economics. The fishery was fairly small and passively managed using gear restrictions, fishing seasons, and closed areas. Experience with this management approach for weathervane scallops and other scallop species has indicated that a collapse of a scallop fishery is not uncommon following a relatively brief period of intense fishing effort. Recent expansion of fishing capacity of the Alaska scallop fleet has aggravated overfishing concerns.

The scallop resource off Alaska may have avoided overall depletion during the early years of the fishery (late 1960's and early 1970's) because scallops were widely distributed and the small fleet was economically motivated to move to new areas to maintain catch rates or to other fisheries. However, available fishery data suggest that the Kodiak and Yakutat area stocks may have been overfished.

During the early years of the Alaska scallop fishery, the scallop harvests from the Kodiak and Yakutat areas were predominated by scallops age 7 and older. By the early 1970's, 2-6 year old scallops dominated the catch. The magnitude of the age shift during the early years of the fishery, as well as subsequent poor fishery performance, indicates that high harvests during the early years of the fishery off Kodiak and Yakutat were not sustainable over the long term (Shirley and Kruse 1995) Published scientific literature provides numerous other examples where overharvesting of scallop stocks has led to long-term or permanent inability to support a commercial fishery (Young and Martin 1989, Orensanz 1986, Aschan 1991).

*Comment 10.* Closure of Federal waters to fishing for scallops will prevent the collection of fishery data that are needed for sound management of the fishery.

Response. NMFS recognizes the importance of fishery data in monitoring the status of the scallop resource. The FMP authorizes a 1-year closure of Federal waters, so the potential loss of commercial fishery data from Federal waters is limited. Fishery data still would be collected from State scallop fisheries authorized by ADF&G. Furthermore, ADF&G has scheduled a 1995 resource assessment for the scallop resource near Kayak Island in the Prince William Sound management area. In addition, ADF&G plans to analyze biological and fishery data already collected to assess sustainability of exploited weathervane scallop stocks off Alaska. Given the opportunity to collect data from State fisheries during the period of time Federal waters are closed, as well as ADF&G's analysis of data

already collected to estimate recruitment, growth, and mortality parameters, NMFS does not believe that a 1-year hiatus in the collection of Federal fishery data will significantly affect the future management of the fishery.

*Comment 11.* NMFS accepts public comment and outside data perfunctorily and for no other reason than that it is required by statute to do so. No evidence exists, especially for the scallop fishery, that the comments submitted from commercial fishing interests have had any effect whatsoever on ultimate decisions.

Response. NMFS disagrees. NMFS routinely revises final regulations in response to public comment. In the case of the proposed FMP, this public comment challenging the merits of a fishery closure or the efficacy of constraining fishing activity implies that short-term financial gain on the part of one or more vessels has priority over the long-term health of the scallop resource and sustainable yield by all participants in the fishery in future years. This perspective is counter to what NMFS believes to be wise use of the Alaska scallop resource. Nonetheless, NMFS has acknowledged and responded to such comments.

*Comment 12.* The implementation of the proposed FMP is being done on a fast track to prevent unregulated fishing in Federal waters by one vessel. A major concern posed by NMFS and the Council is that allowing unregulated fishing by one vessel in Federal waters could cause serious biological overfishing. Without any information on resource conditions and vessel performance measures, it is not possible to state whether or not a single vessel could endanger the resource locally or otherwise. This would be highly unlikely.

Response. NMFS disagrees. The schedule for review and implementation of the proposed FMP is established under section 304 of the Magnuson Act. NMFS has not deviated from this process to pursue an alternative "fasttrack" implementation schedule. NMFS acknowledges that the preparation and review of the FMP have been given high priority. NMFS believes that the Alaska scallop fishery must be protected from uncontrolled fishing activity to better assure the long-term health of the scallop resource and sustain harvests of this resource at an optimum level. As experienced earlier in 1995, unregulated fishing by a single vessel in Federal waters exceeded an Alaska State guideline harvest level by over 100 percent. This degree of overharvesting has the potential for unrestricted crab

bycatch and the possibility that one or more vessels would continue to overharvest the scallop stocks, necessitates closure of Federal waters until a Federal management regime is prepared that authorizes a controlled fishery for scallops. Moreover, continued unregulated fishing by one or more vessels could result in conflicts with other vessels that do not choose to pursue an unregulated fishery, or those Alaska-licensed vessels that are prohibited from fishing for scallops. NMFS has determined that such conflicts represent serious management issues that should be addressed whenever possible.

Comment 13. NMFS was content to permit regulation of the scallop resource by the State of Alaska, which authorized the harvest of 1.6 million lbs (726 mt) of scallops for 1995. Furthermore, NMFS did not require the Alaska State regulations covering harvesting in Federal waters by Alaska State registered vessels to meet the national standards and purposes of the Magnuson Act. The 1995 quota under State management, which NMFS found acceptable, still has 1.5 million lbs (680 mt) available. Yet NMFS maintains that the fishery must be closed to protect the resource. The full 1995 Alaska quota should be harvested before the fishery is closed.

Response. NMFS disagrees. Comment 13 suggests that no conservation problem exists that justifies a closure of Federal waters under the proposed FMP, because the full 1.6 million lbs (726 mt) annual quota established by the State of Alaska has not been harvested. This premise is misleading and irrelevant to the basis for the interim closure authorized under the FMP. The interim closure under the FMP is necessary to address NMFS' concern for localized depletion as a result of uncontrolled dredging for scallops by one or more vessels. Experience in 1995 has shown that closure of an area to fishing for scallops under Alaska State regulations when an annual quota has been reached does not cause unregulated vessels to cease fishing operations. As a result of such action, the State's quota for its Prince William Sound registration area was exceeded by over 100 percent. This poses more than adequate evidence of a serious conservation problem. Therefore, the commenter's suggestion that scallops remain to be harvested in other Federal waters off Alaska is irrelevant to the problem faced by management agencies.

*Comment 14.* The determination in the preamble to the proposed rule that the rule is not significant for purposes