

§ 679.62(c), which will become effective after Paperwork Reduction Act approval has been received from the Office of Management and Budget and a **Federal Register** notice has been published to make it effective.

**ADDRESSES:** Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for Amendment 69 may be obtained from Lori Durall, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, 907-586-7247.

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**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) under the FMP. The Council prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and the AFA (Div. C, Title II, Public Law No. 105-277, 112 Stat. 2681 (1998)). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The AFA established a limited access program for the inshore sector of the BSAI pollock fishery that is based on the formation of fishery cooperatives around each inshore pollock processor. Regulations governing the formation and operation of inshore catcher vessel cooperatives are set out at 50 CFR 679.62 and are summarized in the final rule to implement AFA-related Amendments 61/61/13/8 (67 FR 79692, December 30, 2002).

#### **Purpose and Need for Amendment 69**

Several existing regulations and administrative limitations implementing the American Fisheries Act prevent inshore cooperatives from contracting with non-member vessels to harvest a portion of the cooperative's BSAI pollock allocation. First, NMFS recordkeeping and reporting requirements specify that all landings from the BSAI directed pollock fishery that are made by the member vessels of a cooperative must accrue against that cooperative's annual allocation. The NMFS database in its present form automatically assigns a single cooperative code to each AFA catcher vessel (the code representing the cooperative of which the vessel is a member) and, therefore, precludes a vessel from reporting landings using any different cooperative code during a fishing year. Second, regulations at 50 CFR 679.7(k)(5)(i) prohibit a catcher vessel listed on an AFA inshore

cooperative permit to harvest pollock in excess of the cooperative's allocation. This prohibition prevented the member vessels in one cooperative from contracting to harvest a portion of the allocation of another cooperative.

These restrictions, which have the effect of preventing inshore cooperatives from contracting with non-member vessels, were required by paragraphs 210(b)(1)(B) and 210(b)(5) of the AFA.

Amendment 69 has three objectives:

(1) Increase efficiency and provide catcher vessel owners with a more functional market for leasing of individual pollock allocations, (2) ensure that an inshore cooperative is able to harvest its entire allocation in the event of vessel breakdowns or other unanticipated emergencies, and (3) improve safety by providing greater flexibility for larger catcher vessels to harvest cooperative allocations during hazardous weather in winter months and when Steller sea lion conservation measures require that fishing be done further offshore.

With respect to the first objective, the AFA allows a cooperative member to lease pollock quota only to those vessel owners who are members of the same cooperative. In cooperatives where a substantial number of the vessels are owned or controlled by the associated processor, owners of independent catcher vessels may have limited opportunities to lease quota to other independent vessel owners in the same cooperative. The problem could become even more acute at certain times of the year when only plant-owned vessels are operating. In this instance, an independent catcher vessel owner could have only one potential customer willing to lease his quota and, therefore, may be in a weak bargaining position. This independent catcher vessel owner likely would benefit from a broader market for his pollock quota. Efficiency could improve if the vessel that is being contracted to harvest the pollock has lower operating costs than the vessel initially granted use rights to the pollock by the cooperative, depending upon the cost and terms of the lease contract.

With respect to the second objective, under existing regulations, if one or more vessels in a cooperative breaks down or is otherwise out of commission, and the other vessels in the cooperative are already operating at full capacity, a catcher vessel owner could be unable to contract with a replacement vessel to harvest his portion of the cooperative's pollock allocation. An unexpected emergency such as a dockside fire or accidents that disable or destroy several member

vessels of a cooperative at the same time could result in the cooperative being unable to harvest a large portion of its annual allocation. This final rule gives cooperatives the means to deal with such emergency situations and facilitate their ability to harvest their entire annual allocations.

With respect to the third objective, safety may be improved if the owners of smaller catcher vessels have greater flexibility to enter into contracts with larger (presumably safer) vessels to harvest the smaller vessel's allocation during the more hazardous weather conditions common during winter months and when Steller sea lion protection measures require that fishing be conducted further offshore.

#### **Council Authority to Supersede the AFA**

Subsection 213(c) of the AFA authorizes the Council to recommend management measures to supersede certain provisions of the AFA. Any measure recommended by the Council, and approved by the Secretary of Commerce (Secretary), that supersedes a specific provision of the AFA is implemented in accordance with the Magnuson-Stevens Act. In developing Amendment 69, the Council determined that all three objectives for Amendment 69 meet the criteria established in paragraph 213(c)(1) of the AFA, which states that the Council may recommend measures that supersede the AFA "to mitigate adverse effects . . . on owners of fewer than three vessels in the directed pollock fishery..."

The Council, in interpreting paragraph 213(c)(1), understood the term "owners of fewer than three vessels" to reference independent vessel owners who own two or less vessels in the directed pollock fishery. These are the vessel owners who this rule is intended to benefit as is described in the discussion of the three objectives above.

#### **Elements of the Final Rule**

This final rule contains the following requirements for inshore cooperatives that wish to contract with non-member vessels to harvest a portion of a cooperative's annual BSAI pollock allocation.

**Application process.** A cooperative that wishes to contract with a vessel that is a member of another inshore cooperative is required to complete and submit to NMFS a vessel contract form. The form is available from NMFS and requires that the cooperative identify the contract vessel, the contract vessel's home cooperative, and describe how pollock landings by the contract vessel are to be assigned between cooperatives.