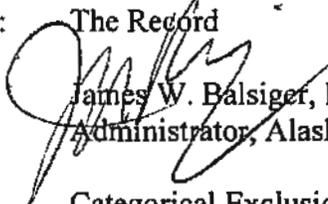




UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
P.O. Box 21668  
Juneau, Alaska 99802-1668

May 27, 2014

MEMORANDUM FOR: The Record  
FROM:  James W. Balsiger, Ph.D.  
Administrator, Alaska Region  
SUBJECT: Categorical Exclusion for Amendment 106 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and the Proposed Rule to allow for the Rebuilding, Replacement, and Removal of American Fisheries Act (AFA) Vessels, RIN 0648-BD35

NAO 216-6, Environmental Review Procedures, requires all proposed actions to be reviewed with respect to environmental consequences on the human environment. This memorandum summarizes the determination that Amendment 106 to the BSAI FMP and proposed implementing regulations qualify to be categorically excluded from further NEPA review pursuant to Section 5.05b and Section 6.03a.3(b)(1) of NAO-216-6, namely this action is an amendment to a previously analyzed and approved action and this action has no effect on the human environment beyond what was analyzed in prior actions.

The North Pacific Fishery Management Council (Council) approved Amendment 106 after reviewing a Public Review Draft of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis for this action. The Public Review Draft stated generally that this action has no effects individually or cumulatively with respect to environmental consequences on the human environment and therefore was categorically excluded from the need to prepare an Environmental Assessment.<sup>1</sup> The Council received no public comment that objected to this conclusion.

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<sup>1</sup> Public Review Draft at 21, RIR/IRFA for a Proposed Amendment to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands and Gulf of Alaska (March 2013)  
[https://alaska.fisheries.noaa.gov/npfinc/PDFdocuments/catch\\_shares/AFA/AFAVesselReplacement413.pdf](https://alaska.fisheries.noaa.gov/npfinc/PDFdocuments/catch_shares/AFA/AFAVesselReplacement413.pdf)  
The action, as approved, only required amendment to the BSAI FMP.



## **Description of the Action**

This action is Amendment 106 and proposed regulations. Amendment 106 implements amendments to the AFA that Congress adopted in the Coast Guard Authorization Act of 2010.<sup>2</sup> This action specifies the conditions under which the owner of an AFA vessel may replace an AFA vessel, rebuild an AFA vessel, or remove an AFA vessel.

This action allows the owner of an AFA vessel to replace or rebuild an AFA vessel to improve vessel safety and improve operational efficiency without limit on the size, weight, or horsepower of the replacement or rebuilt vessel. This action also allows the owner of an AFA catcher vessel that is a member of an inshore cooperative to remove the vessel from the Bering Sea directed pollock fishery and to direct NMFS to assign the catch history of the removed vessel to one or more vessels in the cooperative. This action leaves in place the current, stringent restrictions on participation by AFA vessels in fisheries outside of the Bering Sea pollock fishery and adopts new restrictions on participation by AFA rebuilt and replacement catcher vessels and by AFA vessels that leave the fishery.

## **Effects of the Action**

This action qualifies to be categorically excluded from further NEPA review because it is a change to a previously analyzed and approved action, namely the fishery management plan amendments that implemented the original AFA,<sup>3</sup> and the proposed change has no effect on the human environment not previously considered in the analysis of the original AFA and the analysis of other actions that limit the activity of AFA vessels.

## **Prior Analyses**

Under the analysis of the AFA, NMFS analyzed the essential features of the AFA: the definition of sectors of the BSAI pollock fishery; the determination of which vessels are eligible to participate as motherships, catcher/processor vessels, and catcher vessels; the allocations of BSAI pollock total allowable catch (TAC) to each sector of the fishery; the effects of fishery cooperatives in managing the fishery; sideboards to protect other fisheries from spillover effects from the rationalization of the BSAI pollock fishery; and stringent catch weighing and monitoring requirements including 200 percent observer coverage for catcher/processors (two observers per vessel).<sup>4</sup>

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<sup>2</sup> Pub. L. 111-281, 124 Stat. 2905 (Oct. 15, 2010) *amending* section 208(g) and section 210 of AFA. The AFA is codified as a note to the Magnuson-Stevens Act at 16 U.S.C. 1851.

<sup>3</sup> Final Environmental Impact Statement (FEIS) for American Fisheries Act Amendments 61/61/13/8 (NMFS, February 2002) <https://alaskafisheries.noaa.gov/sustainablefisheries/afa/eis2002.pdf>

<sup>4</sup> Final Environmental Impact Statement (FEIS) for American Fisheries Act Amendments 61/61/13/8 (NMFS, February 2002) <https://alaskafisheries.noaa.gov/sustainablefisheries/afa/eis2002.pdf>. In 2004, Congress amended the AFA and allocated the Aleutian Islands non-CDQ directed pollock fishery to the

In the analysis of the Alaska Groundfish Harvest Specifications, NMFS analyzed the annual harvest specification process, which is the process by which NMFS specifies the overfishing level, the acceptable biological catch and the TAC in federal waters off Alaska by groundfish species and by geographical area. In the harvest specification process, NMFS sets the TAC for pollock that may be taken by AFA vessels; the sideboard limits for fisheries other than pollock that AFA vessels may catch and process; the prohibited species catch limits for AFA vessels.<sup>5</sup>

NMFS analyzed separately measures to minimize bycatch of Chinook salmon by the AFA fleet.<sup>6</sup> NMFS has also analyzed the effect of Council-managed fishing, including fishing by AFA vessels, on essential fish habitat (EFH).<sup>7</sup>

#### Amendment 106: Rebuilding and Replacing AFA Vessels

Amendment 106 allows an owner of an AFA vessel to rebuild or replace an AFA vessel if the owner concludes that a rebuilt or replacement vessel will be safer or more efficient than the prior AFA vessel. This action will likely have no effect on the human environment because this action does not allow fishing and processing by AFA and non-AFA vessels beyond what was considered in prior analyses. NMFS reaches this conclusion for three reasons.

First, this action will not result in any additional AFA permits. This action will not increase the number of AFA vessels in any sector (catcher vessel, catcher/processor, mothership) beyond what was considered in the original AFA analysis. This action allows an owner of an existing AFA vessel to rebuild or replace that vessel, if the owner concludes that action will result in a safer or more efficient vessel and the owner is willing to bear the significant cost of the upgrade.

Under current regulation, an owner of an AFA vessel cannot replace an AFA vessel until the vessel is physically lost or is so damaged that the vessel cannot be economically repaired. This action allows the owners of AFA vessels to take advantage of improved safety and efficiency features in a rebuilt or replacement vessel. But the AFA rebuilt or

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Aleut Corporation. Final Rule, 70 FR 9856 (March 1, 2005); 50 CFR 679.4(m). If the Aleut Corporation does not prosecute that fishery, and other conditions exist, NMFS may reallocate the TAC for this fishery to the Bering Sea pollock fishery. *See* 50 CFR 679.20(a)(5)(iii).

<sup>5</sup> Alaska Groundfish Harvest Specifications – FEIS (NMFS, January 2007)

<https://alaskafisheries.noaa.gov/analyses/specs/eis/default.htm>. NMFS prepared annual supplementary information reports from 2009 to 2013. <https://alaskafisheries.noaa.gov/cm/analyses/default.aspx>. In these reports, NMFS concluded that changes since the FEIS do not require a supplemental EIS.

<sup>6</sup> Bering Sea Chinook Salmon Bycatch Management – FEIS (NMFS, December 2009)

<https://alaskafisheries.noaa.gov/sustainablefisheries/bycatch/salmon/chinook/feis/>

<sup>7</sup> Final Environmental Impact Statement for Essential Fish Habitat Identification and Conservation in Alaska (NMFS, April 2005) <https://alaskafisheries.noaa.gov/habitat/seis/efheis.htm>

replacement vessels are subject to the same, or greater, restrictions as the original AFA vessels.<sup>8</sup>

Second, under this action, if an AFA owner replaces a vessel, the AFA vessel that is replaced – the vessel that leaves the AFA fishery – is not eligible for a federal fishery endorsement except that it may reenter the AFA fishery as a replacement vessel. Therefore, a former AFA vessel would not participate in other federal fisheries, except possibly the AFA fishery.

Third, even though under this action an AFA vessel owner may replace or rebuild an AFA vessel with no limit on the length, size, or horsepower of the rebuilt or replaced vessel, any AFA rebuilt or replacement vessel is subject to the same stringent set of restrictions on harvesting and processing that apply to original AFA vessels. These restrictions will effectively constrain the activities of AFA replacement and rebuilt vessels to the same extent they constrain the activity of original AFA vessels.

With respect to target species, Bering Sea pollock is the primary species that is targeted by AFA vessels and, to a much lesser extent, Pacific cod and yellowfin sole. These species are at a sustainable population level. NMFS manages these species and all species in the BSAI and the Gulf of Alaska (GOA) through the annual harvest specification process with annual TACs that are based on the carrying capacity of the species. Effective monitoring and enforcement measures including internal controls by fishery cooperatives ensure that TACs are not exceeded.

With respect to incidental catch, nothing in Amendment 106 would change fishing practices to increase incidental catch in the pollock fishery. AFA vessels are in the full (or 200 percent) observer coverage category so NMFS has reliable estimates of incidental catch.

Amendment 106 does not diminish the stringent restrictions on AFA vessels that prevent AFA vessels from expanding participation into other fisheries in Alaska beyond their historical catch levels. These include sector allocations, sideboard restrictions in both the BSAI and the GOA, stand down requirements in GOA, exclusive fishing seasons for AFA catcher vessels, trip limits, and the limits on AFA catcher vessels operating as tender vessels.

With respect to activity in the GOA by AFA vessels, Amendment 106 expressly preserves the limits in existing regulations on the length of AFA vessels if AFA vessels participate in the GOA. AFA vessels still must have a License Limitation Program (LLP)

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<sup>8</sup> Under the AFA amendments, catcher vessels that are rebuilt or replaced may not harvest fish in any fishery outside Alaska except the Pacific whiting fishery, a prohibition that did not apply to original AFA catcher vessels.

license that authorizes fishing in the GOA and still must not exceed the maximum length overall on that LLP license. As noted, AFA vessels are subject to sideboard limitations in the GOA, by species, which strictly limit their participation in GOA fisheries.

With respect to prohibited species, prohibited species in the BSAI FMP are Pacific halibut, Pacific herring, Pacific steelhead, Pacific salmon including Chinook salmon, king crab, and Tanner crab. NMFS sets prohibited species catch (PSC) limits by species and sector through the annual harvest specification process. As with TACs, effective monitoring and enforcement measures, including internal controls by fishery cooperatives, ensure that PSC limits are not exceeded.

Chinook salmon has received special attention because of the cultural and economic significance of this species. NMFS comprehensively analyzed management measures to minimize bycatch of Chinook salmon by the AFA fleet including the measure adopted and approved by the Secretary of Commerce, namely a hard cap for Chinook salmon bycatch with an incentive plan agreements and a performance standard.<sup>9</sup>

This action is not expected to have any effect on the harvest by AFA vessels of target species, incidental catch species, or prohibited species, including Chinook salmon, beyond what was considered in the AFA analysis, the Harvest Specification Analysis and the analysis of the Chinook salmon bycatch measures.

With respect to the overall effect of Council-managed fishing, including fishing by AFA vessels, the Essential Fish Habitat (EFH) Environmental Impact Statement found no indication that the current rate and intensity of fishing would alter the capacity of the EFH to support healthy populations of managed species over the long term.<sup>10</sup> This action would have no additional impacts to EFH beyond those considered in the EFH EIS.

With respect to fisheries outside of Alaska, AFA catcher/processors and motherships are already prohibited from participating in any fishery outside of the North Pacific except the Pacific whiting fishery. Amendment 106 imposes the same prohibition on any rebuilt or replaced AFA catcher vessels.

#### Amendment 106: Removing AFA Vessels

Amendment 106 also allows the owner of an AFA catcher vessel in an inshore cooperative to remove the vessel from the AFA fishery and assign the pollock catch history of the removed vessel to one or more vessels in the same cooperative. Some AFA

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<sup>9</sup> NMFS 2009: Bering Sea Chinook Salmon Bycatch Management – FEIS (December 2009) <https://alaskafisheries.noaa.gov/sustainablefisheries/bycatch/salmon/chinook/feis/>

<sup>10</sup> Final Environmental Impact Statement for Essential Fish Habitat identification and Conservation in Alaska (NMFS, April 2005) <https://alaskafisheries.noaa.gov/habitat/seis/efheis.htm>.

catcher vessels are not actively fishing; the owners of these vessels assign their pollock allowance to a cooperative. Under current regulation, these vessels must be stored because NMFS may only issue an AFA permit to the current owner of an AFA vessel.

This part of Amendment 106 will improve efficiency by no longer requiring the storage of inactive vessels. It will not affect the human environment for two reasons. First, the AFA catcher vessels that receive the directed pollock allowance of the removed vessel are subject to all the restrictions on their activities described above. Second, the removed vessel may not participate in any federal fishery except that an AFA vessel that is removed may reenter the AFA fishery as a replacement vessel.<sup>11</sup>

### **Categorical Exclusion**

This action is a change to a previously analyzed and approved action. The proposed change has no effect on the human environment beyond what was considered in prior actions. Therefore, this action is categorically excluded from the need to prepare an Environmental Assessment or Environmental Impact Statement based on sections 5.05b and 6.03a.3(b)(1) of NAO 216-6. This action also does not have the potential to pose significant effects to the quality of the environment and therefore also warrants a categorical exclusion under section 5.05b and 6.03d.4 of NAO 216-6. This action presents no extraordinary circumstances that would remove this action from qualifying as a categorical exclusion.

CC: AKR NEPA Coordinator  
NOAA NEPA Coordinator

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<sup>11</sup> The Coast Guard Authorization Act of 2010 also named four catcher vessels that may leave the AFA fishery but still participate in the New England and Mid-Atlantic fisheries in conformity with the fishery management plans for those regions.