fisheries permit as a support vessel or as any combination of the other four categories (Catcher Vessel, Catcher/Processor, Mothership, Tender Vessel). A vessel permitted as a Catcher Vessel, Catcher/Processor, Mothership, or Tender Vessel may also conduct all operations

authorized for a support vessel.

(e) Amended Permit. (1) The operator or owner who has applied for and received a fisheries permit under this section must notify the Regional Director, in writing, of any change in the information provided under paragraph (b) of this section within 10 days of the date of that change.

(2) An application for an amended permit must be made on the permit application (see Form 1 of this part).

(3) Fisheries Permit. If the application is for an amended fisheries permit required under paragraph (a) of this section and designates a change or addition of a vessel operations category, the amended permit must be on board the vessel before the new type of operations begins.

(f) Duration--(1) Fisheries Permit. Except as provided in paragraph (f)(2) of this section, a fisheries permit will continue in full force and effect through December 31 of the year for which it was issued or until it is revoked, suspended, or modified under part 621 (Civil Procedures) of this chapter or until it is surrendered.

(2) Applicable through December 31, 1999. A fisheries permit issued to the owner of a catcher vessel or a catcher/processor vessel will continue in full force and effect through December 31, 1999, or until it is revoked, suspended, or modified under part 621 (Civil Procedures) or subpart B of part 673 or until it is surrendered.

(3) A fisheries permit is deemed surrendered when the original permit is submitted to and received by NMFS Enforcement Office in Juneau.

(g) Alteration. No person shall alter, erase, or mutilate any fisheries permit issued under paragraph (a) of this section. Any fisheries permit that has been intentionally altered, erased, or mutilated shall be invalid.

(h) Transfer. Fisheries permits issued under paragraph (a) of this section are not transferable or assignable and shall be valid only for the vessel for which it is issued.

(i) Inspection--(1) Fisheries Permit. Any original fisheries permit issued under paragraph (a) of this section must be carried on board the vessel whenever the vessel is fishing. Photocopied or faxed copies are not considered originals.

(2) The permit shall be presented for inspection upon request of any authorized officer.

(j) Sanctions. Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR part 904.

§ 673.5 [reserved]

§ 673.6 [Reserved]

§ 673.7 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to:

(1) Submit false or inaccurate information on a vessel permit application; or

(2) Fish for scallops in Federal waters off Alaska with a vessels which does not have on board a valid permit issued under this part; or

(3) Violate any other provision of this part.

(b) Effective from January 1, 1996 through December 31, 1999, it is unlawful for a person to:

(1) Engage in fishing for scallops in Federal waters except to the extent authorized by § 673.24 of this part;

(2) Harvest scallops with a vessel that has a LOA greater than the maximum LOA that is listed on the vessel permit; or

(3) Harvest scallops with a vessel that has received an unauthorized transfer of a vessel permit.

673.8 Facilitation of enforcement.

See § 620.8 of this chapter

§ 673.9 Penalties.

See § 620.9 of this chapter

§ 678.10 Observer requirements.

Observer requirements for the scallop fishery of the GOA and BSAI are contained in part 677 of this chapter.

Subpart B - Management measures

§ 673.20 General limitations.

(a) The management measures specified in § 673.21 of this part shall apply to all fishing for scallops in the GOA and BSAI by vessels registered under laws of the State of Alaska.

(b) The management measures specified in §§ 673.2 and 673.23 of this part shall apply to all commercial fishing for scallops in the GOA and BSAI.

§ 673.21 Commercial and personal use fishing for scallops.

(a) For State of Alaska statutes and regulations governing commercial fishing, see Alaska Statutes, title 16--Fish and Game; title 5 of the Alaska Administrative code, chapters 1-39.

(b) For State of Alaska Regulations specifically governing the scallop fishery, see 5 Alaska Administrative Code 38.

(c) For State of Alaska statutes and regulations governing sport and personal use scallop fishing other than subsistence fishing, see Alaska Statutes, title 16--Fish and Game; 5 Administrative Code [Insert regulatory reference].

(d) For State of Alaska statutes and regulations governing

subsistence fishing, see Alaska Statutes, title 16--Fish and Game; 5 Alaska Administrative Codes [*Insert regulatory reference*].

§ 673.22 Reserved.

§ 673.23 Moratorium on Vessel Entry Applicable from January 1, 1996, through December 31, 1999.

(a) General. (1) Regulations set out under this section implement the scallop moratorium program developed by the North Pacific Fishery Management Council and approved by the Secretary of Commerce. The moratorium is implemented through the issuance of Federal vessel permits for regulating participation in the commercial fisheries for scallops in the GOA and BSAI.

(2) Definitions for purposes of this section.

(i) Cook Inlet means that portion of the exclusive economic zone of the Gulf of Alaska east of 148 degrees 50 minutes West longitude and north of 58 degrees 52 minutes North latitude.

(ii) Eligible vessel means a vessel that has moratorium qualification and has an LOA that is less than or equal to the maximum LOA [as listed on the vessel permit.]

(iii) Harvest or harvesting means any activity, other than scientific research conducted by a scientific research vessel, that involves the catching or taking of scallops, the attempted catching or taking of scallops, or any other activity that can reasonably be expected to result in the catching or taking of scallops.

(iv) Legal landing means any amount of scallop that was harvested and landed in compliance with State and Federal regulations in existence at the time of the landing.

(v) Letter of authorization means a letter from NMFS to a vessel owner authorizing a vessel to make a legal landing of scallops during the moratorium pending an initial written decision by NMFS on a vessel permit application or pending a final written decision by the Regional Director on an appeal.

(vi) LOA means length overall as defined at § 672.2.

(vii) Lost or destroyed vessel means a vessel that has been sunk at sea or been destroyed by fire or other type of physical damage and is listed on the U.S. Coast Guard Report of Marine Casualty, form 2692.

(viii) Maximum LOA means a length overall assigned by NMFS for each original qualifying vessel that represents the greatest LOA to which a vessel may increase and continue to participate in the scallop fishery during the moratorium. The maximum LOA is 1.2 times the original qualifying length.

(ix) Moratorium qualification means the privilege of a vessel to fish for scallops during the moratorium if the vessel made a qualifying landing. Moratorium qualification may be transferred to another vessel.

(x) Original qualifying length means the historical LOA of an original qualifying vessel on or prior to January 20, 1993.

(xi) Original qualifying vessel means a U.S. vessel that made a qualifying landing.

(xii) Qualifying landing means the legal landing of any amount of scallops during (1) 1991, 1992 or 1993, or (2) any four calendar years during the period from January 1, 1980 through December 31, 1992.

(xiii) Vessel reconstruction means an adjustment in the LOA of a vessel. Vessel reconstruction begins and ends with the start and completion of the physical modification of the vessel.

(3) Moratorium areas. The following two moratorium areas are established: (1) The GOA except Cook Inlet and the BSAI; and (2) Cook Inlet.

(b) Issuance of vessel permits.

(1) Applicability. Except for the exemptions to the vessel moratorium listed in paragraph (f) of this section, the moratorium applies to all catcher vessels and catcher/processor vessels that apply for a fisheries permit under § 673.4 of this part.

(2) Eligibility Criteria. (i) In order for a vessel owner to receive a vessel permit under § 673.4 of this part during the moratorium, the vessel must have made a qualifying landing, and the maximum LOA for the vessel must be greater than or equal to the LOA of the vessel.

(ii) Separate vessel permits are required to fish for scallops in each of the moratorium areas listed under paragraph (a)(3) of this section.

(3) Permit issuance procedure.

(i) A vessel owner who intends to harvest scallops from either or both of the moratorium areas listed under paragraph (a)(3) of this section must apply for and be issued a separate vessel permit for each moratorium area from NMFS. An application for a vessel permit can be obtained from NMFS, P.O. Box 21668 Juneau, Alaska 99802-1668, FAX number 907-586-7465. A vessel permit to harvest scallops in a moratorium area will be issued to the current owner of the vessel that made a qualifying landing of scallops harvested from the moratorium area if:

(A) The vessel owner submits a complete vessel permit application to NMFS as required by § 673.4;

(B) The vessel owner submits the following documentation that establishes the vessel's LOA dated on or before January 20, 1993:

(1) A vessel survey report;

(2) A vessel stability report; or

(3) A naval architect's drawing of the vessel.

(C) The vessel has made a qualifying landing of scallops harvested from the moratorium area or submits a complete moratorium qualification transfer application under paragraph (c) of this section with the vessel permit application; and

(D) The LOA of the vessel, which is specified on the permit application, does not exceed the maximum LOA for that vessel. If the vessel reconstruction provisions at paragraph (d) of this section apply, a vessel owner also should submit a complete

vessel reconstruction application with the vessel permit application. All permits issued by NMFS will list the maximum LOA applicable for that vessel and for any vessel to which the moratorium qualification is transferred.

(ii) If NMFS determines that the vessel is not an eligible vessel, the vessel owner will be notified in writing by NMFS that a vessel permit will not be issued and the reasons therefor. If NMFS denies an application for a vessel permit, the applicant may appeal the initial decision within 45 days of issuance of the denial in accordance with the appeal procedures set forth at § 676.25 of this chapter.

(c) Transfer of moratorium qualification. Moratorium qualification for a moratorium area listed under paragraph (a) (3) of this section may be transferred from a vessel to another vessel. The maximum LOA for the vessel must be transferred with the moratorium qualification. The transfer of moratorium qualification will be authorized by NMFS under the following conditions:

(1) The owner of the qualified vessel must submit a written application to NMFS for the transfer of moratorium qualification that contains the following information:

(i) Names, addresses, and telephone numbers of all persons taking part in the transfer;

(ii) Vessel names, U.S. Coast Guard identification numbers of any vessels taking part in the transfer, and the LOA of all vessels taking part in the transfer;

(iii) A notarized copy of the contract for the transfer of the moratorium qualification with signatures and dates of signature of all persons taking part in the transfer.

(2) The owner of the vessel transferring moratorium qualification must surrender to NMFS the valid permit to harvest scallops for the remainder of the moratorium and the vessel must not be used to harvest any scallops for the remainder of the moratorium unless the vessel subsequently receives moratorium qualification from another vessel.

(3) NMFS must give written approval to a person that has received the transfer of moratorium qualification before the transfer will be authorized.

(d) Adjustment to maximum LOA through reconstruction. The maximum LOA for a vessel may be adjusted through vessel reconstruction under the following conditions:

(1) If vessel reconstruction was completed before January 20, 1993, the LOA of the reconstructed vessel will be the new original qualifying length for the vessel, from which a new maximum LOA will be calculated for the reconstructed vessel.

(2) If vessel reconstruction began on or before January 20, 1993, but was not completed by that date, the LOA resulting from the reconstruction is the new maximum LOA and no further adjustment in maximum LOA is permitted for the duration of the moratorium.

(3) If vessel reconstruction was started after January 20, 1993, the maximum LOA is restricted to 1.2 times the

original qualifying length.

(4) NMFS must give written approval to the vessel owner of an adjustment in the maximum LOA due to vessel reconstruction. A vessel owner must receive written approval and a Federal fisheries permit under § 673.4 of this part with the new maximum LOA prior to harvesting scallops. In order to adjust the maximum LOA for a vessel, the vessel owner must submit to NMFS an application for adjustment of the maximum LOA that includes the following information:

- (i) Name and address of vessel owner(s);
- (ii) Vessel name and U.S. Coast Guard vessel identification number;
- (iii) Written contracts or written agreements with the boat yard or shipyard concerning the vessel reconstruction;
- (iv) An affidavit signed by the vessel owner(s) and the owner/manager of the company performing the vessel reconstruction that states the beginning and ending dates of reconstruction; and
- (v) An affidavit signed by the vessel owner that lists the new LOA of the vessel.

(e) Lost or destroyed vessel. (1) General. A lost or destroyed vessel may transfer its moratorium qualification or be salvaged under the following conditions:

(i) Transfer of the Moratorium Qualification of a Lost or Destroyed Vessel. An eligible vessel that is lost or destroyed prior to or during the effective period of the moratorium may transfer its moratorium qualification to another vessel as specified in paragraph (c) of this section.

(ii) Salvage of a Lost or Destroyed Vessel. An eligible vessel that was lost or destroyed prior to or during the effective period of the moratorium may be salvaged and remain an eligible vessel only if its moratorium qualification has not been transferred to another vessel.

(iii) Application. (A) A vessel owner must submit an application to NMFS for transfer of moratorium qualification from a lost or destroyed vessel or for the salvage of a lost or destroyed vessel. NMFS must give written approval before any such transfer of moratorium qualification or salvage prior to harvesting moratorium species.

(B) The application for the transfer of moratorium qualification from a vessel that was lost or destroyed prior to or during the effective period of the moratorium must include a copy of the U.S. Coast Guard form 2692, Report of Marine Casualty, and a completed application for the transfer of moratorium qualification as specified in paragraph (c) of this section.

(f) Exemptions. The following vessels are not subject to the moratorium and may continue to fish during the moratorium in accordance with parts 673 and 677.

(1) A vessel other than a catcher vessel or catcher/processor vessel.

(2) A catcher vessel or catcher/processor vessel that harvests scallops in the GOA and does not exceed 26 feet (7.9

meters) LOA and is used to fish with dive gear.

(3) A catcher vessel or catcher processor vessel that harvests scallops in the BSAI and does not exceed 32 feet (9.8 meters) LOA and is used to fish with dive gear.

(h) Appeals. A vessel owner may file a notice of appeal with the Regional Director within 45 days of the issuance of an initial decision by NMFS that a scallop vessel permit will not be issued. The process for appealing an initial decision by NMFS is set out at part 676.25 of this chapter.

PART 676--LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA.

2. The authority citation for 50 CFR part 676 continues to read as follows:

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

3. In § 676.25, paragraph (a) is amended to read as follows:

§ 676.25 Determinations and appeals.

(a) General. This section describes the procedure for appealing initial administrative determinations and appellate officers decisions made under this part and part 673.23 of this chapter.

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NORTH PACIFIC FISHERIES RESEARCH PLAN

4. The authority citation for 50 CFR part 677 continues to read as follows:

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

5. In § 677.1 paragraph (b) is amended to read as follows:
§ 677.1 Purpose and scope.

* * * * *

(b) Regulations in this part govern elements of the Research Plan for the following fisheries under the Council's authority: Bering Sea and Aleutian Islands management area groundfish, Gulf of Alaska groundfish, Bering Sea and Aleutian Islands area king and Tanner crab in the exclusive economic zone; Scallops in the exclusive economic zone off Alaska, and halibut from convention waters off Alaska.

6. In § 677.2, the definition of the term Research Plan fisheries and Round weight or round-weight equivalent are revised and new a definition for Shucked scallop meat is added in alphabetical order to read as follows:

§ 677.2 Definitions.

* * * * *

Research Plan fisheries means the following fisheries: Bering Sea and Aleutian Islands management area groundfish, Gulf of Alaska groundfish, Bering Sea and Aleutian Islands area king and Tanner crab, Scallop fishery in Federal waters off Alaska, and halibut from convention waters off Alaska.

* * * * *

Round weight or round-weight equivalent means:

* * *

(4) For scallops harvested in the GOA or BSAI management area-- weight of retained catch of shucked scallop meat.

* * * * *

Shucked scallop meat means [refer to State of Alaska definition if one is specified].

7. In § 677.4, paragraph (a) is revised to read as follows:

§ 677.4 Permits.

(a) General. In addition to the permit and licensing requirements at § 301.3 of this title and 672.4, 673.4, 675.4, and 676.13 of this chapter, all processors of fish from Research Plan fisheries must have a Federal Processor Permit issued by the Regional Director under this section. Such permits shall be issued without charge.

* * * * *

8. In § 677.10, paragraphs (b) (1) (iii), (b) (1) (iv) and (b) (2) (iii) are revised to read as follows:

§ 677.10 General requirements.

* * * * *

(b) * * *

(1) * * *

(iii) Requirements for vessel operators harvesting or processing Bering Sea and Aleutian Islands area king and Tanner crab or Alaska scallops. An operator of a vessel subject to this part must carry one or more NMFS-certified observers or ADF&G employees on board the vessel whenever fishing or processing operations are conducted, if the operator is required to do so by the Regional Director under paragraph (b) (2) of this section.

(iv) Requirements for managers of shoreside processing facilities receiving Bering Sea and Aleutian Islands area king and Tanner crab and Alaska scallops. A manager of a shoreside processing facility that processes scallops or king or Tanner crab received from vessels regulated under this part must have one or more NMFS-certified observers, or ADF&G employees, present at the facility whenever king or Tanner crab is received or processed, if the manager is required to do so by the Regional Director under paragraph (b) (2) of this section.

(2) * * *

(iii) The Regional Director will consult with the

Commissioner of ADF&G prior to making inseason changes in observer coverage level for the crab or scallop observer programs.

* * * * *

9. In § 677.11, paragraph (a)(4) is revised to read as follows:

§ 677.11 Annual Research Plan specifications.

(a) * * *

(4) Observer coverage. For the period January 1, 1995, through December 31, 1995, observer coverage levels in Research Plan fisheries will be as required by § 677.10(a). After December 31, 1995, the level of observer coverage will be determined annually by NMFS, after consultation with the Council and the State of Alaska, and may vary by fishery and vessel or processor size, depending upon the objectives to be met for the groundfish, halibut, scallop, and king and Tanner crab fisheries. The Regional Director may change observer coverage inseason pursuant to § 677.10(b)(2)(ii).

* * * * *

10. Section 677.12 is revised to read as follows:

§ 677.12 Compliance.

The operator of any fishing vessel subject to this part, and the manager of any shoreside processing facility that receives groundfish, halibut, scallops, or king and Tanner crab from vessels subject to this part, must comply with the requirements of this part. The owner of any fishing vessel subject to this part, or any shoreside processing facility that received groundfish, halibut, scallops, or king and Tanner crab from vessels subject to this part, must ensure that the operator or manager complies with the requirements of this part and is liable, either individually or jointly and severally, for compliance with the requirements of this part.

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