

## American Fisheries Act Program Review Work Plan December 2015

This document is a draft work-plan for a program review of the American Fisheries Act (AFA). The objective of this document is to describe the proposed scope of this review. This work-plan is organized into four sections. Section I provides a short summary of the key AFA provisions. Sections II and III explain the requirements that a review of AFA be developed and what should be contained in a program review. The conclusion from section II is that AFA is a Limited Access Privilege Program (LAPP) and therefore a review of the program must be prepared. As noted in section III, the elements of a program review tend to be drawn from the goals and objectives of the LAPP along with the goals, objectives, and National Standards of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Section IV is an annotated table of contents that is proposed for the program review.

### **I. American Fisheries Act**

The AFA was signed into law in October of 1998. The purpose of the AFA was to tighten U.S. ownership standards of fishing vessels that had been exploited under the Anti-reflagging Act, significantly decapitalize the Bering Sea and Aleutian Islands (BSAI) pollock fishery, and provide the BSAI pollock fleet the opportunity to conduct their fishery in a more rational manner while protecting non-AFA participants in other fisheries. Below are some key provisions of the AFA that are **not subject to modification** by the Council or NMFS:

- A requirement that owners of all U.S. flag fishing vessels comply with a 75 percent U.S. controlling interest standard. The provision is derived from section 202.
- A prohibition on the entry of any new fishing vessels into U.S. waters that exceed 165 ft registered length, 750 gross registered tons, or 3,000 shaft horsepower. This prohibition is derived from sections 202 and 208.
- A buyout of nine pollock catcher/processors and the subsequent scrapping of eight of these vessels through a combination of \$20 million in federal appropriations and \$75 million in direct loan obligations. The AFA buyout program is referenced in section 207.
- A new allocation scheme for BSAI pollock. Ten percent of the BSAI pollock total allowable catch (TAC) is allocated to the Community Development Quota (CDQ) Program, and after allowance for incidental catch of pollock in other fisheries, the remaining TAC is allocated as follows: 50% to vessels harvesting pollock for processing by inshore processors, 40% to vessels harvesting pollock for processing by catcher/processors, and 10% to vessels harvesting pollock processing by motherships. These allocations are derived from section 206.
- A prohibition on entry of new vessels and processors into the BSAI pollock fishery. The AFA lists by name vessels and processors and/or provides qualifying criteria for those vessels and processors eligible to participate in the non-CDQ portion of the BSAI pollock fishery. These sector definitions and eligible participants are derived from section 208. Note that Section 208 (f)(B)(2) allows, upon recommendation by the Council, AFA eligible catcher vessels to deliver pollock harvested from the directed fishing allowance to shoreside processors not eligible under Section 208(f)(B)(1) if the total allowable catch for pollock in the BSAI increased by more than

10% above the 1997 TAC or in the event of the actual total loss or constructive loss of a shoreside process eligible under section 208(f)(B)(1)(A).

- A 17.5% excessive share harvesting cap for BSAI pollock

Below are some key provisions of the AFA that **can be modified** by the Council or NMFS based on authorization in Subsection 213(c) of the AFA:

- A change in observer coverage and scale requirements for AFA catcher/processors.
- New standards and limitations for the creation of fishery cooperatives in the catcher/processor, mothership, and inshore industry sectors.
- A program under which NMFS grant individual allocations of the inshore BSAI pollock TAC to inshore catcher vessel cooperatives that form around a specific inshore processor and agree to delivery at least 90 percent of their pollock catch to that processor.
- The establishment of harvesting and processing sideboards on fishermen and processors who have received exclusive harvesting or processing privileges under the AFA to protect the interests of fishermen and processors who have not directly benefitted from the AFA; and,
- A requirement that the Council to develop excessive share caps for BSAI pollock processing and for the harvesting and processing of other groundfish.

## **II. Requirements for a LAPP Review**

During passage of AFA, Congress anticipated that the Act would result in substantial changes to the businesses and communities that rely on fishing, as well as the natural resources that support those fisheries. To provide a better understanding of the impacts resulting from the Act, Congress requested that the Council develop a report focused on specific changes brought about by the AFA.

To address Congress's request, a report on AFA was completed a little over two years after implementation of the cooperative system. Since completion of that report dated April 1, 2002, another program report has not been completed on AFA.

Section 303A(c)(1)(G) of the MSA of 2006 also requires a formal and detailed review of a LAPP, such as the AFA program. MSA requires program review "5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years)." This proposed program review of AFA would satisfy the MSA program review requirement. Under current requirements, the next review of the AFA program would occur in 2022.

### III. Establishing a policy scope for review

Unless otherwise stipulated in program implementation, LAPP reviews do not currently have a check-list of required elements that must be completed.<sup>1</sup> For the AFA program, the Council has the flexibility to request whatever information they deem necessary to evaluate the objectives of the program as stated during program implementation. As noted in the Final Environmental Impact Statement for AFA Amendments 61/61/13/8, there were two primary objectives; (1) to complete the process begun in 1976 to give U.S. interests a priority in the harvest of U.S. fishery resources, and also (2) to significantly decapitalize the BSAI pollock fishery. The AFA was unprecedented in the 23 years since the enactment of the Magnuson-Stevens Act. With the Council system, congressional action is generally not needed to address fishery conservation and management issues in specific fisheries. However, Congress believed that the state of overcapacity that existed in the BSAI pollock fishery at the time of passage of the AFA in 1998 was the result of mistakes in, and misinterpretations of, the 1987 Commercial Fishery Industry Vessel Anti-Reflagging Act that only the Congress had the capacity to fix (*Cong. Rec. 1998, 12777-12782*). In addition, the AFA resolved the longstanding sectoral allocation battle in the BSAI pollock fishery which began in 1991 with the passage of Amendments 13/19, which made inshore and offshore allocations of pollock in the BSAI and GOA.

Guidance for this AFA program review could also be gleaned from section 213(d) of the AFA, which states that:

*“...the North Pacific Council shall submit a report to the Secretary and to Congress on the implementation and effects of this Act, including the effects on fishery conservation and management, on bycatch levels, on fishing communities, on business and employment practices of participants in any fishery cooperatives, on the western Alaska community development quota program, on any fisheries outside of the authority of the North Pacific Council, and such other matters as the North Pacific Council deems appropriate.”*

In addressing section 213(d), the April 1, 2002, Report to Congress and the Secretary of Commerce on the Impacts of the American Fisheries Act included the following areas of impacts:

- Conservation and management impacts
  - Fishing practices
  - Utilization of pollock harvested
  - U.S. Ownership standards
  - Non-AFA catcher/processors that had recent history in the BSAI pollock fishery
  - AFA participants
  - AFA vessels that did not fish BSAI pollock in 2000
  - Repayment of Federal loan by the inshore sector
  - Protecting other fishery participants
  - Cooperative contracts and reports
  - Leasing of quota among cooperative members
- Incidental catch, PSC, and discards
- Fishing Community
- Business and Employment Practices
- CDQ
- Fisheries outside of the authority of the North Pacific Fishery Management Council

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<sup>1</sup> NOAA NMFS is currently developing guidance for program reviews. It is not expected that this template will be completed before the review is brought back to the Council.

In §303A(c)(1) of the MSA, as amended, provides a list of requirements for LAPPs. The following list summarizes issues derived from language in §303A(c)(1) that appear relevant to a program review.

- capacity reductions
- fishing safety
- fishery conservation and management
- social and economic benefits

To help determine relevant information and discussions for the AFA program review, additional work on program reviews that was reviewed. One of these additional works was the NOAA Catch Share Policy document that provides policy recommendations for nine guiding principles in the development and evaluation of catch share plans. Another aid that was consulted was other program reviews that provide examples;<sup>2</sup> suggesting ways to illustrate the impact of program elements when these elements are also relevant to the AFA program. Finally, SSC and AP recommendations and public comment are also important and informative resource to help define the policy scope of issues to be highlighted in this AFA program review.

#### **IV. Annotated proposed table of contents**

This document will provide a review of the effects that the AFA program has had on various sectors of the North Pacific fishing industry and those communities that have historically relied on the pollock fisheries off Alaska's coast. The report will be designed to be a history of what has happened in the different fisheries by AFA qualified vessels since the previous AFA program review in 2002, but in some discussions, utilizing pre-AFA trends to help illustrate changes since implementation of the AFA program will be utilized. It is not intended to be rigorous scientific paper that would allow the reader to determine the economic costs and benefits of the program. Therefore, the review will not be designed to meet the standards of a formal Regulatory Impact Review that is required for implementing an amendment to the Council's FMP or regulations currently in place.

##### **1. Executive Summary**

The executive summary will be developed to be a stand-alone document. It will include summaries of the key findings of the AFA program since the previous program review in 2002.

##### **2. Introduction**

This section will include a description of the objective of the review. Similar to the work-plan, it will detail the requirements to prepare a program review and available authoritative guidance. It will lay out the footprint of the review and describe the data sources that are used within the document. Primary data sources include Catch Accounting data, Alaska Department of Fish and Game Fish tickets, COAR data and elements of the Economic SAFE.

##### **3. Description of Management**

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<sup>2</sup> For example, the Council recently conducted a 5-year review of the Amendment 80 sector. Additionally the Central Gulf Rockfish Pilot Program had a review after its implementation. Catch Share program reviews to be referenced from out of the North Pacific area include the Red Snapper IFQ Program 5-Year Review from the Gulf of Mexico region.

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Included in this section will be comprehensive description of the management elements implemented at the creation of the AFA program. We intend to reiterate the description of these elements of management still consistent with the design of the program today. This is in part for completeness, and in part so that the document can reference these particular elements when appropriate.

The review will also highlight the adaptive management process of the Council by describing recent management issues and amendments to the AFA program since the previous review in 2002. The description of management section will include a description of Council activity related to the AFA program that occurred since 2002, including actions considered, but not taken by the Council. The following table details these actions since 2002.

<b>AFA FMP Amendment Number</b>	<b>Topic</b>	<b>Date of Council Final Action</b>	<b>Status</b>
Amendment 61/61/13/6	Implement of major provisions of the AFA	October 2002	Final Rule implemented January 29, 2003
Amendment 69	Revise AFA inshore cooperative requirements	June 2001	Final Rule implemented March 13, 2003
Regulatory amendment and Amendment 62/62	Revision of Single Geographic Location Requirements. The action also revised 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	June 2002	Final Rule implemented August 17, 2009
Regulatory amendment	Action revised the 2006 & 2007 "other species" harvest sideboard limitations for non-exempt AFA catcher vessels and non-AFA crab vessels due to reduction in the TAC for "other species"	N/A	Final rule implemented November 30, 2006
Amendment 80	Action provides an apportionment of BSAI yellowfin sole to the trawl limited access sectors, and removed the harvest limit for AFA catcher/processors when the ITAC of BSAI yellowfin sole is greater than 125,000 mt.	June 2006	Final rule implemented January 20, 2008
Amendment 84	Establishes salmon prohibited species catch (PSC) intercooperative agreement and exempts pollock vessels from Chinook and Chum Salmon Savings Area closures if they participate in an intercooperative agreement to reduce salmon PSC	October 2005	Final Rule implemented November 28, 2007
Amendment 91	Implement the Chinook Salmon Economic Data Report Program, which evaluates the effectiveness of Chinook salmon PSC management measures in the BS pollock fishery that were implemented under Amendment 91	December 2009	Final Rule implemented March 5, 2012

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<b>AFA FMP Amendment Number</b>	<b>Topic</b>	<b>Date of Council Final Action</b>	<b>Status</b>
Amendment 97	Allows the owner of a trawl catcher/processor vessel authorized to participate in the Amendment 80 catch share program to replace that vessel with a vessel that meets certain requirements to include a prohibition on the use of an AFA vessel as a replacement vessel	May 2010	Final Rule implemented October 31, 2012
Amendment 106	Allows the owner of an AFA vessel to rebuild or replace an AFA vessel without any limitation on the length, weight, or horsepower of the rebuilt or replacement vessel. Also allows owners of an AFA catcher vessel in an inshore cooperative to remove the vessel from the cooperative and assign the BS pollock catch history of the removed vessel to one or more vessels in the cooperative	April 2013	Final Rule implemented October 14, 2014
No amendment number	The action combines a range of management measures including incorporation of chum salmon into existing industry-managed incentive plan agreements, tools to facilitate flexibility for the pollock fleet, more stringent IPA provisions, and reduction of overall cap levels in times of low western Alaska Chinook salmon abundance.	April 2015	No NMFS action at this time

Based on input from the Council concerning the work-plan for the BSAI crab rationalization program review during the February 2015 meeting, the authors intend to keep the discussion of this section to a brief description of what these actions were and a basic understanding of their effects on the fishery to the extent this information is available. Some of these rules have not been implemented yet; thus limited information may be available on the impacts of the new provisions, above what the impact analysis for the rule-making had stated.

**4. Conservation and Fishing Practices**

One of the primary goals of the AFA program is to provide the BSAI pollock fleet the opportunity to conduct their fishery in a more rational manner while protecting non-AFA participants in other fisheries. As noted in the 2002 Report to Congress, the AFA program up to that point was largely successful in achieving this goal. Participants of the AFA program stated that the program had allowed them to improve their fishing practices and operate their businesses in a more rational manner.

To determine if the AFA program has continued to be successful in providing opportunity for rational fishing for the BSAI pollock fleet, this section of the review will summarize the different sectors of the

AFA program during the 2002 through 2014 period. It will provide data showing the number of AFA trawl catcher vessels, AFA catcher/processors, and AFA motherships, and AFA shore processors in the BSAI pollock fishery and other groundfish fisheries in the Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA). The section will provide information on fleet consolidation and trends in harvesting and processing of pollock and other groundfish fishery resources and the historical value of that harvesting and processing by the different AFA sectors during the 2002 through 2014 time frame. This section will also include brief review of the excessive harvest cap (17.5%) and excessive processing limits (30%) of BSAI pollock.

This section will also focus on retention and utilization of fishery resources by AFA vessels during the 2002 through 2014 period. This will include utilization at the processing level. Great emphasis was placed on better utilization of the pollock resource in development of AFA. Members of the AFA are keenly aware of the importance of retention and utilization of the pollock resource in terms of their own bottom line. Processors that are able to generate more product from a given amount of pollock would likely increase their revenues. This also translates to increased profits for the firm, if they are able to produce that product for less the cost of production. As was noted in the 2002 Report to Congress, AFA fishermen and processors were able to better utilize the pollock resource. Catcher/processor sector utilized more of the resource that they were given the right to harvest under the AFA. The inshore sector also increased their utilization of BSAI pollock after cooperatives were implemented. The mothership sector also increased their utilization as well. To determine if pollock sectors are continuing to generate better utilization of the pollock resource since 2002, it is the intent of the author to provide updated annual pollock utilization rates for the different sectors as well as information on product mix produced by each of the AFA processing sectors during 2002 through 2014 period.

Included in this section will also be information on discards by the AFA fleets during the 2002 through 2014 time period. The term ‘discards’ will refer to fish that were not retained for processing. Discards are generally considered as either ‘economic’ or ‘regulatory’. Economic discards occur when it costs more (including opportunity costs of the plant) to process fish than the market is willing to pay. These fish are often of poor quality, a size the market will not accept, or the plant being unable to efficiently process that fish. Regulatory discards occur when Federal or State regulations mandate that the fish be discarded. Prohibited species catch (PSC) are regulatory discards and so are groundfish harvested above the maximum retainable allowance (MRA).

Also included in this section will provide annual incidental catch amounts and rates by species for each harvesting sector from 2002 through 2014. The term ‘incidental catch’ is used in this report to describe fish that are harvested when targeting another species. For example, Pacific cod is often taken incidental when fishermen are trying to harvest pollock in a directed pollock fishery. Pacific cod, taken incidental in this example, may be processed into a saleable product.

This section will also provide a summary of the Council and industry actions concerning salmon PSC by the AFA sectors. Salmon PSC is the most prevalent in the midwater pollock target fishery. To help alleviate the problems associated with salmon PSC, the Council and the AFA sectors have been actively addressing Chinook and chum salmon PSC measures since the mid-1990s through area closures, rolling hot spot closure system, hard PSC caps, and the Incentive Plan Agreements. This section of the report will review the Council’s and the AFA cooperative’s actions in reducing salmon PSC the BS during the 2002 through 2014 period. The pollock industry has also been developing salmon excluder devices for trawl gear, which allows salmon to escape from the trawl net underwater, while retaining pollock.

This section will also include a brief description of the AFA cooperatives and the intercooperative agreements. These cooperative and intercooperative agreements provides a crucial cooperative structure

between the AFA participants on such things as allocation, monitoring, and compliance of the pollock fishery, PSC caps, sideboard harvest limits, establishment of penalties for exceeding pollock and sideboard allocations, establishment and monitoring of sideboard species transfers, compliance of the Council's recommended sideboard measures and PSC limits while allowing for maximum harvest of AFA pollock and sideboard allocations, and promote reduction of PSC in the Bering Sea pollock fishery.

There are currently eight cooperative agreements:

- Peter Pan Fleet Cooperative
- Unisea Fleet Cooperative
- Westward Fleet Cooperative
- Unalaska Fleet Cooperative
- Akutan Catcher Vessel Cooperative
- Northern Victor Fleet Cooperative
- Pollock Conservation Cooperative
- High Seas Catchers Cooperative, and
- Mothership Fleet Cooperative.

In addition to the cooperative agreements, there are also several intercooperative agreements:

- Catcher Vessel Intercooperative Agreement
- Cooperative Agreement Between Offshore Pollock Catchers' Cooperative and Pollock Conservation Cooperative
- Cod Agreement
- Chum Salmon Protection Agreement
- Supplemental Non-Chinook Salmon Protection Agreement
- Chinook Data Sharing Agreement, and
- Squid Agreement.

Finally, since 2005, the pollock fishery has met the Marine Stewardship Council (MSC) standard for a well-managed and sustainable fishery. The pollock fishery has also met the Responsible Fishery Management (RFM) certification developed by Alaska Seafood Marketing Institute. This section will include a brief description of the MSC and RFM programs and a description of the elements that contributed to the pollock fishery receiving the MSC and RFM certifications.

## **5. Pollock Markets and Prices**

This section intends to describe the pollock markets since implementation of the AFA program, including market changes in recent years. A good portion of this section will come from the Alaska Groundfish Market Profiles on pollock fillets, surimi, and roe that are included in the Economic Stock Assessment and Fishery Evaluation Report (SAFE) prepared by Northern Economics, Inc. in 2008 and updated by AFSC staff.

## **6. Protecting Other Fishery Participants**

Protecting participants in other U.S. fisheries, that could be negatively impacted by the BSAI pollock fleet, is required by the AFA. The Council developed a variety of sideboards to prevent AFA vessels from increasing their catch in other fisheries. Sideboard limits do not guarantee the sector that is sideboarded any amount of groundfish total allowable catch (TAC). If other sectors take the available

TAC before the sideboard limit is taken, both the sideboard fishery and the directed fishery will be closed to directed fishing. If the sideboard fleet reaches their sideboard limit before the TAC is taken, the sideboard fishery would be closed to directed fishing, but the remainder of the fleet may continue to fish under the remaining TAC.

Protections the Council developed for non-AFA fish harvesters differ depending on whether they are applied to AFA catcher vessels or catcher/processors. This report will be divided into two sections. The first section will describe protections for persons/companies that harvest fish and are not part of the BSAI pollock fleet as defined in the AFA. One of the focuses of this section will be a review of the winter Pacific cod fishery in the BS. In the past, the Council has reviewed this fishery to determine if AFA vessels are adversely impacting non-AFA vessels in this fishery. The second section will describe protections for non-AFA fish processors. These sections will also evaluate AFA diversification in other fisheries throughout the 2002 through 2014 period.

#### **7. Assessment of CDQ Program in Pollock Fishery**

This section of the report will outline the impact of AFA on the CDQ program since 2002. Included in this section will be information on CDQ allocations in the pollock fishery as well as provide aggregate information on economic development activities that have resulted either directly or indirectly since 2002.

#### **8. Community Impacts of the AFA Program**

This section will describe in general terms the community impacts of the AFA vessels and AFA shore processors on Alaska communities and in Seattle. While not a specific focus of this section, some impacts on business and employment practices of participants in the fishery cooperatives, to the extent that they have resulted in community specific impacts, will be summarized in this section. Communities of focus for this review will be Kodiak, Akutan, Sand Point, King Cove, Dutch Harbor, and Seattle.

One of the most difficult analytic challenges in examining the community impacts of the AFA program results from the many other dynamics affecting the fishery and the fishing communities simultaneously. That is, “not all other things are equal,” so that attributing changes to a single cause or action (or estimating the weight of a single factor in combination with one or more other factors) is difficult or impossible in a strict sense. For example, other management actions affecting communities were enacted since implementation of AFA. While there is not a ‘black and white’ separation of impacts, it is possible to discuss the type and direction of impacts from the AFA program, which will be provided in this review.

#### **9. Safety in AFA Fishery**

With collaboration from NIOSH and the U.S. Coast Guard, the AFA review will examine the safety of the AFA fleet during the 2002-2014 period. NIOSH has detailed surveillance data on reported personnel casualties (i.e., fatal and nonfatal injuries) and all vessel disasters involving AFA vessels in the BSAI and the GOA during 2002-2014. These data on marine casualties were previously abstracted from U.S. Coast Guard investigation reports and entered into an injury surveillance database.

A descriptive epidemiologic analysis will be conducted to characterize and explain the safety hazards. Further analysis will model the risk of fatal and nonfatal injuries over the 13-year time period and to the extent possible, examine the effects of AFA on fishing vessel safety. Modeling risk will require additional data on fishing effort that will need to be provided by NMFS. NIOSH has an existing confidentiality agreement with NMFS that should facilitate the sharing of the required landings and effort data. Using the

results of the analyses, the safety section will provide an overview of workplace hazards in the AFA fleet, draw conclusions about AFAs potential effects on safety, and make recommendations for further improving the occupational safety of the fleet.

**10. Cooperative Contracts and Reports**

Any contract implementing an AFA fishery cooperative for the purpose of cooperatively managing directed fishing for BSAI pollock for processing by an AFA inshore processor, catcher/processor or mothership, and any material modifications to any such contracts must be filed not less than 30 days prior to the start of fishing under the contract with the Council and with the Regional Administrator. The section will provide a brief summary of the requirements of the cooperative contracts.

Reporting requirements for AFA cooperatives were established when AFA was first implemented. Any cooperative which harvests BSAI pollock must submit an annual report on cooperative activities to the Council. The objective of the report is to provide the Council, Secretary of Commerce, and the public with the information necessary to assess the effectiveness of the program. This section of the program review will provide an overview of annual cooperative report requirements and will summarize the applicability of the Paperwork Reduction Act to mandatory and voluntary information requests.

**11. Key Findings and Conclusion**

The final section of review intends to summarize key areas that appear to be consistent with goals of the program, requirements of LAPPs under the MSA, and the National Standards.

**V. Contributors and Persons Consulted**

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