

Executive Order 12612 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Executive Order 12778 (Civil Justice Reform)

This rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on December 7, 1995.

Ricardo Martinez,

Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 950905226-5282-02; I.D. 083095A]

RIN 0648-AH00

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Extension of Allocations to Inshore and Offshore Components

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

ACTION: Final rule.

SUMMARY: NMFS is implementing Amendment 38 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 40 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA). Amendment 38 implements an allocation of pollock for processing by the inshore and offshore components in the BSAI management area from January 1, 1996, through December 31, 1998. Amendment 40 implements an allocation of Pacific cod for processing by the inshore and offshore components, and an allocation of pollock for processing by the inshore component in the GOA from January 1, 1996 through December 31, 1998. It also continues the Western Alaska Community Development Quota (CDQ) Program for pollock for the same period of time. This action is necessary to continue the management measures that were contained in Amendments 18 and 23 to the BSAI and GOA FMPs, respectively. The intended effect of this final rule is to promote management and conservation of groundfish, enhance the stability in the fisheries, and further the goals and objectives contained in the FMPs that govern these fisheries.

EFFECTIVE DATE: January 1, 1996.

ADDRESSES: Copies of Amendments 38 and 40, and the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) prepared for Amendments 38 and 40 are available from the North Pacific Fishery Management Council, 605 West 4th Avenue, room 306, Anchorage, AK 99501-2252; telephone: 907-271-2809.

FOR FURTHER INFORMATION CONTACT: David Ham, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed under the BSAI and GOA FMPs. Both FMPs were prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The BSAI FMP is implemented by regulations appearing at 50 CFR 611.93, 50 CFR part 675, and 50 CFR part 676; for the GOA FMP, regulations are found at 50 CFR 611.92, 50 CFR part 672, and 50 CFR part 676. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620. The fisheries for pollock (*Theragra chalcogramma*) and Pacific cod (*Gadus macrocephalus*) and the affected human environment are described in the FMPs, in the environmental impact statements prepared by the Council for each FMP, and in the EA/RIR/FRFA prepared for this action.

Amendments 38 and 40 will extend the provisions of Amendment 18 to the BSAI FMP and Amendment 23 to the GOA FMP, respectively.

Amendments 18 and 23 and their implementing regulations expire on December 31, 1995. The Council has not yet completed development of its comprehensive plan to address problems caused by the open access nature of the Alaska groundfish fisheries. Therefore, the Council voted unanimously at its June 1995 meeting to extend the provisions of the expiring amendments through December 31, 1998, by Amendments 38 and 40. A notice of availability of Amendments 38 and 40 was published at 60 FR 46572 (September 7, 1995).

Amendments 38 and 40 are essentially the same as amendments 18 and 23, with minor changes. A full discussion of these changes is listed in the proposed rule for amendments 38 and 40 (60 FR 48087, September 18, 1995).

Amendments 38 and 40 were approved by NMFS on November 28, 1995, under section 304(b) of the Magnuson Act. Upon reviewing the reasons for Amendments 38 and 40 and the comments on the proposed rule to implement it, NMFS has determined that this final rule extending the allocation between inshore and offshore components is necessary for fishery conservation and management.

Changes in the Final Rule From the Proposed Rule

This final rule includes the following changes from the proposed rule:

1. In § 675.27(e)(1)(iii), the date that the annual budget reconciliation report

is due to NMFS from each CDQ group is changed from May 15 to May 30 to provide more time for the CDQ groups to comply with this requirement.

2. The definition of "inshore component" at §§ 672.2 and 675.2 is revised as follows. The requirement for an owner of a processor vessel to declare on the annual application for a Federal fishery permit (NOAA Form 88-155) whether it will be part of the inshore component has been deleted from paragraphs (2) and (3) of the definition. This definition is revised for clarity and is not fundamentally different from the current definition.

3. The definitions of "inshore component" and "offshore component" at §§ 672.2 and 675.2 are revised as follows. The phrase "any processor vessel" that appears in both definitions is changed to "vessels". This change was made to simplify and clarify the definition. The definition already refers to vessels that "process", therefore, further reference to a "processor vessel" is redundant.

4. For clarity, NMFS revises the definitions of Community Development Quota Reserve and Community Development Quota at § 675.2.

5. For clarity, NMFS combines paragraphs (1) and (2) of § 675.27(e)(3)(i)(F) into one paragraph 675.27(e)(3)(i)(F). Also, NMFS revises this paragraph (e)(3)(i)(F) of § 675.27 to give the Secretary of Commerce (Secretary) acting through NMFS, in addition to the Governor of the State of Alaska, the authority to deem a change to a Community Development Plan (CDP) to be a material change. This will give NMFS the ability to make a determination that a proposed change to a CDP is a material change.

6. Paragraph § 675.22(g)(2) is removed. This permissive statement is unnecessary.

7. The phrase "processor vessels" in paragraphs § 675.22(g) (3), (4), and (5) is changed to "vessels" to be consistent with the definition of "offshore component."

Response to Comments

Fourteen letters of comment were received within the public comment period. Two letters had no comment, eight were supportive of the proposed action and are summarized in comment 1, and four were received with comments that are summarized and responded to in comments two through ten below:

Comment 1. Continuation of the inshore-offshore program through Amendments 38 and 40 provides the industry with stability while the Council proceeds with developing a

comprehensive rationalization plan. This program is needed by fishery-dependent coastal communities to ensure continuing access to fisheries resources. These fishery resources provide revenue to local communities through raw fish taxes, municipal sales taxes from goods and services, fuel tax revenues from sales to the fishing fleet, corporate income tax revenues, and real and personal property tax revenues. Much of this tax revenue has gone into community infrastructure that has been a great benefit to rural Alaskan coastal communities. The inshore-offshore program slows the pace of harvesting activity and allows NMFS to improve its monitoring of the fisheries. The CDQ program has been a success and has accomplished the positive results that were intended.

Response. NMFS notes this comment.

Comment 2. Amendments 38 and 40 will not maintain stability in the fishery, safeguard capital investments, prevent preemption, or protect coastal communities that are dependent on a local fleet. The derby-style fishing that will continue to characterize these fisheries under Amendments 38 and 40 is unstable. Fishing seasons will continue to shorten, capital investments will continue to be at risk as a result of increased inter-sector competition and capital investment. Local fishing fleets will continue to be preempted by other nonlocal inshore fleets.

Response. NMFS recognizes some limitations of these amendments, but the inshore/offshore allocation is not intended to be a substitute for comprehensive rationalization planning. This allocation extension is a continuation of a temporary solution and as such will provide 3 additional years for completing the development and implementation of a permanent solution.

Comment 3. The analysis for Amendments 38 and 40 should examine environmental issues, such as the water quality problems that have continued to plague shoreside processing operations in Dutch Harbor.

Response. Pages 214 and 215 of the EA/RIR/FRFA for Amendments 38 and 40 address water quality problems in Dutch Harbor. The analysis concluded that it is unlikely that Amendments 38 and 40 will have a negative impact on the water quality in this area.

Comment 4. The analysis did not evaluate the market structure in key seafood markets to determine whether there might be anti-competitive effects by giving shoreside processing plants an increased share of the pollock resource. For example, is there a transfer pricing risk? Or, did the inshore-offshore

allocation result in the price collapse of offshore surimi that occurred during the first inshore-offshore allocation in 1993?

Response. The EA/RIR/FRFA for inshore-offshore examined several issues related to this comment. Page 124 shows that the inshore price for surimi collapsed at about the same rate as the offshore price for surimi from 1992 through 1993. This overall price drop may or may not have been influenced by the inshore-offshore allocation at that time. The price drop was experienced by both sectors, though it was slightly more severe for the offshore sector. The analysis indicates that this may not have been a price collapse at all, but a return to normal prices after 2 years (1991 and 1992) of inordinately high prices. Pages 119 to 123 of the analysis contain a detailed discussion of price factors, though the analysis is not specific to the issue of the collapse of 1993 surimi prices. In an issue related to the collapse of the 1993 surimi prices, Appendix V of the analysis contains further analysis of the structural breakdown of surimi prices relative to exvessel prices paid. The analysis in Appendix V is unable to attribute this phenomenon to the inshore-offshore allocation. Furthermore, the price collapse issue raised in this comment is more relevant to the original inshore-offshore decision than to Amendments 38 and 40, because the inshore-offshore allocations have been in place for 3 years and their continuance now represents the status quo.

Comment 5. Proponents of the inshore-offshore allocation program claim that allocating more fish to large shoreside processors will provide jobs and economic opportunity for local residents. However, the analysis did not address this question. On the other hand, Akutan has petitioned the Council to be included in the pollock CDQ program because the Akutan Trident plant is not part of the community and local residents rarely work at the plant. The logic on these two issues is inconsistent.

Response. The Akutan plant is not necessarily reflective of other shoreside plants, in terms of local employment. The social impact analysis focused primarily on Dutch Harbor, Kodiak, St. Paul, and Ballard/Seattle. The community impact study in the analysis looked at total and distributional income indices, of which direct employment is only a part. The relevant point is not just one of direct employment. There are other non-quantifiable benefits derived from the inshore/offshore allocation system. The availability of alternative economic activity was also an important

consideration. Maintenance of cultural stability, social impacts, and other impacts were also considered.

Comment 6. The proposed regulations at § 675.23(e)(2)(ii) preclude pollock catcher vessels from participating in the yellowfin sole fishery prior to January 26 if they want to harvest pollock roe for processing by the offshore component starting on January 26. Vessels that participate in the yellowfin sole fishery before January 26 cannot enter the pollock fishery for processing by the offshore component until February 5. Yellowfin sole is an abundant species and its harvest should be encouraged, not discouraged. Therefore, there should be no restriction on fishing for yellowfin sole prior to the January 26 start of the pollock fishery for processing by the offshore component.

Response. NMFS acknowledges that limitations on the participation in the yellowfin sole fishery prior to the opening of the pollock fishery for processing by the offshore component could reduce potential revenues of vessels. NMFS approved this limitation after considering the intent of the Council to minimize the preemptive impact on other fisheries that could result from the delay of the pollock roe fishery for processing by the offshore component until January 26. Additionally, if vessels were allowed to harvest yellowfin sole before January 26, those vessel operators could have an unfair advantage by potentially prospecting for pollock stocks just prior to the opening of the pollock fishery for processing by the offshore component.

Comment 7. The proposed CDQ regulations require that an annual budget reconciliation report be submitted to NMFS by May 15 of the year following the year for which the annual budget applies. However, due to other CDQ reporting requirements during May, a burden on the CDQ groups would be relieved if the May 15 due date were changed to May 30. This would allow the CDQ groups more time to prepare the annual budget reconciliation report for NMFS.

Response. NMFS concurs. The regulations at § 675.27(e)(1)(iii) are changed to require the annual budget reconciliation report to be due to NMFS on May 30 instead of May 15.

Comment 8. The focus of the CDQ program needs to remain on long-term development projects, not short-term projects such as job creation. The CDQ regulations need to be more clear in describing the types of CDQ projects that would be acceptable. The CDQ regulations should direct a portion of CDQ resources to be used to construct

and maintain public infrastructure in CDQ communities.

Response. Job creation is part of some CDPs and is usually associated with training and job creation in commercial fisheries. Training and job creation in commercial fisheries will increase the number of skilled fishermen. This will enable CDQ communities to become more self-sufficient in regional fisheries related development, which is a valid long-term goal of the CDQ program. The CDQ regulations allow the CDQ group's board of directors, along with their constituents, to choose their own CDQ projects because each CDQ group is more familiar with the needs of its communities and would be the best judge of whether a project would succeed or fail due to the local conditions. Additionally, by choosing their own projects and succeeding or failing on their own business skills, the CDQ groups can best learn the skills for developing a viable business. This will assist the CDQ groups in becoming self-sufficient in the future. Viable, ongoing businesses are a long-term goal of the CDQ program.

Comment 9. The proposed annual budget and annual budget reconciliation process is burdensome, and NMFS and State budget reporting requirements should be integrated so that separate reports to NMFS and the State are not necessary. CDQ groups should be allowed to submit existing business records to NMFS instead of separately prepared documents whose contents are based on NMFS' criteria.

Response. The Secretary, through NMFS, is obliged to ensure that the funds derived from CDQ activity are used as directed in each CDP for the benefit of the western Alaska communities. The annual budget and annual budget reconciliation report requirements were developed in conjunction with the State of Alaska because the existing reporting requirements were not sufficient to track the financial transactions of the CDQ groups. NMFS is requesting basic business information that should have already been developed for the CDQ board of directors. NMFS requires that each CDQ group submit reports based on NMFS' criteria because NMFS must ensure that the report contains the necessary information to evaluate any financial transactions.

Comment 10. Clarification is requested as to whether § 675.27(e)(3)(i)(F) (1) and (2) are intended to constitute substantial amendments because their contents are already covered under paragraphs § 675.27(e)(3)(i) (A) through (E). Clarification is requested as to the

meaning of the term "material change" in paragraph § 675.27(e)(3)(i)(F). The CDQ regulations should contain solid guidance so that a CDQ group can determine from the regulations whether an amendment is a substantial amendment or a technical amendment. The proposed requirement for written notification of technical amendments to be sent to NMFS before the change occurs is burdensome. This requirement could be met equally well with a quarterly reporting requirement.

Response. Paragraphs (e)(3)(i)(F)(1) and (2) of § 675.27 are part of the definition for a substantial amendment to a CDP. NMFS agrees that this is not clear and revises paragraphs (F)(1) and (2) to create a new paragraph (F). Paragraph (F) is necessary because it would be impossible to list every change to the present or future CDPs that could be a substantial amendment. NMFS did not want to burden the CDQ groups with a long list of CDP changes that would constitute substantial amendments. On the other hand, NMFS did not want to omit any change that could be a substantial amendment. NMFS decided to list the most important general changes that would be substantial in paragraphs (A) through (E), and then give the Governor of Alaska the discretion to recommend to the Secretary other changes to be substantial amendments, based on the Governor's decision as to what constitutes a "material change." NMFS must approve the Governor's recommendations for substantial amendments. A technical amendment is any change to a CDP that is not a substantial amendment. NMFS must be notified of any such change before the change is effected because the Governor and the Secretary must ensure that the change is not a substantial amendment. The burden of notification is slight because it can be accomplished by fax, and, in most cases, the response can be rapid.

Classification

The Director, Alaska Region, NMFS, determined that these FMP amendments are necessary for the conservation and management of the BSAI and GOA fisheries and that they are consistent with the Magnuson Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork

Reduction Act unless that collection of information displays a currently valid OMB control number. This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of information has been approved by The Office of Management and Budget (OMB), OMB control number 0646-0269. The public reporting burden for each year of this collection is estimated to average 40 hours per response for completing annual reports, 40 hours per response for completing annual budget reconciliation reports, 30 hours per response for completing substantial amendments, and 4 hours per response for completing technical amendments. For the first year of the CDQ program, completion of CDP applications is estimated to average 160 hours per response. For each of the last 2 years of the program, completion of annual budget reports is expected to average 40 hours per response. OMB approval has been obtained under OMB control number 0648-0269 for the CDQ-managing organization representative requirement to inform NMFS within 24 hours after the CDQ has been reached and fishing ceased. This requirement has an estimated response time of 2 minutes per response.

All reporting burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The Assistant Administrator for Fisheries, NOAA (AA) finds, good cause, pursuant to authority at 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date of this final rule. The inshore-offshore and CDQ programs have been in effect for the last 3 years, and the fishing industry is relying upon their continuation. A lapse in the effective regulations for these programs would confuse and destabilize the industry. Further, to the extent that this final rule continues regulations that currently are in effect, a delayed effectiveness period is unnecessary because the fishing industry does not need additional time to plan or prepare for compliance with these regulations. Therefore, the AA is waiving the 30-day delayed effectiveness period and making these regulations effective January 1, 1996, to coincide with the start of the fishing year.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: December 6, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUND FISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, the definitions of “Inshore component” and “Offshore component” are revised to read as follows:

§ 672.2 Definitions.

Inshore component (applicable through December 31, 1998) means the following three categories of the U.S. groundfish fishery that process pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, or both:

- (1) Shoreside processing operations;
- (2) Vessels less than 125 ft (38.1 m) in length overall, that process no more than 126 mt per week in round-weight equivalents of an aggregate amount of those fish; and
- (3) Vessels that process those fish at a single geographic location in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) during a fishing year. For the purposes of this definition, NMFS will determine the single geographic location in a fishing year for an individual processor from the geographic coordinates the vessel operator reports on the check-in notice (§§ 672.5(c)(1) and 675.5(c)(1)) of this chapter when that vessel first engages in processing those fish.

Offshore component (applicable through December 31, 1998) means all vessels in the U.S. groundfish fisheries not included in the definition of “inshore component” that process pollock caught in directed fisheries for pollock, or Pacific cod caught in directed fisheries for Pacific cod in the Gulf of Alaska, or both.

3. In § 672.7, paragraph (h) heading, and paragraph (h)(2) are revised to read as follows:

§ 672.7 Prohibitions.

(h) *Applicable through December 31, 1998.*

(2) Operate any vessel under both the “inshore component” and “offshore component” definitions at §§ 672.2 and 675.2 of this chapter during the same fishing year.

* * * * *

§ 672.20 [Amended]

4. In § 672.20, the headings of paragraphs (a)(2)(v), (c)(1)(ii), and (c)(2)(ii) are revised to read: “*Applicable through December 31, 1998.*”

5. In § 672.20, the headings of paragraphs (c)(1)(i) and (c)(2)(i) are revised to read: “*Applicable after December 31, 1998.*”

PART 675—GROUND FISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

6. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

7. In § 675.2, a definition for “Catcher vessel operational area” is added, in alphabetical order, and the definitions for “Community Development Plan,” “Community Development Quota,” “Community Development Quota Program,” “Community Development Quota Reserve,” “Inshore component,” and “Offshore component” are revised to read as follows:

§ 675.2 Definitions.

* * * * *

Catcher vessel operational area (CVOA) (applicable through December 31, 1998) means that part of the Bering Sea subarea south of 56°00' N. lat. and between 163°00' and 167°30' W. long.

Community Development Plan (CDP) (applicable through December 31, 1998) means a plan for a specific Western Alaska community or group of communities approved by the Governor of the State of Alaska and recommended to NMFS under § 675.27.

Community Development Quota (CDQ) (applicable through December 31, 1998) means a percentage of the CDQ reserve for a BSAI subarea or district as defined at § 675.20(a)(3)(ii) that is allocated to a CDP.

Community Development Quota Program (CDQ Program) (applicable through December 31, 1998) means the Western Alaska Community Development Program implemented under § 675.27.

Community Development Quota Reserve (CDQ Reserve) (applicable through December 31, 1998) means one half of the pollock TAC that is placed into the reserve for each subarea and district of the BSAI as specified at

§ 675.20(a)(3) and that is set aside for the CDQ program.

* * * * *

Inshore component (applicable through December 31, 1998) means the following three categories of the U.S. groundfish fishery that process pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, or both:

- (1) Shoreside processing operations;
- (2) Vessels less than 125 ft (38.1 m) in length overall, that process no more than 126 mt per week in round-weight equivalents of an aggregate amount of those fish; and
- (3) Vessels that process those fish at a single geographic location in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) during a fishing year. For the purposes of this definition, NMFS will determine the single geographic location in a fishing year for an individual processor from the geographic coordinates the vessel operator reports on the check-in notice (§§ 672.5(c)(1) of this chapter and 675.5(c)(1)) when that vessel first engages in processing those fish.

* * * * *

Offshore component (applicable through December 31, 1998) means all vessels not included in the definition of "inshore component" that process pollock caught in directed fisheries for pollock, or Pacific cod caught in directed fisheries for Pacific cod in the Gulf of Alaska, or both.

* * * * *

8. In § 675.7, paragraph (i) heading, paragraph (i)(2), and paragraph (j) heading are revised to read as follows:

§ 675.7 Prohibitions.

* * * * *

(i) *Applicable through December 31, 1998.* * * *

(2) Operate any vessel under both the "inshore component" and "offshore component" definitions at § 672.2 of this chapter and § 675.2 during the same fishing year.

(j) *Applicable through December 31, 1998.*

* * * * *

9. In § 675.20, the headings of paragraphs (a)(2)(iii), (a)(3)(i), (a)(3)(ii), and (a)(3)(iii) are revised to read as follows:

§ 675.20 General limitations.

(a) * * *

(2) * * *

(iii) *Applicable through December 31, 1998.*

* * * * *

(3) * * *

(i) *Applicable through December 31, 1998.* * * *

(ii) *Applicable through December 31, 1998.* * * *

(iii) *Applicable through December 31, 1998; application for approval of a CDP and CDQ allocation.* * * *

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10. In § 675.22, paragraphs (g) and (h)(2) are revised to read as follows:

§ 675.22 Time and area closures.

* * * * *

(g) *Catcher vessel operational area (applicable through December 31, 1998).*

(1) The Catcher Vessel Operational Area is established annually from the beginning of the second season of directed fishing for pollock (defined at § 675.23(e)) until either the date that NMFS determines that the pollock quota for processing by the inshore component has been harvested or December 31, whichever is earlier.

(2) Vessels in the offshore component are prohibited from conducting directed fishing for pollock in the CVOA unless they are operating under a CDP approved by NMFS.

(3) Vessels in the offshore component that do not catch groundfish but do process pollock caught in a directed fishery for pollock may operate within the CVOA to process pollock.

(4) Vessels that catch or process groundfish in directed fisheries for species other than pollock may operate within the CVOA.

(h) * * *

(2) If the Regional Director determines that 42,000 nonchinook salmon have been caught by vessels using trawl gear during August 15 through October 14 in the CVOA, NMFS will prohibit fishing with trawl gear for the remainder of the period September 1 through October 14 in the Chum Salmon Savings Area defined under paragraph (h)(1) of this section.

11. In § 675.23, paragraph (e)(2) heading is revised to read as follows:

§ 675.23 Seasons.

* * * * *

(e) * * *

(2) *Applicable through December 31, 1998.* * * *

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12. In § 675.27, the section heading is revised, introductory text is added, and paragraphs (b)(1)(i), (b)(1)(vii), (b)(2)(vii), (b)(3)(ii)(B), (e), and the heading of paragraph (f) are revised to read as follows:

§ 675.27 Western Alaska Community Development Quota Program (applicable through December 31, 1998).

The goals and purpose of the CDQ program are to allocate pollock from the CDQ reserve to eligible Western Alaska communities to provide the means for starting or supporting commercial seafood activities that will result in ongoing, regionally based, commercial seafood or related businesses.

* * * * *

(b) * * *

(1) * * *

(i) A description of the CDP projects that are proposed to be funded by the CDQ and how the CDP projects satisfy the goals and purpose of the CDQ program;

* * * * *

(vii) Description of how the CDP would generate new capital or equity for the applicant's fishing and/or processing operations;

* * * * *

(2) * * *

(vii) A general budget for implementing the CDP. A general budget is a general account of estimated income and expenditures for each CDP project that is described at paragraph (b)(1)(i) of this section for the total number of calendar years that the CDP is in effect. An annual budget is required to be submitted with a CDP as described at paragraph (e)(1)(ii) of this section;

* * * * *

(3) * * *

(ii) * * *

(B) Documentation of a legal relationship between the CDP applicant and the managing organization (if the managing organization is different from the CDP applicant), which clearly describes the responsibilities and obligations of each party as demonstrated through a contract or other legally binding agreement; and

* * * * *

(e) *Monitoring of CDPs—(1) CDP reports.* The following reports must be submitted to NMFS:

(i) *Annual progress reports.* CDP applicants are required to submit annual progress reports to the Governor by June 30 of the year following allocation. Annual progress reports will include information describing how the CDP has met its milestones, goals, and objectives. On the basis of those reports, the Governor will submit an annual progress report to NMFS and recommend whether CDPs should be continued. NMFS must notify the Governor in writing within 45 days of receipt of the Governor's annual progress report, accepting or rejecting

the annual progress report and the Governor's recommendations on multiyear CDQ projects. If NMFS rejects the Governor's annual progress report, NMFS will return it for revision and resubmission. The report will be deemed approved if NMFS does not notify the Governor in writing within 45 days of the report's receipt.

(ii) *Annual budget report.* An annual budget report is a detailed estimation of income and expenditures for each CDP project as described in paragraph (b)(1)(i) of this section for a calendar year. The first annual budget report shall be included in the CDP. Each subsequent annual budget report must be submitted to NMFS by December 15 preceding the year for which the annual budget applies. Annual budget reports are approved upon receipt by NMFS unless disapproved in writing by December 31. If disapproved, the annual budget report may be revised and resubmitted to NMFS. NMFS will approve or disapprove a resubmitted annual budget report in writing.

(iii) *Annual budget reconciliation report.* A CDQ group must reconcile each annual budget by May 30 of the year following the year for which the annual budget applied. Reconciliation is an accounting of the annual budget's estimated income and expenditures with the actual income and expenditures, including the variance in dollars and variance in percentage for each CDP project that is described in paragraph (b)(1)(i) of this section. If a general budget as described at paragraph (b)(2)(vii) of this section is no longer correct due to the reconciliation of an annual budget, then the general budget must also be revised to reflect the annual budget reconciliation, and the revised general budget must be included in the annual budget reconciliation report.

(2) *CDQ increase.* If an applicant requests an increase in a CDQ under a multiyear CDP, the applicant must submit a new CDP application for review by the Governor and approval by NMFS as described in paragraphs (b) and (c) of this section.

(3) *Substantial amendments.* A CDP is a working business plan and must be kept up to date. Substantial amendments to a CDP will require written notification to the Governor and subsequent approval by the Governor and NMFS before any change in a CDP can occur. The Governor may recommend to NMFS that the request for an amendment be approved. NMFS may notify the Governor in writing of approval or disapproval of the

amendment within 30 days of receipt of the Governor's recommendation. The Governor's recommendation for approval of an amendment will be deemed approved if NMFS does not notify the Governor in writing within 30 calendar days of receipt of the Governor's recommendation. If NMFS determines that the CDP, if changed, would no longer meet the criteria under paragraph (d) of this section, or if any of the requirements under this section would not be met, NMFS shall notify the Governor in writing of the reasons why the amendment cannot be approved.

(i) For the purposes of this section, substantial amendments are defined as changes in a CDP, including, but not limited to, the following:

(A) Any change in the applicant communities or replacement of the managing organization;

(B) A change in the CDP applicant's harvesting or processing partner;

(C) Funding a CDP project in excess of \$100,000 that is not part of an approved general budget;

(D) More than a 20 percent increase in the annual budget of an approved CDP project;

(E) More than a 20 percent increase in actual expenditures over the approved annual budget for administrative operations; or

(F) A change in the contractual agreement(s) between the CDP applicant and its harvesting or processing partner, or a change in a CDP project, if such change is deemed by the Governor or the Secretary to be a material change.

(ii) Notification of an amendment to a CDP shall include the following information:

(A) The background and justification for the amendment that explains why the proposed amendment is necessary and appropriate;

(B) An explanation of why the proposed change to the CDP is an amendment according to paragraph (e)(3)(i) of this section;

(C) A description of the proposed amendment, explaining all changes to the CDP that result from the proposed amendment;

(D) A comparison of the original CDP text with the text of the proposed changes to the CDP, and the changed pages of the CDP for replacement in the CDP binder;

(E) Identification of any NMFS' findings that would need to be modified if the amendment is approved along with the proposed modified text; and

(F) A description of how the proposed amendment meets the requirements of

this § 675.27. Only those CDQ regulations that are affected by the proposed amendment need to be discussed.

(4) *Technical amendments.* Any change to a CDP that is not a substantial amendment as defined at paragraph (e)(3)(i) of this section, is a technical amendment. It is the responsibility of the CDQ group to coordinate with the Governor to ensure that a proposed technical amendment does not meet the definition for a substantial amendment. Technical amendments require written notification to the Governor and NMFS before the change in a CDP occurs. A technical amendment will be approved when the CDQ group receives a written notice from NMFS announcing the receipt of the technical amendment. The Governor may recommend to NMFS in writing that a technical amendment be disapproved at any time. NMFS may disapprove a technical amendment in writing at any time with the reasons therefor. Notification should include:

(i) The pages of the CDP with the text highlighted to show deletions and additions; and

(ii) The changed pages of the CDP for replacement in the CDP binder.

(5) It is the responsibility of the CDQ-managing organization to cease fishing operations once its respective CDQ pollock allocation has been reached. Total pollock harvests for each CDP will be determined by observer estimates of total catch and catch composition as reported on the daily observer catch message. The CDQ-managing organization must arrange for processors to transmit a copy of the observer daily catch message to it in a manner that allows the CDQ-managing organization to inform processors to cease fishing operations before the CDQ allocation has been exceeded. CDQ-managing organization representatives must also inform NMFS within 24 hours after the CDQ has been reached and fishing has ceased. If NMFS determines that the observer, the processor, or the CDQ-managing organization failed to follow the procedures described in paragraph (h) of this section for estimating the total harvest of pollock, or violated any other regulation in this part, NMFS reserves the right to estimate the total pollock harvest based on the best available data.

(f) *Suspension or termination of a CDP.*

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