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

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

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

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

Request for Public Comment

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

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

Issued on: May 4, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–11469 Filed 5–9–95; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 673

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

RIN 0648–AIOO

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

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

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

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

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

FOR FURTHER INFORMATION CONTACT: Susan Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The scallop resource off Alaska has been commercially exploited for almost 30 years. Weathervane scallop stocks off Alaska were first commercially explored by a few vessels in 1967. The fishery grew rapidly over the next 2 years with about 19 vessels harvesting almost 2 million lbs (907 mt) of shucked meat. Since then vessel participation and harvests have fluctuated greatly, but have remained below the peak participation and harvests experienced in the late 1960's. Between 1969 and 1991, about 40 percent of the annual scallop harvests came from waters of the State of Alaska (State). Since 1991, Alaska scallop harvests have increasingly occurred in Federal waters. In 1994, only 14 percent of the 1.2 million lbs (544 mt) landed were harvested in State waters, with the remainder harvested in Federal waters off Alaska.

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

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

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

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

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

Based on recent events in the scallop fishery that warranted the emergency interim rule, the Council's proposed FMP no longer is an appropriate option for the management of the scallop fishery in Federal waters. Recent participation in the scallop fishery by at least one unregistered vessel, contemplation by other vessel owners of fishing in Federal waters outside State regulations governing the scallop fishery, and the likelihood that uncontrolled fishing for scallops could occur anywhere off Alaska by the highly mobile scallop processor fleet now requires that Federal regulations be implemented to control scallop fishing activity by vessels that do not register with the State.

At its April 1995 meeting, the Council adopted for submission to NMFS an alternative FMP for the Scallop Fishery off Alaska with the intent that this FMP could be reviewed and implemented before the anticipated 90-day extension of the emergency interim rule expires on August 28, 1995. The FMP would authorize an interim closure of Federal waters to fishing for scallops that would continue until the earlier of 1 year or the issuance of a superseding management regime. The intent of the FMP is to prevent an unregulated and uncontrolled fishery for scallops in Federal waters that could result in overfishing of scallop stocks during the period of time an amendment to the FMP is prepared to authorize fishing for scallops under a Federal management regime. The Council has pursued this approach because it has determined that the suite of alternative management measures necessary to support a controlled fishery for scallops in Federal waters could not be prepared, reviewed, and implemented before the emergency rule expires. Instead, the FMP was prepared to protect the long-term productivity of scallops stocks off Alaska necessary to support the future harvest of OY on a continuing basis without the ''boom and bust'' syndrome that has occurred historically in many other scallop fisheries.

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

Management Area and Fishery

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

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

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

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

Scallop Biology and Resource Management

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

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

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

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

State Management of the Scallop Fishery

The Alaska Department of Fish and Game (ADF&G) initiated development of a management plan for the scallop fishery in response to overfishing concerns resulting from recent changes in the weathervane scallop fishery off Alaska. Weathervane scallops possess biological traits (e.g., longevity, low natural mortality rate, and variable recruitment) that render them vulnerable to overfishing. Record landings occurred in the late 1960's (about 1.8 million lb (816 mt) shucked scallop meat), followed by a significant decline in catch through the 1970's and 1980's when landed catch ranged between 0.2 and 0.9 million lbs (91–408 mt). The ADF&G believes this decline is due, in part, to reduced abundance of scallop stocks. Landings since 1989 have increased to near record levels. During this period, the number of vessels fishing for scallops has not increased (about 10–15 vessels annually), although an increase in fishing power is evidenced by a substantial increase in average vessel length (from 84 ft (25.6 m) registered length in 1981 to 110 ft (33.5 m) in 1991), a predominance of full-time scallop vessels, and an increased number of deliveries. Until 1993, the State did not have a data collection program, although some indication exists that overfishing, or at least localized depletion, may have occurred. Data voluntarily submitted by participants in the scallop fishery during the early 1990's showed that an increase in meat counts per pound has occurred, indicating that smaller scallops now account for a greater proportion of the harvest. These data also suggest that catch per unit of effort in traditional fishing grounds has decreased.

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

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

If a GHR for a registration area is not specified, ADF&G would authorize fishing for weathervane or other scallop species under special use permits that generally include location and duration of harvests, gear limitations and other harvest procedures, periodic reporting or logbook requirements, requirements for onboard observers, and scallop catch or crab bycatch limits.

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

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

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

Management Objective of the FMP

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

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

Optimum Yield (OY)

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

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

Overfishing Level

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

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

Management Measures

To control fishing effort and avoid overfishing of scallop stocks, the only management measure authorized under the proposed FMP would be an interim closure of Federal waters off Alaska to fishing for scallops. Such a closure would protect the scallop resource from unregulated fishing and localized overfishing while more long-term measures are prepared that are expected to allow for controlled harvesting of scallops in Federal waters. An interim closure of Federal waters is a necessary and appropriate interim measure for the protection and promotion of the long-term health of the scallop resource. Such action is expected to promote the stability of the scallop fishery under an anticipated future FMP or FMP amendment authorizing fishing for scallops in Federal waters. An interim closure of Federal waters to prevent an unregulated fishery also would mitigate any potentially adverse impact crab bycatch in the scallop fishery may have on either crab stocks or their habitat off Alaska.

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

Data Collection and Assessment

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

Impacts of the FMP on the Alaska Scallop Fishery

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

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

Consistency Determinations With the National Standards

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

National standard 1. The proposed interim closure of Federal waters to fishing for scallops would be a conservation measure to control fishing effort and prevent overfishing of scallop stocks until an alternative management regime may be implemented, which is expected to authorize a regulated fishery in Federal waters. The proposed interim closure would be effective for a 1-year period unless superseded earlier by an alternative management regime. During this interim closure, data should be assessed and collected on which to base a Federal management program for the Alaska scallop fishery. Prevention of overfishing during this interim period would help guarantee achievement of OY from a healthy, productive scallop resource when the fishery is authorized to open under a future management regime. Furthermore, OY would be achieved on a continuing basis, given that weathervane scallops are a long-lived species with a low natural mortality rate, and the resource harvest foregone during the period Federal waters are closed largely would be available to the fishery after a 1-year period. NMFS recognizes that the economic impact on scallop fishermen could be substantial and that the potential foregone revenue to scallop fishermen could approach $6 million if Federal waters remain closed for the entire 1-year period. However, this short-term impact is justified by the need to prevent overfishing of the scallop resource and ensure the long-term productivity of the scallop resource necessary to support the harvest of OY on a continuing basis under a future management regime that authorizes a regulated fishery in Federal waters.

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

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

National standard 4. Neither the proposed FMP nor its implementing regulations would allocate fishing privileges or discriminate between residents of different states. The proposed interim closure of Federal waters to fishing for scallops would apply to all vessels, regardless of a vessel owner's state of residency.

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

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

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

Classification

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

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

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

NMFS prepared an IRFA as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. As discussed above under ''Impacts of the FMP on the Alaska Scallop Fishery,'' closure of Federal waters off Alaska to fishing for scallops could result in a significant economic impact to nearly all participants in the Alaskan scallop fishery that could approach $6 million in foregone revenues during the 1-year period the closure is effective. Conversely, the long-term impact of not closing Federal waters to fishing for scallops could be substantially greater, given that overfishing of scallop stocks would result in significantly reduced catch or long-term fishery closures. This short-term impact is justified by the need to prevent overfishing of the scallop resource and ensure the long-term productivity of the scallop resource necessary to support the harvest of OY on a continuing basis under a future management regime that authorizes a regulated fishery in Federal waters. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 673

Fisheries.

Dated: May 5, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

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

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

PART 673—SCALLOP FISHERY OFF ALASKA

Sec.

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

§ 673.1 Purpose and Scope.

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

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

§ 673.2 Definitions.

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

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

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

§ 673.3 Prohibitions.

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

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

BILLING CODE 3510–22–F