

to the transaction (*i.e.*, the applicant, other party authorized to receive a license, purchaser, intermediate consignee, ultimate consignee, or end-user) is subject to one or more of the sanctions described in paragraphs (a), (b), (c), and (e) of this section and will deny any export or reexport license application for an item listed on the Commerce Control List with a reason for control of MT if a person who is a party to the transaction is subject to a sanction described in paragraph (d) of this section.

(a) A sanction issued pursuant to the Iran-Iraq Arms Nonproliferation Act of 1992 (50 U.S.C. 1701 note) that prohibits the issuance of any license to or by the sanctioned person.

(b) A sanction issued pursuant to the Iran, North Korea, and Syria Nonproliferation Act (50 U.S.C. 1701 note) that prohibits the granting of a license and requires the suspension of an existing license for the transfer to foreign persons of items, the export of which is controlled under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420), or the Export Administration Regulations.

(c) A sanction issued pursuant to section 11B(b)(1)(B)(ii) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420), that prohibits the issuance of new licenses for exports to the sanctioned person of items controlled pursuant to the Export Administration Act of 1979, as amended.

(d) A sanction issued pursuant to section 11B(b)(1)(B)(i) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420), that prohibits the issuance of new licenses for exports to the sanctioned person of MTCR Annex equipment or technology controlled pursuant to the Export Administration Act of 1979, as amended.

(e) A sanction issued pursuant to the Iran Sanctions Act of 1996 (50 U.S.C. 1701 note) that prohibits the issuance of a specific license or grant of any other specific permission or authority to export any goods or technology to a sanctioned person under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420).

Dated: January 30, 2012.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2012–2465 Filed 2–2–12; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 902

#### 50 CFR Part 679

[Docket No. 110207103–2041–02]

**RIN 0648–BA80**

### Fisheries of the Exclusive Economic Zone Off Alaska; Chinook Salmon Bycatch Management in the Bering Sea Pollock Fishery; Economic Data Collection

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement the Chinook Salmon Economic Data Report Program, which will evaluate the effectiveness of Chinook salmon bycatch management measures for the Bering Sea pollock fishery that were implemented under Amendment 91 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). Members of the American Fisheries Act catcher vessels, catcher/processor, and mothership sectors as well as representatives for the six western Alaska Community Development Quota Program organizations that presently receive allocations of Bering Sea pollock will submit the data collected for this program. This rule is intended to promote the goals and objectives of the FMP, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

**DATES:** This final rule is effective March 5, 2012.

**ADDRESSES:** Electronic copies of this rule, the Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA) may be obtained from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

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

**FOR FURTHER INFORMATION CONTACT:** Jeff Hartman, (907) 586–7442, or Patsy A. Bearden, (907) 586–7008.

**SUPPLEMENTARY INFORMATION:** NMFS manages the U.S. groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) in the Exclusive Economic Zone under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) 16 U.S.C. 1801, *et seq.* Regulations implementing the FMP appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

This rule implements the Chinook Salmon Economic Data Report (EDR) Program, which will provide NMFS with additional data to assess the effectiveness of the Chinook salmon bycatch management measures implemented under Amendment 91 to the FMP. The EDR consists of one new data collection and two revised data collections. The Chinook Salmon EDR program applies to owners and operators of catcher vessels, catcher/processors, motherships, and the six Western Alaska Community Development Quota (CDQ) Program groups qualified to participate in the pollock (*Theragra chalcogramma*) fishery in the Bering Sea subarea of the BSAI. This rule also applies to the representatives of the above described participants in the Bering Sea pollock fishery.

### Background

NMFS implemented Amendment 91 (75 FR 53026, August 30, 2010) to balance the need to minimize bycatch of Chinook salmon in the Bering Sea pollock fishery with the potential costs of bycatch restrictions on the pollock fishery. In addition to limiting the amount of Chinook salmon that may be caught by the pollock fishery, Amendment 91 includes innovative industry-designed incentives, such as the use of penalties for vessels that exceed a sector-established Chinook salmon PSC limit. These industry-enforced incentives are intended to minimize Chinook salmon bycatch to the extent practicable in all years, and to prevent bycatch from reaching the established limit in most years. Amendment 91 also allows NMFS to allocate transferrable Chinook salmon prohibited species catch (PSC) to an entity representing the catcher/

processor sector, mothership sector, inshore cooperatives, and CDQ groups participating in the Bering Sea pollock fishery. The Amendment 91 program applies to owners and operators of catcher vessels, catcher/processors, motherships, inshore processors, and the six CDQ Program groups participating in the pollock fishery in the Bering Sea subarea of the BSAI.

In developing Amendment 91, the Council used the best scientific information available, including catch accounting data, observer data and vessel monitoring system data, to sufficiently analyze the Chinook bycatch management measures approved by the Secretary. The Council determined that it needed additional data in order to evaluate the longer-term effectiveness of the industry's incentives and the hard cap for reducing salmon prohibited species catch in the Bering Sea pollock fishery.

#### Actions Implemented by Rule

Under this final rule, NMFS establishes economic data requirements to implement the Chinook salmon EDR program. In addition to the previous data sources, the EDR now includes three new data forms: (1) The Chinook Salmon Prohibited Species Catch (PSC) Compensated Transfer Report (CTR); (2) the Vessel Fuel Survey; and (3) the Vessel Master Survey. The persons required to submit the EDR include vessel owners, vessel leaseholders, or vessel masters of American Fisheries Act (AFA) vessels, depending on the requirements listed in each form. Submitters also include representatives for, or participants in, an AFA catcher/processor or mothership sector, inshore cooperative, CDQ groups, or parties to an incentive plan agreement (IPA).

This rule amends other existing recordkeeping and reporting requirements, including the (1) IPA Annual Report; (2) Catcher Vessel Trawl Gear Groundfish Daily Fishing Logbook; (3) Catcher/processor Trawl Gear Electronic Logbook; and (4) eLandings landing report. The rule also adds new data requirements for existing groundfish logbooks and landing reports on trawl vessels' movements to avoid Chinook salmon bycatch. The rule revises data requirements regarding transfers of Chinook salmon PSC and pollock among AFA participants in IPA Annual Reports.

#### What the Amendments Accomplish

The information required in the three new EDR forms and in the revisions to existing recordkeeping and reporting requirements includes a combination of quantitative and qualitative data that

will allow NMFS to analyze and compare annual and seasonal changes in the pollock fleet under Amendment 91. Specifically, the new EDR reports will gather information on authorized transfers of Chinook salmon prohibited species catch; vessel movements on the fishing grounds; and pollock allocations, sub-allocations, and transfers between members in an AFA cooperative.

The analysis NMFS will conduct with these data will assist NMFS and the Council to evaluate the effectiveness of: (1) The IPA incentives in times of high and low levels of Chinook salmon abundance; (2) the Chinook salmon PSC limits; and (3) the performance standard in reducing Chinook salmon bycatch. This analysis also can examine how Amendment 91 affects where, when, and how pollock fishing and Chinook salmon bycatch occur. Additionally, NMFS will use the data to study and verify conclusions regarding the effectiveness of Amendment 91 to minimize Chinook salmon bycatch to the extent practicable, as described by industry in an IPA annual report.

The Council recommended that the data collection program should be limited in scope to minimize the industry burden of recordkeeping and reporting. They also recognized that the quantity and quality of data submitted may only partially address the purpose and need statement for this action. This collection provides additional information to status quo data sources, but may not answer all the Council's Chinook salmon bycatch policy questions. Accordingly, the Council may propose future revisions to the data collection as industry develops experience with both the data collection program and Amendment 91. The preamble to the proposed rule (76 FR 42099, July 18, 2011) includes detailed information on the management background and need for the action.

#### Comments and Responses

NMFS invited comments on the proposed rule through August 17, 2011 (76 FR 42099, July 18, 2011). NMFS received one submission containing five unique comments on the proposed rule. The comments are summarized and responded to below.

*Comment 1:* To avoid duplicate reporting of an AFA cooperative's vessels' sub-allocations and seasonal harvest of the number of Chinook salmon PSC and the amount of pollock metric tons (mt), the proposed rule required reporting of these data in either the IPA annual report in § 679.21(f)(13) or in the AFA cooperative annual report in § 679.61(f)(2) but not in both. The

commenter requests that NMFS require the reporting of these data only in an IPA annual report, and make optional the reporting of these data by each AFA cooperative in the AFA cooperative annual report. The commenter points out that it is difficult for each AFA cooperative to be informed of a different AFA cooperative's records of sub-allocations and catches, and that coordinating data from multiple sources into a single report without some centralized repository for this data would be difficult. In contrast, each IPA may include parties from multiple cooperatives, and so an IPA representative has the ability to request, organize, and report that information from each AFA cooperative.

*Response:* NMFS agrees with this comment with respect to the reporting of information about the sub-allocations of Chinook salmon PSC and pollock. NMFS proposed the option of reporting all Chinook salmon PSC and pollock sub-allocation data as well as the number of salmon caught at the end of each season in either the AFA cooperative annual report or the IPA report, but not both. The reason for providing the option is to avoid duplicate data reporting requirements. NMFS originally believed that providing a mutually exclusive choice for either an AFA cooperative representative or the IPA representative to submit that data would provide some additional flexibility for the industry. The commenter provides new information that this approach may create additional reporting burden and will not provide the flexibility intended by NMFS. NMFS believes that an IPA representative can aggregate sub-allocation and catch data received from members of an AFA cooperative who also are party to an IPA. Under the final rule, NMFS continues to require the AFA cooperative representative to submit information on sub-allocations of Chinook salmon PSC and pollock in an IPA annual report. However, NMFS, will not require submission of that information in the AFA cooperative annual report. NMFS will continue to require the reporting of retained and discarded Chinook salmon PSC and pollock in both the IPA annual report and the AFA cooperative annual report.

*Comment 2:* Representatives for the AFA cooperative or sector-level entity are not likely to be informed of the price of each transaction for Chinook salmon PSC. Therefore, the quality of data in the Chinook Transfer Report (CTR) will not be improved by requiring this price data from these representatives.

*Response:* NMFS disagrees with the comment that a representative for an

AFA cooperative or sector level entity should be removed from the persons required to submit a CTR. NMFS proposed a broad approach to identify the persons that may have knowledge of CTR price data. When NMFS proposed this rule, the Amendment 91 program had been implemented recently, and little information was available about which industry participants would have knowledge about the details of the pricing of each Chinook salmon PSC transaction. Accordingly, NMFS proposed to gather information about the pricing from the parties most likely to have that information. Under this rule, the four persons required to report price and amounts of Chinook salmon PSC transfers in the CTR are (1) the owner or leaseholder of an AFA-permitted vessel; (2) the representative for an AFA cooperative; (3) the sector-level entity; and (4) the CDQ group. NMFS is aware that not all these persons may have transferred Chinook salmon PSC allocation and paid or received money for the transfer during the reporting year. In response to this comment, and to reduce reporting burden, NMFS has added a check box to the certification page of the CTR for any owner or leaseholder of an AFA permitted vessel and the representative of any entity that received an allocation of Chinook PSC from NMFS to indicate if he/she did or did not participate in any qualifying Chinook salmon PSC transactions. If the submitter did not participate in any qualifying Chinook salmon PSC transactions, then he/she may submit only the certification page and is not required to fill out any additional data.

If NMFS removes the requirement for a representative of an AFA cooperative or sector-level entity to submit a CTR or certification page, NMFS will not be able to differentiate between a representative of an AFA cooperative that had conducted a Chinook salmon PSC transaction and failed to submit the CTR, and a representative that had not conducted any qualifying Chinook salmon PSC transactions. NMFS believes that the requirement for representatives of an AFA cooperative or sector-level entity to submit the CTR is necessary to ensure that all persons involved in monetary exchange for Chinook salmon PSC fill out a CTR, and that the CTR reporting burden for those that did not pay or receive money for a transfer is minimal.

*Comment 3:* The Vessel Master Survey should include on the Vessel Owner Certification Page a "check box" to indicate that the vessel did not participate in the Bering Sea pollock fishery during the reporting year and, if

checked, the vessel owner should not be required to complete remaining sections of the Vessel Master Survey. The check box should be similar to the check box on the Vessel Fuel Survey.

*Response:* NMFS agrees with this comment. This is a minor revision to the Vessel Master Survey that will reduce unnecessary reporting burden. NMFS proposed the use of a similar check box for simplifying the reporting in the Vessel Fuel Survey. Adding a check box to indicate that the vessel did not participate in the Bering Sea pollock fishery should reduce the burden of reporting information in other fields of the form. Thus, NMFS has added a check box to the Vessel Master Survey to indicate if the vessel did not participate in the Bering Sea pollock fishery during the reporting year. In that event, the vessel owner will not be required to complete the remaining sections of the Vessel Master Survey. This revision to the survey does not amend regulatory text in the final rule, but is added to the Recordkeeping and Reporting requirements for the Vessel Master Survey (OMB Control Number 0648-0633).

*Comment 4:* The commenter does not object to requiring a vessel owner to submit each Vessel Master Survey filled out by a vessel master, but suggests the vessel owner should not be held responsible if the vessel master fails to submit a completed and accurate Vessel Master Survey.

*Response:* NMFS proposed that a vessel owner or leaseholder of an AFA-permitted vessel used to harvest pollock in the Bering Sea in the previous year must submit all Vessel Master Surveys completed by each vessel master who fished on the owner's vessel and verify that each vessel master listed on the certification page of the form was a vessel master of the owner's AFA-permitted vessel. This responsibility is assigned to the vessel owner because the owner is the individual most likely to hire a vessel master and arrange for collection of any information relevant to the operation of the vessel. Also, NMFS has no current database of vessel masters names and contact information that would allow for contact of each vessel master operating a given vessel. Instead, vessel owners or leaseholders are required to collect the completed data forms from each vessel master and submit them to NMFS, but are not responsible for the accuracy or completeness of information completed by the vessel master. A vessel owner or leaseholder, however, may be contacted by NMFS to assist in verifying the identity of vessel masters.

*Comment 5:* Under the proposed rule, persons submitting an EDR will be required to respond within 20 days of a NMFS information request. A 20-day time limit is an unreasonable number of days to expect a response, and a 90-day interval of time for responding to a request for additional data for verifying the accuracy of an EDR will be more practical.

*Response:* NMFS disagrees with this comment. The 20-day limit for responding to an inquiry from NMFS for additional information does not apply to all three Chinook salmon EDR data forms as stated in the public comment, but only to the CTR. Data required for the Vessel Master Survey and Vessel Fuel Survey is generally qualitative and based on the opinion of an owner or vessel master. NMFS does not require that submitters record and retain additional logs or records to support the qualitative responses, and will not audit these responses with requests for additional data. Data required for the CTR would include persons or entities party to specific transactions. The identity of persons, prices and the amounts included in a given transaction for the CTR are records that NMFS expects submitters to retain to support this data collection and other reporting. The 20-day time limit for responding to a request from NMFS to submit additional data for a CTR was modeled after EDR regulations for both the BSAI Crab Rationalization Program (70 FR 10174, March 2, 2005) and the Amendment 80 program (72 FR 52668, September 14, 2007). Submitters of data from each of those two ongoing data collection programs have successfully responded within the 20-day time limit. There are no requirements in the three Chinook EDRs that would justify a different or longer response period to agency requests for additional information on the CTR. Revising the 20-day limit to a different interval will create an inconsistency with these established EDR programs.

In both the BSAI Crab Rationalization and Amendment 80 EDR programs, the protocol for implementing the 20-day time limit for a submitter to respond to a NMFS request for additional information is invoked only after NMFS has completed a formal and multi-day sequence of steps for contacting submitters. The protocol for the sequence of phone, email, and letter contacts with a submitter of any EDR from whom NMFS requests additional information requires three weeks to a month, prior to NMFS concluding that NMFS data collection staff are unable to solicit a response from an EDR submitter. The total elapsed time prior

to forwarding a request to NOAA Office of Law Enforcement for assistance in contacting a submitter is approximately six to eight weeks. Based on the history of the submitter contact process for the BSAI Crab Rationalization and Amendment 80 EDRs, in only a single instance has NMFS requested that the NOAA Office of Law Enforcement assist in contacting an EDR submitter. The NOAA Office for Law Enforcement issued a formal warning to the submitter for not responding to a NMFS request for audit information on a Crab EDR. Based on experience in these EDR programs, in the final rule, NMFS retains the 20-day time limit for responding to a formal request for additional information on a submitted EDR.

### Changes From the Proposed Rule

In response to public comment on the proposed rule, NMFS will not revise the AFA cooperative's annual reporting requirements at § 679.61(f). NMFS is removing the proposed options for reporting certain information on Chinook salmon PSC and pollock in either an IPA annual report or an AFA cooperative's annual report. Additionally, NMFS removes the proposed provision to require that IPA annual reports at § 679.21(f)(13)(ii)(E) include the number of Chinook salmon PSC and the amount of pollock at the start of each season sub-allocated to each participating vessel, as well as the number of Chinook salmon PSC and amount of pollock (mt) caught at the end of each season, unless reported in an AFA cooperative's annual report under § 679.61(f)(2). NMFS removes the phrase "unless reported under § 679.61(f)(2)" in response to a public comment for the reasons explained above under Comments and Responses. An IPA annual report, therefore, must include the above-described information.

Another change NMFS makes from the proposed rule is to remove the proposed requirement that the AFA cooperative's annual report at § 679.61(f)(2)(vii) include data on the sub-allocations and catch of Chinook salmon PSC and pollock. This change responds to the public comment referred to above, and is explained under Comments and Responses.

NMFS also withdraws all proposed revisions to § 679.61(f)(2)(ii) that would have moved the reporting of retained and discarded catch of pollock and Chinook salmon PSC from § 679.61(f)(2)(ii) to a different location in the AFA cooperative's annual report at § 679.61(f)(2)(vii). NMFS will continue to require reporting of retained

and discarded catch of pollock and all Chinook salmon PSC in the AFA annual cooperative report consistent with the intent of the AFA annual cooperative report to collect information on retained and discarded catch of pollock and all PSC. NMFS will not revise § 679.61 in this final rule.

NMFS makes minor corrections in the final rule to create consistent submission requirements for both the regulations and the instructions in the Vessel Master Survey. In the regulatory text, NMFS clarifies that the vessel master must complete the vessel master certification page in the Vessel Master Survey, and the vessel owner or leaseholder must complete the vessel owner certification. NMFS also clarifies that the vessel owner or leaseholder must electronically submit to NMFS all the Vessel Master Survey certification pages and vessel survey forms as well as the vessel owner certification.

NMFS makes additional corrections to the submission dates for an IPA annual report and the three Chinook salmon EDR reports to correspond with the effective date of this final rule. The first correction clarifies that new data on the sub-allocations, retained catch, and discarded catch of Chinook salmon PSC and pollock required in an IPA annual report at § 679.21(f)(13)(ii)(E) and (f)(13)(ii)(F), must be submitted on or before April 1, 2013, for the calendar year of 2012, rather than June 1, 2012, for the calendar year of 2011. Submission dates for most of the data required in an IPA annual report will continue to be April 1, 2012. IPA representatives will still be required to include a description of (1) the incentive measures for the previous year (§ 679.21(f)(13)(ii)(A)); (2) how incentives affect each vessel (§ 679.21(f)(13)(ii)(B)); (3) whether the incentives achieve salmon savings (§ 679.21(f)(13)(ii)(C)); and (4) the amendments to the terms of the IPA (§ 679.21(f)(13)(ii)(C)).

NMFS includes a minor clarification to the requirements for the IPA annual report at § 679.21(f)(13)(ii)(F)(1)(iv) and (f)(13)(ii)(F)(2)(iv). NMFS adds the word "PSC" to the phrase, "number of Chinook salmon transferred" wherever it appears in the paragraph. These two phrases are revised to state, "number of Chinook salmon PSC transferred." This revision is required for consistency with reference to Chinook salmon PSC in the preceding paragraph at § 679.21(f)(13)(ii)(F)(1).

NMFS clarifies the submission dates for the three Chinook salmon EDR reports at § 679.65(b) through (d) by specifying that the CTR, Vessel Master Survey, and Vessel Fuel Survey must be

submitted on or before June 1, 2013, and each year thereafter. This clarification is included to eliminate ambiguity regarding whether the submission of Chinook bycatch EDR data should begin in 2012 or 2013.

### Classification

The Administrator, Alaska Region, NMFS determined that this final rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson-Stevens Act and other applicable law.

### Small Entity Compliance Guide

The preamble to the proposed rule and this final rule serve as the small entity compliance guide required by Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

### Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

### Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) was prepared, as required by section 604(a) of the Regulatory Flexibility Act (RFA). NMFS did not receive any comments on the initial regulatory flexibility analysis (IRFA) and the FRFA incorporates the IRFA and provides a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (see ADDRESSES).

### Need for and Objectives of the Rule

This action is needed because current sources of data collected under Amendment 91, including catch accounting, observer, and vessel monitoring system data, do not provide all the industry data that is necessary for analysis of the management measures implemented to reduce Chinook salmon bycatch. The Council proposed to address those data limitations by creating the EDR. The EDR provides data to evaluate the effectiveness of: (1) The IPA incentives in times of high and low levels of salmon bycatch; (2) Chinook salmon PSC limits; and (3) the performance standard in terms of reducing salmon bycatch. The EDR data allows for the evaluation of how Amendment 91 affects where, when, and how pollock fishing and salmon

bycatch occur. The EDR program also will provide data for the agency to study and verify conclusions drawn by industry in an IPA annual report.

#### **Significant Issues Raised by the Public Comments**

The proposed rule was published on July 18, 2011 (76 FR 42099). An IRFA was prepared for the proposed rule and was described in the classifications section of the preamble to the rule. The public comment period ended on August 17, 2011. No comments specific to the IRFA were received. Five comments were received specific to the action and were summarized in the preamble to this final rule under Comments and Responses.

#### **Number and Description of Small Entities Directly Regulated by the Rule**

The directly regulated entities for this final action are the members of the commercial fishing fleet that participate in the directed pollock trawl fishery in the Bering Sea. Under a conservative application of the Small Business Administration criterion and the best available data from 2010, there are six small entities out of an estimated 122 respondents eligible to submit the EDR that will be directly regulated by the final action. All the non-CDQ AFA-affiliated pollock entities directly regulated by this action were members of AFA cooperatives in 2010 and, therefore, NMFS considers them "affiliated" non-small entities for RFA purposes. To provide the estimates of the number of non-CDQ AFA-affiliated pollock entities that were not small, NMFS matched earnings from all Alaskan fisheries for 2010 with the vessels that participated in the AFA-affiliated pollock fleet for that year. Due to their status as non-profit corporations, the six CDQ groups are identified as "small" entities. This action directly regulates the six CDQ groups, and NMFS considers the CDQ groups to be small entities for RFA purposes. As described in regulations implementing the RFA (13 CFR 121.103) the CDQ groups' affiliations with other large entities do not define them as large entities. Complete descriptions of the CDQ groups and the impacts of this action are located in sections 2.5 and 6.10.3 of the Final Environmental Impact Statement/Regulatory Impact Review/Final Regulatory Flexibility Analysis for Amendment 91 that may be obtained from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

#### **Description of Significant Alternatives and a Description of Steps Taken To Minimize the Significant Economic Impacts on Small Entities**

To minimize impacts on small entities, NMFS did not select some options considered in the RIR that may have expanded the amount of data available to evaluate the effectiveness of Amendment 91. For example, requiring reporting of additional detailed roe production as well as expanded Chinook salmon transfer data, revenue data, and daily operating cost data were considered but rejected because these data may not be recorded by the industry in a consistent and uniform manner, and would be costly for submitters to report. Alternatives 2 and 3 included options for expanding the frequency of reporting and the amount of data to be collected beyond those required by this final rule. These more detailed data were to be collected during or at the end of each fishing trip, and included (1) the use of ledger forms for recording the amount Chinook salmon PSC or pollock allocations and transfers; (2) the reporting of the price for each transfer of Chinook salmon PSC or pollock; and (3) the reporting of the amount of fuel used, activities associated with each interval of fuel use, and the price paid for fuel. These alternatives were not selected because the cost and burden of collecting the additional data during or at the end of a fishing trip would have been substantial, and additional experience operating under Amendment 91 is required before industry could refine recordkeeping for the Council to further consider more detailed information.

Alternative 1 was not selected because it does not address the objectives of the Chinook salmon EDR program to increase the quality and quantity of data for assessing the effects of Amendment 91 IPAs, the PSC limits, and the performance standard on when, where, and how pollock fishing and Chinook salmon bycatch occur.

Alternative 4 was chosen because the limited scope of the data collected will likely increase the quality and quantity of data used to assess the effects of Amendment 91 IPAs, the PSC limits, and the performance standard on when, where, and how pollock fishing and Chinook salmon bycatch occur; will inform the Council and NMFS regarding the development of a more expansive data collection program in the future; and is feasible to implement in a timely manner. Alternative 4 will have the least impact of the four alternatives on small entities while continuing to meet the objectives of the action.

Based upon the best available scientific data and consideration of the objectives of this action, the Council and NMFS determined there are no alternatives to this action that have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes as well as minimize any significant adverse economic impact of the rule on small entities. The analysis did not identify any Federal rules that will duplicate, overlap, or conflict with the action. This rule requires revisions to some existing recordkeeping and reporting requirements and includes one new collection of information to implement new EDR forms.

#### **Collection-of-Information Requirements**

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) that have been approved by the OMB. The collections are listed below by OMB control number.

##### *OMB Control Number 0648-0634*

Public reporting burden per response is estimated to average 23 minutes for a catcher vessel trawl gear daily fishing log; and 35 minutes for an AFA catcher/processor trawl gear electronic log book.

##### *OMB Control Number 0648-0633*

Public reporting burden per response is estimated to average 40 hours for a CTR; 8 hours for a Vessel Fuel Survey; and 3 hours for a Vessel Master Survey.

##### *OMB Control Number 0648-0401*

Public reporting burden per response is estimated to average 40 hours for an IPA Annual Report.

##### *OMB Control Number 0648-0515*

Public reporting burden per response is estimated to average 35 minutes for a mothership eLandings landing report.

Reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES); email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless

that collection of information displays a currently valid OMB control number.

#### List of Subjects

##### 15 CFR Part 902

Reporting and recordkeeping requirements.

##### 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: January 30, 2012.

**Alan D. Risenhoover,**

*Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR part 679 as follows:

#### Title 15—Commerce and Foreign Trade

##### Chapter IX—National Oceanic and Atmospheric Administration, Department of Commerce

#### PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR:”

■ a. Remove the entry for “679.5(c);”

■ b. Add an entry in alphanumeric order for “679.5(c), (e), and (f);”

■ c. Revise entries in alphanumeric order for “and “679.21(f) and (g);” and 679.5(e) and (f)”

■ d. Add entries for “679.65(a), (c), and (d)” and “679.65(b) through (e)”.

The additions and revisions read as follows:

#### § 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

\* \* \* \* \*

(b) \* \* \*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
50 CFR.	
679.5(c), (e), and (f) .....	–0213, –0272, –0330, –0513, –0515, and –0634.
679.5(e) and (f) .....	–0401.
679.21(f) and (g) .....	–0393, –0401, and –0608.
679.65(a), (c), and (d) .....	–0634, and –0515.
679.65(b) through (e) .....	–0633.

#### Title 50—Wildlife and Fisheries

##### Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce

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

■ 3. The authority citation for part 679 continues to read as follows:

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

■ 4. In § 679.2, add a definition for “designated data collection auditor” in alphabetical order to read as follows:

#### § 679.2 Definitions.

\* \* \* \* \*

*Designated data collection auditor (DDCA)* means the NMFS-designated contractor to perform the functions of a data collection auditor for the Chinook

salmon PSC Compensated Transfer Report.

\* \* \* \* \*

■ 5. In § 679.5:

■ a. Revise paragraph (c)(4)(vi) introductory text;

■ b. Add paragraphs (c)(4)(vi)(I) and (e)(6)(i)(A)(12); and

■ c. Revise paragraphs (f)(1)(vii), (f)(2)(ii), and (f)(7).

The additions and revisions read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(vi) *Catch-by-haul information.* The operator must record the following information (see paragraphs (c)(4)(vi)(A) through (I) of this section) for each haul (see § 679.2). If no catch occurred for a given day, write “no catch.”

\* \* \* \* \*

(I) *Movement to Avoid Salmon.* If a catcher vessel is directed fishing for

pollock in the Bering Sea, indicate with a check mark (X) whether, prior to the haul, the operator moved fishing location primarily to avoid Chinook salmon bycatch.

\* \* \* \* \*

(e) \* \* \*

(6) \* \* \*

(i) \* \* \*

(A) \* \* \*

(12) For deliveries from catcher vessels directed fishing for pollock in the Bering Sea, indicate whether, prior to the haul, the operator of the catcher vessel moved fishing location primarily to avoid Chinook salmon bycatch.

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(vii) *AFA and CDQ trawl catcher/processors.* The operator of an AFA catcher/processor or any catcher/processor harvesting pollock CDQ must use a combination of NMFS-approved catcher/processor trawl gear ELB and eLandings to record and report groundfish and PSC information. In the

ELB, the operator must enter processor identification information; catch-by-haul information; prohibited species discard or disposition data for all salmon species in each haul; and indicate whether, prior to the haul, the operator moved fishing location primarily to avoid Chinook salmon bycatch. In eLandings, the operator must enter processor identification, groundfish production data, and groundfish and prohibited species discard or disposition data for all prohibited species except salmon.

(2) \* \* \*

(ii) *Reporting groundfish by ELB.* If the User is unable to submit commercial fishery information due to hardware, software, or Internet failure for a period longer than the required reporting time, contact NMFS Inseason Management at (907) 586-7228 for instructions. When the hardware, software, or Internet is restored, the User must enter this same information into the electronic logbook (ELB) or other NMFS-approved software.

\* \* \* \* \*

(7) *ELB data submission*—(i) *Catcher/processors.* The operator of a catcher/processor must transmit ELB data directly to NMFS online through eLandings or other NMFS-approved data transmission mechanism, by 2400 hours, A.l.t., each day to record the previous day's hauls.

(ii) *Catcher vessels.* The operator of a catcher vessel must transmit ELB data directly to NMFS as an email attachment or to NMFS through a shoreside processor, SFP, or mothership who received his/her groundfish catch. Through a prior agreement with the catcher vessel, the operator of a mothership or the manager of a shoreside processor or SFP will forward the ELB data transfer to NMFS as an email attachment within 24 hours of completing receipt of the catcher vessel's catch.

\* \* \* \* \*

■ 6. In § 679.21, paragraph (f)(12)(vii) is redesignated as (f)(13) and revised to read as follows.

**§ 679.21 Prohibited species bycatch management.**

\* \* \* \* \*

(f) \* \* \*

(13) *IPA Annual Report.* The representative of each approved IPA must submit a written annual report to the Council at the address specified in § 679.61(f). The Council will make the annual report available to the public.

(i) *Submission deadline.* The IPA Annual Report must be postmarked or received by the Council no later than April 1, as follows

(A) For paragraphs (f)(13)(ii)(A) through (D) of this section, in each year following the year in which the IPA is first effective;

(B) For paragraphs (f)(13)(ii)(E) and (F) of this section, in 2013 and each year thereafter.

(ii) *Information requirements.* The IPA Annual Report must contain the following information:

(A) A comprehensive description of the incentive measures in effect in the previous year;

(B) A description of how these incentive measures affected individual vessels;

(C) An evaluation of whether incentive measures were effective in achieving salmon savings beyond levels that would have been achieved in absence of the measures;

(D) A description of any amendments to the terms of the IPA that were approved by NMFS since the last annual report and the reasons that the amendments to the IPA were made;

(E) Sub-allocation to each participating vessel of the number of Chinook salmon PSC and amount of pollock (mt) at the start of each fishing season, and number of Chinook salmon PSC and amount of pollock (mt) caught at the end of each season; and

(F) In-season transfers—(1) *Transfers among entities.* For in-season transfer of Chinook salmon PSC or pollock among AFA cooperatives, entities eligible to receive Chinook salmon PSC allocations, or CDQ groups, provide the following information:

(i) Date of transfer;

(ii) Name of transferor;

(iii) Name of transferee;

(iv) Number of Chinook salmon PSC transferred; and

(v) Amount of pollock (mt) transferred.

(2) *Transfers among IPA vessels.* Transfers among vessels participating in the IPA provide the following information:

(i) Date of transfer;

(ii) Name of transferor;

(iii) Name of transferee;

(iv) Number of Chinook salmon PSC transferred; and

(v) Amount pollock (mt) transferred.

\* \* \* \* \*

■ 7. Section 679.65 is added to read as follows:

**§ 679.65 Bering Sea Chinook Salmon Bycatch Management Program Economic Data Report (Chinook salmon EDR program).**

(a) *Requirements.* NMFS developed the regulations under this section to implement the Chinook salmon EDR program. Additional regulations that

implement specific portions of the Chinook salmon EDR program are set out under paragraphs (a)(1) through (4) of this section:

(1) *Daily fishing logbook* (DFL), catcher vessel trawl gear. See § 679.5(c)(4).

(2) *Electronic logbook* (ELB), AFA and CDQ trawl catcher/processors. See § 679.5(f) in combination with eLandings pursuant to § 679.5(e).

(3) *IPA Annual Report.* See § 679.21(f)(13).

(4) *AFA cooperative annual reporting requirement.* See § 679.61(f)(2).

(b) *Chinook salmon PSC Compensated Transfer Report (CTR).* (1) An owner or leaseholder of an AFA-permitted vessel and the representative of any entity that received an allocation of Chinook salmon PSC from NMFS must submit a CTR, Part 1, each calendar year, for the previous calendar year.

(2) Any person who transferred Chinook salmon PSC allocation after January 20, and paid or received money for the transfer, must submit a completed CTR (Part 1 and Part 2) for the previous calendar year.

(3) The CTR is available through the Internet on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>, or by contacting NMFS at (206) 526-6414.

(4) Beginning in 2013, and each year thereafter, the completed CTR must be submitted electronically on or before 1700, A.l.t., on June 1, following the instructions on the form.

(c) *Vessel Fuel Survey.* (1) An owner or leaseholder of an AFA-permitted vessel must submit all completed Vessel Fuel Surveys for each vessel used to harvest pollock in the Bering Sea in a given year.

(2) The Vessel Fuel Survey is available through the Internet on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>, or by contacting NMFS at (206) 526-6414.

(3) The owner or leaseholder annually must submit a completed Vessel Fuel Survey, electronically on or before 1700, A.l.t., on June 1, 2013, and each year thereafter, following the instructions on the form.

(d) *Vessel Master Survey.* (1) For any AFA-permitted vessel used to harvest pollock in the Bering Sea in the previous year:

(i) The vessel master must complete the Vessel Master Survey, and the Vessel Master certification following the instructions on the form.

(ii) An owner or leaseholder must complete the Vessel owner certification following instructions on the form.



(iii) An owner or leaseholder must submit all Vessel Master Surveys, and each Vessel owner certification electronically on or before 1700, A.l.t., on June 1, 2013, and each year thereafter, following the instructions on the form.

(2) The Vessel Master Survey is available through the Internet on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>, or by contacting NMFS at (206) 526-6414.

(e) *Chinook salmon EDR verification and audit procedures.* NMFS or the designated data collection agent (DDCA) will conduct verification of Chinook salmon EDR information with the persons identified at § 679.65(b)(1), (b)(2), (c)(1), (d)(1)(i), and (d)(1)(ii).

(1) The persons identified at § 679.65(b)(1), (b)(2), (c)(1), (d)(1)(i), and (d)(1)(ii) must respond to inquiries by NMFS and its DDCA for purposes of the CTR, within 20 days of the date of issuance of the inquiry.

(2) The persons identified at § 679.65(b)(1) and (b)(2) must provide copies of additional data to facilitate verification by NMFS and its DDCA for purposes of the CTR. These paper or electronic copies may include, but are not limited to, previously audited or reviewed financial statements, worksheets, tax returns, invoices, receipts, and other original documents substantiating the data submitted.

\* \* \* \* \*

[FR Doc. 2012-2361 Filed 2-2-12; 8:45 am]

BILLING CODE 3510-22-P

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### 29 CFR Part 1602

RIN 3046-AA89

### Recordkeeping and Reporting Requirements Under Title VII, the ADA, and GINA

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final rule.

**SUMMARY:** The Equal Employment Opportunity Commission (EEOC or Commission), through this final rule, extends its existing recordkeeping requirements under title VII of the Civil Rights Act of 1964 (Title VII) and the Americans with Disabilities Act (ADA) to entities covered by title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits employment discrimination based on genetic information.

**DATES:** *Effective Date:* April 3, 2012.

#### FOR FURTHER INFORMATION CONTACT:

Thomas J. Schlageter, Assistant Legal Counsel, (202) 663-4668, or Erin N. Norris, Senior Attorney, (202) 663-4876, Office of Legal Counsel, 131 M Street NE., Washington, DC 20507. Copies of this notice are available in the following alternate formats: large print, Braille, electronic computer disk, and audio tape. Requests for this notice in an alternative format should be made to the Publications Center at 1-(800) 699-3362 (voice), 1-(800) 800-3302 (TTY), or (703) 821-2098 (Fax—this is not a toll free number).

**SUPPLEMENTARY INFORMATION:** On May 21, 2008, President George W. Bush signed the Genetic Information Nondiscrimination Act of 2008 (GINA) into law. Title II of GINA protects job applicants, current and former employees, labor union members, and apprentices and trainees from discrimination based on their genetic information. The coverage in title II of GINA corresponds with that of title VII of the Civil Rights Act of 1964, as amended, covering employers with 15 or more employees, employment agencies, labor unions, and joint labor-management training programs, as well as federal sector employers. Title II became effective on November 21, 2009. EEOC has issued interpretive regulations under GINA (See 75 FR 68912). Further, EEOC issued a final rule implementing changes to its administrative and procedural regulations in a separate notice found at 74 FR 63981. On June 2, 2011, EEOC proposed to amend its recordkeeping regulations to add references to GINA and sought public comment (76 FR 31892). EEOC received only one comment, from an association of state credit unions. The comment expressed support for the proposed changes. Accordingly, the Commission has decided to adopt its proposed changes as its final rule. The final rule does not require the creation of any documents or impose any reporting requirements. It imposes the same record retention requirements under GINA that apply under Title VII and the ADA, i.e., any records made or kept must be retained for the period of time specified in the Title VII and ADA regulations.

#### Regulatory Procedures

##### *Executive Orders 12866 and 13563*

The Commission has complied with the principles in section 1(b) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review. This rule is not a “significant regulatory

action” under section 3(f) of the Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of the Order.

#### *Paperwork Reduction Act*

This final rule contains information collection requirements subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act. It is estimated that the public recordkeeping burden will not increase significantly as a result of the amendments because all employers affected by them are already required to retain all personnel or employment records that they make or keep for a specified period of time, and the only new requirement is that they retain any of those records relevant to a charge of discrimination filed under GINA until the charge is resolved. As required by the Paperwork Reduction Act, the Equal Employment Opportunity Commission has submitted to the Office of Management and Budget a request for approval of these information collection requirements under section 3507(d) of the Act.

*Collection title:* Recordkeeping under Title VII, the ADA, and GINA.

*OMB number:* 3046-0040.

*Description of affected public:* Employers with 15 or more employees are subject to Title VII, the ADA, and GINA.

*Number of respondents:* 899,580.

*Reporting hours:* Not applicable.

*Number of forms:* None.

*Federal cost:* None.

*Abstract:* Section 207 of GINA, 42 U.S.C. 2000ff *et seq.*, incorporates the powers, procedures, and remedies found in section 709 of Title VII. Section 709(c) of Title VII, 42 U.S.C. 2000e-8(c), requires the Commission to establish regulations pursuant to which employers subject to the Act shall preserve certain records to assist the EEOC in assuring compliance with the Act’s nondiscrimination in employment requirements. Any of the records maintained which are subsequently disclosed to the EEOC during an investigation are protected from public disclosure by the confidentiality provision in section 709(e) of Title VII. EEOC has previously issued recordkeeping regulations under Title VII and the ADA which require all covered entities to preserve all employment and personnel records that they make or keep for a specified period of time, and to preserve all records relevant to a Title VII or ADA charge until the charge is resolved. This revision extends these same