

each order as one of the factors in the selection decision; and

(4) The contracting officer should consider past performance on earlier orders under the contract, including quality, timeliness, and cost control.

[FR Doc. 05-10911 Filed 6-1-05; 8:45 am]

BILLING CODE 5001-08-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

RIN 1018-AU28

#### Migratory Bird Hunting; Application for Approval of Tungsten-Tin-Iron Shot as Nontoxic for Waterfowl Hunting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) hereby provides public notice that Nice Shot, Inc. of Albion, Pennsylvania, has applied for approval of 58 percent tungsten, 38 percent tin, and 4 percent iron shot as nontoxic for waterfowl hunting in the United States. The Service has initiated review of the shot under the criteria set out in Tier 1 of the nontoxic shot approval procedures given at 50 CFR 20.134.

**DATES:** A comprehensive review of the Tier 1 information is to be concluded by August 1, 2005.

**ADDRESSES:** The Nice Shot, Inc., application may be reviewed in Room 4091 at the Fish and Wildlife Service, Division of Migratory Bird Management, 4501 North Fairfax Drive, Arlington, Virginia.

#### FOR FURTHER INFORMATION CONTACT:

George T. Allen, Wildlife Biologist, Division of Migratory Bird Management, (703) 358-1825.

**SUPPLEMENTARY INFORMATION:** The Migratory Bird Treaty Act of 1918 (Treaty Act) (16 U.S.C. 703-712) and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712) implement migratory bird treaties between the United States and Great Britain for Canada (1916 and 1996 as amended), Mexico (1936 and 1972 as amended), Japan (1972 and 1974 as amended), and Russia (then the Soviet Union, 1978). These treaties protect certain migratory birds from take, except as permitted under the Treaty Act. The Treaty Act authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, the

U.S. Fish and Wildlife Service controls the hunting of migratory game birds through regulations in 50 CFR part 20. Use of shot types other than those listed in 50 CFR 20.21(j)(1) for hunting waterfowl and coots and any species that make up aggregate bag limits is prohibited.

Since the mid-1970s, the Service has sought to identify types of shot for waterfowl hunting that are not toxic to migratory birds or other wildlife when ingested. We have approved nontoxic shot types and added them to the migratory bird hunting regulations in 50 CFR 20. We will continue to review all shot types submitted for approval as nontoxic.

Nice Shot has submitted its application with the counsel that it contained all of the specified information for a complete Tier 1 submittal, and has requested unconditional approval pursuant to the Tier 1 time frame. The Service has determined that the application is complete, and has initiated a comprehensive review of the Tier 1 information. After the review, the Service will either publish a Notice of Review to inform the public that the Tier 1 test results are inconclusive or publish a proposed rule for approval of the candidate shot. If the Tier 1 tests are inconclusive, the Notice of Review will indicate what other tests will be required before we will again consider approval of the Tungsten-Tin-Iron shot as nontoxic. If the Tier 1 data review results in a preliminary determination that the candidate material does not pose a significant toxicity hazard to migratory birds, other wildlife, or their habitats, the Service will commence with a rulemaking proposing to approve the candidate shot.

Dated: May 19, 2005.

**Matt Hogan,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 05-10909 Filed 6-1-05; 8:45 am]

BILLING CODE 4910-55-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 050520137-5137-01; I.D. 050905F]

RIN 0648-AT10

#### Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 17

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Framework 17 to the Atlantic Sea Scallop Fishery Management Plan (Framework 17) developed by the New England Fishery Management Council (Council). Framework 17 would require that vessels issued a general category scallop permit and that intend to land over 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, install and operate vessel monitoring systems (VMS). Framework 17 would also allow general category scallop vessels with VMS units to turn off (power-down) the VMS units after they have offloaded scallops and while they are tied to a fixed dock or mooring. Finally, Framework 17 proposes to revise the broken trip adjustment provision for limited access scallop vessels fishing in the Sea Scallop Area Access Program. The intent of this action is to provide more complete monitoring of the general category scallop fleet, to reduce VMS operating costs, and to eliminate a provision that may have a negative influence on vessel operator decisions at sea.

**DATES:** Comments must be received at the appropriate address or fax number (see **ADDRESSES**) by 5 p.m., local time, on June 17, 2005.

**ADDRESSES:** Comments should be submitted by any of the following methods:

- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Frameworks 17."

- Fax: (978) 281-9135.

- E-mail: [ScallopAT10@noaa.gov](mailto:ScallopAT10@noaa.gov).

- Federal e-Rulemaking Portal:

<http://www.regulations.gov>.

Written comments regarding the burden-hour estimates or other aspects

of the collection-of-information requirements contained in this proposed rule should be submitted to the Regional Administrator at the address above and to OMB, by e-mail at [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395-7285.

Copies of Framework 17, its Regulatory Impact Review (RIR), including the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>.

**FOR FURTHER INFORMATION CONTACT:** Peter W. Christopher, Fishery Policy Analyst, (978) 281-9288; fax (978) 281-9135.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Framework 17 was adopted by the Council on February 1, 2005, and was submitted to NMFS by the Council on March 11, 2005, with a supplement submitted on April 4, 2005. Framework 17 was developed by the Council to address concerns resulting from reports that vessels issued Atlantic scallop open access general category permits were making undocumented scallop landings and violating the 400-lb (181.44-kg)/50-bu (17.62-hL) possession limit restriction. Members of the fishing industry believe that a large amount of scallop landings are unaccounted for because general category scallop vessels are under-reporting or failing to report their landings, and the extent of general category vessel activity in the scallop fishery needs to be more precisely documented. Though much of the evidence to support these claims is anecdotal, landings by general category vessels have been increasing in recent years, and NMFS recently opened several fishery enforcement cases involving potential violations by general category vessels.

Framework 17 proposes to require all general category vessels that land, or intend to land, more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) unshucked scallops, to install and operate a VMS onboard the vessel. The presence of VMS is expected to assist with monitoring of general category vessel activity and the enforcement of the possession limit regulations. Because of the cost of installing and operating VMS, the requirement may also help distinguish the active fleet of general category vessels that target

scallops from all of the currently permitted vessels, which numbers over 2,500. VMS will provide better data for fishery management, particularly to specifically identify areas that are more frequently targeted by small vessels fishing outside of the typical scallop fishing areas (e.g., inshore areas of the Gulf of Maine). Transmission of location information through VMS could assist U.S. Coast Guard search and rescue operations by automatically tracking vessel position.

There are currently 2,544 vessels issued general category scallop permits. Of these, 210 already have VMS onboard as a requirement of another fishery. This rule proposes that, to land more than 40 lb (18.14 kg) or 5 U.S. bu (176.2 L) of scallops, vessel owners would be required to purchase and install VMS units on their vessels. The Council estimated that the proposed action would result in at least 223 vessels purchasing VMS units, at an initial cost, including first year operation costs, of up to \$4,735 per vessel. These 223 vessels account for almost all of the reported landings by general category scallop vessels. To cover the initial cost of the VMS and first year operating fees, Framework 17 estimates that vessels would need to fish 5 to 6 additional 1-day trips, with scallop landings of 400 lb (181.4 kg) per trip. Yearly costs associated with annual fees, monthly operating fees, position transmission, and trip and power down declarations (continuing costs) would be up to approximately \$1,260 per vessel, which could be offset by only a few trips per year in addition to the trips necessary to cover the initial costs.

In order to administer and effectively enforce the new VMS requirement for general category vessels, NMFS proposes to create a new general category scallop permit designation, under its Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), section 305(d) authority. Upon implementation of Framework 17, vessel owners would be required to designate whether they choose to fish as a VMS or non-VMS vessel and would be required to make this designation on permit renewal forms each fishing year.

A VMS power-down provision is also proposed in Framework 17 to accommodate vessels that do not have continuous power sources at their docks or moorings. Many vessels in the general category fleet home port in remote ports with limited shore electrical power. Vessels at docks and moorings without continuous power would likely find it difficult to maintain power to run VMS and supporting

systems. This power-down provision would allow vessels to turn off their VMS units and notify NMFS once the vessel is in port and scallops have been offloaded, and the vessel is tied to a permanent dock or mooring. Vessels would have to turn on their VMS units and log into the system before leaving the fixed dock or mooring for any purpose.

Framework 17 also proposes to remove the automatic days-at-sea (DAS) charge and possession limit reduction under the current regulatory provision for limited access scallop vessels that terminate scallop trips in the Area Access Program (the "broken trip" provision). Under the current measures, vessels that end Area Access Program trips before catching the total possession limit can resume trips, but the possession limit for the compensation trip is reduced to discourage unnecessary broken trips. Some industry members claim that the potential reduction in their catch under the current broken trip provision compromise safety because vessel captains could choose to remain at sea in hazardous conditions to avoid the reduced possession limit. The Council, therefore, proposed to eliminate the automatic DAS charge to remove the potential that it could result in decisions by vessel captains that compromise safety. Since the reduction in the possession limit is not critical to effective enforcement of the regulations, the Council recommended its removal as a precautionary step to improve safety at sea. Elimination of the broken trip provision would allow vessels that break a scallop trip to fully harvest the remainder of their possession limit on a makeup trip. If approved, the new measure would retroactively be applied to all broken trips that began on or after March 1, 2005, and NMFS would restore all scallop poundage deducted under the existing regulations. This restored poundage could be used on any authorized trip into a specified Access Area during the remainder of the fishing year (through February 28, 2006), as long as the overall possession limit is not exceeded.

##### **Classification**

At this time, NMFS has not determined that the action that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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

An IRFA was prepared pursuant to section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A summary of the analysis follows:

Measures in Framework 17 are intended to improve the management of the scallop fishery. A full description of the action and why it is being considered are contained in the preamble to this proposed rule. The Magnuson-Stevens Act and the Atlantic Sea Scallop Fishery Management Plan, which allow for framework adjustments and amendments to improve the management of the scallop fishery, are the legal basis for this action. This proposed rule does not duplicate, overlap or conflict with any relevant Federal rules.

#### *Description of Small Entities to Which the Proposed Rule Will Apply*

Framework 17 would affect vessels with limited access and general category scallop permits. The vessels in the Atlantic sea scallop fishery are all considered small business entities because all of them grossed less than \$3.5 million according to dealer data for the 2001, 2002, and 2003 fishing years. Therefore, there is no disproportionate impact between small and large vessels.

According to the recent permit data, 289 vessels obtained full-time limited access permits in 2003, including 37 small-dredge and 16 scallop trawl permits. In the same year, there were also 34 part-time and 10 occasional limited access permits in the scallop fishery. In addition, 2,554 permits were issued to vessels in the open access general category. Annual revenue from all species, including scallops, averaged about \$814,000 per full-time vessel, \$405,800 per part-time vessel, and \$121,800 per occasional vessel during the 2003 fishing year. The average annual revenue per vessel that participated in the general category scallop fishery was \$235,300 in 2003. The average annual revenue per vessel that would be impacted by this proposed action was estimated to be \$165,845 for the 2003 fishing year.

In addition to disproportionality, regulatory impacts on profitability, were evaluated. The profitability criterion applies if the regulation significantly reduces profit for a substantial number of small entities, and is discussed in the Economic Impacts of the Proposed Action section of this IRFA summary.

#### *Proposed Reporting, Recordkeeping, and Other Compliance Requirements*

Framework 17 proposes new reporting, recordkeeping, and compliance requirements only for general category scallop vessels. The new requirements in this proposed rule are: (1) Installation of VMS units; (2) documentation of VMS unit installation; (3) notification or application for appropriate general category permit designation; (4) notification via VMS on the day the vessel departs on a fishing trip; and (5) notification through VMS when the vessel is at a fixed dock or mooring and is going to power-down the VMS unit. The total initial cost of compliance is relatively high because of the cost of purchasing and installing the VMS units. There are currently two VMS units available, costing approximately \$3,295 for Boatracs and \$2,268 for Skymate. The cost of the Skymate unit includes a separate computer system (e.g., compatible laptop), which some vessels may also have to purchase at a cost of approximately \$1,000. In addition to purchase cost, VMS units have installation and activation fees, bringing the total initial cost to approximately \$3,475 and \$2,917 for Boatracs and Skymate units, respectively. Monthly costs for operating and maintaining VMS service are \$105 and \$53.95 for Boatracs and Skymate units, respectively, resulting in ongoing annual costs of approximately \$1,260 for Boatracs and \$647 for Skymate. Costs associated with VMS notifications (power-down and trip notifications) are relatively low, at about \$180 per vessel per year (based on the cost of a VMS message, equal to \$0.79 per VMS message). Costs associated with making a general category permit designation would be one designation per year, with a cost of \$0.37 associated with the cost of mailing the designation to NMFS.

#### *Economic Impacts of the Proposed Measures*

##### **1. VMS requirement for general category vessels**

There were 2,554 vessels with general category permits in the 2003 fishing year; 2,278 of these vessels either did not have any scallop landings or landed no more than 40 lb (18.14 kg) of scallops per trip, and 2,121 of them did not have a VMS. The proposed action is expected to affect at least 223 vessels that do not already have a VMS out of a total of 276 general category vessels that landed over 40 lb (18.14 kg) of scallops per trip during the 2003 fishing year. These 276 vessels accounted for approximately 99.9 percent of the general category

scallop landings in 2003. If all 223 vessels choose to install and operate a VMS, total costs to the industry could range between \$795,000 to \$1,307,000 during the initial year of implementation. Total costs would be higher if additional vessels enter the fishery and land more than 40 lb (18.14 kg) of scallops per trip.

The cost of VMS for each vessel is considered in the economic impact analysis in the Framework 17 document to determine the impact on vessels, given historical and expected landing levels. Costs include the initial cost of purchasing and installing the VMS units and ongoing costs of service fees. The initial investment costs for VMS, including the installation charge, activation fee, and monthly service, are estimated to be \$3,565 for Skymate and \$4,735 for Boatracs. After this initial investment, the costs of VMS for vessels will decline substantially, and will consist of annual service charges estimated to be \$1,260 for Boatracs and \$647 for Skymate.

General category vessels that would be impacted by the proposed action are distinguished by their scallop revenue relative to VMS costs. One group consists of 79 to 87 vessels (depending on the VMS unit installed), which could not cover the cost of the VMS units with their landings of scallops if they continue to harvest scallops at their historical level. Scallop landings per trip for this group of vessels was less than 90 lb (40.8 kg), and annual revenue per vessel from scallops averaged about \$1,323 to \$1,569. Another group consists of 136 to 144 vessels, depending on the VMS unit installed, which historically make scallop landings that generate revenue to equal or exceed the costs of the VMS units. The majority of these vessels targeted scallops and earned, on average, \$50,000 or more in scallop revenue during the 2003 fishing year.

The proposed action would have negative economic impacts on vessels if they choose to install a VMS and do not increase scallop landings per trip enough to cover the cost of VMS. Similarly, if vessels that historically landed sufficient amounts of scallops to cover the cost of VMS do not increase scallop landings, the VMS requirement could reduce their profits. Some vessels may choose to lower their scallop landings to the incidental amount (40 lb; 18.14 kg) in order to retain their general category permit without having a VMS onboard. Alternatively, vessels could increase trips and landings to the level that would cover the cost of VMS. This may be the case particularly with vessels that would only need to increase

trips and landings marginally in order to cover the cost of VMS and resume profitable catches. A third group of vessels would be new entrants that would have to make enough landings to cover the cost of VMS units. Such vessels would increase the total number of general category vessels that would be required to be compliant with the VMS requirement, although there is no way to estimate the number of such vessels.

There are several mitigating factors that could minimize the negative economic impacts of VMS implementation for the general category vessels that are required to operate a VMS. The proposed action provides the flexibility to any vessel with a general category permit to retain the permit without having a VMS on board, as long as scallop catch per trip is limited to the incidental amount. Therefore, many vessels that do not land any scallops per trip or land only a small amount of scallops per trip could avoid VMS costs without experiencing a significant amount of revenue loss and without giving up their general category permit. For other general category vessels that already earn significant amounts of revenue from scallop trips in excess of the VMS costs, there could be an opportunity to cover these costs fully or in part by taking more trips and/or by increasing the scallop catch per trip. Between 2,000 to 2,600 lb (907.2 to 1,179.3 kg) of scallops would be necessary to cover the initial and ongoing operational costs of the VMS, depending on the unit purchased, and assuming that scallops constitute the only source of revenue from those trips. This catch would translate into an additional 5 to 7 1-day trips at landings of 400 lb (181.4 kg) of scallops per trip. Vessels would also be able to offset VMS costs through additional revenue from other species landed. In the long term, there may be indirect benefits from better enforcement and monitoring of general category vessel landings, and as a result of the safety benefits associated with VMS position data in case of an accident.

## 2. VMS power-down exemption

The proposed power-down exemption would allow vessels to turn the VMS off while in port and help to reduce costs associate with the VMS requirement by reducing polling costs and eliminating the cost of generating electricity while the vessel is tied to a dock or mooring without continuous power.

## 3. Modification of broken trip provision

Eliminating the requirement for a reduction in the scallop possession limit

when a broken trip occurs would have positive economic impacts by reducing the losses from broken trips for the limited access scallop vessels that fish under the Area Access Program. The proposed action would prevent such revenue loss because it would allow vessels to fully harvest the uncaught portion of the possession limit on a subsequent trip. Assuming that the number of broken trip applications are approximately the same as they were during 2004 fishing year, approximately \$1.6 million in revenue for the scallop fishery could be recovered by eliminating the possession limit reduction.

## *Economic Impacts of Significant and Other Non-selected Alternatives*

The proposed action minimizes the costs for the small business entities operating in the general category scallop fishery as compared to the non-selected alternative 1, under which all vessels with general category permits would be required to operate a VMS. This non-selected alternative would expand the VMS requirement to apply to the 2,278 vessels with general category permits that historically catch no more than 40 lb (18.14 kg) of scallops. The VMS unit costs would require these vessels to either increase their scallop harvest to cover the costs of VMS, or cancel their general category permit, thus losing all scallop revenue. Three other alternatives considered by the Council would have required VMS on general category vessels if the vessel's landings were over 100 lb (45.4 kg), 200 lb (90.7 kg), or 300 lb (136.1 kg) for each alternative. These alternatives would require a smaller subset of vessels to operate VMS, and would result in lower overall costs to the general category fleet compared to the proposed action. On the other hand, exempting a large number of general category vessels would likely not solve the problems in monitoring the possession limit for general category vessels.

The alternative to the power-down exemption would have required VMS operation at all times. It would not minimize economic impacts on small entities compared to the proposed measure. In addition to continuous costs associated with automatic polling of vessel location, requiring vessels to operate VMS units without a power-down provision could present compliance problems for vessels that do not have sufficient power to run the VMS unit while the vessel is tied to a dock or mooring. It may in turn be costly for these vessels to devise a way to keep power supply to the VMS units while the vessel is moored.

Similarly, maintaining the automatic DAS and possession limit charge for broken trips could continue to have negative economic impacts on limited access vessels, and would not minimize economic impacts on small entities.

This proposed rule contains new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements would apply to general category vessels only, and have been submitted to OMB for approval. The public reporting burden for these collections of information are estimated to average as follows:

1. Purchase and installation of VMS units, OMB control number 0648-0202 (1 hr per response);
2. Verification of VMS units, OMB control number 0648-0202 (0.083 hr per response);
3. Notification and application for appropriate general category permit designation, OMB control number 0648-0202 (0.5 hr per response);
4. VMS power-down notification, OMB control number 0648-0202 (0.033 hr per response); and
5. VMS re-power and trip notification, OMB control number 0648-0202 (0.033 hr per response).

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

## **List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: May 26, 2005.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

## **PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.4, paragraph (a)(2)(ii) is revised to read as follows:

### **§ 648.4 Vessel permits.**

(a) \* \* \*

(2) \* \* \*

(ii) *General scallop permit.* Any vessel of the United States that is not in possession of a limited access scallop permit, and that possesses, or lands per trip, 400 lb (181.44 kg) of shucked meats, or 50 bu (17.62 hL) of in-shell scallops, or less, except vessels that fish exclusively in state waters for scallops, must comply with one of the permit requirements described in paragraph (a)(2)(ii)(A) or (B) of this section, unless otherwise exempted under paragraph (a)(2)(ii)(C) of this section.

(A) *General scallop non-VMS permit.* To possess or land up to, but not more than 40 lb (18.14 kg) of shucked or 5 bu (176.2 L) in-shell scallops per trip that are sold or are intended to be sold, a vessel must apply for and be issued a general scallop non-VMS permit. A vessel issued a general scallop non-VMS permit may not possess or land more than 40 lb (18.14 kg) of shucked or 5 bu (176.2 L) of in-shell scallops at any time.

(B) *General scallop VMS permit.* To possess or land more than 40 lb (18.14 kg) of shucked or 5 bu (176.2 L) of in-shell scallops, up to 400 lb (181.44 kg) of shucked meats, or 50 bu (17.62 hL) of in-shell scallops, a vessel must apply for and be issued a general scallop VMS permit. Issuance of a general scallop VMS permit requires the vessel to have installed an operable VMS unit, as described in § 648.10(b)(1)(iv).

(C) *Vessels without general scallop permits.* No scallop permit is required for a vessel that possess or lands up to 40 lb (18.14 kg) of shucked or 5 bu (176.2 L) per trip, provided such scallops are not, or are not intended to be, sold, traded, or bartered.

\* \* \* \* \*

3. In § 648.9, paragraph (c)(1) introductory text and paragraph (c)(2)(i)(C) are revised, and paragraphs (c)(1)(iii) and (c)(2)(i)(D) are added to read as follows:

### **§ 648.9 VMS requirements.**

\* \* \* \* \*

(c) \* \* \*

(1) Except as provided in paragraph (c)(2) of this section, or unless otherwise required by paragraph (c)(1)(ii) or (iii) of this section, all required VMS units must transmit a signal indicating the vessel's accurate position, as specified under paragraph (c)(1)(i) of this section.

\* \* \* \* \*

(iii) At least twice per hour, 24 hours a day, throughout the year, for vessels issued a general scallop permit and subject to the requirements of § 648.4(a)(2)(ii)(C), or a limited access scallop permit.

\* \* \* \* \*

(2) \* \* \*

(i) \* \* \*

(C) The vessel has been issued an Atlantic herring permit, and is in port, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times; or

(D) The vessel has been issued a general scallop permit and is required to operate VMS as specified in § 648.10(b)(1)(iv), is not in possession of any scallops onboard the vessel, is tied to a permanent dock or mooring, and the vessel operator has notified NMFS through VMS that the VMS will be powered down, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such a vessel must repower the VMS prior to moving from the fixed dock or mooring.

\* \* \* \* \*

4. In § 648.10, the section heading and paragraph (b)(1)(iv) are revised to read as follows:

### **§ 648.10 DAS and VMS notification requirements.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iv) A scallop vessel issued a general scallop permit that possesses, or lands per trip, more than 40 lb (18.14 kg) shucked or 5 bu (176.2 L) in shell scallops, or when fishing under the Sea Scallop Area Access Program specified under § 648.60 and in the Sea Scallop Access Areas described in §§ 648.59(b) through (d);

\* \* \* \* \*

5. In § 648.14, paragraphs (i)(11) and (i)(12) are added to read as follows:

### **§ 648.14 Prohibitions.**

\* \* \* \* \*

(i) \* \* \*

(11) Fail to have an approved, operational, and functioning VMS unit

that meets the specifications of § 648.9 on board the vessel at all times, unless the vessel is not subject to the VMS requirements specified in § 648.10.

(12) If the vessel is not subject to VMS requirements specified in § 648.10, possess more than 40 lb (18.14 kg) shucked or 5 bu (176.2 L) in-shell scallops at any time.

\* \* \* \* \*

6. In § 648.52, paragraph (c) is revised to read as follows:

### **§ 648.52 Possession and landing limits.**

\* \* \* \* \*

(c) Owners or operators of vessels with a limited access scallop permit that have declared into the Sea Scallop Area Access Program as described in § 648.60 are prohibited from fishing for or landing per trip, or possessing at any time, more than any sea scallop possession and landing limit specified in or specified by the Regional Administrator in accordance with § 648.60(a)(5).

\* \* \* \* \*

7. In § 648.60, paragraph (c)(5) is revised to read as follows:

### **§ 648.60 Sea scallop area access program requirements.**

\* \* \* \* \*

(c) \* \* \*

(5) The Regional Administrator must authorize the vessel to take an additional trip and must specify the amount of scallops that the vessel may land on such trip and the number of DAS charged for such trip, pursuant to the calculation specified in paragraph (c)(5)(i) of this section. Such authorization will be made within 10 days of receipt of the formal written request for compensation.

(i) The amount of scallops that can be landed on an authorized additional Sea Scallop Access Area trip shall equal the possession limit specified in paragraph (a)(5) of this section minus the amount of scallops landed on the terminated trip. For example, in the 2005 fishing year, if a full-time scallop vessel lands 6,500 lb (2,948.4 kg) of scallops and requests compensation for the terminated trip, the possession limit for the additional trip is 11,500 lb (5,216 kg) (18,000 lb (8,164.7 kg) minus 6,500 lb (2,948.4 kg)).

(ii) If a vessel is authorized more than one additional trip for compensation into any Sea Scallop Access Area as the result of more than one terminated trip in the same Access Area, the possession limits for the authorized trips may be combined together, provided the total possession limit on a combined compensation trip does not exceed the possession limit for a trip as specified

in paragraph (a)(5) of this section. For example, a vessel that has two broken trips with corresponding compensation trip authorizations of 10,000 lb (4,535.9 kg), 8,000 lb (3,628.7 kg), may combine the authorizations to allow one compensation trip with a possession limit of 18,000 lb (8,164.7 kg).

(iii) A vessel that terminated a 2005 access area trip after March 1, 2005, but before [date of the publication of the final rule], will be issued authorization to harvest the amount of pounds deducted from the possession limit for the additional trip. The Regional Administrator will issue this authorization automatically without request from the vessel owner. Rebated possession limit may be combined with other additional trips as described in paragraph (c)(5)(ii) of this section.

\* \* \* \* \*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[I.D. 052605B]

RIN 0648-AT04

#### Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Retention Standard

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; notification of availability of FMP amendments; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) has submitted Amendment 79 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). If approved, Amendment 79 would add a management objective to the goals and objectives section of the FMP that would improve the retention of Bering Sea and Aleutian Islands (BSAI) groundfish species where practicable through the establishment of a minimum Groundfish Retention Standard (GRS). This action is intended to promote the management objectives of the Improved Retention/Improved Utilization (IRIU) program, the FMP, and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action is

necessary to reduce discards and improve utilization in BSAI groundfish fisheries.

**DATES:** Written comments on Amendment 79 must be received on or before August 1, 2005.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail to P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK;
- FAX to 907-586-7557;
- E-mail to [BSA79NOA-0648-AT04@noaa.gov](mailto:BSA79NOA-0648-AT04@noaa.gov) and include in the subject line of the E-mail comment the document identifier: Amendment 79. E-mail comments, with or without attachments, are limited to 5 megabytes; or

- Webform at the Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the instructions at that site for submitting comments.

Copies of Amendment 79 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region website at <http://www.fakr.noaa.gov> or by calling the Sustainable Fisheries Division, Alaska Region, NMFS, at (907) 586-7228.

**FOR FURTHER INFORMATION CONTACT:** [Jeff.Hartman@noaa.gov](mailto:Jeff.Hartman@noaa.gov) or [Jason.Anderson@noaa.gov](mailto:Jason.Anderson@noaa.gov). Either may be contacted at (907) 586-7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** that the FMP or amendment is available for public review and comment. This requirement is satisfied by this notice of availability for Amendment 79.

This proposed action is one of several adopted by the Council to decrease regulatory and economic discards and increase catch utilization in the BSAI groundfish fisheries. Amendment 49 to the FMP was implemented on January 3, 1998 (62 FR 63880), establishing increased retention and utilization

(IRIU) standards for pollock and Pacific cod beginning January 3, 1998, and for rock sole and yellowfin sole beginning January 1, 2003. In 2001, the Council determined that cost, market, and logistical constraints would prevent non-American Fisheries Act (AFA) trawl catcher/processors from being able to comply with IRIU requirements for flatfish. In June 2002, the Council developed a problem statement for the development of alternatives to address the pending effective date of IRIU regulations for flatfish. In October 2002, the Council adopted Amendment 75 to the FMP which would have delayed until June 1, 2004, the effective date of IRIU requirements for flatfish harvested in the BSAI. The Council's intent for this delay was to provide additional time for the development of bycatch reduction measures that could be more practically and effectively applied to the non-AFA trawl catcher/processor sector.

At the same time, the Council initiated the analysis of four new FMP amendments that were intended to augment or replace IRIU regulations for BSAI flatfish prior to the June 2004 effective date. Amendment "B" would have created flatfish discard limits for the flatfish fisheries; Amendment 76 would exempt fisheries with less than a 5 percent IRIU flatfish bycatch rate from IRIU flatfish regulations; Amendment 79 (the proposed action) would establish a minimum GRS; and Amendment 80 (as modified at the October 2004, Council meeting) would allocate certain target species and prohibited species catch limits to non-AFA trawl catcher/processors and create a regulatory structure under which these vessels may form one or more fishery cooperatives.

NMFS partially approved Amendment 75, by approving the removal of the January 1, 2003, effective date for the IRIU flatfish program from the FMP, and by disapproving the adjusted effective date of June 1, 2004. NMFS's decision on Amendment 75 had the effect of indefinitely delaying the IRIU flatfish program. With the indefinite delay of this program, Amendment 76 no longer had any practical application in the BSAI and Amendment "B" was rejected by the Council as infeasible following discussions between industry representatives and fishery managers. However, the Council continued to develop Amendments 79 and 80.

If approved, this proposed amendment would revise the goals and objectives section of the FMP to improve the retention of groundfish where practicable, through establishment of minimum groundfish retention standards. A proposed rule to