

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Part 679**

[Docket No. 130530519–4742–02]

RIN 0648–BD35

**Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; American Fisheries Act; Amendment 106**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS adopts a final rule to implement Amendment 106 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). Amendment 106 is necessary to bring the BSAI FMP into conformity with the amendments to the American Fisheries Act (AFA) in the Coast Guard Authorization Act of 2010 (Coast Guard Act). This rule allows the owner of an AFA vessel to rebuild or replace an AFA vessel without any limitation on the length, weight, or horsepower of the rebuilt or replacement vessel when the rebuilt or replacement vessel is operating in the Bering Sea and Aleutian Islands Management Area (BSAI). This rule also allows the owner of an AFA catcher vessel in an inshore cooperative to remove the vessel from the cooperative and assign the Bering Sea pollock catch history of the removed vessel to one or more vessels in the cooperative. This action is also intended to improve vessel safety and operational efficiency in the AFA fleet by allowing the rebuilding or replacement of AFA vessels with safer and more efficient vessels and by allowing the removal of inactive catcher vessels from the AFA fishery. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the AFA, the BSAI FMP, and other applicable laws.

**DATES:** Effective October 14, 2014.

**ADDRESSES:** An electronic copy of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA or Analysis) prepared for this action may be obtained from <http://www.regulations.gov> or from the Alaska

Region Web site at <https://alaskafisheries.noaa.gov/cm/analyses/>. An electronic copy of the Proposed Rule (79 FR 34696, June 18, 2014) may be obtained from <http://www.regulations.gov> or from the Alaska Region Web site at <https://alaskafisheries.noaa.gov/regs/summary.htm>.

Written comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this final rule may be submitted to NMFS at the above address and by email to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov) or fax to (202) 395–7285.

**FOR FURTHER INFORMATION CONTACT:**

Mary Alice McKeen, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries of the BSAI in the Exclusive Economic Zone off Alaska under the BSAI FMP. The North Pacific Fishery Management Council (Council) prepared, and the Secretary of Commerce (Secretary) approved, the BSAI FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600. Regulations implementing the BSAI FMP appear at 50 CFR part 679. Unless noted otherwise, all references to regulations in this rule are to regulations in Title 50 of the CFR.

This final rule implements Amendment 106 to the BSAI FMP. Under this rule, the owner of an AFA vessel may rebuild or replace an AFA vessel without any limitation on the length, weight, or horsepower of the rebuilt or replacement vessel when the rebuilt or replacement vessel is operating in the BSAI. Under this rule, the owner of an AFA catcher vessel in an inshore cooperative may remove the vessel from the inshore cooperative and assign the Bering Sea pollock catch history of the removed vessel to one or more vessels in the cooperative to which the removed vessel belonged.

NMFS published the Notice of Availability of Amendment 106 in the **Federal Register** on June 3, 2014 (79 FR 31914), with a 60-day comment period that ended on August 4, 2014. The Secretary approved Amendment 106 on September 2, 2014, after determining that Amendment 106 is consistent with the national standards in section 304 of the Magnuson-Stevens Act, other provisions of the Magnuson-Stevens Act, the AFA, and other applicable laws.

NMFS published a proposed rule to implement Amendment 106 on June 18, 2014 (79 FR 34696). The 45-day comment period on the proposed rule ended August 4, 2014. NMFS received six comment letters on Amendment 106, the proposed rule, or the Regulatory Impact Review (RIR) for this action. Two letters were from the same commenter. The letters addressed ten topics. NMFS summarizes and responds to these comments in the section of this preamble, “Comments on the FMP Text or the Proposed Rule.”

NMFS made three changes in the final rule. First, NMFS fixed an error, which was an incorrect reference in the proposed rule to another part of the proposed rule. Second, in response to the same comment from two commenters, NMFS changed the time period after the loss of a vessel during which an AFA vessel owner may replace or remove a vessel and not experience suspension of the fishing privileges of the lost vessel. NMFS changed it from a three-year time period to a five-year time period. Third, in response to a comment, NMFS clarified that this rule does not state the effect of removing an AFA catcher vessel from an inshore cooperative on fishing history of the removed vessel in the Pacific whiting fishery because that fishery occurs outside the EEZ off Alaska. NMFS explains these changes in the section of this preamble, “Changes from the Proposed Rule.”

The Secretary approved this final rule after determining that it is consistent with the BSAI FMP, including Amendment 106; the Magnuson-Stevens Act; and other applicable laws.

In the preamble to the proposed rule, NMFS provided a detailed review of the proposed rule implementing Amendment 106 (79 FR 34696, June 18, 2014). NMFS described the key provisions of the original AFA; described the provisions in the original AFA that strictly limited the replacement of AFA vessels; described the AFA amendments in the Coast Guard Act; described the history of Council action; and described in detail the provisions of the proposed rule (79 FR at 34697–34707). NMFS does not repeat those descriptions here. The proposed rule is available on the NMFS Alaska Region Web site (see Addresses). In this preamble, NMFS summarizes the original AFA, the AFA amendments in the Coast Guard Act, and the key elements of the final rule. In this preamble, all references to regulations are to regulations in Title 50 of the CFR.

## Original AFA

The AFA was adopted in 1998. The original AFA is available on the NMFS Alaska Region Web site: <https://alaskafisheries.noaa.gov/sustainablefisheries/afa/afa1998.pdf>. The original AFA had two subtitles. Subtitle I pertained to the issuance of Federal fishery endorsements generally. Subtitle II pertained to the management of the Bering Sea pollock fishery. The United States Coast Guard, in conjunction with the Maritime Administration (MARAD), implements Subtitle I. NMFS implements Subtitle II.

Under Subtitle I, unless a vessel already had a Federal fishery endorsement as of September 25, 1997, a vessel could not receive a Federal fishery endorsement if it exceeded any of the statutory thresholds in the AFA: 165 feet in registered length, 750 gross registered tons, or engines capable of producing more than 3,000 shaft horsepower. All AFA vessels had Federal fishery endorsements as of September 25, 1997. Therefore, these statutory limits did not deprive any existing AFA vessel of a Federal fishery endorsement.

Subtitle II of the original AFA made significant changes in the management of the Bering Sea pollock fishery in five areas. The original AFA established sector allocations in the BSAI pollock fishery; determined eligible vessels and processors; allowed the formation of cooperatives; set limits on the participation of AFA vessels in other fisheries; and imposed special catch weighing and monitoring requirements on AFA vessels. These features of the original AFA are described in more detail in the preamble to the proposed rule (79 FR 34696, 34697–34698, June 18, 2014).

With respect to replacing AFA vessels, the original AFA explicitly prohibited the replacement of AFA vessels except under conditions specified in section 208(g) of the original AFA. The most stringent restriction in section 208(g) was that an owner of an AFA vessel could only replace an AFA vessel in the event of an “actual total loss or a constructive total loss” of the original AFA vessel. Thus, under the original AFA, a vessel owner could not replace an original AFA vessel until the AFA vessel sunk or was so damaged that it could not economically be repaired. An AFA vessel owner could not replace an original AFA vessel with another vessel simply because the vessel owner wanted a vessel that was safer, more fuel-efficient, or more operationally efficient in any way.

Further, if an owner of an AFA vessel did lose an AFA vessel, section 208(g) of the original AFA limited the length, tonnage, and horsepower of the replacement vessel. If the original AFA vessel exceeded any of the statutory thresholds for receiving a Federal fishery endorsement (165 feet registered length, 750 gross registered tons, or 3,000 shaft horsepower engines), the replacement vessel could not exceed the length, tonnage, or horsepower of the original AFA vessel. If the original AFA vessel was less than any of the statutory thresholds, the replacement vessel could exceed the length, weight, or horsepower of the original AFA vessel by 10 percent, but only up to the statutory thresholds of length, weight, or horsepower in the AFA.

As for rebuilding an original AFA vessel, the original AFA had no explicit provisions that allowed the owner of an AFA vessel to rebuild the vessel and maintain the vessel's AFA permit and the vessel's Federal fishery endorsement. As for removing an AFA vessel, the original AFA did not provide a mechanism for a vessel owner to remove an AFA catcher vessel from an inshore cooperative even if the catcher vessel was doing no or little actual fishing for the cooperative.

Thus, under the original AFA, if an owner of an AFA vessel wanted to replace, rebuild, or remove an AFA vessel, the owner was under severe restrictions for replacing, faced uncertainty with regard to rebuilding, and simply could not remove a vessel. These provisions of the original AFA limited the ability of the owners of AFA vessels to deal with an aging fleet. Of the 92 AFA catcher vessels active in the inshore and mothership sectors in 2011, all were built before 1992. Sixty were built before 1980 (Analysis, Table 1–7). Of the 21 catcher/processors with AFA permits, all were built before 1990. Fifteen were built before 1980 (Analysis, Table 1–26).

## AFA as Amended by the Coast Guard Act

The AFA amendments in the Coast Guard Act amended the provisions of the original AFA that pertain to the issuance of Federal fishery endorsements. The AFA amendments allow AFA rebuilt and replacement vessels to receive a Federal fishery endorsement, even if the vessel did not have a Federal fishery endorsement as of September 25, 1997 (46 U.S.C. 12113(d)(2)(C)). Thus, an AFA rebuilt and AFA replacement vessel may now receive a Federal fishery endorsement even if the vessel exceeds the statutory thresholds for length, weight, and

horsepower: 165 feet registered length, 750 gross registered tons, or 3,000 shaft horsepower. MARAD has proposed a rule to implement this provision in the AFA amendments (79 FR 33160, June 10, 2014).

The AFA amendments in the Coast Guard Act amended provisions of the original AFA that pertain to the management of the Bering Sea pollock fishery. The AFA amendments in the Coast Guard Act allow the rebuilding, replacement, and removal of AFA vessels to improve the safety and efficiency of the AFA fleet. Amendment 106 to the BSAI FMP adopts the provisions of the AFA amendments in the Coast Guard Act that pertain to the management of the Bering Sea pollock fishery. This final rule adopts the regulatory changes necessary to implement Amendment 106.

## Key Elements of This Rule

With respect to rebuilding and replacement, the final rule allows the owner of an AFA vessel to rebuild or replace an AFA vessel as long as the AFA rebuilt vessel or the AFA replacement vessel has a Federal fishery endorsement. Under the AFA Amendments to the Coast Guard Act, an AFA rebuilt or replacement vessel may receive a Federal fishery endorsement irrespective of the vessel's length, weight, or horsepower. Therefore, under the final rule, the owner of an AFA vessel may rebuild or replace an AFA vessel and receive an AFA permit on the rebuilt or replacement vessel without any limit on the length, weight, or horsepower of the AFA rebuilt or replacement vessel.

An AFA rebuilt vessel will have the same privileges and will be subject to the same restrictions as the vessel before rebuilding except (1) the AFA rebuilt vessel will not be subject to the maximum length overall (MLOA) restriction on a License Limitation Program (LLP) license with a Bering Sea or Aleutian Islands area endorsement when the AFA rebuilt vessel is operating in the BSAI, even if the vessel before rebuilding was subject to the MLOA restriction; and (2) an AFA rebuilt catcher vessel that is 125 feet length overall (LOA) or greater will be subject to the season restrictions in § 679.23 even if the vessel before rebuilding was less than 125 feet LOA and was not subject to those restrictions. These provisions are added by the final rule at § 679.4(l)(7)(i).

An AFA replacement vessel will have the same privileges and will be subject to the same restrictions as the vessel it is replacing except (1) the AFA replacement vessel will not be subject to

the MLOA restriction on an LLP license with a Bering Sea or Aleutian Islands area endorsement when the AFA replacement vessel is operating in the BSAI, even if the replaced vessel was subject to the MLOA restriction; (2) an AFA replacement catcher vessel that is 125 feet LOA or greater will be subject to the season restrictions in § 679.23 even if the AFA replaced vessel was less than 125 feet LOA and was not subject to those restrictions; and (3) an AFA catcher vessel that is exempt from sideboard restrictions will maintain its sideboard exemption even if the vessel also becomes a replacement vessel for a vessel that did not have a sideboard exemption. These provisions are added by the final rule at § 679.4(l)(7)(ii).

The final rule at § 679.4(l)(1)(ii)(B) addresses the situation of an owner of an AFA vessel that loses an AFA vessel. The final rule provides that the owner of an AFA vessel has a reasonable, but not unlimited, time to replace or remove a lost AFA vessel and specifies that, during that time, the AFA permit on the lost vessel shall remain valid. The final rule allows the owner of an AFA vessel to maintain the AFA permit on the lost vessel for up to five years from December 31 of the year in which the vessel was lost.

The final rule does not lessen the significant restrictions in the AFA and in current regulations that apply to AFA vessels when those vessels participate in the Gulf of Alaska (GOA). Critically, this rule does not affect the requirement that an AFA vessel—whether an original AFA vessel, an AFA rebuilt vessel, or an AFA replacement vessel—may only operate in the GOA if the AFA vessel is the named vessel on an LLP license, the AFA vessel is operating in an area for which the LLP license has an area endorsement, and the AFA vessel does not exceed the MLOA restriction on that license.

With respect to removal, this final rule at § 679.4(l)(7)(iii) allows the owner of an AFA catcher vessel in an inshore cooperative to remove that vessel from the cooperative and assign the Bering Sea pollock catch history of the removed vessel to another vessel or vessels in the cooperative. The vessels that receive the catch history must remain in the cooperative for at least one year from the date on which NMFS approves the removal of the vessel and assigns catch history to the receiving vessels.

Under the final rule at § 679.4(l)(7)(iv), the privilege of replacing and removing an AFA vessel comes with a significant restriction. A replaced or removed AFA vessel cannot receive a permit to operate in any

fishery in the Exclusive Economic Zone (EEZ) off Alaska unless the replaced or removed AFA vessel reenters the pollock fishery as a replacement AFA vessel. The restriction in the AFA amendments in the Coast Guard Act is actually more far-reaching, namely a replaced or removed AFA vessel cannot receive a Federal fishery endorsement at all unless the replaced or removed AFA vessel reenters the pollock fishery as a replacement AFA vessel (section 208(g)(5), section 210(b)(7)(B)). As noted, the United States Coast Guard, in conjunction with MARAD, will implement the restrictions in the AFA amendments on issuing Federal fishery endorsements.

#### Changes From the Proposed Rule

NMFS made three changes in the regulatory text of the final rule from the regulatory text of the proposed rule (79 FR 34696, June 18, 2014). NMFS made the first change as a result of internal review and made the second and third changes in response to public comments.

First, NMFS fixed an error. The regulatory text of the proposed rule in § 679.4(l)(7)(iii), “Removal of AFA catcher vessel from the directed pollock fishery,” stated in § 679.4(l)(7)(iii)(A): “The owner of a catcher vessel that is designated on an AFA catcher vessel permit with an inshore endorsement may remove the catcher vessel from the directed pollock fishery, subject to the requirements in paragraph (B), (C), (D), and (E) of this paragraph (l)(7)(iii).” The reference to paragraph (E) was an error because there was no paragraph (E). The final rule removes the reference to paragraph (E) in § 679.4(l)(7)(iii)(A).

Second, NMFS changed the period during which the owner of an AFA lost vessel may replace or remove the lost vessel while maintaining without interruption the AFA permit and fishing privileges of the lost vessel. The proposed rule at § 679.4(l)(1)(ii)(B)(3) would have established a 3-year period from December 31 of the year in which the vessel was lost. In the proposed rule, after the 3-year period, NMFS would suspend the AFA permit on the lost vessel if the owner had not replaced or removed the lost vessel but, after the 3-year period, would still process an application by the owner of the lost AFA vessel to replace or remove the lost vessel. The final rule keeps the process the same but changed

§ 679.4(l)(1)(ii)(B)(3) from a 3-year period to a 5-year period. NMFS made this change in response to the same comment from two persons, which is described in Comment 3.

Third, NMFS clarified that the rule does not purport to state the effect of removal of AFA catcher vessels on any catch history that the removed vessel may have earned outside of the EEZ off Alaska. To do this, NMFS added the phrase “in the Exclusive Economic Zone off Alaska” after “all claims relating to the catch history of the removed catcher vessel” in § 679.4(l)(7)(iii)(C) so that the paragraph now reads: “Except for the assignment of the pollock catch history of the removed catcher vessel in paragraph (l)(7)(iii)(B) of this section, all claims relating to the catch history of the removed catcher vessel in the Exclusive Economic Zone off Alaska, including any claims to an exemption from AFA sideboard limitations, will be permanently extinguished upon NMFS’ approval of the application to remove the catcher vessel and the AFA permit that was held by the owner of the removed catcher vessel will be revoked.” NMFS made this change in response to a public comment described in Comment 5 that raised the issue with regard to the fishing history of a removed vessel in the Pacific whiting fishery, which occurs outside the EEZ off Alaska.

#### Comments on the FMP Text, the Proposed Rule, and the RIR for This Action

NMFS received six letters with comments on Amendment 106, the proposed rule, or the Regulatory Review (RIR) for this action. Two letters were from the same commenter. These comments addressed 10 topics. The comments were from individual owners of AFA vessels, an industry group representing owners of AFA vessels, an owner of Amendment 80 vessels, and an industry group representing owners of Amendment 80 vessels.

*Comment 1:* NMFS received several comments of support for various aspects of the proposed rule. Three commenters supported allowing the owners of AFA vessels to rebuild or replace vessels to improve vessel safety or efficiency. Two commenters appreciated that the rule addressed the status of AFA permits after an AFA vessel is lost. Two commenters supported the prohibition on AFA replaced vessels participating in other fisheries. One commenter appreciated that the owner of an AFA vessel could remove the AFA vessel from fishing.

*Response:* NMFS notes this support.

*Comment 2:* The proposed definition of an AFA vessel is as follows: “An AFA vessel means a vessel that is designated on an AFA catcher vessel permit, an AFA catcher/processor permit, or an

AFA mothership permit, and is thereby authorized to participate in the Bering Sea directed pollock fishery.” NMFS actually issues two types of AFA catcher/processor permits: A listed AFA catcher/processor permit and an unlisted AFA catcher/processor permit. The definition should be changed to specifically reflect the two types of AFA catcher/processor permits.

*Response:* NMFS acknowledges that under § 679.4(l)(2), it issues two types of AFA catcher/processor permits: (1) A listed AFA catcher/processor permit for AFA catcher/processors that were listed by name in the original AFA at section 208(e)(1) to (20), and (2) an unlisted AFA catcher/processor permit for AFA catcher/processors that were not listed by name but met the criteria in section 208(e)(21) of the original AFA. Only one catcher/processor, the *Ocean Peace*, received an unlisted AFA catcher/processor permit.

NMFS recognizes that the AFA and implementing regulations impose some restrictions on listed AFA catcher/processors that do not apply to the unlisted AFA catcher/processor. For example, section 211 of the original AFA imposed restrictions on listed AFA catcher/processors from harvesting and processing in fisheries besides Bering Sea pollock that did not apply to an unlisted AFA catcher/processor. The commenter pointed out that the proposed rule loosely referred to the “Limits on AFA vessels in other fisheries” in section 211 (79 FR 34696, 34698) whereas the explicit limits in section 211 apply to listed AFA catcher/processors, not unlisted AFA catcher/processors.

NMFS, however, does not see any need to change the definition of an AFA vessel in the final rule for two reasons. First, the definition in the proposed rule is accurate. An AFA catcher/processor is designated on an AFA catcher/processor permit. It is simply that there are two types of AFA catcher/processor permits: A listed AFA catcher/processor permit or an unlisted AFA catcher/processor permit.

Second, the definition in the proposed rule is not misleading because the proposed rule is clear that a replacement vessel is subject to the same requirements that applied to the replaced vessel. A replacement vessel for a vessel that was designated on a listed AFA catcher/processor permit will receive a listed AFA catcher/processor permit. A replacement vessel for a vessel that was designated on an unlisted AFA catcher/processor permit will receive an unlisted AFA catcher/processor permit. The proposed rule stated at § 679.4(l)(7)(ii)(B) that the

owner of a replacement vessel “will be subject to the same requirements that applied to the replaced vessel and will be eligible to use the AFA replacement vessel in the same manner as the replaced vessel,” subject to three specific exceptions not relevant to this comment.

The proposed rule carefully changed the prohibitions in § 679.7(k) so that all the prohibitions that applied to “listed AFA catcher/processors,” which might be read to apply only to the AFA catcher/processors listed as eligible in the original AFA, now apply to listed AFA catcher/processors and “catcher/processors designated on listed AFA catcher/processor permits.” Similarly, the proposed rule carefully changed the prohibitions in § 679.7(k) so that all the prohibitions that applied to “unlisted AFA catcher/processors” now apply to unlisted AFA catcher/processors and “catcher/processors designated on unlisted AFA catcher/processor permits.” With regard to observer requirements in § 679.51, the proposed rule made the same change in § 679.51(a)(2)(vi)(B)(1) and (3) so that all the requirements that applied to “listed AFA catcher/processors” now also apply to “catcher/processors designated on listed AFA catcher/processor permits,” and all requirements that applied to “unlisted AFA catcher/processors” now also apply to “catcher/processors designated on unlisted AFA catcher/processor permits.”

*Comment 3:* Two commenters stated that the owner of an AFA vessel should be allowed 5 years from December 31 of the year in which the vessel was lost to maintain, without interruption, the AFA permit and fishing privileges of the lost vessel. The proposed rule contained a 3-year period. The commenters gave five reasons in favor of a 5-year period rather than a 3-year period. First, the owner will have to deal with a crisis in the company’s operations when a vessel was lost. This includes a Coast Guard investigation, insurance claims and settlements, and possibly other claims associated with the loss. Second, the owner has to consult and contract with a vessel design/architect firm, equipment vendors, and a shipyard to plan and build a new vessel. One commenter noted that the owner is under an obligation to rebuild the vessel in American shipyards. Third, the owner will need to obtain financing. Fourth, after a contract is signed, the shipyard has to schedule time and space to build the vessel, purchase the necessary material and equipment, and then build the vessel. Fifth, if the owner was lost at sea, the settlement of the owner’s estate can take over a year.

*Response:* NMFS agrees with this comment. NMFS concludes that the reasons advanced by the commenters justify a 5-year period. Therefore, NMFS changed the final rule in § 679.4(l)(1)(ii)(B)(3) to allow the owner of an AFA vessel up to 5 years from December 31 of the year in which the vessel was lost to maintain, without interruption, the AFA permit and fishing privileges of the lost vessel. NMFS notes that, in the proposed rule, it specifically invited comment on whether the 3-year period was adequate to allow the owner of a lost vessel to replace the vessel (79 FR 34696 and 34705, June 18, 2014).

*Comment 4:* If the owner of a lost AFA catcher vessel does not apply to replace the vessel within the 5-year period, NMFS will suspend the AFA permit and fishing privileges of the lost vessel. After the 5-year period, the owner of the lost vessel may still apply to replace the lost vessel. If the owner of a lost catcher vessel in an inshore cooperative applies to replace a lost catcher vessel after the 5-year period, the owner of the AFA vessel should be required to transfer the permit to a vessel in the cooperative of which the lost vessel was a member when the vessel was lost. Such a provision would help keep the system of inshore cooperatives intact.

*Response:* NMFS does not make any change in the proposed rule in response to this comment for three reasons. First, the AFA amendments did not limit the ability of the owner of an AFA vessel to select an AFA replacement vessel. The AFA amendments in section 208(g)(1) allow the owner of an AFA vessel to rebuild or replace an AFA vessel “in order to improve vessel safety or operational efficiency” and provide that the rebuilt or replacement vessel “shall be eligible in the same manner and subject to the same restrictions and limitations” as the vessel being rebuilt or replaced. The AFA amendments did not require the owner of any AFA vessel to choose a replacement from a particular category of vessels. Accordingly, NMFS did not propose that requirement in the proposed rule and does not think it is appropriate to include that requirement in the final rule.

Second, the AFA amendments in section 210(b)(7)(A)(ii) did expressly require that if the owner of an AFA vessel wanted to remove a vessel from an inshore cooperative, the owner had to assign the catch history of the removed vessel to another vessel or vessels in the cooperative and those vessels had to remain in that cooperative for at least one year after the

removed vessel left the cooperative. Accordingly, the proposed and final rule contain that restriction at § 679.4(l)(7)(iii)(D). But the AFA amendments included no such express restriction on the ability of the owner of an AFA vessel to select a replacement vessel.

Third, the regulations restrict which inshore cooperative a replacement vessel may join and thus already provide an incentive for stability in cooperative membership. For an inshore cooperative to include the catch history attached to a replacement catcher vessel in the cooperative application, the vessel must meet the requirements in § 679.4(l)(6) to be a qualified catcher vessel for that cooperative. Under § 679.4(l)(6), a vessel is only qualified to be a member of a cooperative if the vessel meets the landing and permit requirements for cooperative membership in the vessel's last year of participation or is an AFA replacement vessel for a catcher vessel that met the permit and landing requirements. Thus, if the lost vessel could only have been a member of a particular inshore cooperative, the replacement vessel for the lost vessel initially can only be a member of that same cooperative, even if NMFS approves the replacement after the 5-year period. The replacement vessel stands in the shoes of the replaced vessel for cooperative membership and for other fishing privileges, even if the replaced vessel is a vessel that was lost more than five years before the vessel owner seeks to make the replacement.

*Comment 5:* The AFA amendments wisely allow the owners of AFA catcher vessels to remove vessels in the Fishery Exit Provisions. The proposed rule states that all claims relating to the catch history of a removed vessel shall be extinguished. The proposed rule properly extinguishes the exemption from AFA sideboards of a removed vessel. But the proposed rule is too broad if NMFS extinguishes the following claims of a removed vessel: A claim to Rockfish Quota Share; a claim to future catch shares in a GOA catch share program; a claim to catch shares in a Pacific whiting fishery limited access program.

*Response:* With respect to any aspect of the history of an AFA vessel in the Pacific whiting fishery, the comment alerted NMFS to the fact that the proposed rule at § 679.4(l)(7)(iii)(C) might be read to extinguish the history of an AFA vessel in that fishery. NMFS did not intend that. This rule will become part of 50 CFR part 679. Part 679 applies, and only can apply, to fisheries of the EEZ off Alaska. The

Pacific whiting fishery does not occur in the EEZ off Alaska. This fishery occurs in the area of the EEZ within the jurisdiction of the Pacific Council as described in section 302 of the Magnuson-Stevens Act, namely "fisheries of the Pacific Ocean seaward of [California, Oregon, Washington, and Idaho]. NMFS therefore changed § 679.4(l)(7)(iii)(C) to clarify that it applies to fishing history earned in the EEZ off Alaska.

NMFS notes that the provision requiring extinguishment of claims based on the catch history of a removed vessel applies to permits that would enable the owner of the vessel to receive permits in any fishery anywhere within the EEZ, not only in the EEZ off Alaska. The AFA amendments amended section 210(b) so that it now has section 210(b)(7)(B), which states, in part, "[A]ny claim (including relating to catch history) associated with such vessel [a removed vessel] that could qualify any owner of such vessel for any permit to participate in any fishery within the exclusive economic zone of the United States shall be extinguished." It is simply that a rule in 50 CFR part 679 cannot extinguish claims in fisheries outside of the EEZ off Alaska.

With respect to claims relating to fishing history in the EEZ off Alaska, it is important to remember that the AFA amendments only require NMFS to extinguish all claims based on the catch history of a vessel in an inshore cooperative when the vessel is removed from the cooperative. If the owner of an AFA vessel replaces, rather than removes, an AFA catcher vessel with an inshore endorsement, NMFS will issue the replacement vessel all the fishing permits and licenses that were held by the replaced vessel so that the replacement vessel may operate in the same manner as the replaced vessel. Furthermore, the owner of an AFA vessel may select as a replacement vessel a vessel that already has an AFA permit.

If the owner of an AFA vessel chooses to remove, rather than replace, a catcher vessel in an inshore cooperative, NMFS must extinguish any claims to future permits in future catch share programs that are associated with the catch history of the removed vessel. NMFS bases this conclusion on the clear language of section 210(b)(7)(B) of the amended AFA: "Except as provided in subparagraph (C), a vessel that is removed pursuant to this paragraph shall be permanently ineligible for a fishery endorsement, and any claim (including relating to catch history) associated with such vessel that could

qualify any owner of such vessel for any permit to participate in any fishery within the exclusive economic zone of the United States shall be extinguished, unless such removed vessel is thereafter designated to replace a vessel to be removed pursuant to this paragraph." The exception in subparagraph (C) is for four named vessels. This comment does not refer to any of the four named vessels.

The extinguishment language in section 210(b)(7)(B) is strikingly broad: "any claim" associated with such vessel that could qualify "any owner" of such vessel for "any period" to participate in "any fishery" within the EEZ "shall be extinguished." NMFS does not believe that the statute gives it authority to select which catch history of a removed vessel it should extinguish and which catch history it should not extinguish. If NMFS had such authority, the statute would address this issue and provide criteria, or at least guidance, as to which catch history of a removed vessel NMFS should extinguish and which catch history it should not.

NMFS does not, however, believe that the statute requires it to revoke any permits that it has already issued based on the catch history of a removed vessel. The AFA amendments direct NMFS to extinguish "any claim (including relating to catch history) associated with such vessel that could qualify" the owner of an AFA removed vessel for a permit. NMFS concludes that this refers to permits that NMFS might issue in the future based on a claim made in the future. If NMFS has already issued a permit, the owner of the vessel does not merely have a "claim" to a permit. The owner has a permit.

NMFS concludes that this reasoning applies with equal force to catch history of a removed vessel that NMFS has already assigned to an LLP license under the Rockfish Program at § 679.80. The holder of the LLP license may transfer that LLP license with any Rockfish QS assigned to that license within the restrictions at § 679.81(f). Thus, NMFS does not view issued Rockfish QS as a "claim" to QS but as QS that it has issued; that it has assigned to a particular LLP license; that may be used by different vessels if those vessels are named on the LLP license; and that may be transferred to another person when the LLP license is transferred to another person. However, upon removal of a catcher vessel, NMFS will extinguish all claims to new fishing permits and new fishing privileges that could be based on the catch history of the removed vessel.

NMFS notes that 16 AFA catcher vessels have an exemption from GOA

sideboards. The owners of these AFA catcher vessels will have to carefully consider replacing, rather than removing, their vessels. If the owner of an AFA catcher vessel replaces an AFA catcher vessel with an exemption from AFA sideboards in the GOA, NMFS will issue the replacement catcher vessel an AFA permit with an exemption from AFA sideboards in the GOA. If the owner of an AFA catcher vessel removes a vessel with an exemption from GOA sideboards, NMFS will extinguish the sideboard exemption.

*Comment 6:* AFA replacement vessels will likely have more capacity than the vessels they replace. AFA rebuilt vessels will likely have more capacity than the vessel before rebuilding. This may mean that AFA replacement and rebuilt vessels will catch more fish. For example, AFA replacement and rebuilt vessels may catch more yellowfin sole in the BSAI. NMFS should be vigilant that AFA vessels do not adversely impact other fisheries.

*Response:* AFA vessels—whether original, rebuilt, or replacement—are strictly limited in their activities in fisheries other than the Bering Sea pollock fishery. The Analysis of this action at § 1.9 describes the restrictions on AFA vessels in current regulations in both the BSAI and the GOA. NMFS will continue to enforce those restrictions. NMFS does not believe that this rule will make it more difficult to manage the yellowfin sole fishery or other fisheries in which AFA vessels participate.

With respect to yellowfin sole in the BSAI, the listed AFA catcher/processors and the AFA catcher vessels are limited to the amount of yellowfin sole these vessels harvested in the 1995–1997 period, as a percentage of the total allowable catch (TAC) for each year, subject to one exception (§ 679.64(a)(1)(iii), § 679.64(b)(3)(iii)). The exception was part of the Amendment 80 Program: NMFS removes AFA sideboard limits for yellowfin sole in the BSAI in years when the initial TAC level for that species assigned to the Amendment 80 sector and the BSAI trawl limited access sector is fairly high, namely 125,000 metric tons or greater. Final Rule, 72 FR 52668, 52726 (Sept. 14, 2007). By regulation, AFA vessels are not restricted to their historical catch of yellowfin sole in years when the aggregate initial TAC for yellowfin sole in the BSAI assigned to the Amendment 80 sector and the BSAI trawl limited access sector is 125,000 metric tons or greater (§ 679.64(a)(1)(v); § 679.64(b)(6)).

If the Council determines that stricter AFA sideboard limits on yellowfin sole

or any other species are necessary, it would have to pursue that rulemaking. That would be a separate action.

*Comment 7:* If the Council proposes a GOA trawl catch share program in the future, the program should eliminate the maximum length overall restriction on the LLP licenses assigned to the vessels that receive fishing privileges under the new program.

*Response:* This is not a comment on the proposed rule. If the Council and NMFS develop a GOA trawl catch share program, the commenter should participate in the Council process and submit comments as part of the Secretarial rulemaking process.

*Comment 8:* AFA catcher/processors should not be able to participate in Amendment 80 fisheries.

*Response:* The Amendment 80 Program is a limited access program that authorizes vessels to harvest a specific number of units of certain groundfish species, but not pollock, in the BSAI. The permit regulations for Amendment 80 permits are primarily at 50 CFR 679.4(o).

Only one AFA catcher/processor, the *Ocean Peace*, may participate in an Amendment 80 sector fishery. The *Ocean Peace* is the only AFA catcher/processor that also has an Amendment 80 permit. In the future, the only AFA vessel that could participate in an Amendment 80 sector fishery would be the *Ocean Peace* or a replacement vessel for the *Ocean Peace*.

*Comment 9:* The IRFA summary in the proposed rule incorrectly states that all AFA catcher/processors are affiliated through membership in the Pollock Conservation Cooperative. This is inaccurate. The *Ocean Peace* is an AFA catcher/processor and is not a member of the Pollock Conservation Cooperative.

*Response:* The commenter is correct. The statement in the IRFA summary was in error. The *Ocean Peace* is an AFA catcher/processor and is not a member of the Pollock Conservation Cooperative. NMFS corrected the statement in the FRFA, which is contained in this rule.

*Comment 10:* The *Ocean Peace* is currently 219 feet. The *Ocean Peace* is named on an LLP license with area endorsements for the Bering Sea, the Aleutian Islands, and the Western Gulf. The vessel's LLP license has a current MLOA restriction of 219 feet. If the owner of the *Ocean Peace* rebuilds the *Ocean Peace* so that it is longer than 219 feet, or replaces the *Ocean Peace* with a vessel that is longer than 219 feet, does this rule affect the current regulation that NMFS assigns an MLOA of 295 feet to an LLP license on which

an Amendment 80 replacement vessel is the named vessel? The *Ocean Peace* is the only vessel that is named on both an AFA permit and an Amendment 80 Quota Share permit.

*Response:* If the owner of the *Ocean Peace* rebuilds the *Ocean Peace* or acquires a replacement vessel for the *Ocean Peace*, NMFS will amend the LLP groundfish license that names the *Ocean Peace* and will assign an MLOA on that LLP license of 295 feet. The rebuilt *Ocean Peace* or the replacement vessel for the *Ocean Peace* would then be subject to an MLOA of 295 feet when it participates in any fishery in the GOA. NMFS would take these actions based on the current regulations for replacing an Amendment 80 vessel. See 50 CFR 679.4(o)(4); 50 CFR 679.4(k)(3)(i)(C); and 50 CFR 679.2 (definition of Maximum LOA, paragraph (2)(iv)).

The above regulations implemented Amendment 97 to the BSAI FMP. The subject of Amendment 97 was the replacement of Amendment 80 vessels (Final Rule, 77 FR 59852 (October 1, 2012)). Under Amendment 97, an Amendment 80 rebuilt vessel is treated as an Amendment 80 replacement vessel. All Amendment 80 replacement vessels must be classed and load lined or, if the vessel cannot be classed and load lined, the vessel must be enrolled in the Alternative Compliance and Safety Agreement Program of the U.S. Coast Guard. 77 FR at 59867 (NMFS Response to Comment 11).

The *Ocean Peace* also has an AFA permit to participate in the directed pollock fishery as a catcher/processor. Therefore, the *Ocean Peace* is subject to the AFA, as amended by the Coast Guard Act, Amendment 106, and this final rule. Under this rule, the owner of the *Ocean Peace* may rebuild or replace the *Ocean Peace* to improve safety or efficiency without limitation on the length of the rebuilt or replaced vessel, notwithstanding the MLOA restriction on the LLP license on which the *Ocean Peace* is named. Accordingly, under this rule at § 679.2 and § 679.4(k)(3)(i)(E), if the *Ocean Peace* is rebuilt or replaced, the rebuilt *Ocean Peace* or its replacement vessel will be exempt from the MLOA on the LLP license that names the *Ocean Peace* or its replacement vessel when the *Ocean Peace* or its replacement vessel is participating in the BSAI pursuant to that LLP license.

NMFS notes two ways that this rule could affect the ability of the *Ocean Peace* to participate in the GOA. First, under provisions added at § 679.4(l)(7)(iv), if the *Ocean Peace* becomes a replaced or removed AFA

vessel, it would be permanently ineligible to participate in any fishery in the EEZ off Alaska unless it reenters the fishery as an AFA replacement vessel. Second, under provisions added at § 679.4(l)(7)(ii)(B), if the *Ocean Peace* becomes a replacement vessel for any AFA catcher/processor or AFA catcher vessel, the *Ocean Peace* would operate subject to the restrictions and limitations of the vessel it replaced.

#### Classification

The Administrator, Alaska Region, NMFS, determined that this final rule is consistent with the BSAI FMP, including Amendment 106, the Magnuson-Stevens Act, the AFA, and other applicable laws.

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. The preamble to the proposed rule and the preamble to this final rule serve as the small entity compliance guide. This rule does not require any additional compliance from small entities that is not described in the preamble to the proposed rule. Copies of this final rule are available from NMFS at the following Web site: <http://alaskafisheries.noaa.gov>

#### Executive Order 12866

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

#### Regulatory Impact Review

The Council and NMFS conducted a Regulatory Impact Review (RIR) pursuant to Executive Order 12866. The RIR assessed the costs and benefits of Alternative 1, Alternative 2, and four options under Alternative 2. Alternative 1 was no change in the regulations in 50 CFR part 679. Alternative 2 was changing the regulations to conform to NMFS’ interpretation of the AFA as amended by the Coast Guard Act. The four options under Alternative 2 would have imposed additional restrictions on AFA vessels when these vessels participate in the GOA, over and above restrictions in the AFA and current regulations. The Council and NMFS concluded that Alternative 2 is likely to

result in net benefits to the nation. NMFS published the RIR in a combined document with the Initial Regulatory Flexibility Analysis (IRFA). This rule refers to the RIR/IRFA as the Analysis. A copy of the Analysis is available from NMFS (see **ADDRESSES**).

#### Final Regulatory Flexibility Analysis (FRFA)

The Regulatory Flexibility Act (RFA) contains the requirements for the FRFA in section 604(a)(1) through (6) of the RFA. The FRFA must contain:

1. A succinct statement of the need for, and objectives of, the rule;
2. A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
3. The response of the agency to any comments on the proposed rule by the Chief Counsel for Advocacy of the Small Business Administration;
4. A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available;
5. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
6. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

NMFS prepared an IRFA that addressed the requirements described in section 603(b)(1) through (5) of the RFA. This FRFA incorporates the IRFA and the summary of the IRFA in the proposed rule (79 FR 34696, June 18, 2014). As noted, NMFS published the IRFA in a combined document with the RIR. The RIR/IRFA or Analysis is available on the NMFS Alaska Region Web site: <http://alaskafisheries.noaa.gov>.

#### A Succinct Statement of the Need for, and Objectives of, the Rule

This rule is needed to conform current regulations to the AFA amendments in the Coast Guard Act. The rule is also needed to allow the owners of AFA vessels to rebuild and replace their vessels to improve safety and efficiency, even if an AFA vessel has not sunk or been damaged beyond repair. The rule is also needed to allow the owners of AFA catcher vessels in inshore cooperatives to remove those vessels from the cooperative, when the owner is willing to withdraw the catcher vessel from all activity that requires a Federal fishery endorsement except to possibly use the removed vessel as an AFA replacement vessel in the future. The need for, and objectives of, this rule are further explained in the preamble to the proposed rule in the sections, “The Need for Action” and “Proposed Action.” (79 FR 34696, June 18, 2014).

#### Summary of Significant Issues Raised During Public Comment

The proposed rule was published on June 18, 2014 (79 FR 34696). The 45-day comment period on the proposed rule ended August 4, 2014. NMFS received one comment on the IRFA, namely that the IRFA summary in the proposed rule incorrectly stated that all AFA catcher/processors were members of the Pollock Conservation Cooperative. NMFS agreed this was incorrect because the *Ocean Peace* is an AFA catcher/processor and is not a member of the Pollock Conservation Cooperative. NMFS corrected this statement in the FRFA. NMFS describes this comment and its response in Comment 9. NMFS did not receive any other comment on the IRFA. NMFS did not receive any comments on the impacts of this action on small entities.

#### The Response to Comments From Small Business Administration

NMFS did not receive any comments on the proposed rule from the Chief Counsel for Advocacy of the Small Business Administration (SBA).

#### Number and Description of Small Entities Regulated by the Final Rule

NMFS concludes that this rule does not directly regulate any small entities. The SBA establishes size criteria for small entities in all major industry sectors in the United States, including fish harvesting and fish processing businesses. On June 12, 2014, the SBA issued a final rule, effective July 14, 2014, that adjusted the annual receipts standard for small businesses based on inflation (79 FR 33647). The SBA rule



increased the annual receipts standard for entities in Finfish Fishing from \$19.0 million to \$20.5 million. AFA vessels receive their revenues predominately from finfish fishing. Therefore, the IRFA and the FRFA apply the finfish standard.

This action directly regulates the owners of vessels that are designated on AFA permits; these vessels are catcher vessels, catcher/processor vessels, and motherships. In 2013, 105 catcher vessels, 21 catcher/processors, and 3 motherships were designated on AFA permits (Analysis, Section 2.4). In assessing whether an entity is small, the RFA requires NMFS to consider affiliations between entities. All AFA catcher vessels are members of one of eight cooperatives delivering pollock to catcher/processors, to inshore processing plants, or to motherships (Analysis, Section 2.4).

NMFS concludes that none of the AFA vessels or AFA cooperatives are small entities. With respect to the seven AFA catcher vessels that are authorized to deliver to catcher/processors, these seven catcher vessels have formed the High Seas Catchers' Cooperative (HSCC). The HSCC leases the pollock allocation of its members to the Pollock Conservation Cooperative, a cooperative that comprises the nineteen listed AFA catcher/processors (Analysis, Section 1.9.2). The members of the Pollock Conservative Cooperative had estimated 2012 gross revenues from pollock alone in excess of \$500 million (Analysis, Section 2.4). Thus, applying the revised, inflation-adjusted, standard of \$20.5 million, all AFA entities in the catcher/processor sector—catcher vessels, catcher/processors, and the cooperatives of these vessels—are still large entities.

With respect to AFA catcher vessels that deliver to inshore processing plants and to motherships, all of these AFA catcher vessels are members of one of seven cooperatives. The IRFA stated: "The seven cooperatives delivering to processing plants or motherships had gross revenues from pollock alone in excess of \$19 million, and/or were affiliated with processing operations that themselves met the large entity threshold of 500 employees for entities of that type, and/or were affiliated with processors who did" (Analysis, Section 2.4). The gross revenues from pollock for each of these cooperatives also exceeds \$20.5 million dollars, and the affiliation relationships considered in the IRFA continue to exist. Therefore, all AFA catcher vessels that deliver to inshore plants or motherships, and the cooperatives of those vessels, are large entities.

With respect to AFA motherships, the IRFA states: "Three motherships accept deliveries of pollock from catcher vessels. While these vessels are authorized to join the cooperative of catcher vessels making such deliveries, they have not recently chosen to do so. However, each of these motherships is believed to be a large entity, based on corporate affiliations with other large processing firms." (Analysis, Section 2.4). NMFS reaffirms this conclusion in this FRFA.

Thus, NMFS concludes that all of the entities directly regulated by this action are "large" entities for the purpose of the RFA.

#### *Recordkeeping and Reporting Requirements*

Since this action does not directly regulate any small entities, this action does not impose recordkeeping or reporting requirements on any small entities. This action imposes one additional reporting requirement on the owner of an AFA rebuilt vessel. If the owner of an AFA vessel rebuilds an AFA vessel, the owner shall submit the documentation for the rebuilt vessel to NMFS within 30 days of the issuance of the documentation. Apart from this requirement, the owners of AFA rebuilt vessels would be subject to the same recordkeeping and reporting requirements after rebuilding as before rebuilding.

Under this action, the owners of AFA replacement vessels are subject to the same recordkeeping and reporting requirements that applied to the replaced, or former, AFA vessel. Under this action, if a vessel is removed, the owners of the AFA vessels that are assigned the catch history of the removed vessel are subject to the same recordkeeping and reporting requirements after they are assigned the catch history of the removed vessel as before they were assigned the catch history of the removed vessel.

To implement this rule, NMFS has created an application form for the owner of an AFA vessel who wishes to take any of the actions allowed by this rule. The application form allows the owner of an AFA vessel to notify NMFS of rebuilding, to request to replace an AFA vessel, or to request removal of an AFA catcher vessel from an inshore cooperative.

#### **Description of Significant Alternatives to the Final Action That Minimize Adverse Impacts on Small Entities**

Section 604 of the RFA requires that NMFS describe any significant alternatives to the proposed action that would accomplish the stated objectives

of applicable statutes and would minimize any significant adverse economic impacts on directly regulated small entities. Since this action does not directly regulate any small entities, this action has no adverse impacts on small entities and, therefore, there are no alternatives to this action that would minimize adverse impacts on small entities.

#### *Collection-of-Information Requirements*

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648-0393. Public reporting burden for the American Fisheries Act (AFA) Permit: Rebuilt, Replacement, or Removed Vessel Application is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSEES**) and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: [http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

#### **List of Subjects**

##### *15 CFR Part 902*

Reporting and recordkeeping requirements.

##### *50 CFR Part 679*

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 8, 2014.

**Samuel D. Rauch III,**

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

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR part 679 as follows:



## Title 15—Commerce and Foreign Trade

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

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

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

■ 2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR”:

■ a. Remove entries for “679.4(b), (f), (h), and (i)”; “679.4(d) and (e)”; “679.4(g)”; “679.4(k)”; “679.4(l)(1) through (l)(7)”; “679.4(m)(2)”; “679.4(m)(4)”; “679.4(n)”; “679.4(o)”; “679.7(a)(1)”; “679.7(a)(3)”; “679.7(a)(7)(vii) through (ix), 679.7(n)(1)(iv)”; “679.7(a)(12), 679.7(k)(8)(i)”; “679.7(a)(15)”; “679.7(a)(18), 679.7(n)(3)”; “679.7(a)(20)”; “679.7(a)(21) and (22)”; “679.7(b)(2)”; “679.7(d)”; “679.7(f)”; “

“679.7(f)(8)(ii)”; “679.7(g)”; “679.7(i)”;  
“679.7(k)”; “679.7(l)”; “679.7(n)”;  
“679.7(n)(4)(ii)”; and “679.7(o)”.

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

(b) \* \* \*

| CFR part or section where the information collection requirement is located |  |   |   | Current OMB control number (all numbers begin with 0648--) |   |   |
|---|--|---|---|--|---|---|
| 50 CFR:   | *  | * | * | *  | * | * |
| 679.4   | *  | * | * | *  | * | * |
| .....   | -0206, -0272, -0334, -0393, -0513, -0545, -0565, and -0665.                                |   |   |  |   |   |
| 679.7   | *  | * | * | *  | * | * |
| .....   | -0206, -0269, -0272, -0316, -0318, -0330, -0334, -0393, -0445, -0513, -0514, -0545, -0565. |   |   |  |   |   |
|   | *  | * | * | *  | * | * |

**Title 50—Wildlife and Fisheries**

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

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

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108-447; Pub. L. 111-281.

■ 4. In § 679.2,

- a. Revise the definition of “AFA mothership”;

- b. Add definitions for “AFA rebuilt vessel,” “AFA replacement vessel,” and “AFA vessel” in alphabetical order; and
- c. Add paragraph (2)(vi) to the definition of “Maximum LOA (MLOA)”.

The revision and additions read as follows:

**§ 679.2 Definitions.**

*AFA mothership* means a mothership permitted to process BS pollock under § 679.4(l)(4).

*AFA rebuilt vessel* means an AFA vessel that was rebuilt after October 15, 2010.

*AFA replacement vessel* means a vessel that NMFS designated on an AFA permit pursuant to § 679.4(l)(7) after October 15, 2010.

*AFA vessel* means a vessel that is designated on an AFA catcher vessel permit, an AFA catcher/processor permit, or an AFA mothership permit, and is thereby authorized to participate

in the Bering Sea directed pollock fishery.

\*       \*       \*       \*       \*

*Maximum LOA (MLOA) means:*

(vi) An AFA vessel is exempt from the MLOA on an LLP license with a Bering Sea area endorsement or an Aleutian Islands area endorsement when the vessel is used in the BSAI to harvest or process license limitation groundfish and the LLP license specifies an exemption from the MLOA restriction for the AFA vessel.

■ 5. In § 679.4,

■ a. Remove paragraphs (a)(1)(iii)(F), (l)(4) introductory text, and (l)(8)(iv):

■ b. Redesignate paragraphs (l)(2)(iii) as (l)(2)(iv) and (l)(8)(v) as (l)(8)(iv) ;

■ c. Revise paragraphs (k)(1)(i), (k)(3)(i)(A), (l)(1)(ii)(B), (l)(3)(i)(A)(2), (l)(3)(i)(B)(2), (l)(3)(i)(C)(2)(iv), (l)(4)(i), (l)(6)(ii)(C)(3), (l)(6)(ii)(D) introductory text, (l)(7), (l)(8)(i), (l)(8)(ii), (l)(8)(iii), and (o)(4)(i)(D); and

■ d. Add paragraphs (k)(3)(i)(E), (l)(2)(iii), (l)(3)(i)(A)(3), (l)(3)(i)(B)(3), (l)(3)(i)(C)(3), (l)(3)(ii)(E)(3), (1)(6)(ii)(D)(3), and (1)(6)(ii)(D)(4).

The revisions and additions read as follows:

**§ 679.4 Permits.**

$$\begin{array}{ccccc} * & & * & & * & & * & & * \\ (k) & * & * & * & & & & & \\ (1) & * & * & * & & & & & \end{array}$$

(i) In addition to the permit and licensing requirements of this part, and except as provided in paragraph (k)(2) of

this section, each vessel within the GOA or the BSAI must have an LLP groundfish license on board at all times it is engaged in fishing activities defined in § 679.2 as directed fishing for license limitation groundfish. This groundfish license, issued by NMFS to a qualified person, authorizes a license holder to deploy a vessel to conduct directed fishing for license limitation groundfish only in accordance with the specific area and species endorsements, the vessel and gear designations, the MLOA specified on the license, and any exemption from the MLOA specified on the license.

$$\begin{array}{ccccc} * & & * & & * & & * & & * \\ (3) & * & * & * & & & & & \\ (i) & * & * & * & & & & & \end{array}$$

(A) *General.* A license may be used only on a vessel designated on the license, a vessel that complies with the vessel designation and gear designation specified on the license, and a vessel that has an LOA less than or equal to the MLOA specified on the license, unless the license specifies that the vessel is exempt from the MLOA on the license.

(E) *Exemption from MLOA on an LLP license with a Bering Sea area endorsement or an Aleutian Islands area endorsement for AFA rebuilt or AFA replacement vessels.* An AFA rebuilt vessel or an AFA replacement vessel may exceed the MLOA on an LLP groundfish license with a Bering Sea area endorsement or an Aleutian Islands area endorsement when the vessel is

conducting directed fishing for groundfish in the BSAI pursuant to that LLP groundfish license and when the exemption is specified on the LLP license.

\* \* \* \* \*

(l) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(B) *Duration of final AFA permits.* (1)

Except as provided in paragraphs (l)(1)(ii)(B)(2), (l)(1)(ii)(B)(3), (l)(5)(v)(B)(3), and (l)(6)(iii) of this section, AFA vessel and processor permits issued under this paragraph (l) are valid indefinitely unless the permit is suspended or revoked.

(2) An AFA vessel permit is revoked when the vessel designated on the permit is replaced or removed under paragraph (l)(7) of this section.

(3) In the event of a total loss or constructive loss of an AFA vessel,

(i) The AFA vessel permit that designates the lost AFA vessel will be valid from the date of the vessel loss up to 5 years from December 31 of the year in which the vessel was lost and will be suspended after that date, unless the AFA vessel permit for the lost vessel was revoked before that date because the lost vessel was replaced or removed under paragraph (l)(7) of this section. For example, if a vessel sinks on February 15, 2016, the AFA permit on the vessel will be valid until December 31, 2021, unless the owner of the vessel replaces or removes the vessel before December 31, 2021; after December 31, 2021, the AFA permit on the lost vessel will be suspended until the AFA vessel owner replaces or removes the lost vessel;

(ii) The owner of the lost AFA vessel must notify NMFS in writing of the vessel loss within 120 days of the date of the total loss or constructive loss of the vessel;

(iii) For purposes of paragraph (l)(1)(ii)(B)(3) of this section, an AFA lost vessel is a vessel that has been subject to a total loss or a constructive loss; a total loss means that the vessel is physically lost such as from sinking or a fire; a constructive loss means that the vessel suffered damage so that the cost of repairing the vessel exceeded the value of the vessel; the date of the total loss of a vessel is the date on which the physical loss occurred; the date of the constructive loss of a vessel is the date on which the damage to the vessel occurred.

\* \* \* \* \*

(2) \* \* \*

(iii) *AFA replacement vessels.* (A) NMFS will issue a listed AFA catcher/processor permit to the owner of a

catcher/processor that is a replacement vessel for a vessel that was designated on a listed AFA catcher/processor permit.

(B) NMFS will issue an unlisted AFA catcher/processor permit to the owner of a catcher/processor that is a replacement vessel for a vessel that was designated on an unlisted AFA catcher/processor permit.

\* \* \* \* \*

(3) \* \* \*

(i) \* \* \*

(A) \* \* \*

(2) Is not listed in paragraph (l)(3)(i)(A)(1) of this section and is determined by the Regional Administrator to have delivered at least 250 mt and at least 75 percent of the pollock it harvested in the directed BSAI pollock fishery in 1997 to catcher/processors for processing by the offshore component; or

(3) Is an AFA replacement vessel for a vessel that was designated on an AFA catcher vessel permit with a catcher/processor endorsement.

(B) \* \* \*

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

(3) Is an AFA replacement vessel for a vessel that was designated on an AFA catcher vessel permit with a mothership endorsement.

(C) \* \* \*

(2) \* \* \*

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

(3) Is an AFA replacement vessel for a vessel that was designated on an AFA catcher vessel permit with an inshore endorsement.

(E) \* \* \*

(3) *AFA replacement vessel for a catcher vessel that qualified for an exemption.* A catcher vessel that is a replacement vessel for a vessel that was designated on an AFA catcher vessel permit with an exemption from a groundfish sideboard directed fishing

closure will receive an AFA catcher vessel permit with the same exemption as the replaced vessel.

(4) \* \* \*

(i) NMFS will issue to an owner of a mothership an AFA mothership permit if the mothership:

(A) Is one of the following (as listed in paragraphs 208(d)(1) through (3) of the AFA):

EXCELLENCE (USCG documentation number 967502);

GOLDEN ALASKA (USCG documentation number 651041); and

OCEAN PHOENIX (USCG documentation number 296779); or

(B) Is an AFA replacement vessel for a vessel that was designated on an AFA mothership permit.

\* \* \* \* \*

(6) \* \* \*

(ii) \* \* \*

(C) \* \* \*

(3) Each catcher vessel in the cooperative is a qualified catcher vessel and is otherwise eligible to fish for groundfish in the BSAI, except that a lost vessel that retains an AFA permit pursuant to paragraph (l)(1)(ii)(B)(3) of this section need not be designated on a Federal Fisheries Permit or an LLP license; has an AFA catcher vessel permit with an inshore endorsement; and has no permit sanctions or other type of sanctions against it that would prevent it from fishing for groundfish in the BSAI.

(D) *Qualified catcher vessels.* For the purpose of paragraph (l)(6)(ii)(C)(3) of this section, a catcher vessel is a qualified catcher vessel if the catcher vessel meets the permit and landing requirements in paragraphs (l)(6)(ii)(D)(1) and (l)(6)(ii)(D)(2) of this section; the catcher vessel is an AFA replacement catcher vessel that meets the requirements in paragraph (l)(6)(ii)(D)(3) of this section; or the catcher vessel is an AFA lost catcher vessel that meets the requirements in paragraph (l)(6)(ii)(D)(4) of this section.

\* \* \* \* \*

(3) *AFA replacement catcher vessels.* The vessel is an AFA replacement vessel for a catcher vessel that met the permit and landing requirements in paragraphs (l)(6)(ii)(D)(1) and (l)(6)(ii)(D)(2) of this section;

(4) *AFA lost catcher vessels.* In the event of a total loss or constructive loss of an AFA catcher vessel with an inshore endorsement, the owner of the lost vessel has an AFA catcher vessel permit with an inshore endorsement for the lost vessel that is valid pursuant to paragraph (l)(1)(ii)(B)(3) of this section, and the inshore cooperative shows:

(i) The vessel was lost during a year when the vessel was designated on an

AFA inshore cooperative fishing permit issued to the cooperative submitting the application; or

(ii) The vessel was lost during a year when the vessel was not designated on any AFA inshore cooperative fishing permit and when the vessel delivered more pollock to the AFA inshore processor designated by the inshore cooperative under paragraph (l)(6)(ii)(B) of this section than to any other processor; or

(iii) The vessel was lost during a year when the vessel was not designated on any AFA inshore cooperative fishing permit and when the vessel had made no deliveries of pollock and the owner of the lost vessel has assigned the catch history of the lost vessel to the inshore cooperative that submits the application.

\* \* \* \* \*

(7) *AFA rebuilt vessels, AFA replacement vessels, and removal of inshore AFA catcher vessels*—(i) *AFA rebuilt vessels.* (A) To improve vessel safety or to improve operational efficiency, including fuel efficiency, the owner of an AFA vessel may rebuild the vessel. If the owner of an AFA vessel rebuilds the vessel, the owner must notify NMFS within 30 days of the issuance of the vessel documentation for the AFA rebuilt vessel and must provide NMFS with a copy of the vessel documentation for the rebuilt vessel. If the owner of the AFA rebuilt vessel provides NMFS with information demonstrating that the AFA rebuilt vessel is documented with a fishery endorsement issued under 46 U.S.C. 12113, NMFS will acknowledge receipt of the notification and inform the owner that the AFA permit issued to the vessel before rebuilding is valid and can be used on the AFA rebuilt vessel.

(B) Except as provided in paragraph (l)(7)(i)(C) and paragraph (l)(7)(i)(D) of this section, the owner of an AFA rebuilt vessel will be subject to the same requirements that applied to the vessel before rebuilding and will be eligible to use the AFA rebuilt vessel in the same manner as the vessel before rebuilding.

(C) An AFA rebuilt vessel is exempt from the maximum length overall (MLOA) restriction on an LLP groundfish license with a Bering Sea area endorsement or an Aleutian Islands area endorsement when the AFA rebuilt vessel is conducting directed fishing for groundfish in the BSAI pursuant to that LLP groundfish license and the LLP groundfish license specifies the exemption.

(D) If an AFA rebuilt catcher vessel is equal to or greater than 125 ft (38.1 m) LOA, the AFA rebuilt catcher vessel

will be subject to the catcher vessel exclusive fishing seasons for pollock in 50 CFR 679.23(i) and will not be exempt from 50 CFR 679.23(i) even if the vessel before rebuilding was less than 125 ft (38.1 m) LOA and was exempt from 50 CFR 679.23(i).

(ii) *AFA replacement vessels.* (A) To improve vessel safety or to improve operational efficiency, including fuel efficiency, the owner of an AFA vessel may replace the AFA vessel with a vessel that is documented with a fishery endorsement issued under 46 U.S.C. 12113.

(B) Upon approval of an application to replace an AFA vessel pursuant to paragraph (l)(7) of this section and except as provided in paragraph (l)(7)(ii)(C), paragraph (l)(7)(ii)(D), and paragraph (l)(7)(E) of this section, the owner of an AFA replacement vessel will be subject to the same requirements that applied to the replaced vessel and will be eligible to use the AFA replacement vessel in the same manner as the replaced vessel. If the AFA replacement vessel is not already designated on an AFA permit, the Regional Administrator will issue an AFA permit to the owner of the AFA replacement vessel. The AFA permit that designated the replaced, or former, AFA vessel will be revoked.

(C) An AFA replacement vessel is exempt from the maximum length overall (MLOA) restriction on an LLP groundfish license with a Bering Sea area endorsement or an Aleutian Islands area endorsement when the AFA replacement vessel is conducting directed fishing for groundfish in the BSAI pursuant to that LLP groundfish license and the LLP groundfish license specifies an exemption from the MLOA restriction for the AFA replacement vessel.

(D) If an AFA replacement catcher vessel is equal to or greater than 125 ft (38.1 m) LOA, the AFA replacement catcher vessel will be subject to the catcher vessel exclusive fishing seasons for pollock in 50 CFR 679.23(i) and will not be exempt from 50 CFR 679.23(i), even if the replaced vessel was less than 125 ft (38.1 m) LOA and was exempt from 50 CFR 679.23(i).

(E) An AFA replacement catcher vessel for an AFA catcher vessel will have the same sideboard exemptions, if any, as the replaced AFA catcher vessel, except that if the AFA replacement vessel was already designated on an AFA permit as exempt from sideboard limits, the AFA replacement vessel will maintain its exemption even if the replaced vessel was not exempt from sideboard limits.

(iii) *Removal of AFA catcher vessel from the directed pollock fishery.* (A) The owner of a catcher vessel that is designated on an AFA catcher vessel permit with an inshore endorsement may remove the catcher vessel from the directed pollock fishery, subject to the requirements in paragraphs (B), (C), and (D) of this paragraph (l)(7)(iii).

(B) The owner of the removed catcher vessel must direct NMFS to assign the non-CDQ inshore pollock catch history in the BSAI of the removed vessel to one or more catcher vessels in the inshore fishery cooperative to which the removed vessel belonged at the time of the application for removal.

(C) Except for the assignment of the pollock catch history of the removed catcher vessel in paragraph (l)(7)(iii)(B) of this section, all claims relating to the catch history of the removed catcher vessel in the Exclusive Economic Zone off Alaska, including any claims to an exemption from AFA sideboard limitations, will be permanently extinguished upon NMFS' approval of the application to remove the catcher vessel and the AFA permit that was held by the owner of the removed catcher vessel will be revoked.

(D) The catcher vessel or vessels that are assigned the catch history of the removed catcher vessel cannot be removed from the fishery cooperative to which the removed catcher vessel belonged for a period of one year from the date that NMFS assigned the catch history of the removed catcher vessel to that vessel or vessels.

(iv) *Replaced vessels and removed vessels.* An AFA vessel that is replaced or removed under paragraph (l)(7) of this section is permanently ineligible to receive any permit to participate in any fishery in the Exclusive Economic Zone off Alaska unless the replaced or removed vessel reenters the directed pollock fishery as a replacement vessel under paragraph (l)(7) of this section.

(v) *Application.* To notify NMFS that the owner of an AFA vessel has rebuilt the AFA vessel, the owner of the AFA vessel must submit a complete application. To replace an AFA vessel with another vessel, NMFS must receive a complete application from the owner of the vessel that is being replaced. To remove an AFA catcher vessel from the directed pollock fishery, NMFS must receive a complete application from the owner of the vessel that is to be removed. An application must contain the information specified on the application form, with all required fields accurately completed and all required documentation attached. The application must be submitted to NMFS using the methods described on the

application. The application referred to in this paragraph is "American Fisheries Act (AFA) Permit: Rebuilt, Replacement, or Removed Vessel Application."

(8) \* \* \*

(i) *Initial evaluation.* The Regional Administrator will evaluate an application submitted in accord with paragraph (l) of this section. If the Regional Administrator determines that the applicant meets the requirements for NMFS to take the action requested on the application, NMFS will approve the application. If the Regional Administrator determines that the applicant has submitted claims based on inconsistent information or fails to submit the information specified in the application, the applicant will be provided a single 30-day evidentiary period to submit evidence to establish that the applicant meets the requirements for NMFS to take the requested action. The burden is on the applicant to establish that the applicant meets the criteria in the regulation for NMFS to take the action requested by the applicant.

(ii) *Additional information and evidence.* The Regional Administrator will evaluate the additional information or evidence submitted by the applicant within the 30-day evidentiary period. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proof, the application will be approved. However, if the Regional Administrator determines that the applicant did not meet the applicant's burden of proof, the applicant will be notified by an initial administrative determination (IAD) that the application is denied.

(iii) *Initial administrative determinations (IAD).* The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to establish that the applicant meets the requirements for an AFA permit or for NMFS to approve the withdrawal of a catcher vessel, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of the applicant's 30-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. An applicant who receives an IAD may

appeal under the appeals procedures set out at 15 CFR part 906.

\* \* \* \* \*

(o) \* \* \*

(4) \* \* \*

(i) \* \* \*

(D) The replacement vessel is not a vessel listed at section 208(e)(1) through (20) of the American Fisheries Act or permitted under paragraph (l)(2)(i) of this section; is not an AFA replacement vessel designated on a listed AFA catcher/processor permit under paragraph (l)(2) of this section; and is not an AFA catcher vessel permitted under paragraph (l)(3) of this section.

\* \* \* \* \*

■ 6. In § 679.7, revise paragraphs (i)(6), (k)(1)(ii), (k)(1)(iii), (k)(1)(iv), (k)(1)(v), (k)(1)(vi)(A) heading, (k)(1)(vi)(B) heading, (k)(1)(vii)(A) heading, (k)(1)(vii)(B) heading, and (k)(2)(ii) to read as follows:

#### § 679.7 Prohibitions.

\* \* \* \* \*

(i) \* \* \*

(6) Use a vessel to fish for LLP groundfish or crab species, or allow a vessel to be used to fish for LLP groundfish or crab species, that has an LOA that exceeds the MLOA specified on the license that authorizes fishing for LLP groundfish or crab species, except if the person is using the vessel to fish for LLP groundfish in the Bering Sea subarea or the Aleutian Islands subarea pursuant to an LLP license that specifies an exemption from the MLOA on the LLP license.

\* \* \* \* \*

(k) \* \* \*

(1) \* \* \*

(ii) *Fishing in the GOA.* Use a listed AFA catcher/processor or a catcher/processor designated on a listed AFA catcher/processor permit to harvest any species of fish in the GOA.

(iii) *Processing BSAI crab.* Use a listed AFA catcher/processor or a catcher/processor designated on a listed AFA catcher/processor permit to process any crab species harvested in the BSAI.

(iv) *Processing GOA groundfish.* (A) Use a listed AFA catcher/processor or a catcher/processor designated on a listed AFA catcher/processor permit to process any pollock harvested in a directed pollock fishery in the GOA and any groundfish harvested in Statistical Area 630 of the GOA.

(B) Use a listed AFA catcher/processor or a catcher/processor designated on a listed AFA catcher/processor permit as a stationary floating processor for Pacific cod in the GOA and a catcher/processor in the GOA during the same year.

(v) *Directed fishing after a sideboard closure.* Use a listed AFA catcher/processor or a catcher/processor designated on a listed AFA catcher/processor permit to engage in directed fishing for a groundfish species or species group in the BSAI after the Regional Administrator has issued an AFA catcher/processor sideboard directed fishing closure for that groundfish species or species group under § 679.20(d)(1)(iv) or § 679.21(e)(3)(v).

(vi) \* \* \*

(A) *Listed AFA catcher/processors and catcher/processors designated on listed AFA catcher/processor permits.*

\* \* \*

(B) *Unlisted AFA catcher/processors and catcher/processors designated on unlisted AFA catcher/processor permits.*

\* \* \*

(vii) \* \* \*

(A) *Listed AFA catcher/processors and catcher/processors designated on listed AFA catcher/processor permits.*

\* \* \*

(B) *Unlisted AFA catcher/processors and catcher/processors designated on unlisted AFA catcher/processor permits.*

\* \* \*

\* \* \* \* \*

(2) \* \* \*

(ii) *Processing GOA groundfish.* Use an AFA mothership as a stationary floating processor for Pacific cod in the GOA and a mothership in the GOA during the same year.

\* \* \* \* \*

■ 7. In § 679.51, revise paragraphs (a)(2)(vi)(B)(1) and (3) to read as follows:

#### § 679.51 Observer requirements for vessels and plants.

(a) \* \* \*

(2) \* \* \*

(vi) \* \* \*

(B) \* \* \*

(1) *Listed AFA catcher/processors, catcher/processors designated on listed AFA catcher/processor permits, and AFA motherships.* The owner or operator of a listed AFA catcher/processor, a catcher/processor designated on a listed AFA catcher/processor permit, or an AFA mothership must have aboard at least two observers, at least one of whom must be certified as a lead level 2 observer, for each day that the vessel is used to catch, process, or receive groundfish. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

\* \* \* \* \*

(3) *Unlisted AFA catcher/processors and catcher/processors designated on unlisted AFA catcher/processor permits.*

The owner or operator of an unlisted AFA catcher/processor or a catcher/processor designated on an unlisted AFA catcher/processor permit must have aboard at least two observers for each day that the vessel is used to engage in directed fishing for pollock in the BSAI, or receive pollock harvested in the BSAI. At least one observer must be certified as a lead level 2 observer. When a listed AFA catcher/processor is not engaged in directed fishing for BSAI pollock and is not receiving pollock harvested in the BSAI, the observer coverage requirements at paragraph (a)(2)(ii) of this section apply.

\* \* \* \* \*

■ 8. In § 679.62, redesignate paragraphs (a)(2) and (3) as paragraphs (a)(3) and (4), respectively, and add new paragraph (a)(2) to read as follows:

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

(a) \* \* \*

(2) *Determination of individual vessel catch histories after approval of replacement of catcher vessel and approval of removal of catcher vessel from the AFA directed pollock fishery.*

(i) If NMFS approves the application of an owner of a catcher vessel that is a member of an inshore vessel cooperative to replace a catcher vessel pursuant to § 679.4(l)(7), NMFS will assign the AFA inshore pollock catch history of the replaced vessel to the replacement vessel.

(ii) If NMFS approves the application of an owner of a catcher vessel that is a member of an inshore vessel cooperative to remove a catcher vessel from the AFA directed pollock fishery pursuant to § 679.4(l)(7), NMFS will assign the AFA inshore pollock catch

history of the removed vessel to one or more vessels in the inshore vessel cooperative to which the removed vessel belonged as required by § 679.4(l)(7); NMFS will not assign the catch history for any non-pollock species of the removed vessel to any other vessel, and NMFS will permanently extinguish any exemptions from sideboards that were specified on the AFA permit of the removed vessel.

\* \* \* \* \*

■ 9. In § 679.63, redesignate paragraph (c) as paragraph (d) and add new paragraph (c) to read as follows:

**§ 679.63 Catch weighing requirements for vessels and processors.**

\* \* \* \* \*

(c) *What are the requirements for AFA replacement vessels?* The owner and operator of an AFA replacement vessel are subject to the catch weighing requirements and the observer sampling station requirements in paragraphs (a) and (b) of this section that applied to the owner and operator of the replaced vessel.

\* \* \* \* \*

■ 10. In § 679.64:

■ a. Revise paragraph (a) heading and introductory text and paragraph (a)(1) heading; and

■ b. Add paragraphs (b)(2)(iii) and (iv). The revisions and additions read as follows:

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

(a) *Harvesting sideboards for listed AFA catcher/processors and catcher/processors designated on listed AFA catcher/processor permits.* The Regional Administrator will restrict the ability of listed AFA catcher/processors and a

catcher/processor designated on a listed AFA catcher/processor permit 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) *How will groundfish sideboard limits for AFA listed catcher/processors and catcher/processors designated on listed AFA catcher/processor permits be calculated?* \* \* \*

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iii) An AFA rebuilt catcher vessel will have the same sideboard exemptions, if any, as the vessel before rebuilding, irrespective of the length of the AFA rebuilt catcher vessel.

(iv) An AFA replacement vessel for an AFA catcher vessel will have the same sideboard exemptions, if any, as the replaced AFA catcher vessel, irrespective of the length of the AFA replacement vessel, except that if the replacement vessel was already designated on an AFA permit as exempt from sideboard limits, the replacement vessel will maintain the exemption even if the replaced vessel was not exempt from sideboard limits.

\* \* \* \* \*

**§§ 679.4 and 679.51 [Amended]**

■ 11. At each of the locations shown in the “Location” column, remove the phrase indicated in the “Remove” column and add in its place the phrase indicated in the “Add” column for the number of times indicated in the “Frequency” column.

| Location                                       | Remove                         | Add   | Frequency |
|--|--------------------------------|---|-----------|
| § 679.4(a)(1)(iii)(A) and (a)(1)(iii)(C) ..... | Indefinite .....               | Indefinite unless permit is revoked after vessel is replaced or permit is suspended after vessel is lost.             | 1         |
| § 679.4(a)(1)(iii)(B) .....                    | Indefinite .....               | Indefinite unless permit is revoked after vessel is replaced or removed, or permit is suspended after vessel is lost. | 1         |
| § 679.51(f)(5) .....                           | (a)(2)(vi)(B)(1) and (2) ..... | (a)(2)(vi)(B)(1) through (3) .....  | 1         |