NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 12/07/2010

Department of Commerce
National Oceanic and Atmospheric Administration
FOR CERTIFYING OFFICIAL: Simon Szykman
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 07/29/2010

ACTION REQUESTED: Extension without change of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 201007-0648-003
AGENCY ICR TRACKING NUMBER:
TITLE: American Fisheries Act Reports in the Bering Sea and Aleutian Islands Management Area (formerly Alaska Cooperatives in the Bering Sea and Aleutian Islands)
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0401
The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 12/31/2013 DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	156	162	225
New	155	101	38
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	-1	-4	-2
Change due to Agency Adjustment	0	-57	-185
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Kevin F. Neyland
Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs			
IC Title	Form No.	Form Name	CFR Citation
Salmon Bycatch Reduction Inter-Cooperative Agreement (ICA) application and renewal letter			50 CFR 679
Annual Cooperative Report			50 CFR 679.61
Inshore Catcher Vessel Cooperative Pollock Catch report			50 CFR 679.61
Agent for Service of Process			50 CFR 679.61

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request
DOC/NOAA/NMFS

2. OMB control number
a. 0648 - 0401
b. [ ] None

3. Type of information collection (*check one*)
a. [ ] New Collection
b. [ ] Revision of a currently approved collection
c. [✔] Extension of a currently approved collection
d. [ ] Reinstatement, without change, of a previously approved collection for which approval has expired
e. [ ] Reinstatement, with change, of a previously approved collection for which approval has expired
f. [ ] Existing collection in use without an OMB control number
For b-f, note Item A2 of Supporting Statement instructions

4. Type of review requested (*check one*)
a. [✔] Regular submission
b. [ ] Emergency - Approval requested by ____/____/____
c. [ ] Delegated

5. Small entities
Will this information collection have a significant economic impact on a substantial number of small entities? [ ] Yes [✔] No

6. Requested expiration date
a. [✔] Three years from approval date b. [ ] Other Specify:____/____

7. Title
American Fisheries Act Reports in the Bering Sea and Aleutian Islands Management Area

8. Agency form number(s) (*if applicable*)

9. Keywords
"Fisheries", "Fishing Industry", "Fishing Vessels"

10. Abstract

The cooperative management structure, originally implemented by the American Fisheries Act (AFA), has shifted more of the monitoring and enforcement burden to the cooperatives and their members; and has allowed National Marine Fisheries Service (NMFS) to manage the Bering Sea and Aleutian Islands Management Area (BSAI) pollock fishery more precisely. With the flexibility provided by cooperatives, vessels are able to individually (and in aggregate) come very close to harvesting exactly the amount of pollock they were allocated. Allocations of pollock and other species have allowed the AFA fleet the ability to spread their effort in time and space to accommodate Steller Sea Lion conservation measures.

11. Affected public (*Mark primary with "P" and all others that apply with "x"*)
a. ___ Individuals or households d. ___ Farms
b. p Business or other for-profit e. ___ Federal Government
c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government

12. Obligation to respond (*check one*)
a. [ ] Voluntary
b. [ ] Required to obtain or retain benefits
c. [✔] Mandatory

13. Annual recordkeeping and reporting burden
a. Number of respondents: 11
b. Total annual responses: 155
1. Percentage of these responses collected electronically: 25 %
c. Total annual hours requested: 101
d. Current OMB inventory: 162
e. Difference: -61
f. Explanation of difference
1. Program change: ____
2. Adjustment: -61

14. Annual reporting and recordkeeping cost burden (*in thousands of dollars*)
a. Total annualized capital/startup costs: 0
b. Total annual costs (O&M): 0
c. Total annualized cost requested: 0
d. Current OMB inventory: 0
e. Difference: 0
f. Explanation of difference
1. Program change: ____
2. Adjustment: ____

15. Purpose of information collection (*Mark primary with "P" and all others that apply with "X"*)
a. ___ Application for benefits e. X Program planning or management
b. X Program evaluation f. ___ Research
c. ___ General purpose statistics g. P Regulatory or compliance
d. ___ Audit

16. Frequency of recordkeeping or reporting (*check all that apply*)
a. [ ] Recordkeeping b. [ ] Third party disclosure
c. [✔] Reporting
1. [✔] On occasion 2. [ ] Weekly 3. [ ] Monthly
4. [ ] Quarterly 5. [ ] Semi-annually 6. [✔] Annually
7. [ ] Biennially 8. [ ] Other (describe) ____

17. Statistical methods
Does this information collection employ statistical methods
[ ] Yes [✔] No

18. Agency Contact (person who can best answer questions regarding the content of this submission)
Name: Patsy A. Bearden
Phone: 907-586-7008

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

(a) It is necessary for the proper performance of agency functions;

(b) It avoids unnecessary duplication;

(c) It reduces burden on small entities;

(d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;

(e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;

(f) It indicates the retention period for recordkeeping requirements;

(g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):

- (i) Why the information is being collected;
- (ii) Use of information;
- (iii) Burden estimate;
- (iv) Nature of response (voluntary, required for a benefit, mandatory);
- (v) Nature and extent of confidentiality; and
- (vi) Need to display currently valid OMB control number;

(h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);

(i) It uses effective and efficient statistical survey methodology; and

(j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee	Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)	
Signature signed by Emily Menashes	Date 07/09/2010
Signature of NOAA Clearance Officer	
Signature signed by Sarah Brabson	Date 07/12/2010

SUPPORTING STATEMENT
AMERICAN FISHERIES ACT REPORTS IN THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA
OMB CONTROL NO. 0648-0401

INTRODUCTION

This request is for a renewal of the existing collection-of-information and changes the name of this collection from "Alaska Cooperatives in the Bering Sea & Aleutian Islands" to read "American Fisheries Act Reports in the Bering Sea and Aleutian Islands Management Area."

National Marine Fisheries Service (NMFS) manages the groundfish fisheries in the Exclusive Economic Zone (EEZ) of the Bering Sea and Aleutian Islands Management Area (BSAI). The North Pacific Fishery Management Council (Council) prepared the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq*. (Magnuson-Stevens Act) as amended in 2006. Regulations implementing the FMP appear at 50 CFR part 679.

On October 21, 1998, the President signed into law The American Fisheries Act, 16 U.S.C. 1851 (AFA). The AFA established a limited access program for the inshore sector of the BSAI pollock fishery that is based on the formation of fishery cooperatives around each inshore pollock processor. NMFS issues a single pollock allocation to each cooperative and the cooperative may make sub-allocations of pollock to each individual vessel owner in the cooperative.

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

With respect to the fisheries off Alaska, the AFA Program is a suite of management measures that fall into four general categories:

- Regulations that limit access into the fishing and processing sectors of the BSAI pollock fishery and that allocate pollock to such sectors (50 CFR 679.64)
- Regulations governing the formation and operation of fishery cooperatives in the BSAI pollock fishery (50 CFR 679.61 and 679.62)
- Regulations to protect other fisheries from spillover effects from the AFA (50 CFR 679.64).
- Regulations governing catch measurement and monitoring in the BSAI pollock fishery (50 CFR 679.63)

These regulations are necessary to achieve the AFA's objective of decapitalization and rationalization of the BSAI pollock fishery. The Council and NMFS do not have authority to recommend or implement a program that would define the pollock industry sectors differently, change the sectors allocation percentages, or change the lists of vessels and processors that are authorized to participate in each sector. Consequently, all four of the AFA-based categories mirror the provisions of the AFA with respect to pollock industry sectors and sector allocations.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with applicable NOAA Information Quality Guidelines.

Fishery cooperatives are formed by groups of vessel owners to provide an alternative to the open access race for fish. Under a fishery cooperative, the members agree to divide the available quota among themselves in a manner that eliminates a wasteful competition for fish and allows participants to maximize productivity. The AFA authorizes the formation of fishery cooperatives in all sectors of the BSAI pollock fishery, grants anti-trust exemptions to cooperatives in the mothership sector, and imposes operational limits on fishery cooperatives in the BSAI pollock fishery.

The cooperatives are taking advantage of the program to remove excess fishing capacity with expectations of up to 30 percent reductions in fleet size for all three sectors of the BSAI pollock fishery. The co-op system also allows cooperatives to make more effective, coordinated use of the vessels remaining in the cooperatives.

Each cooperative must appoint a designated representative and agent for service of process. A designated representative is intended to fulfill regulatory requirements on behalf of the cooperative including, but not limited to: 1) filing of cooperative contracts, 2) filing of annual reports, and in the case of inshore sector catcher vessel cooperatives, 3) signing cooperative fishing permit applications and 4) completing and submitting inshore catcher vessel pollock cooperative catch reports. The designated representative is the primary contact person for NMFS on issues relating to the operation of the cooperative.

In addition, a cooperative must appoint an agent who is authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of the cooperative. The cooperative must provide the Regional Administrator with the name, address and telephone number of the appointed agent. Service on or notice to the cooperative's appointed agent constitutes service on or notice to all members of the cooperative.

a. Cooperative annual report

Initially, all AFA cooperatives were required to submit preliminary and final annual written reports on directed pollock fishing activity to the Council. The AFA annual reporting requirements were implemented under a final rule (67 FR 79692; December 30, 2002)

implementing Amendment 61 to the FMP. The purposes of the annual reports as described in the final rule, are "to assist the Council and NMFS in meeting the requirements of section 210(a)(1) of the AFA" and to provide the Council information upon which to make decisions on cooperative allocations and on sideboard protection measures.

The Council originally recommended both a preliminary and a final annual report, because it wanted to have the preliminary report available for its December Council meeting when it adopts annual groundfish harvest specifications for the upcoming fishing year. The final AFA cooperative report is due by February 1 of the following year. The AFA cooperative annual reports are required to provide information about how the cooperative distributed pollock and other groundfish species allocations, and prohibited species allowances, among the vessels in the cooperative; the catch of these species, by area, for each vessel in the cooperative; information about how the cooperative monitored fishing by its members; and a description of any actions taken by the cooperative to penalize vessels that exceeded the catch allocations and prohibited species catch allowances made to the vessel by the cooperative.

The Council recognized that, because the pollock fisheries close on November 1, one month may not be enough time for the AFA cooperative representatives to compile all of the required information for the annual report. In addition, it was possible that some of the catch and bycatch data would be updated after the end of the year. Therefore, the Council recommended that NMFS require a preliminary report to provide as much information as was available by December 1, and a final report by February 1 of the following year to update or add any information that became available after December 1.

Recently, the Council does not rely on the preliminary cooperative annual report to develop its recommendations on final groundfish specifications to the extent it originally thought it would. Therefore, submittal of annual cooperative reports is changed. The preliminary report was removed in a nonsubstantive change request approved by the Office of Management and Budget on January 29, 2010. The final cooperative report, renamed the annual cooperative report, must cover fishing activities through December 1 of each year, submitted and postmarked by February 1 of the following year or received by a private courier service by the submission deadline. Each AFA fishery cooperative must submit the annual report to the Council at 605 West 4th Ave, Suite 306, Anchorage, AK 99501.

The "race for the fish," and associated high prohibited species catch (PSC) rates, occur because the competition created by PSC does not encourage individual fishing operations to take full account of their actions when they make fishing decisions. An operation that fished "dirty," that is, an operation that fished with high rates of associated PSC, obtained a benefit that accrued to it alone: cheaper groundfish. But the operation did so by hastening the closure of the groundfish fishery. If the closure came before the target groundfish total allowable catch (TAC) was fully caught, the entire groundfish fleet would incur a cost associated with the value of the foregone groundfish (unharvested TAC). The operation that was fishing dirty would bear some of this cost, but much of it would be borne by other operations in the fishery because no single operation would fully bear the costs of dirty fishing. However, dirty operations would realize

economic benefits from their actions by shifting a large part of their bycatch costs to other operations. Thus, dirty operations do not have an incentive to control PSC rates.

The accounting necessary for the annual cooperative report involves the services of SeaState, Inc., a company that provides catch accounting services. SeaState is authorized by the companies to receive and process data and to report on the status of the harvest. Each AFA cooperative collects and summarizes information on its allocated target species all through the year and provides it to SeaState to perform parallel accounting of "sideboard" species for each cooperative. Sideboard species are non-pollock groundfish species allocated annually as incidental catch to AFA and other fishery cooperatives. SeaState summarizes each cooperative's target species and sideboard information and maintains analyses of cooperatives compared with each other in order to keep any one and all cooperatives from overfishing. All three types of information for each cooperative are included in the annual report. The Council posts the reports on its website at http://www.fakr.noaa.gov/npfmc/default.htm.

Cooperative annual report must include:

- Cooperative's allocated catch of pollock and sideboard species
- Any sub-allocations of pollock and sideboard species made to individual vessels on a vessel-by-vessel basis
- Cooperative's actual retained catch and discards of pollock, sideboard species, and prohibited species catch (PSC) on an area-by-area and vessel-by-vessel basis
- Description of monitoring method for fisheries in which cooperative vessels participate
- Description of any actions taken by the cooperative in response to any vessels that exceed their allowed catch and bycatch in pollock and all sideboard fisheries
- Total weight of pollock landed outside State of Alaska waters on a vessel-by-vessel basis
- Number of salmon taken by species and season
- Estimated number of salmon avoided as demonstrated by the movement of fishing effort away from salmon savings areas
- List of number of times each vessel appeared on the weekly "dirty" 20 lists for both salmon species

Cooperative annual report, Respondent	
Estimated number of respondents	**11**
Total annual responses	**11**
Estimated responses per respondent = 1	
Total burden hours	**88 hr**
Estimated hours per response = 8	
Total personnel cost	**$2,200**
Personnel cost $25/hr	
Total miscellaneous costs (17.82)	**$18**
Postage cost (1.32 x 11 = 14.52)	
Photocopy cost (11 x 6 pg x 0.05 = 3.30)	

Cooperative annual report, Federal Government	
Total annual responses	**11**
Total burden hours (5.5)	**6 hr**
Estimated hours per response = 0.5	
Total personnel cost	**$150**
Personnel cost $25/hr	
Total miscellaneous cost	**0**

b. Cooperative Catch Report.

The designated representative of each AFA inshore catcher vessel cooperative must submit to the Regional Administrator a catcher vessel cooperative pollock catch report detailing each delivery of pollock harvested under the allocation made to that cooperative. The owners of the member catcher vessels in the cooperative are jointly responsible for compliance and must ensure that the designated representative complies with the applicable recordkeeping and reporting requirements.

The cooperative pollock catch report must be received by the Regional Administrator by 1200 hours Alaska local time, one week after the date of completion of delivery. No form exists for this report. A cooperative catch report may be submitted as an attachment to an e-mail or by fax.

Cooperative catch report

Cooperative account number
Catcher vessel Alaska Department of Fish and Game (ADF&G) number
Inshore processor Federal processor permit number
Delivery date
Amount of pollock (in lb) delivered plus weight of at-sea pollock discards
ADF&G fish ticket number

Cooperative catch report, Respondent	
Number of respondents	**11**
Total annual responses	**132**
Number responses per respondent = 12	
Total burden hours (10.56)	**11 hr**
Estimated hours per response = 5 min/60 min	
Total personnel cost	
Personnel cost $25/hr	**$275**
Total miscellaneous cost (16.50)	**$17**
Fax ($5 x 2 = 10)	
Email attachment (0.05 x 130 = 6.50)	

Cooperative catch report, Federal Government	
Total annual responses	**132**
Total burden hours (10.56)	**11 hr**
Estimated hours per response (5 min/60 min)	
Total personnel cost	**$275**
Personnel cost $25/hr	
Total miscellaneous cost	**0**

c. Agent for Service of Process

Each cooperative must appoint an agent who is authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of the cooperative. This agent may be the same person as the designated representative. Service on or notice to the cooperative's appointed agent constitutes service on or notice to all members of the cooperative.

Legal process is the proceeding in any civil lawsuit or criminal prosecution and, particularly, describes the formal notice or writ used by a court to exercise jurisdiction over a person or property. Such process is usually "served" upon a party, to compel that party to come to court, and may take the form of a summons, mandate, subpoena, warrant, or other written demand issued by a court.

No form exists for this appointment, but the cooperative must submit to NMFS the name, address and telephone number of the appointed agent. This information may be submitted by e-mail.

Agent for Service of Process, Respondent	
Number of respondents	**11**
Total annual responses	**11**
Responses per respondent = 1	
Total burden hours (0.92)	**1 hr**
Hours per response = 5 min/60 min	
Total personnel cost	**$25**
Personnel cost $25/hr	
Total miscellaneous cost	**$1**
Email (0.05 x 11 = $0.55)	

Agent for Service of Process, Federal Government	
Total annual responses	**11**
Total burden hours	**1 hr**
Hours per response= 5 min/60 min	
Total personnel cost	**$25**
Total miscellaneous cost	**0**

d. Salmon bycatch reduction inter-cooperative agreement (ICA).

The salmon bycatch reduction inter-cooperative agreement (ICA) was created to enable the pollock fleet to utilize its internal cooperative structure to coordinate the pollock fishery in a manner that reduces incidental catch rates of salmon. The ICA is a voluntary civil agreement among pollock cooperatives, Western Alaska Community Development Quota (CDQ) groups, and western Alaska subsistence salmon user groups.

The ICA includes provisions to retain the services of a private contractor to collect and analyze bycatch data and report salmon bycatch information to the ICA parties.

The ICA uses real-time salmon bycatch information to avoid unacceptably high incidental catch rates of chum and Chinook salmon. The ICA requires that the bycatch rate of a participating cooperative be compared with a pre-determined bycatch rate (base rate). All ICA provisions for fleet bycatch avoidance behavior, closures, and enforcement are to be based on the ratio of the cooperative’s rate to the base rate. An ICA cooperative is to be assigned to one of three tiers based on its bycatch rate relative to the base rate. Higher tiers correspond to higher bycatch rates. Tier assignments determine access privileges to specific fishing areas.

A representative must be appointed by the parties; this ICA Representative will file a signed copy of the initial ICA and any amended ICA to

Regional Administrator
NMFS Alaska Region
P.O. Box 21668
Juneau, AK 99802

Or by courier delivery to

Regional Administrator
NMFS Alaska Region
709 West 9th St., Suite 401
Juneau, AK 99801

The initial ICA was due to NMFS by December 1, 2007 for the 2008 fishing year. After an ICA is initially filed with NMFS, the ICA representative may submit revisions to NMFS through an ICA renewal letter, also referred to as a revised ICA.

The ICA revision must state that the previously filed ICA will remain in effect for the subsequent fishing year and must detail any material modifications to the ICA. These revisions may include changes of vessels participating in the ICA.

Salmon bycatch reduction ICA (Initial or Revision)

- Names of the AFA cooperatives, CDQ groups, and third party groups that are parties to the ICA
- Name of contractor retained to facilitate vessel bycatch avoidance behavior and information sharing
- Name(s), Federal fisheries permit numbers, and USCG documentation number(s) of ICA vessels
- Salmon bycatch avoidance behaviors for ICA vessel operators, including
  - "A" season salmon bycatch management[1]
    - Initial base rate calculation for Chinook salmon
    - Inseason adjustments to the Chinook salmon base rate calculation
    - ICA salmon savings area notices
    - Fishing restrictions for vessels assigned to Tiers
  - "B" season salmon bycatch management
    - "B" season Chinook salmon base rate
    - Non-Chinook salmon base rate
    - Inseason adjustments to the non-Chinook base rate calculation
    - ICA salmon savings area notices
    - Fishing restrictions for vessels assigned to Tiers
  - Cooperative tier assignments
  - Internal monitoring and enforcement provisions to ensure compliance of fishing activities with the provisions of the ICA
    - Provisions allowing any party of the ICA to bring suit or initiate a binding arbitration action against another for breach of the agreement.
    - Annual uniform assessments for any violation of savings area closures
      - $10,000 for the first offense
      - $15,000 for the second offense
      - $20,000 for each offense thereafter
  - ICA representative Name, telephone number, and business address
  - Provisions requiring the parties to conduct an annual compliance audit, and to cooperate fully in such audit, including providing information required by the auditor
  - Provisions requiring data dissemination in certain circumstances

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[1] The two seasons, A and B, are determined by apportionments of Chinook bycatch allowance and base rates. NMFS, after consultation with the Council, may apportion each halibut PSC limit or bycatch allowance on a seasonal basis. [679.21(e)(5)(i)]. An ICA must include provisions that dictate salmon bycatch avoidance behaviors for vessel operators subject to the ICA, including: [679.21(g)(5)(iii)(A)]

Provisions that dictate salmon bycatch avoidance behaviors for vessel operators subject to the ICA, including "A" season salmon bycatch management with an initial base rate calculation for Chinook salmon. The initial "A" season Chinook base rate shall be calculated by dividing the total number of Chinook taken incidentally in the "A" season in the prior year by the total number of metric tons of "A" season pollock catch during the prior year, with exceptions.

"B" season salmon bycatch management. [679.21(g)(5)(iii)(B)]
(1) "B" season Chinook salmon. For the "B" season of the 2008 fishing year, the Chinook salmon base rate shall be 0.05 Chinook salmon per metric ton of pollock.

Revised ICA, Respondent	
Number of respondents	**1**
Total annual responses	**1**
Responses per year = 1	
Total burden hours	**1**
Estimated time per response	
1 hr for renewal letter or revised ICA	
Total personnel cost	**$25**
Cost $25/hr	
Total miscellaneous cost ($1.38)	**$2**
Photocopy (10 pp x .05 x 1= 0.50)	
Postage (0.88 x 1 = 0.88)	

Revised ICA, Federal Government	
Total annual responses	**1**
Total burden hours	**1**
Estimated time per response = 1 hr	
Total personnel cost	**$25**
Total miscellaneous cost	**0**

e. ICA Appeals [REMOVED]

Actual procedure now in use:

The initial ICA is submitted to NMFS. If NMFS finds something questionable, the respondent is contacted and the two work it out to NMFS' satisfaction. There really is no appeal involved, as that term would indicate. The procedure is submittal, review, request for revision or clarification by NMFS, resubmittal, with no need for appeals. The burden for the respondent's time of process is covered under the application time.

It is anticipated that the information collected will be disseminated to the public or used to support publicly disseminated information. As explained in the preceding paragraphs, the information gathered has utility. NOAA Fisheries will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response to Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

The reports may be submitted to the Regional Administrator by mail or e-mail. The cooperative catch report may also be sent by fax.

4. Describe efforts to identify duplication.

None of the information collected as part of this information collection duplicates other collections. This information collection is part of a specialized technical program that is not like any other.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

This collection-of-information does not impose a significant impact on small entities.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

NMFS issued sideboards and season/area apportionments of pollock at the sector level and relies on fishery cooperatives for much of the day-to-day management of fishing activity at the co-op and individual vessel level. Development of an inter-cooperative agreement between all of the cooperatives prevents season/area competition for pollock and an "Olympic" race for fish in sideboard fisheries. If this program were not conducted, NMFS would be unable to continue the socioeconomic goals and objectives of the AFA, the Magnuson-Stevens Act, and the FMP.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

No special circumstances exist.

8. Provide a copy of the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. Public comment or consultation on the information collection.

A Federal Register Notice published on February 4, 2010 (75 FR 5760) solicited public comments. No comments were received.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payment or gift is provided under this program.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

The information collected is confidential under section 402(b) of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq*.). It is also confidential under NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

This information collection does not involve information of a sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

Estimated total unique respondents: 11. Estimated total responses: 155, down from 156. Estimated total burden: 101, down from 162 hours. Estimated total personnel costs: $2,525, down from $4,050.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).

Estimated total estimated miscellaneous costs: $38, down from $225.

14. Provide estimates of annualized cost to the Federal government.

Estimated total burden: 19 down from 48 hr. Estimated total personnel cost: $475, down from $1,201. Estimated total miscellaneous cost: $0, down from $47.

15. Explain the reasons for any program changes or adjustments reported.

Adjustments are made in this collection. The burden of the newly revised annual cooperative report was reduced based on actual time to complete. Other adjustments correct page count, postage rates, fax costs and in some cases, increased electronic submission.

There is one program change: there are no longer ICA appeals, but requests for additional information as part of the initial ICA submission.

Cooperative annual report
The combined estimated burden had been 12 hr. Feedback from the fishing industry showed that an estimate of 8 hr was more accurate for the one report.

A decrease of 44 burden hours, 88 instead of 132
A decrease of $1,100 personnel cost, $2,200 instead of $3,300
A decrease of $34 miscellaneous cost, $18 instead of $52.

Cooperative pollock catch report

A decrease of $141 miscellaneous cost, $17 instead of $158 (the previously approved cost was stated in error – the complete cost of $2 was calculated as a per-response cost).

Agent for Service of Process

A decrease of $10 miscellaneous cost, $1 instead of $11.

Salmon ICA

The initial ICA was submitted and approved by NMFS, with an estimated burden of 40 hr, annualized to 14 hr. From now on, renewal or revision of the existing ICA will occur, which is estimated to be 1 hr.

A decrease of 13 burden hours, 1 instead of 14

A decrease of $325 personnel cost, $25 instead of $350.

Salmon ICA Appeals [REMOVED]

A decrease of 1 respondent and response, 0 instead of 1

A decrease of 4 burden hours, 0 instead of 4

A decrease of $100 personnel cost, $0 instead of $100

A decrease of $2 miscellaneous cost, $0 instead of $2.

16. For collections whose results will be published, outline the plans for tabulation and publication.

The results of this collection-of-information will not be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

NA.

18. Explain each exception to the certification statement.

NA.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT (16 U.S.C. 1851)

(a) IN GENERAL.—Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:

98-623

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

(2) Conservation and management measures shall be based upon the best scientific information available.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

104-297

(5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

104-297, 109-479

(8) Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2), in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

104-297

(9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

104-297

(10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

97-453

(b) GUIDELINES.—The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on the national standards, to assist in the development of fishery management plans.

SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS (16 U.S.C. 1852)

97-453, 101-627, 104-297

(a) ESTABLISHMENT.—

(1) There shall be established, within 120 days after the date of the enactment of this Act, eight Regional Fishery Management Councils, as follows:

(A) NEW ENGLAND COUNCIL.—The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The New England Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(B) MID-ATLANTIC COUNCIL.—The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North Carolina and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except North Carolina, and as provided in paragraph (3)). The Mid-Atlantic Council shall have 21 voting members, including 13 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(C) SOUTH ATLANTIC COUNCIL.—The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The South Atlantic Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

SEC. 2. FINDINGS, PURPOSES, AND POLICY (16 U.S.C. 1801)

(a) FINDINGS.—The Congress finds and declares the following:

(1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, and the anadromous species which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.

104-297

(2) Certain stocks of fish have declined to the point where their survival is threatened, and other stocks of fish have been so substantially reduced in number that they could become similarly threatened as a consequence of (A) increased fishing pressure, (B) the inadequacy of fishery resource conservation and management practices and controls, or (C) direct and indirect habitat losses which have resulted in a diminished capacity to support existing fishing levels.

(3) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade. The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen.

(4) International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified, and implemented.

(5) Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.

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(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, to facilitate long-term protection of essential fish habitats, and to realize the full potential of the Nation's fishery resources.

95-354

(7) A national program for the development of fisheries which are underutilized or not utilized by the United States fishing industry, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.

101-627

(8) The collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States.

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(9) One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. Habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States.

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(10) Pacific Insular Areas contain unique historical, cultural, legal, political, and geographical circumstances which make fisheries resources important in sustaining their economic growth.

109-479

(11) A number of the Fishery Management Councils have demonstrated significant progress in integrating ecosystem considerations in fisheries management using the existing authorities provided under this Act.

109-479

(12) International cooperation is necessary to address illegal, unreported, and unregulated fishing and other fishing practices which may harm the sustainability of living marine resources and disadvantage the United States fishing industry.

(b) PURPOSES.—It is therefore declared to be the purposes of the Congress in this Act—

99-659, 101-627, 102-251

(1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by exercising (A) sovereign rights for the purposes of exploring, exploiting, conserving, and managing all fish within the exclusive economic zone established by Presidential Proclamation 5030, dated March 10, 1983, and (B) exclusive fishery management authority beyond the exclusive economic zone over such anadromous species and Continental Shelf fishery resources[, and fishery resources in the special areas]*;

(2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;

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(3) to promote domestic commercial and recreational fishing under sound conservation and management principles, including the promotion of catch and release programs in recreational fishing;

(4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;

101-627

(5) to establish Regional Fishery Management Councils to exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States;

95-354, 96-561, 104-297

(6) to encourage the development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska, and to that end, to ensure that optimum yield determinations promote such development in a non-wasteful manner; and

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(7) to promote the protection of essential fish habitat in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat.

(c) POLICY.—It is further declared to be the policy of the Congress in this Act—

(1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the conservation and management of fishery resources, as provided for in this Act;

(2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary for the conservation and management of fishery resources, as provided for in this Act;

101-627, **104-297**

(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States and citizens; considers efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; considers the effects of fishing on immature fish and encourages development of practical measures that minimize bycatch and avoid unnecessary waste of fish; and is workable and effective;

(4) to permit foreign fishing consistent with the provisions of this Act;

99-659, 101-627

(5) to support and encourage active United States efforts to obtain internationally acceptable agreements which provide for effective conservation and management of fishery resources, and to secure agreements to regulate fishing by vessels or persons beyond the exclusive economic zones of any nation;

101-627

(6) to foster and maintain the diversity of fisheries in the United States; and

104-297

(7) to ensure that the fishery resources adjacent to a Pacific Insular Area, including resident or migratory stocks within the exclusive economic zone adjacent to such areas, be explored, developed, conserved, and managed for the benefit of the people of such area and of the United States.

SEC. 3. DEFINITIONS (16 U.S.C. 1802)

As used in this Act, unless the context otherwise requires—

(1) The term "anadromous species" means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.

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(2) The term "bycatch" means fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch and release fishery management program.

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(3) The term "charter fishing" means fishing from a vessel carrying a passenger for hire (as defined in section 2101(21a) of title 46, United States Code) who is engaged in recreational fishing.

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(4) The term "commercial fishing" means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.

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Title 50: Wildlife and Fisheries

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA
Subpart F—American Fisheries Act and Aleutian Island Directed Pollock Fishery Management Measures

§ 679.63 Catch weighing requirements for vessels and processors.

(a) *What are the requirements for listed AFA catcher/processors and AFA motherships?* —(1) *Catch weighing.* All groundfish landed by listed AFA catcher/processors or received by AFA motherships must be weighed on a NMFS-certified scale and made available for sampling by a NMFS certified observer. The owner and operator of a listed AFA catcher/processor or an AFA mothership must ensure that the vessel is in compliance with the scale requirements described at §679.28(b), that each groundfish haul is weighed separately, and that no sorting of catch takes place prior to weighing.

(2) *Observer sampling station.* The owner and operator of a listed AFA catcher/processor or AFA mothership must provide an observer sampling station as described at §679.28(d) and must ensure that the vessel operator complies with the observer sampling station requirements described at §679.28(d) at all times that the vessel harvests groundfish or receives deliveries of groundfish harvested in the BSAI or GOA.

(b) *What are the requirements for unlisted AFA catcher/processors?* The owner or operator of an unlisted AFA catcher/processor must comply with the catch weighing and observer sampling station requirements set out in paragraph (a) of this section at all times the vessel is engaged in directed fishing for pollock in the BSAI.

(c) *What are the requirements for AFA inshore processors?* —(1) *Catch weighing.* All groundfish landed by AFA catcher vessels engaged in directed fishing for pollock in the BSAI must be sorted and weighed on a scale approved by the State of Alaska as described in §679.28(c), and be made available for sampling by a NMFS certified observer. The observer must be allowed to test any scale used to weigh groundfish in order to determine its accuracy.

(2) The plant manager or plant liaison must notify the observer of the offloading schedule for each delivery of BSAI pollock by an AFA catcher vessel at least 1 hour prior to offloading. An observer must monitor each delivery of BSAI pollock from an AFA catcher vessel and be on site the entire time the delivery is being weighed or sorted.

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Title 50: Wildlife and Fisheries

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA
Subpart F—American Fisheries Act and Aleutian Island Directed Pollock Fishery Management Measures

§ 679.62 Inshore sector cooperative allocation program.

(a) *How will inshore sector cooperative allocations be made?* An inshore catcher vessel cooperative that applies for and receives an AFA inshore cooperative fishing permit under §679.4(l)(6) will receive a sub-allocation of the annual BS subarea inshore sector directed fishing allowance. Each inshore cooperative's annual allocation amount(s) will be determined using the following procedure:

(1) *Determination of individual vessel catch histories.* The Regional Administrator will calculate an official AFA inshore cooperative catch history for every inshore-sector endorsed AFA catcher vessel according to the following steps:

(i) *Determination of annual landings.* For each year from 1995 through 1997 the Regional Administrator will determine each vessel's total non-CDQ inshore pollock landings from the Bering Sea Subarea and Aleutian Islands Subarea separately, except for the F/V PROVIDIAN (USCG documentation number 1062183).

(ii) *Determination of annual landings for the F/V PROVIDIAN.* For the F/V PROVIDIAN, pursuant to Public Law 106–562, the Regional Administrator will substitute the 1992 through 1994 total Bering Sea subarea and Aleutian Islands subarea pollock non-CDQ inshore landings made by the F/V OCEAN SPRAY (USCG documentation number 517100 for the purpose of determining annual cooperative quota share percentage.

(iii) *Offshore compensation.* If a catcher vessel made a total of 500 or more mt of landings of non-CDQ Bering Sea Subarea pollock or Aleutian Islands Subarea pollock to catcher/processors or offshore motherships other than the EXCELLENCE (USCG documentation number 967502); GOLDEN ALASKA (USCG documentation number 651041); or OCEAN PHOENIX (USCG documentation number 296779) over the 3-year period from 1995 through 1997, then all non-CDQ offshore pollock landings made by that vessel during from 1995 through 1997 will be added to the vessel's inshore catch history by year and subarea.

(iv) *Best two out of three years.* After steps (a)(1)(i) and (ii) of this section are completed, the 2 years with the highest landings will be selected for each subarea and added together to generate the vessel's official AFA inshore cooperative catch history for each subarea. A vessel's best 2 years may be different for the Bering Sea subarea and the Aleutian Islands Subarea.

(2) *Conversion of individual vessel catch histories to annual cooperative quota share percentages* . Each inshore pollock cooperative that applies for and receives an AFA inshore pollock cooperative fishing permit will receive an annual quota share percentage of pollock for the BS subarea that is equal to the sum of each member vessel's official AFA inshore cooperative catch history for the BS subarea divided by the sum of the official AFA inshore cooperative catch histories of all inshore-sector endorsed AFA catcher vessels. The cooperative's quota share percentage will be listed on the cooperative's AFA pollock cooperative permit.

(3) *Conversion of quota share percentage to TAC allocations.* (Effective April 1, 2005) Each inshore pollock cooperative that receives a quota share percentage for a fishing year will receive an annual allocation of Bering Sea and/or Aleutian Islands pollock that is equal to the cooperative's quota share percentage for that subarea multiplied

by the annual inshore pollock allocation for that subarea. Each cooperative's annual pollock TAC allocation may be published in the proposed and final BSAI harvest specifications notice.

(b) *What are the restrictions on fishing under a cooperative fishing permit?* A cooperative that receives a cooperative fishing permit under §679.4(l)(6) must comply with all of the fishing restrictions set out in this subpart. The owners and operators of all the member vessels that are named on an inshore cooperative fishing permit and the owners and operators of any vessels under contract to the cooperative under paragraph (c) of this section are jointly and severally responsible for compliance with all of the requirements of a cooperative fishing permit pursuant to §679.4(l)(6).

(1) *What vessels are eligible to fish under an inshore cooperative fishing permit?* Only catcher vessels listed on a cooperative's AFA inshore cooperative fishing permit or vessels under contract to the cooperative under paragraph (c) of this section are permitted to harvest any portion of an inshore cooperative's annual pollock allocation.

(2) *What harvests accrue against an inshore cooperative's annual pollock allocation?* The following catches will accrue against a cooperative's annual pollock allocation regardless of whether the pollock was retained or discarded:

(i) *Member vessels* . All pollock caught by a member vessel while engaged in directed fishing for pollock in the BS subarea unless the vessel is under contract to another cooperative and the pollock is assigned to another cooperative.

(ii) *Contract vessels* . All pollock contracted for harvest and caught by a vessel under contract to the cooperative under paragraph (c) of this section while the vessel was engaged in directed fishing for pollock in the BS subarea.

(3) *How must cooperative harvests be reported to NMFS?* Each inshore pollock cooperative must report its BS subarea pollock harvest to NMFS on a weekly basis according to the recordkeeping and reporting requirements set out at §679.5(o).

(c) *Contract fishing by non-member vessels.* A cooperative that wishes to contract with a non-member vessel to harvest a portion of the cooperative's annual pollock allocation must comply with the following procedures.

(1) *How does a cooperative contract with a non-member vessel?* A cooperative that wishes to contract with a non-member vessel must submit a completed contract fishing application to the Alaska Region, NMFS, in accordance with the contract fishing application instructions.

(2) *What information must be included on a contract fishing application?* The following information must be included on a contract fishing application:

(i) *Co-op name(s).* The names of the cooperative or cooperatives that wish to contract with a non-member vessel.

(ii) *Designated representative(s).* The names and signatures of the designated representatives for the cooperatives that wish to contract with a non-member vessel and the vessel's home cooperative.

(iii) *Vessel name.* The name and AFA permit number of the contracted vessel.

(iv) *Vessel owner.* The name and signature of the owner of the contracted vessel.

(v) *Harvest schedule.* A completed harvest schedule showing how all catch and any overages by the contracted vessel will be allocated between the contracting cooperative (or cooperatives) and the contract vessel's home cooperative. In the event that multiple cooperatives are jointly contracting with a non-member vessel, the harvest schedule must clearly specify how all catch and any overages will be allocated among the various cooperatives.

(3) *What vessels are eligible to conduct contract fishing on behalf of an inshore cooperative?* Only AFA catcher vessels with an inshore fishing endorsement that are members of an inshore cooperative may conduct contract fishing on behalf of another inshore cooperative.

(4) *Who must be informed?* A cooperative that has contracted with a non-member vessel to harvest a portion of its inshore pollock allocation must inform any AFA inshore processors to whom the vessel will deliver pollock while under contract to the cooperative prior to the start of fishing under the contract.

(5) *How must contract fishing be reported to NMFS?* An AFA inshore processor that receives pollock harvested by a vessel under contract to a cooperative must report the delivery to NMFS on the electronic delivery report by using the co-op code for the contracting cooperative rather than the co-op code of the vessel's home cooperative.

[67 FR 79734, Dec. 30, 2002, as amended at 68 FR 6836, Feb. 11, 2003; 69 FR 64688, Nov. 8, 2004; 70 FR 9868, Mar. 1, 2005]

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Title 50: Wildlife and Fisheries

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA
Subpart F—American Fisheries Act and Aleutian Island Directed Pollock Fishery Management Measures

§ 679.61 Formation and operation of fishery cooperatives.

(a) *Who is liable for violations by a fishery cooperative and cooperative members?* A fishery cooperative must comply with the provisions of this section. The owners and operators of vessels that are members of a fishery cooperative, including vessels under contract to a cooperative, are responsible for ensuring that the fishery cooperative complies with the directed fishing, sideboard closures, PSC limits and other allocations and restrictions that are applicable to the fishery cooperative. The owners and operators of vessels that are members of a fishery cooperative, including vessels under contract to a cooperative, are responsible for ensuring that all fishery cooperative members comply with the directed fishing, sideboard closures, PSC limits and other allocations and restrictions that are applicable to the fishery cooperative.

(b) *Who must comply this section?* Any fishery cooperative formed under section 1 of the Fisherman's Collective Marketing Act 1934 (15 U.S.C. 521) for the purpose of cooperatively managing directed fishing for BS subarea pollock must comply with the provisions of this section. The owners and operators of all the member vessels that are signatories to a fishery cooperative are jointly and severally responsible for compliance with the requirements of this section.

(c) *Designated representative and agent for service of process.* Each cooperative must appoint a designated representative and agent for service of process and must ensure that the cooperative's designated representative and agent for service of process comply with the regulations in this part.

(1) *What is a designated representative?* Any cooperative formed under this section must appoint a designated representative to fulfill regulatory requirements on behalf of the cooperative including, but not limited to, filing of cooperative contracts, filing of annual reports, and in the case of inshore sector catcher vessel cooperatives, signing cooperative fishing permit applications and completing and submitting inshore catcher vessel pollock cooperative catch reports. The designated representative is the primary contact person for NMFS on issues relating to the operation of the cooperative.

(2) *What is an agent for service of process?* Any cooperative formed under this section must appoint an agent who is authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of the cooperative. The cooperative must provide the Regional Administrator with the name, address and telephone number of the appointed agent. Service on or notice to the cooperative's appointed agent constitutes service on or notice to all members of the cooperative.

(3) *What is the term of service and process for replacing the agent for service of process?* The agent for service of process must be capable of accepting service on behalf of the cooperative until December 31 of the year 5 years after the calendar year for which the fishery cooperative has filed its intent to operate. The owners and operators of all member vessels of a cooperative are responsible for ensuring that a substitute agent is designated and the Agency is notified of the name, address and telephone number of the substitute agent in the event the previously designated agent is no longer capable of accepting service on behalf of the cooperative or the cooperative members within that 5-year period.

(d) *Annual filing requirements.* You must file on an annual basis, with the Council and NMFS, a signed copy of your fishery cooperative contract, and any material modifications to any such contract, together with a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request. The Council and NMFS will make this information available to the public upon request.

(1) *Must multi-year contracts be re-filed annually?* If your cooperative contract was previously filed with NMFS and the Council under this paragraph (d), then you may submit a renewal letter to NMFS and the Council by the filing deadline in lieu of the cooperative contract and business review letter. The renewal letter must provide notice that the previously filed cooperative contract will remain in effect for the subsequent fishing year. The renewal letter also must detail any material modifications to the cooperative contract that have been made since the last filing including, but not limited to, any changes in cooperative membership.

(2) *Where must contracts or renewal letters be filed?* You must send a signed copy of your cooperative contract or renewal letter and the required supporting materials to the North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK 99501; and to the NMFS Alaska Region. The mailing address for the NMFS Alaska Region is P.O. Box 21668, Juneau, AK 99802. The street address for delivery by private courier is 709 West 9th St., Suite 401, Juneau, AK 99801.

(3) *What is the deadline for filing?* The contract or renewal letter and supporting materials must be received by NMFS and by the Council at least 30 days prior to the start of any fishing activity conducted under the terms of the contract. In addition, an inshore cooperative that is also applying for an allocation of BS subarea pollock under §679.62 must file its contract, any amendments hereto, and supporting materials no later than December 1 of the year prior to the year in which fishing under the contract will occur.

(e) *What are the required elements in a cooperative contract?* —(1) *Requirements for all fishery cooperatives.* Any cooperative contract filed under this paragraph (e) must:

(i) List parties to the contract.

(ii) List all vessels and processors that will harvest and process pollock harvested under the cooperative.

(iii) Specify the amount or percentage of pollock allocated to each party to the contract.

(iv) Specify a designated representative and agent for service of process.

(v) Include a contract clause under which the parties to the contract agree to make payments to the State of Alaska for any pollock harvested in the directed pollock fishery that are not landed in the State of Alaska, in amounts which would otherwise accrue had the pollock been landed in the State of Alaska subject to any landing taxes established under Alaska law. Failure to include such a contract clause or for such amounts to be paid will result in a revocation of the authority to form fishery cooperatives under section 1 of the Act of June 25, 1934 (15 U.S.C. 521 *et seq.*).

(2) *Additional required elements in all fishery cooperatives that include AFA catcher vessels.* A cooperative contract that includes catcher vessels must include adequate provisions to prevent each non-exempt member catcher vessel from exceeding an individual vessel sideboard limit for each BSAI or GOA sideboard species or species group that is issued to the vessel by the cooperative in accordance with the following formula:

(i) The aggregate individual vessel sideboard limits issued to all member vessels in a cooperative must not exceed the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as calculated by NMFS under §679.64(b) and as announced to the cooperative by the Regional Administrator, or

(ii) In the case of two or more cooperatives that have entered into an inter-cooperative agreement, the aggregate individual vessel sideboard limits issued to all member vessels subject to the inter-cooperative agreement must not exceed the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as calculated by NMFS under §679.64(b) and as announced by the Regional Administrator.

(f) *Annual reporting requirement.* Any fishery cooperative governed by this section must submit preliminary and final annual written reports on fishing activity to the North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK 99501. The Council will make copies of each report available to the public upon request.

(1) *What are the submission deadlines?* You must submit the preliminary report by December 1 of each year. You must submit the final report by February 1 of the following year. Annual reports must be postmarked by the submission deadline or received by a private courier service by the submission deadline.

(2) *What information must be included?* The preliminary and final written reports must contain, at a minimum:

(i) The cooperative's allocated catch of pollock and sideboard species, and any sub-allocations of pollock and sideboard species made by the cooperative to individual vessels on a vessel-by-vessel basis;

(ii) The cooperative's actual retained and discarded catch of pollock, sideboard species, and PSC on an area-by-area and vessel-by-vessel basis;

(iii) A description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated;

(iv) A description of any actions taken by the cooperative in response to any vessels that exceed their allowed catch and bycatch in pollock and all sideboard fisheries; and

(v) The total weight of pollock landed outside the State of Alaska on a vessel-by-vessel basis.

(vi) The annual report must indicate the number of salmon taken by species and season, estimate the number of salmon avoided as demonstrated by the movement of fishing effort away from salmon savings areas, include the results of the compliance audit described at §679.21(g)(6)(vi), and list each vessel's number of appearances on the weekly dirty 20 lists for both salmon species.

(3) *What is the required format?* You must submit at least one copy of each annual report ready for duplication on unbound single-sided 8.5- by-11-inch paper, or in an alternative format approved in advance by the Council.

(g) *Landing tax payment deadline* . You must pay any landing tax owed to the State of Alaska under section 210(f) of the AFA and paragraph (e)(1)(v) of this section before April 1 of the following year, or the last day of the month following the date of publication of statewide average prices by the Alaska State Department of Revenue, whichever is later. All members of the cooperative are prohibited from harvesting pollock in the BS subarea directed pollock fishery after the payment deadline if any member vessel has failed to pay all required landing taxes from any landings made outside the State of Alaska by the landing deadline. Members of the cooperative may resume directed fishing for pollock once all overdue landing taxes are paid.

[67 FR 79734, Dec. 30, 2002, as amended at 68 FR 6836, Feb. 11, 2003; 70 FR 9868, Mar. 1, 2005; 72 FR 61076, Oct. 29, 2007; 73 FR 76166, Dec. 15, 2008]

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Title 50: Wildlife and Fisheries

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA
Subpart F—American Fisheries Act and Aleutian Island Directed Pollock Fishery Management Measures

§ 679.64 Harvesting sideboard limits in other fisheries.

(a) *Harvesting sideboards for listed AFA catcher/processors.* The Regional Administrator will restrict the ability of listed AFA catcher/processors to engage in directed fishing for non-pollock groundfish species to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the BS subarea directed pollock fishery.

(1) *How will groundfish sideboard limits for AFA listed catcher/processors be calculated?* Except for Aleutian Islands pollock and BSAI Pacific cod, the Regional Administrator will establish annual AFA catcher/processor harvest limits for each groundfish species or species group in which a TAC is specified for an area or subarea of the BSAI as follows:

(i) *Aleutian Islands Pacific ocean perch.* (A) The Aleutian Islands Pacific ocean perch harvest limit will be equal to the 1996 through 1997 aggregate retained catch of Aleutian Islands Pacific ocean perch by catcher/processors listed in Sections 208(e)(1) through (20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the Aleutian Islands Pacific ocean perch catch in 1996 and 1997 multiplied by the remainder of the Aleutian Islands Pacific ocean perch TAC after the subtraction of the CDQ reserve under §679.20(b)(1)(ii)(C) in the year in which the harvest limit will be in effect.

(B) If the amount of Pacific ocean perch calculated under paragraph (a)(1)(i)(A) of this section is determined by the Regional Administrator to be insufficient to meet bycatch needs of AFA catcher/processors in other directed fisheries for groundfish, the Regional Administrator will prohibit directed fishing for Aleutian Islands Pacific ocean perch by AFA catcher/processors and establish the sideboard amount equal to the amount of Aleutian Islands Pacific ocean perch caught by AFA catcher/processors incidental to directed fishing for other groundfish species.

(ii) *Atka mackerel.* The Atka mackerel harvest limit for each area and season will be equal to:

(A) Bering Sea subarea and Eastern Aleutian Islands, zero;

(B) Central Aleutian Islands, 11.5 percent of the annual TAC specified for Atka mackerel; and

(C) Western Aleutian Islands, 20 percent of the annual TAC specified for Atka mackerel.

(iii) *Flathead sole, rock sole, and yellowfin sole.* The harvest limit for flathead sole, rock sole, and yellowfin sole will be equal to the 1995 through 1997 aggregate retained catch of that species by catcher/processors listed in Sections 208(e)(1) through (e)(20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the catch of that species in 1995 through 1997 multiplied by the remainder of the TAC of that species after the subtraction of the CDQ reserve under §679.20(b)(1)(ii)(C) in the year in which the harvest limit will be in effect.

(iv) *Remaining groundfish species.* (A) Except as provided for in paragraphs (a)(1)(i) through (a)(1)(iii) of this section, the harvest limit for each BSAI groundfish species or species group will be equal to the 1995 through 1997 aggregate

retained catch of that species by catcher/processors listed in Sections 208 (e)(1) through (e)(20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the catch of that species in 1995 through 1997 multiplied by the TAC of that species available for harvest by catcher/processors in the year in which the harvest limit will be in effect.

(B) If the amount of a species calculated under paragraph (a)(1)(iv)(A) of this section is determined by the Regional Administrator to be insufficient to meet bycatch needs for AFA catcher/processors in other directed fisheries for groundfish, the Regional Administrator will prohibit directed fishing for that species by AFA catcher/processors and establish the sideboard amount equal to the amount of that species caught by AFA catcher/processors incidental to directed fishing for other groundfish species.

(v) *Yellowfin sole sideboard limit exemption.* AFA catcher/processors will not be subject to a harvest limit for yellowfin sole in the BSAI during a calendar year if the aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than or equal to 125,000 metric tons.

(2) *What are the halibut and crab PSC sideboard limits?* The halibut and crab PSC bycatch limits specified for catcher/processors in the BSAI are listed in Tables 40 and 41 to this part.

(3) *How will AFA catcher/processor sideboard limits be managed?* The Regional Administrator will manage groundfish harvest limits and PSC bycatch limits for AFA catcher/processors through directed fishing closures in fisheries established under paragraph (a)(1) of this section in accordance with the procedures set out in §§679.20(d)(1)(iv) and 679.21(e)(3)(v).

(b) *Harvesting sideboards for AFA catcher vessels* . The Regional Administrator will restrict the ability of AFA catcher vessels to engage in directed fishing for other groundfish species to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the BS subarea directed pollock fishery.

(1) *To whom do the catcher vessel sideboard limits apply?* Catcher vessel harvest limits and PSC bycatch limits apply to all AFA catcher vessels participating in all GOA groundfish fisheries and all non-pollock groundfish fisheries in the BSAI except vessels qualifying for sideboard exemptions in the specific fisheries identified in paragraph (b)(2) of this section.

(2) *Who is exempt from catcher vessel sideboards?* (i) BSAI Pacific cod sideboard exemptions—(A) AFA catcher vessels less than 125 ft (38.1 m) LOA that are determined by the Regional Administrator to have harvested a combined total of less than 5,100 mt of BSAI pollock, and to have made 30 or more legal landings of Pacific cod in the BSAI directed fishery for Pacific cod from 1995 through 1997 are exempt from sideboard closures for BSAI Pacific cod.

(B) AFA catcher vessels with mothership endorsements are exempt from BSAI Pacific cod catcher vessel sideboard directed fishing closures after March 1 of each fishing year.

(ii) *GOA groundfish sideboard exemptions.* AFA catcher vessels less than 125 ft (38.1 m) LOA that are determined by the Regional Administrator to have harvested less than 5,100 mt of BSAI pollock and to have made 40 or more landings of GOA groundfish from 1995 through 1997 are exempt from GOA groundfish catcher vessel sideboard directed fishing closures.

(3) *How will groundfish sideboard limits be calculated?* Except for Aleutian Islands pollock, the Regional Administrator will establish annual AFA catcher vessel harvest limits for each groundfish species or species group in which a TAC is specified for an area or subarea of the GOA and BSAI as follows:

(i) *BSAI groundfish other than Amendment 80 species.* The AFA catcher vessel groundfish harvest limit for each BSAI groundfish species or species group other than BSAI Pacific cod will be equal to the aggregate retained catch of that groundfish species or species group from 1995 through 1997 by all AFA catcher vessels; divided by the sum of the TACs available to catcher vessels for that species or species group from 1995 through 1997; multiplied by the TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

(ii) *BSAI Pacific cod.* The AFA catcher vessel groundfish harvest limit for BSAI Pacific cod will be equal to the retained catch of BSAI Pacific cod in 1997 by AFA catcher vessels not exempted under paragraph (b)(2)(i)(A) of this

section divided by the BSAI Pacific cod TAC available to catcher vessels in 1997; multiplied by the BSAI Pacific cod TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

(iii) *Amendment 80 species other than Pacific cod.* The AFA catcher vessel groundfish harvest limit for each Amendment 80 species other than BSAI Pacific cod will be equal to the aggregate retained catch of that Amendment 80 species from 1995 through 1997 by all AFA catcher vessels, divided by the sum of the TAC available to catcher vessels for that species or species group from 1995 through 1997, and multiplied by the remainder of the TAC after the subtraction of the CDQ reserve under §679.20(b)(1)(ii)(C) in the year or season in which the harvest limit will be in effect.

(iv) *GOA groundfish.* The AFA catcher vessel groundfish harvest limit for each GOA groundfish species or species group will be equal to the aggregate retained catch of that groundfish species or species group from 1995 through 1997 by AFA catcher vessels not exempted under paragraph (b)(2)(ii) of this section; divided by the sum of the TACs of that species or species group available to catcher vessels from 1995 through 1997; multiplied by the TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

(4) *How will halibut and crab PSC limits be calculated?* —(i) *BSAI.* The halibut and crab PSC bycatch limits specified for catcher vessels in the BSAI are listed in Tables 40 and 41 to this part.

(ii) *GOA.* The AFA catcher vessel PSC bycatch limit for halibut in the GOA will be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997.

(5) *How will catcher vessel sideboard limits be managed?* The Regional Administrator will manage groundfish harvest limits and PSC bycatch limits for AFA catcher vessels using directed fishing closures according to the procedures set out at §§679.20(d)(1)(iv) and 679.21(d)(8) and (e)(3)(v).

(6) *Yellowfin sole sideboard limit exemption.* AFA catcher vessels will not be subject to a harvest limit for yellowfin sole in the BSAI during a calendar year if the aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than or equal to 125,000 metric tons.

[67 FR 79734, Dec. 30, 2002, as amended at 70 FR 9868, Mar. 1, 2005; 72 FR 52725, Sept. 14, 2007; 72 FR 50818, Sept. 4, 2007; 73 FR 27770, May 14, 2008]

TITLE II – FISHERIES[1]

SEC. 201. Short Title. This title may be cited as the "American Fisheries Act".

SEC. 202. Standard for Fishery Endorsements.

(a) **Standard.** Section 1202(c) of title 46, United States Code, is amended to read as follows--

"(c)(1) A vessel owned by a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity is not eligible for a fishery endorsement under section 12108 of this title unless at least 75 per centum of the interest in such entity, at each tier of ownership of such entity and in the aggregate, is owned and controlled by citizens of the United States.

"(2) The Secretary shall apply section 2(c) of the Shipping Act, 1916 (46 App. U.S.C. 802(c)) in determining under this subsection whether at least 75 per centum of the interest in a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or another entity is owned and controlled by citizens of the united States. For the purposes of this subsection and of applying the restrictions on controlling interest in section 2(c) of such Act, the terms "control" or "controlled"—

"(A) shall include—

"(i) the right to direct the business of the entity which owns the vessel;

"(ii) the right to limit the actions of or replace the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity which owns the vessel; or

"(iii) the right to direct the transfer, operation or manning of a vessel with a fishery endorsement; and

"(B) shall not include the right to simply participate in the activities under subparagraph (A), or the use by a mortgagee under paragraph (4) of loan covenants approved by the Secretary.

"(3) A fishery endorsement for a vessel that is chartered or leased to an individual who is not a citizen of the United States or to an entity that is not eligible to own a vessel with a fishery endorsement and used as fishing vessel shall be invalid immediately upon such use.

"(4)(A) An individual or entity that is otherwise eligible to own a vessel with a fishery endorsement shall be ineligible by reason of an instrument or evidence of

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[1] Enacted as Title II of Division C – Other Matters, of Public Law 105-277, approved October 21, 1998 (112 STAT. 2681, 2681-616), the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.

Section 120 of the Treasury and General Government Appropriations Act, 1999, set forth in Public Law 105-277, approved October 21, 1999 (112 STAT. 2681, 2681-545), the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, provides in part: "For carrying out the provisions of division C, title II of this Act . . . $6,000,000 and $2,000,000 for the Secretary of Commerce and Secretary of Transportation, respectively, to implement division C, title II." Section 624 of Public Law 106-113, Appendix A, approved November 29, 1999 (113 STAT. 1501A-59) the Commerce, State, Justice and Related Agencies Appropriations Act, 2000, provides: "Sec. 624. Funds made available under Public Law 105-277 for costs associated with implementation of the American Fisheries Act of 1998 (division C, title II, of Public Law 105-255) for vessel documentation activities shall remain available until expended."

indebtedness, secured by a mortgage of the vessel to a trustee eligible to own a vessel with a fishery endorsement that is issued, assigned, transferred or held in trust for a person not eligible to own a vessel with a fishery endorsement, unless the Secretary determines that the issuance, assignment, transfer, or trust arrangement does not result in an impermissible transfer of control of the vessel and that the trustee—

"(i) is organized as a corporation, and is doing business, under the laws of the United States or of a State;

"(ii) is authorized under those laws to exercise corporate trust powers;

"(iii) is subject to supervision or examination by an official of the United States Government or a State;

"(iv) has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000; and

"(v) meets any other requirements prescribed by the Secretary.

"(B) A vessel with a fishery endorsement may be operated by a trustee only with the approval of the Secretary.

"(C) A right under a mortgage of a vessel with a fishery endorsement may be issued, assigned, or transferred to a person not eligible to be a mortgagee of that vessel under section 31322(a)(4) of this title only with the approval of the Secretary.

"(D) The issuance, assignment, or transfer of an instrument or evidence of indebtedness contrary to this paragraph is voidable by the Secretary.

"(5) The requirements of this subsection shall not apply to a vessel when it is engaged in fisheries in the exclusive economic zone under the authority of the Western Pacific Fishery Management Council established under section 302(1)(1)(H) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(H) or to a purse seine vessel when it is engaged in tuna fishing in the Pacific Ocean outside the exclusive economic zone of the United States or pursuant to the South Pacific Regional Fisheries Treaty, provided that the owner of the vessel continues to comply with the eligibility requirements for a fishery endorsement under the federal law that was in effect on October 1, 1998. A fishery endorsement issued by the Secretary pursuant to this paragraph shall be valid for engaging only in fisheries in the exclusive economic zone under the authority of such Council, in such tuna fishing in the Pacific Ocean, or pursuant to such Treaty.

"(6) A vessel greater than 165 feet in registered length, of more than 750 gross registered tons, or that has an engine or engines capably of producing a total of more than 3,000 shaft horsepower is not eligible for a fishery endorsement under section 1208 of this title unless—

"(A)(i) a certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997;

"(ii) the vessel is not placed under foreign registry after the date of the enactment of the American Fisheries Act; and

(iii) in the event of the invalidation of the fishery endorsement after the date of the enactment of the American Fisheries Act, application is made for a new fishery endorsement within fifteen (15) business days of such invalidation; or

"(B) the owner of such vessel demonstrates to the Secretary that the regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1))

has recommended after the date of the enactment of the American Fisheries Act, and the Secretary of Commerce has approved, conservation and management measures in accordance with such Act to allow such vessel to be used in fisheries under such council's authority."

(b) **Preferred Mortgage.** Section 31322(a) of title 46, United States Code, is amended--

(1) by striking "and" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3)(B) and inserting in lieu thereof a semicolon and "and"; and

(3) by inserting at the end the following paragraph:

"(4) with respect to a vessel with a fishery endorsement that is 100 feet or greater in registered length, has as the mortgagee—

"(A) a person eligible to own a vessel with a fishery endorsement under section 12102(c) of this title;

"(B) a state or federally chartered financial institution that satisfies the controlling interest criteria of section 2(b) of the Shipping Act, 1916 (46 U.S.C. 802(b)); or

"(C) a person that complies with the provisions of section 12102(c)(4) of this title."

SEC. 203. ENFORCEMENT OF STANDARD.

(a) **Effective Date.** The amendments made by section 202 shall take effect on October 1, 2001.

(b) **Regulations.** Final regulations to implement this subtitle shall be published in the Federal Register by April 1, 2000. Letter rulings and other interim interpretations about the effect of this subtitle and amendments made by this subtitle on specific vessels may not be issued prior to the publication of such final regulations. The regulations to implement this subtitle shall prohibit impermissible transfers of ownership or control, specify any transactions which require prior approval of an implementing agency, identify transactions which do not require prior agency approval, and to the extent practicable, minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of such industry, and to the opportunity to form fishery cooperatives.

(c) **Vessels Measuring 100 Feet and Greater.** (1) The Administrator of the Maritime Administration shall administer section 12102(c) of the title 46, United States Code, as amended by this subtitle, with respect to vessels 100 feet or greater in registered length. The owner of each such vessel shall file a statement of citizenship setting forth all relevant facts regarding vessel ownership and control with Administrator of the Maritime Administration on an annual basis to demonstrate compliance with such section. Regulations to implement this subsection shall conform to the extent practicable with the regulations establishing the form of citizenship affidavit set forth in part 355 of title 46, Code of Federal Regulations, as in effect on September 25, 1997, except that the form of the statement under this paragraph shall be written in a manner to allow the owner of each such vessel to satisfy any annual renewal requirements for a certificate of

documentation for such vessel and to comply with this subsection and section 12101(c) of title 46, United States Code, as amended by this Act, and shall not be required to be notarized.

(2) After October 1, 2001, transfers of ownership and control of vessels subject to section 12102(c) of title 46, United States Code, as amended by this Act, which are 100 feet or greater in registered length, shall be rigorously scrutinized for violations of such section, with particular attention given to leases, charters, mortgages, financing, and similar arrangements, to the control of persons not eligible to own a vessel with a fishery endorsement under section 12102(c) of title 46, United States Code, as amended by this Act, over the management, sales, financing, or other operations of an entity, and to contracts involving the purchase over extended periods of time of all, or substantially all, of the living marine resources harvested by a fishing vessel.

(d) **Vessels Measuring Less Than 100 Feet.** The Secretary of Transportation shall establish such requirements as are reasonable and necessary to demonstrate compliance with section 12102(c) of title 46, United States Code, as amended by this Act, with respect to vessel measuring less than 100 feet in registered length, and shall seek to minimize the administrative burden on individuals who own and operate such vessels.

(e) **Endorsement Revoked.** The Secretary of Transportation shall revoke the fishery endorsement of any vessel subject to section 12102(c) of title 46, United States Code, as amended by this Act, whose owner does not comply with such section.

(f) **Penalty.** Section 12122 of title 46, United States Code, is amended by inserting at the end the following new subsection:

"(c) In addition to penalties under subsections (a) and (b), the owner of a documented vessel for which a fishery endorsement has been issued is liable to the United States Government for a civil penalty of up to $100,000 for each day in which such vessel was engaged in fishing (as such term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) within the exclusive economic zone of the United States, if the owner or the representative or agent of the owner knowingly falsified or concealed a material fact, or knowingly made a false statement or representation with respect to the eligibility of the vessel under section 12102(c) of this title in applying for or applying to renew such fishery endorsement."

(g) **Certain Vessels.** The vessels EXCELLENCE (United States official number 967502, GOLDEN ALASKA (United States official number 651041), OCEAN PHOENIX (United States official number 296779), NORTHERN TRAVELER (United States official number 635986), and NORTHERN VOYAGER (United States official number 637398) (or a replacement vessel for the NORTHERN VOYAGER that complies with paragraphs (2), (5), and (6) of section 208(g) of this Act) shall be exempt from section 12102(c), as amended by this Act, until such time after October 1, 2001 as more than 50 percent of the interest owned and controlled in the vessel changes, provided that the vessel maintains eligibility for a fishery endorsement under the federal law that was in effect the day before the date of the enactment of this Act, and unless, in the case of the

NORTHERN TRAVELER or the NORTHERN VOYAGER (or such replacement), the vessel is used in any fishery under the authority of a regional fishery management council other than the New England Fishery Management Council or Mid-Atlantic Fishery Management Council established, respectively, under subparagraphs (A) and (B) of section 301(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1) (A) and (B), or in the case of the EXCELLENCE, GOLDEN ALASKA, or OCEAN PHOENIX, the vessel is used to harvest any fish.

Subtitle II – Bering Sea Pollock Fishery

SEC. 205. DEFINITIONS.

As used in this subtitle—

(1) the term "Bering Sea and Aleutian Islands Management Area" has the same meaning as the meaning given for such term in part 679.2 of title 50, Code of Federal Regulations, as in effect on October 1, 1998.

(2) the term "catcher/processor" means a vessel that is used for harvesting fish and that does not process pollock onboard;

(3) the term "catcher vessel" means a vessel that is used for harvesting fish and that does not process pollock onboard;

(4) the term "directed pollock fishery" means the fishery for directed fishing allowances allocated under paragraphs (1), (2), and (3) of section 206(b);

(5) the term "harvest" means to commercially engage in the catching, taking, or harvesting of fish or any activity that can reasonably be expected to result in the catching, taking, or harvesting of fish;

(6) the term "inshore component" means the following categories that process groundfish harvested in the Bering Sea and Aleutian Islands Management Area:

(A) shoreside processors, including those eligible under section 208(f); and

(B) vessels less than 125 feet in length overall that process less than 126 metric tons per week in round-weight equivalents of an aggregate amount of pollock and Pacific cod;

(7) the term "Magnuson-Stevens Act" means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

(8) the term "mothership" means a vessel that receives and processes fish from other vessels in the exclusive economic zone of the United States and is not used for, or equipped to be used for, harvesting fish;

(9) the term "North Pacific Council" means the North Pacific Fishery Management Council established under section 302(a)(1)(G) of the Magnuson-Stevens Act (16 U.S.C. 1852(a)(1)(G));

(10) the term "offshore component" means all vessels not included in the definition of "inshore component" that process groundfish harvested in the Bering Sea and Aleutian Islands Management Area.

(11) the term "Secretary" means the Secretary of Commerce, and

(12) the term "shoreside processor" means any person or vessel that receives unprocessed fish, except catcher/processors, motherships, buying stations, restaurants, or persons receiving fish for personal consumption or bait.

SEC. 206. ALLOCATIONS.

(a) **Pollock Community Development Quota.** Effective January 1, 1999, 10 percent of the total allowable catch of pollock in the Bering Sea and Aleutian Islands Management Area shall be allocated as a direct fishing allowance to the western Alaska community development quota program established under section 505(i) of the Magnuson-Stevens Act (16 U.S.C. 1855(i)).

(b) **Inshore/Offshore.** Effective January 1, 1999, the remainder of the pollock total allowable catch in a Bering Sea and Aleutian Islands Management Area, after the subtraction of the allocation under subsection (a) and the subtraction of allowances for the incidental catch of pollock by vessels harvesting other groundfish species (including under the western Alaska community development quota program) shall be allocated as directed fishing allowances as follows—

(1) 50 percent to catcher vessels harvesting pollock for processing by the inshore component;

(2) 40 percent to catch/processors and catcher vessels harvesting pollock for processing by catcher/processors in the offshore component; and

(3) 10 percent to catcher vessels harvesting pollock for processing by motherships in the offshore component.

SEC. 207. BUYOUT.

(a) **Federal Loan.** Under the authority of sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and 1279g) and notwithstanding the requirements of section 312 of the Magnuson-Stevens Act (16 U.S.C. 1861a), the Secretary shall, subject to the availability of appropriations for the cost of the direct loan, provide up to $75,000,000 through a direct loan obligation for the payments required under subsection (d).

(b) **Inshore Fee System.** Notwithstanding the requirements of section 304(d) or 312 of the Magnuson-Stevens Act (16 U.S.C. 1854(d) and 1861(a), the Secretary shall establish a fee for the repayment of such loan obligations which—

(1) shall be six-tenths (0.6) of one cent for each pound round-weight of all pollock harvested from the directed fishing allowance under section 206(b)(1); and

(2) shall begin with such pollock harvested on or after January 1, 2000, and continue without interruption until such loan obligation is fully repaid; and

(3) shall be collected in accordance with section 312(d)(2)(C) of the Magnuson-Stevens Act (16 U.S.C. 1861a(d)(2)(C) and in accordance with such other conditions as the Secretary establishes.

(c) **Federal Appropriation.** Under the authority of section 312(c)(1)(B) of the Magnuson-Stevens Act (16 U.S.C. 1861a(c)(1)(B)), there are authorized to be appropriated $20,000,000 for the payments required under subsection (d).

(d) **Payments.** Subject to the availability of appropriations for the cost of the direct loan under subsection (a) and funds under subsection (c), the Secretary shall pay by not later than December 31, 1998—

(1) up to $90,000,000 to the owner or owners of the catcher/processors listed in paragraphs (1) through (9) of section 209, in such manner as the owners, with the concurrence of the Secretary, agree, except that—

(A) the portion of such payment with respect to the catcher/processor listed in paragraph (1) of section 209 shall be made only after the owner submits a written certification acceptable to the Secretary that neither the owner nor a purchaser from the owner intends to use such catcher/processor outside the exclusive economic zone of the United States to harvest any stock of fish (as such term is defined in section 3 of the Magnuson-Stevens Act (16 U.S.C. 1802)) that occurs within the exclusive economic zone of the United States; and

(B) the portion of such payment with respect to the catcher/processors listed in paragraphs (2) through (9) of section 209 shall be made only after the owner or owners of such catcher/processors will be scrapped by December 31, 2000 and will not, before that date, be used to harvest or process any fish; and

(2)(A) if a contract has been filed under section 210(a) by the catcher/processors listed in section 208(e), $5,000,000 to the owner or owners of the catcher/processors listed in paragraphs (10) through (14) of such section in such manner as the owner or owners, with the concurrence of the Secretary, agree; or

(B) if such a contract has not been filed by such date, $5,000,000 to the owners or the catcher vessels eligible under section 208(b) and the catcher/processors eligible under paragraphs (1) through (20) of section 208(e), divided based on the amount of the harvest of pollock in the directed pollock fishery by each such vessel in 1997 in such manner as the Secretary deems appropriate, except that any such payments shall be reduced by any obligation to the federal government that has not been satisfied by such owner or owners of any such vessels.

(e) **Penalty.** If the catcher/processor under paragraph (1) of section 209 is used outside the exclusive economic zone of the United States to harvest any stock of fish that occurs within the exclusive economic zone of the United States while the owner who received the payment under subsection (d)(1)(A) has an ownership interest in such vessel, or if the catch/processors listed in paragraph (2) through (9) of section 209 are determined by the Secretary not to have been scraped by December 31, 2000 or to have been used in a manner inconsistent with subsection (d)(1)(B), the Secretary may suspend any or all of the federal permits which allow any vessels owned in whole or in part by the owner or owners who received payments under subsection (d)(1) to harvest or process fish within the exclusive economic zone of the United States until such time as the obligations of such owner or owners under subsection (d)(1) have been fulfilled to the satisfaction of the Secretary.

(f) **Program Defined; Maturity.** For the purposes of section 1111 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f), the fishing capacity reduction program in this subtitle shall be within the meaning of the term “program” as defined and used in such section. Notwithstanding section 1111(b)(4) of such Act (46 U.S.C. App. 1279f and 1279g).

(g) **Fishery Capacity Reduction Regulations.** The Secretary of Commerce shall by not later than October 15, 1998 publish proposed regulations to implement subsections (b), (c), (d) and (e) of section 312 of the Magnuson-Stevens Act (16 U.S.C. 1861a) and sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and 1279g).

SEC. 208. ELIGIBLE VESSELS AND PROCESSORS.

(a) **Catcher Vessels Onshore.** Effective January 1, 2000, only catcher vessels which are—

(1) determined by the Secretary—

(A) to have delivered at least 250 metric tons of pollock; or

(B) to be less than 60 feet in length overall and to have delivered at least 40 metric tons of pollock, for processing by the inshore component in the directed pollock fishery in any one of the years 1996 or 1997, between January 1, 1998 and September 1, 1998;

(2) eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary; and

(3) not listed in subsection (b), shall be eligible to harvest the directed fishing allowance under section 206(b)(1) pursuant to a federal fishing permit.

(b) **Catcher Vessels to Catcher/Processors.** Effective January 1, 1999, only the following catcher vessels shall be eligible to harvest the directed fishing allowance under section 206(b)(2) pursuant to a federal fishing permit:

(1) AMERICAN CHALLENGER (United States official number 633219);

(2) FORUM STAR (United States official number 925863);

(3) MUIR MILACH (United States official number 611524);

(4) NEAHKAHNIE (United States official number 599534);

(5) OCEAN HARVESTER (United States official number 549892);

(6) SEA STORM (United States official number 628959);

(7) TRACY ANNE (United States official number 904859); and

(8) any catcher vessel—

(A) determined by the Secretary to have delivered at least 250 metric tons and at least 75 percent of the pollock it harvested in the directed pollock fishery in 1997 to catcher/processors for processing by the offshore component; and

(B) eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary.

(c) **Catchers Vessels to Motherships.** Effective January 1, 2000, only the following catcher vessels shall be eligible to harvest the directed fishing allowance under section 206(b)(3) pursuant to a federal fishing permit.

(1) ALEUTIAN CHALLENGER (United States official number 603820);

(2) ALYESKA (United States official number 560237);

(3) AMBER DAWN (United States official number 529425);

(4) AMERICAN BEAUTY (United States official number 613847);

(5) CALIFORNIA HORIZON (United States official number 590758);
(6) MAR-GUN (United States official number 525608)
(7) MARGARET LYN (United States official number 615563);
(8) MARK I (United States official number 509552);
(9) MISTY DAWN (United States official number 926647);
(10) NORDIC FURY (United States official number 542651);
(11) OCEAN LEADER (United States official number 561518);
(12) OCEANIC (United States official number 602279);
(13) PACIFIC ALLIANCE (United States official number 612084);
(14) PACIFIC CHALLENGER (United States official number 618937);
(15) PACIFIC FURY (United States official number 561934);
(16) PAPADO II (United States official number 536161);
(17) TRAVELER (United States official number 929356);
(18) VESTERAALEN (United States official number 611642);
(19) WESTERN DAWN (United States official number 524423);
(20) any vessel—
(A) determined by the Secretary to have delivered at least 250 metric tons of pollock for processing by motherships in the offshore component of the directed pollock fishery in any one of the years 1996 or 1997, or between January 1, 1998 and September 1, 1998;
(B) eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary; and
(C) not listed in subsection (b).

(d) **Motherships.** Effective January 1, 2000, only the following motherships shall be eligible to process the directed fishing allowance under section 206(b)(3) pursuant to a federal fishing permit:
(1) EXCELLENCE (United States official number 967502);
(2) GOLDEN ALASKA (United States official number 651042);
(3) OCEAN PHOENIX (United States official number 296779).

(e) **Catcher/Processors.** Effective January 1, 1999, only the following catcher/processors shall be eligible to harvest the directed fishing allowance under section 206(b)(2) pursuant to a federal fishing permit:
(1) AMERICAN DYNASTY (United States official number 951307);
(2) KATIE ANN (United States official number 518441);
(3) AMERICAN TRIUMPH (United States official number 646737);
(4) NORTHERN EAGLE (United States official number 506694);
(5) NORTHERN HAWK (United States official number 643771);
(6) NORTHERN JAEGER (United States official number 521069);
(7) OCEAN ROVER (United States official number 552100);
(8) ALASKA OCEAN (United States official number 637856);
(9) ENDURANCE (United States official number 592206);
(10) AMERICAN ENTERPRISES (United States official number 594803);
(11) ISLAND ENTERPRISE (United States official number 610290);

(12) KODIAK ENTERPRISE (United States official number 579450);
(13) SEATTLE ENTERPRISE (United States official number 904767);
(14) US ENTERPRISE (United States official number 921112);
(15) ARCTIC STORM (United States official number 903511);
(16) ARCTIC FJORD (United States official number 940866);
(17) NORTHERN GLACIER (United States official number 663457);
(18) PACIFIC GLACIER (United States official number 933627);
(19) HIGHLAND LIGHT (United States official number 577044);
(20) STARBOUND (United States official number 944658); and
(21) any catcher/processor not listed in this subsection and determined by the Secretary to have harvested more than 2,000 metric tons of the pollock in the 1997 directed pollock fishery and determined to be eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary, except that catcher/processors eligible under this paragraph shall be prohibited from harvesting in the aggregate a total of more than one-half (0.5) of a percent of the pollock apportioned for the directed pollock fishery under section 206(b)(2).

Notwithstanding section 213(a), failure to satisfy the requirements of section 4(a) of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Public Law 100-239; 46 U.S.C. 12108 note) shall not make a catcher/processor listed under this subsection ineligible for a fishery endorsement.

(f) **Shoreside Processors.** (1) Effective January 1, 2000 and except as provided in paragraph (2), the catcher vessels eligible under subsection (a) may deliver pollock harvested from the directed fishing allowance under section 206(b)(1) only to—

(A) shoreside processors (including vessels in a single geographic location in Alaska State waters) determined by the Secretary to have processed more than 2,000 metric tons round-weight of pollock in the inshore component of the directed pollock fishery during each of 1996 and 1997; and

(B) shoreside processors determined by the Secretary to have processed pollock in the inshore component of the directed pollock fishery in 1996 and 1997, but to have processed less than 2,000 metric tons round-weight of such pollock in each year, except that effective January 1, 2000, each such shoreside processor may not process more than 2,000 metric tons round-weight from such directed fishing allowance in any year;

(2) Upon recommendation by the North Pacific Council, the Secretary may approve measures to allow catcher vessels eligible under subsection (a) to deliver pollock harvested from the directed fishing allowance under section 206(b)(1) to shoreside processors not eligible under paragraph (1) if the total allowable catch for pollock in the Bering Sea and Aleutian Islands Management Area increases by more than 10 percent of the actual total loss or constructive total loss of a shoreside processor eligible under paragraph (1)(A).

(g) **Replacement Vessels.** In the event of the actual total loss or constructive total loss of a vessel eligible under subsections (a), (b), (c), (d), or (e), the owner of such vessel may replace such vessel with a vessel which shall be eligible in the same manner under that subsection as the eligible vessel, provided—

(1) such loss was caused by an act of God, an act of war, a collision, an act or omission of a party other than the owner or agent of the vessel, or any other event not caused by the willful misconduct of the owner or agent;

(2) the replacement vessel was built in the United States and if ever rebuilt, was rebuilt in the United States;

(3) the fishery endorsement for the replacement vessel is issued within 36 months of the end of the last year in which the eligible vessel harvested or processed pollock in the directed pollock fishery;

(4) if the eligible vessel is greater than 165 feet in registered length, of more than 750 gross registered tons, or has engines capable of producing more than 3,000 shaft horsepower, the replacement vessel is of the same or lesser registered length, gross registered tons, and shaft horsepower;

(5) if the eligible vessel is less than 165 feet in registered length, of fewer than 750 gross registered tons, and has engines incapable of producing less than 3,000 shaft horsepower, the replacement vessel is less than each of such thresholds and does not exceed by more than 10 percent the registered length, gross registered tons or shaft horsepower of the eligible vessel; and

(6) the replacement vessel otherwise qualifies under federal law for a fishery endorsement, including under section 12102(c) of title 46, United States Code, as amended by this Act.

(h) **Eligibility During Implementation.** In the event the Secretary is unable to make a final determination about the eligibility of a vessel under subsection (b)(8) or subsection (3)(21) before January 1, 1999, or a vessel or shoreside processor under subsection (a), subsection (c)(21), or subsection (f) before January 1, 2000, such vessel or shoreside processor, upon the filing of an application for eligibility, shall be eligible to participate in the directed pollock fishery pending final determination by the Secretary with respect to such vessel or shoreside processor.

(i) **Eligibility Not a Right.** Eligibility under this subsection shall not be construed—

(1) to confer any right of compensation, monetary or otherwise, to the owner of any catcher vessel, catcher/processor, mothership, or shoreside processor, if such eligibility is revoked or limited in any way, including through the revocation or limitation of a fishery endorsement or any federal permit or license;

(2) to create any right, title, or interest in or to any fish in any fishery, or

(3) to waive any provision of law otherwise applicable to such catcher vessel, catcher/processor, mothership, or shoreside processor.

SEC. 209. LIST OF INELIGIBLE VESSELS.

Effective December 31, 1998, the following vessels shall be permanently ineligible for fishery endorsements, and any claims (including relating to catch history) associated with any such vessels that could qualify any owners of such vessels for any present or future limited access system permit in any fishery within the exclusive economic zone of the Unite States (including a vessel moratorium permit or license

limitation program permit in fisheries under the authority of the North Pacific Council) are hereby extinguished:

(1) AMERICAN EMPRESS (United States official number 942347);
(2) PACIFIC SCOUT (United States official number 934772);
(3) PACIFIC EXPLORER (United States official number 942592);
(4) PACIFIC NAVIGATOR (United States official number 592204);
(5) VICTORIA ANN (United States official number 592207);
(6) ELIZABETH ANN (United States official number 534621);
(7) CHRISTINA ANN (United States official number 653045);
(8) REBECCA ANN (United States official number 592205);
(9) BROWNS POINT (United States official number 587440);

SEC. 210. FISHERY COOPERATIVE LIMITATIONS.

(a) **Public Notice.** (1) Any contract implementing a fishery cooperative under section 1 of the Act of June 25, 1934 (15 U.S.C. 521) in the directed pollock fishery and any material modifications to any such contract shall be filed not less than 30 days prior to the start of fishing under the contract with the North Pacific Council and with the Secretary, together with a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request. Notwithstanding section 402 of the Magnuson-Stevens Act (16 U.S.C. 1881a) or any other provision of law, but taking into account the interest of parties to any such contract in protecting the confidentiality of proprietary information, the North Pacific Council and Secretary shall—

(A) make available to the public such information about the contract, contract modifications, or fishery cooperative the North Pacific Council and Secretary deem appropriate, which at a minimum shall include a list of the parties to the contract, a list of the vessels involved, and the amount of pollock and other fish to be harvested by each party to such contract; and

(B) make available to the public in such manner as the North Pacific Council and Secretary deem appropriate information about the harvest by vessels under a fishery cooperative of all species (including bycatch) in the directed pollock fishery on a vessel-by-vessel basis.

(b) **Catcher Vessels Onshore—**

(1) *Catcher Vessel Cooperatives.* Effective January 1, 2000, upon the filing of a contract implementing a fishery cooperative under subsection (a) which—

(A) is signed by the owners of 80 percent or more of the qualified catcher vessels that delivered pollock for processing by a shoreside processor in the directed pollock fishery in the year prior to the year in which the fishery cooperative will be in effect; and

(B) specifies, except as provided in paragraph (6), that such catcher vessels will deliver pollock in the directed pollock fishery only to such shoreside processor during the year in which the fishery cooperative will be in effect and that such shoreside processor has agreed to process such pollock, the Secretary shall allow only such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) to harvest the aggregate percentage of the directed fishing allowance under section 206(b)(1) in the year in which the fishery cooperative will be in effect that is equivalent

to the aggregate total amount of pollock harvested by such catcher vessels (and by such catcher vessels whose owners voluntarily participate pursuant to paragraph(2)) in the directed pollock fishery for processing by the inshore component during 1995, 1996, and 1997 relative to the aggregate total amount of pollock harvested in the directed pollock fishery for processing by the inshore component during such years and shall prevent such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) from harvesting in aggregate in excess of such percentage of such directed fishing allowance.

(2) *Voluntary Participation.* Any contract implementing a fishery cooperative under paragraph (1) must allow the owners of other qualified catcher vessels to enter into such contract after it is filed and before the calendar year in which fishing will begin under the same terms and conditions as the owners of the qualified catcher vessels who entered into such contract upon filing.

(3) *Qualified Catcher Vessel.* For the purposes of this subsection, a catcher vessel shall be considered a "qualified catcher vessel" if, during the year prior to the year in which the fishery cooperative will be in effect, it delivered more pollock to the shoreside processor to which it will deliver pollock under the fishery cooperative in paragraph (1) than to any other shoreside processor.

(4) *Consideration of Certain Vessels*. Any contract implementing a fishery cooperative under paragraph (1) which has been entered into by the owner of a qualified catcher vessel eligible under section 208(a) that harvested pollock for processing by catcher/processors or motherships in the directed pollock fishery during 1995, 1996, and 1997 shall, to the extent practicable, provide fair and equitable terms and conditions for the owner of such qualified catcher vessel.

(5) *Open Access*. A catcher vessel eligible under section 208(a) the catch history of history which has not been attributed to a fishery cooperative under paragraph (1) may be used to deliver pollock harvested by such vessel from the directed fishing allowance under section 206(b)(1) (other than pollock reserved under paragraph (1) for a fishery cooperative) to any of the shoreside processors eligible under section 208(a) the catch history of which has been attributed to a fishery cooperative under paragraph (1) during any calendar year may not harvest any pollock apportioned under section 206(b)(1) in such calendar year other than the pollock reserved under paragraph (1) for such fishery cooperative.

(6) *Transfer of Cooperative Harvest.* A contract implementing a fishery cooperative under paragraph (1) may, notwithstanding the other provisions of this subsection, provide for up to 10 percent of the pollock harvested under such cooperative to be processed by a shoreside processor eligible under section 208(f) other than the shoreside processor to which pollock will be delivered under paragraph (1).

(c) **Catcher Vessels to Catcher/Processors.** Effective January 1, 1999, not less than 8.5 percent of the directed fishing allowance under section 206(b)(2) shall be available for harvest only by the catcher vessels eligible under section 208(b). The owners of such catcher vessels may participate in a fishery cooperative with the owners of the catcher/processors eligible under paragraphs (1) through (20) of section 208(e). The owners of such catcher vessels may participate in a fishery cooperative that will be in effect during 1999 only if the contract implementing such cooperative establishes

penalties to prevent such vessels from exceeding in 1999 the traditional levels harvested by such vessels in all other fisheries in the exclusive economic zone of the United States.

(d) **Catcher Vessels to Motherships—**

(1) *Processing*. Effective January 1, 2000, the authority in section 1 of the Act of June 25, 1934 (46 STAT. 1213 and 1214; 15 U.S.C. 521 et seq.) shall extend to processing by motherships eligible under section 208(d) solely for the purposes of forming or participating in a fishery cooperative in the directed pollock fishery upon the filing of a contract to implement a fishery cooperative under subsection (a) which has been entered into by the owners of 80 percent or more of the catcher vessels eligible under section 208(c) for the duration of such contract, provided that such owners agree to the terms of the fishery cooperative involving processing by the motherships.

(2) *Voluntary Participation*. Any contract implementing a fishery cooperative described in paragraph (1) must allow the owners of any other catcher vessels eligible under section 208(c) to enter such contract after it is filed and before the calendar year in which the fishing will begin under the same terms and conditions as the owners of the catcher vessels who entered into such contract upon filing.

(e) **Excessive Shares.**

(1) *Harvesting*. No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery.

(2) *Processing*. Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from processing an excessive share of the pollock available to be harvested in the directed pollock fishery. In the event the North Pacific Council recommends and the Secretary approves an excessive processing share that is lower than 17.5 percent, any individual or entity that previously processed a percentage greater than such share shall be allowed to continue to process such percentage, except that their percentage may not exceed 17.5 percent (excluding pollock processed by catcher/processors that was harvested in the directed pollock fishery by catcher vessels eligible under section 208(b)) and shall be reduced if their percentage decreases, until their percentages is below such share. In recommending the excessive processing share, the Northern Pacific Council shall consider the need of catcher vessels in the directed Pollock fishery to have competitive buyers for the pollock harvested by such vessels.

(3) *Review by Maritime Administration*. At the request of the North Pacific Council or the Secretary, any individual or entity believed by such Council or the Secretary to have exceeded the percentage in either paragraph (1) or (2) shall submit such information to the Administrator of the Maritime Administration as the Administrator deems appropriate to allow the Administrator to determine whether such individual or entity has exceeded either such percentage. The Administrator shall make a finding as soon as practicable upon such request and shall submit such finding to the North Pacific Council and the Secretary. For the purposes of this subsection, any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity.

(f) **Landing Tax Jurisdiction.** Any contract filed under subsection (a) shall include a contract clause under which the parties to the contract agree to make payments to the State of Alaska for any pollock harvested in the directed pollock fishery which is not landed in the State of Alaska, in amounts which would otherwise accrue had pollock been landed in the State of Alaska subject to any landing taxes established under Alaska law. Failure to include such a contract clause or for such amounts to be paid shall result in a revocation of the authority to form fishery cooperatives under section 1 of the Act of June 25, 1934 (15 U.S.C. 521 et seq.).

(g) **Penalties.** The violation of any of the requirements of this subtitle or any regulation or permit issued pursuant to this subtitle shall be considered the commission of an act prohibited by section 307 of the Magnuson-Stevens Act (16 U.S.C. 1857), and sections 308, 309, 310, and 311 of such Act (16 U.S.C. 1858, 1859, 1860, and 1861) shall apply to any such violation in the same manner as to the commission of an act prohibited by section 307 of such Act (16 U.S.C. 1857). In addition to the civil penalties and permit sanctions applicable to prohibited acts under section 308 of such Act (16 U.S.C. 1858), any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have violated a requirement of this section shall be subject to the forfeiture to the Secretary of Commerce of any fish harvested or processed during the commission of such act.

SEC. 211. PROTECTIONS FOR OTHER FISHERIES; CONSERVATION MEASURES.

(a) **General.** The North Pacific Council shall recommend for approval by the Secretary such conservation and management measures as it determines necessary to protect other fisheries under its jurisdiction and the participants in those fisheries, including processors, from adverse impacts caused by this Act or fishery cooperatives in the directed pollock fishery.

(b) **Catcher/Processor Restrictions.**

(1) *General*. The restrictions in this subsection shall take effect on January 1, 1999 and shall remain in effect thereafter except that they may be superseded (with the exception of paragraph (4)) by conservation and management measures recommended after the date of the enactment of this Act by the North Pacific Council and approved by the Secretary in accordance with the Magnuson-Stevens Act.

(2) *Bering Sea Fishing.* The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from, in the aggregate—

(A) exceeding the percentage of the harvest available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total harvest by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997;

(B) exceeding the percentage of the prohibited species available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the

pollock fishery) that is equivalent to the total of the prohibited species harvested by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount of prohibited species available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997.

(C) fishing for Atak mackerel in the eastern area of the Bering Sea and Aleutian Islands and from exceeding the following percentages of the directed harvest available in the Bering Sea and Aleutian Islands mackerel fishery—

(i) 11.5 percent in the central area; and

(ii) 20 percent in the western area.

(3) *Bering Sea Processing*. The catcher/processors eligible under paragraphs (10 through (20) of section 208(e) are hereby prohibited from—

(A) processing any of the directed fishing allowances under paragraphs (1) or (3) of section 206(b); and

(B) processing any species of crab harvested in the Bering Sea and Aleutian Islands Management Area.

(4) *Gulf of Alaska*. The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from—

(A) harvesting any fish in the Gulf of Alaska.

(B) processing any groundfish harvested from the portion of the exclusive economic zone off Alaska known as area 630 under the fishery management plan for Gulf of Alaska groundfish; or

(C) processing any pollock in the Gulf of Alaska (other than as bycatch in non-pollock groundfish fisheries) or processing, in the aggregate, a total of more than 10 percent of the cod harvested from areas 610, 620, and 640 of the Gulf of Alaska under the fishery management plan for Gulf of Alaska groundfish.

(5) *Fisheries Other than North Pacific*. The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) and motherships eligible under section 208(d) are hereby prohibited from harvesting fish in any fishery under the authority of any regional fishery management council established under section 302(a) of the Magnuson-Stevens Act (16 U.S.C. 1852(a)) other than the North Pacific Council, except for the Pacific whiting fishery, and from processing fish in any fishery under the authority of any such regional fishery management council other than North Pacific Council, except in the Pacific whiting fishery, unless the catcher/processor or mothership is authorized to harvest or process fish under a fishery management plan recommended by the regional fishery management council of jurisdiction and approved by the Secretary.

(6) *Observers and Scales*. The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) shall—

(A) have two observers onboard at all times while groundfish is being harvested, processed, or received from another vessel in any fishery under the authority of the North Pacific Council; and

(B) weight its catch on a scale onboard approved by the National Marine Fisheries Services while harvesting groundfish in fisheries under the authority of the North Pacific Council

This paragraph shall take effect on January 1, 1999 for catcher/processors eligible under paragraphs (1) through (2) of section 208(e) that will harvest pollock allocated

under section 206(a) in 1999, and shall take effect on January 1, 2000 for all other catcher/processors eligible under such paragraphs of section 208(e).

(c) **Catcher Vessel and Shoreside Processor Restrictions.**

(1) *Required Council Recommendations.* By not later than July 1, 1999, the North Pacific Council shall recommend for approval by the Secretary conservation and management measures to—

(A) prevent the catcher vessels eligible under subsections (a), (b), and (c) of section 208 from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fisheries; and

(B) protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of this Act or fishery cooperatives in the directed pollock fishery.

If the North Pacific Council does not recommend such conversation and management measures by such date, or if the Secretary determines that such conservation and management measures recommended by the North Pacific Council are not adequate to fulfill the purposes of this paragraph, the Secretary may by regulation restrict or change the authority in section 210(b) to the extent the Secretary deems appropriate, including by preventing fishery cooperatives from being formed pursuant to such section and by providing greater flexibility with respect to the shoreside processor or shoreside processors to which catcher vessel in a fishery cooperative under section 210(b) may deliver pollock.

(2) *Bering Sea Crab and Groundfish.*

(A) Effective January 1, 2000, the owners of the motherships eligible under section 208(d) and the shoreside processors eligible under section 208(f) that receive pollock from the directed pollock fishery under a fishery cooperative are hereby prohibited from processing, in the aggregate for each calendar year, more than the percentage of the total catch of each species of crab in directed fisheries under the jurisdiction of the North Pacific Council than facilities operated by such owners processed of each such species in the aggregate, on average, in 1995, 1996, and 1997. For the purposes of this subparagraph the term “facilities” means any processing plant, catcher/processor, mothership, floating processor, or any other operation that processes fish. Any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity for the purposes of this subparagraph.

(B) Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from harvesting an excessive share of crab or of groundfish in fisheries in the Bering Sea and Aleutian Islands Management Area.

(C) The catcher vessels eligible under section 208(b) are hereby prohibited from participating in a directed fishery for any species of crab in the Bering Sea and Aleutian Islands Management Area unless the catcher vessel harvested crab in the directed fishery for that species of crab in such Area during 1997 and is eligible to harvest such crab in such directed fishery under the license limitation program recommended by the North

Pacific Council and approved by the Secretary. The north Pacific Council is directed to recommend measures for approval by the Secretary to eliminate latent licenses under such program, and nothing in this subparagraph shall preclude the Council from recommending measures more restrictive than under this paragraph.

(3) *Fisheries Other than North Pacific.*

(A) By not later than July 1, 2000, the Pacific Fishery Management Council established under section 302(a)(1)(F) of the Magnuson-Stevens Act (16 U.S.C. 1852 (a)(1)(F)) shall recommend for approval by the Secretary conservation and management measures to protect fisheries under its jurisdiction and the participants in those fisheries from adverse impacts caused by this Act or by any fishery cooperatives in the directed pollock fishery.

(B) If the Pacific Council does not recommend such conservation and management measures by such date, or if the Secretary determines that such conservation and management measures recommended by the Pacific Council are not adequate to fulfill the purposes of this paragraph, the Secretary may be regulation implement adequate measures including, but not limited to, restrictions on vessels which harvest pollock under a fishery cooperative which will prevent such vessels from harvesting Pacific groundfish, and restrictions on the number of processors eligible to process Pacific groundfish.

(d) **Bycatch Information.** Notwithstanding section 402 of the Magnuson-Stevens Act (16 U.S.C. 1881a), the North Pacific Council may recommend and the Secretary may approve, under such terms and conditions as the North Pacific Council and Secretary deem appropriate, the public disclosure of any information from the groundfish fisheries under the authority of such Council that would be beneficial in the implementation of section 301(a)(9) or section 303(a)(11) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(9) and 1853(a)(11)).

(c) **Community Development Loan Program.** Under the authority of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.), and subject to the availability of appropriations, the Secretary is authorized to provide direct loan obligations to communities eligible to participate in the western Alaska community development quota program established under section 304(i) of the Magnuson-Stevens Act (16 U.S.C. 1855(i)) for the purposes of purchasing all or part of an ownership interest in vessels and shoreside processors eligible under subsections (a), (b), (c), (d), (e), or (f) of section 208. Notwithstanding the eligibility criteria in section 208(a) and 208(c), the LISA MARIE (United States official number 1038717) shall be eligible under such sections in the same manner as other vessels eligible under such sections.

SEC. 212. RESTRICTION ON FEDERA LOANS. Section 302(b) of the Fisheries Financing Act (46 U.S.C. 1274 note) is amended—

(1) by inserting “(1)” before “Until October 1, 2001”; and

(2) by inserting at the end the following new paragraph: “(2) No loans may be provided or guaranteed by the Federal Government for the construction or rebuilding of a vessel intended for use as a fishing vessel (as defined in section 2101 of title 46, United States Code), if such vessel will be greater than 165 feet in registered length, of more

than 750 gross registered tons, or have an engine or engines capable of producing a total of more than 3,000 shaft horsepower, after such construction or rebuilding is completed. This prohibition shall not apply to vessels to be used in the menhaden fishery or in tuna purse seine fisheries outside the exclusive economic zone of the United States or the area of the South Pacific Regional fisheries Treaty."

SEC. 213. DURATION.

(a) **General.** Except as otherwise provided in this title, the provisions of this title shall take effect upon the date of the enactment of this Act. Section 206, 208, and 210 shall remain in effect until December 31, 2004, and shall be repealed on such date, except that the North Pacific Council may recommend and the Secretary may approve conservation and management measures as part of a fishery management plan under the Magnuson-Stevens Act to give effect to the measures in such sections thereafter.

(b) **Existing Authority.** Except for the measures required by this subtitle, nothing in this subtitle shall be construed to limit the authority of the North Pacific Council or the Secretary under the Magnuson-Stevens Act.

(c) **Changes to Fishery Cooperative Limitations and Pollock CDQ Allocation.** The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act—

(1) that supersede the provisions of this subtitle, except for section 206 and 208, for conservation purposes or to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery caused by this title or fishery cooperatives in the directed pollock fishery caused by this title or fishery cooperatives in the directed pollock fishery, provided such measures take into account all factors affecting the fisheries and are imposed fairly and equitable to the extent practicable among and within the sectors in the directed pollock fishery;

(2) that supersede the allocation in section 206(a) for any of the years 2002, 2003, and 2004, upon finding by such Council that the western Alaska community development quota program for pollock has been adversely affected by the amendments in this subtitle; or

(3) that supersede the criteria required in paragraph (1) of section 210(b) to be used by the Secretary to set the percentage allowed to be harvested by catcher vessels pursuant to a fishery cooperative under such paragraph.

(d) **Report to Congress.** Not later than October 1, 2000, the North Pacific Council shall submit a report to the Secretary and to Congress on the implementation and effects of this Act, including the effects on fishery conservation and management, on bycatch levels, on fishing communities, on business and employment practices of participants in any fishery cooperatives, on the western Alaska community development quota program, on any fisheries outside of the authority of the North Pacific Council, and such other matters as the North Pacific Council deems appropriate.

(e) **Report on Fillet Production.** Not later than June 1, 2000, the General Accounting Office shall submit a report to the North Pacific Council, the Secretary, and

the Congress on whether this Act has negatively affected the market for fillets and fillet blocks, including through the reduction in supply of such fillets and fillet blocks. If the report determines that such market has been negatively affected, the North Pacific Council shall recommend measures for the Secretary's approval to mitigate any negative effects.

(f) **Severability.** If any provision of this title, an amendment made by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

(g) **International Agreements.** In the event that any provision of section 12102(c) or section 31322(a) of title 46, United States Code, as amended by this Act, is determined to be inconsistent with an existing international agreement relating to foreign investment to which the United States is a party with respect to the owner or mortgagee on October 1, 2001 of a vessel with a fishery endorsement, such provision shall not apply to that owner or mortgagee with respect to such vessel to the extent of any inconsistency. The provisions of section 12102(c) section 31322(a) of title 46, United States Code, as amended by this Act, shall apply to all subsequent owners and mortgagees of such vessel, and shall apply, notwithstanding the preceding sentence, to the owner on October 1, 2001 of such vessel if any ownership interest in that owner is transferred or otherwise acquired by a foreign individual or entity after such date.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011128283–2291–02; I.D. 111401B]

RIN 0648–AN55

Fisheries of the Exclusive Economic Zone Off Alaska; Amendments 61/61/13/8 to Implement Major Provisions of the American Fisheries Act

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

ACTION: Final rule.

SUMMARY: NMFS issues final regulations to implement the following American Fisheries Act (AFA)-related amendments: Amendment 61 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, Amendment 61 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, Amendment 13 to the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crab, and Amendment 8 to the Fishery Management Plan for the Scallop Fishery off Alaska. These four amendments incorporate the provisions of the AFA into the fishery management plans (FMPs) and their implementing regulations. The management measures include: measures that allocate the Bering Sea and Aleutian Islands Management Area (BSAI) pollock among the sectors of the pollock processing industry and restrict who may fish for and process pollock within each industry sector; measures that govern the formation and operation of fishery cooperatives in the BSAI pollock fishery; harvesting and processing limits known as sideboards to protect the participants in other fisheries from spillover effects resulting from the rationalization of the BSAI pollock fishery; measures that establish catch weighing and monitoring requirements for vessels and processors that participate in the BSAI pollock fishery; and extension of the inshore/offshore regime for pollock and Pacific cod in the Gulf of Alaska (GOA) through December 31, 2004. These amendments and management measures are necessary to implement the AFA and are intended to do so in a manner consistent with the environmental and socioeconomic objectives of AFA, the Magnuson-Stevens Fishery Management and Conservation Act (Magnuson-Stevens Act), and other applicable laws.

DATES: This regulation becomes effective on January 29, 2003 through December 31, 2007, except for amendments to §§ 679.28(c)(3), 679.28(c)(4)(iii), 679.28(g), 679.61(b), 679.61(d)(1)(iv), 679.61(d)(1)(v), 679.61(d)(2), 679.61(e)(2)(v), and 679.63(c)(2), which will become effective after Paperwork Reduction Act (PRA) approval and issuance of control numbers have been received from the Office of Management and Budget (OMB) and a **Federal Register** document has been published to make them effective.

ADDRESSES: The Final Environmental Impact Statement/Regulatory Impact Review/Final Regulatory Flexibility Analysis (FEIS/RIR/FRFA) prepared for Amendments 61/61/13/8 is available in the NEPA section of the NMFS Alaska Region home page at *http://www.fakr.noaa.gov*. Paper copies of the FEIS/RIR/FRFA prepared for Amendments 61/61/13/8 may be requested from Lori Gravel, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, phone: 907–586–7247, email: lori.gravel@noaa.gov. Send comments on information collection requests to NMFS and to OMB, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228 or email: kent.lind@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI and Gulf of Alaska (GOA) under the FMPs for groundfish in the respective areas. With Federal oversight, the State of Alaska (State) manages the commercial king crab and Tanner crab fisheries in the BSAI and the commercial scallop fishery off Alaska under the FMPs for those fisheries. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Subtitle II of the AFA (Div. C, Title II, Pub. L. 105–277, 112 Stat. 2681 (1998)) mandated sweeping changes to existing management program for the BSAI pollock fishery and, to a lesser extent, affected the management of the other groundfish, crab, and scallop fisheries off Alaska. In response, the Council developed Amendments 61/61/13/8 and the regulatory program set out in this final rule to give effect to the required and discretionary provisions of the AFA.

Amendments 61/61/13/8 were developed through a 3–year public process that included 12 Council meetings and numerous other public meetings held by NMFS and the Council during that period. While Amendments 61/61/13/8 were under development, the deadlines and statutory requirements of the AFA were met on an interim basis through several emergency interim rules. The final EIS for Amendments 61/61/13/8 contains a summary of the extensive public process involved in the development of the amendments and describes the AFA-related rulemaking completed to date.

The proposed rule for Amendments 61/61/13/8 was published on December 17, 2001 (66 FR 65028), with comments invited through January 31, 2002. NMFS received 12 letters of comment by the end of the comment period on the proposed rule, many of which contained extensive comments on various sections of the proposed rule. A notice of availability of Amendments 61/61/13/8 was published on November 27, 2001 (66 FR 59225), with comments on the Amendments invited through January 28, 2002. NMFS received one comment letter on the amendments that supported approval and no comments that recommended disapproval. These comments are summarized and responded to in the Response to Comments section below.

On February 27, 2002, NMFS partially approved Amendments 61/61/13/8. NMFS disapproved the December 31, 2004, sunset dates contained in the amendments because the sunset dates were inconsistent with new legislation making the AFA permanent. The remaining text in Amendments 61/61/13/8 was approved. Section 213 of the AFA as passed by Congress contained a December 31, 2004, sunset date and authorized the Council to review and extend the AFA management program in 2004. As submitted by the Council, Amendments 61/61/13/8 contained this December 31, 2004, sunset date. However, after the amendments were submitted for Secretarial review, Congress passed H.R. 2500, the ''Department of Commerce and Related Agencies Act, 2002,'' which contained a provision that removed the December 31, 2004, sunset date from the AFA. As a result, NMFS found it necessary to reconcile the sunset dates contained in the FMP amendments and proposed

rule with the newly-amended AFA which contained no such sunset date.

II. Final Rule as Adopted

The following is a summary of the major elements of the final rule. Because this final rule has been reorganized and contains various modifications from the proposed rule, we are including here a full discussion of the changes between the proposed and final rule.

A. Definitions

This final rule adds the following definitions to § 679.2 to describe vessels and processors eligible to participate in the BSAI pollock fishery under the AFA: ''AFA catcher/processor,'' ''AFA catcher vessel,'' ''AFA crab processing facility,'' ''AFA entity,'' ''AFA inshore processor,'' ''AFA mothership,'' ''Designated primary processor,'' ''Listed AFA catcher/processor,'' ''Official AFA record,'' ''Restricted AFA inshore processor,'' ''Stationary floating processor,'' ''Unlisted AFA catcher/processor,'' and ''Unrestricted AFA inshore processor.''

The definitions of ''AFA entity'' and ''Affiliation'' have been restructured to improve clarity by moving the substantive elements of the definitions of AFA entity and affiliation to a new section entitled § 679.66 *Excessive shares*. In addition, the criteria for 10–percent or greater ownership has been modified from the proposed rule by eliminating the criteria of ''shared assets and liabilities.'' This change was made in response to comment from industry that identified potential unintended effects of the definition.

A definition for ''Official AFA record'' is added to describe the relevant catch histories of all potentially qualifying vessels in the BSAI pollock fisheries. A definition of ''Stationary floating processor'' is added to define a vessel of the United States operating solely as a mothership in Alaska State waters that remains anchored or otherwise remains stationary while processing groundfish harvested in the GOA or BSAI.

Finally, this final rule revises the definition of ''Inshore component in the GOA'' and removes the definitions of ''Inshore component in the BSAI'' and ''Offshore component in the BSAI'' because the previous inshore/offshore regime for pollock in the BSAI has been superseded by the AFA.

B. AFA Permit Requirements for Vessels, Processors, and Inshore Cooperatives

This final rule establishes permit requirements for AFA catcher/processors, AFA catcher vessels, AFA motherships, AFA inshore processors, and AFA inshore cooperatives in a new § 679.4(l). Any vessel used to engage in directed fishing for a non-community development quota (CDQ) allocation of pollock in the BSAI and any processor that receives pollock harvested in a non-CDQ directed pollock fishery in the BSAI is required to maintain a valid AFA permit onboard the vessel or at the processor location at all times that non-CDQ pollock is being harvested or processed. The AFA does not limit who may participate in the CDQ pollock fishery. Therefore, vessels or processors participating in the pollock CDQ fishery are not required to have AFA permits. In addition, any vessel owner that participates in a BSAI pollock cooperative must have a valid AFA permit for every vessel that participates in a cooperative regardless of whether or not the vessel actually engages in directed fishing for pollock in the BSAI. Finally, these new AFA permits do not exempt a vessel operator, vessel owner, or pollock processor from any other applicable permit or licensing requirements required by State or Federal regulations.

AFA vessel and processor permits may not be used on or transferred to another vessel or processor, except under the replacement vessel provisions outlined below. However, AFA permits may be amended to reflect any change in the ownership of the vessel or processor. The owner or owners of an AFA vessel or AFA processor are required to notify NMFS of any changes in ownership within 60 days of the change in ownership of the AFA vessel or processor.

The final rule contains the following substantive changes to the general AFA permit requirements contained in the proposed rule:

1. *AFA permit application deadline eliminated.* The proposed rule contained a 60–day application deadline for all AFA vessel and processor permits. Several letters of comment noted that the proposed application deadline could pose difficulties for fishermen, especially if the application period occurred during a fishing season when vessel owners may be working at sea and out of contact. Therefore, we have eliminated the application deadline from the final rule.

2. AFA catcher vessel and catcher/processor permits will be renewed automatically. Under the proposed rule, all interim AFA permits would have expired 60 days after the effective date of the final rule and vessel owners would have been required to reapply for their permanent AFA permits. NMFS has reconsidered the need to collect additional information from the owners of catcher vessels and catcher processors and has decided to renew existing interim permits automatically. However, under this final rule, the owners of AFA motherships and AFA inshore processors must still reapply for permanent AFA permits. NMFS is requiring the owners of AFA motherships and AFA inshore processors to reapply for their AFA permits in order to collect data confidentiality waivers that are necessary for the administration of crab processing sideboard limits. All interim AFA mothership and AFA inshore processor permits will expire on December 31, 2002.

3. Final AFA vessel and processor permits have no expiration date. All AFA vessel and processor permits will have no expiration date and will remain valid indefinitely unless revoked by NMFS. The proposed rule contained a December 31, 2004 expiration date which was consistent with section 213 of the AFA when the proposed rule was published. However, as noted above, Congress has subsequently removed the sunset date from section 213 of the AFA.

AFA Permit Application and Administrative Appeals Process

Application forms for all AFA permits may be downloaded from the NMFS Alaska Region home page at *http://www.fakr.noaa.gov*. Paper copies of the permit applications also are available from the NMFS Alaska Region (see **ADDRESSES**).

AFA Catcher/processor Permits

Subsection 208(e) of the AFA, which took effect on January 1, 1999, lists by name catcher/processors that are eligible to harvest the catcher/processor sector BSAI pollock directed fishing allowance. Under this final rule, two categories of AFA catcher/processor permits will be issued. Vessels listed by name in paragraphs 208(e)(1) through (20) of the AFA will be issued ''listed AFA catcher/processor permits.'' Vessels qualifying for AFA catcher/processor permits under paragraph 208(e)(21) will be issued ''unlisted AFA catcher/processor permits,'' which will restrict such vessels, in the aggregate, to a harvest of no more than 0.5 percent of the catcher/processor sector pollock TAC allocation. In addition, a catcher/processor will not need an AFA catcher/processor permit to participate in the CDQ sector of the BSAI pollock fishery because the AFA does not limit participation in the CDQ pollock fishery. The owners of AFA catcher/processors are not required to reapply

for their AFA permits. NMFS will mail new permits to the owners of record of all existing AFA catcher/processors prior to the start of the 2003 fishery.

AFA Catcher Vessel Permits

Under the AFA, a catcher vessel is qualified to engage in directed fishing for BSAI pollock if it is listed by name in subsections 208(b), 208(c), or 211(e) of the AFA, or if its history of participation in the BSAI pollock fishery meets certain criteria set out in subsections 208(a), 208(b), or 208(c) of the AFA. Under this final rule, AFA catcher vessel permits will be endorsed to authorize directed fishing for pollock for delivery to one or more of the three processing sectors: Catcher/processors, inshore processors, and motherships. Under the AFA, a catcher vessel may be authorized to engage in directed fishing for pollock for delivery to both AFA inshore processors and AFA motherships, depending on its qualifying catch history. However, a vessel that is eligible to deliver to catcher/processors is ineligible for an endorsement to deliver to inshore processors or motherships. In addition, a catcher vessel will not need an AFA catcher vessel permit to participate in the CDQ sector of the BSAI pollock fishery because the AFA does not limit participation in the CDQ pollock fishery.

The owners of AFA catcher vessels are not required to reapply for their AFA permits. NMFS will mail new permits to the owners of record of all existing AFA catcher vessels prior to the start of the 2003 fishery.

Crab Sideboard Endorsements. Under subparagraph 211(c)(1)(A) of the AFA, the Council is required to recommend measures to limit the participation of AFA catcher vessels in BSAI crab fisheries. Subparagraph 211(c)(2)(C) of the AFA also prohibits section 208(b) catcher vessels (i.e., AFA catcher vessels eligible to deliver to catcher/processors) ''from participating in a directed fishery for any species of crab in the Bering Sea and Aleutian Islands Management Area unless the catcher vessel harvested crab in the directed fishery for that species of crab in such Area during 1997.'' At its June 1999 and June 2000 meetings, the Council developed final recommendations under Amendments 61/61/13/8 for limits on the participation of AFA catcher vessels in BSAI crab fisheries in order to comply with these two provisions of the AFA. These recommendations apply to all AFA catcher vessels and supersede the crab sideboards set out in subparagraph 211(c)(2)(C) of the AFA that apply to section 208(b) vessels only.

Under this final rule, NMFS will implement these catcher vessel crab sideboard limits through crab sideboard endorsements on AFA catcher vessel permits. The owner or operator of a catcher vessel who wishes to participate in a BSAI king or Tanner crab fishery is required to have a sideboard endorsement for that crab species on the vessel's AFA catcher vessel permit. An AFA catcher vessel permit will be endorsed for the Bristol Bay Red King Crab (BBRKC), St. Matthew Island blue king crab, Pribilof Island red or blue king crab, Aleutian Islands brown king crab, Aleutian Islands red king crab, Opilio Tanner crab, and Bairdi Tanner crab fisheries based on the vessel's history of participation in such crab fisheries. The specific qualifying criteria for each fishery are set out in § 679.4(l)(3)(ii)(D) of this final rule.

The Council based some of its crab sideboard recommendations on whether a particular vessel is ''License Limitation Program (LLP) qualified'' for a particular crab fishery. To implement this recommendation, the AFA catcher vessel permit application includes questions related to vessel catch history using the same qualifying years as the LLP program. This final rule requires an applicant for an AFA catcher vessel permit to indicate on the permit application which AFA crab sideboard endorsements the vessel qualifies for based on the qualifying criteria set out in this rule. NMFS will verify all claims of qualification.

Finally, the Council recommended exempting from all crab harvesting sideboards, any AFA catcher vessel that made a legal landing of crab in every BBRKC, *Opilio* Tanner crab, and *Bairdi* Tanner crab fishery opening from 1991–1997. A vessel qualifying for this exemption will receive an AFA catcher vessel permit with an endorsement indicating that the vessel is exempt from all crab harvesting sideboards. The Council recommended the exemption to mitigate the adverse effect of crab sideboards on vessels that are almost exclusively crab vessels but, due to a small amount of pollock landings, fell within the criteria for AFA eligibility. The exemption will mitigate the adverse effect of the crab sideboard restrictions on such vessels.

An owner of a catcher vessel should be aware that qualification for a crab sideboard endorsement does not, in and of itself, provide sufficient authorization to participate in a BSAI crab fishery. To participate in a BSAI crab fishery, the operator of an AFA catcher vessel must have a valid LLP license for that crab fishery as well as an AFA catcher vessel permit naming that vessel and containing an endorsement for that crab fishery.

Groundfish sideboard exemptions. Catcher vessel groundfish harvest sideboard limits apply to all AFA catcher vessels in the aggregate regardless of sector and regardless of participation in a cooperative. However, the Council recommended that certain smaller AFA catcher vessels be exempt from these sideboards if they have relatively low pollock fishing history and show a dependence on BSAI Pacific cod and/or GOA groundfish. Based on the Council's recommended criteria for these exemptions, AFA catcher vessels less than 125 ft (38.1 m) whose annual BSAI pollock landings averaged less than 1,700 mt from 1995–1997 are exempt from BSAI Pacific cod sideboards if they made 30 or more legal landings of BSAI Pacific cod in the BSAI directed fishery for Pacific cod during that 3–year period. In addition, AFA catcher vessels that meet the same vessel length and BSAI pollock landing criteria and that made 40 or more legal landings of GOA groundfish during the 1995–1997 time period are exempt from groundfish sideboards in the GOA.

In recommending these exemptions, the Council noted that many of the AFA catcher vessels with relatively low catch histories of BSAI pollock have traditionally targeted BSAI Pacific cod and GOA groundfish during much of the year and may be only minor participants in the BSAI pollock fishery. The Council believed that imposing aggregate sideboards on such vessels in the BSAI Pacific cod fishery and GOA groundfish fisheries could severely harm the owners of such vessels given their historic high levels of participation in non-pollock fisheries, and the fact that their historic dedication to groundfish fisheries other than the BSAI pollock fishery fisheries may account for their lower catch histories of BSAI pollock during the AFA qualifying years. The owners of vessels who believe their vessel may be eligible for one or both of these exemptions must apply for the sideboard exemption on their AFA catcher vessel permit application form.

AFA Mothership Permits

Under subsection 208(d) of the AFA, three named vessels are eligible for AFA permits that authorize them to process pollock harvested in the BSAI directed pollock fishery for delivery to motherships. Under this final rule, NMFS will issue to the owner of a mothership an AFA mothership permit if the mothership is listed by name in paragraphs 208(d)(1) through (3) of the AFA and the owner applies for such

permit. However, the owner of a mothership wishing to process pollock harvested by a fishery cooperative also must apply for and receive a cooperative processing endorsement on its AFA mothership permit. This requirement is necessary because NMFS must identify and issue crab processing restrictions to any AFA entity that owns or controls an AFA mothership or an AFA inshore processor that receives pollock harvested by a cooperative.

Subparagraph 211(c)(2)(A) of the AFA imposes crab processing restrictions on the owners of AFA mothership and AFA inshore processors that receive pollock from a fishery cooperative. Under the AFA, these processing limits extend not only to the AFA processing facility itself, but also to any entity that directly or indirectly owns or controls a 10–percent or greater interest in the AFA mothership or in the AFA inshore processor. To implement the crab processing restrictions contained in subparagraph 211(c)(2)(A) of the AFA, NMFS requires that applicants for AFA mothership and AFA inshore processor permits disclose on their permit applications all entities directly or indirectly owning or controlling a 10–percent or greater interest in the AFA mothership or AFA inshore processor and the names of BSAI crab processors in which such entities directly or indirectly own or control a 10–percent or greater interest. An applicant for an AFA mothership or an AFA inshore processor permit who did not disclose this crab processor ownership information could still receive an AFA mothership permit or an AFA inshore processor permit but will be denied an endorsement authorizing the processor to receive and process pollock harvested by a fishery cooperative.

AFA Inshore Processor Permits

Under the AFA, shoreside processors and stationary floating processors (collectively known as inshore processors) may be authorized to receive and process BSAI pollock harvested in the directed fishery, based on their levels of processing in both 1996 and 1997. An inshore processor is eligible for an unrestricted AFA inshore processing permit if the facility annually processed more than 2,000 mt round weight of pollock harvested in the BSAI inshore directed pollock fishery in both 1996 and 1997. An inshore processor is eligible for a restricted AFA inshore processor permit if the facility processed pollock harvested in the inshore directed pollock fishery during 1996 or 1997, but did not process annually more than 2,000 mt round weight of pollock in both 1996 and 1997. A restricted AFA inshore processor permit prohibits the inshore processing facility from processing more than 2,000 mt round weight of BSAI pollock harvested in the directed fishery in any one calendar year.

The owner of an AFA inshore processor wishing to process pollock harvested by a fishery cooperative must have a cooperative processing endorsement on the AFA inshore processing permit. The requirements for an AFA inshore processor cooperative processing endorsement are the same as those listed for AFA motherships above.

Finally, AFA inshore processors are restricted to processing BSAI pollock in a single geographic location in state waters during a fishing year. The purpose of this restriction is to implement subparagraph 208(f)(1)(A) of the AFA, which includes in the category of AFA inshore processors, vessels that operate in a single geographic location in state waters. Under the final rule, shoreside (land-based) processors are restricted to operating in the physical location in which the facility first processed pollock during a fishing year. Stationary floating processors are restricted to receiving and processing BSAI pollock in a location within Alaska state waters that is within 5 nautical miles (nm) of the position in which the stationary floating processor first processed BSAI pollock during a fishing year. NMFS believes that 5 nm is an appropriate distance for this requirement because it allows the operator of a floating processor some flexibility in choosing an appropriate anchorage, but it still requires that the processor be located in the same body of water for the duration of a fishing year while receiving and processing BSAI pollock.

Approval of Additional AFA Inshore Processors

Paragraph 208(f)(2) of the AFA provides that:

> Upon recommendation by the North Pacific Council, the Secretary may approve measures to allow catcher vessels eligible under subsection (a) to deliver pollock harvested from the directed fishing allowance under section 206(b)(1) to shoreside processors not eligible under paragraph (1) if the total allowable catch for pollock in the Bering Sea and Aleutian Islands Management Area increases by more than 10 percent above the total allowable catch in such fishery in 1997, or in the event of the actual total loss or constructive total loss of a shoreside processor eligible under paragraph (1)(A).

To implement this provision of the AFA, the final rule provides a mechanism for the Council to recommend that NMFS issue AFA inshore processor permits to inshore processors that are otherwise ineligible under the AFA. In the event that the BSAI pollock TAC exceeds 1,274,900 mt (10 percent above the 1997 combined BSAI TAC of 1,159,000 mt), or in the event of the actual total loss or constructive loss of an AFA inshore processor, the Council may recommend that an additional inshore processor (or processors) be issued AFA inshore processing permits. The Council's recommendation to NMFS must identify (1) the processor (or processors) that would be issued AFA inshore processing permits, (2) the type of AFA inshore processing permit(s) to be issued (restricted or unrestricted), and the duration of any such permit(s). The Council may recommend any length of duration for permits issued under this provision, from a single fishing season to the duration of the AFA. Or the Council may recommend that any such permits remain valid as long as the criteria that led to their issuance remain in effect (i.e., TAC remains above 1,274,900 mt).

Replacement Vessels

This final rule provides that, in the event of the actual total loss or constructive total loss of an AFA catcher vessel, AFA mothership, or AFA catcher/processor, the owner of such vessel may designate a replacement vessel that will be eligible in the same manner as the original vessel after submission of an application for an AFA replacement vessel that is subsequently approved by NMFS. The AFA contains specific restrictions on replacement vessels that are set out in detail in the final rule regulatory text at § 679.4(l)(7). Paragraph 208(g)(5) of the AFA states that a vessel may be used as a replacement vessel if:

> the eligible vessel is less than 165 feet in registered length, of fewer than 750 gross registered tons, and has engines incapable of producing less than 3,000 shaft horsepower, the replacement vessel is less than each of such thresholds and does not exceed by more than 10 percent the registered length, gross registered tons or shaft horsepower of the eligible vessel;

NMFS believes that Congress intended this clause to apply to eligible vessels with engines incapable of producing more than 3,000 shaft horsepower rather than engines incapable of producing less than 3,000 shaft horsepower. No catcher vessel operating in Alaska has engines incapable of producing less than 3,000 shaft horsepower, and construing this clause literally would make this provision a nullity. Any vessel engine regardless of size is capable of

producing less than 3,000 shaft horsepower at less than full throttle or at idle. Therefore, NMFS is using the phrase ''incapable of producing more than 3,000 shaft horsepower'' to implement paragraph 208(g)(5) of the AFA.

In the event of the loss of an approved AFA replacement vessel, the owners of the replacement vessel may designate a subsequent replacement vessel provided that the original replacement vessel is lost under conditions that meet the criteria set out in the AFA for lost vessels. In the event of multiple vessel replacements, the length, horsepower, and tonnage limits for any subsequent replacement vessels are based on the length, horsepower, and tonnage of the originally qualifying AFA vessel.

Under the final rule, any vessel that meets the replacement vessel criteria may be designated as a replacement for a lost vessel including an existing AFA vessel. In the event that an existing AFA catcher vessel is designated as a replacement for a lost AFA catcher vessel, the catch histories of the two vessels will be merged for the purpose of making inshore cooperative allocations, crab sideboard endorsements, and groundfish sideboard exemptions. However, the catch histories of two vessels will not be merged until NMFS receives and approves an application for a replacement vessel from the owner(s) of the affected vessels.

Official AFA Record and Appeals

In order to issue AFA permits, NMFS has compiled available information about vessels and processors that were used to participate in the BSAI pollock fisheries during the qualifying periods. Information in the official AFA record includes vessel ownership information, documented harvests made from vessels during AFA qualifying periods, vessel characteristics, and documented amounts of pollock processed by pollock processors during AFA qualifying periods. Under this final rule, the official AFA record is presumed to be correct for the purpose of determining eligibility for AFA permits. An applicant for an AFA permit has the burden of proving correct any information submitted in an application that is inconsistent with the AFA official record.

This final rule also establishes an appeals process under which the owners of vessels and processors may appeal NMFS determinations about either AFA eligibility or inshore cooperative allocations. The appeals process for AFA permits and inshore cooperative allocations is based on the existing appeals process in place for the individual fishing quota and LLP programs.

Restrictions on Transfer of LLP Licenses

This final rule contains a revision to the LLP program for groundfish and crab that prevents LLP licenses earned on AFA vessels from being used on non-AFA vessels. The purpose of this restriction is to prevent the owners of retired AFA vessels from re-deploying the LLP license in the groundfish and/or crab fisheries off Alaska on a new vessel that is not subject to the same sideboard restrictions as the retired AFA vessel. Without this restriction, owners of AFA vessels would be able to evade the harvesting sideboard restrictions contained in this rule by using the LLP licenses from their AFA vessels to deploy new vessels into the groundfish and crab fisheries that are not subject to AFA sideboards.

Under this restriction, no person may use an LLP license that was derived in whole or in part from the qualifying fishing history of an AFA catcher vessel or a listed AFA catcher/processor to fish for groundfish or crab on a non-AFA catcher vessel or non-AFA catcher/processor. NMFS will identify all such licenses affected by this restriction and inform the holders of such licenses of this restriction through a letter to the permit holder and/or an endorsement printed on the face of the license. Persons will be able to file an administrative appeal of NMFS' determination under § 679.4(l)(8).

C. Procedures and Formulas for Allocating the BSAI Pollock TAC

Under this final rule, the procedures for allocating pollock TAC among industry sectors and apportioning each sector's TAC between seasons and/or areas are revised to incorporate the changes required by the AFA. No changes from the proposed rule were made to the procedures and formulas for allocating the BSAI pollock TAC.

Under this final rule, 10 percent of the pollock TAC specified for the Bering Sea (BS) subarea and the Aleutian Islands (AI) subarea will be allocated to the CDQ program. The remaining TAC for each subarea, after establishment of an incidental catch allowance for pollock harvested as incidental catch in other groundfish fisheries, will be allocated 50 percent to AFA catcher vessels harvesting pollock for processing by AFA inshore processors; 40 percent to AFA catcher/processors and AFA catcher vessels harvesting pollock for processing by AFA catcher/processors, with not less than 8.5 percent of this allocation made available to AFA catcher vessels delivering to catcher/processors; and 10 percent to AFA catcher vessels harvesting pollock for processing by AFA motherships. The inshore pollock TAC will be further divided into two allocations: one allocation to vessels participating in inshore fishery cooperatives, and one allocation to vessels not participating in a fishery cooperative. The annual allocation to inshore cooperatives will be equal to the aggregate annual allocations made to each inshore cooperative. The annual allocation to the inshore open access fishery, which is composed of the remaining AFA inshore catcher vessels that are not in a cooperative, will be equal to the remaining inshore allocation after subtraction of the allocation to fishery cooperatives.

Management of the 8.5 Percent Allocation for AFA Catcher Vessels Delivering to Catcher/Processors

Under subsection 210(c) of the AFA ''not less than 8.5 percent of the [catcher/processor sector] directed fishing allowance . . . shall be available for harvest only by the catcher vessels eligible under section 208(b).'' Subsection 210(c) further provides that ''The owners of such catcher vessels may participate in a fishery cooperative with the owners of the catcher/processors eligible under paragraphs (1) through (20) of section 208(e).'' NMFS intends to implement these two related provisions by establishing two different procedures based on whether such catcher vessels are members of a cooperative with AFA catcher/processors during a given fishing year.

Allocation procedure with cooperatives. If the owners of all such AFA catcher vessels enter into a cooperative agreement, and the owners of such vessels also have entered into a cooperative agreement or inter-cooperative agreement with the owners of the listed AFA catcher/processors, and such agreement provides for at least 8.5 percent of the cooperative harvest shares for such catcher vessels, then NMFS will assume that the 8.5 percent catcher vessel allocation has been provided for within the cooperative or inter-cooperative agreement. In such event, NMFS will make a single allocation of pollock to the catcher/processor sector that is not subdivided between catcher vessels and catcher/processors. Owners of catcher/processors are then able to enter into cooperative agreements that allow them to harvest some or all of the 8.5 percent of the TAC reserved for catcher vessels, or catcher vessels could harvest some or

all of 91.5 percent catcher/processor limit.

Allocation procedure without cooperatives. If the AFA catcher vessels eligible to deliver to catcher/processors do not form a cooperative and do not enter into a cooperative or inter-cooperative agreement with the listed AFA catcher/processor fleet, then NMFS will limit AFA catcher/processors to harvesting no more than 91.5 percent of the catcher/processor sector allocation to guarantee that not less than 8.5 percent of the catcher/processor sector allocation is made available for harvest by AFA catcher vessels. In other words, AFA catcher/processors will be limited to harvesting no more than 91.5 percent of the catcher/processor allocation and only eligible catcher vessels will be able to harvest the remaining 8.5 percent of the catcher/processor sector allocation for delivery to catcher/processors. This 91.5 percent catcher/processor harvest limit will be published in the annual harvest specifications and will be applied to each fishing season.

Management of the 0.5 Percent Cap for Unlisted AFA Catcher/processors

Under paragraph 208(e)(21) of the AFA, unlisted catcher/processors are ''prohibited from harvesting in the aggregate a total of more than one-half (0.5) of a percent of the pollock apportioned to the [AFA catcher/processor sector].'' Under the final rule, this 0.5 percent limit will be apportioned seasonally using whatever seasonal apportionment formula is in effect for the overall catcher/processor sector. This is to prevent unlisted catcher/processors from taking their entire 0.5 percent limit during the roe season when pollock have higher value. However, NMFS will allow for the rollover of any uncaught amount of this 0.5 percent limit from the roe to the non-roe season so that unlisted catcher/processors could take their entire annual limit during the non-roe season if they so choose. This 0.5 percent limit is not a separate allocation to unlisted AFA catcher/processors but rather a cap on their harvest activity within the overall catcher/processor sector allocation. Consequently, if unlisted AFA catcher/processors choose not to fish, this opportunity will be foregone in favor of other AFA catcher/processors and AFA catcher vessels delivering to catcher/processors.

Inshore Cooperative Allocations

Paragraph 210(b)(1)(B) of the AFA sets out a specific formula for determining the allocation of pollock to each inshore cooperative. Under this paragraph:

> The Secretary shall allow only such catcher vessels . . . to harvest the aggregate percentage of the directed fishing allowance under section 206(b)(1) in the year in which the fishery cooperative will be in effect that is equivalent to the aggregate total amount of pollock harvested by such catcher vessels . . . in the directed pollock fishery for processing by the inshore component during 1995, 1996, and 1997 relative to the aggregate total amount of pollock harvested in the directed pollock fishery for processing by the inshore component during such years and shall prevent such catcher vessels . . . from harvesting in aggregate in excess of such percentage of such directed fishing allowance.

In other words, under the AFA, each inshore cooperative's allocation percentage is generated by dividing the aggregate inshore landings by all member vessels in the cooperative from 1995–1997 by the total inshore landings during that same period.

However, paragraph 213(c)(3) of the AFA provides the Council with the authority to recommend an alternative allocation formula:

> The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act . . . that supersede the criteria required in paragraph (1) of section 210(b) to be used by the Secretary to set the percentage allowed to be harvested by catcher vessels pursuant to a fishery cooperative under such paragraph.

Using the authority provided in paragraph 213(c)(3) of the AFA, the Council has recommended three changes that supersede the inshore cooperative allocation formula set out in the AFA. These changes are contained in the final rule and described below.

Offshore compensation. The first change recommended by the Council at its June 1999 meeting allows inshore catcher vessels to receive inshore catch history credit for landings made to catcher/processors if the vessel made cumulative landings to catcher/processors of more than 499 mt of BSAI pollock during the 1995 through 1997 qualifying period. The Council recommended this change to assist the cooperatives in meeting the intent of paragraph 210(b)(4) of the AFA, which requires that:

> Any contract implementing a fishery cooperative under paragraph (1) which has been entered into by the owner of a qualified catcher vessel eligible under section 208(a) that harvested pollock for processing by catcher/processors or motherships in the directed pollock fishery during 1995, 1996, and 1997 shall, to the extent practicable, provide fair and equitable terms and conditions for the owner of such qualified catcher vessel.

The Council believed that catcher vessels with sustained participation delivering to catcher/processors, but excluded from delivering to catcher/processors under subsection 208(b) of the AFA, should not be disadvantaged by the new management regime. The Council chose 499 mt as the threshold based on information presented in the FEIS/RIR/IRFA, which indicated that 499 mt provided a good ''break point'' between vessels with significant history of delivering to catcher/processors and vessels that only had incidental deliveries to catcher/processors during the 1995 through 1997 qualifying period. The Council recommended that only deliveries to catcher/processors be considered for such ''compensation'' and not deliveries made to the three motherships listed in subsection 208(d) of the AFA, because any vessel with more than 250 mt of pollock deliveries to one of the three AFA motherships during the qualifying period will earn an endorsement to deliver pollock to AFA motherships under the AFA and, therefore, has not ''lost'' any fishing privileges as a result of the AFA.

Using the best 2 of 3 years from 1995–1997. The second change recommended by the Council at its June 1999 meeting, modifies the allocation formula so that the share of the BSAI pollock TAC that each catcher vessel brings into a cooperative is based on average annual pollock landings in its best 2 out of 3 years from 1995 through 1997. This change, along with the offshore compensation formula, was unanimously endorsed by industry representatives during public testimony at the June 1999 Council meeting. These changes were viewed as a more equitable method of allocating pollock catch because some vessels may have missed all or part of the inshore fishery in a given year due to unavoidable circumstances such as vessel breakdowns or lack of markets.

Revised open access formula. Finally, the Council recommended a third change to the allocation formula at its June 2000 meeting. This change reduces the denominator in the formula from ''the aggregate total amount of pollock harvested in the directed pollock fishery for processing by the inshore component'' to ''the aggregate total amount of pollock harvested by AFA catcher vessels with inshore sector endorsements.'' The effect of this change is to eliminate from the formula all 1995 through 1997 catch history made by vessels that are not AFA catcher vessels with inshore sector endorsements. One consequence of the formula set out in the AFA is that all inshore catch history made by non-AFA vessels, and AFA catcher vessels without inshore endorsements, defaults to the open access sector. The Council

believed that this resulted in an inshore open access allocation that was unfairly inflated to the detriment of vessels in cooperatives. The Council believed that inflating the open access quota in such a manner will provide incentives for vessels to leave cooperatives, which could disrupt the objective of rationalizing the BSAI pollock fishery. Under this change, the cooperative and the open access sectors will be treated equally and allocations to both cooperatives and the open access sector would be based only on the fishing histories of the vessels in each group. All three of these changes have been incorporated into Amendments 61/61/13/8 as management measures that supersede the AFA.

Separate allocations for Bering Sea and Aleutian Islands Subareas. Under the final rule, NMFS will use the allocation formula recommended by the Council to make annual allocations of pollock to each inshore cooperative for each subarea of the BSAI; the Bering Sea subarea and the Aleutian Islands subarea. These two subareas are treated as separate pollock stocks under the FMP and receive separate TACs during the annual specification process. The Aleutian Islands subarea is currently closed to directed fishing for pollock as a protection measure for Steller sea lions. Consequently, under this final rule, as long as Aleutian Islands subarea is closed for this or any other reason, NMFS will not make separate cooperative allocations of pollock for the Aleutian Islands subarea. Each cooperative will receive an annual allocation of Bering Sea subarea pollock only.

Each sector's annual Bering Sea Subarea allocation of pollock is further apportioned among fishing seasons. In a separate action, NMFS is implementing management measures to temporally and spatially disperse the BSAI pollock fishery to protect endangered Steller sea lions. These temporal and spatial dispersion measures will be applied to each sector's BSAI pollock allocations.

Treatment of the F/V HAZEL LORRAINE AND F/V PROVIDIAN pursuant to Public Law 106–562. In December 2000, the President signed Public Law 106–562 into law. This law, among other things, contains a provision that includes the F/V HAZEL LORRAINE and F/V PROVIDIAN as AFA inshore catcher vessels. The relevant section reads as follows:

SEC 501. TREATMENT OF VESSEL AS AN ELIGIBLE VESSEL.Notwithstanding paragraphs (1) through (3) of sections 208(a) of the American Fisheries Act . . . the catcher vessel HAZEL LORRAINE . . . and catcher vessel PROVIDIAN . . . shall be considered to be vessels that are eligible to harvest the directed fishing allowance under section 206(b)(1) of that Act pursuant to a Federal fishing permit in the same manner as, and subject to the same requirements and limitations on that harvesting as apply to, catcher vessels that are eligible to harvest that directed fishing allowance under section 208(a) of that Act.

After reviewing the legislative history of this statute including a statement by Senator Snow in the Congressional Record (S. 11894, December 15, 2000), NMFS has determined that Public Law 106–562 directs NMFS to include both the F/V HAZEL LORRAINE and F/V PROVIDIAN as eligible vessels and directs NMFS to use the 1992 through 1994 pollock catch history of the F/V OCEAN SPRAY instead of 1995 through 1997 catch history of the F/V PROVIDIAN for the purpose of determining inshore cooperative quota allocations. Consequently, the final regulations provide that the 1992 through 1994 catch history of the F/V OCEAN SPRAY would be used to determine inshore cooperative allocations for any cooperative for which the F/V PROVIDIAN is a member.

Excessive Shares Harvesting and Processing Limits

Harvesting limits. Paragraph 210(e)(1) of the AFA establishes an excessive harvesting share cap of 17.5 percent of the directed pollock fishery as follows:

HARVESTING.—No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery.

To implement this provision of the AFA, NMFS will publish in the annual harvest specifications, the tonnage amount that equates to 17.5 percent of the pollock available to be harvested in the directed pollock fishery excluding CDQ. The final rule also contains a definition of ''AFA entity'' to identify which entities are affected by this 17.5 percent excessive harvesting share limit. The definition of AFA entity is discussed in detail in the definitions section.

Processing limits. Paragraph 210(e)(2) of the AFA states that:

Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from processing an excessive share of the pollock available to be harvested in the directed pollock fishery. In the event the North Pacific Council recommends and the Secretary approves an excessive processing share that is lower than 17.5 percent, any individual or entity that previously processed a percentage greater than such share shall be allowed to continue to process such percentage, except that their percentage may not exceed 17.5 percent (excluding pollock processed by catcher/processors that was harvested in the directed pollock fishery by catcher vessels eligible under 208(b)) and shall be reduced if their percentage decreases, until their percentage is below such share. In recommending the excessive processing share, the North Pacific Council shall consider the need of catcher vessels in the directed pollock fishery to have competitive buyers for the pollock harvested by such vessels.

At its October 2000 meeting, the Council considered various options for processing excessive share limits for the BSAI pollock fishery and adopted a BSAI pollock excessive processing share limit of 30 percent of the non-CDQ directed fishing allowance. The Council also recommended that the same 10 percent entity rules established for excessive harvesting shares be used for excessive processing shares as well. Under this final rule, NMFS will publish in the annual harvest specifications, the excessive processing share limit in tons that equates to 30 percent of the pollock available to be harvested in the non-CDQ directed pollock fishery. An AFA entity is prohibited from processing BSAI pollock from the BSAI directed pollock fishery in excess of this excessive processing share limit.

D. Regulations Governing the Formation and Operation of Fishery Cooperatives

This final rule contains regulations that govern the formation and operation of fishery cooperatives. The first set of regulations are filing deadlines and annual reporting requirements that apply to all cooperatives operating in the BSAI pollock fishery regardless of sector. The second set of regulations are required provisions of cooperative contracts that must be included in all catcher vessel cooperatives operating in the BSAI pollock fishery that are intended to govern the harvest of sideboard species by catcher vessel cooperatives. The third set of regulations are specific requirements and restrictions on inshore catcher vessel cooperatives that are applying for an inshore cooperative fishing permit to receive an annual allocation of the inshore sector BSAI pollock TAC.

Regulations that Apply to all Cooperatives

The following regulations apply to all fishery cooperatives formed for the purpose of managing directed fishing for pollock within any sector of the BSAI pollock fishery.

Filing deadlines. Each fishery cooperative must file with NMFS and the Council, a signed copy of its cooperative contract, and any material modifications to any such contract, together with a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request. The Council and NMFS will make this information available to the public upon request. The filing deadline for cooperatives operating in the catcher/processor and mothership sectors is 30 days prior to the start of any fishing activity conducted under the terms of the contract. The filing deadline for cooperatives operating in the AFA inshore sector is December 1 of the year prior to the year in which fishing under the contract will occur. The December 1 deadline for inshore sector cooperatives is necessary because inshore sector cooperative allocations must be included in the BSAI interim harvest specifications that are usually published prior to January 1 of each year. Under this final rule, NMFS will not make sub-allocations of pollock to catcher/processor and mothership cooperatives. Such cooperatives operate at the sector level. Consequently, catcher/processor and mothership sector cooperative information does not need to be included in the BSAI interim harvest specifications.

Designated representative. Each cooperative is required to appoint a designated representative. The designated representative is the primary contact person for NMFS on issues related to the operation of the cooperative and is responsible for fulfilling regulatory requirements on behalf of the cooperative including, but not limited to, filing of cooperative contracts, filing of annual reports, and in the case of inshore sector catcher vessel cooperatives, signing cooperative fishing permit applications and completing and submitting inshore catcher vessel pollock cooperative catch reports. The owners of the member vessels are jointly and severally responsible for compliance and ensuring that the designated representative complies with the requirements contained in this final rule.

Agent for service of process. Each cooperative is required to appoint an agent who is authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of the cooperative. The agent for service of process may be the same individual as the cooperative's designated representative, or may be a different individual. Service on or notice to the cooperative's appointed agent constitutes service on or notice to all members of the cooperative. NMFS may, at its option, attempt to serve every member of the cooperative individually in addition to service on the cooperative's appointed agent. However, failure to achieve service on the individual member does affect the validity of notice if service is accomplished on the cooperative's appointed agent for service of process. The agent for service of process must be capable of accepting service on behalf of the cooperative until December 31 of the year 5 years after the calendar year for which the fishery cooperative has filed its intent to operate. If the agent is unable to complete this obligation, the cooperative is required to appoint a replacement agent who could complete the term of service.

Required contract elements for all fishery cooperatives. Under the final rule, all cooperative contracts formed for the purpose of managing directed fishing for pollock in the BSAI must: (1) list parties to the contract, (2) list all vessels and processors that will harvest and process pollock harvested under the cooperative, (3) specify the amount or percentage of pollock allocated to each party to the contract, and (4) pursuant to subsection 210(f) of the AFA, include a contract clause under which the parties to the contract agree to make payments to the State for any pollock harvested in the directed pollock fishery which is not landed in the State, in amounts which otherwise would accrue had the pollock been landed in the State subject to any landing taxes established under Alaska law. Failure to include such a contract clause or for such amounts to be paid will result in a revocation of the authority to form fishery cooperatives under section 1 of the Act of June 25, 1934 (15 U.S.C. 521 *et seq.*).

Annual reporting requirements for all cooperatives. Under this final rule all cooperatives are required to submit preliminary and final annual written reports on fishing activity to the Council. The Council will make copies of each report available to the public upon request. The preliminary report covering activities through November 1 must be submitted by December 1 of each year. The final report covering activities for an entire calendar year must be submitted by February 1 the following year.

The preliminary and final written reports must contain, at a minimum: (1) The cooperative's allocated catch of pollock and sideboard species, and any sub-allocations of pollock and sideboard species made by the cooperative to individual vessels on a vessel-by-vessel basis; (2) the cooperative's actual retained and discarded catch of pollock, sideboard species, and prohibited species catch (PSC) on an area-by-area and vessel-by-vessel basis; (3) a description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated; and (4) a description of any actions taken by the cooperative to penalize vessels that exceed their allowed catch and bycatch in pollock and all sideboard fisheries.

The purpose of this annual report requirement is to assist the Council and NMFS in meeting the requirements of paragraph 210(a)(1) of the AFA, which requires that NMFS make such information available to the public in a manner that NMFS and the Council decide is appropriate. Section 210(a) requires the release of this information, despite the confidentiality provisions of the Magnuson-Stevens Act or any other law. It requires that the Secretary and Council take into account the interest of parties to any cooperative contract in protecting the confidentiality of proprietary information. The Secretary and the Council have no discretion in whether to release this information, despite the possibility that it might be confidential commercial or financial information.

After analyzing various methods of providing this information to the public, the Council determined that the most appropriate method for disseminating information about each cooperative is to require an annual report from each cooperative that could be reviewed by the Council and distributed to the public. The information that will be released is based on observer data and, except for the exception in section 210(a), such information may have been protected from public disclosure under the Freedom of Information Act.

During the development of this reporting requirement, pollock industry representatives did not present to NMFS or to the Council concerns about these reporting requirements, and have not indicated that disclosure of such information could reasonably be expected to cause substantial competitive harm. In addition, the annual report does not require the release of observer data on specific hauls (e.g., haul location, fishing depth, and catch composition) that might disclose confidential information on specific fishing operations. The requirement that each cooperative report the actual retained and discarded catch of pollock, sideboard species, and

PSC on an area-by-area and vessel-by-vessel basis will not disclose when and where individual vessels fished and what they caught at those locations which could have disclosed to competitors the identity of fishing grounds. Therefore, NMFS believes the disclosure of catch and bycatch information on an annual basis and by large management areas will not identify any vessel's specific fishing grounds and what was harvested at those specific locations.

For these reasons, NMFS has concluded that the annual reporting requirements as proposed by the Council are an appropriate way to comply with the public disclosure requirements of paragraph 210(a)(1) of the AFA.

Regulations for Cooperatives that Contain AFA Catcher Vessels

In addition to the general regulations described above that apply to all fishery cooperatives operating in the BSAI directed pollock fishery, this final rule imposes additional contract requirements for all cooperatives that contain AFA catcher vessels. These regulations apply to catcher vessel cooperatives operating in all sectors of the BSAI pollock fishery. The purpose of these regulations is to hold catcher vessel cooperatives responsible for managing the harvest of groundfish sideboard species and prevent an all out race for sideboard species by AFA catcher vessels.

Under the final rule, a cooperative contract that includes AFA catcher vessels must include adequate provisions to prevent each non-exempt member catcher vessel from exceeding an individual vessel sideboard limit for each BSAI or GOA sideboard species or species group that is issued to the vessel by the cooperative in accordance with the following criteria: (1) The aggregate individual vessel sideboard limits issued to all member vessels in a cooperative must not exceed the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as announced by NMFS, or (2) in the case of two or more cooperatives that have entered into an inter-cooperative agreement, the aggregate individual vessel sideboard limits issued to all member vessels subject to the inter-cooperative agreement must not exceed the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as announced by NMFS.

This requirement that catcher vessel cooperatives address the issue of sideboard management in their cooperative contracts was recommended by the Council at its December 1999 meeting as a means to prevent increased competition for sideboard species. To comply with this requirement, each cooperative contract must have penalty provisions on individual vessels that will be payable to owners of vessels outside the cooperative. The amount and type of such penalties are left to the discretion of the cooperatives. However, NMFS may disapprove an inshore cooperative fishing permit application if the Regional Administrator, Alaska Region, NMFS (Regional Administrator) determines that such penalties are inadequate.

Regulations for Inshore Catcher Vessel Cooperatives

Under the AFA, a fundamental difference exists between the fishery cooperatives authorized to operate in the AFA catcher/processor and AFA mothership sectors, and the fishery cooperatives authorized to operate in the inshore sector. AFA catcher/processor and AFA mothership cooperatives operate at the sector level and NMFS does not make sub-allocations of each sector's BSAI pollock TAC to individual cooperatives. Inseason management of the AFA catcher/processor and AFA mothership sectors will continue to occur at the sector level regardless of the presence or absence of fishery cooperatives.

However, the inshore catcher vessel cooperatives authorized by the AFA require an entirely different management structure. Subsection 210(b) of the AFA requires that NMFS make separate TAC allocations to inshore catcher vessel cooperatives that form around an AFA inshore processor and that meet certain restrictions. For this reason, inshore cooperatives require substantially greater regulatory and management infrastructure than AFA catcher/processor and AFA mothership sector cooperatives. This final rule implements the following inshore cooperative management measures as required by subsection 210(b) of the AFA.

Application for inshore cooperative fishing permits. Under this final rule, inshore catcher vessel cooperatives wishing to receive an allocation of the BSAI inshore pollock TAC are required to submit an application for an inshore cooperative fishing permit on an annual basis by December 1 of the year prior to the year in which the cooperative fishing permit will be in effect. Applications for an inshore cooperative fishing permit must be accompanied by a copy of the cooperative contract itself and by a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the U.S. Department of Justice and any response to such request unless the cooperative has already filed such information with NMFS and the Council. Inshore cooperative fishing permit applications that are not received by NMFS by December 1 may be disapproved.

As part of the application for an inshore cooperative fishing permit, the cooperative's designated representative, who is signing the permit application on behalf of the various members, must certify that: (1) Each catcher vessel in the cooperative is a ''qualified catcher vessel'' according to the definition of qualified catcher vessel described below, (2) the cooperative contract was signed by the owners of at least 80 percent of the qualified catcher vessels that delivered pollock harvested in the BSAI directed pollock fishery to the cooperative's designated AFA inshore processor during the year prior to the year in which the cooperative fishing permit will be in effect, (3) the cooperative contract requires that the cooperative deliver at least 90 percent of its BSAI pollock catch to its designated AFA processor, and (4) each member vessel has no permit sanctions or other type of sanctions against it that prevent it from fishing for groundfish in the BSAI. A catcher vessel that cannot legally harvest BSAI pollock due to enforcement action, permit sanctions, lack of a valid AFA catcher vessel permit, or lack of other required permit, is barred from membership in an inshore cooperative that receives an inshore cooperative fishing permit.

To add or subtract a qualified catcher vessel (other than a designated replacement for a lost vessel), the cooperative is required to submit a new application prior to the December 1 deadline, and the new application must be subsequently approved by the Regional Administrator.

Definition of qualified catcher vessel. At its June 2000 meeting, the Council voted to recommend a definition of ''qualified catcher vessel'' that supersedes the definition contained in the AFA. Paragraph 210(b)(3) of the AFA defines ''qualified catcher vessel'' as follows:

> QUALIFIED CATCHER VESSEL.—For the purposes of this subsection, a catcher vessel shall be considered a ''qualified catcher vessel'' if, during the year prior to the year in which the fishery cooperative will be in effect, it delivered more pollock to the shoreside processor to which it will deliver pollock under the fishery cooperative in paragraph (1) than to any other shoreside processor.

The effect of this definition was to prevent the retirement of catcher vessels

that are no longer needed to harvest a cooperative's annual allocation of pollock because each vessel was required to make a qualifying landing every year to remain in the cooperative in each subsequent year. At its June 2000 meeting, the Council recommended that this definition be replaced with a new definition under which an inactive vessel remains qualified to join the cooperative that is associated with the processor where it delivered more pollock to than any other inshore processor in the last year in which the vessel participated in the inshore sector of the BSAI directed pollock fishery. The Council's recommended change does not affect vessels that were active in the BSAI pollock fishery during the year prior to the year in which the cooperative fishing permit will be in effect.

The Council derives its authority to recommend an alternative definition of ''qualified catcher vessel'' from paragraph 213(c)(1) of the AFA, which provides the Council with the authority to recommend measures to supersede certain provisions of the AFA. Paragraph 213(c)(1) provides that:

CHANGES TO FISHERY COOPERATIVE LIMITATIONS AND POLLOCK CDQ ALLOCATION.—The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act–

(1) that supersede the provisions of this title, except for sections 206 and 208, for conservation purposes or to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery caused by this title or fishery cooperatives in the directed pollock fishery, provided such measures take into account all factors affecting the fisheries and are imposed fairly and equitably to the extent practicable among and within the sectors in the directed pollock fishery;

In making the recommendation under Amendments 61/61/13/8 to supersede the AFA definition of ''qualified catcher vessel'' the Council determined that this change will mitigate adverse effects on some owners of fewer than three catcher vessels. Some independently owned AFA catcher vessels are relatively small vessels that may be less safe to operate at great distances from shore under the new Steller sea lion protection measures which have closed many nearshore areas to pollock fishing. A requirement that all such vessels fish each year to remain qualified to join a cooperative each following year would impose unnecessary risks that could be mitigated with a revision to the definition of qualified catcher vessel. In addition, some catcher vessels that are eligible to fish for pollock under the AFA have since been lost or may no longer be safe to operate without major rebuilding. Under this change, the owners of such vessels could remain in cooperatives without the need to rebuild or deploy new vessels into the BSAI pollock fishery. In making this recommendation, the Council also noted that a primary objective of the AFA is to reduce excess capacity in the BSAI pollock fishery and that changing the definition of ''qualified catcher vessel'' will further that objective.

This final rule also makes an additional clarification to the definition of ''qualified catcher vessel.'' Under the final rule, only pollock harvested in the BSAI directed pollock fishery is used to determine vessel qualification. Pollock that is landed as incidental catch in other fisheries is not used to determine which cooperative a catcher vessel is qualified to join, and a catcher vessel cannot qualify to join a cooperative based on incidental catch of pollock in other fisheries. This clarification is necessary to prevent a vessel's incidental catch of pollock in other fisheries from inadvertently affecting its cooperative qualification. Counting incidental pollock catch could create the unintended effect of restricting the ability of catcher vessels to deliver non-pollock groundfish to other markets. Because pollock is commonly encountered as incidental catch in the Pacific cod fishery and other groundfish fisheries, AFA catcher vessels fishing for Pacific cod may land significant amounts of pollock that would be counted against the pollock incidental catch allowance and not the vessel's cooperative quota. The AFA makes no restrictions on either the delivery or processing of non-pollock groundfish species in the BSAI. Consequently, AFA catcher vessels fishing for Pacific cod are free to deliver their Pacific cod and associated incidental catch of pollock to any processor, not just to one of the eight AFA processors that are authorized to receive pollock harvested in the BSAI directed pollock fishery.

If an AFA vessel's cooperative qualification were based on all catch of pollock and not just pollock harvested in the directed fishery, then an AFA catcher vessel fishing for Pacific cod and delivering to a processor other than its AFA pollock processor could inadvertently disqualify itself from its cooperative of choice due to incidental pollock harvests in other fisheries. In fact, because Pacific cod processors other than the eight AFA inshore pollock processors also operate in the BSAI, an active AFA catcher vessel delivering Pacific cod to a non-AFA processor could inadvertently find itself ineligible to join any inshore cooperative because the processor to which it delivered more pollock than any other processor may be a non-AFA processor.

Additional contract requirements. Inshore cooperatives wishing to receive an allocation of pollock have several additional contract requirements. An inshore cooperative contract eligible for a pollock allocation must be signed by the owners of at least 80 percent of the qualified catcher vessels. In addition, inshore cooperative contracts must specify that the cooperative will deliver at least 90 percent of the pollock harvested in the directed pollock fishery to its designated inshore processor during the year in which the fishery cooperative will be in effect and that its designated inshore processor has agreed to process such pollock. Finally, a catcher vessel is barred from membership in an inshore cooperative if the vessel does not have all necessary permits to engage in directed fishing for pollock in the BSAI, or if the vessel is subject to any permit sanction that prevents it from engaging in directed fishing for pollock in the BSAI. The purpose of this restriction is to prevent the granting of a limited access fishing quota to any catcher vessel that cannot legally fish for pollock in the BSAI. If an inshore cooperative fishing permit application does not meet all of these requirements, the permit application may be denied by NMFS if after the cooperative is provided the opportunity to submit a revised contract and permit application the application remains insufficient.

Inshore cooperative fishing restrictions. This final rule imposes a variety of requirements and management standards on inshore fishery cooperatives. First, only catcher vessels listed on the cooperative's AFA inshore cooperative fishing permit are permitted to harvest the cooperative's annual cooperative allocation. This first restriction could be modified, however, under Amendment 69 to the BSAI groundfish FMP, which was submitted to the Secretary for review on June 24, 2002. Amendment 69, if approved, would allow a cooperative to contract with non-member vessels to harvest a portion of the cooperative's annual pollock allocation. Second, all BSAI inshore pollock harvested by a member vessel while engaging in directed fishing for inshore pollock accrues against the cooperative's annual pollock allocation regardless of whether the pollock was retained or discarded and regardless of where the pollock was delivered. Third, each inshore pollock cooperative is responsible for reporting to NMFS its BSAI pollock harvest on a

weekly basis according to recordkeeping and reporting requirements published as part of the annual revisions to recordkeeping and reporting requirements for the groundfish fisheries of the BSAI and GOA. Fourth, each inshore pollock cooperative is prohibited from exceeding its annual allocation of BSAI pollock, and the owners and operators of all vessels listed on the cooperative fishing permit are jointly and severally liable for overages of the cooperative's annual allocation.

Inseason management of inshore cooperatives. Under this final rule, NMFS will manage the inshore cooperative sector and inshore open access sector as two separate inshore pollock fisheries. The various inshore cooperatives will be managed as a single aggregate allocation for the purpose of making season and area TAC apportionments and for the purpose of issuing directed fishing closures. When NMFS determines that the cooperative sector has reached a season or area apportionment of BSAI pollock, NMFS will close inshore cooperative fishing for that season or area. Under this system, each inshore cooperative will be given the opportunity to harvest its entire annual allocation of BSAI pollock, but will receive no harvest guarantee for each season and area. NMFS will manage the cooperative pollock quota and various sideboard quotas in the aggregate. It may be advantageous for the various cooperatives to work together to develop a cooperative management program to govern activities by individual cooperatives and individual vessels. Cooperation between cooperatives could prevent the activities of one cooperative from affecting the plans of another cooperative.

E. Harvesting and Processing Sideboard Restrictions

The AFA requires that harvesting and processing limits be placed on AFA vessels and processors in other groundfish, crab, and scallop fisheries to protect the participants in other fisheries from spillover effects resulting from the rationalization of the BSAI pollock fishery and the formation of fishery cooperatives in the BSAI pollock fishery. Potential spillover effects could take many forms. Most obviously, excess harvesting and processing capacity from the rationalization of the BSAI pollock fishery could flood into other fisheries as a result of the AFA to the detriment of current participants in other fisheries. In addition, fishery cooperatives provide vessels with greater flexibility to schedule their fishing activity because they are no longer racing for pollock at the start of every season. As a result, vessels in cooperatives will have the ability to enter other fisheries that might previously have been conducted concurrent with the BSAI pollock fishery. Finally, companies involved in the AFA pollock fishery are expected to benefit financially from the formation of fishery cooperatives and non-AFA companies fear that such profits may be used to expand into other groundfish and crab fisheries.

To address these potential negative effects of the AFA on the participants in other groundfish, crab, and scallop fisheries, the AFA sets out a complex set of harvest and processing restrictions, which have become known as ''sideboards''. These sideboard measures have been further refined by the Council's recommendations for catcher/processor and catcher vessel sideboards under Amendments 61/61/13/8. The Council's recommendations have been incorporated into this final rule and are summarized below.

Catcher/processor Harvesting Sideboards

The AFA establishes harvest restrictions or ''sideboards,'' that restrict the participation of listed AFA catcher/processors in other BSAI groundfish fisheries and completely prohibit listed AFA catcher/processors from fishing in the GOA. These sideboards apply only to AFA catcher/processors listed in paragraphs 208(e)(1) through (20) of the AFA and are not extended to unlisted AFA catcher/processors that qualify to fish for pollock under paragraph 208(e)(21) of the AFA. The language establishing catcher/processor harvest caps is set out in paragraphs 211(b)(1) and (2) of the AFA as follows:

(b) CATCHER/PROCESSOR RESTRICTIONS.—

(1) GENERAL.—The restrictions in this sub-section shall take effect on January 1, 1999, and shall remain in effect thereafter except that they may be superceded (with the exception of paragraph (4)) by conservation and management measures recommended after the date of the enactment of this Act by the North Pacific Council and approved by the Secretary in accordance with the Magnuson-Stevens Act.

(2) BERING SEA FISHING. The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from, in the aggregate

(A) exceeding the percentage of the harvest available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total harvest by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997;

(B) exceeding the percentage of the prohibited species available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total of the prohibited species harvested by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount of prohibited species available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997; and

(C) fishing for Atka mackerel in the eastern area of the Bering Sea and Aleutian Islands and from exceeding the following percentages of the directed harvest available in the Bering Sea and Aleutian Islands Atka mackerel fishery--

(i) 11.5 percent in the central area; and

(ii) 20 percent in the western area.

For the 1999 fishing year, NMFS implemented these provisions by publishing the harvest limits in the 1999 BSAI harvest specifications and prohibiting listed AFA catcher/processors from engaging in directed fishing for a groundfish species or species group when NMFS determined that the sideboard limit was likely to be met or exceeded. For the 2000 through 2002 fishing years these limits were set out by emergency interim rules. For the 2000 fishing year, 65 FR 4520, January 28, 2000; extended at 65 FR 39107, June 23, 2000. For the 2001 fishing year, 66 FR 7276, January 22, 2001; extended at 66 FR 35911, July 10, 2001. And for the 2002 fishing year, 67 FR 956, January 8, 2002; extended at 67 FR 34860, May 16, 2002.

At its June 1999 meeting, the Council recommended that catcher/processor harvest limits for BSAI groundfish other than Atka mackerel be based on the 1995 through 1997 retained catch of such groundfish species by the 20 listed AFA catcher/processors listed in paragraphs 208(e)(1) through (20) of the AFA and the nine ineligible catcher/processors listed in section 209 of the AFA, except for Pacific cod which will be based on 1997 retained catch only. The Council made a distinction between retained and total catch for the purpose of calculating sideboards and felt that AFA vessels should not receive sideboard credit for groundfish that was discarded and not utilized. Given NMFS' and the Council's longstanding emphasis on reduction of discards and waste in the groundfish fisheries off Alaska, the Council believed it was reasonable not to allow the members of a sector of the groundfish fleet to claim fishing privileges based on catch that they discarded and did not utilize, especially given that such discards may have resulted in foregone catch and loss

of fishing opportunities for other sectors of the industry.

In addition, the Council recommended several other relatively minor changes to the catcher/processor sideboard formula set out in the AFA. The Council recommended that only 1997 catch history be used to determine Pacific cod harvest limits, because 1997 was the first year in which the BSAI Pacific cod trawl gear allocation was split between catcher/processors and catcher vessels. Prior to 1997 the BSAI Pacific cod TAC was not allocated between catcher/processors and catcher vessels, meaning that pre–1997 Pacific cod TACs and harvest percentages by AFA catcher/processors are not directly comparable to present day Pacific cod allocations. The Council also recommended that only the years 1996 and 1997 be used to calculate Pacific ocean perch (POP) sideboard amounts because 1996 was the first year in which the POP TAC was divided between the Bering Sea and Aleutian Islands subareas.

The Atka mackerel catcher/processor sideboard percentages set out in subparagraph 211(b)(1)(C) of the AFA will be implemented unchanged. The AFA catcher/processor sideboard limit for Atka mackerel will be zero percent of the Bering Sea subarea and Eastern Aleutians annual TAC, 11.5 percent of the Central Aleutians annual TAC, and 20 percent of the Western Aleutians annual TAC. These Atka mackerel sideboard amounts will be divided by area and season and will be limited inside critical habitat in the same manner as the overall Atka mackerel TAC for each area.

The Council did not recommend any changes to the formula for establishing prohibited species catch (PSC) bycatch limits set out in subparagraph 211(b)(2)(B) of the AFA. However, the Council recommended that NMFS not implement catcher/processor sideboards for salmon and herring because extensive management measures are already in place to limit bycatch of those PSC species in the BSAI pollock fishery and incidental bycatch of salmon or herring is primarily a concern in the pollock fishery and not in the directed fisheries for other groundfish species.

Management of Catcher/Processor Harvest Sideboards

Under this final rule, catcher/processor sideboards will be managed through directed fishing closures. NMFS will evaluate each groundfish harvest limit specified according to the formula outlined previously and will authorize directed fishing by listed AFA catcher/processors only for those BSAI groundfish species for which the harvest limit is large enough to support a directed fishery by listed AFA catcher/processors. Groundfish species for which the catcher/processor harvest limit is too small to support a directed fishery will be closed to directed fishing by listed AFA catcher/processors at the beginning of the fishing year. The sideboard amounts for these species will then be specified as the incidental catch amounts harvested in other directed groundfish fisheries.

In some instances where catcher/processors have a history of harvesting a particular species as bycatch in the pollock fishery and have not traditionally retained that species, the retained catch formula for setting sideboard amounts will result in a sideboard amount for that species that likely will be far below its intrinsic bycatch rate in the BSAI pollock fishery. Squid and POP fall into this category. An expected consequence of basing sideboard amounts on retained catch rather than total catch is that actual harvests of some species as bycatch in the directed pollock fishery will exceed the published sideboard amount. As a result, NMFS established a management approach that will allow for continued incidental catch of species under sideboard provisions that acknowledge historical bycatch needs, while ensuring that listed AFA catcher/processors will not participate in directed fisheries for other BSAI groundfish species at levels that exceed their level of participation in such fisheries from 1995 through 1997. NMFS believes that this approach is consistent with the language and intent of the AFA.

Catcher Vessel Sideboards

This final rule will establish catcher vessel harvest limits for BSAI crab, BSAI and GOA groundfish, and the Alaska scallop fishery. These measure are required under subparagraph 211(c)(1)(A) of the AFA which states:

> By not later than July 1, 1999, the North Pacific Council shall recommend for approval by the Secretary conservation and management measures to . . . prevent the catcher vessels eligible under subsections (a), (b), and (c) of section 208 from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fishery.

The Council met this requirement by adopting a comprehensive suite of catcher vessel sideboard measures at its June 1999 meeting as part of Amendments 61/61/13/8.

Because the BSAI king and Tanner crab fisheries and the Alaska scallop fishery are managed by the State of Alaska under Federal oversight, the Council recommended that crab and scallop catcher vessel sideboards be implemented jointly through state and Federal actions. Amendment 4 to the scallop FMP was approved by NMFS on June 8, 2000, and authorized an LLP for the Alaska scallop fishery under which only one AFA catcher vessel is eligible to receive a scallop license. NMFS and the Council have determined that the scallop LLP program effectively prevents additional effort in the scallop fishery by other AFA catcher vessels and that additional restrictions on entry by AFA catcher vessels are unnecessary. As a further measure under Amendments 61/61/13/8, the Council also has recommended that the state implement an AFA catcher vessel scallop sideboard limit equal to the percentage of the scallop guideline harvest level that was harvested by the AFA catcher vessel in 1997. This sideboard harvest restriction is implemented under State regulations. Therefore, scallop sideboard measures are not included in this final rule.

Under Amendments 61/61/13/8, the Council has recommended that NMFS limit participation in BSAI crab fisheries through crab sideboard endorsements on AFA catcher vessel permits. The Council has recommended that only AFA catcher vessels with a demonstrated history in a particular crab fishery may continue participating in that fishery. A catcher vessel that lacks the appropriate crab sideboard endorsements on its AFA permit is prohibited from retaining BSAI king and Tanner crab even if that vessel was authorized to do so under an LLP for that crab fishery. These sideboard endorsements are described above in the discussion of AFA catcher vessel permits.

In addition to permit restrictions, the Council also recommended that the state implement AFA catcher vessel harvest limits for the Bristol Bay red king crab and Bairdi Tanner crab fisheries to keep the AFA vessels from harvesting more such crab than they had traditionally harvested. With respect to the Bristol Bay red king crab fishery, the Council recommended an AFA catcher vessel sideboard limit equal to the percentage of Bristol Bay red king crab harvested by AFA catcher vessels from 1991 through 1997, excluding 1994 and 1995 when the fishery was closed. For the Bairdi Tanner crab fishery, the Council recommended that AFA catcher vessels be excluded from the fishery until the Council's Bairdi rebuilding goal is reached, and then be limited to their historic catch percentage from

1995–1996. The Alaska Board of Fisheries has developed a management program to implement these restrictions which has been in effect since the 2000 Bristol Bay red king crab fishery.

For the BSAI and GOA groundfish fisheries, the Council recommended that AFA catcher vessel sideboards be established based on landed catch and be managed through directed fishing closures in the same manner as AFA catcher/processor sideboards. However, a significant difference between catcher/processor and catcher vessel groundfish sideboards is that the Council recommended that certain AFA catcher vessels be exempt from some BSAI and GOA groundfish sideboards while no exemptions were recommended for listed AFA catcher/processors. These sideboard exemptions were described previously under the section on AFA catcher vessel permits. This final rule contains the Council's recommended BSAI and GOA groundfish and PSC sideboards for AFA catcher vessels, which are summarized below.

Catcher Vessel Groundfish Sideboards in the BSAI

Catcher vessel groundfish sideboards will be established for all BSAI groundfish species using a formula based on the retained catch of all non-exempt AFA catcher vessels of each sideboard species from 1995 through 1997 (1997 only for BSAI Pacific cod) divided by the available TAC for that species over the same period. AFA catcher vessel sideboards apply to all non-exempt AFA catcher vessels regardless of sector and regardless of participation in a cooperative. The criteria for catcher vessel sideboard exemptions were outlined in the AFA catcher vessel permit section.

In addition, AFA catcher vessels with mothership endorsements are exempt from Pacific cod sideboard closures after March 1 of each year.

Catcher vessel PSC sideboards for BSAI groundfish fisheries would be managed in the same manner as catcher/processor PSC sideboards; however, the sideboard amounts are calculated differently. Because individual vessel PSC catch histories are not available for AFA catcher vessels, PSC sideboard amounts are pro-rated based on percentage of groundfish catch in each BSAI groundfish fishery.

Catcher Vessel Groundfish Sideboards in the GOA

Catcher vessel sideboards for GOA groundfish fisheries will be established and managed in the same manner as the catcher vessel sideboards in the BSAI groundfish fisheries except that catcher vessels less than 125 ft (38.1 m) LOA whose annual BSAI pollock landings averaged less than 1,700 mt from 1995 through 1997 (i.e., landed less than 5,100 mt of pollock over the 3–year period) and that made 40 or more GOA groundfish landings over the same period will be exempt from sideboard closures for GOA groundfish fisheries. The catch histories of the exempt vessels will not be counted towards the sideboard amounts for non-exempt vessels. As with the BSAI Pacific cod fishery, the Council noted that many AFA catcher vessels with relatively low catch histories in BSAI pollock have traditionally participated in GOA groundfish fisheries. Indeed, many of these vessels are based in Kodiak and other GOA ports and have historically concentrated their fishing effort in GOA fisheries. The Council believed that it is inequitable to limit such vessels from participating in GOA fisheries when they have historically fished in the GOA and may have relatively low pollock catch histories in the BSAI during the AFA qualifying years due to their history of fishing primarily in the GOA.

The Council specifically limited both the BSAI Pacific cod and GOA groundfish sideboard exemptions to vessels with a significant history of participation in those fisheries and indicated that it believed such exemptions were consistent with the catcher vessel sideboard provisions at paragraph 211(c)(1) of the AFA, which require that:

> By not later than July 1, 1999, the North Pacific Council shall recommend for approval by the Secretary conservation and management measures to—
>
> (A) prevent the catcher vessels eligible under subsections (a), (b), and (c) of section 208 from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fishery . . . .

NMFS estimates that 12 catcher vessels will be exempt from BSAI Pacific cod sideboards in the BSAI and 12 catcher vessels will be exempt from groundfish sideboards in the GOA. The Council noted that because these exempt vessels traditionally have participated at high levels in the BSAI Pacific cod and GOA groundfish fisheries, such exemptions were not likely to cause the aggregate harvest levels of all AFA catcher vessels to exceed traditional levels in these fisheries. However, the Council noted that, even if fishing in the BSAI Pacific cod and GOA groundfish fisheries by exempt vessels does cause the aggregate harvest of all AFA catcher vessels to exceed historic levels in other groundfish fisheries, the exemptions are warranted and within the authority of the Council to recommend under paragraph 213(c)(1) of the AFA, which states:

> The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act—
>
> (1) that supersede the provisions of this title, except for sections 206 and 208, for conservation purposes or to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery caused by this title or fishery cooperatives in the directed pollock fishery, provided such measures take into account all factors affecting the fisheries and are imposed fairly and equitably to the extent practicable among and within the sectors in the directed pollock fishery.

The Council believed that these two exemptions are warranted to mitigate adverse economic effects as described above on owners of fewer than three vessels in the directed pollock fishery given that the exempt vessels are primarily owned by independent fishermen who own fewer than three vessels in the directed pollock fishery.

Crab Processing Sideboards

Subparagraph 211(c)(2)(A) of the AFA establishes limits on crab processing by AFA inshore processors and AFA motherships that receive pollock harvested by a fishery cooperative:

> Effective January 1, 2000, the owners of the motherships eligible under section 208(d) and the shoreside processors eligible under section 208(f) that receive pollock from the directed pollock fishery under a fishery cooperative are hereby prohibited from processing, in the aggregate for each calendar year, more than the percentage of the total catch of each species of crab in directed fisheries under the jurisdiction of the North Pacific Council than facilities operated by such owners processed of each such species in the aggregate, on average, in 1995, 1996, 1997. For the purposes of this subparagraph, the term ''facilities'' means any processing plant, catcher/ processor, mothership, floating processor, or any other operation that processes fish. Any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity for the purposes of this subparagraph.

These crab processing limits were implemented by NMFS in the emergency interim rule published January 28, 2000 (65 FR 4520, extended at 65 FR 39107, June 23, 2000). However, at its September 2000 meeting, the Council recommended that the 1995–1997 years used to calculate crab processing sideboard amounts be revised by adding 1998 and giving it double-weight. Some crab fishermen and AFA processors expressed concern that too many non-AFA processors have

left the crab fisheries since 1997 and that the 1995–1997 years do not accurately reflect the composition of the crab processing industry at the time of passage of the AFA. Some crab fishermen were concerned that AFA crab processing caps were restricting markets for crab fishermen and having a negative effect on exvessel prices. By adding 1998 and giving it double-weight relative to 1995–1997, the Council believed that the crab processing caps will more accurately reflect the status of the crab processing industry at the time of passage of the AFA and that such a change to supersede this provision of the AFA was warranted to mitigate adverse effects on markets for crab fishermen.

Entity-based processing caps. NMFS has developed a definition of ''AFA entity'' for the purpose of implementing these crab processing limits and for the purpose of implementing the 17.5 percent excessive harvesting share limit discussed above. This definition is explained below in the section on definitions. To implement these crab processing limits, NMFS will require that the owners of an AFA mothership or AFA inshore processor intending to process pollock harvested by a cooperative identify on their permit applications all individuals, corporations, or other entities that directly or indirectly own or control a 10–percent or greater interest in the AFA mothership and/or inshore processor (collectively the AFA inshore or mothership entity), and any other crab processors in which such entities have a 10–percent or greater interest (the associated AFA crab facilities). For each BSAI king and Tanner crab fishery, NMFS will calculate the average percentage of the total crab harvest processed by the associated AFA crab facilities and issue entity-wide crab processing caps for each crab fishery to each AFA inshore or mothership entity on its AFA mothership or AFA inshore processor permit. Each individual, corporation, or other concern comprising an AFA inshore or mothership entity is responsible for ensuring that the AFA crab processing facilities associated with the AFA inshore or mothership entity do not exceed the entity's caps. The individuals, corporations and other concerns comprising the AFA inshore or mothership entity are jointly and severally liable for any overage.

Determining crab processing percentages. Upon receipt of an application for a cooperative processing endorsement from the owners of an AFA mothership or AFA inshore processor, the Regional Administrator will calculate a crab processing cap percentage for the associated AFA inshore or mothership entity. The crab processing cap percentage for each BSAI king or Tanner crab species will be equal to the percentage of the total catch of each BSAI king or Tanner crab species that the AFA crab facilities associated with the AFA inshore or mothership entity processed in the aggregate, on average, in 1995, 1996, 1997, and 1998 with 1998 given double-weight (counted twice).

Each AFA inshore or mothership entity's crab processing cap percentage for each BSAI king or Tanner crab species will be listed on the AFA mothership or AFA inshore processor permit that contains a cooperative pollock processing endorsement.

Conversion of crab processing sideboard percentages to poundage caps. Prior to the start of each BSAI king or Tanner crab fishery, NMFS will convert each AFA inshore or mothership entity's crab processing sideboard percentage to a poundage cap by multiplying the crab processing sideboard percentage by the pre-season guideline harvest level established for that crab fishery by the Alaska Department of Fish and Game. Each entity and the public will be notified of the crab processing poundage caps through notification in the **Federal Register** and/or through information bulletins published on the NMFS-Alaska Region world wide web home page (*http:\\www.fakr.noaa.gov*).

CDQ crab harvest. Under the final rule, processing of CDQ crab will not accrue against an entity's crab processing cap. Only crab harvested in the non-CDQ directed crab fisheries will accrue against an entity's crab processing cap.

Custom processing. These crab processing caps apply to all crab processed by the associated AFA crab processing facilities including any ''custom processing'' activity. Custom processing refers to a contractual relationship in which one processing facility processes crab on behalf of another processor. Custom processing of crab is not prohibited, but any custom processing of crab done under contract with an AFA crab processor will be counted against the associated AFA inshore or mothership entity's crab processing cap.

F. Excessive Share Limits for Harvesting and Processing

This final rule establishes excessive share limits for harvesting and processing of BSAI pollock. The excessive harvesting share limit is 17.5 percent of the BSAI pollock directed fishing allowance and the excessive processing share limits is 30 percent of the BSAI pollock directed fishing allowance. The excessive harvesting and processing share limits apply to all AFA entities which are in subsection 210(e) of the AFA as those individuals, corporations, or other entities that share 10–percent or greater ownership or control.

The final rule establishes a definition for ''AFA entity'' that will be used to determine compliance with the 17.5 percent pollock excessive harvesting share limit and the 30 percent pollock excessive processing limit, and will be used for establishing crab processing sideboard limits. An ''AFA entity'' is defined as a group of affiliated individuals, corporations, or other business concerns that harvest or process pollock in the BSAI directed pollock fishery.

Definition of ''Affiliation''

The concept of ''affiliation'' is central to the definition of ''AFA entity.'' Simply stated, ''affiliation'' means a relationship between two or more individuals, corporations, or other business concerns in which one concern directly or indirectly owns a 10 percent or greater interest in the other, exerts 10 percent or greater control over the other, or has the power to exert 10 percent or greater control over the other; or a third individual, corporation, or other business concern directly or indirectly owns a 10–percent or greater interest in both, exerts 10 percent or greater control over both, or has the power to exert 10 percent or greater control over both. Ownership and control are two overlapping concepts that may arise through a wide variety of relationships between two or more individuals, corporations, or other concerns. The following forms of affiliation are included in this final rule.

Affiliation through ownership. Affiliation arises between two or more individuals, corporations, or other concerns if one individual, corporation, or other concern holds a 10 percent or greater direct or indirect interest in another, or a third party holds a 10–percent or greater direct or indirect interest in both. An indirect interest is one that passes through one or more intermediate entities. NMFS is implementing a multiplicative rule to measure levels of indirect interest. Under this multiplicative rule, an entity's percentage of indirect interest in a second entity is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's direct or indirect interest in the second entity.

Affiliation through stock ownership. Affiliation arises if an individual, corporation, or other business concern directly or indirectly owns or controls, or has the power to control, 10 percent or more of the voting stock of a second corporation or other business concern.

Affiliation through management control. Affiliation arises if an individual, corporation, or other business concern has the right to direct the business of a second corporation or business concern; or limit the actions of or replace the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of a second corporation or business concern.

Affiliation through cooperative agreements. Affiliation arises if an individual, corporation, or other business concern (1) has the power to control a fishery cooperative through 10 percent ownership or control over a majority of the voting rights of the cooperative, (2) has the power to appoint, remove, or limit the actions of or replace the chief executive officer of the cooperative, or (3) has the power to appoint, remove, or limit the actions of a majority of the board of directors of the cooperative. In such instances the individual, corporation, or other entity in question is deemed to have 10 percent or greater control over all member vessels of the cooperative.

Affiliation through control over operations and manning. Affiliation arises if an individual, corporation, or other business concern has the power to direct the operation or manning of a vessel or processor. In such instances, the individual, corporation, or other business concern in question is deemed to have 10 percent or greater control over the vessel or processor.

Potential for multiple affiliations. Under this definition of affiliation, an individual or corporation could be affiliated with more than one AFA entity. This could occur, for example, if two different AFA entities have partial ownership in a single fishing vessel or processor. In such instances, any fishing or processing activity by a vessel or processor that is affiliated with more than one AFA entity will count simultaneously against the excessive harvesting or processing share limits of both AFA entities. However, the two parent entities would not necessarily be considered to be affiliated and, therefore, part of a single entity unless they are directly affiliated with each other.

Cooperatives are not AFA entities. Cooperatives are, by definition, not considered AFA entities. If AFA cooperatives were considered AFA entities then any cooperative that controlled the harvest of 17.5 percent or more of the BSAI pollock directed fishing allowance would be in violation of the excessive harvesting share cap. NMFS believes that such a result would be inconsistent with the purpose and intent of the AFA which authorizes AFA catcher/processors to form a single cooperative that controls 40 percent of the directed fishing allowance. However, even though a cooperative itself is not considered an AFA entity, the member vessels of a cooperative could still be considered affiliated if a single person, corporation, or other entity has the power to control the cooperative. In other words, a cooperative itself is not considered an AFA entity, but a cooperative could be included in an AFA entity for the purpose of monitoring excessive harvesting shares if the cooperative is under the control of the entity in question.

G. Observer Coverage Requirements for AFA Vessels and Processors

This final rule establishes new observer coverage requirements for AFA catcher/processors, AFA motherships, and AFA inshore processors. However, the final rule does not change observer coverage requirements for AFA catcher vessels. These new observer coverage requirements are described below.

Listed AFA Catcher/Processors and AFA Motherships

Two observer requirement. Paragraph 211(b)(6)(A) of the AFA requires that unrestricted AFA catcher/processors have two observers on board at any time the vessel is fishing for groundfish in the BSAI. This final rule establishes this requirement and extends the requirement to AFA motherships. NMFS believes it is appropriate to extend this requirement to AFA motherships because AFA motherships operate in a similar manner to AFA catcher/processors in that they receive unsorted codends from catcher vessels. In a mothership operation, all weighing and sorting of catch occurs on the mothership rather than the catcher vessel. The only practical difference between catcher/processor and mothership operations is that motherships do not actually engage in trawling. Under this final rule, a listed AFA catcher/processor or AFA mothership is required to have aboard two NMFS certified observers for each day that the vessel is used to harvest, process, or take deliveries of groundfish. In addition, at least one observer on board each AFA catcher/processor and AFA mothership must be a lead level 2 observer at all times that the vessel is fishing for groundfish or processing groundfish harvested in the BSAI or GOA.

Observer workload requirement. This final rule also extends the CDQ program observer workload limits to AFA catcher/processor and AFA motherships. These workload limits are necessary to ensure that all groundfish harvested and processed by AFA catcher/processors and motherships can be sampled by a NMFS observer. Consequently, more than two observers might be required to allow each haul brought on board the vessel to be sampled by an observer. This situation may occur for some AFA motherships, depending on how many deliveries they receive from catcher vessels in a day.

Lead level 2 observer requirement. Under this final rule, at least one observer on board each AFA catcher/processor and AFA mothership must be a lead level 2 observer (formerly known as a lead CDQ observer). The second observer position may be filled by any NMFS certified observer. Observers are an increasingly important element of NMFS' monitoring program for AFA catcher/processor and AFA mothership sector pollock harvests. Prior to the AFA, NMFS monitored offshore pollock harvests using a blend of observer data and processor weekly production reports. However, under the AFA with its statutory requirement that AFA catcher/processors carry two observers at all times and weigh their catch using NMFS-approved scales, NMFS is now relying only on observers and scale weights to provide inseason harvest data for the AFA catcher/processor sector and is no longer using vessel production data for quota management purposes. In addition, NMFS relies on observers to monitor catcher/processor groundfish sideboards as well as catcher vessel sideboards for catcher vessels delivering to catcher/processors and AFA motherships. Given this increased reliance on observers and scales, NMFS believes that the lead level 2 observer requirement is necessary to ensure that at least one of the observers aboard each AFA catcher/processor and AFA mothership has prior experience sampling on a trawl catcher/processor or mothership, is trained and experienced in the use of on-board scales, and is available to monitor the use and calibration of such scales. In addition, NMFS believes that the requirement for at least one lead level 2 observer is necessary to ensure that the compliance monitoring role of the observers aboard AFA catcher/processors can be successfully accomplished.

In order to monitor and enforce the newly imposed harvest limitations for unrestricted AFA catcher/processors and AFA motherships, observers with more experience and training must be aboard. NMFS-certified lead level 2 observers have that experience and training. Level 2 observers receive special training in sampling for species composition in situations where bycatch may be limiting, in working with vessel personnel to resolve access to catch and other sampling problems, and in using flow scales for catch weight measurements. Monitoring by level 2 observers is essential for accurate catch accounting, given the fact that a fishery cooperative has been established and that the potential exists for fishing to be curtailed when either groundfish or prohibited species harvest limitations specified for unrestricted AFA catcher/processors have been reached.

Consolidation of CDQ and AFA observer requirements. Under the emergency interim rules governing the AFA pollock fishery in 1999 and 2000, AFA catcher/processors and motherships were required to have one lead level 2 observer at all times but the second observer requirement could be filled by any NMFS-certified observer. However, the CDQ program imposed a higher requirement of one lead level 2 observer and a second level 2 observer for catcher/processor and motherships participating in the CDQ pollock fishery. Under this final rule, the observer requirements for catcher/processors and motherships in the AFA and CDQ pollock fisheries is consolidated into a single standard that requires at least one lead level 2 observer on board at all times but allows the second observer position to be filled by any NMFS certified observer.

Data quality needs for the AFA fishery take into account the vessel-specific nature of the fishery and the operational environment under which observers collect the data. This vessel-specific nature of the AFA has increased the responsibility of the observer to generate data of a quality equivalent to a ''final post-debrief'' level prior to the structured NMFS debriefing process. This raises the standard for experience and advanced training requirements. Since implementation of the AFA, the quality of data collected by observers at-sea has been assessed by the rigorous post-cruise debriefing process and has overall been found to meet expectations of high quality data at the point of collection.

The catcher/processors and motherships involved in this fishery provide the most straightforward sampling situations for observers in the groundfish fleet due to typically minimal bycatch, as well as excellent working conditions for the observer. Multiple opportunities for oversight of the work performed by the second, potentially less experienced, observer has been shown to successfully ensure all data collected from each AFA catcher/processor or mothership meets high data quality standards. Oversight of data collection and recording by the second observer is performed by the lead observer who has extensive observer experience on trawl catcher/processors. Additionally, in-season advising and supervision for observers at sea is provided on an on-going basis by NMFS Observer Program staff through communication via the ATLAS at-sea reporting system required on all catcher/processors and motherships. The NMFS Observer Program has also substantially increased field support for observers. Finally, catcher/processors operating in the BSAI pollock fishery have been considered the best assignments for new trainees, preparing them for further development as an observer. The need to keep open this opportunity to develop observer experience is essential to ensure the continued existence of a pool of qualified level 2 lead observers.

Consistency in observer requirements between the AFA program and the directed pollock fishery in the Multi-species Community Development Quota (MS CDQ) program is essential. The data quality needs for MS CDQ and AFA pollock catch accounting are virtually identical. Further, vessels often fish for MS CDQ and AFA-allocated pollock during the same fishing trip. Uniform observer requirements will simplify observer deployment logistics for such vessels. Therefore, NMFS is changing the current observer requirements under the MS CDQ program for only those catcher/processors and motherships participating in directed fishing and/or processing of MS CDQ-allocated pollock to be consistent with the AFA observer requirements for those vessel classes.

Requirements for unlisted AFA catcher/processors. Under this final rule, vessels receiving unlisted AFA catcher/processor permits under paragraph 208(e)(21) of the AFA are required to meet the same observer coverage, scale, and sampling station requirements as for listed AFA catcher/processors during any fishing trip in which the vessel engages in directed fishing for BSAI pollock or receives deliveries of pollock from AFA catcher vessels engaged in directed fishing for BSAI pollock. This requirement is necessary because NMFS must monitor the 0.5- percent pollock harvest limit on unlisted AFA catcher/processors and cannot adequately do so without scales and an observer on duty at all times. However, because the AFA catcher/processor sideboard limits in other groundfish fisheries do not apply to unlisted AFA catcher/processors, NMFS is not changing the observer coverage requirements for unlisted AFA catcher/processors when such vessels are engaged in directed fishing for groundfish other than pollock. Unlisted AFA catcher/processors participating in non-pollock fisheries are required to meet whatever observer coverage requirements are in place for the fishery in question.

AFA inshore processors. Under this final rule, an AFA inshore processor is required to have a NMFS-certified observer for each consecutive 12–hour period in which the processor takes delivery of, or processes, groundfish harvested by a vessel engaged in directed fishing for BSAI pollock. An AFA inshore processor that takes delivery of or processes pollock during more than 12 consecutive hours in any calendar day is required to have two NMFS-certified observers available during that calendar day. At least one observer assigned to work at each AFA inshore processor must be a level 2 observer during each calendar day that the processor receives or processes pollock harvested in the BSAI directed pollock fishery. Furthermore, under this final rule, observers working at AFA inshore processors may not be assigned to cover more than one processing plant during a calendar day.

NMFS is implementing these new observer coverage requirements for AFA inshore processors so that NMFS can adequately monitor cooperative pollock allocations at each AFA inshore processor. Prior to the AFA, the inshore pollock fishery was managed in the aggregate across the entire sector with NMFS issuing a single closure for the entire inshore sector upon the attainment of a seasonal allocation of pollock TAC. Under the inshore cooperative system set out in this final rule, each inshore processor and its affiliated cooperative is operating on its own proprietary pollock allocation. Because NMFS would no longer manage the inshore sector in the aggregate, increased monitoring is required at each individual processor to ensure that cooperative allocations are not exceeded.

AFA Catcher Vessels

Catcher vessels fishing for pollock may deliver an unsorted codend directly to a mothership or inshore processor, in which case sorting or weighing the

catch prior to delivery is not feasible. Alternatively, they may bring the codend onto the deck and put the catch into tanks for delivery to a mothership or inshore processor. Depending on the size of the trawl alley, sorting and discarding prohibited species at sea also may not be possible. For these reasons, complete at-sea sorting and weighing of catch is rarely possible. Because of these constraints, much of the data concerning catch weight and composition are gathered when the catch is delivered to a mothership or inshore processor. Thus, NMFS does not believe it is necessary for AFA catcher vessels to provide the same level of observer coverage or equipment that is required for AFA processors.

For this reason, the final rule does not make any changes to existing observer coverage levels for AFA catcher vessels. Under the management program set out in this final rule, the primary location for pollock and sideboard catch accounting is at the processor and NMFS is increasing monitoring at all AFA processors to accommodate these increased monitoring needs. AFA catcher vessels are required to meet the existing observer coverage requirements for catcher vessels set out at 50 CFR 679.50(c).

H. Scales and Catch-weighing Requirements

The AFA authorizes eligible vessels and processors to form cooperatives in all sectors of the BSAI pollock fishery. Inshore cooperatives that meet the criteria set out in this final rule are eligible to receive an inshore cooperative fishing permit authorizing the member vessels in the cooperative to harvest a specific allocation of the BSAI pollock TAC. The members of the cooperative may decide among themselves how to share the allocation made to that cooperative. While not an individual fishing quota (IFQ) program per se, the inshore cooperative quota program established by the AFA does share many characteristics with traditional IFQ programs in terms of how the program operates. In effect, fishery cooperatives are privately operated IFQ programs under which the cooperative, rather than NMFS, makes individual allocations to member vessels.

Fishing patterns and behaviors under the inshore cooperative program are expected to be similar to those that would be seen under a traditional IFQ program and the management demands are much the same. Just as with IFQ programs, individual cooperative members and the cooperative as a whole, have a strong incentive to maximize the amount of pollock harvested and processed in any given year within the constraints of a fixed quota of pollock granted to the cooperative. While catcher/processor and mothership sector cooperatives do not receive individual allocations of pollock from NMFS, they function in the same manner as inshore cooperatives because NMFS makes allocations of pollock to each sector and the cooperatives include all eligible participants in each sector.

To manage the AFA pollock fishery properly, NMFS must have data that will provide reliable independent estimates of the total catch by species and area for each cooperative. Because pollock cooperatives are operating under their own individual quotas, they have a vested interest in ensuring that catch data do not overestimate the pollock harvest by that cooperative. Based on experience gained under the CDQ program, NMFS anticipates that observer or NMFS estimates of catch will be routinely questioned by industry. Under a system of fishery cooperatives, a processor stands to benefit directly if catch is underweighed because that processor is operating under an individual allocation. For this reason, NMFS is implementing a catch-weighing system for AFA pollock that is more rigorous than that required in open access groundfish fisheries.

In the final EIS prepared for Amendments 61/61/13/8, NMFS identified two primary objectives for monitoring catch in the AFA fisheries. First, NMFS must be able to ensure that the total weight, species composition, and catch location for each delivery are reported accurately. An acceptable catch-monitoring system based on this objective must allow for independent verification of catch weight, species composition and haul location data; ensure that all catch is weighed accurately; and provide a record of the weight of each delivery that may be audited by NMFS. Second, the quality and level of catch monitoring should be functionally equivalent between sectors. This objective recognizes that a catch-monitoring approach that is appropriate for one sector of the industry may not be appropriate for all sectors while, at the same time, acknowledging that the overall quality of catch data should be equivalent, and no sector should be given a competitive advantage because of differences in catch monitoring standards. Based on these objectives, NMFS has developed the following catch monitoring regulations for each sector.

Scale and Catch-weighing Requirements for AFA Catcher/processors

Subparagraph 211(b)(6)(B) of the AFA requires that all listed AFA catcher/processors ''weigh [their] catch on a scale onboard approved by the National Marine Fisheries Service while harvesting groundfish in fisheries under the authority of the North Pacific Council.'' To implement this requirement of the AFA, NMFS is extending the existing catch weighing and observer sampling station requirements for catcher/processors participating in the CDQ fisheries, found at 50 CFR 679.28, to AFA catcher/processors. These catch-weighing requirements include the following:

1. Scales must meet the performance and technical requirements specified in appendix A to 50 CFR part 679. At this time, Marel hf and Skanvaegt International A/S produce scales that have been approved by NMFS for weighing total catch. Marel hf, Skanvaegt International A/S and Pols hf manufacture scales that have been approved for use in observer sampling stations.
2. Each scale must be inspected and approved annually by a NMFS-approved scale inspector.
3. Each observer sampling station scale must be accurate within 0.5 percent when its use is required.
4. The observer sampling station scale must be accompanied by accurate test weights sufficient to test the scale at 10, 25 and 50 kg.
5. Each scale used to weigh total catch must be tested daily by weighing at least 400 kg of fish or test material on the total catch weighing scale and then weighing it again on an approved observer-sampling station scale.
6. When tested, the total catch weighing scale and the observer sampling station scale must agree within 3 percent.

Observer sampling stations provide a location where observers can work safely and effectively. On June 4, 1998, NMFS published a final rule that established requirements for observer sampling stations and required their use on specified vessels participating in CDQ fisheries (63 FR 30381). Further information on, and the rationale for, observer sampling stations may be found in that rule. Observer sampling stations must meet specifications for size and location and be equipped with an observer sampling station scale, a table, adequate lighting and running water. Each observer sampling station must be inspected and approved by NMFS annually.

AFA listed catcher/processors must comply with the regulations for additional observer coverage, scales, and observer sampling stations when participating in any groundfish fishery off Alaska. Unless other regulations require them to do so, unlisted AFA catcher/processors must comply only with these regulations when engaged in directed fishing for BSAI pollock or when processing pollock harvested in the BSAI directed pollock fishery. Because unlisted AFA catcher/processors are not bound by sideboard limits when participating in other groundfish fisheries, NMFS does not believe that imposing this more rigorous catch-weighing and monitoring regime on such vessels is necessary when they are not fishing for pollock. Such unlisted AFA catcher/processors continue to be bound by all catch-weighing and monitoring requirements that are in effect for any non-pollock fishery in which they participate.

Scale and Catch-weighing Requirements for AFA Motherships

The AFA does not require that motherships weigh all catch or specify additional observer coverage for motherships. However, because motherships receive and process groundfish in a manner similar to catcher/processors, NMFS is extending the AFA catcher/processor scale and observer requirements to AFA motherships. Requirements for catch weighing, observer sampling stations and observer coverage are identical to those described above for AFA listed catcher/processors and apply at all times that the AFA mothership is receiving or processing groundfish harvested in the BSAI or GOA.

Scale and Catch-weighing Requirements for AFA Inshore Processors

This final rule establishes a new catch monitoring system for inshore processors. The catch management goals established by NMFS for the AFA pollock fishery are the same for the inshore and offshore sectors. However, NMFS does not believe that the regulations developed for catcher/processors and motherships are appropriate for inshore processors for two reasons. First, inshore processors vary more in size, facilities and layout than do catcher/processors or motherships. Second, the State is responsible for approving scales used for trade by inshore processors and has developed an effective program for their inspection and approval.

Catch monitoring and control plans. The catch weighing and monitoring system developed by NMFS for catcher/processors and motherships is based on the vessel meeting a series of design criteria. Because of the wide variations in factory layout, NMFS believes that a performance based catch monitoring system is more appropriate for inshore processors. Under this system, each plant must submit a Catch Monitoring and Control Plan (CMCP) to NMFS for approval. In this final rule, the effective date for the CMCP requirement has been delayed until June 1, 2003, to provide inshore processors with adequate time to develop their CMCPs and have them approved by NMFS. The CMCP details how the plant will meet the following requirements:

1. All catch delivered to the plant must be sorted and weighed by species. The CMCP must detail the amount and location of space for sorting catch, the number of staff devoted to catch sorting and the maximum rate that catch will flow through the sorting area.

2. Each processor must designate an ''observation area.'' The observation area is the location designated in the CMCP where an individual may monitor the flow of fish during a delivery. From the observation area, an individual must be able to monitor the entire flow of fish and ensure that no removals of catch have occurred between the delivery point and a location where all sorting has taken place and each species has been weighed.

3. Each processor must designate a ''delivery point.'' The delivery point is the first location where fish removed from a delivering catcher vessel can be sorted or diverted to more than one location. The delivery point is most likely the location where the pump first discharges the catch. If catch is removed from a vessel by brailing, this is most likely the bin or belt where the brailer discharges the catch.

4. The observation area must be located near the observer work station.

5. The observer workstation must be located where the observer has access to unsorted catch.

6. An observer work station, for the exclusive use of the observer, must provide: a platform scale of at least 50 kg capacity; an indoor working area of at least 4.5 square meters, a table, and a secure and lockable cabinet.

7. Designation of a plant liaison, who is responsible for orienting new observers to the plant, ensuring that the CMCP is implemented, and assisting in the resolution of observer concerns.

The plant will be inspected by NMFS to ensure that the plant layout conforms to the elements of the plan. A CMCP that meets all of the performance standards will be approved by NMFS for 1 year, unless during the year changes are made in plant operations or layout that do not conform to the CMCP. After 1 year, NMFS will review the CMCP with plant management to ensure that the CMCP has been implemented and that the performance standards continue to be met.

A single individual cannot effectively monitor the flow of fish from the delivery point to where they have been completely sorted and weighed at any of the existing AFA inshore processors. Therefore, none of the current AFA inshore processors will meet the performance standards without modifying the layout of the plant or developing alternative methods of monitoring catch flow. As a consequence, the process of developing the CMCP may be fairly complex. NMFS anticipates that plant management will wish to work closely with NMFS staff before making any modifications to the plant layout or purchasing equipment. NMFS staff will review draft CMCPs and will pre-inspect inshore processors as requested by plant management.

Scale requirements for AFA inshore processors. Catch weighing for catcher/processors and motherships is based on the use of scales approved by NMFS. Because NMFS and the state use different standards when approving scales, most NMFS-approved scales are not legal for trade in Alaska and most state-approved scales do not meet NMFS criteria for inseason testing and auditing. NMFS believes that the state should be the primary authority responsible for approving and testing scales in shoreplants and that weighing all catch on scales approved by NMFS is unnecessary. Under State regulations, inshore processors are required to weigh all catch that is being bought or sold on state-approved scales. These scales must be inspected annually by inspectors authorized by the Division of Measurement Standards and Commercial Vehicle Enforcement.

However, State regulations do not provide for inseason testing of scales nor do they require that scales produce a printed record of each delivery. NMFS believes that these are essential features of an acceptable catch weighing system. Therefore, in cooperation with the State, NMFS has developed a catch-weighing system that implements these additional features within the existing framework of State scale inspection and approval. The development of this system involved consultation with the Alaska State Division of Measurement Standards in acknowledgment of the State's role to ensure that scales used for trade in the State are accurate. Personnel from the Alaska Division of

Measurement Standards are responsible for inspecting and approving those scales. Scales that are not used in a trade related transaction, or scales that are used outside of State waters are generally not required to be inspected and approved.

This final rule implements two sets of catch weighing requirements. The first, is that catcher/processors and motherships are required to weigh all catch on scales approved by NMFS. These vessels weigh their catch outside of State waters and the approval and inspection of those scales does not in any way interfere with existing State programs.

The second set of conditions requires that AFA inshore processors weigh all of their catch on scales approved by the State and further requires that those scales meet additional requirements for printouts and inseason testing. In order to prevent redundant regulations or involve itself in an existing State function, NMFS has worked closely with the Alaska Division of Measurement Standards to develop these requirements. NMFS staff met with the Director of the Division and his staff twice during 2000 to discuss these requirements, and draft versions of the proposed regulations were provided to Division personnel for review and comment. In October 2000, the Administrator, Alaska Region, sent a letter to the Director of the Division of Measurement Standards expressing his acknowledgment and appreciation for the work that the State had put into assisting NMFS in developing the catch weighing regulations.

Thus, this final rule reflects cooperative State and Federal development of catch weighing requirements for AFA inshore processors and includes the following provisions:

1. Each scale used to weigh catch and its intended use must be identified by serial number in the CMCP. Each scale must be inspected and approved by the State annually.

2. As part of the CMCP, each plant must submit a scale testing plan that gives the procedure the plant will use to test each scale identified in the CMCP. The testing plan must list: the test weights and equipment required to test the scale, where the test weights and equipment are stored, and the plant personnel responsible for testing the scale. Test amounts for various scale types are set out at § 679.28(c)(4) of this final rule.

3. Test weights must be certified at least biannually by a metrology laboratory approved by the National Institute of Standards and Technology.

4. Authorized officers or NMFS-authorized personnel could request that any scale be tested in accordance with the testing plan, provided that the scale had not been tested and found accurate within the past 24 hours.

5. Each scale must be accurate within the limits specified at § 679.28(c)(4) of this final rule (maximum permissible errors and test weight amounts) when tested by the plant staff.

6. Each scale used to weigh catch must be equipped with a printer, and a printout or printouts showing the total weight of each delivery must be generated after each delivery has been weighed. The printouts must be retained by the plant and made available to NMFS-authorized personnel including observers.

I. Vessel Monitoring System (VMS) Requirements

In the proposed rule to implement Amendments 61/61/13/8 NMFS proposed new VMS requirements for all AFA catcher vessels and catcher/processors. However, VMS requirements are not included in this final rule because VMS requirements for the BSAI pollock fishery are being implemented as Steller sea lion protection measures.

J. Extension of Inshore/Offshore Regime in the GOA

Amendment 61 to the FMP for groundfish of the GOA also extends the expiration date for inshore/offshore allocations of GOA pollock and Pacific cod until December 31, 2004. During the development of Amendments 61/61/13/8, the Council voted to extend the GOA inshore/offshore sunset date until December 31, 2004, so that BSAI inshore/offshore allocations under the AFA and GOA inshore/offshore allocations would expire on the same date and could be reevaluated at the same time. At its June 2002 meeting, in light of recent legislation discussed above that removes the sunset date from the AFA, the Council voted to adopt Amendment 62 to the GOA groundfish FMP, which also removes the sunset date from the GOA inshore/offshore allocations. Therefore, if Amendment 62 is subsequently approved by NMFS, the December 31, 2004, sunset date contained in this final rule would be removed. Extensive background information on GOA inshore/offshore allocations is contained in the EA/RIR/FRFA prepared for Amendment 51/51, the most recent inshore/offshore amendments for the BSAI and GOA. Both EA/RIR/FRFA documents are available from the Council (see **ADDRESSES**).

III. Response to Comments

The proposed rule to implement Amendments 61/61/13/8 was published on December 17, 2001 (66 FR 65028), with comments invited through January 31, 2002. NMFS received 12 comment letters on the proposed rule, many of which contained extensive and detailed comments addressing specific aspects of the proposed rule. These comments were summarized and organized under five subject headings: (1) Comments on sector allocations and permit requirements, (2) comments on cooperative regulations, (3) comments on sideboards, (4) comments on catch weighing and monitoring requirements, and (5) comments on inshore/offshore allocations in the GOA.

Comments on Permit Requirements and Sector Allocations

Comment 1: The AFA and the proposed rule to implement the AFA violates national standards 4, 6, and 8 of the Magnuson-Stevens Act. National standard 4 states that if it becomes necessary to allocate fishing privileges among various United States fishermen, such allocations ''shall be fair and equitable to all such fishermen.'' National standard 6 states that ''conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.'' Finally, national standard 8 states that conservation and management measures shall ''take into account the importance of fishery resources to fishing communities.

The AFA excluded some catcher/processors that have a history in the directed pollock fishery during typical AFA qualifying years. In addition, the landings criteria for qualification as an unlisted AFA catcher/processor are not representative of the operating range of the variety of headed and gutted (H&G) catcher/processors that had participated in the directed pollock fishery. Instead, the criteria, which require that the vessel must have harvested at least 2,000 mt of pollock in the BSAI directed pollock fishery in 1997 is skewed towards only one vessel that had landings that are significantly higher than are representative for the H&G catcher/processor fleet. The AFA qualification criteria for catcher vessels and inshore processors are substantially broader and more representative of the capacities of the participants in these sectors. No Council action on any other limited entry, license limitation, recency criteria, or species endorsement regime has ever included such a

onerous and unrepresentative requirement as the qualification requirement for unlisted catcher/processors in paragraph 208(e)(21) of the AFA.

Response: The Council and NMFS do not have the authority to supersede any aspect of vessel and processor qualification criteria set out in section 208 of the AFA. Because the qualification criteria are established in statute and are non-discretionary, the Council did not consider any alternative vessel qualification criteria during the development of Amendments 61/61/13/8 and has not attempted to evaluate the extent to which any vessels with a history of participation in the BSAI directed pollock fishery were excluded under the AFA. Because NMFS was not involved in the development of the unlisted catcher/processor qualification requirement set out in paragraph 208(e)(21) of the AFA, we are unable to comment on the extent to which national standard considerations were involved in the development of the AFA. Furthermore, any modifications to these provisions would have to result from Congressional action because neither NMFS nor the Council have the authority to supersede section 208 of the AFA.

Comment 2: The preamble to the proposed rule inaccurately describes the 25–percent foreign ownership and control limit as applying only to vessels over 100 ft (30.9 m) LOA. Under the AFA this limit applies to all vessels holding a U.S. fisheries endorsement. For vessels 100 ft (30.9 m) LOA and over, this requirement is administered by MARAD. For vessels under 100 ft (30.9 m) LOA this requirement is administered by the Coast Guard.

Response: NMFS agrees and has corrected the references to the AFA's vessel ownership requirements.

Comment 3: In the proposed rule, paragraph 679.4(k)(9) *Restrictions on licenses earned on AFA catcher vessels and listed AFA catcher/processors* provides that no person may use an LLP license that was derived in whole or in part from the qualifying history of an AFA catcher vessel or a listed AFA catcher/processor to fish for groundfish or crab on a non-AFA catcher vessel or a non-AFA catcher/processor. This provision should not prevent the transfer of the LLP license from an AFA vessel that is lost to a vessel that is not AFA qualified for purposes of replacing the lost AFA vessel.

Response: NMFS agrees. This restriction on the use of LLP licenses is intended to prevent vessel owners from evading sideboard restrictions by retiring surplus AFA vessels and re-deploying the LLP permits associated with those vessels on non-AFA vessels that would not be covered by AFA sideboard restrictions. However, this restriction would not prevent the use of such LLP licenses on AFA replacement vessels because the replacement vessel is considered an AFA vessel.

Comment 4: In the proposed rule, paragraph 679.4(l)(1)(ii) *AFA permit duration* provides that, unless suspended or revoked, AFA vessel and processor permits are valid until December 31, 2004. Congress has repealed the 2004 sunset provision of the AFA. AFA vessel and processor permits therefore should not expire as of December 31, 2004.

Response: NMFS agrees. The final rule has been revised to remove the December 31, 2004, expiration date from all provisions to which it was applied in the proposed rule, except for the duration of the inshore/offshore allocations of pollock and Pacific cod in the GOA, which were not addressed by the legislation making the AFA permanent.

Comment 5: In the proposed rule, paragraph 679.4(l)(1)(v) *AFA permit application deadline* provides that all AFA vessel and processor permit applications must be received by the Regional Administrator by no later than 60 days after the effective date of the final rule. This deadline should be extended because it will likely fall during the fishing season. The preamble to the proposed rule suggests that interim permits will become invalid on that date. However, it is unlikely that permanent permits will have been issued by that date, as that is merely the closing date of an already abbreviated application period which would be followed by application processing, requests for additional information, etc. This process is likely to be fairly complicated and difficult for both applicants and the agency, as it will be the first pass at implementing the complex and somewhat subjective ownership and affiliation standards related to harvesting caps, processing caps and crab processing sideboards. The net result will almost certainly be an application processing period of fairly extended duration for many, if not all, of the qualified applicants. If during this period interim permits become invalid, and if that invalidity occurs during a fishing season, the result could be huge losses to the Nation, not to mention the pollock fleet.

The agency should also take into account how difficult it can be for vessel owners and processors to deal with matters of this type during the season. In light of these practical considerations, we suggest that permit applications should be due within some reasonable time (60 to 90 days) from the date that the RAM Division provides an AFA interim permit holder with notice that an application for a final permit must be submitted. We also suggest that interim permits remain valid through 2002 or the duration of the application and processing period, whichever is later.

Response: NMFS agrees. The final rule has been revised to eliminate the application deadline for AFA permits and has extended the duration of all interim AFA permits until December 31, 2002. Under the final rule, all interim AFA permits will continue to be valid for the duration of 2002.

Comment 6: The proposed rule states that applications received after the 60–day deadline will not be accepted by the Regional Administrator, and such vessels and processors will be permanently ineligible to receive the requested AFA permit. This is an egregiously excessive penalty. The interim permit holders are owners of vessels and plants whose AFA eligibility has been determined through interim permit applications. It is not necessary to deny eligibility in the re-application process in order to close an otherwise open class of potentially qualified participants.

Response: NMFS agrees. The final rule has no application deadline for permanent AFA permits but does require that all participants in the BSAI pollock fishery and all members of a fishery cooperative hold a valid AFA permit. In effect, this requirement means that vessels, processors, and fishery cooperatives that wish to operate during the 2003 fishing year will need to hold permanent AFA permits before beginning operations in 2003. Because the permit application deadline has been removed, no vessel will become permanently ineligible for an AFA permit due to failure to submit a timely application. We believe that these revisions in the final rule will provide industry with adequate time to apply for and receive permanent AFA permits, and will avoid any fishing interruptions during 2002.

Comment 7: In the proposed rule, paragraph 679.4(l)(7) *Replacement vessels* provides that the fishery endorsement of a replacement vessel must be issued within 36 months of the end of the last year in which the lost vessel harvested or processed pollock. This requirement reflects the provisions of section 208(g) of the AFA. However, the 36–month deadline is potentially problematic with respect to inactive vessels.

It is well recognized that one of the primary goals of the AFA was to decapitalize the Bering Sea pollock fishery. The Council has recognized that impediments to retiring or removing excess harvesting capacity may frustrate achievement of that goal, and has taken action accordingly. For example, the Council has superseded the AFA definition of ''qualified catcher vessel'' to permit vessels that are inactive to retain their eligibility to join a cooperative.

We are concerned that the 36–month time limit in the vessel replacement provisions may create a disincentive to retire excess harvesting capacity. Our concern is related to a scenario under which the retired vessel is lost or becomes a total constructive loss. If that should happen more than three years after the last year during which the vessel harvested or processed pollock in the directed pollock fishery, it would be ineligible for replacement. The vessel's ineligibility for replacement may not be significant as long as it remains an inactive member of the cooperative to which it belonged before it was lost. However, if the owner later desires to replace the vessel, in the interest of qualifying it for a different cooperative or for any other reason, the owner's ability to do so would appear to be barred by the 36–month replacement period. In order to preserve that option, the owner would have to re-employ the vessel every 3 years. This inappropriate incentive to re-employ excess capacity simply to preserve its eligibility under the AFA is comparable to the inappropriate incentive created by the original qualified vessel annual landing requirement.

To address this issue, we request that NMFS initiate an amendment to the replacement vessel provision of the proposed rule that would exempt vessels that were inactive members of a BSAI pollock fishery cooperative from the 36–month replacement deadline.

Response: The 36–month replacement deadline is set out in paragraph 208(g)(3) of the AFA which states:

(g) REPLACEMENT VESSELS.—In the event of the actual total loss or constructive total loss of a vessel eligible under subsections (a), (b), (c), (d), or (e), the owner of such vessel may replace such vessel with a vessel which shall be eligible in the same manner under that subsection as the eligible vessel, provided that . . .

(3) the fishery endorsement for the replacement vessel is issued within 36 months of the end of the last year in which the eligible vessel harvested or processed pollock in the directed pollock fishery.

NMFS is interpreting this 36–month deadline in the AFA as applying only to the issuance of fishery endorsements of newly-constructed vessels that did not exist at the time the AFA vessel was last engaged in directed fishing for pollock, or converted vessels that did not hold fishery endorsements at the time that the AFA vessel last engaged in directed fishing for pollock. The AFA does not establish any deadline for replacing a lost AFA vessel if the replacement vessel was issued a fishery endorsement before the 36–month deadline. Therefore, the 36–month deadline in the final rule applies only to the issuance of the fishery endorsement for the replacement vessel and not to the application to NMFS for a replacement vessel.

Under the final rule, the owner of a lost vessel may wait indefinitely to designate a replacement vessel. The only restriction is that the fishery endorsement for the replacement vessel must have been issued no later than 36 months from the end of the year in which the vessel last engaged in directed fishing for pollock. Once the 36–month deadline expires, the owner of the lost vessel does lose the option of constructing a new replacement vessel, but permanently retains the right to replace the lost vessel with any existing fishing vessel for which a fishery endorsement was issued before the 36–month deadline. To eliminate confusion on this point, NMFS has revised the final rule to clarify that the 36–month deadline applies only to newly-constructed or newly-converted vessels that did not hold fishery endorsements at the time that the AFA vessel last engaged in directed fishing for pollock in the BSAI.

Comment 8: In the proposed rule, paragraph 679.4(l)(7)(i)(A) *Replacement vessels* provides that a vessel owner may replace an AFA vessel only in the event of the total or constructive loss of the vessel. While this derives from the statute, it must be noted that this eventually will become a serious safety issue. While the statute was drafted with a sunset date of December 31, 2004, this issue may have seemed hypothetical. However, now that the sunset date has been removed, when a vessel becomes un-seaworthy through age, it should be possible to declare it a ''constructive total loss'' prior to its sinking and the potential loss of life.

Response: The term ''constructive total loss'' has a very specific meaning in the context of maritime insurance. Simply stated, a vessel is considered a constructive total loss when it is damaged to such an extent that the estimated cost of repairs exceeds salvaged value of the vessel. A declaration of constructive total loss is typically made as part of an insurance claim. To establish a claim for constructive total loss, the vessel owner generally must abandon what remains of the vessel to the underwriters. Because NMFS is not in a position to independently evaluate whether the constructive total loss of a vessel has occurred, we must rely on U.S. Coast Guard or insurance documentation to verify that a vessel has been declared a constructive total loss. The application for an AFA replacement vessel allows for any vessel that is declared a constructive total loss to be replaced provided that the vessel owner submits a copy of a U.S. Coast Guard Form 2692--Report of Marine Accident, Injury or Death, or insurance documentation showing that the vessel has been declared a constructive total loss and that the remains of the vessel have been abandoned to the underwriter. No provision is made for a vessel owner to make a claim of ''constructive total loss'' to NMFS that is unsupported by U.S. Coast Guard or insurance documentation.

Comment 9: In the proposed rule, paragraph 679.20(a)(5)(i)(6) *Excessive harvesting shares* provides that the excessive harvesting share cap is equal to 17.5 percent of the directed fishing allowance. Section 210(e)(1) of the AFA provides that the harvesting cap is 17.5 percent of the pollock available to be harvested in the directed pollock fishery. We note that some portion of the bycatch allowance that is deducted from the overall pollock TAC in calculating the directed fishing allowance for pollock is often released back into the pollock directed fishing allowance before the end of the year. The 17.5- percent harvesting cap should be calculated with respect to all pollock available for directed harvest, including any bycatch allowance amounts that are released for directed harvest.

Response: NMFS agrees. When unharvested amounts of the ICA are reapportioned to the directed pollock fishery, the effect is an amendment to the directed fishing allowance. The final rule has been revised to clarify that the published excessive harvesting share and excessive processing share limits are subject to revision if unharvested amounts of the ICA are reallocated to the directed pollock fishery, or vice versa.

Comment 10: In the proposed rule, paragraph 679.4(l)(3)(ii)(F) requires notary certification of permit applications. Is this also a requirement of the non-AFA Federal fisheries permit applications? Combined with an application deadline of 60 days, this could be burdensome.

Response: NMFS has reconsidered the requirement that each signature be notarized and has eliminated the notary requirement from AFA vessel and processor application forms.

Comment 11: In the lengthy discussions on the 10–percent affiliation concept at the beginning of implementation of the AFA, a consensus developed that the affiliation should involve ownership and/or control of one company over another. This approach avoids the unintended consequence of extending an affiliation through an intermediate entity to include an entity that has no true ownership or control over an AFA company. The clear intent in the proposed regulations is to cut off the affiliation relationship when it turns upstream to another entity that has no ownership or control of the AFA company. The proposed entity definitions adopt this approach in all instances except for the criteria of ''shared assets and liabilities.'' For example, under the proposed rule, if Company A (an AFA processor) and Company B (a non-AFA processor) each owns 50 percent of Company C, the language could be interpreted to make A and B affiliates even though neither has any ownership or control over the other. Company A and Company C are certainly affiliated for the purposes of the AFA, but the relationship should not flow upstream to Company B.

Response: NMFS agrees. The final rule has been revised to eliminate ''shared assets and liabilities'' from the criteria for affiliation.

Comments on Requirements for Fishery Cooperatives

Comment 12: In the proposed rule, paragraph 679.4(l)(6)(iii) provides that inshore cooperative fishing permits are valid for 1 year. We suggest that inshore cooperative permits remain valid as long as there are no changes in cooperative membership or the continuing eligibility of the member vessels to participate in the cooperative. We suggest that in cases where there are changes in membership or member eligibility, the cooperative members be required to file a new application by an annual deadline. Maintaining inshore cooperative permits on this basis would still condition their validity on satisfaction of the conditions to inshore cooperative formation set forth in the AFA and the implementing regulations, while substantially reducing the administrative workload and cost to the agency and the inshore fleet.

If NMFS does determine that inshore cooperative permits should have only 1 year duration, there are several changes we suggest be made in connection with the annual application process. We suggest that § 679.4(l)(6)(ii)(C) be amended to require that a copy of the cooperative contract be submitted with the annual application only if it has been amended since last being submitted. We suggest that § 679.4(l)(6)(ii)(E) be amended accordingly, to require that a copy of the business review request submitted to the Department of Justice and the response to the same, if any, be submitted with the annual application only if amended since last being submitted. If NMFS is concerned about being able to determine whether there have been changes, we suggest that the cooperative representative be given the alternative of certifying there have been none, rather than resubmitting the documents.

Most cooperative contracts have remained the same since they were originally executed. We know of no cooperative contract, business review request, or resulting enforcement intention letter from the Department of Justice that has not yet been submitted to the Council and to NMFS.

We suggest that once a conforming application for the year has been submitted, a cooperative representative be able to add or subtract vessels without filing a completely new application, but rather by providing written notice of the change, together with a certification concerning vessel eligibility (in cases where a vessel is being added), and a re-certification that the conditions to inshore cooperative formation will continue to be met after the change is given effect. Changes of this type often take place late in the year. It is unduly burdensome to require a cooperative representative to complete and file an entirely new application in connection with each vessel change.

Response: Because inshore cooperative permits authorize member vessels to harvest, in the aggregate, a certain tonnage of pollock during a specific fishing year, cooperative fishing permits will continue to be issued annually. Under the final rule, the cooperative's annual allocation of pollock is issued through the issuance of the cooperative fishing permit. Multi-year cooperative fishing permits are not possible because both co-op membership and TAC allocation amounts for future years would be unknown.

However, NMFS agrees in part with the recommendations to reduce paperwork burdens for inshore cooperatives. NMFS has adopted the recommendations to reduce the burden of the annual filing process for cooperatives. Under the final rule, cooperatives would be required to submit a current list of their member vessels and submit any cooperative contract revisions. Business review letters, once submitted to NMFS would not need to be resubmitted on an annual basis. NMFS also intends to provide application forms in Adobe Acrobat format that may be completed electronically. This will reduce duplication of work for co-op representatives.

Comment 13: In the proposed rule, paragraph 679.4(l)(6)(v), which establishes a December 1 deadline for inshore cooperative fishing permit applications, is inconsistent with the AFA. Paragraph 210(b)(2) of the AFA specifically provides that ''any contract implementing a fishery cooperative . . . must allow the owners of other qualified catcher vessels to enter into such contract after it is filed and before the calendar year in which fishing will begin . . . '' Paragraph 679.4(l)(6)(v) of the proposed rule requires that all inshore cooperative contract amendments that add or subtract vessels be received by the Regional Administrator by December 1 prior to the year in which the inshore cooperative fishing permit will be in effect. This proposed rule provision abbreviates the AFA opt-in period by 30 days. There is no record of which we are aware that supports NMFS' attempt to override this specific provision of the AFA.

Nor is it necessary to do so. We have discussed the reason for the December 1 ''drop dead'' date with NMFS staff. NMFS staff has informed us that the deadline was set to give the agency adequate time to finalize cooperative allocations prior to the start of the next fishing year. However, NMFS staff has also conceded that changes to cooperative allocations could be made in connection with additions or subtractions of vessels between the December 1 filing deadline and the beginning of the next calendar year; the issue in connection with such ''gap period'' changes is whether the allocation change could be made in time to be effective for the pollock roe season, or whether it would be necessary to delay the effective date of the change to the opening of the non-roe season.

This issue will arise only in cases where a vessel has changed the cooperative for which it is eligible by delivering the predominance of its BSAI directed pollock catch in the prior year to a different processor. In these cases, a vessel owner may not be able to consummate negotiations with the

cooperative and processor for which it is now qualified until after December 1. If the vessel owner does so after December 1, but prior to the beginning of the next calendar year, it has a right under the AFA to opt into the new cooperative. If the owner opts in, and it is too late to change the roe season allocation of its new cooperative accordingly, the vessel's allocation could be left in the inshore open access fishery pool for the roe season, and then allocated to the vessel's new cooperative for the non-roe season. This resolution is a reasonable balancing of NMFS' need to make timely cooperative allocations against the specific opt-in provisions of the AFA. The proposed rule should be amended accordingly.

Response: NMFS proposed a December 1 deadline for amendments to inshore co-op applications so that cooperative allocations could be issued through the publication of the BSAI interim harvest specifications, which are published prior to January 1 of each year. The current process for publishing harvest specifications is unable to accommodate allocation changes in late December due to the filing deadlines established by the Office of the Federal Register. The suggestion that late entrants into inshore cooperatives be allowed to start the fishing year in the open access fishery during the roe season and switch to cooperatives during the non-roe season would be inconsistent with paragraph 210(b)(5) of the AFA which prohibits vessels from participating in both the open access fishery and a fishery cooperative during the same fishing year.

NMFS intends to resolve this timing issue as part of proposed Amendments 48/48 which are still under development by the Council. Amendments 48/48 are intended to modify the TAC setting process to address several administrative issues, and would allow for a greater period of time between the publication of final TACs and the start of each year's fisheries. Under Amendments 48/48, NMFS expects to be able to accommodate changes in cooperative membership as late as December 31 of each year.

Comment 14: In the proposed rule, the definition of affiliation at paragraph 679.2 includes 10 percent or greater control of a fishery cooperative as a form of affiliation. We do not believe it is appropriate to include fishery cooperatives in this definition of affiliation. The intent of the 10–percent rule in the AFA is to apply ownership and control provisions to entities that own harvesting vessels. Harvesting cooperative entities do not in any way have ownership of any of the vessels in a cooperative. As such, the cooperative has no control over the operations of the harvesting vessels or the vessel owners who are not members of the cooperative. The definition of AFA entity and affiliation should not contain any reference to affiliation through cooperatives.

Response: NMFS has revised the definition of AFA entity to clarify the relationship of cooperatives to an AFA entity. Under the final rule, a cooperative on its own is not considered an AFA entity. Therefore, members of a cooperative are not automatically considered to be affiliates of each other for the purpose of defining an AFA entity. However, if one particular individual or corporation has the ability to control a fishery cooperative, and the cooperative controls the fishing activity of its member vessels, then all of the members of the cooperative would be considered to be affiliated with the entity that controls the cooperative. In other words, affiliation through cooperative agreements only arises if a particular individual or corporation has the power to control an entire cooperative and the cooperative has the power to control the fishing activity of its member vessels.

Comment 15: In the proposed rule, the prohibition at paragraph § 679.7(k)(6) uses the phrase ''through a fishery cooperative or otherwise'' which implies that the 17.5–percent excessive harvesting share limit should apply to harvest shares of the cooperative as a whole. Again, this is wholly inappropriate to the intent of the excessive harvesting share limit and any reference to affiliation through a cooperative in this section should be eliminated.

Response: See response to comment 14. The phrase ''through a fishery cooperative or otherwise'' is taken directly from paragraph 210(e)(1) of the AFA which states:

> No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery.

In revising the definition of AFA entity in this final rule, NMFS has clarified that a cooperative on its own is not considered to be an AFA entity. However, if a cooperative is controlled by a single individual or corporation and the cooperative has the power to control the fishing activity of its member vessels, then all member vessels are considered to be affiliated with the AFA entity and all of their harvests would be included under the excessive harvesting share prohibition.

Comment 16: The cooperative affiliation standard in the proposed rule is somewhat confusing, but suggests that any member who exercises 10 percent or greater control over a cooperative is ''affiliated'' with all of its members. Under that standard, a cooperative with one member that has 10 percent or more voting control would be an AFA entity under the proposed rule. Of course, under § 679.7(k)(6), no AFA entity may exceed the 17.5- percent harvesting share limit.

If our interpretation of the proposed rule's standards is correct, every member of a cooperative that had nine or fewer members with equal voting power would trigger the affiliation standard. Because the members would be affiliates of each other, the cooperative itself would be subject to the 17.5–percent cap. Under these circumstances, even if each member had the right to harvest only 2 percent of the TAC, and none of them had any ownership or control whatsoever relative to the harvest of any more than that percentage of the TAC or relative to any other AFA entity or vessel, they would all be in violation. We respectfully submit that this effectively makes the harvest limit an AFA cooperative allocation limit, and in the process violates the spirit and the letter of the AFA.

Response: See response to comment 14. The 10–percent standard applies only to measurements of ownership and not to other forms of control that do not involve ownership. Affiliation through cooperative agreements would arise only if a particular individual, corporation, or other entity has the power to control a fishery cooperative and the fishery cooperative controls the fishing activities of its member vessels. Affiliation would not automatically arise in the example of a cooperative with less than 10 members. It would only arise if a single individual, corporation or entity has the power to control the entire cooperative.

Comment 17: In the proposed rule, paragraph 679.7(k)(5)(ii) *Inshore fishery cooperative liability* provides that the owners and operators of all vessels listed on the cooperative fishing permit are responsible for ensuring that all cooperative members comply with all applicable regulations contained in part 679. In addition, the proposed rule provides that owners and operators will be held jointly and severally liable for overages of an annual cooperative allocation, and for any other violations of these regulations committed by a member vessel of a cooperative.

We do not object to requiring owners and operators of vessels listed on an

inshore cooperative fishing permit to be responsible for ensuring all cooperative members comply with the cooperative's directed fishery, sideboard and PSC allocations. We understand that doing so may be necessary for NMFS to have adequate assurances that the inshore sector pollock TAC will not be exceeded, and that the inshore cooperatives will comply with the general sideboard restrictions of section 211(c) of the AFA. Further, we understand that because NMFS does not grant or enforce vessel level allocations of pollock, sideboard species or PSC under the AFA's cooperative management structure, it may be necessary for NMFS to have the authority to impose joint and several liability on cooperative members in the case of a violation, to have adequate assurances that any overages will be penalized.

However, we see absolutely no basis in the AFA or in the policy considerations related to successfully implementing the AFA for NMFS to impose responsibility on each cooperative member for ensuring every other member is operating in compliance with all other applicable provisions of part 679, and absolutely no basis to impose joint and several liability on cooperative members if one of their number fails to do so. We think the provisions to that effect are grossly overreaching on the agency's part, and may stem from the same fundamental misunderstanding of the structure and function of AFA fishery cooperatives that impelled NMFS to include cooperative membership as an indicator of affiliation for purposes of harvest and processing cap compliance.

The AFA cooperatives are allocation structures. As such, they do not grant their members the authority to govern any of the day-to-day operations of other members' vessels, such as when and where they fish, etc. Neither the AFA cooperatives nor its members have the authority to require or ensure that any single member will comply with the provisions of part 679, other than with respect to the matters directly addressed in the AFA cooperative Membership Agreements, such as pollock allocations and sideboard and PSC limits. That being the case, it is fundamentally unfair and inappropriate to assign them that responsibility under the proposed rule, and commensurately unfair and inappropriate to impose joint and several liability for any member violation other than overharvest of a pollock directed fishing allocation or a sideboard or PSC limit. We request that § 679.7(k)(5)(ii) be amended to eliminate cooperative member joint responsibility and cooperative member joint and several liability for any violation other than cooperative allocation overharvests.

Response: NMFS agrees that the language in the proposed rule could be interpreted as overreaching. The final rule has been amended to provide that the owners and operators of vessels that are members of a fishery cooperative are responsible for ensuring that the fishery cooperative complies with the directed fishing, sideboard closures, PSC limits and other allocation restrictions that are applicable to fishery cooperatives.

Comment 18: In the proposed rule, paragraph § 679.7(k)(6) *Excessive harvesting shares* provides that it is unlawful for an AFA entity to harvest, through a fishery cooperative or otherwise, an amount of BSAI pollock that exceeds the 17.5- percent excessive share limit. Under the proposed rule, the owners and operators of individual vessels comprising the AFA entity that harvests BSAI pollock will be held jointly and severally liable for exceeding the excessive harvesting share limit.

We are deeply concerned by the imposition of joint and several liability, especially as it may apply to fishery cooperatives. We concede that a vessel owner who is not otherwise in violation of the harvesting limit could violate it through acquisition and exercise of AFA cooperative pollock harvesting shares. However, we fail to see why such action should result in unconditional joint and several liability among all cooperative members. Any such violation should be the sole responsibility of the person or persons who actually own and control the vessel(s) used to exceed the harvesting limit.

Response: See response to comments 14 and 17. In the final rule, NMFS has revised the definition of AFA entity to clarify that a fishery cooperative is not considered to be an AFA entity per se. However, if a fishery cooperative is controlled by a single individual or corporation, and the fishery cooperative controls or has the power to control the fishing activity of the member vessels, then all members of the cooperative are considered affiliated. With respect to the issue of liability for violating an excessive harvesting share cap, NMFS believes it is appropriate to hold all affiliates of an AFA entity liable for exceeding an excessive harvesting share cap because the harvesting activity of all affiliates contributed to the entity exceeding the harvesting cap. NMFS does not monitor excessive share harvesting caps on an inseason basis or inform each AFA entity when it is approaching or exceeding the excessive harvesting share cap. Rather, it is the responsibility of each AFA entity to monitor the harvesting activities of its affiliates and ensure that the harvesting cap is not exceeded.

Comment 19: In the proposed rule, paragraph 679.20(a)(5)(i), which addresses cooperatives in the catcher/processor sector provides that if by December 1st, NMFS receives cooperative contracts and/or an inter-cooperative agreement entered into by listed AFA catcher/processors and all AFA catcher vessels with catcher/processor sector endorsements, and the Regional Administrator determines that such contracts provide for distribution of the harvest between catcher/processors and catcher vessels in a manner agreed to by all members of the catcher/processor sector cooperative(s), then NMFS will not subdivide the catcher/processor sector allocation between catcher vessels and catcher/processors. On the other hand, if such contract is not filed with NMFS by December 1 in any given year, NMFS will allocate 91.5 percent of the catcher/processor sector allocation to the AFA catcher/processors engaged in directed fishing for pollock, and 8.5 percent of the catcher/processor sector allocation to catcher vessels delivering to catcher processors.

Our comments with respect to this provision are similar in nature to those we made with respect to inshore cooperative permit applications. Specifically, we submit that once copies of the cooperative contracts or of an inter-cooperative agreement that meet the requirements of this section have been submitted, the filing requirement should be suspended unless and until there has been an amendment or termination of the relevant contract(s) or agreement. Any concern NMFS may have regarding the continuing validity and integrity of the contract(s) or agreement could be addressed through a requirement that the designated representatives for all of the catcher/processor sector cooperatives annually certify that the contract(s) or agreement remain in effect and have not been amended.

Response: NMFS agrees that for the purpose of allocating 8.5 percent of the catcher/processor sector TAC to AFA catcher vessels, it is unnecessary to require annual filing of cooperative contracts and inter-cooperative agreements. Consequently, the final rule has been revised to state that if NMFS determines that such cooperatives and inter-cooperative agreements exist and are valid for the fishing year in which the specifications will be valid, then NMFS will make a single allocation to the catcher/processor sector. The annual

specification process provides for the publication of proposed and final harvest specifications. If industry believes that NMFS has made an incorrect determination about the status of cooperatives in the catcher/processor sector in the proposed specifications, then industry will have the opportunity to provide comment to NMFS and NMFS will make any necessary corrections in the final specifications.

Comment 20: In the proposed rule, paragraph 679.61(b) states that all cooperatives are required to appoint a designated representative and an agent for service of process. However, the definitions of those terms in § 679.2 suggest that the terms apply only to inshore catcher vessel cooperatives. NMFS should clarify whether these terms apply only to inshore catcher vessel cooperatives or to all AFA cooperatives.

Response: The final rule has been revised to clarify that all AFA cooperatives are required to appoint a designated representative and agent for service of process. NMFS has revised the definitions in § 679.2 to include all AFA cooperatives.

Comment 21: In the proposed rule, paragraph 679.61(g)(5) requires that each cooperative contract contain a contract clause dealing with payment of surrogate landing tax to the State of Alaska. It appears to say that failure to include the clause, and also failure to pay the surrogate tax will result in revocation of the authority to form a fishery cooperative. The inclusion of a contract clause is a clear standard, and failure to comply would have its own remedies within the contract. However, there is no clear specification for what constitutes the due date of payment in regulation, nor is it clear when revocation would take effect. Would all members of a cooperative be expected to instantly stop fishing if one member were found to be in arrears by 10 percent on the payment to the State?

Response: The landing tax requirement language in the proposed and final rules was taken verbatim from subsection 210(f) of the AFA. However, NMFS agrees that a deadline is appropriate. Therefore, the final rule has been revised to impose an April 1 deadline for payment of landing taxes to the State of Alaska. This is the same deadline imposed on all processors operating within the State of Alaska. Under the final rule, if a member of a cooperative fails to pay all landing tax owed to the State before April 1 of the year following the calendar year in which the fishing activity took place, then the cooperative is prohibited from operating in the BSAI pollock fishery until the landing tax is paid.

In addition, State law provides that the State Department of Revenue may extend the landing tax payment deadline if standardized prices are not available by April 1. This final rule also provides that in the event that the State of Alaska has extended the landing tax payment deadline for processors operating in the State of Alaska, then the deadline for AFA cooperatives is also automatically extended for the same duration. The annual cooperative report requirement also has been revised to require that cooperatives identify in their final annual reports the total landings that occurred outside the State of Alaska and whether or not the landing tax was paid to the State for such landings.

Comment 22: In the proposed rule, paragraph 679.61(l) dictates the format for submission of reports to the Council and requires single sided 8.5–inch by 11–inch paper. The agency should allow for the electronic submission of reports in Adobe Acrobat format.

Response: NMFS proposed the format requirements after consultation with Council staff to ensure that reports would be received in a format most easily duplicated for public distribution. However, NMFS agrees that some electronic formats such as Adobe Acrobat may be equally easy to duplicate. Therefore, the final rule has been revised to accommodate the submission of reports in alternate formats if the cooperative obtains the prior approval of the Council.

Comment 23: In paragraph 679.4(l) of the proposed rule, the F/V PROVIDIAN AND F/V HAZEL LORRAINE are listed as eligible vessels in accordance with Public Law 106–562, which made both vessels eligible ''in the same manner and subject to the same requirements and limitations'' as other vessels eligible under the AFA. However, the inshore co-op allocation formula set out in paragraph 679.62(b)(2) grants the F/V PROVIDIAN the 1992–1994 catch history from an entirely different vessel, the F/V OCEAN SPRAY based on a single ambiguous statement by Senator Olympia Snow in the *Congressional Record*. We strongly object to this interpretation by NMFS. Public Law 106–562 itself provides no basis for this action and to give the F/V PROVIDIAN the 1992–1994 catch history from a different vessel is counter to the intent of Pub. L. 106–562 as well as the other provisions of the AFA.

Response: The issue of catch history for the F/V PROVIDIAN was the subject of an Initial Administrative Determination by the Restricted Access Management Division of the NMFS Alaska Region, a subsequent appeal to the NMFS Office of Administrative Appeals, and a request for reconsideration by Regional Administrator under the appeals process established by the emergency interim rules to implement the AFA. After reviewing the legislative history, including a statement by Senator Olympia Snow in the *Congressional Record* (S. 11894, December 15, 2000), NMFS determined that Public Law 106–562 directed NMFS to include the F/V PROVIDIAN as an eligible vessel using the formula set out in paragraph 679.62(b)(2). The basis for this determination is complex and space considerations do not permit us to repeat the entire legal justification in this final rule. However, the full texts of the appeals decisions related to the F/V PROVIDIAN are available to the public on the NMFS Alaska Region home page at *http://www.fakr.noaa.gov/appeals.*

Comments on Sideboard Protections for Other Fisheries

Comment 24: The formula for calculating catcher/processor groundfish harvesting sideboard provisions set out in paragraph 679.64(a) of the proposed rule is inconsistent with the Council's June 1999 motion which recommended that catcher/processor groundfish sideboard amounts be based on the retained catch of AFA vessels in all target fisheries. The formula contained in the proposed rule would base catcher/processor groundfish sideboards on the retained catch by AFA vessels in non-pollock target fisheries, which is inconsistent with the Council's recommendation. No justification for this change is found within the proposed rule.

Response: The sideboard formula set out in the proposed rule was the result of a drafting error. NMFS did not intend to modify the sideboard recommendations made by the Council. The final rule has been corrected to reflect the Council's recommended catcher/processor sideboard formula.

Comment 25: We support the proposed rule's plan for managing the AFA catcher/processor harvesting sideboards through the use of directed fishing closures on the target fisheries for non-pollock groundfish. We also agree that incidental catch amounts of sideboard species should be set aside prior to the authorization of directed fisheries for such species; and that the Secretary of Commerce should not authorize directed fisheries for sideboard species where the sideboard amount is too small to support a

directed fishery. This will reduce the chance of sideboard caps being exceeded. Under no circumstances, however, do we support the use of hard caps on sideboard species that would shut down or otherwise curtail the pollock fishery itself.

The use of hard caps to shut down the pollock fishery—which is perhaps the cleanest fishery in the world insofar as incidental catch of non-target species is concerned--would be punitive in nature, have devastating economic consequences and accomplish no legitimate conservation or other management objective. It is essential to remember that the purpose of the sideboards is to protect non-AFA fishermen from adverse effects caused by AFA co-op vessels ''spilling over'' into the other non-target fisheries. This is adequately accomplished through the use of directed fishing closures on those non-pollock species with large enough sideboards to support a target fishery (cod and yellowfin sole, for example). The sideboards were not intended to be a bycatch reduction measure or to penalize fishermen for incidental catch levels that have no biological consequences.

Response: NMFS agrees. The FEIS prepared for Amendments 61/61/13/8 drew similar conclusions about the costs and benefits of managing sideboards through directed fishing closures or hard caps.

Comment 26: We believe that the Council exceeded its authority when it adopted a catcher/processor sideboard option that based sideboard amounts on the retained catch of AFA-listed vessels from 1995–1997. We are opposed to any changes in the way that catcher/processor sideboards are calculated. The AFA authorizes the Council to make changes that supersede provisions of the Act only when they are necessary ''for conservation purposes or to mitigate adverse effects'' caused by the AFA or fishery cooperatives. Nowhere in the draft EIS nor in any of the other documents that have been prepared to date in connection with the AFA amendment package has NMFS ever identified an ''adverse effect'' that needs to be mitigated or a ''conservation'' rationale for the proposed change in the AFA's C/P sideboard provisions.

Response: While NMFS agrees that the Council has the authority to supersede the provisions of paragraph 211(b)(2) of the AFA, NMFS disagrees with the premise that the Council superseded the AFA when it developed its recommended approach for catcher/processor groundfish harvesting sideboards. NMFS considers the Council's recommended approach to be a reasonable interpretation of the statutory prohibition in the AFA. Therefore, the final rule interprets but does not supersede the catcher/processor sideboard prohibitions set out in the AFA.

Subparagraph 211(b)(2)(B) of the AFA states:

''The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from, in the aggregate—

(A) exceeding the percentage of the harvest available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total harvest by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997;''

As retained catch, by definition, is a subset of total catch, it must be less than total catch. The AFA only prohibits exceeding ''the percentage of ...total harvest...'' thus, setting a limit below that total harvest threshold specifically complies with the statutory requirements.

The sideboard management approach set out in the final rule is based on the premise that the terms ''fishery'' and ''other than the pollock fishery'' refer to specific non-pollock target fisheries of interest to other fishermen. Under the final rule, sideboards would limit directed fishing by AFA catcher/processors in each BSAI groundfish fishery for which a sideboard amount was specified. If a particular sideboard amount is insufficient to support directed fishing for that species, NMFS will prohibit AFA catcher/processors from engaging in directed fishing for that sideboard species. Sideboard management becomes a matter of regulating the directed fishing activities of AFA catcher/processors in groundfish fisheries other than the BSAI pollock fishery.

Under this approach, determining the sideboard amount for a groundfish species according to the formula set out in the AFA is a matter of estimating how much of each groundfish species AFA catcher/processors harvested during 1995–1997 when they were engaged in directed fishing for that species. Basing sideboard amounts on retained catch as recommended by the Council provides a reasonable approximation of directed fishing activity by the AFA fleet in non-pollock target fisheries from 1995–1997. This is because vessels not engaged in directed fishing for a particular groundfish species generally did not retain any of that species, especially prior to 1998 which was the first year that full retention requirements for Pacific cod were implemented.

Comment 27: We urge NMFS to maintain the Council's retained catch formula for catcher vessel and catcher/processor groundfish sideboards. AFA catcher/processor companies have made various attempts to establish their sideboard limits at total catch levels rather than retained catch levels. In rejecting their effort to overreach, the Council in 1999 determined as a matter of policy that the AFA vessels should not be rewarded for past bycatch and discard history. This determination was based on longstanding efforts by the Council and NMFS to reduce bycatch and discards, a position in accordance with national standard 9. Indeed, it is hypocritical of AFA companies to suggest that their historic discards and the historic discards of the nine scrapped vessels should govern their access into non-pollock groundfish fisheries when retained pollock catch history is the standard used to govern access into the BSAI pollock fishery. If historic discards are a valid basis for access into a given fishery then many more vessels should be eligible to participate in the AFA pollock fishery based on their historic discards of pollock. Obviously however, the AFA does not grant vessels access to the BSAI pollock fishery based on their historic discards of pollock. Likewise, NMFS should set AFA catcher vessel and catcher/processor sideboards at retained catch levels and reject any suggestion from AFA companies to establish them at total catch levels.

Response: Comment noted. The final rule uses retained catch as the basis for establishing both catcher vessel and catcher/processor sideboards for the reasons described in the response to comment 26.

Comment 28: The proposed rule preamble discussion of AFA catcher vessel crab sideboard endorsements presents a requirement that ''an applicant for an AFA catcher vessel permit to indicate on the permit application which AFA crab sideboard endorsements the vessel qualifies for based on the qualifying criteria set out in this rule.'' Because there is overlap in the LLP terminology (endorsement) and in the use of LLP catch history years, it should be made explicit that failing to qualify for a ''sideboard endorsement'' has no effect on the LLP endorsement for a crab species. One continues to retain the LLP endorsement even though it can't be used under these regulations. If a vessel surrenders its AFA permit, its crab LLP endorsements should still be valid.

Response: Crab fishery endorsements on a vessel's AFA permit are independent of crab fishery endorsements on an LLP permit. The operator of an AFA vessel who wishes to fish for king or Tanner crab in the BSAI must have the appropriate endorsement on both the AFA and LLP permit in order to legally fish for crab. The comment also raises the issue of surrender of AFA permits. The final rule has no provision for the surrender of an AFA permit. The issuance of an AFA permit involves a determination by NMFS that the vessel is eligible to fish under the AFA. Under the final rule, no provision exists for a vessel owner to surrender an AFA permit or voluntarily give up AFA eligibility. Once NMFS has made a determination that a vessel is eligible under the AFA, that determination is permanent. Allowing the surrender of AFA permits would allow vessel owners to evade sideboard restrictions that the AFA intended to apply to all eligible vessels regardless of whether or not they were actively engaged in directed fishing for pollock.

Comment 29: The proposed rule preamble discussion of catcher vessel groundfish sideboards in the BSAI includes background on the exemptions to AFA catcher vessel Pacific cod sideboards. This section misrepresents the basis for providing exemptions. It states in part, that ''in most years the BSAI cod fishery is mostly concluded by March 1st.'' This is factually incorrect. The offshore pollock fishery prior to AFA was generally concluded in late February (both for mothership catcher vessels and catcher vessels delivering to catcher/processors). The codfishery is in full swing in March. There has not been a shortage of vessels in March, though most have been AFA vessels.

It also states that mothership sector vessels ''received a relatively smaller pollock quota under the AFA.'' This is not accurate. There are 20 mothership catcher vessels dividing 10 percent of the directed pollock TAC (0.50 percent/vessel), there are 7 catcher vessels in the catcher/processor sector dividing 3.4 percent of the directed pollock TAC (0.49 percent/vessel), additionally mothership vessels retained their inshore pollock catch history. To the extent that non-AFA catcher vessels are impacted in their ability to catch their 'traditional' share of the catcher vessel trawl cod allocation, it will not be because non-exempt AFA vessels have exceeded their history, but because of exemptions. To the extent there is an appropriate basis for not restricting mothership catcher vessels (or other catcher vessels) during March it is because they were not limited by a conflicting pollock fishery during that time period prior to the AFA.

Response: We appreciate this clarification of the Council's rationale.

Comment 30: The proposed formula for calculating catcher vessel groundfish sideboards uses a numerator of retained catch over a denominator of ''TAC available.'' There are various elements of asymmetry in this method of determining the numerator and denominator that should be resolved: First, the sideboard formula should be catch divided by catch rather than catch divided by TAC. The catcher/processor sideboard is calculated as retained catch divided by total catch, not retained catch divided by TAC. At a minimum, there should be consistency in how the two sectors' sideboards are calculated. Second, sideboards should either be retained catch divided by total retained catch, or total catch divided by total catch. There should be consistency between the numerator and denominator.

Response: First, the formulae for catcher vessel and catcher/processor sideboards were developed by the Council after analysis of an extensive suite of alternatives. In choosing to use a formula of catch divided by available TAC, the Council was following the approach set out in the AFA which based catcher/processor sideboards on catch divided by available TAC. The Council also recognized that basing sideboards on catch divided by catch would greatly inflate sideboard amounts in fisheries that were not fully exploited during the basis years because the resulting sideboard could greatly exceed historic catch. Second, the final rule uses the same formula of retained catch divided by available TAC to calculate both catcher vessel and catcher/processor sideboards. The catcher/processor sector is treated more generously than the catcher vessel sector because the entire retained catch history of the nine ineligible vessels is included into the sideboard formula for the catcher/processor sector while the catcher vessel sector is given credit only for the actual catch history of the AFA catcher vessel fleet. However, aside from this one distinction, the catcher vessel and catcher/processor groundfish harvesting sideboards are calculated and managed in the same manner.

Comment 31: An element that potentially impacts the catcher vessel Pacific cod sideboard arises from using TAC 'available.' In 1997 there was a year-end reallocation of the Pacific cod TAC from catcher/processors to catcher vessels that inflated the catcher vessel TAC at a point in time where it was too late to catch the fish. If this reallocated TAC is counted as part of the denominator, then it further waters down the proportionate size of our numerator. NMFS may have all ready recognized that the appropriate ''TAC available'' was the starting TAC, so this element may be moot.

Response: Comment noted. The formula NMFS uses for establishing both catcher vessel and catcher/processor sideboards is based on the published TACs and does not include year-end reallocations.

Comments on Catch Weighing and Monitoring Requirements

The following comments address catch weighing and monitoring requirements.

Comment 32: The VMS requirement should be revised to address instances where the VMS unit is not operational. AFA catcher/processors are already required to carry two observers at all times. If for some reason a VMS unit is not operational, through no fault of the vessel crew or owner, and as long as two observers are onboard, the vessel should be allowed to continue fishing until the next port of call when the VMS unit can be diagnosed and repaired or replaced.

Response: The proposed VMS requirement specific to AFA vessels has been removed from the final rule because such a requirement would be redundant with existing VMS requirements that were established for Steller sea lion protection. In January 2002, NMFS established a VMS requirement for all vessels fishing for Atka mackerel, pollock, and Pacific cod in the BSAI and GOA with gear other than jig gear as part of emergency regulations to protect Steller sea lions (67 FR 956, January 8, 2002). NMFS anticipates that this VMS requirement will be included in permanent rulemaking to protect Steller sea lions which makes a separate VMS requirement for AFA vessels redundant and unnecessary. Comments related to VMS requirements for AFA catcher/processors will be addressed in the upcoming final rule to implement Steller sea lion protection measures.

Comment 33: The scale requirement for AFA catcher/processors and AFA motherships should be relaxed in the event of a scale breakdown when fish is on board. We endorse the use of onboard scales to weigh all groundfish taken in the pollock, cod and Atka mackerel fisheries. All AFA catcher/processors are equipped with such scales. From time to time, however, the scales break or malfunction. This can be particularly problematic when fish has already been taken on board the vessel

but has not yet been processed. In such circumstances, and where the scale breakdown may be protracted, we would propose that a catcher/processor should be allowed to process the fish it has on board as long as a back-up estimate of the total catch has been or could be made by the observer. This would avoid the unnecessary wastage of valuable fish. Furthermore, observed vessels fishing in one of the non-pollock groundfish fisheries should be allowed to complete the fishing trip as long as the observer is capable of estimating catch levels in accordance with the normal procedures prescribed by the NMFS' observer program. The vessel would then be required to repair the scale at the end of the trip and would not be allowed to begin another trip until the necessary repairs have been made and the scale is in working order.

Response: Paragraph 211(b)(6) of the AFA requires that all groundfish harvested by AFA catcher/processors be weighed on NMFS-approved scales. The AFA makes no provisions for other methods of catch estimation. Like many pieces of equipment, scales can fail and it is critical that vessel crew have the expertise and parts to undertake repairs at-sea. However, at-sea scales have been in use off Alaska for more than 3 years. During this time, scale vendors and vessel crew have learned what spare parts must be carried and what training is necessary to ensure minimal down time. NMFS believes that allowing fishing to continue following a scale breakdown would act as a disincentive to an aggressive program of scale maintenance and repair on the part of fishing vessels. NMFS acknowledges, however, that under certain circumstances a scale breakdown could occur and prevent those fish already on board from being weighed. Failure to process those fish could cause a violation of increased retention/increased utilization regulations. Thus, as a matter of policy, NMFS will allow fish already on board to be processed without being weighed in cases where their discard would otherwise be necessary.

NMFS acknowledges the suggestion that a catch-weighing program be extended to the cod and Atka mackerel fisheries. The use of at-sea scales in these, and other, fisheries has been discussed by the Council but no recommendations have been made to date.

Comments on Inshore/Offshore Requirements

The following comments relate to the extension of inshore/offshore regulations in the BSAI and GOA.

Comment 34: We disagree with the inclusion of BSAI Pacific cod as part of the definition of ''inshore component in the BSAI.'' Pacific cod has never been allocated between the inshore and offshore components of the BSAI and the Council in developing its inshore/offshore amendments never intended to regulate the processing of BSAI Pacific cod. It appears that NMFS has included BSAI Pacific cod in the definition of ''inshore component in the BSAI'' in response to section 205(6) of the AFA which defines the inshore component in the BSAI as:

'' the following categories that process groundfish harvested in the Bering Sea and Aleutian Islands Management Area: (A) shoreside processors, including those eligible under section 208(f); and (B) vessels less than 125 feet in length overall that process less than 126 metric tons per week in round-weight equivalents of an aggregate amount of pollock and Pacific cod.≥

However, this definition is limited to the context of the AFA and should never have been used to modify the Council's inshore/offshore program. Including BSAI Pacific cod in this definition means that catcher/processors under 125 ft (38.1 m) that process more than 126 mt of Pacific cod in the BSAI become categorized as part of the offshore component in the BSAI. This has the effect of prohibiting such vessels from participating in the inshore component Pacific cod fishery in the GOA because of the NMFS prohibition on operating in the inshore component in the GOA and the offshore component in the BSAI during the same fishing year.

Response: NMFS agrees. To address the unintended conflict between AFA and inshore/offshore regulations, the final rule has been revised to remove all definitions and prohibitions relating to inshore/offshore in the BSAI because the AFA has superseded the inshore/offshore regime in the BSAI. The regulations governing the inshore/offshore regime in the GOA also have been revised to eliminate reference to inshore/offshore in the BSAI. The inshore/offshore prohibitions have been revised to reflect the actual restrictions on GOA inshore processors that were in effect prior to the passage of the AFA. Consequently, vessels designated as inshore processors in the GOA will have no restrictions on the processing of BSAI Pacific cod.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendments 61/61/13/8 are necessary for the conservation and management of the groundfish, crab, and scallop fisheries off Alaska and that they are consistent with the Magnuson-Stevens Act and other applicable laws.

NMFS prepared a final environmental impact statement for Amendments 61/61/13/8; a notice of availability was published on March 1, 2002 (67 FR 9448). The FEIS examined the projected changes to fishing and processing patterns that are expected to result from implementation of Amendments 61/61/13/8 and how these expected changes will affect the physical and biological resources of the BSAI and GOA. The FEIS concluded that Amendments 61/61/13/8 are expected to have conditionally positive effects on Steller sea lions as a result of the expected temporal and spatial dispersion of fishing effort and the expectation that fishery cooperatives will provide increased ability to micro-manage fishing activity at the individual vessel level. This increase in management capacity is expected to facilitate the implementation of Steller sea lion protection measures. For all other components of the environment analyzed, the effects of Amendments 61/61/13/8 was found to be either insignificant or unknown.

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

NMFS prepared a FRFA as part of the final EIS that describes the impact this action will have on small entities. The FRFA describes the objectives and legal basis for the final rule. With regard to commercial fishing vessels operating in the directed pollock fishery in the BSAI, the AFA provides the legal basis for taking actions to achieve the objective of reducing excessive fishing capacity and establishes regulatory conditions that could foster operational efficiencies in this fishery (Division C, Title II of Public Law 105–277), including cooperative formation and development of sideboard measures. Mitigation of potential adverse impacts to non-AFA fishermen and processors is mandated by the AFA.

The FRFA contains a description of and an estimate of the number of small entities to which the final rule would apply. The FRFA concluded that none of the catcher/processors, motherships and inshore processors affected by this action are small entities. All of the inshore and mothership processors participating in the BSAI pollock fishery are subsidiaries or close affiliates of corporations with more than 500 employees worldwide, and exceed the criterion for small entities. In addition, all 21 AFA catcher/processors have estimated annual gross revenues in excess of the $3–million small entity criterion for fish harvesting operations.

Therefore, none of the catcher/processors, motherships, or inshore processors in the BSAI pollock fishery appear to meet the Regulatory Flexibility Act (RFA) criteria for small entities.

With respect to the catcher vessel fleet, NMFS expects that approximately 120 catcher boats will be eligible to harvest BSAI pollock under this final rule (7 in the offshore delivery sector, 92 in the inshore sector, 7 in the mothership sector, and 14 which are eligible in both the inshore and mothership sectors). Ownership information presented in the FRFA indicates that, of the 92 catcher boats that operated exclusively or partly in the inshore sector, the available ownership data identify 26 vessels owned, in whole or in part, by inshore processors. These 26 vessels may be considered to be affiliated with their respective inshore processor owners and cannot be considered small entities because none of the inshore processors in the BSAI pollock fishery, themselves, are small entities for RFA purposes. An additional 5 catcher boats have been identified as closely affiliated with an inshore floating processor. These 5 catcher boats, taken together with their affiliated processor, exceed the $3–million criterion for fish harvesting operations and are, therefore, not believed to be small entities.

Furthermore, an additional 20 catcher boats have ownership affiliations with other catcher boats or catcher processors. The gross annual receipts of each of these groups of affiliated catcher boats is believed to exceed the $3–million criterion for small entities, when all their fisheries earnings are taken as a whole. The remaining 40 catcher boats operating exclusively or partly in the inshore sector are believed to be small entities.

Twenty-eight catcher boats operated in the offshore sector exclusively (e.g., delivering to catcher/processors and motherships), while 22 operated in both inshore and offshore sectors for a total of 50 offshore catcher boats. Of the combined offshore catcher boat sector, 13 have ownership affiliations with large inshore or offshore processors and, therefore, do not meet the $3–million criterion for small entities. An additional 13 catcher boats have ownership affiliations with other vessels or operations that, taken together with their affiliated entities, are believed to exceed the $3–million gross receipts criterion for small entities. The remaining 24 catcher boats operating exclusively or partly in the offshore sector are believed to qualify as ''small entities'' (and are among the same 120 total vessels described earlier).

The FRFA further concluded that the formation of inshore fishery cooperatives among predetermined groups of catcher vessels and a corresponding inshore processor will create distinct sets of entities, large and small, and their potential for inter-related economic effects resulting from such affiliation. In the context of an RFA analysis, a fish harvesting concern is a small entity if it has annual receipts not in excess of $3 million or it is not dominant in its field (defined in 13 CFR part 121, Standard Industrial Code categorizations). An independent catcher vessel operating in the ''open access'' or non-cooperative directed pollock fishery would typically meet that criteria. However, under Small Business Administration regulations for determining entity size, businesses that are affiliated with each other through joint-venture or cooperative arrangements are not considered ''independent'' and the affiliated businesses must be taken as a whole when determining entity size. In the case of AFA inshore cooperatives, the $3–million criterion will be exceeded for every inshore cooperative meaning that once independent catcher vessels join a cooperative, they can no longer be considered a small business concern for RFA purposes.

Despite the fact that catcher vessels will lose their small entity size status upon entry into cooperatives, the FRFA nonetheless examined the economic consequences of cooperative formation on independent catcher vessels. Approximately 43 small entities, including 40 independent catcher vessels delivering to inshore processors and three neighboring communities, would be expected to be directly impacted by the establishment of AFA cooperatives. The significance of these impacts on small independent catcher vessel businesses will depend primarily on the contractual relationship between such vessels, and their delivery processor as moderated by their collective cooperative agreement and cooperative by-laws. The FRFA concluded that if conventional cooperative motives exist between processor and catcher vessel business members as to foster a mutually beneficial economic relationship, this cooperative action would not be expected to significantly impact a substantial number of these small entities. Indeed, the action would be a net gain for cooperative members and their neighboring communities. Conversely, if the processor associated with the cooperative decides to exploit its position as the sole purchaser of pollock from cooperative co-members that operate as catcher vessels, then it would be highly probable that a substantial number of small entities would be significantly impacted by this action implementing such fishery cooperatives as authorized under AFA. Until empirical data become available, likely after cooperatives have been in operation for 2 or more years, these questions cannot be definitively addressed.

At its June 2000 meeting in Portland, OR, the Council considered and postponed action on a proposal from independent fishermen, known as the ''Dooley-Hall'' proposal, that would have allowed catcher vessel owners to switch cooperatives from year-to-year without needing to spend a year in the open access fishery to qualify for the new cooperative. This proposal is identified as Alternative 5 in the FRFA. Independent fishermen made this proposal to reduce negative economic impacts of this action on their sector of small entities. The FRFA concluded that the economic implications of the Dooley-Hall alternative on independent catcher vessels would be positive. It would also allow them to both retain the exclusive harvesting privilege associated with their cooperative's collective pollock allocation as well as provide for their ability to accept the highest exvessel price for such pollock landings as offered by an eligible inshore processor.

After giving close consideration to Alternative 5, the Council decided to postpone any decision to supersede the AFA by implementing Alternative 5, and selected Alternative 3 as its preferred alternative. Adopting Alternative 5 would have required the Council to supersede the provisions of the AFA that set out the operational criteria for inshore catcher vessel cooperatives. Such action would have required that the Council determine that sufficient harm to independent catcher vessels was likely to occur under Alternative 3. After review of its analysis, and extensive public testimony, the Council determined that it did not have sufficient grounds (i.e. evidence of harm to independent catcher vessel owners) to supersede the AFA and implement Alternative 5. This determination was also supported by written comments on the Initial Regulatory Flexibility Act analysis from the original proponents of Alternative 5. These comments noted that independent catcher vessel owners have not been adversely affected by implementation of the AFA to date and further stated that original proponents

of Alternative 5 now support implementation of Council's preferred alternative as set forth in this final rule.

Alternative 3 as reflected in this final rule is a compromise that was developed in legislative and Council processes. It incorporates compromises among interest groups that were essential to bringing the AFA and the implementing regulations into existence. In particular, the difference between Alternatives 3 and 5 reflects a decision about the allocation of AFA benefits between inshore processors and inshore catcher vessels. In postponing action on the independent catcher vessel's proposal reflected in Alternative 5, the Council chose not to change the terms of this agreement after it had been reached, but indicated that it could take the issue up again at any point if evidence suggested that independent catcher vessels were harmed as a result of the co-op structure contained in the AFA. Thus Alternative 3 is the preferred alternative, although it may not absolutely maximize net benefits as interpreted in benefit-cost analysis.

Finally, the FRFA examined the impacts of catcher vessel sideboard measures on small entities, and examined the effects of this final rule on small vessels excluded from the pollock fishery under the AFA. With respect to the effects of catcher vessel sideboards on AFA catcher vessels, the FRFA examined a range of alternatives that would mitigate adverse effects on small entities, especially small catcher vessels that may have little pollock catch history in the BSAI and would, therefore, receive little benefit under the AFA. The Council recommended, and this final rule contains, an exemption from BSAI Pacific cod and GOA groundfish sideboards for catcher vessels that have less than 1,700 mt average annual pollock harvests in the BSAI from 1995–1997. The intent of this alternative is to eliminate the impact of sideboards on AFA catcher vessels that have not traditionally focused the bulk of their effort in BSAI pollock, and that are more dependent on GOA groundfish fisheries.

This final rule contains collection of information requirements subject to the PRA and which have been approved by OMB under Control Numbers 0648–0393 and 0648–0401. Public reporting burden for these collections are listed by OMB control number.

OMB No. 0648–0393: 2 hours to complete the AFA catcher vessel permit application; 2 hours to complete the AFA mothership and inshore processor permit application; 2 hours to complete the AFA inshore cooperative permit application; and 30 minutes to complete the AFA permit application for a replacement vessel.

OMB No. 0648–0401: 5 minutes to submit a copy of the cooperative contract; 5 minutes to complete the catcher vessel cooperative pollock catch report; 8 hours to complete the Cooperative preliminary report; and 8 hours to complete the annual written Cooperative final report.

This final rule also contains proposed collection-of-information requirements that have been submitted to OMB for approval. These requirements, and their associated estimated response times, are: 40 hours for submission of a catch monitoring and control plan; 5 minutes for arranging for an inspection of a catch monitoring and control plan and 2 hours for the inspection itself; 1 minute for printing scale weights; 2 hours to test scales; 40 hours for a cooperative contract, including the time to specify a designated representative or agent for a fishery cooperative, the time for a contract clause in a cooperative contract concerning the making of payments to the State of Alaska, and the time for a contract provision to prevent exceeding sideboard limits; 8 hours to report (in a preliminary or final report) on a vessel-by-vessel basis the total weight of pollock landed outside the State of Alaska; and 5 minutes for a plant manager to notify an observer of each delivery of BSAI pollock from an AFA catcher vessel.

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 (see **ADDRESSES** above) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a 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.

A formal section 7 consultation under the Endangered Species Act was initiated for Amendments 61/61/13/8. In a biological opinion dated October 19, 2001, the AA determined that fishing activities conducted under Amendments 61/61/13/8 and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 6, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 is revised to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57.

2. In § 679.1, paragraph (k) is revised to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(k) *American Fisheries Act measures.* Regulations in this part were developed by NMFS and the Council under the Magnuson-Stevens Act and American Fisheries Act (AFA) to govern commercial fishing for BSAI pollock according to the requirements of the AFA. This part also governs payment and collection of the loan, under the AFA, the Magnuson-Stevens Act, and Title XI of the Merchant Marine Act, 1936, made to all those persons who harvest pollock from the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

3. In § 679.2, the definitions of ''Inshore component in the BSAI (applicable through December 31, 2004),'' ''Inshore component in the GOA (applicable through December 31, 2002),'' ''Offshore component in the BSAI (applicable through December 31, 2004),'' and ''Offshore component in the GOA (applicable through December 31, 2002),'' are removed; ''ADF&G processor code,'' ''AFA catcher/processor,'' ''AFA catcher vessel,'' ''AFA crab processing facility,'' ''AFA entity,'' ''AFA inshore processor,'' ''AFA mothership,''

''Affiliation,'' ''Appointed agent for service of process,'' ''Designated cooperative representative,'' ''Designated primary processor,'' ''Fishery cooperative or cooperative,'' ''Inshore component in the GOA,'' ''Listed AFA catcher/processor,'' ''Official AFA record,'' ''Offshore component in the GOA,'' ''Restricted AFA inshore processor,'' ''Stationary floating processor,'' ''Unlisted AFA catcher/processor,'' and ''Unrestricted AFA inshore processor'' are added in alphabetical order, and under the definition of ''Directed fishing,'' paragraph (4) is added to read as follows:

§ 679.2 Definitions.

* * * * *

ADF&G processor code means State of Alaska Department of Fish & Game (ADF&G) Intent to operate processor license number (example: F12345).

AFA catcher/processor means a catcher/processor permitted to harvest BSAI pollock under § 679.4(l)(2).

AFA catcher vessel means a catcher vessel permitted to harvest BSAI pollock under § 679.4(l)(3).

AFA crab processing facility means a processing plant, catcher/processor, mothership, floating processor or any other operation that processes any FMP species of BSAI crab, and that is affiliated with an AFA entity that processes pollock harvested by a catcher vessel cooperative operating in the inshore or mothership sectors of the BSAI pollock fishery.

AFA entity means a group of affiliated individuals, corporations, or other business concerns that harvest or process pollock in the BSAI directed pollock fishery.

AFA inshore processor means a shoreside processor or stationary floating processor permitted to process BSAI pollock under § 679.4(l)(5).

AFA mothership means a mothership permitted to process BSAI pollock under § 679.4(l)(5).

* * * * *

Affiliation for the purpose of defining AFA entities means a relationship between two or more individuals, corporations, or other business concerns in which one concern directly or indirectly owns a 10–percent or greater interest in another, exerts control over another, or has the power to exert control over another; or a third individual, corporation, or other business concern directly or indirectly owns a 10 percent or greater interest in both, exerts control over both, or has the power to exert control over both.

(1) *What is 10–percent or greater ownership*? For the purpose of determining affiliation, 10–percent or greater ownership is deemed to exist if an individual, corporation, or other business concern directly or indirectly owns 10 percent or greater interest in a second corporation or other business concern.

(2) *What is an indirect interest*? An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest in a second entity is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's direct or indirect interest in the second entity.

(3) *What is control*? For the purpose of determining affiliation, control is deemed to exist if an individual, corporation, or other business concern has any of the following relationships or forms of control over another individual, corporation, or other business concern:

(i) Controls 10 percent or more of the voting stock of another corporation or business concern;

(ii) Has the authority to direct the business of the entity which owns the fishing vessel or processor. The authority to ''direct the business of the entity'' does not include the right to simply participate in the direction of the business activities of an entity which owns a fishing vessel or processor;

(iii) Has the authority in the ordinary course of business to limit the actions of or to replace the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of an entity that holds 10 percent or greater interest in a fishing vessel or processor. Standard rights of minority shareholders to restrict the actions of the entity are not included in this definition of control provided they are unrelated to day-to-day business activities. These rights include provisions to require the consent of the minority shareholder to sell all or substantially all the assets, to enter into a different business, to contract with the major investors or their affiliates or to guarantee the obligations of majority investors or their affiliates;

(iv) Has the authority to direct the transfer, operation or manning of a fishing vessel or processor. The authority to ''direct the transfer, operation, or manning'' of a vessel or processor does not include the right to simply participate in such activities;

(v) Has the authority to control the management of or to be a controlling factor in the entity that holds 10 percent or greater interest in a fishing vessel or processor;

(vi) Absorbs all the costs and normal business risks associated with ownership and operation of a fishing vessel or processor;

(vii) Has the responsibility to procure insurance on the fishing vessel or processor, or assumes any liability in excess of insurance coverage;

(viii) Has the authority to control a fishery cooperative through 10–percent or greater ownership or control over a majority of the vessels in the cooperative, has the authority to appoint, remove, or limit the actions of or replace the chief executive officer of the cooperative, or has the authority to appoint, remove, or limit the actions of a majority of the board of directors of the cooperative. In such instance, all members of the cooperative are considered affiliates of the individual, corporation, or other business concern that exerts control over the cooperative; and

(ix) Has the ability through any other means whatsoever to control the entity that holds 10 percent or greater interest in a fishing vessel or processor.

* * * * *

Appointed agent for service of process means an agent appointed by the members of a fishery cooperative to serve on behalf of the cooperative. The appointed agent for service of process may be the owner of a vessel listed as a member of the cooperative or a registered agent.

* * * * *

Designated cooperative representative means an individual who is designated by the members of a fishery cooperative to fulfill requirements on behalf of the cooperative including, but not limited to, the signing of cooperative fishing permit applications; submitting catcher vessel pollock cooperative catch reports, and submitting annual cooperative fishing reports.

Designated primary processor means an AFA inshore processor that is designated by an inshore pollock cooperative as the AFA inshore processor to which the cooperative will deliver at least 90 percent of its BSAI pollock allocation during the year in which the AFA inshore cooperative fishing permit is in effect.

* * * * *

Directed fishing means:

* * * * *

(4) With respect to the harvest of groundfish by AFA catcher/processors and AFA catcher vessels, any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the maximum retainable percentage for that

species or species group as calculated under § 679.20.

* * * * *

Fishery cooperative or cooperative means any entity cooperatively managing directed fishing for BSAI pollock and formed under section 1 of the Fisherman's Collective Marketing Act of 1934 (15 U.S.C. 521). In and of itself, a cooperative is not an AFA entity subject to excessive harvest share limitations, unless a single person, corporation or other business entity controls the cooperative and the cooperative has the power to control the fishing activity of its member vessels.

* * * * *

Inshore component in the GOA means the following three categories of the U.S. groundfish fishery that process groundfish harvested in the GOA:

(1) Shoreside processors

(2) Vessels less than 125 ft (38.1 m) LOA that hold an inshore processing endorsement on their Federal fisheries permit, and that process no more than 126 mt per week in round-weight equivalents of an aggregate amount of pollock and GOA Pacific cod.

(3) Stationary floating processors that hold an inshore processing endorsement on their Federal processor permit, and that process pollock and/or Pacific cod harvested in a directed fishery for those species at a single geographic location in Alaska state waters during a fishing year.

* * * * *

Listed AFA catcher/processor means an AFA catcher/processor permitted to harvest BSAI pollock under § 679.4(l)(2)(i).

* * * * *

Official AFA record means the information prepared by the Regional Administrator about vessels and processors that were used to participate in the BSAI pollock fisheries during the qualifying periods specified in § 679.4(l). Information in the official AFA record includes vessel ownership information, documented harvests made from vessels during AFA qualifying periods, vessel characteristics, and documented amounts of pollock processed by pollock processors during AFA qualifying periods. The official AFA record is presumed to be correct for the purpose of determining eligibility for AFA permits. An applicant for an AFA permit will have the burden of proving correct any information submitted in an application that is inconsistent with the official record.

* * * * *

Offshore component in the GOA means all vessels not included in the definition of ''inshore component in the GOA'' that process groundfish harvested in the GOA.

* * * * *

Restricted AFA inshore processor means an AFA inshore processor permitted to harvest pollock under § 679.4(l)(5)(i)(B).

* * * * *

Stationary floating processor means a vessel of the United States operating as a processor in Alaska State waters that remains anchored or otherwise remains stationary in a single geographic location while receiving or processing groundfish harvested in the GOA or BSAI.

* * * * *

Unlisted AFA catcher/processor means an AFA catcher/processor permitted to harvest BSAI pollock under § 679.4(l)(2)(ii).

Unrestricted AFA inshore processor means an AFA inshore processor permitted to harvest pollock under § 679.4(l)(5)(i)(A).

* * * * *

4. In § 679.4, paragraph (a)(1)(iii) is revised and paragraphs (k)(10) and paragraph (l) are added to read as follows:

§ 679.4 Permits.

* * * * *

(a) * * *

(1) * * *

If program permit or card type is:	Permit is effective from issue date through the end of:	For more information see. . .
* *	*	* *
(iii) AFA	.....	
(A) Catcher/processor	Indefinite	Paragraph (l) of this section
(B) Catcher vessel	Indefinite	Paragraph (l) of this section
(C)Mothership	Indefinite	Paragraph (l) of this section
(D) Inshore processor	Indefinite	Paragraph (l) of this section
(E) Inshore cooperative	Calendar year.	Paragraph (l) of this section
(F) Replacement vessel	Indefinite	Paragraph (l) of this section

* * * * *

(k) * * *

(10) *Restrictions on licenses earned on AFA catcher vessels and listed AFA catcher/processors.* No person may use an LLP license that was derived in whole or in part from the qualifying fishing history of an AFA catcher vessel or a listed AFA catcher/processor to fish for groundfish or crab on a non-AFA catcher vessel or non-AFA catcher/processor. NMFS will identify all such licenses affected by this restriction and inform the holders of such licenses of this restriction through a restriction printed on the face of the license.

(l) *AFA permits*—(1) *General*—(i) *Applicability.* In addition to any other permit and licensing requirements set out in this part, any vessel used to engage in directed fishing for a non-CDQ allocation of pollock in the BSAI and any shoreside processor, stationary floating processor, or mothership that receives pollock harvested in a non-CDQ directed pollock fishery in the BSAI must have a valid AFA permit onboard the vessel or at the facility location at all times while non-CDQ pollock is being harvested or processed. In addition, the owner of any vessel that is a member of a pollock cooperative in the BSAI must also have a valid AFA permit for every vessel that is a member of the cooperative, regardless of whether or not the vessel actually engages in directed fishing for pollock in the BSAI. Finally, an AFA permit does not exempt a vessel operator, vessel, or processor from any other applicable permit or licensing requirement required under this part or in other state or Federal regulations.

(ii) *Duration*—(A) *Expiration of interim AFA permits.* All interim AFA vessel and processor permits issued prior to January 1, 2002, will expire on December 31, 2002, unless extended or re-issued by NMFS.

(B) *Duration of final AFA permits.* Except as provided in paragraphs (l)(5)(v)(B)(3) and (l)(6)(iii) of this section, AFA vessel and processor permits issued under this paragraph (l) will have no expiration date, and are valid indefinitely unless suspended or revoked.

(iii) *Application for permit.* NMFS will issue AFA vessel and processor permits to the current owner(s) of a qualifying vessel or processor if the owner(s) submits to the Regional Administrator a completed AFA permit application that is subsequently approved.

(iv) *Amended permits.* AFA vessel and processor permits may not be used on or transferred to any vessel or processor that is not listed on the permit. However, AFA permits may be amended to reflect any change in the ownership of the vessel or processor. An application to amend an AFA permit must include the following:

(A) The original AFA permit to be amended, and

(B) A completed AFA permit application signed by the new vessel or processor owner.

(2) AFA catcher/processor permits--(i) Listed AFA catcher/processors. NMFS will issue to an owner of a catcher/processor a listed AFA catcher/processor permit if the catcher/processor is one of the following (as listed in AFA paragraphs 208(e)(1) through (20)):

(A) AMERICAN DYNASTY (USCG documentation number 951307);

(B) KATIE ANN (USCG documentation number 518441);

(C) AMERICAN TRIUMPH (USCG documentation number 646737);

(D) NORTHERN EAGLE (USCG documentation number 506694);

(E) NORTHERN HAWK (USCG documentation number 643771);

(F) NORTHERN JAEGER (USCG documentation number 521069);

(G) OCEAN ROVER (USCG documentation number 552100);

(H) ALASKA OCEAN (USCG documentation number 637856);

(I) ENDURANCE (USCG documentation number 592206);

(J) AMERICAN ENTERPRISE (USCG documentation number 594803);

(K) ISLAND ENTERPRISE (USCG documentation number 610290);

(L) KODIAK ENTERPRISE (USCG documentation number 579450);

(M) SEATTLE ENTERPRISE (USCG documentation number 904767);

(N) US ENTERPRISE (USCG documentation number 921112);

(O) ARCTIC STORM (USCG documentation number 903511);

(P) ARCTIC FJORD (USCG documentation number 940866);

(Q) NORTHERN GLACIER (USCG documentation number 663457);

(R) PACIFIC GLACIER (USCG documentation number 933627);

(S) HIGHLAND LIGHT (USCG documentation number 577044);

(T) STARBOUND (USCG documentation number 944658).

(ii) *Unlisted AFA catcher/processors*. NMFS will issue to an owner of a catcher/processor an unlisted AFA catcher/processor permit if the catcher/processor is not listed in § 679.4(l)(2)(i) and is determined by the Regional Administrator to have harvested more than 2,000 mt of pollock in the 1997 BSAI directed pollock fishery.

(iii) *Application for AFA catcher/processor permit*. A completed application for an AFA catcher/processor permit must contain:

(A) *Vessel information*. The vessel name, ADF&G registration number, USCG documentation number, vessel telephone number (if any), gross tons, shaft horsepower, and registered length (in feet);

(B) *Ownership information*. The managing owner name(s), tax ID number(s), signature(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(3) *AFA catcher vessel permits*. NMFS will issue to an owner of a catcher vessel an AFA catcher vessel permit containing sector endorsements and sideboard restrictions upon receipt and approval of a completed application for an AFA catcher vessel permit.

(i) *Qualifying criteria*—(A) *Catcher vessels delivering to catcher/processors*. NMFS will endorse an AFA catcher vessel permit to authorize directed fishing for pollock for delivery to a catcher/processor if the catcher vessel:

(*1*) Is one of the following (as listed in paragraphs 208(b)(1) through (7) of the AFA):

AMERICAN CHALLENGER (USCG documentation number 633219);

FORUM STAR (USCG documentation number 925863);

MUIR MILACH (USCG documentation number 611524);

NEAHKAHNIE (USCG documentation number 599534);

OCEAN HARVESTER (USCG documentation number 549892);

SEA STORM (USCG documentation number 628959);

TRACY ANNE (USCG documentation number 904859); or

(*2*) Is not listed in § 679.4(l)(3)(i)(A)(*1*) and is determined by the Regional Administrator to have delivered at least 250 mt and at least 75 percent of the pollock it harvested in the directed BSAI pollock fishery in 1997 to catcher/processors for processing by the offshore component.

(B) *Catcher vessels delivering to AFA motherships*. NMFS will endorse an AFA catcher vessel permit to authorize directed fishing for pollock for delivery to an AFA mothership if the catcher vessel:

(*1*) Is one of the following (as listed in paragraphs 208(c)(1) through (20) and in subsection 211(e) of the AFA):

(i) ALEUTIAN CHALLENGER (USCG documentation number 603820);

(ii) ALYESKA (USCG documentation number 560237);

(iii) AMBER DAWN (USCG documentation number 529425);

(iv) AMERICAN BEAUTY (USCG documentation number 613847);

(v) CALIFORNIA HORIZON (USCG documentation number 590758);

(vi) MAR-GUN (USCG documentation number 525608);

(vii) MARGARET LYN (USCG documentation number 615563);

(viii) MARK I (USCG documentation number 509552);

(ix) MISTY DAWN (USCG documentation number 926647);

(x) NORDIC FURY (USCG documentation number 542651);

(xi) OCEAN LEADER (USCG documentation number 561518);

(xii) OCEANIC (USCG documentation number 602279);

(xiii) PACIFIC ALLIANCE (USCG documentation number 612084);

(xiv) PACIFIC CHALLENGER (USCG documentation number 518937);

(xv) PACIFIC FURY (USCG documentation number 561934);

(xvi) PAPADO II (USCG documentation number 536161);

(xvii) TRAVELER (USCG documentation number 929356);

(xviii) VESTERAALEN (USCG documentation number 611642);

(xix) WESTERN DAWN (USCG documentation number 524423);

(xx) LISA MARIE (USCG documentation number 1038717); or

(*2*) Is not listed in § 679.4(l)(3)(i)(B)(*1*) and is determined by the Regional Administrator to have delivered at least 250 mt of pollock for processing by motherships in the offshore component of the BSAI directed pollock fishery in any one of the years 1996 or 1997, or between January 1, 1998, and September 1, 1998, and is not eligible for an endorsement to deliver pollock to catcher/processors under § 679.4(l)(3)(i)(A).

(C) *Catcher vessels delivering to AFA inshore processors*. NMFS will endorse an AFA catcher vessel permit to authorize directed fishing for pollock for delivery to an AFA inshore processor if the catcher vessel is:

(*1*) One of the following vessels authorized by statute to engage in directed fishing for inshore sector pollock:

HAZEL LORRAINE (USCG documentation number 592211),

LISA MARIE (USCG documentation number 1038717),

PROVIDIAN (USCG documentation number 1062183); or

(*2*) Is not listed in § 679.4(l)(3)(i)(A), and:

(*i*) Is determined by the Regional Administrator to have delivered at least 250 mt of pollock harvested in the directed BSAI pollock fishery for processing by the inshore component in any one of the years 1996 or 1997, or between January 1, 1998, and September 1, 1998; or

(*ii*) Is less than 60 ft (18.1 meters) LOA and is determined by the Regional Administrator to have delivered at least 40 mt of pollock harvested in the directed BSAI pollock fishery for processing by the inshore component in any one of the years 1996 or 1997, or

between January 1, 1998, and September 1, 1998.

(ii) *Application for AFA catcher vessel permit.* A completed application for an AFA catcher vessel permit must contain:

(A) *Vessel information.* The vessel name, ADF&G registration number, USCG documentation number, vessel telephone number (if any), gross tons, shaft horsepower, and registered length (in feet);

(B) *Ownership information.* The managing owner name(s), tax ID number(s), signature(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(C) *Vessel AFA qualification information.* The AFA catcher vessel permit sector endorsement(s) requested.

(D) *Vessel crab activity information required for crab sideboard endorsements.* The owner of an AFA catcher vessel wishing to participate in any BSAI king or Tanner crab fishery must apply for a crab sideboard endorsement authorizing the catcher vessel to retain that crab species. An AFA catcher vessel permit may be endorsed for a crab species if the owner requests a crab sideboard endorsement and if the Regional Administrator verifies the legal landing(s) according to the following criteria:

(*1*) *Bristol Bay Red King Crab (BBRKC).* A legal landing of any BSAI king or Tanner crab species in 1996, 1997, or on or before February 7, 1998. A BBRKC sideboard endorsement also authorizes a vessel to retain Bairdi Tanner crab harvested during the duration of a BBRKC opening if the vessel is otherwise authorized to retain Bairdi Tanner crab while fishing for BBRKC under state and Federal regulations.

(*2*) *St. Matthew Island blue king crab.* A legal landing of St. Matthew Island blue king crab in that fishery in 1995, 1996, or 1997.

(*3*) *Pribilof Island red and blue king crab.* A legal landing of Pribilof Island blue or red king crab in that fishery in 1995, 1996, or 1997.

(*4*) *Aleutian Islands (Adak) brown king crab.* A legal landing of Aleutian Islands brown king crab in each of the 1997/1998 and 1998/1999 fishing seasons.

(*5*) *Aleutian Islands (Adak) red king crab.* A legal landing of Aleutian Islands red king crab in each of the 1995/1996 and 1998/1999 fishing seasons.

(*6*) *Opilio Tanner crab.* A legal landing of Chionoecetes (C.) opilio Tanner crab in each of 4 or more years from 1988 to 1997.

(*7*) *Bairdi Tanner crab.* A legal landing of C. bairdi Tanner crab in 1995 or 1996.

(*8*) *Exemption to crab harvesting sideboards.* An AFA catcher vessel permit may be endorsed with an exemption from all crab harvesting sideboards if the owner requests such exemption and provides supporting documentation that the catcher vessel made a legal landing of crab in every BBRKC, Opilio Tanner crab, and Bairdi Tanner crab fishery opening from 1991 to 1997 and if the Regional Administrator verifies the legal landings.

(E) *Vessel exemptions from AFA catcher vessel groundfish sideboard directed fishing closures.* An AFA catcher vessel permit may contain exemptions from certain groundfish sideboard directed fishing closures. If a vessel owner is requesting such an exemption, the application must provide supporting documentation that the catcher vessel qualifies for the exemption based on the following criteria. The Regional Administrator will review the vessel's catch history according to the following criteria:

(*1*) *BSAI Pacific cod.* For a catcher vessel to qualify for an exemption from AFA catcher vessel sideboards in the BSAI Pacific cod fishery, the catcher vessel must: Be less than 125 ft (38.1 m) LOA, have landed a combined total of less than 5,100 mt of BSAI pollock in the BSAI directed pollock fishery from 1995 through 1997, and have made 30 or more legal landings of Pacific cod in the BSAI directed fishery for Pacific cod from 1995 through 1997.

(*2*) *GOA groundfish species.* For a catcher vessel to qualify for an exemption from AFA catcher vessel sideboards in the GOA groundfish fisheries, the catcher vessel must: Be less than 125 ft (38.1 m) LOA, have landed a combined total of less than 5,100 mt of BSAI pollock in the BSAI directed pollock fishery from 1995 through 1997, and made 40 or more legal landings of GOA groundfish in a directed fishery for GOA groundfish from 1995 through 1997.

(4) *AFA mothership permits.* NMFS will issue to an owner of a mothership an AFA mothership permit if the mothership is one of the following (as listed in paragraphs 208(d)(1) through (3) of the AFA):

EXCELLENCE (USCG documentation number 967502);

GOLDEN ALASKA (USCG documentation number 651041); and

OCEAN PHOENIX (USCG documentation number 296779).

(i) *Cooperative processing endorsement.* The owner of an AFA mothership who wishes to process pollock harvested by a fishery cooperative formed under § 679.61 must apply for and receive a cooperative processing endorsement on the vessel's AFA mothership permit.

(ii) *Application for AFA mothership permit.* A completed application for an AFA mothership permit must contain:

(A) *Type of permit requested.* Type of processor and whether requesting an AFA cooperative endorsement.

(B) *Vessel information.* The mothership name, ADF&G processor code, USCG documentation number, Federal fisheries permit number, gross tons, shaft horsepower, and registered length (in feet).

(C) *Ownership information.* The managing owner name(s), tax ID number(s), signature(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(D) *AFA crab facility ownership information.* If the applicant is applying for a cooperative pollock processing endorsement, the AFA mothership application must list the name, type of facility, ADF&G processor code, and percentage of ownership or control of each AFA crab facility that is affiliated with the AFA entity that owns or controls the AFA mothership;

(E) *Data confidentiality waiver.* If the applicant is applying for a cooperative pollock processing endorsement, the AFA mothership application must contain a valid signed data confidentiality waiver for each crab processing facility listed on the permit application that authorizes public release of the 1995–1998 total processing history of each BSAI king and Tanner crab species.

(5) *AFA inshore processor permits.* NMFS will issue to an owner of a shoreside processor or stationary floating processor an AFA inshore processor permit upon receipt and approval of a completed application.

(i) *Qualifying criteria*—(A) *Unrestricted processors.* NMFS will issue an unrestricted AFA inshore processor permit to a shoreside processor or stationary floating processor if the Regional Administrator determines that the processor facility processed annually more than 2,000 mt round-weight of pollock harvested in the inshore component of the directed BSAI pollock fishery during each of 1996 and 1997.

(B) *Restricted processors.* NMFS will issue a restricted AFA inshore processor permit to a shoreside processor or stationary floating processor if the Regional Administrator determines that

the facility processed pollock harvested in the inshore component of the directed BSAI pollock fishery during 1996 or 1997, but did not process annually more than 2,000 mt round-weight of BSAI pollock during each of 1996 and 1997.

(ii) *Cooperative processing endorsement.* The owner of an AFA inshore processor who wishes to process pollock harvested by a fishery cooperative formed under § 679.62 must apply for and receive a cooperative processing endorsement on the AFA inshore processor permit.

(iii) *Single geographic location requirement.* An AFA inshore processor permit authorizes the processing of pollock harvested in the BSAI directed pollock fishery only in a single geographic location during a fishing year. For the purpose of this paragraph, single geographic location means:

(A) *Shoreside processors.* The physical location at which the land-based shoreside processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year;

(B) *Stationary floating processors.* A location within Alaska state waters that is within 5 nm of the position in which the stationary floating processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year.

(iv) *Application for permit.* A completed application for an AFA inshore processor permit must contain:

(A) *Type of permit requested.* Type of processor, whether requesting an AFA cooperative endorsement, and amount of BSAI pollock processed in 1996 and 1997;

(B) *Stationary floating processor information.* The vessel name, ADF&G processor code, USCG documentation number, Federal processor permit number, gross tons, shaft horsepower, registered length (in feet), and business telephone number, business FAX number, and business e-mail address used on board the vessel.

(C) *Shoreside processor information.* The processor name, Federal processor permit number, ADF&G processor code, business street address; business telephone and FAX numbers, and business e-mail address.

(D) *Ownership information.* The managing owner name(s), tax ID number(s), signature(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(E) *AFA crab facility ownership information.* If the applicant is applying for a cooperative pollock processing endorsement, the AFA inshore processor application must list the name, type of facility, ADF&G processor code, and list the percentage of ownership or control and describe the nature of the interest in each AFA crab facility that is affiliated with the AFA entity that owns or controls the AFA inshore processor;

(F) *Data confidentiality waiver.* If the applicant is applying for a cooperative pollock processing endorsement, the AFA mothership application must contain a valid signed data confidentiality waiver for each crab processing facility listed on the permit application that authorizes public release of the 1995–1998 total processing history of each BSAI king and Tanner crab species by that facility.

(v) *Authorization of new AFA inshore processors.* If the Council recommends and NMFS approves a combined BSAI pollock TAC that exceeds 1,274,900 mt for any fishing year, or in the event of the actual total loss or constructive loss of an existing AFA inshore processor, the Council may recommend that an additional inshore processor (or processors) be issued AFA inshore processing permits.

(A) *Timing of Council action.* At any time prior to or during a fishing year in which the combined BSAI pollock TAC exceeds 1,274,900 mt, or at any time after the actual total loss or constructive total loss of an existing AFA inshore processor, the Council may, after opportunity for public comment, recommend that an additional inshore processor (or processors) be issued AFA inshore processor permits.

(B) *Required elements in Council recommendation.* Any recommendation from the Council to add an additional inshore processor (or processors) must include the following information:

(*1*) *Identification of inshore processor(s).* The Council recommendation must identify by name the inshore processor(s) to which AFA inshore processor permits would be issued;

(*2*) *Type of AFA inshore processor permit(s).* The Council recommendation must specify whether the identified inshore processor(s) should be issued a restricted or unrestricted AFA inshore processor permit.

(*3*) *Duration of permit.* The Council recommendation must specify the recommended duration of the permit. Permit duration may be for any duration from a single fishing season to the duration of section 208 of the AFA. Alternatively, the Council may recommend that the permit be valid as long as the conditions that led to the permit remain in effect. For example, the Council could recommend that a permit issued under this paragraph remain valid as long as the combined annual BSAI pollock TAC remains above 1,274,900 mt. or a lost AFA inshore processor is not reconstructed.

(*4*) *Council procedures.* The Council may establish additional procedures for the review and approval of requests to authorize additional AFA inshore processors. However, such procedures must be consistent with the Magnuson-Stevens Act, the national standards, and other applicable law.

(*5*) *Action by NMFS.* Upon receipt of a recommendation from the Council to authorize additional AFA inshore processors, NMFS may issue an AFA inshore processor permit to the identified inshore processor(s) of the type and duration recommended by the Council, provided the Council has met the requirements identified in paragraphs (l)(5)(v)(B)(*1*) through (*4*) of this section, and the owner(s) of the identified inshore processor has submitted a completed application for an AFA inshore processor permit that is subsequently approved.

(6) *Inshore cooperative fishing permits*—(i) *General.* NMFS will issue to an inshore catcher vessel cooperative formed pursuant to 15 U.S.C. 521 for the purpose of cooperatively managing directed fishing for pollock for processing by an AFA inshore processor an AFA inshore cooperative fishing permit upon receipt and approval of a completed application.

(ii) *Application for permit.* A completed application for an inshore cooperative fishing permit must contain the following information:

(A) *Cooperative contact information.* Name of cooperative; name of cooperative representative; and business mailing address, business telephone number, business fax number, and business e-mail address of the cooperative;

(B) *Designated cooperative processor.* The name and physical location of AFA Inshore Processor who is designated in the cooperative contract as the processor to whom the cooperative has agreed to deliver at least 90 percent of its BSAI pollock catch;

(C) *Cooperative contract information.* A copy of the cooperative contract and a written certification that:

(*1*) The contract was signed by the owners of at least 80 percent of the qualified catcher vessels;

(*2*) The cooperative contract requires that the cooperative deliver at least 90 percent of its BSAI pollock catch to its designated AFA processor; and

(*3*) Each catcher vessel in the cooperative is a qualified catcher vessel

and is otherwise eligible to fish for groundfish in the BSAI, has an AFA catcher vessel permit with an inshore endorsement, and has no permit sanctions or other type of sanctions against it that would prevent it from fishing for groundfish in the BSAI;

(D) *Qualified catcher vessels*. For the purpose of this paragraph, a catcher vessel is a qualified catcher vessel if it meets the following permit and landing requirements:

(*1*) *Permit requirements*—(i) *AFA permit*. The vessel must have a valid AFA catcher vessel permit with an inshore endorsement;

(*ii*) *LLP permit*. The vessel must be named on a valid LLP permit authorizing the vessel to engage in trawling for pollock in the Bering Sea subarea and in the Aleutian Islands subarea if the vessel's Aleutian Islands subarea fishing history is used to generate a cooperative allocation for the Aleutian Islands subarea; and

(*iii*) *Permit sanctions*. The vessel has no permit sanctions that otherwise make it ineligible to engage in fishing for pollock in the BSAI.

(*2*) *Landing requirements*—(i) *Active vessels*. The vessel delivered more pollock harvested in the BSAI inshore directed pollock fishery to the AFA inshore processor designated under paragraph (l)(6)(ii)(B) of this section than to any other shoreside processor or stationary floating processor during the year prior to the year in which the cooperative fishing permit will be in effect; or

(ii) *Inactive vessels*. The vessel delivered more pollock harvested in the BSAI inshore directed pollock fishery to the AFA inshore processor designated under paragraph (l)(6)(ii)(B) of this section than to any other shoreside processor or stationary floating processor during the last year in which the vessel delivered BSAI pollock harvested in the BSAI directed pollock fishery to an AFA inshore processor.

(E) *Business review letter*. A copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and of any response to such request;

(F) *Vessel information*. For each cooperative catcher vessel member: Vessel name, ADF&G registration number, USCG documentation number, AFA permit number; and

(G) *Certification of notary and applicant*. Signature and printed name of cooperative representative, date of signature, and notary stamp or seal, signature and date commission expires of a notary public.

(iii) *Duration of cooperative fishing permits*. Inshore cooperative fishing permits are valid for 1 calendar year.

(iv) *Addition or subtraction of vessels*. The cooperative representative must submit a new application to add or subtract a catcher vessel to or from an inshore cooperative fishing permit to the Regional Administrator prior to the application deadline. Upon approval by the Regional Administrator, NMFS will issue an amended cooperative fishing permit.

(v) *Application deadline*. An inshore cooperative fishing permit application and any subsequent contract amendments that add or subtract vessels must be received by the Regional Administrator by December 1 prior to the year in which the inshore cooperative fishing permit will be in effect. Inshore cooperative fishing permit applications or amendments to inshore fishing cooperative permits received after December 1 will not be accepted by the Regional Administrator for the subsequent fishing year.

(7) *Replacement vessels*. (i) In the event of the actual total loss or constructive total loss of an AFA catcher vessel, AFA mothership, or AFA catcher/processor, the owner of such vessel may replace such vessel with a replacement vessel. The replacement vessel will be eligible in the same manner as the original vessel after submission and approval of an application for an AFA replacement vessel, provided that:

(A) Such loss was caused by an act of God, an act of war, a collision, an act or omission of a party other than the owner or agent of the vessel, or any other event not caused by the willful misconduct of the owner or agent;

(B) The replacement vessel was built in the United States and, if ever rebuilt, rebuilt in the United States;

(C) The USCG certificate of documentation with fishery endorsement for the replacement vessel is issued within 36 months of the end of the last year in which the eligible vessel harvested or processed pollock in the directed pollock fishery;

(D) If the eligible vessel is greater than 165 ft (50.3 meters (m)) in registered length, or more than 750 gross registered tons, or has engines capable of producing more than 3,000 shaft horsepower, the replacement vessel is of the same or lesser registered length, gross registered tons, and shaft horsepower;

(E) If the eligible vessel is less than 165 ft (50.3 m) in registered length, fewer than 750 gross registered tons, and has engines incapable of producing more than 3,000 shaft horsepower, the replacement vessel is less than each of such thresholds and does not exceed by more than 10 percent the registered length, gross registered tons, or shaft horsepower of the eligible vessel; and

(F) If the replacement vessel is already an AFA catcher vessel, the inshore cooperative catch history of both vessels may be merged in the replacement vessel for the purpose of determining inshore cooperative allocations except that a catcher vessel with an endorsement to deliver pollock to AFA catcher/processors may not be simultaneously endorsed to deliver pollock to AFA motherships or AFA inshore processors.

(G) Replacement of replacement vessels. In the event that a permitted replacement vessel is lost under the circumstances described in paragraph (l)(7)(i)(A) of this section, the replacement vessel may be replaced according to the provisions of this paragraph (l)(7). However, the maximum length, tonnage, and horsepower of any subsequent replacement vessels are determined by the length, tonnage, and horsepower of the originally qualifying AFA vessel and not by those of any subsequent replacement vessels.

(ii) *Application for permit*. A completed application for an AFA permit for a replacement vessel must contain:

(A) *Identification of lost AFA eligible vessel*.

(*1*) Name, ADF&G vessel registration number, USCG documentation number, AFA permit number, gross tons, shaft horsepower, and registered length from USCG documentation of the vessel;

(*2*) Name(s), tax ID number(s), business mailing address(es), telephone number(s), FAX number(s), and e-mail address(es) of owner(s);

(*3*) The last year in which the vessel harvested or processed pollock in a BSAI directed pollock fishery; and

(*4*) Description of how the vessel was lost or destroyed. Attach a USCG Form 2692 or insurance papers to verify the claim.

(B) *Identification of replacement vessel*.

(*1*) Name, ADF&G vessel registration number, USCG documentation number, gross tons, shaft horsepower, registered length, net tons from USCG documentation, length overall (in feet), and Federal Fisheries Permit number of the vessel;

(*2*) Name(s), tax ID number(s), business mailing address(es), business telephone number(s), business FAX number(s), and business e-mail address(es) of the owner(s);

(*3*) YES or NO indication of whether the vessel was built in the United States; and

(*4*) YES or NO indication of whether the vessel has ever been rebuilt, and if so whether it was rebuilt in the United States.

(C) *Certification of applicant and notary*. Signature(s) and printed name(s) of owner(s) and date of signature; signature, notary stamp or seal of notary public, and date notary commission expires.

(8) *Application evaluations and appeals*—(i) *Initial evaluation*. The Regional Administrator will evaluate an application for an AFA fishing or processing permit submitted in accordance with paragraph (1) of this section and compare all claims in the application with the information in the official AFA record. Claims in the application that are consistent with information in the official AFA record will be accepted by the Regional Administrator. Inconsistent claims in the application, unless supported by evidence, will not be accepted. An applicant who submits claims based on inconsistent information or fails to submit the information specified in the application for an AFA permit will be provided a single 60–day evidentiary period to submit the specified information, submit evidence to verify the applicant's inconsistent claims, or submit a revised application with claims consistent with information in the official AFA record. An applicant who submits claims that are inconsistent with information in the official AFA record has the burden of proving that the submitted claims are correct.

(ii) *Additional information and evidence*. The Regional Administrator will evaluate the additional information or evidence to support an applicant's claims submitted within the 60–day evidentiary period. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the inconsistent claims in his or her application are correct, the official AFA record will be amended and the information will be used in determining whether the applicant is eligible for an AFA permit. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the inconsistent claims in his or her application is correct, the applicant will be notified by an initial administrative determination that the applicant did not meet the burden of proof to change information in the official AFA record.

(iii) *Sixty-day evidentiary period*. The Regional Administrator will specify by letter a 60–day evidentiary period during which an applicant may provide additional information or evidence to support the claims made in his or her application, or to submit a revised application with claims consistent with information in the official AFA record, if the Regional Administrator determines that the applicant did not meet the burden of proving that the information on the application is correct through evidence provided with the application. Also, an applicant who fails to submit required information will have 60 days to provide that information. An applicant will be limited to one 60–day evidentiary period. Additional information or evidence, or a revised application received after the 60–day evidentiary period specified in the letter has expired will not be considered for the purposes of the initial administrative determination.

(iv) *Initial administrative determinations (IAD)*. The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 60–day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to rebut the presumption that the official AFA record is correct or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 60–day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD will also indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal under the appeals procedures set out at § 679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will receive an interim AFA permit that authorizes a person to participate in an AFA pollock fishery and will have the specific endorsements and designations based on the claims in his or her application. An interim AFA permit based on claims contrary to the Official Record will expire upon final agency action.

(v) *Effect of cooperative allocation appeals*. An AFA inshore cooperative may appeal the pollock quota share issued to the cooperative under § 679.62; however, final agency action on the appeal must occur prior to December 1 for the results of the appeal to take effect during the subsequent fishing year.

5. In § 679.7, paragraphs (a)(7) and (k) are revised to read as follows:

§ 679.7 Prohibitions.

(a) * * *

(7) *Inshore/offshore*—(i) Operate a vessel in the ''inshore component in the GOA'' as defined in § 679.2 without a valid inshore processing endorsement on the vessel's Federal fisheries or Federal processor permit.

(ii) Operate a vessel as a ''stationary floating processor'' in the ''inshore component in the GOA'' as defined in § 679.2, and as a catcher/processor in the BSAI during the same fishing year.

(iii) Operate a vessel as a ''stationary floating processor'' in the ''inshore component in the GOA'' as defined in § 679.2, and as an AFA mothership in the BSAI during the same fishing year.

(iv) Operate any vessel in the GOA in more than one of the three categories included in the definition of ''inshore component in the GOA,'' in §§ 679.2, during any fishing year.

(v) Operate any vessel in the GOA under both the ''inshore component in the GOA'' and the ''offshore component in the GOA'' definitions in §§ 679.2 during the same fishing year.

(vi) Use a stationary floating processor with an GOA inshore processing endorsement to process pollock or GOA Pacific cod harvested in a directed fishery for those species in more than one single geographic location during a fishing year.

* * * * *

(k) *Prohibitions specific to the AFA*. It is unlawful for any person to do any of the following:

(1) *Catcher/processors*—(i) *Permit requirement*. Use a catcher/processor to engage in directed fishing for non-CDQ BSAI pollock without a valid AFA catcher/processor permit on board the vessel.

(ii) *Fishing in the GOA*. Use a listed AFA catcher/processor to harvest any species of fish in the GOA.

(iii) *Processing BSAI crab*. Use a listed AFA catcher/processor to process any species of crab harvested in the BSAI.

(iv) *Processing GOA groundfish*. Use a listed AFA catcher/processor to process any pollock harvested in a directed pollock fishery in the GOA and any groundfish harvested in Statistical Area 630 of the GOA.

(v) *Directed fishing after a sideboard closure*. Use a listed AFA catcher/processor to engage in directed fishing for a groundfish species or species group in the BSAI after the Regional

Administrator has issued an AFA catcher/processor sideboard directed fishing closure for that groundfish species or species group under § 679.20(d)(1)(iv) or § 679.21(e)(3)(v).

(vi) *Catch weighing*—(A) *Listed AFA catcher/processors*. Process any groundfish that was not weighed on a NMFS-approved scale that complies with the requirements of § 679.28(b). Catch may not be sorted before it is weighed and each haul must be sampled by an observer for species composition.

(B) Unlisted AFA catcher/processors. Process groundfish harvested in the BSAI pollock fishery that was not weighed on a NMFS-approved scale that complies with the requirements of § 679.28(b). Catch may not be sorted before it is weighed and each haul must be sampled by an observer for species composition.

(vii) *Observer sampling station*—(A) *Listed AFA catcher/processors*. Process any groundfish without an observer sampling station as described at § 679.28(d). A valid observer sampling station inspection report must be on board at all times when an observer sampling station is required.

(B) *Unlisted AFA catcher/processors*. Process groundfish harvested in the BSAI pollock fishery without an observer sampling station as described at § 679.28(d). A valid observer sampling station inspection report must be on board at all times when an observer sampling station is required.

(2) *Motherships*—(i) *Permit requirement*. Use a mothership to process pollock harvested in a non-CDQ directed fishery for pollock in the BSAI without a valid AFA permit on board the mothership.

(ii) *Cooperative processing endorsement*. Use an AFA mothership to process groundfish harvested by a fishery cooperative formed under § 679.61 unless the AFA mothership permit contains a valid cooperative pollock processing endorsement.

(iii) *Catch weighing*. Process any groundfish that was not weighed on a NMFS-approved scale that complies with the requirements of § 679.28(b). Catch may not be sorted before it is weighed and each delivery must be sampled by an observer for species composition.

(iv) *Observer sampling station*. Process any groundfish without an observer sampling station as described at § 679.28(d). A valid observer sampling station inspection report must be on board at all times when an observer sampling station is required.

(3) *AFA inshore processors*—(i) *Permit requirement*. Use a shoreside processor or stationary floating processor to process pollock harvested in a non-CDQ directed fishery for pollock in the BSAI without a valid AFA inshore processor permit at the facility or on board vessel.

(ii) *Cooperative processing endorsement*. Use a shoreside processor or stationary floating processor required to have an AFA inshore processor permit to process groundfish harvested by a fishery cooperative formed under § 679.62 unless the AFA inshore processor permit contains a valid cooperative pollock processing endorsement.

(iii) *Restricted AFA inshore processors*. Use an AFA inshore processor with a restricted AFA inshore processor permit to process more than 2,000 mt round weight of non-CDQ pollock harvested in the BSAI directed pollock fishery in any one calendar year.

(iv) *Single geographic location requirement*. Use an AFA inshore processor to process pollock harvested in the BSAI directed pollock fishery at a location other than the single geographic location defined as follows:

(A) *Shoreside processors*. The physical location at which the land-based shoreside processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year.

(B) *Stationary floating processors*. A location within Alaska State waters that is within 5 nm of the position in which the stationary floating processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year.

(v) *Catch weighing*. Process any groundfish that was not weighed on a scale approved by the State of Alaska and meeting the requirements specified in § 679.28(c).

(vi) *Catch monitoring and control plan (CMCP)*. Take deliveries or process groundfish delivered by a vessel engaged in directed fishing for BSAI pollock without following an approved CMCP as described at § 679.28(g). A copy of the CMCP must be maintained on the premises and made available to authorized officers or NMFS-authorized personnel upon request.

(4) *Catcher vessels*—(i) *Permit requirement*. Use a catcher vessel to engage in directed fishing for non-CDQ BSAI pollock for delivery to any AFA processing sector (catcher/processor, mothership, or inshore) unless the vessel has a valid AFA catcher vessel permit on board that contains an endorsement for the sector of the BSAI pollock fishery in which the vessel is participating.

(ii) *Crab sideboard endorsement*. Use an AFA catcher vessel to retain any BSAI crab species unless the catcher vessel's AFA permit contains a crab sideboard endorsement for that crab species.

(iii) *Groundfish sideboard closures*. Use an AFA catcher vessel to engage in directed fishing for a groundfish species or species group in the BSAI or GOA after the Regional Administrator has issued an AFA catcher vessel sideboard directed fishing closure for that groundfish species or species group under § 679.20(d)(1)(iv), § 679.21(d)(8) or § 679.21(e)(3)(iv), if the vessel's AFA permit does not contain a sideboard exemption for that groundfish species or species group.

(5) *AFA inshore fishery cooperatives*—(i) *Overages by vessel*. Use an AFA catcher vessel listed on an AFA inshore fishery cooperative fishing permit to harvest non-CDQ BSAI pollock in excess of the fishery cooperative's annual allocation of pollock specified under § 679.62.

(ii) *Overages by fishery cooperative*. An inshore pollock fishery cooperative is prohibited from exceeding its annual allocation of BSAI pollock TAC.

(6) *Excessive harvesting shares*. It is unlawful for an AFA entity to harvest, through a fishery cooperative or otherwise, an amount of BSAI pollock that exceeds the 17.5–percent excessive share limit specified under § 679.20(a)(5)(i)(A)(*6*). The owners and operators of the individual vessels comprising the AFA entity that harvests BSAI pollock will be held jointly and severally liable for exceeding the excessive harvesting share limit.

(7) *Excessive processing shares*. It is unlawful for an AFA entity to process an amount of BSAI pollock that exceeds the 30- percent excessive share limit specified under § 679.20(a)(5)(i)(A)(*7*). The owners and operators of the individual processors comprising the AFA entity that processes BSAI pollock will be held jointly and severally liable for exceeding the excessive processing share limit.

(8) *Crab processing limits*. It is unlawful for an AFA entity that processes pollock harvested in the BSAI directed pollock fishery by an AFA inshore or AFA mothership catcher vessel cooperative to use an AFA crab facility to process crab in excess of the crab processing sideboard cap established for that AFA inshore or mothership entity under § 679.66. The owners and operators of the individual entities comprising the AFA inshore or mothership entity will be held jointly and severally liable for any overages of

the AFA inshore or mothership entity's crab processing sideboard cap.

6. In § 679.20, paragraph (a)(5)(ii) is redesignated as paragraph (a)(5)(iii), new paragraphs (a)(5)(ii) and (d)(1)(iv) are added, and paragraphs (a)(5)(i)(A), (a)(6), (b)(1)(i), and (c)(4) are revised to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(5) * * *

(i) *Bering Sea Subarea*—(A) *AFA allocations*. The pollock TAC apportioned to the Bering Sea Subarea, after subtraction of the 10 percent CDQ reserve under § 679.31(a), will be allocated as follows:

(*1*) *Incidental catch allowance*. The Regional Administrator will establish an incidental catch allowance to account for projected incidental catch of pollock by vessels engaged in directed fishing for groundfish other than pollock and by vessels harvesting non-pollock CDQ. If during a fishing year, the Regional Administrator determines that the incidental catch allowance has been set too high or too low, he/she may issue inseason notification in the **Federal Register** that reallocates incidental catch allowance to the directed fishing allowance, or vice versa, according to the proportions established under paragraph (a)(5)(i)(A) of this section.

(*2*) *Directed fishing allowance*. The remaining pollock TAC apportioned to the Bering Sea subarea is established as a directed fishing allowance.

(*3*) *Inshore sector allocation*. Fifty percent of the directed fishing allowance will be allocated to AFA catcher vessels harvesting pollock for processing by AFA inshore processors. The inshore allocation will be further divided into separate allocations for cooperative and open access fishing.

(i) *Inshore cooperatives*. The inshore cooperative allocation will be equal to the aggregate annual allocations of all AFA inshore catcher vessel cooperatives that receive pollock allocations under § 679.62(e).

(ii) *Inshore open access*. The inshore open access allocation will equal that portion of the inshore sector allocation that is not allocated to inshore cooperatives.

(*4*) *Catcher/processor sector allocation*. Forty percent of the directed fishing allowance will be allocated to AFA catcher/processors and AFA catcher vessels delivering to catcher processors.

(*i*) *Catcher/processor and catcher vessel cooperatives*. If by December 1 of the year prior to the year when fishing under the cooperative agreement will begin, NMFS receives filing of cooperative contracts and/or an inter-cooperative agreement entered into by listed AFA catcher/processors and all AFA catcher vessels with catcher/processor sector endorsements, and the Regional Administrator determines that such contracts provide for the distribution of harvest between catcher/processors and catcher vessels in a manner agreed to by all members of the catcher/processor sector cooperative(s), then NMFS will not subdivide the catcher/processor sector allocation between catcher vessels and catcher/processors.

(*ii*) *Catcher vessel allocation*. If such contract is not filed with NMFS by December 1 of the preceding year, then NMFS will allocate 91.5 percent of the catcher/processor sector allocation to AFA catcher/processors engaged in directed fishing for pollock and 8.5 percent of the catcher/processor sector allocation to AFA catcher vessels delivering to catcher/processors.

(*iii*) *Unlisted AFA catcher processors*. Unlisted AFA catcher/processors will be limited to harvesting not more than 0.5 percent of catcher/processor sector allocation.

(*5*) *Mothership sector allocation*. Ten percent of the directed fishing allowance will be allocated to AFA catcher vessels harvesting pollock for processing by AFA motherships.

(*6*) *Excessive harvesting share*. NMFS will establish an excessive harvesting share limit equal to 17.5 percent of the sum of the directed fishing allowances established under paragraphs (a)(5)(i) and (a)(5)(ii) of this section. The excessive harvesting share limit will be published in the annual harvest specifications and is subject to revision on an inseason basis if NMFS reallocates unharvested amounts of the incidental catch allowance to the directed fishing allowance, or vice versa.

(*7*) *Excessive processing share*. NMFS will establish an excessive processing share limit equal to 30.0 percent of the sum of the directed fishing allowances established under paragraphs (a)(5)(i) and (a)(5)(ii) of this section. The excessive processing share limit will be published in the annual harvest specifications and is subject to revision on an inseason basis if NMFS reallocates unharvested amounts of the incidental catch allowance to the directed fishing allowance, or vice versa.

* * * * *

(ii) *Aleutian Islands Subarea and Bogoslof District*. If the Aleutian Islands subarea and/or Bogoslof District is open to directed fishing for pollock by regulation, then the pollock TAC for those areas will be allocated according to the same procedure established for the Bering Sea subarea at paragraph (a)(5)(i) of this section. If the Aleutian Islands subarea and/or Bogoslof District is closed to directed fishing for pollock by regulation then the entire TAC for those areas will be allocated as an incidental catch allowance.

* * * * *

(6) *GOA inshore/offshore allocations*—(i) *GOA pollock*. The apportionment of pollock in all GOA regulatory areas and for each seasonal allowance described in paragraph (a)(5)(iii) of this section will be allocated entirely to vessels harvesting pollock for processing by the inshore component in the GOA after subtraction of an amount that is projected by the Regional

Administrator to be caught by, or delivered to, the offshore component in the GOA incidental to directed fishing for other groundfish species.

(ii) *GOA Pacific cod*. The apportionment of Pacific cod in all GOA regulatory areas will be allocated 90 percent to vessels harvesting Pacific cod for processing by the inshore component in the GOA and 10 percent to vessels harvesting Pacific cod for processing by the offshore component in the GOA.

* * * * *

(b) *Reserves*—(1) *BSAI*—(i) *General*. Fifteen percent of the BSAI TAC for each target species and the ''other species'' category, except pollock and the hook-and-line and pot gear allocation for sablefish, is automatically placed in a reserve, and the remaining 85 percent of the TAC is apportioned for each target species and the ''other species'' category, except pollock and the hook-and-line and pot gear allocation for sablefish.

* * * * *

(c) * * *

(4) *AFA and inshore/offshore allocations*—(i) *BSAI pollock*. The annual harvest specifications will specify the allocation of pollock for processing by each AFA industry component in the BSAI, and any seasonal allowances thereof, as authorized under paragraph (a)(5) of this section.

(ii) *GOA pollock and Pacific cod*. The annual harvest specifications will specify the allocation of GOA pollock and GOA Pacific cod for processing by the inshore component in the GOA and the offshore component in the GOA, and any seasonal allowances thereof, as

authorized under paragraphs (a)(5) and (a)(6) of this section.

* * * * *

(d) * * *

(1) * * *

(iv) *AFA sideboard limitations*—(A) If the Regional Administrator determines that any sideboard harvest limit for a group of AFA vessels established under § 679.64 has been or will be reached, the Regional Administrator may establish a sideboard directed fishing allowance for the species or species group applicable only to the identified group of AFA vessels.

(B) In establishing a directed fishing allowance under paragraph (d)(1)(iv)(A) of this section, the Regional Administrator will consider the amount of the sideboard limit established for a group of AFA vessels under § 679.64 that will be taken as incidental catch by those vessels in directed fishing for other species.

(C) If the Regional Administrator determines that a sideboard amount is insufficient to support a directed fishery for that species then the Regional Administrator may set the sideboard directed fishing allowance at zero for that species or species group.

* * * * *

7. In § 679.21, paragraphs (d)(8) and (e)(3)(v) are added to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(d) * * *

(8) *AFA halibut bycatch limitations*. Halibut bycatch limits for AFA catcher vessels will be established according to the procedure and formula set out in § 679.64(b) and managed through directed fishing closures for AFA catcher vessels in the groundfish fisheries to which the halibut bycatch limit applies.

(e) * * *

(3) * * *

(v) *AFA prohibited species catch limitations*. Halibut and crab PSC limits for AFA catcher/processors and AFA catcher vessels will be established according to the procedures and formulas set out in § 679.64(a) and (b) and managed through directed fishing closures for AFA catcher/processors and AFA catcher vessels in the groundfish fisheries for which the PSC limit applies.

* * * * *

8. In § 679.28, paragraph (c) is revised, and a new paragraph (g) is added to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(c) *Scales approved by the State of Alaska*. Scale requirements in this paragraph are in addition to those requirements set forth by the State of Alaska, and nothing in this paragraph may be construed to reduce or supersede the authority of the State to regulate, test, or approve scales within the State of Alaska or its territorial sea. Scales used to weigh groundfish catch that are also required to be approved by the State of Alaska under Alaska Statute 45.75 must meet the following requirements:

(1) *Verification of approval*. The scale must display a valid State of Alaska sticker indicating that the scale was inspected and approved within the previous 12 months.

(2) *Visibility*. The owner and manager of the processor must ensure that the scale and scale display are visible simultaneously to the observer. Observers, NMFS personnel, or an authorized officer must be allowed to observe the weighing of fish on the scale and be allowed to read the scale display at all times.

(3) *Printed scale weights*. (i) The owner and manager of the processor must ensure that printouts of the scale weight of each haul, set, or delivery are made available to observers, NMFS personnel, or an authorized officer at the time printouts are generated and thereafter upon request for the duration of the fishing year. The owner and manager must retain scale printouts as records as specified in § 679.5(a)(13).

(ii) A scale identified in a CMCP (see paragraph (g) of this section) must produce a printed record for each delivery, or portion of a delivery, weighed on that scale. If approved by NMFS as part of the CMCP, scales not designed for automatic bulk weighing may be exempted from part or all of the printed record requirements. The printed record must include:

(A) The processor name;

(B) The weight of each load in the weighing cycle;

(C) The total weight of fish in each delivery, or portion of the delivery that was weighed on that scale;

(D) The total cumulative weight of all fish or other material weighed on the scale since the last annual inspection;

(E) The date and time the information is printed;

(F) The name and ADF&G number of the vessel making the delivery. This information may be written on the scale printout in pen by the scale operator at the time of delivery.

(4) *Inseason scale testing*. Scales identified in an approved CMCP (see paragraph (g) of this section) must be tested by plant personnel in accordance with the CMCP when testing is requested by NMFS-staff or NMFS-authorized personnel. Plant personnel must be given no less than 20 minutes notice that a scale is to be tested and no testing may be requested if a scale test has been requested and the scale has been found to be accurate within the last 24 hours.

(i) *How does a scale pass an inseason test*? To pass an inseason test, NMFS staff or NMFS-authorized personnel will verify that the scale display and printed information are clear and easily read under all conditions of normal operation, weight values are visible on the display until the value is printed, and the scale does not exceed the maximum permissible errors specified below:

Test Load in Scale Divisions	Maximum Error in Scale Divisions
(A) 0–500	1
(B) 501–2,000	2
(C) 2,001–4,000	3
(D) >4,000	5

(ii) How much weight is required to do an inseason scale test? Scales must be tested with the amount and type of weight specified for each scale type in the following tables:

(A) Automatic hopper 0 to 150 kg (0 to 300 lb) capacity.

Certified Test Weights	*Other test material*
(*1*) Minimum weighment or 10 kg (20 lb), whichever is greater	Minimum
(*2*) Maximum	Maximum

(B) Automatic hopper > 150 kg (300 lb) capacity.

Certified Test Weights	*Other test material*
(*1*) Minimum weighment or 10 kg (20 lb), whichever is greater	Minimum
(*2*) 25 percent of maximum or 150 kg (300 lb), whichever is greater.	Maximum

(C) Platform or flatbed 0 to 150 kg (0 to 300 lb) capacity.

Certified Test Weights	*Other test material*
(*1*) 10 kg (20 lb)	Not Acceptable
(*2*) Midpoint	Not Acceptable
(*3*) Maximum	Not Acceptable

(D) Platform or flatbead > 150 kg (300 lb) capacity.

Certified Test Weights	*Other test material*
(*1*) 10 kg (20 lb)	Not Acceptable
(*2*) 12.5 percent of maximum or 75 kg (150 lb), whichever is greater	50 percent of maximum or 75 kg (150 lb), whichever is greater
(*3*) 25 percent of maximum or 150 kg (300 lb), whichever is greater	75 percent of maximum or 150 kg (300 lb), whichever is greater

(E) Observer sampling scale > 50 kg capacity.

Certified Test Weights	*Other test material*
(*1*) 10 kg	Not Acceptable
(*2*) 25 kg	Not Acceptable
(*3*) 50 kg	Not Acceptable

(iii) *Certified test weights*. Each test weight used for inseason scale testing must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be certified by a National Institute of Standards and Technology approved metrology laboratory every 2 years. An observer platform scale must be provided with sufficient test weights to test the scale at 10 kg, 25 kg, and 50 kg. All other scales identified in an approved CMCP must be provided with sufficient test weights to test the scale as described in this paragraph (c)(4) of this section. Test weights for observer platform scales must be denominated in kilograms. Test weights for other scales may be denominated in pounds.

(iv) *Other test material*. When permitted in paragraph (c)(4)(ii) of this section, a scale may be tested with test material other than certified test weights. This material must be weighed on an accurate observer platform scale at the time of each use.

(v) *Observer sampling scales*. Platform scales used as observer sampling scales must:

(A) Have a capacity of no less than 50 kg;

(B) Have a division size of no less than 5 g;

(C) Indicate weight in kilograms and decimal subdivisions; and

(D) Be accurate within plus or minus 0.5 percent when tested at 10 kg, 25 kg, and 50 kg by NMFS staff or a NMFS-certified observer.

* * * * *

(g) *Catch monitoring and control plan requirements (CMCP)* (Effective June 1, 2003)—(1) *What is a CMCP*? A CMCP is a plan submitted by the owner and manager of a processing plant, and approved by NMFS, detailing how the processing plant will meet the catch monitoring and control standards detailed in paragraph (g)(6) of this section.

(2) *Who is required to prepare and submit a CMCP for approval*? The owner and manager of an AFA inshore processor is required to prepare and submit a CMCP which must be approved by NMFS prior to the receipt of pollock harvested in the BSAI directed pollock fishery.

(3) *How is a CMCP approved by NMFS*? NMFS will approve a CMCP if it meets all the performance standards specified in paragraph (g)(6) of this section. The processor must be inspected by NMFS prior to approval of the CMCP to ensure that the processor conforms to the elements addressed in the CMCP. NMFS will complete its review of the CMCP within 14 working days of receiving a complete CMCP and conducting a CMCP inspection. If NMFS disapproves a CMCP, the plant owner or manager may resubmit a revised CMCP or file an administrative appeal as set forth under the administrative appeals procedures described at § 679.43.

(4) *How is a CMCP inspection arranged*? The time and place of a CMCP inspection may be arranged by submitting a written request for an inspection to NMFS, Alaska Region. NMFS will schedule an inspection within 10 working days after NMFS receives a complete application for an inspection. The inspection request must include:

(i) Name and signature of the person submitting the application and the date of the application;

(ii) Address, telephone number, fax number, and email address (if available) of the person submitting the application;

(iii) A proposed CMCP detailing how the processor will meet each of the performance standards in paragraph (g)(6) of this section.

(5) *For how long is a CMCP approved*? NMFS will approve a CMCP for 1 year if it meets the performance standards specified in paragraph (e)(2) of this section. An owner or manager must notify NMFS in writing if changes are made in plant operations or layout that do not conform to the CMCP.

(6) *How do I make changes to my CMCP*? An owner and manager may change an approved CMCP by submitting a CMCP addendum to NMFS. NMFS will approve the modified CMCP if it continues to meet the performance standards specified in paragraph (e)(2) of this section. Depending on the nature and magnitude of the change requested, NMFS may require a CMCP inspection as described in paragraph (g)(3) of this section. A CMCP addendum must contain:

(i) Name and signature of the person submitting the addendum;

(ii) Address, telephone number, fax number and email address (if available) of the person submitting the addendum;

(iii) A complete description of the proposed CMCP change.

(7) *Catch monitoring and control standards*—(i) *Catch sorting and weighing requirements*. All groundfish delivered to the plant must be sorted and weighed by species. The CMCP must detail the amount and location of space for sorting catch, the number of staff assigned to catch sorting and the maximum rate that catch will flow through the sorting area.

(ii) *Scales used for weighing groundfish*. The CMCP must identify by serial number each scale used to weigh groundfish and describe the rational for its use.

(iii) *Scale testing procedures*. Scales identified in the CMCP must be accurate within the limits specified in paragraph (c)(4)(i) of this section. For each scale identified in the CMCP a testing plan must be developed that:

(A) Describes the procedure the plant will use to test the scale;

(B) Lists the test weights and equipment required to test the scale;

(C) Lists where the test weights and equipment will be stored; and

(D) Lists the plant personnel responsible for conducting the scale testing.

(iv) *Printed record*. The owner and manager must ensure that the scale produces a complete and accurate printed record of the weight of each species in a delivery. All of the groundfish in a delivery must be weighed on a scale capable of producing a complete printed record as described in paragraph (c)(3) of this section. However, NMFS may exempt scales not designed for automatic bulk weighing from some or all of the printed record requirements if the CMCP identifies any scale that cannot produce a complete printed record, states how the processor will use the scale, and states how the plant intends to produce a complete record of the total weight of each delivery.

(v) *Delivery point*. Each CMCP must identify a single delivery point. The delivery point is the first location where fish removed from a delivering catcher vessel can be sorted or diverted to more than one location. If the catch is pumped from the hold of a catcher vessel or a codend, the delivery point normally will be the location where the pump first discharges the catch. If catch

is removed from a vessel by brailing, the delivery point normally will be the bin or belt where the brailer discharges the catch.

(vi) *Observation area*. Each CMCP must designate an observation area. The observation area is a location designated on the CMCP where an individual may monitor the flow of fish during a delivery. The owner and manager must ensure that the observation area meets the following standards:

(A) *Access to the observation area*. The observation area must be freely accessible to NMFS staff or NMFS-authorized personnel at any time a valid CMCP is required.

(B) *Monitoring the flow of fish*. From the observation area, an individual must have an unobstructed view or otherwise be able to monitor the entire flow of fish between the delivery point and a location where all sorting has taken place and each species has been weighed.

(vii) *Observer work station*. Each CMCP must identify and include an observer work station for the exclusive use of NMFS-certified observers. Unless otherwise approved by NMFS, the work station must meet the following criteria:

(A) *Location of observer work station*. The observer work station must be located in an area protected from the weather where the observer has access to unsorted catch.

(B) *Platform scale*. The observer work station must include a platform scale as described in paragraph (c)(4) of this section;

(C) *Proximity to observer work station*. The observer area must be located near the observer work station. The plant liaison must be able to walk between the work station and the observation area in less than 20 seconds without encountering safety hazards.

(D) *Workspace*. The observer work station must include: A working area of at least 4.5 square meters, a table as specified in paragraph (d)(4) of this section, and meet the other requirements as specified in paragraph (d)(6) of this section.

(E) *Lockable cabinet*. The observer work station must include a secure and lockable cabinet or locker of at least 0.5 cubic meters.

(viii) *Communication with observer*. The CMCP must describe what communication equipment such as radios, pagers or cellular phones, is used to facilitate communications within the plant. The plant owner must ensure that the plant manager provides the NMFS-certified observer with the same communications equipment used by plant staff.

(ix) Plant liaison. The CMCP must designate a plant liaison. The plant liaison is responsible for:

(A) Orienting new observers to the plant;

(B) Assisting in the resolution of observer concerns; and

(C) Informing NMFS if changes must be made to the CMCP.

(x) *Scale drawing of plant*. The CMCP must be accompanied by a scale drawing of the plant showing:

(A) The delivery point;

(B) The observation area;

(C) The observer work station;

(D) The location of each scale used to weigh catch; and

(E) Each location where catch is sorted.

9. In § 679.31, paragraph (a) is revised to read as follows:

§ 679.31 CDQ reserves.

* * * * *

(a) *Pollock CDQ reserve*—(1) *Bering Sea*. In the annual harvest specifications required by § 679.20(c), 10 percent of the Bering Sea subarea pollock TAC will be allocated to a CDQ reserve.

(2) *Aleutian Islands Subarea and Bogoslof District*. In the annual harvest specifications required by § 679.20(c), 10 percent of the Aleutian Islands subarea and Bogoslof District pollock TAC will be allocated to a CDQ reserve unless the Aleutian Islands subarea and/or Bogoslof District is closed to directed fishing for pollock by regulation. If the Aleutian Islands subarea and/or Bogoslof District is closed to directed fishing for pollock by regulation, then no pollock CDQ reserve will be established for those areas and incidental harvest of pollock by CDQ groups will accrue against the incidental catch allowance for pollock established under § 679.20(a)(5)(i)(A)(*1*).

* * * * *

10. In § 679.32, a new paragraph (c)(3)(vi) is added to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

* * * * *

(c) * * *

(3) * * *

(vi) *AFA inshore processors*. Take deliveries from a vessel engaged in directed fishing for pollock CDQ without following an approved CMCP as described at § 679.28(g).

* * * * *

11. In § 679.50, the section heading, and paragraph (c)(4)(i) are revised, paragraph (c)(6) is removed, and paragraphs (c)(5) and (d)(5) are added to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2007.

* * * * *

(c) * * *

(4) * * *

(i) *Motherships or catcher/processors using trawl gear*—(A) *Multi-species CDQ fishery*. A mothership or catcher/processor using trawl gear to participate in the multi-species CDQ fishery must have at least two level 2 observers as described at paragraphs (j)(1)(v)(D) and (E) of this section aboard the vessel, at least one of whom must be certified as a lead level 2 observer.

(B) *Pollock CDQ fishery*. A mothership or catcher/processor using trawl gear to participate in a directed fishery for pollock CDQ must have at least two NMFS-certified observers aboard the vessel, at least one of whom must be certified as a lead level 2 observer.

* * * * *

(5) *AFA catcher/processors and motherships*—(i) *Coverage requirement*—(A) *Listed AFA catcher/processors and AFA motherships*. The owner or operator of a listed AFA catcher/processor or AFA mothership must provide at least two NMFS-certified observers, at least one of which must be certified as a lead level 2 observer, for each day that the vessel is used to harvest, process, or take deliveries of groundfish. More than two observers are required if the observer workload restriction at paragraph (c)(5)(iii) of this section would otherwise preclude sampling as required under § 679.63(a)(1).

(B) *Unlisted AFA catcher/processors*. The owner or operator of an unlisted AFA catcher/processor must provide at least two NMFS-certified observers for each day that the vessel is used to engage in directed fishing for pollock in the BSAI, or takes deliveries of pollock harvested in the BSAI. At least one observer must be certified as a lead level 2 observer. When an unlisted AFA catcher/processor is not engaged in directed fishing for BSAI pollock and is not receiving deliveries of pollock harvested in the BSAI, the observer coverage requirements at paragraph (c)(1)(iv) of this section apply.

(ii) *Observer work load*. The time required for the observer to complete sampling, data recording, and data communication duties may not exceed 12 consecutive hours in each 24–hour period, and, the observer may not sample more than 9 hours in each 24–hour period.

(d) * * *

(5) *AFA inshore processors*—(i) *Coverage level*. An AFA inshore

processor is required to provide a NMFS certified observer for each 12 consecutive hour period of each calendar day during which the processor takes delivery of, or processes, groundfish harvested by a vessel engaged in a directed pollock fishery in the BSAI. An AFA inshore processor that takes delivery of or processes pollock harvested in the BSAI directed pollock fishery for more than 12 consecutive hours in a calendar day is required to provide two NMFS-certified observers for each such day.

(ii) *Multiple processors*. An observer deployed to an AFA inshore processor may not be assigned to cover more than one processor during a calendar day in which the processor receives or processes pollock harvested in the BSAI directed pollock fishery.

(iii) *Observers transferring between vessels and processors*. An observer transferring from an AFA catcher vessel to an AFA inshore processor may not be assigned to cover the AFA inshore processor until at least 12 hours after offload and sampling of the catcher vessel's delivery is completed.

* * * * *

12. In 50 CFR part 679, Subpart F—American Fisheries Act Management Measures is added to read as follows:

Subpart F—American Fisheries Act Management Measures

Sec.
679.60 Authority and related regulations.
679.61 Formation and operation of fishery cooperatives.
679.62 Inshore sector cooperative allocation program.
679.63 Catch weighing requirements for vessels and processors.
679.64 Harvesting sideboard limits in other fisheries.
679.65 Crab processing sideboard limits.

Subpart F—American Fisheries Act Management Measures

§ 679.60 Authority and related regulations.

Regulations under this subpart were developed by the National Marine Fisheries Service and the North Pacific Fishery Management Council to implement the American Fisheries Act (AFA) [Div. C, Title II, Subtitle II, Public Law 105–277, 112 Stat. 2681 (1998)]. Additional regulations in this part that implement specific provisions of the AFA are set out at §§ 679.2 Definitions, 679.4 Permits, 679.5 Recordkeeping and reporting, 679.7 Prohibitions, 679.20 General limitations, 679.21 Prohibited species bycatch management, 679.28 Equipment and operational requirements for Catch Weight Measurement, 679.31 CDQ reserves, and 679.50 Groundfish observer program. Regulations developed by the Department of Transportation to implement provisions of the AFA are found at 50 CFR part 356.

§ 679.61 Formation and operation of fishery cooperatives.

(a) *Who is liable for violations by a fishery cooperative and cooperative members*? A fishery cooperative must comply with the provisions of this section. The owners and operators of vessels that are members of a fishery cooperative are responsible for ensuring that the fishery cooperative complies with the directed fishing, sideboard closures, PSC limits and other allocations and restrictions that are applicable to the fishery cooperative. The owners and operators of vessels that are members of a fishery cooperative are responsible for ensuring that all fishery cooperative members comply with the directed fishing, sideboard closures, PSC limits and other allocations and restrictions that are applicable to the fishery cooperative.

(b) *Who must comply this section*? Any fishery cooperative formed under section 1 of the Fisherman's Collective Marketing Act 1934 (15 U.S.C. 521) for the purpose of cooperatively managing directed fishing for BSAI pollock must comply with the provisions of this section. The owners and operators of all the member vessels that are signatories to a fishery cooperative are jointly and severally responsible for compliance with the requirements of this section.

(c) *Designated representative and agent for service of process*. Each cooperative must appoint a designated representative and agent for service of process and must ensure that the cooperative's designated representative and agent for service of process comply with the regulations in this part.

(1) *What is a designated representative*? Any cooperative formed under this section must appoint a designated representative to fulfill regulatory requirements on behalf of the cooperative including, but not limited to, filing of cooperative contracts, filing of annual reports, and in the case of inshore sector catcher vessel cooperatives, signing cooperative fishing permit applications and completing and submitting inshore catcher vessel pollock cooperative catch reports. The designated representative is the primary contact person for NMFS on issues relating to the operation of the cooperative.

(2) *What is an agent for service of process*? Any cooperative formed under this section must appoint an agent who is authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of the cooperative. The cooperative must provide the Regional Administrator with the name, address and telephone number of the appointed agent. Service on or notice to the cooperative's appointed agent constitutes service on or notice to all members of the cooperative.

(3) *What is the term of service and process for replacing the agent for service of process*? The agent for service of process must be capable of accepting service on behalf of the cooperative until December 31 of the year 5 years after the calendar year for which the fishery cooperative has filed its intent to operate. The owners and operators of all member vessels of a cooperative are responsible for ensuring that a substitute agent is designated and the Agency is notified of the name, address and telephone number of the substitute agent in the event the previously designated agent is no longer capable of accepting service on behalf of the cooperative or the cooperative members within that 5–year period.

(d) *Annual filing requirements*. You must file on an annual basis, with the Council and NMFS, a signed copy of your fishery cooperative contract, and any material modifications to any such contract, together with a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request. The Council and NMFS will make this information available to the public upon request.

(1) *Must multi-year contracts be re-filed annually*? If your cooperative contract was previously filed with NMFS and the Council under paragraph (c) of this section, then you may submit a renewal letter to NMFS and the Council by the filing deadline in lieu of the cooperative contract and business review letter. The renewal letter must provide notice that the previously filed cooperative contract will remain in effect for the subsequent fishing year. The renewal letter also must detail any material modifications to the cooperative contract that have been made since the last filing including, but not limited to, any changes in cooperative membership.

(2) *Where must contracts or renewal letters be filed*? You must send a signed copy of your cooperative contract or renewal letter and the required supporting materials to the North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK 99501; and to the NMFS

Alaska Region. The mailing address for the NMFS Alaska Region is P.O. Box 21668, Juneau, AK 99802. The street address for delivery by private courier is 709 West 9th St., Suite 401, Juneau, AK 99801.

(3) *What is the deadline for filing*? The contract or renewal letter and supporting materials must be received by NMFS and by the Council at least 30 days prior to the start of any fishing activity conducted under the terms of the contract. In addition, an inshore cooperative that is also applying for an allocation of BSAI pollock under § 679.62 must file its contract, any amendments hereto, and supporting materials no later than December 1 of the year prior to the year in which fishing under the contract will occur.

(e) *What are the required elements in a cooperative contract*? (1) *Requirements for all fishery cooperatives.* Any cooperative contract filed under paragraph (c) of this section must:

(i) List parties to the contract.

(ii) List all vessels and processors that will harvest and process pollock harvested under the cooperative.

(iii) Specify the amount or percentage of pollock allocated to each party to the contract.

(iv) Specify a designated representative and agent for service of process.

(v) Include a contract clause under which the parties to the contract agree to make payments to the State of Alaska for any pollock harvested in the directed pollock fishery that are not landed in the State of Alaska, in amounts which would otherwise accrue had the pollock been landed in the State of Alaska subject to any landing taxes established under Alaska law. Failure to include such a contract clause or for such amounts to be paid will result in a revocation of the authority to form fishery cooperatives under section 1 of the Act of June 25, 1934 (15 U.S.C. 521 *et seq.*).

(2) *Additional required elements in all fishery cooperatives that include AFA catcher vessels.* A cooperative contract that includes catcher vessels must include adequate provisions to prevent each non-exempt member catcher vessel from exceeding an individual vessel sideboard limit for each BSAI or GOA sideboard species or species group that is issued to the vessel by the cooperative in accordance with the following formula:

(i) The aggregate individual vessel sideboard limits issued to all member vessels in a cooperative must not exceed the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as calculated by NMFS under § 679.64(b) and as announced to the cooperative by the Regional Administrator, or

(ii) In the case of two or more cooperatives that have entered into an inter-cooperative agreement, the aggregate individual vessel sideboard limits issued to all member vessels subject to the inter-cooperative agreement must not exceed the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as calculated by NMFS under § 679.64(b) and as announced by the Regional Administrator.

(f) *Annual reporting requirement.* Any fishery cooperative governed by this section must submit preliminary and final annual written reports on fishing activity to the North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK 99501. The Council will make copies of each report available to the public upon request.

(1) *What are the submission deadlines*? You must submit the preliminary report by December 1 of each year. You must submit the final report by February 1 of the following year. Annual reports must be postmarked by the submission deadline or received by a private courier service by the submission deadline.

(2) *What information must be included*? The preliminary and final written reports must contain, at a minimum:

(i) The cooperative's allocated catch of pollock and sideboard species, and any sub-allocations of pollock and sideboard species made by the cooperative to individual vessels on a vessel-by-vessel basis;

(ii) The cooperative's actual retained and discarded catch of pollock, sideboard species, and PSC on an area-by-area and vessel-by-vessel basis;

(iii) A description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated;

(iv) A description of any actions taken by the cooperative in response to any vessels that exceed their allowed catch and bycatch in pollock and all sideboard fisheries; and

(v) The total weight of pollock landed outside the State of Alaska on a vessel-by-vessel basis.

(3) *What is the required format*? You must submit at least one copy of each annual report ready for duplication on unbound single-sided 8.5- by 11–inch paper, or in an alternative format approved in advance by the Council.

(g) *Landing tax payment deadline.* You must pay any landing tax owed to the State of Alaska under subsection 210(f) of the AFA and paragraph (d)(1)(v) of this section before April 1 of the following year, or the last day of the month following the date of publication of statewide average prices by the Alaska State Department of Revenue, whichever is later. All members of the cooperative are prohibited from harvesting pollock in the BSAI directed pollock fishery after the payment deadline if any member vessel has failed to pay all required landing taxes from any landings made outside the State of Alaska by the landing deadline. Members of the cooperative may resume directed fishing for pollock once all overdue landing taxes are paid.

§ 679.62 Inshore sector cooperative allocation program.

(a) *How will inshore sector cooperative allocations be made*? An inshore catcher vessel cooperative that applies for and receives an AFA inshore cooperative fishing permit under § 679.4(l)(6) will receive a sub-allocation of the annual Bering Sea subarea inshore sector directed fishing allowance. If the Aleutian Islands Subarea is open to directed fishing for pollock then the cooperative also will receive a sub-allocation of the annual Aleutian Islands Subarea inshore sector directed fishing allowance. Each inshore cooperative's annual allocation amount(s) will be determined using the following procedure:

(1) *Determination of individual vessel catch histories.* The Regional Administrator will calculate an official AFA inshore cooperative catch history for every inshore-sector endorsed AFA catcher vessel according to the following steps:

(i) *Determination of annual landings.* For each year from 1995 through 1997 the Regional Administrator will determine each vessel's total non-CDQ inshore pollock landings from the Bering Sea Subarea and Aleutian Islands Subarea separately, except for the F/V PROVIDIAN (USCG documentation number 1062183).

(ii) *Determination of annual landings for the F/V PROVIDIAN.* For the F/V PROVIDIAN, pursuant to Public Law 106–562, the Regional Administrator will substitute the 1992 through 1994 total Bering Sea subarea and Aleutian Islands subarea pollock non-CDQ inshore landings made by the F/V OCEAN SPRAY (USCG documentation number 517100 for the purpose of determining annual cooperative quota share percentage.

(iii) *Offshore compensation*. If a catcher vessel made a total of 500 or more mt of landings of non-CDQ Bering Sea Subarea pollock or Aleutian Islands Subarea pollock to catcher/processors or offshore motherships other than the EXCELLENCE (USCG documentation number 967502); GOLDEN ALASKA (USCG documentation number 651041); or OCEAN PHOENIX (USCG documentation number 296779) over the 3–year period from 1995 through 1997, then all non-CDQ offshore pollock landings made by that vessel during from 1995 through 1997 will be added to the vessel's inshore catch history by year and subarea.

(iv) *Best two out of three years*. After steps (a)(1)(i) and (ii) of this section are completed, the 2 years with the highest landings will be selected for each subarea and added together to generate the vessel's official AFA inshore cooperative catch history for each subarea. A vessel's best 2 years may be different for the Bering Sea subarea and the Aleutian Islands Subarea.

(2) *Conversion of individual vessel catch histories to annual cooperative quota share percentages*. Each inshore pollock cooperative that applies for and receives an AFA inshore pollock cooperative fishing permit will receive an annual quota share percentage of pollock for each subarea of the BSAI that is equal to the sum of each member vessel's official AFA inshore cooperative catch history for that subarea divided by the sum of the official AFA inshore cooperative catch histories of all inshore-sector endorsed AFA catcher vessels. The cooperative's quota share percentage will be listed on the cooperative's AFA pollock cooperative permit.

(3) *Conversion of quota share percentage to TAC allocations*. Each inshore pollock cooperative that receives a quota share percentage for a fishing year will receive an annual allocation of Bering Sea and/or Aleutian Islands pollock that is equal to the cooperative's quota share percentage for that subarea multiplied by the annual inshore pollock allocation for that subarea. Each cooperative's annual pollock TAC allocation may be published in the interim, and final BSAI TAC specifications notices.

(b) *What are the restrictions on fishing under an inshore cooperative fishing permit*? Any cooperative that receives a cooperative fishing permit under § 679.4(l)(6) must comply with the following fishing restrictions. The owners and operators of all the member vessels that are named on an inshore cooperative fishing permit are jointly and severally responsible for compliance.

(1) *What vessels are eligible to fish under an inshore cooperative fishing permit*? Only catcher vessels listed on a cooperative's AFA inshore cooperative fishing permit are permitted to harvest any portion of an inshore cooperative's annual pollock allocation.

(2) *What harvests accrue against the cooperative allocation*? All BSAI inshore pollock harvested by a member vessel while engaging in directed fishing for inshore pollock in the BSAI during the fishing year for which the annual cooperative allocation is in effect will accrue against the cooperative's annual pollock allocation regardless of whether the pollock was retained or discarded.

(3) *How must cooperative harvests be reported*? Each inshore pollock cooperative must report its BSAI pollock harvest to NMFS on a weekly basis according to the recordkeeping and reporting requirements set out at § 679.5(o).

§ 679.63 Catch weighing requirements for vessels and processors.

(a) *What are the requirements for listed AFA catcher/processors and AFA motherships*? (1) *Catch weighing*. All groundfish landed by listed AFA catcher/processors or received by AFA motherships must be weighed on a NMFS-certified scale and made available for sampling by a NMFS certified observer. The owner and operator of a listed AFA catcher/processor or an AFA mothership must ensure that the vessel is in compliance with the scale requirements described at § 679.28(b), that each groundfish haul is weighed separately, and that no sorting of catch takes place prior to weighing.

(2) *Observer sampling station*. The owner and operator of a listed AFA catcher/processor or AFA mothership must provide an observer sampling station as described at § 679.28(d) and must ensure that the vessel operator complies with the observer sampling station requirements described at § 679.28(d) at all times that the vessel harvests groundfish or receives deliveries of groundfish harvested in the BSAI or GOA.

(b) *What are the requirements for unlisted AFA catcher/processors*? The owner or operator of an unlisted AFA catcher/processor must comply with the catch weighing and observer sampling station requirements set out in paragraph (a) of this section at all times the vessel is engaged in directed fishing for pollock in the BSAI.

(c) *What are the requirements for AFA inshore processors*? (1) *Catch weighing*. All groundfish landed by AFA catcher vessels engaged in directed fishing for pollock in the BSAI must be sorted and weighed on a scale approved by the State of Alaska as described in § 679.28(c), and be made available for sampling by a NMFS certified observer. The observer must be allowed to test any scale used to weigh groundfish in order to determine its accuracy.

(2) The plant manager or plant liaison must notify the observer of the offloading schedule for each delivery of BSAI pollock by an AFA catcher vessel at least 1 hour prior to offloading. An observer must monitor each delivery of BSAI pollock from an AFA catcher vessel and be on site the entire time the delivery is being weighed or sorted.

§ 679.64 Harvesting sideboards limits in other fisheries.

(a) *Harvesting sideboards for listed AFA catcher/processors*. The Regional Administrator will restrict the ability of listed AFA catcher/processors to engage in directed fishing for non-pollock groundfish species to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery.

(1) *How will groundfish sideboard limits for AFA listed catcher/processors be calculated*? (i) For each groundfish species or species group in which a TAC is specified for an area or subarea of the BSAI, the Regional Administrator will establish annual AFA catcher/processor harvest limits as follows:

(ii) *Pacific cod*. The Pacific cod harvest limit will be equal to the 1997 aggregate retained catch of Pacific cod by catcher/processors listed in paragraphs 208(e)(1) through (20) and 209 of the AFA in non-pollock target fisheries divided by the amount of Pacific cod caught by trawl catcher/processors in 1997 multiplied by the Pacific cod TAC available for harvest by trawl catcher/processors in the year in which the harvest limit will be in effect.

(2) *Aleutian Islands Pacific ocean perch*. (i) The Aleutian Islands Pacific ocean perch harvest limit will be equal to the 1996 through 1997 aggregate retained catch of Aleutian Islands Pacific ocean perch by catcher/processors listed in paragraphs 208(e)(1) through (20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the Aleutian Islands Pacific ocean perch catch in 1996 and 1997 multiplied by the Aleutian Islands Pacific ocean perch TAC available for harvest in the year in which the harvest limit will be in effect.

(ii) If the amount of Pacific ocean perch calculated under paragraph (a)(1)(ii)(A) of this section is determined by the Regional Administrator to be insufficient to meet bycatch needs of AFA catcher/processors in other directed fisheries for groundfish, the Regional Administrator will prohibit directed fishing for Aleutian Islands Pacific ocean perch by AFA catcher processors and establish the sideboard amount equal to the amount of Aleutian Islands Pacific ocean perch caught by AFA catcher processors incidental to directed fishing for other groundfish species.

(3) *Atka mackerel*. The Atka mackerel harvest limit for each area and season will be equal to:

(i) Bering Sea subarea and Eastern Aleutian Islands, zero;

(ii) Central Aleutian Islands, 11.5 percent of the annual TAC specified for Atka mackerel; and

(iii) Western Aleutian Islands, 20 percent of the annual TAC specified for Atka mackerel.

(4) *Remaining groundfish species*. (i) Except as provided for in paragraphs (a)(1)(i) through (a)(1)(iii) of this section, the harvest limit for each BSAI groundfish species or species group will be equal to the 1995 through 1997 aggregate retained catch of that species by catcher/processors listed in paragraphs 208(e)(1) through (20) and section 209 of the AFA in non-pollock target fisheries divided by the sum of the catch of that species in 1995 through 1997 multiplied by the TAC of that species available for harvest by catcher/processors in the year in which the harvest limit will be in effect.

(ii) If the amount of a species calculated under paragraph (a)(1)(iv) of this section is determined by the Regional Administrator to be insufficient to meet bycatch needs for AFA catcher/processors in other directed fisheries for groundfish, the Regional Administrator will prohibit directed fishing for that species by AFA catcher processors and establish the sideboard amount equal to the amount of that species caught by AFA catcher processors incidental to directed fishing for other groundfish species.

(5) *How will halibut and crab PSC sideboard limits be calculated*? For each halibut or crab PSC limit specified for catcher/processors in the BSAI, the Regional Administrator will establish an annual listed AFA catcher/processor PSC limit equal to the estimated aggregate 1995 through 1997 PSC bycatch of that species by catcher/processors listed in paragraphs 208(e)(1) through (20) and 209 of the AFA while engaged in directed fishing for species other than pollock divided by the aggregate PSC bycatch limit of that species for catcher/processors from 1995 through 1997 multiplied by the PSC limit of that species available to catcher/processors in the year in which the harvest limit will be in effect.

(6) *How will AFA catcher/processor sideboard limits be managed*? The Regional Administrator will manage groundfish harvest limits and PSC bycatch limits for AFA catcher/processors through directed fishing closures in non-pollock groundfish fisheries in accordance with the procedures set out in §§ 679.20(d)(1)(iv), and 679.21(e)(3)(v).

(b) *Harvesting sideboards for AFA catcher vessels*. The Regional Administrator will restrict the ability of AFA catcher vessels to engage in directed fishing for other groundfish species to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery.

(1) *To whom do the catcher vessel sideboard limits apply*? Catcher vessel harvest limits and PSC bycatch limits apply to all AFA catcher vessels participating in all GOA groundfish fisheries and all non-pollock groundfish fisheries in the BSAI except vessels qualifying for sideboard exemptions in the specific fisheries identified in paragraph (b)(2) of this section.

(2) *Who is exempt from catcher vessel sideboards*? (i) BSAI Pacific cod sideboard exemptions--(A) AFA catcher vessels less than 125 ft (38.1 m) LOA that are determined by the Regional Administrator to have harvested a combined total of less than 5,100 mt of BSAI pollock, and to have made 30 or more legal landings of Pacific cod in the BSAI directed fishery for Pacific cod from 1995 through 1997 are exempt from sideboard closures for BSAI Pacific cod.

(B) AFA catcher vessels with mothership endorsements are exempt from BSAI Pacific cod catcher vessel sideboard directed fishing closures after March 1 of each fishing year.

(ii) *GOA groundfish sideboard exemptions*. AFA catcher vessels less than 125 ft (38.1 m) LOA that are determined by the Regional Administrator to have harvested less than 5,100 mt of BSAI pollock and to have made 40 or more landings of GOA groundfish from 1995 through 1997 are exempt from GOA groundfish catcher vessel sideboard directed fishing closures.

(3) *How will groundfish sideboard limits be calculated*? For each groundfish species or species group in which a TAC is specified for an area or subarea of the GOA and BSAI; the Regional Administrator will establish annual AFA catcher vessel groundfish harvest limits as follows:

(i) *BSAI groundfish other than Pacific cod*. The AFA catcher vessel groundfish harvest limit for each BSAI groundfish species or species group other than BSAI Pacific cod will be equal to the aggregate retained catch of that groundfish species or species group from 1995 through 1997 by all AFA catcher vessels; divided by the sum of the TACs available to catcher vessels for that species or species group from 1995 through 1997; multiplied by the TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

(ii) *BSAI Pacific cod*. The AFA catcher vessel groundfish harvest limit for BSAI Pacific cod will be equal to the retained catch of BSAI Pacific cod in 1997 by AFA catcher vessels not exempted under paragraph (b)(2)(i)(A) of this section divided by the BSAI Pacific cod TAC available to catcher vessels in 1997; multiplied by the BSAI Pacific cod TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

(iii) *GOA groundfish*. The AFA catcher vessel groundfish harvest limit for each GOA groundfish species or species group will be equal to the aggregate retained catch of that groundfish species or species group from 1995 through 1997 by AFA catcher vessels not exempted under paragraph (b)(2)(ii) of this section; divided by the sum of the TACs of that species or species group available to catcher vessels from 1995 through 1997; multiplied by the TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

(4) *How will PSC bycatch limits be calculated*? The AFA catcher vessel PSC bycatch limit for halibut in the BSAI and GOA, and each crab species in the BSAI for which a trawl bycatch limit has been established will be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997.

(5) *How will catcher vessel sideboard limits be managed*? The Regional Administrator will manage groundfish harvest limits and PSC bycatch limits for AFA catcher vessels using directed fishing closures according to the procedures set out at §§ 679.20(d)(1)(iv) and 679.21(d)(8) and (e)(3)(v).

§ 679.65 Crab processing sideboard limits.

(a) *What is the purpose of crab processing limits*? The purpose of crab processing sideboard limits is to protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of the AFA and the formation of fishery cooperatives in the directed pollock fishery.

(b) *To whom do the crab processing sideboard limits apply*? The crab processing sideboard limits in this section apply to any AFA inshore or mothership entity that receives pollock harvested in the BSAI directed pollock fishery by a fishery cooperative established under § 679.61 or § 679.62

(c) *How are crab processing sideboard percentages calculated*? Upon receipt of an application for a cooperative processing endorsement from the owners of an AFA mothership or AFA inshore processor, the Regional Administrator will calculate a crab processing cap percentage for the associated AFA inshore or mothership entity. The crab processing cap percentage for each BSAI king or Tanner crab species will be equal to the percentage of the total catch of each BSAI king or Tanner crab species that the AFA crab facilities associated with the AFA inshore or mothership entity processed in the aggregate, on average, in 1995, 1996, 1997, and 1998 with 1998 given double-weight (counted twice).

(d) *How will AFA entities be notified of their crab processing sideboard percentages*? An AFA inshore or mothership entity's crab processing cap percentage for each BSAI king or Tanner crab species will be listed on each AFA mothership or AFA inshore processor permit that contains a cooperative pollock processing endorsement.

(e) *How are crab processing sideboard percentages converted to poundage caps*? Prior to the start of each BSAI king or Tanner crab fishery, NMFS will convert each AFA inshore or mothership entity's crab processing sideboard percentage to a poundage cap by multiplying the crab processing sideboard percentage by the pre-season guideline harvest level established for that crab fishery by ADF&G.

(f) *How will crab processing sideboard poundage caps be announced*? The Regional Administrator will notify each AFA inshore or mothership entity of its crab processing sideboard poundage cap through a letter to the owner of the AFA mothership or AFA inshore processor. The public will be notified of each entity's crab processing sideboard poundage cap through information bulletins published on the NMFS-Alaska Region world wide web home page ((*http://www.fakr.noaa.gov*)

§§ 679.7, 679.30, 679.32 and 679.50 [Amended]

13. In §§ 679.7, 679.30, 679.32 and 679.50, at each of the paragraphs shown in the first column, remove the phrase indicated, respectively, second column, CHANGE FROM and replace it with the phrase indicated, respectively, in the third column, CHANGE TO, to read as follows:

BILLING CODE 3510–22–S

In Paragraph:	CHANGE FROM	CHANGE TO	FREQUENCY
§ 679.7(d)(15)	CDQ observer	level 2 observer	1
§ 679.30(a)(5)(i)(A)(2)(i)	CDQ observers	level 2 observers	1
§ 679.30(a)(5)(i)(A)(2)(i)	CDQ observer	level 2 observer	2
§ 679.30(a)(5)(ii)(D)	CDQ observer	level 2 observer	2
§ 679.32(c)(2)(i)(B)	CDQ observer	level 2 observer	1
§ 679.32(c)(2)(i)(C)	CDQ observer	level 2 observer	1
§ 679.32(c)(2)(ii)(A)	CDQ observer	level 2 observer	1
§ 679.32(c)(2)(ii)(B)(1)	CDQ observer	level 2 observer	1
§ 679.32(c)(2)(ii)(B)(2)	CDQ observer	level 2 observer	1
§ 679.32(c)(3)(i)	CDQ observer	level 2 observer	2
§ 679.32(c)(3)(iv)	CDQ observer	level 2 observer	1
§ 679.32(c)(4)(i)	CDQ observer(s)	level 2 observer(s)	2
§ 679.32(c)(4)(iv)	CDQ observer	level 2 observer	1
§ 679.32(c)(4)(iv)	CDQ observers	level 2 observers	1
§ 679.32(c)(4)(v)	CDQ observer	level 2 observer	1
§ 679.32(d)(2)(ii)	CDQ observer	level 2 observer	1
§ 679.32(d)(2)(iii)	CDQ observer's	level 2 observer's	1
§ 679.32(d)(2)(iv)(A)	CDQ observer's	level 2 observer's	1
§ 679.32(d)(2)(iv)(B)	CDQ observer's	level 2 observer's	1
§ 679.32(d)(2)(v)	CDQ observer's	level 2 observer's	1
§ 679.32(d)(2)(vi)	CDQ observer's	level 2 observer's	1
§ 679.50(c)(4) introductory	CDQ observer	level 2 observer	2
§ 679.50(c)(4)(i)	CDQ observers	level 2 observers	1
§ 679.50(c)(4)(i)	CDQ observer	level 2 observer	1
§ 679.50(c)(4)(ii)	CDQ observer	level 2 observer	4
§ 679.50(c)(4)(ii)	CDQ observers	level 2 observers	2
§ 679.50(c)(4)(iii)	CDQ observer	level 2 observer	1
§ 679.50(c)(4)(iv)	CDQ observer	level 2 observer	1
§ 679.50(d)(4)	CDQ observer	level 2 observer	3
§ 679.50(d)(4)(iii)	CDQ observer	level 2 observer	2
§ 679.50(h)(1)(i)(D)	CDQ observer	level 2 observer	1
§ 679.50(h)(1)(i)(D)(3)	CDQ observer	level 2 observer	1
§ 679.50(h)(1)(i)(E) introductory	CDQ observer	level 2 observer	1
§ 679.50(h)(1)(i)(E)(1)	CDQ observer	level 2 observer	1
§ 679.50(h)(1)(i)(E)(2)	CDQ observer	level 2 observer	1
§ 679.50(h)(1)(i)(E)(3)	CDQ observer	level 2 observer	1

[FR Doc. 02–31700 Filed 12–27–02; 8:45 am]
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grant the Awards, select Examiners, and comply with statutory responsibilities.

Affected Public: Business or other for-profit organizations; not-for-profit institutions; government entities. Individuals with expertise in the business, education, health care, and/or nonprofit fields are eligible to apply as a member to the Board of Examiners.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5167 or via the Internet at *Jasmeet_K_Seehra@omb.eop.gov.*

Dated: February 2, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–2513 Filed 2–4–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Pacific Coast Groundfish, Rationalization Sociocultural Study

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 6, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Suzanne Russell (206) 860–3274, *suzanne.russell@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Historically, changes in fisheries management regulations have been shown to result in impacts to individuals within the fishery. An understanding of social impacts in fisheries—achieved through the collection of data on fishing communities, as well as on individuals who fish—is a requirement under several federal laws. Laws such as the National Environmental Protection Act and the Magnuson Stevens Fishery Conservation Act (as amended 2007) describe such requirements. The collection of this data not only helps to inform legal requirements for the existing management actions, but will inform future management actions requiring equivalent information.

Fisheries rationalization programs have an impact on those individuals participating in the affected fishery. The Pacific Fisheries Management Council is on track to implement a new rationalization program for the Pacific Coast Groundfish limited entry trawl fishery in January 2011. This research aims to study the individuals in the affected fishery both prior to and after the implementation of the rationalization program. The data collected will provide a baseline description of the industry as well as allow for analysis of changes the rationalization program may create for individuals in the fishery. The measurement of these changes will lead to a greater understanding of the social impacts the management measure may have on the individuals in the fishery. To achieve these goals it is critical to collect the necessary data prior to the implementation of the rationalization program for comparison to data collected after the management program has been implemented. This study will be inclusive of both a Phase 1 pre-implementation data collection effort, as well as a Phase 2, post-implementation data collection effort to achieve the stated objectives.

II. Method of Collection

Literature reviews, secondary sources including Internet sources, United States Census data, key informants, focus groups, paper surveys, electronic surveys, and in-person interviews will be utilized in combination to obtain the greatest breadth of information as possible.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions.

Estimated Number of Respondents: 800.

Estimated Time per Response: 1 hour 30 minutes.

Estimated Total Annual Burden Hours: 1,200.

Estimated Total Annual Cost to Public: $1,000 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 2, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–2504 Filed 2–4–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Cooperatives in the Bering Sea and Aleutian Islands

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 6, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, at (907) 586–7008 or *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The American Fisheries Act (AFA) was signed into law in October of 1998. The AFA established an allocation program for the pollock fishery of the Bering Sea and Aleutian Islands Management Area (BSAI). The AFA established a limited access program for the inshore sector of the BSAI pollock fishery that is based on the formation of fishery cooperatives around each inshore pollock processor. Implementing regulations are found at 50 CFR part 679, subpart F.

The original purposes of the AFA were to tighten United States ownership standards that had been exploited under the Anti-reflagging Act, to provide Alaska's BSAI pollock fleet the opportunity to conduct their fishery in a more rational manner, and to protect non-AFA participants in other fisheries. In addition, a voluntary civil agreement among pollock cooperatives, Western Alaska Community Development Quota (CDQ) groups, and western Alaska subsistence salmon user groups is intended to coordinate the pollock fishery in a manner that reduces incidental catch rates of salmon.

Reduced bycatch, higher utilization rates, increased economic returns, and improved safety are among the direct benefits of the AFA. The flexibility provided by cooperatives and by individual vessel allocations of pollock and other species has allowed the BSAI pollock fleet to spread their fishing effort in time and space. The cooperative management structure has shifted more of the monitoring and enforcement burden to the cooperatives and their members, allowing NMFS to manage the fishery more precisely. The AFA cooperative annual reports are required to provide information about how the cooperative allocated pollock, other groundfish species, and prohibited species among the vessels in the cooperative; the catch of these species by area for each vessel in the cooperative; information about how the cooperative monitored fishing by its members; and a description of any actions taken by the cooperative to penalize vessels that exceeded the catch and bycatch allocations made to the vessel by the cooperative.

II. Method of Collection

For those items not connected with a scale, respondents have a choice of either electronic or paper forms. Methods of submittal include e-mail of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0401.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 11.

Estimated Time per Response: 12 hours for AFA Annual Report; 30 minutes for Nonmember vessel contract fishing application; 5 minutes for Inshore catcher vessel cooperative pollock catch report; 5 minutes for Agent for service of process; 40 hours for Salmon Bycatch Reduction Inter-Cooperative Agreement (ICA); and 4 hours for ICA appeals.

Estimated Total Annual Burden Hours: 470.

Estimated Total Annual Cost to Public: $225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 2, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–2503 Filed 2–4–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–908]

First Antidumping Duty Administrative Review of Sodium Hexametaphosphate from the People's Republic of China: Extension of Time Limit for the Preliminary Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 5, 2010.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0413.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 2009, the Department of Commerce ("Department") published in the **Federal Register** a notice of initiation of an administrative review of sodium hexametaphosphate from the People's Republic of China ("PRC"), covering the period September 14, 2007 February 28, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 19042 (April 27, 2009). From May 26, 2009 to October 28, 2009, the respondent in this review, Hubei Xingfa Chemical Group Co., Ltd. ("Hubei Xingfa"), submitted responses to the Department's antidumping duty questionnaires. From November 9–13, 2009, the Department conducted verification of Hubei Xingfa. On November 25, 2009, the Department extended the time period for issuing the preliminary results of review until January 30, 2010. *See First Antidumping Duty Administrative Review of Sodium Hexametaphosphate from the People's Republic of China: Extension of Time Limit for the Preliminary Results*, 74 FR 61656 (November 25, 2009).