

not a “significant regulatory action” and is, therefore, not subject to review by the Office of Management and Budget. Because the agency has made a “good cause” finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant. This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it will not have a significant adverse effect on the supply, distribution, or use of energy.

This technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995, (15 U.S.C. 272 note) do not apply. This action also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing the final rule amendment, EPA has taken necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988), by examining the takings implications of the final rule amendment in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This action does not impose an information collection burden under the

provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). The EPA’s compliance with these statutes and Executive Orders for the underlying rule is discussed in the May 30, 2003 **Federal Register** action.

The Congressional Review Act (CRA), (5 U.S.C. 801, *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of July 11, 2005. The EPA will submit a report containing this action and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 5, 2005.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart B—[Amended]

■ 2. Table 1 to subpart B of part 63 is amended by revising the entry dated “8/13/05” to read as follows:

TABLE 1 TO SUBPART B OF PART 63—
SECTION 112(J) PART 2 APPLICATION DUE DATES

Due date	MACT standard
11/14/05	Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters. ⁵ Hydrochloric Acid Production. ⁶

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 050325082–5165–02; 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: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 10 to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP), which modifies 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: Effective on August 10, 2005.

ADDRESSES: Copies of Amendment 10 and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, and on the Alaska Region, NMFS, website at <http://www.fakr.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228.

SUPPLEMENTARY INFORMATION: Notice of availability for Amendment 10 was

published on March 24, 2005 (70 FR 15063), with comments on the FMP amendment invited through May 23, 2005. NMFS published a proposed rule to implement Amendment 10 on April 13, 2005 (70 FR 19409) which solicited public comments through May 31, 2005. Please refer to the notice of availability and the proposed rule for additional information on Amendment 10. The Secretary of Commerce approved Amendment 10 to the FMP on June 22, 2005.

Under the LLP, two licenses based on the legal landings of scallops harvested only from Cook Inlet during the qualifying period had a gear restriction endorsement that limited allowable gear to a single 6-foot (1.8 m) dredge when fishing for scallops in any area. The seven remaining 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-foot (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.

Amendment 10 and this action change the dredge restriction endorsement from a single 6-foot (1.8 m) dredge to two dredges with a combined width of no more than 20 feet (6.1 m). This change would allow two LLP license holders, who have been restricted to the smaller dredge size, to fish in Federal waters outside Cook Inlet with larger dredges. The North Pacific Fishery Management Council (Council) concluded, because of changes to the fleet after the LLP was implemented, that these two vessels could increase their fishing capacity by using larger dredges without increasing fishing effort to the extent that it would interfere with the total fleet's ability to operate at a sustainable and economically viable level.

Response to Comments

NMFS received 3 letters of public comment on Amendment 10 (March 24, 2005, 70 FR 15063) and the proposed rule (April 13, 2005; 70 FR 19409). These comments are summarized and responded to below. NMFS made no changes to the final rule in response to public comments.

Comment 1: This rule is environmentally reckless because it causes overfishing and scallop dredges damage the environment.

Response: The rule will not cause overfishing of scallops and does not change the amount of scallops the fleet

is allowed to catch. Amendment 7 to the scallop FMP established criteria for determining when the scallop fishery is overfished and when overfishing is occurring. Managers prevent overfishing by setting the annual guideline harvest ranges below the overfishing threshold. Additionally, current scallop abundance levels are above the threshold levels for determining whether scallops are overfished.

The impact of scallop dredges on essential fish habitat in the waters off Alaska has been determined to be minimal and temporary, based on the analysis in the Environmental Impact Statement for Essential Fish Habitat Identification and Conservation in Alaska (available on the Alaska Region, NMFS, website at <http://www.fakr.noaa.gov/habitat/seis/efheis.htm>). The analysis considered the total area impacted by scallop dredges and the extent to which scallop dredges impact different habitat types. The habitat impacts of the scallop fishery will not change due to this regulatory change because the rule does not increase the amount of scallops harvested, increase harvest intensity, or change the location or timing of the fishery. Therefore, the proposed action will have no effect on essential fish habitat.

Comment 2: Economic hardships of participants in the scallop fishery should not outweigh the environmental interests of the American public.

Response: In recommending Amendment 10, the Council determined, because of changes to the fleet after the LLP was implemented, the two vessels could increase their capacity by using larger dredges without increasing fishing effort to the extent that it would interfere with the total fleet's ability to operate at a sustainable and economically viable level. The Secretary of Commerce agrees with this determination. This determination was based, in part, on an analysis of potential environmental and economic impacts of this action which is presented in the EA/RIR/FRFA (see ADDRESSES). As discussed in the EA/RIR/IRFA and the response to Comment 1 (above), this rule will not impact the environment. Thus, this action, which alleviates the economic hardships imposed by the LLP gear restrictions on two LLP holders, is not contrary to the environmental interests of the American public.

Comment 3: This regulation seemingly contravenes the dual Magnuson-Stevens Act goals of utilization and conservation. Provide a clear statement as to how this regulation serves both to conserve the fishery

(which is held to be more important than its utilization) and how it complies with National Standard 5 of the Magnuson-Stevens Act.

Response: National Standard 5 states that conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose. National Standard 5 guidelines recognize management measures minimizing the use of economic inputs to harvest the resource increase efficiency. In turn, increased efficiency itself is considered a conservation objective, when "conservation" constitutes wise use of all resources involved in the fishery, not just fish stocks.

This rule partially relieves a gear restriction imposed by the LLP and corrects an inequity imposed by the gear restriction on two LLP holders. The rule is designed to improve the fishing efficiency and economic viability of two LLP license holders by allowing them to use larger dredges than they would be allowed to use without this rule. Hence, the potential overall efficiency of the fishery is marginally increased by allowing two LLP license holders to harvest scallops using larger, more efficient dredges without substantially decreasing the efficiency of all other LLP license holders. This action will not diminish either the ability to biologically conserve the scallop resource or the ability of the scallop fishery to achieve optimum yield. Rather, it may enhance achievement of biological and social objectives of the FMP by providing for more equitable sharing of compliance costs and provide greater ability to consider and adopt further conservation measures that might otherwise have been economically unfeasible for the fishery as a whole. Therefore, economic allocation is not the sole purpose or potential outcome of this action while economic efficiency of the fishery overall is marginally enhanced by this action.

Classification

NMFS has determined that this final rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making that determination, NMFS took into account the data, views, and comments received during the comment period.

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

The Council prepared an EA/RIR/FRFA for Amendment 10 (see ADDRESSES), 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 FRFA describes the economic impacts this final rule would have on small entities. A summary of the FRFA follows.

NMFS received no comments on the IRFA and no changes were made to the final rule from the proposed rule.

This rule directly regulates two small entities (i.e., each having annual gross receipts of less than \$3.5 million). The two small entities are two LLP license holders that have been restricted to using a single 6-foot (1.8 m) dredge by the gear endorsement on their LLP.

This rule changes the single 6-foot (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). The purpose of Amendment 10 is to relieve a gear restriction adopted under the LLP that placed a disproportionately heavy burden of complying with fisheries conservation measures (such as observer coverage) on a few participants in the fishery, while maintaining the existing overall stability within the scallop fishery. This change will allow the two affected LLP license holders the opportunity to fish in Federal waters, outside Cook Inlet, with larger gear. The Council concluded that, because of changes to the fleet after the LLP was implemented, these two vessels could increase their fishing capacity by using larger dredges without increasing 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. This rule provides the two affected LLP license holders with an opportunity to capture a larger share of the total catch than they would be able to catch otherwise, thus allowing them to offset observer costs and enhance their income. Because the LLP imposes a maximum vessel length

restriction on the vessels used by the affected LLP license holders, neither operation has the potential to significantly impact the catch shares of the other operations in the fishery, so economic instability in the scallop fishing industry is not a serious concern. One outcome of implementing the rule is a relatively modest redistribution of earnings and a redeployment of effort from the fleet to the two affected LLP license holders. More importantly, Amendment 10 increases the potential overall efficiency of the fishery by allowing two LLP license holders to harvest scallops using larger, more efficient dredges.

The Council considered the following alternatives to minimize economic impacts of the LLP on small entities.

Alternative 1: This alternative would retain status quo and maintain the 6-foot (1.8 m) dredge restriction endorsement on two LLP licenses.

Alternative 2: This alternative would modify the 6-foot (1.8 m) dredge restriction endorsement to allow LLP licenses with this endorsement to be used in Federal waters outside Cook Inlet with two dredges with a combined width of no more than 16 feet (4.9 m).

Alternative 3: This alternative, the preferred alternative, would modify the 6-foot (1.8 m) dredge restriction endorsement to allow LLP licenses with this endorsement to be used in Federal waters outside Cook Inlet with two dredges with a combined width of no more than 20 feet (6.1 m).

Alternative 4: This alternative would eliminate the 6-foot (1.8 m) dredge restriction endorsement on the two LLP licenses.

The preferred alternative (Alternative 3) most effectively achieves the objectives of the action, while minimizing the potential adverse effects on small entities. That is, none of the other available alternatives place a smaller burden on directly regulated small entities, while fully achieving the Council's and FMP's objectives for this action.

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

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

Small Entity Compliance Guide

NMFS will send new LLP licenses with the new gear restriction endorsement to the two LLP license holders directly regulated by the rule as soon as possible after the effective date of the rule. No additional compliance requirements are associated with this rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 5, 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 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.

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(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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