

(f)(2), (f)(3), and (f)(4) of this AD inoperative. When the actions required in paragraph (i) of this AD are accomplished, dispatch with any of the equipment specified in paragraphs (f)(1), (f)(2), (f)(3), and (f)(4) inoperative is allowed in accordance with the provisions and limitations specified in the Master Minimum Equipment List (MMEL).

**Note 1:** The MMELs currently allow flight/dispatch with any or all of the equipment specified in paragraphs (f)(1), (f)(2), (f)(3), and (f)(4) inoperative under certain conditions. This AD supersedes the MMEL or the approved Minimum Equipment List (MEL) for any operator. Paragraph (i) of this AD provides the required terminating action for the dispatch restrictions.

(1) Dispatch with Secondary flight display system inoperative, as allowed in section 34-2, item 5, of the Dassault F2000EX MMEL or the Dassault F900EX MMEL, as applicable, is prohibited.

(2) Dispatch with Non-stabilized magnetic (standby) compass inoperative, as allowed in section 34-2, item 6, of the Dassault F2000EX MMEL or the Dassault F900EX MMEL, as applicable, is prohibited.

(3) Dispatch with UP-DN manual regulator in pressurized flight inoperative, as allowed in section 21-5, item 2, of the Dassault F2000EX MMEL; or in section 21-5, item 3, of the Dassault F900EX MMEL; as applicable; is prohibited.

(4) Dispatch with Digital electronic engine computers (automatic mode) inoperative, as allowed in section 73-1, item 1, sub-item 1, of the Dassault F900EX MMEL is prohibited.

#### Airplane Flight Manual (AFM) Revision

(g) Within 72 hours after the effective date of this AD, revise the Limitations section of the AFM as required in paragraphs (g)(1) and (g)(2) of this AD, as applicable.

(1) Revise Dassault Falcon F2000EX AFM, DGT88898, by inserting a copy of Dassault Temporary Change (TC) 12, dated January 26, 2005.

(2) Revise Dassault Falcon 900EX AFM, DGT84972, by inserting a copy of Dassault TC 14, dated January 12, 2005.

#### Inspection

(h) Within 30 days after the effective date of this AD, do an inspection to check the integrity of the avionics systems communication bus (ASCB) for any faults, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F2000EX-58, dated January 10, 2005; or Dassault Service Bulletin F900EX-256, dated January 10, 2005; as applicable. If any fault is found during the inspection, before further flight, repair the ASCB in accordance with a method approved by either the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

#### Terminating Action

(i) Within 90 days after the effective date of this AD, install an avionics software update to the Honeywell Primus Epic system in accordance with the Accomplishment Instructions of Dassault Service Bulletin F2000EX-59, dated February 2, 2005; or

Dassault Service Bulletin F900EX-254, dated February 2, 2005; as applicable. Doing this software update ends the requirements of paragraph (h) of this AD, and the dispatch restrictions and AFM revisions required by paragraphs (f) and (g) of this AD may be removed.

#### No Reporting Requirement

(j) Although the service bulletins referenced in this AD specify to submit information to the manufacturer, this AD does not include that requirement.

#### Alternative Methods of Compliance (AMOCs)

(k) The Manager, International Branch, ANM-116, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

#### Related Information

(l) French emergency airworthiness directives UF-2005-024, dated January 27, 2005; and UF-2005-025, dated January 27, 2005; also address the subject of this AD.

#### Material Incorporated by Reference

(m) You must use the service information that is specified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. (Only the title and List of Temporary Changes pages of Dassault Temporary Changes 12 and 14 contain the document issue date; no other page of these documents contain this information.) The Director of the Federal Register approves the incorporation by reference of those documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. You can review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, Nassif Building, Washington, DC; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

| Service information                         | Date              |
|---|-------------------|
| Dassault Service Bulletin F2000EX-58.       | January 10, 2005. |
| Dassault Service Bulletin F2000EX-59.       | February 2, 2005. |
| Dassault Service Bulletin F900EX-254.       | February 2, 2005. |
| Dassault Service Bulletin F900EX-256.       | January 10, 2005. |
| Dassault Falcon 2000EX Temporary Change 12. | January 26, 2005. |
| Dassault Falcon 900EX Temporary Change 14.  | January 12, 2005. |

Issued in Renton, Washington, on February 14, 2005.

**Ali Bahrami,**

Manager, Transport Airplane Directorate, Aircraft Certification Service.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 902

#### 50 CFR Part 679

[Docket No. 041117321-5035-02; I.D. 110904D]

RIN 0648-AS37

### Fisheries of the Exclusive Economic Zone Off Alaska; Proposed Information Collection; Comment Request; Aleutian Islands Subarea Directed Pollock Fishery

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule that implements Amendment 82 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). Amendment 82 establishes a framework for the management of the Aleutian Islands subarea (AI) directed pollock fishery. This action is necessary to implement provisions of the Consolidated Appropriations Act of 2004 that require the AI directed pollock fishery to be allocated to the Aleut Corporation for the purpose of economic development in Adak, Alaska. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, the Consolidated Appropriations Act of 2004, and other applicable laws.

The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Effective February 24, 2005.

Written comments on the renewal of collection-of-information must be submitted on or before May 2, 2005.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for the proposed rule (69 FR 70589, December 7, 2004), the 2000 FMP level biological opinion, and the 2001 biological opinion and its June 2003 supplement for the Steller sea lion protection measures may be obtained by mail from NMFS Alaska Region, P. O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Durall, or from the NMFS Alaska Region website at [www.fakr.noaa.gov](http://www.fakr.noaa.gov).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS, Alaska Region.

Direct all written comments regarding the renewal of collection-of-information to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Melanie Brown, 907-586-7228 or [melanie.brown@noaa.gov](mailto:melanie.brown@noaa.gov). Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, 907-586-7008 or [patsy.bearden@noaa.gov](mailto:patsy.bearden@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) are managed under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Council submitted Amendment 82 for review by the Secretary of Commerce. A notice of availability of the amendment was published in the **Federal Register** on November 16, 2004 (69 FR 67107), with comments invited through January 18, 2005. The proposed rule for Amendment 82 was published in the **Federal Register** on December 7, 2004 (69 FR 70589), with comments invited through January 21, 2005. Five letters of comments were received on the notice of availability and the proposed rule. Comments are summarized and responded to under Comments and Responses, below. Amendment 82 was approved by the Secretary of Commerce on February 09, 2005.

## Background

The Consolidated Appropriations Act of 2004 (Public Law (Pub. L.) 108-199) was signed into law on January 23, 2004. Section 803 of this law allocates the AI directed pollock fishery to the Aleut Corporation for economic development in Adak, Alaska. Throughout this preamble, the term "Aleut Corporation" will mean the Aleut Corporation or its authorized agent(s) for purposes of describing activities required for managing the AI directed pollock fishery.

Public Law 108-199 requires the Aleut Corporation's selection of participants in the AI directed pollock fishery and limits participation to American Fisheries Act (AFA) (Pub. L. 105-277, Title II of Division C) qualified entities and vessels 60 feet (18.3 m) or less in length overall (LOA) with certain endorsements. Section 803(b) of Pub. L. 108-199 restricts the annual harvest of pollock in the AI directed pollock fishery by vessels 60 feet (18.3 m) LOA or less to less than 25 percent of the annual allocation until 2009, and to less than 50 percent of the annual allocation prior to 2013. These vessels must receive 50 percent of the annual directed pollock fishery allocation starting in 2013 and beyond. Amendment 82 includes the measures necessary to manage the AI directed pollock fishery.

The Council adopted Amendment 82 in June 2004 and clarified a portion of its action in October 2004. Amendment 82 revises the FMP to establish the management framework for the AI directed pollock fishery. This final rule implements the following management provisions for the AI directed pollock fishery:

1. Restrictions on the harvest specifications for the AI directed pollock fishery, including limits on the size of the annual AI pollock total allowable catch (TAC), limits on the A season harvest of TAC, allocation requirements for vessels 60 feet (18.3 m) LOA or less, and reallocation provisions for unharvested amounts of the AI pollock allocations;

2. Provisions for fishery monitoring, including the Aleut Corporation's selection and NMFS's approval of vessels and processors participating in the AI directed pollock fishery, restrictions on possession of pollock from the AI and either the Bering Sea subarea (BS) or the Gulf of Alaska on a vessel at one time, scale requirements, catch monitoring control plans (CMCPs) for shoreside and stationary floating processors, and Aleut Corporation's and participants' responsibility for ensuring

the harvest does not exceed the AI directed pollock fishery allocation;

3. Reporting requirements; and
4. A new AI Chinook salmon prohibited species catch limit that, when reached, closes the directed pollock fishery in the existing Chinook salmon savings areas in the AI.

Prior to Pub. L. 108-199, the AI directed pollock fishery was managed pursuant to the AFA. The AFA allocated the AI directed pollock fishery to specific harvesters and processors identified in the AFA and specified in regulations at 50 CFR part 679. Public Law 108-199 supersedes portions of the AFA and allocates all the AI directed pollock fishery to the Aleut Corporation. Implementation of Pub. L. 108-199 requires the amendment of AFA provisions in the FMP and in the regulations at 50 CFR part 679 to provide for the allocation of the AI directed pollock fishery to the Aleut Corporation and for the management of this fishery.

The allocation of pollock to the AFA directed pollock fisheries under section 206(b) of the AFA now only pertains to the BS pollock TAC given that Pub. L. 108-199 fully allocates the AI directed pollock fishery to the Aleut Corporation. Thus, AFA restrictions associated with the directed pollock fishery, including excessive harvesting and processing shares under section 210(e) of the AFA, now apply only to the AFA allocations of BS pollock.

Similarly, AFA groundfish sideboard provisions under section 211 of the AFA do not apply to AFA entities while those entities are participating in the AI directed pollock fishery. Groundfish species taken incidental to the AI directed pollock fishery are deducted from the relevant TACs for those species, and fisheries for those species are managed by NMFS accordingly.

## Comments and Responses

Twelve unique comments from one e-mail regarding Amendment 82 and one e-mail and three letters regarding the proposed rule were received. The comments are summarized and responded to below.

*Comment 1:* The comment period for the proposed rule should be extended by 120 days.

*Response:* The commentor provided no reason for the comment period extension. Because the commentor offered no justification for extending the comment period, and because NMFS considers the comment period adequate, the comment period remained 45 days.

*Comment 2:* All quotas should be cut by 50 percent this year and 10 percent

each succeeding year. Marine sanctuaries must be established.

*Response:* This action establishes the management provisions for the AI directed pollock fishery and does not specify groundfish harvest levels. The harvest specifications are established by separate rulemaking at the beginning of each year. NMFS encourages the commentor to submit comments on the proposed harvest specifications when they are published in the **Federal Register** for public comment in approximately December of each year.

Additionally, this action does not address the creation of marine sanctuaries. The January 2004 draft environmental impact statement (EIS) for essential fish habitat discusses the effects of fishing on sensitive habitat features and evaluates a range of options for minimizing adverse effects, such as closing areas of rockfish habitat to bottom trawling. Further information on this draft EIS may be found at the NMFS Alaska Region website at [www.fakr.noaa.gov](http://www.fakr.noaa.gov).

*Comment 3:* The Pew Foundation and United Nations (UN) reports on overfishing are incorporated into the comments from this commentor.

*Response:* This action raises no issues related to overfishing. NMFS manages the groundfish fisheries on a sustainable basis, and notes that no overfishing is occurring for groundfish stocks off Alaska. The current condition of groundfish stocks is detailed in the Stock Assessment and Fishery Evaluation reports which are available on the NMFS Alaska Region website at <http://www.fakr.noaa.gov/npfmc/SAFE/SAFE.htm>. The commentor's specific concerns and their relationship to these reports are not identified. Because no further details are provided by the commentor, NMFS is unable to respond further to this comment.

*Comment 4:* The commentor provided a November 18, 2004, Associated Press article regarding the UN recommendations for banning of high seas bottom trawling. The commentor was concerned that money influences Council recommendations which allow the use of fishery resources that are owned by all of the people of the nation.

*Response:* This action establishes management provisions for the AI directed pollock fishery. Pollock is harvested using pelagic trawl gear, which does not have as much of an impact on the ocean bottom as bottom trawling gear. The AI directed pollock fishery is authorized by this final rule in the exclusive economic zone (EEZ) off Alaska and not in the high seas that extend beyond the EEZ. The commentor did not provide further information

regarding the relationship between the UN high seas bottom trawling ban article and this action.

Even though for-profit entities work with the Council in developing recommendations for management of Alaska groundfish harvest, only the Department of Commerce has the approval authority for Council recommendations. Decisions are made considering the long term conservation and sustainability of the resource for the benefit of the nation.

*Comment 5:* The commentor disapproves of, objects to, and opposes the proposed rule. It does not promote the Magnuson-Stevens Act. Economic development can change an area to resemble an urban area in the United States. The economic development in Adak, Alaska is not needed. Adak's economic development should not be supported by overfishing.

*Response:* Public Law 108-199 requires that, if a directed pollock fishery is open in the AI, all of the quota would go to the Aleut Corporation for economic development in Adak, Alaska. This is a statutory mandate that cannot be changed by NMFS. The nature of the economic development will be decided by the Aleut Corporation and is unlikely to resemble large urban areas of the United States, considering the Aleut culture and the remote location of Adak. No overfishing is occurring in the groundfish stocks off Alaska and therefore, the AI directed pollock fishery will not result in overfishing supporting economic development.

*Comment 6:* The commentor opposes NMFS' action because it will result in seals, sea lions, and other marine life being starved or destroyed.

*Response:* NMFS analyzed the effects of this action on the human environment in the EA/RIR for this action (see **ADDRESSES**) and found no significant impacts. NMFS recognizes that the AI directed pollock fishery may have impacts on marine mammals and other sea life, but these effects were found to be insignificant. Pollock is harvested using pelagic trawl gear which has less adverse effect on the environment than other types of gear. The pollock fishery has a relatively small rate of bycatch of other marine organisms compared to other groundfish fisheries, and the pollock fishery will be managed in accordance with the Steller sea lion protection measures. Fishing will be conducted 20 nautical miles from shore in almost all of the AI, thereby reducing potential interaction with marine mammals and other organisms in this sensitive, near-shore marine habitat. The pollock harvest amounts will be at or well below the

acceptable biological catch (ABC), reducing the potential for competition for prey with marine mammals.

*Comment 7:* The inseason management flexibility to raise and lower the incidental catch allowance (ICA) needs to be included in the regulations for the AI directed pollock fishery.

*Response:* NMFS has implemented this provision in the final rule. Section 679.20(a)(5)(iii)(B)(1)(ii) provides for the Regional Administrator to determine the amount of pollock that is needed as incidental catch in other groundfish fisheries in the AI and to deduct that amount from the annual allocation of AI pollock. The Regional Administrator should be able to reallocate the AI ICA during the fishing year if the ICA is not expected to be fully taken in the same manner as provided for in the BS fishery under § 679.20(a)(5)(i)(A)(1). The provisions in § 679.20(a)(5)(i)(A)(1) allow the Regional Administrator to reallocate pollock either to or from the directed fishing allowance and the ICA by publication in the **Federal Register**.

Without a mechanism to reallocate unharvested ICA, the potential exists that the unused pollock quota may be forgone. NMFS agrees that the regulations should provide for the full harvest of pollock quota established through the harvest specifications and avoid constraints on other groundfish fisheries from inadequate amounts of pollock ICA. Therefore, NMFS adds text to § 679.20(a)(5)(iii)(B)(2)(ii) to authorize the Regional Administrator to reallocate anticipated unused ICA to the AI directed pollock fishery or to reallocate pollock from the directed pollock fishery to the ICA during the fishing year by publication in the **Federal Register**.

*Comment 8:* The Regional Administrator's seasonal apportionment of the ICA should be provided for in the regulations for Amendment 82.

*Response:* NMFS has implemented this provision in the final rule. Proposed § 679.20(a)(5)(iii)(B)(3)(i), limits the harvest of AI pollock in the A season to no more than 40 percent of the ABC. This harvest includes the directed pollock fishery, Community Development Quota (CDQ) directed fishing allowance, and the ICA. To establish the A season directed pollock fishery allocation within the seasonal limit, the Regional Administrator must determine the amount of ICA that will be necessary to support other groundfish fisheries during the A season. Therefore, the final rule is changed from the proposed rule by including a provision in § 679.20(a)(5)(iii)(B)(2) for the Regional

Administrator to determine the seasonal apportionment of the ICA.

*Comment 9:* The Regional Administrator should have the discretion to reapportion amounts of the ICA between seasons, as provided for the directed pollock fishery.

*Response:* NMFS has made changes from the proposed rule in the final rule to implement this provision. Because the Regional Administrator may not be able to accurately predict the amount of ICA needed in the A and B seasons, the Regional Administrator should have discretion to reapportion the ICA to the B season, if needed. The final rule will authorize the Regional Administrator to adjust seasonal apportionments of the ICA to ensure other groundfish fisheries are not constrained by a lack of ICA in the B season. Therefore, § 679.20(a)(5)(iii)(B)(3)(iv) is added to authorize the seasonal reapportionment of the ICA.

*Comment 10:* Non-AFA qualified catcher/processors and motherships should be allowed to participate in the AI directed pollock fishery. The Council's recommendation that all catcher/processors and motherships be AFA qualified goes beyond the requirements specified in Pub. L. 108-199, which restricted only the harvest of pollock to AFA qualified vessels greater than 60 feet (18.3 m) in length overall (LOA). No justification or rationale was provided by the Council for why catcher/processors and motherships should be AFA qualified.

Requiring all catcher/processors and motherships to be AFA qualified hinders the economic development of Adak, Alaska. The head-and-gut fleet operating in the AI have several catcher/processors that could be available to process pollock. The inclusion of these vessels in the directed pollock fishery would provide the Aleut Corporation additional alternatives for processing their pollock allocation, particularly for the small vessel fleet. Small catcher vessels could pass pollock harvests to the non-AFA qualified catcher/processors for processing. Allowing non-AFA qualified catcher/processors would provide additional locations for processing small vessel fleet pollock. Additional processing locations for the small vessel fleet have important safety and economic considerations based on: (1) the limited areas for fishing due to the Steller sea lion protection measures, (2) the severe winter weather in the AI, and (3) the potential for harvested pollock to be stranded on the catcher vessel if AFA qualified catcher/processors or motherships are engaged in the BS pollock fishery.

*Response:* The Council recommended that all catcher/processors and motherships participating in the AI directed pollock fishery be AFA qualified to ensure adequate monitoring provisions are used for the management of this quota-based fishery. These vessels are required to maintain AFA pollock monitoring requirements if they are used to participate in the AI directed pollock fishery. The Council recommendations do not conflict with the provisions of Pub. L. 108-199. NMFS has determined that the Council's recommendation is necessary to ensure accurate monitoring and verification of the harvest of the AI directed pollock fishery allocation. Vessels within the head-and-gut fleet are not required to meet the same monitoring requirements as AFA-qualified catcher/processors and motherships, and therefore, do not meet the monitoring needs to ensure effective management of the directed pollock fishery allocation.

NMFS agrees that special considerations will be needed for the small vessel fleet participating in this fishery. We also are concerned about the safety for small vessels in offshore waters during the winter and about the monitoring of catch from such vessels. This will be particularly important when the small vessel fleet is allocated 50 percent of the directed pollock fishery starting in 2013. NMFS will continue to work with the Council and industry to review the effectiveness of the provisions for the AI directed pollock fishery and will seek ways to balance the economic, safety, and monitoring concerns of this program.

*Comment 11:* Non-AFA qualified stationary floating processors should not be required to have a CMCP, as required for shoreside processors. Catcher/processors acting as motherships should have to meet the AFA mothership standards for observer coverage. Requiring a CMCP for non-AFA qualified catcher/processors is completely unreasonable.

*Response:* Under § 679.4 (b) and (f), Federal fisheries permits may be issued for catcher vessels, catcher/processors, and motherships for groundfish harvest, and Federal processor permits may be issued for shoreside processors and stationary floating processors. Stationary floating processors are vessels of the United States operating as processors in the Alaska State waters that remain anchored or otherwise remain stationary in a single geographic location while receiving or processing groundfish harvested in the GOA or BSAI. A catcher/processor cannot be used as a stationary floating processor

unless it meets the permitting and single geographic location requirements of a stationary floating processor. NMFS agrees that all catcher/processors and motherships processing pollock from the AI directed pollock fishery should meet AFA observer requirements. CMCPs are required only for shoreside processors and stationary floating processors to ensure that all catch is sorted and weighed and to ensure the facilities and practices to support an observer are provided. The practices used for processing pollock at shoreside processors and stationary floating processors are similar, and therefore, the CMCP requirement is applied to both types of processing facilities.

*Comment 12:* The December 2004 allocation of groundfish in the BSAI resulted in an increase of 4,460 mt for BS pollock and a reduction of non-pollock fisheries by the same amount to ensure the 2 million mt optimum yield is not exceeded. The Council policy requires funding the AI pollock allocation by reducing the BS pollock allocation. By increasing the BS pollock allocation in the harvest specifications and subsequently reducing the non-pollock fisheries allocations, the non-pollock fisheries are funding the AI pollock allocation. Any unused AI pollock should be returned to the BS fisheries in proportion to the funding, approximately 75 percent for the BS pollock fishery and 25 percent for the non-pollock fisheries. This may be accomplished by reallocating the unused AI pollock funded from the non-pollock fisheries into a non-specified reserve available to the non-pollock fisheries.

*Response:* The proposed BS pollock initial TAC was 1,327,005 mt (69 FR 70974, December 8, 2004), and the final initial TAC recommended by the Council is 1,330,650 mt. The Council has recommended a final initial pollock TAC 3,645 mt higher than the proposed initial TAC for BS pollock. NMFS has not yet published final initial TACs for the groundfish fisheries, but is aware that the sum of the harvest levels must not exceed the 2 million mt optimum yield maximum.

Each year, NMFS considers the Council's harvest recommendations for the groundfish fisheries. The Council's policy for funding the AI directed pollock fishery from the BS pollock fishery is specified in Amendment 82 to the FMP. The Council recommended that all unharvested AI pollock be reallocated to the BS pollock fishery because the intent is to restore the pollock harvest to the BS pollock fishery. Thus, the Council has recommended that unused AI pollock

be reallocated to the BS pollock fishery rather than attempting complicated proportional reallocations. NMFS approved this policy as a provision of Amendment 82.

### Regulatory Amendments and Changes from the Proposed Rule in the Final Rule

Detailed descriptions of the regulatory amendments required to implement the management provisions for the AI directed pollock fishery pursuant to Amendment 82 and Pub. L. 108-199 were published in the proposed rule for this action (69 FR 70589, December 7, 2004). Several changes are made in the final rule from the proposed rule, as detailed below.

#### Section 679.4 Permits

Proposed § 679.4(m)(2) specifies the information that the Aleut Corporation would have been required to submit to NMFS in the application for approval of each participant in the AI directed pollock fishery. For stationary floating processors and shoreside processors this information would have included an approved CMCP (proposed § 679.4(m)(2)(iii)). NMFS has determined that submission of the CMCP at the time of application for participant approval is an unwarranted burden, and therefore, does not implement proposed § 679.4(m)(2)(iii) in this final rule. However, submission and approval of a CMCP is nevertheless required as proposed before a shoreside processor or a stationary floating processor may lawfully process pollock harvested in the AI directed pollock fishery (see §§ 679.7(l)(3)(iii) and 679.28(g)(2)).

#### Section 679.20 General Limitations

Based on comments received, three changes are made to the proposed provisions for the management of the incidental catch allowance (ICA) in paragraph (a)(5)(iii) which establishes the AI pollock allocations and seasonal apportionments. See the responses to Comments 7, 8 and 9 above for details.

#### Section 679.21 Prohibited Species Bycatch Management

The proposed rule included a separate Chinook salmon prohibited species catch (PSC) limit of 700 fish for the AI directed pollock fishery. If the amount of Chinook salmon bycatch in the AI subarea were to exceed the 700 fish limit, only the AI portion of the Chinook salmon savings areas would be closed (area 1 on Figure 8 to 50 CFR part 679).

Under paragraph (e)(1)(i), 7.5 percent of each PSC amount is allocated to the CDQ fisheries. PSC restrictions for the

CDQ program are based on the portions of the PSC amounts allocated to the CDQ program. Because the CDQ sector will be harvesting pollock in the AI, a portion of the salmon PSC limit must be allocated to the CDQ sector to ensure that CDQ participants also will be subject to the salmon area closure based on the PSC limit established for the CDQ sector. Therefore, NMFS revises paragraph (e)(1)(i) accordingly.

#### Section 679.60 Authority and Related Regulations

The citation for the Department of Transportation regulations that implement provisions of the AFA is corrected in the final rule to 46 CFR part 356.

#### Section 679.63 Catch Weighing Requirements for Vessels and Processors

The proposed rule revised paragraph (c) to remove references to AI pollock for AFA inshore processors' requirements for catch weighing, observer coverage, and prior notification. AI pollock likely will not be processed by any inshore facilities in 2005. The only inshore facilities that may be able to process AI pollock are AFA qualified facilities in Dutch Harbor. These facilities already meet AFA catch weighing and observer requirements for all pollock received and can easily provide the same for any AI pollock that may be delivered. To ensure consistency in the monitoring of pollock landed at AFA facilities, NMFS has determined that maintaining the same level of catch weighing and observer requirements for all pollock delivered at AFA inshore processors is necessary. Thus, NMFS has determined that the revisions to this section are not necessary and has removed them in the final rule.

NMFS is further considering catch monitoring and observer provisions for non-AFA qualified shoreside and stationary floating processors that may process AI pollock and intends to consider additional rulemaking in the future. The level of monitoring and verification for a quota-based program such as the AI directed pollock fishery should be similar to that implemented for AFA fisheries to enhance accurate quota management. Current provisions in this final rule do not provide for all AI pollock delivered to shoreside and stationary floating processors to be observed during catch weighing and sorting. Because neither non-AFA shoreside processors nor stationary floating processors are likely to be used for the AI directed pollock fishery in the immediate future, NMFS has determined that this is not a significant

monitoring or enforcement concern at this time.

### Classification

The Regional Administrator determined that Amendment 82 is necessary for the conservation and management of the BSAI groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The AI directed pollock fishery will remain closed until the effective date of the final rule. The Council made final recommendations for this program in October 2004, and NMFS commenced the rulemaking process as soon as possible after receiving the recommendations. Pollock harvested in the early part of the year usually bears roe which is one of the most valuable components of the total pollock harvest in the year. In 2005, the pollock roe is maturing at a faster rate than anticipated and is likely to reach peak maturity at the end of February.

All of the participants in the AI directed pollock fishery are AFA vessels which also are used in the Bering Sea pollock fishery. These participants have completed negotiating their contracts for Bering Sea and AI pollock harvest for the year. Because pollock is more valuable during the roe producing season Bering Sea pollock fishery, a short window of opportunity exists in late February and early March for the Aleut Corporation to harvest AI pollock. Industry representatives have stated that they are ready to participate in the AI directed pollock fishery on February 28, 2005. They will be moving their vessels from the Bering Sea to the AI in preparation for the AI directed pollock fishery. A delay in the effectiveness of the rule would result in severe economic impact on the AI directed pollock fishery participants. The participants would be unable to harvest AI pollock during the roe season, would lose money in moving the vessels to the AI without the opportunity to harvest in the AI at the time period that they are available, and the lost revenue cannot be recovered by pollock harvested at a later time in the year due to less valuable fish being available.

The potential loss in revenue would prevent the Aleut Corporation from meeting the statutory goal of economic development in Adak, Alaska for this year. Moreover, the Aleut Corporation has worked closely with NMFS and the Council in the development of this rule and is aware of its general requirements and is prepared to meet them. In addition, the directed pollock fishery in the AI has been closed since 1999; consequently, no current participants

exist who might require time to conform ongoing fishing activities to the requirements of this final rule. For these reasons, the Assistant Administrator for Fisheries finds good cause to waive the 30-day delay in effectiveness for the final rule and makes its provisions effective upon filing with the Office of the Federal Register.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved on February 18, 2005, by Office of Management and Budget (OMB) under a request for emergency clearance. Public reporting burden per response for these requirements are listed by OMB control number.

*OMB Control No. 0648-0206*

Federal fisheries permit application, 21 minutes; Federal processor permit application, 21 minutes.

*OMB Control No. 0648-0213*

Weekly production reports, 17 minutes; check-in/check-out report, shoreside processor, 8 minutes; check-in/check-out report, mothership or catcher/processor, 7 minutes; daily production report, 11 minutes; buying station report, 23 minutes; catcher vessel trawl gear daily fishing logbook (DFL), 18 minutes; catcher vessel longline or pot gear DFL, 28 minutes; shoreside processor daily cumulative production logbook (DCPL), 31 minutes; mothership DCPL, 31 minutes; catcher/processor longline and pot gear DCPL, 41 minutes; and catcher/processor trawl gear DCPL, 30 minutes.

*OMB Control No. 0648-0330*

Inshore processor catch monitoring and control plan, 40 hours.

*OMB control No. 0648-0334*

LLP permit, 1 hour.

*OMB Control No. 0648-0393*

AFA inshore processor permit application, 2 hours; AFA catcher vessel permit application, 2 hours; AFA

mothership, 2 hours; and AFA catcher/processor permit application, 0 hours.

*OMB Control No. 0648-0401*

Catcher vessel cooperative pollock catch report, 5 minutes; shoreside processor electronic logbook report, 35 minutes.

*OMB Control No. 0648-0513*

List of participating harvestors and processors in the AI directed pollock fishery, 32 hours; copy of NMFS' approval to participants, 4 hours; and appeals of NMFS' disapproval of participating harvestors or processors, 4 hours. This information collection has been approved for six months through an emergency request, and will be re-submitted for approval for a full three-year period.

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

Comments are invited on: (a) whether the proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection-of-information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection-of-information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of 0648-0513; they also will become a matter of public record.

Notwithstanding any other provision of law, no person is required to respond to, and no person shall 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.

Consultation under the Endangered Species Act was concluded for Amendment 82 on October 22, 2004. As a result of the consultation, the Regional Administrator determined that fishing activities under this rule are not likely to adversely affect endangered or

threatened species or their critical habitat. Pollock is an important prey species for the endangered and threatened Steller sea lion populations. The Steller sea lion protection measures evaluated in the 2000 and 2001 Biological Opinions (see **ADDRESSES**) were considered in the development of the management provisions of Amendment 82. The protection measures for Steller sea lions include spatial and temporal dispersion of pollock harvest. The pollock fishing closure areas in the AI would remain unchanged under Amendment 82 to ensure spatial dispersion of fishing effort. To temporally disperse harvest of prey species, the Steller sea lion protection measures apportion 40 percent of pollock harvest in the BSAI to the A season and 60 percent to the B season. Amendment 82 would continue to temporally disperse pollock harvest with no more than 40 percent of the ABC permitted to be harvested in the A season. The total harvest of pollock in the BS, including any reallocation of unharvested AI pollock, also will remain well below the ABC so that overall harvest would be in proportion to biomass and less likely to compete with Steller sea lions for prey.

**List of Subjects in 15 CFR Part 902 and 50 CFR Part 679**

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: February 22, 2005.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 15 CFR part 902, chapter IX, is amended as follows:

**15 CFR Chapter IX**

**PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT OMB CONTROL NUMBERS**

■ 1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) is amended by adding under 50 CFR the following entries in numerical order:

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

\* \* \* \* \*

(b) \* \* \*

| CFR part or section where the information collection requirement is located | Current OMB control number (All numbers begin with 0648-) |
|---|---|
| * * * *   | *   |
| 50 CFR  | *   |
| 679.4(m)(2)   | -0513   |
| 679.4(m)(4)   | -0513   |
| * * *   | *   |
| 679.5(q)  | -0513   |
| * * *   | *   |

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

**50 CFR Chapter VI**

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

■ 3. The authority citation for part 679 is revised to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

■ 4. In § 679.1, paragraph (k) is revised to read as follows:

**§ 679.1 Purpose and scope.**

\* \* \* \*

(k) *American Fisheries Act and AI directed pollock fishery measures.* Regulations in this part were developed by NMFS and the Council under the Magnuson-Stevens Act, the American Fisheries Act (AFA), and the Consolidated Appropriations Act of 2004 to govern commercial fishing for BSAI pollock according to the requirements of the AFA and the Consolidated Appropriations Act of 2004. This part also governs payment and collection of the loan, under the AFA, the Magnuson-Stevens Act, and Title XI of the Merchant Marine Act, 1936, made to all those persons who harvest pollock from the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

■ 5. In § 679.2, the definitions for “AFA catcher/processor,” “AFA catcher vessel,” “AFA crab processing facility,” “AFA entity,” “AFA inshore processor,” “AFA mothership,” “designated primary processor,” “fishery cooperative or cooperative,” “license limitation groundfish,” “listed AFA catcher/processor,” and “unlisted AFA catcher/processor,” are revised, and the definitions for “AI directed pollock

fishery,” “Aleut Corporation,” “Aleut Corporation entity,” and “designated contact for the Aleut Corporation” are added in alphabetical order to read as follows:

**§ 679.2 Definitions.**

\* \* \* \*

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

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

*AFA crab processing facility* means a processing plant, catcher/processor, mothership, floating processor or any other operation that processes any FMP species of BSAI crab, and that is affiliated with an AFA entity that processes pollock harvested by a catcher vessel cooperative operating in the inshore or mothership sectors of the BS pollock fishery.

*AFA entity* means a group of affiliated individuals, corporations, or other business concerns that harvest or process pollock in the BS directed pollock fishery.

*AFA inshore processor* means a shoreside processor or stationary floating processor permitted to process BS pollock under § 679.4(l)(5).

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

\* \* \* \*

*AI directed pollock fishery* means directed fishing for pollock in the AI under the allocation to the Aleut Corporation authorized at § 679.20(a)(5)(iii).

\* \* \* \*

*Aleut Corporation* means the Aleut Corporation incorporated pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

*Aleut Corporation entity* means a harvester or processor selected by the Aleut Corporation and approved by NMFS to harvest or process pollock in the AI directed pollock fishery.

\* \* \* \*

*Designated contact for the Aleut Corporation* means an individual who is designated by the Aleut Corporation for the purpose of communication with NMFS regarding the identity of selected AI directed pollock fishery participants and weekly reports required by § 679.5.

\* \* \* \*

*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 BS pollock allocation during the year in

which the AFA inshore cooperative fishing permit is in effect.

\* \* \* \*

*Fishery cooperative or cooperative* means any entity cooperatively managing directed fishing for BS pollock and formed under section 1 of the Fisherman’s Collective Marketing Act of 1934 (15 U.S.C. 521). In and of itself, a cooperative is not an AFA entity subject to excessive harvest share limitations, unless a single person, corporation or other business entity controls the cooperative and the cooperative has the power to control the fishing activity of its member vessels.

\* \* \* \*

*License limitation groundfish* means target species and the “other species” category, specified annually pursuant to § 679.20(a)(2), except that demersal shelf rockfish east of 140° W. longitude, sablefish managed under the IFQ program, and pollock allocated to the Aleutian Islands directed pollock fishery and harvested by vessels 60 feet (18.3 m) LOA or less, are not considered license limitation groundfish.

\* \* \* \*

*Listed AFA catcher/processor* means an AFA catcher/processor permitted to harvest BS pollock under § 679.4(l)(2)(i).

\* \* \* \*

*Unlisted AFA catcher/processor* means an AFA catcher/processor permitted to harvest BS pollock under § 679.4(l)(2)(ii).

\* \* \* \*

■ 6. In § 679.4, paragraphs (l)(1)(i), (l)(5)(iii), (l)(6)(ii)(B), (l)(6)(ii)(C)(2), (l)(6)(ii)(D)(1)(ii), (l)(6)(ii)(D)(2)(i), and (l)(6)(ii)(D)(2)(ii) are revised and paragraph (m) is added to read as follows:

**§ 679.4 Permits.**

\* \* \* \*

(l) \* \* \*

(1) \* \* \*

(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 BS and any shoreside processor, stationary floating processor, or mothership that receives pollock harvested in a non-CDQ directed pollock fishery in the BS 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. In addition, the owner of any vessel that is a member of a pollock cooperative in the BS must also have a valid AFA permit for every vessel that is a member of the cooperative, regardless of whether or not the vessel actually engages in

directed fishing for pollock in the BS. Finally, 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.

\* \* \* \* \*

(5) \* \* \*

(iii) *Single geographic location requirement.* An AFA inshore processor permit authorizes the processing of pollock harvested in the BS directed pollock fishery only in 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 pollock harvested from the BS subarea 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 pollock harvested in the BS subarea directed pollock fishery during a fishing year.

\* \* \* \* \*

(6) \* \* \*

(ii) \* \* \*

(B) *Designated cooperative processor.* The name and physical location of an 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 BS pollock catch;

(C) \* \* \*

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

\* \* \* \* \*

(D) \* \* \*

(1) \* \* \*

(ii) *LLP permit.* The vessel must be named on a valid LLP permit authorizing the vessel to engage in trawling for pollock in the Bering Sea subarea. If the vessel is more than 60 feet (18.3 m) LOA, the vessel must be named on a valid LLP permit endorsed for the AI to engage in trawling for pollock in the AI; and

\* \* \* \* \*

(2) \* \* \*

(i) *Active vessels.* The vessel delivered more pollock harvested in the BS inshore directed pollock fishery to the AFA inshore processor designated under paragraph (l)(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; or

(ii) *Inactive vessels.* The vessel delivered more pollock harvested in the BS inshore directed pollock fishery to the AFA inshore processor designated under paragraph (l)(6)(ii)(B) of this section than to any other shoreside processor or stationary floating processor during the last year in which the vessel delivered BS pollock harvested in the BS directed pollock fishery to an AFA inshore processor.

\* \* \* \* \*

(m) *Participation in the AI directed pollock fishery—(1) Applicability.* Harvesting pollock in the AI directed pollock fishery and processing pollock taken in the AI directed pollock fishery is authorized only for those harvesters and processors that are selected by the Aleut Corporation and approved by the Regional Administrator to harvest pollock in the AI directed pollock fishery or to process pollock taken in the AI directed pollock fishery.

(2) *Annual selection of participants by the Aleut Corporation.* Each year and at least 14 days before harvesting pollock in the AI directed pollock fishery or processing pollock harvested in the AI directed pollock fishery, a participant must be selected by the Aleut Corporation and the following information for each participant must be submitted by the designated contact to the Regional Administrator:

(i) Vessel or processor name;

(ii) Federal fisheries permits number issued under paragraph (b) of this section or Federal processor permit issued under paragraph (f) of this section; and

(iii) The fishing year which participation approval is requested.

(3) *Participant approval.* (i) Participants must have:

(A) A valid Federal fisheries permit or Federal processing permit, pursuant to paragraphs (b) and (f) of this section, respectively;

(B) A valid fishery endorsement on the vessel's U.S. Coast Guard documentation for the vessel's participation in the U. S. fishery; and

(C) A valid AFA permit under: paragraph (l)(2) of this section for all catcher/processors, paragraph (l)(3) of this section for all catcher vessels greater than 60 ft (18.3 m) LOA, or paragraph (l)(4) of this section for all motherships.

(ii) Each participant selected by the Aleut Corporation that meets the conditions under paragraph (m)(3)(i) of this section will be approved by the Regional Administrator for participation in the AI directed pollock fishery.

(iii) The Regional Administrator will provide to the designated contact for the

Aleut Corporation the identity of each approved participant and the date upon which participation in the AI directed pollock fishery may commence. The Aleut Corporation shall forward to the approved participants a copy of NMFS's approval letter before harvesting or processing occurs.

(iv) A copy of NMFS' approval letter for participating in the AI directed pollock fishery during the fishing year must be on site at the shoreside processor or stationary floating processor, or on board the vessel at all times and must be presented for inspection upon the request of any authorized officer.

(4) *Participant disapproval.* (i) The Regional Administrator shall disapprove any participant that does not meet the conditions under paragraph (m)(3)(i) of this section. The Regional Administrator will notify in writing the Aleut Corporation and the selected participant of the disapproval. The selected participant will have 30 days in which to submit proof of meeting the requirements to participate in the AI directed pollock fishery.

(ii) The Regional Administrator will prepare and send an initial administrative determinations (IAD) to the selected participant following the expiration of the 30-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the selected participant fails to support the participant's claims and is insufficient to rebut the presumption that the disapproval for participation in the AI directed pollock fishery is correct or if the additional information or evidence is not provided within the time period specified in the letter that notifies the applicant of his or her 30-day evidentiary period. The IAD will indicate the deficiencies in the information required, including the evidence submitted in support of the information. The IAD also will indicate which claims cannot be approved based on the available information or evidence. A participant who receives an IAD may appeal under the appeals procedures set out at § 679.43. A participant who avails himself or herself of the opportunity to appeal an IAD will receive an interim approval from NMFS authorizing participation in the AI directed pollock fishery. An interim approval based on claims contrary to the final determination will expire upon final agency determination.

■ 7. In § 679.5, paragraphs (a)(7)(xv)(F), (h)(1)(i), (h)(1)(ii)(I), and (q) are added to read as follows:



**§ 679.5 Recordkeeping and reporting (R&R).**

- (a) \* \* \*
- (7) \* \* \*
- (xv) \* \* \*

|                                   |                                 |                       |
|-----------------------------------|---------------------------------|-----------------------|
| If harvest made under ... program | Indicate yes and record the ... | Reference             |
| * * *                             | *                               | *                     |
| (F) AIP                           | n/a                             | Subpart F to part 679 |

\* \* \* \* \*

(h) \* \* \*

(1) \* \* \*

(i) *Check-in report (BEGIN message).*

Except as indicated in paragraph (h)(1)(iii) of this section, the operator or manager must submit a check-in report according to the following table:

| Submit a separate BEGIN message for ...                                     | If you are a ...                    | Within this time limit   |
|---|-------------------------------------|--|
| (A) Each reporting area of groundfish harvest, except 300, 400, 550, or 690 | (1) C/P using trawl gear .....      | Before gear deployment   |
|   | (2) C/P using longline or pot gear. | Before gear deployment. May be checked in to more than one area simultaneously.  |
|   | (3) MS, SS, SFP .....               | Before receiving groundfish. May be checked in to more than one area simultaneously.   |
|   | (4) MS .....                        | Must check-in to reporting area(s) where groundfish were harvested.  |
| (B) COBLZ or RKCSA  | (1) C/P using trawl gear .....      | Prior to fishing. Submit one check-in for the COBLZ or RKCSA and another check-in for the area outside the COBLZ or RKCSA.   |
|   | (2) MS, SS, SFP .....               | Before receiving groundfish harvested with trawl gear, submit one check-in for the COBLZ or RKCSA and another check-in for the area outside the COBLZ or RKCSA.                    |
| (C) Gear Type   | (1) C/P .....                       | If in the same reporting area but using more than one gear type, prior to fishing submit a separate check-in for each gear type.   |
|   | (2) MS, SS, SFP .....               | If harvested in the same reporting area but using more than one gear type, prior to receiving groundfish submit a separate check-in for each gear type.                            |
| (D) CDQ   | (1) C/P .....                       | If in the same reporting area but using more than one gear type, prior to fishing submit a separate check-in for each gear type.   |
|   | (2) MS, SS, SFP .....               | Prior to receiving groundfish CDQ. If receiving groundfish under more than one CDQ number, use a separate check-in for each number.  |
| (E) Exempted or Research Fishery  | (1) C/P .....                       | If in an exempted or research fishery, prior to fishing submit a separate check-in for each type.  |
|   | (2) MS, SS, SFP .....               | If receiving groundfish from an exempted or research fishery, prior to receiving submit a separate check-in for each type.   |
| (F) Processor Type  | C/P, MS .....                       | If a catcher/processor and functioning simultaneously as a mothership in the same reporting area, before functioning as either processor type.                                     |
| (G) Change of fishing year  | C/P, MS, SS, SFP .....              | If continually active through the end of one fishing year and at the beginning of a second fishing year, submit a check-in for each reporting area to start the year on January 1. |
| (H) AIP   | (1) C/P .....                       | Prior to AI pollock fishing.   |
|   | (2) MS, SS, SFP .....               | Before receiving AI pollock.   |

(ii) \* \* \*

| Submit a separate BEGIN message for ... | If you are a ...  | Within this time limit  |
|---|-------------------|---|
| (I) AIP                                 | (1) C/P .....     | Within 24 hours after completion of gear retrieval for AI pollock.  |
|   | (2) SS, SFP ..... | Within 48 hours after the end of the applicable weekly reporting period that a shoreside processor or SFP ceases to receive or process AI pollock for the fishing year. |
|   | (3) MS .....      | Within 24 hours after receipt of AIP pollock has ceased.  |

\* \* \* \* \*

(q) *AI directed pollock fishery catch reports*—(1) *Applicability.* The Aleut Corporation shall provide NMFS the identity of its designated contact for the Aleut Corporation. The Aleut Corporation shall submit to the Regional Administrator a pollock catch report

containing information required by paragraph (q)(3) of this section.

(2) *Time limits and submittal.* (i) The Aleut Corporation must submit its AI directed pollock fishery catch reports by one of the following methods:

- (A) An electronic data file in a format approved by NMFS; or
- (B) By fax.

(ii) The AI directed pollock fishery catch reports must be received by the Regional Administrator by 1200 hours, A.l.t. on Tuesday following the end of the applicable weekly reporting period, as defined at § 679.2.

(3) *Information required.* The AI directed pollock fishery catch report must contain the following information:

- (i) Catcher vessel ADF&G number;
- (ii) Federal fisheries or Federal processor permit number;
- (iii) Delivery date;
- (iv) Pollock harvested:

(A) For shoreside and stationary floating processors and motherships, the amount of pollock (in lb for shoreside and stationary floating processors and in mt for motherships) delivered, including the weight of at-sea pollock discards; and

(B) For catcher/processors, the amount of pollock (in mt) harvested and processed, including the weight of at-sea pollock discards; and

(v) ADF&G fish ticket number.

■ 8. In § 679.7, paragraphs (k)(3)(i), (k)(3)(iii), (k)(3)(iv), (k)(4)(i), (k)(5), (k)(6), and (k)(7) are revised, and paragraph (l) is added to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(k) \* \* \*

(3) \* \* \*

(i) *Permit requirement.* Use a shoreside processor or stationary floating processor to process pollock harvested in a non-CDQ directed fishery for pollock in the BS without a valid AFA inshore processor permit at the facility or on board vessel.

\* \* \* \* \*

(iii) *Restricted AFA inshore processors.* Use an AFA inshore processor holding a restricted AFA inshore processor permit to process more than 2,000 mt round weight of non-CDQ pollock harvested in the BS directed pollock fishery in any one calendar year.

(iv) *Single geographic location requirement.* Use an AFA inshore processor to process pollock harvested in the BS directed pollock fishery at a location other than the single geographic location defined as follows:

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

\* \* \* \* \*

(4) \* \* \*

(i) *Permit requirement.* Use a catcher vessel to engage in directed fishing for non-CDQ BS pollock for delivery to any AFA processing sector (catcher/processor, mothership, or inshore)

unless the vessel has a valid AFA catcher vessel permit on board that includes an endorsement for the sector of the BS pollock fishery in which the vessel is participating.

\* \* \* \* \*

(5) *AFA inshore fishery cooperatives—(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 BS pollock in excess of the fishery cooperative's annual allocation of pollock specified under § 679.62.

(ii) *Overages by fishery cooperative.* An inshore pollock fishery cooperative is prohibited from exceeding its annual allocation of BS pollock TAC.

(6) *Excessive harvesting shares.* It is unlawful for an AFA entity to harvest, through a fishery cooperative or otherwise, an amount of BS pollock that exceeds the 17.5 percent excessive share limit specified under § 679.20(a)(5)(i)(A)(6). The owners and operators of the individual vessels comprising the AFA entity that harvests BS pollock will be held jointly and severally liable for exceeding the excessive harvesting share limit.

(7) *Excessive processing shares.* It is unlawful for an AFA entity to process an amount of BS pollock that exceeds the 30-percent excessive share limit specified under § 679.20(a)(5)(i)(A)(7). The owners and operators of the individual processors comprising the AFA entity that processes BS pollock will be held jointly and severally liable for exceeding the excessive processing share limit.

\* \* \* \* \*

(l) *Prohibitions specific to the AI directed pollock fishery—(1) Catcher/processors.* (i) Use a catcher/processor vessel to harvest pollock in the AI directed pollock fishery or process pollock harvested in the AI directed pollock fishery without a copy of NMFS' approval letter on board pursuant to § 679.4(m).

(ii) Process any pollock harvested in the AI directed pollock fishery without complying with catch weighing and observer sampling station requirements set forth at paragraphs (k)(1)(vi) and (k)(1)(vii) of this section, respectively.

(iii) Use a catcher/processor to harvest pollock in the AI directed pollock fishery or process pollock harvested in the AI directed pollock fishery without a valid AFA catcher/processor permit on board the vessel.

(2) *Motherships.* (i) Use a mothership to process pollock harvested in the AI directed pollock fishery without a copy of NMFS' approval letter on board pursuant to § 679.4(m).

(ii) Process any pollock harvested in the AI directed pollock fishery without complying with catch weighing and observer sampling station requirements set forth at paragraphs (k)(2)(iii) and (k)(2)(iv) of this section, respectively.

(iii) Use a mothership to process pollock harvested in the AI directed pollock fishery without a valid AFA mothership permit on board the vessel.

(3) *Shoreside and stationary floating processors.* (i) Use a shoreside processor or stationary floating processor to process pollock harvested in the in AI directed pollock fishery without a copy of NMFS' approval letter on location pursuant to § 679.4(m).

(ii) Process any pollock harvested in the AI directed pollock fishery without complying with catch weighing requirements set forth at paragraph (k)(3)(v) of this section.

(iii) Take deliveries of pollock harvested in the AI directed pollock fishery or process pollock harvested in the AI pollock fishery without following an approved CMCP as described in § 679.28(g). A copy of the CMCP must be maintained on the premises and made available to authorized officers or NMFS-authorized personnel upon request.

(4) *Catcher vessels.* (i) Use a catcher vessel to harvest pollock in the AI directed pollock fishery without a copy of NMFS' approval letter on board pursuant to § 679.4(m).

(ii) Have on board at any one time pollock harvested in the AI directed pollock fishery and pollock harvested from either the Bering Sea subarea or the Gulf of Alaska.

(iii) Use a catcher vessel to deliver pollock harvested in the AI directed pollock fishery:

(A) To a shoreside or stationary floating processor that does not have an approved CMCP pursuant to § 679.28(g) and is not approved by NMFS to process pollock harvested in the AI directed pollock fishery, or

(B) To a catcher/processor or mothership that is not approved by NMFS to process pollock harvested in the AI directed pollock fishery.

(iv) Use a catcher vessel greater than 60 ft (18.3 m) LOA to harvest pollock in the AI directed pollock fishery unless the vessel has a valid AFA catcher vessel permit on board.

(5) *AI directed pollock fishery overages.* (i) Use a catcher vessel selected by the Aleut Corporation and approved by NMFS to participate in the AI directed pollock fishery under § 679.4(m) to harvest pollock in the AI directed pollock fishery in excess of the Aleut Corporation's annual or seasonal allocations of pollock or in excess of the

vessel allocation specified under § 679.20(a)(5)(iii).

(ii) The Aleut Corporation is prohibited from exceeding its annual and seasonal allocations of AI pollock TAC or from exceeding the allocation to vessels, as specified in § 679.20(a)(5)(iii).

■ 9. In § 679.20, paragraph (a)(5)(iii) is redesignated as paragraph (a)(5)(iv); paragraph (a)(5)(iii) is added, and paragraphs (a)(5)(i)(B)(1), (a)(5)(ii), newly redesignated paragraph (a)(5)(iv)(B) introductory text, and paragraph (a)(6)(i) are revised to read as follows:

**§ 679.20 General limitations.**

\* \* \* \* \*

(a) \* \* \*

(5) \* \* \*

(i) \* \* \*

(B) *BSAI seasonal allowances for AFA and CDQ—(1) Inshore, catcher/processor, mothership, and CDQ components.* The portions of the BS subarea pollock directed fishing allowances allocated to each component under sections 206(a) and 206(b) of the AFA and the CDQ allowance in the BSAI will be divided into two seasonal allowances corresponding to the two fishing seasons set out at § 679.23(e)(2), as follows: A season, 40 percent; and B season, 60 percent.

(2) \* \* \*

\* \* \* \* \*

(ii) *Bogoslof District.* If the Bogoslof District is open to directed fishing for pollock by regulation, then the pollock TAC for this district will be allocated according to the same procedure established for the Bering Sea subarea at paragraph (a)(5)(i) of this section. If the Bogoslof District is closed to directed fishing for pollock by regulation, then the entire TAC for this district will be allocated as an incidental catch allowance.

(iii) *AI.* (A) If a directed fishery for pollock in the AI is not specified under paragraph (c) of this section, then the entire TAC for this subarea will be allocated as an incidental catch allowance.

(B) If the AI is open to directed fishing for pollock under paragraph (c) of this section, then the pollock TAC for this subarea will be specified, allocated, seasonally apportioned, and reallocated as follows:

(1) *AI annual TAC limitations.* When the AI pollock ABC is less than 19,000 mt, the annual TAC will be no greater than the ABC. When the AI pollock ABC equals or exceeds 19,000 mt, the annual TAC will be equal to 19,000 mt.

(2) *Allocations—(i) CDQ Directed fishing allowance.* 10 percent of the

annual TAC will be allocated to the CDQ pollock reserve established under § 679.31(a)(2).

(ii) *Incidental catch allowance.* The Regional Administrator will determine the amount of the pollock incidental catch necessary to support an incidental catch allowance in the AI during the fishing year for each season. This amount of pollock will be deducted from the annual TAC. If during a fishing year, the Regional Administrator determines that the incidental catch allowance is excessive or inadequate, the Regional Administrator may reallocate the excess of the incidental catch allowance to the directed pollock fishery, or may reallocate pollock from the directed pollock fishery to the incidental catch allowance as necessary to support incidental catch of pollock in AI groundfish fisheries, by publication in the **Federal Register**.

(iii) *Directed Pollock Fishery.* The amount of the TAC remaining after subtraction of the CDQ directed fishing allowance and the incidental catch allowance will be allocated to the Aleut Corporation as a directed pollock fishery allocation.

(3) Seasonal apportionment. The seasonal harvest of pollock in the AI directed pollock fishery shall be:

(i) *A season.* No greater than the lesser of the annual initial TAC plus any A season CDQ pollock directed fishery allowance or 40 percent of the AI pollock ABC. The total A season apportionment, including the AI directed pollock fishery allocation, the CDQ pollock directed fishery seasonal allowance, and the incidental catch amount, shall not exceed 40 percent of the ABC.

(ii) *B season.* The B season apportionment of the AI directed pollock fishery shall equal the annual initial TAC minus the A season directed pollock fishery apportionment under paragraph (a)(5)(iii)(B)(3)(i) of this section and minus the incidental catch amount under paragraph (a)(5)(iii)(B)(2)(ii) of this section.

(iii) *Inseason adjustments for the directed pollock fishery.* During any fishing year, the Regional Administrator may add any under harvest of the A season directed pollock fishery apportionment to the B season directed pollock fishery apportionment by inseason notification published in the **Federal Register** if the Regional Administrator determines that the harvest capacity in the B season is sufficient to harvest the adjusted B season apportionment.

(iv) *Inseason adjustments for the incidental catch allowance.* During any fishing year, the Regional Administrator

may add any under harvest of the A season incidental catch allowance apportionment to the B season incidental catch allowance apportionment by publication in the **Federal Register** if the Regional Administrator determines that the additional B season incidental catch allowance is necessary to support other groundfish fisheries.

(4) *Reallocation of the annual AI directed pollock fishery and AI CDQ allocations.* As soon as practicable, if the Regional Administrator determines that vessels participating in either the AI directed pollock fishery or the AI CDQ directed pollock fishery likely will not harvest the entire AI directed pollock fishery or CDQ pollock directed fishing allowance, the Regional Administrator may reallocate some or all of the projected unused directed pollock fishery allocation to the Bering Sea subarea directed pollock fishery or AI CDQ pollock directed fishing allowance to the Bering Sea subarea CDQ pollock directed fishing allowance by inseason notification published in the **Federal Register**.

(5) *Allocations to small vessels.* The annual allocation for vessels 60 feet (18.3 m) LOA or less participating in the AI directed pollock fishery will be:

(i) No more than 25 percent of the AI directed pollock fishery allocation through 2008;

(ii) No more than 50 percent of the AI directed pollock fishery allocation from 2009 through 2012; and

(iii) 50 percent of the AI directed pollock fishery allocation in 2013 and beyond.

(iv) \* \* \*

(B) *GOA Western and Central Regulatory Areas seasonal apportionments.* Each apportionment established under paragraph (a)(5)(iv)(A) of this section will be divided into four seasonal apportionments corresponding to the four fishing seasons specified in § 679.23(d)(2) as follows: \* \* \*

(C) \* \* \*

(6) \* \* \*

(i) *GOA pollock.* The apportionment of pollock in all GOA regulatory areas for each seasonal allowance described in paragraph (a)(5)(iv) of this section will be allocated entirely to vessels harvesting pollock for processing by the inshore component in the GOA after subtraction of an amount that is projected by the Regional Administrator to be caught by, or delivered to, the offshore component in the GOA incidental to directed fishing for other groundfish species.

\* \* \* \* \*

■ 10. In § 679.21, paragraphs (e)(1)(i), (e)(1)(vii), and (e)(7)(viii) are revised and paragraph (e)(1)(ix) is added to read as follows:

**§ 679.21 Prohibited species bycatch management.**

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(i) *PSQ reserve.* 7.5 percent of each PSC limit set forth in paragraphs (e)(1)(ii) through (v), and (e)(1)(vii) through (e)(1)(ix) of this section is allocated to the groundfish CDQ program as PSQ reserve. The PSQ reserve is not apportioned by gear or fishery.

\* \* \* \* \*

(vii) *Chinook salmon.* The trawl closures identified in paragraph (e)(7)(viii) of this section will take effect when the Regional Administrator determines that the PSC limit of 29,000 Chinook salmon caught while harvesting pollock in the BS between January 1 and December 31 is attained.

\* \* \* \* \*

(ix) *AI Chinook salmon.* The trawl closures identified in paragraph (e)(7)(viii) of this section will take effect when the Regional Administrator determines that the AI PSC limit of 700 Chinook salmon caught while harvesting pollock in the AI between January 1 and December 31 is attained.

\* \* \* \* \*

(7) \* \* \*

(viii) *Chinook salmon.* If, during the fishing year, the Regional Administrator determines that catch of Chinook salmon by vessels using trawl gear while directed fishing for pollock in the BSAI will reach the annual limits, as identified in paragraphs (e)(1)(vii) and (e)(1)(ix) of this section, NMFS, by notification in the **Federal Register** will close the Chinook Salmon Savings Areas, as defined in Figure 8 to this part, to directed fishing for pollock with trawl gear as follows:

(A) For the BS Chinook salmon PSC limit under paragraph (e)(1)(vii) of this section, area 1 and area 2 in Figure 8 to this part will be closed on the following dates:

(1) From the effective date of the closure until April 15, and from September 1 through December 31, if the Regional Administrator determines that the annual limit of BS Chinook salmon will be attained before April 15.

(2) From September 1 through December 31, if the Regional Administrator determines that the annual limit of BS Chinook salmon will be attained after April 15.

(B) For the AI Chinook salmon limit under paragraph (e)(1)(ix) of this

section, area 1 in Figure 8 to this part will be closed on the following dates:

(1) From the effective date of the closure until April 15, and from September 1 through December 31, if the Regional Administrator determines that the annual limit of AI Chinook salmon will be attained before April 15.

(2) From September 1 through December 31, if the Regional Administrator determines that the annual limit of AI Chinook salmon will be attained after April 15.

\* \* \* \* \*

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

**§ 679.23 Seasons.**

\* \* \* \* \*

(e) \* \* \*

(2) *Directed fishing for pollock in the Bering Sea subarea by inshore, offshore catcher/processor, and mothership components, in the AI directed pollock fishery, and pollock CDQ fisheries.*

Subject to other provisions of this part, directed fishing for pollock by vessels catching pollock for processing by the inshore component, catcher/processors in the offshore component, and motherships in the offshore component in the Bering Sea subarea, directed fishing for pollock in the AI directed pollock fishery, or directed fishing for CDQ pollock in the BSAI is authorized only during the following two seasons:

(i) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., June 10; and

(ii) *B season.* From 1200 hours, A.l.t., June 10 through 1200 hours, A.l.t., November 1.

\* \* \* \* \*

■ 12. In § 679.28, paragraph (g)(2) and the first sentence of paragraph (g)(3) are revised to read as follows:

**§ 679.28 Equipment and operational requirements.**

\* \* \* \* \*

(g) \* \* \*

(2) *Who is required to prepare and submit a CMCP for approval?* The owner and manager of an AFA inshore processor or the owner and manager of a shoreside or stationary floating processor processing pollock harvested in the AI directed pollock fishery are required to prepare and submit a CMCP which must be approved by NMFS prior to the receipt of pollock harvested in the BSAI directed pollock fisheries.

(3) *How is a CMCP approved by NMFS?* NMFS will approve a CMCP if it meets all the requirements specified in paragraph (g)(7) of this section. \* \* \*

\* \* \* \* \*

■ 13. In § 679.50, paragraphs (c)(2)(i), (c)(5) paragraph heading, and (e)(1) are

revised and paragraph (c)(5)(i)(C) is added to read as follows:

**§ 679.50 Groundfish Observer Program applicable through December 31, 2007.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) *Pollock fishery.* In a retained catch of pollock that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2) and in a retained catch of pollock harvested in the AI directed pollock fishery.

\* \* \* \* \*

(5) *AFA and AI directed pollock fishery catcher/processors and motherships.*

(i) \* \* \*

(C) *AI directed pollock fishery catcher/processors and motherships.* A catcher/processor participating in the AI directed pollock fishery or a mothership processing pollock harvested in the AI directed pollock fishery must have on board at least two NMFS-certified observers, at least one of which must be certified as a lead level 2 observer, for each day that the vessel is used to harvest, process, or take deliveries of groundfish. More than two observers are required if the observer workload restriction at paragraph (c)(5)(ii) of this section would otherwise preclude sampling as required under § 679.63(a)(1).

\* \* \* \* \*

(e) \* \* \*

(1) Any vessel, shoreside processor, or stationary floating processor required to comply with observer coverage requirements under paragraphs (c) or (d) of this section or under § 679.7(f)(4) or a catcher vessel less than 60 ft (18.3 m) LOA that is participating in the AI directed pollock fishery must use, upon written notification by the Regional Administrator, NMFS' staff or an individual authorized by NMFS to satisfy observer coverage requirements as specified in paragraphs (c) and (d) of this section or for other conservation and management purpose.

\* \* \* \* \*

■ 14. In subpart F, the subpart heading is revised to read as follows:

**Subpart F—American Fisheries Act and Aleutian Island Directed Pollock Fishery Management Measures**

■ 15. Section 679.60 is revised to read as follows:

**§ 679.60 Authority and related regulations.**

(a) Regulations under this subpart were developed by the National Marine

Fisheries Service and the North Pacific Fishery Management Council to implement the American Fisheries Act (AFA) (Div. C, Title II, Subtitle II, Public Law 105-277, 112 Stat. 2681 (1998)) and the Consolidated Appropriations Act of 2004 (Public Law 108-199, Sec. 803). Additional regulations in this part that implement specific provisions of the AFA and Consolidated Appropriations Act of 2004 are set out at §§ 679.2 Definitions, 679.4 Permits, 679.5 Recordkeeping and reporting (R &R), 679.7 Prohibitions, 679.20 General limitations, 679.21 Prohibited species bycatch management, 679.28 Equipment and operational requirements, 679.31 CDQ reserves, and 679.50 Groundfish Observer Program.

(b) Regulations developed by the Department of Transportation to implement provisions of the AFA are found at 46 CFR part 356.

■ 16. In § 679.61, paragraphs (b), (d)(3), and (g) are revised to read as follows:

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

\* \* \* \* \*

(b) *Who must comply this section?* Any fishery cooperative formed under section 1 of the Fisherman's Collective Marketing Act 1934 (15 U.S.C. 521) for the purpose of cooperatively managing directed fishing for BS subarea pollock must comply with the provisions of this section. The owners and operators of all the member vessels that are signatories to a fishery cooperative are jointly and severally responsible for compliance with the requirements of this section.

\* \* \* \* \*

(d) \* \* \*

(3) *What is the deadline for filing?* The contract or renewal letter and supporting materials must be received by NMFS and by the Council at least 30 days prior to the start of any fishing activity conducted under the terms of the contract. In addition, an inshore cooperative that is also applying for an allocation of BS subarea pollock under § 679.62 must file its contract, any amendments hereto, and supporting materials no later than December 1 of the year prior to the year in which fishing under the contract will occur.

\* \* \* \* \*

(g) *Landing tax payment deadline.* You must pay any landing tax owed to the State of Alaska under section 210(f) of the AFA and paragraph (e)(1)(v) of this section before April 1 of the following year, or the last day of the month following the date of publication of statewide average prices by the Alaska State Department of Revenue, whichever is later. All members of the

cooperative are prohibited from harvesting pollock in the BS subarea directed pollock fishery after the payment deadline if any member vessel has failed to pay all required landing taxes from any landings made outside the State of Alaska by the landing deadline. Members of the cooperative may resume directed fishing for pollock once all overdue landing taxes are paid.

■ 17. In § 679.62, the introductory text in paragraph (a), and paragraphs (a)(2), (a)(3), (b)(2)(i), (b)(2)(ii), and (b)(3) are revised to read as follows:

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

(a) *How will inshore sector cooperative allocations be made?* An inshore catcher vessel cooperative that applies for and receives an AFA inshore cooperative fishing permit under § 679.4(l)(6) will receive a sub-allocation of the annual BS subarea inshore sector directed fishing allowance. Each inshore cooperative's annual allocation amount(s) will be determined using the following procedure:

\* \* \* \* \*

(2) *Conversion of individual vessel catch histories to annual cooperative quota share percentages.* Each inshore pollock cooperative that applies for and receives an AFA inshore pollock cooperative fishing permit will receive an annual quota share percentage of pollock for the BS subarea that is equal to the sum of each member vessel's official AFA inshore cooperative catch history for the BS subarea divided by the sum of the official AFA inshore cooperative catch histories of all inshore-sector endorsed AFA catcher vessels. The cooperative's quota share percentage will be listed on the cooperative's AFA pollock cooperative permit.

(3) *Conversion of quota share percentage to TAC allocations.* Each inshore pollock cooperative that receives a quota share percentage for a fishing year will receive an annual allocation of pollock that is equal to the cooperative's quota share percentage multiplied by the annual inshore BS subarea pollock allocation. Each cooperative's annual pollock TAC allocation may be published in the interim, and final BSAI TAC specifications notices.

(b) \* \* \*

(2) \* \* \*

(i) *Member vessels.* All pollock caught by a member vessel while engaged in directed fishing for pollock in the BS subarea 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 BS subarea.

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

\* \* \* \* \*

■ 18. In § 679.64, introductory paragraph of (a), paragraphs (a)(1)(i), (a)(2)(ii), (a)(4)(i), (a)(4)(ii), introductory paragraph of (b), and introductory paragraph of (b)(3) are revised to read as follows:

**§ 679.64 Harvesting sideboard limits in other fisheries.**

(a) Harvesting sideboards for listed AFA catcher/processors. The Regional Administrator will restrict the ability of listed AFA catcher/processors to engage in directed fishing for non-pollock groundfish species to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the BS subarea directed pollock fishery.

(1) \* \* \*

(i) Except for Aleutian Islands pollock, the Regional Administrator will establish annual AFA catcher/processor harvest limits for each groundfish species or species group in which a TAC is specified for an area or subarea of the BSAI as follows:

\* \* \* \* \*

(2) \* \* \*

(ii) If the amount of Pacific ocean perch calculated under paragraph (a)(2)(i) of this section is determined by the Regional Administrator to be insufficient to meet bycatch needs of AFA catcher/processors in other directed fisheries for groundfish, the Regional Administrator will prohibit directed fishing for Aleutian Islands Pacific ocean perch by AFA catcher/processors and establish the sideboard amount equal to the amount of Aleutian Islands Pacific ocean perch caught by AFA catcher/processors incidental to directed fishing for other groundfish species.

\* \* \* \* \*

(4) \* \* \*

(i) Except as provided for in paragraphs (a)(1)(ii) through (a)(3) of this section, the harvest limit for each BSAI groundfish species or species group will be equal to the 1995 through 1997 aggregate retained catch of that

species by catcher/processors listed in paragraphs 208(e)(1) through (e)(20) and section 209 of the AFA in non-pollock target fisheries divided by the sum of the catch of that species in 1995 through 1997 multiplied by the TAC of that species available for harvest by catcher/processors in the year in which the harvest limit will be in effect.

(ii) If the amount of a species calculated under paragraph (a)(4)(i) of this section is determined by the Regional Administrator to be insufficient to meet bycatch needs for AFA catcher/processors in other directed fisheries for groundfish, the Regional Administrator will prohibit directed fishing for that species by AFA catcher/processors and establish the sideboard amount equal to the amount of that species caught by AFA catcher/processors incidental to directed fishing for other groundfish species.

\* \* \* \* \*

(b) *Harvesting sideboards for AFA catcher vessels.* The Regional Administrator will restrict the ability of AFA catcher vessels to engage in directed fishing for other groundfish species to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the BS subarea directed pollock fishery.

\* \* \* \* \*

(3) *How will groundfish sideboard limits be calculated?* Except for Aleutian Islands pollock, the Regional Administrator will establish annual AFA catcher vessel harvest limits for each groundfish species or species group in which a TAC is specified for an area or subarea of the GOA and BSAI as follows:

\* \* \* \* \*

■ 19. In § 679.65, paragraphs (a) and (b) are revised to read as follows:

**§ 679.65 Crab processing sideboard limits.**

(a) *What is the purpose of crab processing limits?* The purpose of crab processing sideboard limits is to protect processors not eligible to participate in the BS subarea directed pollock fishery from adverse effects as a result of the AFA and the formation of fishery cooperatives in the BS subarea directed pollock fishery.

(b) *To whom do the crab processing sideboard limits apply?* The crab processing sideboard limits in this section apply to any AFA inshore or mothership entity that receives pollock harvested in the BS directed pollock

fishery by a fishery cooperative established under § 679.61 or § 679.62.

\* \* \* \* \*

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[TD 9185]

RIN 1545-BB77

**Diversification Requirements for Variable Annuity, Endowment, and Life Insurance Contracts**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations removing provisions of the Income Tax Regulations that apply a look-through rule to assets of a nonregistered partnership for purposes of satisfying the diversification requirements of section 817(h) of the Internal Revenue Code.

**DATES: Effective Date:** These regulations are effective as of March 1, 2005. However, arrangements in existence on March 1, 2005, will be considered to be adequately diversified if: (i) Those arrangements were adequately diversified within the meaning of section 817(h) prior to March 1, 2005, and (ii) by December 31, 2005, the arrangements are brought into compliance with the final regulations.

**Applicability Date:** For dates of applicability, see § 1.817-5(i).

**FOR FURTHER INFORMATION CONTACT:** James Polfer, (202) 622-3970 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

Under section 817(h), a variable contract based on a segregated asset account is not treated as an annuity, endowment, or life insurance contract unless the segregated asset account is adequately diversified. For purposes of testing diversification, section 817(h)(4) and § 1.817-5(f) of the regulations provide a look-through rule for assets held through certain investment companies, partnerships, or trusts. Section 1.817-5(f)(2)(i) provides that look-through treatment is available with respect to any investment company, partnership, or trust only if all the beneficial interests in the investment company, partnership, or trust are held

by one or more segregated asset accounts of one or more insurance companies, and public access to such investment company, partnership, or trust is available exclusively (except as otherwise permitted by section 1.817-5(f)(3)) through the purchase of a variable contract. Under § 1.817-5(f)(2)(ii), the look-through rule applies to a partnership interest that is not registered under a Federal or state law regulating the offering or sale of securities. Unlike § 1.817-5(f)(2)(i), satisfaction of the nonregistered partnership look-through rule of § 1.817-5(f)(2)(ii) is not explicitly conditioned on limiting the ownership of interests in the partnership to certain specified holders.

On July 30, 2003, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-163974-02) under section 817 in the **Federal Register** (68 FR 44689). The proposed regulations would remove the rule that applies specifically to nonregistered partnerships for purposes of testing diversification. The proposed regulations also would remove an example that illustrates that rule.

The application of § 1.817-5(f)(2)(i) to interests in nonregistered partnerships will be unchanged by the removal of § 1.817-5(f)(2)(ii). Thus, look-through treatment will be available for interests in a nonregistered partnership if all the beneficial interests in the partnership are held by one or more segregated asset accounts of one or more insurance companies and public access to the partnership is available exclusively (except as otherwise permitted by § 1.817-5(f)(3)) through the purchase of a variable contract.

Written comments were received in response to the notice of proposed rulemaking. A public hearing on the notice of proposed rulemaking was held on April 1, 2004. After consideration of all the comments and the hearing testimony, the proposed regulations are adopted as amended by this Treasury decision.

**Explanation and Summary of Comments**

In addition to requesting comments on the clarity of the proposed rule and how the rule could be made easier to understand, the Treasury Department and the IRS specifically requested comments on: (1) Whether revocation of § 1.817-5(f)(2)(ii) necessitates other changes to the look-through rules of § 1.817-5(f), in particular whether the list of holders permitted by § 1.817-5(f)(3) should be amended or expanded, and whether a non-pro-rata distribution of the investment returns of a segregated