

20 AAC 05.230(a)(13) is amended to read:

20 AAC 05.230. Administrative areas. (a)

.....

(13) Scallop administrative areas.

Code

Letter

Name and Description

B

Statewide Area – all waters subject to the jurisdiction of the state.
[, EXCLUDING THOSE WATERS DESCRIBED IN H IN THIS
PARAGRAPH.

H

COOK INLET AREA – COMPRISED OF THE WATERS OF
THE COOK INLET SCALLOP REGISTRATION AREA AS
SPECIFIED IN 5 AAC 38.076(b)(4).]

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(Eff. 12/18/74, Register 52; am 5/12/75, Register 54; am 4/9/76, Register 58; am 2/25/77, Register 61; am 1/21/78, Register 65; am 3/2/80, Register 73; am 1/2/81, Register 77; am 1/29/82, Register 81; am 10/30/82, Register 84; am 12/30/82, Register 84; am 2/29/84, Register 89; am 10/28/84, Register 92; am 11/25/84, Register 92; am 12/29/84, Register 92; am 4/13/85, Register 94; am 8/24/85, Register 95; am 9/26/85, Register 95; am 12/22/85, Register 96; am 11/22/87, Register 104; am 12/20/87, Register 104; am 8/20/89, Register 111; am 1/17/91, Register 117; am 1/2/92, Register 121; am 2/11/95, Register 133; am 5/4/95, Register 134; am 12/14/95, Register 136; am 12/4/96, Register 140; am 1/21/98, Register 145; am 5/16/2002, Register 162; am 9/21/2003, Register 167; am ____/____/2004, Register _____)

Authority: AS 16.43.100 AS 16.43.110 AS 16.43.200

20 AAC 05 is amended by adding new sections to Article 14 to read:

20 AAC 05.1425. Establishment of a vessel permit system. The commission establishes a vessel permit system for the statewide weathervane scallop fishery. (Eff. ____/____/2004, Register _____)

Authority: AS 16.43.100 AS 16.43.110 AS 16.43.450

20 AAC 05.1427. Limitation of statewide weathervane scallop fishery. (a) The commission designates the statewide weathervane scallop fishery as one that has reached a level of participation that requires the limitation of entry.

(b) The commission finds it necessary to limit the statewide weathervane scallop fishery under a vessel permit system. (Eff. ____/____/2004, Register _____)

Authority: AS 16.43.100 AS 16.43.110 AS 16.43.450

20 AAC 05.1428. Application process for statewide weathervane scallop fishery vessel entry permit. (a) The application period for vessel entry permits for the statewide weathervane scallop fishery is from May 15, 2004 through September 1, 2004.

(b) A person or an entity that solely or jointly owns, as of May 15, 2004, a vessel that is qualified for a vessel entry permit under 20 AAC 05.1430 may apply for a vessel entry permit during the application period. In the case of joint ownership, only one jointly held permit will be issued, and the name of each joint owner and percentage of each joint owner's interest must be listed on the application. The applicant shall provide proof of vessel ownership with the application for a vessel entry permit. Evidence of vessel ownership in order of priority includes

- (1) for a vessel required to be documented under the laws of the United States, the United States Coast Guard abstract of title issued for that vessel;
- (2) a certificate of registration that determines vessel ownership;
- (3) a bill of sale;
- (4) other evidence that the commission determines is adequate proof of vessel ownership.

(c) The application fee for a statewide weathervane scallop fishery vessel entry permit is \$200. This fee is nonrefundable and must be paid at the time an applicant submits an application. (Eff. ____/____/2004, Register _____)

Authority: AS 16.43.100 AS 16.43.110 AS 16.43.460

20 AAC 05.1430. Initial issuance of statewide weathervane scallop fishery vessel entry permit. (a) To qualify for a vessel entry permit for the statewide weathervane scallop fishery, a vessel must have legally participated in the Alaska weathervane scallop fishery and commercially harvested at least 1,000 pounds of weathervane scallops

- (1) in at least one calendar year during the time period 1991 through 1996, and in at least three calendar years during the time period 1997 through 2003; or
- (2) in at least four calendar years during the time period 1997 through 2003.

(b) The commission will find that a vessel has legally participated during the applicable time period under (a) of this section, if during that time period

- (1) scallops were lawfully harvested from the vessel with a scallop dredge as described in 5 AAC 38.055, 5 AAC 38.076(f), and 5 AAC 38.322 during a fishing period established by the Department of Fish and Game under 5 AAC 38.076(h);
- (2) the vessel had a person on board who held an interim-use permit for the fishery under AS 16.43.210;
- (3) the vessel was licensed as a commercial vessel under AS 16.05.490 and registered with the Department of Fish and Game under 5 AAC 38.076(c) to engage in commercial fishing in the state;
- (4) scallops harvested from the vessel were sold in accordance with state and federal statutes and regulations governing the sale and use of commercially caught scallops applicable at the time of the sale, including requirements regarding proper completion of reports required of processors, buyers, and fishermen;
- (5) from July 1, 1997 through 2003, the vessel was permitted under AS 16.43.906 when fishing in waters within the internal waters of the state of Alaska and the territorial sea.

(6) from April 11, 1997 through 2003 the vessel had a valid federal permit or license when fishing in the exclusive economic zone (EEZ).

(d) The commission will issue a vessel interim-use permit to an applicant who is contesting the denial of a vessel entry permit under AS 16.43.460 only if the applicant presents an issue which, if resolved in the applicant's favor, would entitle the applicant to a vessel entry permit. A vessel interim-use permit issued under this subsection may not be renewed after a final decision has been issued upholding the denial of the permit.

(e) Vessel interim-use permits and vessel entry permits issued for the statewide weathervane scallop fisheries will restrict the maximum overall length of the vessel for which the permit will be used. Vessel entry permits will be restricted to use on a vessel that is no longer than the overall length of the qualifying vessel. The restriction on the vessel entry permit at initial issuance will remain, regardless of any later vessel substitution or transfer of the vessel entry permit.

(f) Vessel interim-use and vessel entry permits issued for vessels that qualify based on participation in the Cook Inlet scallop registration area only will restrict the vessel to a single six foot dredge. The restriction on the vessel entry permit at initial issuance will remain, regardless of any later vessel substitution or transfer of the vessel entry permit.

(g) In this section,

(1) "Cook Inlet scallop registration area" means all waters of the Cook Inlet registration area specified in 5 AAC 38.300 ;

(2) "pounds" means shucked meat. (Eff. ____/____/2004, Register _____)

Authority: AS 16.43.100 AS 16.43.110 AS 16.43.460

20 AAC 05.1432. General provisions for the statewide weathervane scallop fisheries vessel permit system. (a) Except for a temporary substitution of a vessel under 20 AAC 05.1410(a), a vessel permit can only be held by the vessel owner. If there is a change in the ownership of a vessel for which a vessel permit has been issued, the vessel permit is invalid unless it is transferred to the new vessel owner. A change in the ownership of a vessel occurs on the date the vessel ownership passes to a different person or entity. In the case of joint ownership, a change in ownership occurs on the date that any of the joint owner's interest passes to a different person or entity or there is a change in the percentage of any joint owner's interest. The new vessel owner shall notify the commission in writing within 30 days of the change in ownership.

(b) Unless the ownership interest existed on January 23, 2004, a person or an entity may not hold any degree of ownership interest in more than one vessel entry permit in the statewide weathervane scallop fishery. For purposes of this subsection, an ownership interest in a vessel entry permit includes an ownership interest in any entity having an ownership interest in the vessel entry permit, either directly or indirectly through one or more intermediate entities. Ownership interests include partnerships and ownership of shares. A request for transfer of a vessel entry permit will be denied if the commission determines that the transfer would result in a transferee holding an ownership interest in more than one vessel entry permit in the statewide weathervane scallop fishery.

(c) The commission may request information necessary to determine whether a transfer of a vessel entry permit would result in the transferee holding an ownership interest in more than one vessel entry permit in the statewide weathervane scallop fishery. The commission will deny the request for a transfer if the requested information is not supplied.

(d) It is unlawful for a person or an entity to operate a vessel in the statewide weathervane scallop fishery unless a vessel entry permit or vessel interim-use permit
(1) has been issued for the vessel under 20 AAC 05.1430; and
(2) is displayed in a prominent location on the vessel and available for inspection at all times.

(e) The commission shall deny the transfer of a vessel entry permit if the commission determines that it would increase the number of vessels participating in the Alaska weathervane scallop fishery so as to be contrary to the purposes of AS 16.43 or to be beyond the upper bound of an optimum number range adopted under the authority of AS 16.43.470. (Eff. ____/____/2004, Register _____)

Authority: AS 16.43.100 AS 16.43.450 AS 16.43.520
AS 16.43.110 AS 16.43.460

20 AAC 05.1434. Substitution of a statewide weathervane scallop vessel. (a)

If a vessel is lost or damaged to the extent the vessel is inoperable, the holder of the vessel permit may request the substitution of another vessel that does not exceed the overall length of the original vessel for the remainder of the calendar year. A request for temporary substitution of a vessel entry permit must be made on the form designated Request for Temporary Substitution of Vessel. If the temporary substitution is approved by the commission, the commission will withdraw the original vessel entry permit and reissue the permit with the substitute vessel indicated on it.

(b) The holder of a vessel entry permit may request a permanent substitution of another vessel that is owned by the vessel entry permit holder and does not exceed the maximum overall length indicated on the original vessel permit. For purposes of this section, the commission will determine ownership only on the basis of written documentation. A request for permanent substitution of a vessel must be made on the form designated Request for Permanent Substitution of Vessel.

(c) A substitute vessel is subject to all terms and conditions attached by the commission to the original vessel entry permit. (Eff. ____/____/2004, Register _____)

Authority: AS 16.43.100 AS 16.43.110 AS 16.43.490

20 AAC 05.1436. Transfer of a statewide weathervane scallop vessel entry permit. (a) A request for a permanent transfer of a vessel entry permit must be made on the form designated Request for Permanent Transfer of Vessel Entry Permit provided by the commission. A request for a transfer may be submitted pending completion of a change in ownership. However, a vessel entry permit will not be issued to the new owner until proof of ownership is submitted to the commission.

(b) The vessel permit holder and the proposed transferee must complete the form specified in (a) of this section, including the Required Vessel Entry Permit Transfer

Information portion and submit it to the commission. If a proposed transferee is an entity, the proposed transferee must provide written documentation identifying all shareholders holding at least five percent of the entity's stock, and all current officers, directors, partners, members, or managers. The proposed transferee must acquire a 100 percent of the ownership interest in the vessel identified on the form. The authorized representative of the holder and the authorized representative of the proposed transferee each shall swear to the commission under penalty of unsworn falsification that, to the person's knowledge, (1) the information submitted to the commission on the form and all supporting documents and other information provided at any time in support of the transfer request is true; (2) the transfer is not in violation of AS 16.43.520(e); and (3) neither the holder or the proposed transferee is prohibited by law or court or administrative order from participating in the transfer. The signatures of the authorized representatives on the affidavit portion of the form must be witnessed by a notary public or Alaska postmaster. The commission will deny a request for permanent transfer of a vessel entry permit if the authorized representative of the holder or authorized representative of the proposed transferee fails to complete and sign the form as required under this section.

(c) In addition to the requirements under (b) of this section, the proposed transferee shall certify that the requested transfer of a vessel entry permit would not create an ownership interest in more than one vessel entry permit in the statewide weathervane scallop fishery as prohibited under 20 AAC 05.1432(b).

(d) A request for permanent transfer of a vessel entry permit under this section must include an accurate and complete copy of any written transfer agreement for the vessel entry permit and any written agreements for the later transfer of the vessel entry permit. If there is an oral agreement for the transfer of the permit or any oral agreement for the later transfer of the permit, a written statement containing all terms and conditions of the oral agreement or agreements must be submitted to the commission with the transfer request form. The commission will deny the transfer of a vessel entry permit under this section if the commission finds the terms of an agreement are inconsistent with the material information provided under (b) and (c) of this section.

(e) A vessel owner may request a simultaneous transfer of a vessel entry permit to an eligible transferee and the substitution of another vessel for the vessel identified on the vessel entry permit. The substitute vessel is subject to all terms and conditions attached by the commission to the original qualifying vessel. (Eff. ____/____/2004, Register _____)

Authority: AS 16.43.100 AS 16.43.110 AS 16.43.480

20 AAC 05.1438. Annual renewal of a statewide weathervane scallop vessel entry permit. (a) An application for annual renewal of a vessel entry permit must be submitted to the commission on a form provided by the commission. The renewal form must be completed and signed by the vessel owner, or by an agent authorized under 20 AAC 05.1960. The total annual fee for the vessel entry permit must be submitted with the application.

(b) The annual renewal form for a vessel entry permit under this section must contain the names of the interim-use permit holders who will operate the vessel in the

fishery. The owner of a vessel for which a vessel entry permit is issued must notify the commission in writing of a change in the interim-use permit holders who are authorized to operate the vessel.

(c) An entity, except for a publicly held corporation, that holds a vessel entry permit must provide an update of all shareholders holding at least five percent of the entity's stock, and all current directors, officers, partners, members, and managers and affirm the entity's continuing existence as a corporation or partnership with the annual renewal of the vessel entry permit.

(d) A vessel entry permit is forfeited and reverts to the commission if it has not been renewed by December 31 of the second consecutive calendar year after its issuance or last renewal, unless waived by the commission upon demonstration of good cause. Unless renewal is waived for good cause, a forfeited permit may not be reissued or renewed.

(e) The administrative closure of the statewide weathervane scallop fishery for the entire season is good cause not to renew a vessel entry permit for that calendar year. If good cause exists under this subsection, the commission will waive the payment of fees for that year. A vessel owner may request a refund of any fees that have already been received by the commission by submitting the vessel entry permit with a written request that specifies the circumstances that prevented the vessel from participating in the fishery. (Eff. ____/____/2004, Register _____)

Authority AS 16.43.100 AS 16.43.110 AS 16.43.500

20 AAC 05.1440. Annual renewal fees for a statewide weathervane scallop vessel entry permit. (a) The annual fee for the issuance or renewal of a vessel entry permit or vessel interim-use permit for a vessel with an overall length of 80 feet or less in the statewide weathervane scallop fishery will be the lesser of

- (1) \$2,500; or
- (2) one-half of one percent of the estimated average gross earnings of vessels with an overall length of 80 feet or less that fished in the fishery, rounded to the nearest fifty dollars.

(b) The annual fee for the issuance or renewal of a vessel entry permit or vessel interim-use permit for a vessel with an overall length greater than 80 feet in the statewide weathervane scallop fishery will be the lesser of

- (1) \$2,500; or
- (2) one-half of one percent of the estimated average gross earnings of vessels with an overall length greater than 80 feet that fished in the fishery, rounded to the nearest fifty dollars.

(c) Under (a) and (b) of this section, the average gross earnings per vessel fished will be estimated by the commission in June of the year immediately preceding the year for which the annual fee applies. The estimates will be based upon the most recent three years in which a fishery occurred and for which data are available. If less than three years of data are available, the estimate will be made using data from the available years. (Eff. ____/____/2004, Register _____)

Authority: AS 16.43.100 AS 16.43.110 AS 16.43.510

20 AAC 05.1441. Transfer and vessel substitution fees for the statewide weathervane scallop fisheries. (a) The processing fee for the permanent transfer of a vessel entry permit is \$200.

(b) The processing fee for the temporary or permanent substitution of a vessel for the one that is currently authorized is \$200.

(c) The processing fee for the simultaneous permanent transfer of a vessel permit and the substitution of another vessel for the vessel identified on the current vessel entry permit is \$300. (Eff. ____/____/2004, Register _____)

Authority: AS 16.43.100 AS 16.43.110 AS 16.43.510

20 AAC 05.1443. Applicability of 20 AAC 05.1425 – 20 AAC 05.1444. The provisions of 20 AAC 05.1425 – 20 AAC 05.1444 do not apply after December 31, 2008. (Eff. ____/____/2004, Register _____)

Authority: AS 16.43.100 AS 16.43.110 AS 16.43.510

20 AAC 05.1444. Definitions for 20 AAC 05.1425 – 20 AAC 05.1444. In 20 AAC 05.1425 – 20 AAC 05.1444, unless the context required otherwise,

(1) “Alaska weathervane scallop fishery” means weathervane scallops commercially harvested in the internal waters of the state of Alaska, the territorial sea, and the adjacent United States Exclusive Economic Zone (EEZ) and sold under a W22B or W22H interim-use permit and;

(2) “entity” means a corporation, company, partnership, firm, association, organization, joint venture, trust, society, or other legal entity other than a person;

(3) "exclusive economic zone" means all the waters seaward of the territorial sea to a boundary line drawn in such a manner that each point on the line is 200 nautical miles from the baseline from which the territorial sea is measured;

(4) “lost” means involuntarily sunk or destroyed;

(5) “overall length” means the horizontal distance between the outboard side of the foremost part of the stem and the outboard side of the aftermost part of the stern, excluding fittings and attachments;

(6) “person” has the meaning given in AS 16.43.990;

(7) “retired” means sold for scrap, or voluntarily sunk or destroyed by the owner;

(8) “Statewide weathervane scallop fishery” means the commercial taking of weathervane scallops in all internal waters of the state of Alaska and the territorial sea. (Eff. ____/____/2004, Register _____)

Authority: AS 16.43.100 AS 16.43.450 AS 16.43.460
AS 16.43.110