and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as this final rule is issued by the AA, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3).

Dated: March 31, 2006.

James W. Balsiger,

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

[FR Doc. 06–3285 Filed 3–31–06; 4:15 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 050607152-6070-02; I.D. 052605B]

RIN 0648–AT04

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Retention Standard

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement a groundfish retention standard (GRS) program in the Bering Sea and Aleutian Island management area (BSAI) for trawl catcher/processor vessels (C/Ps) that are 125 ft (38.1 m) length overall (LOA) or greater and that are not listed American Fisheries Act (AFA) catcher/processors referred to throughout this rule as non-AFA trawl C/Ps. This action is necessary to reduce bycatch and improve utilization of groundfish harvested by these non-AFA trawl C/Ps. This action is intended to promote the management objectives of the Improved Retention/Improved Utilization (IRIU) program, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP), and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective on January 20, 2008.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from NMFS, Alaska Region, P.O. Box 21668, Juneau, Alaska, 99802–1668, Attn: Records Officer, or from the NMFS Alaska Region website at *www.fakr.noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS, Alaska Region, and by email to *David__Rostker@omb.eop.gov* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Jason Anderson at *jason.anderson@noaa.gov* or Jeff Hartman at *jeff.hartman@noaa.gov*. Either person may be contacted at (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the U.S. groundfish fisheries of the BSAI in the Exclusive Economic Zone under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP pursuant to the Magnuson-Stevens Act. Regulations implementing the FMP appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

This action was adopted by the Council to decrease regulatory and economic discards and increase catch utilization in the BSAI groundfish fisheries. Amendment 49 to the FMP (62 FR 63880, January 3, 1998), establishes retention and utilization standards for pollock and Pacific cod. In June 2003, the Council adopted Amendment 79 to the FMP, which authorizes groundfish retention standards as a tool for further increasing the retention and utilization of groundfish and responding to bycatch reduction goals described in National Standard 9. A notice of availability for Amendment 79 was published in the **Federal Register** on June 2, 2005 (70 FR 32287), and Amendment 79 was approved by the Secretary of Commerce on August 31, 2005.

Also in June 2003, the Council adopted a GRS program for all non-AFA trawl C/Ps that are used to harvest BSAI groundfish. A proposed rule for the GRS program was published in the **Federal Register** on June 16, 2005 (70 FR 35054). The public comment period for the proposed rule ended on August 1, 2005. NMFS received 19 letters of comment and 38 discrete comments on the proposed rule. These comments are summarized and responded to below under Response to Comments.

The Council's analysis of groundfish retention rates in the BSAI groundfish fishery revealed that vessels in the non-AFA trawl catcher/processor sector (all lengths) had the lowest retained catch rates of any groundfish trawl fishery in the BSAI. The EA/RIR/FRFA for the GRS program reports that non-AFA trawl C/Ps had a retained groundfish catch rate of 75.1 percent in 2001 and accounted for 67 percent of all discards in the BSAI. However, during the same year in the BSAI, AFA trawl catcher/

processors had a retained groundfish catch rate of 99.1 percent, pot catcher/processors had a retained groundfish catch rate of 93.5 percent and longline catcher/processors had a retained groundfish catch rate of 85.4 percent. Since 2001, non-AFA trawl C/P retention rates have declined slightly while retention rates from other sectors have remained relatively stable. For example, in 2004, non-AFA trawl C/Ps had a retained groundfish catch rate of 67.6 percent. For these reasons, the GRS program focuses on non-AFA trawl C/Ps for improved groundfish retention rates and reduced bycatch.

The Council specified that regulations implementing this GRS program would only apply to non-AFA trawl C/Ps that are 125 ft (38.1 m) LOA or greater while fishing in the BSAI because trawl catcher/processor vessels that are less than 125 ft (38.1m) LOA account for a relatively small portion of the sector's total catch and total discard. In 2004, non-AFA trawl C/Ps less than 125 ft (38.1 m) LOA accounted for only 17 percent of the total catch of all non-AFA trawl C/Ps and 24 percent of the discarded catch. Additionally, because non-AFA trawl C/Ps under 125 ft (38.1 m) LOA have relatively smaller factory space, scale and sampling station requirements could reduce processing capacity relative to larger vessels. Displacing a crew member to accommodate an additional observer could also reduce processing capacity for smaller vessels with limited space for crew. Given the relatively small contribution to this sector's overall harvest and recognizing that compliance costs associated with observers and scale monitoring requirements would be relatively higher for vessels less than 125 ft (38.1 m) LOA, non-AFA trawl catcher/processor vessels that are less than 125 ft (38.1 m) LOA were excluded from the GRS program. The existing management background and explanation of the need for this action were described in greater detail in the preamble to the proposed rule (70 FR 35054, June 16, 2005). The following provides a summary of the approved GRS program.

GRS Program

This action implements an annual GRS for non-AFA trawl C/Ps. The percent of groundfish retained will be a percent calculated as a specified ratio of the round-weight equivalent of total retained groundfish to total groundfish catch. The owners or operators of these vessels will be required to meet this standard on an annual basis. The use of total groundfish catch in the denominator of the calculation, instead of total catch, is intended to avoid a potential incentive to target groundfish species closed to directed fishing and to recognize that retention of non-groundfish often is either impractical or prohibited by regulation. Further, the catch of groundfish that are required to be treated as prohibited species under 50 CFR 679.20(d)(2) will be removed from the GRS calculation for individual vessels. By removing groundfish that are in prohibited species status, vessel operators will not be held accountable for retaining catch that they are required to discard. Groundfish species that are closed to directed fishing will be included in the calculation for percent of groundfish retained, because species taken incidental to target species may be retained up to the maximum retainable amounts established in regulations at § 679.27(c). Including these species in the GRS calculation will provide an incentive to reduce incidental catch while providing flexibility to catch target species.

This action also requires non-AFA trawl C/Ps to meet a 15 percent utilization standard for all retained groundfish species listed in Table 2a to part 679 that are used in the calculation for percent of retained groundfish. For each groundfish species, the total weight of retained products must equal or exceed 15 percent of the round-weight catch of each species during a fishing trip.

Monitoring and Enforcement of the GRS

The GRS will be enforced on an individual vessel basis as opposed to a sector basis, so that those vessels that fail to meet the standard could not affect fishing activity by the rest of the non-AFA trawl C/Ps. All regulated vessels will be required to use NMFS-approved scales to determine the weight of total catch and either obtain sufficient observer coverage to ensure every haul is observed for verification that all fish are weighed, or use an alternative processing plan approved by NMFS. Each vessel will be required to provide a single location for observers to collect samples to reduce the potential of sample bias. Observer sampling of each haul is necessary to determine the percentage of the total catch that is comprised of groundfish. This information will be used to estimate total groundfish weight used in the denominator of the GRS calculation. The round weight of retained groundfish catch will be calculated using NMFS standard product recovery rates (PRRs) set forth in regulations at Table 3 to part 679. For each product/species combination, retained tonnage will be equal to primary product tonnage divided by the applicable PRR. For primary products that do not have a PRR specified in Table 3, NMFS will use best available data until a PRR can be established in regulation. Since retained groundfish must meet minimum utilization requirements at § 679.27(i), any primary product with a PRR less than 15 percent of the total weight of retained or lawfully transferred products produced from catch or receipt of that species will not comply with this action.

Mixing of catch from two or more hauls prior to sampling by an observer will be prohibited. This activity is prohibited because all hauls must be available to be observed and sampled, and it is not possible to obtain a discrete sample if hauls are mixed. Non-AFA trawl C/Ps occasionally mix catch from two or more hauls prior to sampling by an observer. However, the percent of groundfish retained under the GRS will be calculated based on the amount of groundfish in each haul. To determine the amount of groundfish in each haul, each haul will be sampled by an observer for species composition. The proportion of groundfish in each species composition sample will be extrapolated to the total haul weight. NMFS would not be able to determine accurately the total haul weight of groundfish or species composition for a specific haul for purposes of calculating the percent of retained groundfish if two or more hauls are mixed.

Recent enforcement actions concerning intentional presorting of catch to bias observed catch rates of Pacific halibut document the incentive for biasing observer samples to optimize groundfish catch relative to constraining PSC or other groundfish catch. However, NMFS expects that opportunities to bias observer samples will be reduced under the GRS program in comparison with the status quo because of the enhanced monitoring provisions that are established under this rule. These include observer sampling space and catch access provisions that will allow observers to monitor all catch between a holding bin and the scale used to weigh total catch.

Recent enforcement actions also have identified an issue with observers' unwillingness to serve as witnesses in enforcement actions because of inconvenience, cost, and the need for observers to refamiliarize themselves with the data and other records relating to the alleged violation. This could be a particular problem when numerous observers may have information and evidence necessary to prove a violation of the GRS. To address this issue, and

to acknowledge the critical role observers play in effective management and enforcement of Alaska fisheries, NMFS intends to implement a program that provides for payment of a supplementary witness fee to any observer who, at the request of NOAA General Counsel, assists in the prosecution of an enforcement action. This program will mitigate, to some degree, the inconvenience and other costs that may otherwise dissuade an observer from assisting the government in proving its case.

Authority for Bycatch Reduction, the National Standards and the GRS

The EA/RIR/FRFA for this action provides information on Magnuson-Stevens Act requirements to reduce bycatch and increase retention of catch. The analysis also highlights the relevance of National Standards 7 and 9 in this action. NMFS has determined that the GRS program balances conservation through reductions in discards (National Standard 9) and minimizes costs where practicable (National Standard 7) by enforcing higher retention rates only on the specific section of the fleet with the largest problem.

Reduction of bycatch for fisheries and other living marine resources has become a national and global concern. For example, on March 6, 2003, NMFS issued a National Bycatch Strategy to address issues related to the management of bycatch within the Nation's fisheries. To provide the authority for programs like the GRS, Congress amended the Magnuson-Stevens Act to require each fishery management plan approved by the Secretary to ''establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery,'' and include conservation and management measures that, to the extent practicable and in the following priority: (A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided.'' Also, NMFS regulations at 50 CFR 600.350(d)(3) provide guidance on factors that should be considered in determining the practicability of a particular management action to minimize bycatch or the mortality of bycatch. Relevant factors were considered and assessed in the EA/RIR/FRFA prepared for this action and are summarized below.

Comparing GRS Tradeoffs

NMFS concluded that progress made in adhering to Magnuson-Stevens Act requirements to reduce bycatch and potential consumer and environmental benefits from improved retention and utilization of groundfish from the GRS program outweighs the costs of enforcement, increased observer coverage, vessel modifications, operational adjustments and recordkeeping and reporting. The EA/RIR/FRFA describes these conclusions relative to conservation goals through reductions in discards (National Standard 9) and minimization of costs where practicable (National Standard 7) by enforcing higher retention rates only on the specific section of the fleet with a recent history of higher discard rates relative to other BSAI trawl groundfish fisheries. The analysis notes that the growing national and regional emphasis on reduction of discards reflects national and regional consumer interest in and potential for non-market, non-consumptive, or environmental benefits of this type of program. The analysis also recognizes the technical difficulty of quantifying those potential benefits. NMFS has determined that implementation of this action imposes reduced compliance costs on industry, as compared to a proposal for full retention of specified flatfish species in the original IRIU program implemented under Amendment 49. Additionally, the EA/RIR/FRFA concludes that a targeted application of the GRS program to the sector of the fleet with the highest discard rates will provide the greatest benefit in bycatch reduction for the costs imposed. At the same time, this action also mitigates the cost of the program on the industry and sector it most directly impacts by excluding non-AFA trawl catcher/processor vessels less than 125 ft (38.1 m) LOA. It also gradually phases in the GRS program over time which allows the affected vessels to schedule and adjust to the retention requirements. This phase-in provides that portion of the industry most impacted by GRS requirements with the opportunity to continue targeting rock sole and yellowfin sole, while working to reduce discards in these fisheries. A recognition of monitoring and enforcement (M&E) costs associated with the GRS program; the time required by the agency to consider public comment and respond in a deliberative manner; the ensuing delay in publication of a final rule; and the time frame within which this sector would incur the M&E costs under a 2007 effective date has led NMFS to implement the GRS in 2008.

Providing additional time for vessel owners to make these changes enhances the flexibility they would have to make arrangements for factory modifications and to plan for associated costs in their business plans. This additional time also would facilitate the design of efficient monitoring space, scale placement, and observer viewing that supports overall catch and bycatch accounting goals.

TABLE 1. GROUNDFISH RETENTION STANDARD

GRS Schedule	*Annual GRS*
2008	65%
2009	75%
2010	80%
2011 and each year after	85%

Description of Regulations Specific to the GRS Program

Current recordkeeping and reporting regulations at § 679.5(a)(7)(iv)(C)(*3*) require the owners or operators of a catcher/processor using trawl gear to record an estimate of total round weight of groundfish by haul in a NMFS daily cumulative production logbook (DCPL). Other regulations, including those that implement monitoring requirements for the GRS, require all catch on certain catcher/processors to be weighed on NMFS-approved scales. This final rule at § 679.5(a)(7)(iv)(C)(*3*) requires all vessel owners or operators of vessels subject to the GRS to record in the DCPL the total catch scale weight for each haul. This will increase the quality of data available to NMFS managers and provide NMFS enforcement with a tool to verify total catch weight for vessels subject to the GRS program.

Regulations at § 679.7(m) establish prohibitions specific to the GRS program. Regulations at § 679.7(m)(1) prohibit owners or operators from discarding groundfish in an amount greater than allowed under the GRS program.

Regulations at § 679.7(m)(2) prohibit owners or operators from failing to submit required information, submitting inaccurate information, or intentionally submitting false information that relates to the GRS program.

Regulations at § 679.7(m)(3) prohibit an owner or operator from processing or discarding any catch that was not weighed on a NMFS-approved scale that complies with requirements described at § 679.28(b), prohibit the sorting of catch prior to the catch passing over the scale, and require that all catch be available to be sampled by an observer.

Regulations at § 679.7(m)(4) prohibit the processing of any catch by a vessel that does not comply with observer sampling station requirements described at § 679.28(d). Also, as previously

described, regulations at § 679.7(m)(5) prohibit the mixing of catch from two or more hauls.

Regulations at § 679.27(b)(4) describe the specific groundfish species to be used in the GRS calculation. This includes all species listed in Table 2a to 50 CFR part 679, except for listed groundfish species that are in prohibited species status. Groundfish species used in the GRS calculations also are subject to the 15 percent utilization requirements found at § 679.27(i). Regulations at § 679.27(j)(1) specify the vessels that are required to comply with the annual GRS program and the time period for which the GRS will be calculated.

Regulations at § 679.27(j)(2)(i) establish the equation used for the GRS calculation and describe the variables used in each component of the calculation. Also, § 679.27(j)(2)(ii) describes the schedule for increasing GRS percentages from 2007 through 2010 and beyond.

Regulations at § 679.27(j)(3) describe the monitoring requirements for vessels subject to the GRS program. Section 679.27(j)(3)(i) requires vessels subject to the GRS program to comply with minimum observer coverage requirements at § 679.50(c)(6). These requirements are described below. Regulations at § 679.27(j)(3)(ii) require vessels to weigh each haul on a NMFS-approved scale and comply with catch weighing requirements described at § 679.28(b). Also, the vessel owner or operator is required to ensure that the catch from each haul is available to be sampled by an observer from a single location at a single collection point. Regulations at § 679.27(j)(3)(iii) require the owner or operator to provide an observer sampling station that meets requirements described at § 679.28(d).

Vessels required to comply with the GRS program also may operate in areas other than the BSAI. Total retained groundfish is calculated from total fish product divided by the PRR for each species. For purposes of enforcing GRS requirements, it is necessary to separate fish or fish product subject to the GRS program from fish or fish product not subject to the GRS program. Regulations at § 679.27(j)(4) require all vessel owners or operators subject to the GRS program to either (1) offload or transfer all fish or fish product prior to harvesting fish outside of the BSAI; or (2) ensure that the vessel is in compliance with recordkeeping and reporting and monitoring requirements described above and at § 679.5(a)(7)(iv)(C) and § 679.27(j)(3) at all times when fishing outside the BSAI. These requirements will improve the enforceability of this action by ensuring that all hauls used to estimate the GRS are available to be observed, and that a record is created by the vessel operator to compare with the observer record. Regulations at § 679.27(j)(5) require compliance with the monitoring requirements described above and at § 679.27(j)(3) by all vessels required to comply with the GRS program that have BSAI groundfish or groundfish product on board and that receive deliveries of unsorted catch from vessels not required to comply with the GRS program. This requirement is necessary to separate fish or fish product subject to the GRS program from fish or fish product not subject to the GRS program.

Regulations at § 679.50(c)(6)(i) and (c)(6)(ii) describe observer coverage and observer workload requirements for vessels subject to the GRS program. The owner or operator of a vessel subject to the GRS program is required to provide two Level 2 NMFS-certified observers, at least one of which must be certified as a lead Level 2 observer, for each day the vessel is used to harvest or process fish in the BSAI. The owner or operator will be required to provide more than two observers if workload restrictions would otherwise preclude sampling duties. The time required for an observer to complete sampling, data recording, and data communications will not be permitted to exceed 12 hours in a 24 hour period. NMFS may authorize an alternative processing plan that could allow the vessel to carry only one lead Level 2 NMFS-certified observer depending on whether the vessel owner or operator can demonstrate to NMFS that the observer's duties can be completed within these workload restrictions. NMFS will not authorize an alternative processing plan if it would require the observer to divide 12-hour shifts into shifts of less than 6 hours.

Response to Comments

NMFS received 19 letters of comment on the proposed rule that contained 38 separate comments. The following summarizes and responds to these comments.

Comment 1: Costs associated with the proposed monitoring requirements, combined with other costs of this program, exceed the benefits of the proposed rule. Costly monitoring requirements include: (1) a prohibition on the mixing of hauls; (2) a requirement for observer sampling from a single location; (3) limiting observer sampling to nine hours in a twelve hour shift; and (4) installation and use of a NMFS certified scale, an observer sampling station, and the requirement for observing all hauls. Monitoring measures will have significant, perhaps bankrupting, economic repercussions for affected vessels. In aggregate, the monitoring, installation, and operating costs to the industry, occupational health and safety issues, and timing issues impose greater costs in the context of National Standard 7 than benefits to either the industry or society from this action.

Response: NMFS disagrees that this final rule is inconsistent with National Standard 7. National Standard 7 states that conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication. Regulatory guidelines for National Standard 7 at 50 CFR 600.340(d) state that the supporting analyses for management measures should demonstrate that the benefits of fishery regulation are real and substantial relative to the added research, administrative, and enforcement costs, as well as costs to the industry of compliance.

NMFS has determined that the benefits from implementation of the GRS program are real and substantial relative to the costs of the program. First, the GRS program will significantly reduce the current level of fishery resource waste that occurs in the non-AFA trawl catcher processor sector through the mandatory increase in retention of groundfish by non-AFA trawl C/Ps and the mandatory production of product from that retained fish. As noted in the EA/RIR/FRFA, there is no conclusive information regarding how many, if any, discarded groundfish survive after being caught in a trawl, and NMFS assumes 100 percent mortality for all groundfish discarded by trawl vessels. Under the GRS program, the amount of groundfish catch that is discarded annually by non-AFA trawl C/Ps will decrease by tens of thousands of metric tons. The EA/AIR/FFA notes that by 2010, retained catch is anticipated to increase by approximately 53,000 metric tons. The GRS will also increase the quantity of groundfish production by non-AFA trawl C/Ps by 20 percent, to approximately 34,300 tons.

Members of the public not directly regulated by this action testified in support of the GRS program at the Council meetings and in public comment on the proposed rule. Federal government resource agencies commenting on the proposed rule (supporting the GRS) expressed interest in reducing waste of living resources, particularly where no products are extracted, used or sold from these groundfish discards. Persons who value

reduction of groundfish discards and waste will perceive that the GRS program has successfully reduced groundfish waste in the BSAI and benefitted society. National Standard 7 explicitly includes consideration of intangible benefits and costs that often are not represented by formal markets. For example, these intangible factors are not typically included in the observed prices of groundfish removed from the BSAI. Moreover, the public interest in reducing the relatively high discard rates within this sector also is reflected in National Standard 9 guidelines which convey specific national values, and benefits for reduction of bycatch and waste in U.S. fisheries. A number of these environmental interest groups and other agencies commented on the proposed rule and the GRS, attesting to the value that exists in reducing bycatch and waste. Bycatch is defined in section 3 of the Magnuson-Stevens Act (16 U.S.C. 1802(2)) and used synonymously with the term ''discards'' in this final rule.

Technical challenges to monetizing societal perceptions of groundfish discards and waste do not mean that society places an insignificant value on wasteful practices in the BSAI. The existence of fisheries and game waste reduction, discard and utilization laws in a number of states is observable evidence that some members of the public perceive that a cost exists to the removal and discard of fish in commercial and recreational fisheries. The States of Washington, New Jersey, Alaska, Oregon, Minnesota, South Dakota and Vermont regulate, to a differing extent, discards of fish and wildlife, roe stripping, or limited utilization of fish. The State of Alaska prohibits the discard of salmon, herring, and groundfish. The State's laws are noted as some of the most restrictive fish and wildlife waste laws in the United States. The State's waste laws impose a cost on fishermen to either avoid catching fish that are not efficient to sell or use, or to catch and deliver the whole fish to a buyer. For example, if market prices for salmon flesh were low, or zero, a fisherman may choose to exit from a fishery in which he or she would otherwise strip roe, dispose of the carcass, and sell the roe because the costs to commercial fishermen to forgo catching fish that they may otherwise roe strip and sell, or to retain and dispose of fish delivered to processing plants are substantial, are potentially on the order of millions of dollars annually. The willingness of the legislature (and populace) to forgo some of the value of the target fisheries and to avoid discards of valuable roe-bearing fish indicates a positive value of this type of waste avoidance policy to people who may not catch, produce or consume the fish.

Second, NMFS believes the GRS program will reduce the catch of incidental species and the waste of unutilized groundfish by providing an incentive to avoid catches with little commercial value. The agency expects owners and operators of non-AFA trawl C/Ps to adjust their fishing practices to avoid undesirable fish. The tangible benefit of such an incentive is that there will be some reduction in the disturbance, injury or mortality of groundfish that currently are incidentally caught, discarded and unutilized by non-AFA trawl C/Ps. The additional groundfish that are retained by implementation of the GRS are processed into head and gut products utilized at a rate that exceeds the minimum groundfish utilization rate of 15 percent as identified in this rule. Under the GRS, not only are more fish expected to be retained, but products made from those groundfish are expected to contribute to additional production of the head and tail cut product known as kirimi. The product recovery rate for kirimi is among the highest product recovery rates for BSAI groundfish at 48 percent.

Third, NMFS anticipates that the increased retention and utilization requirements of the GRS program will result in an increase in the quantity of groundfish sold to consumers from previously discarded species. The benefits that flow from an increase in the amount of groundfish production in the marketplace include the expanded availability of groundfish for consumers.

Finally, an indirect but tangible benefit from the GRS program is that it will enhance the status quo catch monitoring and accounting of groundfish for non-AFA trawl C/Ps. The enhanced data collection will allow NMFS inseason managers to adjust season dates with greater confidence and may reduce the chance of exceeding groundfish total allowable catch. As identified in the preamble to this rule, recent enforcement actions for halibut presorting raise concerns regarding the accuracy of catch accounting data. If the presorting violations of the magnitude documented by some vessels non-AFA trawl C/Ps become widely practiced in this sector, and are extended to species at or near an overfished state, a conservation risk for those species may exist. The monitoring program for the GRS reduces this risk with a combination of improved observer coverage and weighing requirements for groundfish.

NMFS understands that non-AFA trawl C/Ps will incur costs for flowscales and plant changes and these costs are examined in the EA/RIR/FRFA. For example, the rule requires seven vessels in this sector to invest in flow scales at an approximate cost of $75,000 to $300,000 per vessel, and it requires all sixteen vessels greater than 125 ft. LOA to carry an extra observer at a cost of roughly $82,000 per year per vessel. Under this action, these vessels may incur the costs and lost revenues associated with holding/processing, transporting, and transferring fish that are of relative low value. However, the lack of any standardized industry data on variable costs, fixed costs, and earnings to evaluate the effects of the GRS program prevent any reliable estimate of how these vessel owners will adjust to this action, or how it would change their decisions to enter or exit BSAI groundfish fisheries. Based on anecdotal information from the regulated sector, the EA/RIR/FRFA notes that one or more vessels may exit the fishery if the vessel could be used more profitably elsewhere. However, many economic and resource variables enter into groundfish fishing vessel entry or exit decisions. Some economic variables that could impact this sector include: (1) prices of some non-pollock products produced by non-AFA trawl C/Ps have increased in the last decade changing the relative value of retaining or discarding certain species in the mixed fishery catches; (2) a new vessel buyback program passed by Congress (Department of Commerce and Related Agencies Appropriations Act, 2005, Public Law 108–447), could encourage non-AFA trawl C/Ps to remain active in this fleet until the details of the buyback program are known and bids for buyout are approved through a referendum; (3) the Council has been working on a program that could facilitate the industry's formation of one or more non-AFA trawl C/P fishing cooperatives that may increase the expected value of fishing history and returns to capital; and (4) changing prices of operational inputs such as fuel and labor. Each of these factors may alter economic incentives to remain active in or exit a fishery. Also, for some non-AFA trawl C/Ps, compliance with GRS program monitoring requirements will not involve significant changes to a vessel or operation. Seven vessels in this sector currently have flow scales, five of which have certified flow scales. Five vessels also have observer stations, and at least one vessel has two observers on board for much of the year. NMFS anticipates these vessels will experience lower GRS

program costs compared with vessels that have no flow scales, observer stations or less than 2 observers. In consideration of vessels that may incur relatively higher initial M&E costs associated with modifying vessel layout and associated processing operations, the regulated entities are provided additional time to contract for and arrange vessel modifications by implementing the GRS program in 2008 rather than in 2007. NMFS has also addressed comments on monitoring costs of the GRS program in response to Comments 2, 13, 23, and 25.

The costs of the GRS program are justified by the groundfish discard and compliance history of the non-AFA trawl C/P sector. The sector regulated by the GRS has chronically exceeded groundfish discard rates that have been routinely achieved by other BSAI groundfish sectors. These relatively higher discard rates create an inconsistency and imbalance in groundfish fishing privileges to sectors striving to reduce groundfish discards. This regulatory action is necessary to maintain groundfish fishing practices that are equitable and accountable across all BSAI groundfish C/Ps.

This final rule applies a reasoned process for determining that the benefits of the GRS justify the costs for the following additional reasons: (1) A tangible market exists for avoidance of groundfish discards in the United States as demonstrated by Federal and State laws restricting and preventing fish discards to reduce waste as identified in this response and the response to Comment 6. Public comment in support of the proposed rule from the EPA and the State of Alaska (Department of Fish and Game) are representative agencies for those market values. Market prices for discard reduction cannot be directly observed because there is no mechanism for people who value clean fishing to pay those that catch, kill and discard groundfish in this sector; (2) The increment in discard reduction from the action are significant in comparison with total discards in the BSAI and large compared with total groundfish harvests in many other coastal states as identified in the response to Comment 3, and justified as identified in public comments (on the proposed rule) from persons outside the regulated sector, including the EPA and State of Alaska; (3) Costs of the GRS may change fishing decisions and fishing effort for one or more vessels in the non-AFA trawl C/P sector, but they are not likely to force persons to exit Alaska groundfish fisheries altogether considering prices of the products derived from many of the species that will be retained, as noted in the response to Comment 9 and (4) The M&E costs associated with initial factory modifications could be accommodated over more than an 18 month period to provide flexibility in planning and construction time for plant changes.

There is no requirement to limit bycatch reduction tools to only those that increase profits for affected vessels or do not impose costs to a business or aggregation of fishing businesses. National Standard 9 requires that conservation and management measures minimize bycatch to the extent practicable and minimize the mortality of bycatch when it cannot be avoided. Guidelines for practicable bycatch reduction efforts (discard reduction) include consideration of impacts on the environment and value to people who may not directly consume or produce the resource. In this respect, NMFS received public comments from persons and Federal and State agencies that expressed support for implementing the GRS program. These include an environmental interest group, a member of the non-AFA trawl C/P sector, the U.S. Environmental Protection Agency, and the State of Alaska.

A portion of this comment refers to costs associated with safety as a result of a possible industry response to the prohibition on haul mixing. The alternatives for non-AFA trawl C/Ps to respond to or adjust operations and reduce or eliminate circumstances where loading practices may have adverse safety implications are numerous and addressed in the response to Comment 12. Any efforts to avoid unsafe loading practices in this sector could result in a change to vessel costs. NMFS believes that these risk avoidance costs are likely to be subsumed in the fixed costs and driven by external Coast Guard vessel safety regulations and economic incentives for risk avoidance.

The prohibition on mixing of hauls, limitations to one flow scale and conveyor line passing over a scale, and limitation on observer sampling time to 9 hours a day were all included in the proposed rule to provide NMFS with the ability to adequately account for groundfish catch and discards under the GRS program. NMFS agrees that observers may be allowed to sample during an entire 12-hour shift, and the final rule removes the limitation of 9 hours on observer sampling, as explained in the response to Comment 13. Based on the above, NMFS has determined that the benefits from the GRS program identified in this response are real and substantial relative to the added costs to the industry and the agency.

Comment 2: NMFS received a number of comments regarding the cost estimates for the monitoring provisions of the GRS program. A range of opinions expressed that some data used to estimate the costs of the monitoring provisions were not accurate, understated or overstated. For example, one commenter asserted that NMFS underestimated the costs of altering vessels to accommodate flow scales, the costs resulting from the prohibition on mixing of hauls, and the costs of other monitoring requirements. Other comments suggested that specific estimates of aggregate costs in the EA/RIR/IRFA were overstated, noting that each year most of the affected vessels make major factory modifications to repair equipment and make processing operations more efficient.

Response: The data included in the EA/RIR/FRFA represent the best scientific data available to NMFS on the financial costs associated with the monitoring requirements of the GRS program. Wherever possible, NMFS accessed third party data on costs, such as those associated with purchasing and installing scales, or published rates for observers. No independent data exists to determine the extent of other potential costs. Other effects and available data on the costs of the monitoring program are outlined in the response to Comment 1. The range of comments on vessel upgrade costs suggests the possibility that NMFS' estimates represent reasonable point estimates for this sector, although NMFS acknowledges that considerable variation in monitoring compliance costs may exist among fishing vessels.

Comment 3: The proposed action could have a detrimental effect on the community of Greater Seattle due to the concentration of C/Ps in this locality. Further, National Standard 8 is not constrained to the concept of a community as a formal geographic area. A community can be an aggregation of similarly interested individuals engaged in an activity such as fishing. In this context, severe impacts would be imposed on the non-AFA trawl C/P community from this action.

Response: NMFS disagrees that the GRS program will have a detrimental effect on the community of Greater Seattle. The EA/RIR/FRFA examines the impacts of the GRS program on fishing communities. As treated in section 4.2 and in the National Standard 8 discussion in section 5.1 of the EA/RIR/FRFA for the GRS program, NMFS does not anticipate that the Seattle area in the State of Washington and communities along the northern Oregon coast will experience any significant impacts or

cumulative effects from the GRS program based upon the sustained participation of these communities in the groundfish fisheries. The size of the regional economy and personal income generated in Seattle and surrounding areas as well as in coastal communities in Oregon dilutes the overall impact of the Alaska groundfish fishery jobs. While nearly all the non-AFA trawl C/Ps affected by the GRS program are home ported in Seattle, NMFS anticipates few impacts on the surrounding area, in terms of average annual employment, personal income or purchase of goods and services.

The comment also suggests that under National Standard 8, a community can be defined as an aggregation of similarly interested individuals. National Standard 8 states that conservation and management measures must, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities; and (B) to the extent practicable, minimize adverse economic impacts on such communities. Regulatory guidelines for National Standard 8 at 50 CFR 600.345(b)(3) define a fishing community as a community that is ''substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs and includes fishing vessel owners, operators, and crew, and fish processors that are based in such communities. A fishing community is a social or economic group whose members reside in a specific location and share a common dependency on commercial, recreational, or subsistence fishing, or on directly related fisheries dependent services and industries (for example, boatyards, ice suppliers, tackle shops).'' NMFS developed the guidelines for National Standard 8 in accordance with the Sustainable Fisheries Act (SFA, Pub. L. 104 - 297), which added National Standard 8 to the Magnuson - Stevens Act, and with congressional intent as expressed through the legislative history for the SFA. Given NMFS' regulatory guidelines, a ''fishing community'' is based on a geographic approach, defining a census area or statistical area that is consistent with a known state or federal designation for a community. NMFS disagrees with the comment that a fishing community can be an aggregation of similarly interested individuals, engaged in an activity such as fishing. NMFS has followed its regulatory guidelines with respect to analyzing the impacts of the GRS program on affected entities and has determined that the GRS program is consistent with National Standard 8.

Comment 4: The proposed rule does not meet the practicability standards for National Standard 9. The costs to non-AFA trawl C/Ps are high in comparison with the benefits to society. These costs result from the following provisions: no mixing of hauls, limitation to only one flow scale and line, limitation on observer sampling workload time to nine hours out of twelve hours in a day, requirement for installation and use of a NMFS certified scale, requirement for an observer sampling station, and the requirement for monitoring of all hauls.

Response: NMFS disagrees that the GRS program fails to meet the practicability standards for National Standard 9. National Standard 9 states that conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. Regulations implementing National Standard 9 at 50 CFR 600.350(d)(3) state that NMFS should consider ten factors when determining whether a conservation and management measure minimizes bycatch or bycatch mortality to the extent practicable, consistent with the other national standards and maximizing net benefits to the Nation. The ten factors are: population effects for the bycatch species; ecological effects due to changes in the bycatch of that species (effects on other species in the ecosystem); changes in the bycatch of other species of fish and the resulting population and ecosystem effects; effects on marine mammals and birds; changes in fishing, processing, disposal, and marketing costs; changes in fishing practices and behavior of fishermen; changes in research, administration, and enforcement costs and management effectiveness; changes in the economic, social, or cultural value of fishing activities and nonconsumptive uses of fishery resources; changes in the distribution of benefits and costs; and social effects.

Because the GRS program is a bycatch reduction measure, the costs and benefits associated with the GRS program and considered in light of National Standard 9 are similar to the considerations that NMFS must undertake relative to National Standard 7 and therefore, the response to Comment 1 is relevant to this response. As explained in the response to Comment 1, the EA/RIR/FRFA developed for the GRS program demonstrates that the benefits of the GRS program, while not all of which are easily quantifiable, are real and substantial relative to the costs of compliance, consistent with both National Standards 7 and 9. The EA/RIR/FRFA for the GRS program itemizes and addresses each of these factors in a manner that is responsive to National Standard 9. Several of the key benefits identified in the response to Comment 1 directly address two of the factors that NMFS must consider when evaluating an action's consistency with National Standard 9: changes in the economic, social, or cultural value of fishing activities and nonconsumptive uses of fishery resources; and social effects. Additionally, as noted in the response to Comment 1, a number of states have enacted bycatch (discard) and other fish and wildlife waste reduction measures, including complete or partial banning of such actions as roe stripping and wanton waste. NMFS believes that measures implemented by other jurisdictions to reduce waste and under-utilization of fish reveal preferences and positive values for the GRS program.

The response to Comment 1 lists the benefits and costs of the GRS program. Although the non-AFA trawl C/P sector has attempted to increase retention of groundfish without regulatory intervention, it has been unsuccessful in raising retention rates to match the rates of other catcher processors' operations in the BSAI groundfish fisheries. The groundfish retention rate for non-AFA trawl C/Ps remains significantly lower than other BSAI catcher processor sectors.

Comment 5: NMFS has not addressed National Standard 9, which explicitly states the intent of Congress for discard reduction efforts to be ''practicable.'' As clarified in the Congressional Record on National Standard 9: '''Practicable' requires an analysis of the costs of imposing a management action; the Congress does not intend that this provision will be used to allocate among fish gear groups, nor to impose costs on fishermen and processors that cannot be reasonably met.'' Some of the new monitoring and enforcement aspects presented in the proposed rule do not meet this standard.

Response: NMFS disagrees that National Standard 9 has not been addressed and that the GRS program is inconsistent with National Standard 9. NMFS has published regulatory guidelines for National Standard 9 at 50 CFR 600.350 that are responsive to and consistent with National Standard 9 and other provisions of the Magnuson Stevens Act. The EA/RIR/FRFA at section 4.5.4 includes a discussion of

the consistency of the GRS program with National Standard 9. NMFS acknowledges that some vessels will incur new costs under the GRS program that could reduce profits for some fishing businesses in this sector. The potential exists that one or more non-AFA trawl C/Ps may choose to exit from this fishery, though no independently verifiable data are available from this sector to confirm if this is likely. National Standard 9 does not require that the benefits to a sector or a fishery offset the costs of complying with discard reduction programs, or that the benefits to each vessel offset the costs to individual vessels. National Standard 9 does, however, require that the agency examine the best available data on bycatch reduction benefits to the nation and bycatch costs. Benefits from a bycatch (discard) reduction action include a broad spectrum of effects as discussed in the responses to Comments 1 and 4. In the case of the GRS program, NMFS has determined that the preponderance of benefits to society by reducing discards by over 50 thousand metric tons per year at a GRS of 85 percent offset costs in a manner consistent with National Standard 9.

Past actions by some non-AFA trawl C/Ps demonstrate that the monitoring requirements necessary to implement the GRS program and described above do not impose costs that cannot be reasonably met. As described in section 4.5.2 of the EA/RIR/FRFA prepared for this action, several non-AFA trawl C/Ps already have met some or all the GRS program monitoring requirements in compliance with other management programs. Finally, the GRS program does not allocate among fish gear groups.

Comment 6: The State of Alaska recommends that the proposed GRS be approved because it addresses National Standard 9 as follows:

a. National Standard 9, as approved by Congress is consistent with the State of Alaska wanton waste laws and its application to state resource management. The Alaska legislature received impassioned testimony regarding citizen objections to waste of fishery resources of the type that is occurring in the non-AFA trawl C/P fleet when the bill was originally passed in 1975 and amended in 1984.

b. Bycatch (discard) reduction has international and national support. There is broad-based public consensus that discarded portions of fishery catches represent an unacceptable waste of the public's natural resources.

c. According to NMFS regulations (50 CFR 600.350), the criteria for evaluating discard reduction measures include non-consumptive, existence, ecological values, and impacts of groundfish discards on the environment. The GRS provides potential mitigation for any losses in the value of groundfish to persons who do not produce or consume these resources, and any lost value associated with the environment.

d. The proposed GRS program for the non-AFA trawl C/P sector would provide ecological and social benefits that outweigh the costs of the program.

Response: NMFS agrees with the comments made in paragraphs (b) and (c) and notes the comments made in paragraphs (a) and (d).

Comment 7: None of the Council's bycatch reduction actions, alone or in combination, are sufficient to comply with the Magnuson-Stevens Act bycatch mandates. The GRS is a single species-based approach to reducing bycatch (discards) in one portion of the fleet. The commenter urges NMFS to address discards on a more fundamental level by establishing a Bycatch Committee with a strong mandate and clear timeline to develop ecosystem-based conservation and management measures that focus on avoiding discard of all marine species.

Response: NMFS disagrees with the comment that none of the current bycatch reduction measures in the North Pacific groundfish fisheries is sufficient to comply with the Magnuson-Stevens Act's bycatch mandates. The bycatch monitoring and reduction programs implemented for the North Pacific groundfish fisheries have resulted in significant reductions in the amount of fish discarded in these fisheries over the past decade, as well as bycatch avoidance initiatives for prohibited species and seabirds. These activities and the catch monitoring programs implemented for the Alaska groundfish fisheries are the most extensive in the nation and are fully compliant with the Manguson-Stevens Act. Nonetheless, opportunities for improvement exist, and the Council focused a GRS program on non-AFA trawl C/Ps because those vessels had the highest discard rate compared to other sectors operating in the BSAI. The GRS program is not a single species-based approach to reducing bycatch. Instead, it is a multispecies approach for reducing discards of multiple groundfish species.

Consistent with the U.S. Commission on Ocean Policy report and the President's U.S. Ocean Action Plan, the Council is continuing to pursue ecosystem-based conservation and management measures. It has established an ecosystem committee to explore different ecosystem approaches to management and is exploring the concept of a fishery ecosystem plan for the Aleutian Islands area as a pilot project. The Council recognizes that its decisions regarding fisheries and associated bycatch issues affect and are affected by the actions of other governing bodies. Accordingly, the Council also is exploring the feasibility of an Aleutian Islands Ecosystem Forum or some similar mechanism for collaboration among the governmental bodies involved in ocean related activities in the Aleutian Islands area.

Comment 8: The GRS is necessary because the sector has not shown the ability to internally control discard practices. Some species, such as northern rockfish in the Aleutian Islands Atka mackerel fishery, are discarded at rates that are equal to or exceed 80 percent. This activity shows a disregard for a species managed under a federal fishery management plan.

Response: The statistic that discards of northern rockfish discards are equal to or exceed 80 percent is consistent with NMFS catch accounting data. In 2003 and 2004, the discard rate of northern rockfish in the non-AFA trawl C/P fleet exceeded 90 percent in the Aleutian Islands area. NMFS agrees that this discard rate is an example of why the GRS program is a necessary conservation and management measure. The GRS program will make it more difficult to discard groundfish species that are currently discarded at rates that are much higher than the GRS percent for a given year. The GRS program is expected to provide incentives to either avoid catching unwanted groundfish or to seek markets to better utilize incidental harvest of groundfish species.

Comment 9: This action would not reduce discards and, therefore, is not practicable. Bycatch is defined by the Magnuson-Stevens Act as fish which are not sold or kept for personal use. This action would require vessels to retain fish that are valueless and not likely to be marketable in the near future. This unmarketable fish will have to be thrown away on land, and likely would increase ancillary transportation and disposal costs. These fish do not meet the definition of bycatch and, furthermore, these removals represent a net loss of energy from the ecosystem.

Response: Section 3 of the Magnuson-Stevens Act (16 U.S.C. 1802(2)) defines the term ''bycatch'' to mean fish which are harvested in a fishery, but which are not sold or kept for personal use, and ''includes economic discards and regulatory discards'' (emphasis added). Economic discards are defined as fish that are the target of a fishery, but which are not retained because they are of an undesirable size, sex, or quality, or for

other economic reasons. As noted in the response to Comment 1, the GRS will create an incentive to reduce economic discards by establishing a minimum percentage of the total catch of groundfish that must be retained. The costs associated with required retention rates are an incentive to avoid catching groundfish that will not be utilized. Therefore, unless total catch of groundfish declines in this sector, NMFS assumes that both groundfish retention and utilization will increase under the GRS program. The GRS is likely to reduce economic discards that are clearly included in the definition of ''bycatch'' in the Magnuson-Stevens Act.

NMFS does not agree that all utilized product from the GRS program will be unmarketable, although it is possible a vessel regulated by this action could find that the cost of harvesting and marketing a groundfish product may exceed the revenues generated. For some products this condition may occur in any fishery. The marketability of products utilized under the GRS program will depend on a number of regional and international market factors that are unrelated to the GRS program. For example, rising market prices have been observed for a number of flatfish species subject to the GRS program.

The EA/RIR/FRFA for the GRS program projects that increased retention requirements will typically reduce the percent and amount of discards, relative to the no action alternative. Any reduction in discards projected from the GRS will be small compared to natural sources of detritus in the BSAI. There is also an absence of evidence relating changes in scavenger populations to discard trends that would suggest groundfish discards have significant ecosystem impacts through energy removal and redirection.

Comment 10: The analysis shows that the GRS alternative only results in a small change in groundfish retention.

Response: NMFS disagrees that the anticipated reduction in groundfish discard amounts under the GRS program should be characterized as insignificant or small. The rule requires that the groundfish retention rate for the vessels regulated by this rule to increase to 85 percent from present levels of 65 percent - 75 percent in the absence of a regulation. The EA/RIR/FRFA for the GRS program estimates that when the GRS increases to 85 percent in 2010, more than an additional 50,000 metric tons (110 million pounds) of groundfish will be retained annually.

Comment 11: Discarding catch in the course of normal fishing operations is a poor practice, and will decrease the sustainability of fisheries in the long term. We support efforts by NMFS and the Council to reduce regulatory and economic discards.

Response: Comment noted. The GRS program will reduce amounts of economic discards by non-AFA trawl C/Ps in the BSAI groundfish fisheries.

Comment 12: The U.S. Coast Guard (USCG) Fishing Vessel Safety Division recommends the prohibition on mixing of hauls aboard non-AFA trawl C/P vessels impacted by the GRS be reexamined with respect to safety at sea. The basis for this recommendation is the potential for additional risks to vessel stability if vessel operators choose to comply with the proposed prohibition on mixing of hauls by holding greater amounts of groundfish on deck prior to transporting that fish into bins and weighing areas.

Response: As adopted by the Council, the GRS program for non-AFA trawl C/Ps is based solely on groundfish species that are not on prohibited species status. As a result, catch of non-groundfish, groundfish species on prohibited species status, or rocks, boulders, and other non-biological catch must be estimated by NMFS based on haul specific observer data and deducted from the total haul catch weight. The response to Comment 17 describes why this estimation procedure must be done on a haul by haul basis and cannot allow for the mixing of fish from different hauls.

Given the comment from the USCG Fishing Vessel Safety Division, NMFS re-examined the prohibition for mixing hauls. In that re-examination, NMFS demonstrated ample operational choices and flexibility for vessel operators to avoid unsafe loading practices while fishing under the mixing of hauls prohibition. After reviewing NMFS' re-examination, the USCG concluded that NMFS had ''offered numerous viable options to reduce time (of codends and fish) on the deck.''

After consulting with staff of the USCG Fishing Vessel Safety Division, NMFS concludes that this final rule will not result in a decrease in vessel safety compared with the status quo, and that this action is consistent with National Standard 10. NMFS recognizes that fishing is a dangerous activity, particularly in the North Pacific, and believes that persons engaged in this business are aware of these risks. The GRS program does not require persons to undertake dangerous actions beyond those they voluntarily undertake when they choose to fish in the North Pacific. Vessel masters and crew make choices on how best to accommodate safety concerns during fishing activity, including considerations about vessel stability.

The prohibition on mixing of hauls could be accommodated in a number of ways that would not result in new vessel stability risks. For example, vessels could slow fishing effort and the frequency at which gear is deployed to better time haul back activities to minimize the amount of time a codend is on deck. Or, rather than staging a codend on deck where it could be poised for immediate dumping when the previous haul is completely processed, it is a common practice by operators of non-AFA trawl C/Ps to ''shortwire'' a codend, where it is closely towed behind the vessel. Hauling of the codend up onto the deck takes little more than several minutes. As soon as the bin is emptied, the vessel operator could haul the shortwired codend on deck and immediately dump its contents into the bin. Thus, little or no legitimate need exists to stage a codend on deck, and the timing of when to haul the codend on deck and begin dumping the codend into the tank is within the control of the vessel operator. The industry practice of shortwiring a codend at the stern provides an opportunity to ensure a very minimal delay in fish being delivered to the processing deck without having to leave a codend on deck.

Vessel operators also could increase throughput in a factory to complete processing activities of a prior haul before a codend is brought on deck. Vessel specific layout also could be modified to increase the size or number of fish bins to avoid mixing of hauls.

The GRS program does not impede the use of any of these strategies. Although some of them may be costly to some vessels, these changes could be incorporated into other required factory modifications. The analysis prepared for this action describes the costs associated with these changes in section 4.5. The response to Comment 1 includes a more detailed explanation of the costs examined in the EA/RIR/FRFA.

NMFS also encourages vessel owners to adhere to USCG requirements that the master of a vessel is the responsible party to ensure the stability and safety of his or her vessel. In addition, many commercial fishing vessel owners are required by the USCG to retain on board a copy of the vessel's Trim and Stability Booklet (T&S Booklet) prepared by a certified naval architect (46 CFR part 170 subpart D—Stability Instructions for Operating Personnel). Most, if not all, the 16 non-AFA trawl C/Ps that will be regulated under the GRS program have a T&S Booklet. The USCG advises that

the T&S Booklet should be written in clear terms and made available to all members of the crew. Each vessel must restrict the loading of catch according to the tables and analysis in the T&S Booklet, which considers many variables, including fuel, other ballast, and gear. The USCG is authorized to review these booklets when boarding a vessel at sea, but more frequently will review the T&S Booklet in port prior to departing for the fishing grounds. Carrying a load of fish on deck in amounts that exceed the recommendations in a vessel's T&S Booklet may adversely impact vessel stability and create a safety hazard. The implementation date for the GRS program provides ample time for vessel owners and operators to further to integrate vessel safety measures into modified vessels and plants. NMFS encourages vessel operators to consult USCG guidance for reviewing safety equipment and loading practices between the date of this final rule and implementation of the GRS.

The incentive for both crew and observers to work in safe conditions is likely to contribute to a vessel operator's compliance with safe loading procedures and, if available, recommendations of the T&S Booklet. While stability risk assessment involves potentially complex engineering models, the act of loading the contents of multiple codends of fish on the deck of a vessel is highly observable to persons working on a vessel and easier to monitor than many activities that may involve safety risks. Crew members have an interest in safety and an incentive to understand loading procedures that may impact vessel stability. NMFS certified observers are neither trained nor expected to assess or monitor vessel stability. However, at any time, crew or observers may formally record practices, question a skipper, or contact the USCG regarding any safety issue posing a risk to the conduct of their activities on a vessel, including issues associated with the stability of a vessel. Furthermore, any increase in observed illegal or unadvised risk taking behavior on the part of non-AFA trawl C/Ps could be translated into higher insurance premiums, including employee liability and capital loss insurance. Thus, the threat of higher costs imposed by insurance markets for violating loading and stability recommendations may buffer any propensity of an operator of a non-AFA trawl C/P to attempt unsafe, and/or illegal loading practices in these fishing operations.

Given the above considerations, NMFS has determined that the GRS program for non-AFA trawl C/Ps will not result in additional safety concerns resulting from the catch monitoring requirements established for this program and is consistent with National Standard 10.

Comment 13: The Small Business Administration Office of Advocacy was unable to locate a discussion of the monitoring and enforcement costs associated with the prohibition on mixing of hauls, limitation on the number of hours per day an observer may sample catch, the installation of a NMFS approved scale, and specified single observer sampling location.

Response: The IRFA prepared for the proposed rule includes a summary of the impacts of the proposed rule and alternatives, including the monitoring program and states that the specific economic impacts of the proposed rule and other alternatives on both large and small entities in section 4. Section 5.3.9 of the FRFA includes information and analysis on a number of economic factors, including an examination of changes in revenues and operating costs under the proposed action and alternatives. section 5. This section examines the estimated costs of installing flow scales and observer stations and the costs associated with additional observer coverage. Although not explicitly stated, the estimated costs of installation apply to those vessels that must reconfigure a previously installed flow scale or observer sampling station in order to accommodate the monitoring provisions of the GRS program. While the FRFA does not include a specific discussion of the costs associated with the prohibition on the mixing of hauls, it does provide an estimate of the overall costs of compliance with the monitoring provisions of the proposed rule, which specifically included the prohibition on the mixing of hauls. The estimates provided in the FRFA are based on the best available data.

The EA/RIR/FRFA prepared for the final rule notes in several locations that ''all hauls'' must be available for observer sampling and in Appendix 1 that ''each haul'' must be available for observer sampling. NMFS is aware that some vessels routinely mix hauls and may have costs associated with this prohibition that are different from costs experienced by those vessels that do not mix hauls. No independent data exist to determine the extent of these potential costs, but the primary effect of the haul mixing constraint could be reduced haul frequency. Other effects and available data on the costs of the monitoring program are outlined in the response to Comment 1.

Reference to an observer sampling station is made in numerous locations throughout the EA/RIR/FRFA. The proposed rule clearly states the requirement for a single observer station and NMFS has not suggested that multiple observer stations would be allowed. The effects and costs associated with requiring observer stations on these vessels are discussed in the EA/RIR/FRFA , and NMFS has used the best available data to project potential costs associated with observer requirements and sampling stations. NMFS acknowledges that observer sampling station costs may differ among operations, but that the estimates provided constitute the best data available to the agency at this time to make these estimates. A substantial time period for planning and construction is accommodated by the 2008 implementation date to allow regulated vessels to seek the most efficient means to install and modify equipment to comply with the GRS. The response to Comment 24 also includes information on the need for and impacts of observer stations.

For the reasons explained in response to Comment 21 and in Changes from the proposed rule, NMFS agrees that the proposed limitation of an observer's sampling activities to no more than 9 hours per day is not explicitly discussed in the EA/RIR/IRFA. NMFS received public comment that constraining observers to a nine hour sampling day could constrain fishing operations for vessels subject to the GRS program. Thus, upon reconsideration, this measure has been modified in the final rule such that the time required for observers to complete their sampling, data recording, and data communications duties cannot exceed 12 hours per day. Non-AFA trawl C/Ps continue to be required to carry two observers to fish uninterrupted during each 24 hour period.

The EA/RIR/IRFA provided information on the cost of NMFS approved scales in section 4.5. The response to Comment 1 also notes that flow scale installation costs could range from $75,000 to $300,000 per vessel.

Comment 14: NMFS used the wrong criteria for assessing the impacts of the proposed rule on the non-AFA trawl C/Ps under the Regulatory Flexibility Act. The Small Business Administration Office of Advocacy (NAICS) indicates that the correct North American Industry Classification System code for catcher processor vessels is code 311711, which is known as ''Seafood Product Preparation and Packaging.'' This classification specifically includes establishments that are ''floating factory

ships.'' The size standard for businesses in that industry is 500 or fewer employees.

Response: The IRFA and FRFA prepared for this action consider the effects to all non-AFA trawl C/Ps as if they are all small entities under the Regulatory Flexibility Act. The effects to all vessels subject to this action were examined in these analyses. However, the Small Business Administration's Size Standards by NAICS code at 13 CFR 121.201 do not include a size standard for vessels that both harvest and process catch. NMFS acknowledged the need for a determination as to whether the catcher processor fleet would be considered fish harvesters, and thereby governed by the annual receipts standard for catcher vessels, or fish processors, and thereby governed by the employee standard for seafood processors, for purposes of preparing analyses under the requirements of the Regulatory Flexibility Act. To date, NMFS has applied the annual receipts standard to catcher/processors because a catcher/processor is first and foremost a fish harvesting operation. Using this rationale, NMFS appropriately considered non-AFA trawl C/Ps as fish harvesters in the IRFA and FRFA prepared for this action and applied the annual receipts standard for purposes of Regulatory Flexibility Act analyses. Although NMFS currently is reviewing its small entity size classification for all catcher/processors in the United States, NMFS will continue to use the annual receipts standard for catcher/processors until new guidance is adopted.

Comment 15: The Small Business Administration Office of Advocacy requests that a new IRFA be submitted that includes a discussion of the impacts on small entities.

Response: NMFS has determined that a new IRFA is not necessary. As explained in the responses to Comments 13 and 14, NMFS considered the non-AFA trawl C/Ps affected by the GRS program to be small entities and prepared an IRFA that sufficiently discussed the impacts of the proposed rule on small entities, including all the non-AFA trawl C/Ps directly regulated by this action.

Comment 16: The agency did not consider the reasonable and prudent alternative of changing the accounting period for maximum retainable amounts (MRA) of other groundfish species to achieve discard reduction. This revision was implemented for pollock in the BSAI and resulted in increased retention with minimal costs. The MRA accounting period for groundfish could be revised to an offload-to-offload period. By providing operators with additional flexibility to manage groundfish retention, this revision would allow vessels to decrease discards.

Response: The EA/RIR/FRFA examined a range of reasonable alternatives to achieve the stated purpose and need: to create a fixed standard for the retention of BSAI groundfish. MRAs are management tools intended to slow the harvest rate of a species by prohibiting directed fishing for the species but permitting the limited retention of incidental catch amounts. Requiring vessel operators to adhere to MRAs at any time during a trip limits vessel operators' ability to maximize catch retention of any given species. This restriction also limits opportunities for vessel operators to intentionally target valuable species that are closed to directed fishing. Revising an MRA accounting period to allow additional groundfish retention could provide for increased targeting on a valuable species and increase the risk that catch would approach over-fishing levels. Additionally, this revision would only increase groundfish retention of those species that provide an economic benefit to vessel owners and operators. Vessel owners and operators are unlikely to retain species that decrease their profits.

Conversely, the GRS program is a performance-based management concept that is intended to alter fishing behavior to decrease discard and increase retention within the current management constraints. Vessel operators would increase their overall groundfish retention within current MRA restraints. They would also be less likely to intentionally target high value species that are closed to directed fishing, and more likely to retain groundfish species they would not otherwise retain.

NMFS agrees that modification of the pollock MRA accounting period provides greater opportunity for retention of pollock when a vessel operator determines that it is economically feasible to do so. The adjustment to the accounting period for the pollock MRA may be an effective tool to reduce discards through increased retention because pollock is sometimes a valuable species and it is always on bycatch status for vessels that are not permitted to participate in the directed pollock fishery under the American Fisheries Act. Furthermore, the incidental catch of pollock on a haul-by-haul basis can be relatively high for non-AFA trawl C/Ps. These two facts led the Council to focus on the pollock MRA adjustment as an effective management measure to reduce discards.

Other economically valuable species such as Pacific cod and some rockfish species also are taken incidentally by non-AFA trawl C/Ps. The Council is considering adjusting the MRA accounting periods for these species to address discard issues. NMFS supports this initiative, however, the potential reduction in discards of Pacific cod and rockfish likely would be less than that anticipated for pollock due to the larger volume of pollock catch that currently must be discarded. Conservation and allocation concerns also must be considered for any change in retention standards that might create greater incentives to target a species that may have low acceptable biological catch levels and associated overfishing concerns or be fully utilized by competing user groups. Nonetheless, the Council and NMFS would need to prepare a separate rulemaking to adjust the MRA accounting period for incidental catch of groundfish taken by non-AFA trawl C/Ps. If adopted by the Council and approved by NMFS, such an adjustment may be implemented prior to 2007 when the GRS program becomes effective.

Comment 17: The requirement to observe and sample each haul can be satisfied by less onerous and safer means than prohibiting the mixing of hauls. For example, traditional operations could continue and all hauls could be observed by requiring the container that holds unsorted catch from the codend (live tank) to be emptied before the observer goes off-duty.

Response: As described above, only groundfish not on prohibited species status are used in the GRS calculation. Observer samples will be used to calculate the proportion of groundfish not on prohibited species status for each discrete haul. Total groundfish catch is determined by pooling together multiple basket samples from a discrete haul, determining species composition of the catch by weight, and expanding the sampled weight of all groundfish not on prohibited species status by the total weight of the haul as measured by a flow scale. To determine whether a vessel has met the specified annual GRS threshold, NMFS divides the round weight equivalent of retained products during a year by the sum of haul specific estimates of total groundfish catch over the same time period.

Because the distribution of organisms by size and species in a haul is often heterogeneous between hauls, an aggregation of hauls (i.e., mixing two or more hauls) could create errors in the

calculation of total groundfish catch. For example, if a vessel mixes hauls from two different areas or depths, catch composition and size could be significantly different between these hauls, and a composite sample may not be representative of each individual haul. Any errors would be exacerbated as the composite sample is expanded to the total weight of the mixed hauls.

Adequate accounting of the GRS will rely heavily on observer species composition samples. To adequately assess groundfish retention rates for consistency with the GRS, NMFS must have confidence that the data collected is representative of actual groundfish catch and that potential sources of bias have been minimized to the greatest extent practicable. Because the mixing of hauls could create unacceptable data errors as described above, NMFS must prohibit the mixing of hauls. Clearing the live tank as suggested in this comment does not resolve these data collection issues.

Comment 18: In aggregate, the proposed monitoring requirements exceed the scope of the analysis for the GRS program and the Council's recommendation to the Secretary. For example, the provisions for prohibiting the mixing of hauls, limitation to only one flow scale and line, and limitation on observer workload time to nine hours out of twelve hours in a day exceed the recommendations identified by the Council. No notice of these requirements was ever given to the Council, and no authority was given to NMFS to add these requirements to the proposed rule.

Response: With the exception of the 9-hour limitation on observer sampling time and GRS implementation date of 2008, NMFS disagrees that the proposed monitoring requirements exceeded the scope of the analysis. See the response to Comment 19. Most of the key monitoring elements included in the proposed rule and information on the costs associated with those monitoring elements were included in the EA/RIR/IRFA that was available to the Council when it took final action on Amendment 79 and the GRS program. These elements include the requirements for flow scales, two observers, and that each haul be available for observer sampling. The public had numerous opportunities to comment on these monitoring elements before the Council prior to the Council's decision in June 2003.

NMFS agrees that several details of the monitoring program were clarified during development of the proposed rule after new information became available on recent presorting cases, necessitating additional monitoring and enforcement tools for ensuring compliance with the GRS. These clarifications included the prohibition on mixing of hauls and the use of a nine hour day of sampling for each observer. The practice in the Alaska region is to have NMFS, rather than Council staff, prepare the proposed rule for Council action. NMFS provides the Council with the proposed rule and the Council initiates Secretarial review by formally transmitting the proposed rule to NMFS. On May 26, 2005, the Council formally transmitted the GRS program proposed rule to NMFS, which included all the monitoring components of the published proposed rule. Additionally, the Council submitted comments to the Secretary during the public comment period on the proposed rule, but none of the Council's comments objected to the monitoring requirements.

All the monitoring requirements for the GRS program were fully noticed to the public in accordance with the requirements of the Magnuson-Stevens Act and the Administrative Procedure Act. Note that in response to comments received, NOAA Fisheries has modified the final rule to remove the nine hour time constraint on observer sampling.

*Comment 19:*The Council never had an opportunity to comment on the specific monitoring requirements that exceeded those identified in their June 2003 motion.

Response: Several of the monitoring requirements included in the proposed rule were not before the Council when it took its final action on the GRS program, as explained in greater detail in the response to Comment 18. However, at the June 2005 meeting, the NMFS described all the monitoring requirements prior to their publication in the proposed rule and the Council heard public testimony on the GRS program, which included all the proposed monitoring components. Subsequently, the Council clarified their intentions for the GRS program, and submitted comments to NMFS during the proposed rule comment period. None of the Council's comments recommended revising any of the monitoring components. Additionally, as noted in Comment 18, all the monitoring components were included in the proposed rule transmitted to NMFS on May 26, 2005.

NMFS agrees that some regulatory provisions for this rule were not explicitly discussed by the Council before they adopted a recommendation to the Secretary. In the course of implementing a Council recommendation, NMFS must consider its ability to monitor programs such as the GRS, and promulgate enforceable regulations. The prohibition on the mixing of hauls, the limitations to one flow scale, the requirement that the conveyor line pass over a scale, and the limitation on observer sampling time to 9 hours a day were all included in the proposed rule to promote compliance with the GRS. While the final rule eliminates the restriction of observer sampling to nine hours, as explained in the response to Comment 13, the public was provided ample opportunity for public notice and comment on these regulatory clarifications in accordance with the APA.

Comment 20: The proposed rule would establish several additional monitoring requirements for the non-AFA trawl C/P sector. These new monitoring requirements are excessive. Current monitoring standards are sufficient and adequately meet NMFS data needs.

Response: The proposed rule and the supporting EA/RIR/IRFA as well as this final rule and EA/RIR/FRFA discuss the need for enhanced haul-by-haul catch monitoring standards necessary to monitor and support the GRS program. Also, see the response to Comment 17 above. NMFS' ability to adequately account for groundfish catch made under the GRS program would be severely compromised or impossible under current regulations because these regulations do not provide the information needed to determine haul-by-haul accounting of groundfish catch.

All regulated vessels are required to use NMFS-approved scales to determine the weight of total catch. This information is necessary to estimate total groundfish weight used in the denominator of the GRS calculation. All regulated vessels also must obtain sufficient observer coverage to ensure every haul is observed for verification that all fish are weighed or use an alternative processing plan approved by NMFS. Observer sampling of each haul is necessary to determine the percentage of the total catch that is comprised of groundfish. Each vessel will be required to provide a single location for observers to collect samples to reduce the potential of sample bias and enhance an observer's ability to obtain high quality samples. Mixing of catch from two or more hauls prior to sampling by an observer will be prohibited, because it is not possible to obtain a discrete sample if hauls are mixed.

Additionally, recent enforcement actions involving the intentional presorting of catch to bias observed catch rates of Pacific halibut document the incentive for biasing observer samples to optimize groundfish catch

relative to constraining PSC or other groundfish catch. However, the opportunities to bias observer samples should be reduced under the GRS program in comparison with the status quo because of the enhanced monitoring provisions that are established under this rule. These include observer sampling space and catch access provisions that will allow observers to monitor all catch between a holding bin and the scale used to weigh total catch. NMFS has determined that the new monitoring requirements are necessary to adequately account for groundfish catch under the GRS program and are not excessive.

Comment 21: The requirement that fishing operations must be conducted in such a manner that observers are available for no more than 9 hours out of a 12 hour shift could force a vessel to acquire three observers. The analysis envisioned two observers to meet this standard for vessels conducting fishing operations for 24 hours each day. The analysis did not analyze the effects of three observers.

Response: NMFS agrees. As the commenter notes, the analysis is based on the premise that two observers each working a 12-hour shift would be available to sample all hauls retrieved by a non-AFA trawl C/P that conducted fishing operations for 24 hours each day. The proposed rule included the nine hour sampling limitation to provide observers with sufficient time to complete other assigned duty tasks. NMFS assumed that the nine hour sampling limitation would not disrupt the normal haul retrieval patterns of non-AFA trawl C/Ps and that two observers would continue to be sufficient to sample all hauls retrieved by a non-AFA trawl C/P that conducted fishing operations for 24 hours each day. However, as revealed in the comment, non-AFA trawl C/Ps typically retrieve hauls throughout a 12-hour period. Limiting observers to nine hours of sampling within each 12-hour shift would likely require most non-AFA trawl C/Ps to routinely carry a third observer or to significantly alter their operations. Because the EA/RIR/FRFA did not analyze the effects of the 9-hour sampling limitation, NMFS has removed the 9-hour time limitation on sampling in the final rule, as noted in the response to Comment 13. Observers will continue to be limited to a 12-hour work day, and vessel operators must ensure that all hauls are available to an observer to sample. Routine fishing practices which do not allow for 2 observers working 12-hour shifts to complete all required sampling duties would not meet this standard, and additional observers may be required.

Comment 22: The analysis for the proposed GRS program indicates that the additional monitoring requirements provide improvements to management precision and accuracy because NOAA Fisheries will have scale weight data to verify each haul's total weight. Fishery managers currently must rely on secondary sources such as skipper estimates or total weekly production figures to estimate total catch weight. Other potential benefits include: (a) a reduction in error in the timing of fishing closures for some directed groundfish species, (b) improved precision and accuracy associated with prohibited species catch and non-target species removal estimates may lead to more precise estimates of the residual stock, and (c) improved data for estimating sampling variability between observers and for improved information on non-target species which are important components of the ecosystem.

Response: Installation of flow scales, sample stations and observation of each haul will enhance status quo catch monitoring and accounting for non-AFA trawl C/Ps. Direct measurement of weight on a flow scale is likely to be more accurate than observer measurements based on volumetric estimates and density. Managers will use catch estimates based on observer species catch composition data for each discrete haul. The greater the number of hauls that are sampled, the more representative are the species specific catch rates that will be applied to the groundfish catch weight from a specific vessel. NMFS agrees that improvements to data quality could enable inseason managers to adjust season dates with greater confidence than without these monitoring tools. If data from the GRS program are more representative of the actual catch, the management response may reduce the chance of exceeding TAC amounts. While NMFS agrees that the monitoring components of the GRS program are likely to increase data quality and potentially decrease the chance of exceeding catch allocation thresholds, sampling methods employed under the GRS program would not allow NMFS to measure bias and precision error in catch data.

Comment 23: The requirements that all catch be available for sampling from a single point and that an observer be able to ensure that no catch was removed from the point where fish exit the fish bin to the point where unsorted catch is collected are costly, if not unattainable. In many cases, these requirements would require massive restructuring of the factory area or would be physically impossible. The industry always understood that two flow scales would be allowed. This action will prevent vessels from having multiple lines or multiple scales. This will impose an unnecessary burden on those vessels with multiple processing lines and slow down production by creating a bottleneck upstream from the factory.

Response: As described above, NMFS must be confident that a vessel crew's ability to intentionally bias an observer's sample is minimized. Requiring all catch to be available for sampling from a single point reduces the crew's ability to deliberately sort catch prior to observer sampling. For example, if multiple sampling points were allowed, crew could intentionally move catch away from the observer's current sample collection point. Under this scenario, all catch would not be available for sampling by an observer and the sample could be biased. Additionally, a line-of-sight between the observer work station and discharge point of the codend is a required component of this final rule. This requirement further reduces the potential for intentional presorting as observers could detect these violations between the discharge and sample points.

The EA/RIR/FRFA includes an estimate of the costs associated with complying with this requirement as part of the cost of building a NMFS-approved observer sampling station. Factory designers have always sought to minimize the amount of space between the bins and the size sorters because until sorting takes place, fish cannot be further processed and excess space, in effect, would be wasted. Because of this constraint, the natural area for the flow scale in almost all cases is very close to the bins and visibility is not a problem. NMFS' experience with approving sampling stations for vessels has shown that in some cases the observer could not see the entire flow of fish from the sampling location, but that modifications to allow full visibility tended to be inexpensive (such as installing a parabolic mirror). To date, only two vessels have had to make factory modifications specifically to comply with the same monitoring requirements implemented under the CDQ program. Based on agency staff experience with this requirement in other programs and knowledge of all the affected vessels, NMFS has concluded that complying with the line-of-site regulation will likely require minimal factory alteration and should not be physically impossible or require massive restructuring.

This comment also asserts that the rule would prevent the use of multiple scales or multiple lines. NMFS disagrees, as the rule will only require that multiple scales not be used simultaneously and that all unsorted catch pass by a single location where the observer collects his or her samples. The vessel may bifurcate those lines both upstream and downstream in order to increase processing capacity or flexibility. This requirement will only result in a production-reducing constraint in the event that the speed with which fish could pass over the scale was a limiting factor. Given that NMFS-approved flow scales are capable of weighing catch at rates of 60–80 metric tons per hour, NMFS does not believe that such a bottleneck would be created. NMFS also notes that all the C/Ps and motherships participating in the AFA pollock fishery are able to effectively pass fish across a single point in spite of the fact that factory throughput in these vessels is generally considerably greater than the throughput of any non-AFA trawl C/P.

Comment 24: Smaller non-AFA trawl C/Ps should not be required to invest significant amounts of money into vessel capacity and factory upgrades when the need to make such investments may disappear when Amendment 80 is implemented. Amendment 80 is expected to include mechanisms that would allow these vessels to either comply with discard retention requirements through contractual means or retire from the fishery in an economically rational manner.

Response: NMFS recognizes that the lengths of vessels subject to the GRS program vary greatly, from slightly longer to 125 ft (38.1m) LOA to significantly longer than 125 ft. (38.1m) LOA. However, all non-AFA trawl C/Ps are required to comply with the GRS program regardless of whether they are slightly or significantly longer than 125 ft (38.1m) LOA because the non-AFA trawl C/P sector has consistently had the highest rate of groundfish discards of any groundfish sector in the BSAI and non-AFA trawl C/Ps account for 83 percent of the total catch of all non-AFA trawl catcher/processors.

Amendment 80 currently is under consideration by the Council and has not yet been submitted to NMFS for review and approval. Amendment 80 is an entirely separate action that would allocate specified groundfish species to the non-AFA trawl C/P sector and would provide the option for participants in the sector to form one or more fishing cooperatives.

In the future, vessels may be able to exit the fishery with some form of compensation for relinquishing their history and forego initial or ongoing compliance costs of the GRS program if opportunities arise to do so under a legislated buy out program. Similarly, Amendment 80, if adopted by the Council and approved by NMFS, could allow License Limitation Program permit holders the opportunity to enter cooperative agreements to lease their fishing history and avoid direct compliance costs associated with the monitoring of cooperative allocations and the GRS program. These options apply equally to non-AFA trawl C/Ps that are slightly longer than 125 ft (38.1m) LOA and to those that are much longer than 125 ft (38.1m) LOA. The comment appears to assume that only smaller non-AFA trawl C/Ps will exit the fishery were Amendment 80 if approved, but it is difficult to predict which non-AFA trawl C/Ps would continue to operate under Amendment 80.

Comment 25: The draft EA notes that more practicable measures exist for achieving bycatch reduction goals. Specifically, combining a GRS with Amendment 80 would achieve the same goal while offsetting the monitoring and enforcement costs associated with this regulation.

Response: NMFS does not agree that the EA/RIR/IRFA for the GRS states that other alternatives are more practicable for achieving bycatch reduction goals than this GRS. On the contrary, the preferred alternative GRS in this final rule is identified as a practicable means for meeting bycatch reduction goals. The purpose of the GRS program is to create a standard for the retention of groundfish in the BSAI groundfish fishery that will reduce current levels of discards in order to address the problem of excessive discards of groundfish in the BSAI. The alternatives examined in the EA/RIR/FRFA for the GRS program represent a reasonable range of alternatives to the identified purpose and need for the action. While NMFS anticipates that the formation of fishery cooperatives in the non-AFA trawl C/P sector under Amendment 80 (if approved) would decrease discard levels, there is no assurance under Amendment 80 that fishery cooperatives will form and, if formed, that discard reduction will reach the standard imposed by the GRS program.

The Council could have combined the GRS program and Amendment 80 into one action. However, for various policy reasons, the Council chose to separate the two actions. When the Council submitted the GRS program to NMFS for review and approval in accordance with section 304(b) of the Magnuson-Stevens Act (16 U.S.C. 1854(b)), NMFS had to determine whether the GRS program, as a stand alone action, was consistent with the Magnuson-Stevens Act and other applicable law. The provisions of Amendment 80 and the likelihood that they would offset costs associated with the GRS program were immaterial to the determination before NMFS, which was whether the proposed rule for the GRS program is consistent with the Magnuson-Stevens Act and other applicable law. NMFS initially determined that the proposed rule for the GRS program was consistent with the Magnuson-Stevens Act and other applicable law. After reviewing public comment received on the proposed rule, NMFS has determined that the GRS program continues to be consistent with the Magnuson-Stevens Act and other applicable law for the reasons provided in the preamble to this final rule.

Comment 26: Proposed Amendment 80 could impose different, more stringent, monitoring standards. These could cause vessels to have to modify their factories again in order to fish under Amendment 80. For example, the draft Amendment 80 analysis indicates that NMFS may require more space in the observer sampling station to accommodate larger samples.

Response: NMFS agrees that Amendment 80 could impose different, more stringent monitoring standards than those imposed in this final rule for the GRS program. Amendment 80, if approved, would impose monitoring standards on participating vessels that are appropriate for monitoring and accurate species specific catch accounting. Because non-AFA trawl C/Ps that are subject to the GRS program also would be subject to Amendment 80 if it were approved by the Council and NMFS, non-AFA trawl C/Ps may have to reconfigure certain parts of their factories twice - once to accommodate the monitoring requirements of the GRS program and again to accommodate the monitoring requirements of Amendment 80. To the extent possible, NMFS has sought to develop Amendment 80 monitoring standards to avoid additional costs, but in some cases this may not be possible. NMFS cannot state with certainty how the standards will differ until such time as Amendment 80 is approved by the Council and rulemaking implementing Amendment 80 is promulgated. Section 3.3 of the EA/RIR/FRFA prepared for the GRS program examines the cumulative effects that may occur from Amendment 80.

Comment 27: NMFS has not adequately discussed how the program will be enforced. Also, an observer misreporting incentive exists in part of the enforcement mechanism, where observers could be paid to return to testify on a case. Financial compensation for an observer to testify at some future date could compel observers to falsify records on the basis of potential future remuneration.

Response: The preambles to the proposed and final rules, EA/RIR/FRFA, and additional clarifications in response to public comment provide extensive discussion on how the program will be enforced and why different regulatory provisions, such as the requirement for weighing all catch on a certified scale, are required to support compliance monitoring, enforcement and prosecution.

Supplemental witness fees paid to observers will not bias observer reporting of data. In the event that a person contests a violation of the GRS, NMFS must be able to assemble a sufficient number of observers to provide testimony and review sampling data. When prosecution of a violation requires the testimony of observers, NMFS possesses the authority to provide travel expenses and some remuneration for incidental costs and labor associated with that testimony. It is unlikely that this supplemental witness fee will approach the value of lost time, inconvenience or other forgone opportunities for an observer who has chosen to leave the observer program for some alternative activity or source of employment. Additionally, any observer who biases data is subject to agency action which could include decertification and criminal prosecution.

Comment 28: This action will improve estimation of groundfish and prohibited species catch through better sampling and more precise estimation of observer total catch samples.

Response: As noted in the response to Comment 22, NMFS agrees that the accuracy of total catch estimates and the distribution of catch by species in hauls could be improved by this action. It is possible that increasing the total number of samples will have some positive catch precision implications, but the current sampling program is insufficient to generate any error statistics or other statistical measures from catch data. Improvements in the precision of catch estimates are not the purpose of this action, and the monitoring measures were not designed to accomplish this goal. However, this action will clearly improve NMFS' ability to measure total catch and to determine the species composition of that catch.

Comment 29: The Council's length criterion for exempting vessels from the GRS is arbitrary. Some vessels greater than 125 ft (38.1 m) LOA cannot comply with the proposed GRS while some vessels less than 125 ft (38.1 m) LOA would be able to meet the GRS. Differences in vessel size, processing capability, hold capacity, horsepower, crew capacity, and fish tank capacity are not determined by vessel length. The decision to use greater than or equal to 125 ft (38.1 m) LOA as a measure by which vessels can comply with the GRS is not supported in the analysis and is arbitrary.

Response: The length criterion for inclusion in the GRS program is not arbitrary or unsupported in the record. The GRS program applies to non-AFA trawl C/Ps that are 125 ft (38.1 m) LOA or greater. The EA/RIR/FRFA includes data showing that in 2001, non-AFA trawl catcher/processors less than 125 ft (38.1 m) LOA accounted for only 8 percent of the total catch of all non-AFA trawl catcher/processors and only 7 percent of the retained catch. Data presented in the EA/RIR/FRFA demonstrate for these two vessel length categories that catch and retained catch percentages are relatively stable between 1999 and 2002. Additionally, the EA/RIR/FRFA includes information on the costs associated with observers and scale monitoring requirements for non-AFA trawl catcher/processors over and under 125 ft (38.1 m) LOA. Because vessels under 125 ft (38.1m) LOA have relatively smaller factory space, scale and sampling station requirements could reduce processing capacity to a greater extent relative to that of larger vessels. Displacing a crew member to accommodate an additional observer also could reduce processing capacity for smaller vessels with limited space for crew. Given the relatively small contribution to this sector's overall harvest and recognizing that compliance costs associated with observers and scale monitoring requirements would be relatively higher for vessels less than 125 ft (38.1 m) LOA, these vessels are excluded from the GRS program.

Vessel length is a well established criterion for determining application of fishery regulations. In particular, 125 ft (38.1 m) LOA is a common dividing line for other regulations implemented for the North Pacific groundfish fisheries. For example, regulations at § 679.50(c) describe vessel observer coverage requirements. Groundfish vessels 125 ft (38.1 m) LOA or longer are required to carry an observer 100 percent of the time. In general, groundfish vessels less than 125 ft (38.1 m), but greater than 60 ft (18.3 m) LOA are required to carry an observer 30 percent of their fishing days. Groundfish vessels less than 60 ft (18.3 m) LOA are exempt from observer coverage. These regulations have been in place since implementation of the Observer Program in 1990, and are based on an analysis similar to that prepared for the GRS program. The proposed rule for the Observer Program (54 FR 51042, 51044; December 12, 1989) states, ''Because these large vessels harvest more than 50 percent of all the groundfish, requiring them to have higher observer coverage relative to smaller vessels and shoreside processing facilities is appropriate.''

Vessel length is the most practical criterion to determine applicability of fisheries regulations. Determination of vessel length is subject to little uncertainty or measurement bias as compared with some of the alternative operational measures suggested in this comment. Vessel length is tracked and monitored by the USCG and NMFS. While other capacity and power measures are not without merit as criteria for some regulations, NMFS has determined that they do not provide the necessary level of precision or accuracy for applying the GRS program. By applying the equal to or greater than 125 ft (38.1 m) vessel length criterion, those vessels accounting for a significant majority of the total catch and discards by non-AFA trawl C/Ps will be subject to the GRS program. This is consistent with the Council and NMFS's intent for the GRS program to reduce to the maximum extent practicable the amount of discards by non-AFA trawl C/P vessels. Therefore, NMFS has determined that the record for the GRS program supports the use of the 125 ft (38.1 m) LOA criterion.

Comment 30: The proposed rule imposes a burden on vessels within the non-AFA trawl C/P sector over 125 ft (38.1 m) LOA in a manner that is unequal between vessels. For example, vessels that operate in mixed species flatfish and cod fisheries may find it necessary to operate in other fisheries that are further from traditional fishing areas to achieve the required retention rates. The relative costs of making changes to physical plants and ongoing operations in this sector are unequal (and have different effects on the efficiency of a vessel) between the vessels in the sector. It is more costly for some vessels to operate in these remote fisheries than others.

Response: NMFS is aware that the GRS program may pose more operational costs on some non-AFA trawl C/Ps greater than or equal to 125

ft (38.1 m) LOA than other non-AFA trawl C/Ps greater than or equal to 125 ft (38.1 m) LOA. The analysis for this action is based on aggregate catch data for the entire sector as well as other data such as gross revenue and discards. As noted in the response to Comment 29, NMFS has determined that the vessel size threshold of greater than or equal to 125 ft (38.1 m) LOA is an appropriate criterion for inclusion in the GRS program between non-AFA trawl C/Ps. Also, the Magnuson-Stevens Act does not require the imposition of uniform costs or uniform benefits on each vessel in a fleet.

Comment 31: Amendment 79 is not approved at this time. It is not appropriate for NMFS to publish a proposed rule without FMP authority through an approved FMP amendment.

Response: Amendment 79, which authorizes the establishment of GRS programs, was approved by NMFS on August 31, 2005. NMFS disagrees that it was inappropriate to publish the proposed rule for the GRS program prior to approving Amendment 79. Amendment 79 and the proposed rule for the GRS program were submitted by the Council to NMFS on May 26, 2005. The Magnuson-Stevens Act at section 304(b) (16 U.S.C. 1854(b)) requires NMFS to publish a proposed rule within 15 days of receipt if NMFS determines that the proposed rule is consistent with the proposed FMP amendment, the Magnuson-Stevens Act and other applicable law. Because NMFS determined that the proposed rule for the GRS program was consistent with proposed Amendment 79, the Magnuson-Stevens Act, and other applicable law, NMFS appropriately published the proposed rule 15 days after its receipt and prior to NMFS' approval of Amendment 79, consistent with the requirements of the Magnuson-Stevens Act.

Comment 32: The decision to approve, disapprove or partially approve Amendment 79 must be made considering the legal approvability of the regulations implementing it.

Response: NMFS agrees that a decision to approve, disapprove or partially approve an FMP amendment must be made considering the legal consistency of the regulations necessary to implement the FMP amendment. Amendment 79 included the following statement in the management objectives section of the FMP: ''Continue to improve the retention of groundfish where practicable, through establishment of minimum groundfish retention standards.'' As worded, Amendment 79 refines the existing bycatch reduction objectives of the FMP by explicitly recognizing GRS programs as tools to reduce bycatch. At the time NMFS approved Amendment 79, the agency considered the consistency of the amendment as well as any regulations necessary for its implementation. Because regulations were not immediately necessary in order to implement Amendment 79 given its general, discretionary nature, NMFS was able to approve Amendment 79 without having to also make a decision on the proposed GRS program for non-AFA trawl C/Ps. NMFS recognized that any specific GRS program developed by the Council and NMFS under the authority of Amendment 79 must be consistent with the FMP, the Magnuson-Stevens Act, and other applicable law.

Comment 33: Amendment 79 should be approved to provide authority for the GRS program, but the regulations for the proposed GRS program should not be approved.

Response: As explained in greater detail in the response to Comment 32, NMFS approved Amendment 79 on August 31, 2005. After approving Amendment 79, NMFS considered whether the GRS program for non-AFA trawl C/Ps was consistent with the FMP, Magnuson-Stevens Act, and other applicable law. For the reasons provided throughout this final rule, NMFS determined that the GRS program for non-AFA trawl C/Ps was consistent with the FMP, the Magnuson-Stevens Act, and other applicable law, and has approved it.

Comment 34: The Council clarified its intent for the GRS by recommending that NMFS implement the GRS program in 2007 emphasizing that it intended to start the GRS at a rate of 65 percent in the first year of the program. The Council concluded that starting the GRS in 2007 would provide the affected fleet with a sufficient amount of time to make the necessary adjustments, including factory restructuring, to comply with the rule. The Council was concerned that inadequate time would be available to purchase and install the required monitoring equipment before the 2006 fishing season. The Council also concluded that the GRS should start at 65 percent because it was necessary to allow vessel owners to adjust fishing and business operations to accommodate gradually increased groundfish retention over time.

Response: NMFS determines that implementation of the GRS program in 2008 will provide the owners of affected non-AFA trawl C/Ps with a sufficient amount of time to modify their vessels as necessary to comply with the monitoring requirements of this rule. While the Council listed year 2007 as an anticipated starting date for the GRS, the time required to develop this final rule, and provide a sufficient opportunity for persons subject to the final rule to conform to its requirements lead NMFS to implement the GRS in 2008. Therefore, the proposed rule has been modified and this final rule implements the GRS program in 2008. NMFS also agrees with the Council's intent that the GRS program start at 65 percent regardless of the year in which the program is implemented. NMFS has determined that the owners and operators of some of the non-AFA trawl C/Ps regulated by this action will find it easier to adjust to the GRS in the first year if it is implemented at 65 percent as opposed to 75 percent as specified in the proposed rule because some of the non-AFA trawl C/P vessels continue to have a retained groundfish catch of less than 75 percent. Under the final rule, the GRS program will start at a GRS of 65 percent in 2008 and incrementally increase each year thereafter, culminating in an 85 percent GRS in 2011. Although the monitoring requirements must be met for the first year of the GRS program, the incremental increase in the GRS will provide owners and operators of regulated vessels with additional time to make operational adjustments in response to the required retention of additional groundfish. Because of the changes made to the final rule, non-AFA trawl C/Ps will have until 2011, instead of 2008, to respond to an 85 percent retention level.

Comment 35: In June 2005, the Council forwarded a comment on the proposed rule that if adopted by NMFS, would start the GRS program in 2007. In addition to the reasons provided by the Council for starting the GRS program at 65 percent in the first year of the program as summarized in Comment 34, the Council also commented that starting the GRS program later than 2006 is intended to allow the GRS to come on line simultaneously with or at most one year earlier than Amendment 80.

Response: While NMFS notes that Comment 35 is part of the Council's rationale for proposing to start the GRS program in 2007, NMFS does not find Comment 35 to be an appropriate reason to start the GRS program in 2007. NMFS has determined to start the GRS program in 2008 for the reasons provided in the response to Comment 34 and in the Changes to the final rule section of the preamble. Amendment 80 is currently under development by the Council. If the Council submits Amendment 80 to NMFS for approval, its approval is not

guaranteed, and if approved, its implementation date is not certain. Therefore, it is not possible to know at this time whether starting the GRS program in 2007 or even in 2008 will result in a simultaneous implementation with or a one year difference in implementation with Amendment 80.

The GRS program is an action that is independent of and separate from Amendment 80. As such, the GRS program must have a reasonable basis for its approval that is not dependent on the approval of and a specific implementation date for Amendment 80. For the reasons set forth in this rulemaking, NMFS has determined that the GRS program has sufficient analysis and justification for its approval regardless of Amendment 80's approval or implementation date.

Comment 36: The Council understood that industry would incur costs to implement and comply with the GRS and balanced them with the benefits it believes will arise from a reduction of discards and improved utilization of catch.

Response: NMFS agrees. The record developed during Council consideration of the GRS program and its adoption by the Council in June 2003 demonstrates that the Council was fully aware that the GRS program would result in vessel modifications and additional operational costs for non-AFA trawl C/Ps. The Council was again made aware of and received additional public testimony on the operational effects and costs of the GRS, and amended the GRS at its June 2005 meeting. At that time, the Council recommended modification of the GRS implementation date and percentage, but did not act to remove or withdraw support for the GRS program in any manner.

Comment 37: NMFS should adhere to the guidelines for overfishing established by the Pew Report and the United Nations.

Response: The GRS program has no explicit connection with the process that NMFS uses for designating the status of a species or species complex relative to overfishing guidelines.

Comment 38: All quotas should be reduced by 50 percent this year, 10 percent each subsequent year, and marine sanctuaries should be established.

Response: The GRS program implemented by this final rule does not have any relationship to the establishment of harvest specifications or the assignment of quotas or allocations in the North Pacific groundfish fisheries. Furthermore, the GRS program does not have any tangible connection with the establishment of marine sanctuaries.

Changes From the Proposed Rule

In June 2003, the Council assumed that approval and implementation of the GRS program would occur in time for the 2005 fishing year with a GRS of 65 percent. However, Secretarial review of Amendment 79 and associated rulemaking was not initiated prior to the start of the 2005 fishing year. Therefore, the proposed rule prepared for this action (70 FR 35054, June 16, 2005) proposed implementing the GRS in 2006 at the 75 percent level, which was consistent with the schedule in the Council's motion, but NMFS specifically asked for public comment on this aspect of the proposed rule. In June 2005, the Council asked NMFS to start implementation of the GRS at the 65 percent level and assumed the start date for implementation would be in 2007. The Council clarified that it did not intend implementation of the GRS on a date certain basis. Rather, it intended a gradual increase of the GRS level, regardless of the year the program was implemented. The Council clarified that this was necessary to allow vessel owners to adjust fishing and business operations to accommodate gradually increased groundfish retention over time. The Council also was concerned that inadequate time would be available to purchase and install the required monitoring equipment before the 2006 fishing season.

Because the Council clarified its intent to implement the GRS at the 65 percent level regardless of the calendar year, and public comment documented the extent to which some vessels may incur an additional burden to meet a GRS of 75 percent for the first year of the program, the final rule is adjusted to implement the first year of the GRS program at 65 percent. The EA/RIR/FRFA prepared for this action analyzed the effects of implementing the GRS at the 65 percent level, and this change is consistent with the analysis.

Because of the timing concerns highlighted by the industry and Council during public comment associated with making factory modifications to comply with the GRS program in 2006 and because the GRS program must start at the beginning of a fishing year for reasons summarized above, the final rule is adjusted to allow time for vessels to make these modifications and will be effective in 2008. Public comment was also helpful in determining the implementation date for the GRS. Some fishing companies noted that factory modifications would be more significant for some vessels than others. The time required to develop architectural and engineering contracts, scope and budget for capital modifications and schedule one or more shipyard visits for significant modifications could take several months. NMFS has responded to these concerns by implementing the GRS in 2008. Shifting the imposition of monitoring costs by one additional year from 2007 to 2008 will result in clear cost savings to the sector, by deferring present accounting costs by one full year. In addition to extending the time vessel owners and operators would have to plan and make these modifications, NMFS anticipates that the goals of the monitoring program are more likely to be achieved with this additional time by improving the quality of monitoring spaces, ease of observer access and viewing, and accuracy of catch accounting.

Some members of industry affected by this action also expressed concern with observer workload restrictions. As revealed by public comments, non-AFA trawl C/Ps typically retrieve hauls throughout a 12-hour period. Limiting observer to nine hours of sampling within each 12-hour shift could require vessels to alter their operations to allow observers to remain within this limit. To provide non-AFA C/Ps with increased flexibility to maximize their operational efficiencies, the final rule eliminates the 9-hour sampling restriction, as noted in the response to Comment 13. Observers will continue to be limited to a 12-hour work day, and vessel operators must ensure that all hauls are available to an observer to sample. Routine fishing practices that do not allow for 2 observers working 12-hour shifts to complete all required sampling duties would not meet this standard, and additional observers may be required.

A cross reference is added to the final rule at § 679.27(b)(3)(i) to clarify that all hauls must be available to be observed. This is a non-substantive change intended to provide consistency with observer coverage requirements.

At § 679.27(j)(5), the proposed rule is clarified so that the owner or operator of a non-AFA trawl C/P that is subject to the GRS program at § 679.27(j)(1) at any time during a fishing year also is required to comply with the GRS and all associated monitoring requirements if that vessel receives unsorted codends from another vessel at any time during a fishing year. For example, if a non-AFA trawl C/P vessel were to begin the fishing year by acting as a mothership and receive unsorted codends and then act as a catcher/processor later in the year, that vessel would be required to comply with the monitoring requirements at § 679.27(j)(3) for all

catch that was brought on board, even when the vessel was acting as a mothership. If the vessel failed to meet those monitoring requirements during the period that it acted as a mothership, the vessel would be in violation of the GRS program if at anytime during the fishing year it also acted as a catcher/processor. This revision is necessary to clarify which vessels are required to comply with the GRS, and the circumstances under which the GRS may apply to a mothership. Without these monitoring requirements, it would be impossible to accurately account for GRS fish and enforce the GRS program for any catcher/processor that also receives unsorted codends. Total catch would not be required to be measured by a flow scale, but could be estimated by the vessel operator. Furthermore, it would be impossible to verify the amount of product reported on WPRs.

For the reasons described above, regulations at § 679.7(m)(6) were added to prohibit non-AFA trawl C/Ps from receiving deliveries of unsorted catch at any time during a fishing year without complying with the monitoring requirements at § 679.27(j)(3) if the vessel is required to comply with § 679.27(j)(1) at any time during the same fishing year.

Classification

The Administrator, Alaska Region, determined that Amendment 79 to the FMP is necessary for the conservation and management of the BSAI groundish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable law.

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

The NMFS prepared a final regulatory flexibility analysis (FRFA). The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, and a summary of the analyses completed to support the action. A summary of the FRFA and how it addresses each of the requirements in 5 U.S.C. 604(a)(1)-(5) follows. A copy of this FRFA is available from NMFS (see **ADDRESSES**).

This action is intended to decrease regulatory and economic discards and increase catch utilization in the BSAI groundfish fisheries by implementing an annual GRS for non-AFA trawl C/Ps equal to or greater than 125 ft (38.1 m) LOA. The percent of groundfish retained will be a percent calculated as a specified ratio of the round-weight equivalent of total retained groundfish to total groundfish catch. The GRS will gradually increase from 65 percent in 2007 to 85 percent in 2010.

The GRS program applies only to non-AFA C/Ps using trawl gear that are 125 ft (38.1m) LOA or greater. Sixteen head-and-gut trawl C/Ps meet these criteria. Based on the best available data, it is improbable that any of these vessels are small entities. However, NMFS does not have the level of data and information to make a statistically confident estimation of the number of small entities affected by this action. Therefore, NMFS considered these vessels to be small entities and prepared an IRFA/FRFA that examines the impacts of the GRS program.

Alternative 1 described in the EA/RIR/FRFA is the status quo alternative. Current regulations regarding retention and discards would remain in effect.

Alternative 2 would establish a GRS of 70 percent. The standard would apply to non-AFA trawl C/Ps 125 ft (38.1m) LOA or greater and would be enforced at the sector level. Compliance with the GRS would be determined at the end of a fishing year. The MRA for pollock would be increased to 35 percent for all non-AFA trawl C/Ps, including vessels less than 125 ft (38.1m) LOA, and compliance with the pollock MRA would be monitored and enforced on each vessel at the end of each offload. NMFS-approved scales, a certified observer sampling station, and observer coverage of every haul would be used to measure and verify total catch. Alternative processing plans, approved by NMFS, could be substituted for observer coverage of every haul. Retained catch would be calculated using NMFS standard PRRs.

Alternative 3 would establish a GRS of 85 percent for January through May of each calendar year. The GRS would increase to 90 percent for the remainder of the year. The GRS would apply to individual non-AFA C/Ps 125 ft (38.1m) LOA or greater. Non-AFA C/Ps less than 125 ft (38.1m) LOA would be exempt from the GRS program if their weekly production were less than 600 mt. The MRA for pollock would be revised so that it is enforced at any time. Compliance with the GRS would be monitored and enforced at the end of each week for each area and gear type. NMFS-approved scales, a certified observer sampling station, and observation of every haul would be used to measure and verify total catch. Retained catch would be calculated using standard PRRs.

Alternative 4 is the preferred alternative, and is described above in the preamble to this action.

Not withstanding the possibility that markets could develop, retaining additional groundfish is not expected to generate additional revenues immediately, and could result in lower revenues if these fish displace higher value fish. Vessels subject to the GRS program could incur operating costs associated with holding, processing, transporting, and transferring fish that are of relatively low value. However, changes in technology, fishing techniques, and markets could reduce these potential costs.

Vessels subject to this action will be required to comply with the monitoring components described in the preamble above. NMFS estimates 7 of the 16 vessels subject to the GRS program will be required to install NMFS-approved flow scales, which are estimated to cost approximately $50,000 each. Equipment necessary to comply with observer sampling station requirements is estimated to cost between $6,000 and $12,000. Installation of this equipment is estimated to cost between $20,000 and $100,000. Under the GRS program, every haul will be required to be available for sampling by a NMFS-certified observer. This requirement will likely necessitate an additional observer on each vessel, which is estimated to cost $82,000 per vessel per year.

This action revises recordkeeping and reporting requirements for vessels subject to the GRS program. Proposed revisions to regulations will require all vessel owners or operators of vessels subject to the GRS program to record in the DCPL the total catch scale weight for each haul. This will increase the quality of data available to NMFS managers and provide NMFS enforcement with a tool to verify total catch weight for vessels subject to the GRS program.

Need for and Objectives of the Rule

A description of the need for and objectives of this action is contained in the preamble to the proposed rule published in the **Federal Register** on July 16, 2005 (69 FR 35054), and in the preamble to this final rule and is not repeated here.

Summary of Significant Issues Raised in Public Comment

The public comment period for the proposed rule ended on August 1, 2005. NMFS received 19 letters of comment on the proposed rule including 38 discrete comments. Four of the comments received specifically addressed the IRFA. These comments are summarized above in Comments 2, 13, 14, and 15. Seventeen of the comments focused on economic concerns of the proposed rule, but did not specifically address the IRFA. These comments are summarized above in

Comments 1, 3, 4, 5, 6, 9, 10, 17, 20, 21, 23, 24, 25, 26, 27, 30, and 36. Eleven letters of comment were received from persons working for or associated with one or more vessels subject to these regulations. Ten of those letters opposed the rule, and one was in favor of the rule. Associated entities opposing the rule cited the lack of discussion on some of the proposed monitoring components, the burden to catcher processing operations from monitoring and operational adjustments required for fishing under the rule, the costs associated with compliance to the rule, inconsistency of criteria for a small business entity as applied to catcher processors in the fishery, comparatively small benefits to the sector, fishing industry and nation, and a request to complete a new IRFA as the reasons for opposing the action. The regulated entity supporting the rule cited the need for bycatch reduction in the fleet due to wasted catch of groundfish and minimal costs associated with the benefits of the regulation. Of the total number of 19 letters, 5 respondents were in favor of the action, and 13 were not in favor of the action and one expressed no approval/disapproval opinion. Some of the agencies in favor of the action included the Environmental Protection Agency and the State of Alaska.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

The GRS program will apply only to non-AFA C/Ps using trawl gear that are 125 ft (38.1m) LOA or greater. Sixteen vessels meet these criteria. Based on the best available data, it is improbable that any of these vessels are small entities. NMFS defines a catcher/processor as a small entity if it has gross earnings of less than $3.5 million in a year. However, NMFS does not have the level of data and sufficient information on the corporate organization of these companies or data on the gross earnings from fishing operations of these companies to make a statistically confident estimation of the number of small entities affected by this action. Therefore, an IRFA was prepared for the proposed rule, and a FRFA was prepared for the final rule. A detailed description of the entities affected by the alternatives considered is provided in the EA/RIR/FRFA for the final rule in Sections 3.0, 4.0 and 5.0.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action will not change the overall reporting structure and recordkeeping requirements of the participants in the BSAI groundfish fisheries. Modifications to plants for accommodating and certifying scales required of non-AFA trawl C/Ps regulated by this action will result in reporting costs. Many of these costs are detailed in the EA/RIR/FRFA submitted with this final rule in section 5.3.9, regarding impacts on regulated small entities. A detailed description of recordkeeping and reporting requirements are included in the draft support statement for the GRS proposed rule: Supporting Statement for Scale and Catch Weighing Requirements : June 2005 OMB Control No. 0648–0330.

All GRS regulated vessels are required to use NMFS-approved scales to determine the weight of total catch. In addition all vessels must obtain sufficient observer coverage to ensure each haul is observed for verification that all fish are weighed. Capital costs for scales on vessels that do not currently have them are estimated to total approximately $1.0 million. Approximately $0.5 million in annual observer costs are anticipated to support the monitoring program. Observer sampling stations are also required and capital costs for including these stations are anticipated to total approximately $70,000. Other reporting costs include scale tests and inspections, labor associated with producing scale outputs and recordkeeping for logging scale weights for total catch of each haul.

Steps Taken to Minimize Economic Impacts on Small Entities

The FRFA and other sections of the EA/RIR submitted with this rule, considered and rejected a number of options and alternatives that were each likely to have a greater negative impact on regulated entities than the preferred alternative. Alternative 3 would have imposed a GRS of 85 percent for January through May and 90 percent during the remainder of the year. That GRS percent would have applied to all vessel sizes in the non-AFA trawl C/P sector, and for those equal to or greater than 125 ft (38.1 m) length overall (LOA). Alternative 3 would be applied and enforced on an individual vessel basis. A greater number of the non-AFA trawl C/P vessels would be required to increase retention of groundfish under this alternative. The preferred Alternative 4 also considered an option to apply the GRS to non-AFA trawl catcher/processor vessels under 125 ft (38.1 m) LOA. This option was determined to be costly for these operations under 125 ft (38.1 m) LOA, and was rejected because of the lack of cost data associated with adapting these vessels for monitoring the GRS due to limited deck space and processing area. Additionally, non-AFA trawl catcher/processor vessels under 125 ft (38.1 m) LOA accounted for only 17 percent of the total groundfish catch by all non-AFA catcher/processors. Also, as a result of public comment on a potential approach to minimizing the impacts of the GRS, the regulations for this rule (Alternative 4) provide additional relief to these entities, by both reducing and staggering the GRS from the proposed rule level of 75 to 65 percent and by starting the GRS program in 2007 rather than 2006 as proposed. The GRS program is staggered to further provide a gradual increase of the GRS up to 85 percent in 2010 as opposed to imposing it at 85 percent in Alternative 3. Based on public comment, the regulations regarding observer sampling times also were relaxed to provide the affected entities with additional periods in a 12 hour work day to fish. The proposed rule restrained each observer to a sampling work schedule of nine hours in a 12 hour work day. The final rule allows observers to sample over the full 12 hour period, reducing the need for additional observers, or staging trawl operations only during the 9 hour observer sampling period.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules.

The preamble to this rule serves as the small entity compliance guide. It applies to the 16 vessels in the non-AFA trawl C/P sector that are equal or greater than 125 ft (38.1 m) LOA. Parent companies for these operations are well informed of compliance measures for the GRS, due to their long term participation in the non-AFA trawl C/P sector and involvement in the Council process leading to the GRS recommendation. These entities have assessed their ability to comply with the GRS and provided comments to NMFS on the proposed rule, and NMFS has incorporated many of these comments in the final rule. Implementing regulations at §§ 679.2, 679.5, 679.7, 679.27 and 679.50 detail all revisions and additions to recordkeeping, prohibitions, retention and utilization and observer requirements. This action

does not require additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS (see **ADDRESSES**) and at the following website: *http://www.fakr.noaa.gov*.

NMFS has determined that this alternative meets the objective of the recordkeeping and reporting requirements of the GRS program by appropriately balancing the requirements for conservation and management of the groundfish fisheries under the Magnuson-Stevens Act with the requirements to minimize bycatch under National Standard 9 and minimize economic burdens under both National Standard 7 (minimize costs and avoid unnecessary duplication) and the Paperwork Reduction Act (minimize the economic burden of recordkeeping and reporting requirements).

This final rule includes a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) that has been approved by OMB under control number 0648–0330. Public reporting burden for a catcher/processor trawl gear daily cumulative production logbook is estimated to average 30 minutes per response. Public reporting burden per response for: at-sea scale inspection report/sticker is estimated to average 6 minutes; record of daily scale tests is estimated to average 45 minutes; printed output of at-sea scale weight is estimated to average 45 minutes; observer sampling station inspection request is estimated to average 2 hours; and prior notice to observer of scale test is estimated to average 2 minutes.

Estimated response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS Alaska Region at the **ADDRESSES** above, and e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 31, 2006.

James W. Balsiger,

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

■ For the reasons set out in the preamble, 50 CFR part 679 is amended to read as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

■ 2. In § 679.2, a definition of ''Groundfish Retention Standard (GRS)'' is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Groundfish Retention Standard (GRS) means the retention and utilization standard for groundfish described at § 679.27(j).

* * * * *

■ 3. In § 679.5, paragraph (a)(7)(iv)(C)(*3*) is revised to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(a) * * *

(7) * * *

(iv) * * *

(C) * * *

Enter ...	In a ...	If a ...
* * * * * (*3*) Estimated total round weight of groundfish by haul. If the owner or operator of the vessel is required to comply with the GRS program described at § 679.27(j), the operator or manager must enter the round weight total of all catch by haul as measured by the NMFS-approved scale. * * * * *	Trawl DCPL	C/P

* * * * *

■ 4. In § 679.7, paragraph (m) is added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(m) *Prohibitions specific to GRS.* It is unlawful for the owner or operator of a catcher/processor that is 125 ft (38.1 m) LOA or longer and not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI to:

(1) Retain an amount of groundfish during a fishing year that is less than the amount of groundfish required to be retained under the GRS program described at § 679.27(j).

(2) Fail to submit, submit inaccurate information, or intentionally submit false information on any report, application or statement required under this part.

(3) Process or discard any catch not weighed on a NMFS-approved scale that complies with the requirements of § 679.28(b). Catch must not be sorted before it is weighed and each haul must be available to be sampled by an observer for species composition.

(4) Process any groundfish without an observer sampling station that complies with § 679.28(d).

(5) Combine catch from two or more hauls.

(6) Receive deliveries of unsorted catch at any time during a fishing year without complying with § 679.27(j)(3) if the vessel is required to comply with § 679.27(j)(1) at any time during the same fishing year.

* * * * *

■ 5. In § 679.27, paragraphs (b)(4) and (j) are added to read as follows:

§ 679.27 Improved Retention/Improved Utilization Program.

* * * * *

(b) * * *

(4) All species listed in Table 2a to this part for purposes of the GRS program described in paragraph (j) of this section, except for groundfish in prohibited species status at the end of each reporting week.

* * * * *

(j) *Groundfish retention standard*—(1) *Applicability.* The operator of a catcher/processor that is 125 ft (38.1 m) LOA or

longer, not listed in § 679.4(l)(2)(i), and using trawl gear must comply with the GRS set forth under paragraph (j)(2)(ii) of this section while fishing for or processing groundfish caught from the BSAI from January 1 through December 31 of each year. The owner of a catcher/processor 125 ft (38.1 m) LOA or longer is required to ensure that the operator complies with the GRS program set forth under paragraph (j)(2)(ii) of this section. No part of the GRS program supersedes minimum retention or utilization requirements for IR/IU species found in this section.

(2) *Percent of groundfish retained calculation.* (i) For any fishing year, the percent of groundfish retained by each vessel identified under paragraph (j)(1) of this section would be calculated using the following equations:

$$\text{GFroundweight} = \sum_{i=1}^{n} \left(\text{PWspecies}_n \,/\, \text{PRRspecies}_n \right)$$

Substituting the value for GFroundweight into the following equation,

GRF% = (GFroundweight/TotalGF)*100

Where:

GFroundweight = the total annual round weight equivalent of all retained product weights for each IR/IU groundfish species.

$PWspecies_n$ = the total annual product weight for each groundfish species listed in Table 2a to this part by product type as reported in the vessel's weekly production report required at § 679.5(i).

$PRRspecies_n$ = the standard product recovery rate for each groundfish species and product combination listed in Table 3 to this part.

GFR% = the groundfish retention percentage for a vessel calculated as GFroundweight divided by the total weight of groundfish catch.

TotalGF = the total groundfish catch weight as measured by the flow scale measurement, less any non-groundfish, PSC species or groundfish species on prohibited species status under § 679.20.

(ii) The following table displays annual minimum groundfish retention requirements for each vessel required to comply with the GRS program under paragraph (j)(1) of this section:

GROUNDFISH RETENTION STANDARD	
GRS Schedule	*Annual GRS*
2008	65%
2009	75%
2010	80%
2011 and each year after	85%

(3) *Monitoring requirements*—(i) *Observer coverage requirements.* In addition to complying with minimum observer coverage requirements at § 679.50(c), the owner or operator of a vessel required to comply with the GRS program must comply with observer coverage requirements as described at §§ 679.50(c)(6) and 679.7(m)(3) at all times the vessel is used to harvest groundfish in the BSAI with trawl gear.

(ii) *Catch weighing.* For each haul, all catch caught by a vessel required to comply with the GRS program must be weighed on a NMFS-approved scale and made available for sampling by a NMFS certified observer at a single location. The owner or operator of a vessel required to comply with the GRS program must ensure that the vessel is in compliance with the scale requirements described at § 679.28(b), that each haul is weighed separately, and that no sorting of catch takes place prior to weighing. All weighed catch must be recorded as required at § 679.5(a)(7)(iv)(C).

(iii) *Observer sampling station.* The owner or operator of a vessel required to comply with the GRS program must provide an observer sampling station as described at § 679.28(d) and the owner of a vessel required to comply with the GRS program must ensure that the vessel operator complies with the observer sampling station requirements described at § 679.28(d) at all times the vessel is used to harvest groundfish in the BSAI. In addition to the requirements at § 679.28(d)(7)(ii), observers must be able to sample all catch from a single point along the conveyer belt conveying unsorted catch, and when standing where unsorted catch is collected, the observer must be able to see that no catch has been removed between the bin and where unsorted catch is collected.

(4) *Requirements for vessels that also harvest groundfish outside of the BSAI.* The operator of a vessel required to comply with the GRS program must offload or transfer all fish or fish product prior to harvesting fish outside the BSAI, unless the operator of the vessel is in compliance with the recordkeeping and reporting and monitoring requirements described at § 679.5(a)(7)(iv)(C) and paragraph (j)(3) of this section at all times the vessel harvests or processes groundfish outside the BSAI.

(5) *Requirements for vessels receiving deliveries of unsorted catch.* The owner or operator of a vessel required to comply with paragraph (j) of this section at any time during a fishing year and also receives deliveries of unsorted catch at any time during a fishing year must comply with paragraph (j)(3) of this section while processing deliveries of unsorted catch.

■ 6. In § 679.50, paragraph (c)(6) is added to read as follows:

§ 679.50 Groundfish Observer Program (applicable through December 31, 2007).

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(c) * * *

(6) *Catcher/processors 125 ft (38.1m) LOA or longer and not listed in § 679.4(l)(2)(i) using trawl gear in the BSAI*—(i) *Coverage requirement.* The owner or operator of a catcher/processor 125 ft (38.1 m) LOA or longer using trawl gear and not listed in § 679.4(l)(2)(i) must provide at least two level 2 NMFS-certified observers, at least one of which must be certified as a lead level 2 observer, for each day that the vessel is used to harvest or process groundfish in the BSAI. More than two observers are required if the observer workload restriction at paragraph (c)(6)(ii) of this section would otherwise preclude sampling as required under § 679.27(j)(3) and § 679.7(m)(3). NMFS may authorize the vessel to carry only one lead level 2 observer if the vessel owner or operator supplies vessel logbook or observer data that demonstrate that one level 2 observer can complete sampling, data recording, and data communication duties within the workload requirements described in § 679.50(c)(6)(ii) under an alternative processing plan. NMFS will not authorize an alternative processing plan with only one lead level 2 observer if it would require the observer to divide a 12-hour shift into shifts of less than 6 hours.

(ii) *Observer work load.* The time required for the observer to complete sampling, data recording, and data communication duties must not exceed 12 consecutive hours in each 24-hour period.

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