

June

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver *Chris*
Acting Executive Director

DATE: May 30, 2001

SUBJECT: American Fisheries Act

ESTIMATED TIME 6 HOURS

ACTION REQUIRED

- (a) Final action on co-op leasing proposal.
- (b) Review DRAFT report to Congress and provide direction.
- (c) Extension of emergency rule for 2001.
- (d) Review industry proposals on bycatch measures.

BACKGROUND

(a) Co-op leasing proposal

In April we reviewed the draft analysis for an amendment to the AFA regulations which would allow inshore pollock co-ops to contract with other AFA-qualified vessels outside of that co-op, for the purpose of harvesting the co-op's pollock allocation. With some minor changes the Council approved the document for public review and final action at this meeting. The Executive Summary from that analysis is attached as Item C-3(a).

(b) DRAFT report to Congress on AFA implementation

We have compiled, and mailed to you last week, a draft report to Congress and the SOC, as stipulated in the Act. While technically due last fall, we delayed submission of this report so that we would have a full year of both inshore and offshore co-op experience. This is a first draft, and we intend to further distill this into a more concise report, particularly the section on community impacts. I envision a report of less than 50 pages, along with an Executive Summary, with several attachments containing further detail. Darrell Brannan and Dr. Mike Downs will summarize the draft for you and we will be seeking your guidance on how to proceed. One option would be to take comments and guidance from the Council at this meeting, and allow an additional three weeks for further input from the public or Council members, which we would incorporate as appropriate, and go ahead and submit the report (perhaps after distributing to Council members for any final comments).

(c) Extension of Emergency Rule for 2001

Item C-3(c)(1) is a recent letter from NMFS explaining their intent, with Council concurrence, to extend the emergency interim rule implementing certain provisions of the AFA through 2001. This would simply extend, through 2001, what the Council already approved last October, and permanent rulemaking would take over in 2002. Item C-3(c)(2) is a letter from Icicle Seafoods requesting the Council to consider amendments

to the AFA regulations which would allow floating processors to operate in more than one geographic location in the BSAI while processing pollock. I am unsure whether such a proposal could be incorporated in the permanent rulemaking which the Council will review later this fall, or whether it needs to be considered in the larger context of staff tasking.

(d) Industry proposals on bycatch management

Last October you took action to establish BSAI pollock processing caps per the stipulations of the Act. At that time you did not take specific action with regard to groundfish processing sideboards, but indicated that we would revisit this issue through a variety of potential measures, including processing sideboards as described in the existing analysis, and including possible adjustments to the IR/IU provisions which are scheduled to go into effect in 2003. During that discussion you also indicated a desire to consider, within that package, possible bycatch reduction measures to further address provisions of the Sustainable Fisheries Act, and invited industry to submit potential measures for your review at this meeting. Formal analysis of such measures, including IR/IU adjustments, would not necessarily need to begin immediately, given that we have until 2003 before the IR/IU flatfish measures take effect. Item C-3(d) is a letter from the Groundfish Forum with their suggestions, which include: (1) modification of the flatfish IR/IU requirements; (2) LLP recency for the non-AFA trawl Cps; (3) reduction in the total BSAI trawl halibut mortality cap by 10%; and, (4) implementation of the halibut mortality avoidance program (HMAP).

PUBLIC REVIEW DRAFT

EXECUTIVE SUMMARY

The proposed amendment would alter the American Fisheries Act (AFA) inshore cooperative structure. The change would allow one inshore cooperative to contract with members of another inshore cooperative to harvest a portion of their BS/AI pollock allocation. This is currently not allowed, as only members of a cooperative are allowed to harvest any portion their cooperative's allocation.

Limiting the harvest fleet to the members of a cooperative may result in some cooperatives not being able to harvest their entire pollock allocation or force them to do so in an inefficient manner. While inshore cooperatives were able harvest almost all (at least 98.5%) of their allocation during the 2000 fishing season, members of the inshore sector remain concerned that under the right conditions they may not be able to achieve a full harvest. As a remedy to the perceived problem, most members of the inshore sector have agreed to support the following problem statement and alternative management measure. Broad industry support is usually a good indication that the proposed amendment is considered to have positive or neutral impacts on most industry sectors.

Problem Statement:

The Council formally adopted the following problem statement for this amendment:

"Section 210(b)(1)(B) of the AFA and any regulations derived from that section of the Act allow only those catcher vessels that are members of an inshore cooperative to harvest and deliver pollock allocated to that cooperative. As a practical matter, it is therefore, not possible under the AFA for a catcher vessel that is a member of a cooperative to assign its right to harvest its cooperative shares to another inshore AFA vessel that is not also a member of the same cooperative, nor is it possible for a cooperative to contract with non-member AFA catcher vessels to assist in harvesting its cooperative allocation."

Alternatives Under Consideration:

Alternative 1: (Status Quo) Inshore catcher vessels could only harvest pollock allocated to their cooperative.

Current regulations allow only those catcher vessels that are members of an inshore cooperative to harvest and deliver that cooperative's allocation of BS/AI pollock. Selection of the status quo would keep those regulations in place. If a member of the cooperative was unable to harvest their share of the cooperative's allocation they would need to find another member of their cooperative to harvest those fish, or they would not be caught. It may also force vessels that do not want to participate in the fishery that season to gear-up and fish, if an agreement cannot be reached with another member of their cooperative to fish their allocation.

Alternative 2: Allow inshore cooperatives to contract with AFA inshore cooperative member vessels outside of their cooperative.

If an inshore AFA cooperative catcher vessel owner notifies its cooperative that the cooperative member's catcher vessels will be unavailable to harvest pollock during all or any portion of a pollock season, the cooperative may, with the permission of their associated processor, contract with other AFA eligible inshore catcher vessels that are members of another inshore cooperative to harvest pollock to which the cooperative is entitled.

Any pollock delivered by a catcher vessel pursuant to this provision shall not affect the cooperative eligibility of the catcher vessel. Therefore, only the harvest of its own cooperative's allocation will count towards determining where it delivered the majority of its pollock in a year.

Biological Impacts:

None of the alternatives under consideration would affect the prosecution of the BS/AI pollock fisheries in a way not previously considered in consultations. The proposed alternatives are designed to slightly alter the distribution of catch among a group of 100 trawl catcher vessels fishing for pollock in the inshore sector of the BS/AI. None of the alternatives are expected to affect takes of species listed under the Endangered Species Act. In addition, the alternatives are not expected to substantially alter bycatch or discard rates of other groundfish or PSC species.

Economic Impacts:

Increased net benefits to the Nation are expected to result from implementing the proposed amendment. As catcher vessels are able to negotiate with an expanded group of vessel owners, the demand for their quota may increase, allowing them to lease their quota at a higher price. Therefore they are able to derive more revenue from the same quota. The owner of the vessel purchasing their pollock may have a lower cost structure than vessels within their cooperative. Harvesting the pollock at a lower cost would allow them to pay a higher price and still derive benefits from the lease. Therefore, both parties to the lease could be better off as a result of implementing the proposed amendment.

Members of industry are concerned that current and future management measures to protect Steller sea lions may place greater economic and safety burdens on small independent vessels. This measure is viewed as a means to help limit the negative impacts caused by those pending regulations. It may also mitigate the effects of other regulatory requirements that could prevent a vessel from more efficiently utilizing the pollock assigned to it by the cooperative. For example, the vessel replacement clause in the AFA which does not allow a vessel owner to replace an inefficient vessel.

Inshore cooperatives should not be harmed by passage of this amendment. They will retain control over the quota, since it is the cooperatives that will lease the pollock harvest rights and not individual members. Therefore, leasing pollock for harvest by an outside vessel will require approval of the cooperative membership, and the vessel owner leasing the pollock will be bound by the by-laws of the cooperative.

Processors should not be negatively impacted by implementing this amendment because they must approve any lease of pollock outside the cooperative in which they are associated before it can take place. Catcher vessels that lease pollock from another cooperative will be required to deliver the pollock to the cooperative's processor, unless the processor agrees to another arrangement and they comply with the 10% rule. They will also be required to abide by the same delivery schedules and cooperative agreements that other members of that cooperative fish under. Also, any pollock delivered by a vessel as a result of a lease will not count toward determining where that vessel delivered the majority of its pollock. Therefore, pollock delivered as a result of a lease will not affect the vessel's eligibility to join their cooperative the following year.

Few negative impacts on harvest vessels are expected to result from implementing the proposed alternative. If they did occur, they would likely be as a result of freeing up additional capacity to harvest species other than BS/AI pollock, or catcher vessels needing to pay more to be able to lease pollock. The spill-over impacts have been addressed by the Council through AFA sideboard amendments. Those management measures ensure that inshore cooperative vessels will not increase their harvest of FMP species as a result of cooperatives. A few vessels were exempted from these sideboards. Vessels exempted from the GOA groundfish sideboards would only be allowed to lease their BS/AI pollock in a given year if they do not exceed their historical groundfish catch in the Gulf that year (i.e. not take advantage of their GOA groundfish

PUBLIC REVIEW DRAFT

sideboard exemption). Vessels exempted from the BS/AI Pacific cod sideboards would be allowed to lease their BS/AI pollock, but the magnitude of the impact on the BS/AI Pacific cod trawl fleet is unknown. However, the impacts would be expected to be small, and those that do result may be dealt with through negotiations between the inshore cooperatives and the members of the BS/AI cod fleet. Only one vessel is exempted from BS/AI crab sideboards and that vessel had always participated in those crab fisheries in the recent past. Therefore, the combined impact of this proposed amendment and its crab exemption is not expected to have negative impacts on the remaining crab industry.

Other persons that may be negatively impacted are the members of a cooperative that would need to pay higher prices to lease pollock, or they are priced out of the lease market. If a cooperative felt that the increased competition was harming their membership, they could vote to restrict leases to members outside their cooperative even though Federal regulations allow those leases to occur.

NMFS can use their current electronic logbook system to monitor and enforce the proposed amendment. The operator of each inshore processor would be responsible for making certain that the correct cooperative number is reported for each inshore pollock delivery. In addition, the managers of each of the cooperatives involved would be required to report on their weekly cooperative harvest report any landings made on contract by non-member vessels.

NMFS would also require: (1) written permission from the vessel's home cooperative, (2) a written contract with the new cooperative that details the terms under which the vessel will fish for the new cooperative, and (3) written permission from the new cooperative's affiliated processor, for pollock to be harvested by a vessel outside a cooperative. If these requirements are not met, NMFS will consider the contract null and void and count the harvest against the vessel's home cooperative. NMFS will also develop rules for when a vessel is fishing for more than one cooperative on the same trip.

Neither of the alternatives are expected to result in a "significant regulatory action" as defined in E.O. 12866. The proposed management measures will likely benefit or have no impact on most of the directly affected small entities. However, the proposed action may cause some small entities to pay more to lease pollock. As a result other small entities will likely generate higher revenues.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

AGENDA C-3(c)(1)

JUNE 2001

May 14, 2001

RECEIVED
MAY 21 2001
N.P.F.M.C.

Mr. David Benton, Chairman
North Pacific Fisheries Management Council
605 West 4th, Suite 306
Anchorage, Alaska 99501-2252

Dear Dave:

National Marine Fisheries Service (NMFS) intends, with the Council's concurrence, to extend the emergency interim rule that supersedes and revises certain provisions of the American Fisheries Act (AFA) for 2001. In October 2000, the Council voted 10-1 to recommend this emergency interim rule. We published the attached emergency interim rule in the Federal Register on January 22, 2001 (66 FR 7327). The rule expires on July 17, 2001. We received no public comments on the rule during the comment period, which expired on February 21, 2001.

This action is necessary to continue to allow inshore catcher vessel cooperatives to organize in the manner recommended by the Council and requested by industry. In addition, this action maintains sideboard protection measures for vessels and processors not eligible to participate in the AFA directed pollock fishery. Such sideboard protections must remain implemented to prevent adverse economic impacts on the participants of other groundfish and crab fisheries.

Sincerely,

James W. Balsiger
Administrator, Alaska Region

Attachment



[FR Doc. 01-1744 Filed 1-18-01; 3:25 pm]
BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010111009-1009-01; I.D. 122600A]

RIN 0648-AO72

Fisheries of the Exclusive Economic Zone Off Alaska; Emergency Interim Rule to Revise Certain Provisions of 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 emergency interim regulations to supersede certain provisions of the American Fisheries Act (AFA). The elements of this emergency interim rule include a revised definition of "qualified catcher vessel" for the purpose of determining eligibility for inshore cooperatives, a revised formula to allocate the Bering Sea and Aleutian Islands Management Area (BSAI) pollock total allowable catch (TAC) among inshore cooperatives, a revised formula for establishing crab processing sideboard limits, revised observer coverage requirements for catcher/processors and motherships participating in the AFA and Community Development Quota program (CDQ) pollock fisheries, and revised authority to publish and manage AFA catcher/processors and AFA catcher vessel groundfish harvesting sideboards. This action is necessary to implement requirements of the AFA for the 2001 fishing year. The intended effect of this action is to further the socioeconomic objectives of the AFA.

DATES: Effective January 18, 2001 through July 17, 2001. Comments on this emergency interim rule must be received by February 21, 2001.

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 may also be sent via facsimile (fax) to (907) 586-7465. Comments will not be accepted if sent

by e-mail. Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for this action may be obtained from Alaska Region, NMFS.

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 (EEZ) of the BSAI and Gulf of Alaska (GOA) under the fishery management plans (FMPs) for groundfish in the respective areas. With Federal oversight, the State of Alaska 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 part 600.

American Fisheries Act—Background Information

The AFA (Div. C, Title II, Subtitle II, Pub. L. No. 105-277, 112 Stat. 2681 (1998)) enacted on October 21, 1998, made profound changes to the BSAI pollock fishery and, to a lesser extent, to the groundfish and crab fisheries within the EEZ off Alaska. The major provisions of the AFA were implemented on an interim basis by emergency rule published January 28, 2000 (65 FR 4520, extended 65 FR 39107, June 23, 2000). Detailed information on the AFA may be found in the January 2000 emergency interim rule and in the EA/RIR developed for that emergency interim rule. The Council has prepared FMP Amendments 61/61/13/8 to implement the major provisions of the AFA (Amendment 61 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, Amendment 61 to the FMP for Groundfish of the Gulf of Alaska, Amendment 13 to the FMP for the King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands, and Amendment 8 to the FMP for the Scallop Fishery off Alaska). If the amendments are approved, implementing regulations are expected to be effective by mid-2001. This emergency interim rule gives immediate effect to certain revisions necessary for the start of the groundfish fisheries in 2001.

Development of Emergency Interim Rule

The measures contained in this emergency interim rule were developed over the course of several Council meetings held June through October 2000.

In June 2000, the Council examined the AFA definition of "qualified catcher vessel" in paragraph 210(b)(3) of the AFA and recommended that the definition be superseded by the revision contained in this emergency interim rule to allow a retired or inactive vessel to maintain membership in an inshore cooperative. In addition, the Council examined the AFA formula used to establish allocations for inshore cooperatives and the inshore "open access" fishery and recommended that the formula be superseded by a new formula set out in this emergency interim rule.

In September 2000, the Council examined proposed changes to crab processing sideboard limits and adopted a revision to the years used to calculate crab processing sideboard amounts by using 1995 through 1998 to determine crab processing history and counting the 1998 processing year twice (double weight).

In October 2000, the Council reviewed the implementation schedule for Amendments 61/61/13/8 and determined that its previous recommendations with respect to the definition of "qualified catcher vessel," the inshore cooperative allocation formula, and the crab processing sideboard limits should be implemented by emergency interim rule in order to be effective by the start of the 2001 pollock fishery. In addition, the Council recommended that the change in observer coverage for catcher/processors and motherships participating in the pollock CDQ fishery should be revised. These recommendations, along with the 2001 catcher/processor and catcher vessel harvesting sideboards publishing authority, comprise the elements of this action.

This emergency interim rule would be superseded by the final rule to implement FMP Amendments 61/61/13/8, if such a final rule is approved by NMFS. FMP Amendments 61/61/13/8 supersede some of the requirements found in the AFA. All the management measures implemented by this emergency interim rule are the same as a number of the management measures in FMP Amendments 61/61/13/8. The primary five elements of this emergency interim rule are summarized below.

1. Definition of Qualified Catcher Vessel

In June 2000, the Council adopted a definition of "qualified catcher vessel" that would supersede the definition contained in the AFA. Paragraph 210(b)(3) of the AFA currently defines "qualified catcher vessel" as follows:

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

This definition effectively prevents the retirement of catcher vessels that are no longer needed to harvest a cooperative's annual allocation of pollock because each vessel is required to make a qualifying landing every year to remain in a cooperative in each subsequent year. The Council is recommending that this definition be replaced with a new definition of "qualified catcher vessel." Under this new definition, an inactive vessel would remain qualified to join the cooperative that is associated with the processor to which it delivered more pollock than any other inshore processor during the last year in which the vessel participated in the inshore sector of the BSAI-directed pollock fishery. The Council's recommended change would not affect vessels that were active in the BSAI pollock fishery during the year prior to the year in which the cooperative fishing permit will be in effect.

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

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

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

In making the recommendation to supersede the AFA definition of "qualified catcher vessel," the Council determined that this change meets the

criteria set out in paragraph 213(c)(1) of the AFA because the action would mitigate adverse effects on owners of fewer than three catcher vessels in the directed pollock fishery. Such vessels are smaller, on average, than the processor-owned catcher vessel fleets, and most of the smallest AFA catcher vessels are independently owned. Many of these smaller independently owned vessels may be less safe to operate in the wintertime at great distances from shore under new Steller sea lion protection measures that have restricted fishing in most nearshore areas to protect Steller sea lion critical habitat (65 FR 3892, January 25, 2000, extended 65 FR 36795, June 12, 2000). Maintaining the existing requirement that all such vessels fish each year to remain qualified to join a cooperative each following year could force small catcher vessel owners to take unnecessary risks.

In addition, some catcher vessels that are eligible to fish for pollock under the AFA have since been lost or may no longer be safe to operate without major rebuilding. Under this change, the owners of such vessels could remain in cooperatives without the need to rebuild or deploy new vessels into the BSAI pollock fishery. In making this recommendation, the Council noted that a primary objective of the AFA is to reduce excess capacity in the BSAI pollock fishery and that changing the definition of "qualified catcher vessel" will further that objective.

Finally, the Council determined that special circumstances existed in the fishery that made immediate emergency action necessary. During the 2000 fishery, the owners of a number of smaller AFA catcher vessels had intended to fish for BSAI pollock during the C/D season in order to qualify for cooperatives. However, on August 7, 2000, the United States District Court for the Western District of Washington issued an Order enjoining all groundfish trawling within Steller sea lion critical habitat west of 144° W. long. until further order of the Court. The injunction became effective at 11 a.m. Alaska time on August 8, 2000. As a result of the injunction prohibiting trawling in critical habitat, the owners of many of the smaller AFA catcher vessels chose not to fish during the C/D season due to the distances from shore required to fish under the injunction. These vessel owners believed that the Council's action to supersede the AFA definition of qualified catcher vessel would allow them to maintain membership in their cooperatives without the need to participate in the 2000 C/D season under the injunction. The Council noted

that emergency action would be required to allow such vessels to remain in cooperatives for the 2001 fishing year and determined that such emergency action was warranted, given the extraordinary and unforeseen circumstances of the injunction.

2. Inshore Cooperative Allocations

Subparagraph 210(b)(1)(B) of the AFA sets out a specific formula for determining the allocation of pollock to each inshore cooperative as follows:

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

In other words, under the AFA, each inshore cooperative's pollock allocation is a percentage of the inshore sector allocation that is equal to the aggregate inshore landings by all member vessels in the cooperative from 1995 through 1997 relative to the total inshore landings during that period.

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

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

Using this authority, the Council is recommending three changes that would supersede the inshore cooperative allocation formula set out in the AFA. These changes are contained in this emergency interim rule and described below.

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

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

The Council believes that catcher vessels with sustained participation delivering to catcher/processors, but excluded from delivering to catcher/processors under subsection 208(b) of the AFA, should not be disadvantaged by the new management regime. The Council chose 499 mt as the threshold based on information presented in an analysis, which indicated that 499 mt provided a reasonable distinction between vessels with significant history of delivering to catcher/processors and vessels that had only incidental deliveries to catcher/processors during the 1995 through 1997 qualifying period. Only deliveries to catcher/processors would be considered for such "compensation" and not deliveries made to the three motherships listed in subsection 208(d) of the AFA because any vessel with more than 250 mt of pollock deliveries to one of the three AFA motherships during the qualifying period earned an endorsement to deliver pollock to AFA motherships under the AFA and "lost" no fishing privileges as a result of the AFA.

b. *Using the best 2 of 3 years from 1995-1997.* The second change would modify 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. This change, along with the offshore compensation formula, was unanimously endorsed by industry representatives during public testimony. These changes are viewed as a more equitable method of allocating pollock catch because some vessels may have missed all or part of the inshore fishery in a given year due to such unavoidable circumstances as vessel breakdowns or lack of markets.

c. *Revised open access formula.* Finally, the third change to the allocation formula would reduce the denominator in the formula from "the aggregate total amount of pollock harvested in the directed pollock fishery for processing by the inshore component" to "the aggregate total amount of pollock harvested by AFA catcher vessels with inshore sector endorsements." The effect of this change is to eliminate from the formula

all 1995 through 1997 catch history made by vessels that are not AFA catcher vessels with inshore sector endorsements. One consequence of the current formula is that all inshore catch history made by non-AFA vessels and by AFA catcher vessels without inshore endorsements defaults to the open access sector. The Council believes that this results in an inshore open access allocation that is unfairly inflated to the detriment of vessels in cooperatives. Inflating the open access quota in such a manner provides incentives for vessels to leave cooperatives, which could prevent rationalizing the BSAI pollock fishery, an objective of AFA. Under this recommended change, the cooperative and the open access sectors would be treated equally, and allocations to both sectors would be based only on the fishing histories of the vessels in each group. All three of these changes will be incorporated into proposed FMP Amendments 61/61/13/8 as Council recommendations that supersede the AFA and are included in this emergency interim rule for implementation in 2001.

3. Crab Processing Sideboards

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

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

These crab processing limits were intended by Congress to prevent negative spillover effects of AFA on other fisheries, hence the term "sideboards." NMFS first implemented these limits by emergency interim rule published January 28, 2000 (65 FR 4520, extended at 65 FR 39107). However, in September 2000 the Council recommended that the years used to calculate crab processing sideboard amounts be revised by adding 1998 and by giving it a double weight. This action

was based, in part, on concerns expressed by some crab fishermen and AFA processors that too many non-AFA processors have left the crab fisheries since 1997 and that the 1995 through 1997 years did not accurately reflect the composition of the crab processing industry at the time of passage of the AFA. Some crab fishermen testified to the Council that AFA crab processing limits were restricting markets for crab fishermen and having a negative effect on exvessel prices. By adding 1998 and by giving it a double weight relative to 1995 through 1997, the Council believes that the crab processing limits would more accurately reflect the status of the crab processing industry at the time of passage of the AFA and that such a change to supersede this provision of the AFA is warranted to mitigate adverse effects on markets for crab fishermen.

4. CDQ and AFA Observer Requirements

Under the emergency interim rules governing the AFA pollock fishery in 1999 and 2000, AFA catcher/processors and motherships were required to have one lead CDQ observer at all times, but the second observer requirement could be filled by any NMFS-certified observer. However, the CDQ program imposed a higher requirement of one lead CDQ observer and a second CDQ observer for catcher/processors and motherships participating in the CDQ pollock fishery. Under this emergency interim rule, the observer requirements for catcher/processors and motherships in the AFA and CDQ pollock fisheries would use the same standard requiring at least one lead CDQ observer aboard at all times, but allow the second observer position to be filled by any NMFS-certified observer.

Observer requirements in the AFA program and the directed pollock fishery in the CDQ program are reasonably consistent. The data quality needs for CDQ and AFA pollock catch accounting are virtually identical. Further, vessels will often fish for CDQ and AFA-allocated pollock during the same fishing trip, and similar observer requirements will simplify observer deployment logistics. Therefore, NMFS is amending the current observer requirements under the CDQ program for only those catcher/processors and motherships participating in the directed fishery for pollock CDQ to be consistent with the AFA observer requirements for those vessel classes.

5. Catcher/Processor and Catcher Vessel Groundfish Sideboards

Section 211(a), (b), and (c) of the AFA requires NMFS to establish sideboard

limits for AFA catcher/processors and AFA catcher vessels. This requirement of the AFA was implemented through the emergency interim rule published January 28, 2000 (65 FR 4520, extended 65 FR 39107, June 23, 2000). Upon recommendation of the Council, this emergency interim rule takes a more streamlined approach for publishing and managing sideboard amounts. Under this action, NMFS will simply publish catcher/processor and catcher vessel groundfish sideboard amounts based on recommendations from the Council and manage these sideboards through directed fishing closures. This approach is distinct from the previous emergency rule, which specified each individual sideboard amount in regulation although the practical effect will be the same. The Council determined that emergency action is necessary to implement the AFA-mandated sideboard measures for the start of the 2001 fishing year. In the absence of sideboards, participants in other fisheries could be severely disadvantaged by an influx of unregulated fishing effort from AFA vessels.

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. The EA/RIR may be obtained from the Alaska Regional Office (see ADDRESSES).

This emergency interim rule has been determined to be not significant for the purposes of Executive Order 12866.

Because 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 inapplicable.

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 procedure would be impracticable and contrary to the public interest. This action is necessary to provide participants in the BSAI groundfish fishery the opportunity to reorganize inshore catcher vessel cooperatives for the 2001 fishing year in the manner recommended by the Council and requested by the industry. This action is also 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. The need to avoid delaying the start of the pollock season to implement these measures constitutes good cause to waive, pursuant to authority set forth at 5 U.S.C. 553(d)(3), the 30-day delay in effective date otherwise required by 5 U.S.C. 553(d).

On November 30, 2000, NMFS issued a new programmatic Biological Opinion under section 7 of the Endangered Species Act. This opinion is comprehensive in scope and considers the fisheries and the overall management framework established by the respective FMPs to determine whether that framework contains necessary measures to ensure the protection of listed species and critical habitat. The opinion determines whether the BSAI or GOA groundfish fisheries, as implemented under the respective FMPs, jeopardize the continued existence of listed species in the areas affected by the fisheries (i.e., the action areas) or adversely modify critical habitat of such species. NMFS determined that fishing activity under the FMPs is likely to jeopardize the continued existence of the western population of Steller sea lions and is likely to adversely modify their designated critical habitat. NMFS has developed a reasonable and prudent alternative (RPA) with multiple components for the groundfish fisheries in the BSAI and GOA. The components of the RPA address (1) the harvest strategy for fish removal at the global or FMP level and (2) the protection of Steller sea lions from groundfish fisheries at global and regional scales and in both temporal and spatial dimensions. Nothing in this action is expected to impact endangered or threatened marine mammals and fish or bird species in ways that were not considered in the current or previous consultations.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 16, 2001

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 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, the definition of "AFA qualified catcher vessel" is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

AFA qualified catcher vessel (applicable through July 17, 2001) is a vessel that delivered more pollock to the AFA inshore processor that is associated with the inshore catcher vessel cooperative that the vessel wishes to join than to any other inshore processor in the last year in which the vessel engaged in directed fishing for pollock in the BSAI for delivery to the inshore sector. Notwithstanding the definition of this term at paragraph 210(b)(3) of the AFA, and for purposes of determining eligibility to participate in an AFA inshore cooperatives under § 679.20(a)(5)(i)(D).

* * * * *

3. In § 679.20, paragraphs (a)(5)(i)(D), (a)(5)(i)(E), and (c)(3)(iv) are added, and (d)(1)(iv) is suspended and (d)(1)(v) is added to read as follows:

§ 679.20 General limitations.

* * * * *

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

(D) *AFA sectoral allocations* (applicable through July 17, 2001). Allocations of BSAI pollock to the CDQ program and to the inshore, catcher/processor, and mothership sectors will be made in accordance with section 206 of the AFA except that:

(1) *Inshore cooperative membership.* Participation in inshore catcher vessel cooperatives formed under paragraph 210(b)(1) of the AFA is limited to "AFA-qualified catcher vessels" as defined in § 679.2.

(2) *Inshore cooperative allocation formula.* NMFS will allocate Bering Sea Subarea pollock to each inshore cooperative according to the formula set out in paragraph 210(b)(1) of the AFA with the following changes and according to the following steps:

(i) *Determination of official catch history.* NMFS will establish an official catch history for each AFA inshore catcher vessel that is equal to the sum of the 2 highest years of inshore sector pollock landings made by such vessel from 1995 to 1997.

(ii) *Offshore compensation.* If an inshore catcher vessel made more than 499 mt of BSAI pollock landings to catcher/processors in the aggregate during the period 1995 through 1997, all BSAI pollock landings made to catcher/processors by such vessel would be

added to its official catch history prior to determination of the vessel's best 2 of 3 years.

(iii) *Cooperative allocation formula.* Each inshore catcher vessel cooperative approved by NMFS under paragraph 210(b)(1) of the AFA will receive an allocation of the interim and final Bering Sea subarea inshore pollock TAC that is equal to the sum of each member vessel's official catch histories divided by the sum of official catch histories of all AFA inshore catcher vessels, multiplied by the interim and final TAC allocations, respectively.

(E) AFA crab processing sideboards (applicable through July 17, 2001). NMFS will determine crab processing sideboard limits for each AFA entity in accordance with the formula set out in subparagraph 211(c)(2)(A) of the AFA, except that the years used to calculate crab processing sideboard amounts will also include 1998 processed amounts, and NMFS will give the 1998 amounts double-weight in the formula.

* * * * *

(c) * * *

(3) * * *

(iv) Sideboard publication (applicable through July 17, 2001). NMFS will publish AFA sideboard limits for AFA catcher vessels and AFA catcher/processors for each groundfish species and groundfish species group for which final specifications are published under paragraph (c)(3)(i) of this section. Sideboard amounts will be based on recommendations from the Council consistent with section 211 of the AFA.

* * * * *

(d) * * *

(1) * * *

(v) *AFA sideboard closures* (applicable through July 17, 2001). If the Regional Administrator determines that any sideboard harvest limit for a group of AFA vessels published under § 679.20 (c)(3)(iv) 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. In establishing a directed fishing allowance, the Regional

Administrator shall consider the amount that will be taken as incidental catch by those vessels in directed fishing for other species.

* * * * *

4. In § 679.50, paragraphs (c)(4)(i), (c)(5), and (d)(5) are suspended, and paragraphs (c)(4)(vi), (c)(6), and (d)(6) are added to read as follows:

§ 679.50 Groundfish observer program applicable through December 31, 2002.

* * * * *

(c) * * *

(4) * * *

(vi) *Motherships or catcher/processors using trawl gear* (applicable through July 17, 2001). (A) A mothership or catcher/processor using trawl gear to participate in a directed fishery for pollock CDQ must have at least two NMFS-certified observers aboard the vessel, at least one of whom must be certified as a lead CDQ observer as described at paragraph (h)(1)(i)(E) of this section.

(B) A mothership or catcher/processor using trawl gear to participate in a directed fishery for other than pollock CDQ must have at least two CDQ observers as described at paragraphs (h)(1)(i)(D) and (E) of this section aboard the vessel, at least one of whom must be certified as a lead CDQ observer.

(6) *AFA catcher/processors and motherships (applicable through July 17, 2001)—(i) Coverage requirement.*

(A) (Applicable through July 17, 2001). 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) (Applicable through July 17, 2001). 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) (Applicable through July 17, 2001). Certification level. At least one of the observers required under paragraphs (c)(5)(i)(A) and (B) of this section must be certified as a lead CDQ observer as specified in paragraph (h)(1)(i)(E)(1) of this section.

(iii) (Applicable through July 17, 2001). 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) * * *

(6) *AFA inshore processors* (applicable through July 17, 2001).—(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 day.

(ii) (Applicable through July 17, 2001). 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.

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[FR Doc. 01-1698 Filed 1-18-01; 3:32 pm]

BILLING CODE: 3510-22-S



ICICLE

April 27, 2001

AFA REGULATIONS REVISION ON INSHORE PROCESSING SECTOR

The purpose of the proposed revision is to allow the two AFA-qualified BSAI inshore floating pollock processors to operate in more than one location in the BSAI area while processing pollock. The proposal would do the following:

1. Allow the two AFA-qualified inshore floating pollock processors to operate in more than one location in the BSAI during a fishing year.
2. Continue to require that such floating processors operate in a single location for the fishing year while processing GOA pollock and cod.
3. Continue to prohibit offshore catcher processors and motherships from operating in the inshore sector in the GOA.
4. Continue to limit AFA-qualified pollock processing operations to the facilities and vessels that processed their AFA-qualifying pollock in 1996 and 1997.

The current AFA and inshore-offshore regulations have two objectives with regard to the "single geographic location" language. First, the Council decided in June 1999 to limit the AFA-qualified pollock processors to processing BSAI directed fishery pollock in the facilities and vessels that were used by them in 1996 and 1997, and at a single geographic location during a fishing year (December 1999).

Second, the AFA and the inshore-offshore decisions of the Council limited processors to operating in a single sector, e.g. a vessel could not operate in the offshore sector in the BSAI and in the inshore sector in the GOA. The current regulations use the single geographic location definition and several regulatory prohibitions to achieve this separation.

This proposal requests a change in the limitation that an AFA pollock inshore floater must operate in the same location for the entire fishing year while processing pollock. The AFA statute does not require that an AFA floater operate in a single location. In 1999, when the Council decided this issue, inshore cooperatives had not been formed and there was uncertainty as to how the AFA would operate. The inshore sector is now in its second year of cooperative operations with strong positive results. The AFA inshore sector is stable and has reduced harvesting capital successfully. We believe that the BSAI AFA inshore processing sector will accept this proposal.

The current inshore-offshore restrictions will continue under this proposal. In the BSAI, the AFA statute and regulations have defined and limited the three sectors—inshore, catcher-processor, and mothership—and do not allow processor crossovers from one sector to another. The single geographic location restriction is not needed for that purpose. For the GOA, the proposal continues all of the current processor restrictions in the inshore-offshore regulations.

ICICLE SEAFOODS, INC.

4019-21st Avenue West • Seattle, WA 98199

P.O. Box 79003 • Seattle, WA 98119 • Tel: 206-282-0988 • Fax: 206-282-7222

Icicle Seafoods purchased the NORTHERN VICTOR at the end of 1999 and has operated it at its current location in Beaver Inlet. Icicle may consider pollock operations at another site in the BSAI, although any decision is in the future. Regulations for the protection of Stellar sea lions have resulted in significant changes in pollock harvesting operations, and require that we consider other options for location of our pollock processor, the NORTHERN VICTOR. Acceptance of this proposal will allow Icicle to move forward with considering its options.

Groundfish Forum

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May 17, 2001

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

Re: Industry report on bycatch measures - Proposal of alternatives to add to IR/IU modification package under AFA agenda item.

Dear Chairman Benton:

As you know, Groundfish Forum requested that the Council modify improved retention regulations for rock sole and yellowfin sole as a means of protecting non-AFA processors from AFA-qualified groundfish processors. In response, the Council requested that an analysis of this proposed action be initiated on a timeframe allowing for final action and implementation by January 1, 2003, the date that retention requirements for flatfish go into effect. We understand that, in addition to the modification of the IR/IU requirements, the alternatives will be considered in the context of the bycatch reduction mandates in the Sustainable Fisheries Act, and the analysis may include additional bycatch reduction measures as proposed by industry.

Over the past several months, the members of Groundfish Forum have developed a comprehensive package of measures to be included in the analysis. We are confident that if implemented, the elements in this package will not only meet the mandate of the AFA to protect non-AFA processors, but will result in significant reductions in halibut bycatch to accommodate the bycatch reduction intent of IR/IU requirements, while also laying the groundwork for rationalization of its fisheries at some point in the future. While the proposal is ambitious, its approach will enable the Council to address a majority of the H&G fleet's issues on a comprehensive basis.

Our proposal package consists of four basic elements -

1. **Modification of IR/IU to require 50% retention of rock sole and 85% retention of yellowfin sole** - Groundfish Forum has spoken previously to the importance of revising IR/IU to insure the ability of the H&G fleet to compete with AFA-qualified fish meal-producing processors. We feel that this alternative would be adequate as a stand alone measure instead of processor sideboards and that the playing field would be sufficiently returned to the balance that existed prior to the creation of AFA.
2. **LLP recency requirement for non-AFA trawl catcher processors in all BSAI/GOA fisheries of one landing in 1999 and 2000** - An LLP recency requirement to eliminate

latent H&G licenses would allow the overcapitalized non-AFA trawl catcher-processor sector to initiate an industry-funded buyout or other measures to rationalize the H&G fisheries. To the extent that the race for fish can be slowed, the fleet will be better able to address the challenges of minimizing bycatch and discards. A rationalized fishery would also provide the best opportunity for vessel-level accountability and bycatch reduction and more effective means of accommodating Part 3 of our proposal (see below).

3. Reduction in the total BSAI trawl halibut bycatch mortality by 10 percent (approx. 375 metric tons) - Groundfish Forum acknowledges that a modification of flatfish retention requirements will likely result in more flatfish discards than if the regulation remained unchanged. Using the catch and discard data for the past several years, we estimate that 375 metric tons of halibut mortality (the amount by which we've proposed reducing the cap) is roughly equivalent to the amount that would be used to harvest the fish that the fleet would be allowed to discard under our IR/IU modification proposal. While this amount of halibut represents a significant percentage of the existing cap, we are confident in our ability to mitigate the impacts of the reduction, particularly if we are afforded the opportunity to decelerate the race for fish by reducing the size of the fleet and the implementation of the halibut mortality avoidance program (HMAP).

4. Implementation of the halibut mortality avoidance program (HMAP) - The HMAP program has formally been before the Council since 1997. The sheer mass of obligations stemming from the AFA mandates and the Steller sea lion protection measures has forced many important Council issues, including HMAP, to remain in a "holding pattern" for the past few years. Implementation of HMAP may take longer still. It might involve coordination with the observer program or may prove to be feasible only in the context of rationalized fisheries. While Groundfish Forum believes that HMAP is an important part of this set of proposals, we also acknowledge that it may not be in place by the time other elements of this package are implemented. In any case, the HMAP analysis must be started as soon as possible so that the challenges to implementation can be identified and the industry and staff can address them.

Thank you in advance for considering our concerns. As stated above, our proposal is admittedly broad and involves diverse elements. We believe, however, that the comprehensive nature of our proposal is far preferable to dealing with these issues on a piecemeal basis over a much longer period of time.

Groundfish Forum intends to provide additional information about our proposal during public testimony at the June Council meeting. We will be pleased to answer any questions the Council may have at that time.

Sincerely,



John R. Gauvin
Director