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FOR FURTHER INFORMATION CONTACT: Paul H. Jones, 508-281-9273.

**SUPPLEMENTARY INFORMATION:**

**Background**

The American lobster fishery is prosecuted primarily in state waters, and is managed under an FMP developed by the New England Fishery Management Council (Council) in consultation with the Atlantic States Marine Fisheries Commission (ASMFC). The primary objective of the FMP is to serve as a vehicle for coordinated management of the American lobster fishery throughout its range, which encompasses both inshore waters under state jurisdictions and offshore waters under Federal jurisdiction. Because the lobster resource supports important inshore fisheries for States from Maine through New Jersey, these States have developed regulations in compliance with the ASMFC Interstate Management Plan. The Federal FMP and regulations both strengthen and unify the state programs by implementing complementary measures in Federal waters.

In 1993, an assessment of the status of the lobster resource determined that it is overfished. In response, the Council developed Amendment 5 to the FMP, which was implemented on July 20, 1994 (59 FR 31938, June 21, 1994). Amendment 5 established a limited access permit system and an EMT for each of the four management areas. EMTs were made up of industry members, state and Federal government personnel, and Council staff. This approach provided a unique opportunity for members of the industry to participate directly in the development of management measures. Each EMT was required to develop a stock rebuilding program for its area and make recommendations to the Council by January 20, 1995 (50 CFR 649.43(a)). The Council would then determine whether to adopt or modify the EMT's recommendations, provide opportunity for public testimony, and submit management measures sufficient to achieve the objectives of the FMP to the Director, Northeast Region, NMFS (Regional Director), on or before July 20, 1995 (§ 649.43(c)). If the Council failed to submit management measures sufficient to achieve the objectives of the FMP on or before July 20, 1995, NMFS, acting on behalf of the Secretary of Commerce, was to determine whether to prepare an amendment to the FMP (§ 649.42(a)(3)) (Secretarial amendment).

The EMT proposals were submitted on schedule. However, on June 28-29, 1995, the Chair of the Council's Lobster Oversight Committee reported that it would not meet the July 20, 1995, deadline. In addition, several state directors informed the Council that they would be unable to implement the EMT proposals, specifically with reference to achieving the fishing mortality rate reduction rates and administration of a trap-tag system embodied in Amendment 5. Consequently, as called for by Amendment 5, NMFS must now consider whether to prepare a Secretarial amendment or take other action, which could include the option of withdrawal of the FMP.

**Options**

*FMP Withdrawal*

One option available to NMFS is to withdraw the FMP and implement regulations under the ACFCMA. Under ACFCMA, these regulations must be: (1) Necessary to support the effective implementation of an ASMFC Interstate Fishery Management Plan and (2) consistent with the national standards set forth in section 301 of the Magnuson Act. These regulations could include continuation of the limited access permit system as well as implementation of the EMT proposals to the extent that such proposals are consistent with ACFCMA. This option would remove management responsibility for the lobster fishery from the Council's purview.

*Secretarial Amendment*

A second option provided under the Magnuson Act is for NMFS to prepare a Secretarial amendment to the existing FMP, in accordance with the national standards, the other provisions of the Magnuson Act, and any other applicable law. The Magnuson Act provides that such action can be taken if the Council fails to develop and submit, after a reasonable period of time, any necessary amendment to an FMP, if the fishery requires conservation and management.

Under this option, a Secretarial amendment could maintain current regulations, such as the limited access permit system, and implement some or all of the measures proposed by the EMTs as deemed consistent with the objectives of the FMP. However, without the full commitment by the States to implement complementary measures to an FMP amendment, the EMT proposals may no longer be sufficient to achieve the fishing mortality reduction goals. Therefore, additional measures, such as time and/or area closures, for federally permitted

vessels would be considered. Under this option, the Council would have the opportunity to comment on a Secretarial amendment and to amend the FMP in the future.

**Request for Comments**

NMFS is interested in receiving comments on the options explained above. The options discussed are not all-inclusive; suggestions for alternative approaches are encouraged. After consideration of the comments, NMFS will decide whether to proceed with any of the options above or other options, as appropriate.

**Authority:** 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 5101 *et seq.*

Dated: September 13, 1995.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

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**50 CFR Parts 672 and 675**

[Docket No. 950905226-5226-01; I.D. 083095A]

RIN 0648-AH00

**Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Extension of Allocations to Inshore and Offshore Components**

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

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

**SUMMARY:** NMFS publishes a proposed rule that would implement through December 31, 1998, allocations of Pacific cod and pollock for processing by the inshore and offshore components in the Gulf of Alaska (GOA) and pollock for processing by the inshore and offshore components in the Bering Sea and Aleutian Islands management area (BSAI). It would also continue the Western Alaska Community Development Quota (CDQ) Program. These provisions are contained in proposed Amendment 40 to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska and proposed Amendment 38 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, which the North Pacific Fishery Management Council (Council) has submitted to NMFS for review and approval under the Magnuson Fishery Conservation and Management Act (Magnuson Act). If

approved, these amendments would continue measures that were contained in Amendments 18 and 23 to the GOA and BSAI FMPs, respectively. The proposed rule is intended to promote management and conservation of groundfish, enhance stability in the fisheries, and further the goals and objectives contained in the FMPs that govern these fisheries.

**DATES:** Comments are invited on or before November 2, 1995.

**ADDRESSES:** Send comments to Ronald J. Berg, Chief, Fisheries Management Division, Attn: Lori Gravel, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668 or deliver them to Room 457, Federal Building, 709 W. 9th Street, Juneau, AK. Individual copies of the proposed amendments and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510. Send comments and suggestions regarding Paperwork Reduction Act (PRA) requirements to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attn: NOAA Desk Officer.

**FOR FURTHER INFORMATION CONTACT:** Jay Ginter, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

**Background**

The groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed under the BSAI and GOA FMPs. Both FMPs were prepared by the Council under authority of the Magnuson Act. The GOA FMP is implemented by regulations appearing at 50 CFR 611.92, 50 CFR part 672, and 50 CFR part 676; the BSAI FMP, at 50 CFR 611.93, 50 CFR part 675, and 50 CFR part 676. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620. The fisheries for pollock (*Theragra chalcogramma*) and Pacific cod (*Gadus macrocephalus*) and the affected human environment are described in the FMPs, in the environmental impact statements prepared by the Council for each FMP, and in the EA/RIR/IRFA prepared for this action.

Amendments 38 and 40 will extend the provisions of Amendment 18 to the BSAI FMP and Amendment 23 to the GOA FMP. The only significant change is moving the western border of the Catcher Vessel Operational Area (CVOA) 30 minutes to the east, from 168°00' to 167°30' W. long. Because Amendments 18 and 23 and their

implementing regulations expire on December 31, 1995, and because the Council has yet to complete development of its comprehensive plan to address problems caused by the open access nature of the Alaska groundfish fisheries, the Council voted unanimously at its June 1995 meeting to extend the provisions of the expiring amendments through December 31, 1998, by Amendments 38 and 40.

The problems and issues addressed by Amendments 38 and 40 are discussed in the proposed rule notice for Amendments 18 and 23 (56 FR 66009, December 20, 1991; corrected at 57 FR 2814, January 23, 1992), the final rule implementing Amendment 23 and the initially approved portions of Amendment 18 (57 FR 23321, June 3, 1992); a proposed rule to implement a revision of the parts of Amendment 18 that were disapproved earlier (57 FR 46133 (October 7, 1992); and a final rule to implement the revised parts of Amendment 18 (57 FR 61326, December 24, 1992; corrected at 58 FR 14172, March 16, 1993).

The following text covers separately two issues. The first addresses the allocation of Pacific cod and pollock for processing by the inshore and offshore components in the GOA and pollock for processing by the inshore and offshore components in the BSAI. The second addresses the Western Alaska Community Development Program and its allocation of pollock.

*1. The Inshore-Offshore Issue*

*A. Summary of the Inshore-Offshore Issue of Amendments 18 and 23*

Early in 1989, several catcher-processor vessels (factory trawlers) harvested substantial amounts of pollock in the BSAI and GOA. This large, quick harvest forced an early closure of the GOA pollock fishery and prevented inshore harvesters and processors from realizing their anticipated economic benefit from pollock later in the fishing year. Thus, 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 sector of the industry. The Council considered the request and the impacts on coastal community development and stability of the fisheries and prepared Amendments 18 and 23.

NMFS' review of the amendments began on December 1, 1991. On March 4, 1992, the NMFS approved the proposed pollock and Pacific cod

allocations for the GOA and the proposed pollock allocation for the BSAI for 1992, but disapproved the proposed allocations for the BSAI in 1993 through 1995. The approved allocations were implemented on June 1, 1992 (57 FR 23321, June 3, 1992).

In his March 4, 1992, letter notifying the Council of his approval of Amendment 23 and partial disapproval of Amendment 18, the Under Secretary and Administrator of NOAA (Administrator) stated that NOAA is 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' disapproval of the BSAI pollock allocations for 1994 and 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 the olympic system 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 Act.

At its April 21-26, 1992, meeting, the Council considered the NMFS' actions and recommendations and decided to revise Amendment 18. The Council supplemented its previous analysis of allocation alternatives for the original Amendments 18 and 23.

At a special meeting to consider this issue on August 4-5, 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. This action would have allocated pollock in the BSAI for processing by the inshore and offshore components, respectively, of 35 percent and 65 percent in 1993, and of 37.5 percent and 62.5 percent in 1994 and 1995. In addition, it would have created a catcher vessel operational area for the second season pollock fishery in the years 1993 through 1995, and it would have allowed vessels in the offshore component that process only (i.e., motherships) to operate in the CVOA so that the catcher vessels that deliver to these vessels also could operate in the CVOA.

In September 1992, the Council submitted revised Amendment 18 to NMFS for review, approval, and implementation under section 304(a) of the Magnuson Act.

On November 23, 1992, after careful consideration of the revised amendment, public comments, the record developed by the Council, and the analyses of the potential effects of the proposed amendment, NMFS approved pollock allocations of 35 percent for processing by the inshore component and 65 percent for processing by the offshore component for the years 1993 through 1995. NMFS also approved the CVOA, including the provision that motherships could operate within that area, and certain other changes of the regulations proposed by NMFS to clarify the regulations implementing Amendments 18 and 23. The final rule implementing these decisions became effective January 19, 1993 (57 FR 61326, December 24, 1992).

#### B. The Need for and Development of Amendments 38 and 40

The Council stipulated (e.g., sections 14.4.11.7, BSAI FMP) that Amendments 18 and 23 would expire on December 31, 1995, or earlier if replaced with another management regime approved by NMFS. It did so with the understanding 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 groundfish and crab under the Council's authority.

The Council has made some progress on its long-term plan. For example, in June 1995 it adopted a license-limitation program for the groundfish and crab fisheries. However, the Council estimates that it will take 2 or 3 more years to develop and implement a comprehensive management regime. Consequently, the Council decided it would be necessary to extend the provisions of Amendments 18 and 23 for an additional 3 years to maintain stability in the industry, facilitate further development of the comprehensive management regime, 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 decided that if the provisions of Amendments 18 and 23 expired, then the fishery would return to the "free-for-all" state it was in before Amendments 18 and 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 and 23.

In June 1994, the Council reaffirmed that its staff should begin analyzing the impacts of the potential extension of Amendments 18 and 23, including the CDQ program in the BSAI. At its October 1994 meeting, the Council identified this issue as highest priority for analysis. In December 1994, the Council presented a draft statement of the problem and reviewed a plan for analyzing the merits and impacts of continuing Amendments 18 and 23. It also requested a detailed reexamination of the CVOA. Further, it identified the treatment of vessels that fish with longline gear and freeze their catch for possible reevaluation under the definitions of inshore and offshore components. At its January 1995 meeting, the Council reviewed a detailed outline for the analyses and noted that the formal analyses would be presented at its April 1995 meeting, the analyses would undergo public review and comment, and the Council would make its final decision in June 1995. At its April 1995 meeting, the Council released a draft EA and RIR of the proposed reauthorization of Amendments 18 and 23 for public review.

Finally, at its meeting in June 1995, the Council reviewed written comments and considered testimony presented at the meeting by the public and its advisory bodies. It voted unanimously to reauthorize the provisions of Amendments 18 and 23 through December 31, 1998, with two changes. First, it moved the western boundary of the CVOA 30 minutes to the east. Second, it allowed catcher-processor vessels to use the CVOA if the pollock quota for processing by the inshore sector had been harvested for the year.

The Council decided to move the western boundary of the CVOA 30 minutes to the east because (a) that part of the CVOA between 168°00' W. long. and 167°30' W. long. was not being used by catcher vessels delivering to inshore processors, (b) some operators of catcher-processor vessels of the offshore component requested that they be allowed to operate there, and (c) the area was not critical for protected species.

In deciding to move the western boundary, the Council considered the

impact of this move on the accounting of chum salmon caught as bycatch and the chum salmon savings area (§ 675.22(h)). An analysis of chum salmon bycatch data led the Council to conclude that moving the western boundary would have no significant impact on the controls governing chum salmon bycatch.

Furthermore, because the CVOA and statistical area 518 (the Bogoslof District) overlapped, probably only the northern half of the area removed from the CVOA would be open to the offshore component. Roughly the southern half of the area is in statistical area 518 and is closed to directed fishing for pollock under 1995 regulations (60 FR 8479, February 14, 1995), and likely will be closed to directed fishing for pollock in 1996, 1997, and 1998.

#### C. Summary of Amendments 38 and 40

Because Amendments 18 and 23 were due to expire on December 31, 1995, the June 1995 Council action led to new amendments. The provisions of Amendment 18 became the basis of Amendment 38, and those of 23 became the basis of Amendment 40. The only significant difference between Amendments 18 and 23 and Amendments 38 and 40 is that Amendment 38 moves the western boundary of the CVOA.

Thus, in the BSAI, the apportionments of pollock for domestic processing in each subarea or district and each season would be allocated 35 percent for processing by the inshore component and 65 percent for processing by the offshore component. The western border of the CVOA is moved 30 minutes to the east, from 168°00' to 167°30' W. long., thereby reducing its area by about 15 percent. The CVOA will exist from the start of the second season for directed pollock fishing (§ 675.23(e)) until the quota of pollock for processing by the inshore component has been harvested for the year or until December 31. Processor vessels of the offshore component would be allowed to conduct directed fishing operations for pollock in the CVOA only when they were operating under a valid Community Development Plan. Processor vessels in the offshore component that do not catch groundfish would be allowed to process pollock in the CVOA.

In the GOA, the apportionment of pollock for domestic processing in all regulatory areas will be allocated entirely for processing by the inshore component after subtraction of an amount that is projected by the Director, Alaska Region, NMFS (Regional Director) to be caught by or delivered to

the offshore component incidental to directed fishing for other groundfish species. The apportionment of Pacific cod for domestic processing in all regulatory areas will be allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component.

In both amendments the definitions of the terms "inshore component" and "offshore component" are clarified. Also, both amendments continue the requirement that processor vessels will be included with the inshore component or the offshore component based upon a declaration by the owner of that vessel on the annual application for a Federal permit (§§ 672.4 and 675.4).

Separately, Amendment 40 changes two sections of the GOA FMP. First, section 4.3.1.1, Permit Requirements, is revised to emphasize that certain permits are required of participants in the GOA groundfish fisheries. These requirements are found in regulations implementing the GOA FMP. Second, section 4.3.1.6, Inshore/offshore allocations of pollock, is amended by revising the heading to include Pacific cod, by rewriting the text for clarity, and by noting that the provisions of the section will end on December 31, 1998, or earlier if replaced with another management regime approved by NMFS.

Along the same lines, Amendment 38 changes two sections of the BSAI FMP. First, section 14.4.1, Permit requirements, is also revised to emphasize that certain permits are required of participants in the BSAI groundfish fisheries, and that these requirements are found in regulations implementing the BSAI FMP. Second, section 14.4.11, Inshore/offshore allocations of pollock, is rewritten for clarity and to note that the provisions of the section will end on December 31, 1998, or earlier if replaced with another management regime approved by NMFS. Further, Amendment 38 revises § 14.4.11.6, Bering Sea Catcher Vessel Operational Area, moving the western boundary of the CVOA 30 minutes longitude to the east.

Regulations are also proposed to continue the delay in the opening of the first directed fishery for pollock until February 5 for vessels used before January 26 to fish for BSAI or GOA groundfish or BSAI king or Tanner crab. The Council voted at its June 1994 meeting to change the start of the first directed fishery for pollock (the "A-Season" or "roe season") for processing by the offshore component to January 26. It did so to ensure optimum roe quality and increase the associated

revenues. It included the delay to February 5 to discourage pollock vessels from shifting into other fisheries before January 26. NMFS published a final rule to implement these measures on December 16, 1994 (59 FR 64867). They expire December 31, 1995.

#### D. Summary of the Proposed Inshore-Offshore Regulations

The definitions of the terms (§§ 672.2 and 675.2) "inshore component" and "offshore component" would be clarified and extended through December 31, 1998 and the term "catcher vessel operational area" (CVOA) would be added for clarity.

The general prohibitions against vessels operating during any year in more than one category of the inshore component (§§ 672.7(h)(1) and 675.7(i)(1)) or vessels operating in both the inshore and offshore components (§§ 672.7(h)(2) and 675.7(i)(2)) would be extended through December 31, 1998.

The allocations of Pacific cod and pollock for processing by the inshore and offshore components (§§ 672.20(a)(2)(v) and 675.20(a)(2)(iii)) and specifications of annual allocations (§§ 672.20(c)(1)(ii) and 675.20(a)(3)(i)) would be extended through December 31, 1998.

In the regulations governing the CVOA (§ 675.22(g)), the western boundary would be moved 30 minutes to the east to 167°30' W. long. The regulations would clarify that the CVOA will exist from the start of the second season for directed fishing for pollock (§ 675.23(e)) until the quota of pollock for processing by the inshore component has been harvested for the year or until December 31. These regulations would be extended through December 31, 1998.

Regulations concerning the bycatch of chum salmon (§ 675.22(h)) refer to the definition of the CVOA as found at § 675.22(g). Under these regulations chum salmon caught in the CVOA as bycatch in the nonroe pollock fishery are attributed towards a 42,000 fish bycatch limit. The Council's decision to move the western boundary of the CVOA and, thereby, reduce its size would affect the area of chum salmon accounting. The Council recognized this effect on its program for reducing chum salmon bycatch and expressed its intent to have the chum salmon accounting take place within the revised boundaries of the CVOA. Because, under this proposed rule, the definition of the CVOA would be moved to § 675.2, NMFS now proposes to amend § 675.22(h) so it will be consistent with this change.

Also, in accordance with Council intent, NMFS proposes to reimplement until December 31, 1998, regulations governing delays in the start of the first directed fishing seasons for pollock for processing by the offshore component (§ 675.23(e)(2)(ii)).

#### 2. Western Alaska Community Development Quota (CDQ) Program

##### A. Summary of the History and Provisions of the CDQ Program

The approved portion of Amendment 18 and the final rule implementing Amendment 18 (57 FR 23321, June 3, 1992) allocated pollock for the CDQ program only for a temporary period from 1992 through 1995. The amendment allocated 7.5 percent of the pollock total allowable catch for each BSAI subarea or district to be set aside for the CDQ program. A regulatory amendment (57 FR 54936, November 23, 1992) implemented the CDQ program for 1992 and 1993 by specifying the process for applying for CDQ and the required contents of the Community Development Plan applications. A subsequent regulatory amendment (58 FR 32874, June 14, 1993) implemented the CDQ program for 1994 and 1995.

At its June 1995 meeting, the Council reauthorized the provisions of Amendment 18 through December 31, 1998, including the CDQ program. Much has been learned about the CDQ program since 1992. NMFS has worked closely with the State of Alaska's Departments of Community and Regional Affairs, Fish and Game, and Commerce and Economic Development, as well as the CDQ industry, to develop proposed changes to the pollock CDQ regulations.

##### B. Proposed Changes to the CDQ Implementing Regulations

This proposed rule extends the definitions of "community development plan (CDP)," "community development quota," "community development quota program," and "community development quota reserve" until December 31, 1998; and makes the following nine changes to the CDQ implementing regulations that have been in effect, but which expire on December 31, 1995.

1. The phrase "applicable through December 31, 1995" at the beginning of the CDQ regulations at part 675.27 is proposed to be replaced by the phrase "applicable through December 31, 1998". This would implement the Council's recommendation to reauthorize the CDQ program for 3 additional years. In addition, the phrase

“applicable through December 31, 1995” is deleted from the beginning of paragraphs (e) and (f) because it is unnecessary.

2. Introductory text is added in § 675.27 to describe the goals and purpose of the CDQ program as follows: to allocate CDQ pollock to eligible Western Alaska communities to provide the means for starting or supporting commercial seafood activities that will result in ongoing regionally based commercial seafood or related businesses. This statement is a distillation of previous CDQ proposed and final rules that describe the goals and purpose of the CDQ program and is proposed to be added to these regulations to state precisely the purpose and goals of this program.

3. Under current regulations, paragraph (b)(1)(i) states that the CDP must include the goals and objectives of the CDP. However, a CDP does not have goals and objectives that are separate from those of the CDQ program. Therefore, (b)(1)(i) is replaced with a more correct statement. Specifically, CDPs are project-based documents, and should include a description of the CDP projects that are proposed to be funded by the pollock allocation and how the CDP projects satisfy the goals and purpose of the CDQ program.

4. Paragraph (b)(1)(vii) states that a CDP must include a description of how the CDP would generate new capital or equity for the applicant's fishing or processing operations. However, an applicant may have both fishing and processing operations, so it would be more accurate to state that a CDP must include a description of how the CDP would generate new capital or equity for the applicant's fishing and/or processing operations.

5. Paragraph (b)(2)(vii), states that a CDP should include a budget for implementing a CDP. This level of budget oversight has proven to be inadequate for managing the CDQ program. This paragraph is proposed to be expanded, requiring a general budget to be included in the CDP that would be a general account of estimated income and expenditures for each CDP project for each year of the life of the project.

An annual budget would be required at (e)(1)(ii), and it would be a detailed account of the estimated income and expenditures for each CDP project prior to the beginning of a calendar year. An initial annual budget would be required as part of a CDP application. For each subsequent year, the annual budget would be required to be submitted to NMFS in a report by December 15 of the year preceding the year for which the annual budget applies. Annual budgets

would be approved upon receipt by NMFS unless subsequently disapproved by NMFS in writing. The annual budget would be reconciled in a report to NMFS by May 15 after the year for which the annual budget applies. The annual budget reconciliation report would list the actual income and expenditures and highlight the variance between the estimated and actual income/expenditures for each CDP project. If the general budget included in the CDP is no longer valid due to the reconciliation of the annual budget, then the general budget would also be required to be revised and submitted to NMFS with the annual budget reconciliation report.

6. Paragraph (b)(3)(ii)(B) states that the CDP must document the legal relationship between the CDP applicant and the managing organization. This implies that the CDP applicant and the managing organization are different entities. However, in some cases, the CDP applicant is the same as the managing organization. Therefore, this paragraph would be changed to state that the CDP must document the legal relationship between the CDP applicant and the managing organization only if the managing organization is different from the CDP applicant.

7. The definition of a CDP amendment under paragraph (e)(3)(i)(A)–(C) has required unnecessary amendments to be submitted to NMFS. Under the current regulations, paragraph (e)(3)(i)(B) states that any change to the budget of a CDP is a CDP amendment. Minor changes (for example, revisions of a CDP's budget for office supplies) were not meant to be amendments. Therefore, the existing paragraphs at (e)(3)(i)(A)–(C) would be deleted and paragraphs (e)(3)(i)(A)–(F) would be added, specifying in more detail what would constitute a CDP amendment.

8. In 1993, when the first CDP amendments were received by NMFS, guidance at paragraph (e)(3)(ii) regarding the contents of a CDP amendment was not sufficient, and more specific guidance was needed. The existing requirements for the contents of CDP amendments resulted in the submission of CDP amendments in different formats and lacking critical information, making them difficult to evaluate and process. Therefore, the Regional Director provided guidance to the Governor in a letter dated November 3, 1993. Since that date, all CDP amendments have followed the suggested format that was provided in that letter. This guidance is proposed to be added at paragraph (e)(3)(ii)(A)–(F).

9. Currently, a CDQ management organization is not required to notify

NMFS of any change to a CDP that does not meet the criteria for a CDP amendment at (e)(3)(i)(A)–(C). Such minor changes are technical amendments. However, a CDP is a working business plan and must be kept up-to-date. NMFS proposes to require that CDQ groups notify the Governor and NMFS in writing of any technical amendments to a CDP before any change occurs. Technical amendments would be approved when the CDQ group receives a written notice from NMFS of the receipt of a technical amendment. The notification should include the pages of the CDP with the text highlighted to show additions and deletions, and the amended pages of the CDP would be included for replacement in the CDP.

### Environmental and Regulatory Analyses

The Council prepared an EA/RIR/IRFA for Amendments 38 and 40 in accordance with the National Environmental Policy Act, Executive Order 12866, Regulatory Planning and Review, and the Regulatory Flexibility Act. A copy of the EA/RIR/IRFA may be obtained from the Council (see ADDRESSES).

The EA/RIR/IRFA reviews events leading up to Amendments 18 and 23, examines the fisheries since Amendments 18 and 23 went into effect, and examines the alternatives of (a) letting the provisions of Amendments 18 and 23 expire and (b) continuing those provisions as Amendments 38 and 40.

The EA/RIR/IRFA concludes that the potential environmental impacts of Amendments 38 and 40 are expected to be consistent with those previously predicted for Amendments 18 and 23 in the 1992 final supplemental environmental impact statement. They are also consistent with the findings in the supplemental analysis of September 1992 regarding the probable impacts of the CVOA on marine mammals, seabirds, and prohibited species. Total removals of pollock and Pacific cod are controlled by the total allowable catches, and their monitoring has been enhanced recently to guard against overruns. Catches of prohibited species and impacts on marine mammals are expected to be unchanged. Section 7 consultations by NMFS during consideration of Amendments 18 and 23 and again for Amendments 38 and 40 concluded that the groundfish fisheries are unlikely to jeopardize the continued existence or recovery of any endangered or threatened species.

For the analysis of economic and social impacts of Amendments 38 and

40 and the proposed regulations, the Council did not attempt to redo the previous cost-benefit or distributional analyses; rather, the EA/RIR/IRFA provides a review of the current state of the fisheries and identified significant changes that would affect the overall findings of the previous analyses. It also examined stability within the industry, future tradeoffs for affected industry sectors, and potential impacts on the Council's attempts to develop a more comprehensive plan for managing the groundfish, crab, and halibut fisheries.

The EA/RIR/IRFA concluded that reauthorizing the provisions of Amendments 18 and 23 would result in the same general cost-benefit impacts as projected in the 1992 analyses, although the expected net losses to the Nation's economy were probably overstated in the original analyses, and with changes in product recovery rates and prices since 1992, they were expected to move more towards neutral.

The EA/RIR/IRFA found that continuation of the inshore-offshore program would maintain stability and that disruption of this stability could have serious and adverse implications for successful development of a comprehensive management regime for the fisheries (EA/RIR/IRFA, p. E-9). Continuation of the inshore-offshore program would negatively affect Ballard-Seattle, WA; however, the absence of the program would result in negative social and economic impacts on many coastal Alaskan communities, particularly in those participating in the CDP that have developed additional infrastructure since 1992.

In examining the community development program, the EA/RIR/IRFA asked two questions: (a) Can the development projects and initiative underway now be brought to fruition without a continuation of the allocation? and (b) Once the development projects are complete, can they be sustained in the absence of a direct allocation of pollock? For the first question, the EA/RIR/IRFA concluded that the individual projects as well as the overall development objectives of the program would not be realized if the program ends in 1995. For the second question, the EA/RIR/IRFA stated that this was a difficult question to answer at this time and it remained a critical question, likely to be answered within the context of the comprehensive rationalization process.

#### Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a Council within 15 days of receipt of an FMP or

an amendment of an FMP and regulations. At this time, NMFS has not determined that either Amendment 38 of the BSAI FMP or Amendment 40 of the GOA FMP (which these rules would implement) is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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

The Council prepared an IRFA as part of the regulatory impact review, which describes the impact this proposed rule would have on small entities, if adopted. The IRFA analysis indicates that specific allocations to the inshore and offshore components could benefit small harvesting and processing operations associated with one component and, conversely, negatively impact small operations associated with the other. The magnitudes of the impacts are related to the sizes of the allocations. The continuation of specific allocations to the inshore component as well as the specific allocations of pollock to the CDQ program will continue direct benefits to many small jurisdictions of Southwest and Western Alaska. The support industry benefits directly from the economic activity in both the inshore and offshore sector. Probably, the loss in revenue associated with one component will be offset by gains obtained from the other. Overall, this proposal will impact more than 20 percent of those small entities, and NMFS considers that amount to be a "substantial number." A copy of the EA/RIR/IRFA is available from the Council (see ADDRESSES).

This proposed rule contains collection-of-information requirements related to the Community Development Quota Program that are subject to the PRA. These requests for collection of information have been submitted to the Office of Management and Budget for approval. The public reporting burden for each year of this collection is estimated to average 40 hours per response for completing annual reports, 40 hours per response for completing annual budget reconciliation reports, 30 hours per response for completing substantial amendments, and 4 hours per response for completing technical amendments. For the first year of the CDQ program, completion of CDP applications is estimated to average 160 hours per response. For each of the last 2 years of the program, completion of annual budget reports is expected to average 40 hours per response. OMB

approval has been obtained under OMB control number 0648-0269 for the CDQ-managing organization representative requirement to inform NMFS within 24 hours after the CDQ has been reached and fishing ceased. This requirement has an estimated response time of 2 minutes per response.

All reporting burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and to the OMB (see ADDRESSES).

#### List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: September 11, 1995.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

#### PART 672—GROUND FISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

**Authority:** 16 U.S.C. 1801 et seq.

2. In § 672.2, the definitions of "Inshore component" and "Offshore component" are revised to read as follows:

#### § 672.2 Definitions.

\* \* \* \* \*

*Inshore component* (applicable through December 31, 1998) means the following three categories of the U.S. groundfish fishery that process pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, or both:

(1) All shoreside processing operations;

(2) Any processor vessel less than 125 ft (38.1 m) in length overall that processes no more than 126 mt per week in round-weight equivalents of an aggregate of those fish and that is declared to be part of the inshore component by its owner in the annual application for a Federal Permit (NOAA Form 88-155) under § 672.4; and

(3) Any processor vessel that processes those fish at a single geographic location in Alaska State waters (waters adjacent to the State of

Alaska and shoreward of the EEZ) during a fishing year and that is declared to be part of the inshore component by its owner in the annual application for a Federal Permit (NOAA Form 88-155) under § 672.4. For the purposes of this definition, NMFS will determine the single geographic location in a fishing year for an individual processor from the geographic coordinates the vessel operator reports on the check-in notice (§ 672.5(c)(1) and § 675.5(c)(1) of this chapter) when that vessel first engages in processing those fish.

\* \* \* \* \*

*Offshore component* (applicable through December 31, 1998) means all processor vessels in the U.S. groundfish fisheries not included in the definition of "inshore component" that process pollock caught in directed fisheries for pollock, or Pacific cod caught in directed fisheries for Pacific cod in the Gulf of Alaska, or both.

\* \* \* \* \*

3. In § 672.7, paragraph (h) heading, and paragraph (h)(2) are revised to read as follows:

**§ 672.7 Prohibitions.**

\* \* \* \* \*

(h) *Applicable through December 31, 1998.* \* \* \*

(2) Operate any vessel under both the "inshore component" and "offshore component" definitions at §§ 672.2 and 675.2 of this chapter during the same fishing year.

\* \* \* \* \*

**§ 672.20 [Amended]**

4. In § 672.20, the headings of paragraphs (a)(2)(v), (c)(1)(i), (c)(1)(ii), (c)(2)(i) and (c)(2)(ii) are revised to read: "*Applicable through December 31, 1998.*".

**PART 675—GROUND FISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA**

5. The authority citation for 50 CFR part 675 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

6. In § 675.2, a definition for "Catcher vessel operational area" is added, and the definitions for "Community Development Plan," "Community Development Quota," "Community Development Quota Program," "Community Development Quota Reserve," "Inshore component," and "Offshore component" are revised to read as follows:

**§ 675.2 Definitions.**

\* \* \* \* \*

*Catcher vessel operational area (CVOA)* (applicable through December 31, 1998) means that part of the Bering Sea subarea south of 56°00' N. lat. and between 163°00' and 167°30' W. long.

*Community Development Plan (CDP)* (applicable through December 31, 1998) means a plan for a specific Western Alaska community or group of communities approved by the Governor of the State of Alaska and recommended to NMFS under § 675.27.

*Community Development Quota (CDQ)* (applicable through December 31, 1998) means a Western Alaska community development quota for pollock assigned to an approved CDP. All CDQs, in the aggregate, equal 7.5 percent of the total allowable catch specified for pollock that is placed in reserve under § 675.20(a)(3).

*Community Development Quota Program (CDQ program)* (applicable through December 31, 1998) means the Western Alaska Community Development Program implemented under § 675.27.

*Community Development Quota Reserve (CDQ reserve)* (applicable through December 31, 1998) means 7.5 percent of the total allowable catch specified for pollock in each subarea or district that is placed in reserve under § 675.20(a)(3).

\* \* \* \* \*

*Inshore component* (applicable through December 31, 1998) means the following three categories of the U.S. groundfish fishery that process pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, or both:

- (1) All shoreside processing operations;
- (2) Any processor vessel less than 125 ft (38.1 m) in length overall that processes no more than 126 mt per week in round-weight equivalents of an aggregate of those fish and that is declared to be part of the inshore component by its owner in the annual application for a Federal Permit (NOAA Form 88-155) under § 675.4; and
- (3) Any processor vessel that processes those fish at a single geographic location in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) during a fishing year and that is declared to be part of the inshore component by its owner in the annual application for a Federal Permit (NOAA Form 88-155) under § 675.4. For the purposes of this definition, NMFS will determine the single geographic location in a fishing year for an individual processor from the geographic

coordinates the vessel operator reports on the check-in notice (§ 672.5(c)(1) of this chapter and § 675.5(c)(1)) when that vessel first engages in processing those fish.

\* \* \* \* \*

*Offshore component* (applicable through December 31, 1998) means all processor vessels in the U.S. groundfish fisheries not included in the definition of "inshore component" that process pollock caught in directed fisheries for pollock, or Pacific cod caught in directed fisheries for Pacific cod in the Gulf of Alaska, or both.

\* \* \* \* \*

7. In § 675.7, paragraph (i) heading, paragraph (i)(2), and paragraph (j) heading are revised to read as follows:

**§ 675.7 Prohibitions.**

\* \* \* \* \*

(i) *Applicable through December 31, 1998.* \* \* \*

(2) Operate any vessel under both the "inshore component" and "offshore component" definitions at §§ 672.2 of this chapter and 675.2 during the same fishing year.

(j) *Applicable through December 31, 1998.*

\* \* \* \* \*

8. In § 675.20, the headings of paragraphs (a)(2)(iii), (a)(3)(i), (a)(3)(ii), and (a)(3)(iii) are revised to read as follows:

**§ 675.20 General limitations.**

(a) \* \* \*

(2) \* \* \*

(iii) *Applicable through December 31, 1998.*

\* \* \* \* \*

(3) \* \* \*

(i) *Applicable through December 31, 1998.* \* \* \*

(ii) *Applicable through December 31, 1998.* \* \* \*

(iii) *Applicable through December 31, 1998; application for approval of a CDP and CDQ allocation.* \* \* \*

\* \* \* \* \*

9. In § 675.22, paragraphs (g) and (h)(2) are revised to read as follows:

**§ 675.22 Time and area closures.**

\* \* \* \* \*

(g) *Catcher vessel operational area (applicable through December 31, 1998).*

(1) This area is established annually for directed fishing for pollock from the beginning of the second season of directed fishing for pollock (defined at § 675.23(e)) until either the date that NMFS determines that the pollock quota for processing by the inshore component has been harvested or December 31.

(2) Catcher vessels may conduct directed fishing in this area.

(3) Processor vessels in the offshore component are prohibited from conducting directed fishing for pollock in this area unless they are operating under a CDP approved by NMFS.

(4) Processor vessels in the offshore component that do not catch groundfish but do process pollock caught in a directed fishery for pollock may operate within this area to process pollock.

(5) Processor vessels that catch or process groundfish in directed fisheries for species other than pollock may operate within this area.

(h) \* \* \*

(2) When the Regional Director determines that 42,000 nonchinook salmon have been caught by vessels using trawl gear during August 15 through October 14 in the CVOA (defined in § 675.2), NMFS will prohibit fishing with trawl gear for the remainder of the period September 1 through October 14 in the Chum Salmon Savings Area defined under paragraph (h)(1) of this section.

10. In § 675.23, paragraph (e)(2) heading is revised to read as follows:

**§ 675.23 Seasons.**

\* \* \* \* \*

(e) \* \* \*

(2) *Applicable through December 31, 1998.* \* \* \*

\* \* \* \* \*

11. In § 675.27, the section heading is revised, introductory text is added, and paragraphs (b)(1)(i), (b)(1)(vii), (b)(2)(vii), (b)(3)(ii)(B), (e), and the heading of paragraph (f) are revised to read as follows:

**§ 675.27 Western Alaska Community Development Quota Program (applicable through December 31, 1998).**

The goals and purpose of the CDQ program are to allocate CDQ pollock to eligible Western Alaska communities to provide the means for starting or supporting commercial seafood activities that will result in ongoing regionally based commercial seafood or related businesses.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) A description of the CDP projects that are proposed to be funded by the pollock allocation and how the CDP projects satisfy the goals and purpose of the CDQ program;

\* \* \* \* \*

(vii) Description of how the CDP would generate new capital or equity for the applicant's fishing and/or processing operations;

\* \* \* \* \*

(2) \* \* \*

(vii) A general budget for implementing the CDP. A general budget is a general account of estimated income and expenditures for each CDP project that is described at paragraph (b)(1)(i) of this section for the total number of calendar years that the CDP is in effect. An annual budget is required to be submitted with a CDP as described at paragraph (e)(1)(ii) of this section;

\* \* \* \* \*

(3) \* \* \*

(ii) \* \* \*

(B) Documentation of a legal relationship between the CDP applicant and the managing organization (if the managing organization is different from the CDP applicant), which clearly describes the responsibilities and obligations of each party as demonstrated through a contract or other legally binding agreement; and

\* \* \* \* \*

(e) *Monitoring of CDPs*—(1) *CDP reports.* The following reports must be submitted to NMFS.

(i) *Annual progress reports.* CDP applicants are required to submit annual progress reports to the Governor by June 30 of the year following a CDQ allocation. Annual progress reports will include information describing how the CDP has met its milestones, goals, and objectives. On the basis of those reports, the Governor will submit an annual progress report to NMFS and recommend whether CDPs should be continued. NMFS must notify the Governor in writing within 45 days of receipt of the Governor's annual progress report, accepting or rejecting the annual progress report and the Governor's recommendations on multiyear CDQ projects. If NMFS rejects the Governor's annual progress report, NMFS will return it for revision and resubmission. The report will be deemed approved if NMFS does not notify the Governor in writing within 45 days of the report's receipt.

(ii) *Annual budget report.* An annual budget report is a detailed estimation of income and expenditures for each CDP project as described in paragraph (b)(1)(i) of this section for a calendar year. The first annual budget report shall be included in the CDP. Each additional annual budget report must be submitted to NMFS by December 15 preceding the year for which the annual budget applies. Annual budget reports are approved upon receipt by NMFS unless disapproved in writing by December 31. If disapproved, the annual budget report may be revised and resubmitted to NMFS. NMFS will

approve or disapprove a resubmitted annual budget report in writing.

(iii) *Annual budget reconciliation report.* A CDQ group must reconcile each annual budget by May 15 of the year following the year for which the annual budget applied. Reconciliation is an accounting of the annual budget's estimated income and expenditures with the actual income and expenditures, including the variance in dollars and variance in percentage for each CDP project that is described in paragraph (b)(1)(i) of this section. If a general budget as described at paragraph (b)(2)(vii) of this section is no longer correct due to the reconciliation of an annual budget, then the general budget must also be revised to reflect the annual budget reconciliation, and the revised general budget must be included in the annual budget reconciliation report.

(2) If an applicant requests an increase in CDQ allocation under a multiyear CDP, the applicant must submit a new CDP application for review by the Governor and approval by NMFS as described in paragraphs (b) and (c) of this section.

(3) *Substantial amendments.* A CDP is a working business plan and must be kept up-to-date. Substantial amendments to a CDP will require written notification to the Governor and subsequent approval by the Governor and NMFS before any change in a CDP can occur. The Governor may recommend to NMFS that the request for an amendment be approved. NMFS may notify the Governor in writing of approval or disapproval of the amendment within 30 days of receipt of the Governor's recommendation. The Governor's recommendation for approval of an amendment will be deemed approved if NMFS does not notify the Governor in writing within 30 days of receipt of the Governor's recommendation. If NMFS determines that the CDP, if changed, would no longer meet the criteria under paragraph (d) of this section, or if any of the requirements under this section would not be met, NMFS shall notify the Governor in writing of the reasons why the amendment cannot be approved.

(i) For the purposes of this section, substantial amendments are defined as changes in a CDP, including, but not limited to, the following:

- (A) Any change in the applicant communities or replacement of the managing organization;
- (B) A change in the CDP applicant's harvesting or processing partner;
- (C) Funding a CDP project in excess of \$100,000 that is not part of an approved general budget;

(D) More than a 20 percent increase in the annual budget of an approved CDP project;

(E) More than a 20 percent increase in actual expenditures over the approved annual budget for administrative operations; or

(F) The Governor recommends to NMFS that the following is a substantial amendment:

(1) A material change in the contractual agreement(s) between the CDP applicant and their harvesting or processing partner; or

(2) A material change in a CDP project.

(ii) Notification of an amendment to a CDP shall include the following information:

(A) The background and justification for the amendment that explains why the proposed amendment is necessary and appropriate;

(B) An explanation of why the proposed change to the CDP is an amendment according to paragraph (e)(3)(i) of this section;

(C) A description of the proposed amendment, explaining all changes to the CDP that result from the proposed amendment;

(D) A comparison of the original CDP text with the text of the proposed changes to the CDP, and the changed pages of the CDP for replacement in the CDP binder;

(E) Identification of any NMFS' findings that would need to be modified if the amendment is approved along with the proposed modified text;

(F) A description of how the proposed amendment meets the requirements of the CDQ regulations in this section. Only those CDQ regulations that are affected by the proposed amendment need to be discussed.

(4) *Technical amendments.* Any change to a CDP that is not a substantial amendment as defined at paragraph (e)(3)(i) of this section, is a technical amendment. It is the responsibility of the CDQ group to coordinate with the Governor to ensure that a proposed technical amendment does not meet the definition for a substantial amendment. Technical amendments require written notification to the Governor and NMFS before the change in a CDP occurs. A technical amendment will be approved when the CDQ group receives a written notice from NMFS announcing the receipt of the technical amendment. The Governor may recommend to NMFS in writing that a technical amendment be disapproved at any time. NMFS may disapprove a technical amendment in writing at any time with the reasons therefor. Notification should include:

(i) The pages of the CDP with the text highlighted to show deletions and additions; and

(ii) The changed pages of the CDP for replacement in the CDP binder.

(5) It is the responsibility of the CDQ-managing organization to cease fishing operations once its respective CDQ pollock allocation has been reached. Total pollock harvests for each CDP will be determined by observer estimates of total catch and catch composition as reported on the daily observer catch message. The CDQ-managing organization must arrange for processors to transmit a copy of the observer daily catch message to it in a manner that allows the CDQ-managing organization to inform processors to cease fishing operations before the CDQ allocation has been exceeded. CDQ-managing organization representatives must also inform NMFS within 24 hours after the CDQ has been reached and fishing has ceased. If NMFS determines that the observer, the processor, or the CDQ-managing organization failed to follow the procedures described in paragraph (h) of this section for estimating the total harvest of pollock, or violated any other regulation in this part, NMFS reserves the right to estimate the total pollock harvest based on the best available data.

(f) *Suspension or termination of a CDP.*

\* \* \* \* \*

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