

BSAI Groundfish FMP Amendment 106

- 1. Table ES-2: Under “Bering Sea Pollock Fishery,” add new text as follows (new text is underlined).

Subtitle II of the American Fisheries Act (AFA), (16 U.S.C. 1851 note *Bering Sea Pollock Fishery*), incorporated by reference in the FMP, establishes a cooperative program for the pollock fishery.

Access: Limits pollock fishery access to qualifying vessels and processors; included a buyout of 9 catcher/processor vessels. Conditions specify how vessels may be rebuilt, replaced, or removed from the fishery.

- 2. Section 3.3.1.1: In paragraph 9, add appropriately numbered (“e” or other) new paragraph at the end of the alphabetized list as follows:

e) An AFA vessel may exceed the maximum LOA on an LLP license with a Bering Sea or Aleutian Islands endorsement, when fishing for groundfish in the BSAI pursuant to that LLP license, if the AFA vessel was rebuilt or replaced after October 15, 2010. The maximum LOA exemption must be specified on the vessel’s LLP license.

- 3. Section 3.7.2: Revise the first paragraph as follows. Deletions are noted as strikethroughs; new text is underlined.

Subtitle II of the American Fisheries Act (AFA) of 1998, (16 U.S.C. 1851 note ~~entitled~~ *Bering Sea Pollock Fishery*), directed 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 Bering Sea pollock fishery and that allocate pollock to such sectors, 2) regulations governing the formation and operation of fishery cooperatives, 3) regulations that institute sideboard measures to protect other fisheries from spillover effects from the AFA, and 4) regulations governing catch measurement and monitoring in the Bering Sea pollock fishery. Subtitle II of the AFA was amended by section 602 of the Coast Guard Authorization Act of 2010 (Coast Guard Act). A summary of the ~~key~~ provisions of the original Subtitle II and the AFA amendments in the Coast Guard Act is provided ~~are~~ summarized in Appendix C. 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. The subtitle is reprinted in Appendix C.3. Certain provisions of the AFA pertaining to the Aleutian Islands directed pollock fishery were superseded by the Consolidated Appropriations Act of 2004, as further described in Section 3.7.3.

4. Section 3.7.2.1: Revise Step 1a as follows. Addition is underlined language beginning with “the landings assigned to each vessel.”

a. 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; the landings assigned to each vessel shall include any landings assigned to a vessel as a result of that vessel being a replacement vessel for a former AFA vessel and any landings assigned to a vessel as a result of the removal of a catcher vessel that is a member of an inshore cooperative from the AFA fishery.

5. Section 3.7.2.2, Definition of Qualified Catcher Vessel: Add paragraph 3 as follows.

3. Replacement vessels. The vessel is a replacement vessel for a vessel that was a member of the inshore cooperative.

6. Appendix A. History of Fishery Management Plan. Add description of Amendment 106 as follows.

Amendment 106 implemented [DATE], revised Amendment 61 and conformed the FMP to section 602 of the Coast Guard Authorization Act of 2010 that:

Specified the conditions under which the owners of AFA vessels could rebuild AFA vessels, replace AFA vessels, and remove AFA catcher vessels that are members of inshore cooperatives from the Bering Sea directed pollock fishery.

7. Appendix C Summary of the American Fisheries Act and Subtitle II.

In Appendix C, revise C-1: new text is underlined; renumber the existing Section C.2 as Section C-3; add new section C.2.

C.1 Summary of the American Fisheries Act (AF) Management Measures

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

The AFA, as enacted in 1998, 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 nationwide United

States (U.S.) ownership and vessel length restrictions for U.S. vessels with fisheries endorsements. These requirements are implemented by the Maritime Administration and the U.S. Coast Guard under the Department of Transportation and Department of Homeland Security, respectively. Subtitle II – Bering Sea Pollock Fishery contains measures related to the management of BSAI pollock fishery.

Since 1998, Congress has amended the AFA several times. Most notably, in 2004 certain provisions of the AFA regarding the Aleutian Islands directed pollock fishery were superseded by the Consolidated Appropriations Act of 2004, as further described in section 3.7.3 of the FMP, and in 2010, Congress amended the AFA to identify conditions under which the owner of an AFA vessel may rebuild or replace the vessel and conditions under which the owner of an AFA catcher vessel that is a member of an inshore cooperative may remove the vessel from the cooperative.

Key provisions of the Bering Sea Pollock Fishery portion of the AFA, as enacted in 1998, are listed below.

- 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.
- An allocation scheme for BSAI pollock that allocates 10 percent of the BSAI pollock total allowable catch (TAC) to the Community Development Quota (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.
- The identification of vessels and processors eligible to participate in 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.
- The establishment of specific observer coverage and scale requirements for AFA catcher/processors.
- Standards and limitations for the creation of fishery cooperatives in the catcher/processor, mothership, and inshore industry sectors.
- A quasi-individual fishing quota program under which the National Marine Fisheries Service grants 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 benefitted from the AFA.
- A 17.5 percent excessive share harvesting cap for BSAI pollock and a requirement that the Council develop excessive share caps for BSAI pollock processing and for the harvesting and processing of other groundfish.

Add new Section C.2:

C.2 Summary of Amendments to AFA in the Coast Guard Authorization Act of 2010

On October 15, 2010, the President signed into law the Coast Guard Authorization Act of 2010, Pub. L. 111-281. Title VI of the Act was entitled The Maritime Safety Act of 2010. Section 602 of Title VI, entitled “Vessel Size Limits,” amended section 208(g) of the AFA relating to the rebuilding and the replacement of AFA vessels and added section 210(b)(7) allowing for the removal from the AFA fishery of AFA catcher vessels that are members of an AFA inshore fishery cooperative.

Under the original AFA in section 208(g), an owner of an AFA vessel could only replace an AFA vessel if the AFA vessel was lost physically or was lost constructively, which means that the vessel was so damaged that the cost of repair was greater than the value of the vessel. If an owner lost a vessel, the owner could only replace the vessel with a vessel of the same length, weight, or horsepower, unless the AFA vessel was less than the statutory thresholds in 46 U.S.C. 12113 for a vessel to receive a federal fishery endorsement: 165 feet registered length, 750 gross registered tons, and 3,000 shaft horsepower engine(s). If the AFA vessel was less than any of those thresholds, the owner of a lost AFA vessel could replace the lost vessel with a vessel ten percent greater in length, tonnage, or horsepower, up to those thresholds in each category. For AFA catcher vessels that were members of an inshore fishery cooperative, the original AFA had no mechanism whereby the owner of a catcher vessel could remove that vessel and direct NMFS to assign the catch history of the removed vessel to other vessels in the inshore cooperative.

The key provisions of the AFA amendments in the Coast Guard Authorization Act of 2010 that NMFS will implement in Amendment 106 to this FMP are listed below:

- The owner of a vessel which is designated on an AFA vessel permit may replace or rebuild the AFA vessel to improve vessel safety or improve operational efficiency, including fuel efficiency.
- The AFA rebuilt and the AFA replacement vessel will be eligible to participate in the fisheries in the EEZ off Alaska in the same manner as the vessel before rebuilding

or before replacing, except where the AFA amendments specifically changed a condition of participation.

- The AFA rebuilt and the AFA replacement vessel may exceed the maximum length overall (MLOA) on the LLP groundfish license that authorizes the vessel to conduct directed groundfish fishing for license limitation groundfish in the Bering Sea or the Aleutian Islands, while the AFA rebuilt or AFA replacement vessel is fishing pursuant to that LLP license.
- The AFA rebuilt and the AFA replacement vessel are subject to the MLOA requirement on the LLP groundfish license that authorizes the vessel to conduct directed fishing for license limitation groundfish in the Gulf of Alaska, while the AFA rebuilt or AFA replacement vessel is fishing pursuant to that LLP license.
- The AFA amendments prohibit AFA rebuilt catcher vessels and AFA replacement catcher vessels from harvesting fish in any fishery managed under the authority of any regional fishery management council with two exceptions: [1] an AFA rebuilt or AFA replacement catcher vessel may participate in the Pacific whiting fishery, which is managed under the authority of the Pacific Council; and [2] an AFA rebuilt or AFA replacement catcher vessel may participate in a fishery managed under the authority of the North Pacific Fishery Management Council in conformity with the requirements for participating in a Council-managed fishery. The original AFA already imposed this restriction on AFA catcher/processors and motherships.
- The owner of an AFA catcher vessel that is a member of an AFA inshore cooperative may remove the vessel from the AFA fishery and direct NMFS to assign the catch history of the removed vessel to any other vessel or vessels in the AFA cooperative to which the removed vessel belonged, provided that the vessel or vessels that are assigned the catch history remain in the cooperative for at least one year after NMFS assigns the catch history to them.
- If an owner of an AFA catcher vessel removes an AFA catcher vessel, and the removed vessel had an exemption from AFA sideboard limitations, the removal of the vessel permanently extinguishes the exemption from AFA sideboard limitations.
- A vessel that is replaced or removed would be permanently ineligible for any permits to participate in any fishery in the EEZ off Alaska unless the replaced or removed vessel reenters the directed pollock fishery as an AFA replacement vessel.

8. Appendix C, new Section C.3: Replace section 208(g) with the following language, using formatting compatible with the rest of the section:

(g) VESSEL REBUILDING AND REPLACEMENT.—

(1) IN GENERAL.—

(A) REBUILD OR REPLACE.—Notwithstanding 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 of title 50, Code of Federal Regulations, as in effect on the date of enactment of the Coast Guard Authorization Act of 2010 and except as provided in paragraph (4), the owner of a vessel eligible under subsection (a), (b), (c), (d), or (e), in order to improve vessel safety and operational efficiencies (including fuel efficiency), may rebuild or replace that vessel (including fuel efficiency) with a vessel documented with a fishery endorsement under section 12113 of title 46, United States Code.

(B) SAME REQUIREMENTS.—The rebuilt or replacement vessel shall be eligible in the same manner and subject to the same restrictions and limitations under such subsection as the vessel being rebuilt or replaced.

(C) TRANSFER OF PERMITS AND LICENSES.—Each fishing permit and license held by the owner of a vessel or vessels to be rebuilt or replaced under subparagraph (A) 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.

(2) RECOMMENDATIONS OF NORTH PACIFIC FISHERY MANAGEMENT COUNCIL.—The North Pacific Fishery Management Council may recommend for approval by the Secretary such conservation and management measures, including size limits and measures to control fishing capacity, in accordance with the Magnuson-Stevens Act as it considers necessary to ensure that this subsection does not diminish the effectiveness of fishery management plans of the Bering Sea and Aleutian Islands Management Area or the Gulf of Alaska.

(3) SPECIAL RULE FOR REPLACEMENT OF CERTAIN VESSELS.—

(A) IN GENERAL.—Notwithstanding the requirements of subsections (b)(2), (c)(1), and (c)(2) of section 12113 of title 46, United States Code, a vessel that is eligible under subsection (a), (b), (c), or (e) and that qualifies to be documented with a fishery endorsement pursuant to section 213(g) may be replaced with a replacement vessel under paragraph (1) if the vessel that is replaced is validly documented with a fishery endorsement pursuant to section 213(g) before the replacement vessel is documented with a fishery endorsement under section 12113 of title 46, United States Code.

(B) APPLICABILITY.—A replacement vessel under subparagraph (A) and its owner and mortgagee are subject to the same limitations under section 213(g) that are applicable to the vessel that has been replaced and its owner and mortgagee.

(4) SPECIAL RULES FOR CERTAIN CATCHER VESSELS.—

(A) IN GENERAL.—A replacement for a covered vessel described in subparagraph (B) is prohibited from harvesting fish in any fishery (except for the Pacific whiting fishery) managed under the authority of any Regional Fishery Management Council (other than the North Pacific Fishery Management Council) established under section 302(a) of the Magnuson-Stevens Act.

(B) COVERED VESSELS.—A covered vessel referred to in subparagraph (A) is—

(i) a vessel eligible under subsection (a), (b), or (c) that is replaced under paragraph (1); or

(ii) a vessel eligible under subsection (a), (b), or (c) that is rebuilt to increase its registered length, gross tonnage, or shaft horsepower.

(5) LIMITATION ON FISHERY ENDORSEMENTS.—Any vessel that is replaced under this subsection shall thereafter not be eligible for a fishery endorsement under section 12113 of title 46, United States Code, unless that vessel is also a replacement vessel described in paragraph (1).

(6) GULF OF ALASKA LIMITATIONS.—Notwithstanding paragraph (1), the Secretary shall prohibit from participation in the groundfish fisheries of the Gulf of Alaska any vessel that is rebuilt or replaced under this subsection and that exceeds the maximum length overall specified on the license that authorizes fishing for groundfish pursuant to the license limitation program under part 679 of title 50, Code of Federal Regulations, as in effect on the date of enactment of the Coast Guard Authorization Act of 2010.

(7) AUTHORITY OF PACIFIC COUNCIL.—Nothing in this section shall be construed to diminish or otherwise affect the authority of the Pacific Council to recommend to the Secretary conservation and management measures to protect fisheries under its jurisdiction (including the Pacific whiting fishery) and participants in such fisheries from adverse impacts caused by this Act.

9. Appendix C, new Section C.3: In section 210(b), add a new (7) as follows, using formatting compatible with the rest of the section:

(7) FISHERY COOPERATIVE EXIT PROVISIONS.—

(A) FISHING ALLOWANCE DETERMINATION.—For purposes of determining the aggregate percentage of directed fishing allowances under paragraph (1), when a catcher vessel is removed from the directed pollock fishery, the fishery allowance for pollock for the vessel being removed—

(i) shall be based on the catch history determination for the vessel made pursuant to section 679.62 of title 50, Code of Federal Regulations, as in effect on the date of enactment of the Coast Guard Authorization Act of 2010; and

(ii) shall be assigned, for all purposes under this title, in the manner specified by the owner of the vessel being removed to any other catcher vessel or among other catcher vessels participating in the fishery cooperative if such vessel or vessels remain in the fishery cooperative for at least one year after the date on which the vessel being removed leaves the direct pollock fishery.

(B) ELIGIBILITY FOR FISHERY ENDORSEMENT.—Except as provided in subparagraph (C), a vessel that is removed pursuant to this paragraph shall be permanently ineligible for a fishery endorsement, and any claim (including relating to catch history) associated with such vessel that could qualify any owner of such vessel for any permit to participate in any fishery within the exclusive economic zone of the United States shall be extinguished, unless such removed vessel is

thereafter designated to replace a vessel to be removed pursuant to this paragraph.

(C) LIMITATIONS ON STATUTORY CONSTRUCTION.—Nothing in this paragraph shall be construed—

(i) to make the vessels **AJ** (United States official number 905625), **DONA MARTITA** (United States official number 651751), **NORDIC EXPLORER** (United States official number 678234), and **PROVIDIAN** (United States official number 1062183) ineligible for a fishery endorsement or any permit necessary to participate in any fishery under the authority of the New England Fishery Management Council or the Mid-Atlantic Fishery Management Council established, respectively, under subparagraphs (A) and (B) of section 302(a)(1) of the Magnuson-Stevens Act; or

(ii) to allow the vessels referred to in clause (i) to participate in any fishery under the authority of the Councils referred to in clause (i) in any manner that is not consistent with the fishery management plan for the fishery developed by the Councils under section 303 of the Magnuson-Stevens Act.

10. Revise Table of Contents as appropriate.