

(b) * * *
(3) * * *

(i) *DAS allocation.* A vessel qualified and electing to fish under the small vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions. Such a vessel is not subject to a possession limit for other NE multispecies.

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6. In § 648.86, lift the suspension placed at 64 FR 42045 (August 3, 1999) on paragraphs (b)(1)(i), (b)(1)(ii)(A), and (b)(3), revise paragraphs (b)(1)(i) and (b)(1)(ii)(A) to read as set forth below, and remove paragraphs (b)(1)(iv) and (b)(5).

§ 648.86 Multispecies possession restrictions.

* * * * *

(b) * * *
(1) * * *

(i) Except as provided in paragraph (b)(1)(ii) and (b)(4) of this section, and subject to the call-in provision specified in Sec.648.10(f)(3)(i), a vessel fishing under a NE multispecies DAS may land only up to 400 lb (181.8 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g. a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 400 lb (181.8 kg), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 400 lb (181.8 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (e.g., a vessel that has been called into the DAS program for 48 hr or less, but more than 24 hr, may land up to, but no more than 800 lb (363.6 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hr but less than 48 hr) may land up to an additional 400 lb (181.8 kg) of cod for that trip. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) * * *

(A) The vessel operator does not call out of the DAS program as described under Sec.648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the

DAS program for 25 hr, at the time of landing, may land only up to 800 lb (363.6 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

* * * * *

7. In § 648.88: Paragraph (a)(1) is revised effective November 15, 1999 to read as set forth below; paragraph (a)(3) is removed.

§ 648.88 Multispecies open access permit restrictions.

(a) * * *

(1) The vessel may possess and land up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, one Atlantic halibut, per trip, and unlimited amounts of the other NE multispecies, provided that the vessel does not use or possess on board gear other than rod and reel or handlines while in possession of, fishing for, or landing NE multispecies, and provided it has at least one standard tote on board.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991228352-9352-01; I.D. 121099C]

RIN 0648-AM83

Fisheries of the Exclusive Economic Zone Off Alaska; Permit Requirements for Vessels, Processors, and Cooperatives Wishing to Participate in the Bering Sea and Aleutian Islands Pollock Fishery Under the American Fisheries Act

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

ACTION: Emergency interim rule; request for comments.

SUMMARY: NMFS issues an emergency interim rule to implement permit requirements for vessels, processors, and cooperatives wishing to participate in the Bering Sea and Aleutian Islands management area (BSAI) pollock fishery under the American Fisheries Act (AFA). This emergency interim rule is necessary to provide participants in the BSAI pollock fishery with the opportunity to apply for permits to participate in the BSAI pollock fishery prior to the scheduled start of the fishery on January 20, and to implement

sideboard restrictions to protect other Alaska fisheries from negative impacts as a result of fishery cooperatives formed under the AFA.

DATES: Effective December 30, 1999 through June 27, 2000. Comments on the emergency rule must be received by January 20, 2000.

ADDRESSES: Comments must be sent to Sue Salvesson, Assistant Administrator, Sustainable Fisheries Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to 907-586-7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, 709 West 9th Street, Juneau, AK 99801, and marked Attn: Lori Gravel.

Copies of the Environmental Assessment/ Regulatory Impact Review/ Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for Amendments 61/61/13/8 and for this action may be obtained from North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK 99501, 907-271-2809. Send comments on collection-of-information requirements to the NMFS, Alaska Region, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attn: NOAA Desk Officer.

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

SUPPLEMENTARY INFORMATION:

NMFS manages the U.S. groundfish fisheries in the exclusive economic zone of the BSAI and Gulf of Alaska (GOA) under the fishery management plans for the groundfish fisheries of the BSAI and GOA (FMPs). With Federal oversight, the State of Alaska manages the FMPs for Commercial King Crab and Tanner Crab fisheries in the BSAI and the Scallop Fishery off Alaska. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR 600.

American Fisheries Act—Background Information

The AFA made profound changes in the management of the groundfish fisheries of the BSAI and, to a lesser extent, the groundfish fisheries of the

GOA and crab fisheries of the BSAI. With respect to the groundfish and crab fisheries off Alaska, the AFA established a new allocation scheme for BSAI pollock that allocates 10 percent of the BSAI pollock total allowable catch (TAC) to the Western Alaska Community Development Quota (CDQ) Program and, after allowance for incidental catch of pollock in other fisheries, allocates the remaining TAC as follows: 50 percent to vessels harvesting pollock for processing by inshore processors, 40 percent to vessels harvesting pollock for processing by catcher/processors, and 10 percent to vessels harvesting pollock for processing by motherships; provided for the buyout and scrapping of nine pollock catcher/processors through a combination of \$20 million in Federal appropriations and \$75 million in direct loan obligations; established a fee of six-tenths (0.6) of one cent for each pound round weight of pollock harvested by catcher vessels delivering to inshore processors for the purpose of repaying the \$75 million direct loan obligation; listed by name and/or provided qualifying criteria for those vessels and processors eligible to participate in the non-CDQ portion of the BSAI pollock fishery; increased observer coverage and scale requirements for AFA catcher/processors; established limitations for the creation of fishery cooperatives in the catcher/processor, mothership, and inshore industry sectors; required that NMFS grant individual allocations of the inshore BSAI pollock TAC to inshore catcher vessel cooperatives which form around a specific inshore processor and agree to deliver the bulk of their catch to that processor; required harvesting and processing restrictions (commonly known as "sideboards") on fishermen and processors who have received exclusive harvesting or processing privileges under the AFA to protect the interests of fishermen and processors who have not directly benefitted from the AFA; and established excessive share harvesting caps for BSAI pollock and directed the Council to develop excessive share caps for BSAI pollock processing and for the harvesting and processing of other groundfish.

Since the passage of the AFA in October 1998, NMFS has begun to implement specific provisions of the AFA through a variety of mechanisms. For the 1999 fishing year, NMFS implemented the new AFA pollock allocations and harvest restrictions on catcher/processors through the interim and final BSAI harvest specifications (64 FR 50, January 4, 1999; and 64 FR

12103, March 11, 1999). Required changes to the CDQ program were implemented through an emergency interim rule (64 FR 3877, January 26, 1999; extended at 64 FR 34743, June 29, 1999). The increase in observer coverage levels for pollock catcher/processors and regulatory authority to manage AFA catcher/processor sideboard limits through directed fishing closures were implemented through a separate emergency interim rule (64 FR 3435, January 22, 1999; corrected at 64 FR 7814, February 17, 1999; and extended at 64 FR 33425, June 6, 1999). In December 1998, NMFS administered the buyout of the nine catcher/processors declared ineligible under the AFA, and is currently overseeing the scrapping of the eight vessels scheduled for scrapping under the AFA.

The Council has taken an active role in the development of management measures to implement the various provisions of the AFA. The Council began consideration of the implications of the AFA during a special meeting in November 1998, during which it began consideration of AFA-related actions that were required for the 1999 fishing year. At its December 1998 meeting, the Council voted to recommend approval of the two emergency rules cited here, recommended AFA-related provisions to the 1999 BSAI harvest specifications for groundfish, and began an analysis of a suite of AFA-related management measures that subsequently became known as Amendments 61/61/13/8 to the FMPs for the BSAI groundfish fishery, GOA groundfish fishery, BSAI king and Tanner crab fishery, and Alaska scallop fishery, respectively. The Council conducted an initial review of Amendments 61/61/13/8 and related AFA measures at its April 1999 meeting, and took final action on these amendments at its June 1999 meeting.

The suite of permit requirements in this emergency interim rule duplicates, and would give immediate effect to, the permit requirements proposed under Amendments 61/61/13/8. NMFS is issuing this emergency interim rule to give immediate effect to all AFA-related permit requirements so that the fishing industry has the opportunity to apply for and receive AFA-related fishing permits prior to the start of the 2000 fishing year. An emergency rule is necessary to provide an opportunity for inshore catcher vessels to form cooperatives for the 2000 fishing year. Inshore sector cooperatives will provide the inshore industry with the ability to more effectively meet the temporal and spatial dispersion objectives of NMFS' Steller sea lion conservation measures that are being published in separate

rulemakings. Without this emergency interim rule, the inshore sector of the BSAI pollock industry would be unable to form cooperatives prior to the start of the 2000 fishing year as provided for in the AFA, and would lose a valuable method of meeting the temporal and spatial dispersion objectives of NMFS' Steller sea lion conservation measures. In addition, this emergency action is necessary to implement section 211(c)(1) of the AFA which mandates sideboard restrictions to prevent AFA catcher vessels from exceeding "in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fishery, [and] protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of the AFA or fishery cooperatives in the directed pollock fishery." Such sideboard protections must be implemented prior to January 1, 2000, to prevent adverse economic impacts on the participants of other groundfish and crab fisheries that open January 2000.

The permitting requirements contained in this emergency interim rule will be repeated in the proposed rule to implement Amendments 61/61/13/8 to provide the public an opportunity to comment on AFA permit requirements before they are made effective on a permanent basis. If Amendments 61/61/13/8 are approved by NMFS, then this emergency interim rule would be superseded by the final rule to implement the amendments.

This emergency interim rule establishes new permit requirements for AFA catcher/processors, AFA catcher vessels, AFA motherships, AFA inshore processors, and AFA inshore cooperatives. Any vessel used to engage in directed fishing for a non-CDQ allocation of pollock in the BSAI and any processor that receives pollock harvested in a non-CDQ directed pollock fishery in the BSAI is required to maintain a valid AFA permit onboard the vessel or at the plant location at all times while non-CDQ pollock is being harvested or processed. These new AFA permits do not exempt a vessel operator, vessel owner, or pollock processor from any other applicable permit or licensing requirements required by State or Federal regulations. However, vessels fishing for BSAI pollock under the CDQ program and processors processing pollock harvested under the CDQ program are not required to have AFA permits in order to participate in the CDQ fishery.

This emergency interim rule does not establish an application deadline for

vessel or processor permits. However, once issued, AFA vessel and processor permits are valid until December 31, 2004. AFA vessel and processor permits may not be used on or transferred to another vessel or processor, except under the replacement vessel provisions outlined here. However, AFA permits may be amended to reflect any change in the ownership of the vessel or processor. In contrast to vessel and processor permits, AFA inshore cooperative permits are valid only for the fishing year for which they are issued, but are renewable on an annual basis.

AFA Permit Applications

Application forms for all AFA permits are available upon request from the NMFS Alaska Region (see **ADDRESSES**) and are available for downloading on the NMFS Alaska Region home page (<http://www.fakr.noaa.gov>). AFA vessel and processor permits will be issued to the current owner of a qualifying vessel or processor if he/she submits to the Regional Administrator a completed AFA permit application that is subsequently approved. This emergency interim rule also establishes an appeals process under which applicants may appeal the NMFS determinations related to AFA permits and AFA inshore cooperative allocations. The appeals process for AFA permits is similar to the process currently in place for the individual fishing quota program and license limitation program (LLP) appeals.

AFA Catcher/Processor Permits

Under the AFA, the statutory list of qualified catcher/processors took effect on January 1, 1999, and NMFS has already issued AFA catcher/processor permits to the owners of all qualified catcher/processors. Under this emergency interim rule, currently permitted AFA catcher/processors will be issued new AFA permits that will be valid until December 31, 2004. NMFS will reissue AFA catcher/processor permits automatically, and the owners of AFA catcher/processors are not required to re-submit AFA permit applications. Two categories of AFA catcher/processor permits will be issued: Vessels listed by name in sections 208(e)(1) through (20) of the AFA will be reissued unrestricted AFA catcher/processor permits; vessels qualifying for AFA catcher/processor permits under section 208(e)(21) will be reissued restricted AFA catcher/processor permits, which limits them, in the aggregate, to harvesting no more

than 0.5 percent of the catcher/processor sector TAC allocation.

AFA Catcher Vessel Permits

Under the AFA, a catcher vessel is qualified to fish for BSAI pollock if it is listed by name in the AFA or if its history of participation in the BSAI pollock fishery meets certain criteria set out in the AFA. Under this emergency interim rule, AFA catcher vessel permits may be endorsed to authorize directed fishing for pollock for delivery to catcher/processors, AFA inshore processors, and/or AFA motherships. Under the AFA, a catcher vessel may be authorized to engage in directed fishing for pollock for delivery to both AFA inshore processors and AFA motherships, depending on its qualifying catch history. However, a vessel that is eligible to deliver to catcher/processors is ineligible for an endorsement to deliver to inshore processors or motherships. An applicant for an AFA catcher vessel permit is required to indicate the sector endorsement(s) for which the vessel qualifies. NMFS is establishing an official AFA record that includes the relevant catch histories of all potentially qualifying vessels and will review for verification all claims of endorsement qualification against the official AFA record.

AFA Catcher Vessel Crab Sideboard Endorsements

Under section 211(c)(1)(A) of the AFA, the Council is required to recommend measures to limit the participation of AFA catcher vessels in BSAI crab fisheries. Section 211(c)(2)(C) of the AFA also prohibits section 208(b) catcher vessels (i.e., AFA catcher vessels eligible to deliver to catcher/processors) "from participating in a directed fishery for any species of crab in the Bering Sea and Aleutian Islands Management Area unless the catcher vessel harvested crab in the directed fishery for that species of crab in such Area during 1997." In June 1999, the Council developed final recommendations for limits on the participation of AFA catcher vessels in BSAI crab fisheries in order to comply with these two provisions of the AFA.

NMFS will implement these catcher vessel crab sideboard limits recommended by the Council through crab sideboard endorsements on the AFA catcher vessel permits. The owner of a catcher vessel who wishes to participate in any BSAI crab fishery must apply for and receive a sideboard endorsement for that crab species on the vessel's AFA catcher vessel permit. AFA catcher vessel permits may be endorsed for the Bristol Bay Red King Crab, St.

Matthew Island blue king crab, Pribilof Island red or blue king crab, Aleutian Islands brown king crab, Aleutian Islands red king crab, Opilio Tanner crab, and Bairdi Tanner crab fisheries based on a vessel's history of participation in each of those fisheries. The specific qualifying years for each fishery are set out in § 679.4(l)(3)(ii)(D) of this emergency interim rule. While the Council's recommended qualifying years for some crab fisheries are different from the 1997 qualifying year specified in the AFA for section 208(b) catcher vessels, the practical effects of the Council's recommended qualifying years are the same as those specified in the AFA because the same set of subsection 208(b) of the AFA catcher vessels would qualify for crab sideboard endorsements under either the Council's recommended qualification criteria, or the criteria set out in section 211(c)(2)(C) of the AFA. Therefore, the Council's recommended qualifying criteria are consistent with those set forth in section 211(c)(2)(C) of the AFA.

The Council based some of its crab sideboard recommendations on whether a particular vessel is "LLP qualified" for a particular crab fishery. To implement this recommendation, the AFA catcher vessel permit application contains questions related to vessel catch history using the same qualifying years as the LLP program. This rule requires applicants for AFA catcher vessel permits to indicate on the permit application which AFA crab sideboard endorsements the vessel qualifies for based on the qualifying criteria set out in this rule. NMFS will review for verification all claims of qualification.

Owners of catcher vessels should be aware that qualification for a crab sideboard endorsement does not in and of itself provide sufficient authorization to participate in a BSAI crab fishery. Existing regulations require the vessel also to have a valid LLP permit for that fishery. To participate in a BSAI crab fishery, the operator of an AFA catcher vessel must have a valid LLP license for that crab fishery as well as an AFA catcher vessel permit containing an endorsement for that crab fishery.

Exemptions to Catcher Vessel Groundfish Sideboards

NMFS through subsequent rulemaking will be implementing sideboard measures to restrict AFA catcher vessels from exceeding, in the aggregate, their historic harvests in other groundfish fisheries based on recommendations made by the Council at its June 1999 meeting. These groundfish sideboards will apply to all AFA catcher vessels in the aggregate

regardless of sector and regardless of participation in a cooperative except that catcher vessels less than 125 ft whose annual BSAI pollock landings averaged less than 1700 mt from 1995–1997 (i.e., landed less than 5,100 mt of pollock over the 3-year period) are exempt from BSAI Pacific cod sideboards if they made 30 or more legal landings of BSAI Pacific cod in the BSAI directed fishery for Pacific cod. In addition, AFA catcher vessels that meet the same vessel length and BSAI pollock landing criteria and that made 40 or more legal landings of GOA groundfish would be exempt from groundfish sideboards in the GOA.

In recommending these exemptions, the Council noted that many of the AFA catcher vessels with relatively low catch histories of BSAI pollock have traditionally targeted BSAI Pacific cod and GOA groundfish during much of the year and may be only minor participants in the BSAI pollock fishery. The Council believed that imposing aggregate sideboards on such vessels in the BSAI Pacific cod fishery and GOA groundfish fisheries could severely harm the owners of such vessels given their historically high levels of participation in non-pollock fisheries, and the fact that their historic dedication to fisheries other groundfish fisheries may account for their lower catch histories of BSAI pollock during the AFA qualifying years. The owners of vessels who believe their vessel may be eligible for one or both of these exemptions must apply for the sideboard exemption on their AFA catcher vessel permit application form.

AFA Mothership Permits

Under subsection 208(d) of the AFA, three motherships are authorized by vessel name to process pollock harvested in the BSAI directed pollock fishery for delivery to motherships. Under this emergency interim rule, NMFS will issue to the owner of a mothership an AFA mothership permit if the mothership is listed by name in sections 208(d)(1) through (3) of the AFA. However, the owner of a mothership wishing to process pollock harvested by a fishery cooperative also must apply for and receive a cooperative processing endorsement on its AFA mothership permit. This requirement is necessary because NMFS must identify and place crab processing restrictions on any entity that owns or controls an AFA mothership or an AFA inshore processor that receives pollock harvested by a cooperative.

Subsection 211(c)(2)(A) of the AFA imposes crab processing restrictions on the owners of AFA mothership and AFA

inshore processors that receive pollock from a fishery cooperative. Under the AFA, these processing limits extend not only to the AFA processing facility itself, but also to any entity that directly or indirectly owns or controls a 10-percent or greater interest in the AFA mothership or in the AFA inshore processor. To implement the crab processing restrictions contained in subsection 211(c)(2)(A) of the AFA, NMFS is requiring that applicants for AFA mothership and AFA inshore processor permits disclose on their permit applications all entities directly or indirectly owning or controlling a 10-percent or greater interest in the AFA mothership or AFA inshore processor and the names of BSAI crab processors in which such entities directly or indirectly own or control a 10-percent or greater interest. An applicant for an AFA mothership or an AFA inshore processor permit who does not disclose this crab processor ownership information may receive an AFA mothership permit or an AFA inshore processor permit but will be denied an endorsement authorizing the processor to receive and process pollock harvested by a fishery cooperative.

AFA Inshore Processor Permits

Under the AFA, inshore processors are authorized to receive and process BSAI pollock harvested in the directed fishery, based on their levels of processing in 1996 and 1997. NMFS will provide to an applicant an unrestricted AFA inshore processor permit if the Administrator, Alaska Region, NMFS (Regional Administrator) determines that the inshore processing facility annually processed more than 2,000 metric tons (mt) round weight of pollock harvested in the inshore directed pollock fishery in each of 1996 and 1997. NMFS will provide to an applicant a restricted AFA inshore processor permit if the Regional Administrator determines that the inshore processing facility processed pollock harvested in the inshore directed pollock fishery during 1996 or 1997, but did not process annually more than 2,000 mt round weight of pollock in each of 1996 and 1997. A restricted AFA inshore processor permit will prohibit the inshore processing facility from processing more than 2,000 mt round weight of BSAI pollock harvested in the directed fishery in any one year.

The owner of an AFA inshore processor wishing to process pollock harvested by a fishery cooperative must also have a cooperative processing endorsement on the AFA inshore processing permit. The requirements for an AFA inshore processor cooperative

processing endorsement are the same as those listed for AFA motherships above.

At its June 1999 meeting, the Council also recommended that each AFA inshore processor be restricted to operating in the single geographic location in which it operated in 1996 or 1997 when processing pollock harvested in the BSAI directed pollock fishery. However, at its December 1999 meeting, the Council changed its June 1999 recommendation and recommended instead that inshore processors be held to a single geographic location during a fishing year. This revised recommendation would allow a stationary floating processor to change locations between fishing years instead of holding them to the location in which they operated in 1996 or 1997.

The purpose of this recommendation is to implement section 210(f)(1)(A) of the AFA, which includes vessels in a single geographic location in Alaska state waters. To implement this restriction, this emergency rule limits shoreside (land-based) processors to operating in the physical location in which the facility first processed pollock during a fishing year. Stationary floating processors are restricted to operating in a location within Alaska state waters that is within 5 nautical miles (nm) of the position in which the stationary floating processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year. NMFS believes that 5 nm is an appropriate distance for this requirement because it allows the operator of a floating processor some flexibility in choosing an appropriate anchorage, but it still requires that the processor be located in the same body of water for the duration of a fishing year.

Inshore Cooperative Fishing Permits

Under this emergency interim rule, NMFS will issue to an inshore catcher vessel cooperative formed for the purpose of cooperatively managing directed fishing for pollock during 2000 an AFA inshore cooperative fishing permit if NMFS receives the cooperative's completed application by December 31, 1999, and the Regional Administrator approves it. Applications for an inshore cooperative fishing permit must be accompanied by a copy of the cooperative contract itself and by a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request. The Regional Administrator will not approve applications for an inshore cooperative fishing permit that are not received by

the NMFS Alaska Region on or before December 31, 1999.

As part of the application for an inshore cooperative fishing permit, the cooperative's designated representative, who is signing the permit on behalf of the various members, is required to certify that: (1) Each catcher vessel in the cooperative is a qualified catcher vessel meaning that the vessel owner(s) has applied for an AFA catcher vessel permit and has delivered more pollock harvested in the BSAI pollock directed pollock fishery to the designated AFA inshore processor than to any other AFA inshore processor during the year prior to the year in which the cooperative fishing permit would be in effect, (2) the cooperative contract was signed by the owners of at least 80 percent of the qualified catcher vessels that delivered pollock harvested in the BSAI directed pollock fishery to the cooperative's designated AFA inshore processor during the year prior to the year in which the cooperative fishing permit would be in effect, (3) the cooperative contract requires that the cooperative deliver at least 90 percent of its BSAI pollock catch to its designated AFA processor, and (4) each member vessel is an AFA-eligible catcher vessel and has no permit sanctions or other type of sanctions against it that would prevent it from fishing for groundfish in the BSAI. A catcher vessel that is ineligible to harvest BSAI pollock due to permit sanctions or to lack of an AFA or other required permit may not be a member of an inshore cooperative that receives an inshore cooperative fishing permit. To add or subtract a qualified catcher vessel to or from a cooperative fishing permit, the cooperative must submit a new application prior to the December 31 deadline, and the new application must be subsequently approved by the Regional Administrator. Inshore cooperative fishing permits issued under this emergency interim rule are valid for the 2000 fishing year only.

Replacement Vessels

In the event of the actual total loss or constructive total loss of an AFA catcher vessel, AFA mothership, or AFA catcher/processor, the owner of such vessel may designate a replacement vessel that will be eligible in the same manner as the original vessel after submission of an application for an AFA replacement vessel that is subsequently approved by NMFS. The AFA contains specific restrictions on replacement vessels that are set out in detail in the emergency interim rule regulatory text at § 679.4(l)(7). In this emergency rule, NMFS has made one change from the language of the statute. Section 208(g)(5)

of the AFA states that a vessel may be used as a replacement vessel for an eligible AFA vessel if:

the eligible vessel is less than 165 feet in registered length, of fewer than 750 gross registered tons, and has engines incapable of producing less than 3,000 shaft horsepower, the replacement vessel is less than each of such thresholds and does not exceed by more than 10 percent the registered length, gross registered tons or shaft horsepower of the eligible vessel;

NMFS believes that Congress intended this clause to apply to eligible vessels with engines incapable of producing *more* than 3,000 shaft horsepower rather than engines incapable of producing *less* than 3,000 shaft horsepower because no catcher vessel operating in Alaska has engines incapable of producing *less* than 3,000 shaft horsepower. Any marine engine is capable of producing less than 3,000 shaft horsepower at less than full throttle or at idle. Therefore, in this emergency rule, the phrase "incapable of producing more than 3,000 shaft horsepower" is used to implement section 208(g)(5) of the AFA.

An existing AFA vessel may be designated as a replacement vessel for a lost AFA vessel. In the event that an existing AFA catcher vessel is designated as a replacement for a lost AFA catcher vessel, the catch histories of the two vessels may be merged for the purpose of making inshore cooperative allocations.

Official AFA Record and Appeals

In order to issue AFA permits, NMFS is compiling available information about vessels and processors that were used to participate in the BSAI pollock fisheries during the qualifying periods. Information in the official AFA record will include vessel ownership information, documented harvests made from vessels during AFA qualifying periods, vessel characteristics, and documented amounts of pollock processed by pollock processors during AFA qualifying periods. The official AFA record is presumed to be correct for the purpose of determining eligibility for AFA permits. An applicant for an AFA permit has the burden of proving correct any information submitted in an application that is inconsistent with the official record.

This rule also establishes an appeals process under which the owners of vessels and processors may appeal NMFS determinations about either AFA eligibility or inshore cooperative allocations. The appeals process for AFA permits and inshore cooperative allocations is based on the existing

appeals process in place for the individual fishing quota and license limitation programs.

Changes to Definitions

Under this emergency interim rule, new definitions are added for "ADF&G processor code," "AFA catcher/processor," "AFA catcher vessel," "AFA inshore processor," "AFA mothership," "Designated primary processor," "Official AFA record," "Restricted AFA catcher/processor," "Restricted AFA inshore processor," "Stationary floating processor," "Unrestricted AFA catcher/processor," and "Unrestricted AFA inshore processor" to describe vessels and processors permitted to participate in the BSAI pollock fishery under the AFA. The definitions of "AFA crab processor," and "AFA inshore and/or mothership entity" are added to implement the crab processing sideboard restrictions required under the AFA. The definition of "Designated primary processor" is added to describe the processor to which an inshore fishery cooperative will deliver at least 90 percent of its BSAI pollock. The definition for "Official AFA record" is added to describe the relevant catch histories and other data relevant to all potentially qualifying vessels and processors in the BSAI pollock fisheries. The definition for "Stationary floating processor" is added to define a vessel of the United States operating solely as a mothership in Alaska State waters that remains anchored or otherwise remains stationary in a single geographic location while processing groundfish harvested in the GOA or BSAI.

Classification

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

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

This emergency interim rule has been determined to be significant for the purposes of E.O. 12866.

NMFS finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 5(b)(B). This action is necessary to implement the permit requirements of the AFA that authorize vessels and processors to fish for and process pollock, and to provide an

opportunity for inshore catcher vessels to form cooperatives for the 2000 fishing year. Inshore sector cooperatives will provide the inshore industry with the ability to more effectively meet the temporal and spatial dispersion objectives of NMFS's Steller sea lion conservation measures that are being published separately from this emergency rule. Delaying the effectiveness of this emergency interim rule to provide prior notice and opportunity for comment would effectively deny the inshore sector of the BSAI pollock industry the opportunity to form cooperatives prior to the start of the 2000 fishing year as provided for in the AFA. Therefore, this sector of the industry would lose a valuable method of meeting the temporal and spatial dispersion objectives of NMFS's Steller sea lion conservation measures. Delaying the start date of the 2000 pollock fishery to accommodate delayed permitting requirements would conflict with the investment-backed expectations of the regulated community, could disrupt the supply of seafood products to the United States and consequently, would be contrary to the public interest. Likewise, the need to avoid delaying the start of the pollock season constitutes good cause, pursuant to authority set forth at 5 U.S.C.

553(d)(3), not to delay the effective date of this rule for 30 days. In addition, the regulated community has been aware since the June 1999 Council meeting that these new requirements would be necessary and have had ample time to prepare for compliance, making the 30-day delay in effective date unnecessary. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and that have been approved by OMB under control number 0648-0393. Public reporting burden for these collections of information is estimated to average as follows: For the operator to complete the AFA catcher vessel permit application is 2 hours; for an operator of an AFA mothership or manager of an inshore processor to complete the AFA mothership or inshore processor permit application is 2 hours; for a co-operative representative to complete the AFA inshore cooperative permit application is 2 hours; and for an operator to complete the AFA permit application for a replacement vessel is 30 minutes.

The estimated response times shown include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to NMFS and OMB (see ADDRESSES).

The President has directed Federal agencies to use plain language when communicating with the public, through regulations or otherwise. Therefore, NMFS seeks 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: December 28, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 is revised to read as follows:

Authority: Title II of Division C, Pub. L. 105-277, 112 Stat. 2681; Sec. 3027, Pub. L. 106-31, 113 Stat. 57 (16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*).

2. In § 679.2, definitions of "ADF&G processor code," "AFA catcher/processor," "AFA catcher vessel," "AFA crab facility," "AFA inshore or mothership entity," "AFA inshore processor," "AFA mothership," "Designated primary processor," "Official AFA record," "Restricted AFA catcher/processor," "Restricted AFA inshore processor," "Stationary floating processor," "Unrestricted AFA catcher/processor," and "Unrestricted AFA inshore processor," are added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

ADF&G processor code means State of Alaska Department of Fish & Game (ADF&G) Intent to operate processor license number (example: F12345).

AFA catcher/processor means a catcher/processor permitted to harvest BSAI pollock under § 679.4(l)(2).

AFA catcher vessel means a catcher vessel permitted to harvest BSAI pollock under § 679.4(l)(3).

AFA crab facility means a processing plant, catcher/processor, mothership, floating processor or any other operation that processes Bering Sea or Aleutian Island king or Tanner crab in which any individual, corporation or other entity that is part of an AFA entity either directly or indirectly owns a 10 percent or greater interest, or exercises 10 percent or greater control.

(1) *Indirect ownership standard.* For purposes of this definition, an indirect ownership interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's percentage of direct, or indirect, interest in the crab processing facility.

(2) *10 percent control standard.* Also for purposes of this definition, an entity is deemed to exercise 10 percent or greater control of a crab processing facility if the entity controls another entity that directly or indirectly owns a 10 percent or greater interest in the crab processing facility.

(i) The term "control" includes:

(A) Ownership of more than 50 percent of the entity;

(B) The right to direct the business of the entity;

(C) The right to limit the actions of or replace the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity; or

(D) The right to direct the operation or manning of the crab processing facility.

(ii) The term "control" does not include the right to simply participate in the above actions.

AFA inshore or mothership entity means an entity that owns a mothership and/or inshore processor that processes pollock harvested in the directed BSAI pollock fishery.

(1) *10-percent ownership standard.* For purposes of this definition, all individuals, corporations or other entities that either directly or indirectly own a 10 percent or greater interest in the mothership and/or inshore processor, as the case may be, are considered as comprising a single AFA inshore or mothership entity. An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's percentage of direct, or indirect, interest in the mothership and/or inshore processor, as the case may be.

(2) 10 percent control standard. Also for purposes of this definition, any individual, corporation or other entity that controls another entity that directly or indirectly owns a 10 percent or greater interest in the mothership and/or inshore processor, as the case may be, is considered a part of the same AFA inshore or mothership entity of which the controlled entity is a part.

(i) The term "control" includes:

(A) Ownership of more than 50 percent of the entity;
(B) The right to direct the business of the entity;

(C) The right to limit the actions of or replace the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity; or
(D) The right to direct the operation or manning of the mothership and/or inshore processor, as the case may be.

(ii) The term "control" does not include the right to simply participate in the above actions.

AFA inshore processor means a shoreside processor or stationary floating processor permitted to process BSAI pollock under § 679.4(l)(4).

AFA mothership means a mothership permitted to process BSAI pollock under § 679.4(l)(5).

Designated primary processor means an AFA inshore processor that is designated by an inshore pollock cooperative as the AFA inshore processor to which the cooperative will deliver at least 90 percent of its annual BSAI pollock allocation during the year in which the AFA inshore cooperative fishing permit is in effect.

Official AFA record means the information prepared by the Regional Administrator about vessels and processors that were used to participate in the BSAI pollock fisheries during the qualifying periods specified in § 679.4(l). Information in the official AFA record includes vessel ownership information, documented harvests made from vessels during AFA qualifying periods, vessel characteristics, and documented amounts of pollock processed by pollock processors during AFA qualifying periods. The official AFA record is presumed to be correct for the purpose of determining eligibility for AFA permits. An applicant for an AFA permit will have the burden of proving correct any information submitted in an application that is inconsistent with the official record.

Restricted AFA catcher/processor means an AFA catcher/processor

permitted to harvest BSAI pollock under § 679.4(l)(2)(ii).

Restricted AFA inshore processor means an AFA inshore processor permitted to harvest pollock under § 679.4(l)(5)(i)(B).

Stationary floating processor means a vessel of the United States operating as a processor in Alaska State waters that remains anchored or otherwise remains stationary in a single geographic location while receiving or processing groundfish harvested in the GOA or BSAI.

Unrestricted AFA catcher/processor means an AFA catcher/processor permitted to harvest BSAI pollock under § 679.4(l)(2)(i).

Unrestricted AFA inshore processor means an AFA inshore processor permitted to harvest pollock under § 679.4(l)(5)(i)(A).

3. In § 679.4, a new paragraph (l) is added to read as follows:

§ 679.4 Permits.

(l) AFA permits (applicable through June 27, 2000)—(1) General—(i) Applicability. In addition to any other permit and licensing requirements set out in this part, any vessel used to engage in directed fishing for a non-CDQ allocation of pollock in the BSAI and any shoreside processor, stationary floating processor, or mothership that receives pollock harvested in a non-CDQ directed pollock fishery in the BSAI must have a valid AFA permit onboard the vessel or at the facility location at all times while non-CDQ pollock is being harvested or processed. An AFA permit does not exempt a vessel operator, vessel, or processor from any other applicable permit or licensing requirement required under this part or in other state or Federal regulations.

(ii) Duration. Except as provided in paragraph (l)(6)(iv) of this section, and unless suspended or revoked, AFA vessel and processor permits are valid until December 31, 2004.

(iii) Application for permit. NMFS will issue AFA vessel and processor permits to the current owner(s) of a qualifying vessel or processor if the owner(s) submits to the Regional Administrator a completed AFA permit application that is subsequently approved.

(iv) Amended permits. AFA vessel and processor permits may not be used on or transferred to any vessel or processor that is not listed on the

permit. However, AFA permits may be amended to reflect any change in the ownership of the vessel or processor. An application to amend an AFA permit must include the following:

(A) The original AFA permit to be amended, and

(B) A completed AFA permit application signed by the new vessel or processor owner.

(2) AFA catcher/processor permits—(i) Unrestricted. NMFS will issue to an owner of a catcher/processor an unrestricted AFA catcher/processor permit if the catcher/processor is one of the following (as listed in AFA paragraphs 208(e)(1) through (20)):

- AMERICAN DYNASTY (USCG documentation number 951307);
- KATIE ANN (USCG documentation number 518441);
- AMERICAN TRIUMPH (USCG documentation number 646737);
- NORTHERN EAGLE (USCG documentation number 506694);
- NORTHERN HAWK (USCG documentation number 643771);
- NORTHERN JAEGER (USCG documentation number 521069);
- OCEAN ROVER (USCG documentation number 552100);
- ALASKA OCEAN (USCG documentation number 637856);
- ENDURANCE (USCG documentation number 592206);
- AMERICAN ENTERPRISE (USCG documentation number 594803);
- ISLAND ENTERPRISE (USCG documentation number 610290);
- KODIAK ENTERPRISE (USCG documentation number 579450);
- SEATTLE ENTERPRISE (USCG documentation number 904767);
- US ENTERPRISE (USCG documentation number 921112);
- ARCTIC STORM (USCG documentation number 903511);
- ARCTIC FJORD (USCG documentation number 940866);
- NORTHERN GLACIER (USCG documentation number 663457);
- PACIFIC GLACIER (USCG documentation number 933627);
- HIGHLAND LIGHT (USCG documentation number 577044);
- STARBOUND (USCG documentation number 944658).

(ii) Restricted. NMFS will issue to an owner of a catcher/processor a restricted AFA catcher/processor permit if the catcher/processor is not listed in § 679.4(l)(2)(i) and is determined by the Regional Administrator to have harvested more than 2,000 mt of pollock in the 1997 BSAI directed pollock fishery.

(3) AFA catcher vessel permits. NMFS will issue to an owner of a catcher vessel an AFA catcher vessel permit containing sector endorsements and sideboard restrictions upon receipt and approval of a completed application for an AFA catcher vessel permit.

(i) *Qualifying criteria*—(A) *Catcher vessels delivering to catcher/processors.* NMFS will endorse an AFA catcher vessel permit to authorize directed fishing for pollock for delivery to a catcher/processor if the catcher vessel:

(1) Is one of the following (as listed in paragraphs 208(b)(1) through (7) of the AFA):

AMERICAN CHALLENGER (USCG documentation number 633219);

FORUM STAR (USCG documentation number 925863);

MUIR MILACH (USCG documentation number 611524);

NEAHKAHNE (USCG documentation number 599534);

OCEAN HARVESTER (USCG documentation number 549892);

SEA STORM (USCG documentation number 628959);

TRACY ANNE (USCG documentation number 904859); or

(2) Is not listed in § 679.4(l)(3)(i)(A)(1) and is determined by the Regional Administrator to have delivered at least 250 metric tons and at least 75 percent of the pollock it harvested in the directed BSAI pollock fishery in 1997 to catcher/processors for processing by the offshore component.

(B) *Catcher vessels delivering to AFA motherships.* NMFS will endorse an AFA catcher vessel permit to authorize directed fishing for pollock for delivery to an AFA mothership if the catcher vessel:

(1) Is one of the following (as listed in paragraphs 208(c)(1) through (19) and subsection 211(e) of the AFA):

ALEUTIAN CHALLENGER (USCG documentation number 603820);

ALYESKA (USCG documentation number 560237);

AMBER DAWN (USCG documentation number 529425);

AMERICAN BEAUTY (USCG documentation number 613847);

CALIFORNIA HORIZON (USCG documentation number 590758);

MAR-GUN (USCG documentation number 525608);

MARGARET LYN (USCG documentation number 615563);

MARK I (USCG documentation number 509552);

MISTY DAWN (USCG documentation number 926647);

NORDIC FURY (USCG documentation number 542651);

OCEAN LEADER (USCG documentation number 561518);

OCEANIC (USCG documentation number 602279);

PACIFIC ALLIANCE (USCG documentation number 612084);

PACIFIC CHALLENGER (USCG documentation number 518937);

PACIFIC FURY (USCG documentation number 561934);

PAPADO II (USCG documentation number 536161);

TRAVELER (USCG documentation number 929356);

VESTERAALEN (USCG documentation number 611642);

WESTERN DAWN (USCG documentation number 524423);

LISA MARIE (USCG documentation number 1038717); or

(2) Is not listed in § 679.4(l)(3)(i)(B)(1) and is determined by the Regional Administrator to have delivered at least 250 mt of pollock for processing by motherships in the offshore component of the BSAI directed pollock fishery in any one of the years 1996 or 1997, or between January 1, 1998, and September 1, 1998, and is not eligible for an endorsement to deliver pollock to catcher/processors under § 679.4(l)(3)(i)(A).

(C) *Catcher vessels delivering to AFA inshore processors.* NMFS will endorse an AFA catcher vessel permit to authorize directed fishing for pollock for delivery to an AFA inshore processor if the catcher vessel:

(1) Is the LISA MARIE (USCG documentation number 1038717); or

(2) Is not eligible for an endorsement to deliver pollock to catcher/processors under § 679.4(l)(3)(i)(A), and:

(i) Is determined by the Regional Administrator to have delivered at least 250 mt of pollock harvested in the directed BSAI pollock fishery for processing by the inshore component in any one of the years 1996 or 1997, or between January 1, 1998, and September 1, 1998; or

(ii) Is less than 60 ft (18.1 meters) LOA and is determined by the Regional Administrator to have delivered at least 40 mt of pollock harvested in the directed BSAI pollock fishery for processing by the inshore component in any one of the years 1996 or 1997, or between January 1, 1998 and September 1, 1998.

(ii) *Application for AFA catcher vessel permit.* A completed application for an AFA catcher vessel permit must contain:

(A) *Vessel information.* The vessel name, ADF&G registration number, USCG documentation number, vessel telephone number (if any), gross tons, shaft horsepower, and registered length (in feet);

(B) *Owner information.* Owner name(s), tax ID number(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(C) *Vessel AFA qualification information.* AFA catcher vessel permit endorsement(s) requested; and

(D) *Vessel crab activity information required for crab sideboard endorsements.* The owner of an AFA catcher vessel wishing to participate in

any BSAI king or Tanner crab fishery must apply for a crab sideboard endorsement authorizing the catcher vessel to retain that crab species. An AFA catcher vessel permit may be endorsed for a crab species if the owner requests a crab sideboard endorsement, provides supporting documentation that the catcher vessel made the required legal landing(s) of a crab species, and the Regional Administrator verifies the legal landing(s) according to the following criteria:

(1) *Bristol Bay Red King Crab*

(BBRKC): A legal landing of any BSAI king or Tanner crab species in 1996, 1997, or on or before February 7, 1998. A BBRKC sideboard endorsement also authorizes a vessel to retain Bairdi Tanner crab harvested during the duration of a BBRKC opening if the vessel is otherwise authorized to retain Bairdi Tanner crab while fishing for BBRKC under state and Federal regulations.

(2) *St. Matthew Island blue king crab:* A legal landing of St. Matthew Island blue king crab in that fishery in 1995, 1996, or 1997.

(3) *Pribilof Island red and blue king crab:* A legal landing of Pribilof Island blue or red king crab in that fishery in 1995, 1996, or 1997.

(4) *Aleutian Islands (Adak) brown king crab:* A legal landing of Aleutian Islands brown king crab during in each of the 1997/1998 and 1998/1999 fishing seasons.

(5) *Aleutian Islands (Adak) red king crab:* A legal landing of Aleutian Islands red king crab in each of the 1995/1996 and 1998/1999 fishing seasons.

(6) *Opilio Tanner crab:* A legal landing of *Chionoecetes(C.) opilio* Tanner crab in each of 4 or more years from 1988 to 1997.

(7) *Bairdi Tanner crab:* A legal landing of *C. bairdi* Tanner crab in 1995 or 1996.

(E) *Vessel exemptions from AFA catcher vessel groundfish sideboard directed fishing closures.* An AFA catcher vessel permit may contain exemptions from certain groundfish sideboard directed fishing closures. If a vessel owner is requesting an exemption from groundfish sideboard-directed closures, the application must provide supporting documentation that the catcher vessel qualifies for the exemption based on the criteria set out below. The Regional Administrator will review the vessel's catch history according to the following criteria:

(1) *BSAI Pacific cod.* For a catcher vessel to qualify for an exemption from AFA catcher vessel sideboards in the BSAI Pacific cod fishery, the catcher vessel must be less than 125 ft LOA,

have harvested a combined total of less than 5,100 mt of BSAI pollock, and have made 30 or more legal landings of Pacific cod in the BSAI directed fishery for Pacific cod during the combined years 1995, 1996, and 1997.

(2) *GOA groundfish species.* For a catcher vessel to qualify for an exemption from AFA catcher vessel sideboards in the GOA groundfish fisheries, the catcher vessel must be less than 125 ft LOA, have harvested a combined total of less than 5,100 mt of BSAI pollock and made 40 or more legal landings of GOA groundfish during the combined years 1995, 1996, and 1997.

(F) *Certification of notary and applicant.* Owner signature(s), date of signature, printed name(s), and stamp and signature of a notary public.

(4) *AFA mothership permits.* NMFS will issue to an owner of a mothership an AFA mothership permit if the mothership is one of the following (as listed in paragraphs 208(d)(1) through (3) of the AFA):

EXCELLENCE (USCG documentation number 967502);

GOLDEN ALASKA (USCG documentation number 651041); and

OCEAN PHOENIX (USCG documentation number 296779).

(i) *Cooperative processing endorsement.* The owner of an AFA mothership who wishes to process pollock harvested by a fishery cooperative formed under § 679.60 must apply for and receive a cooperative processing endorsement on the vessel's AFA mothership permit.

(ii) *Application for AFA mothership permit.* A completed application for an AFA mothership permit must contain:

(A) *Type of permit requested.* Type of processor and whether requesting an AFA co-operative endorsement.

(B) *Mothership information.* The mothership name, ADF&G processor code, USCG documentation number, Federal fisheries permit number, gross tons, shaft horsepower, and registered length (in feet).

(C) *Owner information.* Owner name(s), tax ID number(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(D) *AFA crab facility ownership information.* If the applicant is applying for a cooperative pollock processing endorsement, the AFA mothership application must list the name, type of facility, ADF&G processor code, and percentage of ownership or control of each of each AFA crab facility that is owned or controlled by the AFA mothership entity that owns or controls the AFA mothership; and

(E) *Certification of notary and applicant.* Owner signature(s), date of signature, printed name(s), and notary stamp and signature of a notary public.

(5) *AFA inshore processor permits.* NMFS will issue to an owner of a shoreside processor or stationary floating processor an AFA inshore processor permit upon receipt and approval of a completed application.

(i) *Qualifying criteria—(A) Unrestricted processors.* NMFS will issue an unrestricted AFA inshore processor permit to a shoreside processor or stationary floating processor if the Regional Administrator determines that the processor facility processed annually more than 2,000 mt round-weight of pollock harvested in the inshore component of the directed BSAI pollock fishery during each of 1996 and 1997.

(B) *Restricted processors.* NMFS will issue a restricted AFA inshore processor permit to a shoreside processor or stationary floating processor if the Regional Administrator determines that the facility processed pollock harvested in the inshore component of the directed BSAI pollock fishery during 1996 or 1997, but did not process annually more than 2,000 mt round-weight of BSAI pollock during each of 1996 and 1997.

(ii) *Cooperative processing endorsement.* The owner of an AFA inshore processor who wishes to process pollock harvested by a fishery cooperative formed under § 679.61 must apply for and receive a cooperative processing endorsement on the AFA inshore processor permit.

(iii) *Single geographic location requirement.* An AFA inshore processor permit authorizes the processing of pollock harvested in the BSAI directed pollock fishery in only a single geographic location during a fishing year. For the purpose of this paragraph, single geographic location means:

(A) *Shoreside processors.* The physical location at which the land-based shoreside processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year;

(B) *Stationary floating processors.* A location within Alaska state waters that is within 5 nm of the position in which the stationary floating processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year.

(iv) *Application for permit.* A completed application for an AFA inshore processor permit must contain:

(A) *Type of permit requested.* Type of processor, whether requesting an AFA cooperative endorsement, and amount

of BSAI pollock processed in 1996 and 1997;

(B) *Stationary floating processor information.* The vessel name, ADF&G processor code, USCG documentation number, Federal processor permit number, gross tons, shaft horsepower, registered length (in feet), and business telephone number, business FAX number, and business E-mail address used onboard the vessel.

(C) *Shoreside processor information.* The processor name, Federal processor permit number, ADF&G processor code, business street address; business telephone and FAX numbers, and business e-mail address.

(D) *Owner information.* Owner name(s), tax ID number(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(E) *AFA crab facility ownership information.* If the applicant is applying for a cooperative pollock processing endorsement, the AFA inshore processor application must list the name, type of facility, ADF&G processor code, and percentage of ownership or control of each of each AFA crab facility that is owned or controlled by the AFA inshore processor entity that owns or controls the AFA inshore processor; and

(F) *Certification of notary and applicant.* Owner signature(s), date of signature, printed name(s), and notary stamp and signature of a notary public.

(6) *Inshore cooperative fishing permits—(i) General.* NMFS will issue to an inshore catcher vessel cooperative formed under section 1 of the Act of June 25, 1934 (15 U.S.C. 521) for the purpose of cooperatively managing directed fishing for pollock for processing by an AFA inshore processor an AFA inshore cooperative fishing permit upon receipt and approval of a completed application.

(ii) *Application for permit.* A completed application for an inshore cooperative fishing permit must contain the following information:

(A) *Cooperative contact information.* Name of cooperative; name of cooperative representative; and business mailing address, business telephone number, business fax number, and business e-mail address of the cooperative;

(B) *Designated cooperative processor.* The name and physical location of AFA Inshore Processor that is designated in the cooperative contract as the processor to whom the cooperative has agreed to deliver at least 90 percent of its BSAI pollock catch. If the processor is a stationary floating processor, the single geographic location (latitude and

longitude) at which the processor will process BSAI pollock under the AFA; and Federal processor permit number of the AFA inshore processor;

(C) *Cooperative contract information.* A copy of the cooperative contract and a written certification that:

(1) The contract was signed by the owners of at least 80 percent of the qualified catcher vessels. For the purpose of this paragraph, a catcher vessel is a qualified catcher vessel if:

(i) it delivered more pollock harvested in the BSAI inshore directed pollock fishery to the AFA inshore processor designated under paragraph (1)(6)(ii)(B) of this section than to any other shoreside processor or stationary floating processor during the year prior to the year in which the cooperative fishing permit will be in effect; and

(ii) the owner(s) of the catcher vessel in question has submitted a completed application for an AFA catcher vessel permit to the Regional Administrator that was received on or before December 31, 1999 and which is not subsequently denied.

(2) The cooperative contract requires that the cooperative deliver at least 90 percent of its BSAI pollock catch to its designated AFA processor; and

(3) Each catcher vessel in the cooperative is a qualified catcher vessel and is otherwise eligible to fish for groundfish in the BSAI, has an AFA catcher vessel permit with an inshore endorsement, and has no permit sanctions or other type of sanctions against it that would prevent it from fishing for groundfish in the BSAI;

(D) *Business review letter.* A copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice, and any response to such request;

(E) *Vessel information.* For each cooperative catcher vessel member: Vessel name, ADF&G registration number, USCG documentation number, AFA permit number; and

(F) *Certification of notary and applicant.* Signature and printed name of cooperative representative, date of signature, and notary stamp or seal of a notary public.

(iii) *Duration of cooperative fishing permits.* Inshore cooperative fishing permits are valid for 1 calendar year.

(iv) *Add or subtract vessels to a cooperative fishing permit.* The cooperative representative must submit a new application to add or subtract a catcher vessel to or from an inshore cooperative fishing permit to the Regional Administrator prior to the application deadline. Upon approval by the Regional Administrator, NMFS will

issue an amended cooperative fishing permit.

(v) *Application deadline.* An inshore cooperative fishing permit application and any subsequent contract amendments that add or subtract vessels must be received by the Regional Administrator by December 31 prior to the year in which the inshore cooperative fishing permit will be in effect. Inshore cooperative fishing permit applications or amendments to inshore fishing cooperative permits received after December 31 will not be accepted by the Regional Administrator for the subsequent fishing year.

(7) *Replacement vessels.* (i) In the event of the actual total loss or constructive total loss of an AFA catcher vessel, AFA mothership, or AFA catcher/processor, the owner of such vessel may replace such vessel with a replacement vessel. The replacement vessel will be eligible in the same manner as the original vessel after submission and approval of an application for an AFA replacement vessel provided that:

(A) Such loss was caused by an act of God, an act of war, a collision, an act or omission of a party other than the owner or agent of the vessel, or any other event not caused by the willful misconduct of the owner or agent;

(B) The replacement vessel was built in the United States and if ever rebuilt, was rebuilt in the United States;

(C) The USCG certificate of documentation with fishery endorsement for the replacement vessel is issued within 36 months of the end of the last year in which the eligible vessel harvested or processed pollock in the directed pollock fishery;

(D) If the eligible vessel is greater than 165 ft (50.3 meters (m)) in registered length, or more than 750 gross registered tons, or has engines capable of producing more than 3,000 shaft horsepower, the replacement vessel is of the same or lesser registered length, gross registered tons, and shaft horsepower;

(E) If the eligible vessel is less than 165 ft (50.3 m) in registered length, of fewer than 750 gross registered tons, and has engines incapable of producing more than 3,000 shaft horsepower, the replacement vessel is less than each of such thresholds and does not exceed by more than 10 percent the registered length, gross registered tons or shaft horsepower of the eligible vessel; and

(F) If the replacement vessel is already an AFA catcher vessel, the inshore cooperative catch history of both vessels may be merged in the replacement vessel for the purpose of determining inshore cooperative allocations except

that a catcher vessel with an endorsement to deliver pollock to AFA catcher/processors may not be simultaneously endorsed to deliver pollock to AFA motherships or AFA inshore processors.

(ii) *Application for permit.* A completed application for an AFA permit for replacement vessel must contain:

(A) *Identification of lost AFA eligible vessel.*

(1) Name, ADF&G vessel registration number, USCG documentation number, AFA permit number, gross tons, shaft horsepower, and registered length from USCG documentation of the vessel;

(2) Name(s), tax ID number(s), business mailing address(es), telephone number(s), FAX number(s), and e-mail address(es) of owner(s);

(3) Last year in which this vessel harvested or processed pollock in a BSAI directed pollock fishery; and

(4) Description of how the vessel was lost or destroyed. Attach a USCG Form 2692 or insurance papers to verify the claim.

(B) *Identification of replacement vessel.*

(1) Name, ADF&G vessel registration number, USCG documentation number, gross tons, shaft horsepower, registered length, net tons, and length overall (in feet) from USCG documentation, and Federal Fisheries Permit number of the vessel;

(2) Name(s), tax ID number(s), business mailing address(es), business telephone number(s), business FAX number(s), and business e-mail address(es) of the owner(s);

(3) YES or NO indication of whether the vessel was built in the United States; and

(4) YES or NO indication of whether the vessel has ever been rebuilt, and if so whether it was rebuilt in the United States.

(C) *Certification of applicant and notary.* Signature(s) and printed name(s) of owner(s) and date of signature; signature, notary stamp or seal of notary public, and date notary commission expires.

(8) *Application evaluations and appeals*—(i) *Initial evaluation.* The Regional Administrator will evaluate an application for an AFA fishing or processing permit submitted in accordance with this paragraph (1) and compare all claims in the application with the information in the official AFA record. Claims in the application that are consistent with information in the official AFA record will be accepted by the Regional Administrator. Inconsistent claims in the application, unless supported by evidence, will not be

accepted. An applicant who submits inconsistent claims or fails to submit the information specified in the application for an AFA permit will be provided a 60-day evidentiary period to submit the specified information, submit evidence to verify the applicant's inconsistent claims, or submit a revised application with claims consistent with information in the official AFA record. An applicant who submits claims that are inconsistent with information in the official AFA record has the burden of proving that the submitted claims are correct.

(ii) *Additional information and evidence.* The Regional Administrator will evaluate additional information or evidence to support an applicant's inconsistent claims submitted within the 60-day evidentiary period. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the inconsistent claims in his or her application are correct, the official AFA record will be amended and the information will be used in determining whether the applicant is eligible for an AFA permit. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the inconsistent claims in his or her application is correct, the applicant will be notified by an initial administrative determination that the applicant did not meet the burden of

proof to change information in the official AFA record.

(iii) *Sixty-day evidentiary period.* The Regional Administrator will specify by letter a 60-day evidentiary period during which an applicant may provide additional information or evidence to support the claims made in his or her application, or to submit a revised application with claims consistent with information in the official AFA record, if the Regional Administrator determines that the applicant did not meet the burden of proving that the information on the application is correct through evidence provided with the application. Also, an applicant who fails to submit required information will have 60 days to provide that information. An applicant will be limited to one 60-day evidentiary period. Additional information or evidence, or a revised application received after the 60-day evidentiary period specified in the letter has expired will not be considered for the purposes of the initial administrative determination.

(iv) *Initial administrative determinations (IAD).* The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 60-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to rebut the presumption

that the official AFA record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 60-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD also will indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal under the appeals procedures set out at § 679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will receive an interim AFA permit that authorizes a person to participate in an AFA pollock fishery, and will have the specific endorsements and designations based on the claims in his or her application. An interim AFA permit will expire upon final agency action.

(v) *Effect of cooperative allocation appeals.* An AFA inshore cooperative may appeal the pollock quota share issued to the cooperative under § 679.61; however, final agency action on the appeal must occur prior to December 15 for the results of the appeal to take effect during the subsequent fishing year.

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