

**2.4 Sortation Level**

The actual sortation level (or corresponding abbreviation) is used for the package, tray, sack, or pallet levels required by 2.2 and shown below: [Add new "PSCF" indicator to identify SCF pallets created as a result of package reallocation under M045.5.0, as follows:]

Sortation level	Abbreviation
* * * * *	
SCF (pallets) .....	N/A.
SCF (pallets created from package reallocation).	PSCF.
* * * * *	

**Neva R. Watson,**  
*Attorney, Office of Legal Policy.*  
 [FR Doc. 98-28803 Filed 10-28-98; 8:45 am]  
 BILLING CODE 7710-12-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 271**

[FRL-6179-6]

**Michigan: Final Authorization of State Hazardous Waste Management Program Revisions**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to grant final authorization to the hazardous waste program revisions submitted by Michigan. In the final rules section of this **Federal Register**, EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the authorization is set forth in the immediate final rule. If no adverse written comments are received on this action, the immediate final rule will become effective and no further activity will occur in relation to this proposal. If EPA receives adverse written comments, EPA will withdraw the immediate final rule before its effective date by publishing a notice of withdrawal in the **Federal Register**. EPA will then respond to public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action should do so at this time.

**DATES:** Written comments on this proposed rule must be received on or before November 30, 1998.  
**ADDRESSES:** Send written comments to: Ms. Judy Feigler, Michigan Regulatory Specialist, U.S. Environmental Protection Agency, Region 5, Waste, Pesticides and Toxics Division (DM-7J), 77 W. Jackson Blvd., Chicago, Illinois 60604. Copies of the Michigan program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 9 a.m. to 4 p.m. at the following addresses: Michigan Department of Environmental Quality, 608 W. Allegan, Hannah Building, Lansing, Michigan. Contact: Ms. Ronda Blayer, phone: (517) 353-9548; and EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604. Contact: Ms. Judy Feigler, phone: (312) 886-4179.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Feigler at the above address and phone number.

**SUPPLEMENTARY INFORMATION:** For additional information see the immediate final rule published in the rules section of this **Federal Register**.

Dated: October 9, 1998.  
**Gail Ginsberg,**  
*Acting Regional Administrator, Region 5.*  
 [FR Doc. 98-28723 Filed 10-28-98; 8:45 am]  
 BILLING CODE 6560-50-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 981021263-8263-01; I.D. 090898D]

RIN 0648-AK12

**Fisheries of the Exclusive Economic Zone Off Alaska; Inshore/Offshore Allocations of Pollock and Pacific Cod Total Allowable Catch**

**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 51 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 51 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) (FMPs). These amendments would allocate pollock in

the BSAI and pollock and Pacific cod in the GOA between inshore and offshore industry components for the years 1999 through 2001. NMFS proposes other associated regulatory measures as well. The amendments and the proposed implementing regulations were submitted by the North Pacific Fishery Management Council (Council) and are intended to promote the socioeconomic goals and objectives of the Council and the FMPs.

**DATES:** Comments on the proposed rule must be received on or before December 14, 1998.

**ADDRESSES:** Comments must be sent to Sue Salvesson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendments 51/51 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for Amendments 51/51 are available from the North Pacific Fishery Management Council at 605 W. 4th Ave., Room 306, Anchorage, AK 99501, telephone 907-271-2809.

**FOR FURTHER INFORMATION CONTACT:** Kent Lind, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

**Background**

NMFS manages the groundfish fisheries in the exclusive economic zone of the BSAI and GOA under the FMPs. The Council prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the GOA and BSAI appear at 50 CFR parts 600 and 679.

BSAI Amendment 51, if approved, would establish the following allocations and management measures for the years 1999 through 2001: (1) The BSAI pollock total allowable catch (TAC), after subtraction of reserves, would be allocated 61 percent to vessels catching pollock for processing by the offshore component and 39 percent to vessels catching pollock for processing by the inshore component; (2) a portion of the inshore component Bering Sea B season allocation equal to 2.5 percent of the BSAI pollock TAC, after subtraction of reserves, would be set aside for harvest by catcher vessels under 125 ft (38.1 m) length overall (LOA) and would become available on or about August 25 of each year; and (3) all vessels harvesting pollock for processing by the offshore component

would be prohibited from fishing inside the Catcher Vessel Operational Area (CVOA) during the B season (September 1 to November 1) until the date that NMFS closes the inshore component B season allocation to directed fishing.

GOA Amendment 51 would extend the current allocations of pollock and Pacific cod TACs for the years 1999 through 2001. The pollock TAC in the GOA would continue to be allocated 100 percent to vessels catching pollock for processing by the inshore component, and the Pacific cod TAC in the GOA would continue to be allocated 90 percent to vessels catching Pacific cod for processing by the inshore component and 10 percent to vessels catching Pacific cod for processing by the offshore component.

The Council has submitted Amendments 51/51 for Secretarial review and a Notice of Availability of the FMP amendments was published in the **Federal Register** on September 15, 1998 (63 FR 49540), with comments on the FMP amendments invited through November 16, 1998. Comments may address the FMP amendments, the proposed rule, or both, but must be received by November 16, 1998, to be considered in the approval/disapproval decision on the FMP amendments. All comments received by November 16, 1998, whether specifically directed to the FMP amendments or the proposed rule, will be considered in the approval/disapproval decisions on the FMP amendments.

A major concern identified during the preliminary review of Amendments 51/51 is that the economic analysis submitted by the Council does not provide a basis upon which to draw unambiguous conclusions about the probable net economic benefits to the Nation of the proposed amendments. The reasons for this deficiency are treated in considerable detail in the document. They pertain to basic data limitations which make conversion from gross to net economic measures impossible. Completion of the preliminary review with publication of the proposed rule for Amendments 51/51 does not mean that either of these two amendments will be approved. NMFS invites comment on the consistency of the amendments and the proposed regulations with the Magnuson-Stevens Act, the national standards, and other applicable laws. Comments are specifically requested on the adequacy of the analysis to support findings of compliance with national standards 2 (scientific information), 4 (allocations), 5 (efficiency), 7 (costs and benefits), 8 (fishing communities), and 10 (safety of life at sea). Information and

analysis that bolster or contradict the conclusions in any of the supporting documents are also welcome.

#### **Reconciliation of Amendments 51/51 with the American Fisheries Act**

On October 21, 1998, the President signed into law the American Fisheries Act (AFA), which, besides affecting Amendments 51/51 in other ways, allocates BSAI pollock differently than BSAI FMP Amendment 51 and these proposed regulations.

Specifically, section 206 of the AFA states:

(a) Pollock Community Development Quota.—Effective January 1, 1999, 10 percent of the total allowable catch of pollock in the Bering Sea and Aleutian Islands Management Area shall be allocated as a directed fishing allowance to the western Alaska community development quota program established under section 305(i) of the Magnuson-Stevens Act (16 U.S.C. 1855(i)).

(b) Inshore/Offshore.—Effective January 1, 1999, the remainder of the pollock total allowable catch in the Bering Sea and Aleutian Islands Management Area, after the subtraction of the allocation under subsection (a) and the subtraction of allowances for the incidental catch of pollock by vessels harvesting other groundfish species (including under the western Alaska community development quota program) shall be allocated as directed fishing allowances as follows—

(1) 50 percent to catcher vessels harvesting pollock for processing by the inshore component;

(2) 40 percent to catcher/processors and catcher vessels harvesting pollock for processing by catcher/processors in the offshore component; and

(3) 10 percent to catcher vessels harvesting pollock for processing by motherships in the offshore component.

Because this new statute was signed into law only a few days ago, the Council has not had the opportunity to reconcile Amendments 51/51 and the proposed regulations with the new statute. The Council has scheduled a special meeting to examine and respond to the mandates of the AFA and to address management measures that may be necessary to protect endangered Steller sea lions. This meeting will be held in Anchorage, Alaska, on November 10–13, 1998. Additional information on this special meeting is available from the Council (see **ADDRESSES**) and on the Council's web site: <http://www.fakr.noaa.gov/npfmc/npfmc.htm>.

Because the Council, at its November meeting, will address reconciliation of Amendments 51/51 and this proposed rule with the AFA, NMFS is proceeding with the publication of this proposed rule unchanged so that such regulatory provisions that are unaffected by the

AFA as inshore/offshore allocations of pollock and Pacific cod in the GOA, establishment of a CVOA in the Bering Sea, and technical changes to the existing regulations can proceed in a timely manner. NMFS will reconcile any inconsistencies between Amendments 51/51 (including their proposed implementing regulations) and the AFA at the time of approval/disapproval of the Amendments and in the final rule implementing them after consultation with the Council at its November 1998 meeting and after the public has had opportunity to comment.

#### **History of Inshore/Offshore Allocations**

##### *Amendments 18/23*

The first inshore/offshore allocations of pollock and Pacific cod were established in 1992 under Amendments 18/23 to the FMPs. The precipitating event that led to the development of inshore/offshore allocations began in early 1989 when the rapid harvest of the GOA pollock TAC by several large factory trawlers forced an early closure of the GOA pollock fishery and prevented inshore catcher vessels and processors from realizing their anticipated economic benefit from the pollock fishery later in the year. At the April 1989 Council meeting, fishermen and processors from Kodiak Island requested that the Council consider specific allocations of fish for processing by the inshore and offshore components of the fishery to prevent future preemption of resources by one component of the industry. The Council considered the request and the impacts on coastal community development and stability of the fisheries and prepared Amendments 18/23.

After 2 years of analysis, review, and debate on the inshore/offshore issue, the Council took final action on Amendments 18/23 in June 1991. Amendment 18 to the BSAI FMP, as adopted by the Council, established a Community Development Quota (CDQ) program and set aside one half of the pollock reserve (7.5 percent of the BSAI pollock TAC) for CDQ harvest, allocated 35 percent of the remaining BSAI pollock TAC to vessels catching pollock for processing by the inshore component and 65 percent of the remaining BSAI pollock TAC to vessels catching pollock for processing by the offshore component in the first year of the allocation, with the inshore allocation increasing to 40 percent in the second year, and 45 percent in the third and fourth years of the amendment, respectively. Amendment 18 also established a catcher vessel operational area (CVOA) from which

catcher processors and motherships would be excluded throughout the fishing year when operating in a directed fishery for pollock.

Amendment 23 to the GOA FMP, as adopted by the Council, allocated 100 percent of the GOA pollock TAC to vessels catching pollock for processing by the inshore component. Amendment 23 also allocated 90 percent of the GOA Pacific cod TAC to vessels catching Pacific cod for processing by the inshore component, and 10 percent of the GOA Pacific cod TAC to vessels catching Pacific cod for processing by the offshore component.

NMFS's review of the amendments began on December 1, 1991. On March 4, 1992, NMFS approved Amendment 23 to the GOA FMP. On the same date, NMFS partially disapproved Amendment 18 to the BSAI FMP by approving the 35/65 allocation split for 1992 but disapproving the increased inshore component allocations for 1993–1995.

In his March 4, 1992, letter notifying the Council of the approval of Amendment 23 and partial disapproval of Amendment 18, the Under Secretary for Oceans and Atmosphere and Administrator of NOAA (Administrator) stated that NOAA was not opposed to the concept of an allocation between onshore and offshore interests as an interim measure pending development of a solution to overcapitalization—ideally, a market-based solution. NMFS's disapproval of the BSAI pollock allocations for 1993 through 1995 was based in part on a cost/benefit analysis prepared by NMFS that indicated a significant net economic loss to the Nation under the proposed allocations for years 1993 through 1995. The Administrator urged the Council to work as expeditiously as possible toward some other method of allocating fish than either direct competition among participants within an open access fishery, or direct government intervention. Meanwhile, he noted, preventing preemption by one fleet of another, safeguarding capital investments, protecting coastal communities that are dependent on a local fleet, and encouraging fuller utilization of harvested fish are desirable objectives that are provided for under the Magnuson-Stevens Act.

At its April 1992 meeting, the Council considered NMFS's actions and decided to revise Amendment 18. The Council supplemented its previous analysis of allocation alternatives. At a special meeting to consider this issue in August 1992, the Council again considered the comments of its advisory bodies and the public, adopted its preferred alternative,

and submitted it to NMFS as revised Amendment 18. As adopted by the Council, revised Amendment 18 would have established a 35/65 inshore/offshore allocation for 1993, the first year of the revised amendment. The inshore allocation would then have increased to 37.5 percent for 1994 and 1995, the second and third years of the revised amendment. In addition, revised Amendment 18 proposed two changes to the CVOA. Under revised Amendment 18, the CVOA would take effect only during the pollock B Season (September 1 to November 1), and motherships (and catcher processors operating as motherships) were allowed to receive deliveries and process pollock inside the CVOA as long as they did not engage in directed fishing for pollock themselves. In September 1992, the Council submitted revised Amendment 18 to NMFS for review and approval.

On November 23, 1992, after careful consideration of the revised amendment, public comments, the record developed by the Council, and the analysis of the potential effects of the proposed amendment, NMFS partially disapproved revised Amendment 18. NMFS approved pollock allocations of 35 percent and 65 percent for vessels catching pollock for processing by the inshore and offshore components, respectively, for the years 1993 through 1995, and the establishment of the CVOA. However, NMFS disapproved the 2.5 percent increase for 1994 and 1995, finding that the sole purpose of the increased allocation to the inshore component during those years was economic, and therefore, in violation of national standards 4, 5, and 7 of Magnuson-Stevens Act, as well as Executive Order 12291. The final rule implementing these decisions was published on December 24, 1992 (57 FR 61326).

#### *Amendments 38 and 40*

When the Council developed its original inshore/offshore amendments, it stipulated that Amendments 18/23 would expire on December 31, 1995, with the intention that by December 31, 1995, it would have adopted and NMFS would have approved a more comprehensive, long-term management program to address the overcapitalization and allocation problems facing the industry, not only for pollock and Pacific cod, but for all the groundfish and crab fisheries under the Council's authority.

By 1995, the Council had made some progress on its long-term plan. For example, in June 1995, it adopted license-limitation programs for the groundfish and crab fisheries. However,

the Council estimated that it would take 2 or 3 more years to develop and implement a comprehensive rationalization plan that could more directly address these allocation issues. Consequently, the Council decided it would be necessary to extend the provisions of Amendments 18/23 for an additional 3 years to maintain stability in the industry, facilitate further development of the comprehensive management plan, and allow for realization of the goals and objectives of the pollock CDQ program. In making this decision, the Council continued the mandate it established for itself in 1992 when it recognized that a more permanent solution to overcapacity and preemption was needed.

The Council also determined that if the provisions of Amendments 18/23 expired, the fishery would return to the "free-for-all" state that existed before Amendments 18/23, and the inshore sector again would be faced with the threat of preemption by the large and efficient offshore sector. Thus, the Council began the process to extend the provisions of Amendments 18/23. The provisions of Amendment 18 became the basis for Amendment 38 to the BSAI FMP, and the provisions of Amendment 23 became the basis for Amendment 40 to the GOA FMP.

At its meeting in June 1995, the Council voted unanimously to adopt Amendments 38/40 through December 31, 1998, with two changes from Amendments 18/23. First, Amendment 38 decreased the size of the CVOA by moving the western boundary of the area 30 minutes to the east. Second, it allowed catcher processors to engage in directed fishing for pollock inside the CVOA if the inshore component pollock allocation was closed to directed fishing and the offshore component allocation was still open to directed fishing. A proposed rule to implement Amendments 38/40 was published in the **Federal Register** on September 18, 1995 (60 FR 48087). NMFS approved Amendments 38/40 on November 28, 1995, and a final rule to implement Amendments 38/40 was published in the **Federal Register** on December 12, 1995 (60 FR 63654).

#### **Council Development of Amendments 51/51**

In April 1997, recognizing that a comprehensive rationalization plan to address overcapitalization and preemption issues could not be adopted and implemented prior to the expiration of Amendments 38/40, the Council began development of a third set of inshore/offshore FMP amendments. These amendments became identified as

Amendments 51/51. In June 1997, the Council requested information in the form of pollock industry profiles that enabled it to examine the evolution and current status of the BSAI pollock fisheries from 1991 through 1996. At that time, the Council also decided to split the reauthorization of the pollock CDQ program in the BSAI and the reauthorization of BSAI inshore/offshore pollock allocations into separate FMP amendments. Under BSAI Amendments 18 and 38, the CDQ program had been included with the inshore/offshore pollock allocations. However, BSAI Amendment 51 only addresses inshore/offshore pollock allocations. The Council adopted a separate FMP amendment, Amendment 45, to extend the BSAI pollock CDQ program on a permanent basis. A proposed rule to implement Amendment 45 was published in the **Federal Register** on September 3, 1998 (63 FR 46993).

At its September 1997 meeting, after examination of the industry profiles prepared by Council staff, consideration of public comment, and Council discussion, the Council adopted the following inshore/offshore problem statements for the BSAI and GOA:

**BSAI Problem Statement:** The current inshore/offshore allocation expires at the end of 1998. The Council thus faces an inevitable allocation decision regarding the best use of the pollock resource. Many of the issues that originally prompted the Council to adopt an inshore/offshore allocation (e.g., concerns for preemption, coastal community dependency, and stability), resurface with the specter of expiration of the current allocation.

The current allocation was made on the basis of several critical assumptions including utilization rates, foreign ownership, the balance between social gains and assumed economic losses to the nation, and the nature of progress on the Council's Comprehensive Rationalization Program (CRP) initiative. Many of these assumptions have not been revisited since approval of the original amendment. It is not clear that these assumptions hold or that the Council and the nation are well-served by continuing to manage the pollock fishery without a reexamination of allocation options. The Magnuson-Stevens Act presents the Council with a new source of guidance to evaluate national benefits. In the context of Council deliberations over Inshore-Offshore 3, this includes enhanced statutory emphasis on increased utilization, reduction of waste, and fishing communities.

There have also been substantial changes in the structure and characteristics of the affected industry sectors including number of operations, comparative utilization rates, and outmigration and concentration of capital. These changes are associated with several issues, including: optimization of food production resulting from wide differences in pollock utilization; shares of pollock

harvesting and processing; discards of usable pollock protein; reliance on pollock by fishing communities; and decreases in the total allowable catch of pollock. In addition, changes in fishing patterns could lead to local depletion of pollock stocks or other behavioral impacts to stocks which may negatively impact Steller sea lions and other ecosystem components dependent upon stock availability during critical seasons.

Therefore, the problem facing the Council is to identify what allocation would best serve to ensure compliance with the new Act and address the issues identified above.

**GOA Problem Statement:** Allowing the current Gulf of Alaska Inshore/Offshore allocative regime to expire December 31, 1998, would allow the same preemption of resident fleets by factory trawlers in the pollock and Pacific cod fisheries which occurred in 1989. It was this dramatic preemption which triggered the original proposal for an inshore/offshore allocation. In 1989, there was still pollock available in the Bering Sea when the preemption occurred when vessels moved into the Gulf to take advantage of fish with high roe content.

A rollover of the current Gulf of Alaska inshore/offshore program which allocates 100 percent of the pollock and 90 percent of the Pacific cod to inshore operations is a proactive action to prevent the reoccurrence of the original problem.

#### Alternatives Considered by the Council

In addition to the development of the inshore/offshore problem statements, the Council adopted a complex set of inshore/offshore alternatives at its September 1997 meeting. During the course of the next several Council meetings, these evolved into five basic alternatives and included various suboptions within each alternative. However, for the GOA, the Council considered only Alternatives 1 and 2.

**Alternative 1: No action.** The existing BSAI and GOA inshore/offshore allocations would expire at the end of 1998.

**Alternative 2: Reauthorize existing BSAI and GOA inshore/offshore allocations without change.** This alternative includes suboptions for a 1-year and 3-year effective period for the amendment.

**Alternative 3: Adopt new BSAI pollock allocations within the following ranges.** This alternative includes a range of allocations among three sectors: Inshore sector 25 to 45 percent, "true" motherships 5 to 15 percent, and offshore sector 40 to 70 percent. The analysis defines "true" motherships as offshore motherships that process but do not harvest groundfish. This alternative includes options that assign "true" motherships (and their allocation percentage) to either the inshore or offshore sectors, or establish a separate "true" mothership allocation.

Additional options establish a set-aside of 40 to 60 percent of the inshore and "true" mothership sector allocations for small catcher vessels (defined as catcher vessels less than 125 ft (38.1 m) LOA), and a set-aside of 9 to 15 percent of the offshore quota for catcher vessels delivering to catcher processors.

**Alternative 4: "Harvester's Choice" for small catcher vessels.** This alternative establishes a stand alone or separate allocation for small catcher vessels (defined as catcher vessels less than 125 ft (38.1 m) LOA). This allocation is equal to 40 to 60 percent of the inshore quota, plus 9 to 15 percent of the offshore quota, plus 100 percent of the "true" mothership quota, depending on the sector allocations established under Alternative 3. Small catcher vessels are free to deliver their allocation to any processing sector and the processing sectors compete among themselves for the opportunity to process pollock harvested by small catcher vessels.

**Alternative 5: "Harvester's Choice" for catcher vessels 155 ft (47.2 m) LOA and shorter.** This alternative is the same as Alternative 4 except that the catcher vessel allocation is available to all catcher vessels 155 ft (47.2 m) LOA and shorter.

Also included as options under Alternative 2 through 5 were four CVOA suboptions: (1) Retain the CVOA as currently defined, (2) prohibit catcher processors from operating inside the CVOA during both pollock seasons, (3) prohibit motherships from operating inside the CVOA during either pollock A season or pollock B season but not both, and (4) repeal the CVOA.

Finally, the Council considered two expiration date options for Alternatives 3 through 5: (1) The selected alternative(s) do not expire, but serve as interim measures until the Council's comprehensive rationalization plan has been completed, and (2) the selected alternative(s) remain in effect for a 3-year period.

#### Council Adoption of BSAI Amendment 51

At its June 1998 meeting, after examination of the EA/RIR/IRFA, consideration of the recommendations of its Advisory Panel (AP) and Scientific and Statistical Committee (SSC), and after extensive public testimony and deliberation, the Council voted 7-4 to adopt Amendment 51 to the BSAI with the following changes from the allocation scheme established under Amendment 38: (1) Shift four percent of the BSAI pollock TAC, after subtraction of reserves, would be shifted to the inshore component resulting in a 39/61

inshore/offshore allocation split; (2) set aside a portion of the inshore component Bering Sea B season allocation, equal to 2.5 percent of the BSAI pollock TAC after subtraction of reserves, for small catcher vessels, and to become available on or about August 25 of each year; and (3) prohibit catcher vessels delivering to the offshore component from fishing inside the CVOA during the B season from September 1 until the inshore component B season allocation is closed to directed fishing. Amendment 51 would remain in effect for the years 1999 through 2001.

**BSAI pollock allocation.** Under BSAI Amendment 51, the BSAI pollock TAC, after subtraction of reserves, would be allocated 61 percent to vessels catching pollock for processing by the offshore component and 39 percent to vessels catching pollock for processing by the inshore component. In developing this preferred alternative, much of the Council discussion focused on a last minute proposal by major inshore and offshore industry representatives that would have established a 3-way allocation split: 40 percent inshore, 50.5 percent offshore, and 9.5 percent to "true" motherships. A separate category for "true" motherships would have enabled the remaining factory trawlers in the offshore sector to establish a harvesters cooperative similar to the cooperative operating in the hake fishery off the Pacific coast. However, several Council members expressed unease with the cooperative idea and uncertainty about the potential spillover effects into other fisheries. As a result, the Council rejected the industry agreement and chose to maintain a 2-way allocation split.

In rejecting the industry's 3-way split proposal, the Council noted that the industry proposal came very late in the process and that many affected members of the public did not have adequate time to analyze and comment on it. While the statutory moratorium on the development of new individual fishing quota (IFQ) programs does not prohibit the Council from adopting a 3-way allocation split, some Council members expressed concern that adopting a 3-way allocation split for the explicit purpose of facilitating a harvesters cooperative could be seen as violating the intent of the Congressional moratorium on IFQ programs.

In adopting its preferred allocation alternative for BSAI Amendment 51, the Council indicated that a shift of pollock TAC to the inshore component was warranted for several reasons. First, the Council noted that the analysis prepared for Amendments 38/40 concluded that

the expected net losses to the Nation's economy were probably overstated in the cost/benefit analysis prepared for Amendments 18/23. A majority of the Council believed that the rationale for partially disapproving the original Amendment 18 in 1991 no longer was valid and that the allocation proposed under Amendment 51 was closer to the Council's original intent under Amendment 18. Second, the Council noted that the EA/RIR/IRFA prepared for Amendments 51/51 concludes that the inshore sector realizes greater gross revenues per metric ton of pollock than the offshore sector due to the higher recovery rates achieved by the inshore sector. The analysis generates gross revenue estimates for the various processing components using 1996 data and concludes that 4 percent of the BSAI pollock TAC (the amount shifted under Amendment 51) would generate the following gross revenues if processed by each of the following industry components, respectively: Inshore component \$24.1 million; mothership component, \$21.4 million; offshore component \$21.7 million. Third, the Council noted that coastal communities in Alaska where onshore processors are located are disproportionately dependent on pollock processing compared to the communities in which offshore processors are based.

**Small catcher vessel set-aside.** Over the course of developing Amendments 51/51 the Council received substantial testimony from owners and operators of smaller catcher boats who indicated that, under the current BSAI inshore/offshore regime, their share of the catch was eroding constantly. The industry sector profiles prepared as part of the EA/RIR/IRFA also confirmed that the share of the BSAI pollock harvest taken by catcher vessels under 125 ft (38.1 m) LOA has eroded since 1991. The percentage of total catcher vessel pollock harvest taken by catcher vessels under 125 ft (38.1 m) LOA declined from 65 percent in 1991 to 42 percent in 1996 despite the fact that the number of catcher vessels under 125 ft (38.1 m) LOA increased from 71 to 89 during the same time period. Recognizing this trend, and the fact that many of these small catcher vessels are considered "small entities" under the Regulatory Flexibility Act (RFA), the Council examined a range of options to preserve the pollock harvest share of smaller catcher vessels as outlined above.

Most of the alternatives considered by the Council included TAC set-asides for small catcher vessels that would be available for harvest during the A and B pollock seasons. However, NMFS

informed the Council that the agency's TAC monitoring system would be unable to monitor TAC set-asides based on vessel size without major changes in recordkeeping and reporting requirements that could not be implemented by January 1999. Based on this constraint, and on the advice of its Advisory Panel, the Council chose to establish a small catcher vessel set-aside that would be available prior to the pollock B season. Because only small catcher vessels delivering to inshore processors would be allowed to fish during this period, recordkeeping and reporting changes would not be required to monitor the set-aside.

Based on this information, the Council voted to set aside a portion of the inshore component Bering Sea B season allocation for small catcher vessels (defined as catcher vessels under 125 ft (38.1 m) LOA). The amount of this set-aside would be equal to 2.5 percent of the BSAI pollock TAC after subtraction of reserves. This small vessel set-aside would become available on or about August 25 of each year with the actual opening date announced by NMFS in the **Federal Register** on an annual basis. NMFS would base the actual start date for the set-aside fishery on the amount of the set-aside, the projected harvest rate, and the number of small catcher vessels expected to participate so that overharvest or underharvest of the set-aside is minimized.

While the amount of the set-aside would be equal to 2.5 percent of the BSAI TAC after subtraction of reserves, the set-aside would be available in the Bering Sea only, and would be taken out of the inshore component B season allocation. The effect of this action would be to allow small catcher vessels to begin fishing for the inshore component B season allocation on or about August 25, effectively giving them a 6-day "head start" over catcher vessels that are 125 ft (38.1 m) LOA or longer. Any underages or overages of the set-aside would be added to or subtracted from the amount available to the inshore component Bering Sea B season.

**Exclusion of offshore catcher vessels from the CVOA.** BSAI Amendment 51, if approved, would exclude all vessels engaged in directed fishing for pollock for processing by the offshore component from fishing inside the CVOA during the B season from September 1 until the date that NMFS closes the inshore component B season allocation to directed fishing. The Council, in adopting this change, noted that the proportion of catch taken by mothership operations has increased at the expense of catcher processors over

the period examined by the EA/RIR/IRFA (1991 through 1996). Under current regulations, catcher vessels that deliver pollock to either the inshore or offshore component for processing may operate within the CVOA. Additionally, vessels in the offshore component that do not catch groundfish but do process pollock, such as motherships, may operate within the CVOA. Although these regulations permit a catcher processor to operate as a mothership within the CVOA, catcher processors typically catch pollock in a directed fishery during the B season and are therefore excluded from the CVOA. Catcher vessels that deliver their catch to offshore catcher processors must operate within relatively close proximity to their processor because codends, once retrieved, cannot be towed for significant distances without damaging the pollock. On the other hand, motherships can operate where their offshore catcher vessels are fishing, either inside or outside the CVOA. As a result of the current regulations, mothership operations may have a competitive advantage over catcher processors because they have the opportunity to operate inside the CVOA during the B season where pollock may be more abundant. By excluding all catcher vessels that harvest pollock for processing by the offshore component in the CVOA during the B season, the Council sought to establish a more level playing field between the two elements of the offshore component—catcher processors and motherships.

**Council Adoption of GOA Amendment 51**

After receiving the recommendations of the AP, SSC and public testimony, the Council voted unanimously to extend the provisions of GOA Amendment 40 without change for an additional 3 years. GOA Amendment 51, if approved, would allocate 100 percent of the GOA pollock TAC and 90 percent of the GOA Pacific cod TAC to vessels catching pollock and Pacific cod for processing by the inshore component. Ten percent of the GOA Pacific cod TAC would be allocated to

vessels catching Pacific cod for processing by the offshore component. The Council believed that an extension of the existing allocation percentages would maintain stability in the GOA pollock and Pacific cod fisheries and would prevent a reoccurrence of the preemption by large factory trawlers that led to the original inshore/offshore amendments.

**Technical Changes That Will Be Made by This Proposed Rule**

In addition to the basic regulatory provisions contained in Amendments 51/51, this proposed rule would make two technical changes to the existing regulatory definitions of the inshore and offshore components. First, definitions of the inshore and offshore components at 50 CFR 679.2 would be revised to indicate that all groundfish processors operating in the BSAI or GOA must be identified as belonging to either the inshore or offshore component regardless of whether they process pollock harvested in a directed fishery for pollock in the BSAI or GOA, or Pacific cod harvested in a directed fishery for Pacific cod in the GOA. This change appears to be necessary because NMFS must assign all catch of pollock in the BSAI and GOA and all catch of Pacific cod in the GOA to either the inshore or offshore components when the catch of those species is taken in a directed fishery for pollock or Pacific cod, and when it is taken as incidental catch in fisheries directed at other species. Second, the inshore component definition would be revised to eliminate obsolete language defining how NMFS determines a single geographic location for inshore floating processors. This language no longer is necessary because NMFS now requires that processors identify themselves as inshore or offshore when applying for Federal groundfish permits.

**Classification**

At this time, NMFS has not determined that Amendments 51/51 are consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws.

NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

An RIR was prepared for this action that describes the management background, the purpose and need for action, the management action alternatives, and the economic and social impacts of the alternatives. For BSAI Amendment 51, the RIR evaluated a range of alternatives from a return to pre-1992 "open access" management, through retention of the current allocation scheme, to a series of incremental reallocations of TAC among the several BSAI industry components. For GOA Amendment 51, the RIR evaluated two alternatives, a return to pre-1992 "open access" management, and retention of the current allocation scheme.

The Council prepared an IRFA as part of the RIR that addresses the economic impacts of the preferred alternative on small entities. The IRFA concludes that BSAI Amendment 51 would have a significant economic impact on a substantial number of small entities in the BSAI, but GOA Amendment 51 would not have a significant economic impact on a substantial number of small entities in the GOA. A copy of the IRFA is available from the Council (See ADDRESSES).

The IRFA determines that the only small businesses that participate directly in the BSAI pollock fishery are independent catcher vessels. All other business entities that participate directly in the BSAI pollock fishery (catcher processors, motherships, shoreside processors, and processor-affiliated catcher vessels) are considered large entities under the RFA. Independent catcher vessels participate in both sectors of the BSAI pollock fishery. Of the 49 independent catcher vessels estimated to be small entities, 45 are under 125 ft (38.1 m) LOA and 4 are 125 ft (38.1 m) LOA or larger. The estimated numbers of catcher vessels that participated in the 1996 BSAI pollock fishery by sector, vessel size, and small or large entity status are displayed in the following table:

Catcher vessel size and sector	Small entities		Large entities	
	<125'	≥125'	<125'	≥125'
Inshore sector .....	35	2	17	15
Offshore sector .....	9	2	16	0
Both sectors .....	1	0	12	9
Total .....	45	4	45	24

If implemented, BSAI Amendment 51 presents three types of impacts on independent catcher vessels. First, the allocation shift itself would impact catcher vessels participating in both sectors. Second, the small vessel TAC set-aside would have impacts on catcher vessels of all sizes. Finally, the exclusion of offshore catcher vessels from the CVOA would impact catcher vessels delivering to the offshore sector. Each of these impacts is summarized below.

*Impacts of the Allocation Shift on Season Lengths.* Quantitative predictions about the impacts of the Council's preferred alternative on net revenues of catcher vessels are impossible because information on gross and net revenues for individual catcher vessels is not available. However, using data from 1997, the most recent full year for which data are available, it is possible to estimate how BSAI pollock fishing season lengths would have been affected under the Council's preferred alternative if it had been in effect in 1997.

If BSAI Amendment 51 had been in place during 1997, inshore catcher vessels equal to or longer than 125 ft (38.1 m) would have gained an additional 3 fishing days during the A season (January 20 to April 1) and would have lost one fishing day during the B season for a net gain of 2 fishing days. Two small entities fall into this category. Offshore catcher vessels over 125 ft (38.1 m) LOA would have lost 2 fishing days during the A season (January 25 to April 1) and 2 fishing days during the B season for a net loss of 4 fishing days or 7.1 percent of their total fishing days compared to the actual 1997 fishery. Two small entities fall into this category. The value of a fishing day during the A season may be marginally greater than the value of a fishing day during the B season because the catchability of pollock in the BSAI is generally greater during the A season, and most processors give fishermen a monetary bonus based on proceeds from the roe season.

As noted above, 45 of the 49 catcher vessel small entities that participated in the BSAI pollock fishery in 1996 are under 125 ft (38.1 m). If BSAI Amendment 51 had been in place during 1997, inshore catcher vessels under 125 ft (38.1 m) LOA would have gained an additional 3 fishing days during the A season, would have lost 1 fishing day during the B season and would have gained 6 fishing days during the small catcher vessel set-aside fishery for a net gain of 8 fishing days. Thirty-five small entities fall into this category and one small entity delivers to

both sectors. All of these small entities will benefit from the Council's preferred alternative. Offshore catcher boats under 125 ft (38.1 m) LOA would have lost 2 fishing days during both the A season and B season, and would have gained approximately 5 fishing days during the small catcher vessel set-aside fishery, assuming they were able to secure inshore markets, for a net gain of 1 fishing day. Nine small entities fall into this category. Because offshore catcher vessels would be excluded from the CVOA during the B season, these catcher vessels would lose at least one fishing day while they transit to waters outside the CVOA prior to the start of the B season and, therefore, would be unable to take advantage of the entire 6-day set-aside fishery.

*Estimating the effects of the small catcher vessel set-aside.* A set-aside fishery for small catcher vessels has never been conducted in the BSAI or GOA groundfish fisheries. Consequently, it is difficult to project the costs and benefits of such a fishery on small entities. Anecdotal information from inshore processors indicates that all of the inshore processors in the BSAI intend to participate in this fishery and that they intend to operate their plants at full capacity. This suggests that the 25 offshore catcher vessels under 125 ft (38.1 m) (9 of which are small entities) may be able to secure inshore markets for this 6-day fishery. However, offshore catcher vessels may not be able to participate in the entire set-aside fishery if they intend to be in position to begin fishing for their offshore processors outside the CVOA beginning September 1. Inshore processors also have stated that they may use large catcher vessels as tenders to ferry pollock from the fishing grounds to the plants. The use of tenders would enable small catcher vessels to fish non-stop during the opening, although they would likely receive a lower price for fish transferred to large catcher vessels at sea than for fish delivered to a plant. At present, projecting the net revenues to the small catcher vessel fleet as a result of this set-aside is impossible because the prices that inshore processors are willing to pay for these fish are unknown. Inshore processors may have little incentive to bargain with small catcher vessels because any unharvested quota from this fishery would become immediately available to all inshore catcher vessels on September 1. Because inshore processors own (or have financial affiliations with) most of the large inshore catcher vessels, inshore processors may benefit financially if the set-aside is under-harvested.

*Impacts from excluding offshore catcher vessels from the CVOA.* Under BSAI Amendment 51, catcher vessels that deliver to the offshore component would be prohibited from fishing inside the CVOA during B season, from September 1 until the date that NMFS closes the inshore component B season allocation to directed fishing. Excluding offshore catcher vessels from the CVOA would impact catcher vessels delivering to motherships more than catcher vessels delivering to factory trawlers. Codends, once retrieved, cannot be towed for significant distances without damaging the pollock, which means that offshore catcher vessels must operate within relatively close proximity to their processor. For this reason, a catcher vessel delivering to a factory trawler that is fishing outside the CVOA must also fish outside the CVOA unless both vessels are fishing very close to the boundary of the CVOA. Currently, catcher vessels delivering to motherships do not face this restriction because motherships are allowed to operate within the CVOA, and the mothership fleet has a history of operating within the CVOA during the B season. During public testimony, representatives for mothership operations expressed concerns about vessel safety if they are required to fish outside the CVOA during the B season. The extent to which these concerns are justified is difficult to evaluate. The US Coast Guard indicated that no statistics exist to suggest that fishing outside the CVOA is more dangerous than fishing inside the CVOA. However, excluding offshore catcher vessels from the CVOA would force these vessels to operate further offshore during the B season, which may have some unquantifiable impact on vessel safety. It could also impose additional costs on these vessels to the extent that they are forced to transit farther from port to begin fishing.

*Effects of GOA Amendment 51 on small entities.* The IRFA concludes that GOA Amendment 51 would affect the entire GOA commercial fishing fleet. In 1996, the most recent year for which vessel participation information is available, 1,508 vessels participated in the groundfish fisheries of the GOA; 1,254 longline vessels, 148 pot vessels, and 202 trawl vessels. Most of these vessels are considered small entities under the RFA. The commercial pollock catch in the GOA totaled 51,000 mt in 1996 with an exvessel value of \$10.3 million. The Pacific cod catch in the GOA totaled 68,000 mt in 1996 with an exvessel value of \$25.2 million. Most of the businesses involved in the support service industry for the groundfish

fisheries of the GOA (e.g., equipment, supplies, fuel, groceries, entertainment, transportation) are also considered to be small entities.

GOA Amendment 51, which would allocate 100 percent of the pollock TAC and 90 percent of the Pacific cod TAC to the vessels fishing for processing by the inshore component, would positively impact nearly all small entities participating in the pollock and Pacific cod fisheries of the GOA because nearly all of these small entities are part of the inshore component. The absence of Amendment 51 would open up the GOA pollock and Pacific cod fisheries to exploitation by large catcher processors, which are not small entities, and the current small entity participants in the GOA pollock and Pacific cod fisheries would be largely displaced as a result.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Council prepared an environmental assessment (EA) for these FMP amendments that discusses the impact on the environment as a result of this rule. The fisheries for pollock and Pacific cod and the affected human environment are described in the FMPs, the environmental impact statement prepared for Amendments 18/23, the EA prepared for Amendments 38/40, and in the EA prepared for this action. A copy of the EA is available from the Council (see ADDRESSES).

A formal section 7 consultation under the Endangered Species Act was initiated for Amendments 51/51. A biological opinion is under preparation that will determine whether the fishing activities conducted under Amendments 51/51 and its implementing regulations are likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat.

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

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: October 23, 1998.

**Gary C. Matlock,**

Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.

For the reasons set out 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 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 definitions of “inshore component” and “offshore component” are revised to read as follows:

#### § 679.2 Definitions.

*Inshore component* (applicable through December 31, 2001) means the following three categories of the U.S. groundfish fishery that process groundfish harvested in the GOA or BSAI:

(1) Shoreside processing operations.  
(2) Vessels less than 125 ft (38.1 m) LOA, that process no more than 126 mt per week in round-weight equivalents of an aggregate amount of pollock and Pacific cod.

(3) Vessels that process pollock or Pacific cod harvested in a directed fishery for those species at a single geographic location in Alaska State waters during a fishing year.

*Offshore component* (applicable through December 31, 2001) means all vessels not included in the definition of “inshore component” that process groundfish harvested in the BSAI or GOA.

3. In § 679.7, paragraph (a)(7) heading is revised to read as follows:

#### § 679.7 Prohibitions.

(7) *Inshore/offshore* (Applicable through December 31, 2001).

4. In § 679.20, the applicable dates in the headings of paragraphs (a)(6), (b)(1)(iv), (b)(2)(i), (b)(2)(ii), and (c)(4) are revised to read: “Applicable through December 31, 2001.”; paragraph (a)(6)(i) is revised; and paragraph (a)(6)(vi) is added to read as follows:

#### § 679.20 General limitations.

(i) *BSAI pollock*. The apportionment of pollock in each BSAI subarea or district and season will be allocated 39 percent to vessels catching pollock for processing by the inshore component and 61 percent to vessels catching pollock for processing by the offshore component.

(vi) *Bering Sea subarea pollock set-aside fishery for catcher vessels less than 125 ft (38.1 m) LOA*—(A) *Calculation of amount*. An amount

equal to 2.5 percent of the BSAI pollock TAC, after subtraction of reserves, will be set aside from the inshore component B season allowance. This set-aside will become available to catcher vessels less than 125 ft (38.1 m) LOA catching pollock for processing by the inshore component on or about August 25 of each year as set out at § 679.23(e)(2)(ii)(E).

(B) *Underages and overages*. Any harvest underage or overage of the small vessel set-aside established under paragraph (a)(6)(vi)(A) will be added to or subtracted from inshore component B season allowance.

5. In § 679.22, paragraph (a)(5) is revised to read as follows:

#### § 679.22 Closures.

(5) *Catcher Vessel Operational Area (CVOA)* (applicable through December 31, 2001). The CVOA is defined as the area of the BSAI east of 167° 30' W. long., west of 163° W. long., and south of 56° N. lat. (see Figure 2 of this part).

(i) *Effective time period*. The CVOA is established annually during the B season, defined at § 679.23(e)(2)(i)(B), from September 1 until the date that NMFS closes the inshore component B season allocation to directed fishing.

(ii) *Offshore component restrictions*. Vessels in the offshore component or vessels catching pollock for processing by the offshore component are prohibited from conducting directed fishing for pollock in the CVOA unless they are operating under a CDP approved by NMFS.

(iii) *Fisheries other than pollock*. Vessels that harvest or process groundfish in directed fisheries for species other than pollock may operate within the CVOA consistent with the other provisions of this part.

6. In § 679.23, paragraph (e)(2) is revised to read as follows:

#### § 679.23 Seasons.

(2) *Directed fishing for pollock*. (i) Subject to other provisions of this part, and except as provided in paragraphs (e)(2)(ii) through (e)(2)(iv) of this section, directed fishing for pollock is authorized only during the following two seasons:

(A) *A season*. From 0001 hours A.l.t. January 1 through 1200 hours A.l.t. April 15.

(B) *B season*. From 1200 hours A.l.t. September 1 through 1200 hours A.l.t. November 1.

(ii) *Offshore component restrictions* (applicable through December 31,



2001)—(A) *Offshore A season*. Subject to the other provisions of this part, directed fishing by the offshore component or by vessels delivering to the offshore component is authorized from 1200 hours A.l.t. January 26 through 1200 hours A.l.t. April 15.

(B) *Offshore A season "fair start" requirement*. Directed fishing for pollock by the offshore component, or by vessels catching pollock for processing by the offshore component is prohibited through 1200 hours, A.l.t., February 5, for any vessel that is used to fish in a non-CDQ fishery for groundfish in the BSAI or GOA, or for

king or Tanner crab in the BSAI prior to 1200 hours, A.l.t., January 26 of the same year.

(iii) *Set-aside for catcher vessels less than 125 ft (38.1 m) LOA (applicable through December 31, 2001)*. Subject to other provisions of this part, directed fishing for pollock by catcher vessels less than 125 ft (38.1 m) LOA catching pollock for processing by the inshore component will be authorized beginning on or about August 25 of each year by notification in the **Federal Register**. NMFS will base the opening date on the amount of the set-aside, the projected harvest rate, and the number of vessels

expected to participate in the set-aside fishery.

(iv) *B season "fair start" requirement*. Except as provided for in paragraph (e)(2)(iii) of this section, directed fishing for pollock is prohibited from 1200 hours A.l.t., September 1 through 1200 hours, A.l.t., September 8, for any vessel that is used to fish for groundfish with trawl gear in a non-CDQ fishery in the BSAI or GOA between 1200 hours A.l.t., August 25, and 1200 hours A.l.t., September 1.

\* \* \* \* \*

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