Revocation of Public Land Order No. 203; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety a public land order which withdrew 155.34 acres of public land for use by the Bureau of Indian Affairs in connection with the construction of a war housing project. Pursuant to Phase II of the Land Exchange Agreement dated May 1, 1991, involving the Navajo Nation, the Bureau of Land Management, and the Bureau of Indian Affairs, the land has been patented in trust to the Navajo Tribe of Indians, with all minerals reserved to the United States. This action will open the land to mining and mineral leasing.


FOR FURTHER INFORMATION CONTACT: Georgiana E. Armirol, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502-0115, 505-438-7594.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 203, which withdrew the following described land, is hereby revoked in its entirety:

New Mexico Principal Meridian

T. 15 N., R. 17 W., Sec. 14, lots 1, 2, 3, 4, and 6.

The area described contains 155.34 acres in McKinley County.

2. At 8 a.m. on January 25, 1993, the land will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.


Dave O'Neal,
Assistant Secretary of the Interior.

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increasing allocation to the inshore component of 35 to 45 percent from 1992 through 1995 and an inverse, decreasing allocation to the offshore component over the same period. The original Amendment 18 to the BSAI fishery management plan, which set inshore and offshore allocations in proportion to 35:65, was implemented on June 1, 1992. In support of its recommendation for an inshore allocation greater than 35 percent for 1994 and 1995, and which were intended to resolve the preemption problem for the balance of 1992. Disapproval of the allocations in the original Amendment 18 for the years 1993 through 1995 was based in part on a cost-benefit analysis that NMFS had prepared to assist the Under Secretary in his decision. The NMFS analysis, which was based on the best available data at the time, indicated that a substantial net economic loss to the Nation would result if the allocations proposed by the Council in Amendment 18 for 1993, 1994, and 1995 were approved. The Under Secretary determined that the Council had not supplied sufficient evidence of social or other benefits to offset that loss.

In a March 4, 1992, letter to the Under Secretary asked the Council to examine and refine the assumptions and methodology of the economic model used by NMFS in its analysis, to identify any countervailing benefits, and to consider modifications to the allocation percentages that would minimize economic loss to the Nation from the Council action. In its analysis for revised Amendment 18, the Council's response to the Under Secretary's suggestions disclosed the economic consequences that are more favorable than the original version of Amendment 18. The analysis indicates that the annual net economic loss to the Nation of the 35/65 percent allocation is no more than $1.7 million, and is offset by the Council's legitimate objective of avoiding preemption of one sector by the other. An increased allocation from 35 to 37.5 percent for the inshore component must be justified. One possible justification would be an increase in net national benefits. The analysis shows that the increase in allocations to the inshore component for 1994 and 1995 would further reduce the national economic benefits available from the pollock resource. Unlike the economic loss resulting from a 35/65 percent allocation, which the Under Secretary believes is adequate to avoid preemption and provide stability in the pollock fishery, the additional economic loss resulting from 37.5/62.5 percent allocations for 1994 and 1995 has not been justified by any other legitimate objective of the FMP. The Under Secretary has concluded that an inshore allocation greater than 35 percent would increase the risk of net negative national benefits that is not warranted or justified by the record. On the other hand, although the 35 percent allocation to the inshore component exceeds the current status quo, approval of the 35/65 percent allocations will have beneficial results. The main justification for approval of these allocations is that they will obtain the objective identified in Amendment 18, which is to avoid potential preemption of the inshore component by the
The definitions of “inshore” and “offshore” components of the industry remain unchanged from those implementing Amendment 23 in the GOA and the approved part of Amendment 18, except as described below in “Additional Regulatory Changes.” In addition, this action makes no change to the western Alaska Community Development Quota (CDQ) program. Final regulations to implement CDQ allocations of pollock in the BSAI area during the years 1992 through 1993 were published in the Federal Register on November 23, 1992 (57 FR 54936).

The principal provisions of revised Amendment 18, as approved by the Under Secretary, include (1) the proportional allocation of the pollock TAC between inshore and offshore components, and (2) the CVOA.

1. Inshore-Offshore Allocation of Pollock in the BSAI Area

Under revised Amendment 18, as approved, the BSAI pollock TAC is allocated between the inshore and offshore components for each subarea and for each season defined at §672.20(a)(2) during a three-year period, 1993 through 1995. The allocations to the inshore and offshore components are 35 and 65 percent, respectively, for each of these years.

The amount of TAC allocated to each component will be calculated after the reserve (§675.20(a)(3)) is subtracted. The reserve is specified annually as 15 percent of the TAC of all species categories. One half of this amount (7.5 percent) would be designated as the CDQ reserve and made available to western Alaska communities that have an approved community development plan (CDP). If the CDQ reserve is not used by western Alaska communities, it will be reapportioned to the non-CDQ fishery in accordance with the specified proportional allocations among the inshore and offshore components.

If, during a fishing year, the Regional Director determines that either the inshore or offshore component will not be able to catch and process the entire amount of pollock allocated to it, then the amount that the Regional Director projects will be unused by one component will be reallocated to the other fishery by notice in the Federal Register.

2. Catcher Vessel Operational Area (CVOA)

Revised Amendment 18 establishes a CVOA between 163° and 168°W longitude, south of 56°N latitude, and north of the Aleutian Islands. Offshore catcher-processors must not conduct directed fishing operations for pollock in the CVOA during the pollock “B” season (June 1 through December 31). Access to this area is unrestricted during the pollock roe or “A” season (January 1–April 15). This CVOA is similar to that established by the approved portion of original Amendment 18 with the following two important differences. First, under revised Amendment 18, the CVOA will exist only during the pollock “B” season instead of during the “A” and “B” seasons as originally proposed by the Council in Amendment 18. This represents a compromise between an exclusive, year-round CVOA, and no CVOA. The compromise is based on compelling arguments made by representatives of the offshore fleet that closing the CVOA during the “A” season would deprive them of prime fishing on roe-bearing fish, particularly because the Bogoslof area (adjacent to and west of the CVOA) fishery had been closed. Further, the ice edge would cause congestion and gear conflicts between factory trawlers and vessels using longlines and pots. They also reasoned that restricting factory trawlers north of 56°N latitude would result in lower recovery rates and higher discard of small pollock. The Council retained the CVOA during the “B” season, because catcher vessels that deliver their pollock catch to shore-based processing plants in the Aleutian Islands have a limited range compared with catcher/processor vessels that can harvest pollock resources north and west of the CVOA. In addition, public testimony indicated the possibility of overcrowding and grounds preemption within the CVOA by the catcher/processor fleet.

Second, catcherships operating in the offshore component may operate in the CVOA under revised Amendment 18. This was not allowed during the “B” season in 1992, because the original Amendment 18 established this area exclusively for catcher vessels. The regulations for 1992 did not prohibit catcher vessels from harvesting pollock in the CVOA and delivering their catch to motherships outside the area. However, this restriction was found to be impractical, because catcher vessels working with motherships cannot tow cod ends large distances. The Council also was concerned with safety. During the winter, the combination of ice edge, icing conditions, and severe storms makes it very hazardous for the catcher-boat fleet to operate outside the CVOA.

Additional Regulatory Changes

Experience in implementing inshore-offshore allocations under Amendments 18/23 during 1992 prompted NMFS to make several changes to existing regulations. The following changes were described and their purpose explained in the revised Amendment 18 proposed rule notice (57 FR 46133, October 7, 1992). The intent of these changes is to improve the clarity and effectiveness of the regulations.

1. The “inshore component” definition currently at §§672.2 and 675.3 would be changed by re-ordering the sequence of types of processing operations that qualify as “inshore.”

2. The prohibitions listed in §§672.7 and 675.7 would be changed by substituting a paragraph prohibiting the use of any vessel in more than one of the three categories included in the definition of “inshore component” during any fishing year. This change deletes regulatory text that is redundant with the definition of “inshore component,” and clarifies that the category in which a vessel begins
operating in an "inshore" directed fishery for Pacific cod harvested in the GOA or pollock harvested in either the GOA or BSAI area is the category in which the vessel must continue to operate for the remainder of the fishing year whenever it processes these species.

3. Finally, regulatory text at §§ 672.20 and 675.20 is changed to clarify that allocations of pollock (and Pacific cod in the GOA) are made to vessels that catch these species for processing by either the inshore or offshore component. Hence, the vessels that catch these species, not processor vessels that do not catch fish, are subject to the directed fishing allowances and prohibitions that the Regional Director is authorized to establish for either component.

Changes in the Final Rule From the Proposed Rule

This final rule includes changes from the proposed rule. These changes are described as follows:

1. The prohibitions in §§ 672.7(h)(2) and 675.7(h)(2) are amended by deleting the word "processor." Under the existing regulations, if a vessel does not have a federal fishing permit, it is not included in the definition of a "processor vessel," and would not be subject to the prohibitions of this section. The revised paragraph clarifies that all vessels are subject to these prohibitions.

2. Section 675.20(e)(2)(iii) is amended to implement only the allocations approved by the Under Secretary. Language intended to implement the disapproved portions of revised Amendment 18 has been deleted.

Responses to Comments

The allocations of pollock in the BSAI area that are implemented by Secretarial approval of revised Amendment 18 remain controversial. Twenty letters of comment were received from 16 different entities during the comment period. Of these, nine opposed and seven expressed support for the action. Most comments are lengthy and raise many points of concern. Key issues and concerns are summarized and responded to as follows:

Comment 1: Revised Amendment 18 violates national standard 1 of providing for the greatest overall benefit to the Nation because (1) the supplemental analysis projects a cumulative loss of $85.8 million and (2) the alternative benefits only Alaskan onshore processors and reduces competition by restricting the number of processors to whom a fisherman can deliver.

Response: National standard 1 requires fishery conservation and management measures be implemented that prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) from each fishery. Executive Order 12291 requires that the economic benefits be in favor of society as a whole. The allocations, as proposed in revised Amendment 18, do not reduce the likelihood of pollock TAC being reached. Weekly production report data indicate that the inshore and offshore components have sufficient capacity and opportunity to harvest and process the available OY.

The Under Secretary has determined that national benefits would result from the approval of a 35/65 percent allocation for 1994 through 1995 by way of maintaining a balance in the social, and economic opportunities inherent in the fisheries. One of the nine Comprehensive Fishery Management Goals for the development of the North Pacific Council's fishery management plans is to ensure that the people of the United States benefit from optimum utilization of the Nation's publicly owned fishery resources. The benefits to the Nation will accrue in gains in Alaskan communities, as evidenced by the promotion of economic stability, growth, and self-sufficiency.

The Under Secretary determined that the 2.5 percent allocation increase proposed for the inshore component in 1994 through 1995 would violate E.O. 12291 because the benefits would result from the allocation of negative national benefits is not justified by the likelihood of any additional social or other benefit for the western Alaskan communities. Therefore, the proposed increased allocation to the inshore sector is disapproved. The approved allocations of revised Amendment 18 that benefit the coastal communities of Alaska and aid them in achieving a stable, self-sufficient, and growing economy balance any potential losses to the Nation.

For a discussion of the issue of competition, see response to comment 34.

Comment 2: Revised Amendment 18 violates national standard 2, which states that conservation and management measures shall be based upon the best scientific information available.

Response: As was explained in the final rule for Amendments 18/23 (57 FR 23321, June 3, 1992), the administrative record does not close until the Secretary makes a decision. During the public comment period, NOAA used the Council's data to review the Council's findings. The decision of the Under Secretary is based on the supplemental analysis, using 1992 data, as well as public comment received.

Based on the record and data developed by the Council and NMFS, the Under Secretary has determined that the record contained sufficient information, and that the information available was the best and most current available for a decision regarding revised Amendment 18.

Comment 3: National standard 4 is violated in that revised Amendment 18 discriminates against fishermen who deliver to shoreside processors in other states. In addition, the regulations would not allow freezer vessels to package frozen headed and gutted or round fish for later processing, which discriminates among processors of different states. Further, the CDQ program discriminates among residents from different states.

Response: Several concerns similar to comment 3 were addressed in the final rule for Amendments 18/23 (57 FR 23321, June 3, 1992). The basis for the approval of the allocation does not conflict with the reasons given in the final rule for Amendments 18/23.

Regulations implementing revised Amendment 18 do not restrict owners or operators of catcher vessels from delivering to either inshore or offshore processing sectors until a component reaches its allocation. NOAA has determined that the revised allocations, as approved, will not discriminate among residents of different states. As stated in the preamble to Amendment 18, the CDQ program does not discriminate between Alaskans and non-Alaskans on the basis of State of residence. The impact of the CDQ program in setting aside a pollock reserve for use by western Alaskan communities for CDPs falls equally upon similarly situated Alaskans and non-Alaskans. Regulations that are determined to discriminate among residents of different states, based on their residence, would not be approved.

See also response to comment 34.

Comment 4: The allocations do not violate national standard 4 as they represent a fair compromise, balancing needs and interests of industry, state, and coastal communities.

Response: Comment noted. The Under Secretary has determined that the revised allocations in the BSAI, as approved, are consistent with the fair and equitable criterion of national standard 4. See response to comment 3.

Comment 5: The proposed regulations violate national standard 5 that the resource would not be efficiently utilized and because the only justification for the proposed action is economic gain by one sector.
addition, to ignore modern technology for fear of preempting an older technology violates the efficiency requirements. The amendment merely acts as a subsidy to less efficient producers.

Response: A similar comment was raised during the review of Amendments 18/23. National standard 5 requires fishery conservation and management measures to promote efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose. In theory, an efficient fishery would harvest all the allowable catch with a minimum use of economic inputs (e.g., labor, capital, fuel, etc.). As was the case with Amendments 18/23, revised Amendment 18 is not substantially less efficient than an open access fishery. The benefits of advanced technology are dissipated when the TAC is reached before the end of the fishing year. The factory trawler fleet is capable of harvesting a large amount of fish in a short period of time. This can lead to early season closures, to the detriment of the inshore fleets and processors. The major objective of Amendment 18 is to avoid preemption of one sector by another. The Under Secretary determined that the 35/65 percent allocation obtains this objective and will protect the smaller, more localized fleets, and allow for continued development of coastal communities in the BSAI.

NOAA has determined that approval of the 35/65 percent allocation does not have economic allocation as its sole purpose because its aim is to protect and enhance benefits, such as preserving stability and avoiding preemption, for Alaska coastal communities. However, the increase in the allocation recommended by the Council for the inshore component to 37.5 percent for 1994 and 1995 is determined to be solely economic in nature as there is no evidence of an increase in social benefits to counter the substantial net economic loss that would be associated with the difference between 35 percent and 37.5 percent inshore allocations.

The allocations, as approved, could improve the overall recovery of fish products from the round weight harvested based on reported higher product recovery rates for the inshore sector. Also, non-resident or foreign workers employed by local processing plants during peak fishing seasons when local labor supply is insufficient contribute to the economic well being of local communities through their demand for goods and services. Finally, the guidelines of the national standards, at 50 CFR 602, provide that sector allocations are justified by the achievement of overall biological, economic, or social benefits. The Under Secretary determined that a 35/65 percent allocation is justified based on these criteria, although an additional 2.5 percent increase for the inshore component for 1994 and 1995 is not. Therefore, the Under Secretary approved only the 35/65 percent allocation for 1993 through 1995.

Comment 6: There is no evidence that revised Amendment 18 violates national standard 5.

Response: Comment noted. See response to comment 5. The benefits of economic stability and gains to the Alaskan coastal communities balance potential economic losses to the Nation with approval of the 35/65 percent allocation. However, the benefits of the 2.5 increase proposed for the inshore component, which was disapproved, do not balance potential economic losses to the Nation.

Comment 7: Revised Amendment 18 violates national standard 6.

Response: A similar comment was made during the review of Amendments 18/23. National standard 6 states that conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishing gear, and catches. Impacts on both components and the resources were analyzed in the draft SEIS for Amendments 18/23.

Comment 8: Revised Amendment 18 is inconsistent with national standard 7, because it increases costs and promotes duplication of capital.

Response: National standard 7 requires that fishery conservation and management measures minimize costs and avoid unnecessary duplication, where practicable. Amendment 18, as proposed originally, was likely to result in net losses in economic efficiency that would not be offset by social or other non-economic benefits. As demonstrated in the supplemental cost-benefit analysis, the revised allocations will mitigate these losses in net national economic benefits. Moreover, the developmental benefits for Alaska coastal communities that would accrue with a 35/65 percent allocation program for 1993–1995 would outweigh the negative. The Magnuson Act allows for an allocation of fishing privileges that may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups (e.g., social and development benefits). Therefore, the Under Secretary approved the 35/65 percent allocation for 1993 through 1995.

Other alternatives were considered but rejected, because they were either too restrictive to the offshore component or would not have prevented preemption of the inshore component by the offshore component.

Comment 9: The partial denial of Amendment 18, which referenced national standard 7, was based on a flawed analysis, because it confused net national benefits with corporate profits.

Response: The cost-benefit analysis done by the NMFS analysis team prior to the March 4 decision adhered to standard methodology and used the best available data and information at the time of the analysis. The supplemental analysis submitted with revised Amendment 18 used the same general methodology with updated information and some refinements in techniques. In both analyses, the results displayed estimated changes in producer surplus, which is an accepted measure of net national benefits. Producer surplus is not a proxy for corporate profits largely because of differences in the way costs are identified and treated in the accounting.

Comment 10: Amendment 18, as revised, addresses the Department of Commerce’s concerns in the previous partial disapproval as it substantially reduces the original proposed allocations, removes the restriction on offshore vessel access in the CVOA during the roe or “A” season (January 1–April 15), and permits mothership vessels to operate in the CVOA during the non-roe or “B” season (June 1–December 31). Based, in part, on these significant changes, revised Amendment 18 should be approved.

Response: The above issues have been addressed during the review process for revised Amendment 18. NOAA recognizes that the allocations proposed in revised Amendment 18 are reduced from the original submission. The 35/65 percent allocations to be implemented for 1993 through 1995 were approved, because they are likely to meet the Council’s objective without causing substantial losses to the offshore component or the Nation. In addition, approval of the allocations will allow the Council to focus its attention on more rational solutions to fishery problems in Alaska. The decision to allow offshore vessels to operate in the CVOA during the “A” season was due to the extreme importance this area and time have for the offshore sector. To deprive them of use of the CVOA during the “A” season would present too great an economic burden. Allowing motherships to operate in the CVOA would prevent undue hardships on the smaller catcher vessels in this area.
Comment 11: A number of comments opposing Amendments 18/23 were submitted in response to the proposed rule implementing the amendments (57 FR 66009, December 20, 1991). These comments were submitted by crew members on offshore vessels, seafood industry employees and representatives, and other interested parties. The main points stressed in opposition to Amendments 18/23 included: (1) Many at-sea workers had steady, well-paying jobs, not readily available otherwise; (2) many of these workers came from areas of high unemployment; (3) the at-sea fleet offered upward mobility for women and rainorities; and (4) the high-pay and other aspects of at-sea employment made it possible to pursue goals in life that would otherwise be unattainable. These same comments apply to revised Amendment 18 and should be addressed. Many of the deficiencies identified with the initial amendment have not been addressed in the supplemental analysis.

Response: The comments that were submitted during the review period for Amendments 18/23 were addressed at that time. A resubmission of these comments does not provide any new information that was not considered under Amendments 18/23, and the responses to those comments in the final rule published June 3, 1992 (57 FR 23321), apply to revised Amendment 18. However, the same issues presented in those comments have been addressed throughout this final rule.

Comment 12: Revised Amendment 18 does not address the underlying problem of overcapitalization in an open-access fishery and may even encourage additional capital investment within the inshore sector. Therefore, the Nation is no closer to solving problems in the North Pacific groundfish fishery. The Council and NMFS should direct their attention to other, more important issues that need to be faced (i.e., stock assessments, bycatch, and management of new technologies) rather than this course of protective regulations that threaten to destroy rather than enhance the Magnuson Act system. Instead, conservation and management objectives should be met by establishing performance requirements.

Response: The issue of overcapitalization in an open-access fishery was addressed during the review of Amendments 18/23. NOAA agrees that the olympic system that prevailed is inefficient and wasteful in the sense that it fosters more investment than is necessary to catch the amount of fish available for harvest in any fishing year. One purpose of the approved revised Amendment 18 allocations is to serve as a preliminary step toward solving the problem of overcapitalization. The approved allocations will provide a stable three-year period while the Council can evaluate more permanent, rationalized management measures, and implement them.

In its November 23, 1992, letter to the Council, the Under Secretary strongly urged the Council to direct its attention to a long-term, market-based allocation system.

Comment 13: The stated purpose of the allocation is to prevent preemption; however, the final allocation will actually lower the share of the TAC currently being utilized by the offshore fleet in the BSAI. The result transfers resources that have been historically taken from one sector (offshore) to another (inshore). Unlike the preferred alternative within revised Amendment 18 does not solve the stated problem of preemption, but rather creates it.

Response: NOAA recognizes that a 35 percent allocation to the inshore component exceeds the inshore performance in recent years. However, the inshore sector has taken increasing shares of the pollock harvest in the BSAI, and in 1991 its share grew to 28 percent. The approval of the 35/65 percent allocations is expected to obtain the objective identified in Amendment 18, which is to avoid potential preemption of the inshore component by the offshore component. The allocations also provide needed stability in the fishery for long-term planning and guarantee both components the opportunity to fish.

Comment 14: The intent of the Magnuson Act was not to allow one sector (offshore) to smother development of social and economic stability in another (coastal communities). Preemption is a continuing problem. Originally, the foreign distant water fleet preempted U.S. fishermen, and now the U.S. distant water fleet is preempting coastal communities.

Response: NOAA recognizes that protection of both sectors is needed. Because the mobility of the offshore component gives it a competitive advantage, an allocation to the inshore sector for a fixed term is justified. However, the groundfish resources off Alaska are a national resource. All U.S. fishing vessels, regardless of their home port of technological components, currently enjoy the same Alaska groundfish harvesting privileges under the BSAI FMP. The preemption problem stems from the excess harvesting and processing capacity to prosecute the fishery, and not the geographic origin of that capacity. The Council has been urged to develop a market-based allocation system for the long term to achieve stability in the fishery and eliminate the problems of preemption and overcapitalization.

Comment 15: The Magnuson Act encouraged American fishermen to invest in harvesting and processing facilities and many factory trawlers have achieved the capacity to harvest 100 percent of the pollock TAC. The allocations would take a large portion of pollock (worth between $34,994,845 and $54,537,433) away from factory trawlers and give it to another sector, thereby putting many American fishermen out of business.

Response: The Magnuson Act established U.S. authority for the conservation and management of fishery resources within the EEZ and provided for priority access to those resources by U.S. fishing and processing firms.

The Magnuson Act also authorizes the allocation of fishery resources among various sectors of the fishing industry. The Under Secretary determined that a 35/65 percent allocation of the BSAI pollock TAC between inshore and offshore components is consistent with the Magnuson Act and other applicable laws. While this allocation may produce benefits for the inshore component at the expense of the offshore component, both sectors should realize some decrease of investment risk in the short term, resulting from better knowledge of the amount of BSAI pollock that will be reserved specifically for either component for a 3 year period.

Intra-component competition for the pollock resource will continue to be a source of uncertainty and risk, but inter-component competition, with its attendant risks, will cease with the implementation of this rule. This should allow improved investment decision-making for both components in the short term (i.e., 3 years).

Comment 16: Catcher boats played an important role in the Americanization of the Alaska groundfish fisheries and, yet, the superior catching capability of the factory trawlers has preempted them. Approval of revised Amendment 18 would provide a sufficient short-term measure. In addition, the smaller catcher boats cannot compete with the factory trawlers, particularly in stormy weather. Approval of the CVOA will enable catcher vessels to fish closer to sheltered waters and still deliver to motherships. Amendment 18 should be approved as it addresses the preemption of catcher vessels by factory trawlers.

Response: The development of a U.S. groundfish fishery in the BSAI area began in 1980 with U.S. catcher vessels delivering pollock and other species to
foreign processing vessels in joint venture processing (JVP) agreements. Significant harvests by U.S. catcher/processors began in 1985. Shorebased pollock processing began to develop in the mid-1980s. Under the Magnuson Act, however, the foreign and JVP fisheries were sequentially replaced in favor of the wholly domestic fishery. The last year in which any groundfish were allocated to JVP fisheries in the BSAI area was 1990. Many of the former JVP catcher vessels were converted to deliver fish to the shorebased processors, and some developed a JVP-style market with U.S. motherships. In both cases, the catcher vessels are generally smaller and more limited in their range than catcher/processors in the offshore component. Revised Amendment 18 recognizes this history by providing for catcher vessels that deliver BSAI pollock to the inshore component, which has a 35 percent allocation of the pollock TAC, and by providing for those that deliver to U.S. motherships the opportunity to fish within the CVOA during the pollock “B” season.

Comment 17: Preemption of the catcher boats by factory trawlers should be addressed from a harvesting perspective rather than one of processing. Response: The Council considered the alternative of allocating pollock (and Pacific cod in the GOA) between vessels that catch and process at sea and vessels that catch for delivery to processors regardless of whether they are on shore or at sea. This is alternative 6 in the final supplemental environmental impact statement prepared by the Council for Amendments 18/23. The Council did not recommend this alternative, because it did not adequately address the Council’s objective of assuring catcher vessels that deliver to shorebased processors a specific proportion of the pollock TAC and alleviating the preemption issue. Approval of the 35/65 percent allocation is justified and accomplishes the stated objective.

Comment 18: The proposed allocation shifts resources away from the offshore fleet, which is primarily from the Pacific Northwest (Washington and Oregon), to the shoreside plants in local Alaskan communities. As a result, Alaska will gain a relatively small number of jobs and increased income at the expense of the Pacific Northwest having much greater losses. Such a reallocation of jobs and income from one region to another has not been justified. The bottom line is that the Pacific Northwest will suffer significant economic hardships as well as direct income and job losses at a time when the entire nation is concerned with rising unemployment and economic growth. Response: The analytical results support this general conclusion that net economic benefits will be negative, but economic considerations are only one element of the decision-making process. The objective of revised Amendment 18 is to avoid possible preemption of the inshore sector by the offshore sector. The economic benefits will prevent preemption and allow stability in the fishery so that long-term plans can be developed. In addition, the Council will be able to direct its attention to other fishery issues and resolutions. Therefore, the Under Secretary determined that the 35/65 percent allocation would result in benefits that offset National losses.

Comment 19: The inshore sector had no catch history prior to inshore/offshore allocations. The largest shoreside catchers came on line just this year and many have a significant percentage of ownership directly related to Con-agre (Trident), Unisea (Nippon-Susan), and Westward (Taiyo). These are not the “family farm” companies the Council claims to be protecting. Response: The inshore sector represents a complex of fishing, processing, and support operations that includes small independently owned catcher vessels and other small support enterprises, in addition to the large shore-based processors that are at the hub of the system. During the review of Amendments 18/23, representatives of several inshore plants testified that they had not been operating at full capacity previously, because they did not have enough fish to supply the plants. Lack of raw product for processing would curtail production and have a negative impact on the various enterprises that feed into and support the processing operations. The aim of Amendment 18 is to help assure some stability in raw fish supplies for the inshore sector and thus stabilize the system and promote economic growth and security for the affected coastal communities in Alaska. Amendment 18 does not demonstrate any net social benefits. It threatens jobs as well as the economic and social well-being of communities and individuals in the State of Washington, which could lead to revenue losses and economic dislocations in Washington State. In addition, the allocations discriminate against Washington State coastal communities by favoring Alaska shoreside processing plants. It takes from one sector to give to another. Response: The overall fishery continues to be an open-access system, whether or not revised Amendment 18 is approved. Individual fishermen or processors are not guaranteed access to a given amount. The analysis concludes that losses in jobs and revenues will occur in the Pacific Northwest but will be partially offset by gains to employment and revenue in Alaska. See response to comment 8.

Comment 21: There is no realistic benefit or justification that outweighs the significant economic harm to the local fleet or those dependent on the health of that fleet. The proposed allocations would result in significant economic losses without any demonstrable countervailing benefits. The Council has failed to provide any new reason why the Under Secretary’s initial rejection of this part of the proposal should not stand. Response: The revised analysis provides the same general economic results, but in order to attain social goals, these considerations could cause the Council to give more or less weight to benefits or costs imposed on different segments of the industry. The Under Secretary approved the 35/65 percent allocation for 1993 through 1995 to obtain the objective of avoiding preemption of the inshore component by the offshore component while providing both components the opportunity to fish. In addition, approval of the allocations will allow the Council to direct its attention to other important management considerations to benefit the North Pacific fishing industry. However, the 2.5 percent increase to the inshore component proposed for 1994 through 1995 did not result in sufficient benefits that would offset National losses. Therefore, the Under Secretary disapproved any increase in the allocations to the inshore component for 1994 and 1995. Nonetheless, increasing national net benefits is only one of the many goals of applicable law and policy.

Comment 22: Communities that are located close to the fishing grounds face fewer alternative opportunities for economic advancement and thus have a greater reliance on access to these fisheries than do distant water fleets. Approval of the allocations of Amendment 18, especially with the CVOA, will be important for the economic health and development in the small coastal communities of Alaska. Amendment 18 would allow for stabilization and growth of locally generated municipal revenues that are derived mainly from taxes on landed raw fish, collected from shore-based vessels and plants, or local property taxes. Pollock is becoming a more...
significant source of this revenue. Without this guaranteed access, instability will occur.

Response: NOAA agrees that the coastal communities have a smaller job base and could be viewed as having a higher reliance on fisheries, although not necessarily on pollock stocks. These communities have not had a historical dependence on pollock, per se, but on the crab, halibut, and salmon fisheries. As shoreside plants process more raw fish in general, local tax revenues will increase but growth may incur offsetting costs for society. Nonetheless, NOAA recognizes a need to provide some assurance of stability to the shore-based fishery enterprises that are substantial contributors to economic welfare of local communities, through a reliable supply of raw fish for processing. Approval of the 35/65 percent allocations and the CVOA offer adequate protection without overly deviating from the current conditions.

Comment 23: Amendment 18 will provide increased employment and long-term stability for Alaskan coastal communities.

Response: The amendment is expected to increase the number of harvesting and processing jobs available in the inshore component, although there will be a concurrent decrease in jobs and income in the offshore sector that is tied principally to the Pacific Northwest. This action is only intended to be a short-term solution that aims at promoting economic stability in Alaskan coastal communities. Improvement of the fisheries that help support these communities, and that contribute substantially to the national welfare, depends on putting in place a management system that eliminates the economic waste inherent in common property fisheries.

Comment 24: Although Amendment 18 is a short-term interim solution, if it is not enacted soon, management might lose the option of dealing with long-term rationalization. Without approval of Amendment 18, the more efficient offshore fleet would capture an ever increasing share of the TAC and reduce the viability of the inshore fleet dramatically. The sector may be so weakened that a decision to disapprove this amendment would be irreversible. Failure to approve this measure would lead to a de facto allocation of all or most of the resource to the offshore fleet and cause a loss of diversity within the fishery.

Response: Prior to the first allocation in 18/23, the inshore sector had grown over a fairly short period to a point where it was taking a significant share of the pollock resource, and new plants came on line. The growth in the inshore sector's participation in the pollock catch is an indicator of its ability to compete with the offshore sector. However, the substantial (and much underestimated) catch capacity of the offshore fleet cannot be ignored and is reviewed as an overwhelming competitive threat to the inshore sector with regard to access to the pollock resource. Locking the allocations in at 35/65 for the three-year period assures that the threat is eliminated while a more productive and beneficial management system is designed and put into place.

Comment 25: The allocations would provide a predictable supply of fish, allowing onshore plants to operate nearly year-round and provide a sustained demand for support services. This would provide more opportunity for permanent residents to work, for other workers to become permanent residents, and allow for long-term planning abilities and financing, as harvesters could choose the best times for fishing. In addition, groundfish plants will be available for traditional species markets such as black cod (sablefish), Pacific halibut, salmon, and crab.

Response: NOAA concurs. The potential of operating nearly year-round is enhanced, which would lead to stabilized production and employment. Stability is one of the objectives of the amendment.

Comment 26: The allocations would allow harvesters to determine the best time to fish based on the condition of fish, the weather, and when recovery and value would be highest.

Response: NOAA concurs. By being guaranteed a percentage of fish, the "race for fish" between inshore and offshore interests is curtailed and harvesters can choose when they want to fish as long as TAC remains in either component. Harvesters delivering to the inshore component would be limited only by their portion of the TAC, and not by the harvesting capability of the offshore sector. Nevertheless, there remains a probability the "race" will occur within a sector, which is a problem that a market-based management system is intended to address.

Comment 27: The shoreside sector has much higher product recovery rates (PPRs), particularly for surimi. The supplementary analysis for revised Amendment 18 stated the surimi recovery rate for the offshore sector to be 17.7 percent. A NMFS study of factory trawlers showed the PRR of surimi during the "A" or roe season (January 1-April 15) to be only 14.35 percent and NMFS recently recommended a rule that established the offshore surimi rate to be 14 percent. Section 2 of the supplementary analysis fails to use existing data that the roe recovery rate is equal for inshore and offshore. The analysis overlooks a lot of data on PRRs and the result is PRRs are overstated for the offshore fleet and understated for the inshore processors.

Response: The team responsible for the supplementary analysis used 1991 data for surimi and roe recovery rates, which was the most recent information available at the time of the analysis. Later data based on partial year results for 1992 indicate lower surimi PRRs for the offshore sector compared with 1991 and higher roe recovery rates for the inshore sector. This new information was used by NMFS analysts in a subsequent run of the cost-benefit analysis and the results made available to the Under Secretary. With regard to PRRs, it is worth noting that the rate is influenced by market and resource conditions as well as the relative efficiency of the operator, and therefore can be expected to vary considerably. In the cost-benefit analysis done by the supplemental analysis analytical team and by NMFS analysts independently, the uncertainties in PRRs are addressed through the application of a risk analysis that allows for the use of a range of values for a particular variable as opposed to a point estimate.

Comment 28: Revised Amendment 18 promotes conservation in that the possibility of localized pulse overfishing by factory trawlers would be reduced.

Response: Effective management of TACs, as in the past, will prevent resource depletion. However, there is no evidence to indicate that increased allocations to the inshore sector will prevent localized depletions, early closures, or shore-based overcapitalization. Potential problems of localized depletion can be addressed by the Council through further management actions, as in the past.

Comment 29: The shoreside sector has demonstrated its concern for the fishery by attempting to delay the non-roe or "B" season (June 1-December 31) to reduce catch of juvenile pollock, Pacific herring, and salmon bycatch. In addition, the shoreside sector set up a voluntary herring savings area to reduce herring bycatch in 1991 and 1992.

Response: NOAA acknowledges and appreciates the concern fishermen have for the resources that sustain them. Self-regulation is certainly a benefit for the resource.

Comment 30: Benefits to the Nation with approval of Amendment 18 would include an increase in food production.
and value, as well as a reduction in wasteful discard of fish.

Response: Some current data indicate that the product recovery rate of the inshore sector is somewhat higher than for the offshore sector. Inshore processors presently convert a higher percentage of fish from round weight to finished product. The best information currently available to estimate discard amounts in the groundfish fisheries provides no reason to believe that discard amounts will increase or decrease under the approved allocations. The amount of prohibited species taken in the groundfish trawl fisheries is largely governed by prohibited species catch (PSC) limits, attainment of which will prohibit further fishing for specified species by both inshore and offshore operations. In addition, the factory fleet has indicated that it expects to increase recovery rates while decreasing waste as it learns more about the improved technology used by the inshore sector. Shoreside processing plants have demonstrated an increase in use of all raw materials, while some factory trawlers may experience a greater loss of potential product due to the conditions under which they must work. Equipment used for preparing fish products must be precisely set; rough conditions experienced at sea on the factory trawlers could interfere with maximum efficiency of processing equipment. The inshore processing plants do not have to deal with the movement of equipment and can be more precise in their cuts of fish.

Nonetheless, the offshore component is developing and employing better technology to more fully utilize the entire fish. These same issues were dealt with in the final rule published for Amendments 18/23.

Comment 31: The offshore sector has a higher preprocessing discard rate, which can be verified by the 1992 data. This constitutes a waste of our resources and discards should be counted as a cost to the nation. This amendment will reduce waste and promote conservation.

Response: The cost-benefit analysis considers the variations in discard rates. Differences occur between seasons, sectors, and individual vessels. The 1992 data mentioned in the comment are from a small subset of factory trawler(s) and may not be representative of the entire fleet. Similarly, because only a portion of the harvest taken by the inshore fleet is reported by official observers, estimates of inshore discards are particularly subject to statistical bias and error.

With regard to an evaluation of efficiency and waste in the production process, other scarce resources in addition to raw fish need to be taken into account, e.g., fuel, labor, and capital. Thus, waste needs to be placed in the context of total resources employed to generate a given quantity of output.

Comment 32: The offshore sector has other fishing options available to it as it is mobile. The inshore sector is solely dependent on resources close at hand.

Response: NOAA recognizes the competitive advantage of the mobile offshore component. Approval of the CVOA during the “B” season will provide needed protection to the inshore component in an area close to shore.

Comment 33: The inshore sector should not be penalized for failing to capitalize as rapidly as the offshore fleet, because part of the offshore fleet’s growth can be attributed to federal loan guarantees and capital subsidies by both the U.S. government and foreign interests.

Response: The allocations approved under revised Amendment 18 are not intended to penalize either the inshore or the offshore component. Instead, the intent is to provide protection to the inshore component to allow the utilization of the fishery resource while acknowledging the fishery interest of the offshore component. Approval of the 35/65 percent allocation for 1993 through 1995 demonstrates this point.

Comment 34: By requiring fishermen to declare where they may sell their product for an entire calendar year, fishermen are prohibited from selling to a more competitive purchaser, thereby restricting trade. In addition, in attempting to protect a specific industry sector in a specific location from competition with another sector, freedom of trade between states is restricted.

Response: Amendment 18 does not restrict to whom a harvester may sell fish. Harvesters are free to deliver fish to either inshore or offshore processors, as defined in the regulations, up to the specified percentages. In addition, the allocations do not restrict freedom of trade between states as they do not restrict where delivery or sale of fish may occur.

Comment 35: Approval of revised Amendment 18 will transfer significant control to foreign interests that dominate the Alaska shorside processing industry. In effect, the allocations illegally give away Washington State jobs and U.S. resources to Japanese companies. The allocation will increase the market power of the Japanese within these markets.

Response: Revised Amendment 18 will result in a transfer of benefits from the offshore sector to the inshore sector. The cost-benefit analysis indicates that under a 35/65 percent inshore/offshore allocation program, the impact on net national benefits is minimized. That is, losses from the off sector are nearly balanced by gains in the inshore, in terms of national economic welfare. The transfer will have a definite positive impact for the Alaska coastal communities that will benefit from an increase in commercial fishing and processing revenues. NOAA recognizes that a fair share of the inshore processing capacity is identified with Japanese interests. By the same token, there is a considerable foreign financial interest in the offshore operations. Moreover, the catcher vessels that serve the onshore processing plants are identified as nearly 100 percent U.S. enterprises. In any case, the foreign ownership element in both sectors does not violate U.S. law. In fact, under the U.S. "fish and chips" policy that played an important role in the development of Alaska fisheries for domestic production, foreign companies that transferred (pollock) processing technology and invested in U.S. fish processing companies were awarded preferential allocations of the total allowable foreign catch off Alaska in the period in which foreign directed fishing was allowed. Some Japanese companies were especially cooperative under this policy and as a result these companies have maintained an ownership presence in the inshore Alaska pollock sector.

Comment 36: Allocation should be based on harvesting rather than processing rights. Otherwise, “foreign leakage” is a problem. Rents, or benefits, from the fishery are much more likely to be captured by allocating to harvesters as opposed to processors.

Response: Revised Amendment 18 allocates pollock between vessels catching pollock for processing by the inshore component and vessels catching pollock for processing by the offshore component. “Foreign leakage” refers to the accrual of benefits to persons and firms outside of the United States. The RIR/FRFA indicates the difficulties of measuring foreign leakage due to imperfect knowledge of the lever of investment foreign firms have in the BSAI pollock fishery. Foreign firms are known to have investments in vessels in the offshore component as well as in shorebased plants and vessels in the inshore component. NOAA has no verified information on which to
determine whether benefits to the United States would be significantly larger under alternative allocations.

Comment 37: Revised Amendment 18 does not correct the failings of Amendment 18 identified in the March 4, 1992, letter of disapproval from the Under Secretary. By refusing to measure the preferred alternative against others, the Council has admitted there is no new justification for approval of revised Amendment 18.

Response: The Under Secretary, in his March 4, 1992, letter to the Council, disapproved portions of Amendment 18 based on a lack of information that would justify the higher percentages being allocated to the inshore component. In particular, there was no documentation of positive social impacts that could balance the losses in net national benefits demonstrated in the cost-benefit analysis. The Under Secretary suggested the Council consider alternative justifications, such as countervailing benefits, modifying the allocation percentages to minimize economic losses and/or melding a subsequent allocation proposal with a moratorium on entry into the fishery, prior to a resubmission of Amendment 18. He stated that a supplemental analysis would be necessary before further consideration could take place. During the April 1992 meeting, the Council chose to consider a modification of the allocation percentages. And, although a separate action, the Council has prepared a plan amendment to place a moratorium on the entry of new vessels into the fishery, beginning in 1993.

On September 3, 1992, the Council, in cooperation with NMFS staff, completed a supplementary analysis of the allocation alternatives. The analysis concluded that the preferred alternative would result in net national economic benefits and would generate compensating economic benefits and development for the Alaska coastal communities in the BSAI. On this basis, a 35/65 percent allocation from 1993 through 1998 appeared warranted. By the same token, there was not sufficient justification for an allocation that would give the inshore component a share greater than 35 percent.

The Under Secretary urged the Council to work towards some other method of allocating fish that would rely more on free market decisions and less on government intervention. The allocations, as approved, will provide protection from preemption of the inshore sector by the offshore sector while the Council works towards a more market-based allocation system. The Council has since submitted proposed amendments for individual fishing quotas (IFQ) for sablefish and Pacific halibut.

Comment 38: As stated in the March 4, 1992, letter from the Under Secretary to the Council, safeguarding capital investments is a desirable objective under the Magnuson Act. The Council has totally disregarded this obligation under the Magnuson Act.

Response: NOAA disagrees. The Council must consider not only the interests of the offshore component, but also the interests of the inshore component. The Council has an obligation to both components when recommending appropriate management measures for the Alaska groundfish fishery. In view of the possibility of preemption, an allocation of the pollock TAC in the BSAI guarantees both the offshore and inshore sectors access to the fishery.

Comment 39: Maintaining the status quo would accomplish the goals identified in the March 4, 1992, letter from the Under Secretary. During the non-roe or “B” season, the shore-based sector operated for 77 days, while the offshore operated only 58. Prior to allocations, both sectors operated an equal number of days. If the allocations are approved and increased in 1994 and 1995, the offshore sector will be further decreased, especially taking into account losses to be incurred during the roe or “A” season.

Response: A comparison of the number of days for the offshore versus inshore components is not an appropriate parallel. The offshore component is capable of harvesting a larger amount of fish in a shorter period of time than the inshore component. Maintaining the status quo could lead to the problem of preemption Amendment 18 was intended to prevent. Although the supplemental analysis for this amendment projects future losses for the offshore fleet and gains for the inshore sector, the 35/65 percent allocation coupled with approval of the CVOA is justified based on the resulting stability and prevention of potential preemption on behalf of the inshore sector, and the likelihood of benefits that would accrue to Alaska coastal communities.

Comment 40: The Council has done little to work as expeditiously as possible toward some other method of allocating fish than either the BSAI system or direct government intervention” (i.e., IFQs) as urged in the March 4, 1992, letter from the Under Secretary.

Response: NOAA urged the Council to work toward a more efficient method of allocating fishing privileges than direct government intervention when Amendment 23 and part of Amendment 18 were approved. NOAA is aware that the Council currently is working on a moratorium on the entry of new vessels into the fisheries, to be followed by a permanent solution to excess fishing capacity. Any incentive to over-invest in the inshore catching and processing sector will be tempered by the planned expiration of the approved allocations, and the possibility of limited access measures in the near future. In addition, a proposed rule for IFQs for sablefish and Pacific halibut, submitted October 27, 1992, was published in the Federal Register December 3, 1992 (57 FR 57/30).

Comment 41: Amendment 18 does not live up to the fundamental principle of the Magnuson Act to use “wise management of the fisheries as the best economic safeguard for those who derive their living from these resources.”

Response: The allocations approved in revised Amendment 18 are intended to be a temporary, interim management measure to prevent the potential problem of preemption in the Alaska groundfish fishery. The allocations will provide a certain amount of protection to the inshore component, which depends on the fishery for its livelihood. NOAA has urged the Council to continue working toward more efficient management measures, such as limited entry and individual transferable quotas. In the meantime, NMFS, together with the Council, will provide necessary management measures to protect the resources as well as the temporary allocations to protect the resource-users, inshore and offshore.

Comment 42: A statement that a broad consensus of the industry supported the Council’s action is untrue.

Response: NOAA concurs. The allocation recommendations of the Council under Amendments 18/23 and revised Amendment 18 appear to be highly controversial and divisive within the fishing industry.

Comment 43: Revised Amendment 18 is politically biased and conflicts of interest exist in the Council. Such issues will continue to invite costly litigation.

Response: A similar comment was raised during the review of Amendment 18/23. The Magnuson Act requires each voting member of a Regional Fishery Management Council and the executive director of each Council to disclose any financial interest in any harvesting, processing, or marketing activity that is being or will be undertaken within any fishery over which the Council concerned has authority. Financial...
interests that must be disclosed include those held by the individual, his or her spouse, minor child, or partner; and any organization (other than the Council) in which the individual is serving as an officer, director, trustee, partner or employee. If the individual complies with the requirement to file a financial disclosure statement, he or she is exempt from criminal liability under section 208 of Title 18 of the United States Code.

In developing the Magnuson Act, Congress recognized the need to have members of the fishing community on the Council to share their fisheries knowledge and experience. Congress understood that by requiring nominees with this type of background, some members may be voting on issues that would directly affect their fishing operations, positively or negatively. Regardless of the effect, Council members are not required to recuse themselves from voting or debating on a decision unless the matter is primarily of individual concern.

Comment 44: The Council has not adequately addressed the merits for choosing the preferred alternative versus other possibilities. In particular, alternative 6, which would have allowed the catcher vessels to decide to whom they would sell. In addition, it is the catcher vessel sector that has been preempted, not the inshore sector. The Council has not explained how the preferred alternative will address this problem of preemption in the fishery.

Response: The preemption of catcher vessels may be a problem, but it was not the problem addressed by the Council. The Council did address this problem in the future if it chooses. Alternative 6 was not recommended to the Secretary in Amendments 18/23 or in revised Amendment 18 because allocations of pollock under that alternative did not provide sufficient assurance that the desired amounts of pollock would be available to vessels that deliver to shore based processing plants, thereby preventing preemption. Approval of the 35/65 percent allocation is justified and accomplishes the stated objective. See response to comment 17.

Comment 45: The Department of Commerce does not have the legal authority to allocate processing rights, only harvesting rights, and should have chosen Alternative 6 as its preferred option.

Response: Revised Amendment 18 allocates pollock between vessels catching pollock for processing by the inshore component and vessels catching pollock for processing by the offshore component. In American Factory Trawler Association v. Knauss. No. C92-870R (W.D. Wash.), the court found that the allocations under Amendments 18/23 were consistent with the Magnuson Act.

Comment 46: The indirect and induced effects of direct income is greater for Alaskan coastal communities of the inshore sector than for the offshore sector.

Response: The results referred to in this comment were derived by using numbers from different impact studies and are not comparable with the results in the Council's Input-Output study. In general, indirect and induced effects will be larger (have higher multipliers) for larger communities, because more of the initial income change will be captured and re-spent within the presence of support industries and other services. For smaller communities, more income will "leak" to other areas, and the indirect and induced impacts will contribute to those other areas.

Comment 47: Neither sector has to pay for the right to harvest raw fish, which are a public resource. Taxes are one way the public receives benefit from the fish. Because the offshore fleet pays minimal taxes as opposed to the inshore fleet, a transfer of resources to the inshore fleet gives the public more compensation from the use of the resource.

Response: Taxes are one vehicle used to convey or capture compensation to the true owners of the resource. However, the current tax structure only benefits a subset of owners, those in Alaska. See also response to comment 22. If this allocation necessitates growth in governmental services, then the increase in tax revenue may not be sufficient to offset the extra costs.

Comment 48: It is inappropriate to cite and use the total amount of fish tax, rather than the tax for pollock deliveries, while considering the benefits of inshore production for the State of Alaska.

Response: NOAA concurs that when calculating the benefits of processing more pollock on shore, only pollock deliveries should be considered. A revised cost-benefit analysis of the benefits of the proposed increase in fish to the inshore sector does not incorporate the private costs required for increased processing capacity or the accompanying additional social infrastructure.

Response: The quantitative results in the supplemental analysis are a projection over the relatively short time period for Amendment 18 (through 1995). The inshore sector will not need to increase processing capacity beyond recent additions. In addition, the social impact data do not anticipate significant changes in structure over the same time period. The supplemental analysis reflects recently increased capacity and capital investment. Given the current inshore season length, further capacity would not likely be needed to harvest the approved allocations of 35 percent for the inshore component. Whether the amendment encourages (or discourages) further investment is unknown. We note, however, that capacity growth is a common feature of an open-access fishery.

Comment 50: The supplemental cost-benefit analysis is overly simplified and relies on faulty information. Inadequate data were used to project market prices (based on only 1 year) and to construct supply functions. The analysis does not incorporate recent changes in the size and number of operations in both sectors. A bioeconomic model should have been constructed instead.

Response: The supplemental cost-benefit analysis relied on the latest information available at the time and followed standard cost-benefit methodology. These constraints were laid out in an attempt to construct a more rigorous and elaborate model upon which to base the analysis, which in any case likely would have had data requirements that were not possible to meet under any circumstances. A prior effort by Council staff to model the pollock fishery was abandoned as a result, at least in part, of data constraints. The methodology used in the supplemental analysis was scrutinized by the Council's Scientific and Statistical Committee, expert representatives from the offshore and inshore sectors and economists from the academic community. There was general agreement the basic methodology was appropriate and sound, although there were disagreements about data inputs, particularly with regard to product recovery rates and discards. The analysts recognized that the model assumes no structural changes that could alter the outcome over time, but given the relatively short time frame for the analysis—three years—this shortcoming was judged as marginal. Variations and uncertainties in the data sets were addressed through the application of Monte Carlo simulations (risk analysis), which is a standard statistical technique. It is also of note that biologists were unable to predict any biological feedback or impact from this rule. TACs are set separately. If the harvest remains within the established TAC, the benefit of the fish stock is not likely to be affected by who harvests and processes it.
Comment 51: The supplementary analysis demonstrates a potential loss to the nation of $34–60 million. This is based on an erroneous analysis that, if corrected, would show a positive net benefit of $88 million.

Response: The estimate of net benefits of $88 million is based on a set of parameters and an analysis that was presented to the Council by certain processors, but was not reviewed by the Council/NMFS analytical team that prepared the supplementary cost-benefit analysis for the revised amendment. NMFS staff subsequently reviewed the processors’ analysis and discovered computational and methodological flaws that raised serious questions about the results and conclusions. In any event, reruns of the NMFS cost-benefit analysis that incorporated the latest data failed to produce results that in any way resembled those produced in the processors’ analysis. The NMFS model reruns consistently showed that the outcome of the allocation alternatives was a loss in net national economic benefits. See response to comment 50.

Comment 52: The revised Amendment 18 cost-benefit analysis shows a net gain in producer surplus as a result of approving this measure.

Response: The positive cost-benefit finding, as reported in section 8 of the September 3, 1992, supplementary analysis, was based on an unverified data set that did not agree with information that appears in other parts of the supplementary analysis. Also, the estimates in section 8 represent total benefits to all U.S. and non-U.S. owners of capital in the pollock industry and do not take into account the leakage of benefits to foreign interests. Studies have shown that foreign ownership of processing capacity in Alaska was in the 75–80 percent range, while foreign ownership for the offshore sector was in the 20–25 percent range. Additionally, the section 8 table does not include any of the lost surplus attributable to the labor sector.

Comment 53: The cost-benefit analysis should incorporate more than just the maximization of private profit. Other considerations, such as physical waste, marine pollution, and loss of food production, must be incorporated.

Response: The cost-benefit study addresses more than just profit. Study results report the estimated changes in producer benefits that are identified as "producer surplus," which is the residual after variable costs (considered social costs) are deducted from revenues. This surplus cannot be strictly identified as corporate profits because of different ways some cost items are treated.

Comment 54: The supplementary analysis for revised Amendment 18 admitted the computation of fish meal production was understated, yet did not correct the error in the computation of producer surplus.

Response: In the numeric analysis, fish meal is treated as an ancillary product such that an accuracy rate of 1.0 is ensured. Treating sea and meal as additional rather than primary products means that quantities of those products in the model will depend solely on the amount of raw fish processed by each sector. This may not match actual observed product levels. In any event, the impact of fish meal production on the estimated changes in producer surplus is marginal.

Comment 55: The supplementary analysis states the cost for factory trawlers to harvest and process pollock into surimi is $0.10 per pound. This assumption does not take into account the cost of fuel, depreciation, equipment repair, and other services.

Response: The analysis relied upon the best available information at the time, which included records of offshore trawler operations from which cost estimates were made. Uncertainties with regard to the cost were addressed in the risk analysis.

Comment 56: The supplementary analysis treats wages differently for inshore and offshore workers. Wages to the offshore sector are viewed as profits, while wages earned by the inshore sector are not counted as a gain to the workers.

Response: Compensation for at-sea workers is not treated as profit. A portion of the lost share-based income for at-sea workers is treated as lost producer surplus, while a portion of the gains to inshore share-based workers (fishing crew) is treated as gained producer surplus. It is therefore not accurate to state that labor costs between sectors is treated differently. All labor payments, no matter the source, are treated as costs for purposes of calculating the surplus attributable to vessel and plant owners. Surplus also accrues to share-based labor, as represented by payment in excess of opportunity costs. Crewmens in both sectors are paid on a share basis. Labor in processing plants inshore, however, is paid on a wage rate basis, which does not fluctuate with changes in plant revenue and is assumed to approximate the opportunity cost.

Comment 57: The supplementary analysis does not include taxes paid to the government as a benefit to society.

Response: NOAA concurs that taxes paid by foreign entities should be included as a national benefit in cost-benefit analysis and that this was omitted in the cost-benefit analysis. The information on the amount of taxes paid was not available to the analysts. The effect of including these taxes would have been a reduction in the magnitude of the net losses. Even if we had information including the taxes, the likely result would still have been significant national benefits.

Comment 58: NMFS uses the wrong percentage of foreign ownership in both sectors to account for foreign leakage of benefits outside of the nation. It also ignores the benefits of taxes paid by foreigners to the U.S. government in its analysis.

Response: The analysts used the best published information available on foreign ownership. It is difficult to ascertain actual ownership within the corporate structure, and how much control that ownership or capital investment has within the market to reallocate profits. No recent work on foreign ownership had been done or could be completed within the available timeframe. Nonetheless, approval of the 35/65 percent allocation was based on benefits to the Western Alaskan communities.

Comment 59: The cost-benefit calculations ignored subsidy of shoreside plants during their initial operations in the early 1980s.

Response: The cost-benefit study focuses on 1992–1995, so any prior investments are considered sunk costs. Federal funds were available to both sectors through a variety of government programs such as the Saltonstall-Kennedy Grant Program and the Fisheries Obligation Guarantee Program.

Comment 60: Because the results of the economic analysis showed a net loss as resources were shifted away from the offshore sector, the Council should have evaluated an alternative that increased the allocation to the offshore fleet.

Response: The Council did not consider an increased allocation because it had other objectives beside increasing the flow of national net benefits (i.e., protection from preemption for the inshore component and the accompanying stability of the fishery).

Comment 61: The models and analyses used for the cost-benefit study may be sufficient for gauging short run industry producer surplus from a given pollock TAC, but are not sufficient for constructing actual supply and demand equations.

Response: NOAA assumes this is a short-term measure and the TAC is relatively fixed. Since it is not necessary to estimate functions, this type of study is appropriate. Also, the data were not
sufficient to construct the market curves.

Comment 62: The cost data for inshore processors are not based on any formal survey and do not allow one to attribute cost by product form. This and other deficiencies make it difficult to generate any statistical measures of their accuracy and make the results of the cost-benefit study questionable.

Response: NOAA concurs. New data are constantly needed and NOAA recognizes the dynamic changes occurring in this fishery. The risk analysis performed as a part of the cost-benefit analysis is a modest attempt to capture some of the uncertainties. See response to comment 2.

Comment 63: Variable costs should have been attributed among products based on price as opposed to volume.

Response: Non-labor costs for the offshore sector were based on an analysis of vessel records that provided a breakdown of production volume, by product, and overall cost figures. Individual product costs were estimated through a regression analysis of costs as a function of volume, which, given the available data, was judged to be the most reliable means to estimate the costs. The underlying assumption is that the cost per unit of time spent is equivalent across product types. NMFS received no information indicating, for instance, that the labor costs per unit of time were different across species. Volume of fish handled would seem to be a more accurate representation of time spent than the value associated with the output products. If the value argument were used, the cost of producing surimi and roe during the "A" season would be substantially higher than producing surimi alone, and this does not seem reasonable.

Comment 64: Section 8 of the supplementary analysis is unfair and biased. It includes a cost-benefit analysis done by the Council after-the-fact to justify approval of the allocation.

The analysis ignores extensive testimony of some parts of the industry and the Council's Scientific and Statistical Committee and relies solely on shoreside interests to produce model parameters. The predicted result of this "testimony" scenario does not resemble the actual fishery performance for the year modeled (1991). The NMFS team of economists refused to be identified as preparers of this section.

Response: This section should be viewed as a Council document reflecting the differing parameters the Council decided were important. NMFS staff did not contribute to the section 8 analysis.

Comment 65: Section 8 fails to account for the effect the cumulative costs would have on the offshore component of revised Amendment 18. It ignores the costs already imposed on the offshore fleet under Amendment 23 in the GOA.

Response: The revised analysis looks at the incremental costs, benefits, and impacts arising from the proposed new allocations. It is not appropriate to incorporate the results from any other previous management action.

Comment 66: The analysis did not take into account that the mobile offshore fleet has many more options for alternative activities than the smaller shorebased ones.

Response: See response to comments 67 and 68. NOAA agrees that fishing patterns would be affected by implementation of the CVOA in the BSAI area. This action establishes the CVOA only for the "B" or non-roe season. Access to the CVOA will be unrestricted during the "A" or roe season. In addition, revised Amendment 18 was changed from the original Amendment 18 to allow access to the CVOA for motherships that only process fish. Restrictions in the CVOA apply only to pollock and will not affect entry in the salmon processing industry.

Historical catch data indicate that large amounts of pollock are likely to be available north and west of the CVOA during the "B" season of which the offshore component could take advantage. The Council retained the CVOA during the "B" season because catcher vessels that deliver their pollock catch to shore-based processing plants in the Aleutian Islands have a limited range compared with catcher/processor vessels that can harvest pollock resources north and west of the CVOA.

In addition, public testimony indicated the possibility of overcrowding and grounds preemption within the CVOA by the catcher/processor fleet. Approval of the CVOA during the "B" season will provide needed protection to the inshore sector. Access to the CVOA is unrestricted during the "A" season, which will allow offshore vessels to operate. In addition, allowing motherships to operate in the CVOA will prevent undue hardship on the smaller catcher vessels in the CVOA and allow delivery there to the offshore component.

Comment 67: In the past, NMFS and the Council rejected similar CVOA proposals that would have applied to foreign fishermen and joint venture fishing operations. The reasons for disapproving such areas in the past apply to the CVOA as now proposed.
Response: The Council proposed a fishery development zone (FDZ) in Amendment 6 to the BSAI groundfish FMP. The FDZ was intended to exclude foreign fishing vessels and be reserved for the use of U.S. fishing vessels only. This amendment proposal was disapproved by the Secretary on December 8, 1983. Even though the concept was supported, the Secretary determined during the preliminary evaluation that the amendment was not consistent with the national standards and was not sufficient in scope and substance to warrant review. The Council was informed of the reasons for disapproval and provided information on rectifying the deficiencies. The proposal was not resubmitted. In Amendment 9, the Council proposed closure of areas west of 170° W. longitude, within 20 nautical miles of the Aleutian Islands, to foreign trawling. The Council proposed this measure to reduce the foreign bycatch of fully utilized species such as rockfish. The Secretary disapproved this part of the amendment because the proposed area closure was not the most effective way to resolve the bycatch problem. Hence, the reasons for Secretarial disapproval of the previous exclusive area proposals are not relevant to the CVOA proposed as part of revised Amendment 18. In this instance, the CVOA is necessary to assure that catcher vessels that deliver “B” season pollock primarily to the inshore component will have a reasonable opportunity to harvest the pollock allocation without preemption by the offshore component that is capable of harvesting its “B” season allocation in other areas.

Comment 71: The CDQ is needed to help local communities offset the high capital costs of entering the BSAI groundfish fisheries.

Response: NOAA concurs. The CDQ program was established to help develop commercial fisheries in eligible western Alaska communities based on the Bering Sea coast and elsewhere which may not have been able to enter the fishery. The Under Secretary approved the CDQ in concept through December 31, 1995, as a part of the final rule for Amendments 18/23. This decision has not been changed. Proposed regulations to implement the CDQ for the years 1994 and 1995 are the subject of a separate rulemaking; a final rule for the years 1992 and 1993 has been issued.

Comment 72: The CDQ part of the proposed action is not consistent with the problem statement (preemption) and no cost-benefit analysis was done for this portion of the allocation.

Response: See response to comment 71.

Analysis of the CDQ program was considered during the review period for Amendments 18/23 and was approved, in concept. The CDQ is being implemented under separate rulemaking.

Comment 73: The allocations would be prejudicial to some CDQ participants because those at-sea processors that are neither catcher vessels nor motherships would be prevented from entering the CVOA. On the other hand, catcher vessels and motherships would be allowed to operate in the CVOA, reducing costs of transportation. The overall effect would be to drive up the expenses of the at-sea segment. The CVOA is unnecessary if the comprehensive rationalization of the fishery occurs and the CVOA discourages some potential participants in the CDQ.

Response: The final rule issuing regulations to implement the CDQ states that “a vessel included in the offshore component may harvest its CDQ allocation in the CVOA when directed fishing is closed for the offshore component.” (57 FR 54936, November 23, 1992). The CVOA is necessary to provide protection for the inshore component and should not affect participation in the CDQ program.

Comment 74: If the CVOA is approved, the non-roe or “B” season should be redefined so that it lasts only 5 weeks (or whatever period would affect the at-sea component). In addition, if individual fishing quotas (IFQ) come about, the CVOA would be unnecessary.

Response: Directed fishing for the second seasonal allowance of pollock, commonly known as the non-roe or “B” season, may occur at any time during the period June 1 through December 31 under §675.20(a)(2)(ii). Although the “B” season is specified for this period, directed fishing by, or for delivery to, either the inshore or offshore component is expected to occur during a much reduced time period within this season. After closure of the offshore component’s directed pollock fishery, the existence of the CVOA becomes moot, unless it is reopened later in the fishing year due to a reapportionment of reserve to the pollock TAC.

The applicability of the CVOA will have to be evaluated by the Council and the Secretary under an IFQ program for the pollock fishery.

Comment 75: The amended language in the prohibition sections of 50 CFR 672.7 and 675.7 to ensure that mobile processors declaring themselves to be part of the inshore component remain at a fixed point throughout the year may be incomplete. The portion of the sections which state, “when that vessel engages in a directed fishery for Pacific cod in the GOA or pollock for the first time in a fishing year” may lead to an interpretation that a vessel may have two fixed locations, one for Pacific cod and one for pollock. It might be useful to provide further clarification of this sentence.

Response: Harvesting and processing can be independent operations that may occur in different areas. With regard to harvesting, the single location criterion under the “inshore component” definition applies to “* * * pollock, harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the GOA * * *” (§§672.2 and 675.2). Without reference to a specific management area, this definition applies to any pollock harvested anywhere. For Pacific cod, it applies only to Pacific cod harvested in the GOA. For example, Pacific cod harvested in a directed fishery for this species in the GOA would be affected by the inshore-offshore allocation rules even if the fish were actually processed in the BSAI area. With regard to processing, the definition explains that a “single geographic location” means the location at which a processor vessel first engages in a directed fishery for Pacific cod in the GOA or pollock (harvested anywhere) during a fishing year. For example, if a processor vessel reported a single location adjacent to the BSAI to process pollock harvested in a directed fishery for pollock in that area and then moved to a different location adjacent to the GOA to process either pollock or Pacific cod harvested in a directed fishery for those species in that area, then the GOA location would be considered the second location. This would be a violation of the “inshore component” definition. This interpretation was explained in the preamble of the proposed and final rules for Amendments 18/23 published in the Federal Register (56 FR 66008; December 20, 1991, and 57 FR 23321; June 3, 1992, respectively).

Comment 76: The Department of Commerce’s Inspector General and the antitrust division of the Department of Justice objected to flaws in the analysis of the rule.

Response: Comments on Amendments 18/23 presented this same argument and the agency responded to these comments in the final rule for Amendments 18/23 (see page 23330 of 57 FR 23321, June 3, 1992).

Comment 77: Revised Amendment 18 is in violation of the Appointments Clause of the U.S. Constitution.
majority of the voting members of the Council are selected by the Governor of Alaska and biased Amendment 18 to promote social interests rather than legitimate conservation and management goals.

Responsiveness: Although Councils recommend FMPs or FMP amendments, it is the Secretary that decides whether to approve or disapprove a Council's proposal and only the Secretary has the authority to implement an approved FMP or FMP amendment. The delegation of power from the Congress to the Secretary is within the authority of the Appointments Clause. Therefore, the Secretary's approval of this allocation does not violate the authority to implement an approved FMP or FMP amendment. The FRFA prepared a supplemental environmental impact statement (FSEIS) for Amendments 18 and 23, which was reviewed under the requirements of the National Environmental Policy Act. A notice of availability of the FSEIS was published on March 20, 1992 (57 FR 9722). A copy of the FSEIS may be requested from the Council (see ADDRESSES). Since the impacts of revised Amendment 18 are within the scope of the FSEIS, this rule is categorically excluded from the requirement to prepare an environmental assessment under section 6.02.c.3(f) of NOAA Administrative Order 216-6.

NOAA determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the RIR/FRFA prepared by the Council. A copy of the RIR/FRFA may be requested from the Council (see ADDRESSES).

The FRFA prepared by the Council describes the effects that revised Amendment 18 is expected to have on small entities. Based on this analysis, NOAA concluded that this rule implementing revised Amendment 18 will have a significant impact on a substantial number of small entities. A summary of this determination is contained in the proposed rule notice (57 FR 46133, October 7, 1992). The existing collection-of-information requirement for check-in/check-out notices has been approved by the Office of Management and Budget under the Paperwork Reduction Act (PRA) (control number 0648-0213). This final rule does not contain a collection-of-information requirement for purposes of the PRA.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of Alaska. This determination was submitted for review by the responsible Alaska State agency under section 307 of the Coastal Zone Management Act. Consistency is automatically inferred because the appropriate State agency did not reply within the statutory time period. The Council determined that this rule is expected to have a minor effect on small entities. Based on this analysis, NOAA determined that revised Amendment 18, as approved, is consistent with the Magnuson Act and other applicable law. NMFS finalized a supplemental environmental impact statement (FSEIS) for Amendments 18 and 23, which was reviewed under the requirements of the National Environmental Policy Act. A notice of availability of the FSEIS was published on March 20, 1992 (57 FR 9722). A copy of the FSEIS may be requested from the Council (see ADDRESSES). Since the impacts of revised Amendment 18 are within the scope of the FSEIS, this rule is categorically excluded from the requirement to prepare an environmental assessment under section 6.02.c.3(f) of NOAA Administrative Order 216-6.

In § 672.2, the existing definitions of "inshore component" is revised to read as follows:

§672.2 Definitions.

Inshore component (applicable through December 31, 1995) means that part of the U.S. groundfish fishery off Alaska that includes:

(1) All shoreside processing operations;

(2) All processor vessels that process, on a daily average during any weekly reporting period, less than 18 metric tons of Pacific cod harvested in the Gulf of Alaska and pollock in aggregate round weight equivalents, and are less than 125 feet (38.1 m) in length overall; and

(3) All processor vessels in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) that process, at a single geographic location during a fishing year, pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, and that submit a check-in notice and weekly production report as required at § 672.5(c) of this part. For purposes of this definition, a single geographic location will be determined by the geographic coordinates reported on a check-in notice submitted by the vessel operator when that vessel engages in a directed fishery for Pacific cod in the Gulf of Alaska or pollock for the first time in a fishing year.

3. In § 672.7, paragraph (b) (1) and (2) are revised to read as follows:

§672.7 Prohibitions.

(1) Operate any vessel in more than one of the three categories included in the definition of "inshore component," at § 672.2 of this part, during any fishing year.

(2) Operate any vessel to process pollock harvested in a Federal reporting area off Alaska in a directed fishery for pollock, or Pacific cod harvested in the Gulf of Alaska in a directed fishery for Pacific cod, under the "inshore component" and "offshore component" definitions at §§ 672.2 and 672.5 of this chapter during the same fishing year.

4. Section 672.20 is amended by removing paragraph (a)(2)(v), and revising paragraphs (a)(2)(v) (A) and (B) to read as follows:

§672.20 General limitations.

(a) * * *

(b) * * *
(A) The DAP apportionment of pollock in all regulatory areas and for each quarterly reporting period described in paragraph (a)(2)(iv) of this section will be allocated entirely to vessels catching pollock for processing by the inshore component after subtraction of an amount that is projected by the Regional Director to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. The Regional Director may establish separate directed fishing allowances and prohibitions authorized under paragraph (c)(2) of this section for vessels catching pollock for processing by the inshore component and for vessels catching pollock for processing by the offshore component. If the Regional Director determines that the inshore component will not be able to process the entire amount of pollock allocated to vessels catching pollock for processing by the inshore component during a fishing year, then NMFS will publish a notice in the Federal Register that reallocates the projected unused amount of pollock to vessels catching pollock for processing by the offshore component.

(B) The DAP apportionment of Pacific cod in all regulatory areas will be allocated 90 percent to vessels catching Pacific cod for processing by the inshore component and 10 percent to vessels catching Pacific cod for processing by the offshore component. The Regional Director may establish separate directed fishing allowances and prohibitions authorized under paragraph (c)(2) of this section for vessels catching Pacific cod for processing by the inshore component and for vessels catching Pacific cod for processing by the offshore component. If, during a fishing year, the Regional Director determines that either the inshore or offshore component will not be able to process the entire amount of Pacific cod allocated to vessels catching Pacific cod for processing by that component, then NMFS will publish a notice in the Federal Register that reallocates the projected unused amount of Pacific cod to vessels catching Pacific cod for processing by the other component.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

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

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

6. In §675.2, the definitions of “inshore component” and “offshore component” are revised to read as follows:

§675.2 Definitions.

- Inshore component (applicable through December 31, 1995) means part of the U.S. groundfish fishery off Alaska that includes:
  1. All shoreside processing operations;
  2. All processor vessels that process, on a daily average during any weekly reporting period, less than 18 metric tons of Pacific cod harvested in the Gulf of Alaska and pollock in aggregate round weight equivalents, and are less than 125 feet (38.1 m) in length overall; and
  3. All processor vessels in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) that process, at a single geographic location during a fishing year, pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, and that submit a check-in notice and weekly production report as required at §672.5(c) of this part. For purposes of this definition, a single geographic location will be determined by the geographic coordinates reported on a check-in notice submitted by the vessel operator when that vessel engages in a directed fishery for Pacific cod in the Gulf of Alaska or pollock for the first time in a fishing year.

- Offshore component (applicable through December 31, 1995) means all processor vessels in the U.S. groundfish fisheries off Alaska not included in the definition of “inshore component.”

7. In §675.7, (i) is revised to read as follows:

§675.7 Prohibitions.

(i) Applicable through December 31, 1995. (1) Operate any vessel in more than one of the three categories included in the definition of “inshore component,” at §675.2 of this part, during any fishing year.
(2) Operate any vessel to process pollock harvested in a Federal reporting area of Alaska in a directed fishery for pollock, or Pacific cod harvested in the Gulf of Alaska in a directed fishery for Pacific cod, under the “inshore component” and “offshore component” definitions at §§672.2 and 675.2 of this chapter during the same fishing year.

8. In §675.20, paragraph (a)(2)(iii) introductory text is revised to read as follows:

§675.20 General limitations

(a) 
(2) 
(iii) Applicable through December 31, 1995. The DAP apportionment of pollock in each subarea, and for each seasonal allowance defined in paragraph (a)(2)(iii) of this section, will be allocated 35 percent to vessels catching pollock for processing by the inshore component and 65 percent to vessels catching pollock for processing by the offshore component. The Regional Director may establish separate directed fishing allowances and prohibitions authorized under paragraphs (a)(8) and (a)(9) of this section for vessels catching pollock for processing by the inshore component and for vessels catching pollock for processing by the offshore component.

9. In §675.22, paragraph (g) is revised to read as follows:

§675.22 Time and area closures.

(g) Catcher vessel operational area (applicable through December 31, 1995). Processor vessels in the “offshore component,” defined at §675.2 of this part, may not catch pollock in excess of the directed fishing standard for pollock during the second seasonal allowance of pollock, defined in paragraph (a)(2)(ii) of this section, in the Bering Sea subarea south of 56°00’N. latitude, and between 163°00’ and 168°00’ W. longitude. Processor vessels in the “offshore component” that do not catch groundfish but process pollock that is caught in a directed fishery for pollock by catcher vessels, may operate within this area to process the second seasonal allowance of pollock. Offshore processor vessels that catch or process groundfish in directed fisheries for species other than pollock may operate within this area.

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