

**Amendment 61
to the
Fishery Management Plan
for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area**

Section 13.4.11 of the *Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area* is revised to read as follows:

13.4.11 American Fisheries Act (AFA) management measures (effective through December 31, 2004).

On October 21, 1998, the President signed into law the American Fisheries Act (AFA) which superseded the previous inshore/offshore management regime for BSAI pollock that was adopted under Amendment 18 and extended under Amendments 23 and 51. With respect to the fisheries off Alaska, the AFA requires a suite of new management measures that fall into four general categories: (1) regulations that limit access into the fishing and processing sectors of the BSAI pollock fishery and that allocate pollock to such sectors, (2) regulations governing the formation and operation of fishery cooperatives in the BSAI pollock fishery, (3) regulations to protect other fisheries from spillover effects from the AFA, and (4) regulations governing catch measurement and monitoring in the BSAI pollock fishery.

The AFA is a complex piece of legislation with numerous provisions that affect the management of the groundfish and crab fisheries off Alaska. The AFA is divided into two subtitles. *Subtitle I—Fisheries Endorsements* includes new nationwide U.S. ownership and vessel length restrictions for U.S. vessels with fisheries endorsements. These new requirements are currently being implemented by the Maritime Administration and the U.S. Coast Guard under the Department of Transportation. *Subtitle II—Bering Sea Pollock Fishery* contains measures related to the management of BSAI pollock fishery.

Key provisions of the AFA include:

- A requirement that owners of all U.S. flag fishing vessels comply with a 75 percent U.S. controlling interest standard.
- A prohibition on the entry of any new fishing vessels into U.S. waters that exceed 165 ft registered length, 750 gross registered tons, or 3,000 shaft horsepower.
- The buyout of nine pollock catcher/processors and the subsequent scrapping of eight of these vessels through a combination of \$20 million in federal appropriations and \$75 million in direct loan obligations.
- A new allocation scheme for BSAI pollock that allocates 10 percent of the BSAI pollock total allowable catch (TAC) to the CDQ Program, and after allowance for incidental catch of pollock in other fisheries, allocates the remaining TAC as follows: 50 percent to vessels harvesting pollock for processing by inshore processors, 40 percent to vessels harvesting pollock for processing by catcher/processors, and 10 percent to vessels harvesting pollock for processing by motherships.
- A fee of six-tenths (0.6) of one cent for each pound round weight of pollock harvested by catcher

vessels delivering to inshore processors for the purpose of repaying the \$75 million direct loan obligation.

- A prohibition on entry of new vessels and processors into the BSAI pollock fishery. The AFA lists by name vessels and processors and/or provides qualifying criteria for those vessels and processors eligible to participate in the non-CDQ portion of the BSAI pollock fishery.
- An increase in observer coverage and scale requirements for AFA catcher/processors.
- New standards and limitations for the creation of fishery cooperatives in the catcher/processor, mothership, and inshore industry sectors;
- A quasi-IFQ program under which NMFS grant individual allocations of the inshore BSAI pollock TAC to inshore catcher vessel cooperatives that form around a specific inshore processor and agree to deliver at least 90 percent of their pollock catch to that processor.
- The establishment of harvesting and processing restrictions (commonly known as "sideboards") on fishermen and processors who have received exclusive harvesting or processing privileges under the AFA to protect the interests of fishermen and processors who have not directly benefited from the AFA; and
- A 17.5 percent excessive share harvesting cap for BSAI pollock and a requirement that the Council to develop excessive share caps for BSAI pollock processing and for the harvesting and processing of other groundfish.

13.4.1.1 Management measures to implement the AFA

Subtitle II of the AFA--*Bering Sea Pollock Fishery* directs the Council and NMFS to develop and implement four general categories of management measures: (1) regulations that limit access into the fishing and processing sectors of the BSAI pollock fishery and that allocate pollock to such sectors, (2) regulations governing the formation and operation of fishery cooperatives, (3) sideboard measures to protect other fisheries from spillover effects from the AFA, and (4) regulations governing catch measurement and monitoring in the BSAI pollock fishery. This entire subtitle of the AFA is incorporated into the FMP by reference and all management measures that are consistent with the provisions of Subtitle II of the AFA will be issued through regulations.

13.4.11.2 Management measure to supersede the AFA

Subsection 213 of the AFA provides the Council with the following authority to recommend management measures to supersede certain provisions of the AFA:

(c) CHANGES TO FISHERY COOPERATIVE LIMITATIONS AND POLLOCK CDQ ALLOCATION.—The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act—

(1) that supersede the provisions of this title, except for sections 206 and 208, for conservation purposes or to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery caused by this title or fishery cooperatives in the directed pollock fishery, provided such measures take into account all factors affecting the fisheries and

are imposed fairly and equitably to the extent practicable among and within the sectors in the directed pollock fishery;

(2) that supersede the allocation in section 206(a) for any of the years 2002, 2003, and 2004, upon the finding by such Council that the western Alaska community development quota program for pollock has been adversely affected by the amendments in this title; or

(3) that supersede the criteria required in paragraph (1) of section 210(b) to be used by the Secretary to set the percentage allowed to be harvested by catcher vessels pursuant to a fishery cooperative under such paragraph.

Any measure recommended by the Council that supersedes a specific provision of the AFA must be implemented by FMP amendment in accordance with the Magnuson-Stevens Act. Under the authority set out in subsection 213(c) of the AFA, the Council has recommended the following three management measures to supersede specific provisions of sections 210 and 211 of the AFA. These measures shall be implemented by NMFS through regulation:

(1) Inshore cooperative allocation formula

(supersedes the inshore cooperative allocation formula set out in subparagraph 210(b)(1)(B) of the AFA)

An inshore catcher vessel cooperative that applies for and receives an AFA inshore cooperative fishing permit will receive a sub-allocation of the annual Bering Sea subarea inshore sector directed fishing allowance. If the Aleutian Islands Subarea is open to directed fishing for pollock then the cooperative also will receive a sub-allocation of the annual Aleutian Islands Subarea inshore sector directed fishing allowance. Each inshore cooperative co-op's annual allocation amount(s) will be determined using the following procedure:

- (a) Calculation of individual vessel catch histories. The Regional Administrator will calculate an official AFA inshore cooperative catch history for every inshore-sector endorsed AFA catcher vessel according to the following steps:
- (i) Determination of annual landings. For each year from 1995 through 1997 the Regional Administrator will determine each vessel's total inshore landings; from the Bering Sea Subarea and Aleutian Islands Subarea separately.
 - (ii) Offshore compensation. If a catcher vessel made a total of 500 or more mt of landings of Bering Sea Subarea pollock or Aleutian Islands Subarea pollock to catcher/processors or offshore motherhips other than the EXCELLENCE (USCG documentation number 967502); GOLDEN ALASKA (USCG documentation number 651041); or OCEAN PHOENIX (USCG documentation number 296779) over the 3-year period from 1995 through 1997, then all offshore pollock landings made by that vessel during from 1995 through 1997 will be added to the vessel's inshore catch history by year and subarea.
 - (iii) Best two out of three years. After steps (i) and (ii) are completed, the 2 years with the highest landings will be selected for each subarea and added together to generate the vessel's official AFA inshore cooperative catch history for each subarea. A vessel's best 2 years may be different for the Bering Sea subarea and the Aleutian Islands Subarea.

- (b) Calculation of annual quota share percentage. Each inshore pollock cooperative that applies for and receives an AFA inshore pollock cooperative fishing permit will receive an annual quota share percentage of pollock for each subarea of the BSAI that is equal to the sum of each member vessel's official AFA inshore cooperative catch history for that subarea divided by the sum of the official AFA inshore cooperative catch histories of all inshore-sector endorsed AFA catcher vessels. The cooperative's quota share percentage will be listed on the cooperative's AFA pollock cooperative permit.
- (c) Conversion of quota share to annual TAC allocation. Each inshore pollock cooperative that receives a quota share percentage for a fishing year will receive an annual allocation of Bering Sea and/or Aleutian Islands pollock that is equal to the cooperative's quota share percentage for that subarea multiplied by the annual inshore pollock allocation for that subarea. Each cooperative's annual pollock TAC allocation may be published in the interim, and final BSAI TAC specifications notices.

(2) Definition of qualified catcher vessel

(supersedes AFA paragraph 210(b)(3) which has the effect of requiring that a qualified catcher vessel must have actually fished for BSAI pollock in the year prior to the year in which the cooperative will be in effect.)

A catcher vessel is qualified to join an inshore catcher vessel cooperative under paragraph 210(b)(3) of the AFA, if:

- (a) Active vessels. The vessel delivered more pollock harvested in the BSAI inshore directed pollock fishery to the inshore cooperative's designated AFA inshore processor than to any other shoreside processor or stationary floating processor during the year prior to the year in which the cooperative fishing permit will be in effect; or
- (b) Inactive vessels. The vessel delivered more pollock harvested in the BSAI inshore directed pollock fishery to the inshore cooperative's designated AFA inshore processor than to any other shoreside processor or stationary floating processor during the last year in which the vessel harvested BSAI pollock in the directed fishery for delivery to an AFA inshore processor.

(3) Crab processing sideboard limits

(supersedes the 1995-1997 formula set out in subparagraph 211(c)(2)(A) of the AFA)

Upon receipt of an application for a cooperative processing endorsement from the owners of an AFA mothership or AFA inshore processor, the Regional Administrator will calculate a crab processing cap percentage for the associated AFA inshore or mothership entity. The crab processing cap percentage for each BSAI king or Tanner crab species will be equal to the percentage of the total catch of each BSAI king or Tanner crab species that the AFA crab facilities associated with the AFA inshore or mothership entity processed in the aggregate, on average, in 1995, 1996, 1997, and 1998 with 1998 given double-weight (counted twice).