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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

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

RIN 0648-AO72

Fisheries of the Exclusive Economic Zone Off Alaska; Emergency Interim Rule to Revise Certain Provisions of the American Fisheries Act

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

ACTION: Emergency interim rule; request for comments.

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

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

ADDRESSES: Comments must be sent to Sue Salvesson, Assistant Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to Federal Building, Fourth Floor, 709 West 9th Street, Juneau, AK, and marked Attn: Lori Gravel. Comments may also be sent via facsimile (fax) to (907) 586-7465. Comments will not be accepted if sent

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

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

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

American Fisheries Act—Background Information

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

Development of Emergency Interim Rule

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

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

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

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

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

1. Definition of Qualified Catcher Vessel

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

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

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

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

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

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

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

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

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

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

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

2. Inshore Cooperative Allocations

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

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

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

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

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

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

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

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

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

b. *Using the best 2 of 3 years from 1995-1997.* The second change would modify the allocation formula so that the share of the BSAI pollock TAC that each catcher vessel brings into a cooperative would be based on average annual pollock landings in its best 2 out of 3 years from 1995 through 1997. This change, along with the offshore compensation formula, was unanimously endorsed by industry representatives during public testimony. These changes are viewed as a more equitable method of allocating pollock catch because some vessels may have missed all or part of the inshore fishery in a given year due to such unavoidable circumstances as vessel breakdowns or lack of markets.

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

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

3. *Crab Processing Sideboards*

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

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

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

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

4. *CDQ and AFA Observer Requirements*

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

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

5. *Catcher/Processor and Catcher Vessel Groundfish Sideboards*

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

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

Classification

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

Pursuant to the National Environmental Policy Act, an EA/RIR was developed for this action. The EA/RIR may be obtained from the Alaska Regional Office (see ADDRESSES).

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

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

NMFS finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B) as such procedure would be impracticable and contrary to the public interest. This action is necessary to provide participants in the BSAI groundfish fishery the opportunity to reorganize inshore catcher vessel cooperatives for the 2001 fishing year in the manner recommended by the Council and requested by the industry. This action is also necessary to implement sideboard restrictions to protect participants in

other Alaska fisheries from negative impacts as a result of fishery cooperatives formed under the AFA. The need to avoid delaying the start of the pollock season to implement these measures constitutes good cause to waive, pursuant to authority set forth at 5 U.S.C. 553(d)(3), the 30-day delay in effective date otherwise required by 5 U.S.C. 553(d).

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 16, 2001

Penelope D. Dalton,

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

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

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

2. In § 679.2, the definition of “AFA qualified catcher vessel” is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

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

* * * * *

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

§ 679.20 General limitations.

* * * * *

(a) * * *

(5) * * *

(i) * * *

(D) *AFA sectoral allocations*

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

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

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

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

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

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

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

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

* * * * *

(c) * * *

(3) * * *

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

* * * * *

(d) * * *

(1) * * *

(v) *AFA sideboard closures* (applicable through July 17, 2001). If the Regional Administrator determines that any sideboard harvest limit for a group of AFA vessels published under § 679.20 (c)(3)(iv) has been or will be reached, the Regional Administrator may establish a directed fishing allowance for the species or species group applicable only to the identified group of AFA vessels. In establishing a directed fishing allowance, the Regional

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

* * * * *

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

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

* * * * *

(c) * * *

(4) * * *

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

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

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

(A) (Applicable through July 17, 2001). Unrestricted AFA catcher/processors and AFA motherships. The owner or operator of an unrestricted AFA catcher/processor or AFA mothership must provide at least two NMFS certified observers for each day that the vessel is used to harvest, process, or take deliveries of groundfish. More than two observers are required if the observer workload restriction at § 679.50(c)(5)(iii) would otherwise preclude sampling as required under § 679.62(a)(1).

(B) (Applicable through July 17, 2001). Restricted AFA catcher/processors. The owner or operator of a restricted AFA catcher/processor must

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

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

(iii) (Applicable through July 17, 2001). Observer work load. The time required for the observer to complete sampling, data recording, and data communication duties may not exceed 12 consecutive hours in each 24-hour period, and, the observer may not sample more than 9 hours in each 24-hour period.

(d) * * *

(6) *AFA inshore processors* (applicable through July 17, 2001).—(i) Coverage level. An AFA inshore processor is required to provide a NMFS certified observer for each 12 consecutive hour period of each calendar day during which the processor takes delivery of, or processes, groundfish harvested by a vessel engaged in a directed pollock fishery in the BSAI. A processor that takes delivery of or processes pollock for more than 12 consecutive hours in a calendar day is required to provide two NMFS-certified observers for each day.

(ii) (Applicable through July 17, 2001). Multiple processors. An observer deployed to an AFA inshore processor may not be assigned to cover more than one processor during a calendar day in which the processor receives or processes pollock harvested in the BSAI directed pollock fishery.

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