Action	FCC form No.	Fee amount	Payment type code	Address
d. Formal Complaints/Cross-Complaints relating to wireless telecommunications services, including cellualr telephone, paging, personal communications services, and other commercial mobile radio services, Filing Fee..	Corr. and 159	150	CIZ	Federal Communications Commission, Wireless Telecommunications Bureau, P.O.Box 358128, Pittsburgh, PA 15251–5120.

* * * * * *

Attachment to the Proposed Rule

FORMAL COMPLAINT INTAKE FORM

Case Name: _____

Complainant Name, Address, Phone and Facsimile Number:

_____

_____

_____

_____

Complaint alleges violation of the following provisions of the Communications Act of 1934, as amended: _____

Answer (Y)es, (N)o or N/A to the following:

____ Complaint conforms to the specifications prescribed by 47 CFR §§ 1.49, 1.734.

____ Complaint complies with the pleading requirements of 47 CFR § 1.720.

____ Complaint conforms to the format and content requirements of 47 CFR § 1.721:

____ Complaint contains a detailed explanation of the manner in which the defendant violated the provisions of the Communications Act of 1934, as amended.

____ Relevant documentation and/or affidavits is attached, including agreements, offers, counter-offers, denials, or other relevant correspondence.

____ Contains certification that complainant has discussed the possibility of settlement with each defendant prior to the filing of the formal complaint.

____ Suit has been filed in another court or government agency on the basis of the same cause of action. If yes, please explain: _____

____ Seeks prospective relief identical to the relief proposed or at issue in a notice-and-comment proceeding that is concurrently before the Commission. If yes, please explain: _____

____ If damages are sought, contains specified amount and nature of damages claimed.

____ Contains a copy of, or a description by category and location of all documents, data compilations and tangible things in the complainant's possession, custody or control that are relevant to the disputed facts alleged with particularity in the complaint.

____ Contains the name, address and telephone number of each individual likely to have discoverable information relevant to the disputed facts alleged with particularity in the complaint, identifying the subjects of information.

____ All reported FCC orders relied upon have been properly cited in accordance with Section 1.14 of the Commission's Rules, Title 47 Code of Federal Regulations, 47 CFR § 1.14.

____ Copies of cited non-FCC authority are attached.

____ Copy of complaint has been served on defendant's registered agent for service in accordance with [to be amended] 47 CFR § 1.47(b).

____ If more than 10 pages, the complaint contains a table of contents as specified in 47 CFR § 1.49(b).

____ The correct number of copies, required by 47 CFR § 1.51(c)(2) and 47 CFR § 1.51(c)(2) if applicable, have been filed.

____ Complaint has been properly signed and verified in accordance with 47 CFR § 1.52.

____ $150.00 filing fee specified in 47 CFR § 1.1105(1)(c) is attached.

____ If complaint is by multiple complainants, it conforms with the requirements of 47 CFR § 1.723(a).

____ If complaint involves multiple grounds, it complies with the requirements of 47 CFR § 1.723(b).

____ If complaint is directed against multiple defendants, it complies with the requirements of 47 CFR § 1.735 (a)–(b).

[FR Doc. 96–32322 Filed 12–24–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961203339–6339–01; I.D. 111896B]

RIN 0648–AI88

Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery Off Alaska; Scallop Vessel Moratorium

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a temporary moratorium on the entry of additional vessels into the scallop fishery off Alaska. This action would implement Amendment 2 to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP) as recommended by the North Pacific Fishery Management Council (Council). The intended effect of Amendment 2 is to curtail increases in fishing capacity and to provide stability for industry while the Council develops a long-term limited access system for this fishery. This action is necessary to promote the conservation and management objectives of the FMP.

DATES: Comments must be received at the following address by February 10, 1997.

ADDRESSES: Comments on the proposed rule must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel. Copies of Amendment 2 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from the same address. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503, Attn: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Management Authority

The scallop fishery in the exclusive economic zone (EEZ) off Alaska is managed by NMFS under the FMP. The FMP was prepared by the Council under the Magnuson-Stevens Act and approved by NMFS on July 26, 1995. Regulations implementing the FMP are set out at 50 CFR part 679. General regulations that also affect fishing in the EEZ are set out at 50 CFR part 600.

The Council is authorized by the Magnuson-Stevens Act to establish a system for limiting access to a fishery in order to achieve optimum yield if, in developing such a system, the Council and NMFS take into account: (1) Present participation in the fishery, (2)

historical fishing practices in, and dependence on, the fishery, (3) the economics of the fishery, (4) the capability of fishing vessels used in the fishery to engage in other fisheries; (5) the cultural and social framework relevant to the fishery, and (6) any other relevant considerations (16 U.S.C. 1853).

Scallop Management Background

Management of scallops in the EEZ off Alaska was conducted by the Alaska State Department of Fish and Game (ADF&G) from 1968 until the implementation of the Federal FMP and an interim closure of the EEZ to fishing for scallops in 1995. In 1992, ADF&G developed an Interim Fishery Management Plan (IFMP) for scallops, as fishing effort was rapidly increasing and maximum sustainable yield may have been exceeded. The IFMP specified three major management measures: (1) Setting area-specific guideline harvest levels and gear restrictions to prevent localized overharvesting, (2) creating an observer program to monitor the fishery and obtain biological information, and (3) limiting effort via gear restrictions, seasons, minimum size limits, and other measures. Consistent with scallop management actions taken on the east coast, the State of Alaska (State) promulgated regulations that limit crew size to a total of 12, and mandated that weathervane scallops only be shucked manually to control effort. In 1993, the Commissioner of ADF&G declared scallops a High Impact Emerging Fishery (5 AAC 39.210) because of mounting resource concerns. A fishery may be regulated as a high impact emerging commercial fishery if the Commissioner determines that any of the following conditions apply to a species or species group in an area or region: (1) Harvesting effort has recently increased beyond a low sporadic level; (2) interest has been expressed in harvesting the resource by more than a single user group; (3) the level of harvest might be approaching a level that might not be sustainable on a local or regional level; and (4) comprehensive regulations to address issues of conservation, allocation, and conduct of an orderly fishery have not been developed.

In 1993, the Council also began to address the issues of overexploitation and overcapitalization in the scallop fishery. At the January 1993 meeting, the Council determined that the scallop fishery may require Federal management to protect the fishery from overexploitation and further overcapitalization. The Council set a control date of January 20, 1993, to notify the industry that a moratorium for this fishery may be implemented. This control date, which was published in the Council's newsletter, meant that fishermen and/or vessels not participating in the fishery by that date may not be guaranteed future access to the fishery.

The Council was presented with information indicating that the stocks of weathervane scallops were fully exploited and any increase in effort would be detrimental to the stocks and the Nation. Information indicated that dramatic changes in age composition had occurred after the fishing-up period (1980–90), with commensurate declines in harvest. In recent years, many fishermen abandoned historical fishing areas and searched for new areas to maintain catch levels. Increased numbers of small scallops were reported. Additionally, scallops are highly susceptible to overfishing and boom/bust cycles worldwide.

The need to limit access was the primary motivation for the Council to prepare the FMP in lieu of State management of the scallop fishery. As anticipated, effort in the scallop fishery increased in 1993 when 32 scallop permits, representing 21 vessels, were issued by the State. Fifteen of these vessels had made landings by the end of 1993. Even without additional vessels entering the fishery, the Council believed that the 1993 fishery was overcapitalized, meaning that too much capital was invested relative to the fleet size necessary to conduct the fishery. In 1992, seven vessels harvested 1.8 million lb (816 mt), for an average of 257,143 lb (116.6 mt) harvested per vessel. The 1993 quota was set at 890,000 lb (403.7 mt) for areas with specified guideline harvest levels, or about one-half of the 1992 landings. This quota could have been harvested by three or four vessels. In 1993, landings from areas without guideline harvest levels totaled 524,000 lb (237.7 mt), which could have been taken by an additional two vessels. Yet, 15 vessels participated in the 1993 fishery. In 1994, the growth trend in the fishery continued with 16 vessels harvesting 1,235,269 lb (560.3 mt) of scallops.

At its January 1993 meeting, the Council directed staff to proceed with an analysis to evaluate potential Federal management of Alaskan scallops. A vessel moratorium was proposed as an essential element of a Federal management regime to stabilize the size and capitalization of the scallop fleet during the time that the Council considers limited entry alternatives for this fishery.

At its June 1993 meeting, the Council and its advisory panels reviewed a draft EA/RIR/IRFA analysis of management alternatives for the scallop fishery. Also at that meeting, the Council reaffirmed the control date of January 20, 1993, and recommended several revisions to the draft analysis, which was subsequently released for public review on August 9, 1993. At the September 1993 Council meeting, public testimony was received on scallop management, particularly on the qualifying criteria for a moratorium. At that meeting, the Council tentatively identified its preferred alternative of a separate FMP for the scallop fishery, with shared management authority with the State. The preferred alternative also included a vessel moratorium option. However, the Council requested additional analysis to assist with determining appropriate qualifying criteria. Additional analysis was incorporated into the revised draft FMP, including a draft EA/RIR/IRFA, and was released for public review on November 30, 1993.

At its April 1994 meeting, the Council and its advisory bodies reviewed the draft FMP, took public testimony, and voted to adopt a separate FMP for the scallop fishery. Eighteen vessels would qualify under the criteria adopted by the Council in April 1994. The 1994 draft FMP, which deferred most management measures to the State, was based on the premise that all vessels fishing for scallops in the Federal waters off Alaska would also be registered with the State.

While regulations were being drafted to implement the FMP, a vessel that had nullified its registration with the State began fishing for scallops in the Federal waters of the Prince William Sound Registration Area, which the State had already closed after the guideline harvest level of 50,000 lb (22,686 kg) was taken on January 26, 1995. The State did not have authority to stop the vessel from fishing, because it was no longer registered with the State and was fishing in the EEZ. On February 17, 1995, the Council met by emergency teleconference and recommended that NMFS implement an emergency rule to close the EEZ off Alaska to scallop fishing to prevent further uncontrolled harvests in Federal waters. The emergency rule went into effect on February 23, 1995 and was published on March 1, 1995 (60 FR 11054).

At its April 1995 meeting, the Council took additional steps to prevent unregulated and uncontrolled harvests after the emergency rule expired. On April 19, 1995, the Council adopted an FMP, which continued the closure of the EEZ to fishing for scallops for a 1-year period. The FMP was approved by

NMFS on July 26, 1995. Additional information on the FMP and the interim closure of Federal waters to fishing for scallops may be found in the proposed and final rules implementing the FMP (60 FR 24822, May 10, 1995, and 60 FR 42070, August 15, 1995, respectively).

At its June 1995 meeting, the Council considered the testimony and recommendations of its Scientific and Statistical Committee, fishing industry representatives, and the general public on alternative management options for the scallop fishery to replace the interim closure. The Council also reviewed a revised EA/RIR/IRFA that outlined the potential impacts of a full Federal management regime, including a vessel moratorium based on the previously approved qualifying criteria. Based on the above information, the Council adopted Amendment 1 to the FMP authorizing a suite of Federal management measures, including the vessel moratorium.

In April 1996, the Council separated the scallop vessel moratorium from the other management measures contained in Amendment 1 and recommended instead that the moratorium proceed as Amendment 2 to the FMP. The Council took this action so that the development of a vessel moratorium would not delay the reopening of the fishery. Amendment 1 was subsequently approved by NMFS on July 10, 1996 (61 FR 38099, July 23, 1996).

Scallop Vessel Moratorium

The following paragraphs explain each aspect of the proposed scallop vessel moratorium.

Duration of the Moratorium

The temporary vessel moratorium would remain in effect for 3 years from the date of implementation or until repealed or replaced by a permanent limited access program. Amendment 2 would allow the Council to recommend that the moratorium be extended for no more than 2 years if a limited access program were imminent.

Qualification Criteria

Scallop moratorium permits would be issued to the person (or successor in interest) who owned the qualifying vessel when it most recently made qualifying landings. The Council indicated that when vessels were sold during or after the moratorium qualification period, the moratorium rights should attach to the owner of the vessel when it most recently made qualifying landings such that each vessel generates only one moratorium permit. The Council believed that moratorium rights should be assigned to the person who owned a vessel when it qualified for a moratorium permit rather than some subsequent owner who does not have a history of participation in the fishery with that vessel. The Council adopted this approach after the testimony of one scallop fisherman who had a long history of participation in the scallop fishery, but who had sold his qualified vessel prior to the announcement of a moratorium control date and had replaced it with a new vessel that would not qualify under the moratorium.

A vessel would qualify for inclusion in the moratorium if it made a legal landing of scallops during 1991, 1992 or 1993; or during at least 4 separate years from 1980 through 1990. The Council chose this two-tier approach 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 during at least 4 separate years from 1980 through 1990.

The Council adopted the 1980 start date for qualification of historic participants, because data prior to 1980 were not available. More important, 1980 marked the first year of the buildup of the scallop fishery and was thus considered to be a reasonable base year for historical participation. Less than three vessels participated in 1974, 1976, 1977, and 1979, and no vessels participated in 1978. The 1990 cutoff date for historic participation was chosen because vessels making landings in 1991, 1992, or 1993 would be included as recent participants. The Council did not include those vessels that participated in 1990, but that did not have sufficient historic participation or more recent participation in the fishery, as moratorium qualified. The Council determined that such vessels had neither recent nor historic dependence on the fishery. Vessels that were in the ''pipeline'' to fish for Alaskan scallops (i.e., under construction, being refitted, relocated, etc.) but that had not made a required landing, would not qualify under the moratorium. The Council had been discussing a scallop moratorium throughout 1993. The qualification period was extended from the January 20, 1993, control date to the end of 1993 to address the problem of vessels in the ''pipeline.''

The Council chose not to extend the moratorium qualifying period past 1993 in order to discourage speculative entry while the moratorium was being developed and submitted for review. Additional entry into the fishery during the development and implementation phase would only exacerbate the very problems that the moratorium is intended to solve. Fishermen received extensive notice through the Council process described above that the fishery was being limited in a way that jeopardized any investments they would make in the fishery after 1993. According to ADF&G landing records, at least three vessels have entered the scallop fishery since the moratorium cut-off date, and they would not qualify for moratorium permits. However, participation in the scallop fishery by these vessels has been sporadic. None of these vessels made a single landing during the entire moratorium qualification period of 1980–93, nor have they participated on a consistent basis since the moratorium cut-off date of December 31, 1993.

Area Endorsements

Moratorium permits would include area endorsements for fishing within Registration Area H (Cook Inlet) and/or waters outside Registration Area H. Qualified vessels should have made at least one legal landing of scallops during the qualifying period within an endorsement area to receive an endorsement for that area. No crossovers would be allowed between Registration Area H and waters outside Registration Area H unless a vessel qualifies in both areas.

The Council adopted the area endorsement approach in order to preserve the unique nature of the Cook Inlet scallop fishery, which is conducted exclusively by small boats operating out of Homer. The State has preserved the Cook Inlet scallop fishery as a distinct small boat fishery by limiting Cook Inlet vessels to a single 6–ft (1.83 m) dredge and exempting Cook Inlet vessels from the observer coverage requirements that are in effect for all other registration areas (§ 679.65(c)). According to ADF&G landing data, only one qualifying vessel fished both inside and outside Registration Area H during the qualifying period and would receive endorsements to fish in both areas.

Vessel Reconstruction and Maximum Length Overall (LOA)

To prevent increased capitalization in the scallop fishery, the Council chose to limit increases in vessel LOA due to the reconstruction of vessels during the moratorium to no more than 1.2 times or 20 percent of the LOA of the vessel on the control date of January 20, 1993. For vessels under reconstruction on January 20, 1993, the maximum LOA would be the LOA on the date reconstruction was completed, with no

additional increases allowed. Each scallop moratorium permit would specify a maximum LOA based on the above criteria.

The 20–percent limit was chosen by the Council for the same reasons that a 20–percent limit was established for the groundfish and crab vessel moratorium. The Council believed that limiting increases in vessel size to 20 percent of LOA would allow for some upgrading of vessels to improve stability and safety, while limiting the further overcapitalization that could occur through massive reconstruction of existing vessels.

Transferability

Moratorium permits would be valid on any vessel that is less than or equal to the maximum LOA identified on the permit and that is owned, leased, or operated by the person identified on the moratorium permit. A vessel fishing for scallops would be required to carry a valid moratorium permit on board whenever the vessel is fishing for scallops, or has scallops retained on board. A person could transfer a moratorium permit to another person if a completed transfer application were submitted to NMFS and subsequently approved. In this event, a new permit would be issued in the name of the person who received the transferred permit.

Exemptions

Vessels less than or equal to 26 ft (7.9 m) LOA in the Gulf of Alaska, and less than or equal to 32 ft (9.8 m) LOA in the Bering Sea and Aleutian Islands Area, would be exempt from the scallop moratorium when fishing for scallops with dive gear. The Council wanted to provide for the potential development of cleaner gear types such as dive gear and chose to adopt the same size limits exemption for small vessels as were established for the groundfish and crab vessel moratorium, except that the exemption only applies when fishing with dive gear. An operator of a vessel under the size limits listed above would still be required to carry a valid scallop moratorium permit on board when fishing with dredge gear, or from a vessel that has dredge gear on board.

While commercial harvesting of shellfish and sea cucumbers with dive gear does occur in Alaska waters, safety and technology factors generally limit this type of fishing to shallow, near-shore State waters. NMFS has no record of commercial divers harvesting scallops in Federal waters off Alaska and believes it is unlikely that any commercial divers would choose to attempt such an endeavor. Nevertheless, this exemption would ensure that a vessel moratorium designed to limit further overcapitalization by the dredge fleet would not prevent future exploration with dive gear.

Appeals

NMFS would issue an initial administrative determination to each applicant who is denied a scallop moratorium permit. An initial administrative determination may be appealed by the applicant in accordance with the procedures established for the groundfish and crab moratorium at § 679.43. An initial administrative determination that denies an application for a scallop moratorium permit would authorize the affected person to catch and retain scallops with an interim permit. The interim permit would expire on the effective date of the final agency action relating to the application. An administrative determination denying the issuance of a scallop moratorium permit or application for transfer would be the final agency action for purposes of judicial review.

Technical changes to existing regulations

This proposed rule contains technical changes to the existing definitions of ''legal landing'', ''maximum LOA'', ''moratorium qualification'', ''moratorium species'', and ''qualifying period'' set out at § 679.2. These technical changes would be made to clarify which terms apply only to the existing groundfish and crab moratorium and which terms also would apply to the scallop moratorium.

A technical change would also be made to the description of the groundfish and crab moratorium appeals process at § 679.4(c)(10)(i) to specify that appeals are to be sent to the Regional Administrator rather than to the Chief, RAM Division. This change is necessary to make § 679.4(c)(10)(i) consistent with the appeals process described at § 679.43(c). In addition, § 679.43(a) would be revised to indicate that the appeals process described at § 679.43 also applies to scallop moratorium appeals made under § 679.4(g).

Classification

At this time, NMFS has not determined that the FMP amendment that this rule would implement is consistent with the national standards, other provisions of the Magnuson-Stevens 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 the purposes of E.O. 12866.

This proposed rule contains a new collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This collection-of-information requirement has been submitted to OMB for approval. The new information requirements include an application for a moratorium permit and an application for transfer of a moratorium permit. Public reporting burden for these collections of information are estimated to be 0.33 and 0.5 hours, respectively. Send comments regarding reporting burden or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

An RIR was prepared for this proposed rule that describes the management background, the purpose and need for action, the management action alternatives, and the social impacts of the alternatives. The RIR also estimates the total number of small entities affected by this action and analyzes the economic impact on those small entities.

The Council prepared an IRFA as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. The analysis shows that the economic effects of this proposed rule to the regulated community would be significant and positive. By limiting participation at current levels, the temporary moratorium would prevent further overcapitalization of the fleet and reduce the potential for overfishing of the scallop resource. Most commercial fishing vessels harvesting scallops off Alaska meet the definition of a small entity under the RFA. In 1994, 86 percent of the scallop harvests off Alaska were taken from Federal waters and 11 of the 16 vessels harvesting scallops participated in no other fishery. Eighteen vessels would qualify for the moratorium under the qualification criteria adopted by the Council. According to ADF&G landing records, at least three vessels have entered the scallop fishery since the moratorium cut-off date and would not qualify for moratorium permits. However, participation in the scallop fishery by

these three vessels has been sporadic. None of these vessels made a single landing during the entire moratorium qualification period of 1980–93, nor have they participated on a consistent basis since the moratorium cut-off date of December 31, 1993, and none of these three vessels has re-entered the fishery since the re-opening of Federal waters to February February fishing for scallops on August 1, 1996, under Amendment 1 to the FMP. Fishermen received extensive notice through the Council process that the fishery was being limited in a way that jeopardized any investments they made in the fishery after 1993. Copies of the EA/RIR/IRFA are available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: December 19, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be 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. 1801 *et seq.*, 773 *et seq.*

2. In § 679.2, the definitions of ''Legal landing'', ''Maximum LOA'' introductory text, ''Moratorium qualification'', ''Moratorium species'', and ''Qualifying period'' are revised to read as follows:

§ 679.2 Definitions.

* * * * *

Legal landing (applicable through [insert date 3 years after the effective date of the final rule]) means any amount of a moratorium species that was or is landed in compliance with Federal and state commercial fishing regulations in effect at the time of the landing.

* * * * *

Maximum LOA (applicable through December 31, 1998), with respect to a vessel's eligibility for a groundfish or crab moratorium permit, means: * * *

* * * * *

Moratorium qualification (applicable through December 31, 1998) with respect to the groundfish and crab vessel moratorium program means a transferable prerequisite for a moratorium permit.

Moratorium species means:

(1) (Applicable through [insert date 3 years after the effective date of the final rule]) any scallop species.

(2) (Applicable through December 31, 1998) any moratorium crab species or moratorium groundfish species.

* * * * *

Qualifying period (applicable through December 31, 1998) with respect to the groundfish and crab vessel moratorium program means the period to qualify for the moratorium from January 1, 1988, through February 9, 1992.

* * * * *

3. In § 679.4, paragraph (c)(10)(i) is revised and a new paragraph (g) is added to read as follows:

§ 679.4 Permits.

* * * * *

(c) * * *

(10) *Appeal*—(i) *Determination*. The Chief, RAM Division, will issue an initial administrative determination to each applicant who is denied a moratorium permit by that official. An initial administrative determination may be appealed by the applicant in accordance with § 679.43. The initial administrative determination will be the final agency action if a written appeal is not received by the Regional Administrator, within the period specified at § 679.43.

* * * * *

(g) *Scallop moratorium permits* (applicable through [Insert date three years after the effective date of the final rule])—(1) *General*—(i) *Applicability*. Except as provided under paragraph (g)(2) of this section, any vessel used to take or retain any scallop species in Federal waters must have a valid scallop moratorium permit on board the vessel at all times when the vessel is engaged in fishing for scallops in Federal waters or has scallops taken from Federal waters retained on board. Any vessel used to take or retain scallops in Federal waters within Scallop Registration Area H must have a scallop moratorium permit endorsed for Registration Area H. Any vessel used to take or retain scallop species in Federal waters outside Registration Area H must have a scallop moratorium permit endorsed for Federal waters exclusive of Registration Area H.

(ii) *Duration*. The scallop moratorium permit is valid for the duration of the moratorium unless otherwise specified.

(iii) *Validity*. A scallop moratorium permit issued under this paragraph is valid only if:

(A) The vessel is owned, leased, or operated by the person named on the moratorium permit.

(B) The vessel's LOA does not exceed the maximum LOA specified on the permit.

(C) The permit has not been revoked or suspended under 15 CFR part 904.

(iv) *Inspection*. A scallop moratorium permit must be presented for inspection upon the request of any authorized officer.

(2) *Exemptions*. A vessel that has an LOA of less than or equal to 26 ft (7.9 m) in the GOA, and less than or equal to 32 ft (9.8 m) in the BSAI and that does not have dredge gear on board is exempt from the requirements of this paragraph (g) when fishing for scallops with dive gear.

(3) *Qualification criteria*—(i) *Qualifying period*. A vessel would qualify for a moratorium permit if the vessel made a legal landing of scallops during 1991, 1992 or 1993 or during at least 4 separate years from 1980 through 1990.

(ii) *Area endorsements*. A scallop moratorium permit may contain an area endorsement for Federal waters within Registration Area H and for Federal waters outside Registration Area H.

(A) *Registration Area H*. A scallop moratorium permit may be endorsed for fishing in Federal waters within Registration Area H if a qualifying vessel made a legal landing of scallops taken inside Registration Area H during the qualifying period defined at paragraph (g)(3)(i) of this section.

(B) *Waters outside Registration Area H*. A scallop moratorium permit may be endorsed for fishing in Federal waters outside Registration Area H if the qualifying vessel made a legal landing of scallops taken in waters outside Registration Area H during the qualifying period defined at paragraph (g)(3)(i) of this section.

(iii) *Legal landings*. Evidence of legal landings shall be limited to documentation of state or Federal catch reports that indicate the amount of scallops harvested, the registration area or location in which they were caught, the vessel used to catch them, and the date of harvesting, landing, or reporting.

(4) *Maximum LOA*—(i) All scallop moratorium permits will specify a maximum LOA, which will be 1.2 times the LOA of the qualifying vessel on January 20, 1993, unless the qualifying vessel was under reconstruction on January 20, 1993.

(ii) If a qualifying vessel was under reconstruction on January 20, 1993, the maximum LOA will be the LOA on the date reconstruction was completed.

(5) *Application for permit*. A scallop moratorium permit will be issued to the person or successor in interest who was the owner of a qualifying vessel when

it most recently made qualifying landings under paragraph (g)(3) of this section, if he/she submits to the Regional Administrator a complete scallop moratorium permit application that is subsequently approved. A complete application for a scallop moratorium permit must include the following information:

(i) Name(s), signature(s), business address(es), and telephone and fax numbers of the person(s) who owned the vessel when the most recent qualifying landing of scallops occurred.

(ii) Name of the qualifying vessel, state registration number of the vessel and the USCG number of the vessel, if any.

(iii) Valid documentation of the vessel's basis for moratorium qualification, if requested by the Regional Administrator due to an absence of landings records for the vessel for the qualifying period.

(iv) Reliable documentation of the vessel's qualifying LOA, if requested by the Regional Administrator, such as a vessel survey, builder's plan, state or Federal registration certificate, or other reliable and probative documents that clearly identify the vessel and its LOA, and that are dated on or before January 20, 1993.

(v) Name(s) and signature(s) of the person(s) who is/are the owner(s) of the vessel or the person(s) responsible for representing the vessel owner.

(vi) If the qualifying vessel was under reconstruction on January 20, 1993, the permit application must contain the following additional information:

(A) A legible copy of written contracts or written agreements with the firm that performed reconstruction of the vessel and that relate to that reconstruction.

(B) An affidavit signed by the vessel owner(s) and the owner/manager of the firm that performed the reconstruction specifying the beginning and ending dates of the reconstruction.

(C) An affidavit signed by the vessel owner(s) specifying the LOA of the reconstructed vessel.

(6) *Vessel ownership*. Evidence of vessel ownership shall be limited to the following documents, in order of priority:

(i) For vessels required to be documented under the laws of the United States, the USCG abstract of title issued in respect to that vessel.

(ii) A certificate of registration that is determinative as to vessel ownership.

(iii) A bill of sale.

(7) *Permit transfer*. A complete application for approval of transfer of a scallop moratorium permit must include the following information:

(i) Name(s), business address(es), and telephone and fax numbers of the applicant(s) including the holders of the scallop moratorium permit that is to be transferred and the person who is to receive the transferred scallop moratorium permit.

(ii) Name(s) and signature(s) of the person(s) from whom moratorium qualification would be transferred or their representative, and the person(s) who would receive the transferred moratorium qualification or their representative.

(iii) A legible copy of a contract or agreement to transfer the moratorium permit in question must be included with the application for transfer that specifies the person(s) from whom the scallop moratorium permit is to be transferred, the date of the transfer agreement, name(s) and signature(s) of the current holder(s) of the permit, and name(s) and signature(s) of person(s) to whom the scallop moratorium permit is to be transferred.

(8) *Appeal*—(i) *Determination*. The Chief, RAM Division, will issue an initial administrative determination to an applicant upon denial of a scallop moratorium permit by that official. An initial administrative determination may be appealed by the applicant in accordance with § 679.43. The initial administrative determination will be the final agency action if a written appeal is not received by the Regional Administrator postmarked within the period specified at § 679.43.

(ii) *Permit denial*. An initial administrative determination that denies an application for a scallop moratorium permit may authorize the affected person to take or retain scallops. The authorization expires on the effective date of the final agency action relating to the application.

(iii) *Final action*. An administrative determination denying the issuance of a scallop moratorium permit is the final agency action for purposes of judicial review.

4. In § 679.43, paragraph (a) is revised to read as follows:

§ 679.43 Determinations and appeals.

(a) *General*. This section describes the procedure for appealing initial administrative determinations made under this subpart as well as § 679.4(c), § 679.4(g) and portions of subpart C of this part that apply to the halibut and sablefish CDQ program.

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