

AMENDMENT 2 - TEXT TO AMEND THE FISHERY MANAGEMENT PLAN FOR THE SCALLOP FISHERY OFF ALASKA

- 1. In Chapter 2, a new section entitled "2.8 Limited Access Management" is added to read as follows:**

2.8 Limited Access Management

A system for limiting access, which is an optional measure under section 303(b) of the Magnuson-Stevens Act, is a type of allocation of fishing privileges that may be used to promote economic efficiency or conservation. For example, "*limited access may be used to combat overfishing, overcrowding, or overcapitalization in a fishery to achieve OY*" (50 CFR 600.330(c)). The Magnuson-Stevens Act (Section 3(28)) further defines "... The "optimum" with respect to the yield from a fishery, means the amount of fish which -- (A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems; (B) is prescribed on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant social, economic, or ecological factor; and (C) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.

The existence of an overcapitalized fleet increases the potential of overfishing the resource in an unrestricted fishery. At its January 1993 meeting, the Council determined that unrestricted access to this fishery may be harmful to the resource and result in a net loss to the Nation. The need to limit access was the primary motivation for the Council to prepare the FMP in lieu of State management of the scallop fishery. A control date of January 20, 1993, was set to place the industry on notice that a moratorium for this fishery may be implemented. This control date was again reaffirmed at the Council's June 1993 and June 1995 meetings. As anticipated, effort in this fishery increased in 1993; 32 permits, representing 21 vessels were issued to fish scallops in 1993. Eleven of these vessels had made landings as of July 31, 1993, and a total of 15 vessels had made landings by the end of 1993.

Even without additional vessels entering the fishery, the 1993 fishery was overcapitalized. In 1992, seven vessels harvested 1.8 million lb (816 mt), for an average of 257,143 lb (116.6 mt) harvested per vessel. The 1993 quota was set at 890,000 lb (403.7 mt) for areas with specified guideline harvest levels, or about one-half of the 1992 landings. Harvesting of this quota could be done by only three to four vessels. Preliminary estimates of 1993 landings from areas without guideline harvest levels total 524,000 lb (237.7 mt), that potentially could have been taken by an additional two vessels. Yet, 11 vessels participated in the 1993 fishery by July 31. Hence, the 1993 fishery was overcapitalized, meaning that too much capital was invested relative to the fleet size necessary to conduct the fishery. In 1994 the fishery continued the trend; 16 vessels harvested 1,235,269 lb (560.3 mt) of scallops.

In June 1995, the Council included a vessel moratorium with Amendment 1 to the FMP which was the suite of management measures needed to reopen the fishery. In April 1996, the Council chose to recommend the vessel moratorium as Amendment 2 in order to prevent moratorium issues from delaying the reopening of the scallop fishery. The following moratorium criteria were adopted by the Council in June 1995 and reaffirmed in April 1996.

2.8.1 Moratorium period

The vessel moratorium will remain in effect until 3 years after date of implementation or until repealed by the Council or replaced by a permanent limited access program. The Council may recommend that the moratorium be extended for 2 years through regulation if a permanent limited access program is imminent.

2.8.2 Qualification criteria

A vessel would qualify for inclusion in the moratorium if it made a legal landing of scallops during 1991, 1992 or 1993; or during at least 4 separate years from 1980 through 1990.

2.8.3 Area Endorsements

Moratorium permits would include area endorsements for fishing in waters inside Registration Area H (Cook Inlet) and/or waters outside Registration Area H.

Waters Outside Registration Area H. A vessel is moratorium qualified to fish for scallops in waters outside Scallop Registration Area H if it made at least one legal landing of scallops in waters outside Scallop Registration H Area during the qualification period in paragraph 2.8.2

Registration Area H. A vessel is moratorium qualified to fish for scallops in waters inside Registration Area H if it made at least one legal landing of scallops in waters inside Scallop Registration Area H during the qualification period in paragraph 2.8.2

2.8.4 Ownership

Scallop moratorium permits would be issued to the person (or successor in interest) who owned the qualifying vessel when it most recently made qualifying landings. If a vessel was sold during or after the moratorium qualification period, the moratorium rights attach to the owner of the vessel when it most recently made qualifying landings under paragraph 2.8.2 such that each vessel generates only one moratorium permit.

2.8.5 Vessel Reconstruction

Vessels may be reconstructed during the moratorium. If physical reconstruction started on or after January 20, 1993, the new size may not exceed 1.2 times the original qualifying vessel length overall (LOA) at time of qualification. For vessels under reconstruction on January 20, 1993, the maximum LOA would be the LOA on the date reconstruction was completed with no additional increases allowed.

2.8.6 Vessel Replacement

Qualifying vessels can be replaced with non-qualifying vessels as often as desired so long as the replaced vessel leaves the fishery or bumps another qualifying vessel out in the case of multiple transactions. Vessel size can be increased as many times as desired, but is restricted to 1.2 times the original qualifying vessel length (LOA). For vessels lost or destroyed before or during the moratorium, qualifying vessels can be replaced with non-qualifying vessels no longer than 1.2 times the original qualifying vessel length (LOA). Replaced vessels cannot be salvaged and come back into the fishery.

2.8.7 Exemptions

Vessels 26 ft (7.9 m) or less in the GOA and vessels 32 ft (9.8 m) or less in LOA in the BSAI are exempted from the moratorium when fishing for scallops only if they use gear other than dredges or trawls.

2.8.8 Appeals

An appeals process will be established in the implementing regulations consistent with the process established for the groundfish and crab vessel moratorium.