

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 03/26/2012

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 03/26/2012

ACTION REQUESTED: Revision of a currently approved collection  
TYPE OF REVIEW REQUESTED: Regular  
ICR REFERENCE NUMBER: 201203-0648-007  
AGENCY ICR TRACKING NUMBER:  
TITLE: CHINOOK SALMON ECONOMIC DATA REPORT (CHINOOK SALMON EDR)  
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change  
OMB CONTROL NUMBER: 0648-0633  
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: 03/31/2015 DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	0	0	0
New	694	9,976	25,958
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	694	9,976	25,958
Change due to Agency Adjustment	0	0	0
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
Annual Chinook Salmon PSC Compensated Transfer Report (CTR)	NA	Compensated Transfer Report (CTR)	
Vessel Fuel Survey	NA	Vessel Fuel Survey	
Vessel Master Survey	NA	Vessel Master Survey	
Verification/Audit of Chinook Salmon EDR Data			50 CFR 679.65

# 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	2. OMB control number <span style="float: right;">b. <input type="checkbox"/> None</span> a. _____ - _____
3. Type of information collection ( <i>check one</i> ) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested ( <i>check one</i> ) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) ( <i>if applicable</i> )	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	
10. Abstract	
11. Affected public ( <i>Mark primary with "P" and all others that apply with "x"</i> ) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond ( <i>check one</i> ) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden ( <i>in thousands of dollars</i> ) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection ( <i>Mark primary with "P" and all others that apply with "X"</i> ) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting ( <i>check all that apply</i> ) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission)  Name: _____ Phone: _____

## 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

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT  
NMFS ALASKA REGION  
CHINOOK SALMON ECONOMIC DATA REPORT (CHINOOK SALMON EDR)  
OMB CONTROL NO. 0648-XXXX**

**INTRODUCTION**

National Marine Fisheries Service (NMFS), Alaska Region manages the groundfish fisheries in the Exclusive Economic Zone off Alaska. 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). The FMP is implemented under regulations at [50 CFR part 679](#).

NMFS manages the Bering Sea pollock fishery under the [American Fisheries Act](#) (AFA) (16 U.S.C. 1851). The AFA “rationalized” the Bering Sea pollock fishery in part by allowing for the formation and management of fishery cooperatives. AFA fishing vessels harvest pollock using pelagic (mid-water) trawl gear, which consists of large nets towed through the water by the vessel. At times, Chinook salmon and pollock occur in the same locations in the Bering Sea. Consequently, Chinook salmon are incidentally caught in the nets as pollock is harvested. This incidental catch is called bycatch and is also called prohibited species catch (PSC). Chinook Salmon are defined as a prohibited species because they are caught by a vessel issued a Federal Fisheries Permit under [§ 679.4\(b\)](#) while fishing for groundfish (pollock) in the Bering Sea and Aleutian Islands Management Area (BSAI) or Gulf of Alaska.

In December 2009, the Council recommended that NMFS implement the Chinook Salmon Economic Data Report (Chinook Salmon EDR) to evaluate the effectiveness of Chinook salmon bycatch management measures for the Bering Sea pollock fishery that were implemented under Amendment 91 to the BSAI FMP (75 FR 53026, August 30, 2010).

In addition to creation of the Chinook Salmon EDR, NMFS will revise two existing collections of information to obtain additional data for the Chinook Salmon analysis: OMB Control No. 0648-0213 (Groundfish Family of Forms) and OMB Control No. 0648-0401 (AFA Reports). Questions concerning vessel movements on the fishing grounds to avoid salmon bycatch are added to OMB Control No. 0648-0213. In addition, questions on Chinook salmon and pollock allocations and transfers are added to the Incentive Plan Agreement (IPA) Final Report and the AFA Cooperative Report in OMB Control No. 0648-0401.

The Chinook EDR Program, once implemented, would provide information to the analysts and the Council for determining the effectiveness of the IPAs. The Chinook EDR Program will evaluate the effectiveness of the IPA incentives, the PSC limits, and the performance standard in terms of minimizing salmon bycatch in times of high and low levels of salmon abundance, and will evaluate how Amendment 91 affects where, when, and how pollock fishing and salmon

bycatch occur. The data collection program would also provide data for NMFS and the Council to study and verify conclusions drawn by industry in the IPA annual reports. A complete background and analysis of the analysis of the Chinook EDR Program is provided in the Appendix to this Supporting Statement.

This action is a request for a new collection, the Chinook Salmon EDR in support of the associated rule (RIN 0648-BA80).

## **A. JUSTIFICATION**

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

In order to provide additional data and to improve the quality of data used to assess the effectiveness of Amendment 91, NMFS will monitor all salmon bycatch by each vessel in the pollock fishery through a census, 100 percent observer coverage, and an expanded biological sampling program. NMFS designed the Annual reports and the Chinook Salmon EDR to evaluate whether and how incentive plans influence a vessel operator's decisions to avoid Chinook salmon prohibited species catch (PSC).

AFA pollock vessel operators face difficulties detecting the presence of Chinook salmon while fishing for pollock. They need to determine how best to minimize their bycatch and mortality of Chinook salmon while comparing the tradeoffs for their sector and AFA cooperative for Chinook PSC avoidance. The Chinook Salmon EDR is designed to provide quantitative information to evaluate how an IPA influences a vessel's operational decisions to avoid Chinook salmon PSC.

### **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 all applicable Information Quality Guidelines.**

The Chinook Salmon EDR is an economic data collection created to evaluate the effects of Amendment 91 management measures on the Bering Sea pollock fishery. The Chinook Salmon EDR consists of the following three forms:

- ◆ Chinook Salmon Prohibited Species Catch (PSC) Allocation Compensated Transfer Report (CTR) – will collect transfer and monetary compensation information for Chinook Salmon PSC allocations;
- ◆ Vessel Fuel Survey – will collect fuel consumption and average fuel costs; and
- ◆ Vessel Master Survey – will collect vessel master impressions of fishing experiences during the year and of Chinook salmon PSC avoidance efforts.

Combined with existing information, data from these forms will assist in evaluation of the effects of the Amendment 91 management measures: the hard cap, performance standard, and IPA incentives.

NMFS will use data from these collections to develop a descriptive analysis and quantitative or tabular comparisons under Amendment 91. These analyses will compare the annual, seasonal, and, where possible, trip-level and haul-level changes in the behavior of the pollock fleet by sector, cooperative, and vessel. Part B provides descriptions of these analyses. If data are available and accurate, NMFS may also apply descriptive statistics or other statistical analyses.

**a. Annual Chinook Salmon PSC Compensated Transfer Report (CTR)**

Under Amendment 91, NMFS allocates annual transferrable or non-transferrable Chinook salmon PSC to members of a qualifying catcher/processor sector, mothership sector, inshore cooperatives, and Western Alaska Community Development Quota (CDQ) groups. Chinook salmon PSC may be transferred between these entities and among members of each entity.

The owner or leaseholder of an AFA permitted vessel or a person or representative of a person that received an allocation of Chinook Salmon PSC from NMFS must submit a CTR Part 1 each year, for the previous calendar year. The owner or leaseholder of an AFA permitted vessel or a person or representative of a person who paid or received money for a transfer of Chinook salmon PSC allocation after January 20 must submit a completed CTR (Part 1 and Part 2) for the previous calendar year.

A compensated transfer is a transfer that is paid for with an exchange of dollars (or any currency) for bycatch units from one party to another for a part of or the whole value of the transferred Chinook PSC allocation. After each calendar year, each transferor and transferee of compensated Chinook salmon PSC must submit a CTR detailing the quantity of PSC transferred in each monetarily compensated transfer and the payment amount of the monetary compensation.

The purpose of the CTR is to account for Chinook salmon PSC transfers and the amount of money exchanged for transfers between AFA vessel owners and other entities transferring Chinook salmon PSC. NMFS would examine data reported for each transaction and tabulate the data to compare the amount of Chinook salmon PSC transferred in each transaction, number of transactions by vessel type (sector and AFA cooperative), and time intervals of the transfers in a season or year. Also, this data will allow for tabulation of the average and variation in price paid for transactions by vessel operation type, sector, and AFA cooperative.

Information on the affiliation of transferor and transferee will be used to determine the independence of the parties of any reported compensated transfer. This is required to differentiate market-based transactions and associated prices from transfer payments between affiliated or integrated entities.

The estimated number of respondents eligible to submit the transfer report is 122. The majority of these entities are vessels engaged in either catching or catching and processing pollock. Seven inshore cooperatives are listed, because some of the catcher vessels and catcher/processors in this fleet are owned by firms that also own inshore processing plants. Owners of inshore processing plants may also be familiar with specific Chinook salmon PSC transfers, and thus, are potential respondents for the CTR.

The CTR is available through the Internet on the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>, or by contacting NMFS at 206-526-6414 or PSMFC toll free At 1-877-741-8913.

Each year, the completed CTR must be submitted electronically on or before 1700 A.l.t. on June 1 following the instructions on the form to Pacific States Marine Fisheries Commission (PSMFC). The Certification Page must be mailed or faxed to PSMFC at fax number 503-595-3450.

**Compensated Transfer Report (CTR)**

**Part 1. Certification page**

Entity information

Entity type (AFA vessel, inshore cooperative, CDQ group, IPA, sector-level entity, other) Check one

Name of reporting entity

AFA permit number or entity NMFS ID

Person completing this report

Person (check appropriate description)

Name and title or NMFS ID

Business telephone number, business FAX number, and business email address (if available)

Select appropriate description of person completing form

Certification

Signature

Date signed

**Part 2. Chinook Salmon PSC allocation transfer information**

Identify the other person who paid or received money for each transfer

If a vessel owner/leaseholder, record AFA vessel permit number

For other persons, record NMFS ID.

If AFA vessel permit number or NMFS ID is unavailable, record the entity name

Direction of transfer. indicate if the Chinook salmon were transferred (sold) to another person by you, or transferred (bought) from another person by you.

Date of transfer -- record the date Chinook salmon were transferred to the receiving person. This may not be the date of final settlement on terms of compensation.

Transfer type -- Identify the type(s) of association between you and the other entity in the transfer using the following codes to identify the type(s) of association (check all that apply):

Association Type	Association between transfer entities description
1	Transfer is between 2 entities which are affiliated as defined by AFA
2	Transfer is between 2 entities in the same pollock cooperative but not affiliated as defined by AFA
3	Transfer is between 2 entities in the same AFA sector but not affiliated as defined by AFA or in the same pollock cooperative (inshore only)
4	Transfer is between 2 entities not part of the same AFA sector or pollock cooperative, and not affiliated as defined by AFA

Entity type -- indicate the entity type of the other party in the Chinook Salmon PSC allocation transfer. Check one: Vessel Owner/Leaseholder, IPA, Inshore Cooperative, Sector-level Entity, CDQ Group, or other entity type.

Chinook Salmon PSC allocation units transferred and compensation

Number of Chinook salmon transferred

Payment amount (\$) -- record the total amount of money in U.S. dollars for each transfer. Report all payment as of the date of submission of this form. This includes all money paid for the transfer regardless of whether other assets, such as pollock quota, are included in the transaction. Do not report any compensation made in any form other than monetary compensation.

Other assets included -- If the transaction included assets other than Chinook salmon and monetary compensation, indicate this using the checkbox. Other assets could include pollock quota, goods, or services of value. Do not check the box if additional assets included only assets of nominal or no value.

<b>Compensated Transfer Report, Respondent</b>	
<b>Estimated number of respondents</b>	<b>200</b>
<b>Total annual responses</b>	<b>200</b>
Responses per respondent = 1	
<b>Total burden hours</b>	<b>8,000</b>
Hours per response = 40 hr	
<b>Total personnel cost</b>	<b>\$600,000</b>
Personnel cost per hour = \$75	
<b>Total miscellaneous costs</b>	<b>\$1,054</b>
e-mail CTR @ 0.05 x 200 = \$10	
fax certification 2 pp x 100 x \$5 = \$1,000	
mail certification .44 x 100 = \$44	

<b>Compensated Transfer Report, Federal Government</b>	
<b>Estimated number of respondents</b>	<b>200</b>
<b>Total annual responses</b>	<b>200</b>
<b>Total burden hours</b>	<b>2,000 hr</b>
Estimated hours per response = 10 hr	
<b>Total personnel cost</b>	<b>\$150,000</b>
Personnel cost per hour = \$75	
<b>Total miscellaneous costs</b>	<b>0</b>

**b. Vessel Fuel Survey**

The Vessel Fuel Survey collects information on the estimated quantity and cost of all fuel consumed by each AFA vessel harvesting or processing pollock during the calendar year. This survey would collect data on average fuel use fishing and transiting and annual fuel use and costs. Data would be reported on a vessel basis annually. These data, when used with existing data and data concerning Chinook salmon avoidance efforts, would allow analysts to examine fuel use and costs associated with choices of fishing grounds and Chinook Salmon PSC avoidance.

This survey is intended to provide information to fishery managers to evaluate the effectiveness of the Amendment 91 management measures. These data, combined with other information in the Chinook Salmon EDR Program, provide information on movements of a vessel to avoid Chinook salmon, and in particular, Chinook salmon bycatch. Fuel use and price data are not available for vessels in the pollock fishery in any uniform format. NMFS would apply fuel usage data to assess the extent to which fleet members are willing to incur these expenses to avoid Chinook salmon PSC. These data could provide useful estimates of fuel usage for evaluating Amendment 91 effects.

An owner or leaseholder of an AFA-permitted vessel must submit a completed Vessel Fuel Survey for each vessel used to harvest pollock in the Bering Sea in a given year. It is the responsibility of the vessel owner or leaseholder to submit all completed Vessel Fuel surveys to NMFS. Submit electronically on or before 1700 A.l.t. on June 1 to the PSMFC, at the address on the form.

The Vessel Fuel Survey is available through the Internet on the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>, or by contacting NMFS at 206-526-6301.

**Vessel Fuel Survey**

**Part 1: Certification Page**

AFA Vessel Owner or Leaseholder name and NMFS ID

Select appropriate description of person completing form

You were the AFA permit holder or leaseholder for one or more AFA vessels that harvested or processed pollock during the calendar year. Complete and submit entire form for the calendar year.

You were the AFA permit holder for an AFA vessel that did not harvest or process AFA pollock during the calendar year. Complete and submit the Certification Page only.

**Certification**

Signature

Date signed

**Part 2. Vessel Fuel Consumption and Cost**

For each vessel operated in the AFA pollock fishery during calendar year

AFA Vessel permit number

Average rate of fuel consumption per hour

Report the average rate of fuel consumption separately for operating while towing and operating while transiting (traveling between points on fishing grounds, but not towing).

Report fuel consumption rates for the pollock fishery only.

For motherships, report the rate of fuel consumption for transiting only.

If you do not have equipment on the vessel for actively monitoring the rate of fuel usage, provide the most accurate estimate you can based on the best information you have available.

Annual Fuel Loaded and Total Cost.

For each vessel, report the total amount of fuel loaded to the vessel, in gallons, during the calendar year and total cost of fuel for this vessel during the calendar year. Include all fuel that was loaded and invoiced, even if not completely used or paid for during the calendar year. Do not include lubrication and fluids costs other than fuel.

<b>Vessel Fuel Survey, Respondent</b>	
<b>Estimated number of respondents</b>	<b>109</b>
<b>Total annual responses</b>	<b>109</b>
Estimated responses per respondent = 1	
<b>Total burden hours</b>	<b>436 hr</b>
Estimated hours per response = 4 hr	
<b>Total personnel cost</b>	<b>\$32,700</b>
Personnel cost per hour = \$75	
<b>Total miscellaneous costs (\$378.08)</b>	<b>\$378</b>
e-mail attachment 0.05 x 36 = \$1.80	
fax certification 2 pp x \$5 x 36 = \$360	
mail certification .44 x 37 = \$16.28	

<b>Vessel Fuel Survey, Federal Government</b>	
<b>Estimated number of respondents</b>	<b>109</b>
<b>Total annual response</b>	<b>109</b>
<b>Total burden hours</b>	<b>436 hr</b>
Estimated hours per response = 4 hr	
<b>Total personnel cost</b>	<b>\$32,700</b>
Personnel cost per hour = \$75	
<b>Total miscellaneous costs</b>	<b>0</b>

### c. Vessel Master Survey

The Vessel Master Survey is a qualitative assessment survey that poses a series of questions to elicit vessel operator input on factors that influenced the vessel's performance during the year. The Vessel Master Survey is intended to provide information to fishery managers to evaluate the effectiveness of Chinook Salmon PSC management measures. The questions in this survey are primarily qualitative questions concerning operator on-grounds impressions and choices made during the pollock season, including incentives, fishing location choices, and salmon PSC reduction measures.

The owner or leaseholder of an AFA-permitted vessel must submit a Vessel Master Survey completed by each master of each vessel used to harvest pollock in the Bering Sea in the previous year. It is the responsibility of the vessel owner or leaseholder to submit all completed surveys to NMFS and fill out Part 1A for each Vessel Master Survey. Part 1A must list each Vessel Master who participated in the Bering Sea pollock fishery. Each Vessel Master Survey submitted by the owner or leaseholder of an AFA permitted vessel must have Part 1B and Part 2 filled out by the Vessel Master.

Many masters may compile notes in-season to be used for response to the specific survey at year-end. The burden associated with tracking activity will vary depending on the circumstances encountered during the year. Fully completing the form at the end of the season is estimated to require approximately 4 hours of in-season time, recording impressions of conditions and decision making.

The respondents would annually complete the Vessel Master Survey at the end of the fishing year. For a given AFA-permitted vessel used to harvest pollock in the Bering Sea in the previous year:

- ◆ The vessel master must complete the Vessel Master Survey, Part 1A.
- ◆ An owner or leaseholder must complete the Vessel Master Survey, Part 1B.
- ◆ An owner or leaseholder must submit all Vessel Master Surveys, Parts 1A and 1B completed by the owner and all of the masters electronically on or before 1700 A.l.t. on June 1 to the PSMFC, at the address on the form.

The Vessel Master Survey is available through the Internet on the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>, or by contacting NMFS at 206-526-6414. The certification page must be submitted by mail, fax, or as an attachment to an e-mail.

### **Vessel Master Survey**

#### Part 1A: Certification Page (Owner AFA-permitted Vessel)

Vessel owner or leaseholder name

Vessel name

AFA permit number

Vessel master name and CFEC gear operator permit number (repeat if more than one master)

#### Certification

Signature of owner or leaseholder of an AFA-permitted vessel and date signed

#### Part 1B: Certification Page (Vessel Master)

Vessel owner or leaseholder name

Vessel name

AFA permit number

Vessel master name and CFEC gear operator permit number

#### Certification

Signature of vessel master

Date signed

#### Part 2: Pollock Fishing and Salmon Bycatch Avoidance

If the vessel participated in an Incentive Plan Agreement (IPA), did the IPA affect your fishing strategy? (Yes/No) If yes, describe and discuss what incentives had the largest impact on your strategy.

Did the amount and/or cost of Chinook Salmon PSC allocation available to the vessel lead you to make changes in pollock fishing operations? (Yes/No).

If yes, describe.

How would you compare the Chinook salmon bycatch and pollock conditions during the A and B seasons this year relative to the last two years?

Describe any unique aspects of the season.

Did Chinook salmon bycatch conditions cause you to delay the start of your pollock fishing or otherwise alter the timing of your pollock fishing for some period during the past A and/or B season? (Yes/No)

If yes, describe the Chinook salmon bycatch condition, when it occurred, and any change in your pollock fishing as a result.

In the past year, did you end a trip and return to port early because of Chinook salmon bycatch conditions? (Yes/No)

If yes, indicate the number of trips that this occurred in each season (use a check to mark the appropriate answer for each season).

Describe how any area closures or restrictions for the purpose of reducing Chinook salmon bycatch affected where and how you fished.

Describe how any regulatory or other area closures or restrictions for a purpose other than reducing Chinook salmon bycatch affected where and how you fished.

Compared to a typical year, did weather or sea ice conditions have more, less, or about the same impact on fishing as in a typical year? (Yes/No)

If yes, describe especially if there were particularly uncommon conditions at any point this year. If these conditions had an impact on your ability to avoid Chinook salmon bycatch, describe.

Were there exceptional factors that affected your pollock fishing this year? For example, were there unusual market or stock conditions, unusual pollock fishing conditions, or maintenance problems? (Yes/No)

If yes, describe.

Separate from an Incentive Plan Agreement, were there other incentives for you to reduce Chinook salmon bycatch? (Yes/No) If yes, describe.

Did actual or potential bycatch of species other than Chinook salmon cause you to change your harvesting decisions during the pollock season? (Yes/No)

If yes, describe.

<b>Vessel Master Survey, Respondent</b>	
<b>Estimated number of respondents</b>	<b>185</b>
<b>Total annual responses</b>	<b>185</b>
Estimated responses per respondent = 1	
<b>Total burden hours</b>	<b>740 hr</b>
Estimated hours per response = 4 hr	
<b>Total personnel cost</b>	<b>\$55,500</b>
Personnel cost per hour = \$75/hr	
<b>Total miscellaneous costs (\$526.25)</b>	<b>\$526</b>
email attachment 0.05 x 85 = \$4.25	
fax certification 2 pp x \$5 x 50 = \$500	
mail certification .44 x 50= \$22	

<b>Vessel Master Survey, Federal Government</b>	
<b>Total annual responses</b>	<b>185</b>
<b>Total burden hours</b>	<b>1,480 hr</b>
Estimated hours per response = 8 hr	
<b>Total personnel cost</b>	<b>\$111,000</b>
Personnel cost per hour = \$75/hr	
<b>Total miscellaneous costs</b>	<b>0</b>

#### **d. Verification/Audit of Chinook Salmon EDR Data**

NMFS would develop measures to verify data accuracy of the Chinook Salmon EDR. These measures would help NMFS to verify data submitted in the Chinook Salmon in-season compensated transfer report (CTR), Vessel Master Survey, and the Vessel Fuel Survey. The principal means to verify data and resolve questions would be through validation of data submitted in these three surveys against supporting records. The person submitting the EDR would need to respond within 20 days of NMFS's information request. Responses after 20 days could be considered untimely and could result in a violation and enforcement action.

For CTR verification, a NMFS-approved auditor may review and request copies of additional data provided by the owner or leaseholder, including but not limited to: previously audited or reviewed financial statements, worksheets, tax returns, invoices, receipts, and other original documents substantiating the data. The NMFS-approved auditor will verify records by comparing specific elements of the report with participant accounting records.

To make this activity as efficient and non-intrusive as possible, NMFS suggests that participants:

- ◆ Keep copies of all certification pages and completed EDRs, with all attachments, submitted to the PSMFC.
- ◆ Keep a file that has all of the supporting information used in the preparation of the EDR.
- ◆ Make sure that the EDR agrees with the company's highest level of financial information. For this purpose, the highest level of financial information is defined in order as:
  - Audited financial statements
  - Reviewed financial statements

- Compiled financial statements
  - Tax returns.
- ◆ Record only whole numbers. Round up dollar figures to the next highest dollar.

<b>Chinook Salmon EDR Verification, Respondent</b>	
<b>Estimated number of respondents</b>	<b>200</b>
<b>Total annual responses</b>	<b>200</b>
Estimated responses per respondent = 1	
<b>Total burden hours</b>	<b>800 hr</b>
Estimated hours per response = 4 hr	
<b>Total personnel cost (\$75/hr)</b>	<b>\$60,000</b>
<b>Total miscellaneous costs</b>	
Photocopy (\$15 x 200 = \$3000)	<b>\$24,000</b>
Telephone calls (\$5 x 200 = \$1000)	
Accountant fee to verify EDR (\$100 x 200 = \$20,000)	

<b>Chinook Salmon EDR Verification, Federal Government</b>	
<b>Total annual responses</b>	<b>0</b>
<b>Total burden hours</b>	<b>0</b>
<b>Total personnel cost</b>	<b>0</b>
<b>Total miscellaneous costs</b>	<b>0</b>

Information derived from the collected data will be disseminated to the public consistent with applicable requirements for nondisclosure of confidential information 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 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.**

This collection is estimated to be 90 percent electronic; these reports will be submitted as attachments to e-mails or possibly by direct entry into a database. However, the certification pages must be sent by fax or mail. The three forms are available on the internet as stated in Question 2.

**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 and 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.**

The proposed action applies only to those entities that participate in the directed pollock trawl fishery in the Bering Sea. The only small entities that are directly regulated by this action are the six CDQ organizations, and the impact is not significant.

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

Chinook salmon caught in the pollock fishery are considered PSC bycatch under the Magnuson-Stevens Act, the FMP, and NMFS regulations at 50 CFR part 679. National Standard 9 of the Magnuson-Stevens Act requires the Council to select, and NMFS to implement, conservation and management measures that, to the extent practicable, minimize bycatch and bycatch mortality.

The Vessel Fuel Survey includes collection of new data on the average fuel use rate by activity, and the price per gallon paid. Without this data, NMFS has no alternative data source to estimate fuel costs or travel costs associated with searching for cleaner fishing grounds, or avoidance of areas that might be closed by NMFS or through an IPA. This data would contain some individual variability in fuel use and prices per gallons by vessel, while any anecdotal information would be generalized. The Council specifically requested this data, and the action would not meet the Council intent if not collected.

The Compensated Transfer Report (CTR) in conjunction with data from IPA reports would provide information on the number and characteristics of Chinook salmon PSC transfers. Without this data, NMFS will not be able to tell how vessels differ from each other in terms of efficient use of Chinook salmon PSC or of the costs of avoiding Chinook salmon PSC. Without this data, it will not be possible to determine if the tradable Chinook salmon PSC is working or if it is not working, how to fix it.

Without the Vessel Master Survey, we will not understand the tradeoffs vessel masters made to avoid Chinook salmon. NMFS may not be able to detect if there are some essential pieces of information missing in other survey or report data that are needed to evaluate the effect of the IPAs in Amendment 91

**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 information on 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.**

NMFS Alaska Region will submit a proposed rule (RIN 0648-BA80) coincident with this submission, requesting comments from the public.

The draft data collection instruments were developed with extensive consultation with the regulated entities that will be subject to the reporting requirement, including a public workshop (FR Announcement RIN 0648-XW73 filed June 3, 2010) to refine data elements and instructions to improve clarity and minimize reporting burden.

**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 data requested in the Chinook Salmon EDR includes detailed proprietary information provided by firms and individuals, as well as personally identifying information (PII) and business identifying information (BII). These data are considered confidential under section 402(b) of the Magnuson-Stevens Act. It is also confidential under [NOAA Administrative Order 216-100](#), which sets forth procedures to protect confidentiality of fishery statistics. The EDR data are prohibited from release to the public. Access to EDR data is tightly controlled under numerous provisions of statute, regulation, and administrative order.

The Code of Federal Regulations ([50 CFR 600.415](#)) specifies that access to confidential data collected by NMFS is restricted to—

- ◆ Federal and Council employees responsible for collection and maintenance of the data, FMP development, monitoring or enforcement, or performing research that requires access to confidential statistics, or on a demonstrable need-to-know basis.
- ◆ NOAA/NMFS contractors or grantees who require access to confidential statistics to perform functions authorized by a Federal contract or grant.
- ◆ State personnel who demonstrate a need for confidential statistics for use in fishery conservation and management, provided that the State has entered an agreement to protect confidential data to a standard comparable to that required by the Magnuson-Stevens Act.

The regulations further provide for granting of access to Council members under conditions that are unlikely to be met in the case of these Chinook Salmon EDR data, and individual submitters may request that their own records be released to themselves or a third party.

In addition, the confidential proprietary data collected in this Chinook Salmon EDR meet the definition of trade secrets as defined in the Freedom of Information Act (5 U.S.C. 552) and Trade Secrets Act (18 U.S.C. 1905), and as such is exempted from disclosure of raw, un-aggregated data under FOIA. All individuals who are determined to be authorized for access to confidential data are required to sign and submit a nondisclosure agreement, affirming the user's understanding of NMFS' obligations with respect to confidential data and the penalties for unauthorized use and disclosure. NOAA Administrative Order 216-100 is the principal legal guidance for NMFS' employees on specific protocols for handling confidential data, including definitions, policies, operational responsibilities and procedures, penalties, and statutory authorities and requirements.

**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 respondents: 200. Estimated total responses: 694. Estimated total burden: 9,976 hr. Estimated total personnel costs: \$748,200.

**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 miscellaneous costs: \$25,958.

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

Estimated total burden: 3,936 hr. Estimated total personnel cost: \$293,700.

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

This is a new program.

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

The information collected 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.**

Not applicable

**18. Explain each exception to the certification statement.**

Not applicable

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

**1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g., establishments, State and local governmental units, households, or persons) in the universe and the corresponding sample are to be provided in tabular form. The tabulation must also include expected response rates for the collection as a whole. If the collection has been conducted before, provide the actual response rate achieved.**

Submission of each of the three forms in the Chinook salmon EDR is required for the entire universe of potential respondents (a census of the entire population for each); thus, NMFS anticipates a response rate of 100 percent. The respondent universe varies for each of the three new forms.

NMFS requires only the owners of the AFA-permitted vessels to submit the Vessel Fuel Survey; it is estimated at or below 110, because some persons own multiple vessels.

For the Vessel Master Survey, masters fill out the form and owners send them in to NMFS. NMFS did a count of all of the State of Alaska Commercial Fisheries Entry Commission (CFEC) permits that were associated with AFA vessels as a rough proxy of how many masters to be involved. It is possible that each vessel master on each vessel that participated in the pollock fishery could be included for a respondent universe of up to 185 individuals. The number of entities that could supply these data may be substantially reduced if the owners of the vessels that are named in an IPA supply these forms for multiple vessels.

For the Compensated Transfer Report (CTR), there could be transactions from the vessel owners, the CDQ groups, and representatives for cooperatives, IPAs, and Chinook receiving entities. The representative for AFA vessel owners that are subject to an agreement for receiving Chinook salmon PSC may also be part of the respondent universe for the CTR, if these representatives are involved in the buying and selling of Chinook salmon PSC. The universe of these owners will be known by November 1 of each year, but is estimated to be 200 individuals.

For each AFA vessel that is not covered in an agreement, but that participated in the pollock fishery, the respondent will be the owner named on a Federal Fisheries Permit. Some of the vessel owners may also provide the name of a representative established by the IPA, AFA

cooperative, or CDQ group to submit these forms. Those respondents are either named on a permit application or would be named by November 1 of each year for each vessel.

**2. Describe the procedures for the collection, including: the statistical methodology for stratification and sample selection; the estimation procedure; the degree of accuracy needed for the purpose described in the justification; any unusual problems requiring specialized sampling procedures; and any use of periodic (less frequent than annual) data collection cycles to reduce burden.**

All information collected in this Chinook salmon EDR is collected through a census of the population of vessels and persons authorized to catch pollock in the Bering Sea. Thus, sample selection methods are not applicable to this action.

NMFS will use census data from these collections to develop a descriptive (qualitative) analysis and quantitative or tabular comparisons to evaluate the effects of Amendment 91. Where data are available, NMFS may also apply descriptive statistics or other statistical analyses to examine whether:

- ◆ Chinook salmon PSC has been reduced,
- ◆ Incentives have changed fishing behavior during high and low Chinook salmon PSC encounter rates, or
- ◆ If pollock fishing location and Chinook salmon PSC locations have changed as a result of Amendment 91.

Regression analysis with a small number of variables or multi-variable statistical analysis may be applied to this data with the intent to assess the variability and explanatory power of two or more variables in a function. This regression analysis will also provide important insight into the distribution of data and potential accuracy of variables or of variables that require further verification.

Chinook salmon PSC transaction data reported in the CTR may be further examined with regression analysis by applying observed transaction prices and quantities traded by vessel. For example, it may be possible to estimate the frequency with which Chinook salmon transactions occur based upon the type or characteristics of vessels, during periods where members of an IPA approach the performance standard based on their proportion of the 47,591 Chinook salmon PSC in no more than two out of seven consecutive years. To conduct this statistical analysis, the variables used from the CTR and other data sources may include the number of transactions, total value of each transaction, vessel characteristics, and membership in a given AFA sector, AFA cooperative, or IPA. These statistical procedures could provide insight as to whether some vessels are either unable to avoid Chinook salmon PSC, or have a higher valued use of Chinook salmon PSC than other vessels and choose to purchase Chinook salmon PSC.

Fuel use and fuel cost from the Vessel Fuel Survey and vessel movement data from revisions to NMFS logbooks and landing reports may be examined with regression analysis to determine if the increase or decrease in selected travel costs can be estimated from data on bycatch incentives imposed by an AFA sector or cooperative and from other existing information. These estimates may also be compared during intervals of time where various types of incentives and combinations of incentives are imposed, and can be compared with various conditions in the fishery (such as weather and sea conditions) that may impact vessel movements. Examples of some of the independent variables that might be tested in a regression analysis of travel costs include: general type of incentive; where and when the incentive is imposed; fuel costs; and distance traveled in response to an incentive, pollock catch, and Chinook salmon PSC.

**3. Describe the methods used to maximize response rates and to deal with non-response. The accuracy and reliability of the information collected must be shown to be adequate for the intended uses. For collections based on sampling, a special justification must be provided if they will not yield "reliable" data that can be generalized to the universe studied.**

As discussed in Question 2, this collection will be applied annually to a census of vessel owners who participate in the AFA Bering Sea pollock fishery. NMFS explicitly identified in Amendment 91 the entities required to supply the data. The collection is mandatory, so non-response error is anticipated to be extremely small. The fuel data supplied on the Vessel Fuel Survey will not represent primary data (actual fuel used by date and event). The Vessel Fuel Survey data represents masters' estimates based on the type of actions they took to respond to Amendment 91; some response error may occur.

Sources of error or incomplete information may also be present in the Chinook salmon PSC prices reported for each transfer in the CTR form. For example, if a transfer of Chinook salmon PSC is accompanied by both monetary and a non-monetary compensation, the owner of a vessel may have some control over when prices are reported and whether the reported price can be attributed to Chinook salmon PSC.

Measuring and minimizing non-response bias is an important aspect of assuring accurate data. The degree of accuracy needed for the Chinook salmon EDR is not established by statistical theory or legislative mandates. The Council specifically identifies this collection as improving the amount of data available to analyze the effectiveness of the Amendment 91 for reducing Chinook salmon PSC to the extent practicable and to assess any changes in the yield of pollock. Data collected through these EDR forms will be used for simple deterministic comparisons, statistical inference by vessel type and cooperative, as well as for estimation of econometric models used for policy-making purposes.

While more accurate data is clearly preferred, standards do not exist regarding the accuracy of data required for estimation of statistical models. The statistical analysis applied to this data may range from simple descriptive statistics, to more sophisticated regression and spatial analysis to assess the effectiveness of Amendment 91.

The major tool for minimizing errors, improving accuracy, and resolving any missing data or non-response of Chinook salmon EDR data is through verification procedures developed by

NMFS economists and analysts. These measures would help NMFS to verify data submitted in the CTR, the Vessel Master Survey, and the Vessel Fuel Survey. The principal means to verify data and resolve questions would be through validation of data submitted in these three surveys against supporting records. NMFS would contact the Chinook salmon EDR submitter and request oral or written confirmation of data submissions. The person submitting the Chinook salmon EDR would need to respond within 20 days of NMFS's information request. Responses after 20 days could be considered untimely and could result in a violation and enforcement action.

For the CTR, a NMFS-approved auditor would review the CTR data submitted and may request financial documents substantiating the data submitted in the Chinook salmon EDR. An auditor/accounting specialist would be subject to strict confidentiality requirements.

**4. Describe any tests of procedures or methods to be undertaken. Tests are encouraged as effective means to refine collections, but if ten or more test respondents are involved OMB must give prior approval.**

The Council held two industry meetings in 2009 to review and recommend data to be collected in each of the three new reports/surveys. While the meetings were not a formal pretest of the data reports, several fields in the reports/surveys were significantly revised as a result of the meetings. In addition, some members of the AFA trawl sectors have voluntarily submitted individual comments on previous versions of the forms developed for each report/survey.

In each meeting these draft data forms were reviewed by members of the AFA sector, North Pacific Fishery Management Council staff, Alaska Fisheries Science Center (AFSC) staff, and other NMFS staff. On June 21, 2010, AFSC held an industry workshop in Juneau to review the proposed reports/surveys. That workshop did not include formal pretests of the data forms, but resulted in some additional changes to the data forms.

**5. Provide the name and telephone number of individuals consulted on the statistical aspects of the design, and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.**

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## REFERENCES

- Cahalan, J., J. Mondragon, and J. Gasper. 2010. "Catch sampling and estimation in the Federal groundfish fisheries off Alaska," US Dept. Commerce, *NOAA Tech. Memo.* NMFS-AFSC-205, 42 p.
- NMFS. 2009. Regulatory Impact Review, Amendment 91. National Marine Fisheries Service Alaska Regional Office. Juneau, AK. December 2009.  
<http://www.fakr.noaa.gov/sustainablefisheries/bycatch/salmon/chinook/rir/rir1209.pdf>

**APPENDIX**  
**to**  
**CHINOOK EDR SUPPORTING STATEMENT**

Part A of the Supporting Statement describes three new data forms (collectively referred to as the Chinook Salmon EDR) for use by members of the Bering Sea pollock fishery:

- ◆ Chinook salmon PSC Allocation Compensated Transfer Report (CTR),
- ◆ Vessel Fuel Survey, and
- ◆ Vessel Master Survey.

The data collected in these reports and surveys and data collected in existing revised collections (OMB 0648-0213, 0401, and 0515) would be combined with other data to analyze the Amendment 91 program.

Part B of the Supporting Statement summarizes the Amendment 91 program, describes the data to be collected to analyze the Amendment 91 program, and answers the five questions on the statistical sampling methods, response rates, non-response bias, methods for testing the data forms, and staff involved in the Chinook salmon EDR program.

Part B is divided into the following sections.

**INTRODUCTION**

Council Purpose and Need Statement -- Chinook Salmon Economic Data Program  
AFA sectors, Cooperatives, and CDQ groups  
Chinook Salmon Bycatch in the Bering Sea Pollock Fishery  
Amendment 91 to the BSAI FMP

**CURRENT INFORMATION TO EVALUATE AMENDMENT 91**

Incentive Plan Agreement (IPA) and IPA Annual Report  
Limitations to IPA plan and IPA Annual Report data for evaluating Amendment 91  
AFA Cooperative Report  
Limitations of AFA Cooperative Reports for evaluating Amendment 91  
Catch Accounting and Observer Data  
Limitations to the use of Catch Accounting and Observer Data for Evaluating  
Amendment 91

**NEW INFORMATION TO EVALUATE AMENDMENT 91**

Chinook salmon PSC Allocation Compensated Transfer Report (CTR)  
Vessel Fuel Survey  
Vessel Master Survey

**REVISIONS TO EXISTING COLLECTIONS FOR CHINOOK SALMON EDR**

Revisions to the IPA Annual Report  
Revisions to Collect Change-in-Location Data

## INTRODUCTION

NMFS would implement the Chinook Salmon Economic Data Program to evaluate the effectiveness of Chinook salmon PSC management measures for the Bering Sea pollock fishery that were implemented under Amendment 91 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The data collected for this program would be submitted by members of the American Fisheries Act (AFA) inshore, catcher/processor, and mothership sectors, as well as representatives for the six western Alaska Community Development Quota (CDQ) organizations that presently receive allocations of Bering Sea pollock. The management measures, explained in detail in the final rule for Amendment 91 (75 FR 53026, August 30, 2010), are also intended to provide insight into the behavioral response of the participants in the pollock fishery.

### Council Purpose And Need Statement -- Chinook Salmon Economic Data Program

The purpose of the Chinook Salmon EDR Program is to provide data for the analysis of the Chinook salmon PSC management in the Bering Sea pollock fishery. The Chinook Salmon PSC Program was implemented in Amendment 91 to the Bering Sea and Aleutian Islands Management Area Fishery Management Plan (FMP). The principal objective of Amendment 91 was to minimize Chinook salmon bycatch (Chinook Salmon PSC) to the extent practicable, while achieving optimum yield.

The Amendment 91 Program was composed of three main parts :

- ◆ An overall hard cap of 60,000 Chinook Salmon PSC that may not be exceeded by the Bering Sea pollock fleet.
- ◆ Access to the higher Chinook Salmon PSC hard cap and conditional privileges to transfer allocated amounts of that hard cap for participants who agree to a bycatch reduction incentive plan agreement (IPA).
- ◆ A performance standard, proportionally applied to each American Fisheries Act (AFA) sector, for keeping Chinook Salmon PSC below 47,591 Chinook salmon in two years out of seven years.

The North Pacific Fisheries Management Council (Council) subsequently recommended the development of a Chinook Salmon EDR Program to analyze the effectiveness of Amendment 91 to reduce Chinook Salmon PSC and to assess any changes in the yield of pollock. The Council's purpose and need statement also recommended that these data be used to address four components of Amendment 91, which are as follows:

- ◆ Effects and impacts of the Amendment 91 IPAs, the higher and lower PSC hard caps, and the performance standard;
- ◆ Effectiveness of the IPA incentives in times of high and low levels of salmon bycatch;

- ◆ Effectiveness of the performance standard to reduce salmon bycatch; and
- ◆ How Amendment 91 affects where, when, and how pollock fishing and salmon bycatch occur.

NMFS anticipates that analysis of this data collection will provide sufficient information to provide insights into the primary objective of Amendment 91 -- which is to reduce Chinook Salmon PSC. Questions include: the costs of Chinook Salmon PSC reduction, the number of Chinook Salmon PSC, the actions taken by vessel operators to avoid Chinook Salmon PSC, and transfer information (the number and frequency of Chinook Salmon PSC transfers and why these transfers occur or do not occur)

### AFA Sectors, Cooperatives, and CDQ Groups

NMFS manages the Bering Sea pollock fishery under the American Fisheries Act (AFA) (16 U.S.C. 1851). The AFA “rationalized” the Bering Sea pollock fishery in part by allowing for the formation and management of fishery cooperatives in the three pollock sectors (catcher/processor, mothership, and catcher vessel) and the CDQ groups. The AFA authorizes the formation of fishery cooperatives in all sectors of the Bering Sea pollock fishery, grants anti-trust exemptions to cooperatives in the mothership sector, and imposes operational limits on fishery cooperatives in the Bering Sea pollock fishery. The AFA fishery cooperatives consist of groups of vessel owners who agree to apportion the available pollock quota among themselves. In so doing, the cooperatives moderate the unnecessary and wasteful fishing effort that occurred prior to AFA, and has increased financial returns for most members of the fleet.

Under the AFA, NMFS allocates ten percent of the Bering Sea pollock total allowable catch (TAC) to the CDQ Program. After allowance for incidental catch of pollock in other fisheries, NMFS allocates the remaining TAC as follows: 50 percent to vessels harvesting pollock for processing by inshore processors, 40 percent to vessels harvesting pollock for processing by catcher/processors, and 10 percent to vessels harvesting pollock for processing by motherships. NMFS manages the catcher vessels that do not join an inshore cooperative under the “inshore open-access fishery.”

AFA cooperatives further subdivide each sector’s or inshore cooperative’s pollock allocation among participants in the sector or cooperative through private agreements. The cooperatives manage these allocations to ensure that individual vessels and companies do not harvest more than their agreed-upon share. The cooperatives also facilitate transfers of pollock among the cooperative members, enforce contract provisions, and participate in the inter-cooperative agreement to reduce salmon bycatch. A more detailed description of AFA cooperatives and cooperative and inter-cooperative agreements may be found in the proposed rule for Amendment 91 (75 FR 14016; March 23, 2010) and in OMB Control No. 0648-0401.

Each year, catcher vessels eligible to deliver pollock to the seven AFA inshore processors may form up to seven inshore cooperatives that are each associated with a particular inshore processor. The AFA catcher/processor sector consists of AFA-eligible vessels in the Pollock

Conservation Cooperative and High Seas Catcher's Cooperative. The High Seas Catcher's Cooperative consists of owners of the catcher vessels eligible to deliver pollock to the catcher/processors. NMFS issues an annual allocation of pollock to the entire catcher/processor sector, based on each vessel's pollock catch history. The AFA mothership sector is made up of three motherships and the AFA-eligible catcher vessels that deliver pollock to these motherships. These catcher vessels have formed a cooperative called the Mothership Fleet Cooperative, which sub-allocates and manages the mothership sector pollock allocation among the catcher vessels authorized to harvest this pollock.

NMFS does not manage the sub-allocations of pollock among members of the Pollock Conservation Cooperative, High Seas Catcher's Cooperative, or Mothership Fleet Cooperative. The cooperatives control the harvest by their member vessels so that the pollock allocation to the sector is not exceeded. However, NMFS monitors pollock harvest by all members of the catcher/processor sector and mothership sector. NMFS retains the authority to close directed fishing by sector if vessels in that sector continue to fish once the sector's seasonal allocation of pollock has been harvested.

#### Chinook Salmon Bycatch In The Bering Sea Pollock Fishery

Pollock is harvested by AFA fishing vessels using pelagic (mid-water) trawl gear, which consists of large nets towed through the water by the vessel. At times, Chinook salmon and pollock occur in the same locations in the Bering Sea. Consequently, Chinook salmon are accidentally caught in the nets as pollock are harvested.

The Bering Sea pollock fishery catches up to 95 percent of the Chinook salmon taken incidentally as bycatch in the Bering Sea groundfish fisheries. From 1992 through 2001, the average Chinook salmon bycatch in the Bering Sea pollock fishery was 32,482. Bycatch increased substantially from 2002 through 2007, with an average of 74,067 Chinook salmon per year caught during this period. A historic high of approximately 122,000 Chinook salmon were taken in the Bering Sea pollock fishery in 2007. However, Chinook salmon bycatch has declined in recent years to 20,493 in 2008 and 12,410 in 2009. The causes of the decline in Chinook salmon bycatch in 2008 and 2009 are unknown. In years of historically high Chinook salmon bycatch in the Bering Sea pollock fishery, 2005 to 2007, the rate of Chinook salmon bycatch averaged 64 Chinook salmon per 1,000 metric tons of pollock harvested.

Chinook salmon bycatch varies seasonally and by sector. In most years, the majority of Chinook salmon bycatch occurs during the pollock A season of the Bering Sea pollock fishery. The variation in bycatch rates among sectors and seasons (A season or B season) is due, in part, to the different fishing practices and fishing patterns each sector uses to fully harvest their pollock allocations.

Chinook salmon bycatch at sea in the pollock fishery affects various State of Alaska commercial and recreational salmon fisheries and subsistence salmon fisheries. Chinook salmon bycatch affects escapement and recruitment of Chinook salmon in the Yukon River and potentially other Chinook salmon river systems. Escapement is that portion of Chinook salmon that escapes the commercial and recreational fisheries and reaches the freshwater spawning grounds in rivers.

Recruitment is the amount of fish added to the exploitable fish stock each year due to growth and/or migration into the fishing area. These effects are described in detail in the Environmental Regulatory Impact Review for the Amendment 91 final rule (NMFS 2009).

In summary, in some years Chinook salmon mortality from bycatch in the pollock fishery is likely to impact the number of Chinook salmon available to the commercial salmon fisheries in the Yukon River, as well as the subsistence, personal use, and recreational Chinook salmon fisheries of the Yukon River. In some years, the bycatch may also affect the escapement of Chinook salmon in the Yukon River and its tributaries, to the extent that low spawning numbers may impact recruitment of juvenile Chinook in certain tributaries of the Yukon River. Data on the origin of Chinook Salmon stocks intercepted in the pollock fishery are insufficient to know with certainty if this bycatch is a significant contributor to low Chinook Salmon escapement numbers in Yukon River tributaries or to assess the magnitude of possible impacts to Yukon River salmon fisheries. Data issues associated with the uncertainty are described in detail in the Amendment 91 EIS/RIR/FRFA.

As documented in the RIR/IRFA for this action, AFA pollock vessel masters and members of AFA sectors and cooperatives face difficulties detecting the presence of Chinook salmon while fishing for pollock. They need to determine how best to minimize their bycatch and mortality of Chinook salmon while comparing the tradeoffs for their sector and AFA cooperative for Chinook Salmon bycatch avoidance. These difficulties are as follows:

- ◆ Individual Chinook salmon are difficult to detect in the water column with current sonar technology, prior to or during a haul and retrieval of pollock trawl gear.
- ◆ Chinook salmon migrate throughout many areas frequented by pollock trawlers, and these migration patterns are unpredictable within and between years.
- ◆ Once Chinook salmon encounters occur, considerable uncertainty exists about whether those interceptions will impact escapements in the Yukon River and its tributaries, or if the impacts will occur during periods of high or low Chinook salmon escapements; and
- ◆ On the pollock fishing grounds, Chinook salmon PSC rates vary by Chinook Salmon population strength and by overlap spatially and temporally of pollock fishing and Chinook salmon.
- ◆ Most actions taken to avoid Chinook salmon PSC are likely to be costly to participants in this fishery and difficult for individual vessel operators to assess if voluntary efforts to avoid Chinook Salmon PSC will result in a future benefit.

Bycatch of any species, including discard or other mortality caused by fishing, is a concern of the Council and NMFS. National Standard 9 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), specifically requires the Council to select conservation and management measures that NMFS implements to minimize bycatch and bycatch mortality to the extent practicable. The Magnuson-Stevens Act defines bycatch as fish that are harvested in a commercial fishery but neither, sold nor kept for personal use. Chinook

salmon is categorized as prohibited species under the Magnuson-Stevens Act, the BSAI FMP, and NMFS regulations at 50 CFR part 679. The objective for managing Chinook salmon as PSC in the Bering Sea pollock fishery is to minimize Chinook salmon mortality to the extent practicable, while achieving optimum yield in target fisheries, because Chinook salmon are a valuable and fully utilized species caught in commercial, subsistence, and recreational fisheries.

In some locations, Chinook salmon face conservation concerns. Fishermen must avoid salmon bycatch and are prohibited from selling or utilizing salmon for personal use. Any salmon caught must either be donated to the Prohibited Species Donation Program under § 679.26, or returned to Federal waters as soon as is practicable, with a minimum of injury, after an observer has determined the number of salmon and collected any scientific data or biological samples. Chinook salmon bycatch in the Bering Sea pollock fishery is assumed to have 100 percent mortality.

### Amendment 91 To The BSAI FMP

NMFS implemented Amendment 91 to the BSAI FMP to manage Chinook salmon PSC in the Bering Sea pollock fishery. Amendment 91 combines limits on incidentally caught Chinook with an Incentive Plan Agreement (IPA) and performance standard. This combination is designed to minimize bycatch to the extent practicable in all years and prevent bycatch from reaching the limit in most years. The most important objective of Amendment 91 is to reduce Chinook bycatch amounts and rates across all AFA sectors, cooperatives, and vessels in future years in accordance with National Standards 1 and 9. In addition, Amendment 91 provides for the development of one or more secondary industry-operated incentive programs.

Allocations. Under Amendment 91, NMFS may allocate transferable Chinook salmon PSC to the catcher/processor sector, mothership sector, inshore cooperatives (shoreside processor or stationary floating processor), and CDQ groups participating in the Bering Sea pollock fishery. Transferable Chinook salmon PSC allocations may be further sub-allocated to members of a sector or cooperative and may be exchanged between sectors, cooperatives, and their members. In addition, NMFS may allocate non-transferable Chinook salmon PSC allocations under certain circumstances to AFA catcher vessels and catcher/processors if they do not qualify for transferable allocations.

The representative for a qualifying sector or inshore cooperative may receive a transferable or non-transferrable allocation of Chinook salmon PSC from NMFS. The representative is allowed to administer any transfer of Chinook salmon PSC between any other group that received transferable Chinook salmon PSC. The transfers could occur between any qualifying sector, inshore cooperative, or CDQ group.

The requirements for receiving transferable or non-transferable Chinook salmon PSC, as well as the amount of Chinook salmon PSC vary between each sector, inshore cooperative, or CDQ group. For example, the catcher/processor sector may receive transferable Chinook salmon PSC based on each vessel's proportional amount of the 47,591 or 60,000 Chinook salmon PSC caps established in Amendment 91, if they form a single "sector-level entity." If all members of the catcher/processor sector also form an IPA that is approved by NMFS and meets other

qualifications in Amendment 91, the catcher/processor sector may receive an allocation of Chinook salmon PSC that is based on each vessel's proportional amount of 60,000 Chinook salmon. The proposed rule for Amendment 91 provides a detailed explanation of these requirements.

The inshore cooperatives and the CDQ groups already are recognized by NMFS as entities eligible to receive allocations on behalf of others. The inshore cooperatives are permitted annually by NMFS under § 679.4(l)(6) and must submit copies of their cooperative contracts to NMFS to be issued a permit. The representative for receiving Chinook salmon PSC for the inshore cooperatives would be the same person as named on the cooperative's annual application for pollock allocations. An inshore cooperative or a CDQ group must notify NMFS in writing if its representative for purposes of Chinook salmon PSC allocations is a different person. The CDQ groups are authorized under section 305(i)(1) of the Magnuson-Stevens Act to receive fishery allocations from NMFS. No additional authorizations are needed for the inshore cooperatives or CDQ groups to be eligible to receive transferable allocations of Chinook salmon PSC. The representative for a CDQ group would be its chief executive officer

PSC allocations are based on either a 60,000 Chinook salmon PSC limit if some or all of the pollock industry participates in an industry-developed IPA, or a "lower cap" of 47,591 Chinook salmon PSC limit if industry does not form any IPAs. This lower Chinook salmon PSC limit is also referred to as the annual threshold amount.

Performance Standard. Amendment 91 requires that each sector meet a "performance standard" by staying below the lower cap/annual threshold amount in all but two of any seven consecutive years. The performance standard for each sector is based on the historical catches of each vessel in each sector and applied as a proportion of the 47,591 Chinook salmon PSC limit. The Chinook bycatch cap and performance standard in Amendment 91 is intended to encourage pollock vessels to avoid Chinook salmon bycatch, even in years when Chinook salmon bycatch is low.

Low salmon bycatch may occur in periods when escapement of Chinook salmon into the Yukon River are also low, and thus it may actually be of greater value to conservation of Chinook salmon to further reduce bycatch in years when salmon bycatch is relatively low. At the same time, larger bycatch levels may be due to either greater run strength or greater co-location of salmon and pollock, so having an upper limit to bycatch is also a valuable means to promote Chinook salmon conservation.

Census of Salmon. To assess Chinook bycatch rates and to use as a basis for monitoring and enforcing the Chinook salmon PSC allocations, Amendment 91 included in eLandings a new PSC accounting census of all Chinook salmon for catcher/processors and for catcher vessels delivering to shoreside processors, stationary floating processors, and motherships. For catcher vessels, delivering shoreside and to motherships Chinook Salmon bycatch will be accounted for by a census at the point of delivery. For a mothership or catcher/processor the census of Chinook Salmon bycatch would occur by each haul.

Electronic Logbook (ELB). Also, Chinook salmon PSC information would be submitted by trawl gear catcher/processors to NMFS through a newly created ELB (see OMB 0648-0213) required by Amendment 91 that works with eLandings (see OMB 0648-0515). NMFS requires that the Chinook salmon PSC counts be submitted using an ELB so that the data are readily available to NMFS in a timely manner.

After implementing Amendment 91 and its performance standard, allocation of transferable Chinook salmon PSC allocations, and the formation of incentives developed in each IPA, the Council anticipates the likelihood of the following responses from participants in the pollock fishery:

- ◆ Substantial changes in sector or cooperative plans and agreements for distribution and use of Chinook salmon PSC.
- ◆ Creation of a market for trading Chinook salmon PSC between sectors and cooperatives and among their members and the joint trading of sub-allocations of Chinook salmon PSC and pollock by vessels.
- ◆ Changes in the location and timing of fishing effort for pollock and the bycatch of Chinook salmon PSC.
- ◆ Increase in cost of harvesting pollock; and
- ◆ Reduction of the annual bycatch of Chinook salmon.

## CURRENT INFORMATION TO EVALUATE AMENDMENT 91

### Incentive Plan Agreement (IPA)

A key component of Amendment 91 is the Incentive Plan Agreement (IPA) (see OMB Control Number 0648-0401). An IPA authorized by Amendment 91 is a private contract among vessel owners or CDQ groups that establishes incentives for participants to minimize bycatch at all levels of Chinook salmon abundance. The parties to an IPA must be owners of AFA-eligible catcher vessels, catcher/processors, motherships, or the representatives of CDQ groups. The representative, referred to as the IPA representative, of an AFA cooperative or a sector-level entity formed under Amendment 91 would sign an IPA on behalf of all vessel owners that are members of that cooperative or sector-level entity. NMFS requires participants to demonstrate to the Council through performance and annual reports that the vessel owners who are IPA signatories are accomplishing the Council's intent that Chinook salmon PSC be minimized in each year. Each IPA plan will describe the structure of the incentives or penalties for reducing Chinook salmon PSC at the level of a sector, cooperative, or individual vessel.

Participation in an IPA is voluntary; however, any vessel or CDQ group that chooses not to participate in an IPA would be subject to a restrictive opt-out cap that provides a maximum backstop cap of 28,496 Chinook salmon PSC. Each year, NMFS would calculate the backstop

cap based on the number of vessels that opt-out of an IPA. The backstop cap would not be allocated to opt-out participants but would be managed by NMFS as a cap. NMFS would not evaluate any vessel or CDQ group that fishes under the backstop cap.

### IPA Annual Report

Each IPA representative is required to submit a written IPA Annual Report to the Council for each year following the year in which the IPA is first effective. Each IPA Annual Report is intended to provide a qualitative evaluation and some quantitative information on the effectiveness of the IPAs.

Each IPA Annual Report must describe the following:

- ◆ The incentive measures in effect in the previous year.
- ◆ How the incentive measures affected individual vessels.
- ◆ Whether incentive measures were effective in achieving salmon savings beyond levels that would have been achieved in absence of the incentive measures.
- ◆ Any amendments to the terms of the IPA that were approved by NMFS since the last annual report, and the reasons that any amendments to the IPA plan were made; and
- ◆ The reasons that any amendments to the IPA plan were made.

The RIR for this action anticipates that the IPA plan and IPA Annual Reports implemented in Amendment 91 may provide the following industry observations and data on the effectiveness of the Amendment 91 management measures including:

- ◆ Summaries of temporal and spatial shifts in effort undertaken by the fleets;
- ◆ Comparisons of Chinook salmon bycatch rates achieved by vessels participating in an IPA versus any vessels not participating in an IPA;
- ◆ An overview of the use of new gear technologies;
- ◆ Assessment of the effect of Rolling Hot Spot (RHS) closures; or
- ◆ Description of research undertaken to reduce Chinook salmon PSC.

The IPA plan and IPA Annual Report, along with other existing data (e.g., catch accounting, observer), are important information sources for determining whether the Amendment 91 management measures are meeting the Council's purpose and need statement to understand the effects of Amendment 91 IPAs, including the performance standard. The information provided in the IPA Annual Report is essential to address one of the objectives of the Council's purpose

and need statement - for the Chinook Salmon EDR to evaluate the conclusions drawn by industry in that report.

### Limitations to IPA Plan and IPA Annual Report Data for Evaluating Amendment 91

NMFS does not require the data and discussion contained in each IPA plan or IPA annual report in a specific format. For example, the format of information in an IPA plan or report may vary by between years or by each group submitting a report. As a result, it is likely that data may not be sufficiently uniform and consistent to quantify the differences between two or more IPAs. Though some of the sector and cooperative data provided in the report may be quantitative, many questions are subjective and respondents may have an incentive to portray the components of Amendment 91 as effective. Individual identifiers (such as a NMFS vessel ID number) are not required for each transfer recorded in an IPA Annual Report, making it potentially difficult to merge transfer data with other NMFS information that includes a mutually exclusive identifier.

The market value of PSC allocations reflects its expected value to the pollock fishery. However, neither IPA Annual Reports nor AFA Cooperative Reports presently require that each transaction between a person buying and selling Chinook salmon PSC be recorded with a corresponding price or at the level of an individual owner of a vessel.

Also, Amendment 91 did not implement any requirements for reporting information in the IPA Annual Report to track how costs may vary by vessel, cooperative, or sector, under the new program. It would be helpful to have data on how the cost of AFA vessels operating in the Bering Sea pollock fishery would change under the various Chinook Salmon bycatch incentive plans. For example, information on the amount of fuel and the cost of fuel used to perform various Chinook salmon bycatch avoidance actions could assist in evaluating the effectiveness of Amendment 91.

In summary, The IPA Annual Report is potentially a helpful element to meet the Councils purpose and need statement, but does not provide information to independently verify its accuracy; other data must be relied upon to assess the fourth objective of the Council's purpose and need statement to "evaluate the conclusions drawn by industry in the IPA annual report."

### AFA Cooperative Report

While AFA cooperative reports do not represent formal NMFS data on groundfish harvests and PSC, they are one of the only sources of disaggregated catch data that are available to the public. In addition, the AFA cooperative reports are the only sources that can be used by analysts to report comprehensive data on individual AFA vessel harvests without violating NMFS and State of Alaska Department of Fish and Game rules data confidentiality rules.

At the beginning of each year, all AFA cooperatives must submit an AFA Cooperative Report to the Council by April 1 of the following year, detailing the activities of the cooperative for the previous year (50 CFR 679.61(f)). Each AFA Cooperative Report must include

- ◆ The cooperative's allocated catch of pollock and sideboard species;

- ◆ Actions taken by the cooperative for vessels that exceed their allowed catch and bycatch in pollock and all sideboard fisheries;
- ◆ Any sub-allocations of pollock and sideboard species made by the cooperative to individual vessels;
- ◆ Total weight of pollock landed outside the State of Alaska on a vessel-by-vessel basis; and
- ◆ The number of salmon taken by species and season, including Chinook salmon.

AFA Cooperative Reports may contain some information for evaluating Amendment 91, specifically, the Council purpose and need statement identifies the need to evaluate how Amendment 91 affects “where, when and how pollock fishing and salmon bycatch occur.” The AFA Cooperative Reports could provide helpful data for that element of the assessment. For example, AFA Cooperative Reports could provide some explanation for why fishing effort at the beginning of a pollock season or at some other point in a season may have been lower, higher, or similar to a previous season (and if Amendment 91 caused any of the changes).

#### Limitations of AFA Cooperative Reports for Evaluating Amendment 91

Because AFA Cooperative Reports are not required to itemize reasons or provide systematic and independently verifiable data for why pollock fishing may progress at a slower or more rapid rate in a season, it is likely that this data will be anecdotal and of limited use. In the event that IPAs are not formed in all sectors, the annual AFA Cooperative Reports could document the distribution of Chinook salmon PSC allocations among vessels in the cooperative. Currently, some transfers of pollock allocations are reported in AFA Cooperative Reports, but these pollock transfers are not reported in a uniform manner between each cooperative, making it difficult to use these data for some types of comparative analysis.

The limitations for pollock allocations and transfers in the AFA Cooperative Reports also apply to Chinook salmon allocations and transfers of PSC. Tracking Chinook salmon PSC transfers by owner or vessel is not required in an AFA Cooperative Reports. The AFA Cooperative Reports do not require submission of pollock or Chinook salmon PSC price data. Prices of pollock and Chinook salmon PSC allocations could be helpful in evaluating Amendment 91.

The market value of PSC allocations reflects its expected value to the pollock fishery. However, the AFA Cooperative Reports presently require that each transaction between a person buying and selling Chinook salmon PSC be recorded with a corresponding price or at the level of an individual owner of a vessel. Also, Amendment 91 did not implement any requirements for reporting information in the AFA Cooperative Reports to track how costs may vary by vessel, cooperative, or sector, under the new program.

AFA Cooperative Reports are not likely to provide sufficiently detailed data to make reliable comparisons of individual vessel Chinook salmon PSC rates relative to distance traveled from

port. Considering each of these previously detailed limitations, AFA Cooperative Reports are not likely to provide sufficiently detailed data to make reliable comparisons of Chinook salmon PSC rates for individual vessels or masters of vessels by time and location, or distance from port.

Thus, the AFA Cooperative Report would have specific limits as a stand-alone source of information for addressing all four components of the Council's purpose and need statement. Specifically the "evaluation of conclusion drawn by the industry in the IPA Annual Report" and the effectiveness of the IPA incentives in times of high and low levels of salmon bycatch" could not be evaluated with this data.

### Catch Accounting and Observer Data

The two primary sources of information used to account for catches in the Bering Sea pollock fishery are onboard observer information and industry-reported data on catch and processed product amounts. Both sources are electronically recorded and submitted to NMFS. Catch accounting and observer data linked with other data would be used to assist analysts in addressing the four components of the Council's purpose and need statement. It would help analysts understand the effects and impacts of the IPAs, evaluate the performance standard, evaluate when and how Chinook Salmon bycatch and pollock catches occur, and could assist in evaluating the conclusions drawn by industry in IPA annual reports.

In 2005, NMFS implemented an interagency electronic reporting system for the catch accounting system to reduce reporting redundancy with other agencies and consolidate fishery landings data. All vessels in the Bering Sea pollock fishery are required to report all groundfish landings, discard, and production through a web-based interface known as eLandings (OMB 0648-0515). There is also a stand-alone application available for the vessels fishing and processing catch at sea (the at-sea fleet). The at-sea fleet submits eLandings files via email.

The eLandings software provides managers with real-time access to individual vessel information, including individual pollock vessel catch and bycatch and unused amounts of allocated pollock and Chinook salmon PSC. Each industry report submitted via eLandings undergoes error checking by NMFS. Data are then stored in a database and are made available to management agencies. There are two basic eLandings report types used for catch estimation: production reports and landing reports.

Observer data are also used in the catch accounting system, and are collected using a stratified sample design where strata are defined by vessel size and gear fished. Within each stratum, a multi-stage sampling design is used to sample the species composition of the catch, length distribution of select species, and other catch components.

Observer data collected on vessels in the Bering Sea pollock fishery are transmitted electronically to a centralized database. The Alaska Fisheries Science Center (AFSC) quality control staff review the data, interview each observer returning from the fishery, and conduct several quality control processes for each dataset incorporated into the database. This database contains all data collected by observers at processing plants and onboard vessels, including marine mammal interaction data, groundfish and non-target catch, and salmon PSC (including

Chinook salmon PSC). The data tables are organized in the database to reflect where and how the data are collected. NMFS merges observer data with industry reports nightly; the merged data are available to fishery managers the following day.

For catcher/processors and catcher vessels delivering pollock to motherships, observer data combined with a census of each vessel's eLandings landing reports may be used to make comparisons of Chinook salmon PSC rates of vessels fishing in different areas during the same period of time or similar areas at different periods of time. These comparisons allow for an analysis of how PSC catch rates vary by vessel type and location. For catcher vessels that make several tows over a large area and that deliver to shoreside processors or SFPs at the end of a fishing trip, the actual location of Chinook salmon bycatch will be more difficult to estimate. For these deliveries, a full accounting of Chinook salmon PSC occurs at the plant, and in most cases covers multiple tows made within a trip.

Observer data combined with landing reports will allow analysts to assess trends in rates and variation of Chinook salmon PSC by vessel, pollock vessel operation type, week or season, and across cooperatives, sectors, or the entire AFA fleet. The combined observer and landing data will also allow analysts to make accurate and reliable comparisons of percentages of the TAC harvested at times of relatively high or low Chinook salmon encounter rates. Combining information on the variation in Chinook salmon PSC amounts and rates with other information on the structure, timing, and application of the incentives that apply to different groups at different times could provide insight into the effectiveness of Chinook salmon PSC measures.

#### Limitations to the Use of Catch Accounting and Observer Data for Evaluating Amendment 91

Catch accounting and observer data allow an assessment of trends in Chinook Salmon PSC by individual vessel, cooperative, and sector. However, observing changes in bycatch levels and rates has limitations for assessing whether the Amendment 91 incentives or the IPAs in particular actually caused a given change in bycatch rates. One difficulty is the variability in the abundance of Chinook salmon that appears in different years in different locations. For example, no currently available data exists to determine if high or low Chinook salmon encounter rates are independent from the spatial and temporal effort from the pollock fleet. In other words, the only information we have on the abundance of Chinook salmon on the pollock grounds is through observations of bycatch during directed fishing on pollock. Because a change in bycatch rates may be the result of either a decrease in salmon on the fishing grounds or a change in fishing behavior, the lack of fishery-independent Chinook salmon abundance estimates is a constraint to drawing conclusions about the cause and effect of industry and regulatory incentives for avoiding Chinook salmon bycatch.

For catcher vessels delivering shoreside or to an SFP, NMFS accounts for all catch of groundfish and Chinook salmon PSC at the time of landing. Because catcher vessels may trawl in several locations before delivering to an inshore processor, it is not possible to verify the amount of Chinook salmon catch by individual haul. Attempts to apportion Chinook salmon PSC to a specific haul using vessel monitoring system (VMS) or other data are subject to error. These data constraints may complicate efforts to attribute a change in Chinook salmon PSC to specific types of incentives. For example, the effectiveness of an IPA penalty for a catcher vessel that

exceeded a predetermined Chinook salmon PSC rate in a specific statistical area may be difficult to assess if catcher vessels are deploying trawl gear on consecutive hauls on either side of the boundary set out by the IPA penalty.

In contrast to the constraints for apportioning Chinook salmon PSC at the haul level for catcher vessels, catcher/processors will have continuous census accounting of Chinook Salmon PSC at sea. Each haul must be observed, and all Chinook salmon must be removed and accounted for at the flow scale. The observer records the haul start and end times and locations of each haul; the path may be tracked with VMS. The combination of location data with haul-by-haul catch accounting allows for Chinook salmon PSC to be accurately observed. Even for catcher/processors, however, catch accounting and observer data combined will not explain which bycatch incentives changed a specific amount of bycatch by time and location for each sector or cooperative or how the back stop cap of 47,591 changed a specific amount of bycatch by time and location. For example, a master of a catcher/processor (or catcher vessel) relocates to new fishing grounds to avoid Chinook salmon bycatch. Catch accounting data, even if it records a reduced catch of Chinook salmon PSC, would not, by itself, provide a reason for the transit. Various factors such as weather, time, and area encounters with Chinook Salmon bycatch, or market prices for pollock could easily have influenced the movements and fishing effort by a vessel, as well as that vessel's rate of Chinook salmon PSC.

#### NEW INFORMATION TO EVALUATE AMENDMENT 91

In December 2009, the Council recommended three new data collection requirements and revisions of two existing collections. Representatives of AFA catcher/processor and mothership sectors, inshore cooperatives, the inshore open access fishery, and CDQ groups would submit the Chinook Salmon EDR. The Council intended these requirements to provide additional data and to improve the quality of data to assess the effectiveness of Amendment 91.

To collect the data required by the Council, NMFS would require submission of each of the following new forms, which are collectively called the Chinook Salmon EDR. These forms would be in a fillable electronic format available on the NMFS Alaska Region website. The Reports/Surveys are:

- ◆ Chinook Salmon PSC Allocation Compensated Transfer Report (CTR).
- ◆ Vessel Fuel Survey; and
- ◆ Vessel Master Survey.

In addition to the Chinook Salmon EDR, NMFS would collect new information concerning vessel movements on the fishing grounds and more general data on pollock allocations and transfers through revisions to the IPA Annual Report. These new data are described below in the section titled: "New Information: Revisions to Existing Collections for Chinook Salmon EDR."

NMFS will use the new data to conduct descriptive analysis and quantitative or tabular comparisons of the annual, seasonal, and where possible, trip-level and haul-level changes in the pollock fleet under Amendment 91 by sector, cooperative, and vessel. Descriptions of these analyses are provided below. NMFS may also conduct statistical analysis of the effect of the

Amendment 91 IPAs and Chinook salmon PSC limits on trawl location choices, variation in the amount of Chinook salmon bycatch in the AFA trawl fishery, and the changes in the value of Chinook salmon PSC transactions if data are sufficiently accurate and complete.

In describing the data required for this program, the Council's motion recognized that the proposed data collection program would be limited in scope, and the quantity and quality of data submitted may only partially address the purpose and need statement for this action:

“The Council recognized the challenges associated with evaluating the effectiveness of the Chinook salmon bycatch incentive program with data collected on trip-based information and stated preferences for transiting and fishing practices aimed at avoiding the bycatch of Chinook salmon. Statistical analyses generated from this type of data is novel and involves some trial and error in designing collection methods, specifying variables to collect, and verifying accuracy of data. The draft forms in this analysis reflect that NMFS and the Council analysts have worked with industry to focus this collection to address the key impacts of Amendment 91. This collection is intended to provide additional information to status quo data, but may not provide an unequivocal answer to all of the Council's policy questions.”

#### Chinook Salmon PSC Allocation Compensated Transfer Report (CTR).

A detailed explanation of the variables and submission requirements for the CTR is included in Part A of this supporting statement. The purpose of the CTR is to account for Chinook salmon PSC transfers and the amount of money exchanged for transfers between AFA vessel owners and other entities transferring Chinook salmon PSC. NMFS would examine data reported for each transaction and tabulate the data to compare the amount of Chinook salmon PSC transferred in each transaction, number of transactions by vessel type (sector and AFA cooperative), and time intervals of the transfers in a season or year. Also, this data will allow for tabulation of the average and variation in price paid for transactions by vessel operation type, sector, and AFA cooperative. It will be possible to enumerate the number of potential traders of Chinook salmon PSC by date and season and those that did or did not participate in Chinook salmon PSC transfers. The timing and patterns of the transfer data in comparison with the specific IPAs in effect by date, sector, and AFA cooperative will help to assess the market for Chinook salmon PSC in each year, and how the IPAs may have impacted that market. If there is a significant volume of unbiased price data collected, it may be possible to address two elements of the Council's purpose and need statement, specifically the effects of certain incentives included in the IPAs and the performance standard.

The CTR data may help to verify and explain some of the industry-reported information in the contracts and agreements for allocating Chinook salmon PSC within and between AFA sectors and cooperatives included in IPA Annual Reports and AFA Cooperative Reports. This will assist in addressing the Council's objective to understand the overall effects and impacts of the Amendment 91, by permitting transactions reported in other industry-reported sources to be compared with and reconciled with the transactions reported in the CTR.

To help explain which incentives impose the largest costs on the pollock fleet, NMFS may combine and compare data on initial allocation of Chinook salmon PSC and intra-sector or intra-cooperative apportionments of PSC with

- ◆ Data on the incentives from IPA plans;
- ◆ Data on pollock transfers from IPA Annual Reports;
- ◆ Distribution and amounts of pollock and Chinook salmon PSC exchanged between vessels; and
- ◆ Estimated travel costs to avoid Chinook salmon PSC.

The information on the costs generated by some incentives should also help analysts describe the impacts of the Chinook salmon PSC cap, IPAs, and performance standard.

Persistent transfers of pollock to vessels with higher Chinook salmon PSC rates may potentially suggest that vessels with poor PSC performance have an incentive to lower their participation in the fishery. Knowing the number of transfers by each individual vessel and amount of Chinook salmon PSC transferred in years of low Chinook salmon encounters will also potentially provide information concerning whether the incentives change fishing behavior at aggregate bycatch levels below the hard cap. Additionally, observing transfers to vessels that are approaching their individual share of the Chinook salmon PSC cap (if those share amounts are available to NMFS) will provide information on if and how PSC transferability helps the fishery to obtain a higher yield of pollock.

If a sufficient number of high-quality data observations is reported and the quality of the price data is high, these data should assist in determining the distribution of Chinook salmon PSC allocations and transfers in-season and over multiple years. This data would assist in addressing the Council's objective to understand the effects and impacts of the Amendment 91 IPAs, the caps, and the performance standard. When combined with additional fields on entity affiliations and the bundling of transactions that may be accounted for in IPA Annual Reports, the CTR could assist in determining if prices exchanged represent independent and arms-length transactions or if the prices are merely accounting measures within affiliated entities.

Limited information in the CTR on the prices of bundled Chinook salmon PSC transactions may restrict the application of this data. For example, it is possible that masters of vessels or the representatives submitting the CTR will not use unpaired or independent monetary transactions to exchange Chinook salmon PSC. If the CTR respondents find it to be more efficient to bundle all or nearly all Chinook salmon transactions with pollock or other items of value, very few transactions or prices of Chinook salmon PSC transactions would be submitted. Also, if each independent Chinook salmon PSC transfer consists of both a monetary transfer component and a non-monetary transfer component, these observations may not be useful. The possibility exists that these reporting constraints would result in a sufficiently low number of reported transactions to significantly reduce the value of these data.

The Council motion acknowledges that the data collected from the Chinook salmon EDR may not produce definitive conclusions about the effectiveness of Amendment 91. NMFS may undertake more rigorous, quantitative analyses to examine the effectiveness of Amendment 91 if the collected CTR data include a sufficient number of compensated transfers. The utility of this data could be reduced for addressing the four elements of the Council's purpose and need statement if poor-quality transaction data are collected in this report.

### Vessel Fuel Survey

A detailed explanation of the variables and submission requirements for the Vessel Fuel Survey is included in Part A of this supporting statement. After each calendar year, each owner of an AFA-permitted vessel catching CDQ or non-CDQ pollock in the Bering Sea must submit to NMFS the Vessel Fuel Survey to report annual fuel use and cost. The owner must include identifying information on the certification page of the report, including a NMFS person ID. The Vessel Fuel Survey, submitted by June 1 of the following year, would include average annual hourly fuel burned while fishing and transiting, and annual fuel purchases in cost per gallon. Each of these values would be combined with other NMFS data (such as VMS and observer data reports) to estimate the costs of moving vessels to avoid salmon bycatch (including the fuel use during trawling, transit between trawls, and lost fishing time).

The RIR/IRFA for this action notes that the Council specifically requested data to allow for estimates of fuel used by a vessel when moving to areas with higher or lower areas of bycatch. NMFS has no other data on fuel consumption or average fuel price on a vessel-by-vessel basis for this fishery; therefore, this fuel data collection is likely to increase the quantity and quality of information available for understanding the effects of Chinook salmon PSC measures, including IPAs. Given the variety of circumstances in the fishery, these data should prove useful for understanding variability of fuel usage, which can aid in assessing fuel costs more generally in the fishery.

Data from the Vessel Fuel Survey would be used with other available data, including observer reports, VMS data, catch accounting data, IPA Reports, and AFA Cooperative Reports. Fuel use and fuel cost data may be combined with other data on distance traveled to avoid Chinook salmon bycatch. The costs borne by parties for moving to lower bycatch areas can be estimated with these data.

Analyses with fuel data may range from basis comparisons of estimated transit costs between the types of AFA operations to quantitative or statistical estimates of the fuel costs for Chinook salmon PSC avoidance from specific IPAs and Amendment 91.

It is possible that variation in vessel fuel costs among vessels could affect the response of different vessels to incentives or disincentives for avoiding Chinook salmon. For example, if it is less expensive for vessels with lower travel costs to travel farther to reach clean fishing grounds, they may be more likely to engage in this action, all other things being equal. NMFS may examine vessel response to Chinook salmon encounter rates to determine whether these operational differences are affected by variations in fuel-based travel costs between vessels,

which in turn may have implications for the effectiveness of certain types of IPAs. These findings could be important for addressing the Council's purpose and need statement.

### Vessel Master Survey

A detailed explanation of the variables and submission requirements for the Vessel Master Survey is included in Part A of this Supporting Statement. The Vessel Master Survey is a qualitative assessment survey that would pose a series of questions to elicit vessel master input on factors that impacted the vessel's performance during the year. The Vessel Master Survey would be conducted at the end of each fishing year. The owner of each AFA-permitted vessel would be responsible for submitting the Vessel Master Survey to NMFS on behalf of any person who is the master of an AFA-permitted vessel. The owner of the AFA-permitted vessel will be required to verify that each person listed on the Certification page for this form is a master of the AFA-permitted vessel.

The intent of the Vessel Master Survey is to identify the purpose for decision-making during the pollock season (fishing location choices and salmon bycatch reduction measures). The survey is designed to obtain master responses to on-the-fishing-grounds conditions to gain information concerning the effect of IPAs and Chinook salmon measures on decision-making. The nine questions in the Vessel Master Survey collect master assessments of the past year's fishing performance regarding the causes for bycatch avoidance, factors impacting Chinook salmon PSC rates, and the influence of the IPAs and AFA cooperatives on fishing and Chinook salmon bycatch avoidance behaviors. NMFS will use this information to guide interpretation of data on the change in fishing revenue obtained from existing NMFS data and data in the Vessel Fuel Survey on fuel cost and fuel consumption rates. These data will assist in evaluating the conclusions drawn by industry in the IPA annual reports that are required to describe the impact of IPAs on the behavior of each sector, cooperative or CDQ group. This evaluation is an objective identified in the Council's purpose and need statement for this action.

To initially process the data on the qualitative questions in the Vessel Master Survey, PSMFC would correct obvious spelling and grammar. The responses would be organized into similar answers and then would be aggregated. The range of responses for each question would be assessed. If possible, some descriptive statistics would be developed on each answer to a given question. The answers would be compared by sector, cooperative, vessel type, or other strata. The common and conflicting viewpoints will be highlighted and tabulated if possible. Where responses converge by a particular stratum of vessels or members of an AFA cooperative, these would then be compared with other quantitative information to see if the qualitative responses provide similar or different understanding of the quantitative data elsewhere in the Chinook Salmon EDR.

Though the Vessel Master Survey information would involve subjective responses, it would be useful to couple this survey with quantitative estimates of the effectiveness of the IPAs and other measures. Where possible, NMFS will examine the effect of the behavioral influences reported in this survey in greater detail and corroborate the responses with other data sources, such as observer data, VMS data, and catch accounting data. This utilization of self-reported

experiences and observable fishing behavior will ensure that analysts consider fishermen's experiences in formulating assessments of the Amendment 91 program, and that this data assists in addressing the Council's purpose and need statement.

## REVISIONS TO EXISTING COLLECTIONS FOR CHINOOK SALMON EDR

NMFS would revise existing requirements for the following reports and collections. These information sources provide some industry data for evaluating the effectiveness of the hard cap, performance standard, IPA, and incentives in Amendment 91 for the AFA catcher/processor and mothership sectors, inshore cooperatives, inshore open-access fishery, and CDQ groups.

- ◆ IPA Annual Report (OMB 0648-0401)
- ◆ AFA Cooperative Report (OMB 0648-0401)
- ◆ Catcher Vessel Trawl Gear Groundfish Daily Fishing Logbook (DFL) (OMB 0648-0213) [see Movement Information]
- ◆ Catcher/processor Trawl Gear Electronic Logbook (ELB) (OMB 0648-0213) [see Movement Information]
- ◆ eLandings Landing Report (OMB 0648-0515)

### Revisions to the IPA Annual Report

Revisions to the IPA Annual Report required by the Chinook salmon EDR Program are described in detail in the OMB collection 0648-0401. The IPA Annual Report would be revised to request the sub-allocation and transfers of Chinook salmon PSC and pollock to each participating vessel, IPA, AFA cooperative, or entity authorized to receive Chinook salmon allocations at the start of each fishing season, and the number of Chinook salmon and amount of pollock (mt) caught at the end of each fishing season.

Each in-season transfer of Chinook salmon and pollock would be requested by amount and date, regardless of whether the transfers were "compensated" transfers. Intermediate transfers among and between each AFA cooperative, IPA, or AFA sector would also be required in the IPA reports.

This revision would provide a single location for Chinook salmon and pollock data on initial allocation, transfer, catch, and residual allocations by season and year for each catcher vessel, catcher/processor, or mothership participating in an IPA.

These revisions to the annual IPA Annual Report would provide additional quantitative and qualitative information on Chinook salmon and pollock transfers for analysts to examine the effectiveness of Amendment 91. For example, the initial allocation and transfers of pollock and Chinook salmon may be tabulated by sector, AFA cooperative, or members of an IPA. This will assist in comparing how transfers may differ between various entities.

If the data are provided in a uniform and comparable manner, IPA data analysis could include descriptive statistics on the pollock and Chinook salmon PSC, allocations, and transfers between participants in each of the above groups. This information could be displayed with annual data and if useful, data may be pooled over multiple years. This would assist the analysts in comparing how transfers differ across years.

If data on transfers of Chinook salmon in IPA Annual Reports could be matched with information on individual compensated transfers of Chinook salmon from the CTR, some analysis of the number of transfers, average amounts transferred, and frequency of transactions may be displayed by vessel category, AFA cooperative, and AFA sector. To improve our ability to match information from two different sources, NMFS would revise the IPA Annual Report and the AFA Cooperative Report to provide the NMFS ID number of each entity involved in a transfer of pollock or Chinook salmon. The distribution of these transfers and information on the IPA measures may provide insight into which IPA measures are most effective.

By combining data from the IPA Report with other available data, NMFS would address the Council's purpose and need statement to improve our understanding of:

- ◆ The effects and impacts of the Amendment 91 IPAs, the caps, and the performance standard;
- ◆ The effectiveness of the IPA incentives and the effectiveness of the performance standard to reduce salmon bycatch; and
- ◆ How Amendment 91 affects where, when, and how pollock fishing and salmon bycatch occur.

NMFS does not require that data and discussion provided in each IPA Annual Report or AFA cooperative report to be submitted in a specific format. Therefore, because more than one IPA Annual Report would be received annually, performance information may not be uniformly reported. This could create consistency issues when comparing information between IPAs and could limit any statistical analysis with IPA data to simple descriptive statistics. Thus, there are analytical limits to the potential usefulness of this data for statistical analysis.

## Revisions to the AFA Cooperative Report

The request for pollock and salmon PSC information would be removed from the AFA Cooperative Report. The annual AFA cooperative report does not need to include any information about pollock or salmon PSC allocation or catch on a vessel-by-vessel basis if that information is provided in the IPA annual report.

## Revisions to Collect Change-in-Location Data

A detailed description of the revisions for including data on the purpose of movements on the fishing grounds is described for the catcher vessel trawl daily fishing logbook (DFL) and the catcher/processor trawl electronic logbook (ELB) (see OMB 0648-0213) and eLandings (see OMB 0648-0515). NMFS would require additional data to describe the reasons that a master of an AFA vessel changed locations in the pollock fishing grounds and specifically those location changes that may be related to Amendment 91. To accomplish this, NMFS would require each AFA master to indicate that a specific haul was followed by a subsequent move to relocate the vessel to a different fishing area primarily to avoid Chinook salmon bycatch whenever:

- ◆ The master of an AFA catcher vessel using trawl gear chooses to move the vessel to reduce Chinook salmon PSC, the master would indicate each change in location for any haul by checking a vessel movement box in the DFL.
- ◆ The master of an AFA catcher/processor using trawl gear chooses to move the vessel to reduce Chinook salmon PSC, the master would indicate each change in location for any haul by checking a vessel movement box in the ELB.
- ◆ The master of an AFA mothership receives notification that an AFA catcher vessel delivering pollock moved the vessel to reduce Chinook salmon PSC, the master would indicate each change in location for any haul by checking a vessel movement box in the eLandings mothership landing report.

NMFS would use the movement information to compare salmon PSC avoidance between individual vessels, and by various vessel characteristics. Chinook salmon PSC rates could be merged with this information by vessel to assess how rates change prior to and following a change in fishing location. Movement data combined with other management data (such as the date a season is opened and closed) could be helpful in assessing a vessel's willingness to leave fishing grounds to avoid Chinook salmon PSC. That would help address the Council's purpose and need objective to "evaluate how Amendment 91 affects where, when, and how pollock fishing and salmon bycatch occur." These industry-reported data may be helpful in evaluating assumptions in more sophisticated statistical models that combine catch by location, VMS, and other data to explain the reasons for a specific set of moves and fishing choices. That information could, in turn, assist with the Council's purpose and need objective to "study and evaluate conclusions drawn by industry in the IPA annual reports."

Movement data helps us understand how the incentives from the IPA may drive the behavior of individuals and groups. The master's decision to relocate vessels from areas with high Chinook

salmon PSC to areas with lower PSC rates may reflect differences in the incentives to the master created by an IPA. Alternatively, upon examination, these data and other information provided by cooperatives may reflect the amount of central coordination of fishing by area and time a cooperative applies to each member of the cooperative. By combining movement data with IPA report data on the effectiveness of incentive measures, analysts may compare the relationship between movement events and response to IPA measures.

While these data are subjective, the data are intended to provide NMFS with a better understanding of each vessel master's perception of factors that impact fishing decisions, and are likely to inform the Council objective for analyzing the effectiveness of IPAs and Amendment 91.

ANNUAL  
**AMENDMENT 91**  
**AFA POLLOCK FISHERY**  
**VESSEL FUEL SURVEY**  
CALENDAR YEAR 2011

This form can be downloaded from  
<http://www.fakr.noaa.gov>



**PUBLIC REPORTING BURDEN STATEMENT**

Public reporting burden for this collection of information is estimated to average 4 hours per response, including time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden to Assistant Regional Administrator, Sustainable Fisheries Division, NOAA National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668.

**ADDITIONAL INFORMATION**

Before completing this form, please note the following: 1) Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number; 2) This information is mandatory and is required to manage commercial fishing efforts for groundfish under section 402(a) of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*) as amended by the Magnuson-Stevens Fishery Management and Conservation Reauthorization Act of 2006; 3) Responses to this information request are confidential under section 402(b) of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*). They are also confidential under NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics.

## **ANNUAL AFA POLLOCK VESSEL FUEL SURVEY**

### Introduction

An owner or leaseholder of an AFA permitted vessel must submit a Vessel Fuel Survey (VFS) for each vessel used to harvest pollock in the Bering Sea in the year listed on this form. It is the responsibility of the vessel owner/leaseholder to submit all completed surveys to NMFS. This survey is intended to provide information to fishery managers to evaluate the effectiveness of Chinook salmon bycatch management measures. The survey collects information on the quantity and cost of all fuel consumed by each AFA vessel harvesting or processing pollock during the calendar year.

Please contact Brian Garber-Yonts at the NMFS Alaska Fisheries Science Center with any questions regarding this survey. He can be contacted at (206) 526-6301 or [brian.garber-yonts@noaa.gov](mailto:brian.garber-yonts@noaa.gov).

## PART 1: CERTIFICATION PAGE

This is a **required form**. Provide all information requested below.

### AFA Vessel Owner or Vessel Leaseholder Information

Record the name and NMFS ID for the AFA Vessel Owner/Leaseholder here. NMFS ID for all AFA participating entities can be accessed at <http://XXX>

AFA Vessel Owner/Leaseholder Name

Vessel Owner/Leaseholder NMFS ID

Select one of the following statements and provide any requested information. Check one box below.

1. You were the AFA permit holder or leaseholder for one or more AFA vessels that harvested or processed pollock during the calendar year 20XX.

Complete and submit entire form for the 20XX calendar year.

2. You were the AFA permit holder for an AFA vessel that did not harvest or process AFA pollock during the calendar year 20XX.

Complete and submit the Certification Page only.

Read the following statement, and sign and date the box below:

I certify under penalty of perjury that I have reviewed all the information in this report and that it is true and complete to the best of my knowledge.

Signature

Date signed

## **Part 2: Vessel Fuel Consumption and Cost**

In Table 2, for each vessel operated by you in the AFA pollock fishery during calendar year 20XX, report the following information:

1. AFA Vessel Permit Number
2. Average rate of fuel consumption. For each vessel, report the average rate of fuel consumption under average operating conditions during the calendar year. Report the fuel consumption rate separately for operating while towing and operating while transiting (traveling between points on fishing grounds, but not towing). Report fuel consumption rates for the pollock fishery only. For motherships, report the rate of fuel consumption for transiting only. If you do not have equipment on the vessel for actively monitoring the rate of fuel usage, provide the most accurate estimate you can based on the best information you have available.
3. Annual Fuel Loaded and Total Cost. For each vessel, report the total amount of fuel loaded to the vessel, in gallons, during the calendar year and total cost of fuel for this vessel during the calendar year. Include all fuel that was loaded and invoiced, even if not completely used or paid for during the calendar year. Do not include lubrication and fluids costs other than fuel.



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**AMENDMENT 91**  
**AFA POLLOCK FISHERY**  
CHINOOK PSC ALLOCATION IN-SEASON  
COMPENSATED TRANSFER REPORT  
CALENDAR YEAR 2011

This form can be downloaded from  
<http://www.fakr.noaa.gov>



**PUBLIC REPORTING BURDEN STATEMENT**

Public reporting burden for this collection of information is estimated to average 40 hours per response, including time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden to Assistant Regional Administrator, Sustainable Fisheries Division, NOAA National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668.

**ADDITIONAL INFORMATION**

Before completing this form, please note the following: 1) Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number; 2) This information is mandatory and is required to manage commercial fishing efforts for groundfish under section 402(a) of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*) as amended by the Magnuson-Stevens Fishery Management and Conservation Reauthorization Act of 2006; 3) Responses to this information request are confidential under section 402(b) of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*). They are also confidential under NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics.

# ANNUAL CHINOOK PSC COMPENSATED TRANSFER REPORT

## Introduction

An owner or leaseholder of an AFA permitted vessel and the representative of any entity that received an allocation of Chinook PSC from NMFS must submit a Compensated Transfer Report (CTR) Part 1 each year, for the previous calendar year. In addition, any person who paid or received money for a transfer of Chinook salmon PSC allocation after January 20 must submit a completed CTR (Part 1 and Part 2) for the previous calendar year. Each year, the completed CTR must be submitted on or before 1700 hours A.l.t. on June 1, The CTR must be submitted to the NMFS Data Collection Agent (DCA), Pacific States Marine Fisheries Commission, at the address below:

Pacific States Marine Fisheries Commission  
NMFS Economic Data Reports  
205 SE Spokane, Suite 100  
Portland, OR 97202  
FAX No. 503-595-3450  
EMAIL:CTR@psmfc.org  
For more information, or if you have questions,  
please call toll free 1-877-741-8913

**PART 1: CERTIFICATION PAGE – 1 of 2**

This is a **required form**. Provide all information requested below.

<b>Entity Information</b>		
Check the appropriate entity type and record the name and NMFS ID for the entity.		
Reporting Entity Type (Check One)	<input type="checkbox"/> AFA Vessel	<input type="checkbox"/> IPA
	<input type="checkbox"/> Inshore Cooperative	<input type="checkbox"/> Sector-level Entity
	<input type="checkbox"/> CDQ Group	<input type="checkbox"/> Other: describe _____
Name of Reporting Entity		AFA Permit Number or Entity NMFS ID

<b>Person Completing this Report</b>	
<b>Check one:</b>	
<input type="checkbox"/> Representative for an IPA, Inshore Cooperative, Sector-Level Entity, or CDQ Group (record the name and NMFS ID of the individual registered with NMFS as the representative)	
<input type="checkbox"/> Vessel Owner/Leaseholder (Provide the name, title, and contact information for the individual submitting the form)	
<input type="checkbox"/> Other Designated Representative (complete all information below)	
Name	Title/NMFS ID
Business Number Telephone	Business FAX Number
Business E-mail address (if available)	

## PART 1: CERTIFICATION PAGE – 2 of 2

Provide any requested information. Check one box below.

1. You are the owner or leaseholder of an AFA permitted vessel or are a person or representative of a person that received an allocation of Chinook PSC from NMFS, and must submit a Compensated Transfer Report (CTR) Part 1 each year, for the previous calendar year.

**Complete and submit CTR Part 1 form for the 20XX calendar year.**

2. You are the owner or leaseholder of an AFA permitted vessel or are a person or representative of a person who paid or received money for a transfer of Chinook salmon PSC allocation after January 20 must submit a completed CTR (Part 1 and Part 2) for the previous calendar year.

**Complete and submit CTR Part 1 and Part 2 form for the 20XX calendar year**

**Read the following statement, and sign and date the box below:**

**I certify under penalty of perjury that I have reviewed all the information in this report and that it is true and complete to the best of my knowledge.**

Signature

Date signed

## PART 2: CHINOOK SALMON PSC ALLOCATION TRANSFER INFORMATION

In Table 1, report each transfer of Chinook salmon Prohibited Species Catch (PSC) allocation to or from another person during the calendar year 2009 for which you paid or received monetary compensation. Compensated transfers are those transfers that include monetary compensation for a part of or the whole value of the transferred Chinook PSC allocation:

**NMFS ID:** identify the other person who paid or received money for each transfer. If the other person was a vessel owner/leaseholder, record the AFA Vessel Permit Number. For other persons, record the NMFS ID. If an AFA Vessel Permit or NMFS ID of entity is unavailable, record the entity name.

**Direction of Transfer:** using the checkbox, indicate if the Chinook salmon were transferred (sold) to another person by you, or transferred (bought) from another person by you.

**Date of transfer:** record the date Chinook salmon were transferred to the receiving person. This may not be the date of final settlement on terms of compensation.

**Transfer Type:** Identify the type(s) of association between you and the other entity in the transfer. Use the following codes to identify the type(s) of association (check all that apply):

Association Type	Association between transfer entities description
1	Transfer is between 2 persons which are affiliated as under AFA as defined in 50 CFR part 679.2
2	Transfer is between 2 persons in the same pollock cooperative but not affiliated under AFA
3	Transfer is between 2 persons in the same AFA sector but not affiliated under AFA or in the same pollock cooperative (inshore only)
4	Transfer is between 2 persons not part of the same AFA sector or pollock cooperative, and not affiliated under AFA

**Entity Type:** indicate the entity type of the other party in the Chinook salmon PSC allocation transfer. Check one: Vessel Owner/Leaseholder, IPA, Inshore Cooperative, Sector-level Entity, CDQ Group, or other entity type.

### Chinook Salmon PSC Allocation Transferred and Compensation

**Number of Chinook salmon transferred:** for each transfer, record the number of Chinook salmon transferred.

**Payment amount:** record the total amount of money in U.S. dollars for each transfer. Report all payment as of the date of submission of this form. This includes all money paid for the transfer regardless of whether other assets, such as pollock quota, are included in the transaction. Do not report any compensation made in any form other than monetary compensation.

**Other assets included:** If the transaction included assets other than Chinook salmon and monetary compensation, indicate this using the checkbox. Other assets could include pollock quota, goods, or services of value. Do not check the box if additional assets included only assets of nominal or no value.



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**AMENDMENT 91**  
**AFA POLLOCK FISHERY**  
**VESSEL MASTER SURVEY**  
CALENDAR YEAR 2011

This form can be downloaded from  
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**PUBLIC REPORTING BURDEN STATEMENT**

Public reporting burden for this collection of information is estimated to average 4 hours per response, including time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden to Assistant Regional Administrator, Sustainable Fisheries Division, NOAA National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668.

**ADDITIONAL INFORMATION**

Before completing this form, please note the following: 1) Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number; 2) This information is mandatory and is required to manage commercial fishing efforts for groundfish under section 402(a) of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*) as amended by the Magnuson-Stevens Fishery Management and Conservation Reauthorization Act of 2006; 3) Responses to this information request are confidential under section 402(b) of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*). They are also confidential under NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics.

# **ANNUAL AFA POLLOCK VESSEL MASTER SURVEY**

## Introduction

An owner or leaseholder of an AFA permitted vessel must submit a Vessel Master Survey completed by each master of each vessel used to harvest pollock in the Bering Sea in the previous year. It is the responsibility of the vessel owner/leaseholder to submit all completed surveys to NMFS and fill out Part 1A for each MS. Part 1A must list each Vessel Master who participated in the BS pollock fishery. Each Vessel Master Survey submitted by the owner or leaseholder of an AFA permitted vessel must have Part 1B and Part 2 filled out by the Vessel Master.

This survey is intended to provide information to fishery managers to evaluate the effectiveness of Chinook salmon bycatch management measures. The questions in this survey ask about different aspects of your decision-making during the pollock season, including your incentives, fishing location choices, and salmon bycatch reduction measures.

Please contact Brian Garber-Yonts at the NMFS Alaska Fisheries Science Center with any questions regarding this survey. He can be contacted at (206) 526-6301 or [brian.garber-yonts@noaa.gov](mailto:brian.garber-yonts@noaa.gov).

**PART 1A: CERTIFICATION PAGE (OWNER AFA PERMITTED VESSEL)**

Complete and submit with each vessel master survey for an AFA Permitted Vessel. Provide all information requested below.

Vessel Owner /Leaseholder Name	Vessel Name
	AFA Permit Number

Vessel Master Name	CFEC Gear Operator Permit Number
Vessel Master Name	CFEC Gear Operator Permit Number
Vessel Master Name	CFEC Gear Operator Permit Number
Vessel Master Name	CFEC Gear Operator Permit Number

**Read the following statement, and sign and date the box below:**

<b>I certify under penalty of perjury that I have reviewed all the information in this report and that it is true and complete to the best of my knowledge.</b>	
Signature (owner or leaseholder of an AFA permitted vessel)	Date signed

**PART 1B: CERTIFICATION PAGE (VESSEL MASTER)**

This is to be completed by the Vessel Master of each AFA vessel. Provide all information requested below.

Vessel Owner /Leaseholder Name	Vessel Name
	AFA Permit Number

Vessel Master Name	CFEC Gear Operator Permit Number
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**Read the following statement, and sign and date the box below:**

**I certify under penalty of perjury that I have reviewed all the information in this report and that it is true and complete to the best of my knowledge.**

Signature (Vessel Master)	Date signed
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## **Part 2: Pollock Fishing and Salmon Bycatch Avoidance**

Please consider the following questions carefully and provide the most complete answers you can. Where applicable, please note any differences between the A and B pollock seasons. Please attach extra sheets if more space is needed to complete your answers.

1. If the vessel participated in an Incentive Plan Agreement (IPA), did the IPA affect your fishing strategy?  Yes  No

If yes, please describe and discuss what incentives had the largest impact on your strategy.

2. Did the amount and/or cost of Chinook PSC allocation available to the vessel lead you to make changes in pollock fishing operations?  Yes  No

If yes, please describe.

3. How would you compare the Chinook salmon bycatch and pollock conditions during the A and B seasons this year relative to the last two years? Please describe any unique aspects of the season.

4. Did Chinook salmon bycatch conditions cause you to delay the start of your pollock fishing or otherwise alter the timing of your pollock fishing for some period during the past A and/or B season?     Yes    No

If yes, please describe the Chinook salmon bycatch condition, when it occurred, and any change in your pollock fishing as a result.

5. In the past year, did you end a trip and return to port early because of Chinook salmon bycatch conditions? Please indicate the number of trips that this occurred in each season (use a check to mark the appropriate answer for each season).

Number of trips suspended due to bycatch	Season	
	A	B
0	<input type="radio"/>	<input type="radio"/>
1-3	<input type="radio"/>	<input type="radio"/>
4-10	<input type="radio"/>	<input type="radio"/>
More than 10	<input type="radio"/>	<input type="radio"/>

6. Please describe how any area closures or restrictions for the purpose of reducing Chinook salmon bycatch affected where and how you fished.

7. Please describe how any regulatory or other area closures or restrictions for a purpose other than reducing Chinook salmon bycatch affected where and how you fished.

8. Compared to a typical year, did weather or sea ice conditions have more, less, or about the same impact on fishing as in a typical year? Please describe especially if there were particularly uncommon conditions at any point this year. If these conditions had an impact on your ability to avoid Chinook salmon bycatch, please describe.

9. Were there exceptional factors that affected your pollock fishing this year? For example, were there unusual market or stock conditions, unusual pollock fishing conditions, or maintenance problems? Please describe.

10. Separate from an Incentive Plan Agreement, were there other incentives for you to reduce Chinook salmon bycatch?  Yes  No

If yes, please describe.

11. Did actual or potential bycatch of species other than Chinook salmon cause you to change your harvesting decisions during the pollock season?  Yes  No

If yes, please describe.

**SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS 16 U.S.C. 1853**

**95-354, 99-659, 101-627, 104-297**

(a) **REQUIRED PROVISIONS.**—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify—

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

**109-479**

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, charter fishing, and fish processing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, economic information necessary to meet the requirements of this Act, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

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(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for—

(A) participants in the fisheries and fishing communities affected by the plan or amendment;

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants; and

(C) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery;

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

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(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

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(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery, including its economic impact, and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors;

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(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector, any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery and;

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(15) establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

**97-453, 99-659, 101-627, 102-251, 104-297**

(b) DISCRETIONARY PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone [or special areas,]\* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]\*;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

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(2)(A) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(B) designate such zones in areas where deep sea corals are identified under section 408, to protect deep sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep sea corals, after considering long-term sustainable uses of fishery resources in such areas; and

(C) with respect to any closure of an area under this Act that prohibits all fishing, ensure that such closure—

- (i) is based on the best scientific information available;
- (ii) includes criteria to assess the conservation benefit of the closed area;
- (iii) establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and
- (iv) is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: users of the area, overall fishing activity, fishery science, and fishery and marine conservation;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the—

- (A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);
- (B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and
- (C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

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(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery and take into account the different circumstances affecting fisheries from different States and ports, including distances to fishing grounds and proximity to time and area closures;

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(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

- (A) present participation in the fishery;
- (B) historical fishing practices in, and dependence on, the fishery;
- (C) the economics of the fishery;
- (D) the capability of fishing vessels used in the fishery to engage in other fisheries;
- (E) the cultural and social framework relevant to the fishery and any affected fishing communities;
- (F) the fair and equitable distribution of access privileges in the fishery; and
- (G) any other relevant considerations;

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(7) require fish processors who first receive fish that are subject to the plan to submit data which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research;

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(12) include management measures in the plan to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations; and

(14)[sic]<sup>15</sup> prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

**97-453, 104-297**

(c) PROPOSED REGULATIONS.—Proposed regulations which the Council deems necessary or appropriate for the purposes of—

(1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 304; and

(2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 304.

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<sup>15</sup> So in original.

**P.L. 109-479, sec. 104(b), MSA § 303 note**

**16 U.S.C. 1853 note**

**EFFECTIVE DATES; APPLICATION TO CERTAIN SPECIES.**—The amendment made by subsection (a)(10)<sup>16</sup>—

(1) shall, unless otherwise provided for under an international agreement in which the United States participates, take effect—

(A) in fishing year 2010 for fisheries determined by the Secretary to be subject to overfishing; and

(B) in fishing year 2011 for all other fisheries; and

(2) shall not apply to a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species; and

(3) shall not limit or otherwise affect the requirements of section 301(a)(1) or 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a)(1) or 1854(e), respectively).

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**SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.**

**16 U.S.C. 1853a**

(a) **IN GENERAL.**—After the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, a Council may submit, and the Secretary may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of this section.

(b) **NO CREATION OF RIGHT, TITLE, OR INTEREST.**—Limited access privilege, quota share, or other limited access system authorization established, implemented, or managed under this Act—

(1) shall be considered a permit for the purposes of sections 307, 308, and 309;

(2) may be revoked, limited, or modified at any time in accordance with this Act, including revocation if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;

(3) shall not confer any right of compensation to the holder of such limited access privilege, quota share, or other such limited access system authorization if it is revoked, limited, or modified;

(4) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and

(5) shall be considered a grant of permission to the holder of the limited access privilege or quota share to engage in activities permitted by such limited access privilege or quota share.

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<sup>16</sup> Section 104(a)(10) of P.L. 109-479 added section 303(a)(15).

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

(1) IN GENERAL.—Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—

(A) if established in a fishery that is overfished or subject to a rebuilding plan, assist in its rebuilding;

(B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity;

(C) promote—

(i) fishing safety;

(ii) fishery conservation and management; and

(iii) social and economic benefits;

(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish, including any person that acquires a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege;

(E) require that all fish harvested under a limited access privilege program be processed on vessels of the United States or on United States soil (including any territory of the United States);

(F) specify the goals of the program;

(G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years);

(H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems;

(I) include an appeals process for administrative review of the Secretary's decisions regarding initial allocation of limited access privileges;

(J) provide for the establishment by the Secretary, in consultation with appropriate Federal agencies, for an information collection and review process to provide any additional information needed to determine whether any illegal acts of anti-competition, anti-trust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges under the program; and

(K) provide for the revocation by the Secretary of limited access privileges held by any person found to have violated the antitrust laws of the United States.

(2) WAIVER.—The Secretary may waive the requirement of paragraph (1)(E) if the Secretary determines that—

- (A) the fishery has historically processed the fish outside of the United States; and
- (B) the United States has a seafood safety equivalency agreement with the country where processing will occur.

(3) FISHING COMMUNITIES.—

(A) IN GENERAL.—

(i) ELIGIBILITY.—To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—

- (I) be located within the management area of the relevant Council;
- (II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and
- (IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(ii) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section for any person who fails to comply with the requirements of the community sustainability plan. Any limited access privileges denied or revoked under this section may be reallocated to other eligible members of the fishing community.

- (B) PARTICIPATION CRITERIA.—In developing participation criteria for eligible communities under this paragraph, a Council shall consider—
- (i) traditional fishing or processing practices in, and dependence on, the fishery;
  - (ii) the cultural and social framework relevant to the fishery;
  - (iii) economic barriers to access to fishery;
  - (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
  - (v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and
  - (vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

(4) REGIONAL FISHERY ASSOCIATIONS.—

(A) IN GENERAL.—To be eligible to participate in a limited access privilege program to harvest fish, a regional fishery association shall—

- (i) be located within the management area of the relevant Council;
- (ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (iii) be a voluntary association with established by-laws and operating procedures;
- (iv) consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;
- (v) not be eligible to receive an initial allocation of a limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that is [sic]<sup>17</sup> members contribute; and
- (vi) develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(B) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section to any person participating in a regional fishery association who fails to comply with the requirements of the regional fishery association plan.

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<sup>17</sup> So in original.

(C) PARTICIPATION CRITERIA.—In developing participation criteria for eligible regional fishery associations under this paragraph, a Council shall consider—

- (i) traditional fishing or processing practices in, and dependence on, the fishery;
- (ii) the cultural and social framework relevant to the fishery;
- (iii) economic barriers to access to fishery;
- (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
- (v) the administrative and fiduciary soundness of the association; and
- (vi) the expected effectiveness, operational transparency, and equitability of the fishery association plan.

(5) ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall—

(A) establish procedures to ensure fair and equitable initial allocations, including consideration of—

- (i) current and historical harvests;
- (ii) employment in the harvesting and processing sectors;
- (iii) investments in, and dependence upon, the fishery; and
- (iv) the current and historical participation of fishing communities;

(B) consider the basic cultural and social framework of the fishery, especially through—

- (i) the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements; and
- (ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery;

(C) include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges, which may include set-asides or allocations of harvesting privileges, or economic assistance in the purchase of limited access privileges;

(D) ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—

- (i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and
- (ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges; and

(E) authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under the system to persons who substantially participate in the fishery, including in a specific sector of such fishery, as specified by the Council.

(6) PROGRAM INITIATION.—

(A) LIMITATION.—Except as provided in subparagraph (D), a Council may initiate a fishery management plan or amendment to establish a limited access privilege program to harvest fish on its own initiative or if the Secretary has certified an appropriate petition.

(B) PETITION.—A group of fishermen constituting more than 50 percent of the permit holders, or holding more than 50 percent of the allocation, in the fishery for which a limited access privilege program to harvest fish is sought, may submit a petition to the Secretary requesting that the relevant Council or Councils with authority over the fishery be authorized to initiate the development of the program. Any such petition shall clearly state the fishery to which the limited access privilege program would apply. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the limited access program shall be eligible to sign a petition for such a program and shall serve as the basis for determining the percentage described in the first sentence of this subparagraph.

(C) CERTIFICATION BY SECRETARY.—Upon the receipt of any such petition, the Secretary shall review all of the signatures on the petition and, if the Secretary determines that the signatures on the petition represent more than 50 percent of the permit holders, or holders of more than 50 percent of the allocation in the fishery, as described by subparagraph (B), the Secretary shall certify the petition to the appropriate Council or Councils.

(D) NEW ENGLAND AND GULF REFERENDUM.—

(i) Except as provided in clause (iii) for the Gulf of Mexico commercial red snapper fishery, the New England and Gulf Councils may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than 2/3 of those voting in a referendum among eligible permit holders, or other persons described in clause (v), with respect to the New England Council, and by a majority of those voting in the referendum among eligible permit holders with respect to the Gulf Council. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the individual fishing quota program shall be eligible to vote in such a referendum. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.

(ii) The Secretary shall conduct a referendum under this subparagraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed individual fishing quota program. Within 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary shall publish guidelines and procedures to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.

(iii) The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of Mexico commercial red snapper fishery.

(iv) Chapter 35 of title 44, United States Code, (commonly known as the Paperwork Reduction Act) does not apply to the referenda conducted under this subparagraph.

(v) The Secretary shall promulgate criteria for determining whether additional fishery participants are eligible to vote in the New England referendum described in clause (i) in order to ensure that crew members who derive a significant percentage of their total income from the fishery under the proposed program are eligible to vote in the referendum.

(vi) In this subparagraph, the term ‘individual fishing quota’ does not include a sector allocation.

(7) TRANSFERABILITY.—In establishing a limited access privilege program, a Council shall—

(A) establish a policy and criteria for the transferability of limited access privileges (through sale or lease), that is consistent with the policies adopted by the Council for the fishery under paragraph (5); and

(B) establish, in coordination with the Secretary, a process for monitoring of transfers (including sales and leases) of limited access privileges.

(8) PREPARATION AND IMPLEMENTATION OF SECRETARIAL PLANS.—This subsection also applies to a plan prepared and implemented by the Secretary under section 304(c) or 304(g).

(9) ANTITRUST SAVINGS CLAUSE.—Nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term ‘antitrust laws’ has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

**16 U.S.C. 1853a**  
**MSA § 303A**

(d) AUCTION AND OTHER PROGRAMS.—In establishing a limited access privilege program, a Council shall consider, and may provide, if appropriate, an auction system or other program to collect royalties for the initial, or any subsequent, distribution of allocations in a limited access privilege program if—

(1) the system or program is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of this section; and

(2) revenues generated through such a royalty program are deposited in the Limited Access System Administration Fund established by section 305(h)(5)(B) and available subject to annual appropriations.

(e) COST RECOVERY.—In establishing a limited access privilege program, a Council shall—

(1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and

(2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.

(f) CHARACTERISTICS.—A limited access privilege established after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 is a permit issued for a period of not more than 10 years that—

(1) will be renewed before the end of that period, unless it has been revoked, limited, or modified as provided in this subsection;

(2) will be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have failed to comply with any term of the plan identified in the plan as cause for revocation, limitation, or modification of a permit, which may include conservation requirements established under the plan;

(3) may be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have committed an act prohibited by section 307 of this Act; and

(4) may be acquired, or reacquired, by participants in the program under a mechanism established by the Council if it has been revoked, limited, or modified under paragraph (2) or (3).

(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—

(1) IN GENERAL.—A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 53706(a)(7) of title 46, United States Code, to issue obligations that aid in financing—

(A) the purchase of limited access privileges in that fishery by fishermen who fish from small vessels; and

(B) the first-time purchase of limited access privileges in that fishery by entry level fishermen.

(2) ELIGIBILITY CRITERIA.—A Council making a submission under paragraph (1) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under subparagraphs (A) and (B) of paragraph (1) and the portion of funds to be allocated for guarantees under each subparagraph.

(h) EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—Nothing in this Act, or the amendments made by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, shall be construed to require a reallocation or a reevaluation of individual quota shares, processor quota shares, cooperative programs, or other quota programs, including sector allocation in effect before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

(i) TRANSITION RULES.—

(1) IN GENERAL.—The requirements of this section shall not apply to any quota program, including any individual quota program, cooperative program, or sector allocation for which a Council has taken final action or which has been submitted by a Council to the Secretary, or approved by the Secretary, within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, except that—

(A) the requirements of section 303(d) of this Act in effect on the day before the date of enactment of that Act shall apply to any such program;

(B) the program shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation; and

(C) nothing in this subsection precludes a Council from incorporating criteria contained in this section into any such plans.

(2) PACIFIC GROUND FISH PROPOSALS.—The requirements of this section, other than subparagraphs (A) and (B) of subsection (c)(1) and subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, shall not apply to any proposal authorized under section 302(f) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 that is submitted within the timeframe prescribed by that section.

**16 U.S.C. 1853a note, 1854**  
**MSA §§ 303A note, 304**

**P.L. 109-479, sec. 106(e), MSA § 303A note**

**16 U.S.C. 1853a note**

**APPLICATION WITH AMERICAN FISHERIES ACT.**—Nothing in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), as added by subsection (a) [P.L. 109-479], shall be construed to modify or supersede any provision of the American Fisheries Act (46 U.S.C. 12102 note; 16 U.S.C. 1851 note; et alia).

**P.L. 104-297, sec. 108(i), MSA § 303 note**

**EXISTING QUOTA PLANS.**—Nothing in this Act [P.L.104-297] or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secretary before January 4, 1995.

## **SEC. 304. ACTION BY THE SECRETARY**

**16 U.S.C. 1854**

### **104-297**

(a) REVIEW OF PLANS.—

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(2) In undertaking the review required under paragraph (1), the Secretary shall—

(A) take into account the information, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—

(A) the applicable law with which the plan or amendment is inconsistent;

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

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**SEC. 402. INFORMATION COLLECTION**

16 U.S.C. 1881a

109-479

(a) COLLECTION PROGRAMS.—

(1) COUNCIL REQUESTS.—If a Council determines that additional information would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for an information collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this paragraph regarding a Council request shall be made within a reasonable period of time after receipt of that request.

(2) SECRETARIAL INITIATION.—If the Secretary determines that additional information is necessary for developing, implementing, revising, or monitoring a fishery management plan, or for determining whether a fishery is in need of management, the Secretary may, by regulation, implement an information collection or observer program requiring submission of such additional information for the fishery.

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(b) CONFIDENTIALITY OF INFORMATION.—

(1) Any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act shall be confidential and shall not be disclosed except—

(A) to Federal employees and Council employees who are responsible for fishery management plan development, monitoring, or enforcement;

(B) to State or Marine Fisheries Commission employees as necessary to further the Department's mission, subject to a confidentiality agreement that prohibits public disclosure of the identity of business of any person;

(C) to State employees who are responsible for fishery management plan enforcement, if the States employing those employees have entered into a fishery enforcement agreement with the Secretary and the agreement is in effect;

(D) when required by court order;

(E) when such information is used by State, Council, or Marine Fisheries Commission employees to verify catch under a limited access program, but only to the extent that such use is consistent with subparagraph (B);

(F) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act;

(G) when such information is required to be submitted to the Secretary for any determination under a limited access program; or

(H) in support of homeland and national security activities, including the Coast Guard's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)).

(2) Any observer information shall be confidential and shall not be disclosed, except in accordance with the requirements of subparagraphs (A) through (H) of paragraph (1), or—

(A) as authorized by a fishery management plan or regulations under the authority of the North Pacific Council to allow disclosure to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification;

(B) when such information is necessary in proceedings to adjudicate observer certifications; or

(C) as authorized by any regulations issued under paragraph (3) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the information by the observers or observer employers, in order—

(i) to allow the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or

(ii) to validate the accuracy of the observer information collected.

(3) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (2)(A).

**(c) RESTRICTION ON USE OF CERTAIN INFORMATION.—**

(1) The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), and the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such Acts or regulations thereunder.

(2) The Secretary may not require the submission of a Federal or State income tax return or statement as a prerequisite for issuance of a permit until such time as the Secretary has promulgated regulations to ensure the confidentiality of information contained in such return or statement, to limit the information submitted to that necessary to achieve a demonstrated conservation and management purpose, and to provide appropriate penalties for violation of such regulations.

**16 U.S.C. 1881a-1881b**  
**MSA §§ 402-403**

(d) **CONTRACTING AUTHORITY.**—Notwithstanding any other provision of law, the Secretary may provide a grant, contract, or other financial assistance on a sole-source basis to a State, Council, or Marine Fisheries Commission for the purpose of carrying out information collection or other programs if—

(1) the recipient of such a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, such State, Council, or Marine Fisheries Commission; or

(2) the Secretary has entered into a cooperative agreement with such State, Council, or Marine Fisheries Commission.

(e) **RESOURCE ASSESSMENTS.**—

(1) The Secretary may use the private sector to provide vessels, equipment, and services necessary to survey the fishery resources of the United States when the arrangement will yield statistically reliable results.

(2) The Secretary, in consultation with the appropriate Council and the fishing industry--

(A) may structure competitive solicitations under paragraph (1) so as to compensate a contractor for a fishery resources survey by allowing the contractor to retain for sale fish harvested during the survey voyage;

(B) in the case of a survey during which the quantity or quality of fish harvested is not expected to be adequately compensatory, may structure those solicitations so as to provide that compensation by permitting the contractor to harvest on a subsequent voyage and retain for sale a portion of the allowable catch of the surveyed fishery; and

(C) may permit fish harvested during such survey to count toward a vessel's catch history under a fishery management plan if such survey was conducted in a manner that precluded a vessel's participation in a fishery that counted under the plan for purposes of determining catch history.

(3) The Secretary shall undertake efforts to expand annual fishery resource assessments in all regions of the Nation.

**104-297**

**SEC. 403. OBSERVERS**

**16 U.S.C. 1881b**

(a) **GUIDELINES FOR CARRYING OBSERVERS.**—Within one year after the date of enactment of the Sustainable Fisheries Act, the Secretary shall promulgate regulations, after notice and opportunity for public comment, for fishing vessels that carry observers. The regulations shall include guidelines for determining—

(1) when a vessel is not required to carry an observer on board because the facilities of such vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; and

(2) actions which vessel owners or operators may reasonably be required to take to render such facilities adequate and safe.

## **Title 50: Wildlife and Fisheries**

### PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

#### Subpart E—Confidentiality of Statistics

#### **§ 600.415 Access to statistics.**

(a) *General.* In determining whether to grant a request for access to confidential data, the following information will be taken into consideration (also see §600.130):

- (1) The specific types of data required.
- (2) The relevance of the data to conservation and management issues.
- (3) The duration of time access will be required: continuous, infrequent, or one-time.
- (4) An explanation of why the availability of aggregate or non-confidential summaries of data from other sources would not satisfy the requested needs.

(b) *Federal employees.* Statistics submitted as a requirement of an FMP and that reveal the identity of the submitter will only be accessible to the following:

- (1) Personnel within NMFS responsible for the collection, processing, and storage of the statistics.
- (2) Federal employees who are responsible for FMP development, monitoring, and enforcement.
- (3) Personnel within NMFS performing research that requires confidential statistics.
- (4) Other NOAA personnel on a demonstrable need-to-know basis.
- (5) NOAA/NMFS contractors or grantees who require access to confidential statistics to perform functions authorized by a Federal contract or grant.

(c) *State personnel.* Upon written request, confidential statistics will only be accessible if:

- (1) State employees demonstrate a need for confidential statistics for use in fishery conservation and management.
- (2) The state has entered into a written agreement between the Assistant Administrator and the head of the state's agency that manages marine and/or anadromous fisheries. The agreement shall contain a finding by the Assistant Administrator that the state has confidentiality protection authority comparable to the Magnuson-Stevens Act and that the state will exercise this authority to limit subsequent access and use of the data to fishery management and monitoring purposes.

(d) *Councils.* Upon written request by the Council Executive Director, access to confidential data will be granted to:

- (1) Council employees who are responsible for FMP development and monitoring.
- (2) A Council for use by the Council for conservation and management purposes, with the approval of the Assistant Administrator. In addition to the information described in paragraph (a) of this section, the Assistant Administrator will consider the following in deciding whether to grant access:
  - (i) The possibility that Council members might gain personal or competitive advantage from access to the data.
  - (ii) The possibility that the suppliers of the data would be placed at a competitive disadvantage by public disclosure of the data at Council meetings or hearings.

(3) A contractor of the Council for use in such analysis or studies necessary for conservation and management purposes, with approval of the Assistant Administrator and execution of an agreement with NMFS as described by NOAA Administrative Order (NAO) 216-100.

(e) *Prohibitions.* Persons having access to these data are prohibited from unauthorized use or disclosure and are subject to the provisions of 18 U.S.C. 1905, 16 U.S.C. 1857, and NOAA/NMFS internal procedures, including NAO 216-100.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

**Title 50: Wildlife and Fisheries**

[PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA](#)  
[Subpart A—General](#)

**§ 679.4 Permits.**

(a) *Requirements.* Only persons who are U.S. citizens are authorized to receive or hold permits under this section, with the exception that an IFQ hired master permit or a CDQ hired master permit need not be held by a U.S. citizen.

(1) *What permits are available?* Various types of permits are issued for programs codified at 50 CFR parts 300 and 679. These permits are listed in the following table. The date of effectiveness for each permit is given along with certain reference paragraphs for further information.

<b>If program permit or card type is:</b>	<b>Permit is in effect from issue date through the end of:</b>	<b>For more information, see . . .</b>
(i) IFQ:		
(A) Registered buyer	Until expiration date shown on permit	Paragraph (d)(3)(ii) of this section
(B) Halibut & sablefish permits	Specified fishing year	Paragraph (d)(1) of this section
(C) Halibut & sablefish hired master permits	Specified fishing year	Paragraph (d)(2) of this section
(ii) CDQ Halibut		
(A) Halibut permit	Specified fishing year	Paragraph (e) of this section
(B) Halibut hired master permit	Specified fishing year	Paragraph (e) of this section
(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

(iv) Groundfish:		
(A) Federal fisheries	Until expiration date shown on permit	Paragraph (b) of this section
(B) Federal processor	Until expiration date shown on permit	Paragraph (f) of this section
(v) Salmon permit	Indefinite	Paragraph (h) of this section
(vi) High Seas Fishing Compliance Act (HSFCA)	5 years	§300.10 of this title
(vii) License Limitation Program (LLP):		
(A) Groundfish license	Specified fishing year or interim (active until further notice)	Paragraph (k) of this section
(B) Crab license	Specified fishing year or interim (active until further notice)	Paragraph (k) of this section
(C) Scallop license	Indefinite	Paragraph (g) of this section
(viii) Exempted fisheries	1 year or less	§679.6
(ix) Research	1 year or less	§600.745(a) of this chapter
(x) Prohibited species donation program:		
(A) Salmon	3 years	§679.26
(B) Halibut	3 years	§679.26
(xi) Special Subsistence Permits:		
(A) Community Harvest Permit	1 year	§300.65 of this title
(B) Ceremonial or Educational Permit	30 days	§300.65 of this title
(xii) Rockfish Program:		
(A) CQ	Specified fishing year	§679.81(e)(4)
(B) Rockfish Limited Access Fishery	Specified fishing year	§679.81(e)(5)
(C) Optout Fishery	Specified fishing year	§679.81(e)(6)
(D) Rockfish Entry Level Fishery	Specified fishing year	§679.81(e)(7)

(xiii) Amendment 80 Program:		
(A) Amendment 80 QS permit	Indefinite	§679.90(b).
(B) CQ permit	Specified fishing year	§679.91(b).
(C) Amendment 80 limited access fishery	Specified fishing year	§679.91(b).
(xiv) Crab Rationalization Program permits	see §680.4 of this chapter	§680.4 of this chapter
(A) Crab Quota Share permit	Indefinite	§680.4(b) of this chapter
(B) Crab Processor Quota Share permit	Indefinite	§680.4(c) of this chapter
(C) Crab Individual Fishing Quota (IFQ) permit	Specified fishing year	§680.4(d) of this chapter
(D) Crab Individual Processor Quota (IPQ) permit	Specified fishing year	§680.4(e) of this chapter
(E) Crab IFQ hired master permit	Specified fishing year	§680.4(g) of this chapter
(F) Registered Crab receiver permit	Specified fishing year	§680.4(i) of this chapter
(G) Federal crab vessel permit	Specified fishing year	§680.4(k) of this chapter
(H) Crab harvesting cooperative IFQ permit	Specified fishing year	§680.21(b) of this chapter

(2) *Permit and logbook required by participant and fishery.* For the various types of permits issued, refer to §679.5 for recordkeeping and reporting requirements. For subsistence permits, refer to §300.65 of this title for recordkeeping and reporting requirements.

(3) *Permit application.* (i) A person may obtain an application for a new permit or for renewal or revision of an existing permit for any of the permits under this section and must submit forms to NMFS as instructed in application instructions. With appropriate software, all permit applications may be completed online and printed from the Alaska Region website at <http://alaskafisheries.noaa.gov>.

(ii) Upon receipt of an incomplete or improperly completed permit application, the Program Administrator, RAM, will notify the applicant of the deficiency in the permit application. If the applicant fails to correct the deficiency, the permit will not be issued. No permit will be issued to an applicant until a complete application is received.

(iii) The operator, manager, Registered Buyer, or Registered Crab Receiver must obtain a separate permit for each applicant, facility, or vessel, as appropriate to each Federal permit in

this section (§679.4) and retain a copy of each permit application, whether the application is requesting an initial permit or renewing or revising an existing permit.

(iv) The information requested on the application must be typed or printed legibly.

(v) All permits are issued free of charge.

(4) [Reserved]

(5) *Alteration.* No person may alter, erase, or mutilate any permit, card, or document issued under this section. Any such permit, card, or document that is intentionally altered, erased, or mutilated is invalid.

(6) *Disclosure.* NMFS will maintain a list of permitted processors that may be disclosed for public inspection.

(7) *Sanctions and denials.* Procedures governing sanctions and denials are found at subpart D of 15 CFR part 904. Such procedures are required for enforcement purposes, not administrative purposes.

(8) *Harvesting privilege.* Quota shares, permits, or licenses issued pursuant to this part are neither a right to the resource nor any interest that is subject to the "takings" provision of the Fifth Amendment to the U.S. Constitution. Rather, such quota shares, permits, or licenses represent only a harvesting privilege that may be revoked or amended subject to the requirements of the Magnuson-Stevens Act and other applicable law.

(9) *Permit surrender.* The Regional Administrator will recognize the voluntary surrender of a permit issued in this section, §679.4, if a permit may be surrendered and it is submitted by the person named on the permit, owner of record, or agent. Submit the original permit to Program Administrator, RAM Program, P.O. Box 21668, Juneau, AK 99802, by certified mail or other method that provides written evidence that NMFS Alaska Region received it. The receiving date of signature by NMFS staff is the date the permit was surrendered.

(b) *Federal fisheries permit (FFP)* —(1) *Groundfish.* No vessel of the United States may be used to fish for groundfish in the GOA or BSAI unless the owner first obtains a Federal fisheries permit for the vessel, issued under this part. A Federal fisheries permit is issued without charge.

(2) *Non-groundfish.* A vessel of the United States that fishes in the GOA or BSAI for any non-groundfish species, including but not limited to halibut, crab, salmon, scallops, and herring, and that is required to retain any bycatch of groundfish under this part must obtain a Federal fisheries permit under this part.

(3) *Vessel operations categories.* An FFP authorizes a vessel owner to deploy a vessel to conduct operations in the GOA or BSAI under the following categories: Catcher vessel, catcher/processor, mothership, tender vessel, or support vessel. A vessel may not be operated in a category other than as specified on the FFP, except that a catcher vessel, catcher/processor, mothership, or tender vessel may be operated as a support vessel.

(4) *Duration* —(i) *Length of permit effectiveness.* An FFP is in effect from the effective date through the expiration date, unless it is revoked, suspended, surrendered in accordance with paragraph (a)(9) of this section, or modified under §600.735 or §600.740 of this chapter.

(ii) *Surrendered permit.* An FFP permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. An FFP may be reissued to the permit holder of record in the same fishing year in which it was surrendered. Contact NMFS/RAM by telephone, locally at 907-586-7202 (Option #2) or toll-free at 800-304-4846 (Option #2).

(iii) *Amended permit.* An owner or operator, who applied for and received an FFP, must notify NMFS of any change in the permit information by submitting an FFP application found at the NMFS website at <http://alaskafisheries.noaa.gov> as instructed on the application form. Upon receipt and approval of a permit amendment, the Program Administrator, RAM, will issue an amended FFP.

(5) *Contents of an FFP application.* To obtain a Federal fisheries permit, the owner must complete a Federal fisheries permit application and provide the following information for each vessel to be permitted:

(i) *New or amended application?* Indicate whether application is for a new or amended Federal fisheries permit and if revision, enter the current Federal fisheries permit number.

(ii) *Owner information.* Indicate the name(s), permanent business mailing address, business telephone number, business FAX number, and business e-mail address of the owner; and if applicable, the name of any person or company (other than the owner) that manages the operations of the vessel.

(iii) *Vessel information.* Indicate the vessel name and homeport (city and state); U.S. Coast Guard (USCG) documentation number; ADF&G vessel registration number; ADF&G processor code; vessel's LOA (ft), registered length (ft), gross tonnage, net tonnage, and shaft horsepower; and whether this is a vessel of the United States.

(iv) *Area and gear information.* Indicate the type of vessel operation. If catcher/processor or catcher vessel, indicate only the gear types used for groundfish fishing. If the vessel is a catcher/processor under 125 ft (18.3 m) LOA that is intended to process GOA inshore pollock or GOA inshore Pacific cod, mark the box for a GOA inshore processing endorsement.

(v) *Signature.* The owner or agent of the owner of the vessel must sign and date the application. If the owner is a company, the agent of the owner must sign and date the application.

(vi) *Atka mackerel, pollock, and Pacific cod directed fisheries.*

(A) Indicate use of pot, hook-and-line, or trawl gear in the directed fisheries for pollock, Atka mackerel, or Pacific cod.

(B) Selections for species endorsements will remain valid until an FFP is amended to remove those endorsements or the permit with these endorsements is surrendered or revoked.

(6) *Issuance.* (i) Except as provided in subpart D of 15 CFR part 904, upon receipt of a properly completed permit application, the Regional Administrator will issue a Federal fisheries permit required by this paragraph (b).

(ii) The Regional Administrator will send the Federal fisheries permit to the applicant with the appropriate logbooks, as provided under §679.5.

(iii) NMFS will reissue a Federal fisheries permit to any person who holds a Federal fisheries permit issued for a vessel if that vessel was used to make any legal rockfish landings and is subject to a sideboard limit as described under §679.82(d) through (h).

(iv) NMFS will reissue a Federal fisheries permit to any person who holds a Federal fisheries permit issued to an Amendment 80 vessel.

(7) *Amended application.* If the application for an amended permit required under this section designates a change or addition of a vessel operations category, the amended permit must be on board the vessel before the new type of operations begins.

(8) *Transfer.* A Federal fisheries permit issued under this paragraph (b) is not transferable or assignable and is valid only for the vessel for which it is issued.

(9) *Inspection.* (i) An original Federal fisheries permit issued under this paragraph (b) must be carried on board the vessel whenever the vessel is fishing. Photocopied or faxed copies are not considered originals.

(ii) A permit issued under this paragraph (b) must be presented for inspection upon the request of any authorized officer.

(c) [Reserved]

(d) *IFQ permits, IFQ hired master permits, and Registered Buyer permits.* The permits described in this section are required in addition to the permit and licensing requirements prescribed in the annual management measures published in the Federal Register pursuant to §300.62 of this title and in the permit requirements of this section.

(1) *IFQ permit.* (i) An IFQ permit authorizes the person identified on the permit to harvest IFQ halibut or IFQ sablefish from a specified IFQ regulatory area at any time during an open fishing season during the fishing year for which the IFQ permit is issued until the amount harvested is equal to the amount specified under the permit, or until the permit is revoked, suspended, surrendered in accordance with paragraph (a)(9) of this section, or modified under 15 CFR part 904.

(ii) A legible copy of any IFQ permit that specifies the IFQ regulatory area and vessel length overall from which IFQ halibut or IFQ sablefish may be harvested by the IFQ permit holder must be carried on board the vessel used by the permitted person to harvest IFQ halibut or IFQ sablefish at all times that such fish are retained on board.

(iii) An IFQ permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. An annual IFQ permit will not be reissued in the same fishing year in which it was surrendered, but a new annual IFQ permit may be issued to the quota share holder of record in a subsequent fishing year. Contact NMFS/RAM for more information locally at 907-586-7202 (Option #2) or toll-free at 800-304-4846 (Option #2).

(2) *IFQ hired master permit.* (i) An IFQ hired master permit authorizes the individual identified on the IFQ hired master permit to land IFQ halibut or IFQ sablefish for debit against the specified IFQ permit until the IFQ hired master permit expires, or is revoked, suspended, surrendered in accordance with paragraph (a)(9) of this section, or modified under 15 CFR part 904, or cancelled on request of the IFQ permit holder.

(ii) A legible copy of an IFQ hired master permit issued to an eligible individual in accordance with §679.42(i) and (j) by the Regional Administrator must be onboard the vessel that harvests IFQ halibut or IFQ sablefish at all times that such fish are retained onboard by a hired master. Except as specified in §679.42(d), an individual that is issued an IFQ hired master permit must remain onboard the vessel used to harvest IFQ halibut or IFQ sablefish with that IFQ hired master permit during the IFQ fishing trip and at the landing site during all IFQ landings.

(iii) Each IFQ hired master permit issued by the Regional Administrator will display an IFQ permit number and the name of the individual authorized by the IFQ permit holder to land IFQ halibut or IFQ sablefish for debit against the IFQ permit holder's IFQ. In addition, IFQ hired master permits will also display the ADF&G vessel identification number of the authorized vessel.

(iv) An IFQ hired master permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. An IFQ hired master permit may be reissued to the permit holder of record in the same fishing year in which it was surrendered. Contact NMFS/RAM for more information by telephone, locally at 907-586-7202 (Option #2) or toll-free at 800-304-4846 (Option #2).

(3) *Registered Buyer permit.* (i) A Registered Buyer permit authorizes the person identified on the permit to receive and make an IFQ landing by an IFQ permit holder or IFQ hired master permit holder or to receive and make a CDQ halibut landing by a CDQ permit holder or CDQ hired master permit holder at any time during the fishing year for which it is issued until the Registered Buyer permit expires, or is revoked, suspended, surrendered in accordance with paragraph (a)(9) of this section, or modified under 15 CFR part 904.

(ii) A Registered Buyer permit is required of:

(A) Any person who receives IFQ halibut, CDQ halibut or IFQ sablefish from the person(s) who harvested the fish;

(B) Any person who harvests IFQ halibut, CDQ halibut or IFQ sablefish and transfers such fish in a dockside sale, outside of an IFQ regulatory area, or outside the State of Alaska.

(C) A vessel operator who submits a Departure Report (see §679.5(l)(4)).

(iii) A Registered Buyer permit is issued on a 3-year cycle by the Regional Administrator to persons that have a Registered Buyer application approved by the Regional Administrator.

(iv) A Registered Buyer permit is in effect from the first day of the year for which it is issued or from the date of issuance, whichever is later, through the end of the current NMFS 3-year cycle, unless it is revoked, suspended, surrendered in accordance with paragraph (a)(9) of this section, or modified under §600.735 or §600.740 of this chapter.

(v) A Registered Buyer permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. A Registered Buyer permit may be reissued to the permit holder of record in the same fishing year in which it was surrendered. Contact NMFS/RAM for more information by telephone, locally at 907-586-7202 (Option #2) or toll-free at 800-304-4846 (Option #2).

(4) *Issuance* . The Regional Administrator will issue IFQ permits and IFQ hired master permits annually or at other times as needed to accommodate transfers, revocations, appeals resolution, and other changes in QS or IFQ holdings, and designation of masters under §679.42.

(5) *Transfer* . The quota shares and IFQ issued under this section are not transferable, except as provided under §679.41. IFQ hired master permits and Registered Buyer permits issued under this paragraph (d) are not transferable.

(6) *Inspection* —(i) *IFQ permit and IFQ hired master permit* . (A) The IFQ permit holder must present a legible copy of the IFQ permit for inspection on request of any authorized officer or Registered Buyer receiving IFQ species.

(B) The IFQ hired master permit holder must present a legible copy of the IFQ permit and a legible copy of the IFQ hired master permit for inspection on request of any authorized officer or Registered Buyer receiving IFQ species.

(ii) *Registered Buyer permit* . A legible copy of the Registered Buyer permit must be present at the location of an IFQ landing or CDQ halibut landing and must be made available by an individual representing the Registered Buyer for inspection on request of any authorized officer.

(7) *Validity* . An IFQ permit issued under this part is valid only if the IFQ permit holder has paid all IFQ fees that are due as a result of final agency action as specified in §§679.45 and 679.5(l)(7)(ii).

(e) *Halibut CDQ permits and CDQ hired master permits* —(1) *Requirements* . (i) The CDQ group, the operator of the vessel, the manager of a shoreside processor or stationary floating processor, and the Registered Buyer must comply with the requirements of this paragraph (e) and of paragraph §679.32(f) for the catch of CDQ halibut.

(ii) The CDQ group, vessel owner or operator, and Registered Buyer are subject to all of the IFQ prohibitions at §679.7(f).

(2) *Halibut CDQ permit* . The CDQ group must obtain a halibut CDQ permit issued by the Regional Administrator. The vessel operator must have a legible copy of the halibut CDQ permit on any fishing vessel operated by, or for, a CDQ group that will have halibut CDQ onboard and must make the permit available for inspection by an authorized officer. The halibut CDQ permit is non-transferable and is issued annually until revoked, suspended, surrendered, or modified. A halibut CDQ permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. The halibut CDQ permit will not be reissued in the same fishing year in which it was surrendered, but a new annual halibut CDQ permit may be issued in a subsequent fishing year to the CDQ group entitled to a CDQ halibut allocation. Contact NMFS/RAM for more information by telephone, locally at 907-586-7202 (Option #2) or toll-free at 800-304-4846 (Option #2).

(3) An individual must have onboard the vessel a legible copy of his or her halibut CDQ hired master permit issued by the Regional Administrator while harvesting and landing any CDQ halibut. Each halibut CDQ hired master permit will identify a CDQ permit number and the individual authorized by the CDQ group to land halibut for debit against the CDQ group's halibut CDQ. A halibut CDQ hired master permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. A halibut CDQ hired master permit may be reissued to the permit holder of record in the same fishing year in which it was surrendered. Contact NMFS/RAM for more information by telephone, locally at 907-586-7202 (Option #2) or toll-free at 800-304-4846 (Option #2).

(4) *Alteration* . No person may alter, erase, mutilate, or forge a halibut CDQ permit, hired master permit, Registered Buyer permit, or any valid or current permit or document issued under this part. Any such permit or document that has been intentionally altered, erased, mutilated, or forged is invalid.

(5) *Landings* . A person may land CDQ halibut only if he or she has a valid halibut CDQ hired master permit. The person(s) holding the halibut CDQ hired master permit and the Registered buyer must comply with the requirements of §679.5(g) and (l)(1) through (6).

(f) *Federal processor permit (FPP) —(1) Requirement.* No shoreside processor of the United States or stationary floating processor may receive or process groundfish harvested in the GOA or BSAI, unless the owner first obtains a Federal processor permit issued under this part. A Federal processor permit is issued without charge.

(2) *Contents of an FPP application.* To obtain an FPP, the owner must complete an FPP application and provide the following information (see paragraphs (f)(2)(i) through (v) of this section for each SFP and shoreside processor plant to be permitted):

(i) *New or amended permit.* Indicate whether application is for a new or amended FPP; and if an amended permit, provide the current FPP number. Indicate whether application is for a shoreside processor or an SFP.

(ii) *Owner information.* Indicate the name(s), permanent business mailing address, business telephone number, business fax number, and business email address of all owners, and if applicable, the name of any person or company (other than the owner) who manages the operations of the shoreside processor or SFP.

(iii) *SFP information.* Indicate the vessel name; whether this is a vessel of the United States; USCG documentation number; ADF&G vessel registration number; ADF&G processor code; the vessel's LOA (ft); registered length (ft); gross tonnage; net tonnage; shaft horsepower; homeport (city and state); and whether choosing to receive a GOA inshore processing endorsement. A GOA inshore processing endorsement is required in order to process GOA inshore pollock and GOA inshore Pacific cod.

(iv) *Shoreside processor information.* Indicate the shoreside processor's name; permanent business mailing address; physical location of plant at which the shoreside processor is operating (street, city, state, zip code); whether the shoreside processor is replacing a previous processor at this facility (YES or NO, and if YES, name of previous processor); whether multiple processing businesses are using this plant; whether the owner named in paragraph (f)(2)(ii) of this section owns this plant; ADF&G processor code; business telephone number; business fax number; and business e-mail address.

(v) *Signature.* The owner or agent of the owner of the shoreside processor or SFP must sign and date the application. If the owner is a company, the agent of the owner must sign and date the application.

(3) *Issuance.* Upon receipt of a properly completed permit application, the Regional Administrator will issue a Federal processor permit required by this paragraph (f).

(4) *Duration —(i) Length of effectiveness.* An FPP is in effect from the effective date through the date of permit expiration, unless it is revoked, suspended, surrendered in accordance with paragraph (a)(9) of this section, or modified under §600.735 or §600.740 of this chapter.

(ii) *Surrendered permit.* An FPP may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. An FPP may be reissued to the permit holder of record in the same fishing year in which it was surrendered. Contact NMFS/RAM for more information by telephone, locally at 907-586-7202 (Option #2) or toll-free at 800-304-4846 (Option #2).

(iii) *Amended permit.* An owner or operator, who applied for and received an FPP, must notify NMFS of any change in the permit information by submitting an FPP application found at the NMFS website at <http://alaskafisheries.noaa.gov>. The owner or operator must submit the application as instructed on the application form. Upon receipt and approval of a permit amendment, the Program Administrator, RAM, will issue an amended FPP.

(5) *Transfer.* A Federal processor permit issued under this paragraph (f) is not transferable or assignable and is valid only for the processor for which it is issued.

(6) *Inspection.* (i) An original Federal processor permit issued under this paragraph (f) must be on site at the shoreside processor, or stationary floating processor at all times. Photocopied or faxed copies are not considered originals.

(ii) A permit issued under this paragraph (f) must be presented for inspection upon the request of any authorized officer.

(g) *Scallop LLP*—(1) *General requirements.* (i) In addition to the permit and licensing requirements prescribed in this part, each vessel within the EEZ off Alaska that is catching and retaining scallops, must have an original scallop LLP license onboard at all times it is catching and retaining scallops. This scallop LLP license, issued by NMFS, authorizes the person named on the license to catch and retain scallops in compliance with State of Alaska regulations and only with a vessel that does not exceed the maximum LOA specified on the license and the gear designation specified on the license.

(ii) A scallop LLP license may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. A surrendered scallop LLP license will cease to exist and will not be subsequently reissued. Contact NMFS/RAM for more information by telephone, locally at 907–586–7202 (Option #2) or toll-free at 800–304–4846 (Option #2).

(2) *Qualifications for a scallop LLP license.* A scallop LLP license will be issued to an eligible applicant who:

(i) Is a qualified person;

(ii) Was named on a State of Alaska scallop moratorium permit or Federal scallop moratorium permit on February 8, 1999;

(iii) Used the moratorium permit held on February 8, 1999, to make legal landings of scallops in each of any 2 calendar years during the qualification period beginning January 1, 1996, through October 9, 1998; and

(iv) Submitted a complete application for a scallop license during the application period specified pursuant to paragraph (g)(4) of this section.

(3) *Scallop license conditions and endorsements.* A scallop license authorizes the license holder to catch and retain scallops only if the vessel length and gear used do not exceed the vessel length and gear endorsements specified on the license. These endorsements will be determined as follows.

(i) The MLOA specified on the scallop license is equal to the length overall on February 8, 1999, of the longest vessel that was authorized by a Federal or State of Alaska Scallop Moratorium Permit to harvest scallops and used by the eligible applicant to make legal landings of scallops during the scallop LLP qualification period, as specified at §679.4(g)(2)(iii) of this part.

(ii) The gear specified on a scallop license will be restricted to two dredges with a combined width of no more than 20 feet (6.1 m) in all areas if the eligible applicant was a moratorium permit holder with a Scallop Registration Area H (Cook Inlet) endorsement and did not make a legal landing of scallops caught outside Area H during the qualification period specified in paragraph (g)(2)(iii) of this section.

(4) *Application for a scallop license*—(i) *General.* The Regional Administrator will issue a scallop license to an applicant if a complete application is submitted by or on behalf of the applicant during the specified application period, and if that applicant meets all the criteria for eligibility in this part. An application that is postmarked or hand delivered after the ending date for the application period for the scallop LLP specified in paragraph §679.4(g)(4)(ii) will be denied. An application form will be sent to the last known address of the person identified as an eligible applicant by the official LLP record. An application form may be requested from the Regional Administrator.

(ii) *Application Period.* January 16, 2001, through February 12, 2001.

(iii) *Contents of application.* To be complete, an application for a scallop license must be signed and dated by the applicant, or the individual representing the applicant, and contain the following information, as applicable:

(A) Scallop Moratorium Permit number under which legal landings of scallops were made during the qualification period specified in paragraph (g)(2)(iii) of this section;

(B) Name, business address, telephone number, FAX number, and social security number or tax ID number of the applicant, and whether the applicant is a U.S. citizen or a U.S. business;

(C) Name of the managing company, if any;

(D) Evidence of legal landings in the qualifying years and registration areas;

(E) For the vessel(s) being used as the basis for eligibility for a license, the name, state registration number (e.g., ADF&G number), the USCG documentation number, and valid evidence of the LOA on February 8, 1999, of the longest vessel used by the applicant during the qualification period specified in paragraph (g)(2)(iii) of this section.

(iv) *Successor-in-interest.* If an applicant is applying as the successor-in-interest to an eligible applicant, an application, to be complete, also must contain valid evidence proving the applicant's status as a successor-in-interest to that eligible applicant and:

(A) Valid evidence of the death of that eligible applicant at the time of application, if the eligible applicant was an individual; or

(B) Valid evidence that the eligible applicant is no longer in existence at the time of application, if the eligible applicant is not an individual.

(v) *Application evaluation.* The Regional Administrator will evaluate an application submitted during the specified application period and compare all claims in the application with the information in the official LLP record. Claims in the application that are consistent with information in the official LLP record will be accepted by the Regional Administrator. Inconsistent claims in the application, unless verified by evidence, will not be accepted. An applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraphs (g)(4)(iii) and (g)(4)(iv) of this section, will be provided a 60-day evidentiary period pursuant to paragraph (g)(4)(vii) of this section to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the official LLP record. An applicant who submits claims that are inconsistent with information in the official LLP record has the burden of proving that the submitted claims are correct.

(vi) *Additional information or evidence.* The Regional Administrator will evaluate additional information or evidence to support an applicant's inconsistent claims submitted within the 60-day evidentiary period pursuant to paragraph (g)(4)(vii) of this section. 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 LLP record will be amended and the information will be used in determining whether the applicant is eligible for a license. 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, pursuant to paragraph (g)(4)(viii) of this section, that the applicant did not meet the burden of proof to change the information in the official LLP record.

(vii) *60-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 LLP 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 information as specified in paragraphs (g)(4)(iii) and (g)(4)(iv) of this section 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 purposes of the initial administrative determination.

(viii) *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 LLP 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 pursuant to §679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will not receive a transferable license until after the final resolution of that appeal in the applicant's favor.

(ix) *Issuance of a non-transferable license.* The Regional Administrator will issue a non-transferable license to the applicant at the same time notification is provided to the applicant of his or her 60-day evidentiary period if issuance is required by the license renewal provisions of 5 U.S.C. 558. A non-transferable license authorizes a person to catch and retain scallops as specified on the non-transferable license, and will have the specific endorsements and designations based on the claims in his or her application. A non-transferable license will expire upon final agency action.

(5) *Transfer of a Scallop License*—(i) *General.* The Regional Administrator will approve the transfer of a scallop license if a complete transfer application is submitted to Restricted Access Management, Alaska Region, NMFS, and if the transfer meets all the eligibility criteria as specified in paragraph (g)(5)(ii) of this section. An application form may be requested from the Regional Administrator.

(ii) *Eligibility criteria for transfers.* A scallop license can be transferred if:

(A) The designated transferee is eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.;

(B) The parties to the transfer do not have any fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations;

(C) The transfer will not cause the designated transferee to exceed the license limit in §679.7(i); and

(D) The transfer does not violate any other provision specified in this part.

(iii) *Contents of transfer application.* To be complete, an application for a scallop license transfer must be signed by the license holder and the designated transferee, or the individuals representing them, and contain the following information, as applicable:

(A) Name, business address, telephone number, and FAX number of the license holder and of the designated transferee;

(B) License number and total price being paid for the license;

(C) Certification that the designated transferee is a U.S. citizen, or a U.S. corporation, partnership, or other association;

(D) A legible copy of a contract or sales agreement that specifies the license to be transferred, the license holder, the designated transferee, the monetary value or the terms of the license transfer; and

(E) Other information the Regional Administrator deems necessary for measuring program performance.

(iv) *Incomplete applications.* The Regional Administrator will return an incomplete transfer application to the applicant and identify any deficiencies if the Regional Administrator determines that the application does not meet all the criteria identified in paragraph (g)(5) of this section.

(v) *Transfer by court order, operation of law, or as part of a security agreement.* The Regional Administrator will transfer a scallop license based on a court order, operation of law, or a security agreement if the Regional Administrator determines that the transfer application is complete and the transfer will not violate any of the provisions of this section.

(h) *Salmon permits*—(1) *Operators of commercial fishing vessels using power troll gear.* The operator of a fishing vessel using power troll gear may engage in commercial fishing for salmon in the Salmon Management Area if the operator:

(i) Held a valid State of Alaska power troll permanent entry permit on May 15, 1979, or is a transferee under paragraph (h)(13) of this section from an operator who held such a permit on that date;

(ii) Held a valid State of Alaska power troll interim use permit on May 15, 1979; or

(iii) Holds a Salmon Fishery permit issued by the Regional Administrator under paragraph (h)(7) of this section.

(2) *Crew members and other persons not the operator of a commercial fishing vessel using power troll gear.* Crew members or other persons aboard but not the operator of a fishing vessel may assist in the vessel's commercial salmon fishing operations in the High Seas Management Area without a permit if a person described in paragraph (h)(1)(i) through (iii) of this section is also aboard the vessel and is engaged in the vessel's commercial fishing operations.

(3) *Personal use fishing.* Any person who holds a valid State of Alaska sport fishing license may engage in personal use fishing in the Salmon Management Area.

(4) *Duration.* Authorization under this paragraph (h) to engage in fishing for salmon in the Salmon Management Area constitutes a use privilege which may be revoked or modified without compensation.

(5) *Eligibility criteria for permits issued by the Regional Administrator.* (i) Any person is eligible to be issued a Salmon Fishery permit under paragraph (h)(7) of this section if that person, during any one of the calendar years 1975, 1976, or 1977:

(A) Operated a fishing vessel in the Salmon Management Area.

(B) Engaged in commercial fishing for salmon in the Salmon Management Area.

(C) Caught salmon in the Salmon Management Area using power troll gear.

(D) Landed such salmon.

(ii) The following persons are not eligible to be issued a Salmon Fishery permit under paragraph (h)(7) of this section:

(A) Persons described in paragraph (h)(1)(i) or (h)(1)(ii) of this section.

(B) Persons who once held but no longer hold a State of Alaska power troll permanent entry or interim-use permit.

(6) *Application.* Applications for a Salmon Fishery permit must be in writing, signed by the applicant, and submitted to the Regional Administrator, at least 30 days prior to the date the person wishes to commence fishing, and must include:

(i) The applicant's name, mailing address, and telephone number.

(ii) The vessel's name, USCG documentation number or State of Alaska registration number, home port, length overall, registered tonnage, and color of the fishing vessel.

(iii) The type of fishing gear used by the fishing vessel.

(iv) State of Alaska fish tickets or other equivalent documents showing the actual landing of salmon taken in the Salmon Management Area by the applicant with power troll gear during any one of the years 1975 to 1977.

(7) *Issuance.* (i) Except as provided in subpart D of 15 CFR part 904, upon receipt of a properly completed application, the Regional Administrator will determine whether the permit eligibility conditions have been met, and if so, will issue a Salmon Fishery permit.

(ii) If the permit is denied, the Regional Administrator will notify the applicant in accordance with paragraph (h)(16) of this section.

(iii) If an incomplete or improperly completed permit application is filed, the Regional Administrator will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days following the date of receipt of notification, the application shall be considered abandoned.

(8) *Amended application.* Any person who applies for and receives a Salmon Fishery permit issued under paragraph (h)(7) of this section must notify the Regional Administrator within 30 days of a change in any of the information submitted under paragraph (h)(6) of this section.

(9) *Replacement.* Replacement permits may be issued for lost or unintentionally mutilated permits. An application for a replacement permit shall not be considered a new application.

(10) *Display.* Any permit or license described in paragraph (h)(1) or (h)(3) of this section must be on board the vessel at all times while the vessel is in the Salmon Management Area.

(11) *Inspection.* Any permit or license described in paragraph (h)(1) or (h)(3) of this section must be presented for inspection upon request by an authorized officer.

(12) *Sanctions.* Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(13) *Transfer of authority to fish in the Salmon Management Area* —(i) *State of Alaska power troll permanent entry permits.* The authority of any person to engage in commercial fishing for salmon using power troll gear in the Salmon Management Area shall expire upon the transfer of that person's State of Alaska power troll permanent entry permit to another and shall be transferred to the new holder of that permit.

(ii) *Transfer of Authority by the Regional Administrator.* (A) Any person to whom the proposed transfer of a State of Alaska power troll permanent entry permit is denied by the State of Alaska may apply, with the consent of the current holder of that permit, to the Regional Administrator for transfer to the applicant of the current holder's authority to engage in commercial fishing for salmon using power troll gear in the Salmon Management Area.

(B) The application for transfer shall be filed with the Regional Administrator within 30 days of the denial by the State of Alaska of the proposed transfer of the permit.

(C) The application for transfer shall include all documents and other evidence submitted to the State of Alaska in support of the proposed transfer of the permit and a copy of the State of Alaska's decision denying the transfer of the permit. The Regional Administrator may request additional information from the applicant or from the State of Alaska to assist in the consideration of the application.

(D) The Regional Administrator shall approve the transfer if it is determined that:

( 1 ) The applicant had the ability to participate actively in the fishery at the time the application for transfer of the permit was filed with the State of Alaska.

( 2 ) The applicant has access to power troll gear necessary for participation in the fishery.

( 3 ) The State of Alaska has not instituted proceedings to revoke the permit on the ground that it was fraudulently obtained.

( 4 ) The proposed transfer of the permit is not a lease.

(E) Upon approval of the transfer application by the Regional Administrator, the authority of the permit holder to engage in commercial fishing for salmon in the Salmon Management Area using power troll gear shall expire, and that authority shall be transferred to the applicant.

(14) *Other Permits.* (i) Except for emergency transfers under paragraph (h)(15) of this section, the authority of any person described in paragraph (h)(1)(ii), (h)(1)(iii), or (h)(3) of this section to fish for salmon in the Salmon Management Area, may not be transferred to any other person.

(ii) Except for emergency transfers under paragraph (h)(15) of this section, the authority to engage in commercial fishing for salmon which was transferred under paragraph (h)(13)(ii) of this section may not be transferred to any other person except the current holder of the State of Alaska power troll permanent entry permit from which that authority was originally derived.

(iii) The authority described in paragraph (h)(14)(ii) of this section may be transferred to the current holder of that permit upon receipt of written notification of the transfer by the Regional Administrator.

(15) *Emergency transfers—authority to use power troll gear.* (i) The authority of any person to engage in commercial fishing for salmon using power troll gear in the Salmon Management Area may be transferred to another person for a period not lasting beyond the end of the calendar year of the transfer when sickness, injury, or other unavoidable hardship prevents the holder of that authority from engaging in such fishing.

(ii) Such a transfer shall take effect automatically upon approval by the State of Alaska of an emergency transfer of a State of Alaska power troll entry permit, in accordance with the terms of the permit transfer.

(iii) Any person may apply to the Regional Administrator for emergency transfer of the current holder's authority to engage in commercial fishing for salmon using power troll gear in the Salmon Management Area for a period not lasting beyond the calendar year of the proposed transfer, if a person:

(A) Is denied emergency transfer of a State of Alaska power troll entry permit by the State of Alaska; or

(B) Requests emergency transfer of a Federal commercial power troll permit previously issued by the Regional Administrator, with the consent of the current holder of that permit.

(iv) The Regional Administrator shall approve the transfer if he determines that:

(A) Sickness, injury, or other unavoidable hardship prevents the current permit holder from engaging in such fishing.

(B) The applicant had the ability to participate actively in the fishery at the time the application for emergency transfer of the permit was filed with the State of Alaska or, in the case of a Federal permit, with the Regional Administrator.

(C) The applicant has access to power troll gear necessary for participation in the fishery.

(D) The State of Alaska has not instituted proceedings to revoke the permit on the grounds that it was fraudulently obtained.

(v) The application in the case of a State of Alaska permit shall be filed with the Regional Administrator within 30 days of the denial by the State of Alaska of emergency transfer of the permit.

(vi) The application shall include all documents and other evidence submitted to the State of Alaska in support of the proposed emergency transfer of the permit and a copy of the State of Alaska's decision denying the emergency transfer of the permit. The Regional Administrator may request additional information from the applicant or from the State of Alaska to assist in the consideration of the application.

(vii) Upon approval of the application by the Regional Administrator, the authority of the permit holder to engage in commercial fishing for salmon using power troll gear in the Salmon Management Area shall expire for the period of the emergency transfer, and that authority shall be transferred to the applicant for that period.

(16) *Appeals and hearings.* (i) A decision by the Regional Administrator to deny a permit under paragraph (h)(7) of this section or to deny transfer of authority to engage in commercial fishing for salmon in the Salmon Management Area under paragraphs (h)(13) and (h)(14) of this section will:

(A) Be in writing.

(B) State the facts and reasons therefor.

(C) Advise the applicant of the rights provided in this paragraph (h)(16).

(ii) Any such decision of the Regional Administrator shall be final 30 days after receipt by the applicant, unless an appeal is filed with the NOAA/NMFS Assistant Administrator within that time.

(iii) Failure to file a timely appeal shall constitute waiver of the appeal.

(iv) Appeals under this paragraph (h)(16) must:

(A) Be in writing.

(B) Set forth the reasons why the appellant believes the Regional Administrator's decision was in error.

(C) Include any supporting facts or documentation.

(v) At the time the appeal is filed with the Assistant Administrator, the appellant may request a hearing with respect to any disputed issue of material fact. Failure to request a hearing at this time will constitute a waiver of the right to request a hearing.

(vi) If a hearing is requested, the Assistant Administrator may order an informal fact-finding hearing if it is determined that a hearing is necessary to resolve material issues of fact and shall so notify the appellant.

(vii) If the Assistant Administrator orders a hearing, the order will appoint a hearing examiner to conduct the hearing.

(viii) Following the hearing, the hearing examiner shall promptly furnish the Assistant Administrator with a report and appropriate recommendations.

(ix) As soon as practicable after considering the matters raised in the appeal, and any report or recommendation of the hearing examiner in the event a hearing is held under this paragraph (h)(16), the Assistant Administrator shall decide the appeal.

(x) The Assistant Administrator shall promptly notify the appellant of the final decision. Such notice shall set forth the findings of the Assistant Administrator and set forth the basis of the decision. The decision of the Assistant Administrator shall be the final administrative action of the Department of Commerce.

(i) *Exempted fisheries permits.* (See §679.6.)

(j) *Prohibited species donation program permits.* (See §679.26(a)(3).)

(k) *Licenses for license limitation (LLP) groundfish or crab species* —(1) *General requirements.* (i) In addition to the permit and licensing requirements of this part, and except as provided in paragraph (k)(2) of this section, each vessel within the GOA or the BSAI must have an LLP groundfish license on board at all times it is engaged in fishing activities defined in §679.2 as directed fishing for license limitation groundfish. This groundfish license, issued by NMFS to a qualified person, authorizes a license holder to deploy a vessel to conduct directed fishing for license limitation groundfish only in accordance with the specific area and species endorsements, the vessel and gear designations, and the MLOA specified on the license.

(ii) Each vessel must have a crab species license, defined in §679.2, issued by NMFS on board at all times it is engaged in fishing activities for the crab fisheries identified in this paragraph. A crab species license may be used only to participate in the fisheries endorsed on the license and on a vessel that complies with the vessel designation and MLOA specified on the license. NMFS requires a crab species license endorsed for participation in the following crab fisheries:

(A) Aleutian Islands red king crab in waters of the EEZ with an eastern boundary the longitude of Scotch Cap Light (164°44' W. long.) to 53°30' N. lat., then west to 165° W. long., a western boundary of 174° W. long., and a northern

boundary of a line from the latitude of Cape Sarichef (54°36' N. lat.) westward to 171° W. long., then north to 55°30' N. lat., and then west to 174° W. long.;

(B) Aleutian Islands Area *C. opilio* and *C. bairdi* in waters of the EEZ with an eastern boundary the longitude of Scotch Cap Light (164°44' W. long.) to 53°30' N. lat., then west to 165° W. long, a western boundary of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and a northern boundary of a line from the latitude of Cape Sarichef (54°36' N. lat.), with a southern boundary of 54°30' N. lat. to 171° W. long., and then south to 54 36' N. lat.;

(C) Norton Sound red king and Norton Sound blue king in waters of the EEZ with a western boundary of 168° W. long., a southern boundary of 62° N. lat., and a northern boundary of 65°36' N. lat.;

(D) Minor Species endorsement includes:

( 1 ) Bering Sea golden king crab ( *Lithodes aequispinus* ) in waters of the EEZ east of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), with a southern boundary of 54°36' N. lat. to 171° W. long., and then south to 54°30' N. lat.

( 2 ) Scarlet or deep sea king crab ( *Lithodes couesi* ) in the waters of the Bering Sea and Aleutian Islands Area;

( 3 ) Grooved Tanner crab ( *Chionoecetes tanneri* ) in the waters of the Bering Sea and Aleutian Islands Area; and

( 4 ) Triangle Tanner crab ( *Chionoecetes angulatus* ) in the waters of the Bering Sea and Aleutian Islands Area.

(2) *Exempt vessels.* Notwithstanding the requirements of paragraph (k)(1) of this section,

(i) A catcher vessel or catcher/processor vessel that does not exceed 26 ft (7.9 m) LOA may conduct directed fishing for license limitation groundfish in the GOA without a groundfish license;

(ii) A catcher vessel or catcher/processor vessel that does not exceed 32 ft (9.8 m) LOA may conduct directed fishing for license limitation groundfish in the BSAI without a groundfish license and may conduct directed fishing for crab species in the Bering Sea and Aleutian Islands Area without a crab species license;

(iii) A catcher vessel or catcher/processor vessel that does not exceed 60 ft (18.3 m) LOA may use a maximum of 5 jig machines, one line per jig machine, and a maximum of 15 hooks per line, to conduct directed fishing for license limitation groundfish in the BSAI without a groundfish license; or

(iv) A catcher vessel or catcher/processor vessel that does not exceed 125 ft (38.1 m) LOA, and during the period after November 18, 1992, through October 9, 1998, was specifically constructed for and used exclusively in accordance with a CDP approved by NMFS, and is designed and equipped to meet specific needs that are described in the CDP, is exempted from the requirement to have a LLP groundfish license to conduct directed fishing for license limitation groundfish in the GOA and in the BSAI area and a crab species license to fish for crab species in the Bering Sea and Aleutian Islands Area.

(3) *Vessel and gear designations and vessel length categories—* (i) *General.* A license may be used only on a vessel named on the license, a vessel that complies with the vessel designation and gear designation specified on the license, and a vessel that has an LOA less than or equal to the MLOA specified on the license.

(ii) *Vessel designations —*(A) *Catcher/processor vessel.* A license will be assigned a catcher/processor vessel designation if:

( 1 ) For license limitation groundfish, license limitation groundfish were processed on the vessel that qualified for the groundfish license under paragraph (k)(4) of this section during the period January 1, 1994, through June 17, 1995, or in the most recent calendar year of participation during the area endorsement qualifying period specified in paragraph (k)(4)(ii) of this section; or

( 2 ) For crab species, crab species were processed on the vessel that qualified for the crab species license under paragraph (k)(5) of this section during the period January 1, 1994, through December 31, 1994, or in the most recent calendar year of participation during the area endorsement qualifying period specified in paragraph (k)(5)(ii) of this section.

( 3 ) For purposes of paragraphs (k)(3)(ii)(A)( 1 ) and (k)(3)(ii)(A)( 2 ) of this section, evidence of processing must be demonstrated by production reports or other valid documentation demonstrating that processing occurred on the vessel during the relevant period.

(B) *Catcher vessel.* A license will be assigned a catcher vessel designation if it does not meet the criteria in paragraph (k)(3)(ii)(A)( 1 ) or (k)(3)(ii)(A)( 2 ) of this section to be assigned a catcher/processor vessel designation.

(C) *Changing a vessel designation.* A person who holds a groundfish license or a crab species license with a catcher/processor vessel designation may, upon request to the Regional Administrator, have the license reissued with a catcher vessel designation. The vessel designation change to a catcher vessel will be permanent, and that license will be valid for only those activities specified in the definition of catcher vessel designation at §679.2.

(D) *Limited processing by catcher vessels.* Up to 1 mt of round weight equivalent of license limitation groundfish or crab species may be processed per day on a vessel less than or equal to 60 ft (18.3 m) LOA that is authorized to fish with an LLP license with a catcher vessel designation.

(iii) *Vessel length categories.* A vessel's eligibility will be determined using the following three vessel length categories, which are based on the vessel's LOA on June 17, 1995, or, if the vessel was under reconstruction on June 17, 1995, the vessel's length on the date that reconstruction was completed.

(A) Vessel length category "A" if the LOA of the qualifying vessel on the relevant date was equal to or greater than 125 ft (38.1 m) LOA.

(B) Vessel length category "B" if the LOA of the qualifying vessel on the relevant date was equal to or greater than 60 ft (18.3 m) but less than 125 ft (38.1 m) LOA.

(C) Vessel length category "C" if the LOA of the qualifying vessel on the relevant date was less than 60 ft (18.3 m) LOA.

(iv) *Gear designations for groundfish licenses* —(A) *General.* A vessel may only use gear consistent with the gear designation on the LLP license authorizing the use of that vessel to fish for license limitation groundfish or crab species, except that a vessel fishing under authority of an LLP license endorsed only for trawl gear may fish for slope rockfish with non-trawl gear within the Gulf of Alaska Slope Habitat Conservation Areas, as described in Table 27 to this part.

(B) *Trawl/non-trawl.* A license will be assigned a trawl/non-trawl gear designation if trawl and non-trawl gear were used to harvest LLP species from the qualifying vessel during the period beginning January 1, 1988, through June 17, 1995.

(C) *Trawl.* A license will be assigned a trawl gear designation if only trawl gear was used to harvest LLP species from the qualifying vessel during the period beginning January 1, 1988, through June 17, 1995.

(D) *Non-trawl.* A license will be assigned a non-trawl gear designation if only non-trawl gear was used to harvest LLP species from the qualifying vessel during the period beginning January 1, 1988, through June 17, 1995.

(E) *Changing a gear designation.* ( 1 ) An applicant may request a change of gear designation based on gear used from the vessel during the period beginning June 18, 1995, through February 7, 1998. Such a change would be permanent and may only be used for a change from trawl to non-trawl or from non-trawl to trawl.

( 2 ) An applicant may request a change of gear designation based on a significant financial investment in converting a vessel or purchasing fishing gear on or before February 7, 1998, and making a documented harvest with that gear on or before December 31, 1998. Such a change would be permanent and may only be used for a change from trawl to non-trawl or from non-trawl to trawl.

(F) *Definitions of non-trawl gear and significant financial investment.* ( 1 ) For purposes of paragraph (k)(3)(iv) of this section, non-trawl gear means any legal gear, other than trawl, used to harvest license limitation groundfish.

( 2 ) For purposes of paragraph (k)(3)(iv)(E)(2) of this section, "significant financial investment" means having spent at least \$100,000 toward vessel conversion and/or gear to change to trawl gear from non-trawl gear, or having acquired groundline, hooks, pots, jig machines, or hauling equipment to change to non-trawl gear from trawl gear.

(4) *Qualifications for a groundfish license.* A groundfish license will be issued to an eligible applicant that meets the criteria in paragraphs (k)(4)(i) and (k)(4)(ii) of this section. For purposes of the license limitation program, evidence of a documented harvest must be demonstrated by a state catch report, a Federal catch report, or other valid documentation that indicates the amount of license limitation groundfish harvested, the groundfish reporting area in which the license limitation groundfish was harvested, the vessel and gear type used to harvest the license limitation groundfish, and the date of harvesting, landing, or reporting. State catch reports are Alaska, California, Oregon, or Washington fish tickets. Federal catch reports are production reports required under §679.5.

(i) *General qualification periods (GQP).* This table provides the GQP documented harvest requirements for LLP groundfish licenses:

A groundfish license will be assigned...	if the requirements found in the table at §679.4(k)(4)(ii) are met for the area endorsement and at least one documented harvest of license limitation groundfish was caught and retained in...	during the period...
(A) One or more area endorsements in the table at §679.4(k)(4)(ii)(A) or (B)	the BSAI or waters shoreward of the BSAI	( 1 ) Beginning January 1, 1988, through June 27, 1992; or ( 2 ) Beginning January 1, 1988, through December 31, 1994, provided that the harvest was of license limitation groundfish using pot or jig gear from a vessel that was less than 60 ft (18.3 m) LOA; or ( 3 ) Beginning January 1, 1988, through June 17, 1995, provided that, during the period beginning January 1, 1988, through February 9, 1992, a documented harvest of crab species was made from the vessel, and, during the period beginning February 10, 1992, through December 11, 1994, a

		documented harvest of groundfish species, except sablefish landed using fixed gear, was made from the vessel in the GOA or the BSAI using trawl or longline gear.
(B) One or more area endorsements in the table at §679.4(k)(4)(ii)(C) through (O)	the GOA or in waters shoreward of the GOA	( 1 ) Beginning January 1, 1988, through June 27, 1992; or ( 2 ) Beginning January 1, 1988, through December 31, 1994, provided that the harvest was of license limitation groundfish using pot or jig gear from a vessel that was less than 60 ft (18.3 m) LOA; or ( 3 ) Beginning January 1, 1988, through June 17, 1995, provided that, during the period beginning January 1, 1988, through February 9, 1992, a documented harvest of crab species was made from the vessel, and, during the period beginning February 10, 1992, through December 11, 1994, a documented harvest landing of groundfish species, except sablefish landed using fixed gear, was made from the vessel in the GOA or the BSAI using trawl or longline gear.

(ii) *Endorsement qualification periods (EQP)*. This table provides the documented harvest requirements for LLP groundfish license area endorsements:

<b>A groundfish license will be assigned...</b>	<b>if...</b>	<b>during the period...</b>	<b>in...</b>	<b>from a vessel in vessel length category...</b>	<b>and that meets the requirements for a...</b>
(A) An Aleutian Island area endorsement	at least one documented harvest of any amount of license limitation groundfish was made	beginning January 1, 1992, through June 17, 1995	the Aleutian Islands Subarea or in waters shoreward of that area	“A”, “B”, or “C”	catcher/ processor designation or a catcher vessel designation.
(B) A Bering Sea area	at least one documented	beginning January 1,	the Bering Sea Subarea or in	“A”, “B”, or “C”	catcher/ processor designation or a

endorsement	harvest of any amount of license limitation groundfish was made	1992, through June 17, 1995	waters shoreward of that area		catcher vessel designation.
(C) A Western Gulf area endorsement	at least one documented harvest of any amount of license limitation groundfish was made in each of any two calendar years	beginning January 1, 1992, through June 17, 1995	the Western GOA regulatory area or in waters shoreward of that area	“A”	catcher/ processor designation or a catcher vessel designation; or
(D) A Western Gulf area endorsement	at least one documented harvest of any amount of license limitation groundfish was made	beginning January 1, 1992, through June 17, 1995	the Western Area of the Gulf of Alaska or in waters shoreward of that area	“B”	catcher vessel designation; or
(E) A Western Gulf area endorsement	at least one documented harvest of any amount of license limitation groundfish was made in each of any two calendar years	beginning January 1, 1992, through June 17, 1995	the Western Area of the Gulf of Alaska or in waters shoreward of that area	“B”	catcher/processor vessel designation; or
(F) A Western Gulf area endorsement	at least four documented harvest of any amount of license limitation groundfish were made	beginning January 1, 1995, through June 17, 1995	the Western Area of the Gulf of Alaska or in waters shoreward of that area	“B”	catcher/processor vessel designation; or
(G) A Western Gulf area endorsement	at least one documented harvest of any amount of license limitation groundfish was	beginning January 1, 1992, through June 17, 1995	the Western Area of the Gulf of Alaska or in waters shoreward of that area	“C”	catcher/processor designation or a catcher vessel designation.

	made				
(H) A Central Gulf area endorsement	at least one documented harvest of any amount of license limitation groundfish was made in each of any two calendar years	beginning January 1, 1992, through June 17, 1995	the Central area of the Gulf of Alaska or in waters shoreward of that area, or in the West Yakutat District or in waters shoreward of that district	“A”	catcher/processor designation or a catcher vessel designation; or
(I) A Central Gulf area endorsement	at least one documented harvest of any amount of license limitation groundfish was made in each of any two calendar years	beginning January 1, 1992, through June 17, 1995	the Central area of the Gulf of Alaska or in waters shoreward of that area, or in the West Yakutat District or in waters shoreward of that district	“B”	catcher/processor designation or a catcher vessel designation; or
(J) A Central Gulf area endorsement	at least four documented harvest of any amount of license limitation groundfish were made	beginning January 1, 1995, through June 17, 1995	the Central area of the Gulf of Alaska or in waters shoreward of that area, or in the West Yakutat District or in waters shoreward of that district	“B”	catcher/processor designation or a catcher vessel designation; or
(K) A Central Gulf area endorsement	at least one documented harvest of any amount of license limitation groundfish was made	beginning January 1, 1992, through June 17, 1995	the Central area of the Gulf of Alaska or in waters shoreward of that area, or in the West Yakutat District or in waters shoreward of that district	“C”	catcher/processor designation or a catcher vessel designation.
(L) A Southeast Outside area endorsement	at least one documented harvest of any amount of license limitation groundfish was	beginning January 1, 1992, through June 17, 1995	in the Southeast Outside District or in waters shoreward of that district	“A”	catcher/processor designation or a catcher vessel designation; or

	made in each of any two calendar years				
(M) A Southeast Outside area endorsement	at least one documented harvest of any amount of license limitation groundfish was made in each of any two calendar years	beginning January 1, 1992, through June 17, 1995	in the Southeast Outside District or in waters shoreward of that district	“B”	catcher/processor designation or a catcher vessel designation; or
(N) A Southeast Outside area endorsement	at least four documented harvest of any amount of license limitation groundfish were made	beginning January 1, 1995, through June 17, 1995	in the Southeast Outside District or in waters shoreward of that district	“B”	catcher/processor designation or a catcher vessel designation; or
(O) A Southeast Outside area endorsement	at least one documented harvest of any amount of license limitation groundfish was made	beginning January 1, 1992, through June 17, 1995	in the Southeast Outside District or in waters shoreward of that district	“C”	catcher/processor designation or a catcher vessel designation.

(iii) An eligible applicant that is issued a groundfish license based on a vessel's qualifications in the table at paragraphs (k)(4)(i)(A)(2) or (k)(4)(i)(B)(2) of this section must choose only one area endorsement for that groundfish license even if documented harvests qualifies the eligible applicant for more than one area endorsement.

(iv) Notwithstanding the provisions in paragraph (k)(4)(i) of this section, NMFS will issue a groundfish license with the appropriate area endorsements to an eligible applicant whose vessel meets the requirements in the table at paragraph (k)(4)(i)(A) of this section, and the requirements in the table at any of the paragraphs (k)(4)(ii)(C) through (O) of this section, except:

(A) From whose vessel no documented harvests were made in the GOA or waters shoreward of the GOA during the period beginning January 1, 1988, through June 27, 1992, and

(B) From whose vessel no documented harvests were made in the BSAI or waters shoreward of the BSAI during the period beginning January 1, 1992, through June 17, 1995.

(v) Notwithstanding the provisions in paragraph (k)(4)(i) of this section, a groundfish license with the appropriate area endorsements will be issued to an eligible applicant whose vessel meets the requirements in the tables at paragraphs (k)(4)(i) and (k)(4)(ii) and (A) or (B) of this section, except:

(A) From whose vessel no documented harvests were made in the BSAI or waters shoreward of the BSAI during the period beginning January 1, 1988, through June 27, 1992, and

(B) From whose vessel no documented harvests were made in the GOA or waters shoreward of the GOA during the period beginning January 1, 1992, through June 17, 1995.

(vi) *Trawl gear designation recent participation requirements.* (A) NMFS will revoke any trawl gear designation on a groundfish license with an Aleutian Island, Bering Sea, Central Gulf, or Western Gulf regulatory area unless one of the following conditions apply:

( 1 ) A person made at least two legal landings using trawl gear under the authority of that groundfish license in that regulatory area during the period from January 1, 2000, through December 31, 2006; or

( 2 ) That trawl gear designation endorsed in that area is exempt from the requirements of this paragraph (k)(4)(vi)(A) as described under paragraphs (k)(4)(vii) or (k)(4)(viii) of this section.

(B) NMFS shall assign a legal landing to a groundfish license for an area based only on information contained in the official record described in paragraph (k)(4)(x) of this section.

(vii) *Exemption to trawl gear recent participation requirements for the AFA, Amendment 80 Program, and Rockfish Program.* (A) Trawl gear designations with Bering Sea or Aleutian Islands area endorsements on a groundfish license that was derived in whole or in part from the qualifying fishing history of an AFA vessel are exempt from the landing requirements in paragraph (k)(4)(vi) of this section.

(B) Trawl gear designations with Bering Sea or Aleutian Islands area endorsements on a groundfish license are exempt from the landing requirements in paragraph (k)(4)(vi) of this section provided that all of the following conditions apply:

( 1 ) The groundfish license was not derived in whole or in part from the qualifying fishing history of an AFA vessel;

( 2 ) The groundfish license is assigned to an AFA vessel on August 14, 2009; and

( 3 ) No other groundfish license with a Bering Sea or Aleutian Island area endorsement is assigned to that AFA vessel on August 14, 2009.

(C) Trawl gear designations with Bering Sea or Aleutian Islands area endorsements on a groundfish license that is listed in Column C of Table 31 to this part are exempt from the landing requirements in paragraph (k)(4)(vi) of this section.

(D) A trawl gear designation with Central Gulf area endorsement on a groundfish license that is assigned Rockfish QS is exempt from the landing requirements in paragraph (k)(4)(vi) of this section.

(viii) *Exemption to trawl gear recent participation requirements for groundfish licenses with a Central Gulf or Western Gulf area endorsement.* A trawl gear designation with a Central Gulf or Western Gulf area endorsement on a groundfish license is exempt from the landing requirements in paragraph (k)(4)(vi) of this section provided that a person made at least 20 legal landings under the authority of that groundfish license in either the Central Gulf or Western Gulf area using trawl gear during the period from January 1, 2005, through December 31, 2007.

(ix) *Aleutian Island area endorsements for non-AFA trawl catcher vessels.* (A) If a non-AFA catcher vessel that is less than 60 feet LOA was used to make at least 500 mt of legal landings of Pacific cod using trawl gear from the waters that were open by the State of Alaska for which it adopts a Federal fishing season adjacent to the Aleutian Islands Subarea during the period from January 1, 2000, through December 31, 2006, according to the official record, NMFS shall issue an Aleutian Island area endorsement with a trawl gear designation to a groundfish license assigned to the vessel owner according to the official record, provided that the groundfish license assigned to that non-AFA catcher vessel meets all of the following requirements:

( 1 ) It was not derived in whole or in part from the qualifying fishing history of an AFA vessel;

( 2 ) It has a trawl gear designation;

( 3 ) It does not have a catcher/processor vessel designation; and

( 4 ) That groundfish license has an MLOA of less than 60 feet.

(B) If a non-AFA catcher vessel that is equal to or greater than 60 feet LOA was used to make at least one legal landing in State of Alaska waters adjacent to the Aleutian Islands Subarea using trawl gear during the period from January 1, 2000, through December 31, 2006, or one landing of Pacific cod from the State of Alaska Pacific cod fishery during the period from January 1, 2000, through December 31, 2006, according to the official record, NMFS shall issue an Aleutian Island area endorsement with a trawl gear designation to a groundfish license assigned to the vessel owner according to the official record, provided that the groundfish license assigned to that non-AFA catcher vessel meets the following criteria:

( 1 ) It was not derived in whole or in part from the qualifying fishing history of an AFA vessel;

( 2 ) It has a trawl gear designation;

( 3 ) It does not have a catcher/processor vessel designation; and

( 4 ) At least 1,000 mt of legal landings of Pacific cod using trawl gear in the BSAI were made under the authority of that groundfish license during the period from January 1, 2000, through December 31, 2006, according to the official record.

(C) NMFS will assign the AI endorsement to an eligible groundfish license held and designated by the vessel owner beginning on August 14, 2009.

(D) If the vessel owner does not hold a groundfish license to which an AI endorsement may be assigned on August 14, 2009 according to the official record, the vessel owner will have the opportunity to amend the official record as described in paragraph (k)(4)(x) of this section to designate an otherwise eligible groundfish license. If the official record is subsequently amended, NMFS will assign the AI endorsement to the groundfish license specified in the amended official record.

(x) *Trawl gear recent participation official record.* (A) The official record will contain all information used by the Regional Administrator to determine the following:

( 1 ) The number of legal landings assigned to a groundfish license for purposes of the trawl gear designation participation requirements described in paragraph (k)(4)(vi) of this section;

( 2 ) The amount of legal landings assigned to a groundfish license for purposes of the AI endorsements described in paragraph (k)(4)(ix) of this section;

( 3 ) The owner of a vessel that has made legal landings that may generate an AI endorsement as described in paragraph (k)(4)(ix) of this section; and

( 4 ) All other relevant information necessary to administer the requirements described in paragraphs (k)(4)(vi) through (k)(4)(ix) of this section.

(B) The official record is presumed to be correct. A groundfish license holder has the burden to prove otherwise. For the purposes of creating the official record, the Regional Administrator will presume the following:

( 1 ) A groundfish license is presumed to have been used onboard the same vessel from which that groundfish license was derived, the original qualifying vessel, during the calendar years 2000 and 2001, unless clear and unambiguous written documentation is provided that establishes otherwise;

( 2 ) If more than one person is claiming the same legal landing, then each groundfish license for which the legal landing is being claimed will be credited with the legal landing;

( 3 ) The groundfish license to which an AI endorsement described in paragraph (k)(4)(ix) of this section will be initially assigned.

(C) Only legal landings as defined in §679.2 and documented on State of Alaska fish tickets or NMFS weekly production reports will be used to assign legal landings to a groundfish license.

(D) The Regional Administrator will specify by letter a 30-day evidentiary period during which an applicant may provide additional information or evidence to amend or challenge the information in the official record. A person will be limited to one 30-day evidentiary period. Additional information or evidence received after the 30-day evidentiary period specified in the letter has expired will not be considered for purposes of the initial administrative determination.

(E) The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the person fails to support a person's claims and is insufficient to rebut the presumption that the official 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 30-day evidentiary period. The IAD will indicate the deficiencies with the information, or the evidence submitted in support of the information. The IAD will also indicate which claims cannot be approved based on the available information or evidence. A person who receives an IAD may appeal pursuant to §679.43. A person who avails himself or herself of the opportunity to appeal an IAD will receive a non-transferable license pending the final resolution of that appeal, notwithstanding the eligibility of that applicant for some claims based on consistent information in the official record.

(5) *Qualification for a crab species license.* A crab species license will be issued to an eligible applicant who owned a vessel that meets the criteria in paragraphs (k)(5)(i), (k)(5)(ii), and (k)(5)(iii) of this section, except that vessels are exempt from the requirements in paragraph (k)(5)(i) of this section for area/species endorsements at paragraphs (A) and (G) in the table at paragraph (k)(5)(ii) of this section.

(i) *General qualification period (GQP).* To qualify for one or more of the area/species endorsements in the table at paragraph (k)(5)(ii) of this section, the requirements of paragraph (k)(5)(iii) of this section must be met and:

(A) At least one documented harvest of any amount of crab species must have been made from a vessel between January 1, 1988, and June 27, 1992; or

(B) At least one documented harvest of any amount of crab species must have been made from a vessel between January 1, 1988, and December 31, 1994, providing that, during the period January 1, 1988, through February 9, 1992, the vessel for which the documented harvest was made also made a legal landing of any groundfish species harvested in the GOA or BSAI with any authorized gear, except sablefish caught with fixed gear, and, during the period February 10, 1992, through December 11, 1994, made a legal landing of any king or Tanner crab species harvested in the Bering Sea and Aleutian Islands Area.

(ii) *Area/species endorsements.* This table provides the documented harvest requirements for LLP crab license area/species endorsements:

<b>A crab species license will be assigned...</b>	<b>if...</b>	<b>during the period...</b>	<b>in...</b>
(A) A Pribilof red king and Pribilof blue king area/species endorsement	at least one documented harvest of red king crab or blue king crab was made by a vessel	beginning January 1, 1993, through December 31, 1994	the area described in the definition for a Pribilof red king and Pribilof blue king area/species endorsement at §679.2.
(B) A Bering Sea and Aleutian Islands Area <i>C. opilio</i> and <i>C. bairdi</i>	at least three documented harvests of <i>C. opilio</i> and <i>C.</i>	beginning January 1, 1992, through	the area described in the definition for a Bering Sea and Aleutian Islands Area <i>C. opilio</i>

area/species endorsement	<i>bairdi</i> were made by a vessel	December 31, 1994	and <i>C. bairdi</i> area/species endorsement at §679.2.
(C) A St. Matthew blue king area/species endorsement	at least one documented harvest of red king crab or blue king crab was made by a vessel	beginning January 1, 1992, through December 31, 1994	the area described in the definition for a St. Matthew blue king area/species endorsement at §679.2.
(D) An Aleutian Islands brown king area/species endorsement	at least three documented harvests of brown king crab were made by a vessel	beginning January 1, 1992, through December 31, 1994	the area described in the definition for an Aleutian Islands brown king area/species endorsement at §679.2.
(E) An Aleutian Islands red king area/species endorsement	at least one documented harvest of red king crab or blue king crab was made by a vessel	beginning January 1, 1992, through December 31, 1994	the area described in the definition for an Aleutian Islands red king area/species endorsement at §679.2.
(F) A Bristol Bay red king area/species endorsement	at least one documented harvest of red king crab or blue king crab was made by a vessel	beginning January 1, 1991, through December 31, 1994	the area described in the definition for a Bristol Bay red king area/species endorsement at §679.2.
(G) A Norton Sound red king and blue king area/species endorsement	at least one documented harvest of red king crab or blue king crab was made by a vessel	beginning January 1, 1993, through December 31, 1994	the area described in the definition for a Norton Sound red king and blue king area/species endorsement at §679.2.

(iii) Recent participation period (RPP). (A) The RPP is the period from January 1, 1996, through February 7, 1998. To qualify for a crab species license, defined at §679.2, a person must have made at least one documented harvest of any amount of LLP crab species from a vessel during the RPP and must have held a LLP qualifying fishing history at the time of that documented harvest. A LLP qualifying fishing history meets the documented harvest requirements at paragraphs (k)(5)(i) and (k)(5)(ii) of this section.

(B) *Exceptions to the RPP.* A person does not need to meet the documented harvest requirements in paragraph (k)(5)(iii)(A) of this section if he or she deployed a vessel that met the documented harvest requirements in paragraph (k)(5)(i) of this section, if applicable, paragraph (k)(5)(ii) of this section, and:

( 1 ) Only qualifies area/species endorsement at paragraph (G) in the table at paragraph (k)(5)(ii).

( 2 ) Those documented harvests were made from a vessel that meets the requirements for vessel length category “C”.

( 3 ) The vessel used to meet the document harvest requirements in paragraphs (k) (5) (i) and (k) (5) (ii) of this section was lost or destroyed, and he or she made a documented harvest of crab species any time during the period beginning after the vessel was lost or destroyed but before January 1, 2000.

(iv) Exception to allow purchase of LLP qualifying fishing history after the documented harvest in the RPP. To qualify for a LLP crab species license, a person who made a documented harvest of LLP crab species during the period from January 1, 1998, through February 7, 1998, must have obtained, or entered into a contract to obtain, the LLP qualifying fishing history by 8:36 a.m. Alaska local time on October 10, 1998,

(v) A qualified person who owned a vessel on June 17, 1995, that met the requirements in paragraphs (k)(5)(i) and (ii) of this section, but whose vessel was unable to meet requirements of paragraph (k)(5)(iii) of this section because of unavoidable circumstances (i.e., the vessel was lost damaged, or otherwise unable to participate in the license limitation crab fisheries) may receive a license if the qualified person is able to demonstrate that:

(A) The owner of the vessel at the time of the unavoidable circumstance held a specific intent to conduct fishing for license limitation crab species with that vessel during a specific time period in a specific area;

(B) The specific intent to conduct directed fishing for license limitation crab species was thwarted by a circumstance that was:

( 1 ) Unavoidable;

( 2 ) Unique to the owner of that vessel, or unique to that vessel; and

( 3 ) Unforeseen and reasonably unforeseeable to the owner of the vessel;

(C) The circumstance that prevented the owner from conducting directed fishing for license limitation crab species actually occurred;

(D) Under the circumstances, the owner of the vessel took all reasonable steps to overcome the circumstances that prevented the owner from conducting directed fishing for license limitation crab species; and

(E) Any amount of license limitation crab species was harvested on the vessel after the vessel was prevented from participating but before January 1, 2000.

(vi) A groundfish license or crab species license may be used on a vessel that is named on the license, that complies with the vessel designation, and that does not exceed the MLOA on the license.

(6) *Application for a groundfish license or a crab species license.* (i) *General.* The Regional Administrator will issue a groundfish license or a crab species license to an applicant if a complete application is submitted by or on behalf of the applicant during the specified application period, and if that applicant meets all the criteria for eligibility in paragraph (k) of this section. An application that is postmarked or delivered after the ending date for the application period for the License Limitation Program specified in the Federal Register will be denied. An application form will be sent to the last known address of a person identified as an eligible applicant by the official LLP record. An application form may be requested from the Regional Administrator.

(ii) *Application period.* An application period of no less than 90 days will be specified by notification in the Federal Register and other information sources deemed appropriate by the Regional Administrator.

(iii) *Contents of application.* To be complete, an application for a groundfish license or a crab species license must be signed by the applicant, or the individual representing the applicant, and contain the following, as applicable:

(A) Name, business address, telephone number, and FAX number of the applicant;

(B) Name, state registration number (e.g., ADF&G number), and, if applicable, the USCG documentation number of the vessel being used as the basis for eligibility for a license; and name, state registration number (e.g., ADF&G number), and, if applicable, the USCG documentation number of the vessel to be deployed with the license if different than the vessel used as the basis of eligibility for a license;

(C) Name of the managing company, if any;

(D) Valid evidence of the documented harvests that are the basis of eligibility for a license, including harvest area, gear used, date of landing, and, if applying for a crab species license, species;

(E) Valid evidence of LOA on June 24, 1992, of the vessel used as the basis of eligibility for a license, except if that vessel was under reconstruction on that date, valid evidence of LOA on the date reconstruction was completed and valid evidence of when reconstruction began and ended;

(F) Valid evidence of LOA on June 17, 1995, of the vessel used as the basis of eligibility for a license, except if that vessel was under reconstruction on that date, valid evidence of LOA on the date reconstruction was completed, and valid evidence of when reconstruction began and ended;

(G) Valid evidence to support the applicant's claim for a vessel designation of catcher vessel or catcher/processor vessel;

(H) Valid evidence of ownership of the vessel being used as the basis for eligibility for a license (for USCG documented vessels, valid evidence must be the USCG Abstract of Title), or if eligibility is based on a fishing history that has been separated from a vessel, valid evidence of ownership of the fishing history being used as the basis of eligibility for a license; and

(I) Valid evidence of the LOA of the vessel to be deployed by the license if different than the vessel used as the basis for eligibility for a license.

(iv) *Other information required for special circumstances .*

(A) *Successor-in-interest.* If an applicant is applying as the successor-in-interest to an eligible applicant, an application, to be complete, also must contain valid evidence proving the applicant's status as a successor-in-interest to that eligible applicant and:

( 1 ) Valid evidence of the death of that eligible applicant at the time of application, if the eligible applicant was or is an individual; or

( 2 ) Valid evidence that the eligible applicant is no longer in existence at the time of application, if the eligible applicant is not an individual.

(B) *Norton Sound crab species license endorsement.* If an applicant is applying for a crab species license endorsement for Norton Sound and if the applicant is a person, an application, to be complete, must contain valid evidence that the applicant was a State of Alaska permit holder for the Norton Sound king crab summer fishery in 1993 or 1994. If the applicant is a corporation, an application, to be complete, must contain valid evidence that the corporation owned or had a lease for a vessel on June 17, 1995, that participated in the Norton Sound king crab summer fishery in 1993 or 1994.

(C) *Extended general qualification period.* If an applicant is applying for a license based on meeting the general qualification period requirements of paragraph (k)(4)(i)(A)( 2 ) or (k)(4)(i)(B)( 2 ) of this section, the application, to be complete, must indicate which single endorsement area the applicant has selected for license. A license cannot be endorsed for more than one area, notwithstanding the fact that the applicant may have the documented harvests to qualify for more than one endorsement area.

(D) *Unavoidable circumstances.* If a person is claiming that unavoidable circumstances prevented him or her from meeting certain eligibility requirements for a license under paragraph (k) of this section, he or she must provide the information required in the particular paragraph of this section authorizing such a claim, and include valid evidence of the date the vessel was lost, damaged, or otherwise unable to participate in the fishery, and the date a documented harvest was made after the vessel was unable to participate in the fishery by the unavoidable circumstance.

(v) *Application evaluation.* The Regional Administrator will evaluate an application submitted during the specified application period and compare all claims in the application with the information in the official LLP record. Claims in the application that are consistent with information in the official LLP record will be accepted by the Regional Administrator. Inconsistent claims in the application, unless verified by evidence, will not be accepted. Pursuant to paragraph (k)(6)(vii) of this section, an applicant who submits inconsistent claims, or an applicant who fails to submit

the information specified in paragraphs (k)(6)(iii) and (k)(6)(iv) of this section, will be provided a 60-day evidentiary period pursuant to paragraph (k)(6)(vii) of this section to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the official LLP record. An applicant who submits claims that are inconsistent with information in the official LLP record has the burden of proving that the submitted claims are correct.

(vi) *Additional information or evidence.* The Regional Administrator will evaluate additional information or evidence to support an applicant's inconsistent claims submitted within the 60-day evidentiary period pursuant to paragraph (k)(6)(vii) of this section. 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 is correct, the official LLP record will be amended and the information will be used in determining whether the applicant is eligible for a license. 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, pursuant to paragraph (k)(6)(viii) of this section, that the applicant did not meet the burden of proof to change the information in the official LLP record.

(vii) *60-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 LLP 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 information as specified in paragraphs (k)(6)(iii) and (k)(6)(iv) of this section 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 purposes of the initial administrative determination.

(viii) *Initial administrative determinations (IAD).* The Regional 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 LLP 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 pursuant to §679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will not receive a transferable license until after the final resolution of that appeal, notwithstanding the eligibility of that applicant for some claims based on consistent information in the application.

(ix) *Issuance of a non-transferable license.* The Regional Administrator will issue a non-transferable license to the applicant on issuance of an IAD if required by the license renewal provisions of 5 U.S.C. 558. A non-transferable license authorizes a person to deploy a vessel to conduct directed fishing for license limitation groundfish or crab species as specified on the non-transferable license, and will have the specific endorsements and designations based on the claims in his or her application. A non-transferable license will expire upon final agency action.

(x) *Surrender of groundfish or crab LLP.* A groundfish or crab LLP license may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. A surrendered groundfish or crab LLP license will cease to exist and will not be subsequently reissued. Contact NMFS/RAM for more information by telephone, locally at 907-586-7202 (Option #2) or toll-free at 800-304-4846 (Option #2).

(7) *Transfer of a groundfish license or a crab species license* —(i) *General.* The Regional Administrator will transfer a groundfish license, Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section, or a crab species license if a complete transfer application is submitted to Restricted Access Management, Alaska Region, NMFS, and if the transfer meets the eligibility criteria as specified in paragraph (k)(7)(ii) of this section. A transfer application form may be requested from the Regional Administrator.

(ii) *Eligibility criteria for transfers.* A groundfish license, Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section, or crab species license can be transferred if the following conditions are met:

(A) The designated transferee is eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.;

(B) The parties to the transfer do not have any fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations;

(C) The transfer will not cause the designated transferee to exceed the license caps in §679.7(i); and

(D) The transfer does not violate any other provision specified in this part.

(iii) *Contents of application.* To be complete, an application for a groundfish license, Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section transfer, or a crab species license transfer must be legible, have notarized and dated signatures of the applicants, and the applicants must attest that, to the best of the applicant's knowledge, all statements in the application are true. An application to transfer will be provided by NMFS, or is available on the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>. The acceptable submittal methods will be specified on the application form.

(iv) *Incomplete applications.* The Regional Administrator will return an incomplete transfer application to the applicant and identify any deficiencies if the Regional Administrator determines that the application does not meet all the criteria identified in paragraph (k)(7) of this section.

(v) *Transfer by court order, operation of law, or as part of a security agreement.* The Regional Administrator will transfer a groundfish license, Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section, or a crab species license based on a court order, operation of law, or a security agreement if the Regional Administrator determines that the transfer application is complete and the transfer will not violate any of the provisions of this section.

(vi) *Voluntary transfer limitation.* A groundfish license, Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section, or a crab species license may be voluntarily transferred only once in any calendar year. A voluntary transfer is a transfer other than one pursuant to a court order, operation of law, or a security agreement. An application for transfer that would cause a person to exceed the transfer limit of this provision will not be approved. A transfer of an Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section to another LLP license, or the transfer of a groundfish license with an Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section attached to it will be considered to be a transfer of that Aleutian Island area endorsement.

(vii) *Request to change the designated vessel.* A request to change the vessel designated on an LLP groundfish or crab species license must be made on a transfer application. If this request is approved and made separately from a license transfer, it will count towards the annual limit on voluntary transfers specified in paragraph (k)(7)(vi) of this section.

(viii) *Severability of licenses.* (A) Area endorsements or area/species endorsements specified on a license are not severable from the license and must be transferred together, except that Aleutian Island area endorsements on a groundfish license with a trawl gear designation issued under the provisions of paragraph (k)(4)(ix)(A) of this section and that are assigned to a groundfish license with an MLOA of less than 60 feet LOA may be transferred separately from the groundfish license to which that Aleutian Island area endorsement was originally issued to another groundfish license provided that the groundfish license to which that Aleutian Island endorsement is transferred:

( 1 ) Was not derived in whole or in part from the qualifying fishing history of an AFA vessel;

( 2 ) Has a catcher vessel designation;

( 3 ) Has a trawl gear designation;

( 4 ) Has an MLOA of less than 60 feet LOA; and

( 5 ) A complete transfer application is submitted to the Regional Administrator as described under this paragraph (k)(7), and that application is approved.

(B) A groundfish license and a crab species license issued based on the legal landings of the same vessel and initially issued to the same qualified person are not severable and must be transferred together.

(ix) *Other transfer restrictions.* The transfer of a LLP license that was issued based on the documented harvests from a vessel that did not have an FFP during the period beginning January 1, 1988, through October 8, 1998, must be accompanied by the vessel from which the documented harvests were made or its replacement vessel, or if the LLP license and vessel were separated by transfer prior to February 7, 1998, then by the vessel that is currently being deployed by the license holder. The Regional Administrator will deny a transfer application that requests the transfer of a LLP license that was issued based on the documented harvests from a vessel that did not have an FFP during the period beginning January 1, 1988, through October 8, 1998, if the appropriate vessel is not being transferred as part of the same transaction. A license holder of an LLP license that was issued based on the documented harvests from a vessel that did not have an FFP during the period beginning January 1, 1988, through October 8, 1998, may replace the vessel from which the documented harvests were made with another vessel that meets the vessel designation and MLOA requirements specified on the LLP license if the original qualifying vessel is lost or destroyed.

(8) *Other provisions.* (i) Any person committing, or a fishing vessel used in the commission of, a violation of the Magnuson-Stevens Fishery Conservation and Management Act or any regulations issued pursuant thereto, is subject to the civil and criminal penalty provisions and the civil forfeiture provisions of the Magnuson-Stevens Fishery Conservation and Management Act, part 621 of this chapter, 15 CFR part 904 (Civil Procedure), and other applicable law. Penalties include, but are not limited to, permanent or temporary sanctions to licenses.

(ii) Notwithstanding the provisions of the license limitation program in this part, vessels fishing for species other than license limitation groundfish as defined in §679.2 that were authorized under Federal regulations to incidentally catch license limitation groundfish without a Federal fisheries permit described at §679.4(b) will continue to be authorized to catch the maximum retainable bycatch amounts of license limitation groundfish as provided in this part without a groundfish license.

(iii) An eligible applicant, who qualifies for a groundfish license or crab species license but whose vessel on which the eligible applicant's qualification was based was lost or destroyed, will be issued a license. This license:

(A) Will have the vessel designation of the lost or destroyed vessel.

(B) Cannot be used to conduct directed fishing for license limitation groundfish or to conduct directed fishing for crab species on a vessel that has an LOA greater than the MLOA designated on the license.

(iv) A qualified person who owned a vessel on June 17, 1995, that made a documented harvest of license limitation groundfish, or crab species if applicable, between January 1, 1988, and February 9, 1992, but whose vessel was unable to meet all the criteria in paragraph (k)(4) of this section for a groundfish license or paragraph (k)(5) of this section for a crab species license because of an unavoidable circumstance (i.e., the vessel was lost, damaged, or otherwise unable to participate in the license limitation groundfish or crab fisheries) may receive a license if the qualified person is able to demonstrate that:

(A) The owner of the vessel at the time of the unavoidable circumstance held a specific intent to conduct directed fishing for license limitation groundfish or crab species with that vessel during a specific time period in a specific area.

(B) The specific intent to conduct directed fishing for license limitation groundfish or crab species with that vessel was thwarted by a circumstance that was:

( 1 ) Unavoidable.

( 2 ) Unique to the owner of that vessel, or unique to that vessel.

( 3 ) Unforeseen and reasonably unforeseeable to the owner of the vessel.

(C) The circumstance that prevented the owner from conducting directed fishing for license limitation groundfish or crab species actually occurred.

(D) Under the circumstances, the owner of the vessel took all reasonable steps to overcome the circumstance that prevented the owner from conducting directed fishing for license limitation groundfish or crab species.

(E) Any amount of license limitation groundfish or appropriate crab species was harvested on the vessel in the specific area that corresponds to the area endorsement or area/species endorsement for which the qualified person who owned a vessel on June 17, 1995, is applying and that the license limitation groundfish or crab species was harvested after the vessel was prevented from participating by the unavoidable circumstance but before June 17, 1995.

(v) A groundfish license or a crab species license may be used on a vessel that complies with the vessel designation on the license and that does not exceed the MLOA on the license.

(9) *Pacific cod endorsements* —(i) *General*. In addition to other requirements of this part, and unless specifically exempted in paragraph (k)(9)(iv) of this section, a license holder must have a Pacific cod endorsement on his or her groundfish license to conduct directed fishing for Pacific cod with hook-and-line or pot gear in the BSAI. A license holder can only use the specific non-trawl gear(s) indicated on his or her license to conduct directed fishing for Pacific cod in the BSAI.

(ii) *Eligibility requirements for a Pacific cod endorsement*. This table provides eligibility requirements for Pacific cod endorsements on an LLP groundfish license:

<b>If a license holder's license has a . . .</b>	<b>And the license holder harvested Pacific cod in the BSAI with . . .</b>	<b>Then the license holder must demonstrate that he or she harvested at least . . .</b>	<b>In . . .</b>	<b>To receive a Pacific cod endorsement that authorizes harvest with . . .</b>
(A) Catcher vessel designation.	Hook-and-line gear or jig gear	7.5 mt of Pacific cod in the BSAI.	In any one of the years 1995, 1996, 1997, 1998, or 1999	Hook-and-line gear.
(B) Catcher vessel designation.	Pot gear or jig gear	100,000 lb of Pacific cod in the BSAI.	In each of any two of the years 1995, 1996, 1997, 1998, or 1999	Pot gear.
(C) Catcher/processor vessel designation.	Hook-and-line gear	270 mt of Pacific cod in the BSAI.	In any one of the years 1996, 1997, 1998, or 1999	Hook-and-line gear.
(D) Catcher/processor vessel designation.	Pot gear	300,000 lb of Pacific cod in the BSAI.	In each of any two of the years 1995, 1996, 1997, or 1998	Pot gear.

(iii) *Explanations for Pacific cod endorsements.* (A) All eligibility amounts in the table at paragraph (k)(9)(ii) of this section will be determined based on round weight equivalents.

(B) Discards will not count toward eligibility amounts in the table at paragraph (k)(9)(ii) of this section.

(C) Pacific cod harvested for personal bait use will not count toward eligibility amounts in the table at paragraph (k)(9)(ii) of this section.

(D) A legal landing of Pacific cod in the BSAI for commercial bait will count toward eligibility amounts in the table at paragraph (k)(9)(ii) of this section.

(E) Harvests within the BSAI will count toward eligibility amounts in the table at paragraph (k)(9)(ii) of this section; however, a license holder will only be able to harvest Pacific cod in the specific areas in the BSAI for which he or she has an area endorsement.

(F) Harvests within the BSAI Would count toward eligibility amounts in the table at paragraph (k)(9)(ii) of this section if:

( 1 ) Those harvests were made from the vessel that was used as the basis of eligibility for the license holder's LLP groundfish license, or

( 2 ) Those harvests were made from a vessel that was not the vessel used as the basis of eligibility for the license holder's LLP groundfish license, provided that, at the time the endorsement-qualifying Pacific cod harvests were made, the person who owned such Pacific cod endorsement-qualifying fishing history also owned the fishing history of a vessel that satisfied the requirements for the LLP groundfish license.

( 3 ) Notwithstanding the provisions of paragraph (k)(9)(iii)(F)( 2 ) of this section, the LLP groundfish license qualifying history or the Pacific cod qualifying history of any one vessel may not be used to satisfy the requirements for issuance of more than one LLP groundfish license endorsed for the BSAI Pacific cod hook-and-line or pot gear fisheries.

(G) Except as provided in paragraph 679.4(k)(9)(iii)(D), only harvests of BSAI Pacific cod in the directed fishery will count toward eligibility amounts.

(iv) *Exemptions to Pacific cod endorsements.* (A) Any vessel exempted from the License Limitation Program at paragraph (k)(2) of this section.

(B) Any catcher vessel less than 60 ft (18.3 m) LOA.

(C) Any catch of Pacific cod for personal use bait.

(v) *Combination of landings and hardship provision.* Notwithstanding the eligibility requirements in paragraph (k)(9)(ii) of this section, a license holder may be eligible for a Pacific cod endorsement by meeting the following criteria.

(A) *Combination of landings.* A license holder may combine the landings of a sunken vessel and the landings of a vessel obtained to replace a sunken vessel to satisfy the eligibility amounts in the table at paragraph (k)(9)(ii) of this section only if he or she meets the requirements in paragraphs (k)(9)(v)(A)( 1 )–( 4 ) of this section. No other combination of landings will satisfy the eligibility amounts in the table at paragraph (k)(9)(ii) of this section.

( 1 ) The sunken vessel was used as the basis of eligibility for the license holder's groundfish license;

( 2 ) The sunken vessel sank after January 1, 1995;

( 3 ) The vessel obtained to replace the sunken vessel was obtained by December 31 of the year 2 years after the sunken vessel sank; and

( 4 ) The length of the vessel obtained to replace the sunken vessel does not exceed the MLOA specified on the license holder's groundfish license.

(B) *Hardship provision.* A license holder may be eligible for a Pacific cod endorsement because of unavoidable circumstances if he or she meets the requirements in paragraphs (k)(9)(v)(B)( 1 )–( 4 ) of this section. For purposes of this hardship provision, the term license holder includes the person whose landings were used to meet the eligibility requirements for the license holder's groundfish license, if not the same person.

( 1 ) The license holder at the time of the unavoidable circumstance held a specific intent to conduct directed fishing for BSAI Pacific cod in a manner sufficient to meet the landing requirements in the table at paragraph (k)(9)(ii) of this section but that this intent was thwarted by a circumstance that was:

( i ) Unavoidable;

( ii ) Unique to the license holder, or unique to the vessel that was used as the basis of eligibility for the license holder's groundfish license; and

( iii ) Unforeseen and reasonably unforeseeable to the license holder.

( 2 ) The circumstance that prevented the license holder from conducting directed fishing for BSAI Pacific cod in a manner sufficient to meet the landing requirements in paragraph (k)(9)(ii) actually occurred;

( 3 ) The license holder took all reasonable steps to overcome the circumstance that prevented the license holder from conducting directed fishing for BSAI Pacific cod in a manner sufficient to meet the landing requirements in paragraph (k)(9)(ii) of this section; and

( 4 ) Any amount of Pacific cod was harvested in the BSAI aboard the vessel that was used as the basis of eligibility for the license holder's groundfish license after the vessel was prevented from participating by the unavoidable circumstance but before April 16, 2000.

(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.

(11) *Rockfish QS* —(i) *General.* In addition to other requirements of this part, a license holder must have rockfish QS on his or her groundfish LLP license to conduct directed fishing for Rockfish Program fisheries with trawl gear.

(ii) *Eligibility requirements for rockfish QS.* The eligibility requirements to receive rockfish QS are established in §679.80(b).

(12) *Amendment 80 Program.* In addition to other requirements of this part, a license holder must have an Amendment 80 LLP license to conduct fishing for an Amendment 80 species assigned to the Amendment 80 sector.

(I) *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 BS and any shoreside processor, stationary floating processor, or mothership that receives pollock harvested in a non-CDQ directed pollock fishery in the BS 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 BS 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 BS. 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.

(C) *Surrender of AFA permits.* Except for AFA inshore processor permits, AFA permits may not be surrendered.

(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 by NMFS to reflect any change in the ownership of the vessel or processor after submittal of this information to NMFS in a written letter.

(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) [Reserved]

(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) [Reserved]

(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);

(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) *Surrender of permit.* An AFA inshore processor permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. The AFA inshore processor permit will not be reissued in the same fishing year in which it was surrendered, but may be reapplied for and if approved, reissued to the permit holder of record in a subsequent fishing year. Contact NMFS/RAM for more information by telephone, locally at 907-586-7202 (Option #2) or toll-free at 800-304-4846 (Option #2).

(iii) *Single geographic location requirement.* An AFA inshore processor permit authorizes the processing of pollock harvested in the BS subarea directed pollock fishery only in a single geographic location during a reporting week. For the purposes of this paragraph, single geographic location means:

(A) *Shoreside processors.* The physical location at which the land-based shoreside processor first processed pollock harvested from the BS subarea directed pollock fishery during a fishing year.

(B) *Stationary floating processors (SFP).* A geographic position within State of Alaska waters of the BS subarea and that is within a 5 nm radius of the latitude and longitude reported in the check-in and check-out reports at §679.5(h)(5)(ix)(B). An AFA SFP cannot change its single geographic location more than four times within State of Alaska waters in the BS subarea to process pollock harvested in a BS subarea directed pollock fishery during a fishing year and cannot use more than one single geographic location during a reporting week.

(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);

(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 (I)(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 an AFA inshore processor that is designated in the cooperative contract as the processor to whom the cooperative has agreed to deliver at least 90 percent of its BS 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 BS 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. If the vessel is more than 60 feet (18.3 m) LOA, the vessel must be named on a valid LLP permit endorsed for the AI to engage in trawling for pollock in the AI; 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 BS inshore directed pollock fishery to the AFA inshore processor designated under paragraph (I)(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 BS inshore directed pollock fishery to the AFA inshore processor designated under paragraph (I)(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 BS pollock harvested in the BS directed pollock fishery to an AFA inshore processor.

( iii ) *Harvests under contract to a cooperative.* Any landings made by a vessel operating under contract to an inshore cooperative in which it was not a member will not be used to determine eligibility under paragraph (I)(6)(ii)(D)( 2 ).

(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 (I)(7)(i)(A) of this section, the replacement vessel may be replaced according to the provisions of this paragraph (I)(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.

(m) *Participation in the AI directed pollock fishery —(1) Applicability .* Harvesting pollock in the AI directed pollock fishery and processing pollock taken in the AI directed pollock fishery is authorized only for those harvesters and processors that are selected by the Aleut Corporation and approved by the Regional Administrator to harvest pollock in the AI directed pollock fishery or to process pollock taken in the AI directed pollock fishery.

(2) *Annual selection of participants by the Aleut Corporation .* Each year and at least 14 days before harvesting pollock in the AI directed pollock fishery or processing pollock harvested in the AI directed pollock fishery, a participant must be selected by the Aleut Corporation and the following information for each participant must be submitted by the designated contact to the Regional Administrator:

(i) Vessel or processor name;

(ii) Federal fisheries permits number issued under paragraph (b) of this section or Federal processor permit issued under paragraph (f) of this section; and

(iii) The fishing year which participation approval is requested.

(3) *Participant approval* . (i) Participants must have:

(A) A valid Federal fisheries permit or Federal processing permit, pursuant to paragraphs (b) and (f) of this section, respectively;

(B) A valid fishery endorsement on the vessel's U.S. Coast Guard documentation for the vessel's participation in the U. S. fishery; and

(C) A valid AFA permit under: paragraph (l)(2) of this section for all catcher/processors, paragraph (l)(3) of this section for all catcher vessels greater than 60 ft (18.3 m) LOA, or paragraph (l)(4) of this section for all motherships.

(ii) Each participant selected by the Aleut Corporation that meets the conditions under paragraph (m)(3)(i) of this section will be approved by the Regional Administrator for participation in the AI directed pollock fishery.

(iii) The Regional Administrator will provide to the designated contact for the Aleut Corporation the identity of each approved participant and the date upon which participation in the AI directed pollock fishery may commence. The Aleut Corporation shall forward to the approved participants a copy of NMFS's approval letter before harvesting or processing occurs.

(iv) A copy of NMFS' approval letter for participating in the AI directed pollock fishery during the fishing year must be on site at the shoreside processor or stationary floating processor, or on board the vessel at all times and must be presented for inspection upon the request of any authorized officer.

(4) *Participant disapproval* . (i) The Regional Administrator shall disapprove any participant that does not meet the conditions under paragraph (m)(3)(i) of this section. The Regional Administrator will notify in writing the Aleut Corporation and the selected participant of the disapproval. The selected participant will have 30 days in which to submit proof of meeting the requirements to participate in the AI directed pollock fishery.

(ii) The Regional Administrator will prepare and send an initial administrative determinations (IAD) to the selected participant following the expiration of the 30-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the selected participant fails to support the participant's claims and is insufficient to rebut the presumption that the disapproval for participation in the AI directed pollock fishery is correct or if the additional information or evidence is not provided within the time period specified in the letter that notifies the applicant of his or her 30-day evidentiary period. The IAD will indicate the deficiencies in the information required, including the evidence submitted in support of the information. The IAD also will indicate which claims cannot be approved based on the available information or evidence. A participant who receives an IAD may appeal under the appeals procedures set out at §679.43. A participant who avails himself or herself of the opportunity to appeal an IAD will receive an interim approval from NMFS authorizing participation in the AI directed pollock fishery. An interim approval based on claims contrary to the final determination will expire upon final agency determination.

(n) *Rockfish Program* —(1) *Cooperative quota (CQ)*. (i) A CQ permit is issued annually to a rockfish cooperative if the members of that rockfish cooperative have submitted a complete and timely application for CQ as described at §679.81(e)(4) that is subsequently approved by the Regional Administrator. A CQ permit authorizes a rockfish cooperative to participate in the Rockfish Program. The CQ permit will indicate the amount of primary rockfish species and secondary species that may be harvested by the rockfish cooperative, and the amount of rockfish halibut PSC that may be used by the rockfish cooperative. The CQ permit will list the members of the rockfish cooperative, the vessels that are authorized to fish under the CQ permit for that rockfish cooperative, and the eligible rockfish processor with whom that rockfish cooperative is associated, if applicable.

(ii) A CQ permit is valid under the following circumstances:

(A) Until the end of the year for which the CQ permit is issued;

(B) Until the amount harvested is equal to the amount specified on the CQ permit for all primary rockfish species, secondary species, and rockfish halibut PSC;

- (C) Until the permit is modified by transfers under §679.81(f);
  - (D) Until the permit is voided through an approved rockfish cooperative termination of fishing declaration; or
  - (E) Until the permit is revoked, suspended, or modified pursuant to §679.43 or under 15 CFR part 904.
- (iii) A legible copy of the CQ permit must be carried on board the vessel(s) used by the rockfish cooperative.
- (2) *Rockfish cooperative termination of fishing declaration.* (i) A rockfish cooperative may choose to extinguish its CQ permit through a declaration submitted to NMFS.
- (ii) This declaration may only be submitted to NMFS using the following methods:
    - (A) Fax: 907-586-7354;
    - (B) Hand Delivery or Carrier. NMFS, Room 713, 709 4<sup>th</sup> Street, Juneau, AK 99801; or
    - (C) By mail: Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802-1668
  - (iii) A Rockfish cooperative termination of fishing declaration must include the following information:
    - (A) CQ permit number;
    - (B) The date the declaration is submitted; and
    - (C) The rockfish cooperative's legal name, NMFS Person ID, the permanent business address, telephone number, fax number, and e-mail address (if available) of the rockfish cooperative or its designated representative, and the printed name and signature of the designated representative of the rockfish cooperative.
  - (iv) NMFS will review the declaration and notify the rockfish cooperative's designated representative once the declaration has been approved.
  - (v) Upon approval of a declaration, the CQ for all primary rockfish species and secondary species will be set to zero, rockfish halibut PSC assigned to that rockfish cooperative will be reapportioned under the provisions described at §679.21(d)(5)(iii)(B) and that rockfish cooperative may not receive any CQ for any primary rockfish species, secondary species, and rockfish halibut PSC by transfer for the remainder of that calendar year.
- (3) *Eligible rockfish processor.* (i) The Regional Administrator will issue an eligible rockfish processor permit to persons who have submitted a complete application described at §679.81(d), that is subsequently approved by the Regional Administrator. An eligible rockfish processor permit authorizes a shoreside processor or stationary floating processor to receive fish harvested under the Rockfish Program, except for fish harvested under the rockfish entry level fishery.
- (ii) A permit is valid under the following circumstances:
    - (A) Until the permit is modified by transfers under §679.81(g); or
    - (B) Until the permit is revoked, suspended, or modified pursuant to §679.43 or 15 CFR part 904.
  - (iii) A legible copy of the eligible rockfish processor permit must be available at the facility at which Rockfish Program fish are received.
- (o) *Amendment 80 Program —(1) Amendment 80 QS permit.* (i) An Amendment 80 QS permit is issued to a person who submits a timely and complete application for Amendment 80 QS that is approved by NMFS under §679.90(b).

(ii) An Amendment 80 QS permit is assigned to the owner of an Amendment 80 vessel that gave rise to that permit under the provisions of §679.90(b), unless the Amendment 80 QS permit is assigned to the holder of an LLP license originally assigned to an Amendment 80 vessel under the provisions of §679.90(d) or §679.90(e).

(iii) If an Amendment 80 QS permit is assigned to the owner of an Amendment 80 vessel the Amendment 80 QS permit will designate the Amendment 80 vessel to which that permit is assigned.

(iv) If an Amendment 80 QS permit is assigned to the holder of an LLP license originally assigned to an Amendment 80 vessel under the provisions of §679.90(d)(2)(ii) or §679.90(e)(4), the Amendment 80 QS permit will be permanently affixed to the LLP license originally assigned to an Amendment 80 vessel which will be designated as an Amendment 80 LLP/QS license.

(v) Amendment 80 QS units assigned to an Amendment 80 QS permit are non-severable from that Amendment 80 QS permit and if transferred, the Amendment 80 QS permit must be transferred in its entirety to another person under the provisions of §679.90(e).

(vi) A person must hold an Amendment 80 LLP license to hold an Amendment 80 QS permit.

(2) *Amendment 80 Cooperative quota (CQ) permit.* (i) A CQ permit is issued annually to an Amendment 80 cooperative that submits a timely and complete application for CQ that is approved by NMFS as described at §679.91(b)(4).

(ii) A CQ permit authorizes an Amendment 80 cooperative to catch a quantity of fish expressed as a portion of the ITAC and halibut and crab PSC that may be held for exclusive use by that Amendment 80 cooperative.

(iii) A CQ permit will indicate the amount of Amendment 80 species that may be caught by the Amendment 80 cooperative, and the amount of Amendment 80 crab and halibut PSC that may be used by the Amendment 80 cooperative. The CQ permit will list the members of the Amendment 80 cooperative, Amendment 80 LLP licenses, Amendment 80 QS permits, and Amendment 80 vessels that are assigned to that Amendment 80 cooperative.

(iv) The amount of CQ listed on the CQ permit will be based on:

(A) The amount of Amendment 80 QS units held by all members of the Amendment 80 cooperative designated on a timely and complete application for CQ as described under §679.91(b) that is approved by NMFS;

(B) The Amendment 80 QS units derived from Amendment 80 QS permits held by members of the Amendment 80 cooperative who have submitted a timely and complete EDR for all Amendment 80 QS permits held by that member as described under §679.94; and

(C) The amount of CQ as modified by an application for CQ transfer as described under §679.91(g) that is approved by NMFS.

(v) A CQ permit is valid until whichever of the following occurs first:

(A) Until the end of the year for which the CQ permit is issued; or

(B) Until the permit is revoked, suspended, or modified pursuant to §679.43 or under 15 CFR part 904.

(vi) A legible copy of the CQ permit must be carried onboard an Amendment 80 vessel assigned to an Amendment 80 cooperative when fishing in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(3) *Amendment 80 limited access fishery permit.* (i) An Amendment 80 limited access fishery permit is required for an Amendment 80 QS holder to catch, process, and receive Amendment 80 species assigned to the Amendment 80 limited access fishery, or use halibut and crab PSC assigned to the Amendment 80 limited access fishery. An Amendment 80 limited access fishery permit is issued annually to an Amendment 80 QS holder who:

(A) Has submitted a timely and complete application for the Amendment 80 limited access fishery as described at §679.91(b)(4) that is approved by NMFS, or

(B) Is assigned to the Amendment 80 limited access fishery by NMFS as described at §679.91(a)(3)(ii); and

(C) Has submitted a timely and complete EDR for all Amendment 80 QS permits held by that person as described under §679.94.

(ii) An Amendment 80 limited access fishery permit is valid until whichever of the following occurs first:

(A) Until the end of the year for which the Amendment 80 limited access fishery permit is issued; or

(B) Until the permit is revoked, suspended, or modified pursuant to §679.43 or under 15 CFR part 904.

(iii) A legible copy of the Amendment 80 limited access fishery permit must be carried onboard an Amendment 80 vessel assigned to the Amendment 80 limited access fishery when fishing in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

[61 FR 31230, June 19, 1996]

**Editorial Note:** For Federal Register citations affecting §679.4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

## TITLE II – FISHERIES<sup>1</sup>

**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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<sup>1</sup> 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 catcher/processors listed in paragraph (2) through (9) of section 209 are determined by the Secretary not to have been scrapped 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/processers 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 United 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 (1) through (2) 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 (2) 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 (2) 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 (2) 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 conservation 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.