

TABLE 1.—PETITION FINDING FOR SEVEN FOREIGN SPECIES OF SWALLOWTAIL BUTTERFLIES (FAMILY: PAPILIONIDAE)—Continued

[R=listing not warranted/removed; C=listing warranted but precluded]

Status		Scientific name	Synonyms	Common name	Historic range
Category	Priority				
R	n/a	<i>Papilio esperanza</i>	<i>Pterourus esperanza</i> <i>Heracles esperanza</i> .	Oaxacan swallowtail, La llamadora.	Mexico.
C	5	<i>Parides ascanius</i>	n/a	Fluminense swallowtail, Ascanius swallowtail.	Brazil.
C	11	<i>Parides hahneli</i>	n/a	Hahnel's Amazonian swal- lowtail.	Brazil.
R	n/a	<i>Ornithoptera meridionalis</i>	<i>Troides meridionalis</i> ; <i>Schoenbergia</i> <i>meridionalis</i> .	Southern tailed birdwing	Indonesia, Papua New Guinea.
C	8	<i>Teinopalpus imperialis</i>	n/a	Kaiser-I-Hind swallowtail, Emperor of India.	Bhutan, China, India, Laos, Myanmar, Nepal, Thai- land, Vietnam.

Dated: November 18, 2004.

Marshall P. Jones, Jr.,

Deputy Director, Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric
Administration

50 CFR Part 679

[Docket No. 041117321-4321-01; I.D.
110904D]

RIN 0648-AS37

Fisheries of the Exclusive Economic
Zone Off Alaska; Aleutian Islands
Subarea Directed Pollock Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would implement Amendment 82 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). Amendment 82, if approved, would establish a framework for 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 of 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,

Consolidated Appropriations Act of 2004, and other applicable laws.

DATES: Written comments must be received by January 21, 2005.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.
- Fax: 907-586-7557.
- E-mail: BSA82-0648-AS37@noaa.gov. Include in the subject line the following document identifier: AI pollock proposed rule. E-mail comments, with or without attachments, are limited to 5 megabytes.

• Webform at the Federal eRulemaking Portal: www.regulations.gov. Follow the instructions at that site for submitting comments.

Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for the proposed rule, 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 from the addresses stated above or from the Alaska Region NMFS website at www.fakr.noaa.gov.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS, Alaska Region, and by e-mail to David_Rostker@omb.eop.gov, or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT:

Melanie Brown, 907-586-7228 or melanie.brown@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 has submitted Amendment 82 for review by the Secretary of Commerce, and a Notice of Availability of the amendment was published in the **Federal Register** on November 16, 2004 (69 FR 67107), with comments on the amendment invited through January 18, 2005. Comments may address the FMP amendment, the proposed rule, or both, but must be received by January 18, 2005, to be considered in the approval/disapproval decision on the FMP amendment. All comments received by that time, whether specifically directed to the FMP amendment or to the proposed rule, will be considered in the approval/disapproval decision on the FMP Amendment.

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 of Adak, Alaska. The statute permits the Aleut Corporation to authorize one or more agents for activities necessary for conducting the

AI directed pollock fishery. 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. A FMP amendment and associated regulatory amendments are needed to implement these and other measures necessary to manage this fishery pursuant to provisions specified in Pub. L. 108–199.

The Council adopted Amendment 82 in June 2004 and clarified a portion of its June action in October 2004. If approved by the Secretary of Commerce, Amendment 82 would revise the FMP to establish the management framework for the AI directed pollock fishery. This proposed rule would implement the following management provisions for the AI directed pollock fishery:

1. Restrictions on the harvest specifications for the AI directed pollock fishery, including: limitations on the size of the annual AI pollock total allowable catch (TAC), limits on the A season harvest of TAC, allocation requirement 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 having pollock from the AI and either the Bering Sea subarea (BS) or the Gulf of Alaska on a vessel at one time, observer and scale requirements, catch monitoring control plans 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, would close 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 named 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. The 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 would 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 would be deducted from the relevant TACs, and fisheries for those species would be managed by NMFS accordingly. Pending the nature and scope of incidental catch in the AI directed pollock fishery, the Council could consider separate groundfish sideboard provisions for this fishery in the future.

Proposed Regulatory Amendments

The following describes the proposed amendments to the regulations, by section, that would be required to implement the management provisions for the AI directed pollock fishery pursuant to Amendment 82 and Pub. L. 108–199.

§ 679.1 Authority

The BSAI pollock fisheries are managed under the provisions of the AFA. Certain provisions of the AFA applicable to the AI directed pollock fishery are superseded by Pub. L. 108–199. Because the BSAI pollock fisheries include the AI directed pollock fishery, this proposed rule would revise § 679.1(k) to include the AI directed

pollock fishery in the paragraph title and to include Pub. L. 108–199 in the list of statutes applicable to the BSAI pollock fisheries.

§ 679.2 Definitions

Several definitions would be revised and four definitions would be added by this proposed rule for the AI directed pollock fishery.

The "Aleut Corporation" is identified in Pub. L. 108–199 as a business incorporated pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). A definition of the Aleut Corporation would be added by this proposed rule to clarify the identity of the corporation that would receive the AI directed pollock fishery allocation.

A definition of the "AI directed pollock fishery" would be added to mean the directed fishery for pollock allocated to the Aleut Corporation. This term does not include directed fishing for pollock under the Western Alaska Community Development Quota (CDQ) Program that may occur in the AI.

A vessel or processor selected by the Aleut Corporation and approved by NMFS to harvest or process pollock in the AI directed pollock fishery during a fishing year (January 1 through December 31) would be defined as an "Aleut Corporation entity." Section 679.2 would be revised to add a definition for "Aleut Corporation entity" to facilitate its reference in regulations.

The proposed rule would add a definition for a "designated contact for the Aleut Corporation." This individual would be designated by the Aleut Corporation as the contact person for management of the AI directed pollock fishery, including, but not limited to, reporting of the selection of Aleut Corporation entities set forth in § 679.4(m) of the proposed rule and fulfilling the proposed recordkeeping and reporting requirements for the fishery set forth under § 679.5.

The definitions in § 679.2 that refer to the AFA pollock fishery would be revised to remove references to the AI directed pollock fishery. Public Law 108–199 allocates AI directed pollock fishery to the Aleut Corporation, and no longer to AFA cooperatives.

Under the proposed rule and Pub. L. 108–199, an Aleut Corporation entity must be selected by the Aleut Corporation and subsequently approved by NMFS before it could lawfully participate in the AI directed pollock fishery. Because AFA qualification alone would no longer allow participation in the AI directed pollock fishery, several AFA definitions would be revised by changing the terms "BSAI

pollock" to "BS pollock" and "BSAI directed pollock" to "BS directed pollock." The definitions that would be revised are "AFA catcher/processor," "AFA catcher vessel," "AFA crab processing facility," "AFA entity," "AFA inshore processor," "AFA mothership," "designated primary processor," "fishery cooperative or cooperatives," "listed AFA catcher/processor," and "unlisted AFA catcher/processor." Removing references to the AI in these AFA definitions would clarify that meeting AFA qualifications does not also qualify a harvester or processor for participating in the AI directed pollock fishery.

The definition for "license limitation groundfish" in § 679.2 would be revised to add an exception for pollock harvested in the AI directed pollock fishery by vessels 60 feet (18.3 m) LOA or less. Public Law 108–199 states that vessels 60 feet (18.3 m) LOA or less that have a valid fishery endorsement may be eligible to participate in the AI directed pollock fishery. The fishery endorsement is issued by the U. S. Coast Guard on the vessel's U.S. Coast Guard documentation for participation in a U. S. fishery. Vessels 60 feet (18.3 m) LOA or less would not need to demonstrate AI pollock harvest history and qualify for a license limitation permit (LLP) pursuant to § 679.4(k). This exception in the license limitation groundfish definition would reduce the licensing burden for participants in the AI directed pollock fishery, would allow vessels 60 feet (18.3 m) LOA or less to enter the fishery without previous pollock fishing history or the necessity for owners to have an LLP that names that vessel, and would encourage economic development of Adak, Alaska, by facilitating the building of a fleet of vessels 60 feet (18.3 m) LOA or less.

§ 679.4 Permits

Section 679.4 describes the permitting requirements for participation in the groundfish fisheries. Public Law 108–199 requires harvesting and processing participants in the AI directed pollock fishery to be approved by the Aleut Corporation. Public Law 108–199 specifies that vessels eligible to harvest pollock in the AI directed pollock fishery either must be AFA qualified or 60 feet (18.3 m) LOA or less. In June 2004, the Council recommended that all catcher/processors and motherships, regardless of size, also be AFA qualified in order to participate in this fishery. Shoreside and stationary floating processors would not need to be AFA qualified to participate in the AI directed pollock fishery. The proposed rule would establish criteria for the

Aleut Corporation's selection and NMFS' approval of participants in this fishery beyond a participant's qualification under the AFA.

This proposed rule would revise § 679.4(l) to clarify that AFA permitting requirements would apply exclusively to the BS pollock fishery, to vessels greater than 60 feet (18.3 m) LOA in the AI directed pollock fishery, and to all catcher/processors and motherships in the AI directed pollock fishery. Paragraphs that reference BSAI pollock harvest history would remain unchanged by this rule because the basis for establishing history for AFA participation was not changed by Pub. L. 108–199.

Revisions would be made to paragraphs (l)(1)(i) for applicability to the BSAI directed pollock fishery, (l)(5)(iii) for the single geographic location requirement for inshore processors, (l)(6)(ii)(B) for the delivery of BSAI pollock to designated cooperative processors, (l)(6)(ii)(C)(2) for cooperative contract information regarding BSAI pollock delivery, and (l)(6)(ii)(D)(2) for landing requirements for pollock harvested in the BSAI directed pollock fishery. The revision to paragraph (l)(6)(ii)(D)(1) for the LLP requirement would remove the reference to the AI cooperative allocation and would make the requirement applicable to vessels greater than 60 feet (18.3 m) LOA harvesting pollock in the AI directed pollock fishery. Vessels 60 feet (18.3 m) LOA or less would not be required to have AFA or LLP permits. Paragraphs (l)(6)(ii)(D)(2)(i) and (ii) also would be revised to limit the landing requirements for qualified catcher vessels to pollock taken in the BS only.

Public Law 108–199 does not require vessels 60 feet (18.3 m) LOA or less to comply with other Federal fisheries permitting requirements that may not be easily met and which could restrict the vessels' participation. However, Federal fisheries permits (FFPs) pursuant to § 679.4(b) would be required for all AI directed pollock fishery vessels to ensure Steller sea lion protection measures requiring vessel monitoring systems (§ 679.28) apply to vessels fishing in the AI directed pollock fishery. The FFP requirement applies to catcher vessels, catcher/processors, and motherships. The FFP requirement should not restrict participation in the AI directed pollock fishery considering the minimal requirements for obtaining the permit, and the FFPs are provided free of charge. No regulatory revisions are needed to implement the pollock fishery endorsement and FFP

requirements for the AI directed pollock fishery participants.

A new paragraph (m) would be added to § 679.4 to establish the annual process for NMFS' approval of participants in the AI directed pollock fishery. The participants selected by the Aleut Corporation for the AI directed pollock fishery must be approved by NMFS annually under criteria established under Pub. L. 108–199 and in this proposed rule. NMFS' approval must be received by the Aleut Corporation before the participant would be authorized to fish in the AI directed pollock fishery. The proposed rule would require the Aleut Corporation to provide NMFS the identity of selected harvesters and/or processors at least 14 days before the participant is scheduled to begin harvesting or processing pollock in the AI directed pollock fishery. NMFS would review each participant selected by the Aleut Corporation relative to approval criteria established in regulations. Upon approval, NMFS would provide the Aleut Corporation a letter showing NMFS' approval of each participant and the date harvesting or processing by the participants in the AI directed pollock fishery may commence.

The Aleut Corporation would be required to provide a copy of NMFS' approval letter to each participant in the AI directed pollock fishery before harvesting or processing by that participant commences during the fishing year. Vessels participating in the fishery would be required to carry a copy of NMFS' approval letter on the vessel at all times while participating in the fishery. Processors would be required to provide documentation of approval during NMFS inspections. This process would allow for approval of participants before the fishery commences and would assist enforcement personnel to rapidly establish such approval during a boarding or inspection for compliance monitoring or enforcement purposes.

Participants may be added to the approval list at any time during the fishing year upon selection by the Aleut Corporation following the procedure set forth above 14 days before harvesting or processing would commence. Once a participant is approved by NMFS for harvesting or processing pollock taken in the AI directed pollock fishery during the fishing year, the participant would remain approved by NMFS for the duration of the fishing year, as long as the Federal fishing permit and any applicable endorsement remains current. Subsequent disapproval for participation in the AI directed pollock fishery by the Aleut Corporation, for

whatever reason, would be managed by the Aleut Corporation through private contractual agreements with the participant.

Paragraph (m) also would include the procedures for appeal of NMFS' disapproval of the Aleut Corporation's selection of a participant for the AI directed pollock fishery. The Regional Administrator would notify the Aleut Corporation and the participant of NMFS' disapproval of the participant. The reason for the disapproval would be provided and the disapproved participant would have 30 days to provide additional evidence. After 30 days, the Regional Administrator would issue an initial administrative determination (IAD) regarding the selection and reasons for the decision. A disapproved participant would be able to appeal the IAD under the appeals procedure at § 679.43 and would be permitted to participate in the AI directed pollock fishery while the IAD is under appeal. This revision would provide due process in the event of a dispute with NMFS' disapproval.

§ 679.5 Recordkeeping and Reporting

This proposed action would add a new paragraph (q) to the recordkeeping and reporting regulations at § 679.5 to add requirements for the AI directed pollock fishery. The Aleut Corporation would be required to submit a weekly catch report to NMFS for all pollock caught by all vessels fishing on its behalf. The information required would include: the catcher vessel Alaska Department of Fish and Game (ADF&G) identification number; FFP or Federal processor permit number; delivery date; the amount of pollock received in pounds plus the weight of at-sea pollock discards; and the ADF&G fish ticket number. The proposed rule also would require the Aleut Corporation to designate a contact for communications regarding reporting and recordkeeping. The designation of a contact and the information required in the report would ensure timely and complete harvest information from the Aleut Corporation is received to facilitate oversight of the AI directed pollock fishery.

The Council recommended that the Aleut Corporation be required to submit both an annual report and a one-time report about the use of its AI pollock allocation. The annual report would include: (1) information describing the use of the revenues generated from the AI directed pollock fishery by the Aleut Corporation for economic development in Adak, and (2) information about catch similar to that required to be provided by the AFA cooperatives

under § 679.61(f). The Council requested that the Aleut Corporation submit a draft of the annual report to the Council by December 1 and a final report by February 1. The Council also requested a one-time report to be provided prior to the June 2006 Council meeting with information on how the revenue from the fishery was spent, harvest success, Chinook salmon bycatch, development of the small vessel fleet, and pollock processing capacity. The Council would consider this information in these reports to determine if the AI directed pollock fishery allocation should be adjusted.

Management of the AI directed pollock fishery would require revisions to logbooks and forms to ensure accurate data collection. The two catcher vessel daily fishing logbooks, two catcher/processor daily cumulative production logbooks (DCPLs), mothership DCPL, and shoreside processor DCPL would be revised by adding "AIP" to the management block of the logbooks to identify the Aleutian Islands directed pollock fishery in the reports. The two weekly production reports (WPRs), two check-in/check out reports, buying station report, and daily production report would be revised by adding "AIP" to the management block of the forms. The software for the shoreside processor electronic logbook report would be revised by adding "AIP" to the management options onscreen.

§ 679.7 Prohibitions

The prohibitions specific to the AFA in § 679.7(k) would be revised by this proposed rule to apply only to the BS directed pollock fishery. Although many of the prohibitions in this paragraph continue to apply to the AI directed pollock fishery, several no longer apply under Pub. L. 108–199. In paragraphs (k)(3)(i) and (k)(4)(i), inshore processors and catcher vessels are prohibited from processing and harvesting BSAI pollock, respectively, without an AFA permit. Public Law 108–199 and Amendment 82 would allow catcher vessels 60 feet (18.3 m) LOA or less to harvest pollock in the AI directed pollock fishery and would allow shoreside and stationary floating processors without AFA permits to process pollock taken in the AI directed pollock fishery. All catcher/processors, motherships, and catcher vessels larger than 60 feet (18.3 m) LOA must be AFA qualified vessels to participate in the AI directed pollock fishery. Paragraphs (k)(3)(i) and (k)(4)(i) would be revised to exclude AI pollock from the prohibition on harvesting pollock without an AFA permit. These revisions would require each inshore

processor and catcher vessel in the BS directed pollock fishery and each catcher vessel greater than 60 feet (18.3 m) LOA in the AI directed pollock fishery to have an AFA permit.

Paragraphs (k)(3)(iii) and (iv) limit the amount of BSAI pollock to be processed by inshore processors and limit the number of geographic locations at which BSAI pollock could be processed in a year. These limitations apply to the AFA pollock fishery, but are not required in the AI directed pollock fishery by either Pub. L. 108–199 or Amendment 82. Consequently, this proposed rule would remove references to the AI pollock fishery from each of these paragraphs.

Paragraphs (k)(5), (k)(6), and (k)(7) prohibit inshore AFA fishery cooperatives from exceeding their annual allocations of BSAI pollock and prohibit AFA-qualified vessels and processors from harvesting or processing an excessive share of BSAI pollock. Because all of the AI directed pollock fishery is allocated to the Aleut Corporation, the prohibitions in these paragraphs are no longer appropriate for the AI directed pollock fishery. This proposed rule would revise these paragraphs to remove references to the AI directed pollock fishery and would ensure that these prohibitions continue to apply only to the AFA fisheries.

New paragraph (l) would add prohibitions specific to the AI directed pollock fishery. Harvesting and processing of pollock taken in the AI directed pollock fishery would be prohibited without selection by the Aleut Corporation and NMFS' approval, as specified under § 679.4(m). NMFS would post a list of NMFS approved participants at www.fakr.noaa.gov that could be reviewed by the participant before harvesting or processing activities. This prohibition would ensure that only harvesters and processors selected by the Aleut Corporation and approved by NMFS could participate in the AI directed pollock fishery.

Paragraph (l) also would prohibit catcher vessels from having onboard at the same time pollock that was harvested from the AI and from either the BS or the GOA. A catcher vessel would be required to offload all pollock that was from the BS or the GOA before fishing in the AI directed pollock fishery and to offload all pollock taken in the AI directed pollock fishery before fishing in the BS or GOA. This prohibition would facilitate enforcement and the accurate accounting of pollock taken in the AI.

Because all catcher/processors and motherships participating in the AI

directed pollock fishery would be required to be AFA qualified, catcher/processors and motherships would be prohibited from processing in the AI directed pollock fishery without complying with the AFA catch weighing and observer sampling requirements under paragraphs (k)(2)(iii) and (k)(2)(iv). This revision would ensure the quality of information collected regarding pollock processing.

Paragraph (l) also would prohibit harvesters from delivering pollock harvested in the AI directed pollock fishery to shoreside or stationary floating processors unless the processor has a catch monitoring control plan satisfying the requirements of § 679.28(g) or to a processing vessel that is not AFA qualified and that is not selected by the Aleut Corporation and approved by NMFS for processing pollock harvested in the AI directed pollock fishery.

To manage the harvest of the Aleut Corporation pollock allocation, paragraph (l) would impose prohibitions on the Aleut Corporation and its entities similar to prohibitions for AFA inshore cooperatives. The proposed rule would prohibit harvest in excess of the harvest specifications for the AI directed pollock fishery by participants and by the Aleut Corporation. This would ensure that both the participants and the Aleut Corporation would be responsible to maintain harvest amounts within the AI directed pollock fishery annual, seasonal, and vessel allocations established in the harvest specifications.

§ 679.20 General Limitations

Section 679.20(a)(5) establishes the provisions for the pollock harvest specifications in the BS, AI, Bogoslof District, and the GOA. The proposed rule would add a new paragraph (iii) for the provisions for the AI directed pollock fishery and to separate AI pollock from the BS pollock harvest specifications.

In June 2004, the Council recommended a method of funding the annual allocation for the AI directed pollock fishery in consideration of the optimum yield (OY), the CDQ pollock directed fishing allowance pursuant to the AFA and § 679.31(a), and the combined TACs for the BSAI groundfish fisheries. The Council's recommended development of annual recommendations for the Bering Sea (BS) and AI TACs within the 2 million mt OY cap. The Council also recommended that the CDQ directed pollock fishery allowance not be reduced by the establishment of an AI pollock TAC. The proposed FMP text

and proposed rule would implement these policy decisions.

Section 206(a) of the AFA requires that "10 percent of the total allowable catch of pollock in the Bering Sea and Aleutian Islands management area be allocated as a directed fishing allowance" to the CDQ program. Public Law 108-199 does not prohibit a CDQ pollock directed fishing allowance in the AI. In October 2004, the Council clarified its intent that the CDQ directed fishing allowance should be deducted from the AI annual pollock TAC to create the initial pollock TAC in the same manner as the Bering Sea pollock allocations. The AI directed pollock fishery for the Aleut Corporation would be allocated from the initial pollock TAC after subtraction of the incidental catch amount. The Council did not recommend a change to the existing regulatory provisions that establish separate CDQ directed fishing allowances in the AI and the Bering Sea subareas. Thus, 10 percent of the TAC specified annually for each subarea would be allocated to the CDQ pollock directed fishing allowance, and the Aleut Corporation and AFA directed pollock fishery allocations would be reduced by corresponding amounts.

This approach maintains Council intent to not reduce the BSAI CDQ directed fishing allowance as a result of the Aleut Corporation allocation. The Aleut Corporation allocation would equal the AI pollock TAC minus the 10 percent CDQ pollock directed fishing allowance and minus the incidental catch allowance (ICA).

In consideration of the harvesting and processing capacity for the AI directed pollock fishery, economic development needs for Adak, Alaska, and impacts on other BSAI groundfish fisheries, the Council recommended limits on the amount of annual harvest in the AI directed pollock fishery. The proposed rule would establish these limits in a new paragraph § 679.20(a)(5)(iii). The annual AI pollock TAC would equal 19,000 mt when the AI pollock ABC is equal to or more than 19,000 mt. When the AI pollock ABC is less than 19,000 mt, the annual AI pollock TAC would be no more than the ABC. The Council determined that the 19,000 mt limit minus the CDQ directed pollock fishing allowance and the ICA would provide an adequate amount of pollock to the Aleut Corporation for economic development while not excessively impacting the other BSAI groundfish fisheries, as combined annual TACs may not exceed the 2 million mt OY cap.

The proposed rule includes a reallocation provision for unharvested

AI pollock. The proposed rule would revise § 679.20(a)(5) to authorize the Regional Administrator to determine the amount of the AI directed pollock fishery allocation or CDQ directed fishing allowance that is not likely to be harvested and to reallocate the anticipated unused amounts to the BS directed pollock fishery or the BS CDQ pollock directed fishing allowance, respectively, as soon as practicable. The amount of reallocation would be limited by the BS pollock ABC and must be consistent with determinations resulting from any associated consultations conducted under the Endangered Species Act (ESA). Based on the Council's funding policy, this would ensure that a portion of the BS pollock fishery recommended TAC that was applied to the AI recommended TAC may be returned to the BS pollock fishery if it is not expected to be harvested in the AI.

The Steller sea lion protection measures require harvest of pollock to be within the annual TAC amounts to ensure harvest is appropriate to the amount of available pollock biomass and other considerations. Because of the current condition of the BS pollock stock and the 2 million mt OY maximum in the BSAI, the BS pollock TAC is set well below the BS pollock ABC. The maximum amount of reallocation that could occur from the AI subarea to the BS subarea is no more than 19,000 mt minus the ICA. The 19,000 mt TAC limit is approximately 1.3 percent of the 2005 proposed BS pollock TAC (1,474,450 mt). The proposed acceptable biological catch (ABC) for pollock in the BS subarea is 2,363,000 mt. The 19,000 mt limit is 2 percent of the difference between the BS pollock TAC and ABC. Even with a reallocation of 19,000 mt from the AI subarea, the amount of pollock available for harvest in the BS (1,493,450 mt) would be well below the ABC.

Based on the 19,000 mt annual TAC limit for AI pollock and on the current biomass size of the BS pollock stock, any reallocation of unharvested AI pollock TAC is not likely to result in a harvest in the BS that is excessive in relation to available pollock biomass. As long as the gap between the BS pollock ABC and the BS pollock TAC is wide, the reallocation of unharvested pollock from the AI to the BS is not likely to adversely affect Steller sea lions or their critical habitat. If the biomass of the BS pollock stock declines substantially in the future or if the gap between ABC and TAC is substantially reduced, reallocation of unharvested AI pollock may need to be restricted to protect Steller sea lions and their critical

habitat. The condition of the BS stock and the amount of AI pollock reallocation would need to be considered at that time to determine the likely effect on Steller sea lions and their critical habitat. No reallocation would occur if the action was likely to adversely affect Steller sea lions or their critical habitat.

The seasonal apportionment of pollock harvest in the AI directed pollock fishery would be revised by this proposed rule. Pollock is an important prey species for the endangered western distinct population segment of Steller sea lions. The protection measures for Steller sea lions include temporal dispersion of pollock harvest. To temporally disperse harvest of prey species, the Steller sea lion protection measures require apportioning 40 percent of the BSAI pollock TAC to the A season and 60 percent to the B season. The regulations currently state that the seasonal apportionment applies to the BSAI pollock fishery. The proposed seasonal apportionment of AI directed pollock fishery would be established in a different manner than the seasonal apportionment of BS pollock. The proposed rule would remove references to AI pollock seasonal apportionment in §§ 679.20(a)(5)(i)(B) and (a)(5)(ii) and would add a new paragraph (iii) to describe the method of seasonal apportionment for the AI directed pollock fishery.

The Council considered the Steller sea lion protection measures in recommending the seasonal apportionment of the AI directed pollock fishery. The proposed rule would limit the A season apportionment to no more than the lesser of the annual initial TAC plus any CDQ fishery or 40 percent of the annual ABC. The total harvest of pollock in the A season from the directed fishery (AI directed pollock fishery and any CDQ fishery) and ICA would not exceed 40 percent of the ABC. This method of limiting seasonal harvest based on ABC is a departure from the use of TAC for the basis of seasonal apportionments. Because the annual TAC is capped at 19,000 mt when the ABC is greater than 19,000 mt, the Council recommended providing for the annual initial TAC to be taken fully in the A season as long as the annual initial TAC plus any CDQ fishery does not exceed 40 percent of the ABC. This would allow the participants to maximize the revenue potential from the fishery by harvesting the more valuable products which are available early in the year and would keep the A season harvest within the intended 40 percent seasonal limits of the Steller sea lion protection measures.

The B season apportionment to the AI directed pollock fishery would be the remainder of the annual initial TAC minus the A season apportionment, and minus the annual ICA. Unharvested A season pollock initial TAC may be reapportioned by the Regional Administrator to the B season, if it is determined that the B season apportionment and reallocation are likely to be harvested. Otherwise, the Regional Administrator may reallocate unharvested AI pollock initial TAC to the BS pollock fishery as long as the BS pollock ABC is not exceeded, as described above.

The CDQ fishery is not part of the Aleut Corporation's directed pollock fishery in the AI. Any harvest of the CDQ pollock directed fishing allowance in the AI would continue to be conducted with the same seasonal apportionments as currently specified for the AI and BS subareas and CDQ components under § 679.20(a)(5)(i)(B). The proposed rule would reorganize these provisions under § 679.20(a)(5)(i)(B) and continue to apportion 40 percent of the CDQ directed fishing allowance in the AI to the A season and 60 percent to the B season. The CDQ pollock directed fishing allowances specified for the AI and the BS subareas would be determined during the harvest specifications process.

Section 679.20(a)(5)(ii) currently requires that the allocation of pollock in both the AI and the Bogoslof District is to be done in the same manner as the AFA allocations in the BS subarea. Because Pub. L. 108–199 allocated the non-CDQ directed pollock fishery in the AI to the Aleut Corporation, this proposed rule would revise paragraph (a)(5)(ii) to apply to the Bogoslof District only. The establishment of an ICA when the directed pollock fishery in the AI is closed would be addressed in a new paragraph (iii) where harvest specifications and seasonal allocations would be specified.

Paragraph (a)(5)(iii) also would specify the further allocation of the Aleut Corporation's allocation among vessels approved to participate in the AI directed pollock fishery. Public Law 108–199 allows the allocation of a portion of the AI directed pollock fishery to vessels 60 feet (18.3 m) LOA or less in increasing amounts through 2013. In 2004 through 2008, up to 25 percent of the allocation may be provided to vessels 60 feet (18.3 m) LOA or less. In 2009 through 2012, up to 50 percent of the allocation may be provided to vessels 60 feet (18.3 m) LOA or less. For 2013 and beyond, 50 percent of the allocation must be provided to

vessels 60 feet (18.3 m) LOA or less. The first two allocation periods would establish a cap on how much of the allocation may go to small vessels. For 2013 and beyond, the amount to go to the small vessels would be 50 percent of the allocation specified during the harvest specifications process.

§ 679.21 Prohibited Species Bycatch Management

The Council recommended a separate Chinook salmon prohibited species catch limit in the AI directed pollock fishery. Currently § 679.21(e)(1)(vii) establishes the BSAI Chinook salmon at 29,000 fish. This limit applies to all Chinook salmon taken when directed fishing for pollock, including CDQ pollock fisheries in the BSAI. When this limit is reached in the BSAI pollock trawl fishery, the Chinook salmon savings areas are closed according to a schedule specified in § 679.21(e)(7)(viii). The two Chinook salmon savings areas are shown in Figure 8 to 50 CFR part 679. One of these areas is in the AI (area 1), and the other area is in the BS (area 2). Area 2 is considered an important area for pollock harvest in the BS. The pollock fishery in the BS subarea has had annual incidental catches of Chinook salmon well over 29,000 fish in 2002 and 2003 and likely will exceed the 29,000 limit in 2004, resulting in the closure of areas 1 and 2.

To reduce the potential impact of Chinook salmon bycatch taken in the AI directed pollock fishery on the BS pollock fishery, the Council recommended a separate AI Chinook salmon prohibited species catch (PSC) limit of 700 fish. The AI directed pollock fishery has been closed since 1999, and little recent information exists on Chinook salmon bycatch in the AI pollock trawl fishery. The 700 fish limit is based on the highest rate of Chinook salmon bycatch observed in the AI pollock fishery between 1991 and 1998 and a 19,000 mt AI pollock TAC. If the amount of Chinook salmon bycatch in the AI subarea were to exceed the 700 fish limit, the proposed rule would require the closure of the AI portion of the Chinook salmon savings areas only (area 1 on Figure 8 to 50 CFR part 679). The proposed rule would revise § 679.21(e)(1)(vii) by removing the AI pollock reference for the 29,000 Chinook salmon PSC limit. A new paragraph (e)(1)(ix) would be added to establish the 700 Chinook salmon PSC limit for the AI directed pollock fishery.

Further, the proposed rule revisions to § 679.21(e)(7)(viii) would provide that reaching the BS pollock trawl Chinook salmon PSC limit of 29,000 would close

the Chinook salmon savings areas close both in the AI and in the BS. The Chinook salmon savings area in the AI is not expected to be an important location for pollock harvest, so closing this area based on obtaining the BS PSC limit for Chinook salmon would not be an excessive burden to the AI directed pollock fishery and would provide additional protection to Chinook salmon. The incidence of Chinook salmon bycatch would be reviewed during the harvest specifications process to determine if the limit in this proposed rule is appropriate based on recent catch information.

§ 679.23 Seasons

Section 679.23(e)(2) would be revised to include the AI directed pollock fishery in the list of fisheries to which seasonal apportionments apply. The Steller sea lion protection measures require the pollock harvest in the BSAI to be managed in two seasons to ensure temporal dispersion of harvest. This proposed action would establish the A season as 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., June 10 and the B season as 1200 hours, A.l.t., June 10 through 1200 hours, A.l.t., November 1.

§ 679.28 Equipment and Operational Requirements

The Council recommended that pollock deliveries to a shoreside or stationary floating processor be prohibited unless the processor has a catch monitoring control plan (CMCP). The CMCP explains how a processor will meet the catch monitoring and control standards detailed in § 679.28(g)(7). This proposed action would revise § 679.28(g)(2) to include the AI directed pollock fishery shoreside processors and stationary floating processors with the processors required to have a CMCP. The CMCP would ensure that pollock processed for the Aleut Corporation would be accurately monitored and reported to ensure effective management of the fishery. This proposed rule also would correct a typographical error in paragraph (g)(3) which references the CMCP standards by revising the reference in the paragraph from (g)(6), which applies to changing a CMCP, to (g)(7) which applies to the standards.

§ 679.50 Groundfish Observer Program

The Council recommended that catcher vessels less than 60 feet (18.3 m) LOA be required to accept a NMFS staff observer if one is designated by NMFS to observe on the vessel. An observer collects fishery information that can be used to manage harvest activities for a

fishery. NMFS staff observers would be provided without charge to the vessel owner to collect this information. Current regulations do not require observers on catcher vessels less than 60 feet (18.3 m) LOA in the AI directed pollock fishery. Revised paragraph (e)(1) would require the owner of a vessel less than 60 feet (18.3 m) LOA in the AI directed pollock fishery to accept a NMFS staff observer and to comply with the safety requirements for carrying an observer at § 679.50(g)(1)(ii). Information gathered by the NMFS staff observers may be used in considering future observer requirements for vessels less than 60 feet (18.3 m) LOA in the AI directed pollock fishery.

Catcher vessels 60 feet (18.3 m) to less than 125 feet (38.1 m) LOA in the AI directed pollock fishery are required by § 679.50(c)(1)(v) to have 30 percent observer coverage during a calendar quarter and for at least one complete fishing trip targeting pollock, as defined under paragraph (c)(2)(i). Proposed revisions to paragraph (c)(2)(i) would ensure the AI directed pollock fishery observer coverage is considered separately from BS or GOA pollock fishery observer coverage requirements. Catcher vessels in this size class participating in the AI directed pollock fishery would have at least one of their trips fully observed, ensuring NMFS receives sufficient information for monitoring activities in the AI directed pollock fishery by catcher vessels in this size class.

Revisions to paragraph (c)(5) also would add catcher/processor and mothership observer requirements for the AI directed pollock fishery equivalent to AFA requirements. The Council recommended that all catcher/processors and motherships participating in the AI directed pollock fishery be required to meet the AFA monitoring requirements, including vessels less than 60 ft. (18.3 m) LOA. This requirement would ensure accurate information is available on which to base management decisions for the AI directed pollock fishery. The reference to observer workload restrictions also would be corrected from paragraph (c)(5)(iii) to paragraph (c)(5)(ii).

Subpart F American Fisheries Act Management Measures

The title to Subpart F would be revised to read "American Fisheries Act and Aleutian Islands Directed Pollock Fishery Management Measures." Because a number of AFA provisions also apply to the AI directed pollock fishery, sections of this subpart would be revised to include the management

measures for the AI directed pollock fishery.

§ 679.60 AFA Management Measures

The authority in the section would be revised to include Pub. L. 108–199 in the list of statutes applicable to the BSAI pollock fisheries.

§ 679.61 Formation and Operation of Fishery Cooperatives

This section describes the formation and operation of fishery cooperatives for the purposes of the AFA pollock fishery. Proposed revisions to §§ 679.61(b), (d)(3) and (g) would remove references to the AI directed pollock fishery. Public Law 108–199 removes the AI directed pollock fishery from the AFA program. Paragraph (b) now states that fishery cooperatives formed for the purpose of cooperatively managing directed fishing in the BSAI directed pollock fishery must comply with § 679.61. Fishery cooperatives no longer participate in the AI directed pollock fishery. Paragraph (d)(3), now states that inshore cooperatives that are applying for an allocation of BSAI pollock must file their contracts by the December 1 deadline. Inshore cooperatives would no longer be able to apply for an AI pollock allocation pursuant to the proposed rule. Paragraph (g) now prohibits cooperative members from participating in the BSAI directed pollock fishery if any landing taxes for the cooperative are overdue. Because the cooperatives are no longer able to participate in the AI directed pollock fishery without the Aleut Corporation's selection and NMFS' approval, the prohibition on fishing in the AI directed pollock fishery is outside the scope of purpose for the formation of the cooperative and would be inappropriate. The reference to landing taxes in paragraph (g) would be corrected from paragraph (d)(1)(v) to paragraph (e)(1)(v).

§ 679.62 Inshore Sector Cooperative Allocation Program

Section 679.62 (a) now specifies that inshore cooperatives will receive a portion of the AI directed pollock fishery allocation if the AI is open to directed pollock fishing. Because Pub. L. 108–199 provides for all of the AI directed pollock fishery to be allocated to the Aleut Corporation, this proposed rule would remove the reference to the AI directed pollock fishery allocation to inshore cooperatives in the introductory paragraph to (a) and in paragraphs (a)(2) and (a)(3).

Paragraphs (b)(2) and (b)(3) now refer to the harvest accrual against inshore cooperative quotas and the reporting of

inshore cooperative harvest, including the AI directed pollock fishery. Because the AI directed pollock fishery is allocated to the Aleut Corporation, the proposed rule would clarify the description of the inshore cooperative allocation and reporting requirements by removing references to the AI directed pollock fishery. The revision also would remove the additional text “by a member vessel” in paragraph (b)(2)(i) to provide more concise text for this requirement.

§ 679.63 Catch Weighing Requirements for Vessels and Processors

Section 679.63(c) now requires groundfish landed by an AFA catcher vessel in the BSAI pollock fishery at a shoreside processor to be weighed and observed. In June 2004, the Council recommended that the shoreside and stationary floating processors receiving pollock from the AI directed pollock fishery be required to have a CMCP. The AFA weighing and observer requirements for inshore processors were not extended to the AI directed pollock fishery because the CMCP would provide the quality and quantity of information needed. The proposed rule would revise paragraph (c) to remove references to the AI pollock fishery.

§ 679.64 Harvesting Sideboard Limits in Other Fisheries

The introductory text to paragraphs (a) and (b) would be revised to clarify that the intent of the sideboards is to protect against adverse effects from fishery cooperative in the BS directed pollock fishery. Paragraphs (a)(1)(i) and (b)(3) would be revised to exempt AI pollock from AFA groundfish sideboard provisions. The citation in paragraphs (a)(2)(ii) would be corrected from (a)(1)(ii)(A) to (a)(2)(i). Paragraph (a)(4) would be revised to correct the citation “(a)(1)(i) through (a)(1)(iii)” to “(a)(1)(ii) through (a)(3).” The citation in paragraph (a)(4)(ii) also would be corrected from (a)(1)(iv) to (a)(4)(i).

§ 679.65 Crab Processing Sideboard Limits

Because the crab processing sideboard limits are applicable to AFA mothership and inshore processors that receive pollock from the BS directed pollock fishery, paragraphs (a) and (b) would be revised to specify the BS directed pollock fishery.

Classification

At this time, NMFS has not determined that the FMP amendment that this rule would implement is consistent with the national standards

of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of 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 (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

Factual Basis for Certification

Description and estimate of the number of small entities to which the rule applies: Amendment 82 potentially affects the following classes of entities: (1) the Aleut Corporation, (2) fishing operations harvesting pollock in the AI with the permission of the Aleut Corporation, (3) processors processing AI pollock with permission of the Aleut Corporation, (4) AFA pollock vessels that may be affected by the Council's policy on funding the AI allocation or which may be involved in fishing the AI allocation under the terms of the Pub. L. 108–199, and (e) CDQ groups.

Section 803(a) of Pub. L. 108–199 requires that effective January 1, 2004, and thereafter, the directed fishery for pollock in the AI subarea of the BSAI shall be allocated to the Aleut Corporation. Except with the permission of the Aleut Corporation or its authorized agent, the fishing or processing of any part of such allocation shall be prohibited by Section 307 of the Magnuson-Stevens Fishery Conservation and Management Act.

For the purposes of the Regulatory Flexibility Act (RFA), the Aleut Corporation is best characterized as a holding company. A holding company is a company that usually confines its activities to owning stock in and supervising management of other companies. A holding company usually owns a controlling interest in the companies whose stock it holds. The Aleut Corporation carries out most of its significant activities through a variety of other companies whose stock it holds. These include the Aleut Enterprise Corporation, the Adak Reuse Corporation, SMI International Corporation, Tekstar, Inc., Akima Corporation, Aleut Real Estate L.L.C., and the Alaska Trust Company.

As a holding company, the Aleut Corporation is not a small entity under the SBA criteria. Aleut Corporation revenues ranged from about \$72 million in 2001 to about \$49 million in 2003.

SBA small entity criteria at 13 CFR 121.201 provide a small entity threshold for “Offices of Other Holding Companies” of \$6 million.

The vessels used to harvest the Aleut Corporation's pollock allocation are expected to “co-op” with the Aleut Corporation because the latter is responsible for dispersing the component shares of the annual AI pollock allocation to individual fishing operations. All those vessels allocated a working share of the Aleut Corporation's directed pollock fishery are “affiliates” of the larger group and are not small entities for RFA purposes. As discussed in Appendix A.2 of the RIR (see **ADDRESSES**), small entities affiliated with large entities are considered large entities for the purpose of an SBA analysis. This means that entities which contract with the Aleut Corporation to harvest or process its allocation of AI pollock are large entities within the meaning of the RFA. Thus, the vessels 60 feet (18.3 m) LOA or less, the AFA vessels, and the processors that fish and process this allocation on behalf of the Aleut Corporation must be considered “affiliates,” and are not small entities within the meaning of the RFA.

The decisions related to allocation size, monitoring, harvest limits for vessels less than 60 feet (18.3 m) LOA, recordkeeping and reporting, and Chinook salmon bycatch limits and area closures are only expected to directly regulate entities which would harvest or process the Aleut Corporation allocation of AI pollock. Because, as noted above, these entities are affiliated with the Aleut Corporation, they are all considered large within the meaning of the RFA.

Amendment 82 would establish a policy under which the AI pollock allocation is “funded” in order that it be contained under the 2 million mt total BSAI groundfish OY. This action would not actually reapportion the various pollock allocations to fund AI pollock. It simply would establish the process by which subsequent action in the harvest specifications process would apportion the 2 million ton OY. If the sum of the TACs in the BSAI were less than the 2 million mt OY, the funding of the AI pollock allocation would take place, to the maximum extent possible, from the difference between the sum of the TACs and the OY. In this situation, the funding would not come at the expense of other fleet segments. Alternatively, if the sum of the TACs were equal to the 2 million mt OY, the funding would come from the BSAI pollock TAC. CDQ reserves would be taken from each TAC established from the AI and BS subarea

pollock fisheries, and therefore, would not contribute to the funding of the AI pollock TAC. The entire funding would come from a reduced TAC accruing to the AFA pollock fishing fleet in the BS.

The AI pollock proposed action establishes the process which would be followed by the Council and NMFS when setting the species/fishery TACs, at which time all attributable impacts to small entities will be assessed, as required by RFA. The potential direct effects on small entities attributable to funding the AI pollock allocation would be evaluated during the harvest specifications process, an action which always includes an initial regulatory flexibility analysis. This is appropriate because it is not until the annual specifications are proposed that any impacts may actually be identified (i.e., OY allocated to TACs).

To illustrate the point, note that in any year the AI directed pollock fishery allocation may be set at zero, or any number above zero up to the TAC limit proposed under this action. If it is zero, no TAC would be reallocated from other fisheries, and clearly no significant effects on a substantial number of small entities would occur. If the AI directed pollock fishery allocation is very small (i.e., 100 mt), "no significant adverse impacts" would occur. This logic extends continuously until some, as yet undefined, point at which an amount of AI directed allocation is large enough to create a "significant adverse impact" (unless the funding source is BS pollock, wherein no small entities exist). However, it is the specification of all the annual TACs (AI pollock and its funding sources), and not the mechanism for specification, which will result in those impacts, and which may require an analysis which would identify the likely number, distribution, and attributes of the entities impacted.

Moreover, the allocation is funded from either an unallocated portion of the OY or from the allocation by a reduction in the TAC available for harvest by the AFA pollock fleet in the BS. The vessels in the AFA pollock fleet are either affiliated with processors or fishing cooperatives. In all instances, the affiliated entities have gross revenues exceeding the \$3.5 million threshold separating small and large entities. Thus, the proposed action would only affect large entities.

Six CDQ groups harvest pollock in the BSAI. CDQ groups represent Western Alaska communities and are given allocations of the annual pollock TAC to use for the purpose of fisheries related economic development to benefit these communities. Under the terms of the AFA, these entities are entitled to 10

percent of the pollock TAC in the BSAI. The CDQ groups are private, non-profit, entities, and are small entities within the meaning of the RFA. In June 2004, the Council explicitly excused the CDQ groups from contributing to the funding of the Aleut Corporation allocation. In October 2004, the Council clarified its intent that the Aleut Corporation, as one of the users of the BSAI pollock, was expected to contribute 10 percent of its AI allocation to the CDQ groups.

Consistent with the Council's intent, the current regulations governing the allocation of pollock to CDQ groups would not be revised under this action. Under current regulations, the CDQ groups receive 10 percent of any TAC specified in the AI and must fish their allocation there unless the Regional Administrator reallocates the unused portion to the BS CDQ pollock directed fishing allowance. The CDQ groups would have been required to fish their AI pollock directed fishing allowance in the AI if the Council had chosen, as it could have, to establish a directed fishery in the AI in 2003 and 2004. This would be the case if Section 803 had not been included in Pub. L. 108-199 and the Council had chosen to create a pollock TAC in the AI in 2005 or in a future year. CDQ groups will receive a part of their CDQ allocation in the AI and their BS CDQ allocation will be reduced by a corresponding amount. The potential advantages and disadvantages of this to the CDQ groups were described in the RIR (Section 7.7) (see **ADDRESSES**).

The CDQ groups will not be directly regulated by the Amendment 82 or by the changes in the regulations associated with it. The CDQ groups may be affected by the Council's decisions relating to TACs. These impacts will be described in the IRFA that is prepared each year to accompany the annual harvest specifications.

Because this proposed rule has no significant economic impacts on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements and estimated reporting burdens have been submitted to OMB for approval: list of participating harvesters and processors in the AI pollock fishery, 16 hours; appeals of NMFS' disapproval as participating harvester or processor, 8 hours, and AI directed pollock fishery catch reporting, 4 hours.

This proposed rule contains collection-of-information requirements subject to the PRA and which has been approved by OMB. Public reporting burden 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.

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.

Public comment is sought regarding: whether this proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection-of-information, including through the use of automated collection techniques or other forms of information technology. Send comments

on these or any other aspects of the collection-of-information to NMFS Alaska Region (see **ADDRESSES**), and e-mail to David_Rostker@omb.eop.gov, or fax to 202-395-7285.

Notwithstanding any other provision of the 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.

Informal consultation under the ESA was concluded for Amendment 82 on October 22, 2004. As a result of the informal 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 Bering Sea subarea, including any reallocation of unharvested AI pollock, also would 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. Both of these harvest provisions satisfy the intent of the Steller sea lion protection measures.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 1, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105-277, Title II of Division C; Pub. L. 106-31, Sec. 3027; Pub. L. 106-554, Sec. 209; and Pub. L. 108-199, Sec. 803.

2. 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 Pub. L. 108-199 to govern commercial fishing for BSAI pollock according to the requirements of the AFA and Pub. L. 108-199. 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.

3. 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 cooperatives or cooperatives,” “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 cooperatives 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).

* * * * *

4. 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 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 § 679.4(b) or Federal processor permit issued under § 679.4(f);

(iii) an approved catch monitoring control plan for shoreside and stationary floating processors, as required by 679.28(g)(2); and

(iv) 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 § 679.4(l)(2) for all catcher/processors, (l)(3) for all catcher vessels greater than 60 ft (18.3 m) LOA, or (l)(4) for all motherships.

(ii) Each participant selected by the Aleut Corporation and 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)*

Notification. 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) *Initial administrative determinations (IAD)*. The Regional Administrator will prepare and send an 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.

5. 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	Prior to groundfish CDQ fishing under each CDQ program.
	(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.

Submit a separate BEGIN message for ...	If you are a ...	Within this time limit
	(2) MS, SS, SFP	Before receiving AI pollock

(ii) * * *

Submit a separate CEASE message for ...	If you are a ...	Within this time limit

(1) 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:

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.

6. 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.

* * * * *

(1) *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 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 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 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 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.

(vi) 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) *Overages by vessel.* 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) *Overages by the Aleut Corporation.* 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).

7. In § 679.20, paragraph (a)(5)(iii) is redesignated as paragraph (a)(5)(iv), 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, and paragraph (a)(5)(iii) is added 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.

* * * * *

(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. This amount of pollock will be deducted from the annual TAC.

(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 this paragraph.

(iii) *Inseason adjustments.* 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 publication 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.

(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 publication 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: * * *

(6) * * *

(i) 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.

* * * * *

8. In § 679.21, paragraphs (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) * * *

(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.

* * * * *

9. 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.

* * * * *

10. 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 fishery.

(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. * * *

* * * * *

11. 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.

* * * * *

12. 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

13. Section 679.60 is revised to read as follows:

§ 679.60 Authority and related regulations.

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 Public Law 108–199, Sec. 803 are set out at §§ 679.2 Definitions, 679.4 Permits, 679.5 Recordkeeping and reporting, 679.7 Prohibitions, 679.20 General limitations, 679.21 Prohibited species bycatch management, 679.28 Equipment and operational requirements for Catch Weight Measurement, 679.31 CDQ reserves, and 679.50 Groundfish observer program.

Regulations developed by the Department of Transportation to implement provisions of the AFA are found at 50 CFR part 356.

14. 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.

15. 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).

* * * * *

16. In § 679.63, paragraph (c) is revised to read as follows:

§ 679.63 Catch weighing requirements for vessels and processors.

* * * * *

(c) *What are the requirements for AFA inshore processors?* (1) *Catch weighing.* All groundfish landed by AFA catcher vessels engaged in directed fishing for pollock in the BS subarea must be sorted and weighed on a scale approved by the State of Alaska as described in § 679.28(c), and be made available for sampling by a NMFS certified observer. The observer must be allowed to test any scale used to weigh groundfish in order to determine its accuracy.

(2) *Observer coverage and prior notification.* The plant manager or plant liaison must notify the observer of the offloading schedule for each delivery of BS subarea pollock by an AFA catcher vessel at least 1 hour prior to offloading. The plant manager must ensure that an observer monitors each delivery of BS subarea pollock from an AFA catcher vessel and is on site the entire time the delivery is being weighed or sorted.

17. In § 679.64, introductory paragraph of (a), paragraphs (a)(1)(i), (a)(2)(ii), (a)(4), 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 (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) 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) 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:

* * * * *

18. 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 COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333-4333-01; I.D. 112204C]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Proposed 2005 and 2006 Harvest Specifications for Groundfish

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

ACTION: 2005 and 2006 proposed harvest specifications for groundfish; apportionment of reserves; request for comments.

SUMMARY: NMFS proposes 2005 and 2006 harvest specifications, reserves and apportionments, and Pacific halibut prohibited species catch (PSC) limits for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits and associated management measures for groundfish during the 2005 and 2006 fishing years. The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by January 6, 2005.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail to P.O. Box 21668, Juneau, AK 99802;
- Hand Delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK;
- E-mail to

2005AKgroundfish.tacspeccs@noaa.gov and include in the subject line of the e-mail comments the document identifier: 2005 Proposed Specifications (E-mail comments, with or without attachments, are limited to 5 megabytes);

- FAX to 907-586-7557; or
- Webform at the Federal eRulemaking Portal: www.regulations.gov. Follow the instructions at that site for submitting comments.

Copies of the draft Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/IRFA) prepared for this action and the 2001 Biological Opinion (BiOp) on the Steller sea lion