NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 08/30/2010

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

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 08/30/2010

ACTION REQUESTED: Revision of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 201008-0648-014
AGENCY ICR TRACKING NUMBER:
TITLE: Alaskan Region American Fisheries Act Reports
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0608
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: 08/31/2013 DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	0	0	0
New	8	220	14
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	8	220	14
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
Non-Chinook Salmon Bycatch Reduction Inter-Cooperative Agreement			50 CFR 679.21(g)
Non-Chinook Salmon ICA annual report			50 CFR 679.21(g)
Application for Proposed Incentive Plan Agreement (IPA)	NA	Application for an incentive plan agreement (IPA) and list of IPA participants	
IPA Annual Report			50 CFR 679.21(f)

PAPERWORK REDUCTION ACT SUBMISSION

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

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

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

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

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

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

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

7. Title American Fisheries Act Reports

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

9. Keywords

10. Abstract

National Marine Fisheries Service (NMFS) manages the groundfish fisheries in the Exclusive Economic Zone (EEZ) off Alaska. The North Pacific Fishery Management Council prepared the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area 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.

This collection-of-information supports the Chinook Salmon Bycatch Program (Program), a new program created for the management of Chinook salmon prohibited species catch (PSC) in the Bering Sea pollock fishery managed under the American Fisheries Act (AFA). The Program is implemented under Amendment 91 to the FMP. This collection-of-information will be merged into the Office of Management and Budget (OMB Control No. 0648-0401 as soon as possible.

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

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

13. Annual recordkeeping and reporting burden
a. Number of respondents 3
b. Total annual responses 8
1. Percentage of these responses collected electronically 0 %
c. Total annual hours requested 220
d. Current OMB inventory 0
e. Difference 220
f. Explanation of difference
1. Program change 220
2. Adjustment

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

15. Purpose of information collection (*Mark primary with "P" and all others that apply with "X"*)
a. ___ Application for benefits e. P 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 (*check all that apply*)
a. [ ] Recordkeeping b. [ ] Third party disclosure
c. [ ] Reporting
1. [✓] On occasion 2. [ ] Weekly 3. [ ] Monthly
4. [ ] Quarterly 5. [ ] Semi-annually 6. [✔] Annually
7. [ ] Biennially 8. [ ] Other (describe)

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

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

19. Certification for Paperwork Reduction Act Submissions

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

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

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

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

(b) It avoids unnecessary duplication;

(c) It reduces burden on small entities;

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

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

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

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

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

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

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

(j) It makes appropriate use of information technology.

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

Signature of Senior Official or designee	Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)	
Signature Emily Menasches	Date 02/20/2010
Signature of NOAA Clearance Officer	
Signature Sarah Brabson	Date 02/24/2010

SUPPORTING STATEMENT
ALASKAN REGION
AMERICAN FISHERIES ACT (AFA) REPORTS

OMB CONTROL NO. 0648-NEW

INTRODUCTION

National Marine Fisheries Service (NMFS) manages the groundfish fisheries in the Exclusive Economic Zone (EEZ) off Alaska. The North Pacific Fishery Management Council prepared the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area 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.

This collection-of-information supports the Chinook Salmon Bycatch Program (Program), a new program created for the management of Chinook salmon prohibited species catch (PSC) in the Bering Sea pollock fishery managed under the American Fisheries Act (AFA). The Program is implemented under Amendment 91 to the FMP. This collection-of-information will be merged into the Office of Management and Budget (OMB Control No. 0648-0401 as soon as possible.

JUSTIFICATION

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

The Program is established to promote reduction of Chinook salmon PSC in the Bering Sea pollock fishery to the extent practicable while achieving optimum yield in the pollock fishery. The focus of the Program is the Bering Sea pollock fishery because this trawl fishery catches up to 95 percent of the Chinook salmon taken as PSC in the Bering Strait/Aleutian Islands (BSAI) groundfish fisheries. Non-Chinook salmon PSC reduction measures will also remain in effect.

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

This information collection is necessary to obtain information that the industry is required to submit if they participate in an Inter-cooperative Agreement (ICA) for management of non-Chinook salmon (under Amendment 84) or an Incentive Plan Agreement **(**IPA) for the management of Chinook salmon (under Amendment 91). Participation in both the ICA and the IPA is voluntary. Industry members who participate in an approved ICA or an approved IPA are either provided exemptions to certain other salmon bycatch management measures or are provided access to a higher salmon PSC limit. In addition, information gathered through the annual reports on these programs is necessary for the Council to evaluate these salmon bycatch

management measures and to provide the public with information about how the programs operate and bycatch reduction under these programs.

a. Non-Chinook Salmon Bycatch Reduction ICA

Amendment 84 to the FMP established the ICA which allows vessels participating in the Bering Sea pollock fishery to utilize their internal cooperative structure to reduce Chinook and non-Chinook salmon bycatch using a method called the voluntary rolling hotspot system (VRHS). Through the VRHS, industry members provide each other real-time salmon bycatch information so that they can avoid areas of high Chinook or non-Chinook salmon bycatch rates. With the implementation of Amendment 91, non-Chinook salmon will continue to be managed under the VRHS ICA, but Chinook salmon bycatch will be removed from that program and managed instead under new regulations, which provide pollock industry members with the option of joining an "incentive plan agreement" or IPA.

The ICA is a salmon bycatch management agreement among all of the AFA pollock cooperatives and the Western Alaska Community Development Quota (CDQ) groups. The agreement is a private, contractual agreement between the interested parties. The effectiveness of the Program through the ICA is dependent upon rapidly gathering, analyzing, and disseminating accurate bycatch data.

Once a non-Chinook salmon bycatch reduction ICA is approved by NMFS, it is not required to be resubmitted annually and is only required to be resubmitted to NMFS if components of the ICA covered by NMFS regulations are amended. The initial ICA was approved in January 2008 and NMFS has not received any amendments or revisions to the approved ICA since that date. Although the ICA representative would not be required to resubmit the ICA when Amendment 91 is implemented in 2011, he or she may choose to do so because of changes made to the ICA as a result of removing Chinook salmon from the ICA.

Non-Chinook Salmon Bycatch Reduction ICA

Participants

Names of the AFA cooperatives and CDQ groups

Name, business mailing address, business telephone number, business fax number, and business email address of the ICA representative.

Name of entity retained to facilitate vessel PSC avoidance behavior and information sharing.

Name of at least one third party group. Third party groups include any organizations representing western Alaskans who depend on non-Chinook salmon and have an interest in non-Chinook salmon PSC reduction but do not directly fish in a groundfish fishery.

Vessel information

Names, Federal fisheries permit numbers, and USCG documentation numbers of vessels subject to the ICA

Provisions that dictate on-Chinook salmon PSC avoidance behaviors for vessel operators

Initial base rate

Inseason adjustments to the non-Chinook base rate calculation

ICA chum salmon savings area notices.

Fishing restrictions for vessels assigned to tiers 1, 2, and 3

Cooperative tier assignments.

PSC rates for Chinook salmon

Internal monitoring and enforcement

Provisions allowing any party of the ICA to bring civil suit or initiate a binding arbitration action against

another for breach of the ICA.

Minimum annual uniform assessments for any violation of savings area closures

$10,000 for the first offense, $15,000 for the second offense, and $20,000 for each offense thereafter.

Annual compliance audit

Must be conducted by a non-party entity

Each party must have an opportunity to participate in selecting the non-party entity.

If the non-party entity hired to conduct a compliance audit discovers a previously undiscovered failure to comply with the terms of the ICA, the non-party entity must notify all parties to the ICA and must simultaneously distribute to all ICA parties the information used to determine the failure

Must include such notice(s) in the compliance report.

Data dissemination

If the entity retained to facilitate vessel PSC avoidance behavior and information sharing determines that an apparent violation of an ICA chum salmon savings area closure has occurred, that entity must promptly notify the Board of Directors of the cooperative to which the vessel involved belongs. If this Board of Directors fails to assess a minimum uniform assessment within 180 days of receiving the notice, the information used by the entity to determine if an apparent violation was committed must be disseminated to all parties to the ICA.

Non-Chinook ICA, Respondent	
Estimated number of respondents	**1**
AFA cooperatives	
CDQ groups	
Total annual responses	**1**
Estimated responses per respondent = 1	
Total burden hours	**40 hr**
Estimated hours per response = 40	
Total personnel cost	**$6,000**
Personnel cost per hour = 150	
Total miscellaneous costs (1.82)	**$2**
Photocopy (10 pp x .05 x 1=0.50)	
Postage (1.32 x 1 = 1.32)	

Non-Chinook ICA, Federal Government	
Estimated number of respondents	**1**
Total annual responses	**1**
Estimated responses per respondent = 1	
Total burden hours	**10 hr**
Estimated hours per response = 10	
Total personnel cost	**$750**
Personnel cost per hour = 75	
Total miscellaneous costs	**0**

b. Non-Chinook Salmon ICA annual report

The non-Chinook salmon ICA annual report is a new annual report that is created by removing several reporting requirements from the AFA cooperatives' annual report to the Council that were implemented under Amendment 84 and requiring them to be submitted as a single separate report annual report submitted by the ICA representative. These reports provide information about the performance of the non-Chinook salmon ICA as a whole. The ICA annual reports submitted to the Council in previous years are available on the Alaska Region website at:

http://www.alaskafisheries.noaa.gov/sustainablefisheries/afa/afa_sf.htm

The ICA representative must submit the ICA annual report to the Council by April 1. This deadline would coincide with the deadline for the other AFA annual reporting requirements and would allow the Council to discuss any of these annual reports at one time at its April Council meeting.

The Council makes the annual report available to the public, and the report is posted on the NMFS Alaska Region website at http://alaskafisheries.gov.

The ICA annual report must contain the following:

- Estimated number of Chinook salmon and non-Chinook salmon avoided as demonstrated by the movement of fishing effort away from chum salmon savings areas, and

- The results of the compliance audit

While calculating the number of salmon avoided cannot be done with absolute precision, an estimate will be provided for purposes of comparison with number of salmon caught by the fleet under the new system. This will be accomplished by calculating the number of salmon that the fleet would have caught in each "hot spot" had that area remained open for the time period of the voluntary hot spot closure. This is based upon the bycatch rate just prior to enactment of the closure and multiplied out by the cooperative's vessels restricted from the area for the time period of the closure according to their individual tier classification.

Non-Chinook ICA final report, Respondent	
Estimated number of respondents	**1**
Total annual responses	**1**
Estimated responses per respondent = 1	
Total burden hours	**4**
Estimated hours per response = 4	
Total personnel cost	**$100**
Personnel cost per hour =25	
Total miscellaneous costs (1.82)	**$2**
Photocopy (10 pg x .05 x 1 = 0.50)	
Postage (1.32 x 1 = 1.32)	

Non-Chinook ICA final report, Federal Government	
Total annual responses	**1**
Total burden hours	**1**
Estimated hours per response = 1 hr	
Total personnel cost	**$25**
Personnel cost per hour = 25	
Total miscellaneous cost	**0**

c. Application for an Incentive Plan Agreement (IPA) and List of IPA Participants

An IPA is a private contract among vessel owners or Community Development Quota (CDQ) groups that establishes incentives for participants to reduce Chinook salmon bycatch. The

parties to an IPA, or the people who would sign the contract, would be the owners of AFA eligible catcher vessels, catcher/processors, or motherships, or the representatives of CDQ groups. The proposed rule would allow the representative of an AFA cooperative or a sector-level entity formed under Amendment 91 to sign an IPA on behalf of all vessel owners that are members of that inshore cooperative or sector-level entity.

If NMFS approves at least one IPA, those participating in an IPA would receive an allocation of the 60,000 Chinook salmon PSC limit. Those not participating in an IPA would be considered to be "opting-out" of an IPA and would fish under a lower allocation of Chinook salmon. CDQ groups may participate in an IPA with members of the other AFA sectors or they may develop an IPA that applies only to vessels while they are fishing on behalf of a CDQ group. Vessel and CDQ group participation in an IPA would be voluntary.

The owners of all vessels that are members of the entity may authorize a representative or agent for service of process to sign a proposed IPA submitted to NMFS on their behalf and who is authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of the sector. This provision must be included in the contract submitted to NMFS to authorize the representative to sign a proposed IPA on behalf of the members of the entity.

The deadline for an application for approval of a proposed IPA is October 1 of the year prior to the year in which the IPA is proposed to be effective. This deadline is necessary to allow enough time for NMFS to review the proposed IPA and to issue a decision on its approval or disapproval prior to the start of the next fishing year.

NMFS will assign an IPA number to the approved IPA. This number must be used by the IPA representative in amendments to the IPA or on the annual list of IPA participants. Proposed amendments to an approved IPA may be submitted. Participation in an approved IPA may change each year without requiring resubmission of the terms of the approved IPA, as long as those terms have not changed. Participants may not apply to withdraw from an IPA or join an IPA after December 1 of the year before each fishing year.

A critical element of Amendment 91 and the system of IPAs permitted by that action is the latitude those measures provide to industry to address Chinook PSC. The IPAs are intended to allow flexibility to industry to develop innovative incentives to constrain Chinook PSC. In providing that flexibility, it is important that industry also provide information that can be used to verify the effectiveness of their actions.

The list of participants in an IPA must be submitted to NMFS:

- As part of the original IPA by October 1 of the year prior to the proposed fishing year.
- Separately by November 1 of each year following the year in which the IPA was approved and for as long as the IPA is in effect. The annual list of participants in an IPA is considered an amendment to an IPA.

The subsequent annual submission of the IPA list of participants will provide information about the IPA membership; whether it is constant or whether it is changing, with participant(s) leaving or joining the IPA effective January 1 of the following year.

The annual list of participants in the IPA must include the signature of any vessel owner or representative of a CDQ group that is withdrawing from the IPA. The signature and a statement to agree to comply with the terms of the IPA must be provided for any vessel owner or CDQ group joining an already approved IPA.

The annual IPA list of participants is considered approved by NMFS unless the IPA representative is notified by NMFS within 15 days of receipt of the list that a revision(s) to the list of participants would cause the IPA to no longer meet the minimum participation requirements.

NMFS would post a copy of any proposed IPA on its website so that the public is informed that a proposed IPA is under review.

Application for an Incentive Plan Agreement (IPA) and List of IPA Participants

Type of application
IPA Name and number (issued by NMFS)
IPA contact information
- Name of IPA representative and name of Agent for service of process (if different from representative)
- Permanent and temporary (if applicable) business mailing address
- Business telephone number, business fax number, and business e-mail address

Affirmation (check if applicable)
Certification
Vessel identification
- Name of vessel
- ADF&G vessel registration number
- Federal fisheries permit number

<u>Attachment – Incentive Plan Agreement</u>
- Incentive(s) to ensure that the operator of each vessel governed by the IPA will avoid Chinook salmon at all times while directed fishing for pollock;
- Rewards for avoiding Chinook salmon, penalties for failure to avoid Chinook salmon at the vessel level, or both;
- How the IPA incentive measures are expected to promote reductions in a vessel's PSC rates relative to what would have occurred in absence of the IPA;
- How the IPA incentive measures promote Chinook salmon savings in any condition of pollock abundance or Chinook salmon abundance in a manner that is expected to influence operational decisions by vessel operators to avoid Chinook salmon PSC; and
- How the IPA ensures that the operator of each vessel governed by the IPA will manage his or her PSC to keep total PSC below the performance standard for the sector in which the vessel participates.
- Names and signatures of the owner or representative for each vessel and CDQ entity that is a party to

the IPA. (Representative of an inshore cooperative, or the representative of the entity formed to represent the AFA catcher/processor sector or the AFA mothership sector, may sign a proposed IPA on behalf of all vessels that are members of that inshore cooperative or sector level entity.)

Chinook Salmon IPA, Respondent	
Estimated number of respondents	**2**
Total annual responses	**4**
Response per respondent = 2	
Total burden hours	**160**
Time per response = 40 hr	
Total personnel cost = $150/hr	**$24,000**
Total miscellaneous cost (7.28)	**$7**
Photocopy (10 pp x .05 x 4 = 2)	
Postage (1.32 x 4 = 5.28)	

Chinook Salmon IPA, Federal Government	
Total annual responses	**4**
Total burden hours	**40 hr**
Time per response = 10 hr	
Total personnel cost = $75	**$3,000**
Total miscellaneous cost	**0**

d. Chinook Salmon IPA annual report

Each IPA representative would be required to submit an annual report to the Council by April 1 each year after the first full year of operation of an IPA. If an IPA is approved for 2011, the Council would receive the first annual report on this IPA by April 1, 2012. The annual IPA report would be the primary tool through which the Council would evaluate the effectiveness of the ICA concept in reducing Chinook salmon bycatch in the Bering Sea pollock fishery.

Chinook Salmon IPA Annual Report

Incentive measures in effect in the previous year.
How incentive measures affected individual vessels, and
Evaluation of whether incentive measures were effective in achieving salmon savings beyond levels that would have been achieved in absence of the measures.
Describe amendments to the IPA terms that were approved by NMFS since the last annual report and the reasons that the IPA amendments were made.

Annual IPA report, Respondent	
Estimated number of respondents	**2**
Total annual responses	**2**
Response per respondent = 1	
Total burden hours	**16**
Time per response = 8 hr	
Total personnel cost = 75	**$1,200**
Total miscellaneous costs (4.64)	**$5**
Photocopy (10 pg x .10 x 2 = 2)	
Postage ($1.32 x 2 = 2.64)	

Annual IPA report, Federal Government

Total annual responses	**2**
Total burden hours = 1	**2**
Total personnel cost = 25	**$50**
Total miscellaneous cost	**0**

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

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

The "fillable" form for the IPA application is available at the NMFS Alaska Region Home Page at alaskafisheries.noaa.gov for downloading, completing and printing. Other submissions consist of multiple documents. Documents may be sent by U.S. mail, fax, or as an attachment to an email, except that the ICA and the plan attached to the IPA application require signatures, and therefore these two sets of documents must be sent by mail.

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 western Alaska 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.

The purpose of the proposed action is to minimize Chinook salmon PSC to the extent practicable while achieving optimum yield from the pollock fishery. The proposed action is necessary to ensure long-term conservation and abundance of salmon, maintain a healthy marine ecosystem, provide maximum benefit to fishermen and communities that depend on salmon and pollock, and

comply with the Magnuson–Stevens Act. If the information were not collected annually, NMFS would be unable to achieve these goals.

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-AX89) coincident with this submission, requesting comments from the public.

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. Assurance of confidentiality provided to respondents and the basis for this assurance in statute, regulation, or agency policy.

All information collections by NMFS Alaska region are protected under confidentiality provisions of 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. However, none of the information in the applications, contracts, or reports submitted under this collection of information contains confidential business information. All of the information in the ICA, IPA, and annual reports will be posted on the NMFS Alaska Region webpage and made available to the public.

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: 3. Estimated total responses: 8. Estimated total burden: 220 hr. Estimated total personnel costs: $31,300.

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: $16.

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

Estimated total burden: 53 hr. Estimated total personnel cost: $3,825. Estimated total miscellaneous cost: $0.

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.

NMFS will make all of the proposed, approved, and disapproved Chinook Salmon IPAs and the IPA list of participants in each approved or disapproved IPA available to the public on the Alaska Region website. The Council will make the IPA annual report and ICA annual report available to the public.

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

This collection does not employ statistical methods.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

OMB Control No. 0648-0608
Expiration Date: 8/31/2010

APPLICATION FOR AN INCENTIVE PLAN AGREEMENT (IPA) AND LIST OF IPA PARTICIPANTS

U.S. Dept. of Commerce/NOAA
National Marine Fisheries Service (NMFS)
Sustainable Fisheries Division
P.O. Box 21668
Juneau, AK 99802-1668
Fax: 907-586-7131
Telephone: 907-586-7228

TYPE OF APPLICATION

Indicate whether this application is for

[__] New IPA [__] Amended IPA [__] Change IPA Participant List

NOTE: Attach Incentive Plan Agreement.

BLOCK A – IPA INFORMATION

1. Name of IPA:	2. IPA Number:

BLOCK B – IPA CONTACT INFORMATION

1. Name of IPA's Representative:	2. Name of Agent for Service of Process, if different from representative
3. Permanent Business Mailing Address:	4. Temporary Business Mailing Address (if applicable):

5. Business Telephone No.:	6. Business Fax No.:	7. E-mail address:

BLOCK C – AFFIRMATION

[__] (*Check if Applicable*)

I claim, swear, and affirm that each eligible vessel owner or CDQ group, from whom I received written notification, requesting to join this IPA has been allowed to join this IPA subject to the same terms and conditions that have been agreed on by, and are applicable to, all other parties to the IPA.

BLOCK D – CERTIFICATION

Under penalty of perjury, I certify by my signature below that I have examined the information and the claims provided on this application and, to the best of my knowledge and belief, the information presented here is true, correct, and complete.

1. Printed Name of Representative:	2. Signature of Representative:	3. Date Signed:

BLOCK E – VESSEL IDENTIFICATION		
Attach additional sheet if necessary.		
Name of vessel	ADF&G No.	Federal Fisheries Permit No.

Instructions
APPLICATION FOR AN INCENTIVE PLAN AGREEMENT (IPA) AND LIST OF IPA PARTICIPANTS

GENERAL INFORMATION

For a new IPA, this application and the IPA must be received by NMFS by **October 1** prior to the year in which the IPA is proposed to be effective. Once approved, an IPA is effective starting January 1, unless the IPA is approved between January 1 and January 19, in which case the IPA is effective starting in the year in which it is approved.

Once approved, an IPA is effective until December 31 of the first year in which it is effective or until December 31 of the year in which the IPA representative notifies NMFS in writing that the IPA is no longer in effect, whichever is later. An IPA may not expire mid-year.

To amend an approved IPA, with no change in the IPA participants, the IPA representative must submit an application and an amended IPA to NMFS. An IPA may be amended at any time. The amended IPA is effective upon written notification of approval by NMFS to the IPA representative.

No party may join or leave an IPA once it is approved without changing the list of IPA participants. To change the list of IPA participants, this application must be received by NMFS by **December 1**.

Additionally

- Retain a copy of completed application for your records.
- NOTE: Attach Incentive Plan Agreement (IPA).
- Submit the completed application online at:

  Website: http://www.alaskafisheries.noaa.gov

- If you have any questions, or if you need any assistance in completing the application, please call NMFS Sustainable Fisheries at **907-586-7228.**

COMPLETING THE APPLICATION

Submit the following information on this form:

TYPE OF APPLICATION

Indicate whether this application is for a new IPA, an amended IPA, or is a change to the IPA Participant List

BLOCK A – IPA INFORMATION

1-2 . IPA Name and Number. A name assigned by the IPA that describes the IPA or the group of American Fisheries Act (AFA) participants submitting the IPA. This name, together with an IPA number assigned by NMFS, must be used by the IPA Representative in all submissions of information about the IPA after it is approved by NMFS.

BLOCK B – IPA CONTACT INFORMATION

1. Name of IPA's Representative

2. Name of Agent for Service of Process, if different from representative

3. Permanent Business Mailing Address:

4. Temporary Business Mailing Address (if applicable):

5-7. Business Telephone Number, Business Fax Number, and Business E-mail address

BLOCK C – AFFIRMATION
Check (Y) this box if applicable

BLOCK D – CERTIFICATION
Enter the printed name and signature of the Representative, and date signed.

BLOCK E – VESSEL IDENTIFICATION
(Attach additional sheet if necessary.)

List the name, Alaska Department of Fish and Game (ADF&G) vessel registration number, and Federal Fisheries Permit (FFP) number of the AFA catcher vessels, AFA catcher/processors, AFA motherships, and vessels fishing on behalf of the CDQ group that are governed by the IPA.

PUBLIC REPORTING BURDEN STATEMENT

Public reporting burden for this collection-of-information is estimated to average 40 hours per response, including the time for reviewing the instructions, searching the existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the 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 under 50 CFR part 679 and under section 402(a) of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq*.) as amended in 2006; 3) Responses to this information request are confidential under section 402(b) of the Magnuson-Stevens Act. They are also confidential under NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics.

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

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

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

98-623

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

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

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

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

104-297

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

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

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

104-297, 109-479

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

104-297

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

104-297

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

97-453

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

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

97-453, 101-627, 104-297

(a) ESTABLISHMENT.—

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

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

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

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

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

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

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

104-297

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

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

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

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

104-297

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

95-354

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

101-627

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

104-297

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

104-297

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

109-479

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

109-479

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

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

99-659, 101-627, 102-251

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

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

104-297

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

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

101-627

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

95-354, 96-561, 104-297

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

104-297

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

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

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

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

101-627, **104-297**

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

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

99-659, 101-627

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

101-627

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

104-297

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

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

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

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

104-297

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

104-297

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

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

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Title 50: Wildlife and Fisheries

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

§ 679.63 Catch weighing requirements for vessels and processors.

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

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

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

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

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

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Title 50: Wildlife and Fisheries

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

§ 679.62 Inshore sector cooperative allocation program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Title 50: Wildlife and Fisheries

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

§ 679.61 Formation and operation of fishery cooperatives.

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

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

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

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

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

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

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

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

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

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

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

(i) List parties to the contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Title 50: Wildlife and Fisheries

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

§ 679.64 Harvesting sideboard limits in other fisheries.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TITLE II – FISHERIES[1]

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

SEC. 202. Standard for Fishery Endorsements.

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

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

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

"(A) shall include—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 203. ENFORCEMENT OF STANDARD.

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

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

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

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

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

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

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

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

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

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

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

Subtitle II – Bering Sea Pollock Fishery

SEC. 205. DEFINITIONS.

As used in this subtitle—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 206. ALLOCATIONS.

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

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

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

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

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

SEC. 207. BUYOUT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 208. ELIGIBLE VESSELS AND PROCESSORS.

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

(1) determined by the Secretary—

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

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

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

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

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

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

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

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

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

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

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

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

(8) any catcher vessel—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 209. LIST OF INELIGIBLE VESSELS.

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

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

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

SEC. 210. FISHERY COOPERATIVE LIMITATIONS.

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

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

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

(b) **Catcher Vessels Onshore—**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) **Excessive Shares.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) 11.5 percent in the central area; and

(ii) 20 percent in the western area.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) *Bering Sea Crab and Groundfish.*

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

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

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

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

(3) *Fisheries Other than North Pacific.*

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

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

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

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

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

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

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

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

SEC. 213. DURATION.

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

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

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

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

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

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

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

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

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

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

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