64.6 LIST OF ELIGIBLE COMMUNITIES—Continued

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazardous areas
Region II				
New Jersey: Mantoloking, borough of, Ocean County.	340383	January 14, 1972, Emerg., September 30, 1977, Reg., December 6, 2000.	12–06–00	12–06–00

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension.

Dated: December 6, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000331092-0315-02; I.D. 030100F]

RIN 0648-AM42

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: Final rule and application period.

SUMMARY: NMFS issues regulations to implement Amendment 4 to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP), which creates a license limitation program (LLP) for the scallop fishery). NMFS also announces the application period for this program. The scallop LLP will limit the number of participants and reduce fishing capacity in the scallop fishery off Alaska. The scallop LLP is necessary to achieve the conservation and management goals for the scallop fishery and is intended to further the objectives of the FMP.

DATES: (1) Final rule: Effective on January 16, 2001; and (2) application period: Beginning January 16, 2001, and ending on February 12, 2001.

ADDRESSES: Applications are available from the Program Administrator, Restricted Access Management, NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Philip Smith. Applications may be picked up in person from NMFS in the Federal Building, Room 713, Juneau, AK. Requests for applications may also be sent by facsimile to (907) 586–7354. Copies of Amendment 4 to the Scallop FMP, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone 907–271–2809. Copies of the Final Regulatory Impact Review (FRFA) prepared for this action are available from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Sue Salveson. Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to the Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228, or gretchen.harrington@noaa.gov.

SUPPLEMENTARY INFORMATION: The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson–Stevens Fishery Conservation and Management Act (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 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 Cook Inlet (State Registration Area H) where vessels are limited to using a single 6-ft (1.8-m) scallop dredge.

The Council submitted Amendment 4 for Secretarial review, and a Notice of Availability of the amendment was published March 9, 2000 (65 FR 12500), for a 60-day comment period that ended May 8, 2000. A proposed rule to implement Amendment 4 was published April 21, 2000 (65 FR 21385), for a 45-day comment period that ended June 5, 2000. Eleven letters of comments were received concerning Amendment 4 and its implementing rule. NMFS approved Amendment 4 on June 8, 2000. A summary of comments received on Amendment 4 and its implementing rule and agency response to each comment are presented in the Responses to Comments later in this document.

Management Background and Need for Action

The history of State and Federal management of the scallop fishery is described in the preamble to the rule proposed to implement Amendment 4 (April 21, 2000; 65 FR 21385). In summary, the scallop resource off Alaska has been commercially exploited for more than 30 years. Between 1969 and 1991, about 40 percent of the annual scallop harvest came from State waters. Since 1991, Alaska scallop harvests have increasingly occurred in Federal waters. The fishery has occurred almost exclusively in Federal waters in recent years, but some fishing in State waters occurs off Yakutat, Dutch Harbor, and Adak.

By 1992, fishery participants and management agencies developed growing concerns about excessive fishing capacity and exploitation in the scallop fishery. The Council was presented with information indicating that the stocks of weathervane scallops

were fully exploited and any increase in fishing effort could be detrimental to the stocks. This information raised conservation concerns because scallops are highly susceptible to local depletion and boom/bust cycles worldwide.

The Council began its consideration of Federal management of the scallop fishery in 1992. The Council determined that Federal action was necessary because existing State statutes precluded a State vessel moratorium and, at that time, the State did not have authority under the Magnuson-Stevens Act to restrict access in Federal waters.

On February 23, 1995, NMFS closed Federal waters off Alaska to fishing for scallops by emergency interim rule to address concerns about uncontrolled fishing for scallops by vessels fishing outside the jurisdiction of State regulations (60 FR 11054; March 1, 1995).

In July 1995, NMFS approved an FMP for the scallop fishery (60 FR 42070; August 15, 1995). The only management measure authorized and implemented under the FMP was an interim 1 year closure of Federal waters off Alaska to fishing for scallops that was intended to provide management agencies time to develop measures necessary to support a controlled fishery.

During 1995, the Council prepared Amendment 1 to the FMP to replace the interim closure with a joint State-Federal management regime. NMFS approved Amendment 1 on July 10, 1996 (61 FR 38099). Amendment 1 established a joint State-Federal management regime under which NMFS implemented Federal scallop regulations that duplicated most State scallop regulations. 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 enabled the Council to delegate management of the fishery to the State.

NMFS approved Amendment 2 to the FMP in March 1997. This amendment established a temporary moratorium on the entry of new vessels into the scallop fishery in Federal waters off Alaska. NMFS published a final rule implementing the moratorium on April 11, 1997 (62 FR 17749). A vessel owner had to have made a legal landing of scallops during 1991, 1992, or 1993, or during at least 4 separate years from 1980 through 1990 to qualify for a moratorium permit. This moratorium expired June 30, 2000. Eighteen vessel owners qualified for moratorium permits under the Federal vessel moratorium.

Changes made to the Magnuson-Stevens Act in 1996 provided the authority to delegate management responsibility for the scallop fishery in Federal waters to the State. The Council formalized this delegation with Amendment 3, which granted 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. The final rule implementing Amendment 3 was published on July 17, 1998 (63 FR 38501).

Development of the Scallop LLP

The Council recommended Amendment 4 to the scallop FMP in February 1999. This amendment, approved by NMFS on June 8, 2000, establishes an LLP to replace the existing Federal moratorium program.

The Council's recommendation responded to extensive public testimony that the scallop fishery suffered from excessive harvesting capacity. In 1996, members of the scallop industry submitted a proposal to the Council for an LLP. Industry members proposed an LLP to limit access to the fishery because they believed that they would suffer economic hardship if latent capacity were activated. ''Latent'' capacity refers to fishing capacity that is not currently active in the fishery but is capable of entering the fishery. Public testimony indicated that the re-entry of latent capacity would adversely affect the economic viability of current participants (i.e., their average gross income from scallops landed would not at least equal their average costs of fishing for scallops).

Based on this information, the Council developed a problem statement and alternatives for analysis of an LLP to replace the vessel moratorium. The Council developed six alternatives and two options for the LLP. These alternatives ranged from no action, which result in open access to the scallop fishery, to programs that would issue between nine and 18 licenses. According to the official scallop LLP record, the Council's preferred alternative will yield a total of nine licenses. The options deal with area endorsements and vessel reconstruction and replacement. The Council's preferred options will: (1) allow all licenses to be statewide, but vessels that fished only in Cook Inlet in the qualifying period are limited to the existing gear restrictions for Cook Inlet; and (2) not allow increases in vessel length. The details of the alternatives and options can be found in the EA/RIR/FRFA (see **ADDRESSES**).

The Council's intent in adopting the most restrictive alternative was to create an LLP that will reduce the number of participants in the fishery and eliminate growth in harvesting capacity. The Council's goal was to reduce effort to approach a sustainable fishery with maximum net benefits to the Nation, as required by the Magnuson-Stevens Act.

Operational Aspects of the Scallop LLP and Small Business Compliance Guide

1. General

The LLP limits access to the commercial scallop fisheries in the exclusive economic zone (EEZ) off Alaska. A qualified person who applies as prescribed will receive a license(s) that authorizes that person to catch and retain scallops. Initial allocation of licenses will be based on the eligibility qualifications discussed below.

2. Nature of Scallop LLP Licenses and Qualification Periods

A scallop LLP license is a permit that grants the person named on the license (i.e., the license holder) the privilege of catching and retaining scallops in Federal waters off Alaska. Permanent scallop LLP licenses issued using criteria discussed below will be transferable to an eligible transferee(s), subject to NMFS approval. Each license will specify certain endorsements and limitations, including the name and address of the license holder and the maximum length overall (MLOA) of the vessel on which the license could be used. Some licenses will also specify limitations on scallop dredging gear that could be deployed from the vessel. A scallop LLP license represents a privilege (not a property right) that could be amended or revoked at any time without compensation.

NMFS will initially issue a scallop LLP license to an eligible applicant who held a State or Federal moratorium permit on February 8, 1999, and who used that permit to make the necessary legal landings of scallops during the qualifying period. The qualifying period runs from January 1, 1996, through October 9, 1998 (1996 was the first year of scallop fishing under the Federal scallop FMP and October 9, 1998, was the date of Council initial action on the scallop LLP). The necessary legal landings of scallops is at least one landing in each of any 2 calendar years during the qualifying period. A legal landing is defined at 50 CFR 679.2 as a landing in compliance with Federal and State commercial fishing regulations in effect at the time of the landing.

A license authorizes the license holder to catch and retain scallops in

Federal waters off Alaska. The license holder could be an individual or a corporate person consistent with the definition of ''Person'' at 50 CFR 679.2. The license holder is not required to be on-board a vessel when it is used to catch and retain scallops. However, the original scallop LLP license is required to be onboard the vessel when it is used to catch and retain scallops. Although a scallop LLP license will not be vessel-specific, the length overall of any vessel that is used to catch and retain scallops under the terms of the license will be constrained by the MLOA specified on the license. In addition, a license will specify any gear limitations. A permanent license also will be transferable, subject to NMFS review and approval of an application to transfer the license and the eligibility of the proposed transferee to receive a license by transfer.

The scallop LLP eligibility criteria that require an applicant to have held a moratorium permit and to have made legal landings of scallops during the scallop LLP qualifying period are designed to account for past and recent participation in the scallop fishery. Hence, persons who were eligible for a vessel moratorium permit but did not apply or receive one will not now be eligible for a scallop LLP license. Also, the LLP requirement to have the original scallop LLP license onboard while the vessel is used to catch and retain scallops would prevent a license holder from deploying more than one vessel at the same time for that purpose through copies of an original scallop LLP license.

3. Gear Endorsements

Most scallop LLP licenses will not have gear endorsements. However, persons who qualify for a scallop LLP license based on the legal landings of scallops harvested only from Cook Inlet (State Registration Area H) during the qualifying period will have a gear endorsement that limits the gear authorized by the license to a single 6-ft (1.8-m) dredge. A single 6-ft dredge is the maximum amount of gear authorized to catch and retain scallops in Cook Inlet. The purpose of this gear endorsement is to prevent expansion in overall fishing capacity of the scallop fleet. This purpose will be accomplished by not allowing operations in Cook Inlet to increase their fishing capacity outside of Cook Inlet beyond the level they used inside of Cook Inlet during the qualification period.

4. Vessel Length

The length overall or ''length overall'' of a vessel is defined at 50 CFR 679.2. Each scallop LLP license will specify the MLOA of a vessel that could be used under the authority of the license. A scallop LLP license could be used on any vessel equal to or less than the MLOA. The specified MLOA is equal to the length overall of the longest vessel used by the applicant to make legal scallop landings during the qualifying years with a valid moratorium permit. The purpose of the MLOA provision is to prevent expansion of harvesting capacity in the fishery, thus furthering the goals of the LLP.

5. Harvest Requirements

A legal landing is defined at 50 CFR 679.2 as a landing in compliance with Federal and State commercial fishing regulations in effect at the time of the landing. Only legal landings of scallops qualify the applicant for a scallop LLP license. To qualify for a scallop license, the applicant had to make one legal landing of scallops in each of any 2 calendar years during the period beginning January 1, 1996, through October 9, 1998, with a valid moratorium permit.

6. Scallop LLP License Recipients

A license will be issued only to an applicant meeting the eligibility criteria described above. In addition, an applicant must have been eligible on February 8, 1999, to document a fishing vessel under Chapter 121 of Title 46, U.S.C., to qualify for a scallop LLP license. Chapter 121 of Title 46, U.S.C., establishes citizenship requirements for documenting U.S. fishing vessels.

7. Application Process for Scallop LLP Licenses

A one-time application period for scallop LLP licenses will begin on January 16, 2001, and end on February 12, 2001. All applications for licenses must be submitted during this time period. Applications postmarked after the ending date for the application period will be denied.

Applications are available from NMFS Restricted Access Management, Alaska Region (see **ADDRESSES**). Also, NMFS will use the official records to identify qualified applicants and will notify these persons of the application period.

To evaluate and verify an applicant's eligibility claim, NMFS has compiled an official LLP record for the scallop LLP containing information on qualified persons who held moratorium permits and used the permits to participate in the scallop fishery during the qualifying period. The official scallop LLP record contains only complete and verifiable information that will be used for the purpose of determining eligibility for a license, including information on vessels that participated in the scallop fishery during the relevant time periods, vessel ownership, and the dates, location, and numbers of qualifying landings of scallops made by those vessels.

NMFS will compare the claims on the application with the official LLP record for all scallop LLP applications submitted during the application period. If the claims on the application are supported by the information in the official scallop LLP record, and those claims are sufficient to qualify the applicant for a license, the application will be approved and a license will be issued to the applicant. However, if the claims cannot be verified using information in the official scallop LLP record, the applicant will be notified and provided 60 days to submit information or evidence to support the unverified claims. For example, an applicant could provide State fish tickets to verify legal landings not found in the official scallop LLP record. Unsubstantiated or incompletely verified claims will not be accepted. If an applicant demonstrates that the claims submitted in the application are correct and sufficient to qualify the applicant for a license, NMFS will issue a license to the applicant at the conclusion of the evidentiary period.

If information in the application is not substantiated or verified at the conclusion of the 60-day evidentiary period, NMFS will issue an initial administrative determination (IAD) denying the permit, including the reasons why the application is not accepted. Applicants then will be provided with an opportunity to appeal that IAD to the NMFS Office of Administrative Appeals, under 50 CFR 679.43.

Pursuant to the license renewal provisions of 5 U.S.C. 558, NMFS will issue an interim (temporary, non-transferable) license to an applicant who was authorized to participate in the fishery in the year before the IAD is issued and who makes a credible claim to eligibility under the scallop LLP regulations. This interim permit will be issued at the same time an applicant is notified about the 60-day evidentiary period. This interim permit will authorize the applicant to catch and retain scallops and will be effective during administrative adjudication leading to a final agency action. Depending on the final agency action, the person will receive either a

permanent, transferable license, or no license at all.

8. Transfer Process for Scallop LLP Licenses

The transfer process for scallop LLP licenses will enable a license holder to request a transfer of an LLP license to any person (designated transferee) who meets the eligibility requirements. Eligibility requirements include (1) the designated transferee being eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C., (2) the parties to the transfer having no fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations, and (3) the transfer not causing the designated transferee to exceed a two-license limit for the scallop LLP (see ''Ownership Limit'' below).

A complete transfer application must be submitted to the Regional Administrator for approval before a transfer can occur. Application forms will be available from NMFS (RAM) on request (see **ADDRESSES**). NMFS will return incomplete applications to the applicant and will identify specific information that is necessary to make the application complete. Information that will be required in the transfer application includes (1) identification information for all parties to the transfer, (2) identification number of the license to be transferred, (3) declaration that the designated transferee is a U.S. citizen, (4) a copy of the contract or sales agreement for the transfer, (5) other information the Administrator, Alaska Region, NMFS (Regional Administrator) may require, and (6) the notarized signatures of the parties to the transfer.

This final rule also provides for a transfer pursuant to court order, operation of law, or the terms of a security agreement. This provision contemplates that some transfers might not be voluntarily requested by the license holder. Under those circumstances, the Regional Administrator will review the information in the transfer application or other document and determine whether the requested transfer conflicts with other provisions of the scallop LLP regulations.

9. Ownership Limit

An individual, corporation, partnership, or other legal entity is prohibited from holding more than two scallop licenses at one time. A person who holds two scallop licenses cannot receive an additional scallop license by transfer.

The two-license ownership limit is intended to prevent any person from obtaining an excessive share of harvest privileges in the scallop fishery as required by national standard 4 of the Magnuson-Stevens Act. The Council determined that holding more than two scallop LLP licenses would constitute an excessive share in the context of this relatively small fishery.

Consistency With Section 303(b)(6) of the Magnuson-Stevens Act and a Fisheries Impact Statement

The preamble of the proposed rule for the action (65 FR 21385; April 21, 2000) provides a complete discussion of the scallop LLP's consistency with section 303(b)(6) of the Magnuson-Stevens Act and a Fisheries Impact Statement for the scallop fishery.

Response to Comments

NMFS received 11 letters of comments concerning the proposed rule. Seven letters indicated unqualified approval of Amendment 4 and its implementing rule. Four letters indicated general approval for the scallop LLP but expressed concerns about specific provisions in the program. These concerns are summarized into the following three comments and responses.

Comment 1: License holders should have the ability to increase the length of their vessels.

Response: The primary objective of the scallop LLP is to rationalize the scallop fishery. As indicated in the analysis, the scallop fleet prior to implementation of limited access had grown beyond the size necessary to harvest the resource, both in number of vessels and in fishing capacity of those vessels. Such an overcapitalized fleet represents an unnecessarily large and unproductive share of the economy's capital investment base. This condition of overcapitalization prevents the achievement of optimum yield (OY) from the fishery to the extent that operating costs are significantly higher than necessary to harvest the resource. National standard 1 of the Magnuson-Stevens Act requires that conservation and management measures shall prevent overfishing of each stock of fish while achieving, on a continuing basis, the OY from each fishery for the United States. The Magnuson-Stevens Act also authorizes the Council to design a limited access program for a fishery to achieve OY. OY is defined as that amount of the resource that will provide the greatest overall benefit to the Nation. An overcapitalized fishery is antithetical to OY and providing the greatest overall benefit to the Nation because, as explained earlier, the economic rents in such a fishery are lower than those achievable, and overall capital costs in that fishery are higher than required.

To allow persons to increase the length of their vessels beyond the size previously used in scallop fishery would only exacerbate the current overcapitalization problem. An increase in the length of a vessel can increase the overall fishing capacity of that vessel. Such an increase would not be different than allowing more participants into the fishery. This is contrary to the primary objective of the scallop LLP, which is to rationalize the fishery by reducing capacity and participants, and thereby reducing overcapitalization to the greatest extent possible.

Establishing an MLOA based on the largest vessel used by the qualified applicant during the qualification period does not violate national standard 10 (safety concerns) of the Magnuson-Stevens Act. First, a person is not required to reduce the size of the vessel they chose to use in the fishery prior to implementation of the scallop LLP. Second, the incentive to fish during inclement weather to catch a portion of the resource before other participants do will be reduced because fewer participants will compete under the scallop LLP. Third, vessel replacements are possible. The MLOA requirement does not prohibit a person from replacing a derelict vessel with one that is within the size limits established by the MLOA

Comment 2 : The requirement that limits a vessel to using a single 6-ft (1.8-m) dredge in all areas if that vessel did not participate outside of Cook Inlet during the recent qualifying period is inconsistent with national standards and other Magnuson-Stevens Act provisions.

Response: The Council has the authority to recommend, and NMFS has the authority to approve, limited access systems, such as the scallop LLP, if the Council and NMFS consider criteria listed in 16 U.S.C. 1853(b)(6) and ensure that the assignment of fishing privileges among various U.S. fishermen is fair and equitable.

The Council, when it recommended the provision limiting the amount of gear used by certain vessels, used recent participation, a criterion in 16 U.S.C. 1853(b)(6), as a determining factor. The Council indicated that part of its rationale for this provision is the control of overcapitalization. Overcapitalization can have adverse impacts on the economics of a fishery, another criterion in 16 U.S.C. 1853(b)(6). An analysis of the various alternatives for a license

limitation program indicated that the break-even number of vessels for economic viability in this fishery is a maximum of nine vessels. Based on that information, the Council decided to choose the most restrictive alternative, allowing nine vessels into the fishery, and restricting those vessels to the gear used during the most recent participation period.

As in all limited access programs, the Council also considered the need to limit fishing capacity when it developed this provision. The method used to limit fishing capacity, by limiting a person's gear to the amount used in the recent participation period, is consistent with criteria specified in the Magnuson-Stevens Act. As all persons that are similarly situated are treated in the same manner, NMFS has determined that the gear limitation provision in the scallop LLP is consistent with the national standards specified in the Magnuson-Stevens Act and with other applicable law.

Comment 3: The scallop LLP should have included area endorsements.

Response: The Council considered including area endorsements as part of the scallop LLP. This option was considered to provide protection to the small boat fleet inside Cook Inlet from competition by larger outside vessels. The Council chose not to include area endorsements for three reasons. First, the season opening dates for Yakutat and Prince William Sound have been changed from January 1 to July 1. This provides additional fishing opportunities for vessels during the summer months, and reduces the incentives to large vessel operators to fish in Cook Inlet. Second, only a single 6-ft (1.8-m) dredge can be used in Cook Inlet. Fishing with a large vessel and crew under that gear restriction would not be economical. Third, the Cook Inlet (Kamishak) quota has remained very small relative to outside areas. This reduces the incentive to forego fishing in outside areas in favor of fishing in Cook Inlet. The Council decided that area endorsements were unnecessary because these three factors will keep the fleet from significantly deviating from traditional fishing patterns.

In this final rule, the definition of MLOA is revised slightly to clarify that the longest vessel authorized by a Federal or State Scallop Moratorium Permit and from which the eligible applicant made legal landings of scallops during the scallop LLP qualification period, will be used to determine the MLOA on the scallop LLP license. Also, the final rule lengthens the application period from 15 days to 30 days. Otherwise, this final rule makes no other changes to the proposed rule other than minor editorial changes.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 4 to the FMP for the Scallop Fishery off Alaska is necessary for the conservation and management of the scallop fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Council prepared an EA/RIR/IRFA for the scallop LLP, 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.

NMFS prepared an FRFA based on the IRFA. The IRFA prepared for this action was made available for public review and comment. NMFS received no letters of public comment in response to the IRFA. The FRFA describes the economic impacts this rule will have on small entities. A summary of the FRFA follows.

NMFS considers the fishing operations that will be affected by this final rule to be small entities. The universe of small entities is composed of 18 operators who fished for scallops during the 1980-1998 period and that qualified for a moratorium permit.

NMFS considered six alternative for the scallop LLP. These alternatives ranged from no action, which would result in open access to the scallop fishery, to programs that would issue between nine and 18 licenses. According to the official scallop LLP record, the preferred alternative will yield a total of nine licenses. The options dealt with area endorsements and vessel construction and replacement. The preferred options will: (1) allow all licenses to be statewide, but vessels that fished only in Cook Inlet in the qualifying period are limited to the existing gear restrictions for Cook Inlet; and (2) not allow increases in vessel length. The FRFA details these alternatives and options.

In order to meet the primary objectives, the Council developed eligibility criteria that reduced the fleet, but granted harvesting privileges to those operations what were most dependent on the scallop fishery as evidenced through past and recent participation. The preferred alternative struck the appropriate balance by reducing the fleet enough so that excess capacity and capitalization will be less of a problem, but not reducing the fleet to the point of eliminating operations most dependent on the scallop resource.

The preferred alternative was chosen even though it would have a significant impact on a substantial number of small entities because it was the only alternative that fully met the requirements of the Magnuson-Stevens Act to achieve OY, reduce overcapitalization, and maximize economic benefits to the Nation. Reduction of capital and capacity were primary objectives of this action. Because NMFS is addressing the allocation of a limited resource, alternatives to minimize economic impacts on some small entities would necessarily result in increased impacts on others.

The Council's break-even analysis, contained in the EA/RIR/IRFA, indicated that a total of about six or seven vessels could participate full time in the Alaska statewide scallop fishery at the break-even level (not including Cook Inlet vessels). The Cook Inlet fishery appears to be fully capitalized, and perhaps overcapitalized at the current level of effort (three to four vessels). The break-even analysis showed that the current scallop fleet contained more vessels that necessary to harvest the resource efficiently and that open access has negative impacts on all members of the fleet.

Each alternative that reduces capacity in the fishery benefits the remaining fleet. However, by reducing capacity, some vessels are excluded from the fishery. The preferred alternative excludes nine vessels from the fishery, creating a fleet of nine vessels, which is the most restrictive alternative and closest to the break-even point.

NMFS concludes that the principal effect of this rule on small entities is that the LLP will significantly impact the vessels excluded from the fishery. The flexibility of open access will be reduced, limited economic opportunities for some non-qualifying fishermen. Non-qualifying fishermen will not be eligible for a license during the initial issuance because they do not meet the eligibility criteria. These fishermen may be eligible to obtain a license through transfer to participate in the scallop fishery.

The scallop LLP also inhibits the ability of new, small entities to enter the fishery because new entrants must purchase a license, thereby increasing the entry cost into the scallop fishery. Alternatively, small fishing firms owning non-qualifying vessels may experience a decrease in the value of their investments to the extent that the

vessel's opportunities have been limited.

The scallop LLP also affects small entities that only fished inside of Cook Inlet during the qualifying period by limiting the size and number of dredges those vessels could operate in areas outside of Cook Inlet to a single 6-ft (1.8-m) dredge. However, those small entities can use their licenses to harvest scallops statewide and will not be limited to harvesting scallops in Cook Inlet. The scallop LLP also affects the small entities that receive licenses by restricting their ability to increase vessel length.

The impact of license limitation is to restrict the opportunities of some vessel owners, yet offer a stabilized economic environment for affected small businesses that qualify for continued participation in the Alaska scallop fishery. The benefits accrue from preventing a further erosion of per-vessel net returns and operating efficiency.

NMFS considered measures to minimize the significant economic impact on small entities. NMFS concluded that alternative policies that would minimize adverse impacts on excluded small entities also would dilute or eliminate the benefits to the fleet as a whole of reduced fishing capacity under the LLP. Allowing one or two additional vessels to participate (relative to the preferred alternative) would reduce impacts on those one or two small entities. However, it also would reduce the beneficial effect of the LLP by reducing the average harvest of all vessels (all other small entities) in the fishery and their potential profitability by preventing attainment of the break-even fleet size. Hence, alternative measures that would reduce the impacts on small entities that are negatively affected would not achieve the objectives of this action.

The scallop LLP will reduce the adverse impacts on a substantial number of small entities resulting from open access. Generally, small entities included in the fishery under the LLP benefit, while those excluded will be adversely affected. Alternatives and options that perpetuate overcapitalization in the scallop fishery would have negative impacts on vessel owners, crew, and fishing communities. The LLP will help reduce overcapitalization of the fishery and the loss of income to current participants that would result from further overcapitalization. Issued licenses will have monetary value, and latent licenses (issued to vessels not currently fishing) if allowed, would likely be transferred to other vessels wishing to participate in the scallop fishery.

This final rule contains new recordkeeping and reporting requirements. All persons wishing to participate in the scallop fishery under the LLP would be required to submit to NMFS a completed application for a license. Also, all persons taking part in the transfer of a license would be required to submit an application for transfer of the license to NMFS. An applicant wishing to appeal an initial administrative determination on an application would submit in writing a concise statement of reasons why the determination should be reversed or modified. These collections of information are necessary to provide information to NMFS for the implementation and management of the LLP.

In summary, the scallop LLP will have economic impacts on vessels excluded from the scallop fishery. The flexibility of open access will be reduced, thereby limiting the economic opportunities for some non-qualifying fishermen. However, this reduced flexibility will be offset by increased stability and financial security for the remaining participants in the scallop fisheries. The increased economic stability and viability of the qualified applicants is the purpose of establishing this program and is consistent with the Magnuson-Stevens Act, which authorizes the establishment of limited access systems in order to achieve OY.

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

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to a penalty for failure to comply with, a collection of information subject to the requirement of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This final rule contains collection-of-information requirements subject to the PRA. These collection-of-information requirements have been approved by OMB and issued OMB control number 0648-0420, expiration date 07-31-2003. Public reporting burden for these collections of information are estimated to be an average of 2 hours per response for an application for initial issuance of a license, 1 hour per response for an application for transfer of a license, and 4 hours per response for an appeal of an initial administrative determination. These response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comment should be sent to the Regional Administrator (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 6, 2000.

William T. Hogarth,

Deputy Asst. Administrator for Fisheries, National Marine Fisheries Service.

For 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. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57; 16 U.S.C. 1540(f).

2. In § 679.1, paragraphs (j)(3) and (j)(4) are added to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(j) * * *

(3) Regulations in this part implement the license limitation program for the commercial scallop fishery in the EEZ off Alaska.

(4) Regulations in this part govern the commercial fishing for scallops by vessels of the United States using authorized gear within the EEZ off Alaska.

* * * * *

3. In § 679.2, the definition for ''Scallop license'' is added in alphabetical order and the definitions ''Eligible applicant'', ''License holder'', ''Maximum LOA'', ''Official LLP record'', and ''Qualified Person'' are revised to read as follows:

§ 679.2 Definitions.

* * * * *

Eligible applicant means a qualified person who submitted an application

during the application period announced by NMFS and:

(1) For a groundfish license or crab species license, who owned a vessel on June 17, 1995, from which the minimum number of documented harvests of license limitation groundfish or crab species were made in the relevant areas during the qualifying periods specified in § 679.4(k)(4) and (k)(5), unless the fishing history of that vessel was transferred in conformance with the provisions in paragraph (2) of this definition; or

(2) For a groundfish license or crab species license, to whom the fishing history of a vessel from which the minimum number of documented harvests of license limitation groundfish or crab species were made in the relevant areas during the qualifying periods specified in § 679.4(k)(4) and (k)(5) has been transferred or retained by the express terms of a written contract that clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred or retained; or

(3) For a crab species license, who was an individual who held a State of Alaska permit for the Norton Sound king crab summer fishery in 1993 and 1994, and who made at least one harvest of red or blue king crab in the relevant area during the period specified in § 679.4(k)(5)(ii)(G), or a corporation that owned or leased a vessel on June 17, 1995, that made at least one harvest of red or blue king crab in the relevant area during the period in § 679.4(k)(5)(ii)(G), and that was operated by an individual who was an employee or a temporary contractor; or

(4) For a scallop license, who qualifies for a scallop license as specified at § 679.4(g)(2) of this part; or

(5) Who is an individual that can demonstrate eligibility pursuant to the provisions of the Rehabilitation Act of 1973 at 29 U.S.C. 794 (a).

* * * * *

License holder means the person who is named on a currently valid groundfish license, crab species license, or scallop license.

* * * * *

Maximum LOA (MLOA) means:

(1)*With respect to the scallop license limitation program,* the MLOA is equal to the length overall on February 8, 1999, of the longest vessel that was:

(i) Authorized by a Federal or State of Alaska Scallop Moratorium Permit to harvest scallops;

(ii) Used by the eligible applicant to make legal landings of scallops during the scallop LLP qualification period, as specified at § 679.4(g)(2)(iii) of this part.

(2) *With respect to the groundfish and crab species license limitation program*, the LOA of the vessel on June 24, 1992, unless the vessel was less than 125 ft (38.1 m) on June 24, 1992, then 1.2 times the LOA of the vessel on June 24, 1992, or 125 ft (38.1 m), whichever is less. However, if the vessel was under reconstruction on June 24, 1992, then the basis for the MLOA will be the LOA of the vessel on the date that reconstruction was completed and not June 24, 1992. The following exceptions apply regardless of how the MLOA was determined.

(i) If the vessel's LOA on June 17, 1995, was less than 60 ft (18.3 m), or if the vessel was under reconstruction on June 17, 1995, and the vessel's LOA on the date that reconstruction was completed was less than 60 ft (18.3 m), then the vessel's MLOA cannot exceed 59 ft (18 m).

(ii) If the vessel's LOA on June 17, 1995, was greater than or equal to 60 ft (18.3 m) but less than 125 ft (38.1 m), or if the vessel was under reconstruction on June 17, 1995, and the vessel's LOA on the date that reconstruction was completed was greater than or equal to 60 ft (18.3 m) but less 125 ft (38.1 m), then the vessel's MLOA cannot exceed 124 ft (37.8 m).

(iii) If the vessel's LOA on June 17, 1995, was 125 ft (38.1 m) or greater, then the vessel's MLOA is the vessel's LOA on June 17, 1995, or if the vessel was under reconstruction on June 17, 1995, and the vessel's LOA on the date that reconstruction was completed was 125 ft (38.1 m) or greater, then the vessel's MLOA is the vessel's LOA on the date reconstruction was completed.

* * * * *

Official License Limitation Program (LLP) record means the information prepared by the Regional Administrator about vessels that were used to participate in the groundfish or crab fisheries during qualified periods for the groundfish and crab LLP specified at § 679.4(k) and in the scallop fisheries during the qualifying periods for the scallop LLP specified at § 679.4(g). Information in the official LLP record includes vessel ownership information, documented harvests made from vessels during the qualification periods, and vessel characteristics. The official LLP record is presumed to be correct for the purpose of determining eligibility for licenses. An applicant for a license under the LLP will have the burden of proving the validity of information submitted in an application that is inconsistent with the official LLP record.

* * * * *

Qualified Person means:

(1) *With respect to the IFQ program,* see IFQ Management Measures at § 679.40(a)(2).

(2) *With respect to the groundfish and crab species license limitation program,* a person who was eligible on June 17, 1995, to document a fishing vessel under Chapter 121, Title 46, U.S.C.

(3) *With respect to the scallop LLP,* a person who was eligible on February 8, 1999, to document a fishing vessel under Chapter 121, Title 46, U.S.C.

* * * * *

Scallop license means a license issued by NMFS that authorizes the license holder to catch and retain scallops pursuant to the conditions specified on the license.

* * * * *

4. In § 679.4, paragraph (g) is added to read as follows:

§ 679.4 Permits.

* * * * *

(g) *Scallop LLP*—(1) *General requirements*. In addition to the permit and licensing requirements prescribed in this part, each vessel within the EEZ off Alaska that is catching and retaining scallops, must have an original scallop LLP license on board at all times it is catching and retaining scallops. This scallop LLP license, issued by NMFS, authorizes the person named on the license to catch and retain scallops in compliance with regulations of the State of Alaska and only with a vessel that does not exceed the MLOA specified on the license and the gear designation specified on the license.

(2) *Qualifications for a scallop LLP license*. A scallop LLP license will be issued to an eligible applicant who:

(i) Is a qualified person;

(ii) Was named on a State of Alaska scallop moratorium permit or Federal scallop moratorium permit on February 8, 1999;

(iii) Used the moratorium permit held on February 8, 1999, to make legal landings of scallops in each of any 2 calendar years during the qualification period beginning January 1, 1996, through October 9, 1998; and

(iv) Submitted a complete application for a scallop license during the application period specified pursuant to paragraph (g)(4) of this section.

(3) *Scallop license conditions and endorsements.* A scallop license authorizes the license holder to catch and retain scallops only if the vessel length and gear used do not exceed the vessel length and gear endorsements specified on the license. These endorsements will be determined as follows.

(i) The MLOA specified on the scallop license is equal to the length overall on February 8, 1999, of the longest vessel that was authorized by a Federal or State of Alaska Scallop Moratorium Permit to harvest scallops and used by the eligible applicant to make legal landings of scallops during the scallop LLP qualification period, as specified at § 679.4(g)(2)(iii) of this part.

(ii) The gear specified on a scallop license will be restricted to a single 6-ft (1.8-m) dredge 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 of Area H during the qualification period specified in paragraph (g)(2)(iii) of this section.

(4) *Application for a scallop license*—(i) *General.* The Regional Administrator will issue a scallop license to an applicant if a complete application is submitted by or on behalf of the applicant during the specified application period, and if that applicant meets all the criteria for eligibility in this part. An application that is postmarked or hand delivered after the ending date for the application period for the scallop LLP specified in paragraph § 679.4(g)(4)(ii) will be denied. An application form will be sent to the last known address of the person identified as an eligible applicant by the official LLP record. An application form may be requested from the Regional Administrator.

(ii) *Application Period.* January 16, 2001, through February 12, 2001.

(iii) *Contents of application.* To be complete, an application for a scallop license must be signed and dated by the applicant, or the individual representing the applicant, and contain the following information, as applicable:

(A) Scallop Moratorium Permit number under which legal landings of scallops were made during the qualification period specified in paragraph (g)(2)(iii) of this section;

(B) Name, business address, telephone number, FAX number, and social security number or tax ID number of the applicant, and whether the applicant is a U.S. citizen or a U.S. business;

(C) Name of the managing company, if any;

(D) Evidence of legal landings in the qualifying years and registration areas;

(E) For the vessel(s) being used as the basis for eligibility for a license, the name, state registration number (e.g., ADF&G number), the USCG documentation number, and valid evidence of the LOA on February 8, 1999, of the longest vessel used by the applicant during the qualification period specified in paragraph (g)(2)(iii) of this section.

(iv) *Successor–in–interest.* If an applicant is applying as the successor-in-interest to an eligible applicant, an application, to be complete, also must contain valid evidence proving the applicant's status as a successor-in-interest to that eligible applicant and:

(A) Valid evidence of the death of that eligible applicant at the time of application, if the eligible applicant was an individual; or

(B) Valid evidence that the eligible applicant is no longer in existence at the time of application, if the eligible applicant is not an individual.

(v) *Application evaluation.* The Regional Administrator will evaluate an application submitted during the specified application period and compare all claims in the application with the information in the official LLP record. Claims in the application that are consistent with information in the official LLP record will be accepted by the Regional Administrator. Inconsistent claims in the application, unless verified by evidence, will not be accepted. An applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraphs (g)(4)(iii) and (g)(4)(iv) of this section, will be provided a 60-day evidentiary period pursuant to paragraph (g)(4)(vii) of this section to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the official LLP record. An applicant who submits claims that are inconsistent with information in the official LLP record has the burden of proving that the submitted claims are correct.

(vi) *Additional information or evidence.* The Regional Administrator will evaluate additional information or evidence to support an applicant's inconsistent claims submitted within the 60-day evidentiary period pursuant to paragraph (g)(4)(vii) of this section. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the inconsistent claims in his or her application are correct, the official LLP record will be amended and the information will be used in determining whether the applicant is eligible for a license. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the inconsistent claims in his or her application is correct, the applicant will be notified by an initial administrative determination, pursuant to paragraph (g)(4)(viii) of this section, that the applicant did not meet the burden of proof to change the information in the official LLP record.

(vii) *60-day evidentiary period.* The Regional Administrator will specify by letter a 60-day evidentiary period during which an applicant may provide additional information or evidence to support the claims made in his or her application, or to submit a revised application with claims consistent with information in the official LLP record, if the Regional Administrator determines that the applicant did not meet the burden of proving that the information on the application is correct through evidence provided with the application. Also, an applicant who fails to submit information as specified in paragraphs (g)(4)(iii) and (g)(4)(iv) of this section will have 60 days to provide that information. An applicant will be limited to one 60-day evidentiary period. Additional information or evidence, or a revised application, received after the 60-day evidentiary period specified in the letter has expired will not be considered for purposes of the initial administrative determination.

(viii) *Initial administrative determinations (IAD).* The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 60-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to rebut the presumption that the official LLP record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 60-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD will also indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal pursuant to § 679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will not receive a transferable license until after the final resolution of that appeal in the applicant's favor.

(ix) *Issuance of a non-transferable license.* The Regional Administrator will issue a non-transferable license to the applicant at the same time notification is provided to the applicant of his or her 60-day evidentiary period if issuance is required by the license renewal

provisions of 5 U.S.C. 558. A non-transferable license authorizes a person to catch and retain scallops as specified on the non-transferable license, and will have the specific endorsements and designations based on the claims in his or her application. A non-transferable license will expire upon final agency action.

(5) *Transfer of a Scallop License*—(i) *General.* The Regional Administrator will approve the transfer of a scallop license if a complete transfer application is submitted to Restricted Access Management, Alaska Region, NMFS, and if the transfer meets all the eligibility criteria as specified in paragraph (g)(5)(ii) of this section. An application form may be requested from the Regional Administrator.

(ii) *Eligibility criteria for transfers.* A scallop license can be transferred if:

(A) The designated transferee is eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.;

(B) The parties to the transfer do not have any fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations;

(C) The transfer will not cause the designated transferee to exceed the license limit in § 679.7(i); and

(D) The transfer does not violate any other provision specified in this part.

(iii) *Contents of transfer application.* To be complete, an application for a scallop license transfer must be signed by the licence holder and the designated transferee, or the individuals representing them, and contain the following information, as applicable:

(A) Name, business address, telephone number, FAX number, and social security number or tax ID number, of the license holder and of the designated transferee;

(B) License number and total price being paid for the license;

(C) Certification that the designated transferee is a U.S. citizen, or a U.S. corporation, partnership, or other association;

(D) A legible copy of a contract or sales agreement that specifies the license to be transferred, the license holder, the designated transferee, the monetary value or the terms of the license transfer; and

(E) Other information the Regional Administrator deems necessary for measuring program performance.

(iv) *Incomplete applications.* The Regional Administrator will return an incomplete transfer application to the applicant and identify any deficiencies if the Regional Administrator determines that the application does not meet all the criteria identified in paragraph (g)(5) of this section.

(v) *Transfer by court order, operation of law, or as part of a security agreement.* The Regional Administrator will transfer a scallop license based on a court order, operation of law, or a security agreement if the Regional Administrator determines that the transfer application is complete and the transfer will not violate any of the provisions of this section.

5. In § 679.7, paragraphs (i)(3) and (i)(7) are revised, and new paragraphs (i)(1(iv) and (i)(8) are added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(i)*License Limitation Programs*—(1) *Number of licenses.** * *

(iv) Hold more than two scallop licenses in the name of that person at any time.

* * * * *

(3) Conduct directed fishing for crab species without an original valid crab license, except as provided in § 679.4(k)(2);

* * * * *

(7) Lease a groundfish, crab species, or scallop license; or

(8) Catch and retain scallops:

(i) Without an original valid scallop license on board;

(ii) Using a vessel with a MLOA greater than that specified on the scallop license; or

(iii) Using dredge gear contrary to a gear limitation specified on the scallop license.

* * * * *

6. In § 679.43, paragraphs (a) and (p) are revised to read as follows:

§ 679.43 Determinations and appeals.

(a) *General.* This section describes the procedure for appealing initial administrative determinations made under part 679 of this chapter.

* * * * *

(p) *Issuance of a non-transferable license.* A non-transferable license will be issued to a person upon acceptance of his or her appeal of an initial administrative determination denying an application for a license for license limitation groundfish, crab species under § 679.4(k) or scallops under § 679.4(g). This non-transferable license authorizes a person to conduct directed fishing for groundfish, crab species, or catch and retain scallops and will have specific endorsements and designations based on the person's claims in his or her application for a license. This non-transferable license expires upon the resolution of the appeal.

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