

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 011128283-1283-01; I.D. 111401B]

RIN 0648-AN55

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

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 61 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, Amendment 61 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, Amendment 13 to the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crab, and Amendment 8 to the Fishery Management Plan for the Scallop Fishery off Alaska (FMPs). These amendments incorporate the provisions of the American Fisheries Act (AFA) into the FMPs and their implementing regulations. Proposed management measures to implementing the AFA include: Regulations limiting entry by vessels and processors into all sectors of the Bering Sea and Aleutian Islands (BSAI) pollock fishery, a new formula allocating the BSAI pollock total allowable catch (TAC) among the inshore, catcher/processor, and mothership processing sectors and the Community Development Quota (CDQ) Program, regulations governing the formation and operation of fishery cooperatives (cooperatives) in the BSAI pollock fishery, harvesting and processing limits known as "sideboards" to protect vessels and processors in other fisheries from spillover effects resulting from the rationalization and privatization of the BSAI pollock fishery, observer coverage requirements for vessels and processors in the BSAI pollock fishery, catch weighing and scale requirements for BSAI pollock processors, vessel monitoring system (VMS) requirements for AFA catcher vessels and AFA catcher/processors fishing for groundfish in the BSAI and GOA; and a 2-year extension of the inshore/

offshore regime for pollock and Pacific cod in the Gulf of Alaska (GOA). These amendments are necessary to implement the AFA and are intended to do so in a manner consistent with the environmental and socioeconomic objectives of AFA, the Magnuson-Stevens Fishery Management and Conservation Act (Magnuson-Stevens Act), the FMPs, and other applicable laws.

**DATES:** Comments on the proposed rule must be received on or before January 31, 2002.

**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, or delivered to Federal Building, Fourth Floor, 709 West 9th Street, Juneau, AK, and marked Attn: Lori Gravel. Copies of the Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EIS/RIR/IRFA) prepared for Amendments 61/61/13/8 may be obtained from NMFS at the above address or online at <http://www.fakr.noaa.gov>. Send comments on collection-of-information requirements to NMFS, Alaska Region and to the Office of Information and Regulatory Affairs (OIRA), 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](mailto:kent.lind@noaa.gov)

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

**American Fisheries Act—Background Information**

On October 21, 1998, the President signed into law the AFA (Div. C, Title II, Pub. L. No. 105-277, 112 Stat. 2681 (1998)). The AFA is divided into two subtitles establishing certain requirements for fishery endorsements for all U.S. fishing vessels, and providing for the reorganization and

rationalization of the BSAI pollock fishery, respectively.

**Subtitle I—Fisheries Endorsements** established a 25 percent foreign ownership and control limit for all U.S. documented fishing vessels over 100 ft (30.9 meters (m)) registered length. Subtitle I also limits new U.S. documented fishing vessels to no more than 165 ft (59.3 m) registered length, no more than 3,000 lbs (1.36 mt) shaft horsepower, and no more than 750 gross registered tons (680 mt). The provisions of this subtitle apply to all U.S. documented fishing vessels fishing anywhere in the U.S. EEZ and are being implemented by the Maritime Administration (MARAD) and the U.S. Coast Guard.

**Subtitle II—Bering Sea Pollock Fishery** mandated sweeping changes to the BSAI pollock fishery and to a lesser extent, affected the management of the other groundfish, crab, and scallop fisheries off Alaska. The purpose of Amendments 61/61/13/8 is to implement the management program required by Subtitle II of the AFA.

Congress identified two primary objectives in passing the AFA. The first objective was to complete the process begun in 1976 to give U.S. interests a priority in the harvest of U.S. fishery resources. This objective was accomplished through the restrictions on foreign ownership and control that are set out in Subtitle I of the AFA. The second objective was to significantly decapitalize the Bering Sea pollock fishery. This objective was addressed by Subtitle II of the AFA. Under the council system established by the Magnuson-Stevens Act, Congressional action is generally not needed to address fishery conservation and management issues in specific fisheries. However, Congress believed that the overcapacity in the BSAI pollock fishery prior to the AFA was due, in part, to mistakes in, and misinterpretations of, the 1987 Commercial Fishery Industry Vessel Anti-Reflagging Act (Anti-Reflagging Act). In passing the AFA, Congress noted that the Anti-Reflagging Act had allowed a flood of foreign-rebuilt catcher/processors into the BSAI pollock fishery and did not limit foreign control of such vessels in the manner in which Congress had intended. Without Subtitle II, the Council and NMFS did not have authority to provide funds under the Federal Credit Reform Act to buy out and retire vessels from the BSAI pollock fishery, to strengthen U.S. controlling interest standards for fishing vessels, or to implement the inshore cooperative program contained in the AFA.

Subtitle 2 of the AFA contains numerous provisions that affect the management of the groundfish and crab fisheries off Alaska. Key provisions include:

1. 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;

2. 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;

3. 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;

4. A prohibition on entry of new vessels and processors into the BSAI pollock fishery. The AFA lists by name vessels and processors and/or provides qualifying criteria for those vessels and processors eligible to participate in the non-CDQ portion of the BSAI pollock fishery;

5. New observer coverage and scale requirements for AFA catcher/processors;

6. New standards and limitations to guide the creation and operation of fishery cooperatives in the BSAI pollock fishery;

7. An individual fishing quota program for inshore catcher vessel cooperatives under which NMFS grants individual allocations of the inshore BSAI pollock TAC to inshore catcher vessel cooperatives that are formed around a specific inshore processor and that agree to deliver at least 90 percent of their pollock catch to that processor;

8. The establishment of harvesting and processing limits known as "sideboards" on AFA pollock vessels and processors to protect the interests of fishermen and processors in other fisheries from spillover effects resulting from the rationalization of the BSAI pollock fishery; and

9. A 17.5 percent excessive share harvesting cap for BSAI pollock and a requirement that the Council develop excessive share caps for BSAI pollock processing and for the harvesting and processing of other groundfish.

Some of the above provisions of the AFA already have been implemented by NMFS and other agencies. The buyout of the nine ineligible factory trawlers and their subsequent scrapping was completed by NMFS in 1999 under the schedule mandated by the AFA. This action was accomplished by contract with the vessel owners rather than regulation. The inshore pollock fee program required by the AFA was implemented by NMFS through final regulations published February 3, 2000 (65 FR 5278). MARAD has implemented the new U.S. ownership requirements and size restrictions for U.S. fishing vessels through final regulations published July 19, 2000 (65 FR 44860). MARAD's regulations also set out procedures for review of compliance with excessive share harvesting limits contained in this proposed rule.

#### **Development of Amendments 61/61/13/8 and AFA-Related Actions Taken to Date**

Since the passage of the AFA in October 1998, NMFS and the Council have undertaken an extensive public process to develop the management program proposed under Amendments 61/61/13/8. Amendments 61/61/13/8 were prepared and revised during the course of 12 Council meetings over the past 2 years and have been the subject of numerous additional public meetings held by the Council and NMFS to address specific aspects of the AFA. While the permanent management program proposed under Amendments 61/61/13/8 was under analysis and development by the Council and NMFS, the statutory deadlines in the AFA were met on an interim basis through several emergency interim rules that were extended through the end of 2001 by Pub. L. No. 106-554, which mandated that all management measures in effect as of July 2000 be extended through the end of 2001. The following time line provides a summary of the 2-year public process through which NMFS and the Council prepared Amendments 61/61/13/8.

*November 1998.* After the passage of the AFA in October 1998, the Council held a special meeting in November 1998, in Anchorage, AK, to address among other things, the new requirements of the AFA and the effect of the AFA on the fisheries under the jurisdiction of the Council. The Council made various recommendations to NMFS regarding the regulation of cooperatives in the catcher/processor sector and the management of sideboards for AFA catcher/processors for the 1999 fishery and began the process of identifying issues and

alternatives for upcoming AFA-related actions.

*December 1998.* At its December 1998 meeting in Anchorage, AK, the Council approved two emergency rules to implement required provisions of the AFA for the 1999 fishing year. The first emergency interim rule required two observers on all AFA-listed catcher processors and motherships, and established procedures for making inseason sideboard closures (64 FR 3435, January 22, 1999; extended at 64 FR 33425, June 23, 1999). The second emergency interim rule made several technical changes to the CDQ program regulations to accommodate the new requirements of the AFA (64 FR 3887, January 26, 1999; extended at 64 FR 34743, June 29, 1999). After extensive public testimony and input from the Council's Advisory Panel (AP) and Scientific and Statistical Committee (SSC), the Council identified a suite of alternatives for the management program that subsequently became known as Amendments 61/61/13/8.

*February 1999.* At its February 1999 meeting in Anchorage, AK, the Council finalized sideboard and AFA management measure alternatives with the intent that a draft analysis would be reviewed at the April 1999 meeting with a final decision scheduled for June 1999 to allow the Council to meet the July 1999 deadline imposed by the AFA for recommendation of sideboard measures. The Council also began preparation of a separate discussion paper to examine the structure of the inshore cooperative program. This separate analysis was in response to a proposal by a group of independent inshore catcher vessel owners who advocated a change in the program to allow the formation of an independent vessel cooperative that would not be tied to a particular processor. A draft analysis was scheduled for review in June 1999, with further discussion in October 1999.

*April 1999.* At its April 1999 meeting in Anchorage, AK, the Council reviewed its draft analysis for Amendments 61/61/13/8, and received extensive public testimony regarding alternatives and other issues that should be considered under Amendments 61/61/13/8. The Council directed staff to make various revisions and additions to the analysis with the intent that the amendment package would be brought before the Council for final action in June 1999. The Council also reviewed its discussion paper on the structure of the inshore cooperative program and the independent inshore catcher vessel cooperative proposal and requested that a broader analysis be prepared for initial review at the October 1999 meeting. In

addition, the Council formed an inshore cooperative implementation committee to advise NMFS on many of the technical issues related to the formation and management of inshore cooperatives.

*May 1999.* The Council's inshore cooperative implementation committee held a public meeting with NMFS on May 10–13 in Seattle, WA, to examine alternative management approaches for inshore catcher vessel cooperatives. The approach to implementing and managing inshore cooperatives developed at this meeting forms the basis of the inshore cooperative management program contained in this proposed rule.

*June 1999.* At its June 1999 meeting in Kodiak, AK, the Council reviewed Amendments 61/61/13/8 and after extensive public testimony, approved a suite of AFA-related recommendations including restrictions on the formation and operation of cooperatives, harvesting sideboards for catcher/processors and catcher vessels, and catch weighing and monitoring requirements. However, the Council was unable to reach a decision on two AFA-related issues: groundfish processing sideboards and excessive processing share caps. To address these issues, the Council established an industry committee to further examine alternatives and work with State and Federal managers to resolve implementation issues with the intent that the Council would review the committee's recommendations in October 1999.

*August 1999.* The Council's processing sideboard industry committee held a public meeting in Seattle, WA, to examine alternatives for processing sideboards and excessive processing share caps. The committee was unable to reach complete consensus on a recommended approach for processing sideboard caps. However, the committee did develop some general recommendations for the Council and provided the Council with some requests for additional analysis and information.

*October 1999.* At its October 1999 meeting in Seattle, WA, the Council reviewed its analysis on the structure of the inshore cooperative program, including the proposal to allow formation of independent inshore catcher vessel cooperatives, and received extensive public discussion on this issue. However, the Council voted to postpone action until February 2000 and requested further analysis on this issue. The Council also re-examined its June 1999 catcher vessel sideboard exemption recommendations and

requested that NMFS delay implementation of these measures until the Council had the opportunity to analyze and discuss possible revisions to its recommended catcher vessel sideboard exemptions. The Council announced that it would be revising its sideboard exemption recommendations at its December 1999 meeting. Finally, the Council reviewed what had become a separate analysis of groundfish processing sideboards and excessive processing share caps. After extensive discussion and public comment on this issue, the Council chose to expand and revise its analysis with intent to review the issue again in February 2000 with final action scheduled for June 2000.

*December 1999.* At its December 1999 meeting in Anchorage, AK, the Council recommended two emergency interim rules to implement required provisions of the AFA for the 2000 fishing year. These measures were necessary to meet certain statutory deadlines in the AFA while the comprehensive suite of permanent management measures under Amendments 61/61/13/8 continued to undergo development, revision, and analysis by the Council and NMFS. The first emergency interim rule set out permit requirements for AFA vessels, processors, and cooperatives (65 FR 380, January 5, 2000; extended at 65 FR 39107, June 23, 2000). The second emergency interim rule established sector allocations, cooperative regulations, sideboards, and catch monitoring requirements for the AFA fleets (65 FR 4520, January 28, 2000; extended at 65 FR 39107, June 23, 2000).

*February 2000.* At its February 2000 meeting in Anchorage, AK, the Council reviewed its revised analysis of groundfish processing sideboards and excessive share processing caps and requested analysis of several additional issues with the stated intent that the analysis would be reviewed again in June 2000. The Council postponed action on the proposed changes to the structure of the inshore cooperative program and the independent inshore catcher vessel proposal until June 2000. Finally, at that meeting, the Council and NMFS decided it would be appropriate to expand the environmental assessment (EA) prepared for Amendments 61/61/13/8 into an EIS given the magnitude of the proposed management program to implement the AFA.

*April 2000.* At its April 2000 meeting in Anchorage, AK, the Council received extensive testimony from industry on several elements of Amendments 61/61/13/8. Catcher vessel owners requested that the Council consider revising several of its recommendations related

to catcher vessel sideboards, retirement of vessels, and the formula for calculating inshore cooperative allocations. The Council requested preparation of a supplemental analysis of these issues for consideration in June 2000. The Council also received testimony from crab fishermen who opposed the crab processing caps implemented in 2000 through emergency interim rule. The Council announced its intent to examine alternatives for crab processing caps at its June 2000 meeting with final action on any changes scheduled for September 2000. In addition, the April Council meeting was used as a scoping meeting to solicit input from the public on issues and alternatives that should be addressed in the EIS being prepared for Amendments 61/61/13/8.

*June 2000.* At its June 2000 meeting in Portland, OR, the Council reviewed its analysis of proposed structural changes to the inshore cooperative program including the independent inshore catcher vessel proposal. The Council did not adopt changes promoted by independent inshore catcher vessel owners that would have allowed greater flexibility in choosing which cooperative a vessel could join. Instead, the Council recommended two changes related to retirement of vessels and allocation formulas that would supersede the measures set out in the AFA. These changes were incorporated as revisions to Amendments 61/61/13/8. The Council also examined the issue of groundfish processing sideboards and excessive processing share caps and voted to release its analysis for public review with intent to take final action on these measures at its October 2000 meeting. The Council's original intent was to include groundfish processing sideboards and excessive processing share caps in Amendments 61/61/13/8. However, due to the extensive additional analysis required for these two issues, the Council decided to address these issues on a separate timetable with a separate analysis.

*September 2000.* At its September 2000, meeting in Anchorage, AK, the Council examined proposed changes to crab processing sideboard limits and recommended that the 1995–1997 formula used to calculate crab processing caps under the AFA be revised by adding 1998 processing history and giving it double-weight. In other words, 1995 through 1998 would be used to determine crab processing history with the 1998 year counting twice. The purpose of this change was to give greater emphasis to recent processing history in consideration of

changes to the crab processing industry that have occurred since 1995.

*October 2000.* At its October 2000 meeting in Sitka, AK, the Council considered the issues of BSAI pollock excessive processing share limits and groundfish processing sideboard limits. The Council adopted a 30 percent excessive processing share limit for BSAI pollock that would be applied using the same 10 percent entity rules set out in the AFA to define AFA entities for the purpose of the 17.5 percent excessive harvesting share limit contained in the AFA. This action represents the Council's final revision to Amendments 61/61/13/8 before official submission of the amendments to the Secretary of Commerce for review and approval. With respect to non-pollock groundfish processing sideboards, the Council took no action. The Council believed that placing non-pollock groundfish processing limits on AFA processors could have negative effects on markets for both AFA and non-AFA catcher vessels. In addition, the Council concluded that its suite of harvesting sideboard restrictions on AFA catcher vessels and catcher/processors also serve to protect non-AFA processors in the BSAI, which are primarily non-AFA catcher/processors. Instead of imposing non-pollock processing limits on AFA processors, the Council indicated its intent to explore revisions to its Improved Retention/Improved Utilization (IR/IU) program set out at 50 CFR 679.27. Testimony from non-AFA processors indicated that such changes could be a more effective means of providing a more level playing field for non-AFA catcher/processors.

#### **Submission of Amendments 61/61/13/8 for Secretarial Review and Public Comment**

The Council has submitted Amendments 61/61/13/8 for Secretarial review and a Notice of Availability of the FMP amendments was published in the Federal Register on November 27, 2001, with comments on the FMP amendments invited through January 28, 2002. Comments may address the FMP amendments, the proposed rule, or both, but must be received by January 28, 2002, to be considered in the approval/disapproval decision on the FMP amendments. All comments received by January 28, 2002, whether specifically directed to the FMP amendments or the proposed rule, will be considered in the approval/disapproval decisions on the FMP amendments.

#### **Elements of the Proposed Rule**

The following is a summary of the major elements of the proposed rule to implement Amendments 61/61/13/8.

##### *Permit Requirements for Vessels and Processors*

Amendments 61/61/13/8 would establish permit requirements for AFA catcher/processors, AFA catcher vessels, AFA motherships, AFA inshore processors, and AFA inshore cooperatives. Once issued, AFA vessel and processor permits would be valid until December 31, 2004, which is the expiration date for section 208 of the AFA. Any vessel used to engage in directed fishing for a non-CDQ allocation of pollock in the BSAI and any processor that receives pollock in a non-CDQ directed pollock fishery in the BSAI would be required to maintain a valid AFA permit onboard the vessel or at the processor location at all times that non-CDQ pollock is being harvested or processed. In addition, these new AFA permits would not exempt a vessel operator, vessel owner, or pollock processor from any other applicable permit or licensing requirements required by State or Federal regulations. Finally, the AFA does not limit who may participate in the CDQ pollock fishery. Therefore, vessels or processors participating in the pollock CDQ fishery would not be required to have AFA permits.

NMFS has already issued interim AFA permits to owners of AFA catcher vessels, AFA catcher/processors, AFA motherships, and AFA inshore processors under the emergency interim rule published January 5, 2000 (65 FR 380). Under this proposed rule, these interim permits would expire 60 days after the effective date of the final rule and the owners of AFA catcher vessels, AFA catcher/processors, AFA motherships, and AFA inshore processors would be required to re-apply for final AFA permits. These final AFA permits would be valid for the duration of section 208 of the AFA that extends through December 31, 2004. The owners of all AFA vessels and processors would be required to re-apply for their AFA permits because this proposed rule requires submission of additional ownership information on AFA permit applications that was not collected under the emergency interim rule.

The deadline for application for all new AFA vessel and processor permits would be 60 days after the effective date of the final rule. This deadline would apply to the owners of any vessels and processors for which NMFS has not

already received a permit application under the emergency interim rule but would not apply to replacement vessel permit applications. NMFS would not accept applications for new AFA vessel and processor permits after this date and any owners of vessels or processors who have not already been issued AFA permits under the emergency interim rule or for which an application has not been received by this date would be permanently ineligible to receive AFA permits for those respective vessels and/or processors. The purpose of this application deadline is to finalize the list of vessels and processors to which AFA fishing privileges and sideboard restrictions apply. A final list of AFA-permitted vessels is necessary because inshore cooperative allocations and catcher vessel sideboards are based on the aggregate catch histories of the various AFA-permitted fleets.

Under the proposed rule, AFA vessel and processor permits could not be used on or transferred to another vessel or processor, except under the replacement vessel provisions outlined below. However, AFA permits may be amended to reflect any change in the ownership of the vessel or processor. In contrast to vessel and processor permits, AFA inshore cooperative permits, discussed below, are valid only for the fishing year for which they are issued. However inshore cooperative fishing permits would be renewable on an annual basis following approval of a submitted permit application.

##### *AFA Permit Application and Administrative Appeals Process*

Application forms for all AFA permits would be available upon request from the NMFS Alaska Region (see **ADDRESSES**) and would be available for downloading on the NMFS Alaska Region home page (<http://www.fakr.noaa.gov>). AFA vessel and processor permits would be issued to the current owner of a qualifying vessel or processor. The proposed rule also sets out an administrative appeals process under which applicants would be able to appeal NMFS determinations related to AFA permits and AFA inshore cooperative allocations. The appeals process for AFA permits would be similar to the process currently in place for the individual fishing quota program and license limitation program (LLP) appeals set out at 50 CFR 679.4(k).

##### *AFA Catcher/Processor Permits*

Subsection 208(e) of the AFA, which took effect on January 1, 1999, lists by name catcher/processors that are eligible to harvest the catcher/processor sector BSAI pollock directed fishing

allowance. Under this proposed rule, two categories of AFA catcher/processor permits would be issued. Vessels listed by name in paragraphs 208(e)(1) through (20) of the AFA would be issued "listed AFA catcher/processor permits." Vessels qualifying for AFA catcher/processor permits under paragraph 208(e)(21) would be issued "unlisted AFA catcher/processor permits," which would restrict such vessels, in the aggregate, to a harvest of no more than 0.5 percent of the catcher/processor sector pollock TAC allocation. In addition, a catcher/processor would not need an AFA catcher/processor permit to participate in the CDQ sector of the BSAI pollock fishery because the AFA does not limit participation in the CDQ pollock fishery.

All owners of AFA catcher/processors would be required to reapply for their AFA permits under this proposed rule because this proposed rule requires the additional submission of vessel ownership information that was not previously collected. All applicants for AFA catcher/processor permits would be required to disclose the identities of all persons who hold a 10 percent or greater direct or indirect interest in the vessel in question. This information is necessary for NMFS to track compliance with the 17.5 percent excessive harvesting share limit established under the AFA and discussed below in the section on excessive shares.

#### *AFA Catcher Vessel Permits*

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

All owners of AFA catcher vessels would be required to reapply for their AFA permits under this proposed rule because this proposed rule requires the additional submission of vessel ownership information that was not previously collected. All applicants for AFA catcher vessel permits would be required to disclose the identities of all persons who hold a 10 percent or greater direct or indirect interest in the vessel in question. This information is necessary for NMFS to track compliance with the 17.5 percent excessive harvesting share limit established under the AFA and discussed below in the section on excessive shares. NMFS has created an official AFA record that includes the relevant catch histories of all potentially qualifying catcher vessels and will review for verification all claims of endorsement qualification against the official AFA record.

#### *AFA Catcher Vessel Crab Sideboard Endorsements*

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

Under the proposed rule, NMFS would implement these catcher vessel crab sideboard limits through crab sideboard endorsements on AFA catcher vessel permits. The owner or operator of a catcher vessel who wishes to participate in a BSAI king or Tanner crab fishery would be required to have a sideboard endorsement for that crab species on the vessel's AFA catcher vessel permit. An AFA catcher vessel permit would be endorsed for the Bristol Bay Red King Crab (BBRKC), St. Matthew Island blue king crab, Pribilof Island red or blue king crab, Aleutian Islands brown king crab, Aleutian

Islands red king crab, Opilio Tanner crab, and Bairdi Tanner crab fisheries based on the vessel's history of participation in such crab fisheries. The specific qualifying criteria for each fishery are set out in § 679.4(l)(3)(ii)(D) of this proposed rule.

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 includes questions related to vessel catch history using the same qualifying years as the LLP program. This rule would require an applicant for an AFA catcher vessel permit to indicate on the permit application which AFA crab sideboard endorsements the vessel qualifies for based on the qualifying criteria set out in this rule. NMFS would verify all claims of qualification.

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

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

#### *Groundfish Sideboard Exemptions*

Under this proposed rule, groundfish catcher vessel harvest sideboard limits detailed below would apply to all AFA catcher vessels in the aggregate regardless of sector and regardless of participation in a cooperative, except the Council recommended that catcher vessels less than 125 ft (38.1 m) 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) would be exempt from BSAI Pacific cod sideboards if they made 30 or more legal landings of BSAI Pacific cod in the BSAI directed fishery for Pacific cod during that 3-year period. In addition, AFA catcher vessels that meet the same vessel length and BSAI pollock landing criteria and that made 40 or more legal landings of GOA groundfish during the 1995–1997 time period 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 historic high levels of participation in non-pollock fisheries, and the fact that their historic dedication to groundfish fisheries other than the BSAI pollock fishery fisheries may account for their lower catch histories of BSAI pollock during the AFA qualifying years. The owners of vessels who believe their vessel may be eligible for one or both of these exemptions would have to apply for the sideboard exemption on their AFA catcher vessel permit application form.

#### *AFA Mothership Permits*

Under subsection 208(d) of the AFA, three named vessels are eligible for AFA permits that authorize them to process pollock harvested in the BSAI directed pollock fishery for delivery to motherships. Under this proposed rule, NMFS would issue to the owner of a mothership an AFA mothership permit if the mothership is listed by name in paragraphs 208(d)(1) through (3) of the AFA and the owner applies for such permit. However, the owner of a mothership wishing to process pollock harvested by a fishery cooperative also would need to apply for and receive a cooperative processing endorsement on its AFA mothership permit. This requirement is necessary because NMFS must identify and issue crab processing restrictions to any AFA entity that owns or controls an AFA mothership or an AFA inshore processor that receives pollock harvested by a cooperative.

Subparagraph 211(c)(2)(A) of the AFA imposes crab processing restrictions on the owners of AFA mothership and AFA inshore processors that receive pollock from a fishery cooperative. Under the

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

#### *AFA Inshore Processor Permits*

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

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

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

#### *Approval of New AFA Inshore Processors*

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

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

To implement this provision of the AFA, the proposed rule provides a mechanism for the Council to recommend that NMFS issue AFA inshore processor permits to inshore processors that would not otherwise be eligible under the AFA. In the event that the BSAI pollock TAC exceeds 1,274,900 mt (10 percent above the 1997 combined BSAI TAC of 1,159,000 mt), or in the event of the actual total loss or constructive loss of an AFA inshore processor, the Council may recommend that an additional inshore processor (or processors) be issued AFA inshore processing permits. The Council's recommendation to NMFS must identify (1) the processor (or processors) that would be issued AFA inshore

processing permits, (2) the type of AFA inshore processing permit(s) to be issued (restricted or unrestricted), and the duration of any such permit(s). The Council may recommend any length of duration for permits issued under this provision, from a single fishing season to the duration of the AFA. Or the Council may recommend that any such permits remain valid as long as the criteria that lead to their issuance remain in effect (i.e., TAC remains above 1,274,900 mt).

#### *Replacement Vessels*

The proposed rule provides that in the event of the actual total loss or constructive total loss of an AFA catcher vessel, AFA mothership, or AFA catcher/processor, the owner of such vessel may designate a replacement vessel that would 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 proposed rule regulatory text at § 679.4(l)(7). Paragraph 208(g)(5) of the AFA states that a vessel may be used as a replacement vessel if:

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

NMFS believes that Congress intended this clause to apply to eligible vessels with engines incapable of producing more than 3,000 shaft horsepower rather than engines incapable of producing less than 3,000 shaft horsepower. No catcher vessel operating in Alaska has engines incapable of producing less than 3,000 shaft horsepower, and construing this clause literally would make this provision a nullity. Any vessel engine regardless of size is capable of producing less than 3,000 shaft horsepower at less than full throttle or at idle. Therefore, NMFS is using the phrase "incapable of producing more than 3,000 shaft horsepower" to implement paragraph 208(g)(5) of the AFA.

In the event of the loss of an approved AFA replacement vessel, the owners of the replacement vessel may designate a subsequent replacement vessel provided that the original replacement vessel is lost under conditions that meet the criteria set out in the AFA for lost vessels. In the event of multiple vessel replacements, the length, horsepower,

and tonnage limits for any subsequent replacement vessels would be based on the length, horsepower, and tonnage of the originally qualifying AFA vessel.

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

#### *Official AFA Record and Appeals*

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

This proposed rule also would establish 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 would be based on the existing appeals process in place for the individual fishing quota and LLP programs.

#### **Restrictions on Transfer of LLP Licenses**

This proposed rule also contains a revision to the LLP program for groundfish and crab that would prevent LLP licenses earned on AFA vessels from being used on non-AFA vessels. The purpose of this restriction is to prevent the owners of retired AFA vessels from re-deploying the LLP

license in the groundfish and/or crab fisheries off Alaska on a new vessel that would not be subject to the same sideboard restrictions as the retired AFA vessel. Without this restriction, owners of AFA vessels would be able to evade the harvesting sideboard restrictions contained in this rule by using the LLP licenses from their AFA vessels to deploy new vessels into the groundfish and crab fisheries that are not subject to AFA sideboards.

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

#### *Procedures and Formulas for Allocating the BSAI Pollock TAC*

Under this proposed rule, the procedures for allocating pollock TAC among industry sectors and apportioning each sector's TAC between seasons and/or areas would be revised to incorporate the changes required by the AFA. Ten percent of the pollock TAC specified for the Bering Sea (BS) subarea and the Aleutian Islands (AI) subarea would be allocated to the CDQ program. The remaining TAC for each subarea, after establishment of an incidental catch allowance for pollock harvested as incidental catch in other groundfish fisheries, would be allocated 50 percent to AFA catcher vessels harvesting pollock for processing by AFA inshore processors; 40 percent to AFA catcher/processors and AFA catcher vessels harvesting pollock for processing by AFA catcher/processors, with not less than 8.5 percent of this allocation made available to AFA catcher vessels delivering to catcher/processors; and 10 percent to AFA catcher vessels harvesting pollock for processing by AFA motherships. The inshore pollock TAC would be further divided into two allocations; one allocation to vessels participating in inshore fishery cooperatives, and one allocation to vessels not participating in a fishery cooperative. The annual allocation to inshore cooperatives would be equal to the aggregate annual allocations made to each inshore cooperative. The annual allocation to

the inshore open access fishery, which is composed of the remaining AFA inshore catcher vessels that are not in a cooperative, would be equal to the remaining inshore allocation after subtraction of the allocation to fishery cooperatives.

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

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

*Allocation procedure with cooperatives.* If prior to December 1 of each year the owners of all such AFA catcher vessels enter into a cooperative agreement, and the owners of such vessels also have entered into a cooperative agreement or inter-cooperative agreement with the owners of the listed AFA catcher/processors, and such agreement provides for at least 8.5 percent of the cooperative harvest shares for such catcher vessels, then NMFS would assume that the 8.5 percent catcher vessel allocation has been provided for within the cooperative or inter-cooperative agreement. In such event, NMFS would make a single allocation of pollock to the catcher/processor sector that is not subdivided between catcher vessels and catcher/processors. Owners of catcher/processors would then be able to enter into cooperative agreements that allow them to harvest some or all of the 8.5 percent of the TAC reserved for catcher vessels, or catcher vessels could harvest some or all of 91.5 percent catcher/processor limit.

*Allocation procedure without cooperatives.* If the AFA catcher vessels eligible to deliver to catcher/processors did not form a cooperative and did not enter into a cooperative or inter-cooperative agreement with the listed AFA catcher/processor fleet, and all such agreements were not filed with NMFS prior to December 1 of each year, then NMFS would limit AFA catcher/processors to harvesting no more than 91.5 percent of the catcher/processor

sector allocation to guarantee that not less than 8.5 percent of the catcher/processor sector allocation is made available for harvest by AFA catcher vessels. In other words, AFA catcher/processors would be limited to harvesting no more than 91.5 percent of the catcher/processor allocation and only eligible catcher vessels would be able to harvest the remaining 8.5 percent of the catcher/processor sector allocation for delivery to catcher/processors. This 91.5 percent catcher/processor harvest limit would be published in the annual harvest specifications and would be applied to each fishing season.

*Management of the 0.5 percent cap for unlisted AFA catcher/processors.*

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

**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. Under this subparagraph:

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 1995–1997 relative to the total inshore landings during that same period.

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

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

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

*Offshore compensation.* The first change recommended by the Council at its June 1999 meeting 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 recommended this change to assist the cooperatives in meeting the intent of paragraph 210(b)(4) of the AFA, which requires that:

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

The Council believed that catcher vessels with sustained participation delivering to catcher/processors, but excluded from delivering to catcher/processors under subsection 208(b) of the AFA, should not be disadvantaged by the new management regime. The Council chose 499 mt as the threshold based on information presented in the EIS/RIR/IRFA, which indicated that 499 mt provided a good “break point”



between vessels with significant history of delivering to catcher/processors and vessels that only had incidental deliveries to catcher/processors during the 1995 through 1997 qualifying period. The Council recommended that only deliveries to catcher/processors be considered for such "compensation" and not deliveries made to the three motherships listed in subsection 208(d) of the AFA, because any vessel with more than 250 mt of pollock deliveries to one of the three AFA motherships during the qualifying period would earn an endorsement to deliver pollock to AFA motherships under the AFA and therefore, has not "lost" any fishing privileges as a result of the AFA.

Using the best 2 of 3 years from 1995–1997. The second change recommended by the Council at its June, 1999, meeting, 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 at the June 1999 Council meeting. These changes were viewed as a more equitable method of allocating pollock catch because some vessels may have missed all or part of the inshore fishery in a given year due to unavoidable circumstances such as vessel breakdowns or lack of markets.

*Revised open access formula.* Finally, the Council recommended a third change to the allocation formula at its June 2000 meeting. This change 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 formula set out in the AFA is that all inshore catch history made by non-AFA vessels, and AFA catcher vessels without inshore endorsements, defaults to the open access sector. The Council believed that this resulted in an inshore open access allocation that was unfairly inflated to the detriment of vessels in cooperatives. The Council believed that inflating the open access quota in such a manner would provide incentives for vessels to leave cooperatives that could disrupt the objective of rationalizing the

BSAI pollock fishery. Under the Council's recommended change, the cooperative and the open access sectors would be treated equally and allocations to both cooperatives and the open access sector would be based only on the fishing histories of the vessels in each group. All three of these changes have been incorporated into Amendments 61/61/13/8 as recommendations that supersede the AFA.

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

Each sector's annual Bering Sea Subarea allocation of pollock also would be 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. These temporal and spatial dispersion measures would be applied to each sector's BSAI pollock allocations in the manner set out in regulations implementing the Steller sea lion RPAs.

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

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

subject to the same requirements and limitations on that harvesting as apply to, catcher vessels that are eligible to harvest that directed fishing allowance under section 208(a) of that Act.

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

#### *Excessive Shares Harvesting and Processing Limits*

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

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

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

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

Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from processing an excessive share of the pollock available to be harvested in the directed pollock fishery. In the event the North Pacific Council recommends and the Secretary approves an excessive processing share that is lower than 17.5 percent, any individual or entity that previously processed a percentage greater than such share shall be allowed to continue to process such percentage, except that their

percentage may not exceed 17.5 percent (excluding pollock processed by catcher/processors that was harvested in the directed pollock fishery by catcher vessels eligible under 208(b)) and shall be reduced if their percentage decreases, until their percentage is below such share. In recommending the excessive processing share, the North Pacific Council shall consider the need of catcher vessels in the directed pollock fishery to have competitive buyers for the pollock harvested by such vessels.

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

#### **Regulations Governing the Formation and Operation of Fishery Cooperatives**

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

#### *Regulations that Apply to all Cooperatives*

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

*Filing deadlines.* Each fishery cooperative would be required to file

with NMFS and the Council, a signed copy of its cooperative contract, and any material modifications to any such contract, together with a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request. The Council and NMFS would make this information available to the public upon request. The proposed filing deadline for cooperatives operating in the catcher/processor and mothership sectors is 30 days prior to the start of any fishing activity conducted under the terms of the contract. The proposed filing deadline for cooperatives operating in the AFA inshore sector is December 1 of the year prior to the year in which fishing under the contract would occur. The December 1 deadline for inshore sector cooperatives is necessary because inshore sector cooperative allocations must be included in the BSAI interim harvest specifications that are published prior to January 31 of each year. Under this proposed rule, NMFS would not make sub-allocations of pollock to catcher/processor and mothership cooperatives. Such cooperatives operate at the sector level. Consequently, catcher/processor and mothership sector cooperative information does not need to be included in the BSAI interim harvest specifications.

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

*Agent for service of process.* Each cooperative would be required to appoint an agent who is authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of the cooperative. The agent for service of process may be the same individual as the cooperative's designated representative, or may be a

different individual. Service on or notice to the cooperative's appointed agent would constitute 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 would not affect the validity of notice if service is accomplished on the cooperative's appointed agent for service of process. The agent for service of process would have to be capable of accepting service on behalf of the cooperative until December 31 of the year 5 years after the calendar year for which the fishery cooperative has filed its intent to operate. If the agent is unable to complete this obligation, the cooperative would be required to appoint a replacement agent who could complete the term of service.

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

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

The preliminary and final written reports would be required to contain, at a minimum: (1) The cooperative's

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

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

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

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

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

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

#### *Regulations for Cooperatives that Contain AFA Catcher Vessels*

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

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

This requirement that catcher vessel cooperatives address the issue of

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

#### *Regulations for Inshore Catcher Vessel Cooperatives*

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

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

*Application for inshore cooperative fishing permits.* Under this proposed rule, inshore catcher vessel cooperatives wishing to receive an allocation of the BSAI inshore pollock TAC would be required to submit an application for an inshore cooperative fishing permit on an annual basis by December 1 of the year prior to the year in which the cooperative fishing permit would be in effect. Applications for an inshore cooperative fishing permit would need to be accompanied by a copy of the cooperative contract itself and by a copy of a letter from a party to the contract

requesting a business review letter on the fishery cooperative from the U.S. Department of Justice and any response to such request. Inshore cooperative fishing permit applications that are not received by NMFS by December 1 would be disapproved.

As part of the application for an inshore cooperative fishing permit, the cooperative's designated representative, who is signing the permit application on behalf of the various members, would be required to certify that: (1) Each catcher vessel in the cooperative is a "qualified catcher vessel" according to the definition of qualified catcher vessel described below, (2) the cooperative contract was signed by the owners of at least 80 percent of the qualified catcher vessels that delivered pollock harvested in the BSAI directed pollock fishery to the cooperative's designated AFA inshore processor during the year prior to the year in which the cooperative fishing permit 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 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 cannot legally harvest BSAI pollock due to enforcement action, permit sanctions, lack of a valid AFA catcher vessel permit, or lack of other required permit, would be barred from membership in an inshore cooperative that receives an inshore cooperative fishing permit.

To add or subtract a qualified catcher vessel, the cooperative would be required to submit a new application prior to the December 1 deadline, and the new application must be subsequently approved by the Regional Administrator.

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

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

The effect of this definition was to prevent the retirement of catcher vessels that are no longer needed to harvest a cooperative's annual allocation of pollock because each vessel was

required to make a qualifying landing every year to remain in the cooperative in each subsequent year. At its June 2000, meeting, the Council recommended that this definition be replaced with a new definition under which an inactive vessel would remain qualified to join the cooperative that is associated with the processor where it delivered more pollock to than any other inshore processor in the last year in which the vessel participated in the inshore sector of the BSAI directed pollock fishery. The Council's recommended change 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 would be in effect.

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

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

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

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

owners of such vessels could remain in cooperatives without the need to rebuild or deploy new vessels into the BSAI pollock fishery. In making this recommendation, the Council also noted that a primary objective of the AFA is to reduce excess capacity in the BSAI pollock fishery and that changing the definition of "qualified catcher vessel" would further that objective.

This proposed rule also makes an additional clarification to the definition of "qualified catcher vessel." Under the proposed rule, only pollock harvested in the BSAI directed pollock fishery would be used to determine vessel qualification. Pollock that is landed as incidental bycatch in other fisheries would not be used to determine which cooperative a catcher vessel is qualified to join and a catcher vessel cannot qualify to join a cooperative based on incidental catch of pollock in other fisheries. This clarification is necessary to prevent a vessel's incidental 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 would be counted against the pollock incidental catch allowance and not the vessel's cooperative quota. The AFA makes no restrictions on either the delivery or processing of non-pollock groundfish species in the BSAI. Consequently, AFA catcher vessels fishing for Pacific cod are free to deliver their Pacific cod and associated incidental catch of pollock to any processor, not just to one of the eight AFA processors that are authorized to receive pollock harvested in the BSAI directed pollock fishery.

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

which it delivered more pollock than any other processor may be a non-AFA processor.

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

**Inshore Cooperative Fishing Restrictions.** This proposed rule would impose 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 would be 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 would accrue against the cooperative's annual pollock allocation regardless of whether the pollock was retained or discarded and regardless of where the pollock was delivered. Third, each inshore pollock cooperative would be responsible for reporting to NMFS its BSAI pollock harvest on a weekly basis according to recordkeeping and reporting requirements published as part of the annual revisions to recordkeeping and reporting requirements for the groundfish fisheries of the BSAI and GOA. Fourth, each inshore pollock cooperative would be 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.

**Inseason Management of Inshore Cooperatives.** Under this proposed rule, NMFS would manage the inshore cooperative sector and inshore open access sector as two separate inshore pollock fisheries. The various inshore cooperatives would be managed as a single aggregate allocation for the purpose of making season and area TAC apportionments and for the purpose of issuing directed fishing closures. When NMFS determines that the cooperative sector has reached a season or area apportionment of BSAI pollock, NMFS would close inshore cooperative fishing for that season or area. Under this system, each inshore cooperative would be given the opportunity to harvest its entire annual allocation of BSAI pollock, but would receive no harvest guarantee for each season and area. NMFS is encouraging the various inshore cooperatives to form an inter-cooperative agreement to govern cooperative fishing activities within each season and area. Such an inter-cooperative agreement was formed in January 2000 to manage cooperative fishing under the emergency interim rules and has operated successfully to date. The proposed management approach is that NMFS would manage the cooperative pollock quota and various sideboard quotas in the aggregate and encourage the various cooperatives to work together to develop a cooperative management program to govern activities by individual cooperatives and individual vessels. Such cooperation between cooperatives will be necessary to prevent the activities of one cooperative from affecting the plans of another cooperative.

#### **Harvesting and Processing Sideboard Restrictions**

The AFA requires that harvesting and processing limits be placed on AFA vessels and processors in other groundfish, crab, and scallop fisheries to protect the participants in other fisheries from spillover effects resulting from the rationalization of the BSAI pollock fishery and the formation of fishery cooperatives in the BSAI pollock fishery. Potential spillover effects could take many forms. Most obviously, excess harvesting and processing capacity from the rationalization of the BSAI pollock fishery could flood into other fisheries as a result of the AFA to the detriment of current participants in other fisheries. In addition, fishery

cooperatives provide vessels with greater flexibility to schedule their fishing activity because they are no longer racing for pollock at the start of every season. As a result, vessels in cooperatives would have the ability to enter other fisheries that might previously have been conducted concurrent with the BSAI pollock fishery. Finally, companies involved in the AFA pollock fishery are expected to benefit financially from the formation of fishery cooperatives and non-AFA companies fear that such profits may be used to expand into other groundfish and crab fisheries.

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

#### **Catcher/Processor Harvesting Sideboards**

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

##### **(b) CATCHER/PROCESSOR RESTRICTIONS.—**

(1) GENERAL. The restrictions in this 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 listed AFA catcher/processors from engaging in directed fishing for a groundfish species or species group when NMFS determined that the sideboard limit was likely to be met or exceeded. For the 2000 and 2001 fishing years these limits were set out by emergency interim rule (65 FR 4520, January 28, 2000; extended at 65 FR 39107, June 23, 2000; and 66 FR 7276, January 22, 2001).

At its June 1999 meeting, the Council recommended that catcher/processor harvest limits for BSAI groundfish other than Atka mackerel be based on the 1995 through 1997 retained catch of such groundfish species by the 20 listed AFA catcher/processors listed in paragraphs 208(e)(1) through (2) of the AFA and the nine ineligibility catcher/processors listed in section 209 of the AFA, except for Pacific cod which would be based on 1997 retained catch only. The Council made a distinction between retained and total catch for the purpose of calculating sideboards and felt that AFA vessels should not receive sideboard credit for groundfish that was discarded and not utilized. Given NMFS' and the Council's longstanding emphasis on reduction of discards and waste in the groundfish fisheries off Alaska, the Council believed it was reasonable not to allow the members of a sector of the groundfish fleet to claim fishing privileges based on catch that they discarded and did not utilize, especially given that such discards may have resulted in foregone catch and loss of fishing opportunities for other sectors of the industry.

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

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

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

#### *Management of Catcher/Processor Harvest Sideboards*

Under this proposed rule, catcher/processor sideboards would be managed through directed fishing closures. NMFS would evaluate each groundfish harvest limit specified according to the formula outlined previously and would authorize directed fishing by listed AFA catcher/processors only for those BSAI groundfish species for which the harvest

limit is large enough to support a directed fishery by listed AFA catcher/processors. Groundfish species for which the catcher/processor harvest limit is too small to support a directed fishery would be closed to directed fishing by listed AFA catcher/processors at the beginning of the fishing year. The sideboard amounts for these species would then be specified as the incidental catch amounts harvested in other directed groundfish fisheries.

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

#### *Catcher Vessel Sideboards*

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

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

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

Because the BSAI king and Tanner crab fisheries and the Alaska scallop

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

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

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

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

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

#### *Catcher Vessel Groundfish Sideboards in the BSAI*

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

In addition, AFA catcher vessels with mothership endorsements would be exempt from Pacific cod sideboard closures after March 1 of each year. The March 1 exemption for AFA catcher vessels with mothership endorsements was recommended 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 would 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 would be pro-rated based on percentage of groundfish catch in each BSAI groundfish fishery.

#### *Catcher Vessel Groundfish Sideboards in the GOA*

Catcher vessel sideboards for GOA groundfish fisheries would 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 would be 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

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

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

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

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

#### *Crab Processing Sideboards*

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

Effective January 1, 2000, the owners of the motherships eligible under section 208(d) and the shoreside processors eligible under section 208(f) that receive pollock from the directed pollock fishery under a fishery cooperative are hereby prohibited from

processing, in the aggregate for each calendar year, more than the percentage of the total catch of each species of crab in directed fisheries under the jurisdiction of the North Pacific Council than facilities operated by such owners processed of each such species in the aggregate, on average, in 1995, 1996, 1997. For the purposes of this subparagraph, the term "facilities" means any processing plant, catcher/ processor, mothership, floating processor, or any other operation that processes fish. Any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity for the purposes of this subparagraph.

These crab processing limits were implemented by NMFS in the emergency interim rule published January 28, 2000 (65 FR 4520, extended at 65 FR 39107). However, at its September 2000 meeting, the Council recommended that the basis years used to calculate crab processing sideboard amounts be revised by adding 1998 and giving it double-weight. Some crab fishermen and AFA processors expressed concern that too many non-AFA processors have left the crab fisheries since 1997 and that the 1995–1997 years do not accurately reflect the composition of the crab processing industry at the time of passage of the AFA. Some crab fishermen were concerned that AFA crab processing caps were restricting markets for crab fishermen and having a negative effect on exvessel prices. By adding 1998 and giving it double-weight relative to 1995–1997, the Council believed that the crab processing caps 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 was warranted to mitigate adverse effects on markets for crab fishermen.

*Entity-based processing caps.* NMFS has developed a definition of "AFA entity" for the purpose of implementing these crab processing limits and for the purpose of implementing the 17.5 percent excessive harvesting share limit discussed above. This definition is explained below in the section on definitions. To implement these crab processing limits, NMFS would require that the owners of an AFA mothership or AFA inshore processor intending to process pollock harvested by a cooperative identify on their permit applications all individuals, corporations, or other entities that directly or indirectly own or control a 10-percent or greater interest in the AFA mothership and/or inshore processor (collectively the AFA inshore or mothership entity), and any other crab processors in which such entities

have a 10-percent or greater interest (the associated AFA crab facilities). For each BSAI king and Tanner crab fishery, NMFS would calculate the average percentage of the total crab harvest processed by the associated AFA crab facilities and issue entity-wide crab processing caps for each crab fishery to each AFA inshore or mothership entity on its AFA mothership or AFA inshore processor permit. Each individual, corporation, or other concern comprising an AFA inshore or mothership entity would be responsible for ensuring that the AFA crab processing facilities associated with the AFA inshore or mothership entity do not exceed the entity's caps. The individuals, corporations and other concerns comprising the AFA inshore or mothership entity would be held jointly and severally liable for any overage.

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

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

Conversion of crab processing sideboard percentages to poundage caps. Prior to the start of each BSAI king or Tanner crab fishery, NMFS would 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. Each entity and the public would be notified of the crab processing poundage caps through notification in the Federal Register and/or through information bulletins published on the NMFS-Alaska Region world wide web home page (<http://www.fakr.noaa.gov>).

*CDQ crab harvest.* Under the proposed rule, processing of CDQ crab would not accrue against an entity's



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

#### **Observer Coverage Requirements for AFA Vessels and Processors**

Under Amendments 61/61/13/8, NMFS proposes new observer coverage requirements for AFA catcher/processors, AFA motherships, and AFA inshore processors. However, no changes to observer coverage requirements are proposed for AFA catcher vessels. These proposed new observer coverage requirements are described below.

#### *Listed AFA Catcher/Processors and AFA Motherships*

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

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

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

In order to monitor and enforce the newly imposed harvest limitations for unrestricted AFA catcher/processors

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

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

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

The catcher/processors and motherships involved in this fishery provide the most straightforward sampling situations for observers in the groundfish fleet due to typically minimal bycatch, as well as excellent working conditions for the observer.

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

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

Requirements for unlisted AFA catcher/processors. Under this proposed rule, vessels receiving unlisted AFA catcher/processor permits under paragraph 208(e)(21) of the AFA would be required to meet the same observer coverage, scale, and sampling station requirements as for listed AFA catcher/processors during any fishing trip in which the vessel engages in directed fishing for BSAI pollock or receives deliveries of pollock from AFA catcher vessels engaged in directed fishing for BSAI pollock. This proposed requirement is necessary because NMFS must monitor the 0.5 percent pollock harvest limit on unlisted AFA catcher/

processors and cannot adequately do so without scales and an observer on duty at all times. However, because the AFA catcher/processor sideboard limits in other groundfish fisheries do not apply to unlisted AFA catcher/processors, NMFS is not proposing to change the observer coverage requirements for unlisted AFA catcher/processors when such vessels are engaged in directed fishing for groundfish other than pollock. Unlisted AFA catcher/processors participating in non-pollock fisheries would simply be required to meet whatever observer coverage requirements are in place for the fishery in question.

**AFA Inshore Processors.** Under this proposed rule, an AFA inshore processor would be 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 would be required to have two NMFS-certified observers available during that calendar day. At least one observer assigned to work at each AFA inshore processor must be a level 2 observer during each calendar day that the processor receives or processes pollock harvested in the BSAI directed pollock fishery. Furthermore, under this proposed rule, observers working at AFA inshore processors may not be assigned to cover more than one processing plant during a calendar day.

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

#### *AFA Catcher Vessels*

Catcher vessels fishing for pollock may deliver an unsorted codend directly to a mothership or inshore processor, in

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

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

#### *Scales and Catch-Weighing Requirements*

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

would have a strong incentive to maximize the amount of pollock harvested and processed in any given year within the constraints of a fixed quota of pollock granted to the cooperative. While catcher/processor and mothership sector cooperatives do not receive individual allocations of pollock from NMFS, they function in the same manner as inshore cooperatives because NMFS makes allocations of pollock to each sector and the cooperatives include all eligible participants in each sector.

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

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

#### *Scale and Catch-Weighing Requirements for AFA Catcher/Processors*

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

1. Scales must meet the performance and technical requirements specified in appendix A to 50 CFR 679. At this time, Marel hf and Skanvaegt International A/S produce scales that have been approved by NMFS for weighing total catch. Marel hf, Skanvaegt International A/S and Pols hf manufacture scales that have been approved for use in observer sampling stations.

2. Each scale must be inspected and approved annually by a NMFS-approved scale inspector.

3. Each observer sampling station scale must be accurate within 0.5 percent when its use is required.

4. The observer sampling station scale must be accompanied by accurate test weights sufficient to test the scale at 10, 25 and 50 kg.

5. Each scale used to weigh total catch must be tested daily by weighing at least 400 kg of fish or test material on the total catch weighing scale and then weighing it again on an approved observer-sampling station scale.

6. When tested, the total catch weighing scale and the observer sampling station scale must agree within 3 percent.

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

AFA listed catcher/processors would be required to comply with the

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

#### *Scale and Catch-weighting Requirements for AFA Motherships*

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

#### *Scale and Catch-Weighing Requirements for AFA Inshore Processors*

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

Catch monitoring and control plans. The catch weighing and monitoring

system developed by NMFS for catcher/processors and motherships is based on the vessel meeting a series of design criteria. Because of the wide variations in factory layout, NMFS believes that a performance based catch monitoring system is more appropriate for inshore processors. Under this system, each plant would be required to submit a Catch Monitoring and Control Plan (CMCP) to NMFS for approval. The CMCP would detail how the plant would meet the following standards:

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

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

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

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

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

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

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

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

that the CMCP has been implemented and that the performance standards continue to be met.

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

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

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

are used outside of State waters are generally not required to be inspected and approved.

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

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

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

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

2. As part of the CMCP, each plant would submit a scale testing plan that gives the procedure the plant would use to test each scale identified in the CMCP. The testing plan would list: the test weights and equipment required to test the scale; where the test weights and equipment are stored; and, the plant personnel responsible for testing the scale. Test amounts for various scale types are shown in Table 1.

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

4. Authorized officers or NMFS-authorized personnel could request that any scale be tested in accordance with

the testing plan, provided that the scale had not been tested and found accurate within the past 24 hours.

5. Each scale would have to be accurate within the limits specified in Table 2 (maximum permissible errors

and test weight amounts) when tested by the plant staff.

6. Each scale used to weigh catch would have to be equipped with a printer, and a printout or printouts showing the total weight of each

delivery would have to be generated after each delivery had been weighed. The printouts would have to be retained by the plant and made available to NMFS-authorized personnel including observers.

TABLE 1. SCALE TYPES AND TEST WEIGHT AMOUNTS

| Scale Type              | Capacity <sup>1</sup> | Test Weights <sup>2</sup>   | Test Loads <sup>3</sup>   |
|-------------------------|-----------------------|---|---|
| Automatic Hopper        | 0 to 150 kg           | Minimum Weighment <sup>1</sup> or 10 kg (20 lb), whichever is greater.<br>Maximum <sup>1</sup> .....  | Minimum <sup>1</sup><br>Maximum <sup>1</sup>  |
| Automatic Hopper        | >150 kg               | Minimum Weighment <sup>1</sup> or 10 kg, whichever is greater .....<br>25 percent of Maximum or 150 kg, whichever is greater. ...                         | Minimum <sup>1</sup><br>Maximum <sup>1</sup>  |
| Platform or flatbed     | 0 to 150 kg           | 10 kg .....<br>Midpoint .....<br>Maximum <sup>1</sup> .....   | Not Acceptable  |
| Platform or flatbed     | >150 kg               | 10 kg .....<br>12.5 percent of Maximum <sup>1</sup> or 75 kg, whichever is greater<br>25 percent of Maximum <sup>1</sup> or 150 kg, whichever is greater. | Not Acceptable<br>50 percent of Maximum <sup>1</sup><br>or 75 kg, whichever is<br>greater<br>75 percent of Maximum <sup>1</sup><br>or 150 kg, whichever is<br>greater |
| Observer sampling scale | ≥50 kg                | 10 kg .....<br>25 kg .....<br>50 kg .....   | Not Acceptable  |

<sup>1</sup>These amounts will be shown on the scale marking plate.

<sup>2</sup>Test Weights are weights that have been approved by a NIST-approved laboratory.

<sup>3</sup>Test load is any combination of approved test weights and other material that is specified in the scale testing plan. Test material other than test weights must be weighed on an accurate observer platform scale at the time of each use.

TABLE2. MAXIMUM PERMISSIBLE ERRORS FOR INSEASON SCALE TESTING<sup>1</sup>

| Accuracy Class <sup>3</sup> | Maximum Error in Scale Divisions <sup>2</sup> |           |   |        |
|-----------------------------|---|-----------|---|--------|
|                             | 1   | 2         | 3   | 5      |
| III                         | 0-500   | 501-2,000 | 2,001-4,000   | >4,000 |
| IIII                        | 0-50  | 51-200    | 201-400   | >400   |
| IIIL                        | 0-500   | 501-1,000 | Add 1 d for each additional 500d or fraction thereof. |        |

<sup>1</sup> Maximum permissible errors and testing procedure for inseason testing are not the same as for State scale approval. A scale that is accurate for the purposes of inseason testing may or may not be accurate enough to be approved by the State.

<sup>2</sup> Division size is shown on the scale's marking plate.

<sup>3</sup> Scales are divided into accuracy classes according to the number and value of scale divisions. The accuracy class is shown on the scale's marking plate.

**Vessel Monitoring System (VMS) Requirements**

Under the proposed rule, all AFA catcher/processors and AFA catcher vessels would be required to deploy an operating NMFS-approved VMS transmitter at all times that the vessel is fishing for groundfish in the BSAI or GOA. In a final rule published October 17, 2000 (65 FR 61264), NMFS established VMS requirements for trawl vessels engaged in directed fishing for Atka mackerel. These requirements would be extended to AFA catcher/

processors and AFA catcher vessels. An AFA catcher/processor or AFA catcher vessel would be required to carry and use a NMFS-approved VMS transmitter whenever fishing for groundfish off Alaska. These transmitters automatically determine the vessel's location several times per hour using Global Positioning System (GPS) satellites and send the position information to NMFS via a mobile communication service provider. The VMS transmitters are designed to be tamper-resistant and automatic. The

vessel owner should be unaware of exactly when the unit is transmitting and would be unable to alter the signal or the time of transmission.

NMFS believes that a VMS system is an essential component of a monitoring program for the AFA pollock fishery. A VMS system would allow NMFS to verify catch locations inside and outside of the Steller Sea Lion Conservation Area (SCA). Under the proposed rule, each sector and cooperative would be limited in the amount of BSAI pollock that can be taken inside the SCA during

each season. Without the means to verify fishing location on a vessel-by-vessel basis, NMFS would be forced to implement a more conservative management program in which all catch by a sector is assumed to have been taken inside the SCA until that sector's SCA limit has been reached. Such a management program would not allow individual vessels to be credited for fishing location and would not allow cooperatives to manage their SCA harvest limits on an individual vessel basis. In addition, a VMS program would provide necessary management information that would enable NMFS to track participation in various sideboard fisheries and better ensure that small sideboard amounts are not exceeded.

In the proposed rule to require VMS in the Atka mackerel fishery (65 FR 36810) NMFS established criteria for the approval of VMS components. At this time, only one transmitter, the ArgoNet Mar GE, and its associated communications service provider, North American Collection and Location by Satellite, Inc. (NACLS), have been approved by NMFS. A vessel owner wishing to purchase this system may contact the provider or NMFS for additional information (see **ADDRESSES**).

The MAR GE transmitter and NACLS communications service provider have also been approved for use in the Atlantic Highly Migratory Species Fisheries. Additional details concerning these VMS components may be found in the NMFS notice of approval of these VMS components published in the Federal Register on September 9, 1999 (64 FR 48988).

#### *Definition of AFA Entity and the Concept of Affiliation*

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

#### *Definition of "Affiliation"*

The concept of "affiliation" is central to the definition of "AFA entity." Simply stated, "affiliation" means a relationship between two or more individuals, corporations, or other business concerns in which one concern directly or indirectly owns a 10 percent or greater interest in the other, exerts 10

percent or greater control over the other, or has the power to exert 10 percent or greater control over the other; or a third individual, corporation, or other business concern directly or indirectly owns a 10 percent or greater interest in both, exerts 10 percent or greater control over both, or has the power to exert 10 percent or greater control over both. Ownership and control are two overlapping concepts that may arise through a wide variety of relationships between two or more individuals, corporations, or other concerns. The following forms of affiliation are included in the proposed rule.

#### *Affiliation through ownership.*

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

*Affiliation through shared assets and/or liabilities.* Affiliation would arise if two or more individuals, corporations, or other concerns have 10 percent or greater shared assets and/or liabilities.

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

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

*Affiliation through cooperative agreements.* Affiliation would arise if an individual, corporation, or other business concern (1) has the power to control a fishery cooperative through 10 percent ownership or control over a majority of the voting rights of the cooperative, (2) has the power to appoint, remove, or limit the actions of or replace the chief executive officer of

the cooperative, or (3) has the power to appoint, remove, or limit the actions of a majority of the board of directors of the cooperative. In such instances the individual, corporation, or other entity in question would be deemed to have 10 percent or greater control over all member vessels of the cooperative.

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

#### *Potential for multiple affiliations.*

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

#### **Extension of Inshore/Offshore Regime in the GOA**

Amendment 61 to the FMP for groundfish of the GOA also would extend the expiration date for inshore/offshore allocations of GOA pollock and Pacific cod until December 31, 2004. The Council elected to extend the GOA inshore/offshore expiration date so that BSAI inshore/offshore allocations under the AFA and GOA inshore/offshore allocations would expire on the same date and could be reevaluated at the same time. Extensive background information on GOA inshore/offshore allocations is contained in the EA/RIR/FRFA prepared for Amendment 51/51, the most recent inshore/offshore amendments for the BSAI and GOA. Both EA/RIR/FRFA documents are available from the Council (see **ADDRESSES**).

#### **Changes to Definitions**

*Added Definitions.* Under the proposed rule, the following new definitions would be added to describe vessels and processors eligible to participate in the BSAI pollock fishery under the AFA: "AFA catcher/

processor," "AFA catcher vessel," "AFA inshore processor," "AFA mothership," "Designated primary processor," "Listed AFA catcher/processor," "Official AFA record," "Restricted AFA inshore processor," "Stationary floating processor," "Unlisted AFA catcher/processor," and "Unrestricted AFA inshore processor." A definition of "Designated primary processor" would be added to describe the processor to which an inshore fishery cooperative will deliver at least 90 percent of its BSAI pollock. A definition for "Official AFA record" would be added to describe the relevant catch histories of all potentially qualifying vessels in the BSAI pollock fisheries. The definition for "Stationary floating processor" would be added to define a vessel of the United States operating solely as a mothership in Alaska State waters that remains anchored or otherwise remains stationary while processing groundfish harvested in the GOA or BSAI.

*Revised Definitions.* In the GOA, the inshore/offshore definitions would be revised to remove reference to the BSAI.

*Removed Definitions.* The definitions for "Inshore component in the BSAI" and "Offshore component in the BSAI" would be removed because the previous inshore/offshore regime for pollock in the BSAI has been superseded by the AFA.

### Classification

At this time, NMFS has not determined that the FMP amendments that this rule would implement are consistent with the national standards of the Magnuson-Stevens Act, the AFA, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an initial regulatory flexibility analysis (IRFA) that describes the impact this proposed rule, if adopted, would have on small entities. A copy of this analysis is available from the Council (see **ADDRESSES**). The IRFA describes in detail the reasons why this action is being proposed, namely to fulfill the statutory requirements of the AFA as outlined under **SUPPLEMENTARY INFORMATION** and AFA-Background information. The IRFA describes the objectives and legal basis for the proposed rule. With regard to commercial fishing vessels operating in the directed pollock fishery in the BSAI, the AFA provides the legal basis for taking actions to achieve the objective of reducing excessive fishing capacity and establishes regulatory conditions that

could foster operational efficiencies in this fishery (Division C, Title II of Public Law 105-277), including cooperative formation and development of sideboard measures. Mitigation of potential adverse impacts to non-AFA fishermen and processors is mandated by the AFA.

The IRFA contains a description of and an estimate of the number of small entities to which the proposed rule would apply. The IRFA concluded that none of the catcher/processors, motherships and inshore processors affected by this proposed rule are small entities. All of the inshore and mothership processors participating in the BSAI pollock fishery are subsidiaries or close affiliates of corporations with more than 500 employees worldwide, and exceed the criterion for small entities. In addition, all 21 AFA catcher/processors have estimated annual gross revenues in excess of the \$3 million small entity criterion for fish harvesting operations. Therefore, none of the catcher/processors, motherships, or inshore processors in the BSAI pollock fishery appear to meet the RFA criteria for small entities.

With respect to the catcher vessel fleet, NMFS expects that approximately 120 catcher boats will be eligible to harvest BSAI pollock under this rule (7 in the offshore delivery sector, 92 in the inshore sector, 7 in the mothership sector, and 14 which are eligible in both the inshore and mothership sectors). Ownership information presented in the IRFA indicates that, of the 92 catcher boats that operated exclusively or partly in the inshore sector, the available ownership data identify 26 vessels owned, in whole or in part, by inshore processors. These 26 vessels may be considered to be affiliated with their respective inshore processor owners and cannot be considered small entities because none of the inshore processors in the BSAI pollock fishery, themselves, are small entities for RFA purposes. An additional 5 catcher boats have been identified as closely affiliated with an inshore floating processor. These 5 catcher boats, taken together with their affiliated processor, exceed the \$3 million criterion for fish harvesting operations and are, therefore, not believed to be small entities.

Furthermore, an additional 20 catcher boats have ownership affiliations with other catcher boats or catcher processors. The gross annual receipts of each of these groups of affiliated catcher boats is believed to exceed the \$3 million criterion for small entities, when all their fisheries earnings are taken as a whole. The remaining 40

catcher boats operating exclusively or partly in the inshore sector are believed to be small entities.

Twenty-eight catcher boats operated in the offshore sector exclusively (e.g., delivering to catcher/processors and motherships), while 22 operated in both inshore and offshore sectors for a total of 50 offshore catcher boats. Of the combined offshore catcher boat sector, 13 have ownership affiliations with large inshore or offshore processors and, therefore, do not meet the \$3 million criterion for small entities. An additional 13 catcher boats have ownership affiliations with other vessels or operations that, taken together with their affiliated entities, are believed to exceed the \$3 million gross receipts criterion for small entities. The remaining 24 catcher boats operating exclusively or partly in the offshore sector are believed to qualify as "small entities" (and are among the same 120 total vessels described earlier).

The IRFA further concluded that the formation of inshore fishery cooperatives among predetermined groups of catcher vessels and a corresponding inshore processor will create distinct sets of entities, large and small, and their potential for inter-related economic effects resulting from such affiliation. In the context of an RFA analysis, a fish harvesting concern is a small entity if it has annual receipts not in excess of \$3 million or it is not dominant in its field (defined in 13 CFR part 121, Standard Industrial Code categorizations). An independent catcher vessel operating in the "open access" or non-cooperative directed pollock fishery would typically meet that criteria. However, under SBA regulations for determining entity size, businesses that are affiliated with each other through joint-venture or cooperative arrangements are not considered "independent" and the affiliated businesses must be taken as a whole when determining entity size. In the case of AFA inshore cooperatives, the \$3 million criterion will be exceeded for every inshore cooperative meaning that once independent catcher vessels join a cooperative, they can no longer be considered a small business concern for RFA purposes.

Despite the fact that catcher vessels will lose their small entity size status upon entry into cooperatives, the IRFA nonetheless examined the economic consequences of cooperative formation on independent catcher vessels. Approximately 43 small entities, including 40 independent catcher vessels delivering to inshore processors and three neighboring communities, would be expected to be directly

impacted by the establishment of AFA cooperatives. The significance of these impacts on small independent catcher vessel businesses will depend primarily on the contractual relationship between such vessels, and their delivery processor as moderated by their collective cooperative agreement and cooperative by-laws. The IRFA concluded that if conventional cooperative motives exist between processor and catcher vessel business members as to foster a mutually beneficial economic relationship, this cooperative action would not be expected to significantly impact a substantial number of these small entities. Indeed, the action would be a net gain for cooperative members and their neighboring communities. Conversely, if the processor associated with the cooperative decides to exploit its position as the sole purchaser of pollock from cooperative co-members that operate as catcher vessels, then it would be highly probable that a substantial number of small entities would be significantly impacted by this action implementing such fishery cooperatives as authorized under AFA. Until empirical data become available, likely after cooperatives have been in operation for 2 or more years, these questions cannot be definitively addressed.

At its June 2000 meeting in Portland, OR, the Council considered and postponed action on a proposal from independent fishermen, known as the "Dooley-Hall" proposal, that would have allowed catcher vessel owners to switch cooperatives from year-to-year without needing to spend a year in the open access fishery to qualify for the new cooperative. Independent fishermen made this proposal to reduce negative economic impacts of this action on their sector of small entities. The IRFA concluded that the economic implications of the Dooley-Hall alternative on independent catcher vessels would be positive. It would also allow them to both retain the exclusive harvesting privilege associated with their cooperative's collective pollock allocation as well as provide for their ability to accept the highest exvessel price for such pollock landings as offered by an eligible inshore processor.

The IRFA concluded that potentially significant economic and institutional efficiencies could be further achieved if inshore catcher vessel operators were allowed to establish cooperatives comprised of memberships which they choose themselves. This is in contrast to the proposed inshore AFA cooperative structure requiring cooperative membership strictly as a function of

historical landings to a given processor. Establishment of more efficient long-term cooperative relationships would exist among members if they are based on commonly shared objectives as well as on economic efficiencies of scale created by business affiliation decisions. The IRFA concluded that sales to a specific processor is a less than optimal index of commonality in operational objectives among a sub-set of inshore catcher vessels. The long-term viability of cooperatives has traditionally proven most successful when they are naturally organized among members who share commitment and loyalty based on their inherent commonalities such as business focus, institutional structure, operational philosophy, geographic relationship, or cultural orientation. The IRFA concluded that such factors should be given due consideration when managers seek to foster the development of inshore pollock fishery cooperatives that will realize long-term benefits to both the fishery participants specifically, and to the Nation in general.

The proposed AFA cooperative structure does not allow a catcher vessel to change its cooperative affiliation from year to year while maintaining cooperative membership. To change cooperative membership (and exvessel buyer affiliation), the catcher vessel must fish in the open-access fishery for 1 year. For this open-access year, the AFA does not allow the vessel to retain its harvest privilege of pollock "quota share". It must compete for its share of pollock in the race-for-fish scenario of the open-access fishery. Should the vessel owner choose to join an AFA cooperative the following year and sell to the cooperative's designated inshore processor, the harvest privilege for the catcher vessel would be reauthorized. This open-access transition year requirement creates economic and resource inefficiencies associated with the catcher vessel's harvest allocation amount. This same amount of pollock would probably be harvested over a shorter time period in the open-access fishery than if harvested under a cooperative arrangement. As a result, open-access pollock harvests would generally yield lower recovery rates and create conditions for less than optimal market prices due to the surge in supply. Furthermore, per unit operating costs would likely be higher for the open-access operation than what could be expected under a more flexible inshore cooperative structure. The transition year constraint imposed by the AFA on inshore catcher vessel owners who seek to shift their vessel's

membership between AFA cooperatives, will create the potential for more, rather than less, inefficiency in the inshore component of the BSAI directed pollock fishery.

To further explore the effects of inshore cooperatives on independent catcher vessels, the Council supplemented the IRFA by contracting with experts in the fields of economics and industrial organization from the University of Washington to prepare a supplemental analysis. This supplemental analysis examined the economic and policy issues associated with the formation of catcher vessel cooperatives and included analysis of three alternatives to the proposed structure for inshore cooperatives and is incorporated into the EIS/RIR/IRFA as an appendix.

The supplemental analysis concluded that an independent catcher vessel is likely to be worse off if inshore cooperatives form and the vessel chooses to remain independent. Under the most plausible scenario, per-vessel share of the remaining TAC allocated on open-access or non-cooperative fishing would be much lower than in the absence of cooperatives. Catcher vessels with large cooperative catch histories would be most likely to join cooperatives in order to preserve this catch history while vessels with little or no catch history during the qualifying years would have less incentive to join cooperatives. Therefore, if inshore cooperatives form, the vessels choosing not to join cooperatives will likely be faced with increased competition for a smaller portion of the TAC.

The supplemental analysis also noted that the presence of processor-owned vessels in a cooperative could have a negative effect on independent vessels if processors are able to exert undue influence over the cooperative by virtue of their ownership of member vessels. Therefore, the analysis concluded that independent catcher vessels likely will be adversely affected by the AFA's provisions for cooperatives. However, the supplemental analysis also noted that, to the extent that the cooperatives are implemented, the race for fish will abate. The resulting rationalization will increase both the total rents in the fishery and the effective amount of capacity in harvesting and processing.

The IRFA (and supplemental analysis) considered three alternatives that would mitigate adverse effects of this rule to small entities. The analysis concluded that under the Dooley-Hall proposal cited previously, independent catcher vessels would be better off, and processors worse off than under the AFA provisions in this proposed rule.



Another alternative would supersede paragraph 210(b)(6) of the AFA to raise the 10 percent limit on the amount of pollock that a cooperative could deliver to a processor other than its designated processor. Raising this limit would facilitate rationalization under the AFA. Whether it would reduce the probability of adverse economic effects on independent catcher vessels would depend in part on whether they could exercise the transfer option without hindrance from processors. The third alternative would supersede paragraph 210(b)(3) of the AFA by eliminating the qualification requirement for cooperative membership, so that a catcher vessel could change processors without having to spend a year fishing in the open access pollock fishery.

Finally, the IRFA examined the impacts of catcher vessel sideboard measures on small entities, and examined the effects of this proposed rule on small vessels excluded from the pollock fishery under the AFA. With respect to the effects of catcher vessel sideboards on AFA catcher vessels, the IRFA examined a range of alternatives that would mitigate adverse effects on small entities, especially small catcher vessels that may have little pollock catch history in the BSAI and would therefore receive little benefit under the AFA. The Council recommended, and this rule contains, an exemption from BSAI Pacific cod and GOA groundfish sideboards for catcher vessels that have less than 1700 mt average annual pollock harvests in the BSAI from 1995–1997. The intent of this alternative is to eliminate the impact of sideboards on AFA catcher vessels that have not traditionally focused the bulk of their effort in BSAI pollock, and that are more dependent on GOA groundfish fisheries.

This proposed rule contains collection of information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by OMB under control numbers 0648–0393, 0648–0401, and 0648–0425.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person will 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.

The estimated response times shown include the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. The estimated time for the operator to complete the AFA catcher vessel permit application is 2 hours; the estimated time for an operator of an

AFA mothership or manager of an inshore processor to complete the AFA mothership and inshore processor permit application is 2 hours; the estimated time for a cooperative representative to complete the AFA inshore cooperative permit application is 2 hours; the estimated time for an operator to complete the AFA permit application for a replacement vessel is 30 minutes; the estimated time for a manager to complete the shoreside processor electronic logbook is 30 minutes; the estimated time for a manager to electronically submit the shoreside processor electronic logbook report is 5 minutes; the estimated time for an operator to complete the at-sea scale inspection request is 2 minutes; the estimated time for an operator to retain the at-sea scale inspection request is 1 minute; the estimated time for an operator to complete the at-sea scale test report is 45 minutes; the estimated time for an operator to print the record of haul weight is 5 minutes; the estimated time for an operator to retain a scale audit trail print-out is 3 minutes; the estimated time for an operator to complete the observer sampling station inspection request is 2 minutes; the estimated time for an operator of a mothership or catcher/processor to electronically submit the weekly production report is 5 minutes; the estimated time for a cooperative representative to complete a catcher vessel cooperative pollock catch report is 5 minutes; the estimated time for a cooperative representative to submit a copy of the cooperative contract is 5 minutes; the estimated time for a cooperative representative to complete a annual written report from each AFA cooperative is 8 hours.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and to OIRA, OMB (see **ADDRESSES**).

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

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 1, 2001

**William T. Hogarth**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

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

#### **PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

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

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

2. In § 679.1, paragraph (k) is revised to read as follows:

#### **§ 679.1 Purpose and scope.**

\* \* \* \* \*

(k) *American Fisheries Act measures.* Regulations in this part were developed by NMFS and the Council under the Magnuson-Stevens Act and American Fisheries Act (AFA) to govern commercial fishing for BSAI pollock according to the requirements of the AFA. This part also governs payment and collection of the loan, under the AFA, the Magnuson-Stevens Act, and Title XI of the Merchant Marine Act, 1936, made to all those persons who harvest pollock from the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

3. In § 679.2, the definitions of “Appointed agent for service of process (applicable through December 31, 2001)” “Designated cooperative representative (applicable through December 31, 2001),” “Directed fishing” paragraph (3), “Inshore component in the GOA,” and “Offshore component of the GOA,” are removed; definitions of “ADF&G processor code,” “AFA catcher/processor,” “AFA catcher vessel,” “AFA crab processing facility,” “AFA entity,” “AFA inshore processor,” “AFA mothership,” “Affiliation for the purpose of defining AFA entities,” “Appointed agent for service of process,” “Designated cooperative representative,” “Designated primary processor,” “Listed AFA catcher/processor,” “Official AFA record,” “Restricted AFA inshore processor,” “Stationary floating processor,” “Unlisted AFA catcher/processor,” “ and Unrestricted AFA inshore processor,” are added in alphabetical order, and under the

definition of "Directed fishing," paragraph (5) is redesignated as paragraph (3), and paragraph (4) is revised to read as follows:

**§ 679.2 Definitions.**

\* \* \* \* \*

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

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

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

*AFA crab processing facility* means a processing plant, catcher/processor, mothership, floating processor or any other operation that processes any FMP species of BSAI crab, and that is affiliated with an AFA entity that processes pollock harvested by a catcher vessel cooperative operating in the inshore or mothership sectors of the BSAI pollock fishery.

*AFA entity* means a group of affiliated individuals, corporations, or other business concerns that harvest or process pollock in the BSAI directed pollock fishery.

*AFA inshore processor* means a shoreside processor or stationary floating processor permitted to process BSAI pollock under § 679.4(l)(5).

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

\* \* \* \* \*

*Affiliation for the purpose of defining AFA entities* means a relationship between two or more individuals, corporations, or other business concerns in which one concern directly or indirectly owns a 10 percent or greater interest in another, exerts 10 percent or greater control over another, or has the power to exert 10 percent or greater control over another; or a third individual, corporation, or other business concern directly or indirectly owns a 10 percent or greater interest in both, exerts 10 percent or greater control over both, or has the power to exert 10 percent or greater control over both.

(1) *What is 10-percent or greater ownership?* For the purpose of determining affiliation, 10-percent or greater ownership is deemed to exist if any of the following relationships are present:

(i) *Direct or indirect interest.* If an individual, corporation, or other business concern directly or indirectly owns 10 percent or greater interest in a second corporation or other business concern, or

(ii) *Shared assets and liabilities.* If 10 percent or more of the assets and/or liabilities of one corporation or other business concern are the same as those of a second corporation or other business concern.

(2) *What is an indirect interest?* An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest in a second entity is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's direct or indirect interest in the second entity.

(3) *What is 10-percent or greater control?* For the purpose of determining affiliation, 10-percent or greater control is deemed to exist if an individual, corporation, or other business concern has any of the following relationships or forms of control over another individual, corporation, or other business concern:

(i) Controls 10 percent or more of the voting stock of another corporation or business concern;

(ii) Has the authority to direct the business of the entity which owns the fishing vessel or processor. The authority to "direct the business of the entity" does not include the right to simply participate in the direction of the business activities of an entity which owns a fishing vessel or processor;

(iii) Has the authority in the ordinary course of business to limit the actions of or to replace the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of an entity that holds 10 percent or greater interest in a fishing vessel or processor. Standard rights of minority shareholders to restrict the actions of the entity are not included in this definition of control provided they are unrelated to day-to-day business activities. These rights include provisions to require the consent of the minority shareholder to sell all or substantially all the assets, to enter into a different business, to contract with the major investors or their affiliates or to guarantee the obligations of majority investors or their affiliates;

(iv) Has the authority to direct the transfer, operation or manning of a fishing vessel or processor. The authority to "direct the transfer, operation, or manning" of a vessel or processor does not include the right to simply participate in such activities;

(v) Has the authority to control the management of or to be a controlling factor in the entity that holds 10 percent or greater interest in a fishing vessel or processor;

(vi) Absorbs all the costs and normal business risks associated with ownership and operation of a fishing vessel or processor;

(vii) Has the responsibility to procure insurance on the fishing vessel or processor, or assumes any liability in excess of insurance coverage;

(viii) Has the authority to control a fishery cooperative through 10 percent or greater ownership or control over a majority of the voting members of the cooperative, has the authority to appoint, remove, or limit the actions of or replace the chief executive officer of the cooperative, or has the authority to appoint, remove, or limit the actions of a majority of the board of directors of the cooperative. In such instance, all members of the cooperative are considered affiliates of the individual, corporation, or other business concern that exerts 10 percent or greater control over the cooperative;

(ix) Has the ability through any other means whatsoever to control the entity that holds 10 percent or greater interest in a fishing vessel or processor.

\* \* \* \* \*

*Appointed agent for service of process* means an agent appointed by the members of 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* 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.

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

\* \* \* \* \*

*Directed fishing* means \* \* \*

\* \* \* \* \*

(4) With respect to the harvest of groundfish by AFA catcher/processors

and AFA catcher vessels, any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the maximum retainable bycatch amount for that species or species group as calculated under § 679.20.

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

*Unlisted AFA catcher/processor* means an AFA catcher/processor permitted to harvest BSAI pollock under § 679.4(l)(2)(ii).

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

\* \* \* \* \*

4. In § 679.4 paragraph (k)(9) is added and paragraph (l) is revised to read as follows:

**§ 679.4 Permits.**

\* \* \* \* \*

(k) \* \* \*

(9) *Restrictions on licenses earned on AFA catcher vessels and listed AFA*

*catcher/processors.* No person may use an LLP license that was derived in whole or in part from the qualifying fishing history of an AFA catcher vessel or a listed AFA catcher/processor to fish for groundfish or crab on a non-AFA catcher vessel or non-AFA catcher/processor. NMFS will identify all such licenses affected by this restriction and inform the holders of such licenses of this restriction through a restriction printed on the face of the license.

(l) *AFA permits—(1) General—(i) Applicability.* In addition to any other permit and licensing requirements set out in this part, any vessel used to engage in directed fishing for a non-CDQ allocation of pollock in the BSAI and any shoreside processor, stationary floating processor, or mothership that receives pollock harvested in a non-CDQ directed pollock fishery in the BSAI must have a valid AFA permit onboard the vessel or at the facility location at all times while non-CDQ pollock is being harvested or processed. 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 paragraphs (l)(5)(v)(B)(3) and (l)(6)(iii) 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.

(v) *Application deadline.* All AFA vessel and processor permits must be received by the Regional Administrator by [INSERT DATE 60 DAYS AFTER EFFECTIVE DATE OF FINAL RULE]. AFA vessel and processor permits received after [INSERT DATE 60 DAYS AFTER EFFECTIVE DATE OF FINAL RULE] will not be accepted by the

Regional Administrator and will be permanently ineligible to receive the requested AFA permit.

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

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

(iii) *Application for AFA catcher/processor permit.* A completed application for an AFA catcher/processor permit must contain:

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

(B) *Ownership information*—(1) *Managing owner.* The managing 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);

(2) *Identification of affiliated persons.* The name, registered address, and percentage of ownership of all persons that are “affiliated” with the vessel by virtue of holding 10 percent or greater direct or indirect ownership or control of the vessel as defined in § 679.2.

(C) *Certification of notary and applicant.* Managing owners signature(s), date of signature, printed name(s), and the notary stamp, signature, and date commission expires of a notary public.

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

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

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

AMERICAN CHALLENGER (USCG documentation number 633219);  
FORUM STAR (USCG documentation number 925863);  
MUIR MILACH (USCG documentation number 611524);  
NEAHKAHNIE (USCG documentation number 599534);  
OCEAN HARVESTER (USCG documentation number 549892);  
SEA STORM (USCG documentation number 628959);  
TRACY ANNE (USCG documentation number 904859); or

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

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

(1) Is one of the following (as listed in paragraphs 208(c)(1) through (19) and in 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 is:

(1) One of the following vessels authorized by statute to engage in directed fishing for inshore sector pollock:

(i) HAZEL LORRAINE (USCG documentation number 592211),

(ii) LISA MARIE (USCG documentation number 1038717),

(iii) PROVIDIAN (USCG documentation number 1062183); or

(2) Is not listed in § 679.4(l)(3)(i)(A), and:

(i) Is determined by the Regional Administrator to have delivered at least

250 mt of pollock harvested in the directed BSAI pollock fishery for processing by the inshore component in any one of the years 1996 or 1997, or between January 1, 1998, and September 1, 1998; or

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

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

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

(B) *Ownership information*—(1) *Managing owner.* The managing 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);

(2) *Identification of affiliated persons.* The name, registered address, and percentage of ownership of all persons that are “affiliated” with the vessel by virtue of holding 10% or greater direct or indirect ownership or control of the vessel as defined in § 679.2.

(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 and provides supporting documentation that the catcher vessel made the required legal landing(s) of a crab species and if the Regional Administrator verifies the legal landing(s) according to the following criteria:

(1) *Bristol Bay Red King Crab (BBRKC).* A legal landing of any BSAI king or Tanner crab species in 1996, 1997, or on or before February 7, 1998. A BBRKC sideboard endorsement also authorizes a vessel to retain Bairdi Tanner crab harvested during the duration of a BBRKC opening if the vessel is otherwise authorized to retain

Bairdi Tanner crab while fishing for BBRKC under state and Federal regulations.

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

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

(4) *Aleutian Islands (Adak) brown king crab*. A legal landing of Aleutian Islands brown king crab 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.

(8) *Exemption to crab harvesting sideboards*. An AFA catcher vessel permit may be endorsed with an exemption from all crab harvesting sideboards if the owner requests such exemption and provides supporting documentation that the catcher vessel made a legal landing of crab in every BBRKC, *Opilio* Tanner crab, and Bairdi Tanner crab fishery opening from 1991 to 1997 and if the Regional Administrator verifies the legal landings.

(E) *Vessel exemptions from AFA catcher vessel groundfish sideboard directed fishing closures*. An AFA catcher vessel permit may contain exemptions from certain groundfish sideboard directed fishing closures. If a vessel owner is requesting 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 (38.1 m) LOA, have landed a combined total of less than 5,100 mt of BSAI pollock in the BSAI directed pollock fishery from 1995 through 1997, and have made 30 or more legal landings of Pacific cod in the BSAI directed fishery for Pacific cod from 1995 through 1997.

(2) *GOA groundfish species*. For a catcher vessel to qualify for an

exemption from AFA catcher vessel sideboards in the GOA groundfish fisheries, the catcher vessel must: Be less than 125 ft (38.1 m) LOA, have landed a combined total of less than 5,100 mt of BSAI pollock in the BSAI directed pollock fishery from 1995 through 1997, and made 40 or more legal landings of GOA groundfish in a directed fishery for GOA groundfish from 1995 through 1997.

(F) *Certification of notary and applicant*. Owner signature(s), date of signature, printed name(s), and the notary stamp, signature, and date commission expires 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 § 679.61 must apply for and receive a cooperative processing endorsement on the vessel's AFA mothership permit.

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

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

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

(C) *Ownership information*—(1) *Managing owner*. The managing 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);

(2) *Identification of affiliated persons*. The name, registered address, and percentage of ownership of all persons that are "affiliated" with the vessel by virtue of holding 10 percent or greater direct or indirect ownership or control of the vessel as defined in § 679.2.

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

each AFA crab facility that is affiliated with the AFA entity that owns or controls the AFA mothership;

(E) *Data confidentiality waiver*. If the applicant is applying for a cooperative pollock processing endorsement, the AFA mothership application must contain a valid signed data confidentiality waiver for each crab processing facility listed on the permit application that authorizes public release of the 1995–1998 total processing history of each BSAI king and Tanner crab species, and

(F) *Certification of notary and applicant*. Owner signature(s), date of signature, printed name(s), and the notary stamp, signature, and date commission expires 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 § 679.62 must apply for and receive a cooperative processing endorsement on the AFA inshore processor permit.

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

(A) *Shoreside processors*. The physical location at which the land-based shoreside processor first processed BSAI pollock harvested in the

BSAI directed pollock fishery during a fishing year;

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

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

(A) *Type of permit requested.* Type of processor, whether requesting an AFA cooperative endorsement, and amount of BSAI pollock processed in 1996 and 1997;

(B) *Stationary floating processor information.* The vessel name, Federal processor code, 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) *Ownership information—(1) Managing owner.* The managing 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);

(2) *Identification of affiliated persons.* The name, registered address, and percentage of ownership of all persons that are "affiliated" with the processor by virtue of holding 10 percent or greater direct or indirect ownership or control of the processor as defined in § 679.2.

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

(F) *Data confidentiality waiver.* If the applicant is applying for a cooperative pollock processing endorsement, the AFA mothership application must contain a valid signed data confidentiality waiver for each crab processing facility listed on the permit application that authorizes public release of the 1995–1998 total processing history of each BSAI king

and Tanner crab species by that facility, and

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

(v) *Authorization of new AFA inshore processors.* If the Council recommends and NMFS approves a combined BSAI pollock TAC that exceeds 1,274,900 mt for any fishing year, or in the event of the actual total loss or constructive loss of an existing AFA inshore processor, the Council may recommend that an additional inshore processor (or processors) be issued AFA inshore processing permits.

(A) *Timing of Council action.* At any time prior to or during a fishing year in which the combined BSAI pollock TAC exceeds 1,274,900, or at any time after the actual total loss or constructive total loss of an existing AFA inshore processor, the Council may, after opportunity for public comment, recommend that an additional inshore processor (or processors) be issued AFA inshore processor permits.

(B) *Required elements in Council recommendation.* Any recommendation from the Council to add an additional inshore processor (or processors) must include the following information:

(1) *Identification of inshore processor(s).* The Council recommendation must identify by name the inshore processor(s) to which AFA inshore processor permits would be issued;

(2) *Type of AFA inshore processor permit(s).* The Council recommendation must specify whether the identified inshore processor(s) should be issued a restricted or unrestricted AFA inshore processor permit.

(3) *Duration of permit.* The Council recommendation must specify the recommended duration of the permit. Permit duration may be for any duration from a single fishing season to the duration of section 208 of the AFA. Alternatively, the Council may recommend that the permit be valid as long as the conditions that led to the permit remain in effect. For example, the Council could recommend that a permit issued under this paragraph remain valid as long as the combined annual BSAI pollock TAC remains above 1,274,900 mt. or a lost AFA inshore processor is not reconstructed.

(4) *Council procedures.* The Council may establish procedures for the review and approval of requests to authorize additional AFA inshore processors. However, such procedures must be consistent with the Magnuson-Stevens Act, the national standards, and other applicable law.

(5) *Action by NMFS.* Upon receipt of a recommendation from the Council to authorize additional AFA inshore processors, NMFS may issue an AFA inshore processor permit to the identified inshore processor(s) of the type and duration recommended by the Council, provided the Council has met the requirements identified in paragraphs (l)(5)(v)(B)(1) through (4) of the same section, and the owner(s) of the identified inshore processor has submitted a completed application for an AFA inshore processor permit that is subsequently approved.

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

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

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

(B) *Designated cooperative processor.* The name and physical location of AFA Inshore Processor who is designated in the cooperative contract as the processor to whom the cooperative has agreed to deliver at least 90 percent of its BSAI pollock catch. 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;

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

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

(D) *Qualified catcher vessels.* For the purpose of this paragraph, a catcher vessel is a qualified catcher vessel if it meets the following permit and landing requirements:

(1) *Permit requirements—(i) AFA permit.* The vessel must have a valid AFA catcher vessel permit with an inshore endorsement;

(ii) *LLP permit.* The vessel must be named on a valid LLP permit authorizing the vessel to engage in trawling for pollock in the Bering Sea subarea and in the Aleutian Islands subarea if the vessel's Aleutian Islands subarea fishing history is used to generate a cooperative allocation for the Aleutian Islands subarea; and

(iii) *Permit sanctions.* The vessel has no permit sanctions that otherwise make it ineligible to engage in fishing for pollock in the BSAI.

(2) *Landing requirements—(i) Active vessels.* The vessel delivered more pollock harvested in the BSAI inshore directed pollock fishery to the AFA inshore processor designated under paragraph (1)(6)(ii)(B) of this section than to any other shoreside processor or stationary floating processor during the year prior to the year in which the cooperative fishing permit will be in effect; or

(ii) *Inactive vessels.* The vessel delivered more pollock harvested in the BSAI inshore directed pollock fishery to the AFA inshore processor designated under paragraph (1)(6)(ii)(B) of this section than to any other shoreside processor or stationary floating processor during the last year in which the vessel delivered BSAI pollock harvested in the BSAI directed pollock fishery to an AFA inshore processor.

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

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

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

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

(iv) *Addition or subtraction of vessels.* The cooperative representative must submit a new application to add or subtract a catcher vessel to or from an inshore cooperative fishing permit to

the Regional Administrator prior to the application deadline. Upon approval by the Regional Administrator, NMFS will issue an amended cooperative fishing permit.

(v) *Application deadline.* An inshore cooperative fishing permit application and any subsequent contract amendments that add or subtract vessels must be received by the Regional Administrator by December 1 prior to the year in which the inshore cooperative fishing permit will be in effect. Inshore cooperative fishing permit applications or amendments to inshore fishing cooperative permits received after December 1 will not be accepted by the Regional Administrator for the subsequent fishing year.

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

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

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

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

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

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

(F) If the replacement vessel is already an AFA catcher vessel, the inshore cooperative catch history of both vessels

may be merged in the replacement vessel for the purpose of determining inshore cooperative allocations except that a catcher vessel with an endorsement to deliver pollock to AFA catcher/processors may not be simultaneously endorsed to deliver pollock to AFA motherships or AFA inshore processors.

(G) *Replacement of replacement vessels.* In the event that a permitted replacement vessel is lost under the circumstances described in paragraph (1)(7)(i)(A) of this section, the replacement vessel may be replaced according to the provisions of this paragraph (1) (7). However, the maximum length, tonnage, and horsepower of any subsequent replacement vessels are determined by the length, tonnage, and horsepower of the originally qualifying AFA vessel and not by those of any subsequent replacement vessels.

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

(A) Identification of lost AFA eligible vessel.

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

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

(3) The last year in which the vessel harvested or processed pollock in a BSAI directed pollock fishery; and

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

(B) Identification of replacement vessel.

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

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

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

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

(C) Certification of applicant and notary. Signature(s) and printed name(s)

of owner(s) and date of signature; signature, notary stamp or seal of notary public, and date notary commission expires.

(8) *Application evaluations and appeals*—(i) *Initial evaluation*. The Regional Administrator will evaluate an application for an AFA fishing or processing permit submitted in accordance with paragraph (l)(1) of this section and compare all claims in the application with the information in the official AFA record. Claims in the application that are consistent with information in the official AFA record will be accepted by the Regional Administrator. Inconsistent claims in the application, unless supported by evidence, will not be accepted. An applicant who submits claims based on inconsistent information or fails to submit the information specified in the application for an AFA permit will be provided a single 60-day evidentiary period to submit the specified information, submit evidence to verify the applicant's inconsistent claims, or submit a revised application with claims consistent with information in the official AFA record. An applicant who submits claims that are inconsistent with information in the official AFA record has the burden of proving that the submitted claims are correct.

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

(iii) *Sixty-day evidentiary period*. The Regional Administrator will specify by letter a 60-day evidentiary period during which an applicant may provide additional information or evidence to support the claims made in his or her application, or to submit a revised application with claims consistent with information in the official AFA record,

if the Regional Administrator determines that the applicant did not meet the burden of proving that the information on the application is correct through evidence provided with the application. Also, an applicant who fails to submit required information will have 60 days to provide that information. An applicant will be limited to one 60-day evidentiary period. Additional information or evidence, or a revised application received after the 60-day evidentiary period specified in the letter has expired will not be considered for the purposes of the initial administrative determination.

(iv) *Initial administrative determinations (IAD)*. The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 60-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to rebut the presumption that the official AFA record is correct or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 60-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD will also indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal under the appeals procedures set out at § 679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will receive an interim AFA permit that authorizes a person to participate in an AFA pollock fishery and will have the specific endorsements and designations based on the claims in his or her application. An interim AFA permit based on claims contrary to the Official Record will expire upon final agency action.

(v) *Effect of cooperative allocation appeals*. An AFA inshore cooperative may appeal the pollock quota share issued to the cooperative under § 679.62; however, final agency action on the appeal must occur prior to December 1 for the results of the appeal to take effect during the subsequent fishing year.

5. In § 679.7, paragraph (k) is revised 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 a listed AFA catcher/processor to harvest any species of fish in the GOA.

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

(iv) *Processing GOA groundfish*. Use a listed AFA catcher/processor to process any pollock harvested in a directed pollock fishery in the GOA and any groundfish harvested in Statistical Area 630 of the GOA.

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

(vi) *Catch weighing*—(A) *Listed AFA catcher/processors*. Process any groundfish that was not weighed on a NMFS-approved scale that complies with the requirements of § 679.28(b). Catch may not be sorted before it is weighed and each haul must be sampled by an observer for species composition.

(B) *Unlisted AFA catcher processors*. Process groundfish harvested in the BSAI pollock fishery that was not weighed on a NMFS-approved scale that complies with the requirements of § 679.28(b). Catch may not be sorted before it is weighed and each haul must be sampled by an observer for species composition.

(vii) *Observer sampling station*.—(A) *Listed AFA catcher/processors*. Process any groundfish without an observer sampling station as described at § 679.28(d). A valid observer sampling station inspection report must be on board at all times when an observer sampling station is required.

(B) *Unlisted AFA catcher/processors*. Process groundfish harvested in the BSAI pollock fishery without an observer sampling station as described at § 679.28(d). A valid observer sampling station inspection report must be on board at all times when an observer sampling station is required.

(viii) *VMS*. Use a listed or unlisted AFA catcher processor to participate in any groundfish fishery or process any groundfish harvested in the BSAI or GOA unless that vessel carries a NMFS-



approved Vessel Management System (VMS) transmitter and complies with the requirements described at § 679.28(f).

(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 § 679.61 unless the AFA mothership permit contains a valid cooperative pollock processing endorsement.

(iii) *Catch weighing*. Process any groundfish that was not weighed on a NMFS-approved scale that complies with the requirements of § 679.28(b). Catch may not be sorted before it is weighed and each delivery must be sampled by an observer for species composition.

(iv) *Observer sampling station*. Process any groundfish without an observer sampling station as described at § 679.28(d). A valid observer sampling station inspection report must be on board at all times when an observer sampling station is required.

(3) *AFA inshore processors*—(i) *Permit requirement*. Use a shoreside processor or stationary floating processor to process 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 § 679.62 unless the AFA inshore processor permit contains a valid cooperative pollock processing endorsement.

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

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

(A) *Shoreside processors*. The physical location at which the land-based shoreside processor first processed BSAI pollock harvested in the

BSAI directed pollock fishery during a fishing year;

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

(v) *Catch weighing*. Process any groundfish that was not weighed on a scale approved by the State of Alaska and meeting the requirements specified in § 679.28(c).

(vi) *Catch monitoring and control plan (CMCP)*. Take deliveries or process groundfish delivered by a vessel engaged in directed fishing for BSAI pollock without following an approved CMCP as described at § 679.28(g). A copy of the CMCP must be maintained on the premises and made available to authorized officers or NMFS-authorized personnel upon request.

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

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

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

(iv) *VMS*. Participate in any groundfish fishery or transport any groundfish without carrying a NMFS-approved Vessel Management System (VMS) transmitter and complying with the requirements of § 679.28(f).

(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 § 679.62.

(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) *Excessive harvesting shares*. It is unlawful for an AFA entity to harvest, through a fishery cooperative or otherwise, an amount of BSAI pollock that exceeds the 17.5 percent excessive share limit specified under § 679.20(a)(5)(i)(A)(6). The owners and operators of the individual vessels comprising the AFA entity that harvests BSAI pollock will be held jointly and severally liable for exceeding the excessive harvesting share limit.

(7) *Excessive processing shares*. It is unlawful for an AFA entity to process an amount of BSAI pollock that exceeds the 30 percent excessive share limit specified under § 679.20(a)(5)(i)(A)(7). The owners and operators of the individual processors comprising the AFA entity that processes BSAI pollock will be held jointly and severally liable for exceeding the excessive processing share limit.

(8) *Crab processing limits*. It is unlawful for an AFA entity that processes pollock harvested in the BSAI directed pollock fishery by an AFA inshore or AFA mothership catcher vessel cooperative to use an AFA crab facility to process crab in excess of the crab processing sideboard cap established for that AFA inshore or mothership entity under § 679.66. The owners and operators of the individual entities comprising the AFA inshore or mothership entity will be held jointly and severally liable for any overages of the AFA inshore or mothership entity's crab processing sideboard cap.

6. In § 679.20, paragraph (a)(5)(ii) is redesignated as paragraph (a)(5)(iii), a new paragraph (a)(5)(ii) is added, and paragraphs (a)(5)(i)(A), (a)(6), (b)(1)(i), (c)(4), and (d)(1)(iv) are revised to read as follows:

**§ 679.20 General limitations.**

\* \* \* \* \*

(a) \* \* \*

(5) \* \* \*

(i) *Bering Sea Subarea*—(A) *AFA allocations (applicable through December 31, 2004)*. The pollock TAC apportioned to the Bering Sea Subarea, after subtraction of the 10 percent CDQ

reserve under § 679.31 (a), will be allocated as follows:

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

(2) *Directed fishing allowance.* The remaining pollock TAC apportioned to the Bering Sea subarea is established as a directed fishing allowance.

(3) *Inshore sector allocation.* Fifty percent of the directed fishing allowance will be allocated to AFA catcher vessels harvesting pollock for processing by AFA inshore processors. The inshore allocation will be further divided into separate allocations for cooperative and open access fishing.

(i) *Inshore cooperatives.* The inshore cooperative allocation will be equal to the aggregate annual allocations of all AFA inshore catcher vessel cooperatives that receive pollock allocations under § 679.62(e).

(ii) *Inshore open access.* The inshore open access allocation will equal that portion of the inshore sector allocation that is not allocated to inshore cooperatives.

(4) *Catcher/processor sector allocation.* Forty percent of the directed fishing allowance will be allocated to AFA catcher/processors and AFA catcher vessels delivering to catcher processors.

(i) *Catcher/processor and catcher vessel cooperatives.* If by December 1 of the year prior to the year when fishing under the cooperative agreement will begin, NMFS receives filing of cooperative contracts and/or an inter-cooperative agreement entered into by listed AFA catcher/processors and all AFA catcher vessels with catcher/processor sector endorsements, and the Regional Administrator determines that such contracts provide for the distribution of harvest between catcher/processors and catcher vessels in a manner agreed to by all members of the catcher/processor sector cooperative(s), then NMFS will not subdivide the catcher/processor sector allocation between catcher vessels and catcher/processors.

(ii) *Catcher vessel allocation.* If such contract is not filed with NMFS by December 1 of the preceding year, then NMFS will allocate 91.5 percent of the catcher/processor sector allocation to AFA catcher/processors engaged in directed fishing for pollock and 8.5 percent of the catcher/processor sector allocation to AFA catcher vessels delivering to catcher/processors.

(iii) *Unlisted AFA catcher processors.* Unlisted AFA catcher/processors will be limited to harvesting not more than 0.5 percent of catcher/processor sector allocation.

(5) *Mothership sector allocation.* Ten percent of the directed fishing allowance will be allocated to AFA catcher vessels harvesting pollock for processing by AFA motherships.

(6) *Excessive harvesting share.* NMFS will establish an excessive harvesting share limit equal to 17.5 percent of the directed fishing allowance. The excessive harvesting share limit will be published in the annual harvest specifications.

(7) *Excessive processing share.* NMFS will establish an excessive processing share limit equal to 30.0 percent of the directed fishing allowance. The excessive processing share limit will be published in the annual harvest specifications.

(i) *Aleutian Islands Subarea and Bogoslof District.* If the Aleutian Islands subarea and/or Bogoslof District is open to directed fishing for pollock by regulation, then the pollock TAC for those areas will be allocated according to the same procedure established for the Bering Sea subarea at paragraph (a)(5)(i) of this section. If the Aleutian Islands subarea and/or Bogoslof District is closed to directed fishing for pollock by regulation then the entire TAC for those areas will be allocated as an incidental catch allowance.

(6) *GOA inshore/offshore allocations—(i) GOA pollock.* The apportionment of pollock in all GOA regulatory areas and for each season allowance described in paragraph (a)(5)(iii) of this section will be allocated entirely to vessels harvesting pollock for processing by the inshore component in the GOA after subtraction of an amount that is projected by the Regional Administrator to be caught by, or delivered to, the offshore component in the GOA incidental to directed fishing for other groundfish species.

(ii) *GOA Pacific cod.* The apportionment of Pacific cod in all GOA regulatory areas will be allocated 90 percent to vessels harvesting Pacific cod for processing by the inshore component in the GOA and 10 percent to vessels harvesting Pacific cod for

processing by the offshore component in the GOA.

\* \* \* \* \*

(b) *Reserves—(1) BSAI—(i) General.* Fifteen percent of the BSAI TAC for each target species and the “other species” category, except pollock and the hook-and-line and pot gear allocation for sablefish, is automatically placed in a reserve, and the remaining 85 percent of the TAC is apportioned for each target species and the “other species” category, except pollock and the hook-and-line and pot gear allocation for sablefish.

\* \* \* \* \*

(c) \* \* \*

(4) *AFA and inshore/offshore allocations—(i) BSAI pollock.* The annual harvest specifications will specify the allocation of pollock for processing by each AFA industry component in the BSAI, and any seasonal allowances thereof, as authorized under paragraph (a)(5) of this section.

(ii) *GOA pollock and Pacific cod.* The annual harvest specifications will specify the allocation of GOA pollock and GOA Pacific cod for processing by the inshore component in the GOA and the offshore component in the GOA, and any seasonal allowances thereof, as authorized under paragraphs (a)(5) and (a)(6) of this section.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iv) *AFA sideboard limitations* (applicable through December 31, 2004)—(A) If the Regional Administrator determines that any sideboard harvest limit for a group of AFA vessels established under § 679.64 has been or will be reached, the Regional Administrator may establish a sideboard directed fishing allowance for the species or species group applicable only to the identified group of AFA vessels.

(B) In establishing a directed fishing allowance under paragraph (d)(1)(iv)(A) of this section, the Regional Administrator will consider the amount of the sideboard limit established for a group of AFA vessels under § 679.64 that will be taken as incidental catch by those vessels in directed fishing for other species.

(C) If the Regional Administrator determines that a sideboard amount is insufficient to support a directed fishery for that species then the Regional Administrator may set the sideboard directed fishing allowance at zero for that species or species group.

\* \* \* \* \*

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

**§ 679.21 Prohibited species bycatch management.**

\* \* \* \* \*

(d) \* \* \*

(8) *AFA halibut bycatch limitations* (applicable through December 31, 2004). Halibut bycatch limits for AFA catcher vessels will be established according to the procedure and formula set out in § 679.64(b) and managed through directed fishing closures for AFA catcher vessels in the groundfish fisheries to which the halibut bycatch limit applies.

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(v) *AFA prohibited species catch limitations* (applicable through December 31, 2004). Halibut and crab PSC limits for AFA catcher/processors and AFA catcher vessels will be established according to the procedures and formulas set out in § 679.64 (a) and (b) and managed through directed fishing closures for AFA catcher/processors and AFA catcher vessels in the groundfish fisheries for which the PSC limit applies.

\* \* \* \* \*

8. In § 679.28, paragraph (c) is revised, and a new paragraph (g) is added to read as follows:

**§ 679.28 Equipment and operational requirements.**

\* \* \* \* \*

(c) *Scales approved by the State of Alaska.* Scale requirements in this paragraph are in addition to those requirements set forth by the State of Alaska, and nothing in this paragraph may be construed to reduce or supersede the authority of the State to regulate, test, or approve scales within the State of Alaska or its territorial sea.

Scales used to weigh groundfish catch that are also required to be approved by the State of Alaska under Alaska Statute 45.75 must meet the following requirements:

(1) *Verification of approval.* The scale must display a valid State of Alaska sticker indicating that the scale was inspected and approved within the previous 12 months.

(2) *Visibility.* The owner and manager of the processor must ensure that the scale and scale display are visible simultaneously to the observer. Observers, NMFS personnel, or an authorized officer must be allowed to observe the weighing of fish on the scale and be allowed to read the scale display at all times.

(3) *Printed scale weights.* (i) The owner and manager of the processor must ensure that printouts of the scale weight of each haul, set, or delivery are made available to observers, NMFS personnel, or an authorized officer at the time printouts are generated and thereafter upon request for the duration of the fishing year. The owner and manager must retain scale printouts as records as specified in § 679.5(a)(13).

(ii) A scale identified in a CMCP (see paragraph g of this section) must produce a printed record for each delivery, or portion of a delivery, weighed on that scale. If approved by NMFS as part of the CMCP, scales not designed for automatic bulk weighing may be exempted from part or all of the printed record requirements. The printed record must include:

- (A) The processor name;
- (B) The weight of each load in the weighing cycle;

(C) The total weight of fish in each delivery, or portion of the delivery that was weighed on that scale;

(D) The total cumulative weight of all fish or other material weighed on the scale since the last annual inspection;

(E) The date and time the information is printed;

(F) The name and ADF&G number of the vessel making the delivery. This information may be written on the scale printout in pen by the scale operator at the time of delivery.

(4) *Inseason scale testing.* Scales identified in an approved CMCP (see paragraph (g) of this section) must be tested by plant personnel in accordance with the CMCP when testing is requested by NMFS-staff or NMFS-authorized personnel. Plant personnel must be given no less than 20 minutes notice that a scale is to be tested and no testing may be requested if a scale test has been requested and the scale has been found to be accurate within the last 24 hours.

(i) *How does a scale pass an inseason test?* To pass an inseason test, NMFS staff or NMFS-authorized personnel will verify that the scale display and printed information are clear and easily read under all conditions of normal operation, weight values are visible on the display until the value is printed, and the scale does not exceed the maximum permissible errors specified below:

| Test Load in Scale Divisions | Maximum Error in Scale Divisions |
|------------------------------|----------------------------------|
| 0–500                        | 1                                |
| 501–2,000                    | 2                                |
| 2,001–4,000                  | 3                                |
| >4000                        | 5                                |

(ii) *How much weight is required to do an inseason scale test?* Scales must be tested with the amount and type of weight specified below.

| Scale Type              | Capacity                  | Certified Test Weights  | Other test material   |
|-------------------------|---------------------------|---|---|
| Automatic Hopper        | 0 to 150 kg (0 to 300 lb) | Minimum Weighment or 10 kg (20 lb), whichever is greater<br>Maximum .....   | Minimum<br>Maximum  |
| Automatic Hopper        | >150 kg (300 lb)          | Minimum Weighment or 10 kg (20 lb), whichever is greater<br>25 percent of Maximum or 150 kg (300 lb), whichever is greater..                                | Minimum<br>Maximum  |
| Platform or flatbed     | 0 to 150 kg (0 to 300 lb) | 10 kg (20 lb) .....<br>Midpoint .....<br>Maximum .....  | Not Acceptable  |
| Platform or flatbed     | >150 kg (300 lb)          | 10 kg (20 lb) .....<br>12.5 percent of Maximum or 75 kg (150 lb), whichever is greater.<br>25 percent of Maximum or 150 kg (300 lb), whichever is greater.. | Not Acceptable<br>50 percent of Maximum or 75 kg (150 lb), whichever is greater<br>75 percent of Maximum or 150 kg (300 lb), whichever is greater |
| Observer sampling scale | ≥50 kg                    | 10 kg .....<br>25 kg .....<br>50 kg .....   | Not Acceptable  |

(iii) *Certified test weights.* Each test weight used for inseason scale testing must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be certified by a National Institute of Standards and Technology approved metrology laboratory every 2 years. An observer platform scale must be provided with sufficient test weights to test the scale at 10 kg, 25 kg and 50 kg. All other scales identified in an approved CMCP must be provided with sufficient test weights to test the scale as described in this paragraph (c)(4). Test weights for observer platform scales must be denominated in kilograms. Test weights for other scales may be denominated in pounds.

(iv) *Other test material.* When permitted in paragraph (c)(4)(ii) of this section, a scale may be tested with test material other than certified test weights. This material must be weighed on an accurate observer platform scale at the time of each use.

(v) *Observer sampling scales.* Platform scales used as observer sampling scales must:

(A) Have a capacity of no less than 50 kg;

(B) Have a division size of no less than 5 g;

(C) Indicate weight in kilograms and decimal subdivisions; and

(D) Be accurate within plus or minus 0.5 percent when tested at 10 kg, 25 kg and 50 kg by NMFS staff or a NMFS-certified observer.

\* \* \* \* \*

(g) *Catch monitoring and control plan (CMCP).* A CMCP is a plan submitted by the owner and manager of a processing plant, and approved by NMFS, detailing how the processing plant will meet the catch monitoring and control standards detailed in paragraph (g)(6) of this section.

(1) *Who is required to prepare and submit a CMCP for approval?* The owner and manager of an AFA inshore processor is required to prepare and submit a CMCP which must be approved by NMFS prior to the receipt of pollock harvested in the BSAI directed pollock fishery.

(2) *How is a CMCP approved by NMFS?* NMFS will approve a CMCP if it meets all the performance standards specified in paragraph (g)(6) of this section. The processor must be inspected by NMFS prior to approval of the CMCP to ensure that the processor conforms to the elements addressed in the CMCP. NMFS will complete its review of the CMCP within 14 working days of receiving a complete CMCP and conducting a CMCP inspection. If NMFS

disapproves a CMCP, the plant owner or manager may resubmit a revised CMCP or file an administrative appeal as set forth under the administrative appeals procedures described at § 679.43.

(3) *How is a CMCP inspection arranged?* The time and place of a CMCP inspection may be arranged by submitting a written request for an inspection to NMFS, Alaska Region. NMFS will schedule an inspection within 10 working days after NMFS receives a complete application for an inspection. The inspection request must include:

(i) Name and signature of the person submitting the application and the date of the application;

(ii) Address, telephone number, fax number, and email address (if available) of the person submitting the application;

(iii) A proposed CMCP detailing how the processor will meet each of the performance standards in paragraph (g)(6) of this section.

(4) *For how long is a CMCP approved?* NMFS will approve a CMCP for 1 year if it meets the performance standards specified in paragraph (e)(2) of this section. An owner or manager must notify NMFS in writing if changes are made in plant operations or layout that do not conform to the CMCP.

(5) *How do I make changes to my CMCP?* An owner and manager may change an approved CMCP by submitting a CMCP addendum to NMFS. NMFS will approve the modified CMCP if it continues to meet the performance standards specified in paragraph (e)(2) of this section. Depending on the nature and magnitude of the change requested, NMFS may require a CMCP inspection as described in paragraph (g)(3) of this section. A CMCP addendum must contain:

(i) Name and signature of the person submitting the addendum;

(ii) Address, telephone number, fax number and email address (if available) of the person submitting the addendum;

(iii) A complete description of the proposed CMCP change.

(6) *Catch monitoring and control standards*—(i) Catch sorting and weighing requirements. All groundfish delivered to the plant must be sorted and weighed by species. The CMCP must detail the amount and location of space for sorting catch, the number of staff assigned to catch sorting and the maximum rate that catch will flow through the sorting area.

(ii) *Scales used for weighing groundfish.* The CMCP must identify by serial number each scale used to weigh groundfish and describe the rationale for its use.

(iii) *Scale testing procedures.* Scales identified in the CMCP must be accurate within the limits specified in paragraph (c)(4)(i) of this section. For each scale identified in the CMCP a testing plan must be developed that:

(A) Describes the procedure the plant will use to test the scale;

(B) Lists the test weights and equipment required to test the scale;

(C) Lists where the test weights and equipment will be stored;

(D) Lists the plant personnel responsible for conducting the scale testing.

(iv) *Printed record.* The owner and manager must ensure that the scale produces a complete and accurate printed record of the weight of each species in a delivery. All of the groundfish in a delivery must be weighed on a scale capable of producing a complete printed record as described in paragraph (c)(3) of this section. However, NMFS may exempt scales not designed for automatic bulk weighing from some or all of the printed record requirements if the CMCP identifies any scale that cannot produce a complete printed record, states how the processor will use the scale, and states how the plant intends to produce a complete record of the total weight of each delivery.

(v) *Delivery point.* Each CMCP must identify a single delivery point. The delivery point is the first location where fish removed from a delivering catcher vessel can be sorted or diverted to more than one location. If the catch is pumped from the hold of a catcher vessel or a codend, the delivery point normally will be the location where the pump first discharges the catch. If catch is removed from a vessel by brailing, the delivery point normally will be the bin or belt where the brailer discharges the catch.

(vi) *Observation area.* Each CMCP must designate an observation area. The observation area is a location designated on the CMCP where an individual may monitor the flow of fish during a delivery. The owner and manager must ensure that the observation area meets the following standards:

(A) *Access to the observation area.* The observation area must be freely accessible to NMFS staff or NMFS-authorized personnel at any time a valid CMCP is required.

(B) *Monitoring the flow of fish.* From the observation area, an individual must have an unobstructed view or otherwise be able to monitor the entire flow of fish between the delivery point and a location where all sorting has taken place and each species has been weighed.

(vii) *Observer work station.* Each CMCP must identify and include an observer work station for the exclusive use of NMFS-certified observers. Unless otherwise approved by NMFS, the work station must meet the following criteria:

(A) *Location of observer work station.* The observer work station must be located in an area protected from the weather where the observer has access to unsorted catch.

(B) *Platform scale.* The observer work station must include a platform scale as described in paragraph (c)(4) of this section;

(C) *Proximity to observer work station.* The observer area must be located near the observer work station. The plant liaison must be able to walk between the work station and the observation area in less than 20 seconds without encountering safety hazards.

(D) *Workspace.* The observer work station must include: A working area of at least 4.5 square meters, a table as specified in paragraph (d)(4) of this section, and meet the other requirements as specified in paragraph (d)(6) of this section.

(E) *Lockable cabinet.* The observer work station must include a secure and lockable cabinet or locker of at least 0.5 cubic meters.

(viii) *Communication with observer.* The CMCP must describe what communication equipment such as radios, pagers or cellular phones, is used to facilitate communications within the plant. The plant owner must ensure that the plant manager provides the NMFS-certified observer with the same communications equipment used by plant staff.

(ix) *Plant liaison.* The CMCP must designate a plant liaison. The plant liaison is responsible for:

(A) Orienting new observers to the plant;

(B) Assisting in the resolution of observer concerns;

(C) Informing NMFS if changes must be made to the CMCP.

(x) *Scale drawing of plant.* The CMCP must be accompanied by a scale drawing of the plant showing:

(A) The delivery point;

(B) The observation area;

(C) The observer work station;

(D) The location of each scale used to weigh catch;

(E) Each location where catch is sorted.

9. In § 679.31, paragraph (a) is revised to read as follows:

**§ 679.31 CDQ reserves.**

\* \* \* \* \*

(a) *Pollock CDQ reserve—(1) Bering Sea.* In the annual harvest specifications

required by § 679.20(c), 10 percent of the Bering Sea subarea pollock TAC will be allocated to a CDQ reserve.

(2) *Aleutian Islands Subarea and Bogoslof District.* In the annual harvest specifications required by § 679.20(c), 10 percent of the Aleutian Islands subarea and Bogoslof District pollock TAC will be allocated to a CDQ reserve unless the Aleutian Islands subarea and/or Bogoslof District is closed to directed fishing for pollock by regulation. If the Aleutian Islands subarea and/or Bogoslof District is closed to directed fishing for pollock by regulation then no pollock CDQ reserve will be established for those areas and incidental harvest of pollock by CDQ groups will accrue against the incidental catch allowance for pollock established under § 679.20(a)(5)(i)(A)(1).

\* \* \* \* \*

10. In § 679.32, a new paragraph (c)(3)(vi) is added to read as follows:

**§ 679.32 Groundfish and halibut CDQ catch monitoring.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(vi) *AFA inshore processors.* Take deliveries from a vessel engaged in directed fishing for pollock CDQ without following an approved CMCP as described at § 679.28(g).

\* \* \* \* \*

11. In § 679.50, paragraph (c)(4)(i) is revised, paragraphs (c)(6) and (d)(6) are redesignated as paragraphs (c)(5) and (d)(5), respectively, and newly redesignated paragraphs (c)(5) and (d)(5) are revised to read as follows:

**§ 679.50 Groundfish Observer Program applicable through December 31, 2002.**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(i) *Motherships or catcher/processors using trawl gear—(A) Multi-species CDQ fishery.* A mothership or catcher/processor using trawl gear to participate in the multi-species CDQ fishery must have at least two level 2 observers as described at paragraphs (h)(1)(i)(D) and (E) of this section aboard the vessel, at least one of whom must be certified as a lead level 2 observer.

(B) *Pollock CDQ fishery.* A mothership or catcher/processor using trawl gear to participate in a directed fishery for pollock CDQ must have at least two NMFS-certified observers aboard the vessel, at least one of whom must be certified as a lead level 2 observer.

\* \* \* \* \*

(5) *AFA catcher/processors and motherships (applicable through*

*December 31, 2004)*—(i) *Coverage requirement—(A) Listed AFA catcher/processors and AFA motherships.* The owner or operator of a listed AFA catcher/processor or AFA mothership must provide at least two NMFS-certified observers, at least one of which must be certified as a lead level 2 observer, for each day that the vessel is used to harvest, process, or take deliveries of groundfish. More than two observers are required if the observer workload restriction at § 679.50(c)(5)(iii) would otherwise preclude sampling as required under § 679.63(a)(1).

(B) *Unlisted AFA catcher/processors.* The owner or operator of an unlisted AFA catcher/processor must provide at least two NMFS-certified observers for each day that the vessel is used to engage in directed fishing for pollock in the BSAI, or takes deliveries of pollock harvested in the BSAI. At least one observer must be certified as a lead level 2 observer. When an unlisted AFA catcher/processor is not engaged in directed fishing for BSAI pollock and is not receiving deliveries of pollock harvested in the BSAI, the observer coverage requirements at § 679.50(c)(1)(iv) apply.

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

\* \* \* \* \*

(d) \* \* \*

(5) *AFA inshore processors (applicable through December 31, 2004)*—(i) *Coverage level.* An AFA inshore processor is required to provide a NMFS certified observer for each 12 consecutive hour period of each calendar day during which the processor takes delivery of, or processes, groundfish harvested by a vessel engaged in a directed pollock fishery in the BSAI. An AFA inshore processor that takes delivery of or processes pollock harvested in the BSAI directed pollock fishery for more than 12 consecutive hours in a calendar day is required to provide two NMFS-certified observers for each such day.

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

(iii) *Observers transferring between vessels and processors.* An observer transferring from an AFA catcher vessel

to an AFA inshore processor may not be assigned to cover the AFA inshore processor until at least 12 hours after offload and sampling of the catcher vessel's delivery is completed.

\* \* \* \* \*

12. In 50 CFR part 679, Subpart F—American Fisheries Act Management Measures is revised to read as follows:

**Subpart F—American Fisheries Act Management Measures (applicable through December 31, 2004)**

679.60 Authority and related regulations.

679.61 Formation and operation of fishery cooperatives.

679.62 Inshore sector cooperative allocation program.

679.63 Catch weighing requirements for vessels and processors.

679.64 Harvesting sideboard limits in other fisheries.

679.65 Crab processing sideboard limits.

**§ 679.60 Authority and related regulations.**

Regulations under this subpart were developed by the National Marine Fisheries Service and the North Pacific Fishery Management Council to implement the American Fisheries Act (AFA) [Div. C, Title II, Subtitle II, Pub. L. No. 105-277, 112 Stat. 2681 (1998)]. Additional regulations in this part that implement specific provisions of the AFA are set out at § 679.2 Definitions, 679.4 Permits, 679.5 Recordkeeping and reporting, 679.7 Prohibitions, 679.20 General limitations, 679.21 Prohibited species bycatch management, 679.28 Equipment and operational requirements for Catch Weight Measurement, 679.31 CDQ reserves, and 679.50 Groundfish observer program. Regulations developed by the Department of Transportation to implement provisions of the AFA are found at 50 CFR part 356.

**§ 679.61 Formation and operation of fishery cooperatives.**

(a) *Who must comply this section?* Any fishery cooperative formed under section 1 of the Fisherman's Collective Marketing Act 1934 (15 U.S.C. 521) for the purpose of cooperatively managing directed fishing for BSAI pollock must comply with the provisions of this section.

(b) *Who is responsible for compliance?* The owners and operators of all the member vessels that are signatories to a fishery cooperative are jointly and severally responsible for compliance with the requirements of this section. Each cooperative also must appoint a designated representative and agent for service of process and must ensure that the cooperative's designated representative and agent for service of

process comply with the regulations in this part.

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

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

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

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

(e) *Where must contracts be filed?* You must send a signed copy of your

cooperative contract and the required supporting materials to the North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK; 99501; and to the NMFS Alaska Region. The mailing address for the NMFS Alaska Region is P.O. Box 21668, Juneau, AK, 99802. The street address for delivery by private courier is 709 West 9th St., Suite 401, Juneau, AK 99801.

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

(g) *What are the required elements in all fishery cooperative contracts?* Any cooperative contract filed under paragraph (b) of this section must:

- (1) List of parties to the contract,
- (2) List of all vessels and processors that will harvest and process pollock harvested under the cooperative,
- (3) Specify the amount or percentage of pollock allocated to each party to the contract, and
- (4) Specify a designated representative and agent for service of process.

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

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

(1) The aggregate individual vessel sideboard limits issued to all member vessels in a cooperative must not exceed

the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as calculated by NMFS under § 679.64(b) and as announced to the cooperative by the Regional Administrator, or

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

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

(j) *What are the deadlines for submission?* The preliminary report covering activities through November 1 must be submitted by December 1 of each year. The final report covering activities for an entire calendar year must be submitted by February 1 the following year.

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

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

(2) The cooperative's actual retained and discarded catch of pollock, sideboard species, and 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 in response to any vessels that exceed their allowed catch and bycatch in pollock and all sideboard fisheries.

(l) *What is the minimum number of copies and required format?* The minimum number of copies that must be submitted is one. However, cooperatives are welcome and encouraged to submit multiple copies of their annual report to the Council for distribution to the public. At least one

copy of each annual report must be submitted to the Council ready for duplication on unbound single-sided 8.5- by 11-inch paper.

#### **§ 679.62 Inshore sector cooperative allocation program.**

(a) *How will inshore sector cooperative allocations be made?* An inshore catcher vessel cooperative that applies for and receives an AFA inshore cooperative fishing permit under § 679.4(l)(6) will receive a sub-allocation of the annual Bering Sea subarea inshore sector directed fishing allowance. If the Aleutian Islands Subarea is open to directed fishing for pollock then the cooperative also will receive a sub-allocation of the annual Aleutian Islands Subarea inshore sector directed fishing allowance. Each inshore cooperative's annual allocation amount(s) will be determined using the following procedure:

(b) *How will individual vessel catch histories be calculated?* The Regional Administrator will calculate an official AFA inshore cooperative catch history for every inshore-sector endorsed AFA catcher vessel according to the following steps:

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

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

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

(4) *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.

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

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

(e) *What are the restrictions on fishing under an inshore cooperative fishing permit?* Any cooperative that receives a cooperative fishing permit under § 679.4(l)(6) must comply with the following fishing restrictions. The owners and operators of all the member vessels that are named on an inshore cooperative fishing permit are jointly and severally responsible for compliance.

(f) *What vessels are eligible to fish under an inshore cooperative fishing permit?* Only catcher vessels listed on a cooperative's AFA inshore cooperative fishing permit are permitted to harvest any portion of an inshore cooperative's annual pollock allocation.

(g) *What harvests accrue against the cooperative allocation?* All BSAI inshore pollock harvested by a member vessel while engaging in directed fishing for inshore pollock in the BSAI during the fishing year for which the annual cooperative allocation is in effect will accrue against the cooperative's annual pollock allocation regardless of

whether the pollock was retained or discarded.

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

**§ 679.63 Catch weighing requirements for vessels and processors.**

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

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

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

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

(2) The plant manager or plant liaison must notify the observer of the offloading schedule for each delivery of BSAI pollock by an AFA catcher vessel at least 1 hour prior to offloading. An observer must monitor each delivery of BSAI pollock from an AFA catcher

vessel and be on site the entire time the delivery is being weighed or sorted.

**§ 679.64 Harvesting sideboards limits on other fisheries.**

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

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

(ii) *Pacific cod.* The Pacific cod harvest limit will be equal to the 1997 aggregate retained catch of Pacific cod by catcher/processors listed in paragraphs 208(e)(1) through (20) and 209 of the AFA in non-pollock target fisheries divided by the amount of Pacific cod caught by trawl catcher/processors in 1997 multiplied by the Pacific cod TAC available for harvest by trawl catcher/processors in the year in which the harvest limit will be in effect.

(2) *Aleutian Islands Pacific ocean perch.* (i) The Aleutian Islands Pacific ocean perch harvest limit will be equal to the 1996 through 1997 aggregate retained catch of Aleutian Islands Pacific ocean perch by catcher/processors listed in paragraphs 208(e)(1) through (20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the Aleutian Islands Pacific ocean perch catch in 1996 and 1997 multiplied by the Aleutian Islands Pacific ocean perch TAC available for harvest in the year in which the harvest limit will be in effect.

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

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

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

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

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

(4) *Remaining groundfish species.* (i) Except as provided for in paragraphs (a)(1)(i) through (a)(1)(iii) of this section, the harvest limit for each BSAI groundfish species or species group will be equal to the 1995 through 1997 aggregate retained catch of that species by catcher/processors listed in paragraphs 208(e)(1) through (20) and section 209 of the AFA in non-pollock target fisheries divided by the sum of the catch of that species in 1995 through 1997 multiplied by the TAC of that species available for harvest by catcher/processors in the year in which the harvest limit will be in effect.

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

(5) *How will halibut and crab PSC sideboard limits be calculated?* For each halibut or crab PSC limit specified for catcher/processors in the BSAI, the Regional Administrator will establish an annual listed AFA catcher/processor PSC limit equal to the estimated aggregate 1995 through 1997 PSC bycatch of that species by catcher/processors listed in paragraphs 208(e)(1) through (20) and 209 of the AFA while engaged in directed fishing for species other than pollock divided by the aggregate PSC bycatch limit of that species for catcher/processors from 1995 through 1997 multiplied by the PSC limit of that species available to catcher/processors in the year in which the harvest limit will be in effect.

(6) *How will AFA catcher/processor sideboard limits be managed?* The Regional Administrator will manage groundfish harvest limits and PSC bycatch limits for AFA catcher/processors through directed fishing closures in non-pollock groundfish fisheries in accordance with the



procedures set out in §§ 679.20(d)(1)(iv), and 679.21(e)(3)(v).

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

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

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

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

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

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

(i) *BSAI groundfish other than Pacific cod.* The AFA catcher vessel groundfish harvest limit for each BSAI groundfish species or species group other than BSAI Pacific cod will be equal to the aggregate retained catch of that groundfish species or species group from 1995 through 1997 by all AFA

catcher vessels; divided by the sum of the TACs available to catcher vessels for that species or species group from 1995 through 1997; multiplied by the TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

(ii) *BSAI Pacific cod.* The AFA catcher vessel groundfish harvest limit for BSAI Pacific cod will be equal to the retained catch of BSAI Pacific cod in 1997 by AFA catcher vessels not exempted under § 679.64(b)(2)(i)(A) divided by the BSAI Pacific cod TAC available to catcher vessels in 1997; multiplied by the BSAI Pacific cod TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

(iii) *GOA groundfish.* The AFA catcher vessel groundfish harvest limit for each GOA groundfish species or species group will be equal to the aggregate retained catch of that groundfish species or species group from 1995 through 1997 by AFA catcher vessels not exempted under § 679.64(b)(2)(ii); divided by the sum of the TACs of that species or species group available to catcher vessels from 1995 through 1997; multiplied by the TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

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

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

#### **§ 679.65 Crab processing sideboard limits.**

(a) *What is the purpose of crab processing limits?* The purpose of crab processing sideboard limits is to protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of the AFA and the formation of fishery cooperatives in the directed pollock fishery.

(b) *To whom do the crab processing sideboard limits apply?* The crab

processing sideboard limits in this section apply to any AFA inshore or mothership entity that receives pollock harvested in the BSAI directed pollock fishery by a fishery cooperative established under § 679.61 or § 679.62.

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

(d) *How will AFA entities be notified of their crab processing sideboard percentages?* An AFA inshore or mothership entity's crab processing cap percentage for each BSAI king or Tanner crab species will be listed on each AFA mothership or AFA inshore processor permit that contains a cooperative pollock processing endorsement.

(e) *How are crab processing sideboard percentages converted to poundage caps?* Prior to the start of each BSAI king or Tanner crab fishery, NMFS will convert each AFA inshore or mothership entity's crab processing sideboard percentage to a poundage cap by multiplying the crab processing sideboard percentage by the pre-season guideline harvest level established for that crab fishery by ADF&G.

(f) *How will crab processing sideboard poundage caps be announced?* The Regional Administrator will notify each AFA inshore or mothership entity of its crab processing sideboard poundage cap through a letter to the owner of the AFA mothership or AFA inshore processor. The public will be notified of each entity's crab processing sideboard poundage cap through information bulletins published on the NMFS-Alaska Region world wide web home page (<http://www.fakr.noaa.gov>).

13. In § 679.5, 679.30, 679.32 and 679.50, at each of the paragraphs shown in the first column, remove the phrase indicated, respectively, second column, CHANGE FROM and replace it with the phrase indicated, respectively, in the third column, CHANGE TO, to read as follows:

| In Paragraph:                     | CHANGE FROM           | CHANGE TO                 | FREQUENCY |
|-----------------------------------|-----------------------|---------------------------|-----------|
| § 679.5(n)(2)(v)(A)(1)            | CDQ observer's .....  | observer's .....          | 1         |
| § 679.5(n)(2)(v)(A)(1)            | CDQ observer .....    | observer .....            | 1         |
| § 679.5(n)(2)(v)(A)(2)            | CDQ observer's .....  | observer's .....          | 1         |
| § 679.5(n)(2)(v)(A)(2)            | CDQ observer .....    | observer .....            | 1         |
| § 679.7(d)(15)                    | CDQ observer .....    | level 2 observer .....    | 1         |
| § 679.30(a)(5)(i)(A)(2)(i)        | CDQ observers .....   | level 2 observers .....   | 2         |
| § 679.30(a)(5)(i)(A)(2)(i)        | CDQ observer .....    | level 2 observer .....    | 2         |
| § 679.30(a)(5)(ii)(D)             | CDQ observer .....    | level 2 observer .....    | 2         |
| § 679.32(c)(2)(i)(B)              | CDQ observer .....    | level 2 observer .....    | 1         |
| § 679.32(c)(2)(i)(C)              | CDQ observer .....    | level 2 observer .....    | 1         |
| § 679.32(c)(2)(ii)(A)             | CDQ observer .....    | level 2 observer .....    | 1         |
| § 679.32(c)(2)(ii)(B)(1)          | CDQ observer .....    | level 2 observer .....    | 1         |
| § 679.32(c)(2)(ii)(B)(2)          | CDQ observer .....    | level 2 observer .....    | 1         |
| § 679.32(c)(3)(i)                 | CDQ observer .....    | level 2 observer .....    | 2         |
| § 679.32(c)(3)(iv)                | CDQ observer .....    | level 2 observer .....    | 1         |
| § 679.32(c)(4)(i)                 | CDQ observer(s) ..... | level 2 observer(s) ..... | 2         |
| § 679.32(c)(4)(iv)                | CDQ observer .....    | level 2 observer .....    | 1         |
| § 679.32(c)(4)(v)                 | CDQ observer .....    | level 2 observer .....    | 1         |
| § 679.32(d)(2)(ii)                | CDQ observer .....    | level 2 observer .....    | 1         |
| § 679.32(d)(2)(iii)               | CDQ observer's .....  | level 2 observer's .....  | 1         |
| § 679.32(d)(2)(iv)(A)             | CDQ observer's .....  | level 2 observer's .....  | 1         |
| § 679.32(d)(2)(iv)(B)             | CDQ observer's .....  | level 2 observer's .....  | 1         |
| § 679.32(d)(2)(v)                 | CDQ observer's .....  | level 2 observer's .....  | 1         |
| § 679.32(d)(2)(vi)                | CDQ observer's .....  | level 2 observer's .....  | 1         |
| § 679.50(c)(4) introductory       | CDQ observer .....    | level 2 observer .....    | 2         |
| § 679.50(c)(4)(i)                 | CDQ observers .....   | level 2 observers .....   | 1         |
| § 679.50(c)(4)(i)                 | CDQ observer .....    | level 2 observer .....    | 1         |
| § 679.50(c)(4)(ii)                | CDQ observer .....    | level 2 observer .....    | 4         |
| § 679.50(c)(4)(ii)                | CDQ observers .....   | level 2 observers .....   | 2         |
| § 679.50(c)(4)(iii)               | CDQ observer .....    | level 2 observer .....    | 1         |
| § 679.50(c)(4)(iv)                | CDQ observer .....    | level 2 observer .....    | 1         |
| § 679.50(d)(4)                    | CDQ observer .....    | level 2 observer .....    | 3         |
| § 679.50(h)(1)(i)(D)              | CDQ observer .....    | level 2 observer .....    | 1         |
| § 679.50(h)(1)(i)(D)(3)           | CDQ observer .....    | level 2 observer .....    | 1         |
| § 679.50(h)(1)(i)(E) introductory | CDQ observer .....    | level 2 observer .....    | 1         |
| § 679.50(h)(1)(i)(E)(1)           | CDQ observer .....    | level 2 observer .....    | 1         |
| § 679.50(h)(1)(i)(E)(2)           | CDQ observer .....    | level 2 observer .....    | 1         |
| § 679.50(h)(1)(i)(E)(3)           | CDQ observer .....    | level 2 observer .....    | 1         |

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