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Dated: June 10, 2014.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 130530519–4476–01]

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: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement Amendment 106 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). The proposed rule would allow the owner of an American Fisheries Act (AFA) vessel to rebuild or replace the vessel without limitation on the length, weight, or horsepower of the rebuilt or replacement vessel when the vessel is operating in the Bering Sea and Aleutian Islands Management Area (BSAI). The proposed rule would also allow the owner of an AFA catcher vessel that is a member of an inshore cooperative to remove the vessel from the Bering Sea directed pollock fishery and assign the pollock catch history of the removed vessel to one or more vessels in the inshore cooperative to which the removed vessel belonged. This action is necessary to bring the regulations implementing the BSAI FMP into conformity with the AFA as amended by the Coast Guard Authorization Act of 2010. This action would also 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: Submit comments on or before August 4, 2014.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2013-0097, by any one of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0097,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P. O. Box 21668, Juneau, AK 99802.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address) voluntarily submitted by the commenter will be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

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 at the above address; emailed to *OIRA_Submission@omb.eop.gov;* or faxed to 202–395–7285.

Electronic copies of Amendment 106 to the FMP, the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (Analysis), and the Categorical Exclusion prepared for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Additional analyses prepared for the AFA include the Final Environmental Impact Statement (FEIS) for American Fisheries Act Amendments 61/61/13/8 (AFA FEIS) (February 2002); the FEIS for Essential Fish Habitat Identification and Conservation in Alaska (April 2005); the Alaska Groundfish Harvest Specifications—FEIS (January 2007); and the Bering Sea Chinook Salmon Bycatch Management—FEIS (December 2009). These analyses are available on the NMFS Alaska Region Web site at *https://alaskafisheries.noaa.gov/analyses/default.htm.*

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 proposed rule are to regulations that are contained in Title 50 of the CFR.

Terms Used in the Preamble

This document uses several terms to help the reader understand the provisions of the proposed rule. The definitions are provided here for ease of reference.

The term ''AFA vessel'' means a vessel that is named on an AFA catcher vessel permit, an AFA catcher/processor permit, or an AFA mothership permit and is authorized by that permit to participate in the directed pollock fishery in the Bering Sea. The proposed rule would add this definition to § 679.2.

The terms ''directed pollock fishery'' or ''AFA fishery'' mean directed fishing for pollock in the Bering Sea subarea. ''Directed fishing'' is defined in regulations at § 679.2.

The term ''original AFA'' means the provisions of the AFA as adopted on October 21, 1998. The original AFA was contained in Division C, Title II—Fisheries, Subtitles I and II, within the Omnibus Appropriations Act FY 1999, Public Law 105–277.

The terms ''amended AFA'' or ''AFA'' mean the American Fisheries Act as amended since 1998, including the amendments to the AFA made by section 602 of the Coast Guard Authorization Act of 2010 (Coast Guard Act), Public Law. 111–281.

The term ''original AFA vessel'' means a vessel that became eligible to participate in the directed pollock fishery under the terms of the original AFA.

Background

The Background portion of this proposed rule contains four sections. Section I describes the relevant statutes and regulations governing the AFA fishery prior to the Coast Guard Act. Section II describes the changes to the AFA made by the Coast Guard Act. Section III describes the history of Council action to address the changes made to the AFA by the Coast Guard Act. Section IV describes the need for this action.

I. Summary of the Original AFA

On October 21, 1998, the President signed into law the original AFA. The original AFA, as adopted in 1998, is available on the NMFS Alaska Region Web site: *https://alaskafisheries.noaa.gov/sustainablefisheries/afa/afa1998.pdf.*

Subtitle I of the original AFA, entitled Fishery Endorsements, comprised sections 201 to 204. Subtitle I made changes generally in the issuance of Federal fishery endorsements by the United States Coast Guard (Coast Guard). These changes were initially codified at 46 U.S.C. 12102 and are now found at 46 U.S.C. 12113. Subtitle II of the original AFA, entitled Bering Sea Pollock Fishery, comprised sections 205 through 213. Subtitle II changed the management of the directed pollock fishery in the BSAI. Subtitle II of the original AFA is codified as a statutory note to section 301 of the Magnuson-Stevens Act (16 U.S.C.A. 1851 note). The following paragraphs briefly describe the provisions in Subtitle I and Subtitle II.

Subtitle I of the Original AFA: Fishery Endorsements

Before the original AFA, a vessel that was five net tons or greater had to have a Federal certificate of documentation with a Federal fishery endorsement to operate as a fishing vessel in U.S. waters (46 U.S.C. 12102(a) (1997); 46 U.S.C. 12108 (1997)). For a vessel to receive a Federal fishery endorsement, the owner of the vessel had to be a U.S. citizen or, if the owner of the vessel was a corporation, the controlling interest in the corporation had to be owned by individuals who were citizens of the United States (46 U.S.C. 12102(c) (1997)).

Subtitle I of the original AFA made two changes in the issuance of Federal fishery endorsements. First, it tightened the requirements for a non-individual entity, such as a corporation, to show that U.S. citizens held a controlling interest in the entity. Subtitle I of the original AFA established a standard of at least 75 percent ownership by U.S. citizens at each tier of ownership of the entity and in the aggregate. For vessels 100 feet or greater in registered length, Subtitle I of the original AFA tasked the Maritime Administration (MARAD), an agency in the Department of Transportation, with making the citizenship determinations for vessel ownership. For vessels less than 100 feet in registered length, the Coast Guard retained the responsibility to make the citizenship determinations for vessel ownership. Subtitle I of the original AFA corrected what Congress believed were mistakes in, and misinterpretations of, the 1987 Commercial Fishing Industry Anti-Reflagging Act. These mistakes and misinterpretations had resulted in the exemption of most vessels from the U.S. citizenship requirements (AFA FEIS at pages 1–3, see **ADDRESSES**).

Second, Subtitle I of the original AFA prohibited the issuance of Federal fishery endorsements to any new fishing vessels that exceeded 165 feet in registered length, that exceeded 750 gross registered tons, or that had an engine or engines capable of producing more than 3,000 shaft horsepower (46 U.S.C. 12113). MARAD regulations refer to vessels that exceed any of these statutory criteria of 165 feet registered length, 750 gross registered tons, or 3,000 shaft horsepower, as ''large vessels'' (46 CFR 356.47). If a vessel was a large vessel, the vessel could not receive a Federal fishery endorsement unless (1) the vessel had a certificate of documentation with a fishery endorsement that was effective on September 25, 1997; or (2) a regional fishery management council recommended and the Secretary of Commerce approved conservation and management measures in accordance with the Magnuson-Stevens Act to allow participation by large vessels in fisheries under the council's authority.

All original AFA vessels had fishery endorsements as of September 25, 1997. Therefore, all original AFA vessels were eligible to receive a Federal fishery endorsement even if the vessel was a ''large vessel.''

Subtitle II of the Original AFA: Bering Sea Pollock Fishery

Subtitle II of the original AFA made sweeping changes in the management of the directed pollock fishery in the BSAI and changed, to a lesser extent, the management of other groundfish fisheries off Alaska. In 2002, NMFS implemented the AFA through the following amendments to fishery management plans: Amendment 61 to the BSAI FMP; Amendment 61 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP); Amendment 13 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs; and Amendment 8 to the Fishery Management Plan for the Scallop Fishery off Alaska. NMFS analyzed the impact of the original AFA and the related fishery management plan amendments in the AFA FEIS (see **ADDRESSES**). NMFS published final regulations that fully implemented the original AFA on December 30, 2002 (67 FR 79692).

Subtitle II of the original AFA made five major changes in the management of pollock and other groundfish fisheries off Alaska: (1) Sector allocations, (2) determination of eligible vessels and processors, (3) the allowance of cooperatives; (4) protection measures for other fisheries, and (5) catch weighing and monitoring requirements. These changes are described in detail in the AFA FEIS and are summarized briefly here.

- Sector allocations. The original AFA in section 206 established sector allocations for the BSAI pollock fishery. The original AFA allocated 10 percent of the BSAI pollock total allowable catch (TAC) to the Western Alaska Community Development Quota (CDQ) Program. After allowance for incidental catch of pollock in other fisheries, the original AFA allocated the remaining TAC as follows: a 50 percent allocation to catcher vessels harvesting pollock for processing by the inshore sector; a 40 percent allocation to catcher vessels and catcher/processors harvesting pollock for processing by the catcher/processor sector; and a 10 percent allocation to catcher vessels harvesting pollock for processing by the mothership sector.
- Eligible vessels and processors. The original AFA in section 208 established which vessels and which processors were eligible to participate in the mothership sector, the catcher/processor sector, and the inshore sector. The mothership sector and the catcher/processor sector together make up the offshore component of the Bering Sea pollock fishery. A mothership may only receive and process fish; a catcher/processor may process and harvest fish; a catcher vessel may only harvest fish (section 205 of original AFA).

NMFS initially issued AFA permits to 3 mothership vessels, 21 catcher/processor vessels, and 112 catcher vessels. The three AFA mothership vessels were listed by name as eligible vessels in the AFA. Of the 21 AFA catcher/processors, 20 vessels were listed catcher/processors, which means they were listed by name as eligible in

section 208(e)(1) through (20) of the original AFA. One catcher/processor, although not listed, was eligible because it met the eligibility criteria in section 208(e)(21) of the original AFA. Of the 112 original AFA catcher vessels, 7 vessels were eligible to deliver to the catcher/processor sector only; 6 vessels were eligible to deliver to the mothership sector only; 85 vessels were eligible to deliver to the inshore sector only; and 14 vessels were dual-qualified to deliver in the inshore and mothership sectors (Analysis, Section 1.9.1).

• Cooperatives. The original AFA in section 210 allowed the formation of fishery cooperatives in each AFA sector. Under a fishery cooperative, the members of a cooperative agree to divide up the pollock that the cooperative members may harvest or process in a manner that seeks to eliminate ''a wasteful race for fish'' and to allow participants ''to maximize productivity'' (AFA FEIS, Executive Summary at page 2, see **ADDRESSES**). The original AFA in section 210(b) specifically regulated the formation of inshore cooperatives for catcher vessels. A catcher vessel with an inshore endorsement has a choice to participate in the open access sector and deliver pollock to any AFA inshore processor, or to contribute its catch history to a cooperative and deliver at least 90 percent of its pollock catch to the processor associated with the cooperative (AFA section 210(b); 50 CFR 679.4(l)(6)).

Seven inshore cooperatives have formed (Analysis, Section 1.9.1). Almost all AFA inshore catcher vessels harvest and deliver pollock through a cooperative, rather than in open access. From 2005 to 2014, except for 2010, all inshore catcher vessels fished through a cooperative (Allocations, NMFS Alaska Region Web site, *http://alaskafisheries.noaa/gov/sustainablefisheries/afa).* In 2010, only two inshore catcher vessels fished in open access (Permits, NMFS Alaska Region Web site, *http://alaskafisheries.noaa.gov/ram/afa.htm*).

• Limits on AFA vessels in other fisheries. The original AFA in section 211 provided protections for other fisheries from spillover effects from the allocation of exclusive harvesting privileges in the Bering Sea pollock fishery and the formation of fishery cooperatives. With respect to fisheries outside of Alaska, section 211(b)(5) of the original AFA prohibited AFA catcher/processors and AFA motherships from participating in any fishery outside of Alaska except the Pacific whiting fishery, unless a regional fishery management council specifically authorized such participation.

With regard to fishing in the Exclusive Economic Zone off Alaska, the original AFA provided for limits on AFA vessels that have become known as sideboards. Sideboards are limits on the amount of a species, other than Bering Sea pollock, that AFA vessels may harvest. The original AFA in section 211(b) established sideboard limits in the BSAI and GOA for the 20 catcher/processors that were listed in the original AFA as eligible to participate in the directed pollock fishery. The original AFA in section 211(a) directed the Council to recommend additional sideboard protections. The Council did recommend, and the Secretary approved, a comprehensive set of sideboard regulations on AFA vessels for species other than Bering Sea pollock (see regulations at § 679.64).

The regulations subject most AFA catcher vessels to sideboard limits (§ 679.4). NMFS establishes the sideboard limits, by species, each year through the annual harvest specification process. (See, e.g., Final 2013 and 2014 Harvest Specifications for Groundfish in the GOA, Tables 19 and 20, 78 FR 13162, February 26, 2013). If a sideboard limit for a species is too low to support a directed fishery, NMFS closes the fishery to directed fishing by AFA-sideboarded catcher vessels (§ 679.20(d)(iii) and (iv)). This frequently occurs. For example, in 2013 and 2014, except for pollock and Pacific cod in Western and Central GOA, NMFS closed directed fishing by AFA-sideboarded catcher vessels for almost all other groundfish species in the GOA (Final 2013 and 2014 Harvest Specifications for Groundfish in the GOA, Tables 30 and 31, 78 FR 13162, February 26, 2013).

The regulations exempt some AFA catcher vessels from sideboard limits for BSAI Pacific cod and for GOA groundfish, if the vessels meet specified criteria (§ 679.64(b)(2)). Out of 112 AFA catcher vessels, 10 vessels are exempt from BSAI Pacific cod sideboards and 16 vessels are exempt from GOA sideboards (Analysis, Section 1.9.1). These vessels are known as ''sideboard-exempt'' vessels. Even though exempt from AFA sideboards, the AFA sideboard-exempt vessels are bound by TACs for BSAI Pacific cod and GOA groundfish species and are subject to additional constraints on fishing for these species (Analysis, Section 1.9.1).

• Catch weighing and monitoring requirements. The original AFA in section 211(b)(6) imposed catch weighing and monitoring requirements on the 20 catcher/processors that were listed in the original AFA as eligible to harvest the directed pollock allocation of the catcher/processor sector. The original AFA required the listed catcher/processors to carry two NMFS observers at all times and to weigh all catch on NMFS-approved scales. Through regulations, the Council and NMFS developed catch measurement and observer requirements for all AFA catcher/processors, for AFA motherships, and for AFA catcher vessels (see regulations at § 679.51 and § 679.63).

Original AFA Provisions on Replacing, Rebuilding and Removing AFA Vessels

The original AFA explicitly prohibited the replacement of original 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. The original AFA did not specifically define total loss or constructive loss, but the terms are commonly used in maritime insurance. A total loss usually means that the vessel sinks, or is otherwise destroyed, and is physically lost. A constructive loss usually means that a vessel is so damaged that the cost of repair is greater than the value of the 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 than the owner's current vessel in any way.

Further, if an original AFA vessel owner did lose an original AFA vessel, section 208(g) of the original AFA limited the length, tonnage, and horsepower of the replacement vessel. If the original AFA vessel was a large vessel, 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 for large vessels.

Between 1998 and passage of the Coast Guard Act in 2010, NMFS approved the replacement of four original AFA vessels under the standards in the original AFA. All

replaced vessels were catcher vessels. Two replacement vessels were new to the AFA fishery. Two replacement vessels already were original AFA vessels that replaced other original AFA vessels.

The original AFA had no explicit provisions on rebuilding original AFA vessels. The original AFA did not provide a mechanism for a vessel owner to remove an original AFA vessel from the directed pollock fishery.

Effect of License Limitation Program (LLP) on Rebuilding and Replacing Original AFA Vessels

To participate in the directed pollock fishery in the Bering Sea, an AFA vessel must not only have an AFA permit, but must also be named on an LLP license with a Bering Sea area endorsement. There are two sources for this requirement. First, section 208(a)(2) of the original AFA specifically stated that to be eligible to participate in the directed pollock fishery, a vessel had to be eligible to harvest pollock under the LLP. Second, pollock is a license limitation groundfish (§ 679.2) and to conduct directed fishing for any species of license limitation groundfish in the Bering Sea, a vessel must be named on an LLP groundfish license with a Bering Sea area endorsement (§ 679.4(k)(1)(i)).

Further, AFA vessels harvest pollock with trawl gear. Every LLP license has a gear designation of either trawl gear, trawl/non-trawl gear, or non-trawl gear (§ 679.4(k)(1)(iv)). The first two gear designations—trawl and trawl/non-trawl—authorize the vessel named on the LLP license to use trawl gear. Therefore, to effectively fish for pollock, an AFA vessel must have an LLP license with a gear designation for trawl gear or trawl/non-trawl gear.

The requirement that an AFA vessel have an LLP license limits the ability of owners of AFA vessels to rebuild or replace AFA vessels. All LLP licenses specify a maximum length overall or MLOA (§ 679.4(k)(3)(i)). Under existing regulations, a vessel fishing for groundfish pursuant to an LLP license cannot exceed the MLOA on that license (§ 679.4(k)(1)(i), § 679.7(i)(6)). Therefore, under existing LLP regulations, an AFA vessel can only fish for Bering Sea pollock if, after rebuilding or replacement, (1) the AFA vessel is designated on an LLP license with a Bering Sea area endorsement and a gear designation authorizing trawl gear and (2) the AFA vessel does not exceed the MLOA on that LLP license.

Aleutian Islands Directed Pollock Fishery

The original AFA applied to the directed pollock fishery in the entire BSAI Management Area (section 205(4), section 205(6), section 205(10) of original AFA). The BSAI Management Area consists of the Bering Sea Subarea and the Aleutian Islands Subarea (see regulatory definitions in § 679.2). In 2004, Congress adopted section 803 of Public Law 108–199, which was the Consolidated Appropriations Act, 2004. In this statute, Congress allocated the directed pollock fishery in the Aleutian Islands (AI) to the Aleut Corporation and specified criteria for vessels to be eligible to harvest that allocation. NMFS published regulations implementing this statute in 2005 (70 FR 9856, March 1, 2005).

Within statutory and regulatory restrictions, the Aleut Corporation may annually select the participants in this fishery (§ 679.4(m), § 679.20(a)(5)(iii)(B)(*5*)). If the Aleut Corporation does not select participants, or if, for any reason, NMFS determines that the vessels in the AI directed pollock fishery will not likely harvest the TAC allowed in that fishery, NMFS may reallocate the TAC for that year in the AI directed pollock fishery to the Bering Sea pollock fishery (§ 679.20(a)(5)(iii)(B)(*2*)(*ii*)). The amended AFA and this proposed rule do not change any statutory or regulatory provisions that pertain to the AI directed pollock fishery. The amended AFA and this proposed rule do not limit the authority of the Aleut Corporation to select participants in the AI directed pollock fishery within the constraints of Public Law 108–199 and regulations implementing that statute.

II. Summary of the AFA as Amended by the Coast Guard Act

On October 15, 2010, Congress amended the AFA in section 602 of the Coast Guard Act, Public Law 111–281. The Coast Guard Act revised section 208(g) of the AFA to essentially eliminate all restrictions on the ability of the owners of AFA vessels to rebuild or replace AFA vessels when the vessel participates in groundfish fisheries of the BSAI. Under the amended AFA, the owner of an AFA vessel may rebuild that vessel or replace that vessel in order to improve vessel safety and operational efficiencies, including fuel efficiency. The amended AFA removes the statutory limits on the length, tonnage, or horsepower of the rebuilt or replacement vessel when the rebuilt or replacement vessel is participating in BSAI groundfish fisheries. In addition, section 208(g) of the AFA, as revised, removes the MLOA limitation in the LLP on the length of an AFA rebuilt or replacement vessel when the vessel participates in BSAI groundfish fisheries.

With respect to the Gulf of Alaska (GOA), section 208(g)(6) of the AFA, as revised, preserves the MLOA limitation in the LLP on the length of an AFA vessel when the vessel participates in GOA groundfish fisheries. An AFA vessel—whether an original AFA vessel, a rebuilt AFA vessel, or a replacement AFA vessel—may not conduct directed fishing for groundfish in any area in the GOA if the vessel exceeds the MLOA on the LLP groundfish license that is endorsed for that area and that is assigned to that vessel.

With respect to participation in fisheries outside of Alaska, the original AFA in section 211(b)(5) prohibited an AFA catcher/processor or AFA mothership from harvesting or processing fish in any fishery outside of Alaska except the Pacific whiting fishery. The amended AFA in section 208(g)(1)(B) imposes that prohibition on rebuilt and replacement AFA catcher/processors and motherships because it subjects AFA rebuilt and replacement vessels to the same restrictions as the vessel being rebuilt or replaced. While the original AFA did not prohibit an AFA catcher vessel from harvesting fish in fisheries outside of Alaska, the amended AFA in section 208(g)(4) imposes a prohibition on AFA rebuilt or replacement catcher vessels similar to the prohibition that applied to AFA mothership vessels and listed AFA catcher/processors in section 211(b)(5) of the original AFA. Under the amended AFA, a rebuilt or replacement AFA catcher vessel is prohibited from harvesting fish in any fishery outside of Alaska except for the Pacific whiting fishery.

The provisions discussed thus far describe the fishing privileges of the AFA rebuilt vessel and the AFA replacement vessel. The other side of the coin is what happens to the vessel that is replaced: the vessel that leaves the AFA fishery and is replaced by another vessel in the AFA fishery. Under section 211(b)(5) of the amended AFA, a vessel that is replaced is not eligible for a Federal fishery endorsement under 46 U.S.C. 12113 unless the replaced vessel becomes, in the future, a replacement vessel for another vessel leaving the AFA fishery.

The amended AFA added section 210(b)(7) to the AFA. This new provision allows the owner of an AFA catcher vessel that is a member of an inshore cooperative to remove the

catcher vessel from the inshore cooperative. Under section 210(b)(7), the owner of the removed vessel must assign the catch history of the removed vessel to one or more vessels in the cooperative to which the removed vessel belonged. Under section 210(b)(7), the vessels that are assigned the pollock catch history of the removed vessel must stay in the fishery cooperative for at least one year after the date on which the vessel was removed from the cooperative. Except for the assignment of the pollock catch history of the removed vessel, section 210(b)(7)(B) permanently extinguishes any claim that might have been based on the catch history of the removed vessel. This means that if the removed AFA catcher vessel was exempt from any sideboard limitations, NMFS permanently extinguishes the exemption and does not assign it to any other vessel.

Finally, except for four named vessels, section 210(b)(7)(B) of the amended AFA prevents the owner of an AFA catcher vessel that is removed under this provision from using the removed vessel in other fisheries. The amended AFA accomplishes this by making a removed AFA catcher vessel permanently ineligible for a Federal fishery endorsement, except that a removed AFA vessel may receive a Federal fishery endorsement to reenter the AFA fishery as a replacement vessel.

The four vessels are named in section 210(b)(7)(C) of the amended AFA. These vessels, if removed, may receive a Federal fishery endorsement to participate in a fishery under the authority of the New England Fishery Management Council or the Mid-Atlantic Fishery Management Council. These vessels are the *AJ* (U.S. official number 905625), *Dona Martita* (U.S. official number 651751), *Nordic Explorer* (U.S. official number 678234), and *Providian* (U.S. official number 1062183).

The Coast Guard, in conjunction with MARAD, will issue Federal fishery endorsements in accord with the amended AFA. For information on the vessel documentation process, see the Coast Guard Web site for the National Vessel Documentation Center at *http://www.uscg.mil/hq/cg5/nvdc/.*

III. History of Council Action

Section 208(g)(2) of the amended AFA gave the Council authority to recommend additional conservation and management measures if the Council concluded that such measures were necessary to ensure that the amended AFA did not undermine the effectiveness of the fishery management plans for either the BSAI or the GOA. Pursuant to section 208(g)(2) of the amended AFA, the Council reviewed whether to recommend conservation and management measures for the GOA, in addition to the restrictions on fishing by AFA vessels in the GOA in existing regulations. The Council concluded that additional measures for the GOA were not necessary, in light of the protections for GOA participants provided by current management measures.

The history of Council action on this subject is documented in minutes and newsletters of Council meetings, which are on the Council Web site: *https://alaskafisheries.noaa.gov/npfmc.* At its February 2012 meeting, the Council received a discussion paper on the issues raised by the AFA amendments and directed staff to analyze alternatives to limit the participation by AFA rebuilt and replacement vessels in the GOA beyond the limitations already in the AFA amendments. At its October 2012 meeting, the Council reviewed a draft analysis and directed staff to make changes in light of comments by the Council's Scientific and Statistical Committee.

At its February 2013 meeting, the Council reviewed the revised analysis. The Council approved the revised analysis for public review and adopted a preliminary preferred alternative. The Council's preliminary preferred alternative was Alternative 2, namely that NMFS should revise the relevant fishery management plans and regulations in accord with the AFA amendments, as NMFS planned to implement the AFA amendments, and that the Council did not need to recommend additional measures for the GOA. The other alternatives considered by the Council—Alternatives 2.1, 2.2, 2.3, and 2.4—placed additional restrictions on AFA rebuilt and replacement vessels when they participated in the GOA. At its April 2013 meeting, the Council unanimously adopted Alternative 2 as its preferred alternative.

In describing Alternative 2, the Analysis described how NMFS would implement the AFA amendments, if the Council did not recommend any additional conservation and management measures (Analysis, Executive Summary at pages ix–xv). The Analysis describes four key areas of NMFS' implementation of the AFA amendments under Alternative 2. First, under Alternative 2, the owner of an AFA vessel would be able to rebuild or replace the vessel with no limitation on the length, size, or horsepower of the rebuilt or replacement vessel, when the rebuilt or replacement vessel was participating in the BSAI (section 208(g)(1)(A) of amended AFA).

Second, with respect to the participation by AFA vessels in the GOA, the AFA amendments preserve the Maximum Length Overall (MLOA) restriction in the LLP for AFA rebuilt and replacement vessels when these vessels participate in the GOA (section 208(g)(6) of amended AFA). To participate in the GOA, AFA vessels must have an LLP license with an area endorsement for the Central Gulf or Western Gulf area (§ 679.4(k)(4)(ii)). An LLP license for the GOA may also have a Southeast Outside area endorsement but AFA vessels use trawl gear and trawl gear is prohibited in Southeast Outside (§ 679.22(b)(4)). Thus, under the AFA amendments as described in Alternative 2 in the Analysis, to fish for groundfish in the GOA, an AFA vessel 1) must have an LLP license with an area endorsement for Western Gulf or Central Gulf and 2) must not exceed the maximum length overall on that LLP license when the vessel is fishing pursuant to that license (Analysis, Executive Summary at page x). A vessel's LLP license endorsed for the Bering Sea is irrelevant to what the vessel can and cannot do in the GOA.

Third, the AFA amendments allow the owner of an AFA catcher vessel that is a member of an inshore cooperative to remove the vessel from the inshore cooperative and to assign the pollock fishing allowance of the removed vessel to one or more vessels in the same inshore cooperative (section 210(b)(7) of amended AFA). Fourth, and related, NMFS concludes that the AFA amendments require that NMFS extinguish any sideboard exemptions of a removed catcher vessel. The AFA amendments provide that, except for the claim to the pollock fishing allowance of the removed vessel, NMFS must extinguish ''any claim (including relating to catch history)'' of the removed vessel (section 210(b)(7)(B) of amended AFA). If the removed vessel was exempt from AFA sideboard limitations, the exemption was based on the vessel's catch history (§ 679.64(b)). A sideboard exemption is clearly a claim ''relating to [the vessel's] catch history.'' Therefore, if the removed vessel was exempt from sideboard limitations, the AFA amendments require NMFS to extinguish that exemption and prohibit NMFS from assigning that sideboard exemption to any other vessel or vessels. (Analysis, Executive Summary at page xv).

The Council specifically concurred with NMFS' interpretation of this provision in the AFA amendments (Analysis, Executive Summary at page

xx). The Council further concluded that, if NMFS did not implement the AFA amendments this way, the Council would recommend this action—extinguishment of the sideboard exemptions of a removed vessel—as a conservation and management measure necessary to ensure that the AFA amendments did not diminish the effectiveness of fishery management plans of the BSAI or GOA (Analysis, Executive Summary at page xx).

As for whether any other measures were necessary to protect the GOA, the Council concluded that no other measures were necessary. The Council noted the considerable protections already in place that restrict fishing by AFA vessels in the GOA. The Council relied on these measures to conclude that current management measures provided sufficient protection for participants in the GOA from increased activity from AFA rebuilt and replacement vessels.

The Analysis describes the existing limitations on AFA vessels in the GOA: the limited number of LLP licenses with Central Gulf or Western Gulf endorsements; the sideboard limits on GOA species that apply to most AFA vessels; the sideboard limits in the Central GOA Rockfish Program for AFA sideboard-exempt vessels that participate in that program; limitations on the use of AFA catcher vessels that operate in both the BSAI and GOA (commonly known as a ''stand-down'' requirement); exclusive fishing seasons for AFA catcher vessels that participate in the pollock fisheries in the BSAI and GOA; trip limits for pollock that are part of the Steller sea lion mitigation measures; limits on AFA trawl catcher vessels operating as pollock tenders; and the provision in the Inter-Cooperative Agreement that prevents an AFA-sideboard exempt vessel from leasing its pollock quota in a year once the vessel exceeds its GOA average harvest level from the 1995 through 1997 period (Analysis, Section 1.9.1 and Section 1.11.2).

A further restriction on AFA vessels in the GOA is the Pacific cod sector split. Beginning in 2012, NMFS annually allocates Pacific cod in the GOA by gear type and vessel type. The sector split allocates Pacific cod to the hook-and-line sector, the pot sector, and the trawl sector. Since AFA vessels use trawl gear to harvest pollock, and since the other gear sectors have their own Pacific cod allocation, the sector split restricts the harvest of Pacific cod in the non-trawl fisheries in the GOA by AFA vessels. For additional detail on the GOA Pacific cod sector split, see the final rule implementing this measure (76 FR 74670, December 2, 2011).

The Council relied on the current suite of restrictions on the participation by AFA vessels in the GOA when the Council did not adopt an alternative that limited participation by AFA vessels in the GOA beyond the restrictions in current statute and regulation.

As for the BSAI, and whether any additional measures were necessary to restrict fishing by AFA vessels in the BSAI, the Council did not specifically consider an alternative to limit non-pollock fishing by AFA rebuilt and replacement vessels in the BSAI beyond the restrictions currently in place. However, the Analysis presented to the Council did describe in detail the extent of fishing by AFA vessels in the BSAI in non-pollock fisheries and did describe the stringent sideboard limits and closures that restrict most AFA vessels (Analysis, Tables 1–1, 1–2, 1–5, 1–8, 1–9, 1–14, 1–15, 1–18. 1–19, 1–23, and Section 1.9.1).

The only AFA vessels that are exempt from any sideboard limits in the BSAI are 10 AFA catcher vessels that are exempt only from BSAI Pacific cod sideboard limits. These 10 sideboard-exempt vessels are, of course, subject to the TAC limits for BSAI Pacific cod and all other species they harvest. Furthermore, the AFA sideboard-exempt vessels in the BSAI are subject to many of the restrictions, noted above, that apply to AFA vessels in the GOA, including stand-down requirements for AFA catcher vessels that operate in both the BSAI and GOA; exclusive fishing seasons for AFA catcher vessels that participate in the pollock fisheries in the BSAI and GOA; and limits on AFA trawl catcher vessels from operating as pollock tenders (Analysis, Section 1.9.1 at pages 20–22).

Thus, with respect to the BSAI, the Council had before it considerable information regarding non-pollock fishing by AFA vessels in the BSAI and did not recommend any management measures beyond the limits on AFA vessels in existing regulations.

IV. The Need for Action

The BSAI FMP and current regulations are consistent with the original AFA, but not with the amended AFA. On this basis, the need for action is clear. The BSAI FMP and regulations must be changed to conform to a statute adopted by Congress.

This action is needed not only to implement the amended AFA, but also to further the purpose of the AFA amendments themselves. The primary purpose of the Coast Guard Act amendments to the AFA is to promote the safety and efficiency of the AFA fleet by allowing the owners of AFA vessels to rebuild or replace their vessels. Under the original AFA and existing regulations, an owner of an AFA vessel had to wait until the vessel sank or was damaged beyond repair before the owner of an AFA vessel could replace the AFA vessel with another vessel. The AFA fleet is aging. 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).

Under the original AFA, as reflected in current regulations, an owner of an AFA vessel cannot replace an AFA vessel with a vessel that is safer, more fuel efficient, or more operationally efficient in other ways. For example, the Analysis notes that advances in propulsion systems for catcher vessels, when paired with improved hull forms, can result in gains in fuel efficiency of up to 25 percent or more per pound of fish products delivered (Analysis, Section 1.11.2).

Under the original AFA, the rebuilding or replacement of AFA vessels was limited by length, tonnage, and horsepower of the rebuilt or replacement vessel. Under the amended AFA, the owner of an AFA vessel may rebuild that vessel or replace that vessel with no limit on the length, tonnage, or horsepower of the rebuilt or replacement vessel when the rebuilt or replacement vessel is participating in the BSAI. The removal of these limits could substantially improve the operational efficiency of AFA vessels. For example, the Analysis notes that the owners of smaller and older AFA catcher/processors may wish to rebuild or replace their vessels to install a fish meal plant, which would enable them to sell fish meal and fish oil. Vessels may also use fish oil as fuel in hybrid diesel electric engines and reduce costs from purchasing petroleum-based fuel (Analysis, Section 1.11.2).

The proposed rule would not require an AFA vessel owner to upgrade a vessel. An AFA vessel owner still must find that the improved safety and improved efficiency from rebuilding or replacing is worth the cost. The Analysis does not try to estimate how many owners of AFA catcher vessels, catcher/processors, or motherships will rebuild or replace vessels. The likelihood of a given vessel being rebuilt or replaced will depend on many factors, including the financial

resources of the vessel owner, which is proprietary and confidential information. NMFS does not have that information and therefore cannot reliably estimate how many AFA vessel owners would rebuild or replace their vessels under the proposed rule. The proposed rule would, however, allow the owners of AFA vessels to weigh the costs and benefits of rebuilding or replacing their vessels, and to act on their evaluation, before their vessels sink or are damaged beyond repair.

Finally, this action responds to the problem that owners of catcher vessels in the inshore sector have experienced because the AFA had no provisions allowing for removal of vessels from the AFA fishery. Under existing regulations, the catcher vessels that do not actively fish for the cooperative must be tied up at the dock or put in storage, even if the owner has concluded that the vessel will never fish again. Except when a vessel was lost, the original AFA provided no way for the owner of an AFA inshore catcher vessel to transfer the catch history of one inshore catcher vessel to any other inshore catcher vessel. The owner of an AFA inshore catcher vessel could not do that simply because the owner wished to remove the vessel from the fishery.

The inability of the owner of an AFA inshore catcher vessel to remove a vessel from the AFA fishery results from the requirement in the original AFA and AFA regulations for a vessel to be a member of an inshore cooperative. For each year the owner of a catcher vessel wants to be a member of a particular inshore cooperative, the catcher vessel must be a ''qualified catcher vessel'' for membership in that inshore cooperative. (Original AFA, section 211(b)(3); 50 CFR 679.4(l)(6)(ii)(*D*)). To be a qualified catcher vessel, a catcher vessel must be eligible to harvest pollock in the Bering Sea and must be eligible to harvest groundfish in BSAI (§ 679.4(l)(1)(i); § 679.4(l)(6)(ii)(C)(*3*)). This means that, to be a member of an inshore cooperative, a catcher vessel must exist and must be designated on four permits: a Federal Fisheries Permit, an AFA catcher vessel permit with an inshore endorsement, an LLP groundfish license with a Bering Sea endorsement, and, of course, an inshore cooperative permit (§ 679.4(l)(6)).

Even though every catcher vessel in an inshore cooperative must be eligible to fish for pollock and for groundfish under the original AFA, not every catcher vessel in an inshore cooperative must actually fish for the cooperative. Some catcher vessels in a cooperative do not fish at all, or fish very little. Other, more efficient, catcher vessels in the cooperative harvest the pollock that the cooperative is authorized to catch. Some of the catcher vessels that do not fish are obsolete and inefficient, but under the original AFA and existing regulations, the owners of these vessels have no way to remove them from the AFA fishery. The AFA amendments and the proposed rule remedy this deficiency by allowing the owner of a catcher vessel that is a member of an inshore cooperative to remove that vessel from the AFA fishery subject to the conditions described above in Section II, ''Summary of the AFA as amended by the Coast Guard Act.''

Proposed Action

This proposed rule would revise the current regulations to implement the amended AFA and Amendment 106 to the BSAI FMP. This proposed rule addresses the rebuilding, replacement, and removal of AFA vessels and would make the following changes.

AFA Rebuilt Vessels

This proposed rule would establish the procedure for owners of AFA rebuilt vessels to maintain AFA permits on rebuilt vessels, would define the fishing privileges of the rebuilt vessel, and would modify the LLP regulations for AFA rebuilt vessels.

• Procedure. The proposed rule at § 679.4(l)(7)(i) would establish a procedure for the owners of AFA rebuilt vessels to maintain AFA permits for AFA rebuilt vessels. Under the proposed rule, an owner of an AFA vessel may rebuild the AFA vessel to improve the safety of the vessel or the operational efficiency of the vessel including the fuel efficiency of the vessel. When a vessel owner applies for an AFA permit or LLP license for a rebuilt vessel, NMFS will ask the applicant to certify that the purpose of the rebuilding was to improve safety, improve operational efficiency, or both.

In the application process, NMFS would not undertake to substantiate that the owner rebuilt the AFA vessel for the reason stated in the application. Similarly, NMFS would not undertake to substantiate through the application process that the rebuilt vessel was safer or more efficient. It would be difficult to establish a standard for judging whether a rebuilt or replacement vessel was safer or more efficient. NMFS does not believe that was the intent of Congress in amending the AFA. NMFS concludes that the purpose of the amended AFA is to allow the owner of an AFA vessel to weigh the considerable costs in rebuilding an AFA vessel against the benefits and to proceed if the owner determined the benefits were worth the costs.

To maintain an AFA permit, the AFA rebuilt vessel must have a certificate of documentation with a Federal fishery endorsement. If the owner of an AFA vessel rebuilds an AFA vessel, the proposed rule at § 679.4(l)(7)(i) would require that the owner notify NMFS and provide a copy of the documentation of the rebuilt vessel within 30 days of the issuance of the documentation. The 30-day period would provide adequate time for the applicant to notify NMFS.

• Fishing privileges of AFA rebuilt vessels. Under the proposed rule at § 679.4(l)(7)(i)(B), the owner of an AFA rebuilt vessel would be eligible to use the vessel in the same manner as the vessel before rebuilding and would be subject to the same requirements under 50 CFR part 679 that applied to the vessel before rebuilding, except for two requirements. First, under the proposed rule at § 679.4(l)(7)(i)(C), an AFA rebuilt vessel would be exempt from the MLOA requirement on an LLP groundfish license with a Bering Sea endorsement or an Aleutian Islands endorsement when that vessel is fishing for groundfish in the BSAI pursuant to that license, whether or not the vessel, before rebuilding, was exempt from the MLOA requirement. This exemption from the MLOA requirement for AFA rebuilt (and replacement) vessels implements a key feature of the AFA amendments.

The exemption from the MLOA requirement would attach to any AFA vessel that was rebuilt after October 15, 2010, the effective date of the Coast Guard Act. The exemption would remain with the vessel. That is, under the proposed rule, once an AFA vessel is rebuilt, the vessel would be permanently exempt from the MLOA restriction on any LLP license with a Bering Sea or Aleutian Islands area endorsement on which the vessel is designated when the vessel is fishing for groundfish in the BSAI pursuant to that LLP license.

The second area where an AFA rebuilt vessel would be subject to a different requirement from the AFA vessel before rebuilding relates to the fishing restrictions in § 679.23(i). A little background is necessary to understand the issue. For certain species in the BSAI or GOA, § 679.23 divides a fishing year into seasons. Section 679.23 divides directed fishing for pollock in the BSAI into two seasons (A season and B season) and divides directed fishing for pollock in the GOA into four seasons (A season, B season, C season, and D season). Section 679.23(i) imposes restrictions that prevent catcher

vessels from fishing for pollock in every season in every year in the BSAI and GOA. For example, under this regulation, if a catcher vessel fishes for pollock in the BSAI in the A season, the catcher vessel cannot fish for pollock in the GOA until the start of the following C season.

Section 679.23 is an inseason management tool to lessen competitive interactions between the groundfish fisheries and Steller sea lions. Section 679.23 ''limits the concentration of fishing effort in one area and reduces the potential for localized depletion of Steller sea lion prey'' (Analysis, section 1.9.1 at page 39). However, § 679.23(i) exempts catcher vessels that are less than 125 feet LOA from the season restrictions in the regulation when the vessels are fishing east of 157°00′ W. long.

NMFS considered whether an AFA rebuilt catcher vessel that is 125 feet LOA or greater after rebuilding would remain subject to the restrictions in § 679.23, even if the vessel was less than 125 feet LOA before rebuilding and therefore was not subject to the restrictions in § 679.23. Under the AFA amendments, NMFS concludes that an AFA rebuilt vessel that is 125 feet LOA or greater is subject to the restrictions in § 679.23. Thus, under the proposed rule at § 679.4(l)(7)(i)(D), an AFA rebuilt catcher vessel that is 125 feet LOA or greater would be subject to the fishing restrictions in § 679.23, even if the vessel before rebuilding was not subject to the restrictions in § 679.23.

NMFS bases this provision in the proposed rule—the continuation of the restrictions in § 679.23 on AFA rebuilt (and replacement) vessels—on three things: the language of the amended AFA, the purpose of the restrictions in § 679.23, and the Analysis for this action.

First, the amended AFA in section 208(g)(1)(A) states that ''[n]otwithstanding any limitation to the contrary on replacing, rebuilding, or lengthening vessels, or transferring permits or licenses to a replacement vessel contained in section 679.2 and 679.4 [of Title 50 CFR],'' a vessel owner may rebuild or replace an AFA vessel. The restriction in § 679.23 is not in § 679.2 or § 679.2 of Title 50 CFR and is therefore not abrogated by reference in section 208(g)(1)(A). Further, the restriction in § 679.23 is not a ''limitation . . . on replacing, rebuilding or lengthening'' AFA vessels. The proposed rule would still allow the owner of an AFA vessel to rebuild or replace an AFA vessel without limitation on the length of the vessel when it is fishing in the BSAI.

The amended AFA in section 208(g)(1)(B) states that the rebuilt and replacement vessel will be ''subject to the same restrictions and limitations . . . as the vessel being rebuilt or replaced.'' The amended AFA in section 208(g)(1)(C) states that the rebuilt and replacement vessel should receive the permits ''as necessary . . . to operate in the same manner'' as the vessel prior to rebuilding or replacement. If the AFA vessel, prior to rebuilding or replacement, had been lengthened so that it was 125 feet LOA or greater, the AFA vessel would have been subject to the restrictions in § 679.23. NMFS concludes that subjecting an AFA rebuilt vessel to the restrictions in § 679.23 is subjecting an AFA rebuilt vessel to ''the same restrictions and limitations'' that applied to the vessel before rebuilding and is allowing the AFA rebuilt vessel to ''operate in the same manner'' as the vessel could have operated before rebuilding.

Second, as noted, the purpose of § 679.23 is to lessen competition between the groundfish fisheries and the Steller sea lion population. NMFS concludes that the purpose of the AFA amendments was not to lessen the scope of the protective measures for the Steller sea lion population in § 679.23. Specifically, NMFS concludes that the purpose of the AFA amendments was not to grant more fishing opportunities to AFA vessels that become 125 feet LOA or longer through rebuilding as opposed to AFA vessels that are 125 feet or longer not as a result of rebuilding.

Finally, the Analysis describes the restrictions in § 679.23 on fishing by AFA vessels as part of Alternative 2, the Council's preferred alternative (Analysis, Section 1.9.1 at pages 39–40). In deciding not to recommend additional measures to limit AFA rebuilt and replacement vessels, the Council relied on this and other measures that currently limit the participation of AFA vessels in the BSAI and GOA. For these reasons, the proposed rule would keep in place the restrictions in § 679.23 that apply to AFA vessels that are 125 feet LOA or longer, even if the AFA vessel was less than 125 feet LOA before rebuilding.

• Changes in LLP regulations for AFA rebuilt vessels. The proposed rule would modify the LLP regulations at § 679.2 and § 679.4(k). The proposed rule modifies these regulations to provide that an AFA rebuilt vessel is exempt from the MLOA requirement on an LLP groundfish license with a Bering Sea or Aleutian Islands area endorsement assigned to the vessel when the vessel is fishing for groundfish in the BSAI and when the LLP license specifies the exemption.

The LLP license holder that wishes to designate an AFA rebuilt vessel on an LLP license is still subject to a limit of one voluntary transfer per year of an LLP license (§ 679.4(k)(7)(vi)). A change of the vessel designated on an LLP license is treated as a voluntary transfer of an LLP license (§ 679.4(k)(7)(vii)).

AFA Replacement Vessels

This proposed rule would establish the procedure for the owner of an AFA vessel to obtain an AFA permit for a replacement vessel, would define the fishing privileges of the replacement vessel, and would modify the LLP regulations for AFA replacement vessels.

• Procedure. Under the proposed rule at § 679.4(l)(7)(ii), an owner of an AFA vessel may replace an AFA vessel with another vessel to improve vessel safety or to improve operational efficiency, including fuel efficiency. To do that, the owner of an AFA vessel would have to submit an application to NMFS that would (1) identify a replacement vessel, (2) provide vessel documentation for the replacement vessel, (3) show that the replacement vessel has a Federal fishery endorsement, and (4) identify the LLP groundfish license on which the AFA replacement vessel would be designated.

On NMFS's approval of the application to replace the AFA vessel with another vessel, the AFA permit that designated the former, or replaced, vessel would be revoked and NMFS would issue a new AFA permit to the replacement vessel, unless the replacement vessel already had an AFA permit.

• Fishing privileges of AFA replacement vessels. The owner of the AFA replacement vessel would be eligible to use the AFA replacement vessel in the same manner as the AFA replaced vessel, and the AFA replacement vessel would be subject to the same requirements under 50 CFR part 679 that applied to the AFA replaced vessel, except for three requirements.

First, under the proposed rule at § 679.4(l)(7)(ii)(C), the AFA replacement vessel would be exempt from the MLOA on an LLP groundfish license with a Bering Sea or Aleutian Islands endorsement on which the replacement vessel is designated when the vessel is fishing pursuant to that LLP license, even if the replaced vessel was not exempt. As with AFA rebuilt vessels, the MLOA exemption would attach to a vessel that became an AFA replacement vessel after October 15, 2010, the

effective date of the AFA amendments in the Coast Guard Act, and would remain with the vessel.

Second, under the proposed rule at § 679.4(l)(7)(ii)(D), an AFA replacement vessel that exceeds 125 feet LOA would be subject to the fishing restrictions in § 679.23(i), even if the replaced or departing vessel was less than 125 feet and was exempt from these restrictions. This is the same provision that would apply to AFA rebuilt vessels under the proposed rule. The rationale for this provision is thoroughly explained in the previous section, ''Fishing Privileges of AFA rebuilt vessels.''

Third, under the proposed rule at § 679.4(l)(7)(ii)(E), if the AFA replacement vessel was already an AFA-permitted catcher vessel with a sideboard exemption, and the replaced or departing vessel was an AFA catcher vessel without a sideboard exemption, the replacement vessel would maintain the sideboard exemption. The replacement vessel would not lose an exemption by virtue of acquiring the pollock catch history of a vessel that did not have an exemption.

- Changes in LLP regulations for AFA replacement vessels. As with AFA rebuilt vessels, the proposed rule would modify the LLP regulations at § 679.2 and § 679.4(k). The proposed rule would modify these rules to provide that an AFA replacement vessel is exempt from the MLOA requirement on an LLP groundfish license with a Bering Sea or Aleutian Islands area endorsement assigned to the vessel when the AFA replacement vessel is fishing for groundfish in the BSAI pursuant to that LLP license and when the LLP license specifies the exemption.

The LLP license holder that wishes to designate an AFA replacement vessel on an LLP license is still subject to the limit in current regulation of one voluntary transfer per year of an LLP license (§ 679.4(k)(7)(vi)). A change of the vessel designated on an LLP license is treated as voluntary transfer of an LLP license (§ 679.4(k)(7)(vii)).

- Fishing privileges of AFA replaced vessels. The replaced vessel is the AFA vessel that has left the AFA fishery and is replaced by another vessel. Under the amended AFA at section 208(g)(5), the replaced vessel is not eligible for a Federal fishery endorsement unless, at some point in the future, the replaced vessel reenters the AFA fishery as a replacement vessel. Thus, the only fishing activity possible for a replaced vessel is reentering the AFA fishery as a replacement vessel.

While the provisions explained above apply generally to rebuilding and replacing AFA catcher/processors, motherships, and catcher vessels, the proposed rule includes specific measures that apply to (1) the rebuilding or replacement of AFA catcher vessels with sideboard exemptions; (2) the replacement of vessels in AFA inshore cooperatives; (3) the status of AFA permits after a vessel is lost; and (4) how the owners of lost catcher AFA vessels may participate in AFA inshore cooperatives. Before examining the provisions in the proposed rule on removing AFA catcher vessels, NMFS will discuss these four special situations regarding rebuilding and replacing AFA vessels.

The Rebuilding or Replacing of AFA Catcher Vessels With Sideboard Exemptions

Under current regulations, AFA catcher vessels are subject to sideboard limitations in the BSAI groundfish fisheries and in the GOA groundfish fisheries, unless an AFA catcher vessel met requirements in § 679.64(b)(2) for an exemption. The regulation provides for an exemption in the BSAI only from BSAI Pacific cod sideboards, not from sideboard limits for any groundfish other than BSAI Pacific cod. The regulation provides for an exemption in the GOA from sideboards for all groundfish species.

In the original AFA, the requirements for initial eligibility for an AFA vessel to be exempt from BSAI Pacific cod sideboard limits were that an AFA catcher vessel (1) was under 125 feet LOA; (2) harvested a relatively small amount of BSAI pollock between 1995 and 1997 (5,100 metric tons); and (3) made a fairly high number of landings of BSAI Pacific cod (30 or more) in that same time period (§ 679.4(l)(3)(ii)(*1*)).

The requirements for initial eligibility for an AFA vessel to be exempt from GOA groundfish sideboard limits were that an AFA catcher vessel (1) was under 125 feet LOA; (2) harvested a relatively small amount of BSAI pollock between 1995 and 1997 (5,100 metric tons); and (3) made a fairly high number of landings of GOA groundfish (40 or more) in that same time period (§ 679.4(l)(3)(ii)(*2*)).

Ten AFA catcher vessels met the requirements for an exemption from BSAI Pacific cod sideboard limits and 16 AFA catcher vessels met the requirements for an exemption from GOA groundfish sideboard limits (Analysis, Section 1.9.1). The regulations also exempt from BSAI Pacific cod sideboard limits a category of AFA catcher vessels regardless of the length of the vessel; namely, AFA catcher vessels that deliver to motherships are exempt from BSAI Pacific cod sideboard closures after March 1 of the fishing year (§ 679.64(b)(2)(i)(B)).

Under the proposed rule at § 679.4(l)(7), the owner of an AFA catcher vessel after rebuilding or replacement would be eligible to participate in the same manner as the vessel before rebuilding or replacement. This means that the owner of an AFA catcher vessel that is exempt from sideboard limits may rebuild or replace the AFA catcher vessel and maintain the exemption from sideboard limits, even if the rebuilt or replacement vessel exceeds the initial eligibility criterion that the vessel be less than 125 feet LOA. This aspect in the proposed rule—the continuation of sideboard exemptions for AFA replacement and rebuilt vessels—implements the language of the amended AFA; was part of Alternative 2, the Council's preferred alternative; and furthers the purpose of the amended AFA.

First, in the amended AFA, section 208(g)(1)(A) states that the expanded privilege for rebuilding and replacing AFA vessels is ''[n]otwithstanding any limitation to the contrary on replacing, rebuilding, or lengthening vessels or transferring permits or licenses to a replacement vessel contained in sections 679.2 and 679.4.'' The requirements for initial eligibility for a sideboard exemption are in § 679.4, which supports the conclusion that an AFA vessel owner should be able to replace, rebuild, or lengthen without being subject to this limitation.

The amended AFA in section 208(g)(1)(B) states that the rebuilt or replacement vessel ''shall be eligible to operate in the same manner and subject to the same restrictions and limitations'' as the vessel before rebuilding or the vessel before replacement. The amended AFA states in section 208(g)(1)(C) that ''[e]ach fishing permit and license held by the owner of the vessel or vessels to be rebuilt or replaced . . . shall be transferred to the rebuilt or replacement vessel or its owner, as necessary to permit such rebuilt or replacement vessel to operate in the same manner as the vessel prior to the rebuilding or the vessel it replaced, respectively.'' Under the amended AFA and this proposed rule, an AFA rebuilt or replacement catcher vessel would maintain an exemption from sideboard closures so as to allow the vessel ''to operate in the same manner'' as the vessel did prior to rebuilding or replacement, notwithstanding the limitation in § 679.4 that an AFA vessel must be less than 125 feet LOA to have an exemption from sideboards.

Second, this provision in the proposed rule—continuation of sideboard exemptions for AFA rebuilt or replacement vessels—was part of Alternative 2, the Council's preferred alternative. Under Alternative 2, as explained in the Analysis, an AFA rebuilt or replacement vessel would have sideboard exemptions if the vessel before rebuilding, or if the vessel that was being replaced, had exemptions (Analysis, Executive Summary at page ix).

Finally, the continuation of sideboard exemptions for AFA rebuilt or replacement vessels furthers the primary purpose of the AFA amendments, which is to allow the owners of AFA vessels to rebuild and replace AFA vessels in accord with their determination that the costs of rebuilding and replacing are worth the benefits. The proposed rule would allow the owner of an AFA catcher vessel that is exempt from AFA sideboards to determine whether to rebuild or replace the vessel based on the costs and benefits of rebuilding and replacing. The proposed rule would not make the owners of AFA sideboard-exempt vessels choose between rebuilding/replacing their vessels andcontinuing to operate with an exemption from sideboard limits.

However, with respect to AFA vessels that are exempt from GOA groundfish sideboard limits, the amended AFA and this proposed rule would preserve the requirement that an AFA vessel may not fish for groundfish in any area in the GOA if the AFA vessel exceeds the MLOA on the vessel's LLP license endorsed for the GOA. This is a very significant constraint on the length of AFA vessels that may operate in the GOA. Although 16 AFA vessels are exempt from sideboard limitations in the GOA, there is only one LLP groundfish license with a Central Gulf area endorsement for a trawl catcher vessel that exceeds 125 feet LOA and that vessel may not exceed 149 feet LOA. There are no LLP groundfish licenses with a Western Gulf area endorsement for a trawl catcher vessel that exceeds 125 feet LOA (Analysis, Table 1–51). Thus, under the proposed rule, only one AFA catcher vessel could exceed 125 feet LOA and operate in the GOA with an exemption from AFA sideboard limits, and that vessel could not be longer than 149 feet LOA.

The Replacement of Catcher Vessels in AFA Inshore Cooperatives

NMFS issues AFA inshore cooperative fishing permits annually to inshore cooperatives. The AFA inshore cooperative fishing permit displays the amount of pollock the inshore cooperative is authorized to harvest for the upcoming fishing year. The permit displays this amount as a percentage of the Bering Sea pollock allocation. NMFS determines this amount by adding together the pollock that each catcher vessel member of the cooperative may harvest. Under the proposed rule, when the owner of a catcher vessel that is a member of an inshore cooperative replaces that vessel, the replacement vessel would be eligible to join the same inshore cooperative of which the replaced vessel was a member. NMFS would transfer the catch history of the replaced vessel to the replacement vessel.

The proposed rule would not change the current deadline for the annual application for an inshore cooperative permit. NMFS still must receive the inshore cooperative application for the upcoming fishing year by December 1 of the prior year. The cooperative application must still list all vessels that are members of the cooperative. And a cooperative will continue to be prohibited from adding or subtracting a vessel for the upcoming fishing year after December 1 of the prior year (§ 679.4(l)(6)(iv), § 679.4(l)(6)(v)). The purpose of the December 1 deadline is to allow NMFS to calculate the allocations for the upcoming year for each cooperative and for the open access sector, if any vessels are in open access.

The December 1 deadline would not apply to applications to replace or remove vessels pursuant to the replacement/removal procedure in this proposed rule. A vessel owner may apply to do that at any time. The replacement or removal of a vessel in an inshore cooperative would not interfere with NMFS' annual calculations for the inshore sector. If NMFS approves the replacement of one vessel that is a member of an inshore cooperative with another vessel, NMFS would not have to change the pollock allocations to the cooperatives. Similarly, if NMFS approves removal of a vessel from an AFA inshore cooperative and assigns the catch history of the removed vessel to one or more vessels in the same cooperative, NMFS would not have to change the allocations to the cooperatives.

The Status of AFA Permits After a Vessel Is Lost

The proposed rule addresses the situation of owners of AFA vessels who experience a total or constructive loss of their vessel. The amended AFA completely revised section 208(g) of the original AFA, which had allowed the owner of AFA vessel to replace the vessel only if it was lost. Section 208(g) of the amended AFA allows the owner of an AFA vessel to replace or rebuild the vessel at any time to improve safety or efficiency.

Under section 208(g) of the original AFA, the owner of an AFA vessel had 36 months from the end of the last year in which the AFA vessel harvested or processed pollock to replace a lost AFA vessel. The original AFA was silent as to the privileges of the owner of a lost AFA vessel during that period and silent as to the privileges of the owner of the lost AFA vessel after that period had lapsed if the owner did not replace the AFA vessel during the allotted time.

The amended AFA also did not explicitly address what happens to the AFA fishing privileges of a lost vessel between the time that the owner loses the vessel and the owner replaces the vessel. To implement the amended AFA, and to provide clarity to the public, the proposed rule specifies the status of an AFA permit in the event of a total or constructive loss of an AFA vessel. NMFS specifically welcomes comment on this provision.

NMFS examined three options. The first option would provide that in the event of a total or constructive loss of an AFA vessel, the AFA permit that designates the lost vessel would immediately become invalid and the owner of the lost AFA vessel would have no AFA fishing privileges until the owner replaces or removes the lost vessel under the replacement/removal procedures in the proposed rule. This approach would pressure the owner of the lost AFA vessel to immediately replace or remove the lost vessel.

The second option would provide that in the event of a total or constructive loss of an AFA vessel, the AFA permit would remain valid until the AFA permit holder designated a replacement vessel. This option would have no mechanism that required the AFA permit holder to designate a replacement vessel and would change the AFA permit from a permit tied to a specific vessel to a permit that was not tied to a vessel. NMFS believes the amended AFA was not meant to fundamentally change the nature of the AFA permit in this way.

The third option would provide that in the event of total or constructive loss of an AFA vessel, the AFA permit would remain valid for a reasonable, but not unlimited, period of time to allow the owner of the lost AFA vessel to continue to receive privileges under the AFA without immediately having to designate a replacement vessel. The proposed rule would implement this

approach. NMFS recognizes that, after a vessel owner incurs the loss of a vessel, it takes time to decide whether and how to replace the vessel. It takes time, sometimes a considerable amount, to collect payment under an insurance policy. It takes time to arrange financing for a replacement vessel. NMFS determined that the proposed rule should provide the vessel owner with a reasonable period of time to take these steps in the wake of an event such as a complete vessel loss.

NMFS determined that a reasonable period of time for the vessel owner to replace a lost vessel or, in the case of an AFA catcher vessel in an inshore cooperative, to remove a lost vessel, is the same period of time that was in the original AFA: the time period starting on the date of the vessel loss and ending on December 31 of the year that is 3 years (36 months) after the year in which the vessel was lost (section 208(g)(3) of the original AFA). It is easier to understand by example. Under the proposed rule at § 679.4(l)(ii), if a vessel sinks on February 15, 2016, the AFA permit on the lost vessel would be valid until December 31, 2019, unless the vessel owner has been issued an AFA permit on a replacement vessel before December 31, 2019, or the vessel owner has removed the lost vessel before that date. For ease of reference, this preamble refers to this time period as a ''3-year period,'' although technically it is a ''3-year plus time period'' because the AFA permit remains valid until December 31 of the year in which the vessel was lost and then 3 more years after that.

NMFS believes that a 3-year period would provide a vessel owner with adequate time to decide whether to replace or remove a lost vessel and to apply to take one of those actions. As noted, this 3-year period is the same period of time that the original AFA in section 208(g) gave the owner of an original AFA vessel to replace an AFA vessel. This 3-year period was adequate for the replacement of four AFA vessels that were lost before enactment of the Coast Guard Act.

Under the proposed rule, NMFS would revoke the AFA permit that designated the lost vessel if, before the end of the 3-year period if, during that period, the owner of the AFA vessel replaces the lost vessel with another vessel or removes the lost vessel pursuant to the replacement/removal procedures established by the proposed rule. It would be inconsistent with the AFA to have two AFA permits authorizing two AFA vessels to fish based on the fishing history of the same lost vessel.

If, at the end of the 3-year period, the AFA vessel owner had not replaced or removed the lost AFA vessel, NMFS would suspend the AFA permit that designated that lost vessel and the AFA permit would not be valid. Since NMFS may have to suspend the AFA permit, the proposed rule would require that the owner of an AFA vessel notify NMFS within 120 days after the vessel is lost.

After the permit was suspended, the owner of the lost AFA vessel could still apply to replace or remove the lost vessel that was designated on the AFA permit. But while the permit was suspended, the owner of the lost AFA vessel would not have a valid AFA permit and would have no fishing privileges based on the suspended AFA permit.

For several reasons, NMFS believes it is highly unlikely that any AFA permits would be suspended under this provision. The permits are valuable. The AFA permit holders have operated in a highly regulated fishery since 1998. And since AFA vessels almost always fish as members of cooperatives, the other members of the cooperative and the cooperative manager would have a great interest in making sure a member's AFA permit is not suspended.

The original AFA in section 208(g) recognized two types of vessel loss that allowed the owner of an AFA vessel to replace an AFA vessel: total loss of the AFA vessel or constructive loss of the AFA vessel. The proposed rule also recognizes these two types of vessel loss. The proposed rule would define total loss and constructive loss for purposes of determining the validity of AFA permits and would clarify when the time period for replacing or removing a vessel would begin. The proposed rule would define total loss and constructive loss in § 679.4(l)(1)(ii)(B)(*3*) and § 679.4(l)(7)(v)(D). Total loss would be defined as the complete physical loss of a vessel, such as when a vessel sinks or is otherwise destroyed. Constructive loss would be defined as when the vessel is damaged so that the cost of repairing the vessel exceeds the value of the vessel. The proposed definition of constructive loss for purposes of AFA permits tracks the common definition of constructive loss used in maritime insurance.

The proposed rule would define the date of the total loss of the vessel as the date when the vessel was physically lost. The proposed rule would define the date of the constructive loss of the vessel as the date when the vessel suffered the damage that resulted in the cost of repair exceeding the value of the vessel.

How the Owners of Lost AFA Catcher Vessels May Participate in AFA Inshore Cooperatives

The proposed rule addresses how NMFS would evaluate an application for an inshore cooperative fishing permit if the applicant includes the catch history of a lost catcher vessel. In examining this provision, it is helpful to keep in mind the standard requirements for a vessel to be a member of a particular cooperative. To be a member of an inshore cooperative, a catcher vessel must meet permit requirements and landing requirements (§ 679.4(l)(6)(ii)(D)(*1*) and (*2*)). The permit requirements are general. An AFA catcher vessel must have a valid AFA permit and an LLP groundfish license that authorizes the vessel to engage in trawling for pollock in the Bering Sea (§ 679.4(l)(6)(ii)(D)(*1*)).

The landing requirements are specific to each cooperative. Each cooperative designates a particular AFA inshore processor to which the cooperative members have agreed to deliver at least 90 percent of their pollock catch (§ 679.4(l)(6)(i)(B)). To be a member of a particular cooperative, the catcher vessel must have delivered more pollock to the processor associated with that cooperative than to any other processor during the prior year or, if the vessel is inactive, during the last year that the vessel made pollock deliveries (§ 679.4(l)(6)(ii)(D)(2)). This means that if a catcher vessel wishes to switch to a new cooperative, the catcher vessel must first spend a year in the open access sector and, for that year, deliver more fish to the processor associated with the new cooperative than to any other processor. After that year, the catcher vessel could join the new cooperative.

As described earlier, under the proposed rule, if an AFA vessel is lost, the AFA permit that designated the lost catcher vessel would be valid for up to 3 years from December 31 of the year in which the vessel was lost. As a corollary to that provision, the proposed rule would establish at § 679.4(l)(6)(ii)(D)(*4*) that, if an AFA catcher vessel with an inshore endorsement is lost, the owner of the lost catcher vessel would be qualified to join an inshore cooperative for up to 3 years from December 31 of the year in which the vessel was lost. The AFA permit designating the lost AFA catcher vessel would be revoked earlier if the owner of the lost catcher vessel replaces the lost vessel or removes the lost vessel. As explained above, if an AFA catcher vessel owner had not replaced or removed the lost vessel by the end of the 3-year period,

the AFA permit that designated the lost vessel would be suspended. While the AFA permit was suspended, the owner of the lost catcher vessel would be unable to be a member of an inshore cooperative because the owner of the lost vessel would not have a valid AFA permit.

The proposed rule would establish which inshore cooperative that the owner of a lost AFA catcher vessel may join during this 3-year period. The proposed rule would do this by adding a provision to the inshore cooperative permit regulation at § 679.4(l)(6)(ii)(D)(*4*). If the catcher vessel was lost during a year when the owner of the lost vessel was a member of an inshore cooperative, the owner of the lost AFA vessel could join that inshore cooperative for the 3-year period while the AFA permit designating the lost vessel remained valid.

In the unlikely event that a catcher vessel is lost during a year when the catcher vessel was not a member of an inshore cooperative, but the vessel had made deliveries to an AFA inshore processor during that year before the vessel was lost, the owner of the lost vessel would be allowed to join the inshore cooperative that is associated with the processor to which the vessel delivered more pollock than any other processor during that year.

In both these situations—when the lost catcher vessel was a member of a cooperative and when the lost catcher vessel was in the open access sector but had made deliveries to a processor associated with a cooperative—the proposed rule would not allow the owner of the lost vessel to join a different cooperative. This limitation is in keeping with the AFA cooperative structure and the landing requirements to be a member of a cooperative (§ 679.4(l)(6)(ii)(D)(*2*)). The owner chose that cooperative for the lost vessel's most recent year of participation. Further, the owner of the lost vessel could not meet the requirements to become a member of a different cooperative; namely after the catcher vessel sank, the vessel could not have delivered pollock to an AFA inshore processor associated with a different cooperative.

In the very unlikely event that a catcher vessel is lost during a year when the vessel was not designated on an inshore cooperative permit, and before the vessel made any pollock deliveries, the owner of the lost vessel would be permitted to join any inshore cooperative while the AFA permit designating the lost vessel was valid.

NMFS notes that it is rare that vessels are lost. From 1998 to 2010, NMFS is aware of only four AFA vessels that were lost. And it is very rare that an inshore catcher vessel is not a member of an inshore cooperative. As noted earlier, since 2004, only two inshore vessels have not fished as a member of a cooperative and that was only for one year (2010). Thus, even though the proposed rule addresses the possibility that a catcher vessel would be lost, and that the lost catcher vessel would not be a member of a cooperative, it is quite unlikely this will occur. If an inshore catcher vessel is lost, in all likelihood, it would be completely straightforward what cooperative the owner of the lost catcher vessel may join during the 3-year period when the permit may remain valid. It would be the cooperative of which the lost catcher vessel was a member.

Removing an AFA Catcher Vessel From the AFA Fishery

The proposed rule at § 679.4(l)(7)(iii) would allow the owner of an AFA catcher vessel that is a member of an inshore cooperative to remove that vessel from the AFA fishery and assign the Bering Sea pollock catch history of the removed vessel to one or more catcher vessels within the cooperative subject to four conditions that NMFS would administer. Each of these conditions is required by section 210(b) of the amended AFA.

First, under the proposed rule at § 679.4(l)(7)(iii)(B), the owner of the AFA catcher vessel that is being removed would be required to direct NMFS to assign the catch history of the removed catcher vessel to one or more AFA catcher vessels that are members of the inshore cooperative to which the removed vessel belonged as of the date that the vessel owner submitted an application for removal. If the owner of the AFA catcher vessel directs NMFS to assign the catch history of the removed vessel to more than one vessel, the owner would be required to specify the percentage of catch history that would be assigned to each vessel. The proposed regulation would not allow the catch history of the removed vessel to be free-floating, or unassigned. The catch history must be assigned to one or more vessels in the cooperative to which the removed vessel belonged. The approval by NMFS of removing a catcher vessel and the assignment by NMFS of the catch history to another vessel or vessels would occur at the same time.

Second, except for assigning the inshore pollock catch history, NMFS would permanently extinguish all other claims relating to the catch history of the removed vessel. The proposed rule at § 679.4(l)(7)(C) includes this provision. Specifically, under the proposed rule, if an AFA catcher vessel is exempt from an AFA sideboard limitation, and that vessel is removed from the AFA fishery, NMFS would permanently extinguish that sideboard exemption and would not assign the exemption to any other vessel or vessels in the inshore cooperative.

Third, under the proposed rule at § 679.4(l)(7)(iii)(D), the vessel or vessels that are assigned the catch history of the removed vessel—the receiving vessel or vessels—could not themselves be removed from the cooperative for one year from the date on which the receiving vessel or vessels were assigned the catch history of the removed vessel. For example, under the proposed rule, if NMFS approved the assignment of catch history of a removed vessel to a receiving vessel on July 1, 2016, the receiving vessel could not be removed from the cooperative until July 1, 2017.

Fourth, under the proposed rule at § 679.4(l)(7)(iv), a vessel that is removed would be permanently ineligible to receive any permits to operate in the Exclusive Economic Zone (EEZ) off Alaska unless, after being removed, the removed vessel reenters the AFA fishery as a replacement vessel for another vessel. This is based on section 210(b)(7)(B), which states that removal of a catcher vessel from an inshore cooperative extinguishes ''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 the exclusive economic zone of the United States.'' While the proposed rule would prohibit participation by a removed vessel in the EEZ off Alaska, it is important to note that section 210(b)(7)(B) prohibits participation by a removed vessel in the entire United States EEZ.

Application Procedures

NMFS has created one form that would be used by the owners of AFA vessels that rebuild, replace, or remove their AFA vessels: ''American Fisheries Act (AFA) Permit: Rebuilt, Replaced, or Removed Vessel Application.'' The application and instructions would be published on the NMFS Alaska Region Web site at *www.alaskafisheries.noaa.gov* upon the effective date of a final rule.

After NMFS receives a complete application, NMFS would take the action requested by the applicant if the applicant met the requirements for NMFS to take the action. If the

application is a notification to NMFS of an AFA rebuilt vessel, NMFS would acknowledge the notification. The AFA vessel would be designated on an LLP license. NMFS would reissue to the AFA rebuilt vessel an LLP groundfish license with an exemption from the MLOA restriction when the AFA rebuilt vessel is used to fish for groundfish in the BSAI pursuant to that LLP license.

If the applicant seeks to replace an AFA vessel, NMFS would issue a new AFA permit to the replacement vessel, unless the replacement vessel already is designated on an AFA permit. NMFS would revoke the AFA permit on the former, or replaced, AFA vessel. On the application form, the AFA vessel owner would indicate the LLP license on which the AFA replacement vessel would be designated. NMFS would issue to the AFA replacement vessel an LLP groundfish license with an exemption from the MLOA restriction. The exemption would only be valid when the AFA replacement vessel is used to fish for groundfish in the BSAI pursuant to that LLP license. If the applicant seeks to replace an AFA catcher vessel with an inshore endorsement, NMFS would modify the AFA permit of the replacement vessel so that the replacement vessel has the exemptions from sideboard limitations, if any, of the replaced vessel.

If the applicant seeks to remove an AFA catcher vessel with an inshore endorsement, NMFS would assign the pollock catch history of the removed vessel to one or more vessels in the inshore cooperative to which the removed vessel belonged, in accord with the application of the owner of the removed vessel. NMFS would notify the applicant that the AFA permit designating the removed catcher vessel was revoked and that, except for the reassigned pollock history, NMFS had extinguished all claims related to the catch history of the removed vessel, including any claims to exemptions from sideboard limitations.

If NMFS believes that the application is deficient, NMFS would notify the applicant and give the applicant one 30-day period to remedy the deficiencies in the application. After the 30-day period, NMFS would review the application and any information submitted within the 30-day period. NMFS would either grant the application or deny the application by issuing an Initial Administrative Determination (IAD), which would explain the basis for the denial.

Appeal Procedures

Under the proposed rule at § 679.4(l)(8)(iii), an applicant would be able to appeal the denial of an application pursuant to the appeal procedures at 15 CFR part 906. NMFS has established a National Appeals Office (NAO) located at NMFS Headquarters in Silver Spring, Maryland. In 2014, NMFS adopted rules of procedure for NAO appeals in 15 CFR part 906. (Final Rule, 79 FR 7056 (Feb. 6, 2014)). The appeal procedures in 15 CFR part 906 are mandatory for appeals in limited access privilege programs (LAPPs) under section 303A of the Magnuson-Stevens Act. 15 CFR 906.1(b). Section 303A applies only to limited access privilege programs that were adopted after January 12, 2007, the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006. 16 U.S.C. 1853a. The AFA was adopted on October 21, 1998. Therefore, AFA appeals are not required to be heard under the procedural rules at 15 CFR part 906.

NMFS may, however, request that NAO decide appeals in programs where NAO does not have mandatory jurisdiction. 15 CFR 906.1(d). In the proposed rule, NMFS proposes to use NAO for appeals of initial administrative determinations issued under this rule and to adopt 15 CFR part 906 as the procedural rules for AFA appeals.

In the past, NMFS Alaska Region had its own appeals office and its own procedural rules for appeal in 50 CFR 679.43. NMFS Alaska Region no longer has its own appeals office and therefore is opting to use the NAO and the procedural rules for the NAO.

In developing this proposed rule, NMFS identified an error in the definition of mothership in 50 CFR 679.2. The current regulation states: ''AFA mothership means a mothership permitted to process BS pollock under § 679.4(l)(5).'' Section 679.4(l)(5) is ''AFA inshore processor permits.'' Section 679.4(l)(4) is ''AFA mothership permits.'' NMFS therefore proposes to change the definition of mothership in § 679.2 to state: ''AFA mothership means a mothership permitted to process BS pollock under § 679.4(l)(4).''

Classification

Pursuant to section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the BSAI FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

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

A Regulatory Impact Review/Initial Regulatory Flexibility Analysis was prepared. An Initial Regulatory Flexibility Analysis (IRFA) was prepared as required in section 603 of the Regulatory Flexibility Act (RFA). On June 20, 2013, the Small Business Administration issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398, June 20, 2013). The rule increased the size standard for Finfish Fishing from $4.0 to 19.0 million, Shellfish Fishing from $4.0 to 5.0 million, and Other Marine Fishing from $4.0 to 7.0 million. Id. at 37400 (Table 1). The new size standards were used to prepare the IRFA for this action.

The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained under the heading ''Need for Action'' in the preamble and in the **SUMMARY** section of the preamble. A summary of the Analysis follows. A copy of the complete Analysis is available from NMFS (see **ADDRESSES**).

Number and Description of Small Entities Regulated by the Proposed Action

This action would regulate 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.

With respect to AFA catcher/processors, the IRFA states: ''All AFA catcher/processors are affiliated through membership in the Pollock Conservation Cooperative; the members of this cooperative had estimated 2012 gross revenues from pollock alone in excess of $500 million. Thus these are large entities.'' (Analysis, Section 2.4, footnote omitted).

With respect to catcher vessels, the IRFA states: ''All AFA catcher vessels are members of one of eight cooperatives delivering pollock to inshore processing plants, to motherships, or to catcher/processors. The cooperative of catcher vessels delivering to catcher/processors was closely affiliated with the catcher/processor cooperative, and thus the member entities are large. 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).

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).

Thus, the IRFA concluded that all of the entities regulated by this action are ''large'' entities for the purpose of the RFA. If that is so, NMFS need not have prepared an IRFA for this proposed rule because an IRFA is necessary only to evaluate the impact of a proposed rule on small entities. NMFS prepared an IRFA, however, because the IRFA acknowledged that the data on ownership and affiliation of AFA entities was limited.

Recordkeeping and Reporting Requirements

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. Similarly, the owners of AFA replacement vessels would be subject to the same recordkeeping and reporting requirements that applied to the replaced, or former, AFA vessel. If a vessel is removed, the owners of the AFA vessels that are assigned the catch history of the removed vessel would be 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.

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 remove an AFA vessel.

Duplicate, Overlapping, or Conflicting Federal Rules

This proposed rule is necessary because existing rules conflict with the AFA amendments in the Coast Guard Act. Apart from that conflict, NMFS has not identified any duplication, overlap, or conflict between this proposed action and existing Federal rules.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

Section 603 of the RFA requires that NMFS should 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 small entities. Although the IRFA concluded that this action did not directly regulate any small entities, the Council and NMFS assumed, for the purpose of the IRFA, that the directly regulated entities were small entities and considered the potential effects on the directly regulated entities.

The Council considered Alternative 1; Alternative 2; and Alternatives 2.1, 2.2, 2.3, and 2.4. Alternative 1 was no action. The Council did not adopt Alternative 1 because it did not conform regulations and the BSAI FMP to a statute adopted by Congress, namely the AFA amendments in the Coast Guard Act. Alternative 1 continued the stringent restrictions in current regulation on the ability of the owners of AFA vessels to upgrade their vessels through rebuilding or replacing the vessels. Alternative 1 continued the prohibition in current regulation on the owners of AFA catcher vessels from removing their vessels and assigning the catch history of their vessels to other vessels in their cooperatives. Alternative 1 completely contradicted the objectives of the amended AFA.

Under Alternative 2, ''the status quo'' alternative, fishery management plans and existing regulations would be changed to conform to the AFA amendments, as NMFS interprets the AFA amendments. The Council and NMFS concluded that the BSAI FMP was inconsistent with the AFA amendments. The Council and NMFS therefore proposed amending the BSAI FMP with Amendment 106 to the BSAI FMP. The Council and NMFS concluded that the GOA FMP was consistent with the amended AFA and therefore proposed no change to the GOA FMP.

Alternative 2 would change the BSAI FMP and implementing regulations to allow the owners of AFA vessels to participate in the BSAI with a rebuilt or replacement vessel without limit on the length, tonnage, or horsepower of the rebuilt or replacement vessel. Alternative 2 continues all the restrictions currently in place on participation by AFA vessels in the GOA, including the requirement that an AFA vessel may not participate in the GOA unless the vessel has an LLP license and the vessel does not exceed the MLOA on that license. The Council selected Alternative 2 as its preferred alternative.

Alternatives 2.1, 2.2, 2.3, and 2.4 would have imposed additional restrictions on participation by AFA rebuilt and replacement vessels in the GOA, in addition to restrictions in current regulations (Analysis, Executive Summary). Alternative 2.1 stated that an AFA rebuilt and replacement vessel that is subject to sideboards could not participate in the GOA if the vessel exceeded the most restrictive MLOA on any GOA LLP license assigned to the vessel at the time that the vessel owner applied to NMFS to replace or rebuild the AFA vessel. Alternative 2.2 stated that an AFA rebuilt or replacement vessel that is subject to sideboards could not participate in the GOA if the vessel exceeded the most restrictive MLOA on any GOA LLP license assigned to the vessel on October 15, 2010, the date of passage of the Coast Guard Act. Alternative 2.3 stated that an AFA rebuilt or replacement vessel that is subject to sideboards could not participate in the GOA if the AFA rebuilt or replacement vessel was greater than 10 percent over the length, tonnage, or horsepower of the vessel on October 15, 2010. Alternative 2.4 stated that an AFA rebuilt or replacement vessel that is not subject to sideboards could not exceed the MLOA on any GOA LLP license assigned to the vessel on October 15, 2010.

Section 208(g)(2) of the amended AFA expressly gave the Council the authority to adopt conservation and management measures to ensure that the AFA amendments did not diminish the effectiveness of the fishery management plans for the Bering Sea or GOA. Alternatives 2.1, 2.2, 2.3, and 2.4 were the alternatives analyzed by the Council under section 208(g)(2).

As to which alternative achieves the objectives of the amended AFA, Alternatives 2, 2.1, 2.2, 2.3, and 2.4 all expand the ability of the owners of AFA vessels to rebuild or replace AFA vessels over the original AFA. However, Alternative 2 best achieves the objective

of the AFA amendments because the objective of the AFA amendments was to impose additional restrictions on the rebuilding and replacement of AFA vessels only if the additional restrictions were necessary to protect the fishery management plans of the BSAI or GOA. The Council did not recommend additional restrictions in either the BSAI or GOA.

As to which alternative minimizes the adverse economic impact on small entities, the Analysis concluded that no AFA vessels are small entities. Therefore none of the alternatives directly regulates small entities and none of the alternatives minimize the adverse economic impacts on small entities.

But assuming for the purposes of analysis that the owners of AFA vessels are small entities, Alternative 2 is the alternative that minimizes the potential adverse economic impacts on the owners of AFA vessels. The reason is that Alternative 2 would allow the owners of AFA vessels to rebuild and replace their vessels without any restrictions on their ability to rebuild and replace vessels beyond the restrictions required by the AFA amendments. Alternative 2 allows the owners of AFA vessels to rebuild and replace their vessels if the vessel owners conclude that the improved safety and efficiency of the rebuilt or replacement vessel warrants the cost of rebuilding or replacing the vessel.

Collection-of-Information Requirements

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). NMFS has submitted these requirements to OMB for approval under OMB Control Number 0648–0393. The public reporting burden for ''American Fisheries Act (AFA) Permit: Rebuilt, Replacement, or Removed Vessel Application'' is estimated to average 2 hours per response. This estimate includes 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 at the **ADDRESSES** above, and by email to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

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.*

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: June 10, 2014.

Samuel D. Rauch III,

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

For the 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 50 CFR 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.

* * * * *

■ 2. In § 679.2,

■ a. Revise the definition of ''AFA mothership;'' and

■ b. Add definitions for ''AFA rebuilt vessel,'' ''AFA replacement vessel,'' and ''AFA vessel'' in alphabetical order, and add paragraph (2)(vi) to the definition of ''Maximum LOA (MLOA)'' to 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: * * *

(2) * * *

(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.

* * * * *

3. 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*)(*ii*), (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 (l)(6)(ii)(D)(*4)* to read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *

(1) * * *

(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.

* * * * *

(3) * * *

(i) * * *

(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 3 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, 2019, unless the owner of the vessel replaces or removes the vessel before December 31, 2019; after December 31, 2019, 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), (D), and (E) 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, 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.

* * * * *

4. 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.

* * * * *

■ 5. In § 679.51, revise paragraphs (a)(2)(vi)(B)(*1*) and (a)(2)(vi)(B)(*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.

* * * * *

■ 6. In § 679.62,

■ a. Redesignate paragraph (a)(2) as (a)(3) and paragraph (a)(3) as (a)(4); and

■ b. Add 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.

* * * * *

■ 7. In § 679.63,

■ a. Redesignate paragraph (c) as paragraph (d); and

■ b. Add 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.

* * * * *

■ 8. In § 679.64,

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

■ b. Add paragraphs (b)(2)(iii) and (b)(2)(iv) to 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]

■ 9. At each of the locations shown in the ''Location'' column, remove the phrase indicated in the ''Remove'' column and replace it with 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

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