

Draft for Council Review

Regulatory Amendment to Remove AFA Preliminary Annual Reporting Requirements

Regulatory Impact Review

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Lead Agency

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Abstract: This document contains a Regulatory Impact Review (RIR) of a proposed regulatory amendment to remove the requirement for American Fisheries Act cooperatives participating in the directed fishery for pollock in the Bering Sea to prepare and submit to the North Pacific Fishery Management Council (Council) the preliminary annual report described in 50 CFR 679.61(f). Requirements for the AFA cooperatives to submit a single annual report to the Council would be retained. The analysis in this document addresses the requirements of Executive Order 12866.

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Executive Summary

NMFS requests that the North Pacific Fishery Management Council (Council) review a proposal to remove the requirement for American Fisheries Act (AFA) cooperatives participating in the directed fishery for pollock in the Bering Sea to prepare and submit to the Council the preliminary annual report described in 50 CFR 679.61(f). Requirements for the cooperatives to submit a single annual report to the Council would be retained.

This regulatory impact review (RIR) provides a cost-benefit analysis of proposed changes to regulations, addressing the statutory requirements of the Presidential Executive Order 12866 (E.O. 12866).

Ten cooperatives have developed as a result of the AFA: seven inshore catcher vessel cooperatives, one cooperative for catcher vessels delivering to catcher/processors, one for catcher/processors, and one for catcher vessels delivering to motherships. Each of these cooperatives is required to submit an annual report to the Council. The impact of the proposed action would be twofold: (1) cooperatives would no longer be required to submit a preliminary annual report, in addition to a final report, reducing their preparation and filing costs; and (2) the Council would incur reduced administrative costs, since it would no longer have to receive and process a preliminary and a final report. If the Council determines that there is no longer an administrative need for the preliminary report, its elimination would impose no costs. Thus, the proposed action would have positive net benefits.

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1 Regulatory Impact Review¹

Introduction

The National Marine Fisheries Service (NMFS) requests the North Pacific Fishery Management Council (Council) to consider whether it is appropriate to remove the requirement for American Fisheries Act (AFA) cooperatives participating in the directed fishery for pollock in the Bering Sea to prepare and submit to the Council the preliminary annual report described in 50 CFR 679.61(f).

This document provides a cost-benefit analysis of these proposed changes to regulations. The analysis addresses the statutory requirements of Presidential Executive Order 12866 (E.O. 12866, 58 FR 51735, September 30, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

E.O. 12866 further requires that the Office of Management and Budget review proposed regulatory programs that are considered to be “significant.” A significant regulatory action is one that is likely to --

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

Statutory Authority

NMFS manages the U.S. groundfish fisheries of the Bering Sea and Aleutian Islands in the Exclusive Economic Zone off Alaska under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council), under the authority of the Magnuson-Stevens Act Fishery Conservation and Management Act. Regulations implementing the FMP appear at 50 CFR part 679. The pollock fishery in the Bering Sea (BS) also is managed under the American Fisheries Act (AFA) (16 U.S.C. 1851 note). General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

¹ Environmental review requirements under the National Environmental Policy Act will be addressed in a separate categorical exclusion. Regulatory Flexibility Act requirements will be met by a certification that the proposed action does not have significant impacts on a substantial number of small entities.

Background

In October 1998, Congress enacted the AFA, which “rationalized” the BS pollock fishery by identifying the vessels and processors eligible to participate in the fishery and allocating pollock among those eligible participants. Under the AFA, a portion of the BS pollock total allowable catch is allocated among the Western Alaska Community Development Quota (CDQ) Program, the inshore sector, the catcher/processor sector, and the mothership sector. Implementing regulations for the AFA are found at 50 CFR part 679, Subpart F.

The AFA allowed for the formation of fishery cooperatives within the non-CDQ sectors. The purpose of these AFA cooperatives is to further subdivide each sector’s or inshore cooperative’s pollock allocation among participants in the sector or cooperative through private contractual agreements. The cooperatives manage these allocations to ensure that individual vessels and companies do not harvest more than their agreed upon share. The cooperatives also facilitate transfers of pollock among the cooperative members, enforce contract provisions, and participate in the intercooperative agreement (ICA) to reduce salmon bycatch.

Each year, catcher vessels eligible to deliver pollock to the seven eligible AFA inshore processors may form inshore cooperatives associated with a particular inshore processor. NMFS permits the inshore cooperatives, allocates pollock to them, and manages these allocations through a regulatory prohibition against an inshore cooperative exceeding its pollock allocation. Inshore catcher vessels are not required to join an inshore cooperative. Those that do not join an inshore cooperative are managed by NMFS under the “inshore open access fishery.”

The AFA catcher/processor sector is made up of the catcher/processors and catcher vessels eligible under the AFA to deliver to catcher/processors. Owners of the catcher/processors that are listed by name in the AFA and still active in the BS pollock fishery have formed a cooperative called the Pollock Conservation Cooperative. The remaining catcher/processor, the F/V *Ocean Peace*, is not listed by name in the AFA, but is eligible to harvest up to 0.5 percent of the allocation of BS pollock to the catcher/processor sector. This portion of the catcher/processor sector’s allocation of BS pollock is reserved for “unlisted” catcher/processors that meet certain requirements, which only the F/V *Ocean Peace* meets. Owners of the catcher vessels eligible to deliver pollock to the catcher/processors have formed a cooperative called the High Seas Catcher’s Cooperative.

The AFA mothership sector is made up of three motherships and the catcher vessels eligible under the AFA to deliver pollock to these motherships. These catcher vessels have formed a cooperative called the Mothership Fleet Cooperative (MFC). The MFC does not include the owners of the three motherships. The primary purpose of the cooperative is to sub-allocate the mothership sector pollock allocation among the catcher vessels authorized to harvest this pollock, to manage these allocations, and to participate in the salmon bycatch reduction ICA.

Problem Statement

Currently, all AFA cooperatives are required to submit preliminary and final annual written reports on directed pollock fishing activity to the Council. The AFA annual reporting requirements were implemented under a final rule (67 FR 79692; December 30, 2002) implementing Amendment 61 to the FMP. The purpose of the annual reports as described in the final rule, is “to assist the Council and NMFS in meeting the requirements of section 210(a)(1) of the AFA, which requires that NMFS make such information available to the public in a manner that NMFS and the Council decide is appropriate.”

The preliminary AFA cooperative report is due to the Council by December 1 of the year in which the pollock fishing occurred. The final AFA cooperative report is due by February 1 of the following year. The AFA cooperative annual reports are required to provide information about how the cooperative distributed pollock and other groundfish species allocations, and prohibited species allowances, among the vessels in the cooperative; the catch of these species, by area, for each vessel in the cooperative; information about how the cooperative monitored fishing by its members; and a description of any actions taken by the cooperative to penalize vessels that exceeded the catch allocations and prohibited species catch allowances made to the vessel by the cooperative.

The Council originally recommended both a preliminary and a final annual report, because it wanted to have this report available for its December Council meeting when it adopts annual groundfish harvest specifications for the upcoming fishing year. The Council recognized that, because the pollock fisheries close on November 1, one month may not be enough time for the AFA cooperative representatives to compile all of the required information for the annual report. In addition, it was possible that some of the catch and bycatch data would be updated after the end of the year. Therefore, the Council recommended that NMFS require a preliminary report to provide as much information as was available by December 1, and a final report by February 1 of the following year to update or add any information that became available after December 1.

In more recent years, the Council may not be relying on the preliminary cooperative annual report to develop its recommendations on final groundfish specifications as much as it originally thought it would. Therefore, NMFS requests the Council assess whether the existing final annual report submitted after the fishing year is completed is sufficient for the Council's and public's needs for information under section 210(a)(1) of the AFA. If the preliminary annual report is no longer necessary, regulations requiring its submission by December 1 would be removed from §679.61(f). Regulations requiring the submission of a single annual report would be retained. Under the proposed rule to implement Amendment 91 to the FMP (75 FR 14016; March 23, 2010), the Council and NMFS proposed that the deadline for the AFA cooperative annual report would be moved from February 1 to April 1 of the following year. No additional action is needed by the Council to change the deadline of the final annual report.

The Alternatives

The alternatives under consideration for this action are:

Alternative 1. No action

Alternative 2. Revise regulations to remove the requirement for AFA cooperatives participating in the directed pollock fishery to prepare and submit the preliminary annual report described in 50 CFR 679.61(f).

Given the objective of this action, no additional alternatives are available.

Cost and Benefit Analysis

Ten cooperatives have developed as a result of the AFA: seven inshore catcher vessel cooperatives, one cooperative for catcher vessels delivering to catcher/processors, one for catcher/processors, and one for catcher vessels delivering to motherships. Each of these is required to submit an annual report.

The impact of this action would be twofold: (1) cooperatives would no longer be required to submit a preliminary report and a final report, thus reducing their preparation and filing costs; and (2) the Council would incur reduced administrative costs, because it will no longer have to receive and process a preliminary and a final report.

NMFS estimates that nine AFA cooperative reports are submitted per year (the catcher/processors' cooperative, and the cooperative for the catcher vessels that deliver to them, file a joint report). The total time required for a firm to prepare and file both its preliminary and final reports is estimated to be 32 hours for each respondent. Thus, the total estimated cost for submitting the reports currently is \$21,600.² This action should permit some reduction in these costs, although the total reduction would be considerably less than half (since the requirement for a full report would remain). If the savings were a quarter of the current costs (which may be high, because there is no change in the actual information required), the total savings would be \$5,400. This is provided as a rough estimate of the likely upper bound cost savings. The Council is estimated to incur \$275 in costs for processing these preliminary reports. There would be some savings here, as well.

In summary, if the Council determines that there is no longer an administrative need for the preliminary report, its elimination would impose no costs. Thus, the proposed action would have a net benefit.

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² A labor cost of \$75/hour has been assumed to take account of the involvement of management personnel in the preparation of the reports. Cooperatives are also estimated to incur *de minimus* (\$30) costs for photocopying and postage.