

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 980817221-9020-02; I.D. 072898A]

RIN 0648-AL22

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

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

ACTION: Final rule; emergency interim rule.

SUMMARY: NMFS issues a final rule to implement Amendment 45 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) and an emergency interim rule to implement requirements of the American Fisheries Act (AFA) related to the 1999 Western Alaska Community Development Quota (CDQ) Program. These actions permanently extend the allocation of pollock to the CDQ Program, remove squid from the CDQ Program, and revise pollock CDQ catch accounting regulations. This action is necessary to implement Amendment 45 and CDQ Program-related provisions of the AFA.

DATES: Effective January 21, 1999, except the definitions for "Directed fishing for pollock CDQ" and "Groundfish CDQ fishing (applicable through December 31, 1998)", at § 679.2 and the amendment to §§ 679.20(b)(1)(iii)(A) and (b)(1)(iii)(D), 679.32(a)(2) through (a)(4), and 679.32(g) of the emergency interim rule are effective January 21, 1999 through July 20, 1999. Comments on the emergency interim rule must be submitted by February 25, 1999.

ADDRESSES: Comments may be sent to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, 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 the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis prepared for Amendment 45 and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for the emergency interim rule may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907-586-7228.

SUPPLEMENTARY INFORMATION:**Management Background and Need for Action**

In Amendment 45, the North Pacific Fishery Management Council (Council) recommended permanent extension of the allocation of 7.5 percent of the pollock total allowable catch (TAC) in the Bering Sea and Aleutian Islands management area (BSAI) to the Western Alaska CDQ Program. In addition, Amendment 45 removes the pollock CDQ Program from the inshore/offshore section of the FMP and reorganizes three separate CDQ-related sections of the FMP into one section.

A notice of availability (NOA) for Amendment 45 was published in the **Federal Register** on August 5, 1998 (63 FR 41782), and the proposed rule was published on September 3, 1998 (63 FR 46993). The public comment period on the NOA ended on October 5, 1998, and the public comment period on the proposed rule ended on October 19, 1998. NMFS received four comments on the NOA and the proposed rule, one expressing general support for the amendment and three from other Federal agencies expressing "no comment." No changes were made to this rule as a result of the comments. NMFS approved Amendment 45 on November 4, 1998. The reasons for implementing Amendment 45 are stated in the preamble of the proposed rule.

The AFA was signed into law by the President on October 20, 1998, as part of the Omnibus Appropriations Bill FY99, (Pub. L. 105-277). Additional requirements for the pollock CDQ fisheries in the AFA supplement the requirements of Amendment 45 and must be implemented by NMFS before the start of the pollock CDQ fisheries on January 20, 1999. Specifically, section 206(a) of the AFA requires that 10 percent of the TAC of pollock in the BSAI shall be allocated as a directed fishing allowance to the CDQ program. Section 206(b) of the AFA requires that pollock bycatch in non-pollock CDQ fisheries will not accrue against the pollock CDQ allocation created in section 206(a). Finally, section 213(a) of the AFA, with one limited exception at section 213(c)(2), requires that the 10-percent pollock CDQ allocation remain in effect until December 31, 2004.

The AFA's requirement to allocate 10 percent of the pollock TAC to the pollock CDQ reserve through December 31, 2004, has the effect of supplementing the Council's recommendation in Amendment 45 to permanently allocate 7.5 percent of the

pollock TAC to a pollock CDQ reserve. In this final rule implementing Amendment 45, NMFS will retain the 7.5-percent allocation of the pollock TAC to the pollock CDQ reserve. NMFS will implement the AFA's 10-percent allocation of the pollock TAC to the pollock CDQ reserve through the BSAI groundfish specifications for 1999. Later in 1999, NMFS intends to initiate proposed and final rulemaking that would implement through regulation the AFA's 10-percent allocation for the years 2000 through 2004. If, at the end of 2004, the Council has not taken action to extend the 10-percent pollock CDQ allocation, the paragraph specifying a 10-percent allocation will expire and the pollock CDQ allocation will revert to 7.5 percent of the pollock TAC starting in 2005.

NMFS has determined that two types of changes to the Multispecies (MS) CDQ Program regulations must be implemented through an emergency interim rule in order for the CDQ Program-related provisions of the AFA to be effective by January 1999. These two regulatory changes are (1) to allow pollock bycatch in the non-pollock groundfish CDQ fisheries to accrue against the allowance for incidental catch of pollock established by section 206(b) of the AFA, and (2) to remove the allocation of squid from the CDQ Program in order to allow the CDQ groups to maximize the possibility that the pollock CDQ directed fishing allowance will be fully harvested.

The AFA requires that NMFS implement these CDQ Program-related provisions of the AFA by January 1999. This deadline could not be met if the provisions were implemented through notice-and-comment rulemaking. At its November 1998 meeting, the Council concurred with NMFS's recommendation on this emergency interim rule.

Accounting for the Catch of Pollock in the CDQ Fisheries

The AFA requires that NMFS distinguish between pollock harvested in a directed fishery for pollock CDQ and pollock harvested in the non-pollock groundfish CDQ fisheries. Pollock harvested in the directed fisheries for pollock CDQ will accrue against the CDQ group's pollock CDQ allocation. Pollock harvested in other groundfish CDQ fisheries will not accrue against the CDQ group's pollock CDQ. This pollock catch will accrue against the pollock incidental catch allowance, established under section 206(b) of the AFA, for the incidental catch of pollock in groundfish fisheries other than pollock, including the non-

pollock open access fisheries and the non-pollock CDQ fisheries.

NMFS considered two options for defining directed fishing for pollock CDQ. The first option was to define directed fishing for pollock CDQ on the basis of the amount of pollock that is retained by a vessel while CDQ fishing. If pollock retention exceeded the maximum retainable bycatch (MRB) amount, then the vessel would be considered directed fishing for pollock CDQ. If pollock retention were below the MRB amount, any catch of pollock by the vessel would not accrue against the pollock CDQ. However, NMFS decided not to pursue this option for two reasons. First, using MRB amounts would lead to regulatory discards by vessels that catch pollock but do not want to have their pollock catch accrue to the pollock CDQ. Second, several sections of the regulations governing directed fishing and the calculation of MRB amounts for the open access fisheries would have to be revised to accommodate the application of MRBs in the CDQ fisheries. These revisions would add further complexity to already complex regulations and would increase the difficulty of managing the open access and CDQ fisheries.

The second option for defining directed fishing for pollock CDQ is to base the definition on the species composition of the haul by catcher/processors or of the delivery by catcher vessels. If the haul or delivery of pollock exceeds a certain percentage, the vessel will be considered directed fishing for pollock CDQ. NMFS selected this option because it does not require revisions to regulations governing the open access fisheries; it is simple to understand and apply; and it will not require regulatory discards of pollock.

In the EA/RIR prepared by NMFS for the emergency interim rule (see ADDRESSES), NMFS examined data from the 1998 pollock CDQ fisheries and the non-pollock open access groundfish fisheries in the BSAI to determine the appropriate percentage of pollock in the catch that will distinguish directed fishing for pollock CDQ from other groundfish CDQ fishing. This percentage will minimize situations in which (1) a haul or delivery by a vessel intending to target pollock does not meet the definition of directed fishing for pollock CDQ, and (2) a haul or delivery by a vessel not intending to target pollock CDQ does meet the definition of directed fishing for pollock CDQ. However, regardless of the percentage threshold selected, some pollock vessels intending to target pollock will catch pollock in hauls or deliveries that do not meet the

definition of directed fishing for pollock CDQ and will, therefore, accrue against the pollock incidental catch allowance. The opposite situation will also occur. Some vessels not intending to target pollock CDQ will catch pollock in hauls or make deliveries that exceed the selected percentage, in which case, this pollock will accrue against the CDQ group's pollock CDQ allocation.

Based on the data examined in the EA/RIR for the emergency interim rule, NMFS selected 40 percent as an appropriate threshold percentage to distinguish directed fishing for pollock from directed fishing for other species in the CDQ fisheries. Data from the 1998 pollock CDQ fisheries show that, if the 40-percent threshold had been applied in 1998, approximately 10 percent of the hauls and 0.20 percent of the pollock catch would not have been defined as occurring in the directed fishery for pollock CDQ. The 115 mt of pollock caught in these hauls, which did accrue to the 1998 pollock CDQ, would not have accrued to the pollock CDQ under the 40-percent threshold definition of directed fishing for pollock CDQ.

Observer data from ten trawl catcher/processors eligible for the MS CDQ fisheries during their 1998 BSAI groundfish open access fisheries also were examined to provide information about the percent pollock represents in hauls from non-pollock groundfish fisheries. These data showed that 3 percent of the hauls and 26 percent of the total pollock catch by these catcher/processors in the 1998 BSAI non-pollock groundfish fisheries would have met the 40-percent pollock threshold. Although the future groundfish CDQ fisheries may not have the same amounts of total catch, catch composition, or fishing conditions, the distribution of pollock in the 1998 non-pollock fisheries is the best data available to predict the results of using a 40-percent threshold.

Based on this information, NMFS believes that the 40-percent threshold provides a balance. It will result in most of the pollock catch by vessels intending to target pollock accruing to the pollock CDQ, and it will minimize the amount of pollock caught by vessels not intending to engage in directed fishing for pollock accruing to the pollock CDQ. Therefore, a new definition for directed fishing for pollock CDQ will be added under this emergency interim rule. Directed fishing for pollock CDQ will be defined as fishing that results in the following catch composition:

(1) For each haul by a catcher/processor, the round weight of pollock represents 40 percent or more of the

total round weight of all groundfish in the haul.

(2) For each delivery by a catcher vessel, the round weight of pollock represents 40 percent or more of the total round weight of all groundfish delivered to a processor from a fishing trip.

The CDQ groups will be required to examine the catch composition of each haul or delivery by vessels using trawl gear and to determine whether the haul or delivery meets the definition of directed fishing for pollock CDQ. If the haul or delivery meets this definition, the CDQ group must report this pollock catch to NMFS on its CDQ catch report. NMFS will subtract this pollock catch from the amount available under the pollock CDQ allocation. If the haul or delivery does not meet the definition of directed fishing for pollock CDQ, the CDQ group is not required to report any pollock catch on the CDQ catch report for that particular haul or delivery. NMFS will examine observer data from all CDQ vessels to (1) verify the accuracy of the CDQ catch report and (2) add up the pollock caught by CDQ vessels that were not directed fishing for pollock CDQ and subtract that amount from the pollock incidental catch allowance.

Uncertainty exists concerning the appropriate percentage threshold because NMFS does not know how CDQ harvesting operations will be conducted under the new MS CDQ Program or how they may be affected by new conservation measures that NMFS will implement in 1999 to mitigate impacts of the pollock fisheries on Steller sea lions. NMFS intends to evaluate the impact of the 40-percent pollock threshold in the 1999 MS CDQ fisheries under this emergency interim rule. An adjustment to this threshold could be implemented under separate rulemaking if this percentage creates unanticipated constraints for the MS CDQ Program or creates an unintended opportunity for vessels participating in the MS CDQ fisheries to increase catch of pollock that will not accrue against the CDQ group's pollock CDQ allocation.

This action does not implement any changes to the current Improved Retention/Improved Utilization (IR/IU) regulations under which all vessels fishing CDQ are required to retain all pollock.

Accounting for the Catch of Other Groundfish CDQ or PSQ Species in the Pollock CDQ Fisheries

Under the regulations implementing Amendment 45, the pollock CDQ program will be integrated with the MS CDQ Program starting in 1999. One

change resulting from this integration is that incidental catch of non-pollock groundfish CDQ species in the directed pollock CDQ fishery will accrue against a CDQ group's allocation for those species. The AFA is silent concerning the accounting for incidental catch of non-pollock groundfish CDQ species in the pollock CDQ fishery and addresses only the accounting for incidental catch of pollock in the non-pollock groundfish CDQ fishery. As a result, the incidental catch of non-pollock groundfish CDQ species or prohibited species with a prohibited species quota (PSQ) in the pollock CDQ fishery must be subtracted from the CDQ group's CDQ and PSQ allocations.

Removing Squid as a CDQ Species

The current 7.5-percent squid CDQ allocation has been identified in public comment to NMFS and the Council as a likely constraint to the full harvest of the current 7.5-percent pollock CDQ allocation. Most of the squid caught in the CDQ fisheries will be caught in the pollock CDQ fishery. Changes in fishing practices to reduce the incidental catch of squid in other groundfish CDQ fisheries are not expected to prevent attainment of the 7.5-percent squid CDQ allocation before attainment of the 7.5-percent pollock CDQ allocation. Therefore, an increase in the pollock CDQ allocation to 10 percent of the pollock TAC without an increase in the squid CDQ allocation is very likely to constrain harvest of the AFA's allocation of pollock CDQ.

Squid bycatch in the 1998 pollock CDQ fisheries through November 6, 1998, was examined in the EA/RIR prepared for the emergency interim rule (see ADDRESSES). Approximately 339 mt of squid were caught in the 1998 pollock CDQ fisheries. The allocation of squid to the MS CDQ program in 1998 was 148 mt. In 1998, squid bycatch in the pollock CDQ fisheries did not accrue against the squid CDQ allocation. However, starting in 1999, under regulations implemented prior to the AFA, all squid bycatch in the pollock CDQ fisheries will accrue against the squid CDQ. Current regulations prohibit the CDQ groups from exceeding their squid CDQ. Starting in 1999, if the squid CDQ is reached before the pollock CDQ, existing CDQ regulations require the CDQ groups to stop fishing in any groundfish CDQ fisheries in which additional squid bycatch would be expected. Given existing regulations and the AFA increase in the pollock CDQ, the bycatch of squid likely will prevent the CDQ groups from catching their full pollock CDQ allocation. Based on the information in the EA/RIR, no other

CDQ or PSQ allocation is likely to result in the same type of limitation on the catch of pollock CDQ.

An increase in the squid CDQ allocation corresponding to the AFA's increased pollock CDQ allocation is not an available management measure. Section 305(i)(1)(C)(ii)(II) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that, until October 1, 2001, the percentage of a groundfish TAC allocated to the CDQ Program cannot exceed the amount approved by the Council prior to October 1, 1995. Therefore, in order to implement the increased pollock CDQ allocation of the AFA and the Magnuson-Stevens Act CDQ provisions not superceded by the AFA, NMFS must remove squid from the CDQ Program. Removal of squid from the CDQ Program will eliminate this likely constraint to harvest of the AFA's pollock CDQ allocation and will further the ability of the CDQ Program to accomplish its economic, social, and developmental goals. By removing squid from the CDQ Program, the catch of squid by vessels CDQ fishing will accrue against the overall squid TAC, which will continue to be managed to ensure that catch in CDQ and non-CDQ fisheries remains within the TAC and does not exceed the overfishing limit and that no CDQ fishery will be constrained by a squid CDQ quota.

Changes From the Proposed Rule

The following regulatory amendments were contained in the proposed rule but are not implemented in the final rule because they conflict with elements of the emergency interim rule implemented to comply with the AFA:

1. In § 679.31, the separate paragraph (a) specifying the pollock CDQ reserve is not removed but is revised by removing the expiration date. Paragraphs (b) through (g) are not redesignated because the AFA requires specification of the pollock CDQ reserve separately from the other groundfish CDQ reserves.

2. The proposed revision to the definition of the halibut CDQ reserve in § 679.2 is not implemented because reference to a new paragraph number for the halibut CDQ reserve in § 679.31 is not necessary.

3. The separately specified pollock CDQ reserve in § 679.20(b)(1)(iii)(A) is not removed. The pollock CDQ reserve must continue to be specified separately from the other groundfish CDQ reserves because the percentage allocation for pollock CDQ under the AFA (10 percent) differs from the percentage

allocation for most other groundfish CDQ species (7.5 percent).

The following changes are made in the final rule:

1. A new definition is added for the American Fisheries Act.

2. A December 31, 1998, expiration date is removed from the definition for "Community Development Quota Program." This sunset date was implemented under the inshore/offshore allocations and should have been proposed to be permanently extended under the proposed rule for Amendment 45.

3. The preamble to the proposed rule stated that NMFS was proposing to revise the definition of "CDQ reserve" so that it applied to any CDQ species (groundfish, halibut, or crab) rather than to groundfish CDQ only. However, NMFS inadvertently left out the revised definition in the proposed regulatory text. NMFS is including this definition in the final rule because it clarifies and corrects a definition without implementing a restriction. The public was provided with an opportunity to comment on the change as described in the preamble of the proposed rule.

4. The following definition for groundfish CDQ fishing expired on December 31, 1998: "groundfish CDQ fishing means fishing by an eligible vessel listed on an approved CDP that results in the catch of any CDQ or PSQ species other than pollock CDQ, halibut CDQ, and fixed gear sablefish CDQ." This definition was necessary because the pollock CDQ fisheries, fixed gear halibut and sablefish CDQ fisheries and the MS groundfish CDQ fisheries were managed under different regulations through December 31, 1998. Under current regulations, pollock and fixed gear sablefish are integrated with the MS groundfish CDQ fisheries starting in 1999, although the AFA has since superceded some aspects of this integration. A slightly revised definition is necessary to support the current MS groundfish CDQ regulations and should have been included in the proposed rule for Amendment 45. The revised definition states that "groundfish CDQ fishing means fishing by an eligible vessel listed on an approved CDP that results in the catch of any groundfish CDQ species." The revised definition does not conflict with separate definitions for directed fishing for pollock CDQ under the emergency interim rule. A new definition for halibut CDQ fishing will be addressed in a future proposed rulemaking.

5. The prohibition currently at § 679.7(d)(24), which applies only in 1998 and prohibits the use of other than pelagic trawl gear in the pollock CDQ

fisheries, is removed. This prohibition was recommended by the Council at its meeting in April 1996 to minimize the amount of bycatch in the 1998 pollock CDQ fisheries that would accrue against TAC and prohibited species catch limits for the moratorium groundfish fisheries. This recommendation was made because bycatch in the 1998 pollock CDQ fisheries did not accrue against the multispecies groundfish CDQs or against the prohibited species quotas. The Council had recommended that the current prohibition be implemented only for 1998. However, at its June 1998 meeting, the Council recommended that NMFS prepare proposed rulemaking that would prohibit using other than pelagic gear in all BSAI pollock fisheries. If implemented, this prohibition would apply to the pollock CDQ fisheries in the future. Furthermore, the 1999 annual groundfish specifications allocate zero amounts of pollock to the directed fishery for pollock using non-pelagic trawl gear under § 679.20(a)(5)(i)(B). This prohibition will also apply to the 1999 pollock CDQ fishery.

6. In § 679.32(a)(1), the applicability paragraph is revised to remove reference to paragraphs (a)(2) and (a)(3) of this section which expired on December 31, 1998. See below for an explanation of a new paragraph (a)(4) that is added under this emergency interim rule.

7. In § 679.50(c)(4), reference to § 679.32(e) at the beginning of the paragraph is removed because it referred to the section that sunset on December 31, 1998.

The following emergency interim rule is implemented to comply with the AFA. These requirements are effective for 180 days after January 21, 1999.

1. A new definition is added for "Directed fishing for pollock CDQ." This definition and the reason for it was discussed in a previous section.

2. The definition for "Groundfish CDQ fishing (applicable through December 31, 1998)" is amended to remove a separate reference to pollock CDQ fishing and fixed gear that applied through December 31, 1998.

3. Section 679.20(b)(1)(iii)(A) is suspended and a new paragraph (b)(1)(iii)(D) is added to remove squid as a CDQ species.

4. In § 679.32, paragraphs (a)(2) and (a)(3) expired on December 31, 1998, and are suspended. In § 679.32, a new paragraph (a)(4) is added to reference requirements for pollock CDQ under the emergency interim rule in paragraph (g) of this section.

5. Section 679.32(e) expired on December 31, 1998 and is suspended. Under this emergency interim rule, a

new § 679.32(g) is added to address the accounting of pollock in the groundfish CDQ fisheries. Section 679.32(g)(1) requires that pollock caught by vessels directed fishing for pollock accrue against the pollock CDQ and that this pollock CDQ must be reported on the CDQ catch report. Section 679.32(g)(2) requires that pollock caught by vessels that are not directed fishing for pollock does not accrue against the pollock CDQ. This pollock catch must not be reported on the CDQ catch report. Section 679.32(g)(3) reiterates that all pollock caught in any groundfish CDQ fishing must be retained under the IR/IU regulations.

Compliance Guide for Small Entities

The Small Business Regulatory Enforcement Fairness Act requires NMFS to prepare a compliance guide that explains how small entities must comply with the regulations implemented in this final rule and this emergency interim rule.

The small entities affected by this rule are the 6 CDQ groups, the 56 western Alaska communities eligible for the CDQ program, 4 of the Alaskan communities whose residents participate in the BSAI pollock fisheries but are not eligible for the CDQ program, 140 catcher vessels using trawl gear, 31 catcher/processors using trawl gear, 3 motherships, and 8 shoreside processing plants (see additional discussion of impacts in the Classification section).

All of these small entities are affected by the permanent 7.5-percent extension of the pollock CDQ allocation. Direct participants in the fisheries, including the CDQ groups, their harvesting and processing partners, and the vessels and processors that participate in the open access pollock fisheries are required to conduct their pollock fisheries so that the catch of pollock does not exceed the quotas established by this rule and by other regulations governing the BSAI pollock quotas.

The CDQ groups are required to monitor and accurately report the catch of pollock CDQ. They must evaluate each haul by a catcher/processor or delivery by a catcher vessel to determine whether pollock represents 40 percent or more of the total groundfish catch weight. If this criteria is met, the pollock catch must be reported on the CDQ catch report subtracted from the CDQ group's available pollock CDQ. If the haul or delivery does not meet the 40 percent threshold, the CDQ group must not report this pollock catch on the CDQ catch report. This pollock catch will be monitored by NMFS through data

collected by the CDQ observer and will be subtracted from the amount of pollock available to the CDQ and non-CDQ fisheries in the incidental catch allowance.

The removal of squid as a CDQ species does not result in any additional requirements on any participant in the CDQ or non-CDQ fisheries.

No additional recordkeeping or reporting requirements are placed on the vessels or processors participating in the pollock or other MS groundfish CDQ fisheries or on the communities affected by the pollock CDQ allocation.

Classification

The Administrator, Alaska Region, NMFS, (Regional Administrator) determined that the final rule implementing Amendment 45 and the emergency interim rule implementing parts of the AFA are necessary for the conservation and management of the groundfish fisheries of BSAI. The Regional Administrator also determined that this final rule and emergency interim rule are consistent with the Magnuson-Stevens Act and other applicable laws.

The final rule and the emergency interim rule have been determined to be not significant for purposes of E.O. 12866.

NMFS prepared a final regulatory flexibility analysis for Amendment 45. Amendment 45 is necessary to continue the allocation of pollock to the CDQ Program after December 31, 1998. NMFS received no comments on the Initial Regulatory Flexibility Analysis.

The analysis estimates that the total universe of entities affected by regulations governing the BSAI pollock fishery is 249. Of these, 130 are small entities. The total universe comprises 6 CDQ groups, 56 western Alaska communities eligible for the CDQ program, 5 communities whose residents participate in the BSAI pollock fisheries but are not eligible for the CDQ program, 140 catcher vessels using trawl gear, 31 catcher/processors using trawl gear, 3 motherships, and 8 shoreside processing plants. The small entities are the 6 CDQ groups, the 56 western Alaska communities eligible for the CDQ program, 4 of the Alaskan communities whose residents participate in the BSAI pollock fisheries but are not eligible for the CDQ program, and 64 of the catcher vessels.

The 64 catcher vessels participating in the BSAI pollock fisheries could be significantly impacted by the pollock CDQ allocation because a 7.5-percent reduction in the pollock TAC may reduce the annual gross revenues of these vessel owners by more than 5

percent relative to the alternative of not allocating pollock to the CDQ program. The impact of the pollock CDQ allocation on the four Alaskan non-CDQ communities (Unalaska, Sand Point, King Cove, and Kodiak) is not known but could be significant depending on the amount of annual revenue lost because pollock CDQ may be processed at different plants than pollock from the open access fisheries. The 64 catcher vessels and four non-CDQ communities represent 52 percent of the small entities in the BSAI pollock fisheries.

The 6 CDQ groups representing 56 western Alaska communities derive a significant portion of their CDQ revenues from the pollock CDQ allocation. Allocating 7.5 percent of the pollock TAC to the CDQ program will allow these small entities to continue to benefit from the pollock CDQ fisheries. Not reauthorizing the pollock CDQ allocation would have a significant impact on these small entities.

NMFS considered two alternatives that could have mitigated the negative economic impacts on the small entities affected by this action. The first alternative would be to allocate 3.5 percent of pollock TAC to the CDQ reserve. Although this alternative would benefit the small entities not receiving CDQ allocation, the benefits accruing to the 56 CDQ communities would be considerably less. The alternatives that those communities have for generating income and investment are so small that the reduction from 7.5 percent to 3.5 percent reserve would be likely to produce significant negative economic impacts on these small entities. The trade off is clear; by reserving 3.5 percent instead of 7.5 percent, the catcher vessels gain at the expense of the CDQ communities. However, because of the relative absence of alternative economic bases in the CDQ communities, those communities will experience a relatively greater economic impact than would other regions of the State and the country in general.

The second alternative would be to let the present reserve of 7.5 percent of pollock TAC expire at the end of 1998. This action would result in a further shift of impacts from one set of small entities to another. It would benefit the non-CDQ participants in the fishery while cutting revenues of the CDQ groups.

Because the CDQ program is allocative by nature, any approved alternative will affect small entities. If the 7.5 percent allocation alternative were found to be inconsistent with the Magnuson-Stevens Act, NMFS could only disapprove it. Reconsideration of the 3.5 percent or other allocation

alternatives by the Council and the public would be time consuming and disruptive to the ongoing CDQ program. Because this rule is an allocation from one group of small entities to another, the Council weighed the economic and social effects and selected its preferred alternative as a legal alternative for achieving its statutory objective of allocating the TAC of pollock in the Bering Sea and Aleutian Islands fishery to the CDQ program.

A copy of this analysis is available from NMFS (see **ADDRESSES**).

The portions of this rule implemented as an emergency interim rule are exempt from the procedures of the Regulatory Flexibility Act because these portions of the rule are issued without opportunity for prior public comment.

NMFS finds that good cause, under the authority contained in 5 U.S.C. 553(d)(3), exists to waive the 30-day delay in effective date for the provisions implemented by the final rule. The primary provision of the final rule is to permanently extend the 7.5% pollock CDQ allocation. This provision, which must be effective to coincide with the effective date of the emergency interim rule provisions prior to the start of the pollock CDQ fisheries on January 20, 1999, would not require any regulated entities to take any steps to come into compliance. As such, a delay in effective date is both unnecessary and contrary to the public interest.

NMFS also finds that the emergency portion of this rule implementing mandatory provisions of the AFA must be effective by January 20, 1999. The AFA was enacted October 20, 1998, and contains provisions which must be in place prior to the start of the pollock fishery on January 20, 1999. Given this very short time between enactment and the opening of the fishery, there was not sufficient time to accept prepromulgation comment on these provisions. Further, if the procedure for promulgating these rules went beyond January 20, the fishing season could not begin as scheduled. As such, there is good cause to waive the requirement to provide prior notice and the opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be impracticable and contrary to the public interest. Similarly, the need to implement these emergency measures by January 20, 1999, the opening of the pollock fishery, so that the CDQ groups may fully harvest their pollock CDQ and properly account for their pollock bycatch as established in the AFA, constitutes good cause under the authority contained in 5 U.S.C.

553(d)(3) to waive the 30-day delay in effective date.

The emergency interim rule contains a reduction in a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB control number 0648-0269. Shoreside processors and CDQ groups currently are required to report all pollock harvested in the CDQ fisheries on CDQ delivery reports and CDQ catch reports. This emergency interim rule requires that the incidental catch of pollock in non-pollock CDQ fisheries not be reported on the CDQ delivery report and the CDQ catch report.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this emergency interim rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 20, 1999.

Andrew A. Rosenberg,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

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

2. In § 679.2, the definitions for "Community Development Quota Program (CDQ Program) (applicable through December 31, 1998)", "Community Development Quota Reserve (CDQ Reserve) (applicable through December 31, 1998)", "Pollock CDQ fishing" and "Sablefish CDQ reserve" are removed; the definitions for "CDQ allocation", "Community Development Quota", "PSQ allocation", and "PSQ species" are revised; the definition for "Groundfish CDQ fishing (applicable through December 31, 1998)" is suspended; and new definitions for "American Fisheries Act (AFA)", "Community Development Quota Program (CDQ Program)", "Community Development Quota Reserve", "Groundfish CDQ fishing", "Directed fishing for pollock CDQ", and

“Fixed gear sablefish CDQ reserve” are added in alphabetical order to read as follows:

§ 679.2 Definitions.

American Fisheries Act (AFA) means Title II—Fisheries Subtitles I and II, as cited within the Omnibus Appropriations Bill FY99 (Pub. L. 105–277).

CDQ allocation means a percentage of a CDQ reserve specified under § 679.31 that is assigned to a CDQ group when NMFS approves a proposed CDP.

Community Development Quota (CDQ) means the amount of a CDQ species established under § 679.31 that is allocated to the CDQ program.

Community Development Quota Program (CDQ Program) means the Western Alaska Community Development Quota Program implemented under subpart C of this part.

Community Development Quota reserve (CDQ reserve) means a percentage of a total allowable catch for groundfish, a percentage of a catch limit for halibut, or percentage of a guideline harvest level for crab that has been set aside for purposes of the CDQ program.

Directed fishing for pollock CDQ means fishing that results in the following:

(1) For each haul by a catcher/processor, the round weight of pollock represents 40 percent or more by weight of the total round weight of all groundfish in the haul.

(2) For each delivery by a catcher vessel, the round weight of pollock represents 40 percent or more by weight of the total round weight of all groundfish delivered to the processor.

Fixed gear sablefish CDQ reserve means 20 percent of the sablefish fixed gear TAC for each subarea in the BSAI for which a sablefish TAC is specified under § 679.20(b)(1)(iii)(B). See also § 679.31(b).

Groundfish CDQ fishing means fishing by an eligible vessel listed on an approved CDP that results in the catch of any groundfish CDQ species.

PSQ allocation means a percentage of a PSQ reserve specified under § 679.21(e)(1)(i) and (e)(2)(ii) that is assigned to a CDQ group when NMFS approves a proposed CDP. See also § 679.31(d).

PSQ species means any species that has been assigned to a PSQ reserve under § 679.21(e)(1)(i) and (e)(2)(ii) for purposes of the CDQ program. See also § 679.31(d).

§ 679.7 [Amended]

3. In § 679.7, paragraph (d)(24) is removed and paragraphs (d)(25) through (d)(28) are redesignated as paragraphs (d)(24) through (d)(27), respectively.

4. In § 679.20, paragraphs (b)(1)(iii)(A) is suspended and paragraph (b)(1)(iii)(D) is added to read as follows:

§ 679.20 General limitations.

- (b) * * *
(1) * * *
(iii) * * *

(D) Groundfish CDQ. Except as limited by § 679.31(a) and section 206(a) of the AFA, one half of the nonspecified reserve established by paragraph (b)(1)(i) of this section for all species except squid is apportioned to the groundfish CDQ reserve.

5. In § 679.30, paragraph (a)(4) is revised to read as follows:

§ 679.30 General CDQ regulations.

- (a) * * *

(4) Request for CDQ and PSQ allocations. A list of the percentage of each CDQ reserve and PSQ reserve, as described at § 679.31 that is being requested. The request for allocations of CDQ and PSQ must identify percentage allocations requested for CDQ fisheries identified by the primary target species of the fishery as defined by the qualified applicant and the gear types of the vessels that will be used to harvest the catch.

§ 679.31 [Amended]

6. In § 679.31, paragraph (a) is amended by removing parenthetical “(applicable through December 31, 1998)”.

7. In § 679.32, paragraph (a)(1) is revised, paragraphs (a)(2), (a)(3), and (e) are suspended and new paragraphs (a)(4) and (g) are added to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

(a) Applicability. (1) The CDQ group, the operator of a vessel, and the manager of a shoreside processor must comply with the requirements of paragraphs (b) through (d) of this section while groundfish CDQ fishing as defined at § 679.2. In addition, the CDQ group is responsible for ensuring that

vessels and processors listed as eligible on the CDQ group’s approved CDP comply with all requirements of this section while harvesting or processing CDQ species.

(4) Requirements for the accounting of pollock while CDQ fishing are at paragraph (g) of this section.

(g) Pollock CDQ—(1) Directed fishing for pollock CDQ. Owners and operators of vessels directed fishing for pollock CDQ as defined at § 679.2 and processors taking deliveries from vessels directed fishing for pollock CDQ must comply with all applicable requirements of paragraphs (a) through (d) of this section. Pollock catch by vessels directed fishing for pollock CDQ will accrue against the pollock CDQ for the CDQ group. The CDQ group must report all pollock caught by vessels directed fishing for pollock CDQ on the CDQ catch report.

(2) Catch of pollock by vessels not directed fishing for pollock CDQ. Pollock catch by vessels groundfish CDQ fishing, but not directed fishing for pollock CDQ as defined at §

679.2, will not accrue against the pollock CDQ for the CDQ group. The CDQ group must not report this pollock catch on the CDQ catch report.

(3) Vessel operators must retain all pollock caught in any groundfish CDQ fishery as required at § 679.27 (IR/IU).

8. In § 679.50, paragraph (c)(4) is revised to read as follows.

§ 679.50 Groundfish Observer Program applicable through December 31, 2000.

- (c) * * *

(4) Groundfish CDQ fisheries. The owner or operator of a vessel groundfish CDQ fishing as defined at § 679.2 must comply with the following minimum observer coverage requirements each day that the vessel is used to harvest, transport, process, deliver, or take deliveries of CDQ or PSQ species. The time required for the CDQ observer to complete sampling, data recording, and data communication duties shall not exceed 12 hours in each 24-hour period and the CDQ observer is required to sample no more than 9 hours in each 24-hour period.