

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director



ESTIMATED TIME
8 HOURS

DATE: February 3, 2000

SUBJECT: American Fisheries Act (AFA)

ACTION REQUIRED

- (a) Comment on Proposed Rule for 2000 and/or initiate regulatory action as appropriate.
- (b) Initial review of analysis of groundfish processing sideboards and excessive share caps for BSAI pollock processing.

BACKGROUND

Comment on Proposed Rule

At our last meeting the Council provided direction on specific aspects of the AFA rulemaking which was in preparation by NMFS via two emergency rules, the first of which dealt with permitting and the second which dealt with all other major provisions of the AFA including harvest specifications, sideboards, and exemptions. The two emergency rules were mailed to you last week, and are also in your notebooks under Items C-3(a and b). Your expectation was to comment further on specific aspects of the proposed rule at this meeting or to possibly initiate separate rulemaking where necessary. While the proposed rule is not yet published, it will essentially mirror the emergency rules before you. Therefore, your comments on various aspects are still relevant at this time, some of which could be incorporated in either the proposed or final rule. Your December motions are included here for reference:

DECEMBER American Fisheries Act (AFA) Actions

EMERGENCY RULES

- Express support to NMFS for the first emergency rule to ensure inshore co-ops and sideboards can be in place for 2000.
- Request NMFS to move forward with the 2nd Emergency Rule, with the following revisions:

-With regard to the single geographic location (SGL) issue, use same regulations as under Inshore-Offshore; i.e., vessels that process pollock at a SGL in State waters during a fishing year (can change between years).

-Under Section 679.61(4), the Council expressed the intent to allow NMFS to use the appropriate regulatory text to reflect the specific calculation of sideboards as approved by the Council.

-For AFA catcher vessels which meet the Council's qualifying criteria for exemptions under the 1700 mt rule in the Bering Sea cod and Gulf of Alaska groundfish fisheries:

1. Bering Sea cod:
 - A. Vessels less than 125 feet in length, and
 - B. The catcher vessel had a minimum of 30 landings in the directed Bering Sea cod fishery over the period of 1995, 1996 and 1997;
2. Gulf of Alaska Groundfish:
 - A. Vessels less than 125 feet in length, and
 - B. The catcher vessel had a minimum of 40 groundfish landings in the Gulf of Alaska over the period of 1995, 1996 and 1997,

Vessels qualifying for the GOA exemption cannot lease their pollock quota.

3. Catcher vessels that meet the requirements of being an exempt vessel shall be treated by NMFS, in those fisheries to which the exemption applies, as a non-AFA vessel. The catch history of the exempt vessel (in the fishery to which the exemption applies) will not be included within the AFA cap for that fishery and the harvest of the exempt vessel will not be counted against the AFA cap.
- With regard to accounting of crab sideboards, add language under (d) (p 35) of the 2nd Emergency Rule, to read: “. . .or as may be adjusted based on total catch, whichever is higher.”

The proposed rule will also be published with the above provisions.

OTHER ACTIONS

1. Initiate an analysis for separate sideboard caps for AFA catcher vessels which meet the Council's qualifying criteria for exemptions in the Bering Sea cod and Gulf of Alaska groundfish fisheries, as follows:

Options:

- A. 1700 mt
- B. 1200 mt

Bering Sea cod:

- A. Vessels less than 125 feet in length, and
- B. The catcher vessel had a minimum of 30 landings in the directed Bering Sea cod fishery over the period of 1995, 1996 and 1997;

Gulf of Alaska Groundfish:

- A. Vessels less than 125 feet in length, and
- B. The catcher vessel had a minimum of 40 groundfish landings in the Gulf of Alaska over the period of 1995, 1996 and 1997,

Establish a separate sideboard pool in each area that is based on the aggregate catch history (95-97) of those vessels that qualify for the exemption.

Option: Require vessels that participate in these pools to fish their Bering Sea pollock, i.e., no leasing.

2. Notice the public that the Council will be reviewing all aspects of the Proposed Rule in February, and may be addressing the following items, either as comment to the Proposed Rule or to initiate separate rulemaking.
 - A. Ensure that the dates in the Proposed Rule and Final Rule for co-op agreement submittal will ensure review by the Council at the December meeting.
 - B. Require re-submittal of co-op agreements for Council review if modified, with re-submittal scheduled such that revised co-op agreements would be reviewed by the Council at its next regular meeting.
 - C. Establish requirements for co-ops to submit economic information, including price data, in their performance reports.
 - D. Establish an application deadline of December 1, 2000 to become an AFA-qualified vessel.

3. The Council in February will also be reviewing the issue of using total vs retained catch for calculating sideboards. Staff will provide to the public and the Council any existing analyses relevant to this issue, and to the extent possible, supplemental tables showing the difference between retained and total catch in the appropriate categories.
4. Add to current analysis of groundfish processing sideboards, the following option: For Bering Sea flatfish species, a processing cap for AFA qualified processors would apply in the aggregate to the at-sea, mothership and shoreside processors overall. The cap would be based on the total of each sector's average processing history of BS flatfish species for 1995-1997. (The intent is that the Council would have the option to apply such a cap either overall or by sector.)

Available information on the issue of total vs retained catch will be provided at this meeting by staff.

Processing sideboards and excessive share caps

In October you took action to define crab processing sideboards, but deferred action on groundfish processing sideboards and combined that issue with excessive share caps for BSAI pollock processing for initial review at this meeting. We mailed you a draft analysis last week which was based on the original Chapter 8 from the larger AFA analysis from last June. That was revised to focus only on groundfish, with updated descriptions of ownership linkages (for purposes of defining entities) and updated information on processing history of various species by AFA companies/entities. We also added a chapter which focuses on the excessive share cap for AFA pollock processors. The ownership charts developed are relevant to that issue as well. For processing sideboards, the primary decision points remain:

1. Whether limits would be applied to individual plants, companies, or entities vs in aggregate across all processors (or across each sector);
2. Whether AFA catcher processors should be subject to processing sideboards in addition to their existing sideboards;
3. If applied at the individual level, whether the limits would apply at a facility level, a company level, or an entity level. Implicit is the question of whether sideboards would apply to all facilities owned by AFA companies, or just to their pollock facilities.
4. Which base years of processing history to use in determining sideboard limits. While the original analysis examined 1995-1997, the analysis now includes more recent participation patterns (through 1999).
5. Whether and how to apply the 10% ownership rule in defining entities subject to the sideboards.

The Advisory Panel provided a recommendation on these issues at the October 1999 meeting, which is included as an Appendix to the analysis. However, the Council noticed the public that all alternatives and options would remain for consideration. Regarding excessive share caps for pollock processing, similar decision points exist, though by definition excessive share caps would be applied individually (at the company or entity level). That part of the analysis examines a processing cap which ranges from 10% to 30%, encompassing the percentage shares currently enjoyed by the AFA entities. The Executive Summary from the analysis is under Item C-3(c), and will be presented by staff. Comments received on this issue are under Item C-3(d).

(b) * * *
(3) * * *

(i) *DAS allocation.* A vessel qualified and electing to fish under the small vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions. Such a vessel is not subject to a possession limit for other NE multispecies.

6. In § 648.86, lift the suspension placed at 64 FR 42045 (August 3, 1999) on paragraphs (b)(1)(i), (b)(1)(ii)(A), and (b)(3), revise paragraphs (b)(1)(i) and (b)(1)(ii)(A) to read as set forth below, and remove paragraphs (b)(1)(iv) and (b)(5).

§ 648.86 Multispecies possession restrictions.

(b) * * *
(1) * * *

(i) Except as provided in paragraph (b)(1)(ii) and (b)(4) of this section, and subject to the call-in provision specified in Sec. 648.10(f)(3)(i), a vessel fishing under a NE multispecies DAS may land only up to 400 lb (181.8 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g. a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 400 lb (181.8 kg), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 400 lb (181.8 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (e.g., a vessel that has been called into the DAS program for 48 hr or less, but more than 24 hr, may land up to, but no more than 800 lb (363.6 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hr but less than 48 hr) may land up to an additional 400 lb (181.8 kg) of cod for that trip. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) * * *

(A) The vessel operator does not call out of the DAS program as described under Sec. 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the

DAS program for 25 hr, at the time of landing, may land only up to 800 lb (363.6 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

7. In § 648.88: Paragraph (a)(1) is revised effective November 15, 1999 to read as set forth below; paragraph (a)(3) is removed.

§ 648.88 Multispecies open access permit restrictions.

(a) * * *

(1) The vessel may possess and land up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, one Atlantic halibut, per trip, and unlimited amounts of the other NE multispecies, provided that the vessel does not use or possess on board gear other than rod and reel or handlines while in possession of, fishing for, or landing NE multispecies, and provided it has at least one standard tote on board.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991228352-9352-01; I.D. 121099C]

RIN 0648-AM83

Fisheries of the Exclusive Economic Zone Off Alaska; Permit Requirements for Vessels, Processors, and Cooperatives Wishing to Participate in the Bering Sea and Aleutian Islands Pollock Fishery Under the American Fisheries Act

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

ACTION: Emergency interim rule; request for comments.

SUMMARY: NMFS issues an emergency interim rule to implement permit requirements for vessels, processors, and cooperatives wishing to participate in the Bering Sea and Aleutian Islands management area (BSAI) pollock fishery under the American Fisheries Act (AFA). This emergency interim rule is necessary to provide participants in the BSAI pollock fishery with the opportunity to apply for permits to participate in the BSAI pollock fishery prior to the scheduled start of the fishery on January 20, and to implement

sideboard restrictions to protect other Alaska fisheries from negative impacts as a result of fishery cooperatives formed under the AFA.

DATES: Effective December 30, 1999 through June 27, 2000. Comments on the emergency rule must be received by January 20, 2000.

ADDRESSES: Comments must be sent to Sue Salvesson, Assistant Administrator, Sustainable Fisheries Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to 907-586-7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, 709 West 9th Street, Juneau, AK 99801, and marked Attn: Lori Gravel.

Copies of the Environmental Assessment/ Regulatory Impact Review/ Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for Amendments 61/61/13/8 and for this action may be obtained from North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK 99501, 907-271-2809. Send comments on collection-of-information requirements to the NMFS, Alaska Region, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attn: NOAA Desk Officer.

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

SUPPLEMENTARY INFORMATION:

NMFS manages the U.S. groundfish fisheries in the exclusive economic zone of the BSAI and Gulf of Alaska (GOA) under the fishery management plans for the groundfish fisheries of the BSAI and GOA (FMPs). With Federal oversight, the State of Alaska manages the FMPs for Commercial King Crab and Tanner Crab fisheries in the BSAI and the Scallop Fishery off Alaska. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR 600.

American Fisheries Act—Background Information

The AFA made profound changes in the management of the groundfish fisheries of the BSAI and, to a lesser extent, the groundfish fisheries of the

GOA and crab fisheries of the BSAI. With respect to the groundfish and crab fisheries off Alaska, the AFA established a new allocation scheme for BSAI pollock that allocates 10 percent of the BSAI pollock total allowable catch (TAC) to the Western Alaska Community Development Quota (CDQ) Program and, after allowance for incidental catch of pollock in other fisheries, allocates the remaining TAC as follows: 50 percent to vessels harvesting pollock for processing by inshore processors, 40 percent to vessels harvesting pollock for processing by catcher/processors, and 10 percent to vessels harvesting pollock for processing by motherships; provided for the buyout and scrapping of nine pollock catcher/processors through a combination of \$20 million in Federal appropriations and \$75 million in direct loan obligations; established a fee of six-tenths (0.6) of one cent for each pound round weight of pollock harvested by catcher vessels delivering to inshore processors for the purpose of repaying the \$75 million direct loan obligation; listed by name and/or provided qualifying criteria for those vessels and processors eligible to participate in the non-CDQ portion of the BSAI pollock fishery; increased observer coverage and scale requirements for AFA catcher/processors; established limitations for the creation of fishery cooperatives in the catcher/processor, mothership, and inshore industry sectors; required that NMFS grant individual allocations of the inshore BSAI pollock TAC to inshore catcher vessel cooperatives which form around a specific inshore processor and agree to deliver the bulk of their catch to that processor; required harvesting and processing restrictions (commonly known as "sideboards") on fishermen and processors who have received exclusive harvesting or processing privileges under the AFA to protect the interests of fishermen and processors who have not directly benefitted from the AFA; and established excessive share harvesting caps for BSAI pollock and directed the Council to develop excessive share caps for BSAI pollock processing and for the harvesting and processing of other groundfish.

Since the passage of the AFA in October 1998, NMFS has begun to implement specific provisions of the AFA through a variety of mechanisms. For the 1999 fishing year, NMFS implemented the new AFA pollock allocations and harvest restrictions on catcher/processors through the interim and final BSAI harvest specifications (64 FR 50, January 4, 1999; and 64 FR

12103, March 11, 1999). Required changes to the CDQ program were implemented through an emergency interim rule (64 FR 3877, January 26, 1999; extended at 64 FR 34743, June 29, 1999). The increase in observer coverage levels for pollock catcher/processors and regulatory authority to manage AFA catcher/processor sideboard limits through directed fishing closures were implemented through a separate emergency interim rule (64 FR 3435, January 22, 1999; corrected at 64 FR 7814, February 17, 1999; and extended at 64 FR 33425, June 6, 1999). In December 1998, NMFS administered the buyout of the nine catcher/processors declared ineligible under the AFA, and is currently overseeing the scrapping of the eight vessels scheduled for scrapping under the AFA.

The Council has taken an active role in the development of management measures to implement the various provisions of the AFA. The Council began consideration of the implications of the AFA during a special meeting in November 1998, during which it began consideration of AFA-related actions that were required for the 1999 fishing year. At its December 1998 meeting, the Council voted to recommend approval of the two emergency rules cited here, recommended AFA-related provisions to the 1999 BSAI harvest specifications for groundfish, and began an analysis of a suite of AFA-related management measures that subsequently became known as Amendments 61/61/13/8 to the FMPs for the BSAI groundfish fishery, GOA groundfish fishery, BSAI king and Tanner crab fishery, and Alaska scallop fishery, respectively. The Council conducted an initial review of Amendments 61/61/13/8 and related AFA measures at its April 1999 meeting, and took final action on these amendments at its June 1999 meeting.

The suite of permit requirements in this emergency interim rule duplicates, and would give immediate effect to, the permit requirements proposed under Amendments 61/61/13/8. NMFS is issuing this emergency interim rule to give immediate effect to all AFA-related permit requirements so that the fishing industry has the opportunity to apply for and receive AFA-related fishing permits prior to the start of the 2000 fishing year. An emergency rule is necessary to provide an opportunity for inshore catcher vessels to form cooperatives for the 2000 fishing year. Inshore sector cooperatives will provide the inshore industry with the ability to more effectively meet the temporal and spatial dispersion objectives of NMFS' Steller sea lion conservation measures that are being published in separate

rulemakings. Without this emergency interim rule, the inshore sector of the BSAI pollock industry would be unable to form cooperatives prior to the start of the 2000 fishing year as provided for in the AFA, and would lose a valuable method of meeting the temporal and spatial dispersion objectives of NMFS' Steller sea lion conservation measures. In addition, this emergency action is necessary to implement section 211(c)(1) of the AFA which mandates sideboard restrictions to prevent AFA catcher vessels from exceeding "in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fishery, [and] protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of the AFA or fishery cooperatives in the directed pollock fishery." Such sideboard protections must be implemented prior to January 1, 2000, to prevent adverse economic impacts on the participants of other groundfish and crab fisheries that open January 2000.

The permitting requirements contained in this emergency interim rule will be repeated in the proposed rule to implement Amendments 61/61/13/8 to provide the public an opportunity to comment on AFA permit requirements before they are made effective on a permanent basis. If Amendments 61/61/13/8 are approved by NMFS, then this emergency interim rule would be superseded by the final rule to implement the amendments.

This emergency interim rule establishes new permit requirements for AFA catcher/processors, AFA catcher vessels, AFA motherships, AFA inshore processors, and AFA inshore cooperatives. Any vessel used to engage in directed fishing for a non-CDQ allocation of pollock in the BSAI and any processor that receives pollock harvested in a non-CDQ directed pollock fishery in the BSAI is required to maintain a valid AFA permit onboard the vessel or at the plant location at all times while non-CDQ pollock is being harvested or processed. These new AFA permits do not exempt a vessel operator, vessel owner, or pollock processor from any other applicable permit or licensing requirements required by State or Federal regulations. However, vessels fishing for BSAI pollock under the CDQ program and processors processing pollock harvested under the CDQ program are not required to have AFA permits in order to participate in the CDQ fishery.

This emergency interim rule does not establish an application deadline for

vessel or processor permits. However, once issued, AFA vessel and processor permits are valid until December 31, 2004. AFA vessel and processor permits may not be used on or transferred to another vessel or processor, except under the replacement vessel provisions outlined here. However, AFA permits may be amended to reflect any change in the ownership of the vessel or processor. In contrast to vessel and processor permits, AFA inshore cooperative permits are valid only for the fishing year for which they are issued, but are renewable on an annual basis.

AFA Permit Applications

Application forms for all AFA permits are available upon request from the NMFS Alaska Region (see ADDRESSES) and are available for downloading on the NMFS Alaska Region home page (<http://www.fakr.noaa.gov>). AFA vessel and processor permits will be issued to the current owner of a qualifying vessel or processor if he/she submits to the Regional Administrator a completed AFA permit application that is subsequently approved. This emergency interim rule also establishes an appeals process under which applicants may appeal the NMFS determinations related to AFA permits and AFA inshore cooperative allocations. The appeals process for AFA permits is similar to the process currently in place for the individual fishing quota program and license limitation program (LLP) appeals.

AFA Catcher/Processor Permits

Under the AFA, the statutory list of qualified catcher/processors took effect on January 1, 1999, and NMFS has already issued AFA catcher/processor permits to the owners of all qualified catcher/processors. Under this emergency interim rule, currently permitted AFA catcher/processors will be issued new AFA permits that will be valid until December 31, 2004. NMFS will reissue AFA catcher/processor permits automatically, and the owners of AFA catcher/processors are not required to re-submit AFA permit applications. Two categories of AFA catcher/processor permits will be issued: Vessels listed by name in sections 208(e)(1) through (20) of the AFA will be reissued unrestricted AFA catcher/processor permits; vessels qualifying for AFA catcher/processor permits under section 208(e)(21) will be reissued restricted AFA catcher/processor permits, which limits them, in the aggregate, to harvesting no more

than 0.5 percent of the catcher/processor sector TAC allocation.

AFA Catcher Vessel Permits

Under the AFA, a catcher vessel is qualified to fish for BSAI pollock if it is listed by name in the AFA or if its history of participation in the BSAI pollock fishery meets certain criteria set out in the AFA. Under this emergency interim rule, AFA catcher vessel permits may be endorsed to authorize directed fishing for pollock for delivery to catcher/processors, AFA inshore processors, and/or AFA motherships. Under the AFA, a catcher vessel may be authorized to engage in directed fishing for pollock for delivery to both AFA inshore processors and AFA motherships, depending on its qualifying catch history. However, a vessel that is eligible to deliver to catcher/processors is ineligible for an endorsement to deliver to inshore processors or motherships. An applicant for an AFA catcher vessel permit is required to indicate the sector endorsement(s) for which the vessel qualifies. NMFS is establishing an official AFA record that includes the relevant catch histories of all potentially qualifying vessels and will review for verification all claims of endorsement qualification against the official AFA record.

AFA Catcher Vessel Crab Sideboard Endorsements

Under section 211(c)(1)(A) of the AFA, the Council is required to recommend measures to limit the participation of AFA catcher vessels in BSAI crab fisheries. Section 211(c)(2)(C) of the AFA also prohibits section 208(b) catcher vessels (i.e., AFA catcher vessels eligible to deliver to catcher/processors) "from participating in a directed fishery for any species of crab in the Bering Sea and Aleutian Islands Management Area unless the catcher vessel harvested crab in the directed fishery for that species of crab in such Area during 1997." In June 1999, the Council developed final recommendations for limits on the participation of AFA catcher vessels in BSAI crab fisheries in order to comply with these two provisions of the AFA.

NMFS will implement these catcher vessel crab sideboard limits recommended by the Council through crab sideboard endorsements on the AFA catcher vessel permits. The owner of a catcher vessel who wishes to participate in any BSAI crab fishery must apply for and receive a sideboard endorsement for that crab species on the vessel's AFA catcher vessel permit. AFA catcher vessel permits may be endorsed for the Bristol Bay Red King Crab, St.

Matthew Island blue king crab, Pribilof Island red or blue king crab, Aleutian Islands brown king crab, Aleutian Islands red king crab, Opilio Tanner crab, and Bairdi Tanner crab fisheries based on a vessel's history of participation in each of those fisheries. The specific qualifying years for each fishery are set out in § 679.4(l)(3)(ii)(D) of this emergency interim rule. While the Council's recommended qualifying years for some crab fisheries are different from the 1997 qualifying year specified in the AFA for section 208(b) catcher vessels, the practical effects of the Council's recommended qualifying years are the same as those specified in the AFA because the same set of subsection 208(b) of the AFA catcher vessels would qualify for crab sideboard endorsements under either the Council's recommended qualification criteria, or the criteria set out in section 211(c)(2)(C) of the AFA. Therefore, the Council's recommended qualifying criteria are consistent with those set forth in section 211(c)(2)(C) of the AFA.

The Council based some of its crab sideboard recommendations on whether a particular vessel is "LLP qualified" for a particular crab fishery. To implement this recommendation, the AFA catcher vessel permit application contains questions related to vessel catch history using the same qualifying years as the LLP program. This rule requires applicants for AFA catcher vessel permits to indicate on the permit application which AFA crab sideboard endorsements the vessel qualifies for based on the qualifying criteria set out in this rule. NMFS will review for verification all claims of qualification.

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

Exemptions to Catcher Vessel Groundfish Sideboards

NMFS through subsequent rulemaking will be implementing sideboard measures to restrict AFA catcher vessels from exceeding, in the aggregate, their historic harvests in other groundfish fisheries based on recommendations made by the Council at its June 1999 meeting. These groundfish sideboards will apply to all AFA catcher vessels in the aggregate

regardless of sector and regardless of participation in a cooperative except that catcher vessels less than 125 ft whose annual BSAI pollock landings averaged less than 1700 mt from 1995–1997 (i.e., landed less than 5,100 mt of pollock over the 3-year period) are exempt from BSAI Pacific cod sideboards if they made 30 or more legal landings of BSAI Pacific cod in the BSAI directed fishery for Pacific cod. In addition, AFA catcher vessels that meet the same vessel length and BSAI pollock landing criteria and that made 40 or more legal landings of GOA groundfish would be exempt from groundfish sideboards in the GOA.

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

AFA Mothership Permits

Under subsection 208(d) of the AFA, three motherships are authorized by vessel name to process pollock harvested in the BSAI directed pollock fishery for delivery to motherships. Under this emergency interim rule, NMFS will issue to the owner of a mothership an AFA mothership permit if the mothership is listed by name in sections 208(d)(1) through (3) of the AFA. However, the owner of a mothership wishing to process pollock harvested by a fishery cooperative also must apply for and receive a cooperative processing endorsement on its AFA mothership permit. This requirement is necessary because NMFS must identify and place crab processing restrictions on any entity that owns or controls an AFA mothership or an AFA inshore processor that receives pollock harvested by a cooperative.

Subsection 211(c)(2)(A) of the AFA imposes crab processing restrictions on the owners of AFA mothership and AFA

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

AFA Inshore Processor Permits

Under the AFA, inshore processors are authorized to receive and process BSAI pollock harvested in the directed fishery, based on their levels of processing in 1996 and 1997. NMFS will provide to an applicant an unrestricted AFA inshore processor permit if the Administrator, Alaska Region, NMFS (Regional Administrator) determines that the inshore processing facility annually processed more than 2,000 metric tons (mt) round weight of pollock harvested in the inshore directed pollock fishery in each of 1996 and 1997. NMFS will provide to an applicant a restricted AFA inshore processor permit if the Regional Administrator determines that the inshore processing facility processed pollock harvested in the inshore directed pollock fishery during 1996 or 1997, but did not process annually more than 2,000 mt round weight of pollock in each of 1996 and 1997. A restricted AFA inshore processor permit will prohibit the inshore processing facility from processing more than 2,000 mt round weight of BSAI pollock harvested in the directed fishery in any one year.

The owner of an AFA inshore processor wishing to process pollock harvested by a fishery cooperative must also have a cooperative processing endorsement on the AFA inshore processor permit. The requirements for an AFA inshore processor cooperative

processing endorsement are the same as those listed for AFA motherships above.

At its June 1999 meeting, the Council also recommended that each AFA inshore processor be restricted to operating in the single geographic location in which it operated in 1996 or 1997 when processing pollock harvested in the BSAI directed pollock fishery. However, at its December 1999 meeting, the Council changed its June 1999 recommendation and recommended instead that inshore processors be held to a single geographic location during a fishing year. This revised recommendation would allow a stationary floating processor to change locations between fishing years instead of holding them to the location in which they operated in 1996 or 1997.

The purpose of this recommendation is to implement section 210(f)(1)(A) of the AFA, which includes vessels in a single geographic location in Alaska state waters. To implement this restriction, this emergency rule limits shoreside (land-based) processors to operating in the physical location in which the facility first processed pollock during a fishing year. Stationary floating processors are restricted to operating in a location within Alaska state waters that is within 5 nautical miles (nm) of the position in which the stationary floating processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year. NMFS believes that 5 nm is an appropriate distance for this requirement because it allows the operator of a floating processor some flexibility in choosing an appropriate anchorage, but it still requires that the processor be located in the same body of water for the duration of a fishing year.

Inshore-Cooperative Fishing Permits

Under this emergency interim rule, NMFS will issue to an inshore catcher vessel cooperative formed for the purpose of cooperatively managing directed fishing for pollock during 2000 an AFA inshore cooperative fishing permit if NMFS receives the cooperative's completed application by December 31, 1999, and the Regional Administrator approves it. Applications for an inshore cooperative fishing permit must be accompanied by a copy of the cooperative contract itself and by a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request. The Regional Administrator will not approve applications for an inshore cooperative fishing permit that are not received by

the NMFS Alaska Region on or before December 31, 1999.

As part of the application for an inshore cooperative fishing permit, the cooperative's designated representative, who is signing the permit on behalf of the various members, is required to certify that: (1) Each catcher vessel in the cooperative is a qualified catcher vessel meaning that the vessel owner(s) has applied for an AFA catcher vessel permit and has delivered more pollock harvested in the BSAI pollock directed pollock fishery to the designated AFA inshore processor than to any other AFA inshore processor during the year prior to the year in which the cooperative fishing permit would be in effect, (2) the cooperative contract was signed by the owners of at least 80 percent of the qualified catcher vessels that delivered pollock harvested in the BSAI directed pollock fishery to the cooperative's designated AFA inshore processor during the year prior to the year in which the cooperative fishing permit would be in effect, (3) the cooperative contract requires that the cooperative deliver at least 90 percent of its BSAI pollock catch to its designated AFA processor, and (4) each member vessel is an AFA-eligible catcher vessel and has no permit sanctions or other type of sanctions against it that would prevent it from fishing for groundfish in the BSAI. A catcher vessel that is ineligible to harvest BSAI pollock due to permit sanctions or to lack of an AFA or other required permit may not be a member of an inshore cooperative that receives an inshore cooperative fishing permit. To add or subtract a qualified catcher vessel to or from a cooperative fishing permit, the cooperative must submit a new application prior to the December 31 deadline, and the new application must be subsequently approved by the Regional Administrator. Inshore cooperative fishing permits issued under this emergency interim rule are valid for the 2000 fishing year only.

Replacement Vessels

In the event of the actual total loss or constructive total loss of an AFA catcher vessel, AFA mothership, or AFA catcher/processor, the owner of such vessel may designate a replacement vessel that will be eligible in the same manner as the original vessel after submission of an application for an AFA replacement vessel that is subsequently approved by NMFS. The AFA contains specific restrictions on replacement vessels that are set out in detail in the emergency interim rule regulatory text at § 679.4(l)(7). In this emergency rule, NMFS has made one change from the language of the statute. Section 208(g)(5)

of the AFA states that a vessel may be used as a replacement vessel for an eligible AFA vessel if:

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

NMFS believes that Congress intended this clause to apply to eligible vessels with engines incapable of producing more than 3,000 shaft horsepower rather than engines incapable of producing less than 3,000 shaft horsepower because no catcher vessel operating in Alaska has engines incapable of producing less than 3,000 shaft horsepower. Any marine engine is capable of producing less than 3,000 shaft horsepower at less than full throttle or at idle. Therefore, in this emergency rule, the phrase "incapable of producing more than 3,000 shaft horsepower" is used to implement section 208(g)(5) of the AFA.

An existing AFA vessel may be designated as a replacement vessel for a lost AFA vessel. In the event that an existing AFA catcher vessel is designated as a replacement for a lost AFA catcher vessel, the catch histories of the two vessels may be merged for the purpose of making inshore cooperative allocations.

Official AFA Record and Appeals

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

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

appeals process in place for the individual fishing quota and license limitation programs.

Changes to Definitions

Under this emergency interim rule, new definitions are added for "ADF&G processor code," "AFA catcher/processor," "AFA catcher vessel," "AFA inshore processor," "AFA mothership," "Designated primary processor," "Official AFA record," "Restricted AFA catcher/processor," "Restricted AFA inshore processor," "Stationary floating processor," "Unrestricted AFA catcher/processor," and "Unrestricted AFA inshore processor" to describe vessels and processors permitted to participate in the BSAI pollock fishery under the AFA. The definitions of "AFA crab processor," and "AFA inshore and/or mothership entity" are added to implement the crab processing sideboard restrictions required under the AFA. The definition of "Designated primary processor" is added to describe the processor to which an inshore fishery cooperative will deliver at least 90 percent of its BSAI pollock. The definition for "Official AFA record" is added to describe the relevant catch histories and other data relevant to all potentially qualifying vessels and processors in the BSAI pollock fisheries. The definition for "Stationary floating processor" is added to define a vessel of the United States operating solely as a mothership in Alaska State waters that remains anchored or otherwise remains stationary in a single geographic location while processing groundfish harvested in the GOA or BSAI.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson-Stevens Act, AFA, and other applicable laws.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This emergency interim rule has been determined to be significant for the purposes of E.O. 12866.

NMFS finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 5(b)(B). This action is necessary to implement the permit requirements of the AFA that authorize vessels and processors to fish for and process pollock, and to provide an

opportunity for inshore catcher vessels to form cooperatives for the 2000 fishing year. Inshore sector cooperatives will provide the inshore industry with the ability to more effectively meet the temporal and spatial dispersion objectives of NMFS's Steller sea lion conservation measures that are being published separately from this emergency rule. Delaying the effectiveness of this emergency interim rule to provide prior notice and opportunity for comment would effectively deny the inshore sector of the BSAI pollock industry the opportunity to form cooperatives prior to the start of the 2000 fishing year as provided for in the AFA. Therefore, this sector of the industry would lose a valuable method of meeting the temporal and spatial dispersion objectives of NMFS's Steller sea lion conservation measures. Delaying the start date of the 2000 pollock fishery to accommodate delayed permitting requirements would conflict with the investment-backed expectations of the regulated community, could disrupt the supply of seafood products to the United States and consequently, would be contrary to the public interest. Likewise, the need to avoid delaying the start of the pollock season constitutes good cause, pursuant to authority set forth at 5 U.S.C. 553(d)(3), not to delay the effective date of this rule for 30 days. In addition, the regulated community has been aware since the June 1999 Council meeting that these new requirements would be necessary and have had ample time to prepare for compliance, making the 30-day delay in effective date unnecessary.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and that have been approved by OMB under control number 0648-0393. Public reporting burden for these collections of information is estimated to average as follows: For the operator to complete the AFA catcher vessel permit application is 2 hours; for an operator of an AFA mothership or manager of an inshore processor to complete the AFA mothership or inshore processor permit application is 2 hours; for a co-operative representative to complete the AFA inshore cooperative permit application is 2 hours; and for an operator to complete the AFA permit application for a replacement vessel is 30 minutes.

The estimated response times shown include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to NMFS and OMB (see ADDRESSES).

The President has directed Federal agencies to use plain language when communicating with the public, through regulations or otherwise. Therefore, NMFS seeks public comment on any ambiguity or unnecessary complexity arising from the language used in this emergency interim rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 28, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 is revised to read as follows:

Authority: Title II of Division C, Pub. L. 105-277, 112 Stat. 2681; Sec. 3027, Pub. L. 106-31, 113 Stat. 57 (16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*)

2. In § 679.2, definitions of "ADF&G processor code," "AFA catcher/processor," "AFA catcher vessel," "AFA crab facility," "AFA inshore or mothership entity," "AFA inshore processor," "AFA mothership," "Designated primary processor," "Official AFA record," "Restricted AFA catcher/processor," "Restricted AFA inshore processor," "Stationary floating processor," "Unrestricted AFA catcher/processor," and "Unrestricted AFA inshore processor," are added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

ADF&G processor code means State of Alaska Department of Fish & Game (ADF&G) Intent to operate processor license number (example: F12345).

AFA catcher/processor means a catcher/processor permitted to harvest BSAI pollock under § 679.4(l)(2).

AFA catcher vessel means a catcher vessel permitted to harvest BSAI pollock under § 679.4(l)(3).

AFA crab facility means a processing plant, catcher/processor, mothership, floating processor or any other operation that processes Bering Sea or Aleutian Island king or Tanner crab in which any individual, corporation or other entity that is part of an AFA entity either directly or indirectly owns a 10 percent or greater interest, or exercises 10 percent or greater control.

(1) *Indirect ownership standard.* For purposes of this definition, an indirect ownership interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's percentage of direct, or indirect, interest in the crab processing facility.

(2) *10 percent control standard.* Also for purposes of this definition, an entity is deemed to exercise 10 percent or greater control of a crab processing facility if the entity controls another entity that directly or indirectly owns a 10 percent or greater interest in the crab processing facility.

(i) The term "control" includes:

(A) Ownership of more than 50 percent of the entity;

(B) The right to direct the business of the entity;

(C) 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; or

(D) The right to direct the operation or manning of the crab processing facility.

(ii) The term "control" does not include the right to simply participate in the above actions.

AFA inshore or mothership entity means an entity that owns a mothership and/or inshore processor that processes pollock harvested in the directed BSAI pollock fishery.

(1) *10-percent ownership standard.*

For purposes of this definition, all individuals, corporations or other entities that either directly or indirectly own a 10 percent or greater interest in the mothership and/or inshore processor, as the case may be, are considered as comprising a single AFA inshore or mothership entity. An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's percentage of direct, or indirect, interest in the mothership and/or inshore processor, as the case may be.

(2) *10 percent control standard.* Also for purposes of this definition, any individual, corporation or other entity that controls another entity that directly or indirectly owns a 10 percent or greater interest in the mothership and/or inshore processor, as the case may be, is considered a part of the same AFA inshore or mothership entity of which the controlled entity is a part.

(i) The term "control" includes:

(A) Ownership of more than 50 percent of the entity;

(B) The right to direct the business of the entity;

(C) 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; or

(D) The right to direct the operation or manning of the mothership and/or inshore processor, as the case may be.

(ii) The term "control" does not include the right to simply participate in the above actions.

AFA inshore processor means a shoreside processor or stationary floating processor permitted to process BSAI pollock under § 679.4(l)(4).

AFA mothership means a mothership permitted to process BSAI pollock under § 679.4(l)(5).

Designated primary processor means an AFA inshore processor that is designated by an inshore pollock cooperative as the AFA inshore processor to which the cooperative will deliver at least 90 percent of its annual BSAI pollock allocation during the year in which the AFA inshore cooperative fishing permit is in effect.

Official AFA record means the information prepared by the Regional Administrator about vessels and processors that were used to participate in the BSAI pollock fisheries during the qualifying periods specified in § 679.4(l). Information in the official AFA record includes vessel ownership information, documented harvests made from vessels during AFA qualifying periods, vessel characteristics, and documented amounts of pollock processed by pollock processors during AFA qualifying periods. The official AFA record is presumed to be correct for the purpose of determining eligibility for AFA permits. An applicant for an AFA permit will have the burden of proving correct any information submitted in an application that is inconsistent with the official record.

Restricted AFA catcher/processor means an AFA catcher/processor

permitted to harvest BSAI pollock under § 679.4(l)(2)(ii).

Restricted AFA inshore processor means an AFA inshore processor permitted to harvest pollock under § 679.4(l)(5)(i)(B).

Stationary floating processor means a vessel of the United States operating as a processor in Alaska State waters that remains anchored or otherwise remains stationary in a single geographic location while receiving or processing groundfish harvested in the GOA or BSAI.

Unrestricted AFA catcher/processor means an AFA catcher/processor permitted to harvest BSAI pollock under § 679.4(l)(2)(i).

Unrestricted AFA inshore processor means an AFA inshore processor permitted to harvest pollock under § 679.4(l)(5)(i)(A).

3. In § 679.4, a new paragraph (l) is added to read as follows:

§ 679.4 Permits.

(l) *AFA permits* (applicable through June 27, 2000)—(1) *General—(i) Applicability.* In addition to any other permit and licensing requirements set out in this part, any vessel used to engage in directed fishing for a non-CDQ allocation of pollock in the BSAI and any shoreside processor, stationary floating processor, or mothership that receives pollock harvested in a non-CDQ directed pollock fishery in the BSAI must have a valid AFA permit onboard the vessel or at the facility location at all times while non-CDQ pollock is being harvested or processed. An AFA permit does not exempt a vessel operator, vessel, or processor from any other applicable permit or licensing requirement required under this part or in other state or Federal regulations.

(ii) *Duration.* Except as provided in paragraph (l)(6)(iv) of this section, and unless suspended or revoked, AFA vessel and processor permits are valid until December 31, 2004.

(iii) *Application for permit.* NMFS will issue AFA vessel and processor permits to the current owner(s) of a qualifying vessel or processor if the owner(s) submits to the Regional Administrator a completed AFA permit application that is subsequently approved.

(iv) *Amended permits.* AFA vessel and processor permits may not be used on or transferred to any vessel or processor that is not listed on the

permit. However, AFA permits may be amended to reflect any change in the ownership of the vessel or processor. An application to amend an AFA permit must include the following:

(A) The original AFA permit to be amended, and

(B) A completed AFA permit application signed by the new vessel or processor owner.

(2) *AFA catcher/processor permits*—(i) *Unrestricted.* NMFS will issue to an owner of a catcher/processor an unrestricted AFA catcher/processor permit if the catcher/processor is one of the following (as listed in AFA paragraphs 208(e)(1) through (20)):

AMERICAN DYNASTY (USCG documentation number 951307);
KATIE ANN (USCG documentation number 518441);
AMERICAN TRIUMPH (USCG documentation number 646737);
NORTHERN EAGLE (USCG documentation number 506694);
NORTHERN HAWK (USCG documentation number 643771);
NORTHERN JAEGER (USCG documentation number 521069);
OCEAN ROVER (USCG documentation number 552100);
ALASKA OCEAN (USCG documentation number 637856);
ENDURANCE (USCG documentation number 592206);
AMERICAN ENTERPRISE (USCG documentation number 594803);
ISLAND ENTERPRISE (USCG documentation number 610290);
KODIAK ENTERPRISE (USCG documentation number 579450);
SEATTLE ENTERPRISE (USCG documentation number 904767);
US ENTERPRISE (USCG documentation number 921112);
ARCTIC STORM (USCG documentation number 903511);
ARCTIC FJORD (USCG documentation number 940866);
NORTHERN GLACIER (USCG documentation number 663457);
PACIFIC GLACIER (USCG documentation number 933627);
HIGHLAND LIGHT (USCG documentation number 577044);
STARBOUND (USCG documentation number 944658).

(ii) *Restricted.* NMFS will issue to an owner of a catcher/processor a restricted AFA catcher/processor permit if the catcher/processor is not listed in § 679.4(l)(2)(i) and is determined by the Regional Administrator to have harvested more than 2,000 mt of pollock in the 1997 BSAI directed pollock fishery.

(3) *AFA catcher vessel permits.* NMFS will issue to an owner of a catcher vessel an AFA catcher vessel permit containing sector endorsements and sideboard restrictions upon receipt and approval of a completed application for an AFA catcher vessel permit.

(i) *Qualifying criteria*—(A) *Catcher vessels delivering to catcher/processors.* NMFS will endorse an AFA catcher vessel permit to authorize directed fishing for pollock for delivery to a catcher/processor if the catcher vessel:

(1) Is one of the following (as listed in paragraphs 208(b)(1) through (7) of the AFA):

AMERICAN CHALLENGER (USCG documentation number 633219);

FORUM STAR (USCG documentation number 925863);

MUIR MILACH (USCG documentation number 611524);

NEAHKAHNE (USCG documentation number 599534);

OCEAN HARVESTER (USCG documentation number 549892);

SEA STORM (USCG documentation number 628959);

TRACY ANNE (USCG documentation number 904859); or

(2) Is not listed in § 679.4(l)(3)(i)(A)(1) and is determined by the Regional Administrator to have delivered at least 250 metric tons and at least 75 percent of the pollock it harvested in the directed BSAI pollock fishery in 1997 to catcher/processors for processing by the offshore component.

(B) *Catcher vessels delivering to AFA motherships.* NMFS will endorse an AFA catcher vessel permit to authorize directed fishing for pollock for delivery to an AFA mothership if the catcher vessel:

(1) Is one of the following (as listed in paragraphs 208(c)(1) through (19) and subsection 211(e) of the AFA):

ALEUTIAN CHALLENGER (USCG documentation number 603820);

ALYESKA (USCG documentation number 560237);

AMBER DAWN (USCG documentation number 529425);

AMERICAN BEAUTY (USCG documentation number 613847);

CALIFORNIA HORIZON (USCG documentation number 590758);

MAR-GUN (USCG documentation number 525608);

MARGARET LYN (USCG documentation number 615563);

MARK I (USCG documentation number 509552);

MISTY DAWN (USCG documentation number 926647);

NORDIC FURY (USCG documentation number 542651);

OCEAN LEADER (USCG documentation number 561518);

OCEANIC (USCG documentation number 602279);

PACIFIC ALLIANCE (USCG documentation number 612084);

PACIFIC CHALLENGER (USCG documentation number 518937);

PACIFIC FURY (USCG documentation number 561934);

PAPADO II (USCG documentation number 536161);

TRAVELER (USCG documentation number 929356);

VESTERAALEN (USCG documentation number 611642);

WESTERN DAWN (USCG documentation number 524423);

LISA MARIE (USCG documentation number 1038717); or

(2) Is not listed in § 679.4(l)(3)(i)(B)(1) and is determined by the Regional Administrator to have delivered at least 250 mt of pollock for processing by motherships in the offshore component of the BSAI directed pollock fishery in any one of the years 1996 or 1997, or between January 1, 1998, and September 1, 1998, and is not eligible for an endorsement to deliver pollock to catcher/processors under § 679.4(l)(3)(i)(A).

(C) *Catcher vessels delivering to AFA inshore processors.* NMFS will endorse an AFA catcher vessel permit to authorize directed fishing for pollock for delivery to an AFA inshore processor if the catcher vessel:

(1) Is the LISA MARIE (USCG documentation number 1038717); or

(2) Is not eligible for an endorsement to deliver pollock to catcher/processors under § 679.4(l)(3)(i)(A), and:

(i) Is determined by the Regional Administrator to have delivered at least 250 mt of pollock harvested in the directed BSAI pollock fishery for processing by the inshore component in any one of the years 1996 or 1997, or between January 1, 1998, and September 1, 1998; or

(ii) Is less than 60 ft (18.1 meters) LOA and is determined by the Regional Administrator to have delivered at least 40 mt of pollock harvested in the directed BSAI pollock fishery for processing by the inshore component in any one of the years 1996 or 1997, or between January 1, 1998 and September 1, 1998.

(ii) *Application for AFA catcher vessel permit.* A completed application for an AFA catcher vessel permit must contain:

(A) *Vessel information.* The vessel name, ADF&G registration number, USCG documentation number, vessel telephone number (if any), gross tons, shaft horsepower, and registered length (in feet);

(B) *Owner information.* Owner name(s), tax ID number(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(C) *Vessel AFA qualification information.* AFA catcher vessel permit endorsement(s) requested; and

(D) *Vessel crab activity information required for crab sideboard endorsements.* The owner of an AFA catcher vessel wishing to participate in

any BSAI king or Tanner crab fishery must apply for a crab sideboard endorsement authorizing the catcher vessel to retain that crab species. An AFA catcher vessel permit may be endorsed for a crab species if the owner requests a crab sideboard endorsement, provides supporting documentation that the catcher vessel made the required legal landing(s) of a crab species, and the Regional Administrator verifies the legal landing(s) according to the following criteria:

(1) *Bristol Bay Red King Crab*

(BBRKC): A legal landing of any BSAI king or Tanner crab species in 1996, 1997, or on or before February 7, 1998. A BBRKC sideboard endorsement also authorizes a vessel to retain Bairdi Tanner crab harvested during the duration of a BBRKC opening if the vessel is otherwise authorized to retain Bairdi Tanner crab while fishing for BBRKC under state and Federal regulations.

(2) *St. Matthew Island blue king crab:* A legal landing of St. Matthew Island blue king crab in that fishery in 1995, 1996, or 1997.

(3) *Pribilof Island red and blue king crab:* A legal landing of Pribilof Island blue or red king crab in that fishery in 1995, 1996, or 1997.

(4) *Aleutian Islands (Adak) brown king crab:* A legal landing of Aleutian Islands brown king crab during in each of the 1997/1998 and 1998/1999 fishing seasons.

(5) *Aleutian Islands (Adak) red king crab:* A legal landing of Aleutian Islands red king crab in each of the 1995/1996 and 1998/1999 fishing seasons.

(6) *Opilio Tanner crab:* A legal landing of *Chionoecetes (C.) opilio* Tanner crab in each of 4 or more years from 1988 to 1997.

(7) *Bairdi Tanner crab:* A legal landing of *C. bairdi* Tanner crab in 1995 or 1996.

(E) *Vessel exemptions from AFA catcher vessel groundfish sideboard directed fishing closures.* An AFA catcher vessel permit may contain exemptions from certain groundfish sideboard directed fishing closures. If a vessel owner is requesting an exemption from groundfish sideboard-directed closures, the application must provide supporting documentation that the catcher vessel qualifies for the exemption based on the criteria set out below. The Regional Administrator will review the vessel's catch history according to the following criteria:

(1) *BSAI Pacific cod.* For a catcher vessel to qualify for an exemption from AFA catcher vessel sideboards in the BSAI Pacific cod fishery, the catcher vessel must be less than 125 ft LOA,

have harvested a combined total of less than 5,100 mt of BSAI pollock, and have made 30 or more legal landings of Pacific cod in the BSAI directed fishery for Pacific cod during the combined years 1995, 1996, and 1997.

(2) *GOA groundfish species.* For a catcher vessel to qualify for an exemption from AFA catcher vessel sideboards in the GOA groundfish fisheries, the catcher vessel must be less than 125 ft LOA, have harvested a combined total of less than 5,100 mt of BSAI pollock and made 40 or more legal landings of GOA groundfish during the combined years 1995, 1996, and 1997.

(F) *Certification of notary and applicant.* Owner signature(s), date of signature, printed name(s), and stamp and signature of a notary public.

(4) *AFA mothership permits.* NMFS will issue to an owner of a mothership an AFA mothership permit if the mothership is one of the following (as listed in paragraphs 208(d)(1) through (3) of the AFA):

EXCELLENCE (USCG documentation number 967502);

GOLDEN ALASKA (USCG documentation number 651041); and

OCEAN PHOENIX (USCG documentation number 296779).

(i) *Cooperative processing endorsement.* The owner of an AFA mothership who wishes to process pollock harvested by a fishery cooperative formed under § 679.60 must apply for and receive a cooperative processing endorsement on the vessel's AFA mothership permit.

(ii) *Application for AFA mothership permit.* A completed application for an AFA mothership permit must contain:

(A) *Type of permit requested.* Type of processor and whether requesting an AFA co-operative endorsement.

(B) *Mothership information.* The mothership name, ADF&G processor code, USCG documentation number, Federal fisheries permit number, gross tons, shaft horsepower, and registered length (in feet).

(C) *Owner information.* Owner name(s), tax ID number(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(D) *AFA crab facility ownership information.* If the applicant is applying for a cooperative pollock processing endorsement, the AFA mothership application must list the name, type of facility, ADF&G processor code, and percentage of ownership or control of each of AFA crab facility that is owned or controlled by the AFA mothership entity that owns or controls the AFA mothership; and

(E) *Certification of notary and applicant.* Owner signature(s), date of signature, printed name(s), and notary stamp and signature of a notary public.

(5) *AFA inshore processor permits.* NMFS will issue to an owner of a shoreside processor or stationary floating processor an AFA inshore processor permit upon receipt and approval of a completed application.

(i) *Qualifying criteria—(A) Unrestricted processors.* NMFS will issue an unrestricted AFA inshore processor permit to a shoreside processor or stationary floating processor if the Regional Administrator determines that the processor facility processed annually more than 2,000 mt round-weight of pollock harvested in the inshore component of the directed BSAI pollock fishery during each of 1996 and 1997.

(B) *Restricted processors.* NMFS will issue a restricted AFA inshore processor permit to a shoreside processor or stationary floating processor if the Regional Administrator determines that the facility processed pollock harvested in the inshore component of the directed BSAI pollock fishery during 1996 or 1997, but did not process annually more than 2,000 mt round-weight of BSAI pollock during each of 1996 and 1997.

(ii) *Cooperative processing endorsement.* The owner of an AFA inshore processor who wishes to process pollock harvested by a fishery cooperative formed under § 679.61 must apply for and receive a cooperative processing endorsement on the AFA inshore processor permit.

(iii) *Single geographic location requirement.* An AFA inshore processor permit authorizes the processing of pollock harvested in the BSAI directed pollock fishery in only a single geographic location during a fishing year. For the purpose of this paragraph, single geographic location means:

(A) *Shoreside processors.* The physical location at which the land-based shoreside processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year;

(B) *Stationary floating processors.* A location within Alaska state waters that is within 5 nm of the position in which the stationary floating processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year.

(iv) *Application for permit.* A completed application for an AFA inshore processor permit must contain:

(A) *Type of permit requested.* Type of processor, whether requesting an AFA cooperative endorsement, and amount

of BSAI pollock processed in 1996 and 1997;

(B) *Stationary floating processor information.* The vessel name, ADF&G processor code, USCG documentation number, Federal processor permit number, gross tons, shaft horsepower, registered length (in feet), and business telephone number, business FAX number, and business E-mail address used onboard the vessel.

(C) *Shoreside processor information.* The processor name, Federal processor permit number, ADF&G processor code, business street address; business telephone and FAX numbers, and business e-mail address.

(D) *Owner information.* Owner name(s), tax ID number(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(E) *AFA crab facility ownership information.* If the applicant is applying for a cooperative pollock processing endorsement, the AFA inshore processor application must list the name, type of facility, ADF&G processor code, and percentage of ownership or control of each of each AFA crab facility that is owned or controlled by the AFA inshore processor entity that owns or controls the AFA inshore processor; and

(F) *Certification of notary and applicant.* Owner signature(s), date of signature, printed name(s), and notary stamp and signature of a notary public.

(6) *Inshore cooperative fishing permits—(i) General.* NMFS will issue to an inshore catcher vessel cooperative formed under section 1 of the Act of June 25, 1934 (15 U.S.C. 521) for the purpose of cooperatively managing directed fishing for pollock for processing by an AFA inshore processor an AFA inshore cooperative fishing permit upon receipt and approval of a completed application.

(ii) *Application for permit.* A completed application for an inshore cooperative fishing permit must contain the following information:

(A) *Cooperative contact information.* Name of cooperative; name of cooperative representative; and business mailing address, business telephone number, business fax number, and business e-mail address of the cooperative;

(B) *Designated cooperative processor.* The name and physical location of AFA Inshore Processor that is designated in the cooperative contract as the processor to whom the cooperative has agreed to deliver at least 90 percent of its BSAI pollock catch. If the processor is a stationary floating processor, the single geographic location (latitude and

longitude) at which the processor will process BSAI pollock under the AFA; and Federal processor permit number of the AFA inshore processor;

(C) *Cooperative contract information.* A copy of the cooperative contract and a written certification that:

(1) The contract was signed by the owners of at least 80 percent of the qualified catcher vessels. For the purpose of this paragraph, a catcher vessel is a qualified catcher vessel if:

(i) it delivered more pollock harvested in the BSAI inshore directed pollock fishery to the AFA inshore processor designated under paragraph (l)(6)(ii)(B) of this section than to any other

shoreside processor or stationary floating processor during the year prior to the year in which the cooperative fishing permit will be in effect; and

(ii) the owner(s) of the catcher vessel in question has submitted a completed application for an AFA catcher vessel permit to the Regional Administrator that was received on or before December 31, 1999 and which is not subsequently denied.

(2) The cooperative contract requires that the cooperative deliver at least 90 percent of its BSAI pollock catch to its designated AFA processor; and

(3) Each catcher vessel in the cooperative is a qualified catcher vessel and is otherwise eligible to fish for groundfish in the BSAI, has an AFA catcher vessel permit with an inshore endorsement, and has no permit sanctions or other type of sanctions against it that would prevent it from fishing for groundfish in the BSAI;

(D) *Business review letter.* A copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice, and any response to such request;

(E) *Vessel information.* For each cooperative catcher vessel member: Vessel name, ADF&G registration number, USCG documentation number, AFA permit number; and

(F) *Certification of notary and applicant.* Signature and printed name of cooperative representative, date of signature, and notary stamp or seal of a notary public.

(iii) *Duration of cooperative fishing permits.* Inshore cooperative fishing permits are valid for 1 calendar year.

(iv) *Add or subtract vessels to a cooperative fishing permit.* The cooperative representative must submit a new application to add or subtract a catcher vessel to or from an inshore cooperative fishing permit to the Regional Administrator prior to the application deadline. Upon approval by the Regional Administrator, NMFS will

issue an amended cooperative fishing permit.

(v) *Application deadline.* An inshore cooperative fishing permit application and any subsequent contract amendments that add or subtract vessels must be received by the Regional Administrator by December 31 prior to the year in which the inshore cooperative fishing permit will be in effect. Inshore cooperative fishing permit applications or amendments to inshore fishing cooperative permits received after December 31 will not be accepted by the Regional Administrator for the subsequent fishing year.

(7) *Replacement vessels.* (i) In the event of the actual total loss or constructive total loss of an AFA catcher vessel, AFA mothership, or AFA catcher/processor, the owner of such vessel may replace such vessel with a replacement vessel. The replacement vessel will be eligible in the same manner as the original vessel after submission and approval of an application for an AFA replacement vessel provided that:

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

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

(C) The USCG certificate of documentation with fishery endorsement for the replacement vessel is issued within 36 months of the end of the last year in which the eligible vessel harvested or processed pollock in the directed pollock fishery;

(D) If the eligible vessel is greater than 165 ft (50.3 meters (m)) in registered length, or more than 750 gross registered tons, or has engines capable of producing more than 3,000 shaft horsepower, the replacement vessel is of the same or lesser registered length, gross registered tons, and shaft horsepower;

(E) If the eligible vessel is less than 165 ft (50.3 m) in registered length, of fewer than 750 gross registered tons, and has engines incapable of producing more than 3,000 shaft horsepower, the replacement vessel is less than each of such thresholds and does not exceed by more than 10 percent the registered length, gross registered tons or shaft horsepower of the eligible vessel; and

(F) If the replacement vessel is already an AFA catcher vessel, the inshore cooperative catch history of both vessels may be merged in the replacement vessel for the purpose of determining inshore cooperative allocations except

that a catcher vessel with an endorsement to deliver pollock to AFA catcher/processors may not be simultaneously endorsed to deliver pollock to AFA motherships or AFA inshore processors.

(ii) *Application for permit.* A completed application for an AFA permit for replacement vessel must contain:

(A) *Identification of lost AFA eligible vessel.*

(1) Name, ADF&G vessel registration number, USCG documentation number, AFA permit number, gross tons, shaft horsepower, and registered length from USCG documentation of the vessel;

(2) Name(s), tax ID number(s), business mailing address(es), telephone number(s), FAX number(s), and e-mail address(es) of owner(s);

(3) Last year in which this vessel harvested or processed pollock in a BSAI directed pollock fishery; and

(4) Description of how the vessel was lost or destroyed. Attach a USCG Form 2692 or insurance papers to verify the claim.

(B) *Identification of replacement vessel.*

(1) Name, ADF&G vessel registration number, USCG documentation number, gross tons, shaft horsepower, registered length, net tons, and length overall (in feet) from USCG documentation, and Federal Fisheries Permit number of the vessel;

(2) Name(s), tax ID number(s), business mailing address(es), business telephone number(s), business FAX number(s), and business e-mail address(es) of the owner(s);

(3) YES or NO indication of whether the vessel was built in the United States; and

(4) YES or NO indication of whether the vessel has ever been rebuilt, and if so whether it was rebuilt in the United States.

(C) *Certification of applicant and notary.* Signature(s) and printed name(s) of owner(s) and date of signature; signature, notary stamp or seal of notary public, and date notary commission expires.

(8) *Application evaluations and appeals—(i) Initial evaluation.* The Regional Administrator will evaluate an application for an AFA fishing or processing permit submitted in accordance with this paragraph (1) and compare all claims in the application with the information in the official AFA record. Claims in the application that are consistent with information in the official AFA record will be accepted by the Regional Administrator. Inconsistent claims in the application, unless supported by evidence, will not be

accepted. An applicant who submits inconsistent claims or fails to submit the information specified in the application for an AFA permit will be provided a 60-day evidentiary period to submit the specified information, submit evidence to verify the applicant's inconsistent claims, or submit a revised application with claims consistent with information in the official AFA record. An applicant who submits claims that are inconsistent with information in the official AFA record has the burden of proving that the submitted claims are correct.

(ii) *Additional information and evidence.* The Regional Administrator will evaluate additional information or evidence to support an applicant's inconsistent claims submitted within the 60-day evidentiary period. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the inconsistent claims in his or her application are correct, the official AFA record will be amended and the information will be used in determining whether the applicant is eligible for an AFA permit. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the inconsistent claims in his or her application is correct, the applicant will be notified by an initial administrative determination that the applicant did not meet the burden of

proof to change information in the official AFA record.

(iii) *Sixty-day evidentiary period.* The Regional Administrator will specify by letter a 60-day evidentiary period during which an applicant may provide additional information or evidence to support the claims made in his or her application, or to submit a revised application with claims consistent with information in the official AFA record, if the Regional Administrator determines that the applicant did not meet the burden of proving that the information on the application is correct through evidence provided with the application. Also, an applicant who fails to submit required information will have 60 days to provide that information. An applicant will be limited to one 60-day evidentiary period. Additional information or evidence, or a revised application received after the 60-day evidentiary period specified in the letter has expired will not be considered for the purposes of the initial administrative determination.

(iv) *Initial administrative determinations (IAD).* The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 60-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to rebut the presumption

that the official AFA record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 60-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD also will indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal under the appeals procedures set out at § 679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will receive an interim AFA permit that authorizes a person to participate in an AFA pollock fishery, and will have the specific endorsements and designations based on the claims in his or her application. An interim AFA permit will expire upon final agency action.

(v) *Effect of cooperative allocation appeals.* An AFA inshore cooperative may appeal the pollock quota share issued to the cooperative under § 679.61; however, final agency action on the appeal must occur prior to December 15 for the results of the appeal to take effect during the subsequent fishing year.

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e. A statement indicating whether the piece volume is subject to seasonal variation and, if applicable, estimates of monthly volumes for a 12-month period.

7.5 Authorization

After a mailer's request for bulk weight averaging has been reviewed and approved by the Manager, Operations Systems, USPS Headquarters, the post office that received the original request provides an authorization letter and has the mailer sign a service agreement for bulk weight averaging of nonletter-size BRM for a specified post office box. If the mailer does not appear to meet the requirements for bulk weight averaging, the post office sends the applicant a written notice advising of the reasons for denial. The applicant has 15 days following receipt of the notice to file a written appeal of the decision with the postmaster and to furnish further information explaining why the application should be approved. If the postmaster still finds that the application should be denied, the postmaster forwards the file to the Manager, Operations Systems, USPS Headquarters, who issues a final written decision to the mailer.

7.6 Action

[Reserved.]

7.7 Reasons

A postmaster may terminate a mailer's authorization to have nonletter-size BRM bulk weight-averaged at any time if:

- a. The mailer provided incorrect or incomplete information when applying for the bulk weight-averaging method.
- b. The mailer's BRM pieces no longer meet the eligibility requirements of 7.2.
- c. USPS finds that bulk weight averaging no longer provides adequate revenue protection.
- d. The mailer no longer desires to have bulk weight averaging used.

7.8 Notice and Appeal

A termination takes effect 15 days from the mailer's receipt of the notice unless the mailer files a written appeal within that period with the postmaster stating why use of the weight-averaging method should not be suspended or terminated. The mailer may continue to have the bulk weight-averaging method used pending a final decision on the appeal. If the postmaster does not uphold an appeal of a suspension or termination, the postmaster forwards the mailer's appeal together with all pertinent information to the Manager, Operations Systems, USPS

Headquarters, who issues a final agency decision to the mailer.

* * * * *

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. As provided by 39 CFR 111.3, notice of issuance will be published in the **Federal Register**.

Stanley F. Mires,
Chief Counsel, Legislative.
[FR Doc. 00-2020 Filed 1-27-00; 8:45 am]
BILLING CODE 7710-12-U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991228352-0012-02; I.D. 011100D]

RIN 0648-AM83

Fisheries of the Exclusive Economic Zone Off Alaska; Emergency Interim Rule To Implement Major Provisions of the American Fisheries Act

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

ACTION: Emergency interim rule; revisions to 2000 harvest specifications; sideboard directed fishing closures; request for comments.

SUMMARY: NMFS issues emergency interim regulations implementing major provisions of the American Fisheries Act (AFA). The elements of this emergency interim rule include: A new formula to allocate the Bering Sea and Aleutian Islands Management Area (BSAI) pollock total allowable catch (TAC) among the Western Alaska Community Development Quota (CDQ) program and the inshore, catcher/processor, and mothership industry sectors; new recordkeeping and reporting requirements for the BSAI pollock fishery and for processors that receive groundfish from AFA catcher vessels; new observer coverage and scale requirements for AFA catcher/processors, AFA motherships, and AFA inshore processors; new regulations to govern BSAI pollock fishery cooperatives formed under the AFA; harvesting restrictions on AFA catcher vessels and AFA catcher/processors to limit effort by such vessels in other groundfish and crab fisheries; crab processing restrictions on AFA

motherships and AFA inshore processors that receive pollock harvested by a cooperative in a BSAI directed pollock fishery, an excessive share harvesting cap that prohibits any single entity from harvesting more than 17.5 percent of the BSAI pollock TAC, and revised interim groundfish harvest specifications for the BSAI and GOA.

This emergency action also establishes interim 2000 harvest sideboard amounts for AFA catcher/processors and AFA catcher vessels, and issues sideboard directed fishing closures for AFA catcher/processor and AFA catcher vessels in various fisheries. This emergency action is necessary to provide inshore pollock cooperatives with allocations of pollock for the 2000 fishing year as required by the AFA. This emergency action also is necessary to implement sideboard restrictions to protect participants in other Alaska fisheries from negative impacts as a result of fishery cooperatives formed under the AFA.

DATES: Effective January 21, 2000 through July 20, 2000, except for § 679.5, paragraphs (a)(4)(iv), (f)(3), (i)(1)(iii), and (o) and § 679.60(d), which, upon approval under the Paperwork Reduction Act of the information collections in these provisions will be made effective through separate notification in the **Federal Register**. Comments on this emergency interim rule must be received by February 28, 2000.

ADDRESSES: Comments must be sent to Sue Salvesson, Assistant Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to Federal Building, Fourth Floor, 709 West 9th Street, Juneau, AK, and marked Attn: Lori Gravel. Comments will not be accepted if sent by e-mail or Internet. Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for this action may be obtained from the North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK 99501, 907-271-2809. Send comments on collection-of-information requirements to the Alaska Region, NMFS, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

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

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries in the exclusive economic zone of the

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

American Fisheries Act—Background Information

The AFA, Div. C, Title II, Subtitle II, Pub. L. No. 105-277, 112 Stat. 2681 (1998), made profound changes in the management of the groundfish fisheries of the BSAI and, to a lesser extent, the groundfish fisheries of the GOA and crab fisheries of the BSAI. With respect to the groundfish and crab fisheries off Alaska, the AFA—

- Established a new allocation scheme for BSAI pollock that allocates 10 percent of the BSAI pollock total allowable catch (TAC) to the CDQ Program, and after allowance for incidental catch of pollock in other fisheries, allocates the remaining TAC as follows: 50 percent to vessels harvesting pollock for processing by inshore processors, 40 percent to vessels harvesting pollock for processing by catcher/processors, and 10 percent to vessels harvesting pollock for processing by motherships;

- Provided for the buyout of nine pollock catcher/processors and the subsequent scrapping of eight of these vessels through a combination of \$20 million in Federal appropriations and \$75 million in direct loan obligations;

- Required a fee of six-tenths (0.6) of one cent for each pound round weight of pollock harvested by catcher vessels delivering to inshore processors for the purpose of repaying the \$75 million direct loan obligation;

- Listed by name and/or provided qualifying criteria for those vessels and processors eligible to participate in the non-CDQ portion of the BSAI pollock fishery;

- Increased observer coverage and scale requirements for AFA catcher/processors;

- Established limitations for the creation of fishery cooperatives in the catcher/processor, mothership, and inshore industry sectors;

- Required that NMFS grant individual allocations of the inshore BSAI pollock TAC to inshore catcher vessel cooperatives that form around a specific inshore processor and agree to deliver the bulk of their catch to that processor;

- Required harvesting and processing restrictions (commonly known as "sideboards") on fishermen and processors who have received exclusive harvesting or processing privileges under the AFA to protect the interests of fishermen and processors who have not directly benefitted from the AFA; and

- Established excessive share harvesting caps for BSAI pollock and directed the Council to develop excessive share caps for BSAI pollock processing and for the harvesting and processing of other groundfish.

Since the passage of the AFA in October 1998, NMFS has begun to implement specific provisions of the AFA through a variety of mechanisms. For the 1999 fishing year, NMFS implemented the new AFA pollock allocations and harvest restrictions on catcher/processors through the interim and final BSAI harvest specifications (64 FR 50, January 4, 1999; and 64 FR 12103, March 11, 1999). Required changes to the CDQ program were implemented through an emergency interim rule (64 FR 3877, January 26, 1999; extended at 64 FR 34743, June 29, 1999). The increase in observer coverage levels for pollock catcher/processors and regulatory authority to manage AFA catcher/processor sideboard limits through directed fishing closures were implemented through a separate emergency interim rule (64 FR 3435, January 22, 1999; corrected at 64 FR 7814, February 17, 1999; and extended at 64 FR 33425, June 6, 1999). In December 1998, NMFS administered the buyout of the nine catcher/processors declared ineligible under the AFA, and is currently overseeing the scrapping of the eight vessels scheduled for scrapping under the AFA. The inshore fee system mandated by the AFA will be implemented in early 2000. A proposed rule to implement the inshore fee program was published on December 21, 1999 (64 FR 71396).

Since the passage of the AFA, the Council has taken an active role in the development of management measures to implement the various provisions of the AFA. The Council began consideration of the implications of the AFA during a special meeting in November 1998, during which it discussed AFA-related actions that were required for the 1999 fishing year. At its December 1998 meeting, the Council

voted to recommend approval of the two emergency interim rules cited earlier, recommended AFA-related provisions to the 1999 BSAI harvest specifications for groundfish, and began an analysis of a suite of AFA-related management measures that subsequently became known as Amendments 61/61/13/8. The Council conducted an initial review of Amendments 61/61/13/8 and related AFA measures at its April 1999 meeting, and took final action on these amendments at its June 1999 meeting.

In addition, the Council formed an industry advisory committee to assist NMFS in the development of specific measures to govern the development and management of inshore pollock cooperatives. This Council-appointed committee met with NMFS at a public meeting May 17-18, 1999, in Seattle, WA to develop recommendations for the implementation and management of inshore pollock cooperatives. These recommendations were presented to the Council at its June 1999 meeting, and were incorporated into the Council's recommended approach for implementing the inshore pollock cooperative provisions of the AFA.

The Council formed a second industry committee to make recommendations on the development and implementation of crab and groundfish processing limits on AFA pollock processors. This second committee met August 9-10, 1999, in Seattle, WA, and presented its recommendations to the Council at its October 1999 Council meeting.

At its December 1999 meeting, the Council reviewed the status of Amendments 61/61/13/8 and recommended that NMFS proceed immediately with an emergency interim rule to implement the Council's June 1999 recommendations so that AFA regulations could be in place prior to the start of the 2000 fisheries while Amendments 61/61/13/8 and the proposed rule to implement the amendments are under review by NMFS. The suite of management measures contained in this emergency interim rule gives effect to the Council's December 1999 motion and contains all AFA-related management measures necessary to implement the provisions of the AFA for the 2000 fishing year except for the inshore fee program, which is being implemented through separate rulemaking. NMFS previously published a separate emergency interim rule (65 FR 380, January 5, 2000) to give immediate effect to all AFA-related permit requirements so that the fishing industry has the opportunity to apply for and receive AFA-related fishing permits prior to the start of the 2000 pollock fishery.

NMFS is issuing this emergency interim rule to give immediate effect to all AFA-mandated management measures. This emergency action is necessary to provide inshore pollock cooperatives with allocations of pollock for the 2000 fishing year as required by the AFA. Inshore sector cooperatives will provide the inshore industry with the ability to more effectively meet the temporal and spatial dispersion objectives of NMFS' Steller sea lion conservation measures that will be implemented prior to the start of the 2000 pollock fisheries. Without this emergency interim rule, the inshore sector of the BSAI pollock industry would be unable to operate under cooperatives for the 2000 fishing year in the manner provided for in the AFA, and consequently, would lose a valuable method of meeting the temporal and spatial dispersion objectives of NMFS' Steller sea lion conservation measures.

In addition, this emergency action is necessary to implement paragraph 211(c)(1) of the AFA, which mandates sideboard restrictions to prevent AFA catcher vessels from exceeding "in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the [Council] as a result of fishery cooperatives in the directed pollock fishery, [and] protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of the AFA or fishery cooperatives in the directed pollock fishery." Such sideboard protections must be implemented by January 20, 2000, to prevent adverse economic impacts on the participants of other groundfish and crab fisheries that open on January 20, 2000. Without sideboard measures in place, AFA catcher vessels and catcher/processors could greatly increase their levels of participation in other groundfish and crab fisheries throughout Alaska due to the flexibility provided by cooperatives in the BSAI pollock fishery. Such a result could severely impact fishermen and communities throughout Alaska that are economically dependent on non-pollock groundfish and crab fisheries.

This emergency interim rule would be superseded by the final rule to implement Amendments 61/61/13/8 if approved by NMFS. The primary elements of this emergency interim rule are summarized here.

Recordkeeping and Reporting Requirements

To implement the provisions of the AFA, NMFS is revising existing procedures and establishing new procedures for inseason management of directed fisheries to monitor catch and

bycatch taken by various AFA-qualified entities, including fishery cooperatives, and to manage catch limits by AFA-qualified vessels in other fisheries. These include:

Shoreside Processor Electronic Logbook Report

To implement the provisions of the AFA, NMFS must monitor daily pollock harvests and sideboard species harvests on a vessel-by-vessel basis in order to make timely management decisions on pollock closures and sideboard species closures. To collect this vessel-by-vessel delivery information, shoreside processors and stationary floating processors receiving deliveries of groundfish from AFA catcher vessels are required to submit information about those deliveries daily in electronic form.

Shoreside processor electronic logbook software to record and submit this information may be obtained free of charge from the Alaska Region, NMFS (see ADDRESSES or <http://www.fakr.noaa.gov>). The minimum hardware and operating system requirements for the NMFS electronic reporting shoreside logbook system are a personal computer (PC) with Pentium or equivalent processor, Windows 95, 98, or NT operating system (or equivalent), at least 16 megabytes of RAM (Windows 95) or 32 megabytes of RAM (Windows 95, NT), at least 75 megabytes of free hard disk storage, and telephone modem or internet connection.

As an alternative to the NMFS-provided shoreside processor electronic logbook software, processors may use privately developed software approved by NMFS that conforms to NMFS electronic logbook software specifications. These software specifications are available from the Alaska Region, NMFS, upon request.

The shoreside processor electronic logbook report is designed to provide NMFS with the detailed information needed to manage inshore fisheries under the AFA while reducing the recordkeeping and reporting burden on industry. Shoreside processors and stationary floating processors that are required to use the shoreside processor electronic logbook report are not required to maintain the paper daily cumulative production logbook (DCPL), submit weekly production reports (WPRs), and if the processor is processing CDQ fish, submit CDQ delivery reports. In addition, the processor is not required to submit quarterly DCPL logsheets to NMFS, although the processor is required to generate and retain printed output of the shoreside processor electronic logbook

report at the processing plant for use by NMFS Enforcement and groundfish observers.

This emergency interim rule also allows shoreside processors and stationary floating processors that do not receive groundfish from AFA catcher vessels to voluntarily use NMFS-approved shoreside processor electronic logbook software in lieu of existing DCPLs, and WPRs.

Catcher Vessel Cooperative Pollock Catch Report

The designated representative or cooperative manager of each inshore catcher vessel cooperative is required to submit catch reports detailing each delivery of pollock harvested under the allocation made to that cooperative within 1 week of the date of delivery. This information is necessary so that NMFS may monitor cooperative fishing activity and enforce pollock allocations. Two options are available to cooperatives for submittal of the catch report: (1) an electronic data file in a NMFS-approved format, or (2) by FAX.

Changes to the Annual Specifications Process

Under this emergency interim rule, the procedures for allocating pollock TAC among industry sectors and apportioning each sector's TAC between seasons are revised to incorporate the changes contained in the AFA. Section 206 of the AFA sets out the allocation formulas for BSAI pollock, which are included in this emergency interim rule. Under this emergency interim rule, 10 percent of the pollock TAC specified for the Bering Sea (BS) subarea and the Aleutian Islands (AI) subarea is allocated to the CDQ program. The remaining TAC for each subarea, after establishment of an incidental catch allowance for pollock harvested as incidental catch in other groundfish fisheries, is allocated 50 percent to AFA catcher vessels harvesting pollock for processing by AFA inshore processors; 40 percent to AFA catcher/processors and AFA catcher vessels harvesting pollock for processing by AFA catcher/processors, with not less than 8.5 percent of this allocation made available to AFA catcher vessels delivering to catcher/processors; and 10 percent to AFA catcher vessels harvesting pollock for processing by AFA motherships. Under this emergency interim rule, the inshore pollock TAC is further subdivided into two allocations; one allocation to vessels participating in inshore fishery cooperatives, and one allocation to vessels not participating in a cooperative fishery. The annual allocation to inshore cooperatives is

equal to the aggregate annual allocations made to each inshore cooperative formed under the provisions of this emergency interim rule. The allocation to vessels that are not in a cooperative fishery is equal to the remaining inshore allocation after subtraction of the allocation to fishery cooperatives.

Each sector's annual BS subarea allocation of pollock is further apportioned among fishing seasons. In a separate action, NMFS is implementing management measures to temporally and spatially disperse the BSAI pollock fishery to implement reasonable and prudent alternatives (RPAs) to protect endangered Steller sea lions.

Observer Coverage Requirements and Scales

This emergency interim rule changes observer coverage and scale requirements for AFA catcher/processors and AFA motherships, and changes observer coverage requirements for AFA inshore processors. However, no changes are made to observer coverage requirements for AFA catcher vessels. These changes are described here.

Unrestricted AFA Catcher/Processors and AFA Motherships

Subparagraph 211(b)(6)(A) of the AFA requires that unrestricted AFA catcher/processors have two observers on board at any time the vessel is fishing for groundfish in the BSAI. Under this emergency interim rule, this statutory requirement is set out in regulation and is extended to AFA motherships because AFA motherships receive unsorted pollock codends and operate in a similar manner to AFA catcher/processors, the only difference being that AFA motherships do not actually harvest the pollock themselves. Under this emergency interim rule, an unrestricted AFA catcher/processor or AFA mothership is required to have aboard two NMFS certified observers for each day that the vessel is used to harvest, process, or take deliveries of groundfish. In addition, this emergency interim rule extends the CDQ program observer workload limits to AFA catcher/processor and AFA motherships. Consequently, more than two observers might be required to allow each haul brought on board the vessel to be sampled by an observer. This situation may occur for some AFA motherships, depending on how many deliveries they receive from catcher vessels in a day. Finally, at least one of the observers must be certified as a lead CDQ observer.

Observers are an increasingly important element of NMFS' monitoring

program for AFA catcher/processor and AFA mothership sector pollock harvests. Prior to the AFA, NMFS monitored offshore pollock harvests using a blend of observer data and vessel WPRs. However, under the AFA with its statutory requirement that AFA catcher/processors carry two observers at all times and weigh their catch using NMFS-approved scales, NMFS is now relying only on observers and scale weights to provide inseason harvest data for the AFA catcher/processor sector and is no longer using vessel production data for quota management purposes. In addition, NMFS is reliant on observers to monitor catcher/processor groundfish sideboards as well as catcher vessel sideboards for catcher vessels delivering to catcher/processors and AFA motherships. Given this increased reliance on observers and scales, NMFS believes that the lead CDQ observer requirement is necessary to ensure that at least one of the observers aboard each AFA catcher/processor and AFA mothership has prior experience sampling on a trawl catcher/processor or mothership, is trained and experienced in the use of on-board scales, and is available to monitor the use and calibration of such scales. In addition, NMFS believes that the requirement for at least one lead CDQ observer is necessary to ensure that the compliance monitoring role of the observers aboard AFA catcher/processors can be successfully accomplished.

In order to monitor and enforce the newly imposed harvest limitations for unrestricted AFA catcher/processors and AFA motherships, observers with more experience and training must be aboard. NMFS-certified CDQ observers have that experience and training. CDQ observers receive special training in sampling for species composition in situations where bycatch may be limiting, in working with vessel personnel to resolve access to catch and other sampling problems, and in using flow scales for catch weight measurements. Monitoring by CDQ observers is essential for accurate catch accounting, given the fact that a fishery cooperative has been established and that the potential exists for fishing to be curtailed when either groundfish or prohibited species harvest limitations specified for unrestricted AFA catcher/processors have been reached. In consideration of the potential observer shortage that these new CDQ observer training requirements may cause for 2000, NMFS is phasing in the observer training requirements for AFA catcher/processors, AFA motherships, and AFA

inshore processors. NMFS believes that at least one observer aboard every unrestricted AFA catcher/processor and AFA mothership must be a lead CDQ observer, and is making this requirement effective beginning January 20, 2000. NMFS anticipates implementing separate rulemaking that would require that the second observer on AFA catcher/processors and AFA motherships be a CDQ observer beginning in 2001. The reason for this delay in implementation is to provide observer contractors adequate time to train and deploy these additional CDQ observers.

A detailed discussion on the justification for additional observer training and certification criteria for individual vessel monitoring programs was provided both in the preamble to the proposed rule (62 FR 43866, August 15, 1997) and in the preamble to the final rule (63 FR 30381, June 4, 1998) implementing the Multispecies CDQ program.

In addition, under this emergency interim rule, the CDQ catcher/processor scale requirements and observer sampling station requirements are extended to unrestricted AFA catcher/processors and AFA motherships at all times such vessels are fishing for groundfish in the BSAI or processing groundfish harvested in the BSAI. Subparagraph 210(b)(6)(B) of the AFA requires that unrestricted AFA catcher/processors weigh their catch on an on-board scale approved by NMFS while harvesting groundfish in the BSAI. This emergency interim rule sets out these AFA scale requirements in regulation and extends them to AFA motherships because AFA motherships receive and process unsorted groundfish codends in a manner similar to AFA catcher/processors and thus, generate the same monitoring demands as unrestricted AFA catcher/processors. As a result, scale requirements and observer sampling station requirements for CDQ and unrestricted AFA catcher/processors and AFA motherships are now identical under this emergency interim rule.

Restricted AFA Catcher/Processors

Under this emergency interim rule, vessels receiving restricted AFA catcher/processor permits under paragraph 208(e)(21) of the AFA are required to meet the observer coverage, scale, and sampling station requirements outlined above during any fishing trip in which the vessel engages in directed fishing for BSAI pollock or receives deliveries of pollock from AFA catcher vessels engaged in directed fishing for BSAI pollock. This

requirement is necessary because NMFS must monitor the 0.5 percent pollock harvest limit on restricted AFA catcher/processors and cannot adequately do so without scales and an observer present at all times. Because the AFA catcher/processor sideboard limits in other groundfish fisheries do not apply to restricted AFA catcher/processors, NMFS is not increasing the observer coverage requirements for restricted AFA catcher/processors when such vessels are engaged in directed fishing for groundfish other than pollock.

AFA Inshore Processors. Under this emergency interim rule, an AFA inshore processor is required to have a NMFS-certified observer for each consecutive 12-hour period in which the processor takes delivery of, or processes, groundfish harvested by a vessel engaged in directed fishing for BSAI pollock. An AFA inshore processor that takes delivery of or processes pollock during more than 12 consecutive hours in any calendar day is required to have two NMFS-certified observers available during that calendar day. Furthermore, under this emergency interim rule, observers working at AFA inshore processors may not be assigned to cover more than one processing plant during a calendar day. These new observer coverage requirements are necessary so that NMFS can adequately monitor cooperative pollock allocations at each AFA inshore processor. Prior to the AFA, the inshore pollock fishery was managed in the aggregate across the entire sector with NMFS issuing a single closure for the entire inshore sector upon the attainment of a seasonal allocation of pollock TAC. Under the inshore cooperative system set out in this emergency interim rule, each inshore processor and its affiliated cooperative will be operating on its own proprietary pollock allocation. Because NMFS will no longer manage the inshore sector in the aggregate, increased monitoring is required at each individual processor to ensure that cooperative allocations are not exceeded.

Due to potential shortages in CDQ observers during 2000, NMFS is proposing to phase in increased training and experience requirements for AFA inshore processor observers beginning in 2001. In subsequent rulemaking, NMFS intends to propose that all observers deployed at AFA inshore processors be required to be CDQ observers beginning January 1, 2001, to ensure that such observers are adequately trained in the use and monitoring of scales used to monitor pollock landings in AFA inshore processors. However, NMFS is delaying

this requirement until 2001 to provide adequate opportunity for observer contractors to recruit and train sufficient numbers of CDQ observers for deployment in both AFA and CDQ fisheries.

AFA Catcher Vessels

This emergency interim rule makes no changes to existing observer coverage levels for AFA catcher vessels.

Catcher/Processor and Mothership Cooperative Restrictions

Subsection 210(a) of the AFA sets out public notice requirements for all BSAI pollock fishery cooperatives. To incorporate these requirements, this emergency interim rule stipulates that any contract implementing a fishery cooperative for the purpose of cooperatively managing directed fishing for pollock for harvest by the catcher/processor or mothership sectors, and any material modifications to any such contract, must be filed with the Council and with the Administrator, Alaska Region, NMFS (Regional Administrator) not less than 30 days prior to the start of fishing under the 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.

In addition, the contracts of all catcher vessel cooperatives delivering to catcher/processors or AFA motherships must include at a minimum: (1) A list of parties to the contract, (2) a list of all vessels and processors that will harvest and process pollock harvested under the cooperative, (3) the amount or percentage of pollock allocated to each party to the contract, and (4) penalties to prevent member vessels from exceeding in the aggregate, a harvest of any other BSAI or GOA groundfish species or species group that is equal to the percentage of each sideboard species that NMFS has attributed to the non-exempt vessels in the cooperative in the calculation of the sideboard amount, unless an inter-cooperative agreement provides for a different distribution of sideboard harvests between AFA catcher vessels. This penalty requirement was recommended by the Council at the request of catcher vessel owners so that the catcher vessel fleet has a mechanism to prevent an uncontrolled catcher vessel race for fish for sideboard species.

In addition, any pollock fishery cooperative governed by this emergency interim rule must submit annual preliminary and final written reports on fishing activity to the Council for public distribution. The preliminary report

covering activities through November 1 must be submitted by December 1 of each year and the final report must be submitted by January 31 of the following year. The preliminary and final written reports must contain, at a minimum: (1) The cooperative's allocated amounts of pollock and sideboard species, and any sub-allocations of pollock and sideboard species made by the cooperative to individual vessels on a vessel-by-vessel basis; (2) the cooperative's actual retained and discarded catch of pollock, sideboard species, and PSC on an area-by-area and vessel-by-vessel basis; (3) a description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated; and (4) a description of any actions taken by the cooperative to penalize vessels that exceed their allowed catch and bycatch in pollock and all sideboard fisheries.

Inshore Cooperative Restrictions

Under the AFA, a fundamental difference exists between the fishery cooperatives authorized to operate in the AFA catcher/processor and AFA mothership sectors, and the fishery cooperatives authorized to operate in the inshore sector. AFA catcher/processor and AFA mothership cooperatives operate at the sector level and do not require separate allocations of pollock from NMFS in order to operate. Inseason management of the AFA catcher/processor and AFA mothership sectors will continue to occur at the sector level regardless of the presence or absence of fishery cooperatives because the formation of cooperatives does not require NMFS to sub-allocate TAC.

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

Filing of Inshore Cooperative Contracts

Any inshore catcher vessel cooperative wishing to receive an allocation of pollock for an upcoming fishery year must apply for an AFA

inshore cooperative fishing permit as detailed in the previous emergency interim rule to implement AFA permit requirements (65 FR 380, January 5, 2000). Inshore cooperatives also must comply with the contract requirements for AFA catcher/processor and AFA mothership sector cooperatives outlined here. In addition to applying for an inshore cooperative fishing permit, all inshore sector cooperatives must file their contract with the Council and with the Regional Administrator as detailed above.

Inshore cooperatives wishing to receive an allocation of pollock have several additional contract requirements. An inshore cooperative contract eligible for a pollock allocation must be signed by the owners of at least 80 percent of the qualified catcher vessels. In addition, inshore cooperative contracts must specify that the cooperative will deliver at least 90 percent of the pollock harvested in the directed pollock fishery to 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.

Qualified Catcher Vessels

Paragraph 210(b)(3) of the AFA defines a qualified catcher vessel as follows: "[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 * * * than to any other shoreside processor." This paragraph of the AFA requires that a vessel wishing to join an inshore cooperative must have delivered more pollock to the cooperative's designated inshore processor than to any other inshore processor during the year prior to the year in which the cooperative fishing permit will be in effect. Consequently, catcher vessels wishing to join cooperatives must have made at least one delivery of pollock during the year prior to the year in which the cooperative fishing permit will be in effect.

For the purpose of this emergency interim rule, a catcher vessel is a qualified catcher vessel if: (1) It delivered more pollock harvested in the BSAI directed pollock fishery to the cooperative's designated AFA inshore processor than to any other shoreside processor or stationary floating processor during the year prior to the year in which the cooperative fishing permit will be in effect; and (2) the owner(s) of the catcher vessel in

question has submitted a completed application for an AFA catcher vessel permit to the Regional Administrator that was received on or before December 31, 1999, and is not subsequently disapproved.

These two additional measures to the qualified catcher vessel definition in the statute are necessary to implement the inshore cooperative program in this emergency interim rule. The first additional measure, that qualifying harvests must be in the BSAI directed pollock fishery is necessary to prevent a vessel's incidental bycatch of pollock in other fisheries from inadvertently affecting its cooperative qualification. Counting pollock bycatch could create the unintended effect of restricting the ability of catcher vessels to deliver non-pollock groundfish to other markets. Because pollock is a common bycatch species in the Pacific cod fishery and other groundfish fisheries, AFA catcher vessels fishing for Pacific cod may land significant amounts of pollock as incidental bycatch that will be counted against the pollock incidental catch allowance and not the vessel's cooperative quota. The AFA makes no restrictions on either the delivery or processing of non-pollock groundfish species in the BSAI. Consequently, AFA catcher vessels fishing for Pacific cod are free to deliver their Pacific cod and associated incidental catch of pollock to any processor, not just to one of the eight AFA processors that are authorized to receive pollock harvested in the BSAI directed pollock fishery.

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

The second additional measure, that a "qualified catcher vessel" is a vessel for which the owner(s) has submitted a completed application for an AFA catcher vessel permit to the Regional

Administrator that was received on or before December 31, 1999, and is not subsequently disapproved, is necessary for timing reasons. NMFS will not have a final official list of eligible catcher vessels until all owners of potentially eligible vessels have submitted applications to NMFS that have been subsequently approved or denied. Consequently, it is impossible for a cooperative to know by the inshore pollock cooperative fishing permit application deadline if it is composed of at least 80 percent of the eligible catcher vessels. For this reason, and for the purpose of this definition of "qualified catcher vessel" this emergency interim rule considers a vessel qualified if it has submitted a completed application to the Regional Administrator by the December 31 deadline for inshore pollock cooperative fishing permit applications.

Under this emergency interim rule, a vessel that did not engage in directed fishing for BSAI pollock during a fishing year will be ineligible to join any inshore cooperative for the subsequent fishing year. In addition, a catcher vessel that is a member of one cooperative during a fishing year will be unable, under most circumstances, to join a different cooperative for the subsequent fishing year. To change cooperatives, a catcher vessel must qualify to fish for the new cooperative, which could require that the vessel spend a year fishing in the "open access" fishery, unless the catcher vessel is able to deliver more pollock harvested in the BSAI directed pollock fishery to the new cooperative's designated processor than to the designated processor of the vessel's current cooperative. Because cooperative contracts formed under the AFA may provide for the delivery of up to 10 percent of a cooperative's allocation to processors other than the cooperative's designated processor, a vessel could change cooperatives from 1 year to the next if the vessel made use of this 10-percent provision to deliver more pollock to the designated processor of the new cooperative than to the designated processor of the vessel's existing cooperative.

Inshore Cooperative TAC Allocations. Under this emergency interim rule, an inshore pollock cooperative that applies for and receives an AFA inshore cooperative fishing permit will receive a sub-allocation of the annual inshore pollock TAC allocation. Subsection 210(b) of the AFA establishes an explicit formula for allocating pollock TAC to inshore cooperatives based on the percentage of inshore pollock harvested by member vessels during 1995, 1996,

and 1997. However, the Council has recommended an alternative formula for allocating pollock TAC to inshore cooperatives that is contained in this emergency interim rule.

Paragraph 213(c)(3) of the AFA provides the Council with the authority to recommend for approval by the Secretary of Commerce (Secretary), an alternative formula for allocating BSAI pollock to inshore cooperatives. Paragraph 213(c)(3) states that "the Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act * * * that supersede the criteria required in paragraph (1) of section 210(b) to be used by the Secretary to set the percentage allowed to be harvested by catcher vessels pursuant to a fishery cooperative under such paragraph." After analysis and based on the recommendations of its Advisory Panel, the Council elected to recommend two changes to the inshore cooperative allocation formula set out in the AFA.

The first change recommended by the Council allows catcher vessels with inshore sector endorsements to receive inshore catch history credit for landings made to catcher/processors when the vessel made more than 499 mt of landings to catcher/processors during the 1995 through 1997 qualifying period. The Council recommended this change to assist the cooperatives in meeting the intent of paragraph 210(b)(4) of the AFA, which specifies that: "Any contract implementing a fishery cooperative under paragraph (1) which has been entered into by the owner of a qualified catcher vessel eligible under section 208(a) that harvested pollock for processing by catcher/processors or motherships in the directed pollock fishery during 1995, 1996, and 1997 shall, to the extent practicable, provide fair and equitable terms and conditions for the owner of such qualified catcher vessel."

The Council chose the 499 mt threshold based on the recommendation of its Advisory Panel that vessels with sustained participation delivering to catcher/processors, but excluded from delivering to catcher/processors under subsection 208(b) of the AFA, should not be disadvantaged by the new management regime. The Council chose 499 mt as the threshold based on information presented in the EA/RIR, which indicated that 499 mt provided a good break point between vessels with significant history of delivering to catcher/processors and vessels that only had incidental deliveries to catcher/processors during the 1995 through 1997 qualifying period. The Council

recommended that only deliveries to catcher/processors be considered for "compensation" and not deliveries made to the three motherships listed in subsection 208(d) of the AFA during the qualifying period, because any vessel with more than 250 mt of pollock deliveries to one of the three AFA motherships during the qualifying period will earn an endorsement to deliver pollock to AFA motherships under the AFA and therefore, has not "lost" any fishing privileges as a result of the AFA.

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

Under this emergency interim rule, NMFS will use the allocation formula recommended by the Council to make annual allocations of pollock to each inshore cooperative for each subarea of the BSAI; the BS subarea and the AI subarea. These two subareas are treated as separate pollock stocks under the FMP and receive separate TACs during the annual specification process. Because the AI subarea is currently closed to directed fishing for pollock, cooperative allocations of AI subarea pollock will not be made under this emergency interim rule. Each cooperative will receive an annual allocation of BS subarea pollock only.

Inshore Cooperative Fishing Restrictions

This emergency interim rule imposes a variety of requirements and management standards on inshore fishery cooperatives. First, only catcher vessels listed on the cooperative's AFA inshore cooperative fishing permit are permitted to harvest the cooperative's annual cooperative allocation. Second, all BSAI inshore pollock harvested by a member vessel while engaging in directed fishing for inshore pollock will accrue against the cooperative's annual pollock allocation regardless of whether the pollock was retained or discarded. Third, each inshore pollock cooperative is responsible for reporting to NMFS its BSAI pollock harvest on a daily basis according to the recordkeeping and

reporting requirements described above. Fourth, each inshore pollock cooperative is prohibited from exceeding its annual allocation of BSAI pollock, and the owners and operators of all vessels listed on the cooperative fishing permit would be held jointly and severally liable for overages of the cooperative's annual allocation.

Inshore Cooperative Designated Representative

Each inshore catcher vessel cooperative is required to appoint a designated representative. The designated representative will act as the point of contact for all matters related to the cooperative's participation in the AFA fishery, and will be responsible for completing and submitting the catcher vessel cooperative pollock catch report. The owners of the member catcher vessels are jointly and severally responsible for compliance and insuring that the designated representative complies with the recordkeeping and reporting requirements contained in this emergency interim rule.

Inshore Cooperative Agent for Service of Process

Each inshore catcher vessel cooperative is required to appoint an agent to serve on behalf of the cooperative. The appointed agent for service of process may be the owner of a vessel listed as a member of the cooperative or a registered agent. If at any time the cooperative's appointed agent for service of process becomes unable to accept service, then the cooperative members are required to notify the Regional Administrator of a substitute appointed agent. Service on or notice to the cooperative's appointed agent constitutes service on or notice to all members of the cooperative.

NMFS may, at its option, attempt to serve every member of the cooperative individually in addition to service on the cooperative's appointed agent. However, failure to achieve service on the individual member will not affect the validity of constructive notice if service is accomplished on the inshore pollock cooperative's appointed agent for service of process.

Inseason Management of Inshore Cooperative Fishing

Under this emergency interim rule, NMFS will manage the allocations to inshore cooperative and vessels not participating in a cooperative as two separate inshore fisheries. The various inshore cooperatives will be managed as a group for the purpose of making TAC apportionments by season and area and for the purpose of issuing directed

fishing closures. NMFS will continue to announce directed fishing closures for each inshore fishery when the Regional Administrator determines that the TAC allocated to that fishery for a particular season and area has been reached.

Under this system, fishing by inshore cooperatives will be unaffected by fishing by inshore catcher vessels that are not participating in a cooperative. However, the aggregate harvests by all inshore cooperatives will determine the inshore cooperative directed fishing closures for each season and area.

Due to the complexities of implementing this management program within the short time frame required by the AFA, NMFS is not implementing a system under which each individual inshore cooperative would receive allocations of pollock subdivided by each management area and season. Under this emergency interim rule, each inshore cooperative is given the opportunity to harvest its entire annual allocation of BS subarea pollock, but will not receive a specific guarantee of harvest levels for any particular season or management area within the BS subarea. NMFS encourages cooperatives wishing to further rationalize their annual operations to work with each other to prevent the activities of one cooperative from preempting the harvest plans of another cooperative within a specific season or area.

Inshore catcher vessel cooperatives also are required to complete and submit annual preliminary and final reports of fishing activity to the Council. The submission deadlines and required content are the same as the report requirements for AFA catcher/processor and AFA mothership sector cooperatives as described earlier.

Catcher/Processor Groundfish Sideboards

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

(b) Catcher/Processor Restrictions.—

(1) General.—The restrictions in this subsection shall take effect on January 1, 1999 and shall remain in effect thereafter except

that they may be superceded (with the exception of paragraph (4)) by conservation and management measures recommended after the date of the enactment of this Act by the North Pacific Council and approved by the Secretary in accordance with the Magnuson-Stevens Act.

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

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

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

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

- (i) 11.5 percent in the central area; and
- (ii) 20 percent in the western area.

For the 1999 fishing year, NMFS implemented these provisions by publishing the harvest limits in the 1999 BSAI harvest specifications and prohibiting unrestricted AFA catcher/processors from engaging in directed fishing for a groundfish species or species group when NMFS determined that the sideboard limit was likely to be met or exceeded.

At its June 1999 meeting, the Council recommended that catcher/processor harvest limits for BSAI groundfish other than Atka mackerel be based on the 1995 through 1997 retained catch of such groundfish species by the 20 unrestricted AFA catcher/processors listed in paragraphs 208(e)(1) through (20) of the AFA and the nine ineligible catcher/processors listed in section 209 of the AFA, except for Pacific cod which would be based on 1997 retained catch only. The Council recommended that only 1997 catch history be used to determine Pacific cod harvest limits because 1997 was the first year in which the BSAI Pacific cod trawl gear allocation was split between catcher/processors and catcher vessels. Prior to 1997 the BSAI Pacific cod TAC was not

allocated between catcher/processors and catcher vessels, meaning that pre-1997 Pacific cod TACs and harvest percentages by AFA catcher/processors are not directly comparable to present day Pacific cod allocations. The Council also recommended that only the years 1996 and 1997 be used to calculate Pacific ocean perch (POP) sideboard amounts because 1996 was the first year in which the POP TAC was divided between the BS subarea and AI subarea.

However, since the Council made this recommendation in June 1999, NMFS has received comments from the public suggesting that the public was not provided adequate notice or opportunity to comment on this recommendation prior to the Council's June, 1999, vote on this issue, and that NMFS would benefit from a more deliberative rulemaking process that allowed for public review and comment on the Council's recommended approach. Adequate opportunity for public review and comment is especially important given that the Council's June discussion and action on catcher/processor sideboards was based on an alternative not addressed in the draft analysis available to the public prior to Council action. For this reason, NMFS has decided to calculate catcher/processor groundfish sideboards amounts for 2000 under this emergency interim rule in the same manner those sideboards were calculated in 1999.

As a consequence, all catcher/processor harvest sideboards other than Atka mackerel will be based on the total catch of each groundfish species by the 20 unrestricted AFA catcher/processors listed in paragraphs 208(e)(1) through (20) of the AFA and the nine ineligible catcher/processors listed in section 209 of the AFA when such vessels were engaged in groundfish fisheries other than pollock. In the future proposed rule to implement the AFA under Amendments 61/61/13/8, NMFS intends to incorporate the Council's recommendation to base these amounts on historical retained catch only, so that the public has opportunity to review and comment on these recommendations before they are approved or disapproved by NMFS as part of the FMP amendment review process.

Under this emergency interim rule, the Atka mackerel sideboard percentages laid out in subparagraph 211(b)(1)(C) of the AFA are carried forward unchanged. The AFA catcher/processor sideboard limit for Atka mackerel is zero percent of the BS subarea and Eastern Aleutians annual TAC, 11.5 percent of the Central

Aleutians annual TAC, and 20 percent of the Western Aleutians annual TAC.

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

Management of Catcher/Processor Sideboards

This emergency interim rule amends the BSAI interim groundfish harvest specifications to establish catcher/processor sideboard limits for groundfish and PSC species. These sideboard limits will be managed through directed fishing closures. Under the procedures established in this emergency interim rule, NMFS will evaluate each groundfish harvest limit specified according to the formula outlined previously and will authorize directed fishing by unrestricted AFA catcher/processors only for those BSAI groundfish species for which the harvest limit is large enough to support a directed fishery by unrestricted AFA catcher/processors. Groundfish species for which the catcher/processor harvest limit is too small to support a directed fishery will be closed to directed fishing by unrestricted AFA catcher/processors at the beginning of the fishing year. Using this approach, NMFS will assure that unrestricted AFA catcher/processors will not participate in other directed fisheries at levels that would exceed their level of participation from 1995 through 1997.

Catcher Vessel Sideboards

In addition to catcher/processor harvest restrictions, this emergency interim rule establishes catcher vessel harvest limits for BSAI crab, BSAI and GOA groundfish, and the Alaska scallop fishery. Paragraph 211(c)(1)(A) of the AFA states: "By not later than July 1, 1999, the North Pacific Council shall recommend for approval by the Secretary conservation and management measures to * * * prevent the catcher vessels eligible under subsections (a), (b), and (c) of section 208 from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of

fishery cooperatives in the directed pollock fishery." The Council met this requirement by taking final action on a comprehensive suite of catcher vessel sideboard measures at its June 1999 meeting and forwarding those recommendations to NMFS.

Because the BSAI king and Tanner crab fisheries and the Alaska scallop fishery are managed by the State under Federal oversight, the Council recommended that crab and scallop catcher vessel sideboards be implemented jointly through State and Federal actions. Under Amendment 4 to the scallop FMP, the Council has developed a license limitation program for the Alaska scallop fishery under which only one AFA catcher vessel would be eligible to receive a scallop license. Amendment 4 is currently under review by NMFS and, if approved, would take effect for the 2000 scallop season. In addition, under Amendment 8 to the FMP for the scallop fishery off Alaska, the Council has recommended that the State implement an AFA catcher vessel scallop sideboard limit equal to the percentage of the scallop guideline harvest level that was harvested by AFA catcher vessels in 1997. Therefore, NMFS has determined that additional scallop sideboard measures are not required in this emergency interim rule.

With respect to BSAI crab fisheries, NMFS is limiting participation by AFA catcher vessels through AFA catcher vessel permit endorsements. Only AFA catcher vessels with a demonstrated history in a particular crab fishery may continue participating in that fishery. A catcher vessel that lacks the appropriate crab sideboard endorsements is prohibited from retaining BSAI king and Tanner crab. These crab sideboard endorsements have been implemented under the emergency interim rule to implement AFA permit requirements (65 FR 380, January 5, 2000). In addition to entry restrictions, the Council also recommended that the State implement AFA catcher vessel harvest limits for the Bristol Bay red king crab and Bairdi Tanner crab fisheries under Amendment 14 to the FMP for the BSAI king and Tanner crab fisheries. With respect to Bristol Bay red king crab fishery, the Council recommended an AFA catcher vessel sideboard limit equal to the percentage of Bristol Bay red king crab harvested by AFA catcher vessels from 1991 through 1997, excluding 1994 and 1995 when the fishery was closed. For the Bairdi Tanner crab fishery, the Council recommended that AFA catcher vessels be excluded from the fishery until the Council's Bairdi rebuilding goal is reached, and then be limited to

their historic catch percentage from 1995–1996. The State intends to implement these recommended crab sideboard limits through State regulations.

With respect to BSAI and GOA groundfish fisheries, the Council recommended that AFA catcher vessel sideboards be established based on landed catch and be managed through directed fishing closures in the same manner as AFA catcher/processor sideboards. A significant difference between catcher/processor and catcher vessel groundfish sideboards is that the Council recommended that certain AFA catcher vessels be exempt from some BSAI and GOA groundfish sideboards while no exemptions were recommended for unrestricted AFA catcher/processors. This emergency interim rule contains the Council's recommended BSAI and GOA groundfish and PSC sideboards for AFA catcher vessels, which are summarized here

Groundfish Sideboards in the BSAI

Under this emergency interim rule, groundfish sideboards will be established for all BSAI groundfish species using a formula based on the retained catch of AFA catcher vessels of each sideboard species from 1995 through 1997 (1997 only for BSAI Pacific cod) divided by the available TAC for that species over the same period. AFA catcher vessel sideboards will apply to all AFA catcher vessels regardless of sector and regardless of participation in a cooperative except that catcher vessels less than 125 ft (38.1 meters (m)) LOA whose annual BSAI pollock landings averaged less than 1700 mt from 1995 through 1997 (*i.e.*, landed less than 5,100 mt of pollock over the 3-year period) and that made 30 or more landings of BSAI Pacific cod during that time period are exempt from sideboard closures for BSAI Pacific cod and their historic catch is not counted towards the sideboard. In addition, AFA catcher vessels with mothership endorsements are exempt from Pacific cod sideboard closures after March 1 of each year.

In recommending these exemptions for BSAI Pacific cod, the Council noted that many of the AFA catcher vessels with relatively low catch histories of BSAI pollock have traditionally targeted Pacific cod rather than pollock during the January through March BSAI Pacific cod fishery. The Council believed that restricting such vessels in the Pacific cod fishery would be inequitable given their disproportionate history of participation in the Pacific cod fishery and because their historic dedication to

Pacific cod fishing in the winter months accounts for their lower catch histories of BSAI pollock during the AFA qualifying years. With respect to the March 1 exemption for AFA catcher vessels with mothership endorsements, the Council made this recommendation for several reasons. In most years, the BSAI Pacific cod fishery is largely concluded by March 1 and fishing is often less productive in terms of catch per unit effort after that date. Given that as few as two non-AFA catcher vessels have fished for BSAI Pacific cod in recent years, the Council believed that some additional vessels might be needed after this date to completely harvest the TAC so that processors are not faced with a slow trickle of Pacific cod deliveries that are uneconomical to process. The Council recommended that AFA catcher vessels with mothership endorsements be allowed to re-enter the BSAI Pacific cod fishery after March 1 because the mothership sector received a relatively smaller pollock quota under the AFA and mothership catcher vessels are more likely to be finished with their pollock operations by that date.

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

Groundfish Sideboards in the GOA

Catcher vessel sideboards for GOA groundfish fisheries will be established and managed in the same manner as the catcher vessel sideboards in the BSAI groundfish fisheries except that catcher vessels less than 125 ft (38.1 m) LOA whose annual BSAI pollock landings averaged less than 1700 mt from 1995 through 1997 (*i.e.*, landed less than 5,100 mt of pollock over the 3-year period) and that made 40 or more GOA groundfish landings over the same period are exempt from sideboard closures for GOA groundfish fisheries. The catch histories of the exempt vessels would not be counted towards the sideboard amounts for non-exempt vessels. As with the BSAI Pacific cod fishery, the Council noted that many AFA catcher vessels with relatively low catch histories in BSAI pollock have traditionally participated in GOA groundfish fisheries. Indeed, many of these vessels are based in Kodiak and other GOA ports and have historically concentrated their fishing effort in GOA fisheries. The Council believed that it

would be inequitable to limit such vessels from participating in GOA fisheries when they have historically fished in the GOA and may have relatively low pollock catch histories in the BSAI during the AFA qualifying years due to their history of fishing primarily in the GOA.

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

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

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

The EA/RIR prepared for this action estimates the potential number of exempt vessels to be 10 catcher vessels in the BSAI and 20 catcher vessels in the GOA. The Council noted that because these exempt vessels traditionally have participated at high levels in the BSAI Pacific cod and GOA groundfish fisheries, such exemptions were not likely to cause the aggregate harvest levels of all AFA catcher vessels to exceed traditional levels in these fisheries. However, the Council noted that even if fishing in the BSAI Pacific cod and GOA groundfish fisheries by exempt vessels does cause the aggregate harvest of all AFA catcher vessels to exceed historic levels in other groundfish fisheries, the exemptions are warranted and within the authority of the Council to recommend under paragraph 213(c)(1) of the AFA, which states:

The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act—

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

The Council believed that these two exemptions are indeed warranted to

mitigate adverse economic effects as described above on owners of fewer than three vessels in the directed pollock fishery given that the exempt vessels are primarily owned by independent fishermen who own fewer than three vessels in the directed pollock fishery.

AFA Inshore Processor and AFA Mothership Crab Processing Sideboards

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

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

At its October 1999 meeting, the Council recommended that NMFS implement these crab processing sideboards through processing caps that would be managed in the aggregate through inseason crab processing closures for AFA entities. However, NMFS does not currently have a crab monitoring or management program in place that would provide crab processing data on a sufficiently timely basis to issue inseason crab processing closures to AFA entities. Under the BSAI king and Tanner crab FMP, the primary inseason management responsibility for crab fisheries is delegated to the State and NMFS is not involved with day-to-day management of BSAI crab fisheries. NMFS intends to work closely with the Alaska Department of Fish and Game to develop a management program that could implement the aggregate crab processing sideboards recommended by the Council. However, due to the complexities of developing such an inseason management program, NMFS believes that such a program will not likely be implemented prior to mid-2000 at the earliest.

To meet the January 2000 deadline for crab processing sideboards that is set out in subparagraph 211(c)(2)(A) of the AFA, NMFS is implementing a crab processing sideboard management program on an entity-by-entity basis in this emergency interim rule. Under the interim program set out in this emergency interim rule, all of the individuals, corporations, or other entities that directly or indirectly own or control a 10-percent or greater interest in the AFA mothership or inshore processor will be considered a single AFA inshore or mothership entity and will have crab processing caps issued to the entity based on its collective 1995 through 1997 crab processing activity. To implement this interim program, NMFS is requiring that the owners of an AFA mothership or AFA inshore processor wishing to process pollock harvested by a cooperative identify on their permit applications all individuals, corporations, or other entities that directly or indirectly own or control a 10-percent or greater interest in the AFA mothership and/or inshore processor (collectively the AFA inshore or mothership entity), and any other crab processors in which such entities have a 10-percent or greater interest (the associated AFA crab facilities). For each BSAI king and Tanner crab fishery, NMFS will calculate the average percentage of the total crab harvest processed by the associated AFA crab facilities and issue entity-wide crab processing caps for each crab fishery to each AFA inshore or mothership entity on its AFA mothership or AFA inshore processor permit. Each individual, corporation, or other entity comprising an AFA inshore or mothership entity will be responsible for insuring that the AFA crab processing facilities associated with the AFA inshore or mothership entity do not exceed the entity's caps. The individuals,

corporations and other entities comprising the AFA inshore or mothership entity will be held jointly and severally liable for any overage.

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

Excessive Shares Harvesting Limit

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

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

To implement this provision of the AFA, this emergency interim rule requires that NMFS publish in the proposed, interim, and final specifications, the tonnage amount that equates to 17.5 percent of the pollock available to be harvested in the directed pollock fishery.

Revised 2000 Interim Harvest Specifications

The 2000 interim harvest specifications for BSAI groundfish published on January 3, 2000 (65 FR 60), must be revised to incorporate the new inshore pollock allocations and sideboards implemented by this emergency interim rule. Therefore, in accordance with the provisions of this

emergency interim rule, the following additions are made to the 2000 interim specifications for groundfish in the BSAI and GOA. These additional interim specifications are based on the Council's final 2000 TAC recommendations. If NMFS approves these recommendations, the interim pollock allocation and sideboards implemented by this emergency interim rule will be effective for the duration of this action and will not be superseded by the final 2000 harvest specifications. Final 2000 AFA pollock allocations and sideboard limits will be made in conjunction with the final rulemaking that will extend or supersede this emergency interim rule.

BS Subarea Inshore Pollock Allocations

Under § 679.20(a)(5)(i)(D) of this emergency interim rule, NMFS must subdivide the inshore allocation into allocations for cooperatives and vessels not fishing in a cooperative (i.e., the open access sector). In addition, under § 679.22(a)(11)(iv) NMFS must establish harvest limits inside the Steller sea lion conservation area (SCA) and provide a set-aside so that catcher vessels less than or equal to 99 ft (30.2 m) LOA have the opportunity to operate entirely within the SCA during the A/B season. Accordingly, the 2000 BSAI interim specifications for groundfish (65 FR 60, January 3, 2000) are amended by Table 1, which subdivides the BS subarea inshore pollock allocation into allocations for vessels fishing in a cooperative and for vessels not participating in a cooperative and establishes a cooperative-sector SCA set-aside for AFA catcher vessels less than or equal to 99 ft (30.2 m) LOA. The SCA set-aside for sector catcher vessels less than or equal to 99 ft (30.2 m) LOA that are not participating in a cooperative will be established inseason based on actual participation levels and is not included in Table 1.

TABLE 1.—INTERIM A/B SEASON BERING SEA SUBAREA POLLOCK ALLOCATIONS TO THE COOPERATIVE AND OPEN ACCESS SECTORS OF THE INSHORE POLLOCK FISHERY. AMOUNTS ARE EXPRESSED IN METRIC TONS

	A/B season TAC	A season inside SCA ¹	B season inside SCA
Cooperative sector:			
Vessels > 99 ft	n/a	66,581	22,194
Vessels <99 ft	n/a	10,195	3,398
Total	182,801	76,776	25,592
Open access sector	11,968	≈ 5,027	1,676
Total inshore	194,769	81,803	27,268

¹ Steller sea lion conservation area established at § 679.22(a)(11)(iv).

² SCA limitations for vessels less than or equal to 99 ft LOA that are not participating in a cooperative will be established on an inseason basis in accordance with § 679.22(a)(11)(iv)(C)(2) which specifies that "the Regional Administrator will prohibit directed fishing for pollock to vessels catching pollock for processing by the inshore component greater than 99 ft (30.2 m) LOA before reaching the inshore SCA harvest limit during the A and D seasons to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA for the duration of the inshore seasonal opening."

Under the emergency interim rule to establish AFA permit requirements (65 FR 380, January 5, 2000), NMFS set out procedures for AFA inshore catcher vessel pollock cooperatives to apply for and receive cooperative fishing permits and inshore pollock allocations. NMFS received applications from seven inshore catcher vessel cooperatives by the application deadline of December 31, 1999. Table 2 amends the 2000 BSAI interim specifications for groundfish (65 FR 60, January 3, 2000) by making BS subarea interim allocations to the seven inshore catcher vessel pollock cooperatives that have been approved and permitted by NMFS for the 2000 fishing year. Final 2000 allocations of pollock TAC to each cooperative will be made in rulemaking that supersedes this emergency interim rule. Interim allocations for cooperatives and vessels not participating in cooperatives are not made for the AI subarea because the AI subarea has been closed to directed fishing for pollock under the emergency interim rule to implement Steller sea lion RPAs.

TABLE 2.—BERING SEA SUBAREA INTERIM¹ INSHORE COOPERATIVE ALLOCATIONS

Cooperative name and member vessels	Sum of member vessel's official catch histories ²	Percentage of inshore sector allocation (percent)	Interim annual co-op allocation
<i>Akatan Catcher Vessel Association:</i> ALDEBARAN, ARCTIC I, ARCTIC VI, ARCTURUS, BLUE FOX, COLUMBIA, DOMINATOR, DONA LILIANA, DONA MARTITA, DONA PAULITA, EXODUS, FLYING CLOUD, GOLDEN DAWN, MAJESTY, PACIFIC VIKING, VIKING EXPLORER, GOLDEN PISCES, LESLIE LEE, MARCY J, MISS BERDIE, PEGASUS, PEGGIE JO, PERSEVERANCE, PREDATOR, RAVEN, ROYAL AMERICAN, SEEKER	258,508	28.257	55,036
<i>Arctic Enterprise Association:</i> ARCTIC III, ARCTIC IV, OCEAN ENTERPRISE, PACIFIC ENTERPRISE	50,008	5.466	10,646
<i>Northern Victor Fleet Cooperative:</i> NORDIC FURY, PACIFIC FURY, GOLDRUSH, EXCALIBUR II, HALF MOON BAY, SUNSET BAY, COMMODORE, STORM PETREL, POSEIDON, ROYAL ATLANTIC	62,545	6.837	13,316
<i>Peter Pan Fleet Cooperative:</i> AMBER DAWN, AMERICAN BEAUTY, OCEANIC, OCEAN LEADER, WALTER N	6,584	0.720	1,402
<i>Unalaska Cooperative:</i> ALASKA ROSE, BERING ROSE, DESTINATION, GREAT PACIFIC, MESSIAH, MORNING STAR, MS AMY, PROGRESS, SEA WOLF, VANGUARD, WESTERN DAWN	106,714	11.665	22,719
<i>UniSea Fleet Cooperative:</i> ALSEA, AMERICAN EAGLE, ARCTIC WIND, ARGOSY, AURIGA, AURORA, DEFENDER, GUN-MAR, NORDIC STAR, PACIFIC MONARCH, SEADAWN, STARFISH, STARLITE, STARWARD	220,361	24.087	46,914
<i>Westward Fleet Cooperative:</i> A.J., ALASKAN COMMAND, ALYESKA, CAITLIN ANN, CHELSEA K, HICKORY WIND, FIERCE ALLEGIANCE, OCEAN HOPE 3, PACIFIC KNIGHT, PACIFIC PRINCE, VIKING, WESTWARD 1	153,917	16.824	32,768
Open access AFA vessels:	56,215	6.145	11,968
Total inshore A/B season allocation:	914,851	100	194,769

¹ Interim specifications of pollock are equal to the first seasonal allowance of pollock allocated to the inshore sector based on 2000 BS subarea TAC recommendations by the Council at its December 1999 meeting.

² Under 679.62(e)(1) the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

Interim 2000 Unrestricted AFA Catcher/Processor Sideboards

Paragraph 679.63(a) of this emergency interim rule establishes a formula for setting AFA catcher/processor sideboard limits for non-pollock groundfish and PSC in the BSAI. The basis for these sideboard amounts are described in the preceding preamble text. The 2000 interim catcher/processor sideboards are set out in Table 3 below.

All non-pollock groundfish that is harvested by unrestricted AFA catcher/processors, whether as targeted catch or bycatch, will be deducted from the harvest limits in Table 3. However, non-pollock groundfish that is delivered to listed catcher/processors by catcher vessels will not be deducted from the 2000 harvest limits for the listed catcher/processors.

TABLE 3.—2000 INTERIM UNRESTRICTED AFA CATCHER/PROCESSOR GROUND FISH SIDEBOARDS. AMOUNTS ARE EXPRESSED IN METRIC TONS

Target species	Area	1995-1997			2000 ITAC available to trawl C/Ps	200 C/P sideboard amount
		Total catch	Available TAC	Ratio		
Pacific cod trawl	BSAI	13,547	51,450	0.263	41,953	11,034
Sablefish trawl	BS	8	1,736	0.005	624	3
	AI	1	1,135	0.001	516	1
	Western AI	n/a	n/a	0.200	27,472	2,747
Atka mackerel	CH limit ²	n/a	n/a	0.115	22,847	1,566
	Central AI	n/a	n/a	0.115	22,847	1,314
	CH limit	n/a	n/a	0.115	22,847	880
B season	CH limit	n/a	n/a	0.115	22,847	1,566
	Central AI	n/a	n/a	0.115	22,847	1,314
	CH limit	n/a	n/a	0.115	22,847	880

TABLE 3.—2000 INTERIM UNRESTRICTED AFA CATCHER/PROCESSOR GROUND FISH SIDEBOARDS. AMOUNTS ARE EXPRESSED IN METRIC TONS—Continued

Target species	Area	1995–1997			2000 ITAC available to trawl C/Ps	200 C/P sideboard amount
		Total catch	Available TAC	Ratio		
Yellowfin sole	BSAI	123,003	527,000	0.233	104,773	24,412
Rock sole	BSAI	14,753	202,107	0.073	114,546	8,362
Greenland turbot	BSAI	168	16,911	0.010	5,764	58
	AI	31	6,839	0.005	2,839	14
Arrowtooth flounder	BSAI	788	36,873	0.021	111,350	2,338
Flathead sole	BSAI	3,030	87,975	0.034	44,755	1,522
Other flatfish	BSAI	12,145	92,428	0.131	71,242	9,333
Pacific ocean perch	BS	58	5,760	0.010	2,210	22
	Western AI	356	12,440	0.029	5,245	152
	Central AI	95	6,195	0.015	3,247	49
	Eastern AI	112	6,265	0.018	2,886	52
Other red rockfish	BS	75	3,034	0.025	165	4
Sharpchin/northern	AI	1,034	13,254	0.078	4,764	372
Shortraker/rougheye	AI	68	2,827	0.024	573	14
Other rockfish	BS	39	1,026	0.038	314	12
	AI	95	1,924	0.049	583	29
Squid	BSAI	7	3,670	0.002	1,675	3
Other species	BSAI	3,551	65,925	0.054	26,656	1,439

¹ The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Unrestricted AFA catcher/processors are limited to harvesting no more than 20 and 11.5 percent of the available TAC in the Western and Central AI subareas respectively. Unrestricted AFA catcher/processors are prohibited from harvesting Atka mackerel in the Eastern Aleutian Islands District and Bering Sea subarea (paragraph 211(b)(2)(C)).

² Critical habitat (CH) allowance refers to the amount of each seasonal allowance that is available for fishing inside critical habitat (Table 1, Table 2, and Figure 4 of 50 CFR 226). In 2000, the percentage of TAC available for fishing inside critical habitat area is 57 percent in the Western AI and 67 percent in the Central AI. When these critical habitat allowances are reached, critical habitat areas will be closed to trawling until NMFS closes Atka mackerel to directed fishing within the same district.

Paragraph 679.63(a)(2) of this emergency interim rule establishes a formula for PSC sideboards for unrestricted AFA catcher/processors. These amounts are equivalent to the percentage of prohibited species bycatch limits harvested in the non-pollock groundfish fisheries by the AFA catcher/processors listed in subsection 208(e) and section 209 of the AFA from 1995, through 1997. Prohibited species amounts harvested by these catcher/processors in BSAI non-pollock groundfish fisheries from 1995 through 1997 are shown in Table 4. These data were used to calculate the relative amount of prohibited species catch limits harvested by pollock catcher/processors, which was then used to determine the prohibited species harvest limits for unrestricted AFA catcher/processors in the 2000 non-pollock groundfish fisheries.

PSC that is caught by unrestricted AFA catcher/processors participating in any non-pollock groundfish fishery listed in Table 3 shall accrue against the 2000 PSC limits for the listed catcher/processors. Paragraph 679.21(e)(3)(v) of this emergency interim rule provides authority to close directed fishing for non-pollock groundfish for unrestricted AFA catcher/processors once a 2000 PSC limitation listed in Table 5 is reached.

Crab or halibut PSC that is caught by unrestricted AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/other species fishery categories under § 679.21(e).

TABLE 4.—2000 INTERIM UNRESTRICTED AFA CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD AMOUNTS

PSC species	1995–1997			2000 PSC available to trawl vessels	2000 C/P limit
	PSC catch	Total PSC	Ratio		
Halibut mortality	955	11,325	0.084	3,400	286 mt.
Red king crab	3,098	473,750	0.007	89,725	628 crab.
C. opilio	2,323,731	15,139,178	0.153	4,023,750	615,634 crab.
C. bairdi:					
Zone 1	385,978	2,750,000	0.140	767,750	107,485 crab.
Zone 2	406,860	8,100,000	0.050	2,331,000	116,550 crab.

Interim 2000 AFA Catcher Vessel Sideboards

Paragraph 679.63(b) of this emergency interim rule establishes a formula for setting AFA catcher vessel groundfish and PSC sideboard amounts for the BSAI and GOA. The bases for these sideboard amounts are described in the preceding preamble text. The 2000 interim AFA catcher vessel sideboards amounts are shown in Tables 5 and 6.

All harvests of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or bycatch, will be deducted from the sideboard limits listed in Tables 5 and 6.

TABLE 5.—INTERIM 2000 BSAI AFA CATCHER VESSEL (CV) SIDEBOARDS. AMOUNTS ARE EXPRESSED IN METRIC TONS

Species	Fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2000 Initial TAC	2000 catcher vessel sideboard
Pacific cod	BSAI jig	0.0000	3,571	0

TABLE 5.—INTERIM 2000 BSAI AFA CATCHER VESSEL (CV) SIDEBOARDS. AMOUNTS ARE EXPRESSED IN METRIC TONS—Continued

Species	Fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2000 Initial TAC	2000 catcher vessel sideboard
	Fixed gear:			
	Jan 1–Apr 30	0.0006	65,000	39
	May 1–Aug 31	0.0006	0	0
	Sept 1–Dec 31	0.0006	26,048	16
	Trawl gear:			
	catcher vessel	0.7291	41,953	30,588
	catcher/processor	0.0000	41,953	0
Sablefish	BS trawl gear	0.0006	624	0
	AI trawl gear	0.0608	515	31
Atka mackerel	Eastern AI/BS			
	Jig gear	0.0031	152	0
	Other gear			
	Jan 1–Apr 15	0.0031	7,509	23
	Sept 1–Nov 1	0.0031	7,509	23
	Central AI			
	Jan–Apr 15	0.0001	11,424	1
	Inside CH	0.0001	7,654	1
	Sept 1–Nov 1	0.0001	11,424	1
	Inside CH	0.0001	7,654	1
	Western AI			
	Jan–Apr 15	0.0000	13,736	0
	Inside CH	0.0000	7,829	0
	Sept 1–Nov 1	0.0000	13,726	0
	Inside CH	0.0000	7,829	0
Yellowfin sole	BSAI	0.0712	104,773	7,460
Rock sole	BSAI	0.0255	114,546	2,921
Greenland Turbot	BS	0.0405	5,764	233
	AI	0.0021	2,839	
Arrowtooth flounder	BSAI	0.0583	111,350	6,492
Other flatfish	BSAI	0.0558	71,242	3,975
POP	BS	0.1018	2,210	225
	Eastern AI	0.0048	2,886	14
	Central AI	0.0011	3,247	4
	Western AI	0.0000	5,245	0
Other red rockfish	BS	0.0280	165	5
Sharpchin/northern	AI	0.0015	4,764	7
Shortraker/rougheye	AI	0.0011	819	1
Other rockfish	BS	0.0379	314	12
	AI	0.0031	583	2
Squid	BSAI	0.3885	1,675	651
Other species	BSAI	0.0283	26,656	754

TABLE 6.—INTERIM 2000 GOA AFA CATCHER VESSEL (CV) SIDEBOARDS. AMOUNTS ARE EXPRESSED IN METRIC TONS

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2000 TAC	2000 catcher vessel sideboard
Pollock ¹	<i>A Season (W/C areas only):</i>			
	Shelikof Strait	0.1672	14,366	2,402
	Shumagin (610)	0.6238	5,465	3,409
	Chirikof (620) (outside Shelikof)	0.1262	3,352	410
	Kodiak (630) (outside Shelikof)	0.1984	4,278	849
	<i>B Season (W/C areas only):</i>			
	Shelikof Strait	0.1672	7,183	1,201
	Shumagin (610)	0.6238	2,732	1,704
	Chirikof (620) (outside Shelikof)	0.1262	1,626	205
	Kodiak (630) (outside Shelikof)	0.1984	2,139	424
	<i>C Season (W/C areas only):</i>			
	Shumagin (610)	0.6238	11,506	7,177
	Chirikof (620)	0.1262	6,847	864
	Kodiak (630)	0.1984	9,008	1,787
	<i>D Season (W/C areas only):</i>			
	Shumagin (610)	0.6238	9,588	5,981
	Chirikof (620)	0.1262	5,706	720
	Kodiak (630)	0.1984	7,506	1,489
	<i>Annual: E. GOA</i>	0.3642	8,800	3,205

TABLE 6.—INTERIM 2000 GOA AFA CATCHER VESSEL (CV) SIDEBARDS. AMOUNTS ARE EXPRESSED IN METRIC TONS—Continued

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2000 TAC	2000 catcher vessel sideboard
Pacific cod ²	W inshore	0.1310	14,850	1,945
	offshore	0.1026	1,650	169
	C inshore	0.0542	24,538	1,330
	offshore	0.0721	2,726	197
	E inshore	0.0000	2,887	0
	offshore	0.0078	321	3
Flatfish deep-water	W	0.0000	280	0
	C	0.0620	2,710	168
	E	0.0021	2,310	5
Rex sole	W	0.0043	1,230	5
	C	0.0117	5,660	66
	E	0.0026	2,550	7
Flathead sole	W	0.0129	2,000	26
	C	0.0097	5,000	49
	E	0.0008	2,060	2
Flatfish shallow-water	W	0.0260	4,500	117
	C	0.0420	12,950	544
	E	0.0106	1,950	21
Arrowtooth flounder	W	0.0047	5,000	24
	C	0.0206	25,000	515
	E	0.0016	5,000	8
Sablefish	W trawl gear	0.0023	368	1
	C trawl gear	0.0384	1,146	44
	E trawl gear	0.0236	288	7
Pacific Ocean perch	W	0.0051	1,240	6
	C	0.0692	9,240	639
	E	0.0225	2,540	57
Shortraker/Rougheye	W	0.0000	210	0
	C	0.0145	930	13
	E	0.0105	590	6
Other rockfish	W	0.0000	20	0
	C	0.0410	740	3
	E	0.0000	4,140	0
Northern rockfish	W	0.0005	630	0
	C	0.0307	4,490	138
	E	0.0004	550	0
Pelagic shelf rockfish	W	0.0004	550	0
	C	0.0000	4,480	0
	E	0.0066	1,350	9
Demersal shelf rockfish.	SEO	0.0000	340	0
Thornyhead	Gulfwide	0.0118	2,360	28
Atka mackerel	Gulfwide	0.0443	600	27
Other species	Gulfwide	0.0067	14,215	95

¹ Pollock sideboard limits are based on pollock harvest restrictions implemented under the emergency interim rule published concurrently with this action that implements Steller sea lion RPA measures for the BSAI and GOA pollock fisheries.

² Sideboard harvest limits for Pacific cod are based on the initial TAC.

Paragraph 679.63(b) of this emergency interim rule establishes a formula for PSC sideboards for AFA catcher vessels. The AFA catcher vessel PSC bycatch limit for halibut in the BSAI and GOA, and each crab species in the BSAI for which a trawl bycatch limit has been established is a percentage 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. These amounts are listed in Tables 7 and 8.

Halibut and crab PSC that is caught by AFA catcher vessels participating in any non-pollock groundfish fishery listed in Tables 5 or 6 will accrue against the 2000 PSC limits for the AFA catcher vessels. Paragraphs 679.21(d)(8) and (e)(3)(v) of this emergency interim rule provide authority to close directed fishing for non-pollock groundfish for AFA catcher vessels once a 2000 PSC limitation listed in Table 7 for the GOA or Table 8 for the BSAI is reached. PSC that is caught by AFA catcher vessels while fishing for pollock in the BSAI will accrue against either the midwater pollock or the pollock/Atka mackerel/other species fishery categories.

TABLE 7.—INTERIM 2000 AFA CATCHER VESSEL PROHIBITED SPECIES CATCH (PSC) SIDEBOARD AMOUNTS FOR THE GOA

PSC species	Target fishery and season	Ratio of 1995–1997 AFA CV retained catch to total retained catch	2000 PSC Limit	2000 AFA catcher vessel PSC sideboard
Halibut (mortality in mt).	Trawl 1st seasonal allowance:			
	Shallow water targets	0.3400	500	170
	Deep water targets	0.0700	100	7
	Trawl 2nd seasonal allowance:			
	Shallow water targets	0.3400	100	34
	Deep water targets	0.0700	300	21
	Trawl 3rd seasonal allowance:			
	Shallow water targets	0.3400	200	68
	Deep water targets	0.0700	400	28
	Trawl 4th seasonal allowance:			
	All targets	0.2050	400	82

TABLE 8.—INTERIM 2000 AFA CATCHER VESSEL (CV) PROHIBITED SPECIES CATCH (PSC) SIDEBOARD AMOUNTS¹ FOR THE BSAI

PSC species	Target fishery category ² and season	Ratio of 1995–1997 AFA CV retained catch to total retained catch	2000 PSC Limit	2000 AFA catcher vessel PSC sideboard
Halibut	Pacific cod trawl	0.6183	1,434	887
	Pacific cod fixed	0.0022	748	2
	Yellowfin sole:			
	Jan. 20–Mar. 31	0.1144	262	30
	Apr. 1–May 20	0.1144	195	22
	May 21–July 3	0.1144	49	6
	July 4–Dec. 31	0.1144	380	43
	Rock sole/Flathead sole/Oth. flat:			
	Jan. 20–Mar. 31	0.2841	448	127
	Apr. 1–July 3	0.2841	163	46
	July 4–Dec. 31	0.2841	167	47
	Turbot/Arrowtooth/Sablefish	0.2327	0	0
	Rockfish	0.0245	70	2
	Pollock/Atka mackerel/Other sp.	0.0227	232	5
Red King Crab	Pacific cod	0.6183	11,655	7,207
	Yellowfin sole	0.1144	11,655	1,333
	Rock sole/Flathead sole/Oth. flat	0.2841	42,090	11,958
	Pollock/Atka mackerel/Other sp.	0.0227	1,711	39
<i>C. opilio</i>	Pacific cod	0.6183	123,530	76,383
	Yellowfin sole	0.1144	2,876,578	329,067
	Rock sole/Flathead sole/Oth. flat	0.2841	869,934	247,154
	Pollock/Atka mackerel/Other sp.	0.0227	71,622	1,626
	Rockfish ⁵	0.0245	41,043	1,006
<i>C. bairdi</i>	Turbot/Arrowtooth/Sablefish	0.2327	41,043	9,552
	Pacific cod	0.6183	158,547	98,035
	Yellowfin sole	0.1144	288,750	33,032
	Rock sole/Flathead sole/Oth. flat	0.2841	309,326	87,882
Zone 1	Pollock/Atka mackerel/Other sp.	0.0227	14,818	336
	Pacific cod	0.6183	279,041	172,540
	Yellowfin sole	0.1144	1,514,683	173,272
<i>C. bairdi</i>	Rock sole/Flathead sole/Oth. flat	0.2841	504,894	143,444
	Pollock/Atka mackerel/Other sp.	0.0227	25,641	582
	Zone 2			

TABLE 8—INTERIM 2000 AFA CATCHER VESSEL (CV) PROHIBITED SPECIES CATCH (PSC) SIDEBOARD AMOUNTS¹ FOR THE BSAI—Continued

PSC species	Target fishery category ² and season	Ratio of 1995–1997 AFA CV retained catch to total retained catch	2000 PSC Limit	2000 AFA catcher vessel PSC sideboard
	Rockfish	0.0245	10,024	246

¹ Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

² Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).

³ *C. opilio* Bycatch Limitation Zone. Boundaries are defined at § 679.21 (e)(7)(iv)(B).

⁴ The Council at its December 1999 meeting limited red king crab for trawl fisheries within the RKCSS to 35 percent of the total allocation to the rock sole, flathead sole, and other flatfish fishery category (§ 679.21(e)(3)(ii)(B)).

⁵ The Council at its December 1999 meeting apportioned the rockfish PSC amounts from July 4–December 31, to prevent fishing for rockfish before July 4, 2000.

2000 Sideboard Directed Fishing Closures

Catcher/Processor Sideboard Closures

The Regional Administrator has determined that many of the AFA catcher/processor sideboard amounts listed in Table 3 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2000 fishing year. In accordance with § 679.20(d)(1)(iv) of this emergency interim rule, the Regional Administrator establishes these amounts as directed fishing allowances. The Regional Administrator finds that many of these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by unrestricted AFA catcher/processors for the species in the specified areas set out in Table 9.

TABLE 9.—AFA UNRESTRICTED CATCHER/PROCESSOR SIDEBOARD DIRECTED FISHING CLOSURES.¹

[These Closures Take Effect 1200 Hrs A.L.T., January 20, 2000 and Remain in Effect Through 2400 Hrs, A.L.T., December 31, 2000.]

Species	Area	Gear types
Sablefish trawl	BSAI	All.
Greenland turbot	BSAI	All.
Arrowtooth flounder.	BSAI	All.
Flathead sole	BSAI	All.
Pacific ocean perch.	BSAI	All.
Other red rockfish	BS	All.
Sharpchin/Northern rockfish.	AI	All.
Shortraker/Rougheye rockfish.	AI	All.
Other rockfish	BSAI	All.
Squid	BSAI	All.
Other species	BSAI	All.

¹ Maximum retainable percentages may be found in Table 11 to 50 CFR part 679.

AFA Catcher Vessel Sideboard Closures

The Regional Administrator has determined that many of the AFA catcher vessel sideboard amounts listed in Table 5 and 6 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2000 fishing year. In accordance with § 679.20(d)(1)(iv) of this emergency interim rule, the Regional Administrator establishes these amounts as directed fishing allowances. The Regional Administrator finds that many of these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with

§ 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by non-exempt AFA catcher vessels for the species in the specified areas set out in Table 10.

TABLE 10.—AFA CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES¹

[These Closures Take Effect 12 Noon A.L.T., January 20, 2000 Except for Pollock in Area 610 and in the Shelikof Strait Conservation Zone Which Closes 12 Noon A.L.T., January 21, 2000. These Closures will Remain in Effect Through 2400 Hrs, A.L.T., December 31, 2000.]

Species	Area	Gear
Pacific cod	BSAI	Fixed, jig.
Sablefish	BSAI	Trawl.
Atka mackerel	BSAI	All.
Greenland Turbot	BSAI	All.
Arrowtooth flounder.	BSAI	All.
Pacific ocean perch.	BSAI	All.
Other red rockfish	BSAI	All.
Sharpchin/northern rockfish.	AI	All.
Shortraker/Rougheye rockfish.	AI	All.
Other rockfish	BSAI	All.
Squid	BSAI	All.
Other species	BSAI	All.
Pollock	3	All.
Pollock ²	4	All.
Pacific cod	GOA	All.
Deep water flatfish.	GOA	All.
Flathead sole	GOA	All.
Shallow water flatfish.	GOA	All.
Arrowtooth flounder.	GOA	All.
Sablefish	GOA	Trawl.
Pacific ocean perch.	GOA	All.

TABLE 10.—AFA CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES¹—Continued

[These Closures Take Effect 12 Noon A.L.T., January 20, 2000 Except for Pollock in Area 610 and in the Shelikof Strait Conservation Zone Which Closes 12 Noon A.L.T., January 21, 2000. These Closures will Remain in Effect Through 2400 Hrs, A.L.T., December 31, 2000.]

Species	Area	Gear
Shortraker/rougheye rockfish.	GOA	All.
Other rockfish	GOA	All.
Northern rockfish	GOA	All.
Demersal shelf rockfish.	GOA	All.
Thornyhead rockfish.	GOA	All.
Other species	GOA	All.

¹ Maximum retainable percentages may be found in Tables 10 and 11 to 50 CFR part 679.

² Closures take effect 12 noon A.L.T., January 21, 2000.

³ 620, 630 outside Shelikof Strait

⁴ 610, Shelikof Strait

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson-Stevens Act, AFA, and other applicable laws.

Pursuant to the National Environmental Policy Act an EA/RIR was developed for this action. It was determined that this action would not have a significant impact on the human environment. The EA/RIR may be obtained in hard copy from the Alaska Regional Office (see ADDRESSES) or via

the internet at www.fakr.noaa.gov. NMFS is specifically requesting comments on the EA/RIR. NMFS will respond to those comments in the proposed rule to implement Amendments 61/61/13/8.

This emergency interim rule has been determined to be significant for the purposes of Executive Order 12866.

NMFS finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such provisions would be contrary to the public interest. This emergency action is necessary to meet the AFA requirement to provide inshore pollock cooperatives with allocations of pollock for the 2000 fishing year. Inshore sector cooperatives will provide the inshore industry with the ability to more effectively meet the temporal and spatial dispersion objectives of NMFS' Steller sea lion conservation measures that became effective January 20, 2000, and published January 25, 2000. As such, if this rule is not made effective on January 20, 2000, or soon thereafter, the inshore sector of the BSAI pollock industry will be denied the opportunity to fish under cooperatives during the 2000 fishing year. Therefore, this sector of the industry would lose an economically valuable method of meeting the temporal and spatial dispersion objectives of NMFS' Steller sea lion conservation measures. Likewise, pursuant to authority set forth at 5 U.S.C. 553(d)(3), the need to ensure that this rule is in place as soon as possible because the pollock fishing season began on January 20, 2000, constitutes good cause to waive the 30-day delay in effective date otherwise required by 5 U.S.C. 553(d).

Because rule prior notice and opportunity for public comment are not required for this emergency interim rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inappropriate.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These regulations have been submitted to OMB for approval. Public reporting burden for these collections of information are estimated to average as

follows: For a manager to complete the shoreside processor electronic logbook and print reports is 30 minutes; for a manager to electronically submit the shoreside processor electronic logbook report is 5 minutes; for an operator to complete the at-sea scale inspection request is 2 minutes; for an operator to retain the at-sea scale inspection request is 1 minute; for an operator to complete the at-sea scale test report is 45 minutes; for an operator to print the record of haul weight is 3 minutes; for an operator to retain a scale audit trail print-out is 3 minutes; for an operator to complete the observer sampling station inspection request is 2 minutes; for a cooperative representative to complete a catcher vessel cooperative pollock catch report is 5 minutes; for a cooperative representative to submit a copy of the cooperative contract is 5 minutes; for a cooperative representative to complete an annual written preliminary report from each AFA cooperative is 8 hours; and for a cooperative representative to complete a annual written report from each AFA cooperative is 8 hours. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought: Regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and the clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques, or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and OMB (see ADDRESSES).

The President has directed Federal agencies to use plain language when communicating with the public, through regulations or otherwise. Therefore, NMFS seeks public comment on any ambiguity or unnecessary complexity arising from the language used in this emergency interim rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 21, 2000.

Andrew A. Rosenberg,
Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, definitions of "Appointed agent for service of process," and "Designated cooperative representative" are added in alphabetical order, and a new paragraph (4) is added to the existing definition of "Directed fishing" to read as follows:

§ 679.2 Definitions.

* * * * *

Appointed agent for service of process (applicable through July 20, 2000) means an agent appointed by the members of an inshore catcher vessel cooperative to serve on behalf of the cooperative. The appointed agent for service of process may be the owner of a vessel listed as a member of the cooperative or a registered agent. If at any time the cooperative's appointed agent for service of process becomes unable to accept service, then the cooperative members are required to notify the Regional Administrator of a substitute appointed agent.

* * * * *

Designated cooperative representative (applicable through July 20, 2000) means an individual who is designated by the members of an inshore pollock cooperative to fulfill requirements on behalf of the cooperative including, but not limited to, the signing of cooperative fishing permit applications and completing and submitting inshore catcher vessel pollock cooperative catch reports.

* * * * *

Directed fishing means * * *

(4) (applicable through July 20, 2000) With respect to the harvest of groundfish by AFA catcher/processors and AFA catcher vessels, any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the maximum retainable bycatch amount for that species or species group as calculated under § 679.20.

* * * * *

3. In § 679.5, paragraphs (a)(4)(iv), (f)(3), (f)(4), (i)(1)(iii), and (o) are added to read as follows:

§ 679.5 Recordkeeping and reporting.

(a) * * *

(4) * * *

(iv) *Shoreside processor electronic logbook report* (applicable through July 20, 2000). The manager of a shoreside processor or stationary floating processor receiving groundfish from AFA catcher vessels must use NMFS-approved software to report catcher vessel deliveries to NMFS as required under this section, and maintain the shoreside processor electronic logbook report describe at paragraph (f)(3), and printed reports required under this section to record the information described at paragraph (f)(4) of this section. The owner of a shoreside processor or stationary floating processor is responsible for compliance and must ensure that the operator, manager, or representative complies with the requirements of this paragraph described at paragraph (f)(3).

* * * * *

(f) *Shoreside processor DCPL.* * * *

(3) *Shoreside processor electronic logbook report* (applicable through July 20, 2000).

(i) *Requirement.* The manager of a shoreside processor or stationary floating processor that receives deliveries of groundfish from one or more AFA catcher vessels must record in and submit a shoreside processor electronic logbook report for each catcher vessel delivery and must print and retain reports required under this section for the duration of the fishing year.

(ii) *Applicability.* (A) Processors that use the shoreside processor electronic logbook to record all deliveries and that receive from NMFS an electronic return receipt for each delivery report are exempt from the requirement to maintain shoreside processor DCPLs as described at paragraph (f)(1) and (2) of this section and are exempt from the requirement to submit quarterly DCPL logsheets to NMFS Enforcement as described at paragraph (a)(14)(iii)(A) of this section.

(B) Processors that submit the shoreside processor electronic logbook report and that receive from NMFS an electronic return receipt for each delivery report are exempt from the requirement to maintain and submit WPRs to the Regional Administrator as described at paragraph (i) of this section.

(C) Processors that submit the shoreside processor electronic logbook report, receive from NMFS a return

receipt for each delivery report, and that are receiving deliveries of fish under a CDQ program are exempt from the requirement to submit CDQ delivery reports to the Regional Administrator as described at paragraph (n)(1) of this section.

(iii) *Time limit and submittal.* (A) The shoreside processor electronic logbook report must be submitted daily to NMFS as an electronic file. A dated return-receipt will be generated and sent by NMFS to the processor confirming receipt and acceptance of the report. Processors must retain the return receipt as proof of report submission. If a processor does not receive a return receipt from NMFS, the processor must contact NMFS within 24 hours for further instruction on submission of electronic logbook reports.

(B) Information entered daily and described at § 679.5(f)(3)(iv)(B) must be entered each day on the day they occur.

(C) Information for each delivery described at § 679.5(f)(3)(iv)(C) must be submitted to NMFS by noon of the following day for each delivery of groundfish.

(iv) *Information required.* The manager must enter the following information into the shoreside processor electronic logbook:

(A) *Information entered once (at software installation) or whenever it changes:*

(1) Shoreside processor name, ADF&G processor code, Federal processor permit number, and processor e-mail address;

(2) State port code;

(3) Name, telephone and FAX numbers of representative.

(B) *Information entered daily:*

(1) Indicate if no deliveries or no production;

(2) Number of observers on site;

(3) Whether harvested in BSAI or GOA;

(4) Product by species code, product code, and whether primary, ancillary, or reprocessed/rehandled;

(5) Product weight (in lb or mt).

(C) *Information entered for each delivery:*

(1) Date fishing began and delivery date;

(2) Vessel name (optional) and ADF&G number;

(3) Whether delivery is from a buying station;

(4) If received from a buying station:

(i) Type: vessel, vehicle, or other.

(ii) Name of buying station and date received by buying station.

(iii) If a vessel, ADF&G number.

(iv) If a vehicle, license plate number.

(v) If other, description;

(5) Whether a discard DFL was received from catcher vessel; if discard DFL not received, reason given;

(6) ADF&G fish ticket number of delivery;

(7) Management program name and identifying number (whether CDQ, research program, experimental fishery, IFQ, or AFA coop);

(8) Gear type of harvester;

(9) Landed species by species code, product code, and weight (in pounds or mt) for each species of each delivery;

(10) Discard or disposition species by species code, product code, and weight (in pounds or mt) of groundfish or PSC herring;

(11) Discard or disposition species by species code, product code, and count (in numbers of animals) of PSC halibut, salmon, or crab;

(12) If a CDQ delivery, discard or disposition species by species code, product code, weight (in pounds or mt) and count of PSQ halibut;

(13) ADF&G statistical area(s) where fishing occurred; and estimated percentage of total delivered weight corresponding to each area.

(4) *Shoreside processor electronic logbook printed reports.*

(i) The manager must output at the processing plant daily reports of the shoreside processor electronic logbook in two formats generated by the required software onto paper consisting of a Shoreside Logbook Daily Production Report and a Delivery Worksheet. The processor must maintain copies of both of these printouts throughout the fishing year and must make them available to observers, NMFS personnel, and authorized officers upon request.

(ii) *Information required—(A) Delivery worksheet.* Name of processor; ADF&G fish ticket number; management program name (whether CDQ, research program, experimental fishery, IFQ, or cooperative) and identifying number; catcher vessel name (optional) and ADF&G vessel number; date fishing began; delivery date; gear type by harvester; landed species by species code and product code and weight (in lb) for each species of each delivery; ADF&G statistical area and percentage of total delivered weight in each area, Federal reporting area; discard or disposition by species code and product code; weight of each discard or disposition species (in lb), number of each discard or disposition species (in lb) (if groundfish or herring); number of each species discard or disposition species if PSC halibut, salmon or crab.

(B) *Shoreside logbook daily production.* Processor name; Federal processor number; ADF&G processor code; date; number of observers on site;

indicate if no production and/or no deliveries; last sent date; last modified date; product by species code and product code whether primary, ancillary, or reprocessed/rehandled; and product weight in lb.

* * * * *
(i) *Weekly production report (WPR)*. * * *

(1) * * *
(iii) (applicable through July 20, 2000) If a shoreside processor or stationary floating processor and if using software approved by the Regional Administrator as described in § 679.5(f)(3), the shoreside processor or stationary floating processor is exempt from the requirements to submit a WPR.

* * * * *
(o) *Catcher vessel cooperative pollock catch report* (applicable through July 20, 2000).

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

(2) *Time limits and submittal*. (i) The cooperative pollock catch report must be submitted by one of the following methods:

(A) An electronic data file in a format approved by NMFS; or

(B) By fax.

(ii) The cooperative pollock catch report must be received by the Regional Administrator by 1200 hours, A.l.t. 1 week after the date of completion of delivery.

(3) *Information required*. The cooperative pollock catch report must contain the following information: Cooperative account number; catcher vessel ADF&G number; inshore processor Federal processor permit number; delivery date; amount of pollock (in lb) delivered plus weight of at-sea pollock discards; ADF&G fish ticket number.

* * * * *
4. In § 679.7, a new paragraph (k) is added to read as follows:

§ 679.7 Prohibitions.

* * * * *
(k) *Prohibitions specific to the AFA*. It is unlawful for any person to do any of the following:

(1) *Catcher/processors*.

(i) *Permit requirement*. Use a catcher/processor to engage in directed fishing for non-CDQ BSAI pollock without a valid AFA catcher/processor permit on board the vessel.

(ii) *Fishing in the GOA*. Use an unrestricted AFA catcher/processor to fish for any species of fish in the GOA.

(iii) *Processing BSAI crab*. Use an unrestricted AFA catcher/processor to process any species of crab harvested in the BSAI.

(iv) *Processing GOA groundfish*. Use an unrestricted AFA catcher/processor to process any groundfish harvested in Statistical Area 630 of the GOA.

(v) *Directed fishing after a sideboard closure*. Use an unrestricted AFA catcher/processor to engage in directed fishing for a groundfish species or species group in the BSAI after the Regional Administrator has issued an AFA catcher/processor sideboard directed fishing closure for that groundfish species or species group under § 679.20(d)(1)(iv) or § 679.21(e)(3)(v).

(vi) *Catch weighing*—(A) *Unrestricted AFA catcher/processors*. Use an unrestricted AFA catcher processor to process any groundfish that was not weighed on a NMFS-certified scale.

(B) *Restricted AFA catcher processors*. Use a restricted AFA catcher processor to process any pollock harvested in the BSAI directed pollock fishery that was not weighed on a NMFS-certified scale.

(2) *Motherships*.

(i) *Permit requirement*. Use a mothership to process pollock harvested by an AFA catcher vessel with an inshore or mothership sector endorsement in a non-CDQ directed fishery for pollock in the BSAI without a valid AFA permit on board the vessel.

(ii) *Cooperative processing endorsement*. Use an AFA mothership to process groundfish harvested by a fishery cooperative formed under § 679.60 unless the AFA mothership permit contains a valid cooperative pollock processing endorsement.

(iii) *Catch weighing requirement*. Use an AFA mothership to process groundfish harvested in the BSAI or GOA that was not weighed on a NMFS-certified scale.

(3) *Shoreside processors and stationary floating processors*.

(i) *Permit requirement*. Use a shoreside processor or stationary floating processor to process groundfish harvested in a non-CDQ directed fishery for pollock in the BSAI without a valid AFA inshore processor permit at the facility or vessel.

(ii) *Cooperative processing endorsement*. Use a shoreside processor

or stationary floating processor required to have an AFA inshore processor permit to process groundfish harvested by a fishery cooperative formed under § 679.61 unless the AFA inshore processor permit contains a valid cooperative pollock processing endorsement.

(iii) *Restricted AFA inshore processors*. Use an AFA inshore processor with a restricted AFA inshore processor permit to process more than 2,000 mt round weight of non-CDQ pollock harvested in the BSAI directed pollock fishery in any one year.

(iv) *Single geographic location requirement*. Use an AFA inshore processor to process pollock harvested in the BSAI directed pollock fishery at a location other than the single geographic location defined as follows:

(A) *Shoreside processors*. The physical location at which the land-based shoreside processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year;

(B) *Stationary floating processors*. A location within Alaska State waters that is within 5 nm of the position in which the stationary floating processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year.

(v) *Catch weighing requirement*. Use an AFA inshore processor to process groundfish harvested in the BSAI or GOA that was not weighed on a scale certified by the State of Alaska.

(4) *Catcher vessels*—(i) Use a catcher vessel to engage in directed fishing for non-CDQ BSAI pollock for delivery to any AFA processing sector (catcher/processor, mothership, or inshore) unless the vessel has a valid AFA catcher vessel permit on board that contains an endorsement for the sector of the BSAI pollock fishery in which the vessel is participating.

(ii) Use an AFA catcher vessel to retain any BSAI crab species unless the catcher vessel's AFA permit contains a crab sideboard endorsement for that crab species.

(iii) Use an AFA catcher vessel to engage in directed fishing for a groundfish species or species group in the BSAI or GOA after the Regional Administrator has issued an AFA catcher vessel sideboard directed fishing closure for that groundfish species or species group under § 679.20(d)(1)(iv), § 679.21(d)(8) or § 679.21(e)(3)(iv), if the vessel's AFA permit does not contain a sideboard exemption for that groundfish species or species group.

(5) *AFA inshore fishery cooperatives*—(i) *Quota overages*. Use an AFA catcher vessel listed on an AFA

inshore cooperative fishing permit to harvest non-CDQ pollock in excess of the cooperative's annual allocation of pollock specified under § 679.61.

(ii) *Liability.* An inshore pollock cooperative is prohibited from exceeding its annual allocation of BSAI pollock TAC. The owners and operators of all vessels listed on the cooperative fishing permit are responsible for ensuring that all cooperative members comply with all applicable regulations contained in part 679. The owners and operators will be held jointly and severally liable for overages of an annual cooperative allocation, and for any other violation of these regulations committed by a member vessel of a cooperative.

(6) *Crab processing limits.* It is unlawful for an AFA entity that processes pollock harvested in the BSAI directed pollock fishery by an AFA inshore or AFA mothership catcher vessel cooperative to use an AFA crab facility to process crab in excess of the crab processing sideboard cap established for that AFA inshore or mothership entity under § 679.64. The owners and operators of the individual entities comprising the AFA inshore or mothership entity will be held jointly and severally liable for any overages of the AFA inshore or mothership entity's crab processing sideboard cap.

5. In § 679.20, paragraphs (a)(5)(i)(D) and (d)(1)(iv) are added to read as follows:

§ 679.20 General limitations.

- (a) * * *
(5) * * *
(i) * * *

(D) *AFA sectoral allocations* (applicable through July 20, 2000). The pollock TAC apportioned to each BSAI subarea or district, after subtraction of the 10 percent CDQ reserve under § 679.31 (a), will be allocated as follows:

(1) *Incidental catch allowance.* The Regional Administrator will establish an incidental catch allowance to account for projected incidental catch of pollock by vessels engaged in directed fishing for groundfish other than pollock and by vessels harvesting non-pollock CDQ. If during a fishing year, the Regional Administrator determines that the incidental catch allowance has been set too high or too low, he/she may issue inseason notification in the Federal Register that reallocates pollock to/from the directed pollock fisheries to/from the incidental catch allowance according to the proportions established under § 679.20(a)(5)(i)(D)(2).

(2) *Directed fishing allocations.* The remaining pollock TAC apportioned to

each BSAI subarea or district will be allocated for directed fishing as follows:

- (i) 50 percent to vessels harvesting pollock for processing by AFA inshore processors,
(ii) 40 percent to vessels harvesting pollock for processing by catcher/processors, with not less than 8.5 percent of this allocation made available for harvest by AFA catcher vessels and not more than 0.5 percent of this allocation made available for harvest by restricted AFA catcher/processors, and
(iii) 10 percent to vessels harvesting pollock for processing by AFA motherships.

(3) *Allocations for fishing by inshore cooperatives and vessels not participating in cooperatives.* The TAC allocated to vessels harvesting pollock for processing by AFA inshore processors will be divided into separate allocations for cooperatives and vessels not participating in cooperatives. The TAC allocation for cooperative fishing will be equal to the aggregate annual allocations of all inshore cooperatives that receive pollock allocations under § 679.61(e). The TAC allocation for fishing for vessels not participating in cooperatives will be equal to the allocation made to vessels harvesting pollock for processing by AFA inshore processors minus the TAC allocation for cooperative fishing.

(4) *Excessive harvesting share.* NMFS will establish an excessive harvesting share limit equal to 17.5 percent of the sum of the allocations made under § 679.20(a)(5)(i)(D)(2). The excessive share limit will be published in the proposed, interim, and final specifications.

- (d) * * *
(1) * * *

(iv) *AFA sideboard limitations* (applicable through July 20, 2000)—(A) If the Regional Administrator determines that any sideboard harvest limit for a group of AFA vessels established under § 679.63 has been or will be reached, the Regional Administrator may establish a directed fishing allowance for the species or species group applicable only to the identified group of AFA vessels.

(B) In establishing a directed fishing allowance under paragraph (d)(1)(iv)(A) of this section, the Regional Administrator shall consider the amount of the harvest limitation established for a group of AFA vessels under § 679.63 that will be taken as incidental catch by those vessels in directed fishing for other species.

* * * * *

6. In § 679.21, paragraphs (d)(8) and (e)(3)(v) are added to read as follows:

§ 679.21 Prohibited species bycatch management.

- (d) * * *

(8) *AFA halibut bycatch limitations* (applicable through July 20, 2000). Halibut bycatch limits for AFA catcher vessels will be established according to the procedure and formula set out in § 679.63 (b) and managed through directed fishing closures for AFA catcher vessels in the groundfish fisheries to which the halibut bycatch limit applies.

* * * * *

- (e) * * *

- (3) * * *

(v) *AFA prohibited species catch limitations* (applicable through July 20, 2000). Halibut and crab PSC limits for AFA catcher/processors and AFA catcher vessels will be established according to the procedures and formulas set out in § 679.63 (a) and (b) and managed through directed fishing closures for AFA catcher/processors and AFA catcher vessels in the groundfish fisheries for which the PSC limit applies.

* * * * *

7. In § 679.50, paragraphs (c)(5) and (d)(5) are added to read as follows:

§ 679.50 Groundfish Observer Program * * *

- (c) * * *

(5) *AFA catcher/processors and motherships* (applicable through July 20, 2000)—(i) *Coverage requirement.*

(A) *Unrestricted AFA catcher/processors and AFA motherships.* The owner or operator of an unrestricted AFA catcher/processor or AFA mothership must provide at least two NMFS certified observers for each day that the vessel is used to harvest, process, or take deliveries of groundfish. More than two observers are required if the observer workload restriction at § 679.50(c)(5)(iii) would otherwise preclude sampling as required under § 679.62(a)(1).

(B) *Restricted AFA catcher/processors.* The owner or operator of a restricted AFA catcher/processor must provide at least two NMFS certified observers for each day that the vessel is used to engage in directed fishing for pollock in the BSAI, or takes deliveries of pollock harvested in the BSAI. When a restricted AFA catcher/processor is not engaged in directed fishing for BSAI pollock and is not receiving deliveries of pollock harvested in the BSAI, the observer coverage requirements at § 679.50(c)(1)(iv) apply.

(ii) *Certification level.* At least one of the observers required under paragraphs (c)(5)(i)(A) and (B) of section must be

certified as a lead CDQ observer as specified in paragraph (h)(1)(i)(E)(1) of this section.

(iii) *Observer work load.* The time required for the observer to complete sampling, data recording, and data communication duties may not exceed 12 consecutive hours in each 24-hour period, and, the observer may not sample more than 9 hours in each 24-hour period.

* * * * *

(d) *Observer requirements for shoreside processors.* * * *

(5) *AFA inshore processors* (applicable through July 20, 2000)—(i) *Coverage level.* An AFA inshore processor is required to provide a NMFS certified observer for each 12 consecutive hour period of each calendar day during which the processor takes delivery of, or processes, groundfish harvested by a vessel engaged in a directed pollock fishery in the BSAI. A processor that takes delivery of or processes pollock for more than 12 consecutive hours in a calendar day is required to provide two NMFS-certified observers for each such day.

(ii) *Multiple processors.* An observer deployed to an AFA inshore processor may not be assigned to cover more than one processor during a calendar day in which the processor receives or processes pollock harvested in the BSAI directed pollock fishery.

* * * * *

8. In 50 CFR part 679, a new Subpart F—American Fisheries Act Management Measures (applicable through July 20, 2000) is added to read as follows:

Subpart F—American Fisheries Act Management Measures (Applicable Through July 20, 2000)

Sec.

679.59 Authority and related regulations.

679.60 Catcher/processor and mothership pollock cooperatives.

679.61 Inshore pollock cooperatives.

679.62 Requirements for vessels and processors.

679.63 Harvest limitations in other fisheries.

679.64 AFA inshore processor and AFA mothership crab processing sideboard limits.

Subpart F—[Amended]

§ 679.59 Authority and related regulations.

Regulations under this subpart were developed by the National Marine Fisheries Service and the North Pacific Fishery Management Council to implement the American Fisheries Act (AFA) [Div. C, Title II, Subtitle II, Public Law No. 105-277, 112 Stat. 2681 (1998)]. Additional regulations that

implement specific provisions of the AFA are set out at § 679.2 *Definitions*, § 679.4 *Permits*, § 679.5 *Recordkeeping and reporting*, § 679.7 *Prohibitions*, § 679.20 *General limitations*, § 679.21 *Prohibited species bycatch management*, § 679.28 *Equipment and operational requirements for Catch Weight Measurement*, § 679.31 *CDQ reserves*, and § 679.50 *Groundfish Observer Program applicable through December 31, 2000.*

§ 679.60 Catcher/processor and mothership pollock cooperatives.

(a) *Applicability.* Any fishery cooperative formed under section 1 of the Act of June 25, 1934 (15 U.S.C. 521) for the purpose of cooperatively managing directed fishing for BSAI pollock for processing by catcher/processors or motherships must comply with the provisions of this section.

(b) *Filing of fishery cooperative contracts.* Any contract implementing a fishery cooperative for the purpose of cooperatively managing directed fishing for BSAI pollock for processing by catcher/processors or motherships, and any material modifications to any such contract must be filed not less than 30 days prior to the start of fishing under the contract with the Council and with the Regional Administrator, 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. Any fishery cooperative intending to deliver pollock to an AFA mothership also must notify the owners of the AFA mothership not less than 30 days prior to the start of fishing under the contract.

(c) *Required elements.* Any cooperative contract filed under paragraph (b) of this section must contain the following information:

- (1) A list of parties to the contract,
- (2) A list of all vessels and processors that will harvest and process pollock harvested under the cooperative,
- (3) The amount or percentage of pollock allocated to each party to the contract, and
- (4) For a cooperative that includes catcher vessels delivering pollock to motherships or catcher/processors, penalties 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 § 679.63(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 § 679.63(b) and as announced to NMFS by the Regional Administrator.

(d) *Annual report.* Any fishery cooperative governed by this section must submit annual preliminary and final written reports on fishing activity to the North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK 99501, for public distribution. The preliminary report covering activities through November 1 must be submitted by December 1 of each year and the final report must be submitted by January 31 of each year.

(1) *Required contents.* 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 a 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; and

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

§ 679.61 Inshore pollock cooperatives.

(a) *Applicability.* Any fishery cooperative formed under section 1 of the Act of June 25, 1934 (15 U.S.C. 521) for the purpose of cooperatively managing directed fishing for pollock for processing by an AFA inshore processor must comply with the provisions of this section.

(b) *Filing of fishery cooperative contracts.* Any contract implementing a fishery cooperative for the purpose of cooperatively managing directed fishing for pollock for processing by an AFA inshore processor, any material

modifications to any such contract, and 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, must be filed with the Council and with the Regional Administrator no later than 30 days prior to the start of fishing under the contract.

(c) *Required elements.* Any cooperative contract filed under paragraph (b) of this section must contain the following:

(1) A list of parties to the contract,

(2) A list of all vessels and processors that will harvest and process pollock harvested under the cooperative,

(3) The amount or percentage of pollock allocated to each party to the contract, and

(4) Penalties to prevent each non-exempt member catcher vessel from exceeding an individual vessel sideboard limit for each BSAI or GOA groundfish 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 § 679.63(b) and as announced to the cooperative by the Regional Administrator, or

(ii) In the case of two 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 amount as calculated by NMFS under § 679.63(b) and as announced to NMFS by the Regional Administrator.

(d) *Responsible parties*—(1) *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, the signing of cooperative fishing permit applications and completing and submitting inshore catcher vessel pollock cooperative catch reports. The owners of the member catcher vessels in the cooperative are jointly responsible for compliance and must ensure that the designated representative complies with all applicable regulations in this part.

(2) *Agent for service of process.*

(i) 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 listed on the cooperative fishing permit. The cooperative must provide the Regional Administrator with the name, address and telephone number of the appointed agent on the application for an inshore cooperative fishing permit. Service on or notice to the cooperative's appointed agent constitutes service on or notice to all members of the cooperative.

(ii) The owners and operators of all member vessels of an inshore pollock cooperative are responsible for ensuring that the agent is capable of accepting service on behalf of the cooperative for at least 5 years from the expiration day of the AFA permit. The owners and operators of all member vessels of a cooperative are also responsible for ensuring that a substitute agent is designated and the Agency is notified of the name, address and telephone number of the substitute representative in the event the previously designated representative is no longer capable of accepting service on behalf of the cooperative or the cooperative members within that 5-year period.

(e) *Cooperative pollock allocations.* An inshore pollock 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 inshore pollock allocation that is determined according to the following procedure:

(1) *Calculation of individual vessel catch histories.* The Regional Administrator will calculate an official AFA inshore cooperative catch history for every catcher vessel that made a landing of inshore pollock in the Bering Sea Subarea and/or Aleutian Islands Subarea during 1995, 1996, or 1997 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 inshore landings; from the Bering Sea Subarea and Aleutian Islands Subarea separately.

(ii) *Offshore compensation.* If a catcher vessel made a total of 500 or more mt of landings of 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 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.

(iii) *Best two out of three years.* After steps (i) and (ii) 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) *Calculation of cooperative quota share.* Each inshore pollock cooperative that applies for and receives an AFA inshore pollock cooperative fishing permit will receive an annual quota share percentage of pollock for each subarea of the BSAI that is equal to the sum of each member vessel's official AFA inshore cooperative catch history for that subarea divided by the sum of the official AFA inshore cooperative catch histories of all catcher vessels that made BSAI inshore pollock landings from that subarea in 1995, 1996, or 1997. The cooperative's quota share percentage will be listed on the cooperative's AFA pollock cooperative permit.

(3) *Conversion of quota share to annual TAC allocation.* Each inshore pollock cooperative that receives a quota share percentage for a fishing year will receive an annual allocation of Bering Sea and/or Aleutian Islands pollock that is equal to the cooperative's quota share percentage for that subarea multiplied by the annual inshore pollock allocation for that subarea. Each cooperative's annual pollock TAC allocation may be published in the interim, and final BSAI TAC specifications notices.

(f) *Cooperative fishing restrictions.* AFA inshore pollock cooperatives must comply with the following fishing restrictions.

(1) *Eligible vessels.* Only catcher vessels listed on the cooperative's AFA inshore cooperative fishing permit are permitted to harvest the cooperative's annual cooperative allocation.

(2) *Quota management.* All BSAI inshore pollock harvested by a member vessel while engaging in directed fishing for inshore pollock in the BSAI during the fishing year for which the annual cooperative allocation is in effect will accrue against the cooperative's annual pollock allocation regardless of whether the pollock was retained or discarded.

(3) *Reporting of cooperative catch.* Each inshore pollock cooperative must report to the Regional Administrator its BSAI pollock harvest on a daily basis according to the recordkeeping and

reporting requirements set out at § 679.5(o).

(g) *Annual report.* Any fishery cooperative governed by this section must submit annual preliminary and final written reports on fishing activity to the North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK 99501, for public distribution. The preliminary and final reports must contain the same elements and must be submitted according to the same deadlines as the preliminary and final reports required under § 679.60(d).

§ 679.62 Requirements for vessels and processors.

(a) *AFA catcher/processors and AFA motherships—(1) Unrestricted AFA catcher/processors and AFA motherships.*

(i) *Catch weighing.* All groundfish landed by unrestricted 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 an unrestricted 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.

(ii) *Observer sampling station.* The owner and operator of an unrestricted 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.

(2) *Restricted AFA catcher/processors.* The owner or operator of a restricted AFA catcher/processor must comply with the catch weighing and observer sampling station requirements set out in paragraph (a)(1) of this section at all times the vessel is engaged in directed fishing for pollock in the BSAI.

(b) *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 under § 679.28(c) and be made available for sampling by a NMFS certified observer. The observer must be allowed to test any scale used to weigh groundfish in order to determine its accuracy.

(2) The plant manager or plant liaison must notify the observer of the

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

§ 679.63 Harvest limitations in other fisheries.

(a) *AFA catcher/processor sideboards.* The Regional Administrator will establish restrictions on the ability of unrestricted AFA catcher/processors to engage in directed fishing for BSAI groundfish species other than pollock. Such limits will be established and managed as follows:

(1) *Calculation of groundfish harvest limits.* For each groundfish species or species group in which a TAC is specified for an area or subarea of the BSAI, the Regional Administrator will establish annual AFA catcher/processor harvest limits as follows:

(i) *Pacific cod.* The Pacific cod harvest limit will be equal to the 1997 aggregate catch of Pacific cod by catcher/processors listed in paragraphs 208(e)(1) through (2) and 209 of the AFA in non-pollock target fisheries divided by the Pacific cod TAC available to catcher/processors in 1997 multiplied by the Pacific cod TAC available for harvest by catcher/processors in the year in which the harvest limit will be in effect.

(ii) *Aleutian Islands Pacific ocean perch.* The Aleutian Islands Pacific ocean perch harvest limit will be equal to the aggregate 1996 through 1997 catch of Aleutian Islands Pacific ocean perch by catcher/processors listed in paragraphs 208(e)(1) through (2) and 209 of the AFA in non-pollock target fisheries divided by the sum of the Aleutian Islands Pacific ocean perch TACs available to catcher/processors in 1996 and 1997 multiplied by the Aleutian Islands Pacific ocean perch TAC available for harvest by catcher/processors in the year in which the harvest limit will be in effect.

(iii) *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.

(iv) *Remaining groundfish species.* Except as provided for in paragraphs (a)(2)(1)(i) through (a)(2)(1)(iii) of this section, the harvest limit for each BSAI groundfish species or species group will be equal to the aggregate 1995 through

1997 catch of that species by catcher/processors listed in paragraphs 208(e)(1) through (2) and 209 of the AFA in non-pollock target fisheries divided by the sum of the TACs of that species or species group available to catcher/processors 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.

(2) *Calculation of halibut and crab PSC bycatch limits.* For each halibut or crab PSC limit specified for catcher/processors in the BSAI, the Regional Administrator will establish an annual unrestricted AFA catcher/processor PSC limit equal to the estimated aggregate 1995 through 1997 PSC bycatch of that species by catcher/processors listed in paragraphs 208(e)(1) through (2) and 209 of the AFA while engaged in directed fishing for species other than pollock divided by the aggregate PSC bycatch limit of that species for catcher/processors from 1995 through 1997 multiplied by the PSC limit of that species available to catcher/processors in the year in which the harvest limit will be in effect.

(3) *Management of AFA catcher/processor sideboard limits.* The Regional Administrator will manage groundfish harvest limits and PSC bycatch limits for AFA catcher/processors in accordance with the procedures set out in § 679.20(d)(1)(iv), and § 679.21(e)(3)(v).

(b) *AFA catcher vessel sideboards.* The Regional Administrator will establish restrictions on the ability of AFA catcher vessels to engage in directed fishing for other groundfish species in the GOA and BSAI. Such restrictions will be established and managed as follows:

(1) *Calculation of groundfish and PSC sideboards.* For each groundfish species or species group in which a TAC is specified for an area or subarea of the GOA and BSAI; and for each halibut and crab PSC limit, the Regional Administrator will establish annual AFA catcher vessel groundfish harvest limits and PSC bycatch limits as follows:

(i) *Affected vessels.* Catcher vessel harvest limits and PSC bycatch limits will apply to all AFA catcher vessels in all GOA and non-pollock BSAI groundfish fisheries except:

(A) *BSAI Pacific cod—(1)* 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 will be exempt from sideboard closures for BSAI Pacific cod.

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

(B) *GOA groundfish*. AFA catcher vessels less than 125 ft (38.1 m) LOA that are determined by the Regional Administrator to have harvested less than 5100 mt of BSAI pollock and to have made 40 or more landings of GOA groundfish from 1995 through 1997 will be exempt from GOA groundfish catcher vessel sideboard directed fishing closures.

(ii) *Calculation of BSAI and GOA groundfish harvest limits*—(A) *BSAI Groundfish other than BSAI Pacific cod*. The AFA catcher vessel groundfish harvest limit for each BSAI groundfish species or species group other than BSAI Pacific cod will be equal to the aggregate retained catch of that groundfish species or species group from 1995 through 1997 by AFA catcher vessels not exempted under § 679.63(b)(1)(i)(A)(1); 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.

(B) *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 § 679.63(b)(1)(i)(A)(1) 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.

(C) *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 § 679.63(b)(1)(i)(B); 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.

(iii) *Calculation of BSAI and GOA PSC bycatch limits*. The AFA catcher vessel PSC bycatch limit for halibut in the BSAI and GOA, and each crab species in the BSAI for which a trawl bycatch limit has been established will be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997.

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

§ 679.64 AFA inshore processor and AFA mothership crab processing sideboard limits.

(a) *Applicability*. The crab processing limits in this section apply to any AFA inshore or mothership entity that receives pollock harvested in the BSAI directed pollock fishery by a fishery cooperative established under § 679.60 or § 679.61.

(b) *Calculation of crab processing sideboard limits*. Upon receipt of an application for a cooperative processing endorsement from the owners of an AFA mothership or AFA inshore processor, the Regional Administrator will calculate a crab processing cap percentage for the associated AFA inshore or mothership entity. The crab processing cap percentage for each BSAI king or Tanner crab species will be equal to the percentage of the total catch

of each BSAI king or Tanner crab species that the AFA crab facilities associated with the AFA inshore or mothership entity processed in the aggregate, on average, in 1995, 1996, and 1997.

(c) *Notification of crab processing sideboard percentage limits*. An AFA inshore or mothership entity's crab processing cap percentage for each BSAI king or Tanner crab species will be listed on each AFA mothership or AFA inshore processor permit that contains a cooperative pollock processing endorsement.

(d) *Conversion of crab processing sideboard percentages and notification of crab processing sideboard poundage caps*. Prior to the start of each BSAI king or Tanner crab fishery, NMFS will convert each AFA inshore or mothership entity's crab processing sideboard percentage to a poundage cap by multiplying the crab processing sideboard percentage by the pre-season guideline harvest level established for that crab fishery by ADF&G. The Regional Administrator will notify each AFA inshore or mothership entity of its crab processing sideboard poundage cap through a letter to the owner of the AFA mothership or AFA inshore processor and by publishing the crab processing poundage caps on the NMFS-Alaska Region world wide web home page (<http://www.fakr.noaa.gov>).

(e) *Overages*. In the event that the actual harvest of a BSAI crab species exceeds the pre-season Guideline harvest level (GHL) announced for that species, an AFA inshore or mothership entity may exceed its crab processing cap without penalty up to an amount equal to the AFA inshore or mothership entity's crab processing percentage multiplied by the final official harvest amount of that crab species as determined by ADF&G and announced by NMFS on the NMFS-Alaska Region world wide web home page (<http://www.fakr.noaa.gov>).

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E1 Executive Summary

This document provides an assessment of the effects of imposing limits on the amount of groundfish in the Gulf of Alaska and Bering Sea and Aleutian Island that processors participating in cooperatives under the American Fisheries Act could process. The document also examines the effects of an excessive share cap on the amount of Bering Sea and Aleutian Island pollock that any given entity comprising AFA facilities could process. The document is divided into five sections, an introduction, a discussion of environmental considerations, an assessment of AFA processing limits, an assessment of an excessive share cap on the processing of pollock in the Bering Sea and Aleutian Islands, and a summary section that addresses other applicable laws.

E1.1 Processing Limits

Chapter 3 examines the impacts of establishing processing limits on non-pollock groundfish in the Bering Sea and Aleutian Islands and all groundfish in the Gulf of Alaska (including pollock) by processors eligible to participate in pollock cooperatives under the American Fisheries Act (AFA). The analysis examines the language in the AFA, shows the organizational structure of the industry, and develops 10 specific options to implement processing limits, sometimes referred to as "processing sideboards". It then calculates the percent of the total allowable catch (TAC) in the GOA and BSAI that could be processed by AFA processor and associated facilities based on the structure of the industry and options specified. Conclusions are drawn regarding the efficacy of the options in fulfilling the mandates of the AFA.

E1.1.1 The Organizational Structure of the Pollock Processing Industry

The AFA directs the Council to provide protection to non-AFA processors from the AFA processors that may benefit from participation in pollock cooperative. The AFA also introduces the concept of AFA entities as follows: "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." Entities that are linked by this "10% Ownership Rule" to AFA-eligible processing facilities are referred to as AFA entities.

The language in the AFA regarding the 10% Ownership Rule is subject to interpretation. A preliminary analysis in June 1999 used a literal interpretation of the 10% Ownership Rule. Because of the potentially far-reaching consequences of the literal interpretation of the 10% Ownership Rule, a more limited interpretation was developed. This interpretation known as the 10% Limited Rule was presented to the Council in October. The 10% Limited Rule recognizes the limits of the stream of benefits that could result from participation in AFA pollock cooperatives.

NMFS also recognized the far-reaching implications of a literal interpretation of the 10% rule, and chose to develop their own interpretation for implementing processor limits for crab and harvesting limits for AFA harvesters. NMFS interpretation is based on a multiplicative algorithm that enables them to assess the level of ownership where very complicated ownership structures exist. The language of the NMFS interpretation of the 10% Ownership Rule is as follows.

10-percent ownership standard. For purposes of this definition, all individuals, corporations or other entities that either directly or indirectly own a 10 percent or greater interest in the mothership, inshore processor or pollock harvesting entity, as the case may be, are considered as comprising a single AFA entity. An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's percentage of direct, or indirect interest in the mothership, inshore processor or pollock harvesting entity, as the case may be.

Outcomes using NMFS' 10 percent ownership standard mirror outcomes using the 10% Limited Rule in relatively straightforward situations, and provide more guidance than the 10% Limited Rule in more complicated situations. Therefore NMFS' 10 percent ownership standard, along with NMFS' 10 percent control standard, is used in the

analysis to determine AFA entities. AFA companies are determined by using similar 50 percent ownership and control standards

Table 6 summarizes ownership interests of AFA processors in companies and entities developed in organization charts in Chapter 3. The organization charts were based on research in public databases and on interviews with owners and officers of processing firms.

The analysis of the ownership structure using the 10 percent ownership and control standards indicates that there are a total of 12 AFA entities. The 12 AFA entities are described in Table 1. If 50 percent ownership and control standards are used to define AFA companies, only 3 AFA facilities would be directly affected—rather than a single entity comprising the *F/V Arctic Storm*, *F/V Arctic Fjord*, and *M/V Ocean Phoenix*, two separate companies would be defined, one comprising the *F/V Arctic Storm* and *F/V Arctic Fjord*, the other consisting of *M/V Ocean Phoenix*.

Table 1. Summary of AFA Entities as Defined with the 10 Percent Ownership and Control Standards

Entity	Description
Alaska Ocean LLP	The entity comprises the <i>F/V Alaska Ocean</i>
Alaska Trawl Fisheries	The entity comprises the <i>F/V Endurance</i>
Aleutian Spay Fisheries APICDA, CVRF, Prowler LLC, and Ocean Prowler LLC	The entity comprises the <i>F/V Starbound</i> , as well as 5 fixed gear catcher processors (<i>F/V Horizon</i> , <i>F/V Prowler</i> , <i>F/V Bering Prowler</i> , <i>F/V Ocean Prowler</i>) and shore plants in Atka, and False Pass (under construction).
American Seafoods Inc.	The entity comprises American Seafoods' 7 AFA-eligible pollock catcher processors , 11 AFA-ineligible catcher processors, and 4 catcher processor (currently not participating in the North Pacific), and the <i>F/V Beagle</i> an H&G catcher processor.
Phoenix Processor LP, Arctic Storm Inc, Arctic Fjord Inc, and BBEDC	The entity comprises 3 AFA processing vessels <i>F/V Arctic Storm</i> , <i>F/V Arctic Storm</i> , <i>M/V Ocean Phoenix</i> , and the <i>F/V Bristol Leader</i> , a fixed gear catcher processor.
Glacier Fish Company, which is owned 50 percent by NSEDC.	The entity comprises the <i>F/V Pacific Glacier</i> , <i>F/V Northern Glacier</i> , <i>F/V Norton Sound</i> and 3 shore plants in small shore plants in the Nome area.
Highland Light /Yard Arm Knot Holdings	The entity comprises the <i>F/V Highland Light</i> , <i>F/V Yardarm Knot</i> , <i>F/V Westward Wind</i> ; the latter are pot and fixed gear catcher processors.
Icicle Seafoods, Inc.	The entity comprises the <i>M/V Northern Victor</i> , 4 floating processors <i>M/V Arctic Star</i> , <i>M/V Bering Star</i> , <i>M/V Coastal Star</i> , <i>M/V Discovery Star</i> , and shore plants in Petersburg and Seward.
Maruha Corporation and its subsidiaries, (Supreme Alaska, Westward Seafood, and Western Alaska Fisheries), and Wards Cove Packing Company	The entity comprises the <i>M/V Excellence</i> , 2 AFA shore plants in Dutch Harbor , a shore plant in Kodiak, two non-AFA catcher processors (<i>F/V Titan</i> , and <i>F/V Pacific Knight</i>) and 14 non-AFA processing facilities owned by Wards Cove Packing.
Nichiro Corporation, its subsidiary Peter Pan Seafoods, and Seven Sea Fishing Company	The entity comprises an AFA shore plant in King Cove , the <i>M/V Golden Alaska</i> , shore plants in Valdez, Port Moller, and Dillingham, and the 2 non-AFA catcher processors <i>F/V Blue Wave</i> , <i>F/V Stellar Sea</i> .
Nippon Suisan and it subsidiary Unisea, Inc.	The entity comprises an AFA shore plant in Dutch Harbor , and 2 non-AFA processing barge in St. Paul (<i>Unisea</i>)vessels, and the floating processor <i>M/V Omnisea</i>
Trident Seafoods Corporations	The entity comprises 2 AFA shore plants one in Akutan and one in Sand Point , all of the processing facilities formerly owned by Tyson Seafoods, including 5 AFA catcher processors and 1 AFA floating processor . The entity also comprises 13 other non-AFA processing vessels, and 6 other non-AFA shore plants.

Notes: Bolded text indicates an AFA eligible processing facility.

E1.1.2 Identification of Ten Options

The analysis identifies ten different ways the processing limits could be applied as follows:

- Option 1 **Overall Limits Applied to All Facilities within AFA Entities.** A single, overall processing limit would be set for each species. AFA entities would be defined as an organization under which all processing facilities that are associated with AFA facilities by a 10 percent ownership and control standard. Once the overall limit is reached, no additional processing of the limited species by any included facility in any of the entities would be allowed.
- Option 2 **Overall Limits Applied to All Facilities within AFA Companies.** A single, overall processing limit would be set for each species. AFA companies would be defined as all processing facilities that are associated with AFA facilities by the 50 percent ownership and control standards.
- Option 3 **Overall Limits Applied to All AFA-eligible Facilities.** A single, overall processing limit would be set for each species. Only AFA processing facilities would be included.
- Option 4 **Sector-Level Limits Applied to All Facilities within AFA Entities.** Sector-level processing limits for each species would be imposed upon all facilities in AFA entities. Three sectors would be defined (catcher processor, mothership, and inshore) on the basis of existing inshore-offshore regulations.
- Option 5 **Sector-Level Limits Applied to All Facilities within AFA Companies.** Sector level processing limits for each species would be imposed upon all facilities in AFA companies. Three sectors would be defined on the basis of existing inshore-offshore regulations.
- Option 6 **Sector Level Limits Applied to AFA Facilities.** A processing limit for each species would be applied to each sector. Only AFA facilities would be included.
- Option 7 **Individual Entity Limits Applied to All Entity Facilities.** Individual processing limits would be imposed on each AFA entity.
- Option 8 **Individual Company Limits Applied to All Company Facilities.** Individual processing limits would be issued to each AFA company. All processing facilities owned by AFA Companies would be included.
- Option 9 **Individual Company Limits Applied to AFA Facilities.** Processing limits would be imposed on each AFA company, but only AFA-eligible facilities would be included.
- Option 10 **Individual Plant and Vessel Limits.** An individual facility-level processing limit would be imposed on each AFA plant or vessel.

E1.1.3 Assessment of Processing Limits

The analysis estimated the percentage of past processing by species group and area reported by AFA processors under the different options. Three historical periods were examined: 1995-1997, 1998-1999, and 1995-1999. Tables showing these percentages are included in Chapter 3.

The analysis also examines the effect of processing limits in a more qualitative manner from the perspective of AFA processors, non-AFA processors, non-AFA processors that may be restricted under the limits, catcher vessels, and NMFS. In all, eleven different objectives were listed, and are used to provide qualitative assessment of the 10 different options. Table 2 summarizes the qualitative assessment of the processing limits options.

Table 2 Summary of the Qualitative Analysis of Processing Limits

	Overall Limits			Sector Limits			Individual Limits			
	Option 1 Entity	Option 2 Company	Option 3 Facility	Option 4 Entity	Option 5 Company	Option 6 Facility	Option 7 Entity	Option 8 Company	Option 9 AFA/Co.	Option 10 Facility
Objectives from the Perspective of Proponents of Processing Limits										
How does the option rate in terms of limiting AFA processing of species other than BSAI pollock to the levels achieved prior to the passage of the AFA?	Poor	Poor	Poor	Good	Fair	Fair	Poor	Poor	Poor	Poor
How does the option rate in terms of including all processing interests of AFA companies?	Good	Fair	Poor	Good	Fair	Poor	Good	Fair	Poor	Poor
How does the option rate in terms of preventing AFA companies from evading the limits through subsidiaries or holding companies?	Good	Fair	Poor	Good	Fair	Poor	Good	Fair	Poor	Poor
Objectives from the Perspective of AFA Processors										
How does the option rate in terms of allowing AFA processors to maximize their ability to realize profits in the pollock processing industry?	Good	Good	Good	Good	Good	Good	Good	Good	Good	Poor
How does the option rate in terms of allowing AFA processors to be able to utilize non-pollock processing capacity improvements completed prior to passage of the AFA?	Fair	Fair	Fair	Poor	Poor	Fair	Fair	Fair	Good	Fair
How does the option rate in terms of its effect on the market value of AFA facilities?	Poor	Fair	Good	Poor	Fair	Fair	Poor	Fair	Good	Good
Objectives from the Perspective of Catcher Vessel Owners										
How does the option rate in terms of ensuring sufficient competition among processors for raw fish	Good	Good	Good	Fair	Fair	Fair	Poor	Poor	Poor	Poor
Objectives from the Perspective of Non-pollock Processors Linked to AFA Processors										
How does the option rate in terms of restricting processors that will not benefit directly from AFA?	Poor	Good	Good	Poor	Good	Good	Poor	Good	Good	Good
Objectives from the Perspective of NMFS										
How does the option rate in terms of the Paperwork Reduction Act?	Poor	Fair	Good	Poor	Fair	Good	Poor	Fair	Good	Good
How does the option rate in terms of the NMFS ability to determine and set the limits?	Poor	Fair	Good	Poor	Fair	Good	Poor	Fair	Good	Good
How does the option rate in terms of the NMFS ability to manage the limits in-season?	Fair	Fair	Good	Poor	Poor	Good	Fair	Fair	Fair	Fair

Notes: Objectives are given a presumed rating relative to the other options from the perspective of the interest group. A fair rating implies that there are both better and worse options. The column headed "AFA/Co." is for the option that imposes individual processing limits on a company's AFA facilities but does not limit non-AFA facilities in the company.

E1.1.4 Overall Conclusions Regarding Processing Limits

The AFA instructs the Council to examine alternatives that would protect processors that will not be able to participate in pollock cooperatives from adverse effects resulting from the AFA.

The analysts conclude that pollock processors may be able to generate higher-than-expected profits from pollock processing because of the AFA. AFA processors may choose to reinvest those higher than expected returns into the processing of other species if it appears that returns from additional investment in processing of groundfish, and other species will provide better returns than investments outside of fish processing. Because many other opportunities for investment exist, the stock market, for example, it is not certain that pollock processors will invest additional amounts into the processing non-pollock groundfish. If AFA processors do choose to invest in additional processing capacity, then it is likely they will be able to increase their share of the processing of other species.

It does not appear that any of the options that have been analyzed will fully address the concerns of the non-AFA processors without placing potentially harsh restrictions on processors that do not appear to be able to benefit directly from the AFA, and without imposing burdensome paperwork and enforcement costs on NMFS, and on the industry as a whole. This conclusion applies whether the processing limits are overall limits, sector limits or individual limits.

If the Council chooses to fulfill its mandate to protect non-AFA processors by imposing processing limits on groundfish other than pollock, it appears that establishing processing limits on sectors, or on individual AFA companies using a 50 percent ownership and control standard, will provide a relatively high level of protection with fewer negative impacts, though aggregate limits (across all companies or sectors) may be more palatable from the perspective of catcher vessels, and associated market issues.

E1.2 Excessive Share Caps on Pollock

Chapter 4 examines an excessive share cap for pollock in the BSAI on AFA processors. The AFA directs the Council to establish a cap on AFA processors, as a means to ensure competition in the pollock fisheries. This chapter examines the goals and objectives of an excessive processing share cap for BSAI pollock, and examines the impacts of setting the cap at levels ranging from 10 percent to 30 percent. The examination also includes 3 sub-options:

- 1) allow processors that exceed the cap in the past to continue at previous levels (a grandfather clause)
- 2) include CDQ pollock within the excessive share cap
- 3) apply the cap to AFA companies using a 50 percent ownership and control standard rather than to entities defined with a 10 percent ownership and control standard.

E1.2.1 Goals and Objectives of Excessive Processing Share Caps for Pollock

Language in the AFA implies that the goal of excessive share caps is to preserve competition in the fishing and processing industry of the BSAI. Market share has often been used as an indicator of markets that are less than competitive, and it is a very useful indicator. However, a disproportionate market share by itself does not always indicate that an anti-competitive situation exists. Barriers to entry into a particular market are perhaps a more important factor in market control. With a high market share and barriers to entry, it is more likely that company will be able to influence prices paid for input such as raw fish, as well as prices paid for finished products to produce abnormally high profits.

The AFA erected significant barriers to entry into the pollock processing and harvesting markets. Therefore it appears reasonable to set policies that regulate how much of the pollock processing and harvesting markets individual firms or entities can control. Since there are several substitutes for pollock products in world market it is less likely that AFA processors will be able to significantly influence the prices of finished products. However, the supply of raw pollock is relatively localized, and therefore the effectiveness of excessive share caps

on pollock are judged according to whether or not the cap increases or reduces the likelihood that a given processor will be able to influence the prices it pays for raw pollock.

E1.2.2 Impacts of Setting the Cap at Various Levels

The Council requested that an excessive share cap on pollock processing be examined at three levels: 10 percent, 20 percent and 30 percent. The Council has also stated that these levels represent a range and that the Council may choose any level between 10 and 30 percent. The effects of the cap at any given level depend on two factors:

- 1) How many entities would be constrained by the cap
- 2) How much would the constrained entities have to cut back production in order to stay within the cap

Table 3 shows the percentage point difference of the three cap levels and the percentage processed in 1999 by the AFA pollock entities as defined in Table 1. Entities are given a code to protect the confidential nature of the data. The code does not correspond to the order of the entities in Table 1. A plus sign (+) indicates how much the entity could increase its processing and still remain under the cap. A shaded cell with a minus sign (-) indicates that the entity exceeded the cap in 1999 and would have to reduce its processing by the amount shown to come under compliance of the cap. If the cap were set at 10 percent four entities would have to cut back their processing. With a 20 percent cap only one entity would have to cut back, and with a 30 percent no entity would be constrained.

Table 3. Cap Levels Compared to 1999 BSAI Pollock Processing Percentages

Entity #	Percentage Points Above (+) or Below (-) the Cap in 1999		
	10 percent cap	20 percent cap	30 percent cap
1	+6.6	+16.6	+26.6
2	-12.3	-2.3	+7.7
3	+7.8	+17.8	+27.8
4	+7.8	+17.8	+27.8
5	+0.6	+10.6	+20.6
6	+7.3	+17.3	+27.3
7	-8.0	+2.0	+12.0
8	+9.4	+19.4	+29.4
9	-6.8	+3.2	+13.2
10	-3.1	+6.9	+16.9
11	+6.7	+16.7	+26.7
12	+7.6	+17.6	+27.6

Notes:

- 1) Processing shares do not include CDQ pollock, which has been excluded from both the numerator and the denominator in the calculations.
- 2) Plus signs (+) indicate the percentage points the entity could gain and still remain under the cap.
- 3) Shaded cells with minus signs (-) show entities that were above the cap in 1999, and how many percentage points they would have to cut to be in compliance with the cap.

E1.2.2.1 Impacts on Competition of Excessive Share Caps

If the cap is set at a level that requires entities to scale back their processing, there could be impacts on competition particularly in the market for raw fish. The impacts will depend on malleability of the processing capacity of the particular entity. An entity that consist of a single pollock shorebased processing plant has much less malleable processing capacity than an entity that consists of several processing vessels. If an entity that consists of several vessels must cut back processing, it will likely to try to sell one or more of it vessels. If an entity consists of a single shorebased processing plant, then it is likely that the entity will be forced to reduce the

throughput through its existing plant. The latter situation is more likely than the former to create a reduction in the price of raw fish.

The four large AFA shore plants in Dutch Harbor and Akutan averaged 10.2 percent of the non-CDQ pollock in 1999. Therefore, if the excessive share cap for AFA pollock processing was set at 10 percent, then even if each shore plant was the only pollock facility in an entity, at least some of those four would have to cut back on production, creating the potential for lower ex-vessel prices for raw fish.

If the cap were set at 20 percent, only one entity would be constrained. While the analysts cannot predict exactly how this entity would behave, it is likely that it would wish to divest itself of less efficient and more malleable processing capacity to get below the cap. Divestiture is probably less likely to create downside pressures on raw pollock prices. Furthermore if the caps are set at 20 percent it appears unlikely, given the average percentages of the large shore plants, that there would be additional aggregations of these facilities.

If the excessive share cap for BSAI pollock processing is set at 30 percent, none of the entities as they currently exist would have to cut back on processing. A 30 percent cap would, however, allow an entity to be formed consisting of three of the four larger shorebased processors without forcing the entity to dramatically cut back on throughput. If such an entity were formed, it is likely that at least 90 percent of the inshore pollock allocation would be processed within two AFA entities. This would tend to create downward pressures on ex-vessel prices.

For the catcher processor sector the issue of excessive share caps that allows existing entities to expand may be less of an issue than for entities that control motherships and shorebased plants. This is because in general catcher processors do not purchase raw fish from delivery vessels, and therefore localized competitive concerns are less likely.

In summary, the analysts conclude that if caps are set too low there is likely to be downward pressure on ex-vessel prices for pollock. If caps are set too high it is possible that the inshore pollock allocations could be controlled by as few as two entities—a situation that is also likely to be put downward pressure on ex-vessel prices. Therefore the analysts would recommend a cap of 20 percent rather than a cap set at 10 percent or at 30 percent.

E1.2.3 Impacts of Options to the Excessive Share Cap

Grandfather Clause: It does not appear that a grandfather clause that allows processors over the cap to continue to process at that level would negatively affect competition. However, the analysts believe that entities that are grandfathered should be restricted from divesting of excess capacity and continuing to remain above the cap, particularly if the divested processing capacity remains active in the pollock processing industry.

Inclusion of CDQ Processing within the Cap: If the excessive share cap includes CDQ processing of pollock then it is likely that incentives to form partnerships with CDQ organizations may be reduced, which could translate to fewer benefits coming to CDQ organizations.

Apply Caps to Companies Rather than to Entities: There does not appear to be any significant impact of setting a BSAI pollock processing excessive share cap on AFA companies rather than on AFA entities under the current ownership patterns. However, setting excessive share caps on companies rather than on entities would allow a greater level of concentration of ownership of pollock processing facilities in the future. This greater concentration of ownership might make it more likely that AFA processors would be able to act in non-competitive ways that might influence prices for delivered pollock or for finished products. Furthermore a consistent definition of ownership and control between excessive share caps and AFA processing limits will be easier to implement, monitor and enforce.

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January 20, 2000

VIA FAX to (907) 586-7465

Sue Salveson
Assistant Regional Administrator
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802
Attn: Lori Gavel

RECEIVED
JAN 25 2000
N.P.F.M.C

Re: Section 210(c) of the American Fisheries Act

Dear Ms. Salveson:

We write to you on behalf of Greenpeace concerning section 210(c) of the American Fisheries Act (AFA). Specifically, we want to discourage any reliance by NMFS on the Office of General Counsel's legal opinion on the meaning of section 210(c) of the act. These comments expand on and memorialize the testimony we presented to the Council last month. This letter also responds to the Federal Register notice and request for comments on the AFA dated January 5, 2000 by addressing our NEPA concerns with implementation of the AFA.

Given the intense pressure the huge groundfish fishery puts on the Bering Sea ecosystem -- as evidenced by declining populations of so many Bering Sea marine mammal and seabird species -- and a dangerous overcapitalization of that fishery that makes it non-sustainable, it is in our interest to further the decapitalization and rationalization purposes of the AFA. If the fishery is conducted in a sustainable manner, the participation in the fishery of coastal Alaska residents offers great hope on a challenging economic landscape. As importantly, the participation of local residents in a fishery that occurs in the environment which sustains so many other aspects of life in coastal Alaska only makes sense. The people of Alaska's Bering Sea coast are an important part of that ecosystem, and the congressional guarantee that they can directly participate in commercial fisheries ensures that they remain in position to be its greatest stewards.

These principles are firmly embodied in the law, including section 210(c) of the AFA and elsewhere. And it is these principles which are undermined by OGC's interpretation of section 210(c).

Section 210(c) provides:

(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 (2) 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.

American Fisheries Act, § 210(c) (emphasis added).

Rather than look to the plain meaning of this provision and its legislative history, OGC looks to other provisions of the AFA to determine whether Congress intended the 8.5% to be a directed fishing allowance available only to the 208(b) catcher vessels. It then concludes that:

in section 210(c), Congress uses the phrase "available for harvest only by the catcher vessels" to allocate part of the offshore directed fishing allowance as a set aside for the offshore catcher vessels. It does not state that at least 8.5% "shall be allocated as a directed fishing allowance" for harvest by the catcher vessels. Therefore, notwithstanding the word "only" in the first sentence, we believe Congress intended to protect the offshore catcher vessels' historical harvesting opportunities by ensuring at least 8.5% of the offshore pollock TAC would be available to them as a group. This goal is accomplished in the first sentence. From the inclusion of the second sentence authorizing the formation of a cooperative between the catcher vessels and the named catcher/processors immediately following the first sentence, we infer that Congress somehow was relating the set-aside with the formation of a cooperative. We believe this strongly suggests that Congress anticipated that the catcher vessels would bring the 8.5% to a co-op if a co-op were formed.

Memo from Lisa Lindeman, OGC, to Steve Pennoyer, May 26, 1999. OGC thus concludes that the 8.5% is not available only to catcher vessels, as the Act states, but may be harvested by catcher/processors as well. This interpretation turns the language of the statute on its head.

This is not, however, "a difficult provision to interpret", as OGC states. A reading of the plain meaning of the statute compels the conclusion that 8.5 percent of the 40 percent of the harvest allocated to catcher/processors in section 206(b)(2) can be harvested "only" by catcher vessels. AFA, Section 210(c). As a quick reference to a dictionary confirms, the word "only" means "solely" or "exclusively." New Lexicon Webster's Dictionary (1989 ed.). Given the clarity of this statutory provision, no further analysis is necessary. See, e.g., Demarest v. Manspeaker, 498 U.S. 184, 190 (1991) (when the terms of a statute are unambiguous, judicial inquiry is complete except in rare and exceptional circumstances).

Moreover, although it is unnecessary to consult it, the legislative history of section 210(c) speaks directly to this issue. The conference report states:

Subsection (c) requires at least 8.5 percent of the pollock allocated under section 206(b)(2) for processing by catcher/processors to be available for harvesting by the catcher vessels eligible under section 208(b). This requirement will help ensure that the traditional harvest of those catcher vessels will not be reduced.

129 Cong. Rec. S12780 (Oct. 21, 1998) (emphasis added). This legislative history underscores the plain meaning of section 210(c) and further provides Congress' reasoning for including this important provision within the law: decapitalizing and rationalizing the fishery by ensuring that a certain portion of the off-shore harvest is caught only by the section 208(b) boats. To allow otherwise would render the 8.5% allocation a nullity, because the cooperative could enter into an agreement that allows the entire catch of this industry sector to be caught by catcher/processors.

As we stated in our testimony to the Council last month, the effect of such an interpretation is to undermine the decapitalization and rationalization intent of the AFA. If the section 208(b) catcher vessels are not required to harvest their quota themselves, and yet get paid for it anyway, this leaves them free to fish more heavily in other fisheries. Although they are capped at their traditional participation in the non-pollock fisheries by the section 211 sideboards,¹ it is much more likely that these vessels will actually fish in those other fisheries, thereby increasing the race for fish and the competition in non-pollock fisheries. We are aware of at least two of these boats that are fishing full time in the Gulf of Alaska and Aleutian Islands while their co-op share is being fished by factory trawlers. It is counter to the intent of the idea of "sideboards" to allow vessels that specifically asked for the AFA in order to relieve the overcapitalization in the pollock fishery to lease their quota and move into any fishery where the TAC is currently being taken. Such an effect cannot be squared with the intent of the law.

Perhaps more fundamentally, though, allowing leasing of this quota share effectively creates an illegal individual fishing quota (IFQ). The Magnuson-Stevens Act contains a moratorium on the creation of new IFQs through October 1, 2000. 16 U.S.C. § 303(d)(1)(A). The AFA does not repeal this provision with respect to the North Pacific, and repeals by implication are extremely disfavored. *In re Glacier Bay*, 944 F.2d 577, 581 (9th Cir. 1991). Allowing these eight boats to freely lease their quota shares creates the equivalent of an IFQ, which is explicitly barred by the MSA.

We offer these views to discourage any reliance on OGC's section 210(c) legal opinion and urge that the 8.5% of the harvest allocated by Congress to catcher vessels remain solely with those vessels. Action taken consistent with OGC's opinion would undermine the substantive promise of the AFA to "decapitalize, rationalize, and Americanize" the North Pacific fishery. It would also result in a direct violation of the AFA. Further, this interpretation results in the creation of a new IFQ, in direct violation of the MSA.

Finally, we state once again that NMFS must prepare an environmental impact statement (EIS) on the implementation of the AFA. NEPA requires an EIS for any action that may significantly affect the quality of the human environment. 42 U.S.C. § 102(2)(C). Effects can be significant "even if on balance the agency believes that the effect[s] will be beneficial." 40 C.F.R. § 1508.8. There can be little question that, by radically altering the prosecution of the Bering Sea pollock fisheries, the AFA has had, and continues to have, a significant affect on the human environment, especially in terms of the human participants in that fishery. Many of the effects of the AFA are highly uncertain and highly controversial. It is quite possible that there may be adverse effects on the endangered Steller sea lion resulting from the increased rate at which the inshore fleet has harvested its quota under the act. All of these factors point in the direction of necessitating an EIS. See 40 C.F.R. § 1508.27(b). Furthermore, many of the measures of the AFA are being implemented piecemeal, with a new analysis each time a new idea is presented. This kind of segmentation is not allowed under NEPA. See 40 C.F.R. § 1598.27(b)(7); *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1215 (9th Cir. 1998), cert. denied, ___ U.S. ___ (1999) (significance cannot be avoided by breaking down an action into small component parts). As with the 2000 TAC specifications, NMFS may not "tier" its EA for the AFA to the 1998 SEIS. We hereby incorporate by reference our Jan. 12, 2000 comments on the TAC specifications on this issue and will not repeat those arguments here. In conclusion, because the AFA has not only potential, but actual, significant environmental impacts, implementation of the AFA must be addressed in an EIS and the current EA/FONSI is inadequate.

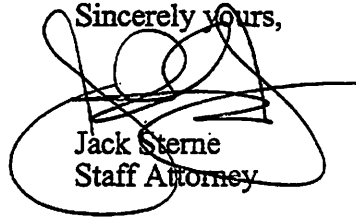
¹ With respect to the sideboards, we hereby adopt by reference previous comments submitted on this issue on behalf of the Alaska Marine Conservation Council. See Letters of January 29, 1999 and June 1, 1999.

Sue Salveson
January 20, 2000

Page 4

Thank you for your consideration of our comments on this matter. As always, should you have any questions or comments, please do not hesitate to call.

Sincerely yours,

A handwritten signature in black ink, appearing to be "Jack Sterne", written over a circular stamp or seal.

Jack Sterne
Staff Attorney

cc: Steven Pennoyer
Richard B. Lauber
Sen. Ted Stevens
David Benton



Fishermen's Finest, Inc.

4039 21st Ave. W. #201 ■ Seattle, WA 98199
TEL: (206) 283-1137 ■ FAX: (206) 281-8681

January 31, 2000

Mr. Richard B. Lauber
Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

RECEIVED

JAN 31 2000

N.P.F.M.C

RE: *American Fisheries Act* - Agenda Item C-3
Groundfish Processor Sideboards

page 1 of 2

Dear Chairman Lauber:

In its initial review of the processor sideboards, we urge the Council to remember the intent for which the sideboards were included in the *American Fisheries Act*: to protect non-AFA processors from undesirable effects from the *Act*. If processors are not held to their traditional processing amounts, and harvesters are not held to their sideboards, then non-AFA processors and catcher-processor would be severely disadvantaged.

If processing sideboards are not implemented at historical participation levels, AFA processors can bring in additional effort into the BS from non-AFA vessels. There will be increased competition for the limited amount of PSC available in each target fishery. There will also be disruption of markets for which there is currently none to limited potential for expansion. These factors would hinder non-AFA companies' abilities to harvest their traditional amounts of groundfish, as well adversely affect supply and demand for their traditional products. If harvesting sideboards are relaxed as well, to accommodate a lessening of processor sideboards, then there would clearly be no sacrifices imposed on the AFA companies or vessels for their exclusive access to the pollock resource.

This year, AFA vessels and companies which would normally target pollock are choosing not to. They can do this in a variety of ways:

- Sell their quota to another company and concentrate on non-pollock species (see attached article).
- Stack pollock quota onto a few vessels so that other vessels can concentrate on non-pollock groundfish.
- Exercise the sideboard exemptions
- Chose not to fish pollock under AFA and concentrate solely on non-pollock groundfish.

**Fishermen's Finest, Inc. letter to NPFMC
Processor Sideboards
January 31, 2000**

page 2 of 2

Because of this ability to reap the benefits of the *Act* (and the 12% increase in pollock TAC) while simultaneously targeting on non-pollock species, it is essential that all sideboards reflect only traditional participation levels and not a ton more. In order to maintain the current level of participation in the non-pollock groundfish fisheries, Fishermen's Finest, Inc. urges the Council to adopt processing sideboards that mirror the harvesting sideboards recently implemented. This is the only way to ensure continued rationalization of the non-pollock groundfish fisheries and maintain market integrity.

Thank you for letting Fishermen's Finest, Inc. express our concerns about the *Act* and its sideboard provisions.

Sincerely,



Rudy A. Petersen

F/V American No. 1
F/ U.S. Intrepid
F/V Pathfinder
F/V U.S. Liberator

CC: Senator Gorton
Senator Stevens
Senator Snowe



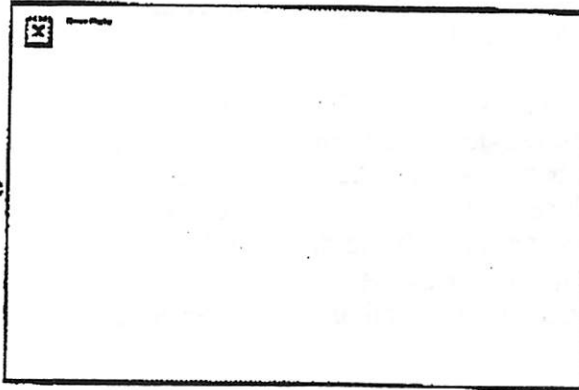
Anchorage Daily News

Sunday, January 23, 2000

Riches hauled in without a net
7 Seattle-based trawler owners split share of Bering Sea pollock fishery after helping write law in their favor

By WESLEY LOY
Daily News reporter

SEATTLE - Dave Fraser, a commercial fisherman, stands to make perhaps a \$1 million this year on walleye pollock in the Bering Sea. Yet he and his partners won't have to catch a single fish.



In this misty metropolis of soaring, nouveau companies like Microsoft, Amazon.com and Starbucks Coffee, Fraser is proof there are still fortunes to be made in a stalwart old industry that's practically forgotten here.

He hardly looks like a deal maker. With his cascading hair and graying goatee, his garish shirts and Converse high-tops, he looks more hippie than trawler captain. Yet he's regarded as one of the shrewdest of fishing capitalists.

Fraser leads a tiny fleet of small trawlers that people in Alaska's fishing industry have dubbed - half out of resentment, half out of admiration - the Magnificent Seven.

Magnificent because Fraser and the other owners of the seven boats were sharp enough to step off the decks and go to Washington, D.C., where they chiseled into law a way to get paid for not fishing.

"They saw an opportunity, and they seized it. They made themselves millionaires," said Linda Behnken, a member of the federal council that regulates commercial fishing off Alaska.

Fraser and the other Magnificent Seven owners counter that 20 years of "homesteading" on the brutal Bering Sea is finally paying off.

On Thursday, the largely Seattle-based pollock fleet sailed into the half-frozen Bering Sea to begin the first harvest of the millennium. It's the nation's richest fishery - annually worth almost \$700 million after basic processing. The bland, white flesh is made into things like fish sticks and fake crab.

But the Magnificent Seven won't help with the harvest this year, at least not nearly to the extent they used to. There's no need. The other 120 or so boats in the Bering Sea fleet can do the job.

A sweeping federal law, the American Fisheries Act of 1998, has tamed this once bitterly contested, bankruptcy-plagued race for fish by clearly designating who gets how much.

The act, guided through Congress by Alaska Sen. Ted Stevens, created lots of winners. The Japanese-dominated shore-based seafood companies got a lucrative boost in their share of pollock. The fleet of 300-foot factory trawlers, which catch and process fish at sea, gained the ability to form a pollock club or cooperative to divvy up their own share and stop racing one another for fish. And one factory trawler company got \$90 million to retire several of its boats from the overbuilt fleet.

But most people agree the Magnificent Seven - relative small fry in the pollock world - were the biggest winners of all.

It could have gone the other way. The seven little trawlers, known as "catcher boats," could have been squeezed out by warring onshore and offshore titans trying to make peace.

In the racing days, the catcher boats played an important role. The big factory trawlers often needed more fish than they could catch themselves. Boats like Fraser's 86-foot Muir Milach would buzz around the Bering Sea like worker bees, hustling gigs to bring extra fish to the factory ships.

But last year, when the 20 factory trawlers formed their co-op, the race for fish was over. The giants could work at their own pace. The catcher boats were no longer necessary.

But Fraser and the other catcher boat owners succeeded in getting a provision in the law that set aside 3.4 percent of the pollock for the seven catcher boats. They could, and did, form their own co-op to divvy up the fish among themselves.

And they got something else: federal clearance to transfer or sell their shares to the factory trawlers.

Two of the Magnificent Seven already were owned by factory trawler companies. Of the remaining five, most last year did transfer the bulk of their pollock. And two of the vessels were sold.

The transactions were worth millions of dollars. And some of the catcher boat owners stand to make millions more in coming years - from fish someone else will catch.

It's a credit to Fraser, whose Bohemian looks belie a knack for navigating the murky waters of commercial fishing politics, industry people say. He's known for packing around a laptop computer jammed with fishery statistics. He's a tireless attendee of mind-numbing regulatory meetings. As a member of an important advisory panel to the North Pacific Fishery Management Council, the federal body that regulates commercial fishing off Alaska, he sometimes takes a curious turn by voting with the largely ignored environmentalists to actually reduce the pollock catch.

Fraser also is said to be a trusted fisheries adviser to U.S. Sen. Slade Gorton of Washington, whose support was needed for passage of the American Fisheries Act.

Tom Casey, head of a Seattle association of boats that catch mostly crab, said: "The crabbers have Dave Fraser envy, particularly the people who want to retire. He's the magna cum laude of Bering Sea 101."

Like many in the industry, Casey finds something a little fishy about fishermen collecting money for pollock they don't catch. And he questions whether only a few people should get what is essentially an ownership stake in a public resource.

"The citizens of the United States gave Dave Fraser those fish for free," Casey said.

But listen to Fraser. On a rainy afternoon in early January, he guides the Muir Milach to a fuel dock in Seattle's fishing district of Ballard, a downscale maze of piers and humble houses and Norwegian culture where most eyes seem to gaze north to Alaska's rich fishing grounds. He and the crew fill the tanks deep inside the midnight-blue hull with 13,000 gallons of diesel, enough for the 10-day voyage to the Bering Sea. There the deck will slosh not with pollock but with cod.

"We homesteaded a chunk of the ocean," Fraser said. "We have homesteaded the Bering Sea pollock fishery for 20 years. We feel like

we've got rights in this fishery. The public gave up Oklahoma, the public gave up a lot of land in Alaska to people who were willing to homestead it."

The Muir Milach is one of two boats in the Magnificent Seven fleet owned by Fraser and some partners. Last year, they decided to sell one, the Tracy Anne, along with its pollock share to a factory trawler company. They kept the Muir Milach to fish for cod, crab and other species - and to lease its pollock rights to the highest bidder each year.

At today's pollock prices, leasing the Muir Milach's fish would be worth about \$1 million a year, with the Tracy Anne sale worth potentially several times that much.

Fraser says selling one boat and keeping the other was like an investor who suddenly finds himself holding shares of a really hot stock - cash out half now and hang onto the other half hoping it will climb even higher in value. It's a gamble. Pollock stocks or prices could go up - or crash. And fishermen worry that the endangered Steller sea lion, which feeds on pollock, could be the ruin of the fishery.

There were many hard bumps on the way to the homestead, Fraser said. In the 1970s he was a self-professed hippie fisherman working the dying Puget Sound gillnet salmon fishery. At that time Alaska's pollock and bottom fish were taken mostly by foreign fleets, but changes in federal law aimed to push the foreigners out and open the door for Americans.

Fraser and four partners cobbled \$1 million to build the Muir Milach, Gaelic for something like "shining sea alive with fish," Fraser said. They eventually took it to the Bering Sea and towed their nets for foreign processing ships or whoever needed fish.

The evolving Bering Sea fisheries were competitive and sometimes marginal. Fraser saw factory ship after factory ship go bankrupt, leaving him without a market for fish. After one failure, Fraser said, he and his partners weren't paid for \$250,000 worth of delivered fish.

Not long after that, in 1995, Fraser said, he got a gig to deliver fish to the factory trawler Endurance. He hustled the job by donning his diving gear to clear a line that had snared the big ship's propeller.

By 1998, Fraser could see the American Fisheries Act coming. It would seek to reduce the size of a fleet that was still regarded by Sen. Stevens as too foreign and too big for the available pollock. The act would retire some boats and divide the pollock between onshore and offshore seafood operators.

For the catcher boats, "it was life or death," Fraser said. "We were either going to be out of business or golden."

He said he practically lived in Washington, D.C., in summer 1998 talking to lawmakers and their staffers. At one point he found himself sitting in a senator's chair in the Capitol's ornate Senate appropriations room, where Stevens had convened a meeting of industry players to hammer out a law to solve the pollock fishery's problems.

"It was awesome," Fraser said.

He and other catcher boat owners like Frank Bohannon, owner of the 110-foot Neahkahnie, argued that they had earned a cut of the pollock, that they'd helped the big factory trawlers build their businesses by delivering fish to them.

When it was all done, Fraser's little Muir Milach, along with the rest of the Magnificent Seven, was written by name into an act of Congress. They had their 3.4 percent of the Bering Sea pollock.

The seven later secured a legal opinion from federal regulators saying the catcher boats need not actually catch the fish themselves; they could transfer the shares to the factory trawlers and sit tied to the dock if they wanted.

Does that violate the intent of the American Fisheries Act?

"At first blush, I don't see anything wrong with it," Stevens said in a recent interview. He noted that Western Alaska communities with a federally mandated share of Bering Sea fisheries do the same thing.

However magnificent his deal, Fraser plans to continue fishing, though probably not for pollock. He acknowledges buying the house he had been renting in Port Townsend, Wash. He financed a substantial upgrade to the Muir Milach this winter. He points out that he must share the boat's income with four partners, including his ex-wife, as well as Uncle Sam.

He figures he and his partners could have done just as well had they put into the stock market that \$1 million used to build the Muir Milach.

Instead, he said, they invested 20 years of dragging the frigid Bering Sea.

* Reporter Wesley Loy can be reached at wloy@adn.com or 257-4590

**Mezich Allegiance, Inc.
F/V Fierce Allegiance
7215 156th St. SW
Edmonds, WA 98026**

February 1, 2000

Mr. Rick Lauber
North Pacific Fishery Management Council
605 West 4th Ave., Suite 306
Anchorage, AK 99501-2252

RE: Comment on Agenda Item C-3
Pacific Cod Sideboards for AFA Catcher Vessels

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FEB - 1 2000
N.P.F.M.C

Dear Chairman Lauber and Council Members:

I am writing to you about my concern over the recent cod analysis which has narrowed the basis years for the AFA catcher vessel sideboard for Pacific cod to 1997 exclusively. It has been my understanding that the AFA sideboards were implemented to protect the fisheries and allow vessels to continue to fish at their historic participation levels. Picking just one year, 1997, is devastating to some catcher vessels who traditionally have trawled for cod. My family owned vessel, the Fierce Allegiance (ADF&G #55111 and MVP #7304B), trawled for cod during 1995 and 1996, two of the AFA sideboard years. In 1997, however, the vessel required some major shipyard repairs and was unable to participate in the cod fishery. Now we are forced to pay the price for being absent one year, 1997, in a fishery we traditionally have fished. I would like to request the council look at other alternatives for implementing the Pacific cod sideboards, rather than using the current analysis for 1997 only, before it makes it's final rule.

I urge the council to make a decision that is consistent with the original AFA sideboards. Thank you for your consideration.

Respectfully,



Rick Mezich
Mezich Allegiance, Inc.-President

SHER & BLACKWELL

ATTORNEYS AT LAW

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February 2, 2000

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FEB - 2 2000

N.P.F.M.C

Richard B. Lauber
Chairman
North Pacific Fishery Management Council
605 West 4th Avenue
Anchorage, Alaska 99501-2252

Dear Mr. Chairman:

On behalf of the **Fair Fisheries Coalition**, this letter makes recommendations with respect to **Agenda Item C-3, the American Fisheries Act (AFA)**. Under this agenda item the Council is scheduled to comment on the draft rule for implementing AFA safeguards and make an initial review of AFA processor sideboards on non-pollock groundfish and an excessive pollock processing share cap under section 210(e)(2) of the AFA.

With respect to the draft rule, which the Coalition understands will be essentially a combination of the two interim emergency rules currently in effect (as published in the Federal Register on January 5, 2000 at 380-390 and January 28, 2000 at 4520-4544), the Coalition requests that the Council recommend that violations of the excessive harvesting share cap for pollock be included under the prohibited acts listed at 50 C.F.R. 679.7. While the statutory prohibition is in effect under the AFA as enacted, the Coalition believes that inclusion of the prohibition in NMFS regulations will aid in enforcement of this requirement. In particular, the NMFS regulations should specifically incorporate the same rules included in the interim regulations for determining AFA entities and AFA crab facilities, including the provisions with respect to control of an entity. While MarAd is directed to investigate and report to the Council and Secretary its determination regarding whether an entity has violated the cap, it is the Secretary of Commerce that is ultimately responsible for enforcing the excessive harvesting cap under section 210 of the AFA. Because violations of subtitle II of the AFA are punishable under the Magnuson Act, it is appropriate that the Council and NMFS should establish the interpretation of the entity rule under section 210 so that entity determinations are made consistently throughout the AFA.

The Coalition also requests that the Council recommend that the prohibited acts under 50 C.F.R. 679.7 include a specific prohibition on any linkage in cooperative agreements, including tacit agreements between members, to delivery or harvesting of federal groundfish species, except as required for bycatch or prohibited species purposes. The Council has clearly stated that such a prohibition should exist, and inclusion of such a prohibition in the regulations will aid in enforcing this safeguard.

With respect to the draft EA/RIR on AFA measures, in particular chapter 8 regarding Processing Sideboards, the Coalition once again would like to request that the Council implement aggregate caps on an entity-wide basis. As this is an initial review, with final action to be taken at the next Council meeting, the Coalition simply requests that the Council ask that the analysis be updated to reflect events that have transpired over the past six months, including acquisitions of harvesting and processing rights. It appears to the Coalition that many of the staff assumptions concerning the potential adverse impacts of processing sideboards or caps on the value of the AFA pollock entities may be erroneous as evidenced by actions in the marketplace. As a result the analysis of the options should be revised to place greater emphasis on the concerns of the non-AFA processors, and data should be revised to reflect the facts as they are now.

The sale of American Seafoods, Tyson Seafoods, and Victor Seafoods suggests that the value of entering a closed class of pollock processors and being able to utilize cooperative fishing practices may outweigh any disadvantage of crab processing caps, possible groundfish processing caps, or any excessive share cap on pollock processing. The Coalition once again requests that the Council continue to move forward toward adoption of an aggregate processing cap for AFA entities based on their historic processing share of all fully utilized federal groundfish species (other than pollock).

The Council should also recommend in April that an excessive share cap for pollock processing be put in place immediately. This cap should be set at no more than 17.5 percent, and at that level it would still allow just three players to dominate each of the inshore or offshore processing sectors.

The Coalition plans to present testimony on these issues and others that may arise at the Council meeting, and would be happy to answer any questions you or other members of the Council may have.

Thank you for your attention to this letter.

Respectfully,



Earl W. Comstock
Counsel for the Fair Fisheries Coalition

Reported vs Landed Catch

1995-97 reported and landed catch of AFA Catcher Vessels and Catcher Processors

February 4, 2000

Table 11.2: Estimates of Catcher/Processor Groundfish Sideboards Resulting from the Council's Preferred Alternative (Landed Catch/TAC).

Species/Area TAC Groupings	Years 1995-97				1999 TAC	Estimated Cap (mt) Based on 1999 TAC	Ex-Vessel Price (\$/Lb)	Value (\$ Millions)
	Available TAC	Total Catch	Landed Catch	Landed Catch/TAC				
Atka Mackerel - Central AI*	103,100	23,138	22,543	11.5%	10,360	1,191	\$0.05	\$0.14
Atka Mackerel - Eastern AI	55,200	803	177	0.3%	7,784	25	\$0.05	\$0.00
Atka Mackerel - Western AI*	94,557	9,636	8,991	20.0%	12,487	2,497	\$0.05	\$0.29
Arrowtooth Flounder - BSAI	36,873	2,688	76	0.2%	114,201	237	\$0.04	\$0.02
Other Flatfish - BSAI	92,428	12,607	3,243	3.5%	130,900	4,593	\$0.09	\$0.91
Flathead Sole - BSAI	87,975	7,435	1,925	2.2%	65,705	1,438	\$0.13	\$0.40
Greenland Turbot - AI	6,839	33	23	0.3%	2,525	8	\$0.28	\$0.00
Greenland Turbot - BS	16,911	265	121	0.7%	5,126	37	\$0.28	\$0.02
Other Species - BSAI	65,925	5,599	553	0.8%	27,931	234	\$0.03	\$0.01
P. Cod (C/Ps)-BSAI (97 only)	51,450	17,205	12,424	24.1%	38,475	9,290	\$0.21	\$4.30
POP - Bering Sea	5,760	91	12	0.2%	1,190	2	\$0.07	\$0.00
POP - Central AI (96 & 97 only)	6,195	112	3	0.0%	3,561	2	\$0.07	\$0.00
POP - Eastern AI (96 & 97 only)	6,265	141	53	0.9%	3,173	27	\$0.07	\$0.00
POP - Western AI (96 & 97 only)	12,440	356	126	1.0%	5,753	58	\$0.07	\$0.01
Other Rockfish - AI	1,924	97	18	0.9%	583	5	\$0.47	\$0.01
Other Rockfish - BS	1,026	47	5	0.4%	314	1	\$0.47	\$0.00
Rock Sole - BSAI	202,107	17,888	6,317	3.1%	102,000	3,188	\$0.15	\$1.03
Sablefish (Trawl Gear) - AI	1,135	0	0	0.0%	293	0	\$1.77	\$0.00
Sablefish (Trawl Gear) - BS	1,736	9	8	0.4%	569	3	\$1.77	\$0.01
Sharpchin/Northern Rockfish-AI	13,254	1,034	83	0.6%	3,913	25	\$0.23	\$0.01
Squid - BSAI	3,670	877	73	2.0%	1,675	33	\$0.04	\$0.00
Shortraker/Rougheye Rockfish-AI	2,827	75	42	1.5%	625	9	\$0.23	\$0.00
Other Red Rockfish - BS	3,034	174	8	0.3%	227	1	\$0.23	\$0.00
Yellowfin Sole - BSAI	527,000	125,010	100,192	19.0%	176,783	33,610	\$0.08	\$5.78

* Atka mackerel percentages defined in the AFA are included as opposed to the historic catch ratio

Source: NMFS Blend data 1995-97 for catch and 1997 PACFIN reports for ex-vessel prices (the most recent year currently available).

Reported and Landed Catch of groundfish species by AFA catcher vessels in the GOA, 1995-97

Species by TAC Grouping	CV Inshore		CV to IN/MS		CV to MS		CV to CP		Total Catch	
	Reported	Landed	Reported	Landed	Reported	Landed	Reported	Landed	Reported	Landed
Atka Mackerel - CG (1995 - 1996)	7	7	2	2	-	-	1	1	10	10
Atka Mackerel - GOA (1997)	-	-	-	-	-	-	-	-	-	-
Atka Mackerel - WG (1995 - 1996)	227	227	-	-	15	12	6	5	248	244
Arrowtooth Flounder - Central Gulf	7,028	4,481	55	55	166	22	435	435	7,684	4,993
Arrowtooth Flounder - Eastern Gulf	103	64	-	-	23	1	3	1	129	66
Arrowtooth Flounder - Western Gulf	107	46	1	1	3	3	-	-	111	50
Deep Water Flatfish - Central Gulf	3,023	2,968	-	-	143	143	26	26	3,192	3,137
Deep Water Flatfish - Eastern Gulf	88	88	-	-	6	6	14	14	108	108
Deep Water Flatfish - Western Gulf	-	-	-	-	-	-	-	-	-	-
Flathead Sole - Central Gulf	1,139	1,132	1	1	17	17	125	125	1,282	1,275
Flathead Sole - Eastern Gulf	36	36	-	-	1	1	6	6	43	43
Flathead Sole - Western Gulf	90	34	-	-	12	2	1	-	103	36
Northern Rockfish - CG	1,432	1,320	-	-	28	28	4	4	1,464	1,352
Northern Rockfish - EG	5	5	-	-	-	-	-	-	5	5
Northern Rockfish - WG	2	-	-	-	-	-	-	-	2	-
Other Species - GOA	1,656	1,653	2	2	11	11	93	93	1,762	1,759
Pacific Cod (Inshore) - CG	27,148	26,667	-	-	2,586	2,584	168	168	29,902	29,419
Pacific Cod (Offshore) - CG	-	-	37	37	314	314	386	386	737	737
Pacific Cod (Inshore) - EG	275	273	-	-	-	-	5	5	280	278
Pacific Cod (Offshore) - EG	-	-	-	-	-	-	-	-	-	-
Pacific Cod (Inshore) - WG	9,714	9,638	-	-	2,105	2,093	340	329	12,119	-
Pacific Cod (Offshore) - WG	-	-	13	13	109	109	527	527	649	649
Pelagic Shelf Rockfish - CG	438	425	-	-	1	1	6	6	445	432
Pelagic Shelf Rockfish (Nearshore) - CG	1	1	-	-	-	-	-	-	1	1
Pelagic Shelf Rockfish - EG	-	-	-	-	1	1	19	19	20	20
Pelagic Shelf Rockfish - WG	2	1	-	-	-	-	-	-	2	1
Pollock - Chirikof District	29,875	29,335	10	10	41	16	151	151	30,077	29,512
Pollock - EG	4,088	4,075	-	-	1,037	1,037	166	166	5,291	5,278
Pollock - Kodiak	30,689	30,278	9	9	2,951	2,917	659	659	34,308	33,863
Pollock - Shumagin District	57,162	56,600	316	316	2,720	2,702	91	70	60,289	59,688
Pacific Ocean Perch - CG	3,560	3,301	7	7	199	172	107	107	3,873	3,587
Pacific Ocean Perch - EG	7	5	-	-	1	-	146	146	154	151
Pacific Ocean Perch - WG	66	54	-	-	-	-	-	-	66	54
Rex Sole - Central Gulf	710	708	20	20	18	18	47	47	795	793
Rex Sole - Eastern Gulf	112	112	-	-	8	8	9	9	129	129
Rex Sole - Western Gulf	14	2	-	-	-	-	-	-	14	2
Slope Rockfish - CG	17	11	-	-	3	1	-	-	20	12
Slope Rockfish - EG	-	-	-	-	-	-	-	-	-	-
Slope Rockfish - WG	-	-	-	-	-	-	-	-	-	-
Sablefish (Trawl Gear) - CG	627	542	-	-	31	30	15	15	673	587
Sablefish (Trawl Gear) - Southeast	-	-	-	-	-	-	1	1	1	1
Sablefish (Trawl Gear) - WG	4	1	-	-	-	-	-	-	4	1
Sablefish (Trawl Gear) - W Yakutat	10	10	-	-	-	-	11	11	21	21
Shallow Water Flatfish - Central Gulf	7,079	7,049	1	1	101	98	240	240	7,421	7,388
Shallow Water Flatfish - Eastern Gulf	12	12	-	-	8	8	30	30	50	50
Shallow Water Flatfish - Western Gulf	338	215	-	-	18	5	32	11	388	231
Shortraker / Rougheye - CG	182	110	-	-	3	3	3	3	188	116
Shortraker / Rougheye - EG	7	6	-	-	2	2	11	11	20	19
Shortraker / Rougheye - WG	1	1	-	-	-	-	-	-	1	1
Thornyhead - GOA	183	176	-	-	6	6	14	14	203	196

Source: ADF&G Fishtickets and NORPAC Observer data, 1995-97

Reported and Landed Catch of All Eligible AFA Catcher Vessels in the Bering Sea and Aleutian Islands (1995-97)

Species by TAC Grouping	CV Inshore		CV to IN/MO		CV to CP		Total Catch in All Fisheries
	Reported	Landed	Reported	Landed	Reported	Landed	
	15	2	2	1	6	17	
Aka Mackerel - Central Aleutian Islands	15	2	2	1	6	17	17
Aka Mackerel - Eastern Aleutian Islands	452	154	10	2	11	475	171
Arrowtooth Flounder - Bering Sea and Aleutian Islands	2,766	1,361	369	302	245	221	2,151
Other Flatfish - Bering Sea and Aleutian Islands	7,792	4,344	646	481	356	47	2,833
Flathead Sole - Bering Sea and Aleutian Islands	6,293	3,099	613	490	483	346	5,155
Greenland Turbot - Aleutian Islands	4	4	-	-	-	-	4,323
Greenland Turbot - Bering Sea	609	24	23	-	10	14	14
Other Species - Bering Sea and Aleutian Islands	3,500	1,209	3,339	254	12	44	685
Pacific Cod (Fixed Gear) - Bering Sea and Aleutian Islands	50	50	13	13	144	260	1,867
Pacific Cod (Jig Gear) - Bering Sea and Aleutian Islands	-	-	-	-	-	195	258
* Pacific Cod (Trawl Gear, Catcher Vessels) - BSAI (1997 only)	46,264	44,904	4,906	3,820	5,754	5,242	56,584
* Pacific Cod (Trawl Gear, Catcher Processor Vessels) - BSAI (1997 only)	36,116	35,993	238	215	-	-	36,208
Pollock (Inshore) - Aleutian Islands	2,229	706	49	49	1,358	1,358	3,342
Pollock (Inshore) - Bering Sea	1,143,696	1,107,994	23,442	21,706	2,403	1,663	1,170,407
Pollock (Offshore) - Bering Sea	66,192	66,192	235,829	235,829	82,854	82,854	479,004
Pacific Ocean Perch - Bering Sea	7	7	25	16	9	9	578
* Pacific Ocean Perch - Central Aleutian Islands (1996 through 1997 only)	27	27	-	-	-	-	7
* Pacific Ocean Perch - Eastern Aleutian Islands (1996 through 1997 only)	-	-	-	-	-	-	30
Other Rockfish - Aleutian Islands	1	1	1	1	4	4	6
Other Rockfish - Bering Sea	51	30	2	2	1	6	39
Rock Sole - Bering Sea and Aleutian Islands	13,250	3,174	1,119	879	652	387	5,174
Sablefish (Fixed Gear) - Aleutian Islands	-	-	-	-	-	-	-
Sablefish (Fixed Gear) - Bering Sea	-	-	-	-	-	-	-
Sablefish (Trawl Gear) - Aleutian Islands	68	64	1	1	4	4	69
Sablefish (Trawl Gear) - Bering Sea	1	1	-	-	-	-	1
Sharpchin/Northern Rockfish - Aleutian Islands	1	1	12	12	-	-	19
Squid - Bering Sea and Aleutian Islands	1,427	1,339	53	53	20	6	1,426
Shortraker/Rougheye Rockfish - Aleutian Islands	3	3	-	-	-	-	3
Other Red Rockfish - Bering Sea	58	57	13	13	4	11	86
Yellowfin Sole - Bering Sea and Aleutian Islands	33,249	31,295	4,402	4,283	1,043	1,036	39,730

American Fisheries Act Rulemaking and Implementation

NMFS-Alaska Region
February 2000

Rulemaking Schedule

- Emergency Rule #1 (effective December 30, 1999) established permit application procedures for AFA vessels, processors, and inshore co-ops
- Emergency Rule #2 (effective January 21, 2000) implemented comprehensive management measures to govern fishing and processing under the AFA for 2000 fishing year
- July 2000: Rollover of emergency rules
- September 2000: Publication of proposed rule for permanent AFA measures
- December 2000: Publication of final rule for permanent AFA measures

Content of Proposed Rule

- Proposed rule is expected to contain the combined elements of the two emergency rules with the following substantive additions or changes:
- Establish December 1, 2000 final deadline for all permit applications (included in emergency rule extension),
- Revert to Council recommendation on retained catch formula for catcher/processor sideboards,
- Phase-in of CDQ-level observer coverage requirements on AFA catcher/processors and AFA motherships,
- Ongoing revisions to recordkeeping and reporting requirements,
- Possible revision to management of pollock incidental catch allowance (ICA) to remove “topping off” incentives and regulatory discards of pollock by AFA pollock vessels.

Catcher Vessel Sideboard Exemption Clarifications

- Must clarify definition of offshore “landing” for 1700 mt catcher vessel sideboard exemptions. Two options:
 - Each offshore codend transfer equals one landing (definition used in Council analysis)
 - Each offshore delivery day equals one landing (definition of landing used in LLP program)
 - Other definition?
- Must clarify definition of “Pacific cod target” for BSAI Pacific cod 1700 mt exemption.
 - Directed fishing definition: Delivery in which the percentage of Pacific cod in the delivery exceeds the 20% MRB
 - Pacific cod target definition: Delivery in which Pacific cod is the predominant species in the delivery

Inshore Co-op Structure

- Final action at April 2000 Council meeting on any previously analyzed alternative to the structure or qualification criteria for inshore cooperatives could be incorporated into the proposed rule for implementation in 2001.

Emergency Rule Treatment of “Qualified Catcher Vessel” Definition

AFA Paragraph 210(b)(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.

EMERGENCY RULE: Paragraph 679.4(I)(6)(ii)(C)

...For the purpose of this paragraph, a catcher vessel is a qualified catcher vessel if:

(i) it delivered more pollock harvested in the BSAI inshore directed pollock fishery to the AFA inshore processor designated under paragraph (I)(6)(ii)(B) of this section than to any other shoreside processor or stationary floating processor during the year prior to the year in which the cooperative fishing permit will be in effect;

AMERICAN FISHERIES ACT CATCHER VESSEL PERMITS

Issued by
National Marine Fisheries Service - Restricted Access Management

Listed by Vessel Name
REVISED: February 3, 2000

Vessel Name	ADFG	USCG	AFA Permit	Inshore Co-op	Co-op ID	Sector Endorsements			Crab Sideboard Endorsements (2)						Sideboard Exemptions		
						c/p	mth	ins	BBRK	STMBK	PRBK	AIBK	AIRK	BAOT	BABT	BSAI P Cod	GOA GF
AJ	57934	599164	3405	Westward	107			Y	N	N	N	N	N	N	N		
ALASKA ROSE	38989	610984	515	Unalaska	105			Y	N	N	N	N	N	N	N		
ALASKAN COMMAND	57321	599383	3391	Westward	107			Y	N	N	N	N	N	N	N		
ALDEBARAN	48215	664363	901	Akutan	101			Y	Y	N	N	N	N	N	N	Y	
ALEUTIAN CHALLENGER	50570	603820	1687	na	na		Y		N	N	N	N	N	N	N		
ALSEA	40749	626517	2811	UniSea	106			Y	Y	N	N	N	N	Y	N		
ALYESKA	00045	560237	395	Westward	107		Y	Y	N	N	N	N	N	N	Y		
AMBER DAWN	00028	529425	980	Peter Pan	104		Y	Y	N	N	N	N	N	N	N		
AMERICAN BEAUTY	24255	613847	1688	Peter Pan	104		Y	Y	N	N	N	N	N	N	N		
AMERICAN CHALLENGER (4)	62152	633219	4120	na	na	Y			N	N	N	N	N	N	N		
AMERICAN EAGLE	00039	558605	434	UniSea	106			Y	Y	N	N	N	N	Y	Y		
ANITA J	00029	560532	1913	na	na			Y	N	N	N	N	N	N	N		
ARCTIC I	51092	678234	3009	Akutan	101			Y	N	N	N	N	N	N	N		
ARCTIC III	55923	647985	3007	Arctic Ent	102			Y	N	N	N	N	N	N	N		
ARCTIC IV	57440	936302	3388	Arctic Ent	102			Y	N	N	N	N	N	N	N		
ARCTIC VI	64105	988598	4993	Akutan	101			Y	N	N	N	N	N	N	N		
ARCTIC WIND	01112	608216	5137	UniSea	106			Y	N	Y	Y	N	N	Y	Y		
ARCTURUS	45978	655328	533	Akutan	101			Y	Y	N	N	N	N	N	Y		
ARGOSY	38547	611365	2810	UniSea	106			Y	Y	N	N	N	N	Y	Y		
AURIGA	56153	639547	2889	UniSea	106			Y	N	N	N	N	N	N	N		
AURORA	56154	636919	2888	UniSea	106			Y	N	N	N	N	N	N	N		
BERING ROSE	40638	624325	516	Unalaska	105			Y	N	N	N	N	N	N	N		
BLUE FOX	62892	979437	4611	Akutan	101			Y	Y	N	N	N	N	N	Y		Y

Vessel Name	ADFG	USCG	AFA Permit	Inshore Co-op	Co-op ID	Sector Endorsements			Crab Sideboard Endorsements (2)							Sideboard Exemptions		
						c/p	mth	ins	BBRK	STMBK	PRBK	AIBK	AIRK	BAOT	BABT	BSAI P Cod	GOA GF	
CAITLIN ANN	59779	960836	3800	Westward	107			Y	N	N	N	N	N	N	N	N		
CALIFORNIA HORIZON	33697	590758	412	na	na		Y		N	N	N	N	N	N	N	N		
CHELSEA K	62906	976753	4620	Westward	107			Y	N	N	N	N	N	N	N	N		
COLUMBIA	39056	615729	1228	Akutan	101			Y	N	N	N	N	N	N	N	N		
COMMODORE	53843	914214	2657	N. Victor	103			Y	Y	N	N	N	N	N	N	N		
DEFENDER	56676	544030	3257	UniSea	106			Y	N	N	N	N	N	N	N	N		
DESTINATION	60655	571879	3988	Unalaska	105			Y	N	N	N	N	N	N	N	N		
DOMINATOR	08668	602309	411	Akutan	101			Y	Y	N	N	N	N	N	N	Y		
DONA LILIANA	55199	651752	2770	Akutan	101			Y	Y	N	N	N	N	N	N	N		
DONA MARTITA	51672	651751	2047	Akutan	101			Y	Y	N	N	N	N	N	N	Y		
DONA PAULITA	55153	637744	2769	Akutan	101			Y	N	N	N	N	N	N	N	N		
ELIZABETH F	14767	526037	823	na	na			Y	Y	N	N	N	N	N	N	N		Y
EXCALIBER II	54653	636602	410	N. Victor	103			Y	N	N	N	N	N	N	N	N		Y
EXODUS	33112	598666	1249	Akutan	101			Y	N	N	N	N	N	N	N	N		Y
FIERCE ALLEGIANCE (4)	55111	588849	4133	Westward	107			Y	Y	N	N	N	N	N	Y	Y		
FLYING CLOUD	32473	598380	1318	Akutan	101			Y	Y	N	N	N	N	N	N	Y		
FORUM STAR	59687	925863	4245	na	na		Y		N	N	N	N	N	N	N	N	Y	
GOLD RUSH	40309	521106	1868	N. Victor	103			Y	N	N	N	N	N	N	N	N	Y	Y
GOLDEN DAWN	35687	604315	1292	Akutan	101			Y	Y	N	N	N	N	N	N	Y		
GOLDEN PISCES (4)	32817	599585	586	Akutan	101			Y	Y	N	Y	N	N	Y	Y	Y	Y	
GREAT PACIFIC	37660	608458	511	Unalaska	105			Y	N	N	N	N	N	N	N	N		
GUN-MAR	41312	640130	425	UniSea	106			Y	Y	N	N	N	N	N	N	Y		
HALF MOON BAY (4)	39230	615796	249	N. Victor	103			Y	N	N	N	N	N	N	N	N	Y	
HICKORY WIND	47795	594154	993	Westward	107			Y	N	N	N	N	N	N	N	N		Y
LESLIE LEE	56119	584873	1234	Akutan	101			Y	N	N	N	N	N	N	N	N		Y
MAJESTY	60650	962718	3996	Akutan	101			Y	Y	N	N	N	N	N	N	Y		
MARCY J	00055	517024	2142	Akutan	101			Y	Y	N	N	N	N	N	N	N		
MARGARET LYN	31672	615563	723	na	na			Y	Y	Y	N	N	N	N	N	N		
MAR-GUN	12110	525608	524	na	na			Y	Y	Y	N	N	N	N	N	Y		
MARK I	06440	509552	1242	na	na			Y	Y	Y	N	N	N	N	N	Y		
MESSIAH	66196	610150	6081	Unalaska	105			Y	N	N	N	N	N	N	N	N	Y	
MISS BERDIE	59123	913277	3679	Akutan	101			Y	N	N	N	N	N	N	N	N		
MISTY DAWN	68858	926647	5946	na	na			Y		N	N	N	N	N	N	N		
MORNING STAR	38431	610393	208	Unalaska	105			Y	N	N	N	N	N	N	N	N		
MS AMY	56164	920936	2904	Unalaska	105			Y	N	N	N	N	N	N	N	N		
MUIR MILACH	41021	611524	480	na	na		Y		Y	N	N	N	N	N	N	N		
NEAHKAHNIE	32858	599534	424	na	na		Y		N	N	N	N	N	N	N	N		
NORDIC FURY	00200	542651	1094	N. Victor	103			Y	Y	Y	N	N	N	N	N	Y		
NORDIC STAR	00961	584684	428	UniSea	106			Y	Y	Y	N	N	N	N	N	Y		

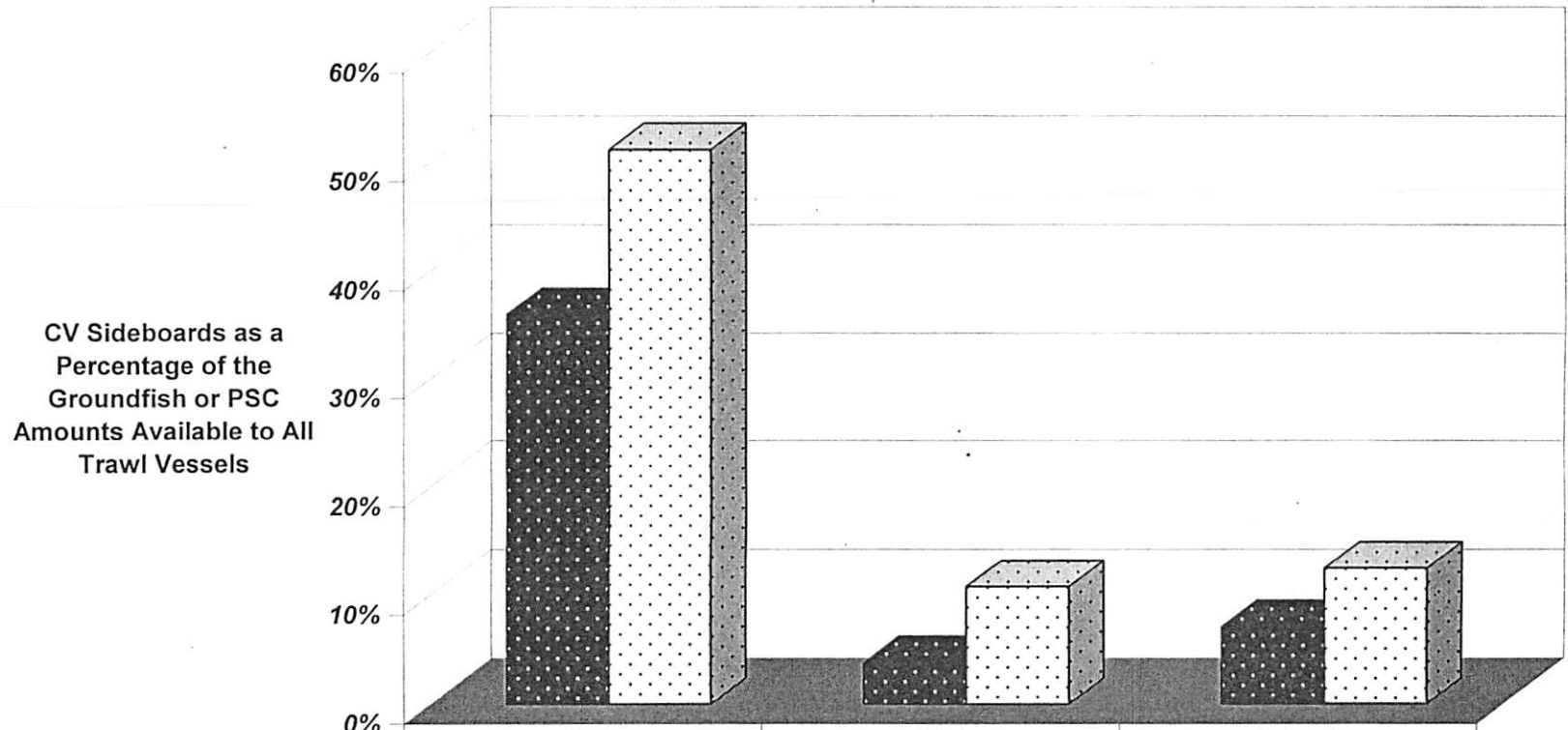
Vessel Name	ADFG	USCG	AFA Permit	Inshore Co-op	Co-op ID	Sector Endorsements			Crab Sideboard Endorsements (2)						Sideboard Exemptions			
						c/p	mth	ins	BBRK	STMBK	PRBK	AIBK	AIRK	BAOT	BABT	BSAI P Cod	GOA GF	
VIKING EXPLORER	36045	605228	1116	Akutan	101			Y	Y	N	N	N	N	N	N	Y		
WALTER N	34919	257365	825	Peter Pan	104			Y	N	N	N	N	N	N	N			Y
WESTERN DAWN	22294	524423	134	Unalaska	105	Y		Y	N	N	N	N	N	N	N			
WESTWARD I	53247	615165	1650	Westward	107			Y	N	N	N	N	N	N	N			

Notes:

1. All permits are currently "Interim".
2. Crab Endorsements are: BBRK (Bristol Bay red king); STMBK (St. Matthew blue king); PRBK (Pribilof Is. Red/blue king); AIBK (Aleutian Is. Blue king); AIRK (Aleutian Is. Red king); BAOT (C. Opilio); BABT (C. Bairdi)
3. An application to replace PACIFIC ALLIANCE with MORNING STAR (618797) is not yet processed.
4. Revisions: Original list published 1/16/00.
 - 1/21/00. F/V Fierce Allegiance. List corrected to reflect BSAI C. opilio endorsement (permit was correctly issued).
 - 1/25/00. F/V Half Moon Bay. Permit revised by request to include BSAI P. cod sideboard exemption. Letter sent providing 60 days in which to submit evidence to support the claimed exemption.
 - 1/28/00. F/V Golden Pisces. Permit revised by request to include BSAI P. cod sideboard exemption. Letter sent providing 60 days in which to submit evidence to support the claimed exemption.
 - 1/31/00. F/V Pacific Alliance. Permit revised by request to delete Inshore delivery endorsement.
 - 2/3/00. F/V American Challenger. Permit revised by request to reflect new vessel owner.

Hendershot
C-3

Comparison of CV Groundfish and PSC Sideboard Ratios



	Cod	Oflat	Yellowfin
■ CV Groundfish Sideboard based on Landed Catch as a Percentage of TAC	36%	4%	7%
□ CV PSC Sideboard Based on Landed Catch as a Percentage of Retained Catch	51%	11%	12%

Source: 1995-1997 Total Allowable Catches - NPFMC AFA Sideboard Document, January, 2000, Table 11.2; 1995-1997 Catcher Vessel Landed Catch - NPFMC AFA Sideboard Document, January 2000, Table 11.3; 1995-1997 Total Retained Catch - NMFS Catch and Discard Reports, NMFS Internet Web Site.

Groundfish Forum's suggestions for analysis of the need for processor shares 2/12/00

1. **Evaluation of potential for advantages resulting from AFA for competing more effectively in first wholesale markets upon which non-AFA sector depends**
 - a. **List of primary and secondary product forms for flatfish (or all non-pollock species) currently produced by non-AFA sector and monthly quantity and price data (industry will provide in audited form).**
 - b. **monthly catch of non-pollock species**
 - c. **evaluation of degree to which prices determined in those markets are sensitive to increases in quantity**
2. **Product forms and competition: Discussion of restricting the expansion of AFA processing sector based on non-competing product forms (surimi, fish meal).**
3. **Evaluation of the potential that inadequate processing sideboards could increase capitalization of non-pollock fisheries, accelerate the race for groundfish and PSC, and limit or remove potential for a non-AFA sector industry-funded buyback**
- Discussion of AFA consolidation and coop share sales thus far. Evaluation of degree to which these share sales may be capturing long term (beyond 2004) economic benefits (resource rents).**
5. **Description of "stacking" of vessel quotas among AFA vessels to date; discussion of potential for similar asset consolidation among AFA processors and potential associated advantages to those processors in non-pollock fisheries.**