fishing in the Prince William Sound registration area may have the potential to harvest nearly 65,000 lbs (29.48 mt) of shucked scallop meat per week based on 1995 ADF&G observer data collected from a similar vessel. At this rate of harvest, the Prince William Sound GHR could be overharvested by a significant amount since the fishery was closed on January 26, 1995. Although specific information on the vessel's harvesting activity is not available, the U.S. Coast Guard boarded the vessel on February 21, 1995, and was informed that 54,000 lbs (24.49 mt) of scallop meat was on board. This level of retained catch alone exceeds the Prince William Sound GHR by over 100 percent. The Council is concerned that this or other vessels fishing outside the jurisdiction of the State will continue to severely overharvest other GHRs and result in localized overfishing of scallop stocks.

For the reasons stated above, NMFS concurs with the Council's determination that unregulated and uncontrolled fishing for scallops by vessels outside the jurisdiction of Alaska State regulations poses a serious conservation concern that must be addressed as quickly as possible by emergency rulemaking. Although weathervane scallop is the primary species of commercial interest, NMFS' concern about localized depletion and overfishing extends to all scallop species that may be harvested in the EEZ by unregulated vessels. NMFS further concurs in the Council's determination that immediate closure of the EEZ off Alaska to fishing for scallops is an appropriate action to address the scallop management void in the EEZ and concerns of localized overfishing of scallop stocks.

The Council is considering options for a Federal FMP for scallops. Given the time necessary for the preparation of an FMP and the statutory review and implementation schedule for FMPs set out under sections 303 and 304 of the Magnuson Act, the Council requested NMFS repromulgate the emergency closure of the EEZ for an additional 90 days as authorized under section 305(c)(3)(B) of the Magnuson Act. NMFS agrees that additional time may be necessary for the preparation and implementation of a Federal management program for scallops in Federal waters and will consider promulgating a second emergency rule under the Magnuson Act at the appropriate time.

There are many factors to be considered in determining whether to issue a second emergency rule in that such a rule could have an impact on

State-registered vessels that participate in this fishery under the laws of the State of Alaska. Vessels that participate in the Yakutat and Prince William Sound scallop fisheries will not be affected because ADF&G has closed these management areas for the remainder of the year, since the GHR has been harvested. The Cook Inlet fishery is conducted primarily in State waters and will be available to Stateregistered vessels when the fishery opens in mid-August (Table 1). Scallop fishermen wishing to participate in the westward area scallop fisheries (Kodiak, Dutch Harbor, Alaska Peninsula, and Bering Sea registrations area) when these fisheries open July 1 would be restricted to fishing in State waters under ADF&G management regulations if a second 90-day emergency rule is promulgated in the same form as this emergency rule. If a second emergency rule is issued, ADF&G would make a downward adjustment of the GHRs specified for the westward area to compensate for a scallop fishery constrained to State waters. Given that all the Bering Sea scallop harvest comes from Federal waters, as well as about 70 percent of the scallop harvest from other westward registration areas, and assuming an exvessel price of \$6.00 per lb, the potential foregone harvest and revenue could approach 820,574 lbs (372.21 mt) and nearly \$5 million. Based on 1994 data, about 12 vessels made landings of scallops harvested in a westward area fishery and could potentially be affected by a second emergency rule action.

Comments on this emergency rule will be accepted by NMFS through March 10, 1995. (See ADDRESSES.) NMFS also is soliciting comments on appropriate Federal management measures the Council should consider during its further development of an FMP for the Alaska scallop fishery.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable laws.

This rule is exempt from the procedures of the Regulatory Flexibility Act, because it is not required to be issued with prior notice and opportunity for prior public comment.

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

NMFS finds that the immediate need to prevent overfishing and localized depletion of scallops in the EEZ off

Alaska, as explained in the preamble to this rule, constitutes good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B), such procedures would be contrary to the public interest. Similarly, the need to implement these measures in a timely manner to prevent localized overfishing of scallop stocks by vessels fishing outside the jurisdiction of Alaska State law constitutes good cause under authority contained in 5 U.S.C. 553(d)(3) to waive the requirement for a 30-day delay in effective date.

List of Subjects in 50 CFR Part 673

Fisheries.

Dated: February 23, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 673 is added as follows:

1. Part 673 is added to Chapter VI of 50 CFR to read as follows:

PART 673—SCALLOP FISHERY OFF ALASKA

Sec.

- 673.1 Purpose and scope.
- 673.2 Definitions.
- 673.3 Prohibitions.

Authority: 16 U.S.C. 1801 et seq.

§673.1 Purpose and scope.

(a) These regulations implement Federal authority under the Magnuson Act to manage the scallop fishery in the exclusive economic zone off Alaska.

(b) Regulations in this part govern commercial fishing for scallops in the exclusive economic zone off Alaska.

§673.2 Definitions.

In addition to the definitions in the Magnuson Act and in 50 CFR part 620, the terms in 50 CFR part 673 have the following meanings:

Exclusive Economic Zone (EEZ) (see § 620.2 of this chapter) *Scallop(s)* means any species of the family Pectinidae, including without limitation weathervane scallops (*Patinopecten caurinus*).

§673.3 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to take or retain any scallops in the EEZ seaward off Alaska.

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