

administration by division; claims; interest.

Section 590.840 Collection of fee for certain fuels and heating oil; exempt products; payment of expenses of department.

Section 590.850 Registration of storage tanks; Collection of annual fee; exempt tanks; liability for noncompliance.

Section 590.860 Balance in fund to determine collection of fees by department.

Section 590.870 Report of discharge from tank required; division to clean up discharge; expectation; test of tank required for coverage.

Section 590.880 Allocation of costs resulting from discharge from certain storage tanks for heating oil.

Section 590.890 Allocation of costs resulting from discharge from other storage tanks.

Section 590.900 Liability for costs to clean up discharge caused by willful or wanton misconduct, gross negligence or violation of statute or regulation.

Section 590.910 Pro rata reduction required, if balance in fund insufficient for full payment.

Section 590.920 Tanks exempted from provisions of Sections 590.850 to 590.910 inclusive; optional coverage of exempted tank.

(4) Nevada Civil Procedure, Rule 24 (1971): Nevada Civil Procedure, Rule 24 .

(b) The regulatory provisions includes:

(1) Nevada Administrative Code 459, UST Program (1990):

Section 459.9929 "Storage Tank" defined.

Section 459.993 Compliance with federal regulations.

Section 459.995 Financial responsibility of owners and operators.

Section 459.996 Releases: Reporting.

(2) Nevada Administrative Code 590, Petroleum Fund (1991):

Section 590.720 Adoption by reference of provisions of Code of Federal Regulations.

(3) Nevada Administrative Code, Reportable Quantities (1989):

Section 445.240 Notice required.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 980402084-8166-02; I.D. 032398B]

RIN 0648-AJ51

Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery off Alaska; Amendment 3

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 3 to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP), which delegates to the State of Alaska (State) the authority to manage all aspects of the scallop fishery, except limited access. This final rule repeals all Federal regulations governing the scallop fishery off Alaska, except for the scallop vessel moratorium program. This action is necessary to eliminate duplicative regulations and management programs at the State and Federal levels and is intended to further the goals and objectives of the FMP.

DATES: Effective July 14, 1998.

ADDRESSES: Copies of Amendment 3 and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for Amendment 3 are available from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or by calling the Alaska Region, NMFS, at 907-586-7228.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907-586-7228 or kent.lind@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS and the State of Alaska manage the scallop fishery off Alaska pursuant to the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). 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.

The Council submitted Amendment 3 for Secretarial review on March 26, 1998, and a Notice of Availability of the amendment was published March 31, 1998 (63 FR 15376), with comments on the FMP amendment invited through June 1, 1998. NMFS published a proposed rule to implement Amendment 3 on April 16, 1998 (63 FR 18863), with comments on the proposed rule invited until June 1. No comments were received on the FMP amendment or the proposed rule by the end of the comment periods.

Based on a review of the FMP amendment, proposed rule, EA/RIR, and applicable State laws, the Administrator, Alaska Region, NMFS, determined that Amendment 3 is necessary for the conservation and management of the scallop fishery off Alaska and that it is consistent with the

Magnuson-Stevens Act and other applicable laws.

Management Background and Need for Action

The history of the scallop fishery off Alaska and the events leading up to the development of the joint State-Federal management regime under Amendment 1 to the FMP are discussed in detail in the proposed rule (63 FR 18863, April 16, 1998) and in the EA/RIR prepared for this action (see ADDRESSES). Amendment 1 established a joint State-Federal management regime under which NMFS implemented Federal scallop regulations that duplicate most State scallop regulations, including definitions of scallop registration areas and districts, scallop fishing seasons, closed waters, gear restrictions, efficiency limits, crab bycatch limits, scallop catch limits, inseason adjustments, and observer coverage requirements. This joint State-Federal management regime was designed as a temporary measure to prevent unregulated fishing in Federal waters until changes in the Magnuson-Stevens Act would enable the Council to delegate management of the fishery to the State.

While the joint State-Federal management regime established under Amendment 1 has enabled NMFS to reopen the Exclusive Economic Zone to fishing for scallops, it has proven to be cumbersome in practice. Every management action, including inseason openings and closures, must be coordinated so that State and Federal actions are simultaneously effective. NMFS must draft and publish in the **Federal Register** inseason actions that duplicate every State inseason scallop action. State scallop managers are now constrained in their ability to implement management decisions rapidly because they must coordinate each action with NMFS and provide sufficient lead-time for publication of the action in the **Federal Register**.

The only purpose of maintaining duplicate regulations at the State and Federal level is to prevent unregulated fishing by vessels not registered under the laws of the State. The State-Federal management regime established under Amendment 1 is no longer necessary to prevent unregulated fishing for scallops in Federal waters because the Sustainable Fisheries Act of 1996, which amended the Magnuson-Stevens Act, now provides authority for the Council to delegate to the State management responsibility for the scallop fishery in Federal waters off Alaska. The statutory requirements for delegation of fisheries management

authority to a state were presented in the preamble to the proposed rule (63 FR 18863, April 16, 1998).

Repeal of Federal Scallop Regulations Under Amendment 3

Amendment 3, adopted by the Council by a 10 to 1 vote, delegates to the State the authority to manage all aspects of the scallop fishery in Federal waters, except limited access, including the authority to regulate vessels not registered under the laws of the State. Section 306(a)(3)(B) of the Magnuson-Stevens Act, as amended, requires that such a delegation of authority be made through an FMP amendment and be approved by a three-quarters majority vote of the Council.

This final rule to implement Amendment 3 removes subpart F of 50 CFR part 679. Subpart F contains all the Federal regulations specific to the scallop fishery off Alaska, with the exception of the scallop vessel moratorium program, which is set out under permit requirements at June 26, 1998, § 679.4(g). Amendment 3 and this final rule change the Federal scallop vessel moratorium program established under Amendment 2 to the FMP by simplifying scallop management in the Federal waters off Alaska through the elimination of unnecessary duplication of regulations at the State and Federal levels.

This final rule also makes minor changes to § 679.1(h) to accommodate the delegation of management authority to the State and adds a definition of Scallop Registration Area H (Cook Inlet) to the definitions at § 679.2 because this definition, previously set out in subpart F, is necessary for the scallop vessel moratorium program.

Changes Made From the Proposed Rule

This final rule removes definitions for "Dive" and "Scallop dredge" under the definition of "Authorized fishing gear" at § 679.2 because these definitions are no longer required. In addition, the final rule eliminates cross references to scallop regulations at § 679.7(h) and § 679.22(g). No additional changes were made from the proposed rule.

Classification

This action repeals duplicative Federal regulations that serve no Federal management purpose and have the potential to confuse the regulated community. In addition, this action does not significantly revise

management measures for the regulated community in a manner that would require time to plan or prepare for those revisions. For these reasons, the Assistant Administrator for Fisheries, NOAA, finds that good cause exists to waive the 30-day delayed effectiveness period for this action under 5 U.S.C. 553(d).

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 would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

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

The Administrator, Alaska Region, NMFS determined that fishing activities conducted under this rule would not affect endangered and threatened species listed or critical habitat designated pursuant to the Endangered Species Act in any manner not considered in prior consultations on the scallop fisheries off Alaska.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 13, 1998.

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 50 CFR part 679 continues to read as follows:

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

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

§ 679.1 Purpose and scope.

* * * * *

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

the United States (see subpart A of this part).

(2) State of Alaska laws and regulations that are consistent with the FMP and with the regulations in this part apply to vessels of the United States that are fishing for scallops in the Federal waters off Alaska.

* * * * *

3. In § 679.2, the definition of "Authorized fishing gear," is amended by revising the introductory paragraph, removing the paragraphs (1) *Dive* and (11) *Scallop dredge*, and renumbering paragraphs (2) through (10) and (12) through (14) as paragraphs (1) through (12), respectively; and a definition "Scallop Registration Area H Cook Inlet" is added, in alphabetical order, to read as follows:

§ 679.2 Definitions.

* * * * *

Authorized fishing gear means, fixed gear, hook-and-line, jig, longline, longline pot, nonpelagic trawl, nontrawl, pelagic trawl, pot-and-line, trawl, hand troll gear, and power troll gear:

* * * * *

Scallop Registration Area H (Cook Inlet) means all Federal waters of the GOA west of the longitude of Cape Fairfield (148°50' W. long.) and north of the latitude of Cape Douglas (58°52' N. lat.).

* * * * *

4. In § 679.3, paragraph (g) is added to read as follows:

§ 679.3 Relation to other laws.

* * * * *

(g) *Scallops.* Additional regulations governing conservation and management of scallops off Alaska are contained in Alaska Statutes A.S. 16 and Alaska Administrative Code at 5 AAC Chapter 38.

§ 679.7 [Amended]

5. In § 679.7, paragraph (h) is removed and paragraph (i) is redesignated as paragraph (h).

§ 679.22 [Amended]

6. In § 679.22, paragraph (g) is removed and reserved.

§§ 679.60–679.65 (Subpart F) [Removed]

7. Subpart F, consisting of §§ 679.60–679.65, is removed.

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