



Federal Register

**Monday,
August 30, 2010**

Part II

Department of Commerce

**National Oceanic and Atmospheric
Administration**

15 CFR Part 902

50 CFR Part 679

**Fisheries of the Exclusive Economic Zone
Off Alaska; Chinook Salmon Bycatch
Management in the Bering Sea Pollock
Fishery; Final Rule**

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

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[Docket No. 090511911-0307-02]

RIN 0648-AX89

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

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 91 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). Amendment 91 is an innovative approach to managing Chinook salmon bycatch in the Bering Sea pollock fishery that combines a prohibited species catch (PSC) limit on the amount of Chinook salmon that may be caught incidentally with an incentive plan agreement and performance standard designed to minimize bycatch to the extent practicable in all years. This action is necessary to minimize Chinook salmon bycatch in the Bering Sea pollock fishery to the extent practicable while maintaining the potential for the full harvest of the pollock total allowable catch. Amendment 91 is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Effective September 29, 2010.

ADDRESSES: Electronic copies of Amendment 91, the Final Environmental Impact Statement (EIS), the Record of Decision (ROD), the Final Regulatory Impact Review (RIR), and the Biological Opinion prepared for this action may be obtained from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian, Records Officer; in person at NMFS Alaska Region, 709 West 9th Street, Room 420A, Juneau,

AK; and by e-mail to David_Rostker@omb.eop.gov, or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington or Seanbob Kelly, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands Management Area (BSAI) under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

This final rule implements Amendment 91 to the FMP. In April 2009, the Council unanimously recommended Amendment 91 to the Secretary of Commerce. NMFS published a Notice of Availability of this amendment in the **Federal Register** on February 18, 2010 (75 FR 7228) with comments invited through April 19, 2010. NMFS published the proposed rule on March 23, 2010 (75 FR 14016) with comments invited through May 7, 2010. NMFS approved Amendment 91 on May 14, 2010. NMFS received 71 letters of public comment on Amendment 91 and the proposed rule. NMFS summarized these letters into 102 separate comments, and responds to them under Response to Comments, below.

The Bering Sea Pollock Fishery

This final rule applies to owners and operators of catcher vessels, catcher/processors, motherships, inshore processors, and the six Western Alaska Community Development Quota (CDQ) Program groups participating in the pollock (*Theragra chalcogramma*) fishery in the Bering Sea subarea of the BSAI. The Bering Sea pollock fishery is the largest single species fishery, by volume, in the United States. The first wholesale gross value of this fishery was more than 1.4 billion dollars in 2008. In 2010, the Bering Sea pollock total allowable catch (TAC) is 813,000 metric tons.

Currently, pollock in the BSAI is managed as three separate units: the Bering Sea subarea, the Aleutian Islands subarea, and the Bogoslof District of the Bering Sea subarea. Separate overfishing limits, acceptable biological catch limits, and TAC limits are specified

annually for Bering Sea pollock, Aleutian Islands pollock, and Bogoslof pollock. Amendment 91 applies only to management of the Bering Sea pollock fishery and will not affect the management of pollock fisheries in the Aleutian Islands or the status of pollock fishing in the Bogoslof District.

The Bering Sea pollock fishery is managed under the American Fisheries Act (AFA) (16 U.S.C. 1851 note), which "rationalized" the pollock fishery by identifying the vessels and processors eligible to participate in the fishery and allocating pollock among those eligible participants. Under the AFA, 10 percent of the Bering Sea pollock TAC is allocated to the CDQ Program. After the CDQ Program allocation is subtracted, an amount needed for the incidental catch of pollock in other Bering Sea groundfish fisheries is subtracted from the TAC. The remaining "directed fishing allowance" is then allocated among the AFA inshore sector (50 percent), the AFA catcher/processor sector (40 percent), and the AFA mothership sector (10 percent). Pollock allocations to the CDQ Program and the other three AFA sectors are further allocated annually between two seasons—40 percent to the A season (January 20 to June 10) and 60 percent to the B season (June 10 to November 1).

The CDQ Program pollock allocation is further allocated among the six non-profit corporations (CDQ groups) that represent the 65 communities eligible for the CDQ Program under section 305(i)(1)(D) of the Magnuson-Stevens Act. The CDQ Program also is described in more detail in the "Classification" section of this final rule. CDQ groups typically sell or lease their pollock allocations to harvesting partners, including vessels owned, in part, by individual CDQ groups. Although CDQ groups are not required to partner with AFA-permitted vessels to harvest CDQ pollock, the vessels harvesting CDQ pollock have been AFA permitted-vessels. The CDQ pollock allocations have most often been harvested by catcher/processors or catcher vessels delivering to a mothership. However, some pollock CDQ has been delivered to inshore processing plants in past years.

The AFA allows for the formation of fishery cooperatives within the non-CDQ sectors. The purpose of these AFA cooperatives is to further subdivide each sector's pollock allocation among participants in the sector or cooperative through private contractual agreements. The cooperatives manage these allocations to ensure that individual vessels and companies do not harvest more than their agreed upon share. The cooperatives also facilitate transfers of

pollock among the cooperative members and enforce contract provisions.

Each year, catcher vessels eligible to deliver pollock to the seven eligible AFA inshore processors may form inshore cooperatives associated with a particular inshore processor. NMFS permits the inshore cooperatives, allocates pollock to them, and manages these allocations through a regulatory prohibition against an inshore cooperative exceeding its pollock allocation. The amount of pollock allocated to each inshore cooperative is based on the member vessels' pollock catch history from 1995 through 1997, as required under section 210(b) of the AFA (16 U.S.C. 1851 note). These catcher vessels are not required to join an inshore cooperative. Those that do not join an inshore cooperative are managed by NMFS under the "inshore open access fishery."

The AFA catcher/processor sector is made up of the catcher/processors and catcher vessels eligible under the AFA to deliver pollock to catcher/processors. Owners of the catcher/processors that are listed by name in the AFA and still active in the pollock fishery have formed a cooperative called the Pollock Conservation Cooperative (PCC). Owners of the catcher vessels eligible to deliver pollock to the catcher/processors have formed a cooperative called the High Seas Catchers' Cooperative (HSCC).

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

NMFS does not manage the sub-allocations of pollock among members of the PCC, HSCC, or MFC. The cooperatives control the harvest by their member vessels so that the pollock allocation to the sector is not exceeded. NMFS monitors pollock harvest by all members of the catcher/processor sector and mothership sector. NMFS retains the authority to close directed fishing for pollock by a sector if vessels in that sector continue to fish once the sector's seasonal allocation of pollock has been harvested.

Chinook Salmon Bycatch in the Bering Sea Pollock Fishery

Chinook salmon are accidentally caught in the nets as fishermen target pollock. The Magnuson-Stevens Act defines bycatch as fish that are harvested in a fishery that are not sold or kept for personal use. Therefore, Chinook salmon caught in the pollock fishery are considered bycatch under the Magnuson-Stevens Act, the FMP, and NMFS regulations at 50 CFR part 679. Bycatch of any species, including discard or other mortality caused by fishing, is a concern of the Council and NMFS. National Standard 9 of the Magnuson-Stevens Act requires the Council to select, and NMFS to implement, conservation and management measures that, to the extent practicable, minimize bycatch and bycatch mortality.

Culturally and economically valuable species like Chinook salmon, which are fully allocated and, in some cases, facing conservation concerns, are classified as prohibited species in the groundfish fisheries off Alaska under the FMP. The prohibited species are Chinook salmon, all other species of salmon (a category called "non-Chinook salmon"), steelhead trout, Pacific halibut, king crab, Tanner crab, and Pacific herring. Bycatch of prohibited species is highly regulated and closely managed. The FMP requires that groundfish fishermen avoid bycatch of prohibited species. Additionally, any salmon bycatch must either be donated to the Prohibited Species Donation (PSD) Program under § 679.26, or returned to sea as soon as practicable, with minimum injury, after an observer has determined the number of salmon and collected any scientific data or biological samples.

The Bering Sea pollock fishery catches up to 95 percent of the Chinook salmon taken incidentally as bycatch in the BSAI groundfish fisheries. From 1992 through 2001, the average Chinook salmon bycatch in the Bering Sea pollock fishery was 32,482 fish. Bycatch increased substantially from 2002 through 2007, to an average of 74,067 Chinook salmon per year. A historic high of approximately 122,000 Chinook salmon were taken in the Bering Sea pollock fishery in 2007. However, Chinook salmon bycatch has declined in recent years to 20,559 in 2008 and 12,414 in 2009. For the 2010 pollock A season, and the pollock B season that opened on June 10, bycatch rates are comparable to the low bycatch rates in 2009. The causes of the decline in Chinook salmon bycatch in 2008, 2009, and 2010 are unknown. The decline is

most likely due to a combination of factors, including changes in abundance and distribution of Chinook salmon and pollock, and changes in fleet behavior to avoid salmon bycatch.

Chinook salmon bycatch also varies seasonally and by sector. In most years, the majority of Chinook salmon bycatch occurs during the A season. Since 2002, catcher vessels in the inshore sector typically have caught the highest number of Chinook salmon and had the highest bycatch rates by sector in both the A and B seasons. As discussed in the EIS (*see ADDRESSES*), the variation in bycatch rates among sectors and seasons is due, in part, to the different fishing practices and patterns each sector uses to fully harvest their pollock allocations.

In years of historically high Chinook salmon bycatch in the Bering Sea pollock fishery (2003 through 2007), the rate of Chinook salmon bycatch averaged 52 Chinook salmon per 1,000 tons of pollock harvested. With so few salmon relative to the large amount of pollock harvested, Chinook salmon encounters are difficult to predict or avoid. Industry agreements that require vessel-level cooperation to share information about areas of high Chinook salmon encounter rates probably are the best tool that the industry currently has to quickly identify areas of high bycatch and to avoid fishing there. However, predicting these encounter rates will continue to be difficult, primarily because of the current lack of understanding of the biological and oceanographic conditions that influence the distribution and abundance of salmon in the areas where the pollock fishery occurs.

Chinook Salmon Stocks and Fisheries in Western Alaska

Chinook salmon taken in the pollock fishery originate from Alaska, the Pacific Northwest, Canada, and Asian countries along the Pacific Rim. Estimates vary, but more than half of the Chinook salmon bycatch in the pollock fishery may be destined for western Alaska. Western Alaska includes the Bristol Bay, Kuskokwim, Yukon, and Norton Sound areas. In general, western Alaska Chinook salmon stocks declined sharply in 2007 and remained depressed in 2008 and 2009. Chapter 5 of the EIS provides additional information about Chinook salmon biology, distribution, and stock assessments by river system or region (*see ADDRESSES*). NMFS is expanding biological sampling to improve data on the origins of salmon caught as bycatch in the pollock fishery.

Chinook salmon support subsistence, commercial, personal use, and sport fisheries in their regions of origin. The

State of Alaska Board of Fisheries adopts regulations through a public process to conserve fisheries resources and allocate them to the various users. The State of Alaska Department of Fish and Game (ADF&G) manages the salmon commercial, subsistence, sport, and personal use fisheries. The first management priority is to meet spawning escapement goals to sustain salmon resources for future generations. The next priority is for subsistence use under both State and Federal law. Chinook salmon serves as a primary subsistence food in some areas. Subsistence fisheries management includes coordination with U.S. Federal agencies where Federal rules apply under the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3101–3233.

In recent years of low Chinook salmon returns, the in-river harvest of western Alaska Chinook salmon has been severely restricted and, in some cases, river systems have not met escapement goals. Surplus fish beyond escapement needs and subsistence use are made available for other uses. Commercial fishing for Chinook salmon may provide the only source of income for many people who live in remote villages. Chapter 3 of the RIR provides an overview of the importance of subsistence harvests and commercial harvests (*see ADDRESSES*).

Current Management of Chinook Salmon Bycatch in the Bering Sea and Aleutian Islands

Over the past 15 years, the Council and NMFS have implemented several management measures to limit Chinook salmon bycatch in the BSAI trawl fisheries. In 1995, NMFS implemented an annual PSC limit of 48,000 Chinook salmon and specific seasonal no-trawling zones in the Chinook Salmon Savings Area that would close when the limits were reached (60 FR 31215; November 29, 1995). In 2000, NMFS reduced the Chinook Salmon Savings Area closure limit to 29,000 Chinook salmon, redefined the Chinook Salmon Savings Area as two non-contiguous areas of the BSAI (Area 1 in the AI subarea and Area 2 in the BS subarea), and established new closure periods (65 FR 60587; October 12, 2000).

Chinook salmon bycatch management measures were most recently revised under Amendments 84 to the FMP. The Council adopted Amendment 84 in October 2005 to address increases in Chinook and non-Chinook salmon bycatch that were occurring despite PSC limits that triggered closure of the Chinook and Chum Salmon Savings Areas.

Amendment 84 established in Federal regulations the salmon bycatch intercooperative agreement (ICA), which allows vessels participating in the Bering Sea pollock fishery to use their internal cooperative structure to reduce Chinook and non-Chinook salmon bycatch using a method called the voluntary rolling hotspot system (VRHS). Through the VRHS, industry members provide each other real-time salmon bycatch information so that they can avoid areas of high Chinook or non-Chinook salmon bycatch rates. The VRHS was implemented voluntarily by the fleet in 2002. Amendment 84 exempts vessels participating in the salmon bycatch reduction ICA from salmon savings area closures, and revised the Chum Salmon Savings Area closure to apply only to vessels directed fishing for pollock, rather than to all vessels using trawl gear. The exemptions to savings area closures for participants in the VRHS ICA were implemented by NMFS in 2006 and 2007 through an exempted fishing permit. Regulations implementing Amendment 84 were approved in 2007 (72 FR 61070; October 29, 2007), and NMFS approved the salmon bycatch reduction VRHS ICA in January 2008. Amendment 84 requires that parties to the ICA be AFA cooperatives and CDQ groups. All AFA cooperatives and CDQ groups participate in the VRHS ICA.

Using a system specified in regulations, the VRHS ICA assigns vessels in a cooperative to certain tiers, based on bycatch rates of vessels in that cooperative relative to a base rate, and implements large area closures for vessels in tiers associated with higher bycatch rates. The VRHS ICA managers monitor salmon bycatch in the pollock fisheries and announce area closures for areas with relatively high salmon bycatch rates. Monitoring and enforcement are accomplished through private contractual arrangements. The efficacy of voluntary closures and bycatch reduction measures must be reported to the Council annually.

While the annual reports suggest that the VRHS ICA has reduced Chinook salmon bycatch rates compared to what they would have been without the ICA, the highest historical Chinook salmon bycatch occurred in 2007, when the ICA was in effect under an exempted fishing permit. This high level of bycatch illustrated that, while the management measures implemented under Amendment 84 provided the pollock fleet with tools to reduce salmon bycatch, these measures contain no effective upper limit on the amount of salmon bycatch that could occur in the Bering Sea pollock fishery.

Bering Sea Chinook Salmon Bycatch Management

This final rule implements the provisions of Amendment 91, as approved by NMFS. The preamble to the proposed rule (75 FR 14016; March 23, 2010) provides a full description of the provisions implemented with this final rule and the justification for them. In summary, this final rule establishes two Chinook salmon PSC limits (60,000 Chinook salmon and 47,591 Chinook salmon) for the Bering Sea pollock fishery. For each PSC limit, NMFS will issue A season and B season Chinook salmon PSC allocations to the catcher/processor sector, the mothership sector, the inshore cooperatives, and the CDQ groups. Chinook salmon allocations remaining from the A season can be used in the B season (“rollover”). Entities can transfer PSC allocations within a season and can also receive transfers of Chinook salmon PSC to cover overages (“post-delivery transfers”).

NMFS will issue transferable allocations of the 60,000 Chinook salmon PSC limit to those sectors that participate in an incentive plan agreement (IPA) and remain in compliance with the performance standard. Sector and cooperative allocations would be reduced if members of the sector or cooperative decided not to participate in an IPA. Vessels and CDQ groups that do not participate in an IPA would fish under a restricted opt-out allocation of Chinook salmon. If a whole sector does not participate in an IPA, all members of that sector would fish under the opt-out allocation.

The IPA component is an innovative approach for fishery participants to design industry agreements to avoid incentives for each vessel to avoid Chinook salmon bycatch at all times and thus reduce bycatch below the PSC limits. This final rule establishes performance-based requirements for the IPAs. To ensure participants develop effective IPAs, this final rule requires that participants submit annual reports to the Council that evaluate whether the IPA is effective at providing incentives for vessels to avoid Chinook salmon at all times while fishing for pollock.

The sector-level performance standard ensures that the IPA is effective and that sectors cannot fully harvest the Chinook salmon PSC allocations under the 60,000 Chinook salmon PSC limit in most years. Each year, each sector will be issued an annual threshold amount that represents that sector’s portion of 47,591 Chinook salmon. For a sector to continue to receive Chinook salmon

PSC allocations under the 60,000 Chinook salmon PSC limit, that sector must not exceed its annual threshold amount 3 times within 7 consecutive years. If a sector fails this performance standard, it will permanently be allocated a portion of the 47,591 Chinook salmon PSC limit.

NMFS will issue transferable allocations of the 47,591 Chinook salmon PSC limit to all sectors, cooperatives, and CDQ groups if no IPA is approved, or to the sectors that exceed the performance standard.

Transferability of PSC allocations is expected to mitigate the variation in the encounter rates of Chinook salmon bycatch among sectors, CDQ groups, and cooperatives in a given season by allowing eligible participants to obtain a larger portion of the PSC limit in order to harvest their pollock allocation or to transfer surplus allocation to other entities. When a PSC allocation is reached, the affected sector, inshore cooperative, or CDQ group would have to stop fishing for pollock for the remainder of the season even if its pollock allocation had not been fully harvested.

This final rule also removes from regulations the 29,000 Chinook salmon PSC limit in the Bering Sea, the Chinook Salmon Savings Areas in the Bering Sea, exemption from Chinook Salmon Savings Area closures for participants in the VRHS ICA, and Chinook salmon as a component of the VRHS ICA. This final rule does not change any regulations affecting the management of Chinook salmon in the Aleutian Islands or non-Chinook salmon in the BSAI. The Council is currently considering a separate action to modify the non-Chinook salmon management measures to minimize non-Chinook salmon bycatch.

Summary of Regulation Changes in Response to Public Comments

This section provides a summary of the substantive changes made to the final rule in response to public comments. Section 304(b)(3) of the Magnuson-Stevens Act requires NMFS to consult with the Council before making any revisions to proposed regulations and to publish in the **Federal Register** an explanation of any differences between proposed and final regulations. At its June 2010 meeting, NMFS consulted with the Council on the revisions to the proposed rule to improve the implementing regulations and respond to public comments. All of the specific regulation changes, and the reasons for making these changes, are contained under Response to Comments, below.

Recordkeeping and Reporting

NMFS changed the time limit in the final rule for operators of catcher/processors, catcher vessels delivering to motherships, and motherships to record the CDQ group number in the paper or electronic logbooks to within 2 hours after completion of weighing on the scale all catch in the haul. NMFS is preparing a separate proposed rule to revise and standardize reporting time limits to address the time limit for recording scale weights of each haul and other required information because these requirements affect more vessels than those regulated under Amendment 91. These additional revisions are expected to be effective by January, 2011.

Bering Sea Pollock Offload Monitoring

NMFS modified the final rule to (1) allow a catcher vessel to begin a new trip before the salmon census and sampling are complete from the vessel's prior trip and (2) clarify that a shoreside or stationary processor must give the observer the opportunity to complete the count of salmon and collect biological samples before sorting a new pollock offload. In 2011, NMFS' observer sampling policy and observer duties for the Bering Sea pollock fishery will be modified for monitoring offloads at shoreside processors and stationary floating processors. The plant observer on duty will be tasked with monitoring each offload for proper salmon sorting, verifying the count of salmon, and collecting biological samples and scientific data.

Catch Monitoring and Control Plan (CMCP) Requirements

NMFS has modified the final rule to clarify that the observation area and the observer work station may be located in separate areas, while also requiring the observer work station be adjacent to the location where the observer counts all salmon and collects scientific data or biological information. NMFS also modified the final rule to require that all salmon be stored in a "salmon storage container." The observation area must now provide a clear, unobstructed view of the salmon storage container to ensure no salmon of any species are removed without the observer's knowledge. NMFS made these changes to the final rule to give processors more flexibility to achieve the goals of allowing an observer to monitor all the sorting of salmon as well as verify the count of the salmon.

Adjustments to the Performance Standard's Annual Threshold Amount

NMFS changed the final rule to subtract a vessel's opt-out allocation from a sector's annual threshold amount in a method similar to the Council's recommended method for determining the sector allocation under the 60,000 Chinook salmon PSC limit.

Entities for the Catcher/Processor and Mothership Sectors

To improve the implementation of sector entities, NMFS modified the final rule to clarify that: (1) NMFS will authorize only one entity to represent the catcher/processor sector and only one entity to represent mothership sector; (2) under the 60,000 Chinook salmon PSC limit, the entity for each sector has to represent all IPA participating vessel owners in that sector; and (3) vessel owners in the catcher/processor sector and mothership sector must be a member of the sector entity to join an IPA. NMFS changed the deadline for the entity application from November 1 to October 1, to coincide with the deadline for the IPA application, and added a December 1 deadline for the entity representative to make changes to the vessels that are members of the entity. NMFS also changed the regulations to clarify that an entity representative may sign more than one IPA on behalf of the vessel owners participating in that IPA.

Joint and Several Liability

NMFS removed joint and several liability provisions for cooperatives and the entities representing the catcher/processor sector and mothership sector. In the proposed rule, these provisions created some confusion and they are unnecessary because NOAA has independent authority to exercise its discretion to seek to impose joint liability if the evidence supports doing so.

Post-Delivery Transfers

NMFS changed the final rule to clarify that a vessel is prohibited from fishing for an entity that has exceeded its Chinook salmon PSC allocation.

Incentive Plan Agreements

NMFS changed the final rule to: (1) Modify the minimum participation requirement for an IPA to clarify that parties to an IPA must collectively represent at least 9 percent of the Bering Sea pollock quota; (2) modify the IPA requirement to better reflect the Council motion that says that an IPA must describe incentives for each vessel to avoid Chinook salmon bycatch under any condition of pollock and Chinook

salmon abundance in all years; (3) change the deadline for amendments to the IPA list of participants from November 1 to December 1 to provide vessel owners more time to join an IPA; and (4) clarify the regulatory language for an amendment to an IPA.

To clarify a CDQ group's participation in one or more approved IPAs, NMFS added a requirement in the final rule that, for a CDQ group to be a member of an IPA, the CDQ group must list each vessel harvesting pollock CDQ on behalf of that CDQ group in the IPA.

Electronic Monitoring

NMFS removed the proposed rule's requirement that the video monitor display the "activities within the tank," and clarified in the final rule that the purpose of the video monitor is to enable the observer to view any area where crew could sort salmon and view the salmon contained in the storage container. Also, for clarity and consistency, NMFS revised the final rule to allow NMFS staff or other authorized personnel, including observers, the ability to view any video footage from earlier in the trip.

Tables 47a, 47b, 47c, and 47d to Part 679

In the final rule, NMFS changed column G in Tables 47a, 47b, and 47c and column E in Table 47d to show each vessel's annual amount of Chinook salmon for the opt-out allocation that will be deducted from the sector's annual threshold amount for the performance standard if a vessel opts-out of an IPA. NMFS also modified the percent of the inshore sector's pollock allocation in column D of Table 47c to include four decimal places.

Additional Changes From the Proposed Rule

NMFS made the following changes from the proposed rule to the final rule to clarify regulatory language or correct mistakes in the proposed rule.

AFA Preliminary Report

In the final rule, NMFS corrects the proposed language at § 679.61(f)(1) to retain the requirement for a preliminary AFA cooperative report. The proposed rule anticipated the publication of another rule that would have provided notice and an opportunity for public comment to remove this AFA reporting requirement. Until such a process is completed, NMFS cannot remove the regulations requiring a preliminary report at § 679.61(f)(1). Retaining the preliminary report does not change the information collection burden on AFA cooperatives; however, the final rule

still changes the submission deadline for the final annual AFA cooperative reports from February 1 to April 1 to coincide with the deadlines for a new Chinook salmon IPA annual report and the non-Chinook salmon ICA annual report. Having the same deadline for all three of these reports allows the Council to discuss any of these annual reports at one time during its April Council meeting. At its June 2010 meeting, the Council recommended that NMFS pursue a proposed rule to remove the regulations requiring a preliminary AFA report.

AI Chinook Salmon Allocation for the CDQ Program

NMFS corrected the proposed rule to retain allocations of the trawl gear PSC limits to the CDQ Program as a prohibited species quota (PSQ) reserve. The proposed rule, at § 679.21(e)(3)(i)(A)(3)(i), inadvertently eliminated the 7.5 percent apportionment of the PSC limit for AI Chinook salmon set forth in paragraph (e)(1)(viii). This correction is necessary to ensure that CDQ participants will be subject to the AI salmon area closure based on the PSC limit established for the CDQ sector by Amendment 82 to the BSAI FMP (70 FR 9856, March 1, 2005).

Response to Comments

Observer Issues

Comment 1: This action proposes two positive management actions: increasing observer coverage to 100 percent and implementing the census approach to catch accounting.

Response: NMFS agrees with this comment. This final rule will improve the collection of Chinook salmon information by increasing observer coverage to 100 percent for all vessels and shoreside processing facilities, and by requiring a census of Chinook salmon in every haul or fishing trip.

Comment 2: The majority of Alaskans depend on fish to feed themselves. Yet salmon bycatch in the pollock fishery is uncertain and unregulated. Solving this mystery starts with observing the pollock fishery and international fishing boats.

Response: Amendment 91 regulates Chinook salmon bycatch in the Bering Sea pollock fishery and will minimize Chinook salmon bycatch to the extent practicable. Additionally, with the regulations implementing Amendment 91, NMFS will increase observer coverage for all vessels and shoreside processing facilities, and require a census of Chinook salmon in every haul or fishing trip. This will greatly improve

our information on Chinook salmon bycatch in the pollock fishery.

International fishing boats are prevented from fishing in the U.S. exclusive economic zone, and observing vessels fishing in international waters is outside the scope of this action.

Comment 3: Under Amendment 91, observers on catcher vessels would be performing a monitoring and compliance role. While we agree that it is not necessary to require an observer with a level-two endorsement for catcher vessels delivering to inshore plants, we do not recommend specifying observer training level in the regulations. Doing so could restrict future flexibility if the observer's role should change to accommodate other needs.

Response: NMFS agrees and does not specify the observer training levels for observers on catcher vessels in this final rule. Species identification and sampling methodologies for the shoreside observers are covered during the three week training course that all certified observers receive. Observers with a level-two endorsement, as defined at § 679.50(j)(1)(v)(D), are trained in at-sea sample station requirements, at-sea motion compensated scale testing, and observer duties under the CDQ Program. Training for level-two observers does not include new duties for shoreside vessel and plant observers under Amendment 91.

Comment 4: The inshore sector represents approximately 76 percent of the pollock catcher vessels, assuming that each mothership services eight harvesting vessels. The vast majority of catcher vessels have had extremely lax observer coverage for several years. Over a dozen crew members of the inshore fleet have commented that over the last decade the salmon bycatch is under-reported by an average of 40 percent (range of under-reporting was stated as between 20 and 70 percent).

Response: Under this final rule, every catcher vessel in the inshore sector will have an observer onboard at all times. This is an increase in observer coverage for catcher vessels less than 125 feet length overall (LOA). Additionally, every salmon caught by each vessel in the Bering Sea pollock fishery will be counted.

Comment 5: The monitoring and enforcement measures in the proposed rule ensure that the appropriate conservation and management measures are adequately applied to Chinook salmon bycatch.

Response: NMFS agrees. This final rule will improve the collection of Chinook salmon information by increasing observer coverage for vessels

and shoreside processing facilities, by requiring a census of Chinook salmon in every haul or fishing trip, by requiring video monitoring to assist observers aboard catcher/processors and motherships, and by implementing electronic reporting by haul or delivery.

Comment 6: A third plant observer should not be considered as part of Amendment 91 and is not necessary because the two full-time observers currently available at each inshore plant plus the vessel observer provide more than adequate coverage.

Response: NMFS agrees and neither the proposed rule nor the final rule require a third plant observer. Under the final rule, one plant observer is on duty for each delivery with the assistance of the vessel observer. Together, two observers can meet the assigned duties of monitoring proper sorting of salmon, verifying salmon counts, and collecting scientific data and biological samples. Shoreside processors may voluntarily obtain a third plant observer. However, the duties of a third observer would be no different than those currently required of plant observers.

Comment 7: The proposed rule inaccurately assumes that observers can add salmon census duties to their other responsibilities and still accomplish their other work. Currently, observers are assigned a variety of data collection projects that support scientists and managers. To accomplish the goals of the proposed census system, an additional person dedicated to the oversight of salmon sorting may be necessary. Otherwise, the observer is dedicated to Amendment 91 responsibilities, and other data collection would have to be greatly reduced or eliminated altogether.

Response: NMFS recognizes that observer duties may need to change to allow observers to complete salmon monitoring as outlined in this final rule. The Fisheries Monitoring and Analysis (FMA) Division of the Alaska Fisheries Science Center makes policy decisions about the tasks an observer performs, informed by regulation and management necessity. As is customary for each new regulation and calendar year, the FMA Division may require duties performed in 2010 be added or removed for 2011. Under the FMA Division observer sampling policy for 2011, observer duties will be adjusted to allow for the monitoring of pollock offloads at shoreside processors and stationary floating processors. The FMA Division determines the specific observer duties necessary to ensure the proper data is collected while recognizing the limitations on the observer's time and energy.

Observers aboard catcher/processors and motherships will still complete their normal sampling duties. Observers have routinely reported the number of salmon collected during a haul. The responsibility for ensuring that all salmon are removed from the catch and counted will fall upon the vessel with the observer providing third party verification. The use of electronic monitoring systems will supplement the observer's ability to monitor proper sorting and ensure that no salmon are removed from the storage container until an observer has had the opportunity to verify the count and collect scientific data and biological samples on a haul by haul basis.

Comment 8: The proposed rule is written such that the burden of ensuring that all salmon are collected, enumerated, and identified to species appears to fall on the observer. A census can be accomplished, but it requires shifting the responsibility for sorting and identifying salmon bycatch from the observer to the vessel and processing plant crews. The regulations should require the vessel or processing plant crew to sort all salmon and separate salmon by species. Observers should only be responsible for independently tallying the salmon and verifying species, gathering biological samples, and transmitting data as directed by NMFS. Furthermore, placing such onus on the vessel or processing plant crew would allow for fewer disruptions to fishing operations.

This system already exists under § 679.21(c), prohibited species bycatch management, and through the observers sampling protocols established by the FMA Division. The regulations at § 679.21(c) direct vessels to sort all salmon bycatch into bins and separate by haul until the number of salmon can be determined by the observer. Observers estimate these salmon counts are approximately 95 percent accurate.

Response: NMFS disagrees that the regulations place the burden on the observer to ensure that all salmon are collected, enumerated, and identified to species. The observer provides third party verification and reports salmon bycatch. The FMA Division has historically tasked observers to collect information that sometimes parallels industry reporting requirements; this role remains the same under this final rule.

For the inshore sector, the final rule, at § 679.21(c)(2)(i) and (iii), is clear that the responsibility for ensuring all salmon are sorted, stored, and accounted properly falls upon the vessel operator or shoreside processor. Additionally, § 679.5(e)(5)(i)(C)(3)

requires shoreside processors and stationary floating processors to report salmon numbers by species for each landing. The final rule, at § 679.5(f)(1)(vii), requires all catcher/processors and motherships to report the salmon numbers by species for each haul.

Comment 9: NMFS should consider the 100 percent observer requirement on the previously unobserved segment of the pollock fleet as an opportunity to research claims by other unobserved sectors with similarly configured vessels regarding cost, practicality, and convenience.

Response: The AFA catcher vessels that will be subject to increased observer coverage under this final rule are not members of a previously unobserved segment of the pollock fleet. All of the vessels that will be subject to 100 percent observer coverage currently are subject to 30 percent observer coverage, so they already carry observers during part of the year. Therefore, NMFS already has information about the costs, practicality, and convenience of carrying observers on these vessels. NMFS needs information about cost and practicality of carrying observers on vessels less than 60 feet LOA that are not required to carry any observers under current regulations. However, there are no active fishing vessels of this size class in the Bering Sea pollock fishery.

Comment 10: The proposed rule would stop all sorting and processing when the observer cannot be present. This inaccurately assumes that the observer is present during all sorting periods. Observers on at-sea processors must complete a myriad of activities that may require them to move to other parts of the vessel. Similarly, on some catcher vessels hauls are sorted on a level below the trawl deck; therefore, crew can be on deck dumping the bag, while the observer is below sorting the catch. Observers are also required to take breaks.

Response: NMFS disagrees that the regulations would stop all sorting and processing when the observer cannot be present, and has made no changes to the final rule in response to this comment. Although the observer must verify that a census of all salmon is conducted, observers aboard catcher/processors and motherships are not required to conduct the census. Under the final rule, at § 679.21(c)(2)(i), the vessel operator is responsible for ensuring that all salmon are sorted, stored, and counted by species. Therefore, the regulations do not require that sorting and processing must halt if an observer is not present or is completing other duties. Instead,

the final rule, at § 679.28(j), requires an electronic monitoring system to enable observers to review sorting they may have not been able to witness. Sorting is required to stop only if the salmon storage container is full; see § 679.21(c)(2)(i)(B). This will allow the observer to clearly delineate salmon that have been sampled from those that have not been sampled and counted.

For catcher vessels, no salmon may be removed or discarded at sea and all salmon must be delivered to a shoreside processor; see § 679.7(d)(7)(E) and § 679.21(c)(2)(ii)(B). Additionally, catcher vessels that have the ability to sort below deck do not have many opportunities to sort out salmon while the codend is being dumped. NMFS acknowledges that there may be a small opportunity to remove salmon while the codend is being dumped; however, these vessels would be in violation of the requirement to retain all salmon.

Comment 11: The final rule should require vessels to assign and maintain a salmon sorter at the sorting belt throughout the processing of a haul. Such a salmon sorter should also be required to identify and sort salmon by species into designated bins that can be easily monitored by the observer.

Response: The final rule, at § 679.21(c)(3), requires the operators of vessels and the managers of shoreside or stationary floating processors to designate, and identify to the observer, a crew person or employee responsible for ensuring all sorting, retention, and storage of salmon occurs in accordance with the regulations at § 679.21(c)(2). However, the regulations do not require vessel operators and shoreside or stationary floating processor managers to sort salmon by species. Due to the variety of vessel and shoreside configurations, adding the necessary space required for sorting salmon by species may be impractical for some operations. Vessel operators or processors may choose to separate salmon by species in order to expedite the verification of the salmon count and the collection of biological samples or scientific data.

Comment 12: Vessel operators participating in an IPA are responsible to track their own salmon counts throughout each season. Therefore, it is unnecessary to structure regulations regarding the observation and count of salmon that are directly tied to the vessel observer.

Response: NMFS agrees that vessel operators, cooperative managers, and managers of shoreside processing facilities are responsible for ensuring proper sorting, counting, and identification of salmon. However,

NMFS disagrees that it is unnecessary to structure regulations regarding the observation and count of salmon that are directly tied to the vessel observer. Observations reported by the NMFS observers will serve as independent third party information to verify whether the counts and identification of salmon reported by industry are correct and accurate. Regulations are necessary to ensure the observer has unobstructed access to these fish in such a way that the data can be reliably collected and reported.

Comment 13: The proposed rule, at § 679.7(k)(8)(iii), prohibits the operator of a catcher vessel from starting a new fishing trip for pollock in the Bering Sea if the observer assigned to the catcher vessel for the next fishing trip has not completed counting the salmon and collecting scientific data or biological samples from the previous delivery by that vessel. Similarly,

§ 679.21(c)(2)(ii)(C) requires that before the vessel can begin a new fishing trip, the observer assigned to that vessel for the next fishing trip must be given the opportunity to complete the count of salmon and collect scientific data or biological samples from the previous delivery. These provisions contradict language in the preamble (pages 14029 and 14030) that a vessel may begin a new trip before the salmon census and sampling are complete for the vessel's prior trip so long as the vessel leaves with a different observer than it carried on the prior trip.

These provisions are overly prescriptive, would increase costs to participants while reducing flexibility, and would require contractors to maintain a large pool of observers onshore to ensure that catcher vessels could start a new fishing trip prior to the observer completing their duties. And, it should not be the responsibility of the observer assigned to the catcher vessel for the next trip to collect the data from the previous trip. These responsibilities should be shared by the vessel and plant observers. The final rule should require only that no catcher vessel may start a new fishing trip unless it has an observer onboard. Which observer the vessel carries and whether a vessel or plant observer completes the salmon census and all sampling for a prior delivery should not matter. In light of additional observer coverage and changing duties involved in Chinook salmon bycatch accounting, a more flexible approach to duty assignment is necessary.

Response: NMFS agrees and for the reasons set forth by the commenter, it has modified the final rule to (1) allow a catcher vessel to begin a new trip

before the salmon census and sampling are complete from the vessel's prior trip, and (2) clarify that a shoreside or stationary processor must give the observer the opportunity to complete the count of salmon and collect biological samples before sorting a new pollock offload.

NMFS removed the restriction on a vessel's ability to begin a new trip, at § 679.21(c)(2)(ii)(C) of the proposed rule. Instead, NMFS revised the prohibition at § 679.7(d)(8)(ii)(C)(6) to clarify that a shoreside or stationary floating processor cannot begin sorting a pollock CDQ offload before the observer has completed the count of salmon and the collection of scientific data or biological samples. Similarly, NMFS revised § 679.7(k)(8)(iii) to prohibit shoreside processors and stationary floating processors from sorting the next pollock offload until the observer has completed duties related to a previous pollock offload. Moreover, NMFS added § 679.21(c)(2)(iii)(F) to the final rule to prevent a shoreside or stationary floating processor from beginning the next pollock offload until the observer has notified the plant operator that opportunity has been provided to complete the count of salmon and collect scientific data or biological samples.

Comment 14: The proposed rule, at § 679.21(c)(2)(iii)(D), requires that the vessel offload and sorting must cease in the event salmon are too numerous to be contained in the observation area and the observer must be given the opportunity to count the salmon in the observation area and collect scientific data or biological samples. In addition, the proposed rule, at § 679.28(g)(7)(vii)(F), requires that the observation area must contain an area designated to store salmon. However, there may not be enough room to contain all salmon within sight of the observer at all times. The final rule should allow the salmon to be removed, in the presence of the observer, once salmon have been counted and sampled. Moreover, vessels should be allowed to resume offloading and sorting as soon as space becomes available in the observation area.

Response: NMFS agrees and has revised the final rule to clarify that, at any point during the offload, if salmon are too numerous to be contained in the salmon storage container, the sorting of the offload must cease and the observer must be allowed to count all the salmon and collect scientific data and biological samples adjacent to the observer work station. Once these duties have been completed, the salmon may be removed

in the presence of the observer and the sorting of the offload may continue.

NMFS made the following changes in the final rule to give processors more flexibility to achieve the goals of allowing an observer to monitor all the sorting of salmon and verify the count of salmon. These changes are necessary because processing facilities vary greatly in the methods used to sort and weigh fish.

In response to comments that the observation area may not provide enough space to hold the salmon storage area, NMFS revised the final rule at § 679.21(c)(2)(iii)(C), (D), and (E) by removing the requirement to store and count salmon in the observation area. Instead, the final rule requires salmon to be stored in a "salmon storage container." No additional revisions are needed because the final rule, at § 679.21(c)(2)(iii)(D), allows shoreside processors or stationary processors to remove the salmon from the storage container if the salmon become too numerous to contain in this location.

NMFS added a requirement, at § 679.28(g)(7)(vi)(C), that the observation area must provide a clear, unobstructed view of the salmon storage container to ensure no salmon of any species are removed without the observer's knowledge.

NMFS revised paragraph § 679.28(g)(7)(vii) to allow for the observation area and the observer work station to be in separate locations, while also requiring the observer work station be adjacent to the location where the observer counts all salmon and collects scientific data or biological information.

Last, NMFS revised the regulations at § 679.28(g)(7)(x)(F) to clarify that the CMCP requirement to include the location of the salmon storage container is only for shoreside or stationary floating processors taking pollock deliveries.

Comment 15: Revise sections § 679.21(c)(2)(iii)(D) and (E) to refer to "an observer" rather than "the observer." Using "the observer" implies that the required functions would always be done by the catcher vessel observer, which is illogical because an offload could take up to 24 hours. Using "an observer" would add flexibility for program participants and more accurately reflect the current shared responsibilities of vessel and plant observers when a catcher vessel delivers to a shoreside or stationary floating processor.

Response: NMFS disagrees and has made no changes to the final rule in response to this comment. The final rule, at § 679.21(c)(2)(iii)(D) and (E), uses the phrase "the observer" to refer to

either the plant or the vessel observer, and does not designate which observer will be tasked with monitoring the offload. No changes are required to the regulations because either observer may perform these duties.

The FMA Division makes policy decisions about the tasks an observer performs. In the past, vessel observers monitored offloads of shoreside pollock deliveries. Beginning in 2011, observer program policy will place the primary responsibility for monitoring the proper sorting of salmon, verifying the count of salmon, and collecting scientific data and biological samples upon the observers stationed at the processing facility. The vessel observer may provide the plant observer breaks or other assistance as needed during the offload.

Comment 16: The proposed rule, at § 679.21(c)(2)(i)(D) and § 679.21(c)(2)(iii)(B), requires that that no salmon pass the observer sample collection point, or no salmon pass from the last point where sorting of fish occurs into the factory area of a processing plant. These requirements are unreasonable as it is inevitable that salmon occasionally pass beyond the sorting area because salmon can be difficult to identify in the large volume of pollock. This could occur even when every effort is made to identify and separate salmon out at the observer sample collection point and/or sorting area. Rather than penalize a plant operator, the regulations should provide the flexibility for salmon identified at any point in the process to be counted and sampled without penalty.

Response: NMFS disagrees and has made no changes to the final rule in response to this comment. As identified in the EIS on page 65, Chinook salmon PSC allocations may create strong economic incentives to misreport salmon bycatch because each salmon counted against Chinook salmon PSC allocation could ultimately constrain the full harvest of a sector's, cooperative's, or CDQ group's pollock allocation. The factory areas of processing plants are large and complex. Preventing observers from seeing Chinook salmon that enter the factory would not be difficult. In order for PSC limits to be effective, NMFS needs to ensure that there is a credible salmon bycatch monitoring system in place at shoreside processing plants. This would ensure that observers have access to all salmon, prior to the fish being conveyed into the factory. NMFS acknowledges that the reduction in the flow of fish through the initial catch sorting area could slow pollock processing, since fish would enter the factory at a slower

rate. Additional sorting crew may also be needed in the catch sorting area during times when salmon bycatch is high or small salmon are present.

Recordkeeping and Reporting

Comment 17: Current regulations require operators of trawl catcher/processors to record the scale weight for the haul and the CDQ group number within 2 hours after completion of gear retrieval. However, it is unlikely that all of the catch from a haul will be weighed within 2 hours of gear retrieval. Pollock often are held in tanks before weighing and processing for hours after the gear is retrieved. In addition, vessel operators and CDQ group representatives want to know the weight of the haul and the number of Chinook salmon in the haul before deciding whether to assign the haul to the CDQ group. The time limit for recording scale weight and CDQ group number should be changed to within 2 hours after the completion of weighing of the catch from the haul. This solution provides adequate time for the crew to safely move the fish across the scale without putting unnecessary pressure on the observer to monitor the haul and complete their other duties faster than they reasonably can. It also ensures that the vessel operator enters the haul data with minimal delay for the benefit of other vessels in their sector that depend on that data to avoid hot spots and to manage under the PSC allocation and performance standard.

Response: NMFS agrees and has modified the final rule, at § 679.5, to change the time limit for recording the CDQ group number in the logbooks, for the reasons described in the comment.

Proper accounting of pollock catch and salmon bycatch to an AFA sector, inshore cooperative, or CDQ group requires identification of whether a haul by a catcher/processor or a delivery by a catcher vessel to either a mothership, shoreside processor, or stationary floating processor is assigned to a specific CDQ group. If no CDQ group is identified with the haul or delivery, that pollock, associated salmon bycatch, and other catch in the haul or delivery is attributed to the sector or inshore cooperative to which the vessel or processor belongs. For catcher/processors and motherships, observer data is used to determine the weight of pollock and number of salmon associated with the haul or delivery, and the CDQ group number must be properly identified in the observer data at the time the data is transmitted by the observer from the vessel to NMFS. The primary and official source of the CDQ group number for the observer is the

vessel logbook. Observers also record and transmit the total weight of each haul or delivery from the scale onboard the vessel. Although the scale weight of each haul or delivery also is required to be recorded in the vessel logbook, observers can obtain this information directly from the scale and do not need to rely on the vessel logbooks as the only source of data for scale weights.

Under current regulations, operators of catcher vessels and catcher/processors using any gear type and the operators of motherships are required to record the CDQ group number in their logbooks within 2 hours after the completion of gear retrieval. This requirement has existed for logbooks for many years so that vessel operators can document whether catch in a haul or set is occurring in CDQ or non-CDQ fisheries. The primary reasons for requiring the vessel operators to indicate in their logbooks that they were fishing on behalf of a CDQ group are: (1) To document why a vessel may be directed fishing for a groundfish species when the non-CDQ fisheries for that species were closed; (2) to record production and retained catch separately in the CDQ and non-CDQ fisheries for purposes of calculating maximum retainable amounts of groundfish not open for directed fishing; and (3) to provide information for proper accounting of catch to allocated quotas.

The requirement to record both the scale weight of the haul and the CDQ group number within 2 hours of completion of gear retrieval applies to daily cumulative production logbooks (DCPLs) for catcher/processors using trawl gear under regulations at § 679.5(c)(4)(ii)(B). However, as described in the proposed rule, under Amendment 91 AFA catcher/processors or any catcher/processor harvesting pollock CDQ will no longer be filling out DCPLs (the paper logbooks). Vessel operators are required to record all information previously required in the DCPL in an electronic logbook (ELB). This final rule adds text to the introductory paragraph of the trawl catcher/processor DCPL requirements to clarify that the operators of AFA catcher/processors or any catcher/processor harvesting pollock CDQ are required to use an ELB and no longer report using a DCPL.

Regulations at § 679.5(f)(2)(iii)(B)(1) require that vessel operators using an ELB must "Record the haul number or set number, time and date gear set, time and date gear hauled, begin and end position, CDQ group number (if applicable), and hail weight for each haul or set within 2 hours after

completion of gear retrieval." Hail weight is the vessel operator's estimate of the total weight of the haul. Although current ELB regulations require the vessel operator to enter all data currently required for the DCPLs, the ELB time limits currently do not include the same requirement that applies to the DCPL that operators of catcher/processors required to weigh catch on a scale approved by NMFS must record the scale weight of the haul. In addition, although the ELB time limits list the information that must be recorded within 2 hours after completion of gear retrieval, they do not include the additional DCPL time limit to record all other required information by noon of the day following completion of production. NMFS revised the final rule to require operators of catcher/processors to report, in the ELBs, the CDQ group number within 2 hours after completion of weighing all of the catch in the haul on the scale.

NMFS is preparing a separate proposed rule to revise and standardize time limits in § 679.5 for daily fishing logbooks (DFLs), DCPLs, and ELBs and will address the time limit for recording the scale weight of each haul and all other required information in this separate rulemaking because these requirements affect more than the vessels regulated under Amendment 91. This separate rulemaking is expected to be effective by January 1, 2011. However, until these revisions are made, operators of catcher/processors fishing under Amendment 91 are not required to record scale weights of each haul in the ELB within 2 hours of completion of gear retrieval.

NMFS changed the final rule to add a requirement that the operator of the vessel must provide the information recorded in the ELB to the observer or an authorized officer upon request at any time after the specified deadlines and before the ELB logsheet is printed. This requirement is needed because the CDQ group number is required to be recorded in the ELB within 2 hours after weighing of the catch, but the vessel operator is only required to print a copy of the ELB logsheet for the observer's use by noon each day to record the previous day's ELB information. The observer may need access to the information about the CDQ group number recorded in the ELB prior to the daily printing of the ELB logsheet page to submit observer data to NMFS in a timely manner. As stated in the comment, timely submission of observer data will be essential to the industry to manage Chinook salmon bycatch under Amendment 91.

The same issue raised in this comment about the time needed to assess catch composition before assigning the catch in the haul to a CDQ group or the partner vessel also applies to catcher vessels delivering to motherships. Current regulations at § 679.5(c)(4)(ii)(A) require the operator of a catcher vessel using trawl gear to record the CDQ group number in its DFL within 2 hours after completion of gear retrieval. Catcher vessels delivering unsorted codends do not retrieve gear onboard the catcher vessel, but just transfer the codend from the catcher vessel to the mothership. The trawl net is hauled onboard the mothership, dumped into holding tanks and held, sorted, weighed, and processed in much the same manner as is done on a catcher/processor. Therefore, assessment of the composition of the catch and obtaining information needed by the vessel operator to assign the catch to a CDQ group or the mothership sector is not available until after the catch is weighed and the salmon sorted, identified, and counted on the mothership.

To maintain consistency with the revisions made for time limits that apply to the catcher/processors, NMFS also revised the final rule that governs time limits for recording the CDQ group number in the catcher vessel's DFL and the mothership's DCPL. NMFS revised the final rule, at § 679.5(c)(4)(ii)(A)(1), to add the statement that specific information must be recorded within 2 hours after completion of gear retrieval, except that catcher vessels harvesting pollock CDQ and delivering unsorted codends to a mothership must record CDQ group number within 2 hours after completion of weighing all catch in the haul on the mothership.

For the mothership DCPL, NMFS revised the final rule, at § 679.5(c)(6)(ii)(A), to add the statement that specific information must be recorded within 2 hours after completion of receipt of each groundfish delivery, except that the CDQ group number for catcher vessels harvesting pollock CDQ and delivering unsorted codends to a mothership must be recorded within 2 hours after the completion of weighing all catch from the haul on the mothership. Mothership operators may use either the DCPL or ELB. Mothership DCPLs do not require reporting of the scale weight of each delivery, so no revisions are needed.

Finally, current regulations require that the operator of a vessel using an ELB must notify NMFS by fax that he or she will be using an ELB. NMFS modified the final rule so that this requirement applies only to operators

voluntarily using an ELB. AFA catcher/processors required to use an ELB under Amendment 91 will not be required to notify NMFS by fax that they are using an ELB because NMFS will know that they are using an ELB.

Comment 18: The final rule should revise the time limit to record scale weight of the haul and CDQ group number to within 2 hours after the catch from a haul is weighed and the salmon in the haul are counted, whichever occurs later. This deadline would better comport with fish processing operations and the practical requirements for storing pollock in holding tanks.

Response: NMFS agrees that the time limit for recording whether the catch from a haul by a catcher/processor is attributed to a CDQ group should be changed. See response to comment 17. The final rule revises this time limit to within 2 hours of the completion of weighing all catch in the haul. NMFS believes that the time limit is appropriately linked to the completion of weighing of the haul and does not agree that the time limit should be linked to when the observer has completed counting the salmon in the haul.

Two hours after weighing the catch in the haul should provide sufficient time for the observer to sort, identify species, and count all of the salmon in a haul. However, if unusual circumstances prevent the observer from completing the count of all salmon in the haul within this time limit, vessel crew can assist the observer or count the salmon in the haul independent of the observer with enough detail to assess the catch composition from the haul for purposes of deciding whether to assign a haul to a CDQ group or to the catcher/processor sector. In addition, the time when the catch from a haul is completely weighed on the scale is readily available to the vessel operator from information stored and printed by the scale. Conversely, the time when an observer completes counting salmon would require separate and additional documentation by the observer.

Comment 19: The proposed rule, at § 679.21(c)(2)(ii)(A), requires an operator of a vessel making inshore deliveries to store all salmon taken as bycatch in a refrigerated saltwater tank. This regulation should be removed because at times catch must be stored on deck if tanks are full, a refrigeration break-down could result in a violation, and certain times of the year water temperatures are sufficiently cold that it is unnecessary to refrigerate.

Response: NMFS did not add this requirement with the proposed rule, we only removed the ability to freeze or ice

the salmon. Making the requested change is outside the scope of this action. Vessel operators should notify NOAA Office of Law Enforcement of any equipment failures, including a refrigeration break down, that impedes a vessel's full compliance with regulations.

Comment 20: In the interest of reducing the carbon footprint of the pollock fleet, we support the proposal to remove the reference requiring the discard of salmon into Federal waters once they have been counted or otherwise sampled. However, whenever possible and practical, Chinook salmon bycatch should be committed to the PSD program.

Response: NMFS acknowledges this comment.

PSC Limits and Allocations

Comment 21: A 20,000 to 25,000 Chinook salmon bycatch cap is required for the Chinook salmon population to recover.

Response: As discussed in the EIS (see ADDRESSES), no available information indicates that caps at the levels recommended in this comment would recover the Chinook salmon population. Annual bycatch caps of 20,000 to 25,000 Chinook salmon were considered and eliminated from further analysis by the Council. Based on recommendations from the Council's Salmon Bycatch Workgroup, the initial hard cap numbers under consideration ranged from 14,000 to 114,000 fish. At the December 2007 Council meeting, the Council raised the lowest hard cap under consideration to 29,323 Chinook salmon, which is representative of the 5-year average prior to 2001. The Council noted that including this number in the analysis was sufficiently conservative and that caps below 29,323 would not meet the purpose and need for this action. The EIS has a complete analysis of the cap level options (see ADDRESSES).

Comment 22: A hard cap of 29,323 Chinook salmon would ensure salmon returns meet the needs of user groups. A cap at this level is consistent with the (1997 to 2001) average Chinook salmon bycatch and would approach the Yukon River Salmon Agreement requirement that the United States increase in-river returns by reducing losses to marine fisheries. As the EIS describes, a cap at this level would have provided the "greatest benefit" in salmon savings for Western and Interior Alaska stocks from 2003–2007.

Response: NMFS acknowledges the comment and notes that a similar hard cap was considered in the EIS. The Council recommended and NMFS approved Amendment 91 because it best

balances the need to minimize Chinook salmon bycatch to the extent practicable while providing the pollock fleet the flexibility to harvest the pollock TAC. This decision is fully supported by the EIS and RIR prepared for this action (see ADDRESSES). NMFS has complied with all applicable laws, Executive Orders, and international obligations in approving and implementing Amendment 91.

Comment 23: A very strong case was made by directly affected communities, and those organizations whose entire existence is for the purpose of conserving Yukon River Chinook salmon, for implementing a 30,000 Chinook salmon cap with a 58/42 A/B season split.

Response: The analyses for this action examined the impacts of hard caps ranging from 29,300 to 87,500 Chinook salmon. See NMFS response to comment 21. Four seasonal apportionment options were analyzed in the EIS, including the 58/42 apportionment. Amendment 91 apportions the PSC limits as 70 percent in the A season and 30 percent in the B season. Seventy percent is higher than the average historical distribution of Chinook salmon bycatch to the A season to provide more of the Chinook salmon PSC allocation during the highest value pollock fishing season. However, the 70/30 A/B season split is combined with the rollover of 100 percent of the remaining A season allocation to the B season. This rollover provision promotes salmon savings in the A season by providing incentives for sectors to minimize bycatch to the extent practicable in preparation for the B season, but also locks in the maximum proportion of bycatch allowed in the A season.

Comment 24: The 47,591 Chinook salmon PSC limit is too high. Declining Chinook salmon numbers prove that salmon stocks cannot sustain exploitation at that level.

Response: NMFS disagrees. The EIS analyzes the environmental impacts of Chinook salmon bycatch at the 47,591 Chinook salmon PSC limit (see ADDRESSES). This analysis provides the best available information on the predicted impacts of bycatch at this level. The 47,591 is the approximate 10-year average of Chinook salmon bycatch from 1997 to 2006, and represents both the performance standard for sectors with vessels participating in an IPA and the PSC limit if no IPA is approved by NMFS.

While Chinook salmon bycatch in the pollock fishery may be a contributing factor in the decline of Chinook salmon, as the EIS analysis shows, the absolute

numbers of the ocean bycatch that would have returned to western Alaska are expected to be relatively small due to ocean mortality and the large number of other river systems contributing to the total Chinook bycatch. Although the reasons for the decline of Chinook salmon are not completely understood, scientists believe they are predominately natural. Changes in ocean and river conditions, including unfavorable shifts in temperatures and food sources, likely cause poor survival of Chinook salmon.

Comment 25: The 60,000 Chinook salmon PSC limit is nearly double the cap levels of 29,323–32,500 Chinook salmon recommended by those who oversee management of the Chinook salmon fisheries in-river and by those who depend on the Chinook salmon. The 60,000 Chinook salmon PSC limit would allow the pollock industry to waste more Chinook salmon than the entire subsistence catch on the Yukon River.

Response: Amendment 91 involves more management measures than a simple 60,000 Chinook salmon PSC limit. The performance standard will ensure that average bycatch does not exceed the recent 10-year average. The IPAs are intended to further reduce bycatch below that amount by providing vessels incentives to avoid Chinook salmon at all times. As a result, Amendment 91 is intended to achieve, on average, greater Chinook salmon savings in low abundance years than a single hard cap and achieve Chinook salmon bycatch below the performance standard in most years. However, the 60,000 Chinook salmon PSC limit provides for the inherent variability in Chinook salmon bycatch among vessels, sectors, and years by allocating sufficient Chinook salmon for times when Chinook salmon bycatch is unavoidably high.

NMFS will monitor all salmon bycatch by each vessel in the pollock fishery through a census, 100 percent observer coverage, and an expanded biological sampling program. Annual reports and the proposed economic data collection program are designed to evaluate whether and how incentive plans influence a vessel's operational decisions to avoid Chinook salmon bycatch. If information becomes available to indicate that Amendment 91 is not providing the expected Chinook salmon savings, NMFS will work with the Council to take additional actions to minimize Chinook salmon bycatch to the extent practicable.

Performance Standard

Comment 26: Under the proposed rule, if a vessel opts-out of an IPA, an amount equal to that vessel's portion of opt-out allocation of 28,496 Chinook salmon is subtracted from that sector's PSC allocation; however, an amount equal to that vessel's portion of 47,591 Chinook salmon is also subtracted from that sector's annual threshold amount. The proposed rule has no rationale for subtracting an opt-out vessel's portion of 47,591 Chinook salmon from the sector's annual threshold amount. This proposed adjustment method will unnecessarily restrict fishing opportunities for vessels that choose to become members of an IPA and will, in turn, jeopardize the attainment of optimum yield in the pollock fishery. The final rule should accommodate the vessels that choose to opt-out of an IPA by subtracting the vessels opt-out allocation from the sector's annual threshold amount.

Response: NMFS consulted with the Council on the two methods to calculate a sector's annual threshold amount, the method in the proposed rule or the method recommended by public comment. The Council recommended that the final rule be changed to subtract a vessel's opt-out allocation from the sector's annual threshold amount. This is the same method that the Council had recommended for calculating the sector allocations under the 60,000 Chinook salmon PSC limit and will result in slightly higher annual threshold amounts for sectors with vessels that opt-out of an IPA than the method in the proposed rule. To make this change, NMFS changed column G in Tables 47a, 47b, and 47c and column E in Table 47d of the final rule to show each vessel's annual Chinook salmon opt-out allocation that will be deducted from the sector's annual threshold amount.

Comment 27: The performance standard allows the pollock fleet to exceed the 60,000 Chinook salmon PSC limit in some years without penalty, although consistently exceeding the performance standard could trigger a lower bycatch cap for future years.

Response: Under Amendment 91, the pollock fleet is prevented from exceeding the 60,000 Chinook salmon PSC limit in every year. Each year, NMFS will allocate the 60,000 Chinook salmon PSC limit to the mothership sector, catcher/processor sector, inshore cooperatives, and CDQ groups if an IPA is formed and approved by NMFS. The sector-level performance standard of 47,591 Chinook salmon is a tool to ensure that each sector does not fully harvest its Chinook salmon PSC

allocation in most years. For a sector to continue to receive Chinook salmon PSC allocations under the 60,000 Chinook salmon PSC limit, that sector may not exceed its portion of 47,591 in any three years within seven consecutive years. If a sector fails this performance standard, it will permanently be allocated a portion of the 47,591 Chinook salmon PSC limit.

Comment 28: The performance standard allows the pollock fleet to catch 60,000 Chinook salmon in two out of seven years with no penalty. The rationale cited by the Council was that in certain years the pollock fishery simply cannot avoid bycatch despite behavioral changes. No analysis is presented in the EIS to support this conclusion.

Response: The EIS (see **ADDRESSES**) discusses the function of the sector-level performance standard to prevent each sector from exceeding its portion of 47,951 Chinook salmon in more than 3 years in any 7 consecutive years. Note that since the performance standard is on a sector basis, if one sector exceeded its performance standard and fished up to its allocation under the 60,000 PSC limit, total bycatch would still be below 60,000 Chinook salmon. Bycatch would only reach 60,000 Chinook salmon in a given year if all sectors fished up to their allocation of 60,000 Chinook salmon. Therefore, the performance standard is the tool that will prevent bycatch from exceeding, on average, the historical 10-year average.

The EIS analysis shows that the number of Chinook salmon caught as bycatch in the pollock fishery is highly variable from year to year, from sector to sector, and even from vessel to vessel. Current information about Chinook salmon is insufficient to determine the reasons for high or low encounters of Chinook salmon in the pollock fishery or the degree to which encounter rates are related to Chinook salmon abundance or other conditions. The uncertainty and variability in Chinook salmon bycatch led the Council to create a program with a 60,000 Chinook salmon PSC limit, a performance standard, and IPAs. The 60,000 Chinook salmon PSC limit represents a reduction in bycatch from the recent high bycatch years and is approximately one-half of the 2007 Chinook salmon bycatch. The 60,000 Chinook salmon PSC limit assumes that the fleet can and will change behavior to avoid Chinook salmon or face closure the pollock fishery. The performance standard and the IPAs aim to ensure that the fleet will further change behavior to avoid Chinook salmon bycatch.

Eligible Entities

Comment 29: The proposed rule, at § 679.21(f)(8)(ii), is unclear about what would happen if NMFS received more than one application for the entity to represent a sector and receive the Chinook salmon PSC allocation. No more than one entity should be authorized to represent the catcher/processor sector, but not all of the owners of the AFA permitted vessels in the sector should be required to be members in a single entity.

The final rule should contain an explanation of the criteria that NMFS intends to use to determine which of two or more entity applications will be selected to represent the catcher/processor sector. One criterion should be that an applicant must represent the majority (i.e., 75 percent) of the eligible vessel owners in that sector. By using these criteria, NMFS would authorize an entity with the broadest representation of participants. This super-majority threshold will ensure that the terms under which the entity is formed will reflect the views of the strong majority of participants but at the same time will prevent the creation of hold out opportunities that would result from a unanimous approval requirement. The rule should not require unanimous participation by the owners of every eligible vessel. This standard would give inappropriate leverage to participants with very little investment in the fishery and could disrupt the entire allocation and IPA process.

Response: NMFS consulted with the Council on the best way to address the sector entity issues raised in public comment, and the Council recommended that NMFS change the final rule to improve the implementation of sector entities and better align IPA and sector entity participation. The requirement that the mothership and catcher/processor sector entities must represent all of the vessel owners in that sector to receive a transferable PSC allocation was explained in the EIS and is a result of the fact that Amendment 91 only allows for NMFS to make a single allocation to those sectors. However, the proposed rule did not provide the necessary structure for the sector entity to form without introducing the problems identified in public comments.

NMFS modified the final rule, at § 679.21(f)(8)(i)(C) and (D), to make it clear that NMFS will authorize only one entity to represent the catcher/processor sector and one entity to represent the mothership sector. NMFS also clarified that, under the 60,000 Chinook salmon PSC limit, the entity has to represent all

IPA participating vessel owners because the allocation is for use by all IPA participating members of the sector, and the entity is responsible for managing the use of the allocation by all IPA participating members. Vessel owners that choose to opt-out of an IPA would not participate in the sector entity. NMFS added a requirement, at § 679.21(f)(8)(ii)(A), that the sector entity representative must affirm on the application form that each eligible vessel owner, from whom the applicant received written notification requesting to join the sector entity, has been allowed to join the sector entity subject to the terms and conditions that have been agreed on by, and are applicable to, all other parties to the sector entity. NMFS moved a similar requirement for IPA membership from the proposed language at § 679.21(f)(12)(ii) to the IPA application requirements at § 679.21(f)(12)(iii)(A) to better align the participation requirements for both applications. NMFS also added a requirement, at § 679.21(f)(12)(ii)(B), that vessels owners in the catcher/processor sector or mothership sector must be a member of the sector entity to join an IPA.

To address the issue of what would happen if NMFS received more than one sector entity application, NMFS added § 679.21(f)(8)(ii)(E) to the final rule to clarify that if more than one entity application is submitted to NMFS, NMFS will approve the application for the entity that represents the most eligible vessel owners in the sector. At § 679.21(f)(8)(ii)(D), NMFS changed the deadline for the entity application from November 1 to October 1 to coincide with the deadline for the IPA application. NMFS added § 679.21(f)(8)(ii)(F) to the final rule to enable vessel owners to join an approved sector entity by December 1 of each year, so that the entity can represent all eligible vessels in the sector and receive a transferable PSC allocation.

Comment 30: The proposed rule, at § 679.7(f)(8)(iii)(A)(4), allows an entity representative to sign an IPA on behalf of the vessel owners in that entity. The final rule should allow the entity representative to sign more than one IPA to provide for the eventuality that members of the same entity join different IPAs.

Response: NMFS agrees and has modified this paragraph, now at § 679.21(f)(8)(iii)(B) in the final rule, to allow an entity representative to sign more than one IPA. The IPA representative may sign an IPA on behalf of the vessel owners in that entity that intend to join that IPA. Note that

the IPA application requires that the IPA list each vessel that will be participating in that IPA.

Comment 31: The joint and several liability provision, at § 679.21(f)(8)(iii)(A), is unreasonably broad and makes the members of an entity formed for the purposes of applying for and holding transferable quotas jointly and severally liable for any violation of applicable regulations and for any penalties. Requiring vessel owners to subject themselves to such onerous and open-ended joint and several liability exposure raises serious issues of fairness and due process. The prospect of such liability is likely to have a chilling effect on the willingness of an individual company to enter into the entity formation arrangements required to enjoy the benefits of a transferable bycatch allocation in the first place. Without an entity, that sector would not receive transferable Chinook salmon PSC allocations, which may jeopardize its ability to harvest its pollock. This is an inappropriate standard that not only unfairly imposes liability on innocent vessel owners, but it was included in the proposed rule without opportunity for comment earlier in the process and without the benefit of Council input. For these reasons, and without benefit of any rationale for including such provisions in the first place, the joint and several liability provisions should be removed for the final rule.

Response: NMFS has removed from the final rule the joint and several liability provisions for cooperatives and the entities representing the catcher/processor sector and mothership sector. These provisions created some confusion, as discussed in the comment, and they are unnecessary because NOAA has independent authority to exercise its discretion to seek to impose joint liability if the evidence supports doing so.

Transfers

Comment 32: The proposed rule, at § 679.21(f)(9)(ii), states that vessels fishing on behalf of an entity that has exceeded its Chinook salmon PSC allocation for a season may not start a new pollock fishing trip for the remainder of that season. This implies that if a vessel was fishing on the pollock allocation from an AFA entity and the entity had exceeded its Chinook salmon PSC limit, the vessel could not start a new fishing trip for a CDQ entity. That is not the intent. Clarify that once an entity has exceeded its Chinook salmon PSC allocation, a vessel cannot start a new fishing trip for that same entity.

Response: NMFS agrees and has modified the final rule at § 679.21(f)(9)(ii) to clarify that a vessel is prohibited from fishing for an entity that has exceeded its Chinook salmon PSC allocation. The Council motion states that any recipient of a post delivery transfer during a season may not fish for the remainder of that season. The recipient of a post delivery transfer is the entity, not a vessel. The prohibitions at § 679.7(d)(8)(ii)(C)(2) and (k)(8)(iv)(B) accurately reflect this.

Comment 33: In the proposed rule, at § 679.21(f)(10)(ii), it is difficult to determine whether seasonal pollock fishery closures will affect a sector of the fishery or the entire fishery. The final rule should make it clear that sector-specific seasonal closures will be employed to manage this portion of the fishery.

Response: NMFS disagrees that this paragraph needs to be changed. This regulation makes it clear that NMFS will close fishing for those vessels fishing under a non-transferable allocation. For any given year, NMFS can establish non-transferable allocations, including a non-transferable allocation for the group of opt-out vessels. The non-transferable opt-out allocation will apply to all vessels that have opted out and could include vessels from different sectors. Therefore, the NMFS closures will not necessarily be sector-specific.

Incentive Plan Agreement (IPA)

Comment 34: The proposed rule, at § 679.21(f)(12)(i)(A), incorrectly characterizes the minimum participation requirement. The first sentence should read, "participation by the owners of AFA permitted vessels or CDQ groups that combined represent at least 9 percent of the Bering Sea directed pollock fishery is required for purposes of this paragraph (f)(12)(i)." The accompanying table should be deleted.

Response: NMFS agrees and has corrected this paragraph for the final rule to clarify that parties to an IPA must collectively represent at least 9 percent of the Bering Sea pollock quota. The correct method for determining the percent represented by each party to an IPA is described in detail in the preamble to the proposed rule (75 FR 14028; March 23, 2010).

NMFS disagrees that the accompanying table should be deleted. The table contains necessary information for participants to understand how NMFS will calculate the percent of Bering Sea pollock used for each AFA permitted vessel and CDQ group in determining whether an IPA

meets the minimum participation requirement.

Comment 35: The preamble to the proposed rule explains that a CDQ group can only join one IPA. This restriction would force a CDQ group with vessels fishing in different AFA sectors to join one IPA and adopt the same incentive program. A CDQ group has investments in fishing vessels in several pollock sectors, and can allocate CDQ pollock among them, and should have the ability to join multiple IPAs.

Response: NMFS concurs that a CDQ group should not be required to participate in only one approved IPA. CDQ groups are not restricted in what vessels they may authorize to catch pollock CDQ on their behalf as long as those vessels meet all other applicable requirements in 50 CFR part 679 and other Federal regulations. Therefore, a CDQ group may have vessels from different AFA sectors fishing for pollock in the Bering Sea on its behalf. Different AFA sectors may develop different IPAs and the CDQ group or the vessel owner may want the partner vessel to participate in the same IPA that the vessel participates in for its non-CDQ fishing. Although described in the preamble, no regulations were included in the proposed rule that would require the CDQ groups to participate in only one IPA. Therefore, no changes in the final rule are needed.

However, NMFS added a requirement to the final rule to clarify requirements associated with a CDQ group's participation in an IPA. To receive a transferable Chinook salmon PSC allocation under the 60,000 PSC limit, a CDQ group must participate in an approved IPA. If a CDQ group is participating in an IPA, it cannot also participate in the opt-out fishery because the Chinook salmon allocation to a CDQ group cannot be subdivided based on the participation of its partner vessels in an approved IPA. Therefore, to implement the Council's intent and to address this comment submitted by five of the six CDQ groups, NMFS added a requirement in the final rule, at § 679.21(f)(12)(ii)(C), that states, for a CDQ group to be a member of an IPA, the CDQ group must list in the IPA each vessel harvesting Bering Sea pollock CDQ on behalf of that CDQ group that will participate in that IPA.

Comment 36: If a vessel is eligible to participate in more than one sector, that vessel should be able to participate in more than one IPA. This would occur for a vessel that is in the catcher/processor sector and fishing for a CDQ group or for a vessel that can fish in the mothership sector and inshore cooperative sector.

Response: NMFS agrees that if a vessel is eligible to participate in more than one sector, then that vessel can participate in an IPA for each sector.

Comment 37: Clarify whether a CDQ group must submit a separate proposed IPA if they decide to participate in an IPA together with members of another AFA sector.

Response: The IPA representative must submit an application for approval of a proposed IPA to NMFS. A CDQ group that is a member of that proposed IPA will be listed in the IPA; this CDQ group does not need to separately submit the same proposed IPA.

Comment 38: Two different deadlines are identified for IPAs; October 1 and November 1. Which is correct?

Response: Both deadlines are correct. October 1 is the deadline for submitting a proposed IPA or amended IPA under § 679.21(f)(12)(iv). November 1 is the deadline in the proposed rule for the IPA representative to submit amendments to the list of participants in the IPA. Note that, in response to comment 39, NMFS changed this deadline for amendments to the IPA list of participants, at § 679.21(f)(12)(v)(C)(2), to December 1.

Comment 39: NMFS should add a deadline for when NMFS will notify participants whose IPA is rejected to allow them sufficient time to amend their application or join a different IPA. The proposed rule, at § 679.21(f)(12)(iv)(D)(2), provides an applicant one 30-day period to address any deficiencies in the proposed IPA that NMFS identifies. The final rule should allow for a 45-day period to address, in writing, the IPA deficiencies identified by NMFS. Additionally, the November 1 deadline at § 679.21(f)(12)(v)(C)(2) for amendments to the IPA's list of participants should be changed to December 1 to accommodate NMFS' review and notification process and the potential for amending and/or switching IPAs.

Response: NMFS will expeditiously review the IPAs and notify the IPA representative of any deficiencies as soon as possible; therefore, a deadline for NMFS review is not necessary. The 30-day period for an IPA representative to address any identified deficiencies was put in regulations to ensure that deficiencies could be addressed and NMFS could approve an IPA before the upcoming fishing year. Therefore, NMFS did not change this 30-day period in the final rule. NMFS agrees that the deadline for amendments to the list of participants for an IPA should be changed from November 1 to December 1 and has made this change in the final rule at § 679.21(f)(12)(v)(C)(2).

Comment 40: The proposed rule, at § 679.21(f)(12)(iii)(B)(3)(i), says that the IPA must contain a written description of the incentives that will be implemented under the IPA to ensure that the operator of each vessel participating in the IPA will avoid Chinook salmon at all times while directed fishing for pollock. This does not correctly reflect the Council motion, which says that an IPA must describe incentives for each vessel to avoid Chinook salmon bycatch under any condition of pollock and Chinook salmon abundance in all years. In other words, the IPA is to describe the incentives that promote salmon avoidance. The incentives will not ensure that participants avoid salmon at all times. The final rule should reflect the Council motion.

Response: NMFS agrees and has changed the IPA requirement in the final rule, at § 679.21(f)(12)(iii)(B)(3)(i), to reflect the Council motion.

Comment 41: The final rule, at § 679.21(f)(12)(v)(D), should include the criteria that NMFS would use to disapprove of an IPA as identified in the preamble (75 FR 14029; March 23, 2010). The reasons for disapproval should also include where the IPA lacks a component intended to prevent the sector from exceeding the performance standard. As the performance standard applies to all members of a sector who participate in IPAs, rather than to each IPA individually, the IPAs should be required to include provisions to keep the entire sector below the performance standard. This is particularly important in the event that vessels in any one sector participate in more than one IPA. And, this criteria should also be added to the final rule at § 679.21(f)(12)(v)(D)(1)(ii) for disapproval of a proposed amendment to an IPA.

Response: NMFS disagrees that additional criteria for disapproval should be specified in the regulations. The requirements in the regulations that an IPA must meet for NMFS approval are directly related to the Council motion, and NMFS will disapprove an IPA that does not meet these requirements. The proposed rule preamble provides examples of ways that an IPA would not meet the requirements specified in the regulations, but these are just examples and there are other ways NMFS may decide an IPA does not meet the regulatory requirements. Additionally, under § 679.21(f)(12)(iii)(B)(3)(v), an IPA must describe how the IPA ensures that the operator of each vessel governed by the IPA will manage his or her Chinook salmon bycatch to keep total bycatch

below the performance standard for the sector in which the vessel participates. Under § 679.21(f)(12)(v)(D), NMFS will disapprove an IPA or an amendment to an IPA that does not meet this requirement.

Comment 42: For the requirement that the IPA contains incentives to ensure that the operator of each vessel will avoid Chinook salmon while fishing for pollock, “avoid” should be changed to “minimize to the extent practicable” to use the same language as National Standard 9.

Response: The Council motion recommending Amendment 91 specifically requires that an IPA must describe incentives for each vessel to avoid Chinook salmon bycatch under any condition of pollock and Chinook salmon abundance. This final rule implements Amendment 91. Additionally, this IPA requirement is consistent with 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. This suggests the general goal is to avoid bycatch and if it cannot be avoided, minimize its mortality. In other words, the fact that part (B) uses the word “avoided” suggests that that word accurately encapsulates the principal aim of part (A) of National Standard 9. Therefore, the requirement to avoid bycatch is consistent with National Standard 9’s parameters, namely, bycatch must be minimized to the extent practicable. Moreover, Amendment 91 is designed to minimize bycatch to the extent practicable, as required by National Standard 9, and the IPAs are one aspect in achieving that goal.

Comment 43: The IPAs operate outside of regulatory control, and we have no assurances that actual bycatch will be any lower than the limits placed in regulation.

Response: The IPAs will not operate outside of regulatory control. Regulations establish the performance based requirements that each IPA must accomplish. Any number of different incentive plans could meet these regulatory requirements. The requirements for the IPA are performance based because fishery participants have more tools available to them to create incentives to minimize bycatch at the vessel level than could be proscribed through Federal regulation. As designed, an IPA can be more responsive and adaptive than Federal regulations and can use tools not available to managers, such as fees and

penalties. IPAs are included as a performance-based provision and the Federal regulations are flexible in allowing the pollock fleet to modify the IPAs as performance information becomes available to ensure that the IPAs meet the goals in Amendment 91.

Additionally, the final rule requires the IPA representative to submit an annual report to the Council that will be the primary tool through which the Council will evaluate whether its goals for the IPAs are being met. Also, the proposed economic data collection program that the Council and NMFS are developing is designed to provide quantitative information to evaluate how an IPA influences a vessel’s operational decisions to avoid Chinook salmon bycatch. See response to comment 44.

Comment 44: Under Amendment 91, there is no opportunity for a substantive review of the IPAs by either NMFS or the Council, and no analysis of expected performance is conducted by NMFS in approving the plans. The IPA requirements do not specify the types of incentives that must be contained in the plans. Under this review process, only the Council addresses the efficacy of the incentive programs, yet the incentive programs submitted to NMFS may not be the same programs initially submitted to the Council. In effect, no one, including the public, NMFS, and the Council, has the opportunity to assess the efficacy of the final incentive programs submitted to NMFS. Moreover, the Council has no authority to approve or deny the IPAs. An FMP amendment would have to be initiated to change the requirements.

Response: The comment is correct that there is no process to review the potential efficacy of the IPAs prior to the first year of implementation. After the first year of implementation, substantive review of the IPAs will occur annually as part of the Council’s public process and will be based on the performance of the IPAs. The IPA annual report is the primary tool through which the Council will evaluate whether its goals for the IPAs are being met. The IPA annual report must contain: (1) A comprehensive description of the incentive measures in effect in the previous year; (2) a description of how these incentive measures affected individual vessels; (3) an evaluation of whether incentive measures were effective in achieving salmon savings beyond levels that would have been achieved in the absence of the measures; and (4) a description of any amendments to the terms of the IPA that were approved by NMFS since the last annual report and

the reasons that the amendments to the IPA were made.

The proposed economic data collection program, once implemented, would provide information to the analysts and the Council for determining the effectiveness of the IPAs. The data collection program will focus on (1) evaluating the effectiveness of the IPA incentives, the PSC limits, and the performance standard in terms of minimizing salmon bycatch in times of high and low levels of salmon abundance, and (2) evaluating how Amendment 91 affects where, when, and how pollock fishing and salmon bycatch occur. The proposed data collection program would also provide data for NMFS and the Council to study and verify conclusions drawn by industry in the IPA annual reports. Due to the complex nature of economic data collection, the data collection program will be implemented after Amendment 91.

By design, IPAs are adaptive and can be modified as necessary. The IPAs may be amended in response to the Council's review to better achieve the program goals. Furthermore, if analysis prepared after the incentive plans are in effect demonstrates that the Council's goals are not being met, then NMFS and the Council could re-initiate analysis of alternative Chinook salmon bycatch management measures and recommend revised or new management measures in the future.

Comment 45: It is important that the public review and objectively assess how the IPAs are functioning. The qualitative approach suggested in the proposed rule is not adequate. The final rule should recommend that an IPA and its associated annual report contain objective, measurable, specific, and verifiable quantitative values or estimates for each of the IPA components.

Response: NMFS agrees that careful review and assessment of the IPAs are important. The Council motion specified the requirements for the IPA annual report to the Council and no changes to these requirements were made in the final rule. The proposed economic data collection program that the Council and NMFS are developing is designed to provide quantitative information to evaluate how an IPA influences a vessel's operational decisions to avoid Chinook salmon bycatch.

Comment 46: The EIS does not analyze the IPAs, which were relied upon to justify Amendment 91. NEPA requires that IPAs be analyzed as alternatives within the EIS if selection of a higher hard cap is based on

performance under the IPAs. Without an analysis of the IPAs, there is no justification for allowing a higher cap if IPAs are in place. The agency argues that the IPAs need not be analyzed because it is the cap levels themselves which are being analyzed. One must then assume that the Council has effectively chosen a 60,000 hard cap. Assuming arguendo that this is the case, the Council's rhetoric does not match its action. In deliberations and in follow-up to the public, Council members have stressed that this is not really a 60,000 hard cap because of the IPAs and the performance standard. If the IPAs are truly insignificant enough such that they need not be analyzed in the EIS, they also cannot be justification for the two scenario approach.

Response: NMFS disagrees. As explained in EIS chapter 9, as long as the EIS analyzes and discloses the consequences of adopting the PSC limits specified in the alternatives, and the IPAs are a feature of the alternative that provides additional incentives to avoid Chinook salmon bycatch within these cap levels, the Secretary of Commerce can approve and implement Amendment 91 without an analysis in the EIS of the specific IPAs the pollock industry may submit.

The EIS analyzes the environmental impacts of Chinook salmon bycatch at the 60,000 and 47,591 Chinook salmon PSC limits. This analysis provides the best available information on the predicted impacts of bycatch at these levels because these PSC limits are the maximum amount of bycatch that could be caught in any given year. The EIS discusses the function of the sector-level performance standard to prevent each sector from exceeding its portion of 47,951 in more than three years in any seven consecutive years. Note that since the performance standard is on a sector basis, if a given sector exceeded its performance standard and fished up to its PSC allocation, total bycatch would still be below 60,000 Chinook salmon. Bycatch could only reach 60,000 Chinook salmon in a given year if each sector fished up to its PSC allocation. Therefore, the performance standard is the tool that will prevent bycatch from exceeding, on average, the historical 10-year average of 47,591 Chinook salmon.

The EIS makes no assumptions as to whether the IPAs will be effective; rather, the IPA component is an innovative approach that is designed to provide incentives for each vessel to avoid bycatch at all times with the goal of reducing bycatch below the PSC limits. The requirements for an IPA are performance based (*i.e.*, they address what an IPA should accomplish); any

number of different incentive plans could meet these objectives. As designed, an IPA can be more responsive and adaptive than Federal regulations and can use tools not available to Federal managers, such as fees and penalties. IPAs were included as a performance-based provision, and the Federal regulations are flexible in allowing the pollock fleet to modify the IPAs as performance information becomes available to ensure that the IPAs meet the goals in Amendment 91. IPA performance will be reviewed annually (*see* response to comment 44). If information becomes available to indicate that Amendment 91 is not providing the expected Chinook salmon savings, NMFS will work with the Council to take additional actions to minimize Chinook salmon bycatch to the extent practicable.

Additionally, requiring, as the comment suggests, that fishery participants finalize an IPA years before it would be used in order for it to be analyzed would remove the adaptive nature of the IPAs and therefore remove some of its effectiveness. And, doing so would not have changed the analysis of the environmental impacts.

Non-Chinook Bycatch

Comment 47: The section at § 679.21(g)(2)(iii)(C) on ICA Chum Salmon Savings Area Notices should be re-written to more accurately describe the original intention of Amendment 84. While the twice weekly notices are required, ICA Chum Salmon Savings Area closures only occur if and when areas with bycatch in excess of the based rate, as described in paragraph (g)(2)(iii)(B), are identified. The sentence, "For any ICA Salmon Savings Area notice, the maximum total area closed must be at least 3,000 square miles for ICA Chum Salmon Area closures" is confusing and does not accurately reflect the original intention of the 3,000 square mile standard. The original intention was to assure that the ICA, not the notice, contain language that allows for the maximum areas available for a Chum Salmon Savings Area closure to be no less than 3,000 square miles. There was never an intention to require 3,000 square miles be closed by each notice as this sentence may be interpreted to mean.

Response: Substantive revisions to the regulations at § 679.21(g) governing the non-Chinook salmon portions of the VRHS ICA are not within the scope of this final rule. Revisions to the management of chum salmon bycatch in the Bering Sea pollock fishery was not considered among the alternatives analyzed for Amendment 91. The

Council currently is analyzing alternatives to address chum salmon bycatch, and NMFS will request that it consider these comments in developing its alternatives and analysis.

Comment 48: The last sentence in § 679.21(g)(2)(iii)(E) states that “Bycatch rates for Chinook salmon must be calculated separately from non-Chinook salmon, and cooperatives must be assigned to tiers based on non-Chinook salmon bycatch.” This sentence is not necessary and should be removed.

Response: NMFS concurs and removed this sentence in the final rule. This requirement does not appear in current regulations governing the VRHS ICA and was added in the proposed rule in an attempt to clarify how the ICA would operate with the removal of regulations related to Chinook salmon. However, the intent of the regulations in this paragraph is clear without this additional sentence.

PSD Program

Comment 49: The proposed rule, at § 679.21(c)(2)(i)(D), requires catcher/processors and motherships to ensure that no salmon of any species pass the observer sample collection point. This seems to prohibit salmon from passing the observer sample collection point and into the factory area, yet salmon intended for the PSD program must be processed and frozen, and these activities take place in the factory area. The final rule should clearly indicate that it is acceptable for crew to process and freeze donation program salmon in the factory areas after the salmon have been counted.

Response: NMFS disagrees that a change in the final rule is necessary to allow for the transfer or processing of salmon under the PSD program, at § 679.26. The final rule, at § 679.21(c)(2)(i)(A), requires that the operators of catcher/processors or motherships must first sort salmon bycatch into an approved salmon storage location. Once the observer has determined the salmon count and collected biological samples, the salmon can be removed from the area, as described in § 679.21(c)(1), and can then be processed for the PSD program.

Comment 50: Salmon taken as bycatch are either discarded at sea or processed for food banks in the Pacific Northwest, far from the Western Alaska families which depend on salmon.

Response: NMFS encourages participation in the PSD program to reduce waste and provide high quality protein to those in need. Regulations at § 679.26 require any salmon donated to be handled by an authorized distributor. Any organization that can meet the

requirements for a PSD program permit may apply to NMFS to become an authorized distributor. To date, only one authorized distributor, SeaShare, is permitted to handle donated salmon. Because of the logistics of handling and shipping the fish, and the limited resources for the program, only Pacific Northwest residents have benefited from the donated salmon. The PSD program is currently a voluntary program, with participants paying the cost of handling the fish. Having more authorized distributors that could provide donated salmon to Western Alaska communities would be a good way to reduce salmon waste in the pollock fishery. More information about the PSD program is available on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov/ram/psd.htm>).

Equipment and Operational Requirements

Comment 51: The proposed rule, at § 679.28(j)(1)(viii), specifies that a video monitor is needed for viewing “within the tank.” Because salmon are sorted from the catch after the catch is removed from fish storage tanks, there is no reason to require a camera in a fish storage tank. The final rule should remove the phrase “within the tank.”

Response: NMFS agrees and has revised the final rule to eliminate the requirement to display the “activities within the tank”. The final rule, at § 679.28(j)(1)(viii), clarifies that the purpose of the 16-bit video monitor is to enable the observer to view all areas where the sorting of salmon of any species takes place, in addition to the salmon contained in the storage container.

Comment 52: The preamble states (75 FR14029–14030; March 23, 2010) that NMFS would use the same method for accounting for Chinook salmon bycatch for all AFA sectors, yet the video monitoring requirement applies only to the catcher/processor and mothership sectors. The inshore sector should have the option to use the same video system as a method of ensuring compliance.

Response: NMFS disagrees that the inshore sector should have the option to use video monitoring. In the EIS, NMFS examined the possibility of requiring video at shoreside processors but found that this was not a reasonable option because factories are so complex that it would be logistically impossible to cover all areas where a salmon could appear in the factory. On the other hand, the areas to be monitored on catcher/processors and motherships are limited in space and complexity. Thus, electronic monitoring systems will be

able to view all the areas required with a minimal amount of equipment.

Additionally, while the requirement for a census of salmon will be the same for catcher/processors, motherships, and shoreside processors, the duties of an observer differ. The observers aboard catcher/processors and motherships must conduct species composition sampling while the sorting of catch is occurring. Therefore, observers may not be able to monitor the sorting at all times due to their other duties. Video monitoring is required to verify all salmon are sorted from the catch into the appropriate storage container prior to entering the processing area of the factory and remain in the storage container until removed under the direction of the observer. The primary duties for observers assigned to shoreside processors differ from the observer duties on a catcher/processor or mothership. While the offload is occurring at a shoreside processor, observers ensure that all salmon are properly sorted from the catch and are not required to complete other duties during an offload.

Comment 53: The video system will work well to augment the observer’s role as a salmon census monitor. Proposed regulations at § 679.28(j) require the installation of a video system to allow observers to view all areas where salmon might be sorted. Observers would be able to randomly scan the monitors to assure proper handling of the salmon. If the vessel reported salmon bycatch numbers from the unobserved periods that varied from those of the observed periods, the observer could review the video to determine whether salmon were being missed by the crew.

Response: NMFS agrees. The electronic monitoring systems are a tool for the observers to use to determine whether proper sorting occurs during periods when they may not be able to monitor and verify that no salmon have been removed from the salmon storage container before they have the opportunity to count the number of salmon and collect biological samples and scientific data.

Tables 47a to 47d to Part 679

Comment 54: It is vitally important that NMFS provide the vessel owners, listed in table 47c, with the total pounds of pollock being accredited to each vessel during the three AFA inshore history years, 1995 to 1997. These pound estimates must be compared to the owner’s records and the vessel owners must be provided the opportunity to provide contradictory information to NMFS.

Response: NMFS cannot provide the AFA catcher vessel's catch history due to the confidentiality requirements established by the State of Alaska on fish ticket data (AS 16.05.815). Under Federal regulations at § 679.62(a), the Regional Administrator used State of Alaska fish ticket records to establish the Official AFA Record to determine (1) a catcher vessel's eligibility for an AFA permit and (2) a catcher vessel's official AFA inshore cooperative catch history. Due to the confidential nature of these records, NMFS does not release or verify historic catch data for an individual AFA pollock catcher vessel.

State of Alaska fish tickets document the harvest of fish sold, discarded, or retained by the fisherman for personal use. The information collected includes species composition, weight, gear used, date harvested, who caught the fish, processor's license code, and other information specific to each fishery. As records of purchase between the processors and the fishermen, fish ticket data are confidential. The owners of fish tickets can request fishing records from any local office of ADF&G. In order to receive a vessel's catch history, vessel owners that are not also owners of the fish tickets must obtain confidentiality waivers. AFG&G clears the waivers prior to releasing the certified fish tickets.

Comment 55: The proposed rule, at column D of Table 47c to part 679, inaccurately lists the percent of inshore sector pollock assigned to each catcher vessel. AFA catcher vessels have relied on cooperative catch data to determine each vessel's individual share of the inshore sector's pollock allocation. The shares of each catcher vessel's inshore pollock allocation in Table 47c differ significantly from cooperative records and from the percentages some vessel owners and cooperatives previously believed NMFS had applied to pollock allocations. NMFS should afford each catcher vessel owner the opportunity to challenge the percentage of the inshore sector's pollock allocation because these values are used to calculate vessel-level Chinook salmon limits and may determine a vessel's ability to harvest pollock. To not do so will unjustly disadvantage many catcher vessel owners.

Response: NMFS disagrees that changes are necessary to the percent of inshore pollock assigned to each catcher vessel in column D of Table 47c to part 679. The values NMFS assigned to each AFA eligible inshore catcher vessel were calculated from the Official AFA Record, defined at § 679.2, which represents the best scientific information available.

Following the passage of the AFA by Congress in 1998, NMFS compiled the Official AFA Records for each vessel potentially qualifying for an AFA permit. As specified at § 679.4(l), the information included vessel ownership, documentation of harvests made by vessels during the AFA qualifying periods, vessel characteristics, and documented amounts of pollock processed by pollock processors during the AFA qualifying period. For inshore catcher vessels, individual catch histories were required to determine fishery eligibility and annual catch allocations under the AFA. NMFS relied on State of Alaska fish tickets to establish a comprehensive account of all groundfish catch by catcher vessel because fish tickets are required for any groundfish landed in State waters or delivered to plants or processing vessels operated in State waters. See response to comment 54.

Since the 2000 directed pollock fishing season, the catch histories of individual AFA eligible vessels have been used to calculate each cooperative's percentage allocation of the inshore sector's portion of the TAC. NMFS converts individual vessel catch histories into annual quota share percentages assigned to each vessel in a process described in regulation at § 679.62(a). The annual Bering Sea pollock allocation to each inshore cooperative is equal to the aggregated member vessel quota share percentages. The resulting cooperative percentages are then applied to the inshore sector's portion of the Bering Sea pollock TAC to determine each cooperative's pollock allocations.

Each year NMFS announces the harvest specification for the directed pollock fishery in the Bering Sea subarea. NMFS posts the sum of member vessel's official catch histories, the percentage of inshore sector allocation, and the corresponding allocation for each inshore pollock cooperative and open access fishery, should one exist. These tables are posted on the Alaska Region Web site (http://alaskafisheries.noaa.gov/sustainablefisheries/afa/afa_sf.htm).

NMFS previously provided an appeals process under which the owners of vessels and processors could appeal NMFS' determinations relating to AFA eligibility or AFA inshore cooperative allocations. Both the emergency interim rule (65 FR 380, January 5, 2000) and the final rule implementing AFA related amendments (67 FR 79692, December 30, 2002) established an appeals process similar to the process for appealing individual fishing quota and license limitation

programs. Further, the regulations implementing the AFA-related FMP amendments provided an opportunity for, and placed the burden on, each applicant for AFA permits to correct any inconsistencies with the Official AFA Record, including catch histories.

Following that appeals process and in response to challenges by cooperatives, NMFS revised the Official AFA Record. NMFS responded to each challenge that provided individual vessel catch histories as evidence of discrepancies between cooperative records and the Official AFA Record. In order to verify claims, NMFS compared the cooperatives records to the Official AFA Record and, if necessary, observer information. In several cases this vetting process resulted in corrections to the Official AFA Record and the calculations of a cooperative's allocation of Bering Sea pollock TAC. Therefore, the quota share percentages in Column D of Table 47c, which were derived from the Official AFA Record, represent the best information available for allocating Chinook salmon PSC limits. The creation of another appeals process or other revisions to the pollock quota share allocations that were established under the AFA and relied on by NMFS to allocate pollock to cooperatives for the past 10 years are beyond the scope of this action. Should the Council determine that further refinement of Table 47c is necessary, additional rulemaking would be required.

Furthermore, NMFS disagrees that the percentages listed in Table 47c disadvantage vessel owners. Under Amendment 91, NMFS uses these vessel level percentage assignments listed in Table 47c to calculate the opt-out allocation at § 679.21(f)(4)(i)(C) or open access fishery allocation, the annual threshold amount at § 679.21(f)(6)(ii)(C), and the IPA minimum participation for catcher vessels under section § 679.21(f)(12)(i)(A)(3). NMFS allocates transferable Chinook salmon PSC allocations to each inshore cooperative, not to the individual vessels. The management of PSC allocations is handled within each cooperative through private contracts with member vessels and such transactions are not within the scope of this action.

Comment 56: Chinook salmon PSC limits are based on the historical pollock harvest; therefore, it is important that these figures be identical to the cooperative's records. Carry the percentages on the table to four decimal places (ten-thousandths place) rather than two.

Response: NMFS agrees and has revised the final rule to include the percentages in Column D of Table 47c

in four decimal places. NMFS notes that the Chinook salmon associated with each vessel has not changed.

Amendment 91

Comment 57: Use an emergency regulation to immediately implement a hard cap of 32,500 Chinook salmon. This lower cap level will provide protection to salmon populations while allowing the pollock fishery to operate.

Response: Emergency action is not warranted at this time in light of the reductions from the high Chinook salmon bycatch years. In 2008, the pollock fleet caught 19,928 Chinook salmon. In 2009, the pollock fleet caught 12,410 Chinook salmon. For the 2010 pollock A season, and the pollock B season that opened on June 10, bycatch rates are comparable to the low bycatch rates in 2009.

Comment 58: The Council has justified a higher cap on the basis that they must balance National Standard 9 with National Standard 1, which requires that conservation and management measures prevent overfishing, while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. However, the EIS shows that even at the lowest cap level analyzed, 29,300 Chinook salmon, optimum yield was achieved overall throughout the time period analyzed in the EIS. This time period includes the highest bycatch on record, and the three highest bycatch levels in the past eighteen years, so the fact that optimum yield was achieved even with these bycatch levels suggests that a bycatch cap at the lowest level analyzed, 29,300 Chinook salmon, is indeed practicable for the pollock fleet, and would comport with National Standard 1. This being the case, a 60,000 hard cap is not necessary to meet National Standard 1 or the practicability requirement of National Standard 9, and in fact seems designed more to protect the pollock fishery's revenues than the health of Western Alaska's salmon and those who depend upon them.

Response: Amendment 91 complies with National Standards 9 and 1, and the 60,000 Chinook salmon PSC limit is one component of this program. In developing this program, the Council recognized that the number of Chinook salmon caught as bycatch in the pollock fishery is highly variable from year to year, from sector to sector, and even from vessel to vessel. Current information about Chinook salmon is insufficient to determine the reasons for high or low encounters of Chinook salmon in the pollock fishery or the degree to which encounter rates are

related to Chinook salmon abundance or other conditions. The uncertainty and variability in Chinook salmon bycatch led the Council to create a program with a combination of management measures that together achieve its objective to minimize bycatch to the extent practicable in all years while providing the fleet the flexibility to harvest the pollock TAC.

Since Amendment 91 divides the PSC limit between the A and B seasons and allocates the PSC limits to the sectors, cooperatives, CDQ groups, and, potentially, non-transferable allocations, the actual allocations are small and could be limiting to an entity that is trying to avoid bycatch in a high bycatch year. In these years, the flexibility of the higher PSC limit is necessary for each sector, cooperative, or CDQ group to harvest its pollock allocation. Thus, Amendment 91 provides the flexibility for the fleet potentially to harvest its TAC, which is one aspect of achieving optimum yield in the long term. Amendment 91 balances this flexibility with the performance standard and IPA components that provide incentives for each vessel to avoid Chinook salmon at all times while fishing for pollock.

Comment 59: Amendment 91 is in direct conflict with NMFS' stated management goal of avoiding bycatch of a prohibited species like Chinook salmon. The hard cap amounts do not reduce bycatch but are an allowance for higher bycatch.

Response: NMFS disagrees. Amendment 91 achieves the stated management goal to minimize Chinook salmon bycatch to the extent practicable while achieving optimum yield by maintaining flexibility for the pollock fleet to harvest the TAC. The PSC limits are not an allowance for higher bycatch, they are one aspect of the program that imposes an absolute limit on Chinook salmon bycatch. Amendment 91 also contains a performance standard to ensure that Chinook salmon bycatch will not exceed, on average, the recent 10-year average Chinook salmon bycatch and will be much lower than bycatch levels several years prior to and including 2007. The IPAs will provide incentives for each vessel to avoid Chinook salmon bycatch at all times. Therefore, Amendment 91 aims to achieve greater reductions in Chinook salmon bycatch than the PSC limit and performance standard.

Comment 60: Members of the Bering Sea pollock fishery remain cautiously optimistic that Amendment 91 and its implementing regulations will provide the incentives and tools necessary to enable the pollock industry to fully

harvest and process the annual pollock TAC while, at the same time, minimizing to the extent practicable the fishery's bycatch of Chinook salmon—all as required by the Magnuson-Stevens Act and the national standards embodied therein.

Response: NMFS acknowledges the comment.

Comment 61: The Amendment 91 text should be clarified. As written, one of the Amendment 91 changes to the FMP executive summary states "Attainment of a Chinook salmon PSC allocation closes directed fishing for pollock in the Bering Sea subarea." It would be more accurate to State that "Under certain circumstances, attainment of a sector's or sub-sector's Chinook salmon PSC allocation may close directed fishing for pollock by that sector or sub-sector in the Bering Sea subarea."

Response: NMFS disagrees. Additional clarification is not required because the executive summary provides readers a general description of the BSAI groundfish fisheries and the conservation and management measures promulgated under the FMP. The Chinook salmon bycatch management program is described in detail at section 3.6.2 of the FMP, while other aspects of the program are specified in this final rule implementing Amendment 91. Also note that the term "sub-sector" does not appear in the FMP, in the regulations at 50 CFR Part 679, or in the Council's final action recommending Amendment 91.

Comment 62: Amendment 91 appears to be more weighted to the concerns of the profitability of industrial fisheries than to the real impacts to communities, the subsistence way of life, and the protection of Chinook salmon stocks. Rules need to be put in place that prioritize the conservation of Chinook salmon returns over the continuation of the pollock fishery in a way that allows them to remove too many Chinook salmon.

Response: Amendment 91 prioritizes the conservation of Chinook salmon by the pollock fishery. However, it does so in a way that provides the pollock fleet the flexibility to determine how best to avoid Chinook salmon while harvesting pollock. In developing this program, NMFS and the Council analyzed and considered the impacts to communities, subsistence, and Chinook salmon stocks in the EIS and RIR (see ADDRESSES).

Comment 63: The Council's rejection of bycatch proposals submitted by the most affected communities is not reassuring that future fishery management in the Arctic will be responsive to community concerns and that protective measures will be

implemented to avoid negatively impacting critical stocks of fish on which Arctic coastal communities rely.

Response: The Council's Fishery Management Plan for Fish Resources of the Arctic Management Area includes in its management policy the use of adaptive management through community-based or rights-based management. The objectives of the plan include Alaska Native and community considerations. In managing Arctic fisheries, the Council promotes management measures that, while meeting conservation objectives, are designed to avoid significant disruption of existing social and economic structures and incorporate local and traditional knowledge in fishery management, encouraging Alaska Native participation and consultation in fishery management.

Before any fishery may develop in the Arctic, an analysis must be provided of the historic commercial, sport, or subsistence harvest of the potential target and bycatch species and of the customary and traditional subsistence use patterns and evaluation of impacts on existing users. The combination of the FMP's policy and objectives with the Council's efforts to work with Native communities through its Rural Outreach Committee, should ensure concerns of Arctic communities are considered in Arctic fisheries management decisions. Arctic communities will be able to work with the Council to ensure sustainable management of Arctic marine fish resources.

Comment 64: The salmon bycatch in the pollock fishery is impacting the Copper River salmon fisheries. As Chinook salmon runs decrease elsewhere, the harvest pressure on Copper River stocks increase.

Response: NMFS acknowledges that salmon fishing effort may shift from areas with low Chinook salmon returns to more favorable fishing areas; however, many factors likely contribute to decreases in run strength. ADF&G manages the Copper River salmon fisheries to address conservation concerns.

Comment 65: No data was presented to the Council or made available to the public which would support the rationale that a low cap and low allocations could preclude pollock fishing by vessels or groups of vessels.

Response: NMFS disagrees. The EIS and RIR analysis show that a low PSC limit could limit the pollock fishery harvests below the pollock TAC in many years because a low PSC limit would not accommodate the high variability in Chinook salmon encounter rates experienced in the pollock fishery,

or the unpredictability of these rates (see **ADDRESSES**). Additionally, as the analysis shows, if the low PSC limit were allocated to sectors, cooperatives, and CDQ groups, it could result in allocations so small that it could effectively preclude pollock fishing by a vessel or group of vessels. On the other hand, not allocating the PSC limit could result in a race for fish, which would undermine the rationalized management of the AFA and the current pollock fishery management.

Comment 66: The pollock fleet's Chinook salmon bycatch significantly impairs the sustainability of western Alaska Chinook salmon runs.

Response: As explained in the EIS analysis, the degree to which levels of bycatch are related to declining returns of Chinook salmon is unknown (see **ADDRESSES**). While Chinook salmon bycatch in the pollock fishery may be a contributing factor in the decline of Chinook salmon, the absolute numbers of the ocean bycatch that would have returned to western Alaska are expected to be relatively small due to ocean mortality and the large number of other river systems contributing to the total Chinook bycatch. Although the reasons for the decline of Chinook salmon are not completely understood, scientists believe they are predominately natural. Changes in ocean and river conditions, including unfavorable shifts in temperatures and food sources, likely caused poor survival of Chinook salmon.

Comment 67: Cease operation of the pollock fishery until the Chinook salmon rebound to acceptable levels.

Response: NMFS acknowledges this comment; however, the closure of the Bering Sea pollock fishery is beyond the scope of this action.

Comment 68: The burden of conservation should be shared with the pollock fleet. Rural subsistence users have carried this burden by themselves for too long. In many parts of rural Alaska commercial, sport, and subsistence fisheries have been severely restricted, yet escapement goals are not met.

Response: NMFS acknowledges this comment.

Comment 69: Available evidence suggests that practicable and easily achievable ways to reduce bycatch below Amendment 91 cap levels exist. Amendment 91 falsely relies upon a presumption that further reductions in bycatch are not practicable; however, no evidence is presented in the EIS or Council record that this is the case. Evidence suggests that the high bycatch years may be a function of fishing

behavior and fishing patterns that are easily changed (e.g., time area closures).

Response: Amendment 91 is premised on that fact that the pollock fleet can and will reduce bycatch substantially below the 60,000 Chinook salmon PSC limit and is specifically designed, through the performance standard and IPAs, to provide incentives for each vessel to change fishing behavior to avoid Chinook salmon at all times. With Amendment 91, additional command and control management measures, such as time area closures, are not necessary to minimize bycatch to the extent practicable.

Comment 70: Overall, the proposed rule provides a good overview of the issues and challenges involving salmon bycatch reduction in the pollock fishery. The proposed rule clearly presents and describes in sufficient detail the measures managers intend to use to address salmon bycatch in the pollock fishery while assisting the public in understanding the potential impacts of those measures.

Response: NMFS acknowledges this comment.

Comment 71: The Council justified a higher cap on the basis of the possibility of a "lightning strike"—or a single haul of pollock with a high amount of Chinook salmon bycatch. The Council did not consider other methods to address this concern, such as a bycatch pool in which each vessel contributes a portion of their bycatch allocation to cover a vessel that has a lightning strike event.

Response: The Council considered public testimony that lightning strikes of Chinook salmon bycatch occur, especially in the catcher vessel fleet, in understanding the unpredictability of Chinook salmon bycatch. To address this, Amendment 91 does not allocate Chinook salmon PSC to vessels. In a sense, the Chinook salmon PSC allocations are a type of bycatch pool in that they will be allocated to the mothership sector, the catcher/processor sector, inshore cooperatives, and CDQ groups to manage among participating vessels.

Comment 72: Remand the Chinook salmon bycatch issue back to the Council with a strong statement about the failure of Amendment 91 to adequately protect and conserve Chinook salmon stocks, to provide for subsistence uses (including the small scale in-river commercial fisheries), and to meet the United States' obligation under the Yukon River Salmon Agreement. Acknowledge NMFS' emergency regulatory authority under the Magnuson-Stevens Act should bycatch reach 32,000 Chinook salmon

during the period of the remand.

Continuing under the status quo while the Council reconsiders Amendment 91 is far more acceptable and presents less of a risk to Chinook salmon stocks and the subsistence way of life than a 60,000 Chinook salmon PSC limit. The Council can act quickly on a remand because the EIS analyzed a full range of alternatives.

Response: On May 14, 2010, NMFS approved Amendment 91. As demonstrated in the EIS and ROD, Amendment 91 minimizes Chinook salmon bycatch to the extent practicable and achieves optimum yield on a continuing basis. NMFS has determined that Amendment 91 is consistent with the National Standards and other applicable law.

Amendment 91, through the IPA component, is intended to result in Chinook salmon bycatch levels below the PSC limit and performance standard. Amendment 91 is a highly innovative program, however, there is inherent uncertainty over how effective this novel approach will be in minimizing bycatch over all years and at all levels of Chinook salmon and pollock abundance. NMFS will be monitoring the bycatch closely during the season, and if information becomes available to indicate that Amendment 91 is not providing the expected Chinook salmon savings, NMFS will work with the Council to take additional actions to minimize Chinook salmon bycatch to the extent practicable.

Comment 73: Amendment 91 rewards the pollock fleet for less than responsible fishing behavior practiced by some of the fleet in 2006 and 2007. Amendment 91 is based, in part, on rationale and bycatch averages that incorporate these high years of “voluntary” compliance. This “trust me” approach in VRHS approach has failed miserably. The pollock industry should bear the burden of its past excesses rather than reaping rewards.

Response: Amendment 91 is a direct response to the high Chinook salmon bycatch in 2006 and 2007, and does not reward the fleet for that bycatch. First, the 60,000 Chinook salmon PSC limit is below the three highest years of bycatch and is approximately half the amount of the highest year, 2007. Second, while the VRHS ICA was in place in 2007, after that year, the pollock fleet made significant changes to the system for 2008, 2009, and 2010, which, in addition to other factors, have resulted some of the lowest Chinook salmon bycatch since 1990. NMFS expects that these changes to fishing practices will remain under Amendment 91, and Amendment 91 provides incentives for further reductions in bycatch while

preventing future bycatch from ever exceeding 60,000 Chinook salmon.

Comment 74: All quotas should be cut by 50 percent. You are starving all marine life that needs fish to stay alive. It is disgusting that you allow the commercial fish profiteers to walk away with one million dollars for a week's work. Those fish belong to all Americans, not just local profiteers.

Response: Amendment 91 will minimize Chinook salmon bycatch to the extent practicable and reduce the impacts of the pollock fleet on Chinook salmon. The environmental impacts of Amendment 91 and its alternatives were analyzed in the EIS (see **ADDRESSES**).

Comment 75: The Council and NMFS have an obligation to consider the Endangered Species Act (ESA) in setting the bycatch caps. The effects of Chinook salmon bycatch on the viability of listed Pacific Northwest Chinook salmon species are unknown; therefore, take may exceed permissible levels.

Response: NMFS and the Council considered the ESA in setting the PSC limits. NMFS Alaska Region conducted a formal section 7 consultation under the ESA for Amendment 91 with the NMFS Northwest region. In the December 2, 2009, biological opinion (see **ADDRESSES**), the Administrator, NMFS Northwest Region, determined that fishing activities conducted under Amendment 91 and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened salmon species or result in the destruction or adverse modification of critical habitat.

There is no permissible level of take for ESA-listed salmon. The take that is expected to occur with the action is established in the incidental take statement included in the biological opinion for this action. The incidental take statement determined that the amount or extent of expected take of ESA-listed Chinook salmon in the Bering Sea pollock fishery would be equivalent to the amount of ESA-listed Chinook salmon taken under the Chinook salmon PSC limits established by Amendment 91. If this level of take is exceeded, NMFS would be required to reinitiate section 7 consultation.

Information on the bycatch of ESA-listed stocks is from the recovery of coded-wire tagged fish from ESA-listed stocks. The only ESA-listed stocks that have been recovered from bycatch in the BSAI groundfish fisheries are from the Lower Columbia River and Upper Willamette River Chinook salmon stocks. All of these recoveries have been from the Bering Sea pollock fishery. The frequency of coded-wire tag recovery, in relation to the number of coded-wired

tagged fish released from these stocks, indicates that the take of these ESA-listed stocks in the BSAI groundfish fisheries is rare.

The final rule will improve the collection of Chinook salmon information by requiring the retention, sorting, and counting of every Chinook salmon in every haul or fishing trip. Each Chinook salmon with a clipped adipose fin, indicating a coded-wire tag may be present, will be sampled for coded-wire tags. Because of this improved sampling process, NMFS will know the actual number of coded-wire tagged ESA-listed salmon taken by the Bering Sea pollock fishery.

Comment 76: The transboundary escapement goals were not met in 2007 or 2008; therefore, the statement that “. . . salmon escapement targets are being met in general . . .” is not true. The transboundary escapement goal was only met in one out of three years because of massive curtailment of the subsistence fishing and a commercial fishing stand down.

Response: NMFS acknowledges this comment. The EIS and RIR contain information on the Yukon River escapement through 2009 (see **ADDRESSES**).

Comment 77: The Council process in adopting Amendment 91 allowed blatant conflicts of interest and disregarded the Obama administration's position on conflict of interest standards. The pollock industry was represented by voting Council members with past and/or future financial ties to the pollock fishery. When one distills the Council's decision, it is clear that it was not guided by science, facts, or law, but by misplaced policies facilitated by a process that allows for at least the appearance of a conflict of interest.

Response: NMFS disagrees. NOAA Office of General Counsel reviewed all of the financial disclosure forms that Council members had filed pursuant to § 600.235(b) and (c)(1), and concluded that the action would not have a significant and predictable effect on a financial interest disclosed in their reports. Therefore, no Council member was precluded from voting.

Comment 78: Proposed FMP revisions are problematic because they would create or perpetuate a bycatch standard that is inconsistent with the Magnuson-Stevens Act and the accompanying national standards. Each revision utilizes or depends on a requirement that groundfish fishermen “avoid” the bycatch of prohibited species including Chinook salmon. This mandate goes significantly further than the requirement of National Standard 9, which requires fishermen to “minimize

bycatch to the extent practicable.” The effect of the proposed revisions would be to arbitrarily eliminate the “to the extent practicable” qualifier of National Standard 9; replacing it with language that could jeopardize attainment of optimum yield from the fishery as required by National Standard 1. The statutory language, minimize to the extent practicable, should be utilized in establishing the regulatory mandate.

Response: Amendment 91 does not change prohibited species management under the FMP, except to implement the specific provisions of the Chinook salmon bycatch management program, as recommended by the Council. Prohibited species, which include Pacific halibut, Pacific herring, Pacific salmon and steelhead, king crab, and Tanner crab, are the most regulated and closely managed category of bycatch. The FMP states that catch of all prohibited species must be avoided. This is not a new requirement or modified language under Amendment 91. Amendment 91 only changes the FMP text in the paragraphs in question to provide for the new regulatory requirement to retain salmon in the pollock fishery so that all salmon can be counted. Changing the FMP’s provision that prohibited species must be avoided would require consideration and recommendation by the Council.

The FMP is consistent with 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. This suggests the general goal is to avoid bycatch, but if it cannot be avoided, to minimize bycatch mortality. In other words, the fact that part (B) uses the word “avoided” suggests that that word accurately encapsulates the principal aim of part (A) of National Standard 9. Therefore, the FMP is consistent with National Standard 9’s parameters, namely, that bycatch must be minimized to the extent practicable.

For Chinook salmon, Amendment 91, by design, provides the flexibility for the fleet potentially to harvest its TAC, which is one aspect of achieving optimum yield in the long term. Management of the other prohibited species is outside the scope of this action.

Comment 79: NOAA has the responsibility to modify the Council’s recommendations to fulfill Federal obligations under ANILCA, ESA, Pacific Salmon Treaty, Environmental Justice, and Federal responsibility to tribal governments. NOAA should fulfill these obligations by not implementing

Amendment 91 and insisting on the smaller bycatch rates proposed and supported by the most directly impacted communities.

Response: NMFS has complied with all applicable laws, Executive Orders, and international obligations in approving and implementing Amendment 91, as documented in the EIS and ROD (*see ADDRESSES*).

Comment 80: Amendment 91 does not comply with National Standard 8. Western Alaska communities depend on Chinook salmon as a subsistence resource and for commercial fishing. Every additional fish that escapes the pollock fleet will make a difference to communities where fishing is already severely restricted. The impacts of Amendment 91 on the pollock fishery are minor in comparison.

Response: Amendment 91 complies with National Standard 8. National Standard 8 states, “Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data based on the best scientific information available, 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” (16 U.S.C. 1851(a)(8)).

The EIS and RIR analyze the importance of Chinook salmon and pollock resources to fishing communities. Amendment 91 mitigates the impacts of status quo bycatch on Chinook salmon fishing communities and does not negatively affect the sustained participation of these fishing communities. Amendment 91 balances the needs of these communities with the ability to ascertain direct impacts to salmon streams from bycaught salmon. Understanding that this action cannot rebuild salmon streams, this action is likely to return more fish to these streams than many of the other alternatives considered by the Council. Amendment 91 also balances the needs of pollock fishing communities with need to minimize Chinook salmon bycatch in developing a program that provides the fleet the flexibility to harvest the pollock TAC.

Comment 81: The description of National Standard 1 in the preamble is an inaccurate interpretation of optimum yield. The preamble states that providing the opportunity for the fleet to harvest its TAC is one aspect of achieving optimum yield in the long term. The mere opportunity to fish

under regulations where catching fish is not possible provides nothing but an opportunity to incur costs. It is the catching of fish and the creation of economic profits that produces optimum yield.

Response: NMFS disagrees with the commenter’s description of optimum yield and the statement that the proposed regulations make it impossible to catch pollock. National Standard 1 requires that “conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry” (16 U.S.C. 1851(a)(1)). The Magnuson-Stevens Act expressly defines optimum yield in a comprehensive manner. Specifically, it means “the amount of fish which * * * (A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems; [and] (B) is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor. * * * .” 16 U.S.C. 1802(33).

Under National Standard 1, the optimum yield standard must be achieved over the long-run but not necessarily with precision each individual fishing year. Accordingly, as the preamble states, achieving optimum yield in the BSAI groundfish fishery does not equate to ensuring the ability to harvest the entire pollock TAC in any given year. For the BSAI management area, NMFS has established that the optimum yield is a range from 1.4 to 2.0 million metric tons (*see* § 679.20(a)(1)(i)). The record indicates that the regulations implementing Amendment 91 will not impede the BSAI groundfish fishery from meeting this standard.

Comment 82: The Amendment 91 PSC limits will not meet the obligations under National Standard 9 to reduce bycatch, but rather will maintain bycatch levels that are higher than historical averages.

Response: NMFS disagrees. National Standard 9 requires 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. Amendment 91 minimizes bycatch to the extent practicable. Amendment 91 is more than just a 60,000 Chinook salmon PSC limit. Amendment 91 complies with National Standard 9 because the performance standard ensures Chinook salmon

bycatch will not exceed, on average, the recent 10-year average and will be lower than bycatch levels several years prior to and including 2007. Additionally, if the IPAs work as intended, the bycatch should be well below that amount. If fishery participants do not form any IPAs, then the 47,591 PSC limit will be in effect, which is the approximate 10-year average of Chinook salmon bycatch from 1997 to 2006.

Comment 83: NMFS' interpretation of § 210(a)(1)(B) of the AFA in relation to section 402(b)(2) of the Magnuson-Stevens Act, as described in the preamble (75 FR 14032; March 23, 2010), is entirely appropriate. Chinook salmon, as well as other species in the Bering Sea, are public resources held in trust by the Federal Government. As public trust resources, the collective owners of those resources, the American people, have a right to know how those resources are being used or otherwise affected. Therefore, NMFS should make available to the public data on not just Chinook salmon bycatch, but on all bycatch in the pollock fishery on a vessel-by-vessel basis.

Response: NMFS acknowledges the comment and notes that making an AFA pollock fishing vessel's bycatch data available to the public, for species other than Chinook salmon, is outside the scope of Amendment 91.

Comment 84: Amendment 91 can be construed as a limited access allocation of Chinook salmon to the pollock fleet. Accordingly, the Council could use its Magnuson-Stevens Act 303A(e) authority to recover the costs of the management, data collection, analysis, and enforcement of the program.

Response: Section 304(d)(2) of the Magnuson-Stevens Act provides NMFS authority to collect fees for cost recovery of a limited access privilege program. That section specifies that the fee shall not exceed 3 percent of the ex-vessel value of the fish harvested under the program. This does not apply to the Chinook salmon bycatch management program because the Chinook salmon incidentally caught in the pollock fishery are not sold and therefore have no ex-vessel value.

Comment 85: Necessary information on contributions of different Chinook salmon stocks to the bycatch has not been determined. The pollock industry should be required to pay for a robust genetic research program to determine the exact Chinook salmon stock contributions as this knowledge is critical in determining impacts to various watersheds and communities hit hard by the decline of Chinook salmon.

Response: NMFS agrees that genetic research is important for understanding

the impacts of Chinook salmon bycatch in the Bering Sea pollock fishery and has taken steps to improve the collection and analysis of genetic data starting in the 2011 pollock fishery. Requiring the pollock industry to pay for this research, however, is outside of the scope of Amendment 91.

Comment 86: Develop and fund a comprehensive research program to adaptively manage salmon at all life-stages. This gravel-to-gravel research plan, which would emphasize hiring and development of local experts, would include community-based salmon research such as habitat assessments, integration of traditional knowledge, in-river and ocean sampling for genetic stock identification, and Chinook salmon's temporal and spatial use of ocean habitat.

Response: NMFS agrees that research on salmon at all life stages is important and notes that ADF&G, NMFS, the University of Alaska, and many other institutions currently conduct such research. A gravel-to-gravel research plan is outside of the scope of Amendment 91.

Comment 87: Use Magnuson-Stevens Act authority, in § 313(g)(1), to levy fines of up to \$25,000 per vessel as an incentive to reduce bycatch and make these funds available to offset costs including conservation and management measures and much-needed research.

Response: NMFS and the Council considered using this provision of the Magnuson-Stevens Act and determined, based on guidance from NOAA Office of General Counsel, that it was not appropriate for minimizing Chinook salmon bycatch in the Bering Sea pollock fishery. Section 313(g)(1) of the Magnuson-Stevens Act authorizes the Council and NMFS to impose a "system of fines" on a per-salmon caught basis, and to use those fines to offset the costs of bycatch reduction research. The fine, however, is limited to \$25,000 per vessel per season.

The use of the term "fine" in § 313(g)(1) makes this provision a penalty-based program. A concern with a penalty-based program is that it creates greater problems of proof. To prove a violation, NOAA would have to demonstrate that the vessel in question had exceeded a specific bycatch level. Experience shows that successful prosecution of this type of case requires a commitment of agency resources that is difficult to sustain. Further, since an enforcement action can take a significant amount of time to bring to successful conclusion, there can be no certainty that any fine would be recovered quickly, or that even a

successful prosecution would have a deterrent effect on Chinook salmon bycatch violators. In short, since the deterrent effect of the \$25,000 fine per vessel per season under § 313(g)(1) is relatively inconsequential, and given the length of time and agency resources necessary for successful investigations and prosecutions of violations of a fine-per-salmon-penalty program, any prosecution(s) under that program would not likely result in swift enforcement of salmon bycatch exceedences or the collection of substantial and timely funds for research.

Comment 88: Reducing bycatch of salmon in the commercial groundfish fisheries and implementing comprehensive research and monitoring are crucial to maintaining and restoring salmon runs, and should remain a priority for NMFS and the Council.

Response: NMFS acknowledges the comment.

Comment 89: Although NMFS has acknowledged the potential for unintended negative consequences of Amendment 91 on the northern fur seal populations, we urge NMFS to carefully monitor this action for any negative effects. The EIS for this action suggests that a hard cap could benefit the fur seal if the fleet shifts away from pollock prey areas, or the fishery is closed before reaching its total allowable catch. However, it is too early to determine the impact of hard caps on fur seals because of data limitations and the complexity of the ecosystem. We encourage caution in this approach.

Response: NMFS agrees that much needs to be learned about the potential effects of the pollock fishery on northern fur seals and about fur seal biology. A description of past and ongoing research is available on the National Marine Mammal Laboratory's Web site (http://www.afsc.noaa.gov/nmml/species/species_nfs.php). This research includes studies that should provide additional information regarding the pollock fishery interactions with northern fur seals. NMFS is actively pursuing research on northern fur seals to help us understand the reasons for the decline and potential threats to the population. The research projects investigate a broad range of topics related to fisheries interactions around the Pribilof Islands, including studies to quantify area-specific food habits and animal conditions, describe foraging behavior in different environments, delineate foraging habitats, and model habitat suitability in relation to fur seals and their overlap with commercial fisheries.

Comment 90: Amendment 91 would allow more salmon to be caught as bycatch in a single year than would enter into the Canadian portion of the Yukon River system in any given year's healthy run. This is an insult to Canadian First Nations. The Pacific Salmon Treaty and First Nation tribes are ignored even though they are severely impacted.

Response: The substantive issues involving Chinook salmon bycatch on the Canadian portion of the Yukon River and the Pacific Salmon Treaty were considered in the development of Amendment 91. The EIS and RIR for this action (see **ADDRESSES**) recognize that Chinook salmon taken as bycatch in the pollock fishery originate from Alaska, the Pacific Northwest, Canada, and Asian countries along the Pacific Rim. Estimates vary, but more than half of the Chinook salmon may be destined for rivers in western Alaska including the Yukon River. The EIS and RIR address the substantive issues involving the portion of Chinook salmon taken as bycatch in the Bering Sea pollock fishery that originated from the Yukon River.

NMFS acknowledges that in 2007 and 2008, the United States did not meet the Yukon River escapement goals established with Canada by the Yukon River Agreement. However, in 2009 the United States exceeded these escapement goals, allowing for harvest sharing between the United States and Canada.

Comment 91: The final rule should acknowledge the current contribution that the VRHS provides to Chinook salmon bycatch reduction efforts, especially in low abundance years when the challenge will be to keep bycatch as far below the PSC limit as is practicable. The preamble does not explain that while the VRHS was in place in 2007, the highest bycatch year, bycatch likely would have been significantly higher without the VRHS. After 2007, major modifications were made to the VRHS that have clearly helped to keep Chinook salmon bycatch down in 2008, 2009, and 2010. Based on the performance from 2008 to 2010, the VRHS remains one of the most effective tools the industry has to keep Chinook salmon bycatch within acceptable levels.

Response: The RIR prepared for this action contains a complete description of the VRHS, its performance, and modifications since it was developed.

Comment 92: Industry efforts are ongoing to develop an effective salmon "excluder" that fishermen can incorporate into their trawl nets so as to enable salmon to escape from the nets

unharmful. Ongoing experiments to design and perfect excluder devices are showing promise, and it is hoped that they, too, will make significant contributions to industry efforts to keep Chinook bycatch as low as practicable.

Response: NMFS acknowledges the comment.

Comment 93: Acknowledge the importance of salmon to ecosystems other than marine. Low Chinook salmon returns are not only bad for the people who depend on them for sustenance and income, but declining runs present substantial negative impacts to river systems, riparian habitat, upland watershed habitat, and the ocean nutrient conveyor belt.

Response: NMFS agrees and acknowledges the comment.

Comment 94: Chinook salmon bycatch in the Bering Sea pollock fishery may lead user groups to give up their way of life. If user groups cannot continue to catch more pollock and more salmon, they will starve and die.

Response: NMFS acknowledges the comment.

Tribal Consultation Issues

Comment 95: Tribes and their leaders were shut out of meaningful participation in the decision-making process. The Council limited Chinook salmon bycatch management options before any significant effort was made to involve Alaskan Native tribes. NMFS and Council staff's attempts at outreach and government-to-government tribal consultations were awkward, held too late in the process, and participation was limited. As a result, the analysis poorly characterized subsistence and its importance to rural user groups. It is evident by their actions that the majority of Council members paid no meaningful attention to the concerns of the tribes who all spoke with a strong and unified voice on this issue. Conversely, the Council meetings involved many pollock industry representatives and presentations.

Response: NMFS and the Council made significant efforts to involve Alaska Native tribes and western Alaska residents early in the process. As detailed in the EIS (see **ADDRESSES**), the Council conducted extensive outreach to Alaskan communities to explain this action, the supporting analysis, and the Council decision-making process. In conjunction with the Council outreach, NMFS consulted with interested Alaska Native representatives, as described in the Tribal Summary Impact Statement in the Classification section of this preamble.

In February 2007, the Council began developing this action by creating the

Salmon Bycatch Workgroup. The Salmon Bycatch Workgroup had members that represented western Alaska, held public meetings, and developed the first draft of the alternative set. When NMFS started the EIS scoping process on December 28, 2007, NMFS initiated the consultation process for this action by mailing letters to Alaska tribal governments, Alaska Native corporations, and related organizations. These letters provided information about the proposed action and the EIS process, and solicited consultation and coordination with Alaska Native representatives. The primary purpose of scoping is to obtain public comments on the range of alternatives and issues to analyze. Based on scoping, public testimony, and the workgroup recommendations, the Council refined the range of alternatives and developed the analysis over seven Council meetings, finalizing the alternative set and recommending the preferred alternative in April 2009.

Western Alaska residents commented that the Draft EIS and RIR poorly characterized subsistence and its importance to rural user groups. In response to these comments, NMFS, the Council, and the State of Alaska made significant improvements to this analysis for the final EIS and RIR (see **ADDRESSES**). This additional analysis was presented to the Council before they took final action to recommend Amendment 91.

Comment 96: Subsistence users of the Yukon River, the vast majority of whom are Alaska Native and have the lowest per capita income in the United States, are clearly bearing a disproportionately high adverse environmental impact under Amendment 91. Under the concept of Environmental Justice, why does Amendment 91 result in tribal subsistence users bearing virtually all of the consequences resulting from past, present, and future wasteful bycatch by the pollock fleet? This violates all measures of fairness and fails to satisfy any consideration of environmental justice. The pollock fleet can best afford to make sacrifices in order to accomplish meaningful reductions in Chinook salmon bycatch.

Response: NMFS acknowledges the comment. The EIS prepared for this action analyzes the environmental justice impacts of this action (see **ADDRESSES**).

Comment 97: NOAA conducted only one true tribal consultation, with the Bering Straits tribes. This consultation occurred with only a small fraction of the Alaska federally recognized tribes affected by Amendment 91. NOAA failed to formally respond to or follow-

up on the concerns raised by the tribes in the single inadequate tribal consultation that was held.

Response: NMFS disagrees. NMFS conducted a consultation with every tribe that requested a consultation. As detailed in the Tribal Summary Impact Statement, below, NMFS held five consultations with fifteen Alaska Native tribes. Following the Nome consultation referenced by the commenter, NMFS addressed the concerns raised by the tribal representatives in written responses in the Comment Analysis Report, and amended the EIS analysis to reflect the concerns raised at the consultation.

Comment 98: We support NMFS' efforts to implement and refine its procedures for effective and adequate consultation and coordination with Alaska Native tribes.

Response: NMFS acknowledges this comment.

Comment 99: Fewer than 5 percent of the people who live in the Yukon River drainage have heard of the Council despite the FMP containing provisions for consulting with Alaska Natives and rural communities. During the April 2009 Council meeting, NMFS stated that the analysis for this action did not include freshwater information, even though salmon are anadromous. The Tanana Chiefs Conference, the Association of Village Council Presidents, the First Nations tribes of Canada, and the Office of Subsistence Management should have all been consulted regarding the declining salmon runs. Traditional ecological knowledge must be considered.

Response: The State of Alaska manages Chinook salmon fisheries and the EIS and RIR prepared for this action (see ADDRESSES) contain extensive information from the State of Alaska on Chinook salmon in-river abundance, fisheries, and management. ADF&G was a cooperating agency in preparing the EIS and the EIS relied on subsistence information from ADF&G's Office of Subsistence Management.

As explained in the EIS, the Council conducted extensive outreach to Alaskan communities to explain this action, the supporting analysis, and the Council decision-making process. In conjunction with the Council's outreach activities, NMFS consulted with interested Alaska Native representatives, as described in the Tribal Summary Impact Statement.

Comment 100: We applaud NMFS efforts to incorporate more personal meetings with tribal representatives. We recommend that NMFS establish an Alaska Native Tribal Liaison position for the purpose of further implementing

and conducting NMFS consultation and coordination policy.

Response: NMFS acknowledges this comment. NMFS continues to encourage the participation of rural Alaska in the decision-making processes and strives to improve our tribal consultation and outreach efforts. NMFS is considering the recommendation to hire a tribal liaison as we assess the resources needed to meet tribal consultation requests and responsibilities under Executive Order 13175.

Comment 101: Tribal leaders, even those representing regions with 20, 30, and 50 tribes, were allowed an impossibly scant three minutes of time during the "public" comment part of the April 2009 meeting to express their concerns and positions. Pollock fishery representatives, on the other hand, were allowed several hours to present their incentive plans.

Response: During the April 2009 Council meeting, public testimony was limited to 4 minutes for associations and organizations and 2 minutes for individuals. Because the preliminary preferred alternative included a provision to allow the pollock industry to develop incentive plan agreements, and the Council's selection of a final preferred alternative depended on the ability to understand what such agreements may entail, the Council requested that each primary sector of the pollock industry provide a presentation on the progress and potential content of the incentive plans as part of the background presentations prior to public comment. These presentations assisted the Council and the public in understanding how the incentive plan agreements may be developed before making a decision.

Comment 102: The Secretary of Commerce has a trust obligation to protect the opportunity for Alaska Natives to continue their subsistence way of life.

Response: NMFS agrees that the Federal Government has a trust responsibility to protect the Alaskan Natives' rights of subsistence hunting and fishing. However, the environmental statutes under which the Council and NMFS act prescribe a solicitous stance toward the environment. As a result, where the government acts responsibly regarding the environment, it implements and protects the parallel concerns of Native Alaskans. In this instance, the Council and NMFS are taking action to minimize the Chinook salmon bycatch to the extent practicable. This action is intended to protect an important natural resource and therefore is also,

inherently, intended to protect Alaskan Natives' rights of subsistence fishing.

Classification

Pursuant to sections 304(b) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that Amendment 91 and this final rule are consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

Final Environmental Impact Statement (EIS) and Final Regulatory Impact Review (RIR)

An EIS and RIR were prepared to serve as the central decision-making documents for the Secretary of Commerce to approve, disapprove, or partially approve Amendment 91, and for NMFS to implement Amendment 91 through Federal regulations (see ADDRESSES). The EIS was prepared to disclose the expected impacts of this action and its alternatives on the human environment. The RIR for this action was prepared to assess the costs and benefits of available regulatory alternatives.

Final Regulatory Flexibility Analysis (FRFA)

This final regulatory flexibility analysis (FRFA) incorporates the Initial Regulatory Flexibility Analysis (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.

NMFS published the proposed rule on March 23, 2010 (75 FR 14016) with comments invited through May 7, 2010. An IRFA was prepared and summarized in the "Classification" section of the preamble to the proposed rule. The description of this action, its purpose, and its legal basis are described in the preamble to the proposed rule and are not repeated here.

NMFS received 71 letters of public comment on Amendment 91 and the proposed rule. None of these comments addressed the IRFA. NMFS received comment letters on Amendment 91 and the proposed rule from five of the six CDQ groups, which compose all the small entities directly affected by this action. In total six unique comments were received from the small entities. Two of these comments (17 and 34) resulted in revisions to the final rule from the proposed rule, while the other three (35, 36, 37, and 39) resulted in

further clarification in the preamble to the final rule.

Number and Description of Small Entities Regulated by This Action

This action applies only to those entities that participate in the directed pollock trawl fishery in the Bering Sea. These entities include the AFA-affiliated pollock fleet and the six CDQ groups that receive allocations of Bering Sea pollock.

The Regulatory Flexibility Act (RFA) requires consideration of affiliations among entities for the purpose of assessing if an entity is small for RFA purposes. The AFA pollock cooperatives are a type of affiliation. All of the non-CDQ entities directly regulated by this action were members of AFA cooperatives in 2008 and, therefore, NMFS considers them "affiliated" large (non-small) entities for RFA purposes.

Due to their status as non-profit corporations, the six CDQ groups are identified as "small" entities under the Small Business Administration's (SBA) guidelines. This action directly regulates the six CDQ groups, and NMFS considers the CDQ groups to be small entities for RFA purposes. As described in regulations implementing the RFA (13 CFR 121.103), the CDQ groups' affiliations with other large entities do not qualify them as large entities. Revenue derived from groundfish allocations and investments in BSAI fisheries enable these non-profit corporations to better comply with the burdens of this action, when compared to many of the large AFA-affiliated entities. Nevertheless, the only small entities that are directly regulated by this action are the six CDQ groups.

No duplication, overlap, or conflict between this action and existing Federal rules has been identified.

A FRFA must describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. "Significant alternatives" are those that achieve the stated objectives for the action, consistent with prevailing law, with potentially lesser adverse economic impacts on small entities, as a whole.

NMFS approved and is implementing Amendment 91 following recommendations by the Council. The

EIS, RIR, and FRFA for this action considered four alternative management actions to the preferred alternative.

As the "preferred alternative," Alternative 5 constitutes the "final rule." The remaining four alternatives (in various combinations of options and suboptions) constitute the suite of "significant alternatives," under the final rule, for RFA purposes. Each is addressed below. Please refer to section 2.5 of the EIS for the detailed impacts analyses. Data on cost and operating structure within the CDQ sector are unavailable, so a wholly quantitative evaluation of the size and distribution of burdens cannot be provided. The following is a summary of the contents of those more extensive analyses, specifically focusing on the aspects which pertain to small entities.

Under the status quo alternative (Alternative 1), the Chinook Salmon Savings Area, established by Amendment 84 to the FMP, creates separate non-CDQ and CDQ Chinook salmon PSC limits. NMFS closes the Chinook Salmon Savings Area upon attainment of the non-CDQ Chinook salmon PSC limit. The CDQ Program receives allocations of 7.5 percent of the Chinook salmon PSC limit (or 2,175 Chinook salmon) as PSQ reserve. NMFS further allocates PSQ reserves among the six CDQ groups, based on a recommendation by the State of Alaska in 2005. The State of Alaska recommended that the percentage allocation of Chinook salmon PSQ and non-Chinook salmon PSQ among the CDQ groups be the same as the CDQ groups' percentage allocations of pollock. The percentage allocation of Chinook salmon PSQ by CDQ group is as follows: Aleutian Pribilof Island Community Development Association (APICDA) 14 percent, Bristol Bay Economic Development Corporation (BBEDC) 21 percent, Central Bering Sea Fisherman's Association (CBSFA) 5 percent, Coastal Villages Region Fund (CVRF) 24 percent, Norton Sound Economic Development Corporation (NSEDC) 22 percent, and Yukon Delta Fisheries Development Association (YDFDC) 14 percent. Allocations of salmon PSQ to the CDQ groups are transferable among the CDQ groups.

Unless exempted because of participation in the VRHS ICA, a CDQ group is prohibited from directed fishing for pollock in the Chinook Salmon Savings Area when the Chinook salmon PSQ is reached. As described earlier in the preamble to this final rule, the VRHS ICA provides real-time salmon PSC information, so that the fleet can avoid areas of high Chinook salmon interception rates. The fleet

voluntarily started the VRHS in 2002 for Chinook salmon, and in 2008 NMFS approved the regulations implementing Amendment 84 to the BSAI FMP. In 2008 and 2009, all CDQ groups were voluntarily participating in an ICA, so they were exempt from the closure of the Chinook Salmon Savings Area.

Alternative 1 would likely impose the least burden on the CDQ groups, because it does not impose a Chinook salmon PSC limit that could prevent the full harvest of their respective pollock allocations. While the annual reports indicate that the VRHS ICA has reduced Chinook salmon encounter rates compared to what they would have been without the ICA, the highest historical Chinook salmon bycatch occurred in 2007, when the ICA was in effect under an exempted fishing permit. This high level of bycatch indicates that the status quo management measures, despite their giving the pollock fleet the tools to reduce salmon bycatch, contain no effective upper limit on the amount of Chinook salmon bycatch taken in the fishery. NMFS and the Council remain concerned that the status quo management has the potential for high amounts of Chinook salmon bycatch as experienced in 2007.

The hard cap alternative (Alternative 2) would establish an upper limit to Chinook salmon bycatch in the pollock fishery. A range of suboption caps, from 29,323 to 87,500 Chinook salmon, were considered, based on various averages of Chinook salmon bycatch in the pollock fishery over a range of historical year combinations from 1997 through 2006. Analysis in sections 6.10.3 and 7.3 of the RIR examined the potential impacts on CDQ groups over this range. All Chinook salmon caught by vessels participating in the pollock fishery would accrue toward the cap. Under this alternative, upon reaching a Chinook salmon PSC limit, all directed pollock fishing would stop, regardless of potential forgone pollock harvests.

As described in the EIS section 2.2, this alternative includes several different options for management of a PSC limit, including separate PSC limits for the CDQ Program and the remaining AFA sectors, and hard caps divided by season, by sector, or a combination of both. In addition, the Council included an option to allow small entities (*i.e.*, CDQ groups) and non-CDQ groups to transfer Chinook PSC allocations among sectors, between the A and B seasons, or a combination of both, that would allow small entities more flexibility to harvest the full TAC in high Chinook salmon encounter years.

Regardless of the hard cap level or allocation option chosen, the

establishment of an upper limit on the amount of Chinook salmon bycatch in the pollock fishery would require participants in the CDQ Program to stop directed fishing for pollock if a hard cap were reached, because further directed fishing for pollock would likely result in exceeding the Chinook salmon hard cap. As the analysis in section 6.10 of the RIR demonstrates, the lower the hard cap selected, the higher the probability of a fishery closure and potential for forgone pollock revenues to the CDQ groups.

Although this alternative would have established an upper limit to Chinook salmon bycatch, the hard cap alternative alone would fail to promote Chinook salmon avoidance during years of low salmon encounter rates and could result in a loss of revenues to CDQ groups, due to the closure of the fishery before the TAC has been harvested. Additionally, this alternative could create a race for Chinook salmon bycatch, similar to a race for fish in an open access fishery, which could increase the likelihood of wasteful fishing practices, a truncated directed fishing season, and forgone pollock harvest. The final rule retains components of Alternative 2 that will limit the burden on the small entities and further increase the flexibility for small entities through an IPA to minimize Chinook bycatch, to the extent practicable, at all levels of salmon or pollock abundance, while establishing an upper limit on Chinook salmon bycatch. Furthermore, the Council rejected Alternative 2 in partial response to public testimony described below.

During public comment, the Council received varying perspectives from CDQ participants on the costs and benefits of the range of PSC limits under consideration. NMFS received written comments from three of the six CDQ groups. While two CDQ groups (BBEDC and YDFDA) argued for a lower limit than this final rule provides, it was asserted by some, (including members of CVRF communities) that a hard cap higher than 68,000 Chinook salmon would increase the possibility that they could both harvest their full pollock allocation, under AFA, and receive full royalty and profit sharing payments from those allocations. The importance of the pollock resource, as a source of revenue for these small entities, indicates that any loss of pollock catch represents an increased economic burden on the CDQ groups (small entities). Public comment from CDQ members revealed the complexity of the issue for CDQ groups and communities. Although CDQ communities derive revenue from pollock and other BSAI

fisheries, many of these CDQ stakeholders also depend on sustainable Chinook salmon runs for subsistence, cultural, and spiritual practices; therefore, this issue is not strictly a matter of finances. The Council ultimately rejected Alternative 2 in recognition that a hard cap alone would not achieve the Council's objectives for this action.

The modified area triggered closure alternative (Alternative 3) is similar to the status quo in that regulatory time and area closures would be invoked when specified Chinook salmon PSC limits are reached, but NMFS would remove the VRHS ICA exemptions to the closed areas. This alternative would incorporate new cap levels for triggered closures, sector allocations, and transfer provisions and could impose a lower burden on the CDQ groups than the preferred alternative. If triggered, NMFS would close only the seasonal areas, described in section 2.3 of the EIS, to directed pollock fishing. This alternative would not necessarily prevent small entities from the full harvest of their pollock TAC, because fishing effort outside of the closed areas could continue until the fishing season ended.

While Alternative 3 appears to reduce the economic impacts of forgone pollock revenue on small entities, when compared to the hard cap alternative, it does not provide any incentive to minimize Chinook salmon bycatch below the trigger amount. This alternative would shift the fleet's fishing effort to areas that may (or, as experienced in recent seasons, may not) have a lower risk of Chinook salmon encounters, but would not achieve the Council's objectives to promote Chinook salmon avoidance at the vessel level, establish a maximum limit on Chinook salmon bycatch in the pollock fishery, or hold the industry accountable for minimizing Chinook salmon bycatch.

At its June 2008 meeting, the Council developed a preliminary preferred alternative (Alternative 4) that contains components of Alternatives 1 through 3. Alternative 4 would set a hard cap for all vessels participating in the pollock fisheries and includes provisions for a voluntary ICA that must encourage Chinook salmon avoidance, at all levels of pollock and Chinook salmon abundance and encounter rates. This alternative would minimize the burden on small entities by setting a relatively high PSC limit (68,392 Chinook salmon), allowing participants in an ICA to share the burden of reducing Chinook bycatch, and allowing sector level PSC allocation transfers.

PSC allocations under Alternative 4 would limit the burden on the small entities by increasing their annual allocation of the Chinook salmon PSC limit. Under component 2 of this alternative, a sector's allocation of Chinook salmon bycatch would be calculated at 75 percent historical bycatch and 25 percent AFA pollock quota, with allowances for the CDQ sector. Estimates of historic bycatch in the CDQ sector were based on lower bycatch hauls when compared to non-CDQ sectors, due in part to agreement with the catcher/processor fleet contracted to harvest pollock on behalf of the CDQ sector. These historical bycatch estimates would have resulted in a lower initial allocation of Chinook salmon to CDQ groups, potentially increasing forgone revenue loss for small entities. Therefore, component 2 estimates the historic CDQ bycatch rates by blending CDQ bycatch rates with those of sectors harvesting pollock on behalf of the CDQ groups. The resulting higher PSC allocations would decrease the probability of forgone pollock revenue and the financial burden of this action on the CDQ groups. NMFS provides a description of the sector allocation in section 2.4 of the EIS (see **ADDRESSES**).

During public comment on the Draft EIS, a different sector allocation was proposed to component 2 of Alternative 4. The suggested allocation would further reduce the burden on the small entities by allocating Chinook salmon based on 25 percent history and 75 AFA pollock allocation. Such an allocation would further benefit CDQ groups by increasing the PSC allocations to the CDQ groups above the amount provided under component 2 of Alternative 4. The Council considered and rejected this suggestion because such an allocation would not adequately represent the different fishing practices and patterns each sector utilizes to fully harvest their pollock allocations.

Despite the advantages of Alternative 4, the Council did not recommend this alternative, noting that it failed to meet the Chinook salmon conservation objective of this action by setting too high a PSC limit and by not establishing a performance standard to promote and ensure that the pollock fishery minimized Chinook salmon bycatch to the extent practicable. However, by unanimous vote, the Council selected a preferred alternative that retained component 2 from Alternative 4, which is designed to reduce the economic burden on the CDQ groups.

The preferred alternative (Alternative 5), which constitutes the "final action" under this element of the FRFA, reflects

the least burdensome of management structures available, in terms of directly regulated small entities, while fully achieving the conservation and management purposes consistent with applicable statutes. As described elsewhere in the final rule for this action, Alternative 5 combines a limit on the amount of Chinook salmon that may be caught incidentally with a novel approach designed to minimize bycatch, to the extent practicable, in all years and should result in a greater reduction of Chinook salmon bycatch over time than the PSC limits and performance standard.

The uncertainty and variability in Chinook salmon bycatch led the Council and NMFS to create an innovative and comprehensive management program, which limits the burden on CDQ groups through performance rather than design standards. Alternative 5 establishes a system of transferable PSC allocations and a performance standard to provide CDQ groups with the flexibility to decide how best to comply with the requirements of this action, given the other constraints imposed on the pollock fishery (*e.g.*, pollock TAC, market conditions, area closures associated with other rules, gear restrictions, climate and oceanographic change).

NMFS decided to implement the Council's recommended alternative because it best balances a suite of management measures that enable NMFS to manage Chinook salmon bycatch in the pollock fishery, while meeting all statutory, regulatory, and national policy requirements, goals, and objectives. Following a comprehensive review of the relevant environmental, economic, and social consequences of the alternatives, NMFS did not identify any additional alternatives to those analyzed in the EIS, RIR, and the FRFA that had the potential to further reduce the economic burden on small entities, while achieving the objectives of this action. The EIS section 2.6, contains a detailed discussion of alternatives considered and eliminated for further analysis (*see ADDRESSES*).

Recordkeeping and Reporting Requirements

In addition to revising some existing requirements, this rule will add recordkeeping and reporting requirements needed to implement the preferred alternative including those related to—

- Reporting Chinook salmon bycatch by vessels directed fishing for pollock in the Bering Sea;

- Applications to transfer Chinook salmon PSC allocations to another eligible entity;

- Development and submission of proposed IPAs and amendments to approved IPAs; and

- An annual report from each IPA representative documenting information and data relevant to the Chinook salmon bycatch management program.

The CDQ groups enter contracts with partner vessels to harvest their pollock allocations. Many of these vessels are at least partially owned by the CDQ groups. Although the accounting of Chinook salmon bycatch by partner vessels fishing under CDQ allocations will accrue against each respective CDQ group's seasonal PSC limit, most of the recordkeeping, reporting, and compliance requirements in the final rule apply to the vessels harvesting pollock, as well as the processors processing pollock delivered by catcher vessels. For example, under existing requirements at § 679.5, landings and production reports that include information about Chinook salmon bycatch are required to be submitted by processors.

NMFS clarifies that, in the future, if a CDQ group chooses to have pollock CDQ delivered to a shoreside processing plant, the catcher vessel used to harvest the pollock CDQ would need to designate the trip as a CDQ trip and comply with the retention and observer coverage requirements for catcher vessels, and the pollock would have to be delivered to a processor with an approved CMCP. These steps will ensure that all salmon bycatch from the pollock CDQ fisheries are properly counted and reported.

The CDQ groups already receive transferable Chinook and non-Chinook salmon PSQ allocations and have received such allocations under the CDQ Program since 1999. Therefore, NMFS will not require CDQ groups to apply for recognition as entities eligible to receive transferable Chinook salmon PSC allocations. The CDQ groups are already authorized to transfer their salmon PSQ allocations to and from other CDQ groups, using existing transfer applications submitted to NMFS.

New under this action is the authorization for the CDQ groups to transfer Chinook salmon PSC allocations to and from AFA entities, outside of the CDQ Program, including the AFA inshore cooperatives and the entities representing the AFA catcher/processor sector and the AFA mothership sector. Because of this new feature, CDQ groups will use a new application form to transfer Chinook

PSC; all other transfers by CDQ groups will continue to be accomplished using the CDQ or PSQ Transfer Application. The existing application has been revised to provide this instruction.

Participation in an IPA is voluntary, but it is necessary to receive transferable allocations of a portion of the 60,000 Chinook salmon PSC limit. Therefore, it is likely that the CDQ groups will participate in one or more IPAs. A CDQ group may participate in an IPA with vessel owners from other AFA sectors, or the CDQ groups may develop an IPA that applies only to CDQ groups and vessels fishing on behalf of the CDQ groups. Each vessel harvesting pollock CDQ on behalf of a CDQ group must be listed in an approved IPA in which the CDQ group also is a participant, as required by § 679.21(f)(12)(ii)(C). If a CDQ group participates in an IPA, it will share the costs of developing and managing the IPA and meeting the reporting requirements. However, these costs are offset by the increased allocation of Chinook salmon PSC for IPA participants.

The professional skills necessary to prepare the reporting and recordkeeping requirements that will apply to the CDQ groups under this action include the ability to read, write, and understand English; the ability to use a computer and the Internet to submit electronic transfer request applications; and the authority to take actions on behalf of the CDQ group. Each of the six CDQ groups has executive and administrative staffs capable of complying with the reporting and recordkeeping requirements of this action and the financial resources to contract for any additional legal or technical expertise that they require to advise them.

Small Entity Compliance Guide

NMFS has posted a small entity compliance guide on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov/sustainablefisheries/bycatch/default.htm>) to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996, which requires a plain language guide to assist small entities in complying with this rule. Contact NMFS to request a hard copy of the guide (*see ADDRESSES*).

Tribal Summary Impact Statement (E.O. 13175)

Executive Order 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), and the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995) outline the

responsibilities of NMFS in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 109–447 (118 Stat. 3267), extends the consultation requirements of Executive Order 13175 to Alaska Native corporations.

Pursuant to Executive Order 13175, NMFS is obligated to consult and coordinate with federally recognized tribal governments and Alaska Native Claims Settlement Act regional and village corporations on a government-to-government basis. Specifically, Executive Order 13175 requires Federal agencies to: (1) Regularly consult and collaborate with Indian tribal governments and Alaska Native corporations in developing Federal regulatory practices that significantly or uniquely affect their communities; (2) reduce the imposition of unfunded mandates on Indian tribal governments; and (3) streamline the applications process for and increase the availability of waivers to Indian tribal governments.

Section 5(b)(2)(B) of Executive Order 13175 requires NMFS to prepare a tribal summary impact statement as part of the final rule. This statement must contain: (1) A description of the extent of the agency's prior consultation with tribal officials; (2) a summary of the nature of their concerns; (3) a statement of the extent to which the concerns of tribal officials have been met; and (4) the agency's position supporting the need to issue the regulation.

A Description of the Extent of the Agency's Prior Consultation With Tribal Officials

On December 28, 2007, when NMFS started the EIS scoping process for this action, NMFS mailed letters to Alaska tribal governments, Alaska Native corporations, and related organizations ("Alaska Native representatives"). The letter provided information about the proposed action, the EIS process, and solicited consultation and coordination with Alaska Native representatives. NMFS received 12 letters providing scoping comments from representatives of tribal governments and Alaska Native Corporations. These comments were summarized and included in the scoping report available on the NMFS Alaska Region Web site (*see ADDRESSES*). Additionally, a number of tribal representatives and tribal organizations provided written public comments and oral public testimony to the Council during Council outreach meetings on Amendment 91 and at the numerous Council meetings at which Amendment 91 was discussed.

Once the Draft EIS was released on December 5, 2008, NMFS sent another letter to Alaska Native representatives announcing the release of the document and soliciting comments concerning the scope and content of the Draft EIS. The letter included a copy of the executive summary of the Draft EIS and provided information on how to obtain a printed or electronic copy of the Draft EIS. NMFS also mailed 23 copies of the Draft EIS to the Alaska Native representatives who had requested a copy or provided written comments to NMFS during scoping. NMFS received 14 letters of comment on the Draft EIS from representatives of tribal governments, tribal organizations, or Alaska Native corporations. These comments were summarized and responded to in the Comment Analysis Report (CAR) in Chapter 9 of the EIS and the comment letters are posted on the NMFS Alaska Region Web site (*see ADDRESSES*).

NMFS conducted tribal consultations at the request of representatives from the following federally recognized tribes: The Nome Eskimo Community; the Chinik Eskimo Community (representing the village of Golovin); the Stebbins Community Association; the Native Village of Unalakleet; the Native Village of Kwigillingok; the Native Village of Kipnuk; the Alakanuk Tribal Council; the Native Village of Koyuk; the Native Village of Elim; the Native Village of Gambell; Native Village of Savoonga; Saint Michael; Shaktolik; King Island; and the Native Village of Eyak.

NMFS held a tribal consultation in Nome, Alaska, on January, 22, 2009, in conjunction with a Council outreach meeting on Chinook salmon bycatch. Consulting in person with NMFS in Nome were representatives of the Nome Eskimo Community, the Chinik Eskimo Community, and the Native Village of Elim. Representatives of the Stebbins Community Association and the Native Village of Unalakleet participated by telephone. Council staff provided information on the Draft EIS, the alternatives, and the schedule for Council action. As part of the consultation, NMFS staff provided additional information and listened to the concerns and issues raised by the tribal representatives. The Nome Eskimo Community submitted a letter to NMFS with its comments during the tribal consultation. NMFS considered and responded to these comments in the CAR.

NMFS also held a tribal consultation teleconference on March 17, 2009, with the Native Village of Kwigillingok and the Bering Sea Elders Advisory Group, which has 37 tribes as members. The

Regional Administrator provided information about the upcoming final action by the Council and the Draft EIS comment period and listened to the concerns and issues raised by the tribal representatives. The concerns expressed in the consultation were provided in a letter from the Bering Sea Elders Advisory Group.

On October 19, 2009, NMFS held a tribal consultation teleconference with the Alakanuk Tribal Council and the Native Village of Kipnuk. The Regional Administrator provided information on the Chinook and chum salmon bycatch in the Bering Sea in 2009 and listened to the concerns and issues raised by the tribal representatives.

Following the release of the EIS and RIR on December 7, 2009, NMFS sent another letter to Alaska Native representatives announcing the release of the EIS and providing information on how to participating in the rulemaking process. These letters included a copy of the EIS and RIR executive summary and provided information on how to obtain a printed or electronic copy of the EIS and RIR. NMFS also mailed 28 copies of the EIS and RIR to the Alaska Native representatives who requested a copy or who had provided written comments to NMFS. NMFS received one comment from an Alaska Native organization on the EIS that was summarized and responded to in the ROD (*see ADDRESSES*).

On October 13, 2009, NMFS received a request from the Native Village of Unalakleet for tribal consultation on a number of fishery management issues regarding the Bering Sea. On February 16, 2010, NMFS conducted a tribal consultation in Unalakleet, Alaska, that included tribal representatives from the Native Village of Unalakleet, the Native Village of Koyuk, Stebbins Community Association, Native Village of Elim, the Native Village of Gambell, the Native Village of Savoonga, Saint Michael, Shaktolik, and King Island. Among other issues, Amendment 91, general rulemaking and tribal consultation processes, salmon research, and fisheries bycatch management were discussed. The report NMFS prepared on this consultation is available on the NMFS Alaska Region Web site (*see ADDRESSES*).

On March 24, 2010, NMFS continued the consultation process by sending another letter to all Alaska Native representatives when the Notice of Availability for Amendment 91 and the proposed rule were published in the **Federal Register**. The letter included a copy of these documents and notified representatives of the opportunity to comment and consult. NMFS received

45 letters of comment on Amendment 91 and the proposed rule from tribal members and representatives of tribal governments, tribal organizations, or Alaska Native corporations. The comment summaries and NMFS' responses are provided in this preamble under Response to Comments.

On May 18, 2010, NMFS held a tribal consultation teleconference with the Native Village of Eyak. The Regional Administrator provided information on Amendment 91 and Chinook salmon and listened to the concerns and issues raised by the tribal representatives.

A Summary of the Nature of Tribal Concerns

The concerns expressed in consultations and reflected in written comments from tribal representatives and members center on four themes. First, Chinook salmon is vitally important to tribal members, and they suffer great hardships when Chinook salmon abundance is low. Second, tribal representatives attribute low Chinook salmon in-river returns directly to bycatch in the Bering Sea pollock fishery. Third, tribal members want Chinook salmon bycatch greatly curtailed by a hard cap of between zero and 32,000 Chinook salmon. Fourth, NMFS should improve its consultation process and include tribal perspectives early in decision-making. The Alaska tribal representatives' specific concerns raised during the consultations before the EIS was finalized were summarized and responded to in the EIS (*see ADDRESSES*). The Alaska tribal representatives' specific concerns raised after the EIS was published are addressed in the Response to Comments in this final rule.

A Statement of the Extent to Which the Concerns of Tribal Officials Have Been Met

One of the primary factors in initiating this action was concern over the potential impacts of Chinook salmon bycatch in the Bering Sea pollock fishery on the return of Chinook salmon to western Alaska river systems and the recognition of the importance of Chinook salmon to the people in western Alaska. While the final program is not the program advocated by many Alaska Native representatives, it will minimize bycatch to the extent practicable.

To address their first concern that the draft analysis poorly characterized the subsistence fishery for Chinook salmon and its importance to rural user groups, NMFS, the Council, and the State of Alaska made significant improvements to the final EIS and RIR analysis to

accurately document the importance of the subsistence way of life. The analysis includes the best available information from the ADF&G Office of Subsistence and current literature, and the traditional knowledge shared with NMFS and the Council in consultations and comments. This additional analysis was presented to the Council before it took final action to recommend Amendment 91 and was the analysis used by the agency to approve Amendment 91.

To address the second concern, the EIS applied the best available scientific information to conduct an adult equivalent analysis to determine the impacts of the pollock fishery on the annual returns of Chinook salmon to the river systems in Western Alaska. As explained in the EIS analysis, the degree to which levels of bycatch are related to declining returns of Chinook salmon is unknown. While Chinook salmon bycatch in the Bering Sea pollock fishery may be a contributing factor in the decline of Chinook salmon, the EIS analysis shows that the absolute numbers of the ocean bycatch that would have returned to western Alaska are expected to be relatively small due to ocean mortality and the large number of other river systems contributing to the total Chinook salmon bycatch. Although the reasons for the decline of Chinook salmon are not completely understood, scientists believe they are predominately natural. Changes in ocean and river conditions, including unfavorable shifts in temperatures and food sources, likely caused poor survival of Chinook salmon.

NMFS considered the recommended hard caps from tribal members, and the most recommended limit of 32,500 Chinook salmon was analyzed in the EIS and RIR. As discussed above, NMFS has determined Amendment 91 is a better program than a hard cap alone because it includes a mechanism, the IPA, that provides incentives for pollock fishing vessels to avoid Chinook salmon bycatch under any condition of pollock and Chinook salmon abundance in all years. Amendment 91 will achieve the conservation objectives of minimizing Chinook salmon bycatch to the extent practicable, but includes management measures that provide the fleet the flexibility to harvest the pollock TAC within the specified Chinook salmon PSC limits.

NMFS and the Council have made great efforts to conduct outreach, communication, and consultations with Alaska Native tribes, organizations, Alaska Native corporations, and communities. NMFS and the Council made significant efforts to involve

Alaska Native tribes and western Alaska residents early in the process of developing Amendment 91. As explained in the EIS, the Council conducted extensive outreach to Alaskan communities to explain this action, the supporting analysis, and the Council decision-making process. In conjunction with the Council outreach, NMFS provided information to all tribes at each step in the process and consulted with interested Alaska Native representatives, as described in "A Description of the Extent of the Agency's Prior Consultation with Tribal Officials."

In response to the tribal concerns, NMFS and the Council have also taken steps to improve these processes. In November 2009, NMFS conducted a workshop with interested tribal officials on tribal consultations and has responded to the recommendations made at that workshop. More information on NMFS' tribal consultation process is available on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov/tc/>). The Council also created the Rural Community Outreach Committee to develop outreach plans for specific Council actions and educational workshops for rural communities on environmental law and the Council process. More information on the Council's outreach efforts is available on the Council's Web site (<http://alaskafisheries.noaa.gov/npfmc/default.htm>).

NMFS' Position Supporting the Need To Issue the Regulation

This final rule is needed to implement Amendment 91, a complex and innovative program to minimize bycatch to the extent practicable in the pollock fishery. This final rule is also needed to implement increased observer coverage and ensure that every salmon caught in the pollock fishery is counted so that NMFS has accurate salmon bycatch data. NMFS is also expanding the biological sampling to improve data on the origins of salmon caught as bycatch in the pollock fishery.

Collection-of-Information Requirements

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

OMB Control No. 0648-0213

Public reporting burden per response is estimated to average 30 minutes for

eLandings Catcher/Processor Trawl Gear Electronic Logbook.

OMB Control No. 0648-0393

Public reporting burden per response is estimated to average 8 hours for the Application for Approval as an Entity to Receive Transferable Chinook Salmon PSC Allocation form and 15 minutes for the Application for Transfer of Chinook Salmon PSC Allocations.

OMB Control No. 0648-0515

Public reporting burden per response is estimated to average 20 minutes for the eLandings Catcher/Processor or Mothership Production Report.

This rule also contains new collection-of-information requirements subject to the PRA. These information collections have been submitted to and approved by the OMB.

OMB Control No. 0648-0609

Public reporting burden per response is estimated to average 30 minutes for the Groundfish/Halibut CDQ and Prohibited Species Quota (PSQ) Transfer Request.

OMB Control No. 0648-0610

Public reporting burden per response is estimated to average 40 hours for the AFA CMCP; 5 minutes for the Inspection Request for Inshore CMCP; 8 hours for the CMCP Addendum; 1 hour for the Electronic Monitoring System; and 2 hours for the Inspection Request for Electronic Monitoring System.

OMB Control No. 0648-0401

Public reporting burden per response is estimated to average 40 hours for the

Application for Proposed Chinook Incentive Plan Agreement (IPA); 8 hours for the Chinook IPA annual report; 40 hours for the initial non-Chinook Inter-Cooperative Agreement (ICA); 8 hours for the non-Chinook ICA annual report; 12 hours the annual AFA cooperative report; 5 minutes for the IPA agent of service (this item will be removed because it is part of the ICA); and 5 minutes for the ICA agent of service (this item will be removed because it is part of the IPA).

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

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by 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, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 13, 2010.

Samuel D. Rauch III,

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

■ For the reasons set out in the preamble, NMFS amends 15 CFR Chapter IX and 50 CFR Chapter VI as follows:

TITLE 15—COMMERCE AND FOREIGN TRADE

CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

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

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

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

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

■ a. Remove entries for “679.28(b), (c), (d), and (e)” and “679.28(g)”; and

■ b. Add entries in alphanumeric order for “679.21(f) and (g)”; and “679.28(b), (c), (d), (e), (g), and (j)”.

The additions read as follows:

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

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control No. (all numbers begin with 0648-)
* * * * *	
50 CFR	
* * * * *	
679.21(f) and (g)	-0393 and -0608.
* * * * *	
679.28(b), (c), (d), (e), (g), and (j)	-0610.
* * * * *	

TITLE 50—WILDLIFE AND FISHERIES

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

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

■ 4. In § 679.2,

■ a. Remove the definitions for “Bycatch rate”, “Chinook Salmon Savings Area of the BSAI”, “Fishing month”, “Observed or observed data”, and “Salmon bycatch reduction intercooperative agreement (ICA)”;

■ b. In the definition for “Fishing trip”, revise paragraph (1) introductory text, paragraph (1)(i) introductory text, and paragraph (1)(ii), and add new paragraph (6);

■ c. Add new definitions for “Agent for service of process”, “Chinook salmon bycatch incentive plan agreement (IPA)”, “Non-Chinook salmon bycatch reduction intercooperative agreement (ICA)”, and “Observed”.

The addition and revisions read as follows:

§ 679.2 Definitions.

* * * * *

Agent for service of process means, for purposes of § 679.21(f), a person appointed by the members of an AFA inshore cooperative, a CDQ group, or an entity representing the AFA catcher/processor sector or the AFA mothership sector, who is authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of the inshore cooperative, the

entity representing the catcher/processor sector, the entity representing the mothership sector, or the entity representing the cooperative or a CDQ group and owners of all vessels directed fishing for pollock CDQ on behalf of that CDQ group.

* * * * *

Chinook salmon bycatch incentive plan agreement (IPA) is a voluntary private contract, approved by NMFS under § 679.21(f)(12), that establishes incentives for participants to avoid Chinook salmon bycatch while directed fishing for pollock in the Bering Sea subarea.

* * * * *

Fishing trip means:

(1) Retention requirements (MRA, IR/IU, and pollock roe stripping) and R&R requirements under § 679.5.

(i) Catcher/processors and motherships. An operator of a catcher/processor or mothership processor vessel is engaged in a fishing trip from the time the harvesting, receiving, or processing of groundfish is begun or resumed in an area until any of the following events occur: * * *

(ii) Catcher vessels. An operator of a catcher vessel is engaged in a fishing trip from the time the harvesting of groundfish is begun until the offload or transfer of all fish or fish product from that vessel.

* * * * *

(6) For purposes of § 679.7(d)(9) for CDQ groups and § 679.7(k)(8)(ii) for AFA entities, the period beginning when a vessel operator commences harvesting any pollock that will accrue against a directed fishing allowance for pollock in the BS or against a pollock CDQ allocation harvested in the BS and ending when the vessel operator offloads or transfers any processed or unprocessed pollock from that vessel.

* * * * *

Non-Chinook salmon bycatch reduction intercooperative agreement

(ICA) is a voluntary non-Chinook salmon bycatch avoidance agreement, as described at § 679.21(g) and approved by NMFS, for directed pollock fisheries in the Bering Sea subarea.

* * * * *

Observed means observed by one or more observers (see subpart E of this part).

* * * * *

■ 5. In § 679.5,

■ a. Revise paragraphs (c)(4)(i)(B), (c)(4)(ii)(A)(1), (c)(6)(ii)(A), (e)(10)(iii)(M), (f)(1) introductory text, (f)(1)(iv), (f)(2)(iii)(B)(1), (f)(7) introductory text, and paragraph (f)(7)(i); and

■ b. Add paragraph (f)(1)(vii).

The revisions and additions read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(c) * * *

(4) * * *

(i) * * *

(B) Except as described in paragraph (f)(1)(iv) or (vii) of this section, the operator of a catcher/processor that is required to have an FFP under § 679.4(b) and that is using trawl gear to harvest groundfish is required to use a combination of catcher/processor trawl gear DCPL and eLandings to record and report daily processor identification information, catch-by-haul landings information, groundfish production data, and groundfish and prohibited species discard or disposition data. Under paragraph (f)(1)(vii) of this section, the operators of AFA catcher/processors or any catcher/processor harvesting pollock CDQ are required to use an ELB and no longer report using a DCPL.

(ii) * * *

(A) * * *

DATA ENTRY TIME LIMITS, CATCHER VESSEL TRAWL GEAR

Required information	Time limit for recording
(1) Haul number, time and date gear set, time and date gear hauled, beginning and end positions, CDQ group number (if applicable), total estimated haul weight for each haul.	Within 2 hours after completion of gear retrieval, except that catcher vessels harvesting pollock CDQ in the BS and delivering unsorted codends to a mothership must record CDQ group number within 2 hours after completion of weighing all catch in the haul on the mothership.
*	*
*	*
*	*
*	*

* * * * *

(ii) * * *

(6) * * *

DATA ENTRY TIME LIMITS, MOTHERSHIP

Required information	Record in		Time limit for recording
	DCPL	eLandings	
(A) All catcher vessel or buying station delivery information.	X	.....	Within 2 hours after completion of receipt of each groundfish delivery, except that the CDQ group number for catcher vessels harvesting pollock CDQ in the BS and delivering unsorted codends to a mothership must be recorded within 2 hours after completion of weighing all catch in the haul on the mothership.

* * * * *

(e) * * *

(10) * * *

(iii) * * *

(M) *PSC numbers—(1) Non-AFA catcher/processors and all motherships.* Daily number of PSC animals (Pacific salmon, steelhead trout, Pacific halibut, king crabs, and Tanner crabs) by species codes and discard and disposition codes.

(2) *AFA and CDQ catcher/processors.* The operator of an AFA catcher/processor or any catcher/processor harvesting pollock CDQ must enter daily the number of non-salmon PSC animals (Pacific halibut, king crabs, and Tanner crabs) by species codes and discard and disposition codes. Salmon PSC animals are entered into the electronic logbook as described in paragraphs (f)(1)(iv) and (v) of this section.

* * * * *

(f) * * *

(1) *Responsibility.* The operator of a vessel voluntarily using an ELB must notify the Regional Administrator by fax at 907-586-7465 to notify NMFS that the operator is using a NMFS-approved ELB instead of a DFL or DCPL, prior to participating in any Federal fishery.

* * * * *

(iv) *Catcher/processor trawl gear ELB.* Except as described in paragraph (f)(1)(vii) of this section, the operator of a catcher/processor using trawl gear may use a combination of a NMFS-approved catcher/processor trawl gear ELB and eLandings to record and report groundfish information. In the ELB, the operator may enter processor identification information and catch-by-haul information. In eLandings, the operator must enter processor identification, groundfish production data, and groundfish and prohibited species discard or disposition data.

* * * * *

(vii) *AFA and CDQ trawl catcher/processors.* The operator of an AFA catcher/processor or any catcher/processor harvesting pollock CDQ must use a combination of NMFS-approved

catcher/processor trawl gear ELB and eLandings to record and report groundfish and PSC information. In the ELB, the operator must enter processor identification information, catch-by-haul information, and prohibited species discard or disposition data for all salmon species in each haul. In eLandings, the operator must enter processor identification, groundfish production data, and groundfish and prohibited species discard or disposition data for all prohibited species except salmon.

* * * * *

(2) * * *

(iii) * * *

(B) * * *

(1) *Recording time limits.* Record the haul number or set number, time and date gear set, time and date gear hauled, begin and end position, CDQ group number (if applicable), and hail weight for each haul or set within 2 hours after completion of gear retrieval. If a catcher/processor using trawl gear and required to weigh all catch on a scale approved by NMFS, record the CDQ group number (if applicable) within 2 hours after completion of weighing all of the catch in the haul. The operator of a vessel must provide the information recorded in the ELB to the observer or an authorized officer upon request at any time after the specified deadlines.

* * * * *

(7) *ELB data submission.* The operator must transmit ELB data to NMFS at the specified e-mail address in the following manner:

(i) *Catcher/processors or motherships.* Directly to NMFS as an e-mail attachment or other NMFS-approved data transmission mechanism, by 2400 hours, A.l.t., each day to record the previous day's hauls.

- * * * * *
- 6. In § 679.7,
 - a. Remove and reserve paragraph (c)(1);
 - b. Remove paragraphs (d)(6) and (d)(9) through (d)(23);
 - c. Redesignate paragraph (d)(24) as (d)(6) and paragraph (d)(25) as (d)(9);

- d. Revise paragraphs (d)(7), (d)(8);
- e. Revise paragraph (k)(3)(vi); and
- f. Add paragraph (k)(8).

The additions and revisions read as follows:

§ 679.7 Prohibitions.

* * * * *

(c) * * *

(1) [Reserved]

* * * * *

(d) * * *

(7) *Catch Accounting—(i) General—*

(A) For the operator of a catcher/processor using trawl gear or a mothership, to harvest or take deliveries of CDQ or PSQ species without a valid scale inspection report signed by an authorized scale inspector under § 679.28(b)(2) on board the vessel.

(B) For the operator of a vessel required to have an observer sampling station described at § 679.28(d), to harvest or take deliveries of CDQ or PSQ species without a valid observer sampling station inspection report issued by NMFS under § 679.28(d)(8) on board the vessel.

(C) For the manager of a shoreside processor or stationary floating processor, or the manager or operator of a buying station that is required elsewhere in this part to weigh catch on a scale approved by the State of Alaska under § 679.28(c), to fail to weigh catch on a scale that meets the requirements of § 679.28(c).

(D) For the operator of a catcher/processor or a catcher vessel required to carry a level 2 observer, to combine catch from two or more CDQ groups in the same haul or set.

(E) For the operator of a catcher vessel using trawl gear or any vessel less than 60 ft (18.3 m) LOA that is groundfish CDQ fishing as defined at § 679.2, to discard any groundfish CDQ species or salmon PSQ before it is delivered to a processor, unless discard of the groundfish CDQ is required under other provisions or, in waters within the State of Alaska, discard is required by laws of the State of Alaska.

(F) For the operator of a vessel using trawl gear, to release CDQ catch from

the codend before it is brought on board the vessel and weighed on a scale approved by NMFS under § 679.28(b) or delivered to a processor. This includes, but is not limited to, "codend dumping" and "codend bleeding."

(G) For the operator of a catcher/processor using trawl gear or a mothership, to sort, process, or discard CDQ or PSQ species before the total catch is weighed on a scale that meets the requirements of § 679.28(b), including the daily test requirements described at § 679.28(b)(3).

(H) For a CDQ representative, to use methods other than those approved by NMFS to determine the catch of CDQ and PSQ reported to NMFS on the CDQ catch report.

(ii) *Fixed gear sablefish*—(A) For a CDQ group, to report catch of sablefish CDQ for accrual against the fixed gear sablefish CDQ reserve, if that sablefish CDQ was caught with fishing gear other than fixed gear.

(B) For any person on a vessel using fixed gear that is fishing for a CDQ group with an allocation of fixed gear sablefish CDQ, to discard sablefish harvested with fixed gear unless retention of sablefish is not authorized under § 679.23(e)(4)(ii) or, in waters within the State of Alaska, discard is required by laws of the State of Alaska.

(8) *Prohibited species catch*—(i) *Crab*—(A) *Zone 1*. For the operator of an eligible vessel, to use trawl gear to harvest groundfish CDQ in Zone 1 after the CDQ group's red king crab PSQ or *C. bairdi* Tanner crab PSQ in Zone 1 is attained.

(B) *Zone 2*. For the operator of an eligible vessel, to use trawl gear to harvest groundfish CDQ in Zone 2 after the CDQ group's PSQ for *C. bairdi* Tanner crab in Zone 2 is attained.

(C) *COBLZ*. For the operator of an eligible vessel, to use trawl gear to harvest groundfish CDQ in the *C. opilio* Bycatch Limitation Zone after the CDQ group's PSQ for *C. opilio* Tanner crab is attained.

(ii) *Salmon*—(A) *Discard of salmon*. For any person, to discard salmon from a catcher vessel, catcher/processor, mothership, shoreside processor, or SFP or transfer or process any salmon under the PSD Program at § 679.26, if the salmon were taken incidental to a directed fishery for pollock CDQ in the Bering Sea, until the number of salmon has been determined by an observer and the collection of scientific data or biological samples from the salmon has been completed.

(B) *Non-Chinook salmon*. For the operator of an eligible vessel, to use trawl gear to harvest pollock CDQ in the Chum Salmon Savings Area between

September 1 and October 14 after the CDQ group's non-Chinook salmon PSQ is attained, unless the vessel is participating in a non-Chinook salmon bycatch reduction ICA under § 679.21(g).

(C) *Chinook salmon*—(1) *Overages of Chinook salmon PSC allocations*. For a CDQ group, to exceed a Chinook salmon PSC allocation issued under § 679.21(f) as of June 25 for the A season allocation and as of December 1 for the B season allocation.

(2) For the operator of a catcher vessel or catcher/processor, to start a new fishing trip for pollock CDQ in the BS in the A season or in the B season, if the CDQ group for which the vessel is fishing has exceeded its Chinook salmon PSC allocation issued under § 679.21(f) for that season.

(3) For the operator of a catcher/processor or mothership, to catch or process pollock CDQ in the BS without complying with the applicable requirements of § 679.28(j).

(4) For the operator of a catcher/processor or a mothership, to begin sorting catch from a haul from a directed fishery for pollock CDQ in the BS before the observer has completed counting the salmon and collecting scientific data or biological samples from the previous haul.

(5) For the operator of a catcher vessel, to deliver pollock CDQ to a shoreside processor or stationary floating processor that does not have a catch monitoring and control plan approved under § 679.28(g).

(6) For the manager of a shoreside processor or stationary floating processor, to begin sorting a pollock CDQ offload before the observer has completed the count of salmon and the collection of scientific data or biological samples from the previous offload.

* * * * *

(k) * * *

(3) * * *

(vi) *Catch monitoring and control plan (CMCP)*—(A) Take deliveries or process groundfish delivered by a vessel engaged in directed fishing for BSAI pollock without following an approved CMCP as described at § 679.28(g). A copy of the CMCP must be maintained on the premises and made available to authorized officers or NMFS-authorized personnel upon request.

(B) Allow sorting of fish at any location in the processing plant other than those identified in the CMCP under § 678.28(g)(7).

(C) Allow salmon of any species to pass beyond the last point where sorting of fish occurs, as identified in the scale

drawing of the processing plant in the approved CMCP.

* * * * *

(8) *Salmon bycatch*—(i) *Discard of salmon*. For any person, to discard any salmon from a catcher vessel, catcher/processor, mothership, or inshore processor, or transfer or process any salmon under the PSD Program at § 679.26, if the salmon were taken incidental to a directed fishery for pollock in the BS before the number of salmon has been determined by an observer and the collection of scientific data or biological samples from the salmon has been completed.

(ii) *Catcher/processors and motherships*. For the operator of a catcher/processor or a mothership, to begin sorting catch from a haul from a directed fishery for pollock in the BS before the observer has completed counting the salmon and collecting scientific data or biological samples from the previous haul.

(iii) *Shoreside processors and stationary floating processors*. For the manager of a shoreside processor or stationary floating processor to begin sorting a new BS pollock offload before the observer has completed the count of salmon and the collection of scientific data or biological samples from the previous offload.

(iv) *Overages of Chinook salmon PSC allocations*—(A) For an inshore cooperative, the entity representing the AFA catcher/processor sector, or the entity representing the AFA mothership sector, to exceed a Chinook salmon PSC allocation issued under § 679.21(f) as of June 25 for the A season allocation and as of December 1 for the B season allocation.

(B) For a catcher vessel or catcher/processor, to start a fishing trip for pollock in the BS in the A season or in the B season if the vessel is fishing under a transferable Chinook salmon PSC allocation issued to an inshore cooperative, the entity representing the AFA catcher/processor sector, or the entity representing the AFA mothership sector under § 679.21(f) and the inshore cooperative or entity has exceeded its Chinook salmon PSC allocation for that season.

* * * * *

■ 7. In § 679.21,

- a. Remove and reserve paragraph (a);
- b. Revise paragraphs (b)(2)(ii), (b)(3), (c), (e)(1)(vi), (e)(3)(i)(A)(3)(i), (e)(7)(viii), (e)(7)(ix), and (g); and
- c. Add paragraphs (b)(6) and (f).

The revisions and additions read as follows:

§ 679.21 Prohibited species bycatch management.

- (a) [Reserved]
 (b) * * *
 (2) * * *

(ii) After allowing for sampling by an observer, if an observer is aboard, sort its catch immediately after retrieval of the gear and, except for salmon prohibited species catch in the BS pollock fisheries under paragraph (c) of this section and § 679.26, return all prohibited species, or parts thereof, to the sea immediately, with a minimum of injury, regardless of its condition.

(3) *Rebuttable presumption.* Except as provided under paragraph (c) of this section and § 679.26, there will be a rebuttable presumption that any prohibited species retained on board a fishing vessel regulated under this part was caught and retained in violation of this section.

* * * * *

(6) *Addresses.* Unless otherwise specified, submit information required under this section to NMFS as follows: by mail to the Regional Administrator, NMFS, P.O. Box 21668, Juneau, AK 99802; by courier to the Office of the Regional Administrator, 709 West 9th St., Juneau, AK 99801; or by fax to 907-586-7465. Forms are available on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov/>).

(c) *Salmon taken in the BS pollock fisheries.* Regulations in this paragraph apply to vessels directed fishing for pollock in the BS, including pollock CDQ, and processors taking deliveries from these vessels.

(1) *Salmon discard.* The operator of a vessel and the manager of a shoreside processor or SFP must not discard any salmon or transfer or process any salmon under the PSD Program at § 679.26, if the salmon were taken incidental to a directed fishery for pollock in the BS, until the number of salmon has been determined by the observer and the observer's collection of any scientific data or biological samples from the salmon has been completed.

(2) *Salmon retention and storage—*
 (i) Operators of catcher/processors or motherships must:

(A) Sort and transport all salmon bycatch from each haul to an approved storage location adjacent to the observer sampling station that allows an observer free and unobstructed access to the salmon (see § 679.28(d)(2)(i) and (d)(7)). The salmon storage location must remain in view of the observer from the observer sampling station at all times during the sorting of the haul.

(B) If, at any point during sorting of the haul or delivery for salmon, the

salmon are too numerous to be contained in the salmon storage location, all sorting must cease and the observer must be given the opportunity to count the salmon in the storage location and collect scientific data or biological samples. Once the observer has completed all counting and sampling duties for the counted salmon, the salmon must be removed by vessel personnel from the approved storage location, in the presence of the observer.

(C) Before sorting of the next haul may begin, the observer must be given the opportunity to complete the count of salmon and the collection of scientific data or biological samples from the previous haul.

(D) Ensure no salmon of any species pass the observer sample collection point, as identified in the scale drawing of the observer sample station.

(ii) Operators of vessels delivering to shoreside processors or stationary floating processors must:

(A) Store in a refrigerated saltwater tank all salmon taken as bycatch in trawl operations.

(B) Deliver all salmon to the processor receiving the vessel's BS pollock catch.

(iii) Shoreside processors or stationary floating processors must:

(A) Comply with the requirements in § 679.28(g)(7)(vii) for the receipt, sorting, and storage of salmon from deliveries of catch from the BS pollock fishery.

(B) Ensure no salmon of any species pass beyond the last point where sorting of fish occurs, as identified in the scale drawing of the plant in the CMCP.

(C) Sort and transport all salmon of any species to the salmon storage container identified in the CMCP (see § 679.28(g)(7)(vi)(C) and (x)(F)). The salmon must remain in that salmon storage container and within the view of the observer at all times during the offload.

(D) If, at any point during the offload, salmon are too numerous to be contained in the salmon storage container, the offload and all sorting must cease and the observer must be given the opportunity to count the salmon and collect scientific data or biological samples. The counted salmon then must be removed from the area by plant personnel in the presence of the observer.

(E) At the completion of the offload, the observer must be given the opportunity to count the salmon and collect scientific data or biological samples.

(F) Before sorting of the next offload of catch from the BS pollock fishery may begin, the observer must be given the opportunity to complete the count of

salmon and the collection of scientific data or biological samples from the previous offload of catch from the BS pollock fishery.

(3) *Assignment of crew to assist observer.* Operators of vessels and managers of shoreside processors and SFPs that are required to retain salmon under paragraph (c)(1) of this section must designate and identify to the observer aboard the vessel, or at the shoreside processor or SFP, a crew person or employee responsible for ensuring all sorting, retention, and storage of salmon occurs according to the requirements of (c)(2) of this section.

(4) *Discard of salmon.* Except for salmon under the PSD Program at § 679.26, all salmon must be returned to the sea as soon as is practicable, following notification by an observer that the number of salmon has been determined and the collection of scientific data or biological samples has been completed.

* * * * *

- (e) * * *
 (1) * * *

(vi) *BS Chinook salmon.* See paragraph (f) of this section.

* * * * *

- (3) * * *
 (i) * * *
 (A) * * *
 (3) * * *

(i) *Chinook salmon.* For BS Chinook salmon, see paragraph (f) of this section. For AI Chinook salmon, 7.5 percent of the PSC limit set forth in paragraph (e)(1)(viii) of this section.

* * * * *

- (7) * * *

(viii) *AI Chinook salmon.* If, during the fishing year, the Regional Administrator determines that catch of Chinook salmon by vessels using trawl gear while directed fishing for pollock in the AI will reach the annual limit of 700 Chinook salmon, as identified in paragraph (e)(1)(viii) of this section, NMFS, by notification in the **Federal Register** will close the AI Chinook Salmon Savings Area, as defined in Figure 8 to this part, to directed fishing for pollock with trawl gear on the following dates:

(A) From the effective date of the closure until April 15, and from September 1 through December 31, if the Regional Administrator determines that the annual limit of AI Chinook salmon will be attained before April 15.

(B) From September 1 through December 31, if the Regional Administrator determines that the annual limit of AI Chinook salmon will be attained after April 15.

(ix) *Exemptions.* Trawl vessels participating in directed fishing for

pollock and operating under a non-Chinook salmon bycatch reduction ICA approved by NMFS under paragraph (g) of this section are exempt from closures in the Chum Salmon Savings Area described at paragraph (e)(7)(vii) of this section. See also § 679.22(a)(10) and Figure 9 to part 679.

* * * * *

(f) *BS Chinook Salmon Bycatch Management*—(1) *Applicability*. This paragraph contains regulations governing the bycatch of Chinook salmon in the BS pollock fishery.

(2) *BS Chinook salmon prohibited species catch (PSC) limit*. Each year, NMFS will allocate to AFA sectors,

listed in paragraph (f)(3)(ii) of this section, a portion of either the 47,591 Chinook salmon PSC limit or the 60,000 Chinook salmon PSC limit.

(i) An AFA sector will receive a portion of the 47,591 Chinook salmon PSC limit if:

(A) No Chinook salmon bycatch incentive plan agreement (IPA) is approved by NMFS under paragraph (f)(12) of this section; or

(B) That AFA sector has exceeded its performance standard under paragraph (f)(6) of this section.

(ii) An AFA sector will receive a portion of the 60,000 Chinook salmon PSC limit if:

(A) At least one IPA is approved by NMFS under paragraph (f)(12) of this section; and

(B) That AFA sector has not exceeded its performance standard under paragraph (f)(6) of this section.

(3) *Allocations of the BS Chinook salmon PSC limits*—(i) *Seasonal apportionment*. NMFS will apportion the BS Chinook salmon PSC limits annually 70 percent to the A season and 30 percent to the B season, which are described in § 679.23(e)(2)(i) and (ii).

(ii) *AFA sectors*. Each year, NMFS will make allocations of the applicable BS Chinook salmon PSC limit to the following four AFA sectors:

AFA sector:	Eligible participants are:
(A) Catcher/processor (C/P)	AFA catcher/processors and AFA catcher vessels delivering to AFA catcher/processors, all of which are permitted under § 679.4(l)(2) and § 679.4(l)(3)(i)(A), respectively.
(B) Mothership	AFA catcher vessels harvesting pollock for processing by AFA motherships, all of which are permitted under § 679.4(l)(3)(i)(B) and § 679.4(l)(4), respectively.
(C) Inshore	AFA catcher vessels harvesting pollock for processing by AFA inshore processors, all of which are permitted under § 679.4(l)(3)(i)(C).
(D) CDQ Program	The six CDQ groups authorized under section 305(i)(1)(D) of the Magnuson-Stevens Act to participate in the CDQ Program.

(iii) *Allocations to each AFA sector*. NMFS will allocate the BS Chinook

salmon PSC limits to each AFA sector as follows:

(A) If a sector is managed under the 60,000 Chinook salmon PSC limit, the

maximum amount of Chinook salmon PSC allocated to each sector in each season and annually is:

AFA sector	A season		B season		Annual total	
	% Allocation	# of Chinook	% Allocation	# of Chinook	% Allocation	# of Chinook
(1) C/P	32.9	13,818	17.9	3,222	28.4	17,040
(2) Mothership	8.0	3,360	7.3	1,314	7.8	4,674
(3) Inshore	49.8	20,916	69.3	12,474	55.6	33,390
(4) CDQ Program	9.3	3,906	5.5	990	8.2	4,896

(B) If the sector is managed under the 47,591 Chinook salmon PSC limit, the sector will be allocated the following

amount of Chinook salmon PSC in each season and annually:

AFA sector	A season		B season		Annual total	
	% Allocation	# of Chinook	% Allocation	# of Chinook	% Allocation	# of Chinook
(1) C/P	32.9	10,960	17.9	2,556	28.4	13,516
(2) Mothership	8.0	2,665	7.3	1,042	7.8	3,707
(3) Inshore	49.8	16,591	69.3	9,894	55.6	26,485
(4) CDQ Program	9.3	3,098	5.5	785	8.2	3,883

(iv) *Allocations to the AFA catcher/processor and mothership sectors*—(A) NMFS will issue transferable Chinook salmon PSC allocations under paragraph (f)(3)(iii)(A) or (B) of this section to entities representing the AFA catcher/processor sector and the AFA mothership sector if these sectors meet the requirements of paragraph (f)(8) of this section.

(B) If no entity is approved by NMFS to represent the AFA catcher/processor sector or the AFA mothership sector, then NMFS will manage that sector under a non-transferable Chinook salmon PSC allocation under paragraph (f)(10) of this section.

(v) *Allocations to inshore cooperatives and the AFA inshore open access fishery*. NMFS will further allocate the inshore sector's Chinook salmon PSC

allocation under paragraph (f)(3)(iii)(A)(3) or (B)(3) of this section among the inshore cooperatives and the inshore open access fishery based on the percentage allocations of pollock to each inshore cooperative under § 679.62(a). NMFS will issue transferable Chinook salmon PSC allocations to inshore cooperatives. Any Chinook salmon PSC allocated to the inshore open access fishery will be as a non-transferable

allocation managed by NMFS under the requirements of paragraph (f)(10) of this section.

(vi) *Allocations to the CDQ Program.* NMFS will further allocate the Chinook salmon PSC allocation to the CDQ

Program under paragraph (f)(3)(iii)(A)(4) or (B)(4) of this section among the six CDQ groups based on each CDQ group's percentage of the CDQ Program pollock allocation in Column B of Table 47d to

this part. NMFS will issue transferable Chinook salmon PSC allocations to CDQ groups.

(vii) *Accrual of Chinook salmon bycatch to specific PSC allocations.*

If a Chinook salmon PSC allocation is:	Then all Chinook salmon bycatch:
(A) A transferable allocation to a sector-level entity, inshore cooperative, or CDQ group under paragraph (f)(8) of this section.	By any vessel fishing under a transferable allocation will accrue against the allocation to the entity representing that vessel.
(B) A non-transferable allocation to a sector or the inshore open access fishery under paragraph (f)(10) of this section.	By any vessel fishing under a non-transferable allocation will accrue against the allocation established for the sector or inshore open access fishery, whichever is applicable.
(C) The opt-out allocation under paragraph (f)(5) of this section	By any vessel fishing under the opt-out allocation will accrue against the opt-out allocation.

(viii) *Public release of Chinook salmon PSC information.* For each year, NMFS will release to the public and publish on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov/>):

(A) The Chinook salmon PSC allocations for each entity receiving a transferable allocation;

(B) The non-transferable Chinook salmon PSC allocations;

(C) The vessels fishing under each transferable or non-transferable allocation;

(D) The amount of Chinook salmon bycatch that accrues towards each transferable or non-transferable allocation; and

(E) Any changes to these allocations due to transfers under paragraph (f)(9) of this section, rollovers under paragraph (f)(11) of this section, and deductions from the B season non-transferable allocations under paragraphs (f)(5)(v) or (f)(10)(iii) of this section.

(4) *Reduction in allocations of the 60,000 Chinook salmon PSC limit—(i) Reduction in sector allocations.* NMFS

will reduce the seasonal allocation of the 60,000 Chinook salmon PSC limit to the catcher/processor sector, the mothership sector, the inshore sector, or the CDQ Program under paragraph (f)(3)(iii)(A) of this section, if the owner of any permitted AFA vessel in that sector, or any CDQ group, does not participate in an approved IPA under paragraph (f)(12) of this section. The amount of Chinook salmon subtracted from each sector's allocation for those not participating in an approved IPA is calculated as follows:

For each sector:	Reduce the A season allocation by the sum of the amount of Chinook salmon associated with each vessel or CDQ group not participating in an IPA:		Reduce the B season allocation by the sum of the amount of Chinook salmon associated with each vessel or CDQ group not participating in an IPA:		
(A) Catcher/processor	From Column E in Table 47a to this part.	+	From Column F in Table 47a to this part.	=	The annual amount of Chinook salmon subtracted from each sector's Chinook salmon PSC allocation listed at paragraph (f)(3)(iii)(A) of this section.
(B) Mothership	From Column E in Table 47b to this part.	.....	From Column F in Table 47b to this part.	
(C) Inshore	From Column E in Table 47c to this part.	.....	From Column F in Table 47c to this part.	
(D) CDQ Program	From Column C in Table 47d to this part.	.....	From Column D in Table 43d to this part.	

(ii) *Adjustments to the inshore sector and inshore cooperative allocations—*

(A) If some members of an inshore cooperative do not participate in an approved IPA, NMFS will only reduce the allocation to the cooperative to which those vessels belong, or the inshore open access fishery.

(B) If all members of an inshore cooperative do not participate in an approved IPA, the amount of Chinook salmon that remains in the inshore sector's allocation, after subtracting the amount in paragraph (f)(4)(i)(C) of this section for the non-participating inshore cooperative, will be reallocated among the inshore cooperatives participating in

an approved IPA based on the proportion each participating cooperative represents of the Chinook salmon PSC initially allocated among the participating inshore cooperatives that year.

(iii) *Adjustment to CDQ group allocations.* If a CDQ group does not participate in an approved IPA, the amount of Chinook salmon that remains in the CDQ Program's allocation, after subtracting the amount in paragraph (f)(4)(i)(D) of this section for the non-participating CDQ group, will be reallocated among the CDQ groups participating in an approved IPA based on the proportion each participating

CDQ group represents of the Chinook salmon PSC initially allocated among the participating CDQ groups that year.

(iv) *All members of a sector do not participate in an approved IPA.* If all members of a sector do not participate in an approved IPA, the amount of Chinook salmon that remains after subtracting the amount in paragraph (f)(4)(i) of this section for the non-participating sector will not be reallocated among the sectors that do have members participating in an approved IPA. This portion of the 60,000 PSC limit will remain unallocated for that year.

(5) *Chinook salmon PSC opt-out allocation.* The following table describes requirements for the opt-out allocation:

(i) What is the amount of Chinook salmon PSC that will be allocated to the opt-out allocation in the A season and the B season?	The opt-out allocation will equal the sum of the Chinook salmon PSC deducted under paragraph (f)(4)(i) of this section from the seasonal allocations of each sector with members not participating in an approved IPA.
(ii) Which participants will be managed under the opt-out allocation?	Any AFA permitted vessel or any CDQ group that is a member of a sector eligible under paragraph (f)(2)(ii) of this section to receive allocations of the 60,000 PSC limit, but that is not participating in an approved IPA.
(iii) What Chinook salmon bycatch will accrue against the opt-out allocation?	All Chinook salmon bycatch by participants under paragraph (f)(2)(ii) of this section.
(iv) How will the opt-out allocation be managed?	All participants under paragraph (f)(2)(ii) of this section will be managed as a group under the seasonal opt-out allocations. If the Regional Administrator determines that the seasonal opt-out allocation will be reached, NMFS will publish a notice in the FEDERAL REGISTER closing directed fishing for pollock in the BS, for the remainder of the season, for all vessels fishing under the opt-out allocation.
(v) What will happen if Chinook salmon bycatch by vessels fishing under the opt-out allocation exceeds the amount allocated to the A season opt-out allocation?	NMFS will deduct from the B season opt-out allocation any Chinook salmon bycatch in the A season that exceeds the A season opt-out allocation.
(vi) What will happen if Chinook salmon bycatch by vessels fishing under the opt-out allocation is less than the amount allocated to the A season opt-out allocation?	If Chinook salmon bycatch by vessels fishing under the opt-out allocation in the A season is less than the amount allocated to the opt-out allocation in the A season, this amount of Chinook salmon will not be added to the B season opt-out allocation.
(vii) Is Chinook salmon PSC allocated to the opt-out allocation transferable?	No. Chinook salmon PSC allocated to the opt-out allocation is not transferable.

(6) *Chinook salmon bycatch performance standard.* If the total annual Chinook salmon bycatch by the members of a sector participating in an approved IPA is greater than that sector's annual threshold amount of Chinook salmon in any three of seven consecutive years, that sector will receive an allocation of Chinook salmon under the 47,591 PSC limit in all future years.

(i) *Annual threshold amount.* Prior to each year, NMFS will calculate each sector's annual threshold amount. NMFS will post the annual threshold amount for each sector on the NMFS

Alaska Region Web site (<http://alaskafisheries.noaa.gov/>). At the end of each year, NMFS will evaluate the Chinook salmon bycatch by all IPA participants in each sector against that sector's annual threshold amount.

(ii) *Calculation of the annual threshold amount.* A sector's annual threshold amount is the annual number of Chinook salmon that would be allocated to that sector under the 47,591 Chinook salmon PSC limit, as shown in the table in paragraph (f)(3)(iii)(B) of this section. If any vessels in a sector do not participate in an approved IPA, NMFS will reduce that sector's annual

threshold amount by the number of Chinook salmon associated with each vessel not participating in an approved IPA. If any CDQ groups do not participate in an approved IPA, NMFS will reduce the CDQ Program's annual threshold amount by the number of Chinook salmon associated with each CDQ group not participating in an approved IPA. NMFS will subtract the following numbers of Chinook salmon from each sector's annual threshold amount for vessels or CDQ groups not participating in an approved IPA:

For each sector:	The amount of Chinook salmon associated with each vessel or CDQ group not participating in an IPA:
(A) Catcher/processor	From Column G of Table 47a to this part;
(B) Mothership	From Column G of Table 47b to this part;
(C) Inshore	From Column G of Table 47c to this part;
(D) CDQ Program	From Column E of Table 47d to this part.

(iii) If NMFS determines that a sector has exceeded its performance standard by exceeding its annual threshold amount in any three of seven consecutive years, NMFS will issue a notification in the **Federal Register** that the sector has exceeded its performance standard and that NMFS will allocate to that sector the amount of Chinook salmon in the table in paragraph (f)(3)(iii)(B) of this section in all subsequent years. All members of the affected sector will fish under this lower allocation regardless of whether a vessel

or CDQ group within that sector participates in an approved IPA.

(7) *Replacement vessels.* If an AFA permitted vessel listed in Tables 47a through 47c to this part is no longer eligible to participate in the BS pollock fishery or if a vessel replaces a currently eligible vessel, the portion and number of Chinook salmon associated with that vessel in Tables 47a through 47c to this part will be assigned to the replacement vessel or distributed among other eligible vessels in the sector based on the procedures in the law, regulation, or private contract that accomplishes the vessel removal or replacement action

until Tables 47a through 47c to this part can be revised as necessary.

(8) *Entities eligible to receive transferable Chinook salmon PSC allocations—*(i) NMFS will issue transferable Chinook salmon PSC allocations to the following entities, if these entities meet all of the applicable requirements of this part.

(A) *Inshore cooperatives.* NMFS will issue transferable Chinook salmon PSC allocations to the inshore cooperatives permitted annually under § 679.4(l)(6). The representative and agent for service of process (see definition at § 679.2) for an inshore cooperative is the

cooperative representative identified in the application for an inshore cooperative fishing permit issued under § 679.4(l)(6), unless the inshore cooperative representative notifies NMFS in writing that a different person will act as its agent for service of process for purposes of this paragraph (f). An inshore cooperative is not required to submit an application under paragraph (f)(8)(ii) of this section to receive a transferable Chinook salmon PSC allocation.

(B) *CDQ groups.* NMFS will issue transferable Chinook salmon PSC allocations to the CDQ groups. The representative and agent for service of process for a CDQ group is the chief executive officer of the CDQ group, unless the chief executive officer notifies NMFS in writing that a different person will act as its agent for service of process. A CDQ group is not required to submit an application under paragraph (f)(8)(ii) of this section to receive a transferable Chinook salmon PSC allocation.

(C) *Entity representing the AFA catcher/processor sector.* NMFS will authorize only one entity to represent the catcher/processor sector for purposes of receiving and managing transferable Chinook salmon PSC allocations on behalf of the catcher/processors eligible to fish under transferable Chinook salmon PSC allocations.

(1) NMFS will issue transferable Chinook salmon allocations under the 60,000 Chinook salmon PSC limit to the entity representing the catcher/processor sector if that entity represents all of the owners of AFA permitted vessels in this sector that are participants in an approved IPA.

(2) NMFS will issue transferable Chinook salmon allocations under the 47,591 Chinook salmon PSC limit to an entity representing the catcher/processor sector if that entity represents all of the owners of AFA permitted vessels in this sector.

(D) *Entity representing the AFA mothership sector.* NMFS will authorize only one entity to represent the mothership sector for purposes of receiving and managing transferable Chinook salmon PSC allocations on behalf of the vessels eligible to fish under transferable Chinook salmon PSC allocations.

(1) NMFS will issue transferable Chinook salmon allocations under the 60,000 Chinook salmon PSC limit to an entity representing the mothership sector if that entity represents all of the owners of AFA permitted vessels in this sector that are participants in an approved IPA.

(2) NMFS will issue transferable Chinook salmon allocations under the 47,591 Chinook salmon PSC limit to an entity representing the mothership sector if that entity represents all of the owners of AFA permitted vessels in this sector.

(ii) *Request for approval as an entity eligible to receive transferable Chinook salmon PSC allocations.* A representative of an entity representing the catcher/processor sector or the mothership sector may request approval by NMFS to receive transferable Chinook salmon PSC allocations on behalf of the members of the sector. The application must be submitted to NMFS at the address in paragraph (b)(6) of this section. A completed application consists of the application form and a contract, described below.

(A) *Application form.* The applicant must submit a paper copy of the application form with all information fields accurately filled in, including the affidavit affirming that each eligible vessel owner, from whom the applicant received written notification requesting to join the sector entity, has been allowed to join the sector entity subject to the same terms and conditions that have been agreed on by, and are applicable to, all other parties to the sector entity. The application form is available on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov/>) or from NMFS at the address or phone number in paragraph (b)(6) of this section.

(B) *Contract.* A contract containing the following information must be attached to the completed application form:

(1) Information that documents that all vessel owners party to the contract agree that the entity, the entity's representative, and the entity's agent for service of process named in the application form represent them for purposes of receiving transferable Chinook salmon PSC allocations.

(2) A statement that the entity's representative and agent for service of process are authorized to act on behalf of the vessel owners party to the contract.

(3) *Certification of applicant.* Signatures, printed names, and date of signature for the owners of each AFA permitted vessel identified in the application.

(C) *Contract duration.* Once submitted, the contract attached to the application is valid until amended or terminated by the parties to the contract.

(D) *Deadline.* An application and contract must be received by NMFS no later than 1700 hours, A.l.t., on October 1 of the year prior to the year for which

the Chinook salmon PSC allocations are effective.

(E) *Approval.* If more than one entity application is submitted to NMFS, NMFS will approve the application for the entity that represents the most eligible vessel owners in the sector.

(F) *Amendments to the sector entity.*

(1) An amendment to sector entity contract, with no change in entity participants, may be submitted to NMFS at any time and is effective upon written notification of approval by NMFS to the entity representative. To amend a contract, the entity representative must submit a complete application, as described in paragraph (f)(8)(ii) of this section.

(2) To make additions or deletions to the vessel owners represented by the entity for the next year, the entity representative must submit a complete application, as described in paragraph (f)(8)(ii) of this section, by December 1.

(iii) *Entity Representative.* (A) The entity's representative must—

(1) Act as the primary contact person for NMFS on issues relating to the operation of the entity;

(2) Submit on behalf of the entity any applications required for the entity to receive a transferable Chinook salmon PSC allocation and to transfer some or all of that allocation to and from other entities eligible to receive transfers of Chinook salmon PSC allocations;

(3) Ensure that an agent for service of process is designated by the entity; and

(4) Ensure that NMFS is notified if a substitute agent for service of process is designated. Notification must include the name, address, and telephone number of the substitute agent in the event the previously designated agent is no longer capable of accepting service on behalf of the entity or its members within the 5-year period from the time the agent is identified in the application to NMFS under paragraph (f)(8)(ii) of this section.

(B) All vessel owners that are members of an inshore cooperative, or members of the entity that represents the catcher/processor sector or the mothership sector, may authorize the entity representative to sign a proposed IPA submitted to NMFS, under paragraph (f)(12) of this section, on behalf of the vessel owners that intend to participate in that IPA. This authorization must be included in the contract submitted to NMFS, under paragraph (f)(8)(ii)(B) of this section, for the sector-level entities and in the contract submitted annually to NMFS by inshore cooperatives under § 679.61(d).

(iv) *Agent for service of process.* The entity's agent for service of process must—

(A) Be authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of an entity receiving a transferable allocation of Chinook salmon PSC or with respect to a CDQ group. Service on or notice to the entity's appointed agent constitutes service on or notice to all members of the entity.

(B) Be capable of accepting service on behalf of the entity until December 31 of the year five years after the calendar year for which the entity notified the Regional Administrator of the identity of the agent.

(v) *Absent a catcher/processor sector or mothership sector entity.* If the catcher/processor sector or the mothership sector does not form an entity to receive a transferable allocation of Chinook salmon PSC, the sector will be managed by NMFS under a non-transferable allocation of Chinook salmon PSC under paragraph (f)(10) of this section.

(9) *Transfers of Chinook salmon PSC*—(i) A Chinook salmon PSC allocation issued to eligible entities under paragraph (f)(8)(i) of this section may be transferred to any other entity receiving a transferable allocation of Chinook salmon PSC by submitting to NMFS an application for transfer described in paragraph (f)(9)(iii) of this section. Transfers of Chinook salmon PSC allocations among eligible entities are subject to the following restrictions:

(A) Entities receiving transferable allocations under the 60,000 PSC limit may only transfer to and from other entities receiving allocations under the 60,000 PSC limit.

(B) Entities receiving transferable allocations under the 47,591 PSC limit may only transfer to and from other entities receiving allocations under the 47,591 PSC limit.

(C) Chinook salmon PSC allocations may not be transferred between seasons.

(ii) *Post-delivery transfers.* If the Chinook salmon bycatch by an entity exceeds its seasonal allocation, the entity may receive transfers of Chinook salmon PSC to cover overages for that season. An entity may conduct transfers to cover an overage that results from Chinook salmon bycatch from any fishing trip by a vessel fishing on behalf of that entity that was completed or is

in progress at the time the entity's allocation is first exceeded. Under § 679.7(d)(8)(ii)(C)(2) and (k)(8)(iv)(B), vessels fishing on behalf of an entity that has exceeded its Chinook salmon PSC allocation for a season may not start a new fishing trip for pollock in the BS on behalf of that same entity for the remainder of that season.

(iii) *Application for transfer of Chinook salmon PSC allocations*—(A) *Completed application.* NMFS will process a request for transfer of Chinook salmon PSC provided that a paper or electronic application is completed, with all information fields accurately filled in. Application forms are available on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov/>) or from NMFS at the address or phone number in paragraph (b)(6) of this section.

(B) *Certification of transferor*—(1) *Non-electronic submittal.* The transferor's designated representative must sign and date the application certifying that all information is true, correct, and complete. The transferor's designated representative must submit the paper application as indicated on the application.

(2) *Electronic submittal.* The transferor's designated entity representative must log onto the NMFS online services system and create a transfer request as indicated on the computer screen. By using the transferor's NMFS ID, password, and Transfer Key, and submitting the transfer request, the designated representative certifies that all information is true, correct, and complete.

(C) *Certification of transferee*—(1) *Non-electronic submittal.* The transferee's designated representative must sign and date the application certifying that all information is true, correct, and complete.

(2) *Electronic submittal.* The transferee's designated representative must log onto the NMFS online services system and accept the transfer request as indicated on the computer screen. By using the transferee's NMFS ID, password, and Transfer Key, the designated representative certifies that all information is true, correct, and complete.

(D) *Deadline.* NMFS will not approve an application for transfer of Chinook salmon PSC after June 25 for the A season and after December 1 for the B season.

(10) *Non-transferable Chinook salmon PSC allocations*—(i) All vessels belonging to a sector that is ineligible to receive transferable allocations under paragraph (f)(8) of this section, any catcher vessels participating in an inshore open access fishery, and all vessels fishing under the opt-out allocation under paragraph (f)(5) of this section will fish under specific non-transferable Chinook salmon PSC allocations.

(ii) All vessels fishing under a non-transferable Chinook salmon PSC allocation, including vessels fishing on behalf of a CDQ group, will be managed together by NMFS under that non-transferable allocation. If, during the fishing year, the Regional Administrator determines that a seasonal non-transferable Chinook salmon PSC allocation will be reached, NMFS will publish a notice in the **Federal Register** closing the BS to directed fishing for pollock by those vessels fishing under that non-transferable allocation for the remainder of the season or for the remainder of the year.

(iii) For each non-transferable Chinook salmon PSC allocation, NMFS will deduct from the B season allocation any amount of Chinook salmon bycatch in the A season that exceeds the amount available under the A season allocation.

(11) *Rollover of unused A season allocation*—(i) *Rollovers of transferable allocations.* NMFS will add any Chinook salmon PSC allocation remaining at the end of the A season, after any transfers under paragraph (f)(9)(ii) of this section, to an entity's B season allocation.

(ii) *Rollover of non-transferable allocations.* For a non-transferable allocation for the mothership sector, catcher/processor sector, or an inshore open access fishery, NMFS will add any Chinook salmon PSC remaining in that non-transferable allocation at the end of the A season to that B season non-transferable allocation.

(12) *Chinook salmon bycatch incentive plan agreements (IPAs)*—(i) *Minimum participation requirements.* More than one IPA may be approved by NMFS. Each IPA must have participants that represent the following:

(A) *Minimum percent pollock.* Parties to an IPA must collectively represent at least 9 percent of the BS pollock quota. The percentage of pollock attributed to each sector, AFA permitted vessel, and CDQ group is as follows:

For each sector	The percent of BS pollock quota attributed to each sector	Percent of BS pollock quota used to calculate IPA minimum participation for each AFA permitted vessel and CDQ group is the value in
(1) Catcher/processor	36	Column H in Table 47a to this part.
(2) Mothership	9	Column H in Table 47b to this part.
(3) Inshore	45	Column H in Table 47c to this part.
(4) CDQ Program	10	Column F in Table 47d to this part.

(B) *Minimum number of unaffiliated AFA entities.* Parties to an IPA must represent any combination of two or more CDQ groups or corporations, partnerships, or individuals who own AFA permitted vessels and are not affiliated, as affiliation is defined for purposes of AFA entities in § 679.2.

(ii) *Membership in an IPA.*—(A) No vessel owner or CDQ group is required to join an IPA.

(B) For a vessel owner in the catcher/processor sector or mothership sector to join an IPA, that vessel owner must be a member of the entity representing that sector under paragraph (f)(8).

(C) For a CDQ group to be a member of an IPA, the CDQ group must sign the IPA and list in that IPA each vessel harvesting BS pollock CDQ, on behalf of that CDQ group, that will participate in that IPA.

(iii) *Request for approval of a proposed IPA.* The IPA representative must submit an application for approval of a proposed IPA to NMFS at the address in paragraph (b)(6) of this section. A completed application consists of the application form and the proposed IPA, described below.

(A) *Application form.* The applicant must submit a paper copy of the application form with all information fields accurately filled in, including the affidavit affirming that each eligible vessel owner or CDQ group, from whom the applicant received written notification requesting to join the IPA, has been allowed to join the IPA subject to the same terms and conditions that have been agreed on by, and are applicable to, all other parties to the IPA. The application form is available on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov/>) or from NMFS at the address or phone number in paragraph (b)(6) of this section.

(B) *Proposed IPA.* The proposed IPA must contain the following information:

(1) *Name of the IPA.* The same IPA name submitted on the application form.

(2) *Representative.* The name, telephone number, and e-mail address of the IPA representative who submits the proposed IPA on behalf of the parties and who is responsible for

submitting proposed amendments to the IPA and the annual report required under paragraph (f)(12)(vii) of this section.

(3) *Description of the incentive plan.*

The IPA must contain a written description of the following:

(i) The incentive(s) that will be implemented under the IPA for the operator of each vessel participating in the IPA to avoid Chinook salmon bycatch under any condition of pollock and Chinook salmon abundance in all years;

(ii) The rewards for avoiding Chinook salmon, penalties for failure to avoid Chinook salmon at the vessel level, or both;

(iii) How the incentive measures in the IPA are expected to promote reductions in a vessel's Chinook salmon bycatch rates relative to what would have occurred in absence of the incentive program;

(iv) How the incentive measures in the IPA promote Chinook salmon savings in any condition of pollock abundance or Chinook salmon abundance in a manner that is expected to influence operational decisions by vessel operators to avoid Chinook salmon; and

(v) How the IPA ensures that the operator of each vessel governed by the IPA will manage his or her Chinook salmon bycatch to keep total bycatch below the performance standard described in paragraph (f)(6) of this section for the sector in which the vessel participates.

(4) *Compliance agreement.* The IPA must include a written statement that all parties to the IPA agree to comply with all provisions of the IPA.

(5) *Signatures.* The names and signatures of the owner or representative for each vessel and CDQ group that is a party to the IPA. The representative of an inshore cooperative, or the representative of the entity formed to represent the AFA catcher/processor sector or the AFA mothership sector under paragraph (f)(8) of this section may sign a proposed IPA on behalf of all vessels that are members of that inshore cooperative or sector level entity.

(iv) *Deadline and duration*—

(A) *Deadline for proposed IPA.* An

application must be received by NMFS no later than 1700 hours, A.L.T., on October 1 of the year prior to the year for which the IPA is proposed to be effective.

(B) *Duration.* Once approved, an IPA is effective starting January 1 of the year following the year in which NMFS approves the IPA, unless the IPA is approved between January 1 and January 19, in which case the IPA is effective starting in the year in which it is approved. Once approved, an IPA is effective until December 31 of the first year in which it is effective or until December 31 of the year in which the IPA representative notifies NMFS in writing that the IPA is no longer in effect, whichever is later. An IPA may not expire mid-year. No party may join or leave an IPA once it is approved, except as allowed under paragraph (f)(12)(v)(C) of this section.

(v) *NMFS review of a proposed IPA*—(A) *Approval.* An IPA will be approved by NMFS if it meets the following requirements:

(1) Meets the minimum participation requirements in paragraph (f)(12)(i) of this section;

(2) Is submitted in compliance with the requirements of paragraph (f)(12)(ii) and (iv) of this section; and

(3) Contains the information required in paragraph (f)(12)(iii) of this section.

(B) *IPA identification number.* If approved, NMFS will assign an IPA number to the approved IPA. This number must be used by the IPA representative in amendments to the IPA.

(C) *Amendments to an IPA.*

Amendments to an approved IPA may be submitted to NMFS and will be reviewed under the requirements of this paragraph (f)(12).

(1) An amendment to an approved IPA, with no change in the IPA participants, may be submitted to NMFS at any time and is effective upon written notification of approval by NMFS to the IPA representative. To amend an IPA, the IPA representative must submit a complete application, as described in paragraph (f)(12)(iii) of this section.

(2) An amendment to the list of IPA participants must be received by NMFS no later than 1700 hours, A.L.T., on

December 1 and will be effective at the beginning of the next year. To amend the list of participants, the IPA representative must submit an application form, as described in paragraph (f)(12)(iii)(A) of this section.

(3) An amendment to the list of participants related to a replacement vessel, under paragraph (f)(7) of this section, may be submitted to NMFS at any time. To amend the list of participants for a replacement vessel, the IPA representative must submit the application form, as described in paragraph (f)(12)(iii)(A) of this section, and include a copy of the AFA permit issued under § 679.4 for the replacement vessel.

(D) *Disapproval*—(1) NMFS will disapprove a proposed IPA or a proposed amendment to an IPA for either of the following reasons:

(i) If the proposed IPA fails to meet any of the requirements of paragraphs (f)(12)(i) through (iii) of this section, or

(ii) If a proposed amendment to an IPA would cause the IPA to no longer be consistent with the requirements of paragraphs (f)(12)(i) through (iv) of this section.

(2) *Initial Administrative Determination (IAD)*. If, in NMFS' review of the proposed IPA, NMFS identifies deficiencies in the proposed IPA that require disapproval of the proposed IPA, NMFS will notify the applicant in writing. The applicant will be provided 30 days to address, in writing, the deficiencies identified by NMFS. An applicant will be limited to one 30-day period to address any deficiencies identified by NMFS. Additional information or a revised IPA received after the 30-day period specified by NMFS has expired will not be considered for purposes of the review of the proposed IPA. NMFS will evaluate any additional information submitted by the applicant within the 30-day period. If the Regional Administrator determines that the additional information addresses deficiencies in the proposed IPA, the Regional Administrator will approve the proposed IPA under paragraphs (f)(12)(iv)(B) and (f)(12)(v)(A) of this section. However, if, after consideration of the original proposed IPA and any additional information submitted during the 30-day period, NMFS determines that the proposed IPA does not comply with the requirements of paragraph (f)(12) of this section, NMFS will issue an initial administrative determination (IAD) providing the reasons for disapproving the proposed IPA.

(3) *Administrative Appeals*. An applicant who receives an IAD disapproving a proposed IPA may

appeal under the procedures set forth at § 679.43. If the applicant fails to file an appeal of the IAD pursuant to § 679.43, the IAD will become the final agency action. If the IAD is appealed and the final agency action is a determination to approve the proposed IPA, then the IPA will be effective as described in paragraph (f)(12)(iv)(B) of this section.

(4) While appeal of an IAD disapproving a proposed IPA is pending, proposed members of the IPA subject to the IAD that are not currently members of an approved IPA will fish under the opt-out allocation under paragraph (f)(5) of this section. If no other IPA has been approved by NMFS, NMFS will issue all sectors allocations of the 47,591 Chinook salmon PSC limit as described in paragraph (f)(3)(iii)(B) of this section.

(vi) *Public release of an IPA*. NMFS will make all proposed IPAs and all approved IPAs and the list of participants in each approved IPA available to the public on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov/>).

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

(A) *Submission deadline*. The annual report must be postmarked or received by the Council no later than April 1 of each year following the year in which the IPA is first effective.

(B) *Information requirements*. The annual report must contain the following information:

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

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

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

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

(g) *BS Non-Chinook Salmon Bycatch Management*—(1) *Requirements for the non-Chinook salmon bycatch reduction intercooperative agreement (ICA)*—(i) *Application*. The ICA representative identified in paragraph (g)(2)(i)(B) of this section must submit a signed copy of the proposed non-Chinook salmon bycatch reduction ICA, or any proposed amendments to the ICA, to NMFS at the

address in paragraph (b)(6) of this section.

(ii) *Deadline*. For any ICA participant to be exempt from closure of the Chum Salmon Savings Area as described at paragraph (e)(7)(ix) of this section and at § 679.22(a)(10), the ICA must be filed in compliance with the requirements of this section, and approved by NMFS. The proposed non-Chinook salmon bycatch reduction ICA or any amendments to an approved ICA must be postmarked or received by NMFS by December 1 of the year before the year in which the ICA is proposed to be effective. Exemptions from closure of the Chum Salmon Savings Area will expire upon termination of the initial ICA, expiration of the initial ICA, or if superseded by a NMFS-approved amended ICA.

(2) *Information requirements*. The ICA must include the following provisions:

(i) *Participants*—(A) The names of the AFA cooperatives and CDQ groups participating in the ICA. Collectively, these groups are known as parties to the ICA. Parties to the ICA must agree to comply with all provisions of the ICA.

(B) The name, business mailing address, business telephone number, business fax number, and business e-mail address of the ICA representative.

(C) The ICA also must identify one entity retained to facilitate vessel bycatch avoidance behavior and information sharing.

(D) The ICA must identify at least one third party group. Third party groups include any organizations representing western Alaskans who depend on non-Chinook salmon and have an interest in non-Chinook salmon bycatch reduction but do not directly fish in a groundfish fishery.

(ii) The names, Federal fisheries permit numbers, and USCG documentation numbers of vessels subject to the ICA.

(iii) Provisions that dictate non-Chinook salmon bycatch avoidance behaviors for vessel operators subject to the ICA, including:

(A) *Initial base rate*. The initial B season non-Chinook salmon base rate shall be 0.19 non-Chinook salmon per metric ton of pollock.

(B) *Inseason adjustments to the non-Chinook base rate calculation*. Beginning July 1 of each fishing year and on each Thursday during the B season, the B season non-Chinook base rate shall be recalculated. The recalculated non-Chinook base rate shall be the three week rolling average of the B season non-Chinook bycatch rate for the current year. The recalculated base rate shall be used to determine bycatch avoidance areas.

(C) *ICA Chum Salmon Savings Area notices.* On each Thursday and Monday after June 10 of each year for the duration of the pollock B season, the entity identified under paragraph (g)(2)(i)(C) of this section must provide notice to the parties to the salmon bycatch reduction ICA and NMFS identifying one or more areas designated "ICA Chum Savings Areas" by a series of latitude and longitude coordinates. The Thursday notice must be effective from 6 p.m. A.l.t. the following Friday through 6 p.m. A.l.t. the following Tuesday. The Monday notice must be effective from 6 p.m. A.l.t. the following Tuesday through 6 p.m. A.l.t. the following Friday. For any ICA Salmon Savings Area notice, the maximum total area closed must be at least 3,000 square miles for ICA Chum Savings Area closures.

(D) *Fishing restrictions for vessels assigned to tiers.* For vessels in a cooperative assigned to Tier 3, the ICA Chum Salmon Savings Area closures announced on Thursdays must be closed to directed fishing for pollock, including pollock CDQ, for seven days. For vessels in a cooperative assigned to Tier 2, the ICA Chum Salmon Savings Area closures announced on Thursdays must be closed through 6 p.m. Alaska local time on the following Tuesday. Vessels in a cooperative assigned to Tier 1 may operate in any area designated as an ICA Chum Salmon Savings Area.

(E) *Cooperative tier assignments.* Initial and subsequent base rate calculations must be based on each cooperative's pollock catch for the prior two weeks and the associated bycatch of non-Chinook salmon taken by its members. Base rate calculations shall include non-Chinook salmon bycatch and pollock caught in both the CDQ and non-CDQ pollock directed fisheries. Cooperatives with non-Chinook salmon bycatch rates of less than 75 percent of the base rate shall be assigned to Tier 1. Cooperatives with non-Chinook salmon bycatch rates of equal to or greater than 75 percent, but less than or equal to 125 percent of the base rate shall be assigned to Tier 2. Cooperatives with non-Chinook salmon bycatch rates of greater than 125 percent of the base rate shall be assigned to Tier 3.

(iv) *Internal monitoring and enforcement provisions to ensure compliance of fishing activities with the provisions of the ICA.* The ICA must include provisions allowing any party of the ICA to bring civil suit or initiate a binding arbitration action against another party for breach of the ICA. The ICA must include minimum annual uniform assessments for any violation of savings area closures of \$10,000 for the

first offense, \$15,000 for the second offense, and \$20,000 for each offense thereafter.

(v) *Provisions requiring the parties to conduct an annual compliance audit, and to cooperate fully in such audit, including providing information required by the auditor.* The compliance audit must be conducted by a non-party entity, and each party must have an opportunity to participate in selecting the non-party entity. If the non-party entity hired to conduct a compliance audit discovers a previously undiscovered failure to comply with the terms of the ICA, the non-party entity must notify all parties to the ICA of the failure to comply and must simultaneously distribute to all parties of the ICA the information used to determine the failure to comply occurred and must include such notice(s) in the compliance report.

(vi) *Provisions requiring data dissemination in certain circumstances.* If the entity retained to facilitate vessel bycatch avoidance behavior and information sharing under paragraph (g)(2)(i)(C) of this section determines that an apparent violation of an ICA Chum Salmon Savings Area closure has occurred, that entity must promptly notify the Board of Directors of the cooperative to which the vessel involved belongs. If this Board of Directors fails to assess a minimum uniform assessment within 180 days of receiving the notice, the information used by the entity to determine if an apparent violation was committed must be disseminated to all parties to the ICA.

(3) *NMFS review of the proposed ICA and amendments.* NMFS will approve the initial or an amended ICA if it meets all the requirements specified in paragraph (g) of this section. If NMFS disapproves a proposed ICA, the ICA representative may resubmit a revised ICA or file an administrative appeal as set forth under the administrative appeals procedures described at § 679.43.

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

(i) *Submission deadline.* The ICA annual report must be postmarked or received by the Council by April 1 of each year following the year in which the ICA is first effective.

(ii) *Information requirements.* The ICA annual report must contain the following information:

(A) An estimate of the number of non-Chinook salmon avoided as demonstrated by the movement of

fishing effort away from Chum Salmon Savings Areas, and

(B) The results of the compliance audit required at § 679.21(g)(2)(v).

■ 8. In § 679.22, revise paragraphs (a)(10) and (h) to read as follows:

§ 679.22 Closures.

(a) * * *

(10) *Chum Salmon Savings Area.* Directed fishing for pollock by vessels using trawl gear is prohibited from August 1 through August 31 in the Chum Salmon Savings Area defined at Figure 9 to this part (see also § 679.21(e)(7)(vii)). Vessels directed fishing for pollock in the BS, including pollock CDQ, and operating under a non-Chinook salmon bycatch reduction ICA approved under § 679.21(g) are exempt from closures in the Chum Salmon Savings Area.

* * * * *

(h) *CDQ fisheries closures.* See § 679.7(d)(8) for time and area closures that apply to the CDQ fisheries once the non-Chinook salmon PSQ and the crab PSQs have been reached.

* * * * *

■ 9. In § 679.26, revise paragraph (c)(1) to read as follows:

§ 679.26 Prohibited Species Donation Program.

* * * * *

(c) * * *

(1) A vessel or processor retaining prohibited species under the PSD program must comply with all applicable recordkeeping and reporting requirements. A vessel or processor participating in the BS pollock fishery and PSD program must comply with applicable regulations at §§ 679.7(d) and (k), 679.21(c), and 679.28, including allowing the collection of data and biological sampling by an observer prior to processing any fish under the PSD program.

* * * * *

■ 10. In § 679.28,

■ a. Redesignate paragraphs (d)(7) and (d)(8) as paragraphs (d)(8) and (d)(9), respectively;

■ b. Add paragraphs (d)(7), (g)(7)(vi)(C), and (g)(7)(x)(F);

■ c. Revise newly redesignated paragraph (d)(9)(i)(H) and paragraphs (g)(2)(i), (g)(7)(vii)(A) and (C), (g)(7)(ix)(A), and (g)(7)(x)(D) and (E);

■ d. Add paragraph (j); and

■ e. Redesignate paragraphs (i)(1)(iii), (iv), and (v) as paragraphs (i)(1)(ii), (iii), and (iv), respectively.

The revisions and additions read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(d) * * *

(7) *Catcher/processors and motherships in the BS pollock fishery, including pollock CDQ.* Catcher/processors directed fishing for pollock in the BS or motherships taking deliveries from vessels directed fishing for pollock in the BS also must meet the following requirements:

(i) A container to store salmon must be located adjacent to the observer sampling station;

(ii) All salmon stored in the container must remain in view of the observer at the observer sampling station at all times during the sorting of each haul; and

(iii) The container to store salmon must be at least 1.5 cubic meters.

* * * * *

(g) * * *

(j) * * *

(H) For catcher/processors using trawl gear and motherships, a diagram drawn to scale showing the location(s) where all catch will be weighed, the location where observers will sample unsorted catch, and the location of the observer sampling station including the observer sampling scale. For catcher/processors directed fishing for pollock in the BS or motherships taking deliveries from catcher vessels directed fishing for pollock in the BS, including pollock CDQ, the diagram also must include the location of the last point of sorting in the factory and the location of the salmon storage container required under paragraph (d)(7) of this section.

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(g) * * *

(2) * * *

(i) AFA and CDQ pollock,

* * * * *

(7) * * *

(vi) * * *

(C) For shoreside processors or stationary floating processors taking deliveries from vessels directed fishing for pollock in the BS, including vessels directed fishing for pollock CDQ in the BS, the observation area must provide a clear, unobstructed view of the salmon storage container to ensure no salmon of any species are removed without the observer's knowledge.

(vii) * * *

(A) *Location of observer work station.*

(1) The observer work station must be located in an area protected from the weather where the observer has access to unsorted catch.

(2) For shoreside processors or stationary floating processors taking deliveries from vessels directed fishing

for pollock in the BS, including vessels directed fishing for pollock CDQ in the BS, the observer work station must be adjacent to the location where salmon will be counted and biological samples or scientific data are collected.

* * * * *

(C) *Proximity of observer work station.* The observation area must be located near the observer work station. The plant liaison must be able to walk between the work station and the observation area in less than 20 seconds without encountering safety hazards.

* * * * *

(ix) * * *

(A) Orienting new observers to the plant and providing a copy of the approved CMCP;

* * * * *

(x) * * *

(D) The location of each scale used to weigh catch;

(E) Each location where catch is sorted including the last location where sorting could occur; and

(F) For shoreside processors or stationary floating processors taking deliveries from vessels directed fishing for BS pollock, including vessels directed fishing for pollock CDQ in the BS, the location of the salmon storage container.

* * * * *

(j) *Electronic monitoring on catcher/processors and motherships in the BS pollock fishery, including pollock CDQ.* The owner or operator of a catcher/processor or a mothership must provide and maintain an electronic monitoring system that includes cameras, a monitor, and a digital video recording system for all areas where sorting of salmon of any species takes place and the location of the salmon storage container described at paragraph (d)(7) of this section. These electronic monitoring system requirements must be met when the catcher/processor is directed fishing for pollock in the BS, including pollock CDQ, and when the mothership is taking deliveries from catcher vessels directed fishing for pollock in the BS, including pollock CDQ.

(1) *What requirements must a vessel owner or operator comply with for an electronic monitoring system?*

(i) The system must have sufficient data storage capacity to store all video data from an entire trip. Each frame of stored video data must record a time/date stamp in Alaska local time (A.l.t.). At a minimum, all periods of time when fish are flowing past the sorting area or salmon are in the storage container must be recorded and stored.

(ii) The system must include at least one external USB (1.1 or 2.0) port or other removable storage device approved by NMFS.

(iii) The system must use commercially available software.

(iv) Color cameras must have at a minimum 470 TV lines of resolution, auto-iris capabilities, and output color video to the recording device with the ability to revert to black and white video output when light levels become too low for color recognition.

(v) The video data must be maintained and made available to NMFS staff, or any individual authorized by NMFS, upon request. These data must be retained onboard the vessel for no less than 120 days after the date the video is recorded, unless NMFS has notified the vessel operator that the video data may be retained for less than this 120-day period.

(vi) The system must provide sufficient resolution and field of view to observe all areas where salmon could be sorted from the catch, all crew actions in these areas, and discern individual fish in the salmon storage container.

(vii) The system must record at a speed of no less than 5 frames per second at all times when fish are being sorted or when salmon are stored in the salmon storage location.

(viii) A 16-bit or better color monitor, for viewing all areas where sorting of salmon of any species takes place and the salmon storage container in real time, must be provided within the observer sampling station. The monitor must—

(A) Have the capacity to display all cameras simultaneously;

(B) Be operating at all times when fish are flowing past the sorting area and salmon are in the storage container; and

(C) Be securely mounted at or near eye level.

(ix) NMFS staff, or any individual authorized by NMFS, must be able to view any earlier footage from any point in the trip and be assisted by crew knowledgeable in the operation of the system.

(x) A vessel owner or operator must arrange for NMFS to inspect the electronic monitoring system and maintain a current NMFS-issued electronic monitoring system inspection report onboard the vessel at all times the vessel is required to provide an approved electronic monitoring system.

(2) *How does a vessel owner arrange for NMFS to conduct an electronic monitoring system inspection?* The owner or operator must submit an Inspection Request for an Electronic Monitoring System to NMFS by fax (206-526-4066) or e-mail

(*station.inspections@noaa.gov*). The request form is available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*) or from NMFS at the address or phone number in paragraph (b)(6) of this section. NMFS will coordinate with the vessel owner to schedule the inspection no later than 10 working days after NMFS receives a complete request form.

(3) *What additional information is required for an electronic monitoring system inspection?*

(i) A diagram drawn to scale showing all locations where salmon will be sorted, the location of the salmon storage container, the location of each camera and its coverage area, and the location of any additional video equipment must be submitted with the request form.

(ii) Any additional information requested by the Regional Administrator.

(4) *How does a vessel owner make a change to the electronic monitoring system?* Any change to the electronic monitoring system that would affect the system's functionality must be submitted to, and approved by, the Regional Administrator in writing before that change is made.

(5) *Where will NMFS conduct electronic monitoring system inspections?* Inspections will be conducted on vessels tied to docks at Dutch Harbor, Alaska; Kodiak, Alaska; and in the Puget Sound area of Washington State.

(6) *What is an electronic monitoring system inspection report?* After an inspection, NMFS will issue an electronic monitoring system inspection

report to the vessel owner, if the electronic monitoring system meets the requirements of paragraph (j)(1) of this section. The electronic monitoring system report is valid for 12 months from the date it is issued by NMFS. The electronic monitoring system inspection report must be made available to the observer, NMFS personnel, or to an authorized officer upon request.

■ 11. In § 679.50,

■ a. Revise paragraph (c)(1) introductory text, paragraph (c)(4)(iv), and (c)(5) heading; and

■ b. Add a new paragraph (c)(5)(i)(D).

The addition and revisions read as follows:

§ 679.50 Groundfish Observer Program.

* * * * *

(c) * * *

(1) Unless otherwise specified in paragraphs (c)(4) through (7) of this section, observer coverage is required as follows:

* * * * *

(4) * * *

(iv) *Catcher vessel using trawl gear—*
 (A) *Groundfish CDQ fishing.* A catcher vessel equal to or greater than 60 ft (18.3 m) LOA using trawl gear, except a catcher vessel that delivers only unsorted codends to a processor or another vessel or a catcher vessel directed fishing for pollock CDQ in the BS, must have at least one level 2 observer as described at paragraph (j)(1)(v)(D) of this section aboard the vessel at all times while it is groundfish CDQ fishing.

(B) *BS pollock CDQ fishery.* A catcher vessel using trawl gear, except a catcher vessel that delivers only unsorted

codends to a processor or another vessel, must have at least one observer aboard the vessel at all times while it is directed fishing for pollock CDQ in the BS.

* * * * *

(5) *AFA and AI directed pollock fishery.*

(i) * * *

(D) *AFA catcher vessels in the BS pollock fishery.* A catcher vessel using trawl gear, except a catcher vessel that delivers only unsorted codends to a processor or another vessel, must have at least one observer aboard the vessel at all times while it is directed fishing for pollock in the BS.

* * * * *

■ 12. In § 679.61, revise paragraph (f)(2)(vi) to read as follows:

§ 679.61 Formation and operation of fishery cooperatives.

* * * * *

(f) * * *

(2) * * *

(vi) The number of salmon taken by species and season, and list each vessel's number of appearances on the weekly "dirty 20" lists for non-Chinook salmon.

* * * * *

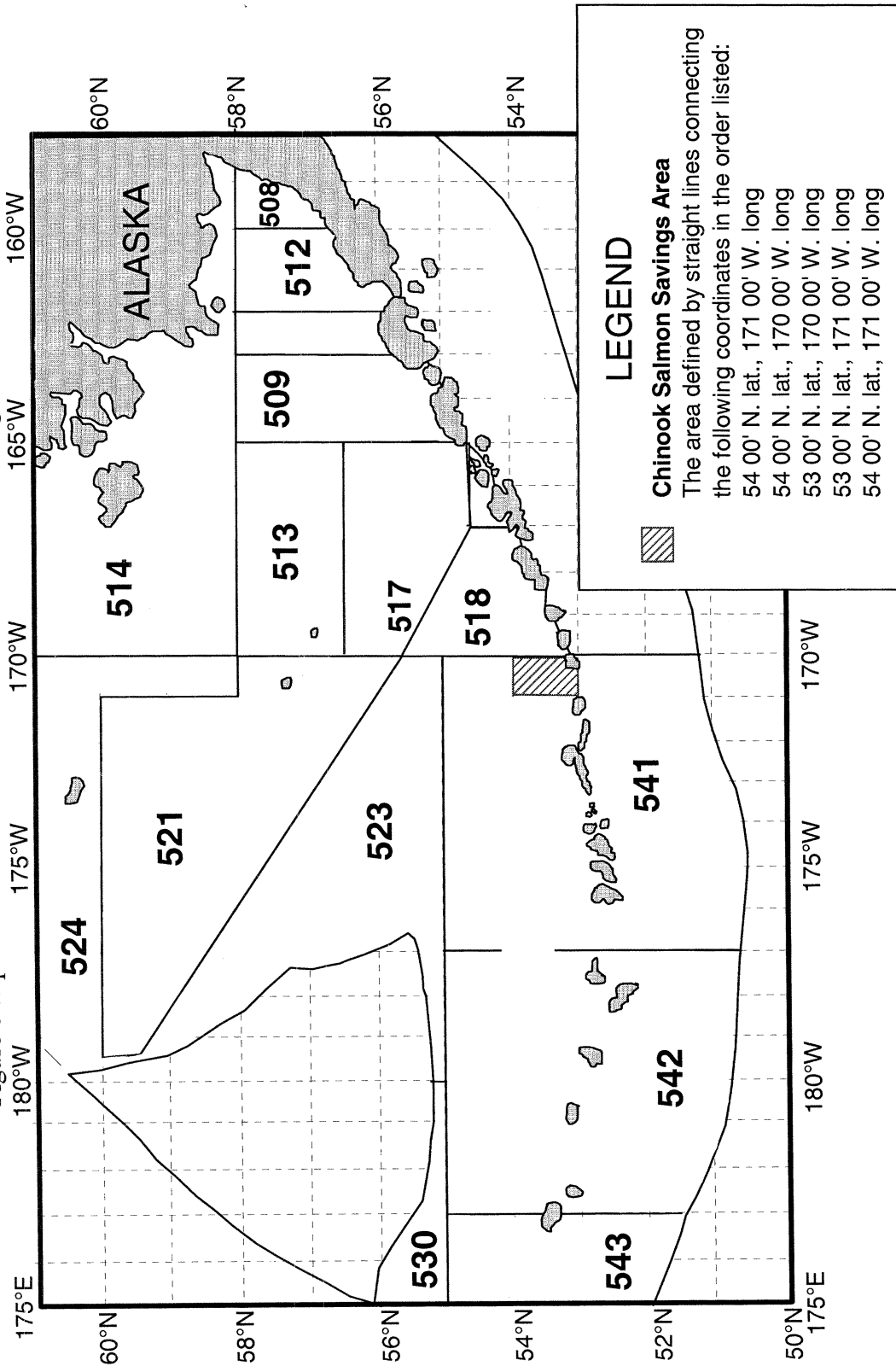
§§ 679.2, 679.5, 679.7, 679.20, 679.21, 679.26, 679.27, 679.28, 679.32, 679.61, and § 679.93 [Amended]

■ 13. At each of the locations shown in the "Location" column of the following table, remove the phrase indicated in the "Remove" column and replace it with the phrase indicated in the "Add" column for the number of times indicated in the "Frequency" column.

Location	Remove	Add	Frequency
§ 679.2 Definition "AFA trawl catcher/processor".	AFA trawl catcher/processor	AFA catcher/processor	1
§ 679.2 Definition for "Amendment 80 vessel" paragraph (2)(i).	AFA trawl catcher/processor	AFA catcher/processor	1
§ 679.5(c)(3)(v)(F) and (c)(4)(v)(G)	certified observer(s)	observer(s)	2
§ 679.5(c)(6)(v)(E)	certified observer(s)	observer(s)	1
§ 679.7(d)(18)	§ 679.28(d)(8)	§ 679.28(d)(9)	1
§ 679.20(a)(5)(i)(A)(3)(i)	§ 679.62(e)	§ 679.62(a)	1
§ 679.20(a)(7)(iii)(B)	AFA trawl catcher/processor	AFA catcher/processor	1
§ 679.21(e)(3)(v)	AFA trawl catcher/processor	AFA catcher/processor	2
§ 679.26(c)(1)	§ 679.7(c)(1)	§ 679.7(c)(2)	1
§ 679.27(j)(5)(iii)	§ 679.28(d)(7)(i)	§ 679.28(d)(8)(i)	1
§ 679.28(d)(2)(ii)	§ 679.28(d)(7)(ii)(A)	paragraph (d)(8)(ii)(A) of this section	1
§ 679.28(d)(2)(ii)	§ 679.28(d)(7)(ii)(B)	paragraph (d)(8)(ii)(B) of this section	1
§ 679.32(b)	§ 679.7(d)(7) through (10)	§ 679.7(d)(8)	1
§ 679.32(d)(2)(ii)(B)(7)	§ 679.28(d)(8)	§ 679.28(d)(9)	1
§ 679.32(d)(4)(ii)	§ 679.28(d)(8)	§ 679.28(d)(9)	1
§ 679.61(f)(1)	February 1	April 1	1
§ 679.93(c)(9)	§ 679.28(i)	§ 679.28(i)(1)	1

■ 14. Revise Figure 8 to part 679 to read as follows:

Figure 8 to part 679-- Aleutian Islands Chinook Salmon Savings Area



■ 15. Tables 47a through 47d to part 679 are added to read as follows:

TABLE 47a TO PART 679—PERCENT OF THE AFA CATCHER/PROCESSOR SECTOR'S POLLOCK ALLOCATION, NUMBERS OF CHINOOK SALMON USED TO CALCULATE THE OPT-OUT ALLOCATION AND ANNUAL THRESHOLD AMOUNT, AND PERCENT USED TO CALCULATE IPA MINIMUM PARTICIPATION ASSIGNED TO EACH CATCHER/PROCESSOR UNDER § 679.21(f)

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
			Percent of C/P sector pollock	Number of Chinook salmon for the opt-out allocation (8,093)	Number of Chinook salmon for the opt-out allocation (8,093)	Number of Chinook salmon deducted from the annual threshold amount of 13,516	Percent used to calculate IPA minimum participation
Vessel name	USCG vessel documentation No.	AFA permit No.	Percent	A season	B season	Annual	Percent
American Dynasty	951307	3681	4.93	324	76	400	1.78
American Triumph	646737	4055	7.25	475	111	586	2.61
Northern Eagle	506694	3261	6.07	398	93	491	2.19
Northern Hawk	643771	4063	8.45	554	129	683	3.04
Northern Jaeger	521069	3896	7.38	485	113	598	2.66
Ocean Rover	552100	3442	6.39	420	98	518	2.30
Alaska Ocean	637856	3794	7.30	479	112	591	2.63
Island Enterprise	610290	3870	5.60	367	86	453	2.01
Kodiak Enterprise	579450	3671	5.90	387	90	477	2.13
Seattle Enterprise	904767	3245	5.48	359	84	443	1.97
Arctic Storm	903511	2943	4.58	301	70	371	1.65
Arctic Fjord	940866	3396	4.46	293	68	361	1.60
Northern Glacier	663457	661	3.12	205	48	253	1.12
Pacific Glacier	933627	3357	5.06	332	77	409	1.82
Highland Light	577044	3348	5.14	337	79	416	1.85
Starbound	944658	3414	3.94	259	60	319	1.42
Ocean Peace	677399	2134	0.50	33	8	41	0.18
Katie Ann	518441	1996	0.00	0	0	0	0.00
U.S. Enterprise	921112	3004	0.00	0	0	0	0.00
American Enterprise	594803	2760	0.00	0	0	0	0.00
Endurance	592206	3360	0.00	0	0	0	0.00
American Challenger	633219	4120	0.78	51	12	63	0.28
Forum Star	925863	4245	0.61	40	9	49	0.22
Muir Milach	611524	480	1.13	74	17	91	0.41
Neahkahnne	599534	424	1.66	109	25	134	0.60
Ocean Harvester	549892	5130	1.08	71	16	87	0.39
Sea Storm	628959	420	2.05	134	31	165	0.74
Tracy Anne	904859	2823	1.16	76	18	94	0.42
Total .....	.....	.....	100.00	6,563	1,530	8,093	36.00

TABLE 47b TO PART 679—PERCENT OF THE AFA MOTHERSHIP SECTOR'S POLLOCK ALLOCATION, NUMBERS OF CHINOOK SALMON USED TO CALCULATE THE OPT-OUT ALLOCATION AND ANNUAL THRESHOLD AMOUNT, AND PERCENT USED TO CALCULATE IPA MINIMUM PARTICIPATION ASSIGNED TO EACH MOTHERSHIP UNDER § 679.21(f)

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
			Percent of MS sector pollock	Number of Chinook salmon for the opt-out allocation (2,220)	Number of Chinook salmon for the opt-out allocation (2,220)	Number of Chinook salmon deducted from the annual threshold amount of 3,707	Percent used to calculate IPA minimum participation
Vessel name	USCG Vessel Documentation No.	AFA Permit No.	Percent	A season	B season	Annual	Percent
American Beauty	613847	1688	6.000	96	37	133	0.54
Pacific Challenger	518937	657	9.671	154	60	214	0.87
Nordic Fury	542651	1094	6.177	99	39	138	0.55
Pacific Fury	561934	421	5.889	94	37	131	0.53

TABLE 47b TO PART 679—PERCENT OF THE AFA MOTHERSHIP SECTOR'S POLLOCK ALLOCATION, NUMBERS OF CHINOOK SALMON USED TO CALCULATE THE OPT-OUT ALLOCATION AND ANNUAL THRESHOLD AMOUNT, AND PERCENT USED TO CALCULATE IPA MINIMUM PARTICIPATION ASSIGNED TO EACH MOTHERSHIP UNDER § 679.21(f)—Continued

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
			Percent of MS sector pollock	Number of Chinook salmon for the opt-out allocation (2,220)	Number of Chinook salmon for the opt-out allocation (2,220)	Number of Chinook salmon deducted from the annual threshold amount of 3,707	Percent used to calculate IPA minimum participation
Vessel name	USCG Vessel Documentation No.	AFA Permit No.	Percent	A season	B season	Annual	Percent
Margaret Lyn	615563	723	5.643	90	35	125	0.51
Misty Dawn	926647	5946	3.569	57	22	79	0.32
Vanguard	617802	519	5.350	85	33	118	0.48
California Horizon	590758	412	3.786	61	24	85	0.34
Oceanic	602279	1667	7.038	112	44	156	0.63
Mar-Gun	525608	524	6.251	100	39	139	0.56
Mark 1	509552	1242	6.251	100	39	139	0.56
Aleutian Challenger	603820	1687	4.926	79	31	110	0.44
Ocean Leader	561518	1229	6.000	96	37	133	0.54
Papado II	536161	2087	2.953	47	18	65	0.27
Morning Star	618797	7270	3.601	57	23	80	0.32
Traveler	929356	3404	4.272	68	27	95	0.38
Vesteraalen	611642	517	6.201	99	39	138	0.56
Alyeska	560237	395	2.272	36	14	50	0.20
Western Dawn	524423	134	4.150	66	26	92	0.37
Total			100.000	1,596	624	2,220	9.00

TABLE 47c TO PART 679—PERCENT OF THE AFA INSHORE SECTOR'S POLLOCK ALLOCATION, NUMBERS OF CHINOOK SALMON USED TO CALCULATE THE OPT-OUT ALLOCATION AND ANNUAL THRESHOLD AMOUNT, AND PERCENT USED TO CALCULATE IPA MINIMUM PARTICIPATION ASSIGNED TO EACH CATCHER VESSEL UNDER § 679.21(f)

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
			Percent of sector pollock	Number of Chinook salmon for the opt-out allocation (15,858)	Number of Chinook salmon for the opt-out allocation (15,858)	Number of Chinook salmon deducted from the annual threshold amount of 26,485	Percent used to calculate IPA minimum participation
Vessel name	USCG Vessel documentation No.	AFA Permit No.	Percent	A Season	B Season	Annual	Percent
AJ	599164	3405	0.6958	69	41	110	0.31
Alaska Rose	610984	515	1.6835	167	100	267	0.76
Alaskan Command	599383	3391	0.3711	37	22	59	0.17
Aldebaran	664363	901	1.4661	146	87	233	0.66
Alsea	626517	2811	1.6635	165	99	264	0.75
Alyeska	560237	395	1.2192	121	72	193	0.55
American Beauty	613847	1688	0.0425	4	2	6	0.02
American Eagle	558605	434	1.0682	106	63	169	0.48
Anita J	560532	1913	0.4999	50	30	80	0.22
Arctic Explorer	936302	3388	1.6236	161	96	257	0.73
Arctic Wind	608216	5137	1.1034	110	65	175	0.50
Arcturus	655328	533	1.5450	153	91	244	0.70
Argosy	611365	2810	1.6330	162	97	259	0.73
Auriga	639547	2889	3.0981	308	184	492	1.39
Aurora	636919	2888	3.0990	308	184	492	1.39
Bering Rose	624325	516	1.7238	171	102	273	0.78
Blue Fox	979437	4611	0.3140	31	19	50	0.14
Bristol Explorer	647985	3007	1.5398	153	91	244	0.69
Caitlin Ann	960836	3800	0.9357	93	55	148	0.42
Cape Kiwanda	618158	1235	0.2282	23	13	36	0.10
Chelsea K	976753	4620	4.6467	462	275	737	2.09

TABLE 47c TO PART 679—PERCENT OF THE AFA INSHORE SECTOR'S POLLOCK ALLOCATION, NUMBERS OF CHINOOK SALMON USED TO CALCULATE THE OPT-OUT ALLOCATION AND ANNUAL THRESHOLD AMOUNT, AND PERCENT USED TO CALCULATE IPA MINIMUM PARTICIPATION ASSIGNED TO EACH CATCHER VESSEL UNDER § 679.21(f)—Continued

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
Vessel name	USCG Vessel documentation No.	AFA Permit No.	Percent	A Season	B Season	Annual	Percent
Collier Brothers	593809	2791	0.1534	15	9	24	0.07
Columbia	615729	1228	1.4429	143	85	228	0.65
Commodore	914214	2657	1.2595	125	75	200	0.57
Defender	554030	3257	3.4822	346	206	552	1.57
Destination	571879	3988	2.1528	214	128	342	0.97
Dominator	602309	411	1.7505	174	104	278	0.79
Dona Martita	651751	2047	2.1033	209	125	334	0.95
Elizabeth F	526037	823	0.3835	38	23	61	0.17
Excalibur II	636602	410	0.5200	52	31	83	0.23
Exodus Explorer	598666	1249	0.2990	30	18	48	0.13
Fierce Allegiance	588849	4133	0.9377	93	56	149	0.42
Flying Cloud	598380	1318	1.6410	163	97	260	0.74
Gold Rush	521106	1868	0.4062	40	24	64	0.18
Golden Dawn	604315	1292	1.7532	174	104	278	0.79
Golden Pisces	599585	586	0.2706	27	16	43	0.12
Great Pacific	608458	511	1.2361	123	73	196	0.56
Gun-Mar	640130	425	2.2201	221	132	353	1.00
Half Moon Bay	615796	249	0.5859	58	35	93	0.26
Hazel Lorraine	592211	523	0.3847	38	23	61	0.17
Hickory Wind	594154	993	0.3055	30	18	48	0.14
Intrepid Explorer	988598	4993	1.1458	114	68	182	0.52
Leslie Lee	584873	1234	0.5480	54	32	86	0.25
Lisa Melinda	584360	4506	0.2192	22	13	35	0.10
Majesty	962718	3996	0.9958	99	59	158	0.45
Marcy J	517024	2142	0.1799	18	11	29	0.08
Margaret Lyn	615563	723	0.0341	3	2	5	0.02
Mar-Gun	525608	524	0.1043	10	6	16	0.05
Mark I	509552	1242	0.0452	4	3	7	0.02
Messiah	610150	6081	0.2291	23	14	37	0.10
Miss Berdie	913277	3679	0.6110	61	36	97	0.27
Morning Star	610393	208	1.6981	169	101	270	0.76
Ms Amy	920936	2904	0.4882	48	29	77	0.22
Nordic Explorer	678234	3009	1.1045	110	65	175	0.50
Nordic Fury	542651	1094	0.0207	2	1	3	0.01
Nordic Star	584684	428	1.0103	100	60	160	0.45
Northern Patriot	637744	2769	2.4115	240	143	383	1.09
Northwest Explorer	609384	3002	0.2387	24	14	38	0.11
Ocean Explorer	678236	3011	1.3744	137	81	218	0.62
Morning Star	652395	1640	0.5290	53	31	84	0.24
Ocean Hope 3	652397	1623	0.4175	41	25	66	0.19
Ocean Leader	561518	1229	0.0545	5	3	8	0.02
Oceanic	602279	1667	0.1348	13	8	21	0.06
Pacific Challenger	518937	657	0.1680	17	10	27	0.08
Pacific Explorer	678237	3010	1.2895	128	76	204	0.58
Pacific Fury	561934	421	0.0121	1	1	2	0.01
Pacific Knight	561771	2783	2.1816	217	129	346	0.98
Pacific Monarch	557467	2785	1.5992	159	95	254	0.72
Pacific Prince	697280	4194	2.4099	239	143	382	1.08
Pacific Ram	589115	4305	0.2035	20	12	32	0.09
Pacific Viking	555058	422	1.0909	108	65	173	0.49
Pegasus	565120	1265	0.6950	69	41	110	0.31
Peggy Jo	502779	979	0.3324	33	20	53	0.15
Perseverance	536873	2837	0.2954	29	17	46	0.13
Poseidon	610436	1164	1.2411	123	73	196	0.56
Predator	547390	1275	0.1968	20	12	32	0.09
Progress	565349	512	1.0118	100	60	160	0.46
Providian	1062183	6308	0.3822	38	23	61	0.17
Raven	629499	1236	0.7116	71	42	113	0.32

TABLE 47c TO PART 679—PERCENT OF THE AFA INSHORE SECTOR’S POLLOCK ALLOCATION, NUMBERS OF CHINOOK SALMON USED TO CALCULATE THE OPT-OUT ALLOCATION AND ANNUAL THRESHOLD AMOUNT, AND PERCENT USED TO CALCULATE IPA MINIMUM PARTICIPATION ASSIGNED TO EACH CATCHER VESSEL UNDER § 679.21(f)—Continued

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
			Percent of sector pollock	Number of Chinook salmon for the opt-out allocation (15,858)	Number of Chinook salmon for the opt-out allocation (15,858)	Number of Chinook salmon deducted from the annual threshold amount of 26,485	Percent used to calculate IPA minimum participation
Vessel name	USCG Vessel documentation No.	AFA Permit No.	Percent	A Season	B Season	Annual	Percent
Royal American	624371	543	0.9698	96	57	153	0.44
Royal Atlantic	559271	236	1.3095	130	78	208	0.59
Sea Wolf	609823	1652	1.5156	151	90	241	0.68
Seadawn	548685	2059	1.4108	140	84	224	0.63
Seeker	924585	2849	0.3695	37	22	59	0.17
Sovereignty	651752	2770	2.3513	234	139	373	1.06
Star Fish	561651	1167	1.5114	150	90	240	0.68
Starlite	597065	1998	1.2252	122	73	195	0.55
Starward	617807	417	1.2611	125	75	200	0.57
Storm Petrel	620769	1641	1.2334	123	73	196	0.56
Sunset Bay	598484	251	0.5596	56	33	89	0.25
Topaz	575428	405	0.0828	8	5	13	0.04
Traveler	929356	3404	0.0413	4	2	6	0.02
Vanguard	617802	519	0.0565	6	3	9	0.03
Viking	565017	1222	1.6575	165	98	263	0.75
Viking Explorer	605228	1116	1.1881	118	70	188	0.53
Walter N	257365	825	0.4031	40	24	64	0.18
Western Dawn	524423	134	0.3952	39	23	62	0.18
Westward I	615165	1650	1.5544	154	92	246	0.70
Total			100.00	9,933	5,925	15,858	45.00

TABLE 47d TO PART 679—PERCENT OF THE CDQ PROGRAM’S POLLOCK ALLOCATION, NUMBERS OF CHINOOK SALMON USED TO CALCULATE THE OPT-OUT ALLOCATION AND ANNUAL THRESHOLD AMOUNT, AND PERCENT USED TO CALCULATE IPA MINIMUM PARTICIPATION ASSIGNED TO EACH CDQ GROUP UNDER § 679.21(f)

Column A	Column B	Column C	Column D	Column E	Column F
	Percent of CDQ Program pollock	Number of Chinook salmon for the opt-out allocation (2,325)	Number of Chinook salmon for the opt-out allocation (2,325)	Number of Chinook salmon deducted from the annual threshold amount of 3,883	Percent used to calculate IPA minimum participation
CDQ group	Percent	A season	B season	Annual	Percent
APICDA	14.00	260	66	326	1.40
BBEDC	21.00	389	99	488	2.10
CBSFA	5.00	93	23	116	0.50
CVRF	24.00	445	113	558	2.40
NSEDC	22.00	408	103	511	2.20
YDFDA	14.00	260	66	326	1.40
Total	100.00	1,855	470	2,325	10.00

[FR Doc. 2010-20618 Filed 8-27-10; 8:45 am]