

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)	Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
<p>Approximately 1,400 feet upstream of the mouth of Thalia Creek .....</p> <p>At Windsor Oaks Boulevard ....</p> <p><i>Holland Road Tributary Thalia Creek:</i></p> <p>At the confluence with Left Bank Tributary Thalia Creek</p> <p>At the downstream side of Holland Road .....</p> <p><i>Unnamed Pond:</i></p> <p>Approximately 100 feet east of the intersection of East Port Road and Gammon Road ....</p> <p><i>Shallow Ponding Area:</i></p> <p>Approximately 400 feet east of Atlantic Avenue on 65th Street .....</p> <p><i>Shallow Ponding Area:</i></p> <p>Located in the vicinity of the intersection of Sandpiper Road and Oyster Lane .....</p> <p><i>Shallow Ponding Area:</i></p> <p>Approximately 500 feet north of the State boundary line ....</p> <p><b>Maps available for inspection</b> at the City of Virginia Beach Municipal Center, Operations Building No. 2, Virginia Beach.</p>	<p>*8</p> <p>*10</p> <p>*10</p> <p>*10</p> <p>*9</p> <p>#1</p> <p>#2</p> <p>#3</p>	<p>Approximately 0.3 mile upstream of County Highway AH (89th Street) .....</p> <p><b>Maps available for inspection</b> at the Kenosha County Administration Building, 1010 56th Street, Kenosha, Wisconsin.</p> <p><b>Pleasant Prairie (Village), Kenosha County (FEMA Docket 7172)</b></p> <p><i>Lake Michigan:</i></p> <p>Entire shoreline within community .....</p> <p><i>Barnes Creek North Outlet:</i></p> <p>At the confluence with Lake Michigan .....</p> <p>Approximately 100 feet downstream of First Avenue .....</p> <p><i>Barnes Creek South Outlet:</i></p> <p>At the confluence with Lake Michigan .....</p> <p>Approximately 200 feet upstream of Third Avenue .....</p> <p><b>Maps available for inspection</b> at the Pleasant Prairie Village Hall, 9915 39th Avenue, Kenosha, Wisconsin.</p>	<p>*763</p> <p></p> <p></p> <p></p> <p>*585</p> <p>*585</p> <p>*586</p> <p>*585</p> <p>*585</p>	<p>under Amendment 1 and implemented by this final rule include: Gear and efficiency restrictions, scallop registration areas and districts, procedures for specifying total allowable catch (TAC) and crab bycatch limits (CBLs), time and area closures, inseason management authority, fishing seasons, and observer coverage requirements. This action is necessary to further the conservation and management objectives of the FMP and the Magnuson Fishery Conservation and Management Act (Magnuson Act).</p> <p><b>EFFECTIVE DATES:</b> The changes to part 679 are effective August 1, 1996. The final 1996–97 harvest specifications and closure are effective August 1, 1996, through June 30, 1997.</p> <p><b>ADDRESSES:</b> Copies of Amendment 1 and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for Amendment 1 may be obtained from the North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501.</p> <p><b>FOR FURTHER INFORMATION CONTACT:</b> Kent Lind, 907–586–7228.</p> <p><b>SUPPLEMENTARY INFORMATION:</b></p> <p>Background</p> <p>The scallop fishery in the exclusive economic zone (Federal waters) off Alaska is managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Act. Regulations implementing the FMP are set out at 50 CFR part 679. General regulations that also affect fishing in Federal waters are set out at 50 CFR part 600. This action establishes Federal management measures to replace the interim closure of Federal waters off Alaska to fishing for scallops. The history of the scallop fishery off Alaska and the events leading up to the interim closure of Federal waters are described in the FMP and the preambles to the proposed and final rules implementing the FMP (60 FR 24822, May 10, 1995, and 60 FR 42070, August 15, 1995, respectively).</p> <p>In June 1995, the Council adopted Amendment 1 to the FMP, which authorizes Federal management measures to replace the interim closure of Federal waters to fishing for scallops. The Council’s preferred alternative for Amendment 1 was to incorporate certain State of Alaska management measures into the Federal regulations and implement a vessel moratorium based on criteria adopted in April 1994 and reaffirmed in January 1995.</p> <p>At its January 1993 meeting, the Council determined that unrestricted</p>
<b>WISCONSIN</b>				
<p><b>Kenosha (City), Kenosha County (FEMA Docket No. 7172)</b></p> <p><i>Pike River:</i></p> <p>At confluence with Lake Michigan .....</p> <p>At downstream side of State Route 32 .....</p> <p><i>Lake Michigan:</i></p> <p>Entire shoreline within the community .....</p> <p><b>Maps available for inspection</b> at the Kenosha City Hall, 625 52nd Street, Kenosha, Wisconsin.</p> <p><b>Kenosha County (Unincorporated Areas) (FEMA Docket No. 7172)</b></p> <p><i>Lake Michigan:</i></p> <p>Entire shoreline within community .....</p> <p><i>Camp Lake:</i></p> <p>Entire shoreline within community .....</p> <p><i>Center Lake:</i></p> <p>Entire shoreline within community .....</p> <p><i>Unnamed Tributary:</i></p> <p>At the State boundary .....</p> <p>At Camp Lake dam .....</p> <p><i>Unnamed Tributary to Center Lake:</i></p> <p>At Center Lake inlet .....</p>	<p>*585</p> <p>*585</p> <p>*585</p> <p>*585</p> <p>*585</p> <p>*743</p> <p>*744</p> <p>*742</p> <p>*743</p> <p>*744</p>	<p>(Catalog of Federal Domestic Assistance No. 83.100, “Flood Insurance.”)</p> <p>Dated: July 10, 1996.</p> <p>Richard W. Krimm, <i>Acting Associate Director for Mitigation.</i></p> <p>[FR Doc. 96–18660 Filed 7–22–96; 8:45 am]</p> <p><b>BILLING CODE 6718–04–P</b></p> <hr/> <p><b>DEPARTMENT OF COMMERCE</b></p> <p><b>National Oceanic and Atmospheric Administration</b></p> <p><b>50 CFR Part 679</b></p> <p>[Docket No. 960502124–6190–02; I.D. 042396B]</p> <p><b>RIN 0648–AF81</b></p> <p><b>Scallop Fishery Off Alaska; Management Measures; 1996–97 Harvest Specifications</b></p> <p><b>AGENCY:</b> National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.</p> <p><b>ACTION:</b> Final rule; final 1996–97 harvest specifications; closures.</p> <p><b>SUMMARY:</b> NMFS issues a final rule to implement Amendment 1 to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP). The management measures established</p>		

access to the scallop fishery may be harmful to the resource and result in a net loss to the Nation. The Council announced a control date of January 20, 1993, to place the industry on notice that a moratorium for this fishery may be implemented and any person or fishing vessel that entered the scallop fisheries in Federal waters off Alaska would not be assured of future access to those fishery resources if a moratorium is implemented. In June 1995, the Council developed final qualifying criteria for the vessel moratorium. Under the Council's qualifying criteria, vessels would qualify for inclusion in the moratorium if they made at least one legal landing of scallops in any year from 1991 through 1993, or during any 4 separate years from 1980 through 1990. This two-tier approach was chosen to emphasize recent participation in the fishery by allowing all vessels with any legal landings in 1991, 1992 or 1993 to qualify. Historic participants would qualify under the more restrictive standard of a legal landing in at least 4 years between 1980 and 1990. The Council's final recommended qualifying criteria, which were published in the Council's newsletter, means that fishermen and/or vessels not participating in the fishery by December 31, 1993, may not be guaranteed future access to the fishery.

The Council subsequently separated the vessel moratorium from Amendment 1 and recommended that the vessel moratorium be implemented as Amendment 2 to the FMP. The Council took this action to prevent moratorium issues from delaying the reopening of the scallop fishery. On May 10, 1996, NMFS published a proposed rule to implement Amendment 1 to the FMP (61 FR 21431). The comment period for the proposed rule ended on June 21, 1996. Six letters of comment were received, which are summarized in the Response to Comments section below.

The regulations implementing Amendment 1 were developed in coordination with the Council and the State and are designed to complement current State management of the scallop fishery. These regulations do not preclude the State from imposing additional regulations on State registered vessels fishing in Federal waters, so long as State regulations are not in conflict with the FMP and its implementing regulations. The preamble to the proposed rule provides a description of and justification for each Federal management measure including: Gear and efficiency restrictions, scallop registration areas

and districts, procedures for specifying TACs and CBLs, time and area closures, inseason management authority, fishing seasons, and observer coverage requirements.

#### Changes From the Proposed Rule

Four changes were made from the proposed rule. First, since publication of the proposed rule, the Federal regulations implementing Alaska FMPs have undergone a comprehensive consolidation. As a consequence, most of the regulations implementing the FMP for the scallop fishery off Alaska (50 CFR part 673) have been recodified at 50 CFR 679 subpart F, except for the purpose and scope, definitions, and prohibitions sections of the scallop regulations, which are now found in 50 CFR 679 subpart A.

Second, in § 679.1(h)(2) the phrase "consistent with" was changed to "in addition to, and not in conflict with" so that § 679.1(h)(2) reads as follows: "State of Alaska laws that are in addition to, and not in conflict with, the regulations in this part are not preempted for vessels registered under the laws of the State fishing for scallops in the Federal waters off Alaska." This change was made in response to a comment and clarifies that NMFS intends to allow the State to impose additional regulations on State-registered vessels that are fishing for scallops in Federal waters as long as State regulations are not in direct conflict with Federal regulations or the FMP.

Third, the 1996 fishing season in Registration Area D is temporarily extended in response to a comment to allow for the harvest of remaining 1995-96 State TAC amounts that were not harvested in this area during the January 1996 fishery in State waters. In January 1996, the State authorized a fishery in the State waters of Registration Area D for the estimated portion of the TACs that were attributable to beds in State waters (8,000 lb (3,628.7 kg) shucked meat from District 16 and 55,000 lb (24,947.6 kg) from the remaining districts of Registration Area D). Because the entire portion of the 1996 TAC attributable to beds in State waters has been taken, the State has closed State waters in Registration Area D until 1997. Because State waters will remain closed until 1997, the remaining 1996 TAC for this area, which will become available on August 1, 1996, will be available only in Federal waters.

Fourth, § 679.62(a) was changed in response to a comment to require that available TAC be specified by

registration area rather than allow a combined TAC for multiple registration areas. This change was made to prevent overharvest from within one area. This change affects Registration Areas M, Q, and R.

#### 1996-97 Total Allowable Catch Specifications

The TACs for Registration Areas A, E, K, and O are unchanged from the proposed specifications published with the proposed rule. TACS for Registration Areas D, H, M, Q, and R have been changed from the proposed specifications for the reasons cited below.

In Registration Area D, the State authorized a January 1996 fishery inside State waters and allowed the harvest of the percentage of the annual TAC that was estimated to be attributable to scallop beds within State waters. Under the new regulations established by this rule, the fishing year for scallops runs from July 1 through June 30 of the following fishing year. Consequently, in Registration Area D, two TACs must be specified to allow for the harvest of the remaining 1995-96 TAC in Registration Area D. The 1995-96 TAC amount that went unharvested during the State's January 1996 fishery is specified for the period August 1, 1996, through December 31, 1996. The TAC for the current 1996-97 fishing year TAC is specified for the period January 1, 1997, through June 30, 1997.

In Registration Areas M, Q, and R, and H (other than Kamishak District), a combined TAC of 875,000 lb (396,893.32 kg) shucked meat was listed in the proposed specifications. This combined TAC was subdivided by area to prevent overharvest of the TAC from within any one area. TACs for each of these registration areas are now specified at the historic high catch, which is equal to the upper end of the OY range. No TAC is specified for districts other than the Kamishak District of Registration Area H. The other districts within Registration Area H lie primarily within State waters and there are no known commercially viable scallop beds in these districts. The State may authorize exploratory scallop fishing in these districts within State waters. Any exploratory fishing in Federal waters within these districts could be authorized by NMFS pursuant to "exempted fishing" regulations published at 50 CFR 600.745.

TABLE 1.—SCALLOP TAC AMOUNTS FOR THE PERIOD AUGUST 1, 1996, THROUGH JUNE 30, 1997, IN POUNDS (KILOGRAMS IN PARENTHESES) OF SHUCKED SCALLOP MEAT BY SCALLOP REGISTRATION AREA AND DISTRICT

Scallop registration area	TAC	
	lb	kg
Area A (Southeastern) .....	zero	
Area D (Yakutat): <b>(Applicable August 1, 1996 through December 31, 1996)<sup>1</sup></b>		
District 16 .....	27,000	12,247
All other districts .....	195,000	88,451
<b>(Applicable January 1, 1997 through June 30, 1997)</b>		
District 16 .....	35,000	15,880
All other districts .....	250,000	113,430
Area E (Prince William Sound) .....	50,000	22,686
Area H (Cook Inlet):		
Kamishak District .....	20,000	9,074
Area K (Kodiak) .....	400,000	181,488
Area M (Alaska Peninsula) .....	200,000	90,718
Area O (Dutch Harbor) .....	170,000	77,132
Area Q (Bering Sea) .....	600,000	272,155
Area R (Adak) .....	75,000	43,019
Total <sup>2</sup> .....	1,800,000	816,416

<sup>1</sup> Represents unharvested TAC that would have been specified for the period July 1, 1995, through June 30 1996. Because the closure of Federal waters prevented the harvest of this TAC during the January 1996 State-managed opening, NMFS is making this unharvested TAC amount available on August 1, 1996. The Area D TAC that would normally have been specified for the period August 1, 1996, through June 30, 1997 will not become effective until January 1, 1997.

<sup>2</sup> Does not include the August 1, 1996, through December 31, 1996, TAC for Registration Area D because this TAC amount represents unharvested TAC from the previous fishing year.

1996-97 Crab Bycatch Limits

These numbers are unchanged from the proposed specifications.

Table 2 shows CBLs for the period August 1, 1996, through June 30, 1997.

TABLE 2.—CRAB BYCATCH LIMITS FOR THE PERIOD AUGUST 1, 1996, THROUGH JUNE 30, 1997, IN NUMBERS OF CRABS BY SCALLOP REGISTRATION AREA AND DISTRICT

Scallop registration area	Red king	C. bairdi	C. opilio
Area A (Southeastern) .....			
Area D (Yakutat) .....			
Area E (Prince William Sound) .....		630	
Area H (Cook Inlet):			
Kamishak District .....	40	15,900	
Outer/Eastern Districts .....	98	2,170	
Area K (Kodiak):			
Shelikof District .....	22	16,100	
Northeast District .....	66	130,000	
Area M (Alaska Peninsula) .....	435	22,800	
Area O (Dutch Harbor) .....	10	10,700	
Area Q (Bering Sea) .....	500	257,000	275,000
Area R (Adak) .....	50	10,000	

Closure

In Registration Area A, the final scallop TAC amount for the period August 1, 1996, through June 30, 1997, is zero. Therefore, under § 679.62(c), NMFS is prohibiting the catch and retention of scallops in Registration Area A from August 1, 1996, through June 30, 1997.

Response to Comments

*Comment 1:* The 30-day delay in effectiveness normally incorporated into Federal rulemaking procedures should be waived. This rule will impact the industry in a positive way by allowing fishing to resume after an 18-month hiatus brought about by a lack of Federal regulation. The period normally viewed as an opportunity for industry to adapt to an onerous regulation is not

needed and would, in fact, present further hardship to the fishing industry.

*Response:* NMFS agrees. The 30-day delayed effectiveness period for this rule has been waived (see "Classification" section, below).

*Comment 2:* The proposed rule has an August 15 opening date for Registration Area H (Cook Inlet). A later opening date of August 29 is recommended, because crab tend to move out of this area later in the season. A later opening date would produce less crab bycatch,

which is a prime concern of industry and the Council.

*Response:* Because a single TAC is specified for both the Federal and State waters of each registration area or district, a simultaneous opening of Federal and State waters is necessary to prevent localized overfishing of scallop stocks and reduce administration and enforcement concerns. For these reasons, opening dates in the Federal waters of each registration area or district were scheduled to match existing State opening dates. If the opening date for the Federal waters of Registration Area H were delayed until August 29, vessel operators might try to harvest the entire TAC from within State waters that would open on August 15. This situation could cause localized overfishing of scallops stocks inside State waters. Moreover, enforcement of closures would be more problematic if adjacent State and Federal waters were open at different times. Therefore, the opening date for Registration Area H is unchanged.

NMFS does not have adequate bycatch data to support or refute the contention that crab bycatch would be appreciably lower if the opening date were delayed until August 29. However, crab bycatch was certainly a consideration of the Board of Fisheries when it established an August 15 opening date for the Cook Inlet Registration Area. In its comments on the proposed rule, ADF&G has indicated that possible changes to scallop opening dates will be examined by the Board of Fisheries at the March 1997 meeting. If bycatch data presented to the Board of Fisheries indicate that a change in opening dates is warranted for the Cook Inlet Registration Area, NMFS, in coordination with the Council and the State could address opening date changes at that time.

*Comment 3:* While the exemption from observer coverage for vessels less than 80 ft (24.4 m) length overall (LOA) in Cook Inlet is justified, a similar exemption is necessary for small vessels fishing outside Cook Inlet. In the past, State regulations have exempted vessels less than 65 ft (19.8 m) LOA from observer requirements. A number of vessels qualified for this exemption. If small vessels must give up bunk space to carry an observer, they will lose a significant percentage of their workforce while incurring the extra expense of accommodating an observer. Therefore, small vessels will be hit doubly hard by the 100 percent observer coverage requirement. In the groundfish observer program, vessels between 60 and 125 ft (18.3 and 38.1 m) LOA are only required to carry an observer for 30 percent of

their fishing days. A small vessel exemption should be reinstated for the scallop fishery, or a percentage-based coverage system similar to that used in the groundfish fishery.

*Response:* All vessels required to carry an observer under this rule will need to provide accommodations for an observer. The loss of a bunk space is not limited to small vessels. In addition, the restrictions on dredge width and crew size will tend to limit disparities in harvesting capacity between large and small vessels. Therefore, NMFS does not believe that a 100 percent observer coverage requirement will have inordinate impacts on small vessels. Nevertheless, NMFS is sensitive to the impacts that this rule will have on small businesses and has taken numerous steps to reduce burdens on small businesses such as avoiding duplicate State and Federal recordkeeping and recording requirements. In addition, the Council heard testimony on the burden of 100 percent observer requirements from small vessel owners during initial and final consideration of Amendment 1. However, the Council believes, and NMFS concurs, that the need for accurate management data outweighed the economic impacts on small vessels. One hundred percent observer coverage is necessary outside Cook Inlet to accurately monitor crab bycatch, which is a primary management concern because crab populations are severely depleted throughout the area covered by the FMP. Observer data are also required because little information is presently available on the status of scallop stocks in much of the management area. Consequently, no observer coverage exemption was made for small vessels fishing outside of Cook Inlet.

*Comment 4:* The Alaska Department of Fish and Game (ADF&G) is concerned that the Federal regulatory system will not be flexible enough to reflect season changes made by the Alaska Board of Fisheries, or by ADF&G emergency order. ADF&G believes that a real likelihood exists that the State seasons established for Registration Areas D and E will be changed in 1997. Seasons in State and Federal waters must be identical for conservation, as well as enforcement and fair start reasons.

*Response:* NMFS may make regulatory changes in fishing seasons at any time for conservation or management reasons in response to recommendations from ADF&G or the Council. Any changes to State fishing seasons made at the March 1997 Board of Fisheries meeting could not become effective before the 1998 fishing season because the 1997 scallop fishery in

Registration Areas D and E would have already occurred in January. NMFS would have more than sufficient time to make corresponding changes in Federal fishing seasons through the normal regulatory process. Any conservation emergency that warrants an immediate adjustment of fishing seasons, or any other management measure, could be made through the inseason adjustment authority set out at § 679.63 or through an emergency rule.

*Comment 5:* The proposed rule establishes the TAC for each registration area as a single number. ADF&G recommends that the TAC be set as a range for each registration area. For example, in the Yakutat Registration Area, TAC should be set at 0 to 250,000 lb (113,430 kg) shucked meat. By stating TAC as a range, conservation adjustments to harvest guidelines, either pre-season or in-season, would be frameworked within regulations and would not require additional action by NMFS.

*Response:* The TACs specified by NMFS simply represent the upper end of the range of acceptable harvests. No requirement exists that the entire TAC be harvested in each registration area. Indeed, NMFS expects that the scallop fishery in some registration areas will close long before the entire TAC is harvested due to attainment of CBLs. No management advantage would be achieved by specifying TACs as a range, because NMFS would still be required to publish an inseason adjustment or closure to affect any change in the fishery. NMFS believes that the inseason adjustment authority established by this regulation is sufficient to implement timely inseason changes to TACs, should they be warranted for conservation or management reasons.

*Comment 6:* Paragraph 673.1(c) of the proposed rule states "State of Alaska laws that are consistent with the regulations in this part are not preempted for vessels registered under the laws of the State fishing for scallops in the Federal waters off Alaska." Neither the FMP nor the proposed rule adopt all of the areas closed by State to scallop fishing. Thus, one could interpret paragraph 673.1(c) to mean that State closed areas within Federal waters could be preempted for State registered vessels. The areas closed by the State to scallop fishing were adopted by the Board of Fisheries over 20 years ago to protect king and Tanner crab stocks by using the best scientific information available along with public testimony. Crab stocks in these closed areas are very depressed and commercial king crab fisheries have

been closed since 1983. Based on the crab stock status and additional public input, the Board of Fisheries confirmed the closures in 1994.

*Response:* NMFS did not implement all of the closed areas that are currently established in State regulations, because NMFS did not have sufficient information on crab bycatch and crab habitat immediately available to propose such closures. To compile and analyze crab bycatch statistics for the areas currently closed by the State prior to publication of the proposed rule could have delayed the timely reopening of the scallop fishery in Federal waters. However, NMFS encourages the State to take any additional measures necessary to protect scallop stocks and bycatch species for State-registered vessels fishing in Federal waters. In § 679.1(h)(2), the phrase "consistent with" was changed to "in addition to, and not in conflict with" to clarify that NMFS intends to allow the State to impose additional regulations on State-registered vessels that are fishing for scallops in Federal waters, as long as State regulations are not in direct conflict with Federal regulations or the FMP.

*Comment 7:* The proposed rule does not close Federal waters presently closed by the State to scallop fishing. ADF&G is concerned that vessels that are not registered with the State will not comply with State regulations and could legally fish in these closed areas. The State's Fish and Wildlife Protection Division cannot enforce regulations on vessels that are not registered with the State or do not enter State waters. ADF&G believes that NMFS Enforcement could not enforce these closed waters if they are not established in Federal regulations.

*Response:* The reasons why NMFS did not implement all of the State closures in Federal waters are outlined in the response to comment 6. Because the closed areas in question are not established in Federal regulations, they will not be enforced by NMFS, however, they may be enforced by the State for State-registered vessels. A vessel fishing for scallops that is not registered with the State could indeed fish in areas of Federal waters that the State has closed to State-registered vessels. However, NMFS believes it is extremely unlikely that a vessel operator would chose to fish for scallops without registering with the State. Many scallop beds straddle both State and Federal waters and a vessel not registered with the State would be prevented from fishing in State waters and could also be prevented from entering State waters with unprocessed scallops on board.

NMFS believes that the loss of access to State waters would far outweigh any possible advantage a vessel would gain by avoiding State-registration simply to fish in the closed areas in question.

*Comment 8:* ADF&G believes that separate TACs should be established for Registration Areas M, Q, and R. The combined TAC of 875,000 lb (396,893.3 kg) of shucked meat creates a potential risk of overfishing in any single area. Dependence on CBLs to protect the scallop resource from overfishing in these areas is not appropriate. TACs for each registration area should be established at historic high catch: Registration Area M, 0 to 200,000 lb (90,718 kg) shucked meat; Registration Area Q, 0 to 600,000 lb (272,155 kg) shucked meat; and Registration Area R, 0 to 75,000 lb (43,019 kg) shucked meat.

*Response:* NMFS agrees. The final specifications of TAC for the period August 1, 1996, through June 30, 1997, have been changed to reflect TACs of 200,000 lb (90,718 kg) shucked meat for Registration Area M, 600,000 lb (272,155 kg) shucked meat for Registration Area Q, and 75,000 lb (43,019 kg) shucked meat for Registration Area R.

*Comment 9:* The Bristol Bay bottom trawl closures recently adopted by the Council should also be closed to scallop dredging to be consistent with Federal groundfish regulations and to assist in the protection and rebuilding efforts for the Bristol Bay red king crab stocks.

*Response:* NMFS agrees. All Federal waters that are closed to trawling for groundfish with nonpelagic trawl gear for the purpose of habitat protection, limiting crab bycatch, or protecting walrus rookeries and Steller sea lion areas are also closed to dredging for scallops. If the Bristol Bay bottom trawl closures recently adopted by the Council are approved by NMFS, they will also apply to dredging for scallops.

#### Classification

The Director, Alaska Region, NMFS, determined that Amendment 1 is necessary for the conservation and management of the scallop fishery off Alaska and that it is consistent with the Magnuson Act and other applicable laws.

The Federal waters off Alaska have been closed to scallop fishing under an emergency interim rule and subsequent final rule since February 23, 1995 (60 FR 11054, March 1, 1995 and 60 FR 42070, August 15, 1995, respectively). The management measures established under this final rule relieve this restriction by reopening Federal waters to fishing for scallops. Therefore, as this rule relieves a restriction, delayed

effectiveness under 5 U.S.C. 553(d)(1) is not required. Additionally, with respect to the new management measures imposed by this rule, there is good cause to waive the delayed effectiveness period under 5 U.S.C. 553(d)(3) because of the need to coordinate the opening of Federal waters with the August 1, 1996, opening of State waters within each registration area. Furthermore, all vessels expected to fish in Federal waters also fish in State waters where these regulatory requirements have been in effect and are familiar to the fleet.

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

The Council prepared a FRFA as part of the RIR, which describes the impacts that this rule is expected to have on small entities. The economic effects of this rule to the regulated community are expected to be significant and positive. Because this rule repeals the total closure of Federal waters to fishing for scallops, significant opportunities for scallop fishing will exist that could otherwise be unavailable under current regulations. The analysis concluded that in 1994, 86 percent of the scallops harvested off Alaska were taken from Federal waters and 11 of the 16 vessels harvesting scallops participated in no other fishery. This rule will restore the opportunity to fish in Federal waters that was available prior to 1995. A copy of this analysis is available from NMFS (see ADDRESSES).

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

Fisheries, Reporting and recordkeeping requirements.

Dated: July 17, 1996.

Gary Matlock,

*Program Management Officer, National Marine Fisheries Service.*

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

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

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

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

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

#### **§ 679.1 Purpose and scope.**

\* \* \* \* \*

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

the United States (see subparts A and F of this part).

(2) State of Alaska laws that are in addition to, and not in conflict with, the regulations in this part are not preempted for vessels registered under the laws of the State fishing for scallops in the Federal waters off Alaska.

3. In § 679.2 the definition of "Authorized fishing gear" is amended by revising the introductory paragraph, redesignating paragraphs (1) through (9) and (10) as paragraphs (2) through (10) and (12), respectively, and adding new paragraphs (1) and (11). New definitions of "CBL" and "Shucking machine" are added, in alphabetical order, to read as follows:

**§ 679.2 Definitions.**

\* \* \* \* \*

*Authorized fishing gear* means dive, fixed gear, hook-and-line, jig, longline, longline pot, nonpelagic trawl, nontrawl, pelagic trawl, pot-and-line, scallop dredge, and trawl defined as follows:

(1) *Dive* means any scuba or surface supported diving equipment that allows for the underwater harvest of scallops by divers, or the taking of scallops by means of such gear.

\* \* \* \* \*

(11) *Scallop dredge* means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any modification to this design that can be or is used in the harvest of scallops, or the taking of scallops by means of such gear.

\* \* \* \* \*

*CBL* means crab bycatch limit.

\* \* \* \* \*

*Shucking machine* means any mechanical device that automatically removes the meat or the adductor muscle from the shell.

\* \* \* \* \*

4. In § 679.7, paragraph (h) is added to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(h) *Scallop fishery off Alaska*. It is unlawful for any person to violate any provision of subpart F of this part while fishing for scallops in the Federal waters off Alaska.

5. Subpart F is revised to read as follows:

**Subpart F—Scallop Fishery Off Alaska**

- Sec.
- 679.60 Gear and efficiency limits.
- 679.61 Registration areas.
- 679.62 General limitations.
- 679.63 Inseason adjustments.
- 679.64 Seasons.
- 679.65 Observer requirements.

**Subpart F—Scallop Fishery Off Alaska**

**§ 679.60 Gear and efficiency limits.**

(a) *General*. Scallops may be taken only with dive gear or scallop dredge gear as defined at § 679.2.

(b) The inside ring diameter on all dredges used or carried by a vessel fishing for weathervane scallops (*Patinopecten caurinus*) must be 4 inches (10.16 cm) or larger.

(c) The inside ring diameter on all dredges used or carried by a vessel fishing for scallops other than weathervane scallops must be 3 inches (7.62 cm) or larger.

(d) No person may use chafing gear or other devices that decrease the legal inside ring diameter of a scallop dredge.

(e) Except as provided in paragraph (f) of this section, no more than two scallop dredges may be operated at one time from a vessel, and the opening of a scallop dredge must be equal to or less than 15 ft (4.57 m) wide.

(f) In the Kamishak, Southern, and Central Districts of Scallop Registration Area H defined under § 679.61, no more than one scallop dredge may be operated at one time from a vessel, and the opening of a dredge may not be more than 6 ft (1.83 m) in width.

(g) Scallops must be shucked by hand only. A shucking machine must not be on board a vessel that is fishing for scallops or that has scallops on board.

(h) No vessel fishing for scallops in Federal waters may have aboard more than 12 persons, exclusive of ADF&G or NMFS observers.

**§ 679.61 Registration areas.**

For the purpose of managing the scallop fishery, the Federal waters off Alaska and adjacent State waters are divided into nine scallop registration areas. Three scallop registration areas are further subdivided into districts. The scallop registration areas and districts are defined as follows:

(a) *Registration Area A* (Southeastern) has as its southern boundary the international boundary at Dixon Entrance, and as its northern boundary Loran-C line 7960-Y-29590, which intersects the western tip of Cape Fairweather at 58°47'58" N. lat., 137°56'30" W. long., except for ADF&G District 16 defined under paragraph (b) of this section.

(b) *Registration Area D* (Yakutat) has as its western boundary the longitude of Cape Suckling (143°53' W. long.), and as its southern boundary Loran-C line 7960-Y-29590, which intersects the western tip of Cape Fairweather at 58°47'58" N. lat., 137°56'30" W. long., and ADF&G District 16 defined as all waters all waters north of a line

projecting west from the southernmost tip of Cape Spencer and south of a line projecting southwest from the westernmost tip of Cape Fairweather.

(c) *Registration Area E* (Prince William Sound) has as its western boundary the longitude of Cape Fairfield (148°50' W. long.), and its eastern boundary the longitude of Cape Suckling (143°53' W. long.).

(d) *Registration Area H* (Cook Inlet) has as its eastern boundary the longitude of Cape Fairfield (148°50' W. long.) and its southern boundary the latitude of Cape Douglas (58°52' N. lat.).

(1) *Northern District*. North of a line extending from Boulder Point at 60°46'23" N. lat., to Shell Platform C, then to a point on the west shore at 60°46'23" N. lat.

(2) *Central District*. All waters between a line extending from Boulder Point at 60°46'23" N. lat., to Shell Platform C, to a point on the west shore at 60°46'23" N. lat., and the latitude of Anchor Point Light (59°46'12" N. lat.).

(3) *Southern District*. All waters enclosed by a line from Anchor Point Light west to 59°46'12" N. lat., 152°20' W. long., then south to 59°03'25" N. lat., 152°20' W. long., then in a northeasterly direction to the tip of Cape Elizabeth at 59°09'30" N. lat., 151°53' W. long., then from the tip of Cape Elizabeth to the tip of Point Adam at 59°15'20" N. lat., 151°58'30" W. long.

(4) *Kamishak Bay District*. All waters enclosed by a line from 59°46'12" N. lat., 153°00'30" W. long., then east to 59°46'12" N. lat., 152°20' W. long., then south to 59°03'25" N. lat., 152°20' W. long., then southwesterly to Cape Douglas (58°52' N. lat.). The seaward boundary of the Kamishak Bay District is 3 nautical miles seaward from the shoreline between a point on the west shore of Cook Inlet at 59°46'12" N. lat., 153°00'30" W. long., and Cape Douglas at 58°52' N. lat., 153°15' W. long., including a line three nautical miles seaward from the shorelines of Augustine Island and Shaw Island, and including the line demarking all state waters shown on NOAA chart 16640, 21st Ed., May 5, 1990 (Available from Alaska Region).

(5) *Barren Island District*. All waters enclosed by a line from Cape Douglas (58°52' N. lat.) to the tip of Cape Elizabeth at 59°09'30" N. lat., 151°53' W. long., then south to 58°52' N. lat., 151°53' W. long., then west to Cape Douglas.

(6) *Outer District*. All waters enclosed by a line from the tip of Point Adam to the tip of Cape Elizabeth, then south to 58°52' N. lat., 151°53' W. long., then east to the longitude of Aligo Point

(149°44'33" W. long.), then north to the tip of Aligo Point.

(7) *Eastern District*. All waters east of the longitude of Aligo Point (149°44'33" W. long.), west of the longitude of Cape Fairfield (148°50' W. long.), and north of 58°52' N. lat.

(e) *Registration Area K* (Kodiak) has as its northern boundary the latitude of Cape Douglas (58°52' N. lat.), and as its western boundary the longitude of Cape Kumlik (157°27' W. long.).

(1) *Northeast District*. All waters northeast of a line extending 168° from the easternmost tip of Cape Barnabas, east of a line from the northernmost tip of Inner Point to the southernmost tip of Afognak Point, east of 152°30' W. long. in Shuyak Strait, and east of the longitude of the northernmost tip of Shuyak Island (152°20' W. long.).

(2) *Southeast District*. All waters southwest of a line extending 168° from the easternmost tip of Cape Barnabas and east of a line extending 222° from the southernmost tip of Cape Trinity.

(3) *Southwest District*. All waters west of a line extending 222° from the southernmost tip of Cape Trinity, south of a line from the westernmost tip of Cape Ikolik to the southernmost tip of Cape Kilokak and east of the longitude of Cape Kilokak (156°19' W. long.).

(4) *Semidi Island District*. All waters west of the longitude of Cape Kilokak at 156°19' W. long. and east of the longitude of Cape Kumlik at 157°27' W. long.

(5) *Shelikof District*. All waters north of a line from the westernmost tip of Cape Ikolik to the southernmost tip of Cape Kilokak, west of a line from the northernmost tip of Inner Point to the southernmost tip of Afognak Point, west of 152°30' W. long., in Shuyak Strait, and west of the longitude of the northernmost tip of Shuyak Island (152°20' W. long.).

(f) *Registration Area M* (Alaska Peninsula) has as its eastern boundary the longitude of Cape Kumlik (157°27' W. long.), and its western boundary the longitude of Scotch Cap Light. The registration area also includes all waters of Bechevin Bay and Isanotski Strait south of a line from the easternmost tip of Chunak Point to the westernmost tip of Cape Krenitzen.

(g) *Registration Area O* (Dutch Harbor) has as its northern boundary the latitude of Cape Sarichef (54°36' N. lat.), as its eastern boundary the longitude of Scotch Cap Light, and as its western boundary 171° W. long., excluding the waters of Statistical Area Q.

(h) *Registration Area Q* (Bering Sea) has as its southern boundary a line from Cape Sarichef (54°36' N. lat.), to 54°36' N. lat., 171° W. long., to 55°30' N. lat.,

171° W. long., to 55°30' N. lat., 173°30' E. long., as its northern boundary the latitude of Point Hope (68°21' N. lat.).

(i) *Registration Area R* (Adak) has as its eastern boundary 171° W. long., and as its northern boundary 55°30' N. lat.

#### § 679.62 General limitations.

(a) *Harvest limits*—(1) *General*. NMFS will establish TAC amounts and CBLs for the scallop fishery off Alaska according to the procedures described under this section. The total annual TAC amount for scallops off Alaska will be established within the OY range of 0 to 1.8 million lb (0 to 815.5 mt) of shucked scallop meat.

(2) *TACs*. (i) The annual TACs for scallops in each Registration Area or part thereof will be established as a weight in pounds of shucked scallop meat based on a review of the following:

(A) Assessments of the biological condition of each scallop species. Assessments will include, where practicable, updated estimates of MSY; historical catch trends and current catch statistics, reviews of alternative harvesting strategies; and relevant information relating to changes in scallop markets.

(B) Socioeconomic considerations that are consistent with the goals and objectives of the FMP.

(ii) Annual scallop TACs will be specified for the 12-month time period extending from July 1 through June 30 of the following year. An annual TAC amount is available for harvest only for the registration area or district specified, only during the applicable season set out in § 679.64, and only if no closure or other restriction or limitation is applicable.

(3) *CBLs*. (i) CBLs may be specified for red king crab and Tanner crab species for any registration area or district.

(ii) Except as provided under paragraph (a)(3)(iii) of this section, annual CBLs will be based on the biological condition of each crab species, historical bycatch rates in the scallop fishery, and other socioeconomic considerations that are consistent with the goals and objectives of the FMP.

(iii) Annual CBLs in Registration Area Q will equal the following amounts:

(A) The CBL for red king crab caught while conducting any fishery for scallops will be specified within the range of 500 to 3,000 crab based on the considerations listed in paragraph (a)(3)(ii) of this section.

(B) The CBL for *Chionoecetes opilio* Tanner crab caught while conducting any fishery for scallops is 0.003176 percent of the best available estimate of

*C. opilio* abundance in Registration Area Q.

(C) The CBL for *C. bairdi* Tanner crab caught while conducting any fishery for scallops is 0.13542 percent of the best available estimate of *C. bairdi* abundance in Registration Area Q.

(iv) Annual CBLs will be specified for the 12-month time period from July 1 through June 30 of the following year. An annual CBL may be utilized only for the registration area or district specified, only if any applicable TAC amount is available for harvest, only during the applicable season set out in § 679.64, and only if no closure or other limitation or restriction is applicable.

(b) *Specifications*. The following procedure is established for specifying TAC amounts and CBLs:

(1) On an annual basis, prior to the April Council meeting, the Council will distribute a summary of the State's most recent TAC and CBL recommendations and supporting documentation to the public through its mailing list, as well as provide copies of the recommendations, documentation, and the annual SAFE report to the public upon request. The Council will notify the public of its intent to develop final recommendations at the April Council meeting and solicit public comment both before and during the April Council meeting.

(2) Following the April Council meeting, the Council will submit its TAC and CBL recommendations along with rationale and supporting information to NMFS for review and implementation.

(3) As soon as practicable after receiving recommendations from the Council, NMFS will publish in the Federal Register annual specifications of TAC amounts and CBLs for the succeeding 12-month period extending from July 1 through June 30 of the following year.

(c) *Closures*. (1) If the Director, Alaska Region, NMFS, determines that a TAC or CBL specified under paragraphs (a) and (b) of this section has been or will be reached, NMFS will publish notification in the Federal Register prohibiting the taking and retention of scallops in the Federal waters of the registration area or district where the notification is applicable.

(2) It is unlawful for any person to conduct any fishing for scallops contrary to the notification of closure issued pursuant to this paragraph.

(d) *Closed areas*. It is unlawful for any person to dredge for scallops in any Federal waters off Alaska that are closed to fishing with trawl gear or non pelagic trawl gear under § 679.22(a)(1)(i), (a)(2)(i), (a)(4), (a)(6), (a)(7) and (b).

**§ 679.63 Inseason adjustments.**

(a) Inseason adjustments may be issued by NMFS to implement the closure, extension, opening, or reopening of a season in all or part of a scallop registration area; and the adjustment of TAC amounts or CBLs.

(b) Determinations for any inseason adjustment authorized under paragraph (a) of this section must be consistent with § 679.25(a)(2).

(c) Procedures for making inseason adjustments are specified at § 679.25(c).

(d) It is unlawful for any person to conduct any fishing for scallops contrary to an inseason adjustment issued pursuant to this section.

**§ 679.64 Seasons.**

(a) Fishing for scallops in the Federal waters off Alaska is authorized from 0001 hours, A.l.t., July 1, through 2400 hours, A.l.t., June 30, subject to the other provisions of this part, except as provided in paragraphs (b) through (e) of this section.

(b) Fishing for scallops in the Federal waters of Scallop Registration Areas K, M, O, Q, and R is authorized from 1200 hours, A.l.t., July 1 through 1200 hours, A.l.t., February 15 of the following year, subject to the other provisions of this part.

(c) Fishing for scallops in the Federal waters of the Kamishak District of Scallop Registration Area H is authorized from 1200 hours, A.l.t., August 15 through 1200 hours, A.l.t., October 31, subject to the other provisions of this part.

(d) (Applicable January 1, 1997) Fishing for scallops in the Federal waters of Scallop Registration Areas A, D, and E is authorized from 1200 hours, A.l.t., January 10 through 2400 hours, A.l.t., June 30, subject to the other provisions of this part.

(e) (Applicable through December 31, 1996) Fishing for scallops in the Federal waters of Scallop Registration Area D is authorized from 1200 hours, A.l.t.,

August 1 through 2400 hours, A.l.t., December 31, subject to the other provisions of this part. Fishing for scallops in the Federal waters of Scallop Registration Areas A and E is not authorized.

**§ 679.65 Observer requirements.**

(a) Except as provided in paragraph (c) of this section, vessels must carry a NMFS-certified or ADF&G-certified scallop observer at all times while fishing for scallops in Federal waters.

(b) An operator of a vessel required to carry an observer must comply with all safety and conduct requirements set out at § 679.7(g).

(c) Vessels less than 80 ft (24.4 m) LOA are exempt from the requirements of this section while fishing for scallops in the Federal waters of Registration Area H.

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