



**UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration**

*National Marine Fisheries Service  
P.O. Box 21668  
Juneau, Alaska 99802-1668*

September 23, 2011

MEMORANDUM FOR: Paul N. Doremus  
NOAA NEPA Coordinator

FROM: James W. Balsiger, Ph.D.  
Administrator, Alaska Region

SUBJECT: Environmental Assessment for Amendment 13 to the Fishery  
Management Plan for the Scallop Fishery off Alaska [RIN 0648-  
XA421]

The attached subject environmental assessment (EA) and Finding of No Significant Impact (FONSI) are forwarded for your review. The EA and FONSI have been prepared in accordance with the provisions of: (1) NOAA Administrative Order 216-6, Environmental Review Procedures For Implementing The National Environmental Policy Act; and (2) the Council on Environmental Quality's Regulations For Implementing The Procedural Provisions of The National Environmental Policy Act (40 CFR Parts 1500-1508).

Based on the environmental impact analysis within the attached EA, I have determined that no significant environmental impacts will result from the proposed action. I therefore have approved the FONSI for this proposed action. I request your concurrence with the EA and its FONSI. I also recommend, subject to a request from the public, that you release the documents for public review.

1. I concur. \_\_\_\_\_  
NOAA NEPA Coordinator                      Date

2. I do not concur. \_\_\_\_\_  
NOAA NEPA Coordinator                      Date



## **Finding of No Significant Impact for Amendments 13 to the Fishery Management Plan for the Scallop Fishery off Alaska**

National Marine Fisheries Service

One of the purposes of an environmental assessment is to provide the evidence and analysis necessary to decide whether an agency must prepare an environmental impact statement (EIS). The Finding of No Significant Impact (FONSI) is the decision maker's determination that the action will not result in significant impacts to the human environment, and therefore, further analysis in an EIS is not needed. Regulations by the Council on Environmental Quality (40 CFR 1508.27) state that the significance of an action should be analyzed both in terms of "context" and "intensity." An action must be evaluated at different spatial scales and settings to determine the context of the action. Intensity is evaluated with respect to the nature of impacts and the resources or environmental components affected by the action. NOAA Administrative Order (NAO) 216-6 provides guidance on the National Environmental Policy Act (NEPA) specifically to line agencies within NOAA. It specifies the definition of significance in the fishery management context by listing criteria that should be used to test the significance of fishery management actions (NAO 216-6 §§ 6.01 and 6.02). These factors form the basis of the analysis presented in the environmental assessment (EA) for this action. The results of the analysis are summarized here for those criteria.

*Context:* For this action, the setting is all waters in and off Alaska including the Bering Sea, Aleutian Islands and Gulf of Alaska. Any effects of this action are limited to this area. The effects of this action on society within this area are on individuals directly and indirectly participating in the Federal scallop fishery and on those who use the ocean resources. Because this action concerns the use of a present and future resource, this action may have impacts on society as a whole or regionally.

*Intensity:* Considerations to determine intensity of the impacts are set forth in 40 CFR 1508.27(b) and in the NAO 216-6, section 6. Each consideration is addressed below in order as it appears in the NMFS Instruction 30-124-1 dated July 22, 2005, Guidelines for Preparation of a FONSI. The chapters and sections of the EA for this action<sup>1</sup>, Appendix D of the Fishery Management Plan for the Scallop Fishery off Alaska (FMP),<sup>2</sup> and the Final Environmental Impact Statement for Essential Fish Habitat Identification and Conservation in Alaska<sup>3</sup> that address the considerations are identified.

*1) Can the proposed action reasonably be expected to jeopardize the sustainability of any target species that may be affected by the action?*

**Response:** No. The proposed action is to amend the Scallop FMP to establish annual catch limits, accountability measures, and an ecosystem component category in compliance with the

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<sup>1</sup> Draft Environmental Assessment for this Proposed Amendment 13 to the Fishery Management Plan for the Scallop Fisheries off Alaska to Comply with Annual Catch Limit Requirements, June 2011

<sup>2</sup> <http://www.fakr.noaa.gov/npfmc/fmp/scallop/ScallopFMP2006.pdf>

<sup>3</sup> <http://www.fakr.noaa.gov/habitat/seis/efheis.htm>

Magnuson-Stevens Fishery Conservation and Management Act. Amendments 13 would provide added protection against overfishing and would not jeopardize the sustainability of weather-vane scallops, the target species that may be affected by the action, as analyzed in chapters 4 and 5 of the EA.

*2) Can the proposed action reasonably be expected to jeopardize the sustainability of any non-target species?*

Response: No. Non-target species will not be affected by an annual catch limit, accountability measures, or the ecosystem component category for scallop stocks under the FMP. The scallop fishery has 100 percent observer coverage, thus data on the bycatch of non-target species is well documented. This includes non-target species of scallops, prohibited species (such as crab and halibut), other commercially important species of fish and invertebrates, and miscellaneous non-commercial species. Impacts of the scallop fishery on the sustainability of non-target scallop species are discussed in chapters 4 and 5 of the EA. Impacts of the scallop fishery on the sustainability of any non-scallop species are discussed in chapter 5 of the EA. The EA concludes that the scallop fishery has an insignificant effect on the productivity and thus the sustainability of any non-target species. The proposed action will not change the way the fishery impacts the sustainability of any non-target species under the scallop FMP and, therefore, the proposed action will have an insignificant effect on these species.

*3) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in FMPs?*

Response: No. The action proposed by Amendment 13 will not increase the amount of harvest, the intensity of harvest or the location of harvest, therefore, this action is presumed not to increase the impacts of the scallop fishery on habitats and Essential Fish Habitat (EFH). Impacts of the scallop fishery on habitat are discussed in section 5.4 of the EA, Appendix D of the FMP, and the Environmental Impact Statement (EIS) for Essential Habitat Identification and Conservation in Alaska<sup>4</sup>. The EIS also addresses impacts of the scallop fishery on the EFH assessment and designated Habitat Areas of Particular Concern. The EIS concludes that impacts on EFH from the scallop fishery are minimal and temporary.

The effects of scallop dredge gear on benthic habitats are greater than for other gear types however, the fishery occurs in areas with extreme tides, fast current flow, and high energy habitat types that have relatively fast recovery rates. The overall area impacted annually is estimated at 149 square nautical miles or about a tenth of a percent of the total benthic EFH area. The proposed amendment to the scallop FMP will not change the way the fishery impacts EFH and therefore, the proposed action will have an insignificant effect on EFH.

*4) Can the proposed action be reasonably expected to have a substantial adverse impact on public health or safety?*

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<sup>4</sup> National Marine Fisheries Service. 2005. Final Environmental Impact Statement for Essential Habitat Identification and Conservation in Alaska, DOC, NOAA, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, Alaska 99802-1668. Volumes I-VII.

Response: No. Public health and safety will not be impacted by Amendment 13. Amendment of the scallop FMP to reduce the risk of overfishing will not have substantial or adverse impacts on vessel operations, crew size, fishing practices, gear or gear usage, processing product, or the entanglement or entrapment of non-target organisms in active or inactive scallop fishing gear. The proposed action is not expected to substantially affect any of the groundfish fisheries, therefore the scallop fishery will have no substantial impacts of on public health and safety in other fisheries. Amendment 13 will not change the way the scallop fishery operates under the scallop FMP, therefore, the proposed action will have an insignificant effect on public health and safety.

*5) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species?*

Response: No. Endangered or threatened species and their critical habitat will not be adversely affected by Amendment 13. Impacts of the scallop fishery on endangered or threatened species, marine mammals, or critical habitat of these species, are discussed in chapter 5 and 6 of the Scallop EA. The scallop fishery is classified as Category III fishery under the Marine Mammal Protection Act. A fishery that interacts only with non-strategic stocks and whose level of take has insignificant impact on the stocks is placed in Category III.

Scallop dredges are small, and while fishing, this gear remains within one foot of the ocean bottom. Gear interactions with sedentary fauna, flat fish and crabs occurs in marginal habitat for scallops. The observer program for the scallop fishery has not recorded any take of endangered or threatened species or marine mammals since its inception in 1996. However, anecdotal information suggests a small pinniped was captured in a scallop dredge fishing off Yakutat, Alaska in 2009. The proposed action will not change the way the scallop fishery impacts endangered or threatened species, marine mammals, or critical habitat of these species under the FMP and, therefore, the proposed actions will have an insignificant effect on these species and their critical habitat.

*6) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?*

Response: No. The proposed action will not substantially impact the biodiversity and ecosystem function within the EEZ off Alaska covered by the scallop FMP. Conclusions on the impacts of the scallop fishery on biodiversity and ecosystem function can be drawn from the EIS for EFH interaction and conservation in Alaska and chapter 5 of the EA for Amendment 13. The proposed action will not change the way the scallop fishery impacts biodiversity and ecosystem function under the FMP and therefore, the proposed actions will have an insignificant effect on biodiversity and ecosystem function.

Amendment 13 would establish an ecosystem category for non-target scallop species that would require a special permit to catch and retain them. Placing non-target scallop species in the ecosystem category may offer increased protection of these species during vulnerable life history

stages and marginal environment conditions thus providing potential for improved function but substantial change is not anticipated.

*7) Are significant social or economic impacts interrelated with natural or physical environmental effects?*

Response: No social or economic impacts are interrelated with significant natural or physical environmental effects, as discussed in chapters 4 and 5 of the EA.

*8) Are the effects on the quality of the human environment likely to be highly controversial?*

Response: The effects of this action on the quality of the human environment are insignificant and not controversial, as discussed in the EA. No members of the public identified any controversial aspects of the predicted effects of the quality of the human environment. Development of this action was a consensus process with the State of Alaska.

*9) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas?*

Response: No. The scallop fishery takes place in waters off shore of Alaska, and no unique areas are present or known to co-occur with scallop fishing grounds. The actions will not impact unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas.

*10) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?*

Response: No. As discussed in chapter 2 of the EA, the annual catch limit, accountability measures, and ecosystem component were developed to incorporate new scientific information. These measures account for uncertainty in the overfishing limit and establish annual catch limits to prevent overfishing. Chapter 3 contains the methodology used to analyze impacts on the scallop stocks, the only component of the human environment impacted.

*11) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?*

Response: No past, present, or reasonably foreseeable future actions were identified that would combine with the effects of this action to result in cumulatively significant impacts (EA chapter 6).

*12) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?*

Response: No. This action will have no impacts on districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places and will not cause loss or destruction of significant scientific, cultural, or historical resources.

*13) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?*

Response: No. This action will not affect the introduction or spread of non-indigenous species, because there will be no change in fishing practices that may introduce such organisms into the marine environment.

*14) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?*

Response: No. This action will not establish a precedent for future actions.

*15) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?*

Response: No. This action poses no known risk of violation of federal, state, or local laws or requirements for the protection of the environment.

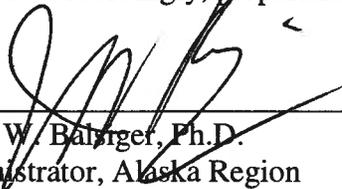
*16) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?*

Response: No. Chapter 6 of the EA analyzes the cumulative effects of the proposed action. No past, present, or reasonably foreseeable future actions were identified that would combine with the effects of this action to result in cumulatively significant impacts.

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## DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting Environmental Assessment prepared for Amendments 13, I have determined that the proposed action will not significantly impact the quality of the human environment as described above and in the supporting Environmental Assessment. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for these actions is not necessary.

  
James W. Balinger, Ph.D.  
Administrator, Alaska Region

9.23.11  
Date



**UNITED STATES DEPARTMENT OF COMMERCE**  
 National Oceanic and Atmospheric Administration  
 Office of General Counsel  
 P.O. Box 21109  
 Juneau, Alaska 99802-1109

**ATTORNEY-CLIENT PRIVILEGED - DO NOT RELEASE - FOIA EXEMPT**

CERTIFICATION OF ATTORNEY REVIEW

MEMORANDUM FOR: James W. Balsiger, Ph.D.  
 Administrator, Alaska Region

FROM: Lisa L. Lindeman  
 Alaska Regional Counsel

SUBJECT: Approval of Amendment 13 to the Fishery Management  
 Plan for the Scallop Fishery off Alaska (without a rule)  
 [RIN 0648-XA421].

This action is legally sufficient and raises no significant legal issue(s) other than those addressed in any attached legal memorandum. I have consulted with Susan Auer, the regional enforcement attorney on this matter.

Additional Comments:

Legal Memorandum Attached:  yes  no

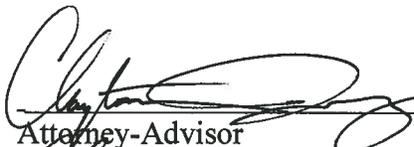
A Taking Implication Assessment Prepared:  
 (if prepared, see attachment)  yes  no

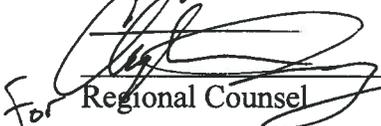
No TIA was prepared:  No effect on private property.

Exclusion because...[or  
 Categorically excluded under  
 DOC Takings Guidelines,  
 paragraph III.C.2.c.iv.]

Generic TIA.

Magnuson-Stevens Act  
 Proposed Rule.

 9/23/11  
 Attorney-Advisor Date

 9/23/11  
 Regional Counsel Date

cc: GCF, NOAA GC

