

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

[Docket No. 030808196-3196-01; I. D. 062403C]

RIN 0648-AR13

**Fisheries of the Exclusive Economic Zone Off Alaska; Provisions of the American Fisheries Act (AFA)**

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

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

**SUMMARY:** NMFS proposes to remove the expiration date of regulations published as a final rule in the *Federal Register* on December 30, 2002, implementing the AFA. The AFA final rule specified a period of effectiveness that will expire December 31, 2007, and this rule proposes to make the amendments to the AFA rule permanent. This action is necessary to implement properly the AFA, and is intended to do so in a manner consistent with the objectives of the AFA, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

**DATES:** Comments must be received by September 24, 2003.

**ADDRESSES:** Comments may be sent to Sue Salvesson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Durall, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments also may be sent via facsimile (FAX) to 907-586-7557. Comments will not be accepted if submitted via e-mail or Internet. The Final Environmental Impact Statement/Regulatory Impact Review/Final Regulatory Flexibility Analysis (FEIS/RIR/FRFA) prepared for Amendments 61/61/13/8 is available in the NEPA section of the NMFS Alaska Region home page at <http://www.fakr.noaa.gov>. Paper copies of the FEIS/RIR/FRFA prepared for Amendments 61/61/13/8 may be requested from Lori Durall, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, phone: 907 586 7247, email: [lori.durall@noaa.gov](mailto:lori.durall@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:**

Patsy A. Bearden, NMFS, 907-586-7228 or [patsy.bearden@noaa.gov](mailto:patsy.bearden@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The final rule implementing the AFA was published on December 30, 2002 (67 FR

79692), and became effective January 29, 2003. Excepted from this period of effectiveness were several paragraphs under review by the Office of Management and Budget (OMB) under the requirements of the Paperwork Reduction Act (PRA). The **DATES** section of the preamble text described the period of effectiveness for the final rule as January 29, 2003, through December 31, 2007. The December 31, 2007, date was meant to apply only to 50 CFR 679.50, which describes the Groundfish Observer Program, applicable through that date. Therefore, except for those paragraphs in 50 CFR 679.50, and the paragraphs subject to review under PRA, this proposed rule would state the date of effectiveness for the AFA rule and would clarify that the affected paragraphs are permanent revisions without expiration. The paragraphs subject to review under PRA were subsequently approved by OMB on July 14, 2003. A document announcing their effective requirements is published elsewhere in this issue of the *Federal Register*.

**Classification**

This action is necessary to make the regulations governing the pollock fishery in the BSAI consistent with statute. In October 1998, the AFA mandated sweeping changes to the conservation and management program for the pollock fishery of the Bering Sea and Aleutian Islands (BSAI) and to a lesser extent, affected the management programs for other groundfish fisheries of the BSAI, the groundfish fisheries of the Gulf of Alaska (GOA), the king and Tanner crab fisheries of the BSAI, and the scallop fishery off Alaska. With respect to the fisheries off Alaska, the AFA requires a suite of new management measures that fall into four general categories:

(1) regulations that limit access into the fishing and processing sectors of the BSAI pollock fishery and that allocate pollock to such sectors,

(2) regulations governing the formation and operation of fishery cooperatives in the BSAI pollock fishery,

(3) regulations to protect other fisheries from spillover effects from the AFA, and

(4) regulations governing catch measurement and monitoring in the BSAI pollock fishery.

Section 213 of the AFA as originally passed by Congress contained a December 31, 2004, sunset date and authorized the Council to review and extend the AFA management program in 2004. As submitted by the Council, Amendments 61/61/13/8 contained this

December 31, 2004, sunset date. However, after the amendments were submitted for Secretarial review, the "Department of Commerce and Related Agencies Act, 2002," was enacted which contained a provision that removed the December 31, 2004, sunset date from the AFA. As a result, NMFS found it necessary to reconcile the sunset dates contained in the FMP amendments and proposed rule with the newly-amended AFA which contained no such sunset date. On February 27, 2002, NMFS partially approved Amendments 61/61/13/8, implementing the AFA. NMFS disapproved the December 31, 2004, sunset dates contained in the amendments because the sunset dates were inconsistent with new legislation making the AFA permanent. The remaining text in Amendments 61/61/13/8 was approved.

The final rule implementing these amendments was published on December 30, 2002 (67 FR 79692) and became effective January 29, 2003. The pollock fisheries in the BSAI are subject to observer requirements under regulations at § 679.50. These observer requirements have an independent sunset date of December 31, 2007. The final rule made changes to these observer regulations. The DATE section of the preamble to the final rule contained a reference to the sunset date for these observer requirements, but as the preamble was written, this observer sunset date applied to the entire final rule. Thus, the DATES section of the preamble text described the period of effectiveness for the final rule as January 29, 2003 through December 31, 2007. This proposed rule would state that the phrase "effective through December 31, 2007" applies only to those paragraphs dealing with the observer program, and that the other provisions would be effective indefinitely.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The impacts of this action have already been analyzed pursuant to the Regulatory Flexibility Act by way of the FRFA completed for Amendments 61/61/13/8, and may be found in Section 4.6 of the Final Environmental Impact Statement for American Fisheries Act Amendments 61/61/13/8 (NMFS, 2002). The FRFA is further summarized in the final rule (December 30, 2002, 67 FR 79692). The FRFA identified a total of 41 small pollock fishing industry entities to which the rule applied (Table 4.6.2). A description of the fleet, fishery

and industry directly and reasonably indirectly impacted by Amendments 61/61/13/8 was provided in Section 4.6.7 of the FRFA (pages 4-176 to 4-182). Since this action corrects the dates for which this rule is effective, and does not modify eligibility criteria or any other facet of Amendments 61/61/13/8, there would be no change in the numbers of impacted entities as a result of this proposed action.

Similarly, the FRFA in Section 4.6.8 described the negative impacts of Amendments 61/61/13/8 on small entities, summarized in the final rule (December 30, 2002, 67 FR 79692). This proposed rule corrects the described period of effectiveness in the DATES section of the preamble to a final rule. The proposed rule results in no impacts on small entities.

Two criteria were considered in determining the significance of regulatory impacts, namely, disproportionality and profitability.

These criteria consider the effect of regulations on small businesses and other small entities. The correction of the effective dates section in this proposed rule will not place a substantial number of small entities at a significant competitive disadvantage to large entities. Similarly, this proposed rule will not significantly reduce profit for a substantial number of small entities. This proposed rule will not impact industry.

The final rule for Amendments 61/61/13/8 (December 30, 2002, 67 FR 79692), addressed whether the rule would impose impacts on a substantial number of small entities. As discussed above, this proposed action will not impact the numbers of affected entities.

The findings of fact underlying a certification should "describe the data sources and analytical methods used in the analyses, variability, and uncertainty in the cost and revenue estimates, explain the assumptions

used, and indicate the extent to which the results were affected by those assumptions." The findings of fact underlying this certification are based on a review of the FRFA for the original action, and did not utilize new data sets, analytical methods, or cost and revenue estimates beyond those incorporated in the earlier analysis.

On this basis, the Chief Counsel for Regulation has certified that this action will not have "a significant impact on a substantial number of small entities." As a result, a regulatory flexibility analysis was not prepared.

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

Dated: August 14, 2003.

**John Oliver,**

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

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