

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971110265-7306-02; I.D. 101797A]

RIN 0648-AJ98

Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery Off Alaska; Change in Season Dates

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

ACTION: Final rule.

SUMMARY: NMFS changes the dates of the fishing season for Registration Area D (Yakutat), Registration Area E (Prince William Sound), and Registration Area H exclusive of the Kamishak District in the scallop fishery in the exclusive economic zone (EEZ) off Alaska. The new fishing season will begin on July 1 and end on February 15 of the following year. The intended effect of this action, which makes the Federal fishing season parallel to that of the State of Alaska scallop fishery, is to improve vessel safety and product quality, and to maintain consistency between Federal and State of Alaska fishing season regulations. This action is necessary to promote the conservation and management objectives of the Fishery Management Plan for the Scallop Fishery off Alaska (FMP).

DATES: Effective January 10, 1998.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for this action may be obtained from Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel.

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

SUPPLEMENTARY INFORMATION:**Management Authority**

The scallop fishery in the EEZ off Alaska is managed by NMFS under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management 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. Amendment 1 to the FMP established a cooperative State-Federal management regime under which each management action by the

State of Alaska (State) is mirrored by a parallel Federal management action. The purpose of this cooperative management regime is to give primary responsibility to the State of Alaska for managing scallop fishing in both state and Federal waters.

In March 1997, the Alaska State Board of Fisheries (Board) approved an industry proposal to change the scallop season dates in the Yakutat and Prince William Sound Registration Areas. Previously, the scallop fishery in those areas opened on January 10 and closed on June 30 of each year. The Board's action changes State regulations by specifying a season opening of July 1 and a closure of February 15 of the following year. The Board recommended that a parallel season change be made in the Federal regulations to prevent conflicting regulations at the state and Federal levels. The following two reasons were cited in the Board's decision to move the scallop season dates for these areas.

Changing circumstances in the scallop fishery.

The historical reason for a January opening in the Yakutat and Prince William Sound Registration Areas no longer exists under the current management regime. Prior to 1993, the Alaska Department of Fish and Game (ADF&G) did not establish Guideline Harvest Levels (GHLs) for each registration area. Instead, winter and summer openings were used in different areas to spread effort and to mirror the historical pattern of scallop fishing throughout the State. However, under Amendment 1 to the FMP, approved July 10, 1996, ADF&G and NMFS now establish GHLs or total allowable catch (TAC) amounts for each scallop registration area. Consequently, the January openings for Yakutat and Prince William Sound are no longer necessary to distribute effort between registration areas because the separate TACs established for each registration area accomplish the same objective.

Safety issues.

At its March 1997 meeting, the Board received extensive testimony from scallop fishermen who reported that January is an unsafe time to fish for scallops in the smaller vessels that compose most of the fleet. Fishing conditions are much safer in July than in January when severe winter storms are common in the Gulf of Alaska. Historically, the summer fishery in the western registration areas would extend into the fall and winter months. Vessel operators would typically begin scallop fishing in the Bering Sea and Alaskan

Peninsula during July and move to the more sheltered waters of Yakutat and Prince William Sound in the winter. However, in recent years, TAC limits and/or crab bycatch limits are reached relatively quickly in the western registration areas. No reason exists to delay the Yakutat and Prince William Sound scallop fisheries until January when the worst winter weather occurs.

Federal Response to Board Action

The Board has already amended the State regulations to establish a scallop fishing season of July 1 through February 15 for the corresponding state waters. Therefore, the goal under Amendment 1 to the FMP to maintain consistency between State and Federal scallop regulations requires NMFS to implement a parallel change for the Federal regulations. This revision to the Federal regulations is necessary to prevent conflicting fishing seasons at the State and Federal level and the resulting disruption to industry. If no action is taken, cooperative State-Federal management of the fishery would be impossible. State waters in Prince William Sound and Yakutat would open on July 1 while Federal waters would open on January 10. Furthermore, ADF&G and NMFS would be forced to split the TACs between State and Federal waters and manage each portion of the TAC separately.

A proposed rule to change the season dates in these registration areas was published in the **Federal Register** on November 24, 1997 (62 FR 62545) with comments invited through December 9, 1997. No comments were received on the proposed rule and no changes were made from the proposed rule.

Classification

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

NMFS has determined that there is good cause to waive a portion of the delayed effectiveness period under 5 U.S.C. section 553(d)(3) because the need to coordinate scallop season opening dates in State and Federal regulations requires that this action be effective on or before January 10, 1998. If it is not, Federal waters would open to fishing for scallops in Registration Areas D and E on January 10, while State waters would not open until July 1, resulting in increased costs to industry and a disruption of the orderly management of the fishery under the cooperative State/Federal management regime.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to

the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. Copies of the EA/RIR are available from NMFS (see ADDRESSES).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 22, 1997.

David L. Evans,

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

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

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

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

Authority: 16 U.S.C. 1801 *et seq.*, 773 *et seq.*, and 3631 *et seq.*

2. Section 679.64 is revised to read as follows:

§ 679.64 Seasons.

(a) Fishing for scallops in the Federal waters off Alaska is authorized from 0001 hours, A.l.t., July 1, through 1200 hours, A.l.t., February 15 of the following year, subject to the other provisions of this part, except as

provided in paragraphs (b) and (c) of this section.

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

(c) Fishing for scallops in the Federal waters of Registration Area A is authorized from 1200 hours A.l.t., January 10 through 1200 hours, A.l.t., June 30, subject to the other provisions of this part.

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