

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

[Docket No. 071102641-91087-04]

RIN 0648-AR06

**Fisheries of the Exclusive Economic Zone Off Alaska; Revision of Single Geographic Location Requirement in the Bering Sea Subarea; Amendments 62/62**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to increase the number of times per year that a stationary floating processor (SFP) that is qualified under the American Fisheries Act (AFA) may move within State of Alaska waters in the Bering Sea (BS) subarea to process pollock harvested in the BS subarea directed pollock fishery. This action also requires AFA SFPs to process all Gulf of Alaska (GOA) pollock and GOA Pacific cod where they processed these species in 2002. This action is necessary to increase operational flexibility for AFA SFPs that process pollock caught in the BS subarea directed fishery while continuing to limit the competitive advantage of AFA SFPs in the GOA pollock and GOA Pacific cod fisheries. This final rule also is notification to the public of the approval of Amendment 62 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and the approval of Amendment 62 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). Amendments 62/62 revise the BSAI FMP description of the Catcher Vessel Operational Area and remove the obsolete sunset date for inshore/offshore sector allocations of pollock and Pacific cod in the GOA FMP. These actions are intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the GOA FMP, the BSAI FMP, and other applicable laws.

**DATES:** Effective August 17, 2009.

The uncodified fishery management plan amendments (Amendments 62/62) became effective July 1, 2009, and are summarized in the preamble of this rule.

**ADDRESSES:** Electronic copies of the Environmental Assessment/Regulatory

Impact Review (EA/RIR) for this action may be obtained from <http://www.regulations.gov> or from the Alaska Region website at <http://www.alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P. O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, Alaska; and by e-mail to [David.Rostker@omb.eop.gov](mailto:David.Rostker@omb.eop.gov), or fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Becky Carls, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) and the GOA under the Fishery Management Plans (FMPs) for groundfish in the respective areas. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

**Background and Need for Action**

In June 2002, the Council adopted Amendments 62/62 to revise obsolete or inconsistent inshore/offshore language in the BSAI and GOA FMPs to make them consistent with the AFA. A combination of circumstances delayed the submission of these amendments for Secretarial review. Additionally, other amendments incorporated two of the four Council-approved FMP changes regarding inshore/offshore language. In April 2008, the Council reviewed Amendments 62/62 and affirmed its 2002 decisions concerning the remaining FMP amendments.

In conjunction with the Council's consideration of Amendments 62/62, the Council also considered a separate regulatory amendment to allow AFA SFPs to relocate in the BSAI during a fishing year for purposes of processing pollock in the BSAI. Amendments 62/62 do not require any regulatory text changes, and the FMPs do not require modification to authorize the regulatory amendment concerning AFA SFPs. Therefore, the changes to the regulations in this final rule do not implement Amendments 62/62. The background and need for both actions were described in detail in the preamble to

the proposed rule to revise single geographic location requirements in the BS subarea (74 FR 17137; April 14, 2009) and in the Notice of Availability (NOA) for Amendments 62/62 (74 FR 14950; April 2, 2009). The proposed rule and NOA are available via the Internet (see **ADDRESSES**) and are summarized in separate sections below. No substantive changes were made to the proposed regulatory text in this final rule. One minor change to regulatory text is made at § 679.7(k)(3)(vii) to clarify that it is the same AFA SFP that must return to the location where that particular AFA SFP first processed GOA pollock or GOA Pacific cod in 2002 in order to process GOA pollock or GOA Pacific cod after implementation of this final rule. NMFS' rationale for approving the regulatory provisions in this final rule is contained in the agency's response to comments below.

**Single Geographic Location**

Single geographic location provisions apply to SFPs, which can be AFA or non-AFA qualified. An SFP, as defined at § 679.2, is a vessel of the United States operating as a processor in State of Alaska (State) waters that remains anchored or otherwise remains stationary in a single geographic location while receiving or processing groundfish harvested in the GOA or BSAI. There are two AFA SFPs that are semi-permanently moored in protected anchorages in the Aleutian Islands less than 45 nautical miles (nm) (83 km) apart, consisting of the F/V *Arctic Enterprise* which is located in Akutan Bay, and the F/V *Northern Victor* which is located in Beaver Inlet.

Regulations in effect prior to this rule limited AFA inshore processors, including AFA SFPs, to a single geographic location during a fishing year when processing pollock harvested in the BS subarea directed pollock fishery. The regulations further specified that a single geographic location for an AFA SFP was the location within State waters that was within 5 nm of the position in which the SFP first processed pollock harvested in the BS subarea directed pollock fishery during a fishing year.

This final rule allows any AFA SFP to change its location within State waters, from reporting week to reporting week, up to four times during a fishing year, for processing pollock harvested in the BS subarea directed pollock fishery. Originally, the single geographic location restriction was implemented in the inshore/offshore regulations to prevent floating processors, which have limited mobility and which operate in the inshore processing sector, from

having an unfair economic advantage over operators of onshore processing plants. It was also intended to prevent offshore catcher/processors and motherships, that have greater mobility, from entering the inshore sector. With the passage of the AFA in 1998, and the associated cooperative agreements, these concerns diminished in the BSAI pollock target fisheries.

The regulations further specify that no more than one single geographic location may be used during a reporting week, and specify that a single geographic location is the geographic position within 5 nm of the latitude and longitude reported in check-in and check-out reports that are required under regulations at § 679.5(h)(5)(ix)(B). As many as five different locations may be used, but the number of times that an AFA SFP may move to change its location for purposes of processing pollock harvested in a BS subarea directed pollock fishery is limited to four.

In addition, AFA inshore processors are required to process all GOA pollock and GOA Pacific cod delivered to them in the same location at which they processed these species in 2002. This restriction is intended to reduce the potential for these mobile AFA SFPs to take advantage of increased flexibility for processing locations in the BS subarea and receive and process a larger share of GOA pollock or GOA Pacific cod compared with the status quo in 2002, the year that Council action was taken. Pacific cod or pollock harvested in the GOA also are processed by other inshore processing operations. Without this restriction on AFA SFPs, other inshore processing operations would not be protected from the competitive advantage that could result from the increased mobility of the AFA SFPs. It is not the intention of this action to increase the operational flexibility of the AFA SFPs in the GOA pollock and GOA Pacific cod fisheries. Therefore, the AFA SFPs are restricted to processing GOA pollock and GOA Pacific cod to the location at which they processed these species in 2002.

#### *Amendments 62/62*

Amendment 62 to the BSAI FMP revises the Catcher Vessel Operational Area (CVOA) descriptions to make the FMP consistent with current regulations at § 679.22(a)(5). The CVOA is an area in which AFA catcher/processors are prohibited from directed fishing for pollock during the non-roe, or B, season unless they are participating in the Community Development Quota fishery. The previous FMP descriptions of the CVOA included outdated references to

pollock B season dates and to the inshore and offshore components of the BSAI pollock fishery and were removed. The new BSAI FMP text for Section 3.5.2.1.6 and Appendix B is as follows: "The CVOA is defined as the area of the BSAI east of 167°30' W. longitude, west of 163° W. longitude, south of 56° N. latitude, and north of the Aleutian Islands. AFA catcher/processors are prohibited from engaging in directed fishing for pollock in the CVOA during the non-roe season unless they are participating in the CDQ fishery."

Amendment 62 to the GOA FMP formally removes the December 31, 2004, sunset date for GOA inshore/offshore pollock and Pacific cod allocations. Housekeeping Amendments 83/75 (70 FR 35395, June 20, 2005) revised the FMPs by updating harvest, ecosystem, and socioeconomic information; consolidating text; and organizing the information to improve the readability of the documents. It was premature to remove the sunset date at that time, because that was not specified as one of the changes made by Amendments 83/75. This action officially removes the sunset date from the GOA FMP.

#### *Recordkeeping and Reporting*

Existing regulations at § 679.5(h)(1) require the manager of an SFP to submit check-in and check-out reports prior to receiving or ceasing to receive or process groundfish. Check-in and check-out reports must be submitted to the Regional Administrator within the appropriate time limits when beginning and when ceasing processing activities. Under this action, no more than a single geographic location may be used by an AFA SFP in a weekly reporting period. To monitor this restriction, the current check-in report and check-out report table at § 679.5(h)(4) adds requirements for the manager of an AFA SFP to notify NMFS of a change in location by submitting a complete check-out report before changing location and a check-in report before receiving groundfish at the new location. The new location will be reported on the check-in report as currently required at § 679.5(h)(5)(ix)(B).

#### **Response to Comments**

The proposed rule was published in the **Federal Register** on April 14, 2009 (74 FR 17137), with a 45-day comment period that ended on May 29, 2009. The NOA for Amendments 62/62 was published on April 2, 2009 (74 FR 14950), with a 60-day comment period that ended on June 1, 2009. NMFS received a total of two letters on the proposed rule that contained two unique comments. A summary of these

comments and NMFS's responses follows.

*Comment 1:* We support the adoption of Amendments 62/62. The redefinition of single geographic location will allow for greater flexibility and efficient use of the AFA stationary floating processors. Relocation of the stationary floating processors may be particularly useful if Steller sea lion regulations become more restrictive or pollock stocks move or shrink. Allowing these floating processors to relocate up to four times per year to process Bering Sea target pollock catch will allow for more efficiency by reducing delivery costs for catcher vessels and enhancing product quality with shorter delivery times. The amendment continues to provide protection for GOA groundfish processors by restricting the AFA stationary floating processors to the location in which they processed GOA pollock and Pacific cod in 2002. We believe the Council has taken appropriate action to meet the problem identified in the Bering Sea while still providing protection for Gulf of Alaska groundfish processors.

*Response:* The Council's rationale for this action was provided in detail in the preamble to the proposed rule. NMFS has determined that the action is reasonable and NMFS finds the articulated rationale supported by the record. The above comment lends further support for approval of this action.

*Comment 2:* All quotas allocated should be cut in half this year and all quotas should continue to be cut by 10 percent in each succeeding year. You should never rely on fish population numbers from the commercial fishermen.

*Response:* Cutting catch quotas is beyond the scope of this action. NMFS conservatively manages the Alaska groundfish fisheries based on the best scientific information available. To ensure conservation of the resource, the status of the stocks is reviewed by NMFS and the Council each year through a public scientific review process before total allowable catch limits for each target species are allocated. Catch information from scientific surveys of the groundfish stocks and from the commercial fishing industry are important parts of this process. This action does not entail allocation of the fishery resource among fishermen.

#### **Classification**

The Acting Administrator, Alaska Region, NMFS, determined that the FMP amendments and final rule are necessary for the conservation and

management of the GOA and BS subarea pollock fisheries and the GOA Pacific cod fishery, and that they are consistent with the Magnuson-Stevens Act and other applicable laws. This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under Control Number 0648-0213. Public reporting burden for the shoreside processor check-in and check-out reports is estimated to average ten minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data

collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to David\_Rostker@omb.eop.gov, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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.

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: July 13, 2009.

**Samuel D. Rauch III,**  
Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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

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

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

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

■ 2. In § 679.4, revise paragraphs (l)(5)(iii) introductory text and (l)(5)(iii)(B) to read as follows:

**§ 679.4 Permits.**

\* \* \* \* \*

(l) \* \* \*

(5) \* \* \*

(iii) *Single geographic location requirement.* An AFA inshore processor permit authorizes the processing of pollock harvested in the BS subarea directed pollock fishery only in a single geographic location during a reporting week. For the purposes of this paragraph, single geographic location means:

\* \* \* \* \*

(B) *Stationary floating processors (SFP).* A geographic position within State of Alaska waters of the BS subarea and that is within a 5 nm radius of the latitude and longitude reported in the check-in and check-out reports at § 679.5(h)(5)(ix)(B). An AFA SFP cannot change its single geographic location more than four times within State of Alaska waters in the BS subarea to process pollock harvested in a BS subarea directed pollock fishery during a fishing year and cannot use more than one single geographic location during a reporting week.

\* \* \* \* \*

■ 3. In § 679.5, add paragraph (h)(4)(x) to read as follows:

**§ 679.5 Recordkeeping and reporting (R&R).**

\* \* \* \* \*

(h) \* \* \*

(4) \* \* \*

For ...	If you are a ...	Submit a BEGIN message	Submit a CEASE message
*****			
(x) Change of location	AFA SFP	Before receiving groundfish.	Upon completion of receipt of groundfish from a position and before movement from that position.

\* \* \* \* \*

■ 4. In § 679.7, revise paragraphs (a)(7)(vi) and (k)(3)(iv)(B) and add paragraph (k)(3)(vii) to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(7) \* \* \*

(vi) Except as provided in paragraph (k)(3)(iv) of this section, use a stationary floating processor with a GOA inshore processing endorsement to process pollock or GOA Pacific cod harvested in a directed fishery for those species in

more than one single geographic location during a fishing year.

\* \* \* \* \*

(k) \* \* \*

(3) \* \* \*

(iv) \* \* \*

(B) *Stationary floating processor (SFP).* A geographic position within State of Alaska waters of the BS subarea and that is within a 5 nm radius of the latitude and longitude reported in the check-in and check-out reports at § 679.5(h)(5)(ix)(B). An AFA SFP cannot change its single geographic location more than four times within State of Alaska waters in the BS subarea to process pollock harvested in a BS

subarea directed pollock fishery during a fishing year and cannot use more than one single geographic location during a reporting week.

\* \* \* \* \*

(vii) *Restrictions for GOA Pacific cod and GOA pollock.* Use an AFA SFP to process GOA pollock or GOA Pacific cod in any location other than the location at which either GOA pollock or GOA Pacific cod were first processed by that SFP in the year 2002.

\* \* \* \* \*

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