

49 WL. Since Hermitage is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested. In addition, this allotment is short-spaced to vacant Channel 280C1 in Woodstock, Ontario, and we have requested Canadian concurrence of Channel 280A at Hermitage, Pennsylvania, as a specially-negotiated, short-spaced allotment. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will accept competing expressions of interest for the use of Channel 280A at Hermitage, Pennsylvania, or require Petitioner to demonstrate the existence of an equivalent class channel for the use of other interested parties.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

##### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by removing Channel 233C1 at Caliente, and adding Moapa, Channel 233C.

3. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by removing Channel 280A at Mercer, and adding Hermitage, Channel 280A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 679

[Docket No. 050325082-5082-01; I.D. 031705E]

RIN 0648-AS90

##### Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program for the Scallop Fishery

**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 Amendment 10 to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP), which would modify the gear endorsements under the license limitation program (LLP) for the scallop fishery. This action is necessary to allow increased participation by LLP license holders in the scallop fisheries off Alaska. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

**DATES:** Written comments on the proposed rule must be received on or before May 31, 2005.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- E-mail: *Scallop10-PR-0648-AS90@noaa.gov*. Include in the subject line of the e-mail the following document identifier: Scallop 10 PR. E-mail comments, with or without attachments, are limited to 5 megabytes.

- Mail: P.O. Box 21668, Juneau, AK 99802.

- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

- Facsimile: 907-586-7557.

- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

Copies of Amendment 10 to the Scallop FMP, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the amendment are available from NMFS at the mailing address specified above.

#### FOR FURTHER INFORMATION CONTACT:

Gretchen Harrington, phone: 907-586-7228 or e-mail: *gretchen.harrington@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act. Under the FMP, management of all aspects of the scallop fishery, except limited access, is delegated to the State of Alaska (State). Federal regulations governing the scallop fishery appear at 50 CFR parts 600 and 679. State regulations governing the scallop fishery appear in the Alaska Administrative Code (AAC) at 5 AAC Chapter 38--Miscellaneous Shellfish.

State regulations establish guideline harvest levels (GHL) for different scallop registration areas, fishing seasons, open and closed fishing areas, observer coverage requirements, bycatch limits, gear restrictions, and measures to limit processing efficiency (including a ban on the use of mechanical shucking machines and a limitation on crew size). The gear regulations limit vessels to using no more than two 15 ft (4.5 m) dredges, except in State Scallop Registration Area H (Cook Inlet) where vessels are limited to using a single 6 ft (1.8 m) scallop dredge.

The Council has submitted Amendment 10 for Secretarial review, and a Notice of Availability of the amendment was published on March 24, 2005, with comments on the FMP amendment invited through May 23, 2005 (70 FR 15063). Comments may address the FMP amendment, this proposed rule, or both, but must be received by May 23, 2005, to be considered in the approval/disapproval decision on the FMP amendment.

Beginning in 2001, NMFS has required a Federal scallop LLP license on board any vessel deployed in the scallop fisheries in Federal waters off Alaska. The LLP was implemented through approval of Amendment 4 to the FMP by the Secretary on June 8, 2000, and the final rule implementing Amendment 4 was published December 14, 2000 (65 FR 78110). The LLP was established to limit harvesting capacity in the Federal scallop fishery off Alaska. NMFS issued a total of nine LLP licenses. Licenses were issued to holders of either Federal or State moratorium permits who used their permits to make legal landings of scallops in each of any two calendar years during the period beginning January 1, 1996, through October 9, 1998. The licenses authorize their holders to catch and retain scallops in

all waters off Alaska that are open for scallop fishing.

Two licenses were based on the legal landings of scallops harvested only from Cook Inlet during the qualifying period and therefore have a gear restriction endorsement that limits allowable gear to a single 6 ft (1.8 m) dredge when fishing for scallops in any area. The other seven licenses, based on the legal landings of scallops harvested from areas outside Cook Inlet during the qualifying period, have no gear restriction endorsement, but are limited to two 15-ft (4.5 m) dredges under existing state regulations. The purpose of the gear restriction endorsement was to prevent expansion in overall fishing capacity by not allowing relatively small operations in Cook Inlet to increase their fishing capacity.

Subsequent to LLP implementation, the Council has found that the gear restriction endorsement may create a disproportionate economic hardship for those LLP license holders restricted to 6 ft (1.8 m) dredges when they fish in Federal waters, especially in light of the State's observer requirements and their associated costs. In February 2004, the Council developed a problem statement and four alternatives for analysis of modifying or eliminating the gear restriction for the two licenses affected by the gear restriction.

In October 2004, the Council voted unanimously to recommend to the Secretary Amendment 10 to change the single 6 ft (1.8 m) dredge restriction endorsement in the scallop LLP to two dredges with a combined width of no more than 20 ft (6.1 m) restriction endorsement. This change would allow the two LLP license holders with the current gear endorsement to fish in Federal waters outside Cook Inlet with larger dredges. The Council recommended this change because it found that it is not economically viable for vessels to operate outside Cook Inlet with the existing gear restrictions.

The Council also recognized that economic conditions of the scallop fleet had changed since the LLP was approved. The change resulted from the formation of a harvesting cooperative by a majority of the LLP holders. The harvesting cooperative provides harvesting efficiency to participants without an increase in fishing capacity. Efficiency gains are realized when harvesting cooperative participants retire excess fishing capacity while being assured that the entry of additional capacity is prevented by the LLP. Without the LLP, a harvesting cooperative was unlikely because any efficiency gains through cooperation could be easily eroded by unrestricted

entry of new vessels to the fishery. Hence, concern about the expansion of overall fishing capacity no longer exists with the combined effects of the LLP and harvesting cooperatives.

In discussing the difference among the alternatives, the Council noted that allowing two vessels the ability to use two 10-ft dredges would give them a much greater ability to cover the costs of carrying an observer in Federal waters outside Cook Inlet. Public testimony by a vessel owner with a restricted license indicated that the use of larger dredges would allow the vessel to adequately cover its operational costs with the additional costs for an observer in statewide waters. The Council discussed the issue of increasing capacity in the fishery by this proposed action, but acknowledged that licenses already are limited by vessel length, and the two vessels impacted by this proposed action are among the smallest in the fishery. The Council acknowledged that these vessels, by their size, are precluded from fishing in inclement weather and thus are limited in their harvesting ability. The fishery currently is prosecuted in a slower manner than before 2000, due to the combination of the LLP and the harvesting cooperative in the fishery. The Council discussed the relative impacts of increasing harvesting ability on the two licenses which are not part of this harvesting cooperative. Due to the small size of the vessels used by the license holders, however, this change is not expected to impact the operation of the harvesting cooperative.

Therefore, the Council concluded that while these two vessels could increase their capacity, they would not increase overall fishing effort to the extent that it would interfere with the total fleet's ability to operate at a sustainable and economically viable level. Amendment 10 would provide the two vessels with a larger share of the total catch which would offset their observer costs and enhance their economic viability.

#### Classification

At this time, NMFS has not determined that this proposed rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making that determination, NMFS will take into account the data, views, and comments received during the comment period (see **DATES**).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an EA/RIR/IRFA for Amendment 10, which describes the management background,

the purpose and need for action, the management alternatives, and the socio-economic impacts of the alternatives. It estimates the total number of small entities affected by this action, and analyzes the economic impact on those small entities as required by the Regulatory Flexibility Act. The IRFA describes the economic impacts this proposed rule, if adopted, would have on small entities. A summary of the IRFA follows.

For purposes of the IRFA, the two LLP license holders, which currently are subject to the single 6 ft (1.8 m) dredge gear restriction, are the only small entities (i.e., each having annual gross receipts of less than \$3.5 million) directly regulated by the proposed rule.

The LLP impacted the two small entities that fished exclusively inside of Cook Inlet during the qualifying period by limiting the size of dredge either vessel could operate to a single 6 ft (1.8 m) dredge. The remaining seven LLP license holders may operate up to the State-authorized gear limit of two 15 ft dredges (4.5 m). The Council recommended Amendment 10 because it found that it is not economically viable for the two LLP license holders to operate outside Cook Inlet (as authorized by authority of the LLP license) with the existing 6 ft (1.8 m) dredge gear restrictions. The Council determined that, given existing observer requirements and their associated costs, the single 6 ft (1.8 m) dredge restriction created a disproportionate economic hardship when fishing in Federal waters outside Cook Inlet.

The Council considered the following four alternatives that could reduce impacts on small entities.

*Alternative 1:* This alternative would retain status quo and maintain the current 6 ft. (1.8 m) dredge restriction endorsement on two LLP licenses. This alternative was rejected because it would not solve the problem of disproportionate hardship being experienced by two LLP license holders that are restricted to using a single 6 ft. (1.8 m) dredge when fishing in Federal waters outside of Cook Inlet while other LLP license holders are limited to two 15 ft. (4.5 m) dredges.

*Alternative 2:* This alternative would modify the 6 ft. (1.8 m) dredge restriction endorsement to allow vessels with the current endorsement to fish in Federal waters outside Cook Inlet with two dredges with a combined width of no more than 16 ft. This alternative was rejected because it did not provide enough relief to the two LLP license holders currently limited to using a single 6 ft. (1.8 m) dredge in Federal waters outside of Cook Inlet. This

alternative would allow slightly more than half of the fishing capacity of other scallop fishing operations outside of Cook Inlet.

*Alternative 3:* This alternative is the preferred alternative. It would modify the current 6 ft. (1.8 m) dredge restriction to allow vessels with the current endorsement to fish in Federal waters outside Cook Inlet with two dredges with a combined width of no more than 20 ft (6.1 m). This alternative appeared to ideally balance the Council's original concern of limiting fishing capacity for scallops while allowing the two LLP license holders that are restricted to using a single 6 ft. (1.8 m) dredge to expand their production of scallops sufficiently to cover their costs and allow them to become competitive with other scallop fishing operations.

*Alternative 4:* This alternative would eliminate the current 6-ft. (1.8 m) dredge restriction endorsement on the two LLP licenses. This alternative would allow the two LLP license holders that are restricted to using a single 6 ft. (1.8 m) dredge to expand their capacity to be equal to the current limit of two 15 ft. (4.5 m) dredges. This alternative was rejected because it is unnecessarily liberal.

As proposed, Amendment 10 would change the single 6 ft (1.8 m) dredge restriction endorsement in the LLP to a restriction endorsement of two dredges with a combined width of no more than 20 feet (6.1 m). This change would allow the two LLP license holders with

the current gear restriction endorsement the opportunity to fish in Federal waters, outside Cook Inlet, with larger gear. The Council also concluded that, because of changes to the fleet after the LLP was implemented, these two vessels could increase their capacity by using larger dredges without increasing fishing overall effort to the extent that it would interfere with the total fleet's ability to operate at a sustainable and economically viable level. Amendment 10 has the potential to provide these two vessels with an opportunity to capture a larger share of the total catch, thus allowing them to offset observer costs and enhance their income. Because of the maximum vessel length imposed on these vessels by the LLP license, neither operation has the potential to significantly impact the catch shares of the other operations in the fishery, so instability in the sector is not a serious concern associated with the proposed action. The most probable outcomes of implementing the preferred alternative would be some relatively modest redistribution of earnings to the two LLP license holders currently affected by the single 6 ft (1.8 m) dredge restriction.

No known Federal rules duplicate, overlap, or conflict with the proposed rule.

This proposed rule would impose no recordkeeping and reporting requirements on affected vessels.

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

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 7, 2005.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For 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. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.4, paragraph (g)(3)(ii) is revised to read as follows:

#### § 679.4 Permits.

\* \* \* \* \*

(g) \* \* \*

(3) \* \* \*

(ii) The gear specified on a scallop license will be restricted to two dredges with a combined width of no more than 20 feet (6.1 m) in all areas if the eligible applicant was a moratorium permit holder with a Scallop Registration Area H (Cook Inlet) endorsement and did not make a legal landing of scallops caught outside Area H during the qualification period specified in paragraph (g)(2)(iii) of this section.

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