

wireless providers making a single election whether to report actual interstate telecommunications revenues or use the applicable interim wireless safe harbor. We have become aware that adoption of an affiliate definition in this context that deems a ten percent interest as indicative of control would result in companies being required to make the same election merely because they are related through direct or indirect minority ownership interests of more than 10 percent. We understand that such cross-ownership is common in the wireless telecommunications industry. For example, several major national wireless telecommunications providers may be "affiliated" for purposes of the definition adopted as a result of greater than ten percent ownership interests in certain other wireless telecommunications providers. In short, the definition adopted in the *Universal Service Contribution Methodology Order* may force competing wireless telecommunications providers that are not otherwise under common control to adopt common universal service revenue reporting policies.

3. We conclude that revising the definition of affiliate in this proceeding is necessary to achieve the goals of consistency, equity, and fairness in reporting revenues for purposes of supporting universal service. Entities that are not under common control may have different billing and administrative systems and, consequently, may have legitimate reasons to make different revenue reporting elections. The Commission previously adopted rules in the wireless auction context in order to evaluate affiliations for purposes of determining eligibility for designated entity status. We conclude a similar approach would be reasonable for purposes of revenue reporting for universal service. We, therefore, reconsider on our own motion the definition of "affiliate" adopted in the *Universal Service Contribution Methodology Order*. We now conclude, consistent with § 1.2110(c)(5) of the Commission's rules, that wireless telecommunications providers are affiliated for purposes of making the single election whether to report actual interstate telecommunications revenues or use the applicable interim wireless safe harbor for universal service contribution purposes if one entity (1) directly or indirectly controls or has the power to control another, (2) is directly or indirectly controlled by another, (3) is directly or indirectly controlled by a third party or parties that also controls or has the power to control another, or

(4) has an "identity of interest" with another contributor.

4. *CMRS Actual Interstate Revenues*. We note that some parties have suggested two different readings of the Commission's universal service contribution cost recovery limitations for wireless telecommunications providers that choose to report their actual interstate telecommunications revenues based on a company-specific traffic study. Specifically, AT&T and WorldCom read the requirement that telecommunications carriers cannot mark up the universal service line item above the relevant contribution factor to mean that wireless carriers that do not utilize the interim safe harbors must conduct traffic studies on a customer-by-customer basis when recovering contribution costs through a line item. CTIA, on the other hand, reads this requirement to allow wireless carriers that report revenues based on a company-specific traffic study to use the same company-specific percentage to determine interstate revenues to compute contribution recovery line items.

5. We disagree with AT&T and WorldCom's reading of the requirement. For wireless providers that choose to report their actual interstate telecommunications revenues based on a company-specific traffic study, the interstate telecommunications portion of each customer's bill would equal the company-specific percentage based on its traffic study times the total telecommunications charges on the bill. Accordingly, if such providers choose to recover their contributions through a line item, their line items must not exceed the interstate telecommunications portion of each customer's bill, as described above, times the contribution factor. Just as the Commission did not eliminate the option of reporting actual interstate telecommunications revenues either through a company-specific traffic study or some other means, the Commission did not intend to preclude wireless telecommunications providers from continuing to recover contribution costs in a manner that is consistent with the way in which companies report revenues to USAC. We therefore disagree with AT&T and WorldCom that the recovery limitations adopted in the *Universal Service Contribution Order* should be read so narrowly as to require CMRS providers to conduct traffic studies on a customer-by-customer basis to calculate contribution recovery line items.

### III. Ordering Clause

6. Accordingly, it is ordered, pursuant to sections 1–4, 201–202, 254, and 405 of the Communications Act of 1934, as amended, and § 1.108 of the Commission's rules, this Order and Order on Reconsideration is adopted.

7. Pursuant to section 553(d)(3) of the Administrative Procedure Act, this Order and Order on reconsideration shall become effective upon publication in the **Federal Register**.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 020724175–3022–02; I.D. 062602E]

RIN 0648–AP71

#### Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 69 to Revise American Fisheries Act Inshore Cooperative Requirements

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement Amendment 69 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutians Area (FMP). This final rule will allow an American Fisheries Act (AFA) inshore cooperative to contract with a non-member vessel to harvest a portion of the cooperative's pollock allocation. The North Pacific Fishery Management Council (Council) developed Amendment 69 to provide greater flexibility to inshore catcher vessel cooperatives to arrange for the harvest of their pollock allocation, and to address potential emergency situations, such as vessel breakdowns, that would prevent a cooperative from harvesting its entire allocation. This action is designed to be consistent with the environmental and socioeconomic objectives of the AFA, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

**DATES:** This regulation becomes effective on March 13, 2003, except for

§ 679.62(c), which will become effective after Paperwork Reduction Act approval has been received from the Office of Management and Budget and a **Federal Register** notice has been published to make it effective.

**ADDRESSES:** Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for Amendment 69 may be obtained from Lori Durall, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, 907-586-7247.

**FOR FURTHER INFORMATION CONTACT:** Kent Lind, 907-586-7650, or [kent.lind@noaa.gov](mailto:kent.lind@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) under the FMP. The Council prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and the AFA (Div. C, Title II, Public Law No. 105-277, 112 Stat. 2681 (1998)). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The AFA established a limited access program for the inshore sector of the BSAI pollock fishery that is based on the formation of fishery cooperatives around each inshore pollock processor. Regulations governing the formation and operation of inshore catcher vessel cooperatives are set out at 50 CFR 679.62 and are summarized in the final rule to implement AFA-related Amendments 61/61/13/8 (67 FR 79692, December 30, 2002).

#### **Purpose and Need for Amendment 69**

Several existing regulations and administrative limitations implementing the American Fisheries Act prevent inshore cooperatives from contracting with non-member vessels to harvest a portion of the cooperative's BSAI pollock allocation. First, NMFS recordkeeping and reporting requirements specify that all landings from the BSAI directed pollock fishery that are made by the member vessels of a cooperative must accrue against that cooperative's annual allocation. The NMFS database in its present form automatically assigns a single cooperative code to each AFA catcher vessel (the code representing the cooperative of which the vessel is a member) and, therefore, precludes a vessel from reporting landings using any different cooperative code during a fishing year. Second, regulations at 50 CFR 679.7(k)(5)(i) prohibit a catcher vessel listed on an AFA inshore

cooperative permit to harvest pollock in excess of the cooperative's allocation. This prohibition prevented the member vessels in one cooperative from contracting to harvest a portion of the allocation of another cooperative.

These restrictions, which have the effect of preventing inshore cooperatives from contracting with non-member vessels, were required by paragraphs 210(b)(1)(B) and 210(b)(5) of the AFA.

Amendment 69 has three objectives: (1) Increase efficiency and provide catcher vessel owners with a more functional market for leasing of individual pollock allocations, (2) ensure that an inshore cooperative is able to harvest its entire allocation in the event of vessel breakdowns or other unanticipated emergencies, and (3) improve safety by providing greater flexibility for larger catcher vessels to harvest cooperative allocations during hazardous weather in winter months and when Steller sea lion conservation measures require that fishing be done further offshore.

With respect to the first objective, the AFA allows a cooperative member to lease pollock quota only to those vessel owners who are members of the same cooperative. In cooperatives where a substantial number of the vessels are owned or controlled by the associated processor, owners of independent catcher vessels may have limited opportunities to lease quota to other independent vessel owners in the same cooperative. The problem could become even more acute at certain times of the year when only plant-owned vessels are operating. In this instance, an independent catcher vessel owner could have only one potential customer willing to lease his quota and, therefore, may be in a weak bargaining position. This independent catcher vessel owner likely would benefit from a broader market for his pollock quota. Efficiency could improve if the vessel that is being contracted to harvest the pollock has lower operating costs than the vessel initially granted use rights to the pollock by the cooperative, depending upon the cost and terms of the lease contract.

With respect to the second objective, under existing regulations, if one or more vessels in a cooperative breaks down or is otherwise out of commission, and the other vessels in the cooperative are already operating at full capacity, a catcher vessel owner could be unable to contract with a replacement vessel to harvest his portion of the cooperative's pollock allocation. An unexpected emergency such as a dockside fire or accidents that disable or destroy several member

vessels of a cooperative at the same time could result in the cooperative being unable to harvest a large portion of its annual allocation. This final rule gives cooperatives the means to deal with such emergency situations and facilitate their ability to harvest their entire annual allocations.

With respect to the third objective, safety may be improved if the owners of smaller catcher vessels have greater flexibility to enter into contracts with larger (presumably safer) vessels to harvest the smaller vessel's allocation during the more hazardous weather conditions common during winter months and when Steller sea lion protection measures require that fishing be conducted further offshore.

#### **Council Authority to Supersede the AFA**

Subsection 213(c) of the AFA authorizes the Council to recommend management measures to supersede certain provisions of the AFA. Any measure recommended by the Council, and approved by the Secretary of Commerce (Secretary), that supersedes a specific provision of the AFA is implemented in accordance with the Magnuson-Stevens Act. In developing Amendment 69, the Council determined that all three objectives for Amendment 69 meet the criteria established in paragraph 213(c)(1) of the AFA, which states that the Council may recommend measures that supersede the AFA "to mitigate adverse effects . . . on owners of fewer than three vessels in the directed pollock fishery..."

The Council, in interpreting paragraph 213(c)(1), understood the term "owners of fewer than three vessels" to reference independent vessel owners who own two or less vessels in the directed pollock fishery. These are the vessel owners who this rule is intended to benefit as is described in the discussion of the three objectives above.

#### **Elements of the Final Rule**

This final rule contains the following requirements for inshore cooperatives that wish to contract with non-member vessels to harvest a portion of a cooperative's annual BSAI pollock allocation.

**Application process.** A cooperative that wishes to contract with a vessel that is a member of another inshore cooperative is required to complete and submit to NMFS a vessel contract form. The form is available from NMFS and requires that the cooperative identify the contract vessel, the contract vessel's home cooperative, and describe how pollock landings by the contract vessel are to be assigned between cooperatives.

Cooperatives are allowed to contract with a non-member vessel to fish for the cooperative for a certain period of time, or to harvest a certain tonnage of pollock. The contract form also must indicate how any harvest overages by the contract vessel will be treated. A vessel contract form is not valid unless it is signed by the cooperative's designated representative, the contracted vessel owner, and the designated representative for the vessel's home cooperative. These signatures are necessary to ensure that all affected parties are in agreement as to the terms of the contract and to avoid any disputes about how a contract vessel's catch is to be attributed.

**Fishing for multiple cooperatives.** A vessel owner may enter into simultaneous contracts with more than one cooperative. This may occur, for example, at the end of a fishing season when several cooperatives have very small remaining allocations and it is more cost-effective for a single vessel to conduct "mop up" operations for several cooperatives at one time than for each individual cooperative to send a separate vessel to harvest the small remaining tonnages of pollock. If a vessel owner wishes to enter into contracts with more than one cooperative at the same time, then all the affected cooperatives are required to submit their contract applications together, and the contract applications must specify how the contracted vessel's harvest and any overages are to be assigned among the various cooperatives.

**Recordkeeping and reporting requirements.** Inshore processors are currently required to report in their shoreside electronic delivery reports the name and co-op code of each vessel that makes a delivery to that processor. Under this final rule, this requirement does not change. However, each vessel operator must correctly identify for the processor, the co-op code that should be assigned to each delivery. In the event that a vessel is making a single delivery on behalf of more than one cooperative, the processor must submit a separate delivery report for each cooperative that identifies the tonnage of pollock that is assigned to each cooperative. Cooperatives must report any contracted landings by non-member vessels on their weekly reports to NMFS. Cooperatives also must provide a summary of all contracted fishing by non-member vessels in their preliminary and final annual reports.

**Liability.** For the purpose of liability, a non-member vessel under contract to a cooperative is considered to be a member of the cooperative for the

duration of the terms of the contract. This means that the members of the cooperative may be held jointly and severally liable under § 679.61 for certain fishing violations made by the operator of the contracted vessel.

**Effects of contract fishing on future qualification for membership.** Under this final rule, BSAI pollock landings made by a vessel while under contract to another cooperative would not be used to determine the vessel's qualification for future membership in a cooperative. Only landings attributed to the vessel's home cooperative will be used to determine which cooperative the vessel is eligible to join in a future year. The purpose of this measure is to prevent contracted fishing activity from affecting which cooperative a vessel is eligible to join in the subsequent fishing year.

#### Response to Comments

A Notice of Availability of Amendment 69 was published in the **Federal Register** on July 5, 2002 (67 FR 44794), inviting comments on the FMP amendment through September 3, 2002. NMFS received two comment letters on Amendment 69, both of which supported approval of the Amendment. On October 3, 2002, after consideration of the comments received, the Secretary approve Amendment 69 in its entirety.

A proposed rule to implement Amendment 69 was published in the **Federal Register** on August 23, 2002 (67 FR 54610), with comments invited through October 7, 2002. NMFS received two comment letters on the proposed rule which are summarized in the following three comments:

**Comment 1:** The commenters believe it is important to note that Amendment 69 would actually relax regulatory requirements on participants in the fisheries to allow more operational flexibility. This flexibility is very important to independently-owned catcher vessels, which in many cases do not have adequate options in their own cooperatives. Amendment 69 would provide that flexibility.

**Response:** The Final Regulatory Flexibility Analysis prepared for Amendment 69 came to the same conclusion.

**Comment 2:** The commenters believe it is important to note that this amendment has been supported by substantially all affected harvesters and processors throughout the Council process. Furthermore, throughout the entire Council process no opposition to this action arose.

**Response:** NMFS has not received any indication of opposition to this action.

**Comment 3:** The commenters noted that two major goals of the AFA were the rationalization and de-capitalization of the Bering Sea harvesting fleet. Amendment 69 will further both goals by providing inshore cooperatives with necessary flexibility and the ability to employ the optimum number and type of harvesting vessels.

Response. Comment noted.

#### Changes from the Proposed Rule

The structure and numbering of the paragraphs in this final rule were revised from the supplemental proposed rule published on August 23, 2002 (67 FR 54610). These changes were necessary to ensure that the paragraph numbering in this final rule is consistent with the final rule implementing AFA-related Amendments 61/61/13/8 (67 FR 79692, December 30, 2002), which this final rule amends. No other changes were made from the supplemental proposed rule.

#### Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 69 is necessary for the conservation and management of the BSAI pollock fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which describes the impact this final rule may have on small entities. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) and its findings. A copy of the FRFA is available from NMFS (see **ADDRESSES**). No comments on the IRFA were received during the comment period that would result in findings that differ from those previously described. A description of the impacts of this action on small entities was provided in the proposed rule (67 FR 54610, August 23, 2002). In summary, this final rule modifies an existing form to allow a cooperative to identify a non-member vessel with which the cooperative intends to contract. None of the cooperatives impacted by this final rule are small entities. NMFS is aware of no existing relevant Federal rules which duplicate, overlap, or conflict with this final rule.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under Control Number 0648-0401.

Public reporting burden for recordkeeping and reporting under AFA is as follows: Five minutes to submit a copy of the cooperative contract; 5 minutes to complete the catcher vessel cooperative pollock catch report; 8 hours to complete the cooperative preliminary report; and 8 hours to complete the annual written cooperative final report.

This rule also contains a proposed revision to this information collection that has been submitted to OMB for approval. The revision would require inshore cooperatives that wish to contract with a non-member vessel to harvest a portion of the cooperatives' annual pollock allocation to submit a completed contract fishing application to the Alaska Region, NMFS. Public reporting burden for this collection is estimated to be 30 minutes to complete the application and submit it to NMFS. The number of annual respondents is not expected to exceed 8, which is the maximum number of inshore cooperatives, as provided by the AFA.

Public comment is sought regarding the revision: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see ADDRESSES above) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attention: NOAA Desk Officer).

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.

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

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: February 5, 2003.

**William T. Hogarth,**  
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:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57.

2. In § 679.4, paragraph (1)(6)(ii)(D)(2)(iii) is added to read as follows.

**§ 679.4 Permits.**

\* \* \* \* \*

- (1) \* \* \*
- (6) \* \* \*
- (ii) \* \* \*
- (D) \* \* \*
- (2) \* \* \*

(iii) *Harvests under contract to a cooperative.* Any landings made by a vessel operating under contract to an inshore cooperative in which it was not a member will not be used to determine eligibility under paragraph (1)(6)(ii)(D)(2).

\* \* \* \* \*

3. In § 679.7, paragraph (k)(5)(i) is revised to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

- (k) \* \* \*
- (5) \* \* \* (i) *Overages by vessel.* Use an AFA catcher vessel listed on an AFA inshore cooperative fishing permit, or under contract to a fishery cooperative under § 679.62(c), to harvest non-CDQ BSAI pollock in excess of the fishery cooperative's annual allocation of pollock specified under § 679.62.

\* \* \* \* \*

4. In § 679.61, paragraph (a) is revised to read as follows:

**§ 679.61 Formation and operation of fishery cooperatives.**

(a) *Who is liable for violations by a fishery cooperative and cooperative members?* A fishery cooperative must comply with the provisions of this section. The owners and operators of vessels that are members of a fishery cooperative, including vessels under contract to a cooperative, are responsible for ensuring that the fishery cooperative complies with the directed fishing, sideboard closures, PSC limits and other allocations and restrictions that are applicable to the fishery cooperative. The owners and operators of vessels that are members of a fishery cooperative, including vessels under contract to a cooperative, are responsible for ensuring that all fishery cooperative members comply with the

directed fishing, sideboard closures, PSC limits and other allocations and restrictions that are applicable to the fishery cooperative.

\* \* \* \* \*

5. In § 679.62, paragraph (b) is revised and a new paragraph (c) is added to read as follows:

**§ 679.62 Inshore sector cooperative allocation program.**

\* \* \* \* \*

(b) *What are the restrictions on fishing under a cooperative fishing permit?* A cooperative that receives a cooperative fishing permit under § 679.4(1)(6) must comply with all of the fishing restrictions set out in this subpart. The owners and operators of all the member vessels that are named on an inshore cooperative fishing permit and the owners and operators of any vessels under contract to the cooperative under paragraph (c) of this section are jointly and severally responsible for compliance with all of the requirements of a cooperative fishing permit pursuant to § 679.4(1)(6).

(1) *What vessels are eligible to fish under an inshore cooperative fishing permit?* Only catcher vessels listed on a cooperative's AFA inshore cooperative fishing permit or vessels under contract to the cooperative under paragraph (c) of this section are permitted to harvest any portion of an inshore cooperative's annual pollock allocation.

(2) *What harvests accrue against an inshore cooperative's annual pollock allocation?* The following catches will accrue against a cooperative's annual pollock allocation regardless of whether the pollock was retained or discarded:

(i) *Member vessels.* All pollock caught by a member vessel while engaged in directed fishing for pollock in the BSAI by a member vessel unless the vessel is under contract to another cooperative and the pollock is assigned to another cooperative.

(ii) *Contract vessels.* All pollock contracted for harvest and caught by a vessel under contract to the cooperative under paragraph (c) of this section while the vessel was engaged in directed fishing for pollock in the BSAI.

(3) *How must cooperative harvests be reported to NMFS?* Each inshore pollock cooperative must report its BSAI pollock harvest to NMFS on a weekly basis according to the recordkeeping and reporting requirements set out at § 679.5(o).

(c) *Contract fishing by non-member vessels.* A cooperative that wishes to contract with a non-member vessel to harvest a portion of the cooperative's annual pollock allocation must comply with the following procedures.

(1) *How does a cooperative contract with a non-member vessel?* A cooperative that wishes to contract with a non-member vessel must submit a completed contract fishing application to the Alaska Region, NMFS, in accordance with the contract fishing application instructions.

(2) *What information must be included on a contract fishing application?* The following information must be included on a contract fishing application:

(i) *Co-op name(s)*. The names of the cooperative or cooperatives that wish to contract with a non-member vessel.

(ii) *Designated representative(s)*. The names and signatures of the designated representatives for the cooperatives that wish to contract with a non-member vessel and the vessel's home cooperative.

(iii) *Vessel name*. The name and AFA permit number of the contracted vessel.

(iv) *Vessel owner*. The name and signature of the owner of the contracted vessel.

(v) *Harvest schedule*. A completed harvest schedule showing how all catch and any overages by the contracted vessel will be allocated between the contracting cooperative (or cooperatives) and the contract vessel's home cooperative. In the event that multiple cooperatives are jointly contracting with a non-member vessel, the harvest schedule must clearly specify how all catch and any overages will be allocated among the various cooperatives.

(3) *What vessels are eligible to conduct contract fishing on behalf of an inshore cooperative?* Only AFA catcher vessels with an inshore fishing endorsement that are members of an inshore cooperative may conduct

contract fishing on behalf of another inshore cooperative.

(4) *Who must be informed?* A cooperative that has contracted with a non-member vessel to harvest a portion of its inshore pollock allocation must inform any AFA inshore processors to whom the vessel will deliver pollock while under contract to the cooperative prior to the start of fishing under the contract.

(5) *How must contract fishing be reported to NMFS?* An AFA inshore processor that receives pollock harvested by a vessel under contract to a cooperative must report the delivery to NMFS on the electronic delivery report by using the co-op code for the contracting cooperative rather than the co-op code of the vessel's home cooperative.

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