Response. NMFS disagrees. Fishing for scallops in Federal waters by a vessel not subject to State regulations governing the scallop fishery precipitated an emergency rule to close Federal waters to unregulated fishing for scallops (60 FR 11054, March 1, 1995, and 60 FR 28359, May 31, 1995). Based on the events that warranted the emergency interim rule, the Council has recommended that a Federal FMP is needed to authorize an interim closure of Federal waters to fishing for scallops that will continue for 1 year or until a superseding Federal management regime is implemented, whichever is earlier. In the absence of a management regime, NMFS anticipates that continued unregulated scallop fishing could result in local depletion of scallops, increasing the risk of overfishing of scallops stocks.

NMFS recognizes that an interim closure of Federal waters to fishing for scallops will result in a substantial impact on scallop fishermen. The potential foregone revenue to scallop fishermen could approach \$6 million if Federal waters remain closed for the entire year. However, this short-term impact is justified by the need to prevent overfishing of scallop stocks and ensure the long-term productivity of the scallop resource so that the OY may be achieved on a continuing basis under a future management regime that authorizes a regulated fishery in Federal waters.

Comment 2. The proposed FMP is not consistent with National Standard 1, because the FMP does not establish a quantified maximum sustainable yield (MSY); the proposed OY range does not reflect the estimated range of harvests in Federal waters relative to distribution of weathervane scallops, which is from California to Alaska; and the specified OY is not based on the best information available (see Comment 3). Furthermore, the 1-year closure authorized under the proposed FMP would interfere with the achievement of OY on a long-term, continuing basis.

Response. NMFS disagrees. See also response to Comment 3. NMFS noted in the preamble to the proposed rule that biomass estimates for scallops are limited, and the continuing expansion of this fishery into new areas make numerical estimation of MSY for weathervane and other scallop species not possible at this time. Nonetheless, an OY range (0 to 1,100,000 lb (0-499 mt)) may be established based on historical catches from Federal waters. These catches are the best information available on the long-term productivity of the scallop resource off Alaska. During the period that Federal waters

are closed to fishing for scallops, the OY is set at zero. This interim OY level is consistent with National Standard 1 and will achieve OY on a continuing basis because: (1) Prevention of overfishing during the short-term will help guarantee a healthy long-term OY from the fishery when it is reopened, (2) the scallop harvest foregone during the interim closure will be available for later harvest and will contribute to increased OY because this species is a long-lived resource, (3) uncontrolled scallop fishing (the alternative to implementing the FMP) in the EEZ may repeat the overfishing and stock depression that historically has occurred in the weathervane scallop fishery, and (4) uncontrolled scallop dredging increases the potential for increasing bycatch of crab beyond levels presently established by the State of Alaska and may interfere with achieving OY in certain crab fisheries.

If implementation of the FMP and its associated OY are delayed until more scientific information is collected and analyzed, unregulated fishing for scallops in Federal waters would continue until NMFS acquired all data necessary to refine the determination of MSY/OY. At that point, the resource might be too diminished to allow achievement of OY on a continuing basis.

Comment 3. The proposed FMP is not consistent with National Standard 2, because the FMP does not use the best information available, that includes data on landings, meat counts, resource distribution, spatial catch, and fishing effort. Furthermore, the available scientific database for the Alaska scallop fishery is thin and does not justify an interim closure of Federal waters.

Response. NMFS disagrees. The FMP and preamble to the proposed rule summarized the recent trends in scallop landings, meat counts per pound, and fishing effort that precipitated the preparation of a scallop management plan by the Alaska Department of Fish and Game (ADF&G). NMFS and ADF&G have acknowledged the limited information on scallop population structure and abundance. ADF&G is continuing to pursue analyses of biological, fishery, and resource assessment data to better understand the population structure of the Alaska scallop resource and its sustainable exploitation level. Available scientific data on the life history traits of weathervane scallops and other scallops species indicate that weathervane scallops are susceptible to localized depletion and require a cautious resource management approach. Therefore, NMFS has determined that

an interim closure of the scallop fishery in the EEZ is necessary until such time as a management regime can be implemented to manage the fishery.

Comment 4. The weathervane scallop is distributed from California to Alaska and commercial fisheries occur off the States of Oregon and Washington. National Standards 3 and 6 require that an individual stock of fish shall be managed as a unit throughout its range and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. The proposed FMP does not indicate that any effort was made to consult with the States of Oregon and Washington or with the Pacific Fishery Management Council (Pacific Council). Given that the proposed FMP only addresses fishing activity off Alaska, the FMP does not consider a properly defined management unit and violates National Standards 3 and 6.

Response. NMFS disagrees. Comment 4 confuses geographic distribution of a species with stock management. Concentrations of adult scallops do not mingle and typically are managed as separate stocks. The geographic range of the weathervane scallops consists of a collection of stocks. Available information on resource distribution supports the management of the Alaska scallop resource as separate stock units. NMFS anticipates that future amendments to the FMP that authorize controlled fishing for scallops off Alaska will further define management units of the Alaska scallop resource in a manner very similar to the scallop management areas developed by the State of Alaska.

The FMP for the Alaska scallop fishery was precipitated by uncontrolled fishing for scallops off Alaska. A similar situation could occur off the Pacific Coast States. This situation has prompted the Pacific States Marine Fisheries Commission (PSMFC) to pursue an amendment to the Magnuson Act that would authorize the West Coast States to protect legitimate state interests in the conservation and management of fish caught in Federal waters off the coast of Washington, Oregon, or California in the absence of an approved Federal fishery management plan.

The PSMFC predicated its action on the belief that scallops are very sensitive to fishing pressure and that sudden increases in fishing effort may have long-term negative consequences to the recuperative capability of scallop stocks. The PSMFC has further acknowledged action by the Council to initiate rulemaking to control the scallop fishery off Alaska and the resulting potential for