

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Part 679**

[Docket No. 0612242886–7464–03; I.D. 041307D]

RIN 0648–AU68

**Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea/Aleutian Islands Fishery Resources; American Fisheries Act Sideboards**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). Amendment 80 (hereinafter the “Program”) primarily allocates several Bering Sea and Aleutian Islands (BSAI) non-pollock trawl groundfish fisheries among fishing sectors, and facilitates the formation of harvesting cooperatives in the non-American Fisheries Act (AFA) trawl catcher/processor sector. The Program establishes a limited access privilege program (LAPP) for the non-AFA trawl catcher/processor sector. This action is necessary to increase resource conservation and improve economic efficiency for harvesters who participate in the BSAI groundfish fisheries. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the FMP, and other applicable law.

**DATES:** Effective on October 15, 2007, except amendments to § 679.2, the definition of “non-AFA trawl catcher/processor,” § 679.20(a)(7)(ii)(A)(8), § 679.20(a)(7)(iii)(B), § 679.64(a)(1)(i)(A), § 679.64(a)(1)(iii), § 679.64(a)(1)(v), § 679.64(a)(1)(vi), § 679.64(a)(2), and § 679.64(a)(3) that are effective on January 1, 2008; and amendments to § 679.7(m), § 679.27(j), and § 679.50(c)(6) that are effective on January 20, 2008.

**ADDRESSES:** Copies of Amendment 80, the final Environmental Assessment (EA), Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and Final Regulatory Flexibility Analysis (FRFA) for this action may be

obtained from NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian, and on the NMFS Alaska Region Web site at <http://www.fakr.noaa.gov>. The proposed rule to implement Amendment 80 also may be accessed at this Web site.

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 at the above address, and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or by fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:**

Glenn Merrill, 907–586–7228 or [glenn.merrill@noaa.gov](mailto:glenn.merrill@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The groundfish fisheries in the BSAI are managed under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the MSA, 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Council took final action to recommend Amendment 80 on June 9, 2006. The Council submitted Amendment 80 for review by the Secretary of Commerce (Secretary) in April 2007, and a notice of availability of the FMP amendment was published in the **Federal Register** on April 30, 2007 (72 FR 21198), with comments on the FMP amendment invited through June 29, 2007. NMFS received one comment specific to Amendment 80. That comment has been addressed in the Response to Comments section below. On May 30, 2007, NMFS published a proposed rule to implement the Program (72 FR 30052). The public comment period on the proposed rule ended on July 29, 2006. NMFS received 25 letters commenting on the proposed rule, including the letter submitted during the Amendment 80 comment period. These letters contained a total of 82 unique comments. These comments are addressed in the Response to Comments section of this rule below. The Secretary approved Amendment 80 on July 26, 2007.

The Program allocates several BSAI non-pollock trawl groundfish species among trawl fishery sectors and facilitates the formation of harvesting cooperatives in the non-AFA trawl catcher/processor sector. The Program meets the broad goals of (1) improving retention and utilization of fishery resources by the non-AFA trawl catcher/processor fleet by extending the groundfish retention standard (GRS) to all non-AFA trawl catcher/processor

vessels; (2) allocating fishery resources among BSAI trawl harvesters in consideration of historic and present harvest patterns and future harvest needs; (3) establishing a LAPP for the non-AFA trawl catcher/processors and authorizing the allocation of groundfish species to harvesting cooperatives to encourage fishing practices with lower discard rates and to improve the opportunity for increasing the value of harvested species while lowering costs; and (4) limiting the ability of non-AFA trawl catcher/processors to expand their harvesting capacity into other fisheries not managed under a LAPP.

**I. Development of the Program***A. History of Bycatch and Discard Reduction Efforts in the BSAI*

The Council has long recognized the need to reduce bycatch, minimize waste, and improve utilization of fish resources to the extent practicable in order to provide the maximum benefit to present and future generations of fishermen, associated fishing industry sectors, communities, and the Nation as a whole. The Council has recommended and NMFS has approved and implemented numerous measures to reduce discards and bycatch of groundfish species over the past several years.

The Council recommended and NMFS approved and implemented management measures to establish retention and utilization standards for pollock and Pacific cod under Amendment 49 to the FMP (62 FR 63880; January 3, 1998). More recently, in June 2003, the Council recommended Amendment 79 to the FMP to improve retention of groundfish species by implementing the GRS. The Secretary approved Amendment 79 on August 31, 2005, and NMFS published regulations to implement the GRS on April 6, 2006 (71 FR 17362). The GRS will be effective on January 20, 2008.

Amendment 79 authorizes the GRS as a tool for further increasing the retention and utilization of groundfish and responding to bycatch reduction goals described in the MSA National Standards (16 U.S.C. 1851(a)). The GRS balanced the requirements for conservation and management of the groundfish fisheries under the MSA with the requirements to minimize bycatch under National Standard 9 and minimize economic burdens under National Standard 7 to the extent practicable (minimize costs and avoid unnecessary duplication). The GRS currently applies to catcher/processor vessels using trawl gear that are greater than or equal to 125 ft (38.1 m) length

overall (LOA) and not specifically defined as catcher/processors listed as eligible to participate in the directed pollock fishery under section 208(e) of the AFA. These catcher/processors are commonly referred to as non-AFA trawl catcher/processors or head and gut catcher/processors.

The Council's analysis of groundfish retention rates in the BSAI groundfish fishery revealed that vessels in the non-AFA trawl catcher/processor sector had the lowest retained catch rates of any groundfish trawl fishery in the BSAI. This analysis also noted that non-AFA trawl catcher/processors equal to or greater than 125 ft (38.1 m) LOA contributed the majority of the harvest and discarded catch by the non-AFA trawl catcher/processor fleet. Given the smaller, but still considerable, proportion of overall bycatch and discard of groundfish by non-AFA trawl catcher/processors less than 125 ft (38.1 m) LOA to the overall bycatch and discard of groundfish by all non-AFA trawl catcher/processors, and recognizing that compliance costs associated with observers and scale monitoring requirements would be relatively higher for vessels less than 125 ft (38.1 m) LOA, non-AFA trawl catcher/processor vessels that are less than 125 ft (38.1 m) LOA were excluded from the GRS. The GRS requires each non-AFA trawl catcher/processor greater than or equal to 125 ft (38.1 m) LOA to retain specific groundfish species at a specified annual minimum rate. The annual minimum retention rate is lowest in 2008, the first year the GRS is effective, and is gradually increased to a maximum retention rate for 2011 and in all years thereafter. This graduated approach to increasing the minimum GRS rate was designed to facilitate industry compliance with the GRS by providing vessel operators several years to modify and adapt fishing operations.

Amendment 80 and the implementing regulations continue initiatives by the Council and NMFS to reduce bycatch and discard of fish species in the BSAI non-pollock trawl groundfish fisheries. The Program (1) extends the application of the GRS to non-AFA trawl catcher/processor vessels of all sizes by including catcher/processor vessels less than 125 ft (38.1 m) LOA; and (2) reduces the amount of halibut and crab bycatch, known as prohibited species catch (PSC), that may be taken while non-AFA trawl catcher/processors are groundfish fishing in the BSAI. These measures improve the utilization of fishery resources, minimize costs, and further minimize bycatch to the extent practicable, thereby meeting the

objectives of the MSA National Standards 5, 7, and 9.

The Program facilitates this improved retention and utilization of groundfish resources through specific economic incentives provided by a LAPP. It is anticipated that the LAPP will improve retention and utilization of fishery resources by allocating specific amounts of certain non-pollock groundfish species, halibut PSC, and crab PSC to non-AFA trawl catcher/processors; and facilitates the formation of cooperatives that will receive exclusive harvest privileges for a portion of these fishery resources. The ways in which the use of exclusive harvest privileges will improve the retention and utilization of fishery resources by non-AFA trawl catcher/processors are described in Parts C and D of this section.

#### *B. Legislation Affecting the Program*

Congress granted NMFS additional specific statutory authority to manage BSAI groundfish fisheries under the FMP. Eligibility to participate in the Program and allocation of groundfish resources under the Program are affected by several pieces of recent legislation.

- Section 219 of the Consolidated Appropriations Act of 2005 (Pub. L. 108-447; December 8, 2004), referred to in this rule as the Capacity Reduction Program (CRP), which defined the non-AFA trawl catcher/processor sector [Amendment 80 sector] and implemented a capacity reduction program for several catcher/processor sectors;

- Section 416 of the Coast Guard and Maritime Transportation Act of 2006 (Pub. L. 109-241; July 11, 2006), referred to in this rule as the Coast Guard Act, which amended provisions of the Community Development Quota (CDQ) Program in the MSA; and

- The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Pub. L. 109-479, January 12, 2007), referred to in this rule as the MSRA, which modified provisions related to the CDQ Program and instituted other measures applicable to LAPPs.

These pieces of legislation directly dictate specific elements of the Program. The preamble of the proposed rule details the effects of the CRP, Coast Guard Act, and MSRA on the development of the Program and this rule; therefore, that discussion is not repeated here (see 72 FR 30052; May 30, 2007).

#### *C. The Non-Pollock Trawl Groundfish Fisheries*

One of the primary reasons for the relatively high discard rates of groundfish by non-AFA trawl catcher/processors is the nature of the fisheries in which those vessels participate. The non-AFA trawl catcher/processor sector primarily participates in non-pollock groundfish fisheries. The non-pollock groundfish fisheries are primarily comprised of groups of species that share similar habitat (e.g., flatfish fisheries such as rock sole, flathead sole, and yellowfin sole). Because these species occur together, they are typically harvested together. When a non-AFA trawl catcher/processor retrieves its net, very often multiple species of fish are present. If a vessel operator is targeting only one species of fish, and other species are retrieved along with the desired catch, the vessel operator may have an incentive to discard the less valuable species and retain only the higher value species. The multi-species nature of these fisheries makes it difficult for vessel operators to target only one species, and an economic incentive is created to discard less valuable fish.

NMFS establishes a total allowable catch (TAC) for each of the non-pollock groundfish fisheries based on the species' annual biomass with the goal of providing a conservatively managed sustainable yield. Harvesters compete for the TAC, resulting in a "race for fish," wherein vessels attempt to maximize their harvest in as little time as possible, in order to claim as large a share as possible of the available TAC. This race for fish increases the economic incentive to discard less valuable species in a multi-species harvest, and accelerates the harvest rate for the more valuable species.

Because vessel operators are competing with each other for harvest of a common TAC, a vessel operator has little economic incentive to undertake actions to reduce unwanted incidental catch, such as searching for fishing grounds with lower bycatch rates, or using gear modifications that may reduce bycatch but have lower harvest rates, if those actions would limit the ability of that vessel to effectively compete with other vessels.

Additionally, a vessel operator has little incentive to process and store less valuable species if by doing so, he loses an opportunity to use that processing or storage capacity for more valuable catch. Therefore, an individual vessel operator has strong incentives to harvest fish as quickly as possible, and discard less valuable species before the TAC limit is

reached because all vessel operators are competing for a limited TAC.

Additionally, non-pollock groundfish fisheries are constrained by catch limits for non-target species, such as halibut, red king crab, Tanner crab (*Chionoecetes bairdi*), and snow crab (*C. opilio*). Halibut and crab are harvested in other fisheries and cannot be retained by vessels using trawl gear. NMFS establishes PSC limits for halibut in the entire BSAI, and red king crab, *C. opilio* crab, and *C. bairdi* crab in specific areas of the BSAI to limit the adverse impact of harvesting operations on the long-term productivity of those species. NMFS monitors these PSC limits, and may close or otherwise restrict trawl harvests if PSC limits are projected to be reached. Fishery closures due to reaching PSC limits can limit harvest of the groundfish TAC and reduce overall revenue to vessel operators and crew. As vessel operators seek to maximize harvest of TAC, they may accelerate fishing operations to maximize harvest before a crab or halibut PSC limit is reached. A "race for PSC" further exacerbates competition and the incentives to harvest rapidly, resulting in greater potential waste and higher discard rates of less valuable groundfish species.

The multi-species nature of non-pollock groundfish fisheries further limits the ability of a fisherman to specifically target valuable groundfish species as they race with their competitors. Vessel operators may discard considerable portions of their catch to maximize harvests of more valuable species even though the discarded species may still have considerable market value.

#### *D. Limited Access Privilege Programs (LAPPs)*

The primary method to offset the economic incentives that lead to a race for fish and relatively high discard rates is to reduce the impact of those incentives through a LAPP. LAPPs have been used extensively in the North Pacific as a means to encourage economic efficiency and less wasteful harvest methods, and to resolve allocation disputes among harvesters by providing a group of harvesters with exclusive harvest privileges that can be traded. North Pacific LAPPs include (1) the Halibut and Sablefish individual fishing quota (IFQ) Program (58 FR 59375; November 9, 1993); (2) the AFA (67 FR 69692; December 30, 2002); (3) the BSAI Crab Rationalization Program (70 FR 10174; March 2, 2005); and (4) the Central Gulf of Alaska (GOA) Rockfish Program (71 FR 67210; November 20, 2006). An extensive

discussion of LAPPs can be found in the EA/RIR/FRFA prepared for this action and in the National Research Council's publication *Sharing the Fish*, which was consulted and considered during the development of the Program.

A LAPP allows vessel operators to make operational choices to reduce discards of fish because the strong incentives to maximize catch in the minimum amount of time have been reduced. If a vessel operator receives an exclusive portion of the TAC for non-pollock groundfish species and the associated halibut and crab PSC, he knows that he need not compete with other harvesters. That vessel operator can then choose to fish in a slower and less wasteful fashion, use modified gear with a lower harvest rate but which reduces bycatch, coordinate with other vessel operators to avoid areas of high bycatch, process fish in ways that yield increased value but which are possible only by slowing the processing rate, or otherwise operate in ways that limit bycatch. The examples cited in this paragraph have been used by vessel operators in other LAPPs in the North Pacific, and NMFS anticipates non-AFA trawl catcher/processors would use similar techniques to reduce bycatch and improve the value of their product.

LAPPs can improve the profitability of fishing operators holding the exclusive harvest privilege. In most cases, LAPPs provide harvesters greater flexibility in tailoring their fishing operations to specific fisheries which can reduce operational costs. Additionally, vessel operators may reduce costs by avoiding costly improvements in vessel size or fishing power designed to outcompete other harvesters. Slower fishing rates can improve product handling and quality and increase the exvessel price of product. Vessel operators can also choose to consolidate less profitable fishing operations onto one vessel. Other potential advantages to the holders of exclusive harvest privileges have been analyzed during the development of past LAPPs.

LAPPs can increase the costs of entering the fishery substantially because the permits acquire value and must be purchased prior to entry. Consolidation can limit employment opportunities as well. Compliance costs can also increase to ensure that NMFS can monitor the harvesting and processing of fish. Administration of LAPPs typically requires greater effort and cost than non-LAPP fisheries due to the greater precision in catch accounting required to track the harvest of fish and to ensure proper debiting of accounts. Participants in LAPPs may also use their

excess fishing capacity to expand operations into other fisheries that are not managed by LAPPs and increase the race for fish in those fisheries unless they are constrained. These effects and others have been addressed in the design of previous LAPPs by limiting the amount of consolidation in the LAPP fishery and by limiting the harvest of species in non-LAPP fisheries. Entry costs for any LAPP are likely to be higher than in other non-LAPP fisheries, and those costs limit the ability of those operators lacking the financial wherewithal to participate in these fisheries. A loan program for entry level participants has been authorized and established in the Halibut and Sablefish IFQ Program to assist entry into that LAPP, but fishery participants in other LAPPs must rely on other sources of financing. A loan program has not been authorized for the Program.

Based on extensive experience with past LAPPs, and after weighing potential advantages and disadvantages, the Council adopted the Program to create economic incentives that provide additional opportunities to reduce bycatch while increasing the potential for greater economic returns to those holding the harvest privileges. The Program provides an incentive for non-AFA trawl catcher/processors to harvest certain species of non-pollock groundfish in a less wasteful manner by granting an exclusive harvest privilege to a limited number of harvesters. The Program encourages participants to harvest more efficiently and less wastefully by allowing them to join other harvesters to form harvesting cooperatives that will receive an exclusive annual harvest privilege of specific groundfish species. Those participants that do not join a harvesting cooperative may fish in a limited access fishery. The principal benefits from the Program would be realized by harvesters that choose to join a cooperative.

#### *E. LAPPs, GRS, and Reduced PSC*

The Council also recognized that some of the compliance costs associated with the GRS, particularly for non-AFA trawl catcher/processors less than 125 ft (38.1 m) LOA could be reduced under LAPP management. The Council recognized that if harvesters could apply the GRS to a cooperative by aggregating the retention rate of all vessels assigned to a cooperative, owners of non-AFA trawl catcher/processors less than 125 ft (38.1 m) LOA could choose to join a cooperative, assign their harvest privilege to the cooperative, and allow other larger vessels to harvest the cooperative's exclusive allocation of fish without

incurring the compliance costs associated with monitoring the GRS. Non-AFA trawl catcher/processor vessels less than 125 ft (38.1 m) LOA would still receive economic benefits from the cooperative's harvests but would not need to refit their vessels to meet the additional monitoring and enforcement (M&E) requirements and pay the additional costs to fish in the BSAI. Those vessels could continue to participate in other fisheries in the GOA. Furthermore, the catch associated with smaller non-AFA trawl catcher/processor vessels that are used to fish in the BSAI would be subject to the GRS, thereby further improving retention of groundfish and reducing discards of fish.

Additionally, for those non-AFA trawl catcher/processor vessels that do fish under a cooperative's exclusive harvest privilege, the costs associated with retaining less valuable fish under the GRS may be offset by increased profitability from those vessels because they are no longer operating in a race for fish. The Council considered these factors in recommending that the GRS be extended to all non-AFA trawl catcher/processors under the Program.

The Council also recognized that LAPP management under a cooperative allocation can encourage lower bycatch as described in Part D of this section. Because vessel operators in cooperatives are better able to target catch and can engage in voluntary agreements to avoid areas with higher PSC, the Council recommended an overall reduction in the amount of halibut and crab PSC that may be used by the non-AFA trawl catcher/processor sector. The Program incorporates this recommendation, furthering the Council's goals of reducing bycatch and discards of fishery species.

#### *F. Program Overview*

As noted earlier, the Council adopted the Program to meet the broad goals of (1) improving retention and utilization of fishery resources; (2) allocating fishery resources among BSAI trawl harvesters; (3) establishing a LAPP for the non-AFA trawl catcher/processors; and (4) limiting the ability of non-AFA trawl catcher/processors to expand their harvesting capacity into other fisheries not managed under a LAPP.

As with all other LAPPs in the North Pacific, the extensive changes to existing management of BSAI non-pollock trawl fisheries implemented by the Program affects a wide range of fishing practices and regulations. The Program affects management of the non-AFA trawl catcher/processors, other BSAI trawl fishery participants, and

other harvesters in the North Pacific. As such, the Program implements a complex suite of measures to ensure the goals of the Program are met and to minimize potential adverse impacts on affected fishery participants.

The rationale behind specific aspects of the Program are summarized below and described in detail in the preamble to the proposed rule (72 FR 30052; May 30, 2007).

#### **1. Community Development Quota (CDQ) Program**

The Program incorporates statutory mandates in the MSA as amended by Section 416 of the Coast Guard Act and the MSRA. The rule modifies the percentage of TAC for directed fisheries that are allocated to the CDQ Program, the percentage of halibut, crab, and non-Chinook salmon PSC allocated to the CDQ Program as prohibited species quota (PSQ), and includes other provisions necessary to bring Amendment 80 and the CDQ Program into compliance with applicable law.

#### **2. Amendment 80 Sector and Amendment 80 Vessels**

Eligible Program participants are defined by applicable legislation and the Program. Applicable legislation is summarized in Part B of this section of this preamble. The Program incorporates statutory mandates in section 219 of the CRP which defines who is eligible to harvest fish in the non-AFA trawl catcher/processor sector for a defined list of non-pollock groundfish species. The Program defines the "Amendment 80 sector" as non-AFA trawl catcher/processor harvesters eligible to fish under this statutory mandate. The defined list of non-AFA trawl catcher/processor vessels that may be used to fish in the Amendment 80 sector are "Amendment 80 vessels."

#### **3. Amendment 80 Species**

The Program allocates a specific portion of six non-pollock groundfish species among trawl fishery sectors. These six species are the "Amendment 80 species" and include Aleutian Islands (AI) Pacific ocean perch (POP), BSAI Atka mackerel, BSAI flathead sole, BSAI Pacific cod, BSAI rock sole, and BSAI yellowfin sole. These Amendment 80 species are allocated between the Amendment 80 sector and all other BSAI trawl fishery participants not in the Amendment 80 sector. These other trawl fishery participants include AFA catcher/processors, AFA catcher vessels, and non-AFA catcher vessels. Collectively, this group of trawl fishery participants comprises the "BSAI trawl limited access sector."

Amendment 80 species are economically valuable and have historically been targeted by non-AFA trawl catcher/processors, but fisheries associated with these species have high rates of discard or waste relative to other groundfish fisheries. Other species, such as Alaska plaice, are occasionally harvested in the BSAI trawl fisheries, but these other species are a minor component of the overall biomass and value of non-pollock groundfish harvested, less subject to an intense race for fish, and are not allocated under the Program.

#### **4. Allocations of TAC and PSC in the BSAI Trawl Fisheries**

Each year, the Program will allocate an amount of Amendment 80 species available for harvest, called the initial total allowable catch (ITAC), and crab and halibut PSC to two defined groups of trawl fishery participants: (1) The Amendment 80 sector; and (2) the BSAI trawl limited access sector. Allocations made to one sector are not subject to harvest by participants in the other fishery sector except under a specific condition: fish that are allocated to the BSAI trawl limited access sector and projected to be unharvested could be reallocated to Amendment 80 cooperatives.

The ITAC represents the amount of TAC for each Amendment 80 species that is available for harvest after allocations to the CDQ Program and the incidental catch allowance (ICA) have been subtracted from the TAC. The ICA is set aside for the incidental harvest of an Amendment 80 species while targeting other groundfish species in non-trawl fisheries (e.g., yellowfin sole incidental harvests in the hook-and-line Pacific cod fishery) and in the BSAI trawl limited access sector fisheries (e.g., rock sole incidentally harvested by AFA trawl catcher vessels in the Pacific cod fishery).

The Program will allocate crab and halibut PSC to the Amendment 80 and BSAI trawl limited access sectors to accommodate PSC use by these sectors based on past PSC use with specific consideration given to possible future requirements. As explained earlier, the Program further addresses the Council's goals of reducing bycatch and discard of groundfish species by reducing the total amount of crab and halibut PSC assigned to the Amendment 80 sector.

#### **5. BSAI Trawl Limited Access Sector**

The Program provides a specific allocation of Amendment 80 species and crab and halibut PSC to this sector. The Program modifies the calculation of AFA sideboard limits for Amendment

80 species and crab and halibut PSC limits necessary to allow the efficient operation of AFA vessels. The Program also adjusts the maximum limit for red king crab bycatch in the Red King Crab Savings Subarea.

#### 6. Amendment 80 Quota Share

The Program assigns Amendment 80 quota share (QS) for Amendment 80 species based on catch by Amendment 80 vessels. The Amendment 80 QS could be used to yield an exclusive harvest privilege for a portion of the Amendment 80 sector ITAC. The Program establishes criteria for harvesters in the Amendment 80 sector to apply for and receive QS, initially allocate QS, and transfer QS.

The Program assigns Amendment 80 QS based on historic catch patterns of an Amendment 80 vessel during 1998 through 2004 and on the relative proportion of an Amendment 80 species harvested by an Amendment 80 vessel compared to all other Amendment 80 vessels.

The Program will assign Amendment 80 QS only to persons who submit a timely and complete application for Amendment 80 QS. In most cases, the Program will assign the Amendment 80 QS to the Amendment 80 vessel owner. In specific cases where an Amendment 80 vessel has been lost or is otherwise permanently ineligible to fish in U.S. waters, the Program will assign the Amendment 80 QS to the holder of the license limitation program (LLP) license originally assigned to that Amendment 80 vessel. Once Amendment 80 QS is assigned based on the historic catch patterns of an Amendment 80 vessel, it cannot be divided or transferred separately from that Amendment 80 vessel. If the Amendment 80 QS is assigned to the LLP license originally issued for that Amendment 80 vessel, it cannot be transferred separately from that LLP license.

#### 7. Amendment 80 Cooperatives

Persons that receive Amendment 80 QS can join a cooperative to receive an exclusive harvest privilege for a portion of the ITAC. Amendment 80 QS holders can form a cooperative with other Amendment 80 QS holders on an annual basis, provided they meet specific criteria. Each Amendment 80 cooperative will receive an annual cooperative quota (CQ), an amount of Amendment 80 species ITAC that will be for the exclusive use by that cooperative for harvest in a given year. The Program establishes requirements for forming an Amendment 80 cooperative with other Amendment 80 QS holders, the allocation of annual CQ

to a cooperative, and transfers of CQ among cooperatives.

A cooperative will receive an amount of CQ equivalent to the proportion of QS held by all of the members of the cooperative relative to the total QS held by all Amendment 80 QS holders. Each Amendment 80 cooperative will receive an annual CQ with an exclusive limit on the amount of crab and halibut PSC the cooperative can use while harvesting in the BSAI. This crab and halibut PSC CQ will be assigned to a cooperative proportional to the amount of Amendment 80 QS held by the members, and will not be based on the amount of crab or halibut PSC historically used by the cooperative members. This provision does not reward harvesters with high PSC rates with large amounts of PSC CQ. Instead, PSC CQ will be issued in proportion to the amount of Amendment 80 species CQ that are assigned to a cooperative for harvest.

The Program provides opportunities for Amendment 80 sector participants to trade harvest privileges among cooperatives to further encourage economically efficient fishing operations. An Amendment 80 cooperative will not be able to transfer CQ to the Amendment 80 limited access fishery or to the BSAI trawl limited access sector.

A cooperative structure may allow Amendment 80 vessel operators to manage PSC rates more efficiently. By reducing PSC through more efficient cooperative operations, such as through gear modifications, or by coordinating fishing operations to fish in areas with lower PSC use rates, Amendment 80 vessel operators also may increase the harvest of valuable targeted groundfish species and improve revenues that would otherwise be foregone if a fishery were closed due to reaching PSC limits.

The Program allows Amendment 80 cooperatives to receive a rollover of an additional amount of CQ, if a portion of the Amendment 80 species or crab or halibut PSC allocated to the BSAI trawl limited access sector is projected to go unharvested. This rollover to Amendment 80 cooperatives is at the discretion of NMFS with consideration given to projected harvest rates in the BSAI trawl limited access sector and other criteria. Each Amendment 80 cooperative will receive an additional amount of CQ that is based on the proportion of the Amendment 80 QS assigned to that Amendment 80 cooperative as compared with the amount of Amendment 80 QS assigned to all other Amendment 80 cooperatives.

Fishery participants in a cooperative can consolidate fishing operations on a specific Amendment 80 vessel or subset of Amendment 80 vessels, thereby reducing M&E and other operational costs. This will allow cooperative members to harvest fish in a manner more likely to be economically efficient and less wasteful.

#### 8. Amendment 80 Limited Access Fishery

Amendment 80 QS holders that do not join an Amendment 80 cooperative can participate in the Amendment 80 limited access fishery. The Program will assign to the Amendment 80 limited access fishery the amount of the Amendment 80 sector's allocation of Amendment 80 species ITAC and crab and halibut PSC that remains after allocation to all of the Amendment 80 cooperatives. Participants fishing in the Amendment 80 limited access fishery will continue to compete with each other; will not realize the same potential benefits from consolidation and coordination; and will not receive an exclusive harvest privilege that accrues to members of an Amendment 80 cooperative. NMFS will manage the Amendment 80 limited access fishery similar to the way the fisheries were managed prior to implementation of the Program.

#### 9. Use Caps

The Council considered the effect of consolidation resulting from the allocation of an excessive share of harvest privileges to Amendment 80 cooperatives. In response, the Program implements use caps to limit the amount of Amendment 80 QS a person can hold, the amount of CQ they can use, and the amount of ITAC an Amendment 80 vessel can harvest. These use caps moderate some of the potentially adverse effects of excessive consolidation of fishing operations on fishery participants, such as lost employment opportunities for fishing crew, while recognizing the desire to provide economic efficiencies to Amendment 80 QS holders.

#### 10. GOA Sideboard Limits

GOA sideboard limits are catch limits that restrict the ability of participants eligible for this Program to expand their harvest efforts in the GOA. The Program is designed to provide certain economic advantages to participants. Program participants could use this economic advantage to increase their participation in other fisheries, primarily in the GOA fisheries, adversely affecting the participants in those fisheries. Therefore, the Program limits the total

amount of catch in other groundfish fisheries that could be taken by Amendment 80 vessels, including harvests made in State of Alaska (State) waters that are open during Federal fishing seasons to allow the harvest of fish assigned to the Federal TAC—commonly known as the “parallel” groundfish fisheries. GOA groundfish and halibut PSC sideboards will limit the catch by Amendment 80 vessels to historic levels in the GOA.

Sideboards limit harvest of Pacific cod, pollock, and rockfish fisheries in the GOA, the eligibility of Amendment 80 vessels to participate in GOA flatfish fisheries, and the amount of halibut PSC that Amendment 80 vessels could catch when harvesting groundfish in the GOA. Sideboards apply to all Amendment 80 vessels, with a limited exemption for the F/V GOLDEN FLEECE.

#### 11. M&E Provisions

M&E provisions are necessary for accurate catch accounting and compliance with the Program to ensure that Amendment 80 QS holders maintain catches within annual CQ and ITAC allocations in the BSAI and do not exceed sideboard limits in the GOA. The M&E measures established for the Program are similar to those currently required for compliance with Amendment 79, and mirror those in place for catcher/processor vessels participating in the Central GOA Rockfish Program (see regulations in § 679.84 for additional detail).

#### 12. GRS Requirements

Under the Program, all non-AFA trawl catcher/processor vessels, which includes all Amendment 80 vessels regardless of size, are required to meet GRS requirements in the BSAI. For Amendment 80 vessels harvesting in the BSAI under the authority of an Amendment 80 cooperative, GRS requirements apply collectively to all vessels harvesting under the authority of the cooperative rather than on a vessel-specific basis. In other words, an Amendment 80 cooperative is required to meet the GRS on an aggregate basis for all vessels in the Amendment 80 cooperative. The Program modifies some of the GRS provisions scheduled for implementation on January 20, 2008 (71 FR 17362; April 6, 2006). Specifically, the Program modifies the GRS by extending the GRS to all non-AFA trawl catcher/processor vessel sizes and calculating the GRS for Amendment 80 vessels assigned to an Amendment 80 cooperative on an aggregate basis.

#### 13. Economic Data Report (EDR)

The Program implements an economic data collection program to assess the impacts of Amendment 80 on various components of the fishery, including skippers and crew. The Program establishes a process for collecting and reviewing economic data generated under Amendment 80 by requiring the annual submission of an EDR from each Amendment 80 QS holder.

### II. Summary of Regulation Changes in Response to Public Comments

This section provides a summary of the major changes made to the final rule in response to public comments on the proposed rule. All of the specific changes, and the reasons for making them, are described under the Response to Comments section below. The changes are described by their corresponding regulatory section. Additional changes to the proposed regulatory text made by NMFS and not in response to public comment are discussed under Section IV of the preamble.

#### Section 679.2

- NMFS modified the definitions of an “Amendment 80 LLP license” to remove a reference to a specific list of LLP licenses in Column C of Table 31 to Part 679, include LLP licenses that designate Amendment 80 vessels at any time after the effective date of the rule, and include an LLP license to which an Amendment 80 QS permit has been affixed (i.e., an Amendment 80 QS/LLP license).

- NMFS redefined the term “Amendment 80 LLP license originally assigned to an Amendment 80 vessel” as the term “LLP license originally assigned to an Amendment 80 vessel.”

#### Section 679.7

- In § 679.7(o)(1), (o)(4), and (o)(5), NMFS made several modifications to (1) allow the receipt and processing of unsorted catch from the BSAI trawl limited access fishery onboard Amendment 80 vessels; (2) allow the use of Amendment 80 vessels to catch and process fish allocated to the CDQ Program; (3) prohibit Amendment 80 vessels assigned to one Amendment 80 cooperative from receiving and processing unsorted catch from Amendment 80 vessels assigned to another Amendment 80 cooperative or the Amendment 80 limited access fishery; and (4) prohibit Amendment 80 vessels assigned to the Amendment 80 limited access fishery from receiving and processing unsorted catch from

Amendment 80 vessels assigned to any Amendment 80 cooperative.

- NMFS removed the prohibition at § 679.7(o)(2), added a prohibition at paragraph (o)(2)(i) to prohibit a person from designating any vessel other than an Amendment 80 vessel on an Amendment 80 LLP license, and added a prohibition at paragraph (o)(2)(ii) to prohibit a person from failing to designate an Amendment 80 vessel on an Amendment 80 LLP license endorsed for groundfish in the Bering Sea subarea or Aleutian Islands subarea with a catcher/processor designation at all times during a calendar year unless that Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108.

- In § 679.7(o)(3)(i), NMFS clarified that a person may not hold Amendment 80 QS assigned to an Amendment 80 vessel unless that person holds an Amendment 80 LLP license endorsed for groundfish in the Bering Sea subarea or Aleutian Islands subarea with a catcher/processor designation that designates that Amendment 80 vessel.

- In § 679.7(o)(3), NMFS added a new paragraph (o)(3)(iii) to clarify that a person may not hold an Amendment 80 QS permit assigned to an Amendment 80 vessel if that Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108, after October 15 in the calendar year following the date of that vessel's loss or ineligibility.

- In § 679.7(o)(4), (o)(5), and (o)(6), NMFS clarified that (1) a valid copy of a CQ or Amendment 80 limited access permit must be maintained onboard an Amendment 80 vessel while fishing in the BSAI; and (2) M&E provisions established in the Program for Amendment 80 vessels fishing in the BSAI and GOA do not apply when an Amendment 80 vessel is used to directed fish for scallops using dredge gear.

#### Section 679.50

- In § 679.50(a)(8) and (c)(6), NMFS clarified that observer coverage requirements apply to any Amendment 80 vessel fishing for groundfish in the BSAI. This clarification is necessary to meet the clear intent of the Program to apply a specific standard of observer coverage to all Amendment 80 vessels when they are fishing for groundfish in the BSAI.

- NMFS modified § 679.50(c)(6) to clarify that observer coverage in the BSAI and GOA required under the

Program would not apply to Amendment 80 vessels while they are used to directed fish for scallops using dredge gear.

#### Section 679.91

- In § 679.91(a)(1), NMFS clarified that an Amendment 80 QS holder must designate each Amendment 80 QS permit, associated Amendment 80 vessel, and Amendment 80 LLP license on a timely and complete application for CQ. This relieves the requirement that all QS permits, LLP licenses, and associated Amendment 80 vessels held by a person had to be assigned to either one cooperative or the Amendment 80 limited access fishery, commonly referred to as the “all-in” provision.

- In § 679.91(a)(3), NMFS removed the restriction that a person could not fish in the Amendment 80 sector if they failed to submit a timely application by November 1 of the previous year. NMFS also revised this paragraph so that NMFS will assign an Amendment 80 QS permit, associated vessel, and LLP license to the Amendment 80 limited access fishery if they are not designated on a timely and complete application for CQ.

- In § 679.91(f)(2), NMFS revised this paragraph to state that NMFS “may” rather than “will” consider a range of factors before reallocating unharvested ITAC or unused PSC from the BSAI trawl limited access sector. This modification allows NMFS to manage these reallocations using the same flexible standards currently used for managing fishery resource allocations during a fishing season.

- In § 679.91(h)(1), NMFS eliminated the requirement that an Amendment 80 cooperative must accept any person wishing to join it.

- In § 679.91(h)(3)(vii), NMFS rephrased regulations that describe the fishing season applicable to cooperatives so that they reference existing trawl closure regulations at § 679.23.

- In § 679.91(h)(3)(xi) and (xii), NMFS rephrased regulations to make it clear that a person holding multiple QS permits, LLP licenses, and associated Amendment 80 vessels is not required to assign all of those permits, licenses, or vessels to only one cooperative or the Amendment 80 limited access fishery during a calendar year. This revision removes the “all in” requirement.

#### Section 679.92

- 679.92(b), NMFS clarified that GOA sideboard limits do not apply to Amendment 80 vessels while they are directed fishing for scallops using dredge gear.

- In § 679.92(c), NMFS removed the requirement that Amendment 80 vessels eligible to directed fish for flatfish in the GOA must use a specific LLP license designated in Table 39 to part 679 while fishing in GOA flatfish fisheries.

#### Section 679.93

- In § 679.93(c), NMFS clarified that M&E requirements in the BSAI established under the Program do not apply to Amendment 80 vessels that are directed fishing for scallops using dredge gear. A similar change is made in § 679.93(d) which applies to M&E requirements applicable to Amendment 80 vessels in the GOA.

- In § 679.93(e)(1)(i)(ii), (e)(2)(ii) and (e)(2)(iii), NMFS clarified that catch of Amendment 80 species or crab or halibut PSC in the BSAI would not be debited from a CQ account or the ITAC for the Amendment 80 limited access fishery if an Amendment 80 vessel was directed fishing for scallops using dredge gear.

- In § 679.93(e)(3) and (4), NMFS clarified that catch of groundfish or halibut PSC by Amendment 80 vessels fishing in the GOA do not apply to groundfish or halibut PSC sideboard limits in the GOA when an Amendment 80 vessel is directed fishing for scallops using dredge gear.

#### Tables

- In Table 31 to part 679, NMFS added a footnote noting the LLP license that is originally assigned to the F/V ENTERPRISE.

- In Table 39 to part 679, NMFS changed the title of the table and deleted column C to remove references to a list of specific LLP licenses that had to be used while directed fishing for flatfish in the GOA.

### III. Response to Comments

Comments have been summarized and edited for consistency, clarity, and to avoid duplication.

#### Section 679.2

*Comment 1:* Amendment 80 is a vessel-based program. Catch history is assigned to Amendment 80 eligible vessels for the purposes of determining QS. The LLP license originally assigned to the eligible vessel becomes the LLP to which QS is assigned, if the vessel is sunk or otherwise becomes permanently ineligible. However, an LLP license originally assigned to an Amendment 80 vessel should not become an Amendment 80 LLP until vessel owner assigns it to an Amendment 80 vessel as part of an Amendment 80 QS application or until QS is assigned to that LLP license when the vessel is lost.

Once QS is assigned to an Amendment 80 LLP license it should no longer be used outside the Amendment 80 sector. Clarify that, at the time of Amendment 80 QS application, each Amendment 80 vessel owner chooses the LLP license(s) which will be assigned to each Amendment 80 vessel by making the following four changes in the regulations:

1. Revise the definition of “Amendment 80 LLP license” under § 679.2 to remove the reference to the list of LLP licenses provided in Table 31 to part 679.

2. Revise the definition of “Amendment 80 LLP license originally assigned to an Amendment 80 vessel” under § 679.2 to “LLP license originally assigned to an Amendment 80 vessel.”

3. Replace the phrase “Amendment 80 LLP license originally assigned to an Amendment 80 vessel” with “LLP license originally assigned to an Amendment 80 vessel” in § 679.4 paragraphs (o)(1)(ii), and (iv); and § 679.90 paragraphs (a)(2)(ii)(A), (a)(2)(ii)(C), (b)(4)(i)(E), (b)(4)(i)(H), (d)(2)(ii), (e)(4), (f)(3)(i)(B)(2), and (f)(3)(i)(E).

4. Revise the title of Column C in Table 31 to part 679 to read “List of Amendment 80 Vessels and LLP Licenses Originally Assigned.”

The Council’s motion, which serves as the basis of Amendment 80 to the FMP, clearly identified the Program as “vessel-based” and only referred to the “first license assigned to” an eligible vessel in terms of clarifying which LLP license QS could be affixed to in case of a total loss or permanent ineligibility of the vessel to participate in the fishery. At no time did the Council require any specific LLP be declared an Amendment 80 LLP until such time that (1) the owner of an Amendment 80 vessel decided to assign a specific LLP to a vessel as part of an Amendment 80 application, or (2) the owner of an inoperable vessel (e.g., a vessel with a total constructive loss) assigned the QS derived from that inoperable vessel assigned to the LLP license originally assigned to that vessel and had completed an application for Amendment 80 QS.

This interpretation of Council intent is supported by a review of the CRP. The CRP prohibited participation in the non-AFA trawl catcher/processor subsector (i.e., Amendment 80 sector) by vessels and owners that did not meet the requirements of the CRP, but in no way compels participation by eligible participants in that fishery or prohibits eligible participants from operating in other sectors or fisheries. The Council similarly defines the parameters of the



Amendment 80 sector, but does not compel the use of an LLP license in the sector and does not explicitly restrict the use of an LLP license that is eligible for use in the Amendment 80 sector outside of that sector if that license is not actually used in the Amendment 80 sector.

At this time, at least one LLP originally assigned to an Amendment 80 vessel is being used on a non-Amendment 80 vessel. The Amendment 80 vessel originally issued that LLP license is currently using a different LLP license to prosecute its non-AFA catcher/processor fisheries. In developing a vessel-based Program, it was not the Council's intent to disrupt the use of these (or any other) LLP licenses but rather to ensure that when an application for Amendment 80 QS is submitted, that it is accompanied by at least one LLP that is endorsed for use in fishing for groundfish in the Bering Sea and/or Aleutian Islands for that Amendment QS permit.

*Response:* NMFS agrees in part. NMFS modified the final rule as recommended by the commenter in points 1, 3, and 4. The Council motion, which serves as the basis of Amendment 80, describes how an LLP license can be used in the Program. After reviewing the draft EA/RIR/IRFA prepared for the proposed rule (see Section 1.11.6), the final EA/RIR (see **ADDRESSES**), and records of the Council action supporting the Program, NMFS concludes the following which support the recommended changes in points 1, 3, and 4 above:

- Amendment 80 and the Program clearly define the LLP license to which QS should be assigned in the event an Amendment 80 vessel suffers an actual total loss, constructive total loss, or permanent ineligibility to fish.

- In order to participate in the non-pollock groundfish fisheries using a trawl catcher/processor, as defined in the CRP, a person must own an Amendment 80 vessel and hold an LLP license endorsed for trawl gear with a catcher/processor designation in the BS or AI.

- The Council did not recommend that in all cases an LLP license originally issued to an Amendment 80 vessel must be defined as an Amendment 80 LLP license, or that an LLP license originally issued to an Amendment 80 vessel must be used within the Amendment 80 sector.

- Once an Amendment 80 LLP license is assigned for use in the Amendment 80 sector, it is not intended to be used to designate a non-Amendment 80 vessel and be used outside of the Amendment 80 sector.

- The Council's action supports the commenter's recommendation that a person must assign an LLP license endorsed for trawl catcher/processor activity to an Amendment 80 vessel.

- The Council did express concern about "double-dipping," which is the process of using an LLP license endorsed for trawl catcher/processor gear and which originally designates an Amendment 80 vessel from being used onboard a non-Amendment 80 vessel in other groundfish fisheries, specifically those in the GOA. By allowing LLP licenses issued to an Amendment 80 vessel to be used outside of the Amendment 80 sector, there is the potential that the additional harvest opportunities offered by the use of that LLP license could lead to an increase in fishing effort in other non-LAPP fisheries.

In regards to point 2 of the comment, NMFS determined that a modification was needed, but not exactly as the commenter suggests. NMFS found that defining an LLP license as an "Amendment 80 LLP license" only if it is noted on an application for Amendment 80 QS would not address two situations. First, if an LLP license designates an Amendment 80 vessel after the application period for Amendment 80 QS has ended, it would not be considered an Amendment 80 LLP license under the commenter's proposal. Second, if an Amendment 80 QS permit is assigned to an LLP license originally issued to an Amendment 80 vessel, then that LLP license becomes an Amendment 80 QS/LLP permit.

However, unless that Amendment 80 QS/LLP license designates an Amendment 80 vessel, it would not be considered an Amendment 80 LLP under the commenter's proposal. Allowing an LLP license meeting either of these criteria not to be defined as an Amendment 80 LLP license contravenes the clear intent of the Program. This intent is to ensure that once an LLP license is used in the Amendment 80 sector either to support fishing onboard an Amendment 80 vessel or has an Amendment 80 QS permit affixed to it, then that LLP license becomes an Amendment 80 LLP license and cannot be used to designate a non-Amendment 80 vessel.

Therefore, NMFS modified the definition of an "Amendment 80 LLP license" to include (1) LLP licenses designated on an application for Amendment 80 QS; (2) LLP licenses that designate an Amendment 80 vessel at any point after the effective date of this rule; and (3) any Amendment 80 QS/LLP permit.

With these changes in the definition of an Amendment 80 LLP license, NMFS is deleting the prohibition at § 679.7(o)(2) which limits a person from designating "an Amendment 80 vessel on any LLP license other than an Amendment 80 LLP license." With the changes in the definition of an Amendment 80 LLP license, any time an LLP license designates an Amendment 80 LLP license it is defined as an Amendment 80 LLP license. This prohibition is no longer necessary with the removal of a defined list of Amendment 80 LLP licenses.

NMFS is adding two new paragraphs at § 679.7(o)(2)(i) and (o)(2)(ii) in response to the comment. The new paragraph at § 679.7(o)(2)(i) clarifies that persons are prohibited from designating any vessel other than an Amendment 80 vessel on an Amendment 80 LLP license. This change is consistent with the commenter's recommendation, the final EA/RIR/FRFA, and Amendment 80.

The new paragraph at § 679.7(o)(2)(ii) adds a requirement that a person who holds Amendment 80 QS and who owns an Amendment 80 vessel also must hold an Amendment 80 LLP license endorsed for trawl catcher/processor activity in the Bering Sea subarea or Aleutian Islands subarea that designates that Amendment 80 vessel at all times during a calendar year unless that Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108. This provision ensures that a person holding multiple trawl catcher/processor endorsed LLP licenses in the BS or AI maintains one LLP license on each vessel, so that each Amendment 80 vessel is designated on an LLP license even if that vessel is not fishing. This provision is necessary to meet the clear intent of the CRP, which requires that in order to participate in the Amendment 80 sector, a person must hold an LLP license that is endorsed for groundfish in the Bering Sea subarea or Aleutian Islands subarea with a catcher/processor designation. However, this paragraph does not require that a person designate an Amendment 80 vessel on an Amendment 80 LLP license in the event that vessel has been lost or is no longer able to fish. If a vessel is no longer able to be used in the fishery, then it is not necessary to assign an LLP license to that vessel. Instead, a person who holds an LLP license that designated a lost or permanently ineligible vessel could designate that LLP license for use on another Amendment 80 vessel.

With these changes, several key components of the Program will be



improved. First, LLP licenses that were originally issued to an Amendment 80 vessel but are currently used outside of the Amendment 80 sector would not be defined as Amendment 80 LLP licenses until such time as they designate an Amendment 80 vessel, or the QS permit for an Amendment 80 vessel is affixed to that LLP license. This would allow existing business operations using these LLP licenses to continue without being adversely affected by the Program. Second, by requiring that each Amendment 80 LLP license designate an Amendment 80 vessel, NMFS ensures that the clear requirements for participation in the Amendment 80 sector are met, and reduces the potential that LLP licenses originally issued to Amendment 80 vessels will be used outside of the Amendment 80 sector in a manner that will increase fishing effort in other non-Amendment 80 sector fisheries.

NMFS had proposed listing Amendment 80 LLP licenses as a means of addressing two issues. First, it is clear that the Council intended that in the event an Amendment 80 vessel is lost or is permanently ineligible to fish, the QS assigned to that vessel may be assigned to the LLP license originally assigned to that vessel. Second, it is clear that in order to participate in the Amendment 80 sector, one must hold an LLP license endorsed for trawl catcher/processor activity in the BS or AI. In an effort to clarify the list of LLP licenses that would meet both of those requirements, NMFS had created a list of LLP licenses. However, in doing so, NMFS failed to account for those vessel operators that were using LLP licenses originally assigned to an Amendment 80 vessel on non-Amendment 80 vessels that are ineligible to participate in the Amendment 80 sector, or the fact that LLP licenses that were not issued to an Amendment 80 vessel are used by Amendment 80 vessels. This change corrects that oversight and is consistent with the Council's intent.

*Comment 2:* Section 679.2 defines the terms "Amendment 80 fishery," "Amendment 80 limited access fishery," "Amendment 80 sector," and "BSAI trawl limited access sector." These terms make the regulations difficult to understand. Improve the terminology to provide the reader a clearer and better understanding of these groups and sectors and how each is treated under the rule.

*Response:* As noted in the preamble to the proposed rule, NMFS used terminology that is consistent with the terms used by the Council in the development of this Program to reduce confusion. NMFS also provided

additional explanation of the terms identified by the commenter in the preambles to the proposed and final rules. NMFS determined that sufficient explanation of the terms used has been provided and a change in terminology at this point would create significant confusion. NMFS did not modify the regulations based on this comment.

#### Section 679.4

*Comment 3:* Comment supports the Amendment 80 QS permit application requirements in the proposed rule and urges NMFS to retain those restrictions in the final regulations.

*Response:* NMFS notes the comment and that the proposed requirements have been retained in this final rule.

*Comment 4:* Sections 679.4(o)(1)(ii) and (iii) state that Amendment 80 QS permits may be issued to the owner of the Amendment 80 vessel or to the holder of an LLP license originally assigned to an Amendment 80 vessel. Under these provisions, an Amendment 80 vessel owner could transfer the LLP license originally issued for an Amendment 80 vessel, but retain the Amendment 80 vessel. As such, the owner of an Amendment 80 vessel would be issued QS.

Clarify what would happen to the disposition of QS that was originally issued to the vessel owner if the Amendment 80 vessel sinks and is a total loss. Will the QS automatically be reassigned to the holder of the LLP license originally issued for that vessel? This scenario is especially troubling if the QS permit derived from a sunken vessel is one of the nine QS permits required to form a cooperative. Is the cooperative still valid, even if an Amendment 80 vessel sinks and the associated QS permit is issued to a new owner outside the cooperative?

*Response:* NMFS modified the regulations at § 679.7(o)(3) based on this comment. The proposed regulations allowed an Amendment 80 QS permit to be assigned to the holder of the LLP license originally issued for an Amendment 80 vessel during the initial allocation of Amendment 80 QS (see § 679.90(d)(2)(ii)), or after the initial allocation of QS through a transfer process (see § 679.90(e)(4)) if that vessel suffers an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108. The proposed regulations also prohibited a person from holding Amendment 80 QS assigned to a vessel unless that person is "designated as the owner of that Amendment 80 vessel by an abstract of title or USCG [United States Coast Guard] documentation (see § 679.7(o)(3)(ii))."

Based on the intent expressed by the Council in developing the Program, which is supported in the draft EA/RIR/IRFA prepared for the proposed rule and described in the preamble of the proposed rule, NMFS added a new prohibition in this final rule at § 679.7(o)(3)(ii) to clearly prohibit a person from holding an Amendment 80 QS permit assigned to an Amendment 80 vessel if that Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108 after October 15 in the calendar year following the date of that actual total loss, constructive total loss, or permanent ineligibility to receive a fishery endorsement under 46 U.S.C. 12108.

By requiring divestiture of Amendment 80 QS by October 15 the first year after the loss, the vessel owner would have adequate time to initiate transfer before the application for CQ or application for an Amendment 80 limited access fishery is due for the following year. This deadline provides a vessel owner a minimum of nine and a half months, assuming a vessel is lost or becomes permanently ineligible on December 31 of the preceding year, to transfer the QS to the holder of the LLP license originally assigned to that Amendment 80 vessel under the provisions of § 679.90(e)(4). Therefore, if a vessel is lost or becomes ineligible in the middle of a year, the vessel owner could continue to hold the Amendment 80 QS for the following year. This reduces the potential disruptions that mid-year divestiture could cause to existing business arrangements. The October 15 deadline was chosen by NMFS because it is the same as the deadline to apply for QS. In addition, requiring divestiture by October 15 should provide any person who may receive the QS by transfer to the LLP license originally issued to the Amendment 80 vessel that has been lost or is now permanently ineligible 15 days to determine whether the resulting Amendment 80 QS/LLP license would be assigned to an Amendment 80 cooperative or limited access fishery.

If the owner of a lost or permanently ineligible vessel sought to retain Amendment 80 QS assigned to that vessel after October 15 in the calendar year following the loss or permanent ineligibility of the vessel, that person would be in violation of the prohibition and NMFS could begin proceedings to revoke the Amendment 80 QS permit. NMFS notes that this prohibition does not require NMFS to automatically reissue the Amendment 80 QS permit to

the holder of the LLP license originally issued to the Amendment 80 vessel. NMFS assumes that should an Amendment 80 vessel be lost or become permanently ineligible, and the LLP license originally assigned to that Amendment 80 vessel was held by someone other than the vessel owner, the two parties would reach a mutually beneficial arrangement and the QS would be transferred under the transfer provisions at § 679.90(f) and affixed to that LLP license.

With these changes, NMFS has addressed the questions raised by the commenter. First, the prohibition at § 679.7(o)(3)(ii) makes clear that a vessel owner cannot continue to hold Amendment 80 QS assigned to a vessel in the event of a vessel's loss or permanent ineligibility after a specific deadline. Second, if an Amendment 80 QS permit assigned to an Amendment 80 vessel can no longer be held by the owner of a lost or permanently ineligible vessel after a specific date, that person is in violation of the regulations, is no longer a valid Amendment 80 QS holder, and cannot use that Amendment 80 vessel-related QS permit in an Amendment 80 cooperative or Amendment 80 limited access fishery after that date. Therefore that person and the Amendment 80 QS permit that used to be held by that person will not be considered as one of the Amendment 80 QS permit holders for purposes of meeting the minimum number of Amendment 80 QS permits necessary to form an Amendment 80 cooperative under the regulations at § 679.91(h)(3)(ii). The Amendment 80 QS permit could be transferred to the LLP license originally assigned to that Amendment 80 vessel under the regulations at § 679.90(f). Once the Amendment 80 QS permit is transferred to the LLP license originally issued to that Amendment 80 vessel, the person holding that Amendment 80 QS/LLP license will be eligible to be a member of an Amendment 80 cooperative.

This regulation is necessary to be consistent with the intent of the Program. Regulations at § 679.90(a)(2)(i)(A) clarify that a person is eligible to receive QS as the owner of an Amendment 80 vessel if that person, among other criteria, can demonstrate that they own an Amendment 80 vessel through an abstract of title or USCG documentation. This raises the question of whether a person can continue to demonstrate ownership of an Amendment 80 vessel that suffers an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108 through an abstract of title or

USCG documentation, and therefore hold QS as a vessel owner?

Regulations pertaining to vessel documentation at 46 CFR 67.7 require that any vessel of five net tons or more used in fishing activities on navigable waters of the United States or in the Exclusive Economic Zone (EEZ), or used in coastwise trade must be documented through the USCG unless the vessel is exempt from documentation. All Amendment 80 vessels are greater than five net tons, are used in fishing activities in the EEZ, and do not meet the criteria for an exemption for USCG documentation. Therefore, all Amendment 80 vessels must have USCG documentation.

However, regulations pertaining to vessel documentation at 46 CFR part 67 do not prohibit a vessel that has suffered an actual total loss or constructive total loss from being documented. Additionally, even if an Amendment 80 vessel is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108, a vessel could be documented with an endorsement for use in a non-fishery related trade.

Additionally, even though all Amendment 80 vessels must be documented under 46 CFR part 67, there do not appear to be any regulations that prohibit a person from also holding a title of abstract to a vessel that has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108.

The construction of the proposed rule and vessel documentation regulations at 46 CFR part 67 create the potential that a person could demonstrate ownership of an Amendment 80 vessel through a title of abstract or USCG documentation even if that vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108. In such a case, a person could still be considered the owner of an Amendment 80 vessel and not violate the prohibition in the proposed rule under § 679.7(o)(3)(ii).

The potential for a person to continue to hold Amendment 80 QS assigned to an Amendment 80 vessel if that vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to fish contravenes the clear intent of the Council when designing the Program. The Council did not recommend that owners of vessels that have suffered an actual total loss, constructive total loss, or are permanently ineligible to be used in a fishery should be able to continue

to hold QS that is assigned to that Amendment 80 vessel.

The Council contemplated that Amendment 80 QS would transfer to the LLP license originally issued for that Amendment 80 vessel. Section 1.11.6 of the final EA/RIR/FRFA prepared for the final rule specifically contemplates that "catch history," a term synonymous with Amendment 80 QS, could be transferred should a vessel suffer an actual total loss, constructive total loss, or become permanently ineligible to be used in a fishery. "The [CRP] legislation is "steel based" (*i.e.*, linked to the hull), allowing the catch history of sunk or lost vessel to be transferred to the originating license. This would allow the catch history to stay in the fishery and be used on another eligible vessel, rather than being extinguished." Furthermore, Section 1.11.13.5 of the final EA/RIR/FRFA prepared for the final rule notes that catch history is affixed to the LLP license originally issued for an Amendment 80 vessel in the event of its loss. It reads, "In the event of a total actual loss or constructive loss of a vessel, or permanent inability of a vessel to be used in the Program, the catch history *will* [emphasis added] be attached to the license that arose from that vessel."

The preamble to the proposed rule contemplates that Amendment 80 QS would need to be transferred in the event an Amendment 80 vessel is lost. The preamble to the proposed rule (72 FR 30077) states that "[t]he Program would ensure that an Amendment 80 QS permit resulting from the legal landings of an Amendment 80 vessel could be used even if an Amendment 80 vessel were lost or became permanently ineligible to fish in U.S. waters. Under certain conditions, NMFS would issue an Amendment 80 QS permit to the holder of the Amendment 80 LLP license originally assigned to an Amendment 80 vessel rather than the Amendment 80 vessel owner." The preamble to the proposed rule also states that "[t]his provision is intended to allow a person to continue participation in the Amendment 80 sector if otherwise qualified. During the development of the Program, this provision was considered as a means for meeting the overall intent of the Program to allow a person to use QS under specific conditions without contravening the intent of the CRP."

The preamble to the proposed rule also envisioned that a QS permit could be revoked by NMFS if a vessel is lost or becomes permanently ineligible to fish. Specifically, the preamble to the proposed rule detailed this situation when describing the definition of the

LLP license originally assigned to the F/V ENTERPRISE. Although the example provided in the preamble describes the potential of QS being extinguished in the event that the F/V ENTERPRISE suffered an actual total loss, constructive total loss, or became permanently ineligible, the example is relevant to all other Amendment 80 vessels. It reads, "Because the F/V ENTERPRISE did not give rise to an LLP license, if NMFS were to permit a QS permit to be transferred only to the LLP license originally issued to an Amendment 80 vessel, the QS permit issued to the owner of the F/V ENTERPRISE could not be assigned to any LLP license. If the F/V ENTERPRISE was lost or became permanently ineligible to fish in U.S. waters, the QS issued to the owner of the F/V ENTERPRISE could be extinguished" (72 FR 30078).

The changes made in § 679.7(o)(3)(iii) meet the clear intent of the Program and are consistent with the proposed rule. The regulations at § 679.4(o)(1)(ii) and (iii) do not need to be modified. The regulations at § 679.4(o)(1)(ii) and (iii) refer to permitting requirements and do not address limitations on holding QS.

*Comment 5:* Remove the prohibition at § 679.7(o)(1)(ii), (o)(4)(i), and (o)(5)(i) limiting the receiving and processing Amendment 80 species from the BSAI trawl limited access fishery or the Amendment 80 limited access fishery. The following are the primary concerns with the prohibition:

- The prohibition on the processing or receiving of Amendment 80 species from the BSAI trawl limited access sector or the Amendment 80 limited access sector was not recommended by the industry and was not part of the Council's recommendation to NMFS.
- These prohibitions are contrary to the FMP and the overall goals of the Program to promote bycatch reduction and improved utilization. NMFS cannot add regulations that contravene the FMP unless the Secretary of Commerce disapproves the action.
- The prohibition was not analyzed in the EA/RIR/IRFA, nor by the Council and therefore should be removed. Specifically, this prohibition could adversely affect small entities as defined under the Regulatory Flexibility Act.
- The prohibition violates National Standard 9 and Executive Order 12866.
- NMFS has sufficient observation, recordkeeping and reporting requirements, and auditing systems in place to independently account for cooperative catch and deliveries from the BSAI limited access sector or Amendment 80 limited access sector.

- NMFS also has the tools necessary to monitor the GRS without limiting vessel activity during a weekly reporting period.

- Neither the preamble nor the regulations should suggest or add a prohibition that would limit an Amendment 80 vessel to operating as either a mothership, stationary floating processor, or as a fishing vessel on a week-by-week basis (see, for example, 72 FR 30073).

Amendment 80 vessels have historically received and processed Amendment 80 species caught by catcher vessels in the BSAI and they have done so in conjunction with their own fishing during the same weekly reporting period. Prohibiting this activity will not only impact the Amendment 80 sector, but it will severely limit catcher vessels within the BSAI limited access sector from harvesting certain Amendment 80 species. For species such as Pacific cod, catcher vessels have existing shoreside business relationships that will continue, but for the remaining Amendment 80 species, such as yellowfin sole, there is limited or no shoreside capacity for processing. The proposed prohibition is inconsistent with the goal of improving the accuracy of the catch accounting system and reducing discards as catcher vessels will be forced to deliver Amendment 80 species to facilities with less than 200 percent observer coverage and no GRS requirements.

The distance of Amendment 80 species fisheries in relation to shoreside processors may limit catcher vessels' ability to deliver a quality product. Amendment 80 cooperative vessels have the flexibility to act as motherships and travel to locations where the fisheries occur. Amendment 80 vessels also have existing markets and capacity for producing high quality products from Amendment 80 species. The proposed prohibition against delivering BSAI limited access and Amendment 80 limited access fish to Amendment 80 vessels in cooperatives has significant impacts on small business entities, AFA and non-AFA catcher vessels, and Amendment 80 vessels that may choose to act as catcher vessels in the future.

Each Amendment 80 vessel will carry two NMFS-certified observers who will sample 100 percent of the hauls and deliveries made to the vessel. In addition, each haul and delivery will be independently weighed on a certified flow scale. Recordkeeping and reporting regulations require that hauls made by a vessel be recorded separately from deliveries made to the vessel in the Daily Cumulative Production Logbook

(DCPL) and in the Weekly Production Report (WPR) submitted to NMFS. The proposed regulations actually provide monitoring and enforcement requirements for vessels that receive "unsorted catch" (See § 679.27(j)(7)).

Corroborating the vessel logbook information should not be difficult. Two observers will be onboard and there will always be one observer on shift to independently witness a catcher vessel delivery. Observers record unsorted codend deliveries differently than catch the vessel made itself. Observers record a delivering vessel's name and ADF&G number that NMFS can use to verify a delivery was made from the BSAI limited access sector or Amendment 80 limited access sector. Observer data are reported daily to the Observer Program and the Regional Office and, in conjunction with vessel logbook information, this should be sufficient for determining on a haul by haul basis whether catch should be debited against a cooperative's CQ, the BSAI limited access sector, or the Amendment 80 limited access sector.

For vessels in a cooperative, the GRS will be monitored at the cooperative level and it does not need to be met until the end of the year, therefore in-season audits of product would serve little value for enforcement with respect to monitoring the GRS. Observer data and vessel logbook data are adequate for GRS monitoring and enforcement and there is no reason to separate product in the hold or to limit a vessel's activity by weekly reporting period.

*Response:* NMFS agrees in part and has modified the regulations at 679.7(o) to allow Amendment 80 vessels to receive unsorted catch in limited circumstances. This revision will allow the one entity that NMFS has identified as currently receiving unsorted catch from a catcher vessel in the BSAI trawl limited access fishery to continue to do so. This revision will accommodate potential future growth in the use of Amendment 80 vessels as mothership vessels for vessels in the BSAI trawl limited access fishery.

NMFS made the following modifications:

- Modified § 679.7(o)(1)(i) to prohibit the use of any vessel other than an Amendment 80 vessel to catch any amount of Amendment 80 species, crab PSC, or halibut PSC assigned to the Amendment 80 sector. This removed the reference to processing and receiving catch.
- Modified § 679.7(o)(1)(ii) to prohibit the use an Amendment 80 vessel to catch any amount of Amendment 80 species, crab PSC, or halibut PSC assigned to the BSAI trawl limited

access sector. This removed the proposed references to processing and receiving catch.

- Deleted the prohibition at § 679.7(o)(1)(iii). This removes limitations on using an Amendment 80 vessel to catch, process, or receive catch of Amendment 80 species assigned to other fisheries.

- Modified § 679.7(o)(4)(i) to prohibit the use of an Amendment 80 vessel, Amendment 80 LLP license, or Amendment 80 QS permit not assigned to an Amendment 80 cooperative for a calendar year to catch any Amendment 80 species, crab PSC, or halibut PSC assigned to that Amendment 80 cooperative during that calendar year. This rephrasing removes proposed references to receiving and processing catch and makes it clear that only vessels assigned to a cooperative can be used to catch CQ assigned to that cooperative.

- Add a new prohibition at § 679.7(o)(4)(ii) to prohibit the use of an Amendment 80 vessel assigned to an Amendment 80 cooperative for a calendar year to receive or process catch from any Amendment 80 vessel not assigned to that Amendment 80 cooperative for that calendar year. This provision prohibits an Amendment 80 vessel from receiving or processing catch from Amendment 80 vessels in

other Amendment 80 cooperatives or in the Amendment 80 limited access fishery, but it does not limit the ability of Amendment 80 vessels to receive and process catch from other fisheries, such as the BSAI trawl limited access fishery.

- Renumber § 679.7 paragraphs (o)(4)(ii), (iii), and (iv) as

§ 679.7(o)(4)(iii), (iv), and (v) respectively.

- Modify § 679.7(o)(5)(i) to prohibit the use of an Amendment 80 vessel, Amendment 80 LLP license, or Amendment 80 QS permit not assigned to the Amendment 80 limited access fishery for a calendar year to catch any Amendment 80 species, crab PSC, or halibut PSC assigned to the Amendment 80 limited access sector during that calendar year. This rephrasing removes proposed references to receiving and processing catch and makes it clear that only vessels assigned to the Amendment 80 limited access fishery can be used to catch Amendment 80 species ITAC assigned to the Amendment 80 limited access fishery.

- Add a new prohibition at § 679.7(o)(5)(ii) to prohibit the use of an Amendment 80 vessel assigned to the Amendment 80 limited access fishery for a calendar year to receive or process catch from any Amendment 80 vessel not assigned to the Amendment 80 limited access fishery for that calendar

year. This provision prohibits an Amendment 80 vessel assigned to the Amendment 80 limited access fishery from receiving or processing catch from Amendment 80 vessels in Amendment 80 cooperatives, but it does not limit the ability of such vessels to receive and process catch from other fisheries, such as the BSAI trawl limited access fishery.

- Renumber § 679.7 paragraphs (o)(5)(ii) and (iii) as § 679.7(o)(5)(iii) and (iv) respectively.

These modifications narrow the focus of these prohibitions so that limitations on the harvesting activities of Amendment 80 vessels are distinct from the limitations on receiving and processing catch. A direct result of these restructured prohibitions is that NMFS is no longer indirectly prohibiting an Amendment 80 vessel from catching, processing, or receiving fish allocated to the CDQ Program (see response to comment 6 for additional detail). These more narrowly defined prohibitions will permit the delivery of catch from the BSAI trawl limited access fishery to the Amendment 80 sector, accommodate existing delivery and processing patterns, and ensure adequate catch accounting. The following table summarizes the limitations on the delivery of unsorted catch that the suite of revised prohibitions will impose on Amendment 80 vessels.

Can unsorted catch (codends) from . . .	be received and processed by an Amendment 80 vessel assigned to . . .	Yes	No
An Amendment 80 vessel in a cooperative .....	Another Amendment 80 cooperative .....	.....	X
An Amendment 80 vessel in a cooperative .....	The same Amendment 80 cooperative .....	X	.....
An Amendment 80 vessel in the Amendment 80 limited access fishery.	An Amendment 80 cooperative .....	.....	X
An Amendment 80 vessel in the Amendment 80 limited access fishery.	The Amendment 80 limited access fishery .....	X	.....
The BSAI trawl limited access sector .....	An Amendment 80 cooperative or the Amendment 80 limited access fishery.	X	.....
Non-Amendment 80 non-trawl fisheries (e.g., longline Pacific cod).	An Amendment 80 cooperative or the Amendment 80 limited access fishery.	X	.....

The preamble to the proposed rule stated the following reasons for the proposed prohibitions on receiving and processing unsorted catch from the BSAI trawl limited access sector onboard an Amendment 80 vessel: (1) Uncertainty over whether the Council intended to allow unrestricted delivery of unsorted catch; (2) concern over the unintended consequences of allowing Amendment 80 vessels to receive catch from non-Amendment 80 vessels; (3) concern for GRS compliance; and (4) concern over ensuring proper catch accounting.

In light of comment 5, NMFS reviewed the rationale for the proposed prohibitions, examined the

administrative record, and developed additional analysis on the economic impacts of these proposed prohibitions. NMFS has included that analysis in the FRFA, and the RIR incorporates by reference the information and analyses contained in the FRFA.

NMFS analyzed observer data from 2003 through 2006, a time frame chosen for analysis because it represents recent processing patterns. During each year of the 2003 through 2006 time period, only one Amendment 80 vessel received catch from a non-Amendment 80 vessel. The Amendment 80 vessel received unsorted catch from the same non-Amendment 80 catcher vessel in each year. The specific amounts of unsorted

catch delivered cannot be provided due to limitations on the release of confidential data. Based on information available to NMFS, including information provided by a public comment, it appears that the non-Amendment 80 vessel and the Amendment 80 vessel are owned by the same entity.

The entity that is engaged in delivering and processing unsorted catch onboard an Amendment 80 vessel would not be defined as a small entity under Small Business Administration (SBA) standards based on the information available to NMFS concerning the predicted annual ex-vessel revenue from this entity, and the

definition of a small entity in the harvesting sector used by NMFS. It does appear that the proposed prohibitions would have limited the ability of this one non-small entity to continue to deliver and process unsorted catch from its non-Amendment 80 catcher vessel onboard its Amendment 80 vessel.

This analysis indicates that the practice of delivering unsorted catch from non-Amendment 80 vessels to Amendment 80 vessels is not as widespread as suggested by some commenters. Although industry participants may wish to engage in such practices in the future, the proposed prohibitions do not appear to adversely affect any known small entities as that term is currently defined under SBA standards. Although the specific amount of catch being delivered from catcher vessels to Amendment 80 vessels cannot be released, that catch represents a small proportion of the overall catch in the BSAI. Based on the above, previous concerns that permitting this practice would create a significant shift in processing patterns away from existing shore-based processors do not appear to be supported, particularly if current rates of delivery of unsorted catch from the BSAI trawl limited access sector to the Amendment 80 sector continue.

NMFS also re-examined its ability to track catch for purposes of GRS compliance if unsorted catch from numerous sources were delivered to Amendment 80 vessels. The preamble to the proposed rule specifically requested public comment to assist NMFS in determining if there were measures that could provide adequate catch accounting and permit this practice. Subsequent review of the GRS program in consultation with the NOAA Office of Law Enforcement (OLE) and industry participants indicates that current monitoring and enforcement practices for GRS compliance are not adversely affected by the receipt and processing of unsorted catch from multiple vessels aboard the same vessel, provided the weight of each codend (i.e., delivery of unsorted catch) is adequately reported when delivered and vessel operators comply with DCPL and WPR requirements. NMFS anticipates that GRS compliance will be monitored by reviewing annual groundfish catch and retention for each Amendment 80 cooperative or for each Amendment 80 vessel that is assigned to the Amendment 80 limited access fishery. Therefore, combining unsorted catch from multiple sources onboard a single Amendment 80 vessel would not undermine GRS M&E requirements.

Finally, NMFS determined that, although Council intent is not clear

regarding the regulation of catch assigned to one group of fishery participants to be received and processed by another group of fishery participants, the Council did not expressly indicate its intent to limit the delivery of unsorted catch. NMFS indicated that Council intent was not clear in the preamble to the proposed rule (72 FR 30052; May 30, 2007), and again at two public workshops on May 23, 2007 (72 FR 27798), and on June 18, 2007 (72 FR 31548), both of which were attended by numerous participants in the Amendment 80 and BSAI trawl limited access sectors, and a member of the Council. Further, NMFS provided a review of the proposed rule to the Council at its June 2007 meeting, specifically highlighting this issue and requesting that the Council provide comments if the proposed rule contravened Council intent. At the June 2007 Council meeting, the Council did not indicate that it either intended or did not intend to allow catch from the BSAI trawl limited access sector to be delivered to the Amendment 80 sector. The Council did not provide any comments during the public comment period for either the proposed rule or Amendment 80 to indicate that limitations on the receipt and processing of unsorted catch contained in the proposed rule contravened Council intent.

Based on the additional analysis NMFS conducted as a result of this comment and the lack of Council intent to the contrary as explained above, NMFS determined that most of the proposed prohibitions on the delivery of catch from the BSAI trawl limited access fishery to the Amendment 80 sector should not be included in this final rule. Therefore, NMFS modified the regulations at 679.7(o) to allow Amendment 80 vessels to receive unsorted catch in limited circumstances.

However, NMFS did not change the proposed rule to allow Amendment 80 vessels to deliver to other Amendment 80 vessels in specific circumstances described below because it would significantly complicate M&E of the Program and the analysis indicates that this prohibition will not affect any current fishing practices. As explained above, NMFS determined that maintaining this prohibition in the final rule is not contrary to Council intent. This prohibition is consistent with the language of Amendment 80, and the Council provided no indication that any of the proposed prohibitions were inconsistent with their intent.

NMFS also determined that this prohibition is necessary to adequately

monitor and enforce the Program and meet the agency's obligations under the MSA. Properly accounting for and tracking catch may be complicated if: (1) Catch from a vessel assigned to an Amendment 80 cooperative is processed on an Amendment 80 vessel not assigned to that cooperative; or (2) catch from a vessel assigned to the Amendment 80 limited access fishery is processed on an Amendment 80 vessel not assigned to the Amendment 80 limited access fishery. Although NMFS will require two observers aboard each Amendment 80 vessel while fishing in the BSAI, as well as other M&E reporting standards, NMFS currently has limited mechanisms to review observer reports of catch weight and sample composition received and processed onboard an Amendment 80 vessel and the assignment of that catch to a specific cooperative or the Amendment 80 limited access fishery while an observer is at sea. Observer debriefing can resolve most questions and concerns that may arise, but observer debriefings typically take place several weeks after an observer has disembarked from a given vessel. Such corrections would occur well after catch has been attributed to a specific source, and would not be timely.

As an example, observer reports corrected after observer debriefings could indicate that unsorted catch from an Amendment 80 cooperative was incorrectly attributed to a specific cooperative and CQ was incorrectly debited from a CQ account. Not only does this affect the total CQ account balances, but if an amount of CQ has been transferred to another cooperative between the time of a given delivery of an unsorted catch and the receipt of a corrected observer report, NMFS would have limited means to correct the CQ account. This could result in debiting the CQ account of a third party that received the CQ that was transferred. Without significant and potentially costly programming changes to the catch accounting system used to track and assign catch and changes to observer reporting protocols, NMFS remains concerned about its ability to ensure that catch from various Amendment 80 allocations (i.e., CQ accounts for each Amendment 80 cooperative, and the ITAC of the Amendment 80 limited access fishery) received onboard an Amendment 80 vessel can be tracked with the degree of accuracy necessary to ensure that catch is properly debited in a timely and correct manner without potentially adversely affecting other Amendment 80 sector participants.

Changes in the catch accounting system and observer protocols could not be quickly and easily undertaken to allow catch from one Amendment 80 cooperative or the Amendment 80 limited access fishery to be received and processed by vessels assigned to another Amendment 80 cooperative. Further, NMFS is not required to adopt management measures that impose additional costs on the agency without adequate budgetary provisions. NMFS does not have funds currently available for substantial changes in catch accounting software and observer protocols for this specific purpose.

The Council and NMFS produced an extensive RIR in accordance with E.O. 12866 that examines a range of allocations and harvesting patterns and that has been appropriately supplemented with available additional information on this issue. The available data do not suggest that the delivery of unsorted catch between Amendment 80 vessels is currently occurring. Therefore, NMFS determined that maintaining this limitation would not adversely affect existing fishing operations, would not contravene the intent of the Program reduce discards and improve efficiency, or violate National Standard 9.

NMFS notes that the need to transfer unsorted catch between Amendment 80 vessels could be accommodated by Amendment 80 cooperatives choosing to transfer the underlying CQ, rather than the catch itself. Furthermore, NMFS notes that the prohibitions in § 679.7(o) do not restrict the ability of an Amendment 80 vessel assigned to a cooperative to deliver catch to another Amendment 80 vessel assigned to the same cooperative. Finally, the prohibitions in § 679.7(o) do not restrict the ability of Amendment 80 vessels assigned to the Amendment 80 limited access fishery to deliver catch to other Amendment 80 vessels participating in the Amendment 80 limited access fishery.

*Comment 6:* As written, it is not clear that Amendment 80 vessels can catch and process allocations made to the CDQ Program. Add an exception under § 679.7 paragraphs (o)(4)(i), (o)(4)(iv), and (o)(5)(i) to make it clear that Amendment 80 vessels are authorized to catch, process, or receive fish allocated to the CDQ Program provided they comply with regulations applicable to the CDQ Program. Prohibiting Amendment 80 vessels from participating in the CDQ fisheries was not discussed by the Council nor considered as part of this action. No analysis of the impacts of such an action was included in the EA/RIR.

Prohibiting any Amendment 80 vessel from harvesting those species on behalf of CDQ partners would be very disruptive to the CDQ Program and its beneficiaries. Certain Amendment 80 vessels have long-term relationships with their CDQ partners. Not only do these harvests contribute significantly to the revenues of these vessels, these relationships enable western Alaska communities to benefit from the harvest of Amendment 80 species.

*Response:* NMFS agrees. The prohibitions proposed in § 679.7 paragraphs (o)(4)(i), (o)(4)(iv), and (o)(5)(i) had the unintentional effect of prohibiting Amendment 80 vessels from catching, processing, and receiving catch allocated to the CDQ Program. As the commenter notes, Amendment 80 vessels have frequently contracted with various CDQ groups to harvest their allocations. NMFS did not intend to specifically exclude Amendment 80 vessels from continuing existing business practices. As noted in the response to comment 5, NMFS will be able to properly track and account for catch made by an Amendment 80 vessel that is catching fish allocated to the CDQ Program if that vessel is also used to catch fish assigned to the Amendment 80 sector. Therefore, it is not necessary to restrict an Amendment 80 vessel from also catching, processing, or receiving catch allocated to the CDQ Program. The changes made to the final rule as described in response to comment 5 would relieve the prohibition on an Amendment 80 vessel catching fish allocated to the CDQ Program at the same time that vessel is fishing for an Amendment 80 cooperative or in the Amendment 80 limited access fishery.

*Comment 7:* The commenter supports regulations at § 679.7(o) that prohibit an Amendment 80 vessel from taking deliveries of unsorted catch from the BSAI trawl limited access fishery. Allowing Amendment 80 vessels to receive catch from the BSAI trawl limited access sector would put them at a competitive advantage over existing processors.

*Response:* As explained in the response to comment 5, NMFS proposed the prohibitions in § 679.7(o) limiting the receipt and processing of Amendment 80 species in an effort to meet what was believed to be Council intent, and to ensure adequate accounting of catch. Other commenters have noted that nothing in the Program specifically prohibits the receipt and processing of catch by Amendment 80 vessels, and the Council did not explicitly intend to limit Amendment 80 vessels as NMFS had proposed. In

addition, after a subsequent review of M&E measures described in the response to comment 5, NMFS has determined that NMFS can adequately track catch of fish from the BSAI trawl limited access fishery and ensure compliance with GRS requirements and catch accounting protocols. NMFS has revised § 679.7(o) to allow Amendment 80 vessels to receive and process catch from the BSAI trawl limited access sector.

NMFS notes that currently, at least one Amendment 80 vessel processes unsorted catch from catcher vessels although the amount of fish processed in this manner is relatively small compared to total BSAI processing activities. NMFS cannot predict the extent to which this practice might increase in the future, or whether this practice would have any adverse economic impact on existing processing operations. Numerous commenters from both the Amendment 80 and BSAI trawl limited access sectors noted that currently there are limited shore-based markets for Amendment 80 species and Amendment 80 vessels may provide the best processing market. NMFS does not intend to limit processing operations of Amendment 80 vessels at this time except as necessary to ensure adequate compliance with catch monitoring and enforcement standards. A review of processing operations by shore-based processors and Amendment 80 vessels could provide the basis for a future regulatory amendment should the Council identify and recommend additional changes to the Program to address potential conflicts that may arise.

*Comment 8:* Modify regulations to allow the F/V ALLIANCE to replace a vessel in the Alaska weathervane scallop fishery. Make the following changes to the regulatory text to permit the use of the F/V ALLIANCE in the scallop fishery without the M&E requirements and catch accounting standards generally applicable to Amendment 80 vessels:

- Modify § 679.7(o)(1)(iii) to prohibit the use of an Amendment 80 vessel in a directed groundfish fishery to catch, process, or receive any amount of Amendment 80 species, crab PSC, or halibut PSC in the BSAI for a calendar year if that Amendment 80 vessel is not assigned to an Amendment 80 cooperative or the Amendment 80 limited access fishery.

- Modify § 679.7(o)(6)(i) to prohibit the use of an Amendment 80 vessel or a catcher/processor not listed in § 679.4(l)(2)(i) and using trawl gear, to catch, process, or receive groundfish in the BSAI or adjacent waters opened by

the State of Alaska for which it adopts a Federal fishing season and fail to follow the catch monitoring requirements detailed at § 679.93(a), (b), and (c).

- Modify § 679.92(b)(1) to clarify that Amendment 80 vessels may not be used to catch more than the sideboard amounts of groundfish in the management areas specified in Table 37 to part 679 from January 1 through December 31 of each year; except that groundfish catches of Amendment 80 vessels using non-trawl gear in a non-groundfish fishery shall not be applied to the Amendment 80 sideboard limitations.

- Modify § 679.92(b)(2) to clarify that an Amendment 80 vessel fishing in a non-trawl non-groundfish fishery is not subject to the groundfish or halibut PSC sideboard limits in Tables 37 and 38 to part 679.

- Modify § 679.93(c) and (d) to clarify that catch monitoring standards for Amendment 80 vessels in the BSAI and GOA apply only when an Amendment 80 vessel is fishing in a "directed groundfish fishery."

- Modify § 679.93(e) to clarify that only the catch by Amendment 80 vessels fishing in a directed groundfish fishery should apply to CQ accounts, the Amendment 80 limited access fishery, or Amendment 80 GOA sideboard limits for purposes of accounting for Amendment 80 species, crab PSC, or halibut PSC.

The proposed regulations at § 679.50(c)(6) relating to observer coverage requirements for Amendment 80 vessels fishing in the BSAI and GOA would not apply to the F/V ALLIANCE if and when that vessel is used as a scallop vessel. The proposed observer coverage regulations in the BSAI at § 679.50(c)(6)(i) apply only to vessels using trawl gear and only for each day that the vessel is used to harvest, receive, or process groundfish in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. The observer coverage regulations at § 679.50(c)(6)(ii) applicable to Amendment 80 vessels fishing in the GOA require that such vessels must have onboard at least one NMFS certified observer for each day that the vessel is used to harvest, receive, or process groundfish in the GOA management areas or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. These paragraphs provide examples showing the clear intent to apply M&E requirements only to Amendment 80 vessels operating in the groundfish fisheries.

Further, although NMFS may be concerned about the possibility that Amendment 80 vessels could use non-trawl gear, such as longline gear to target Pacific cod, and possibly avoid certain M&E requirements such as observer coverage in the BSAI, NMFS should not apply M&E requirements applicable for monitoring the Program to non-groundfish fisheries generally. The objectives of the M&E requirements, which are described in Section 3.3.7 of the Amendment 80 EA, specify objectives necessary for monitoring groundfish catch to ensure compliance with regulations governing the groundfish fishery and provide an authoritative, timely, and unambiguous record of quota harvested. These concerns do not extend to the use of an Amendment 80 vessel while fishing under the authority of a non-groundfish fishery management plan, such as the scallop fishery, with its own M&E requirements.

Incidental catch of Amendment 80 species and PSC by the F/V ALLIANCE while fishing in the scallop fishery should not be debited against allocations to an Amendment 80 cooperative or the Amendment 80 limited access fishery to which the F/V ALLIANCE may be assigned while fishing in the BSAI. Likewise, additional catch by the F/V ALLIANCE of species subject to sideboard limits while fishing for scallops in the GOA should not be debited against GOA sideboard limits applicable to Amendment 80 vessels generally.

*Response:* NMFS agrees in part and has modified the final rule to relieve specific M&E and catch accounting regulations when an Amendment 80 vessel is using dredge gear while directed fishing for scallops. This change is not inconsistent with the Council's intent or the FMP. NMFS notes that the suite of M&E measures, catch accounting provisions, and sideboard measures described in the final EA/RIR/FRFA were specifically developed to ensure catch accounting by Amendment 80 vessels operating in groundfish fisheries. There is no indication that non-groundfish fisheries were intended to be subject to M&E and catch accounting measures developed under the Program.

The commenter provides a well-reasoned rationale for not applying specific M&E and catch accounting standards to a vessel that is engaged in a specific non-groundfish fishery. The commenter identifies one fishery, the scallop fishery, where one Amendment 80 vessel, the F/V ALLIANCE, could be used. The number of potential entrants into the scallop fishery is

limited by the Scallop LLP, substantial controls on gear use exist, and the scallop fishery is carefully monitored by the State of Alaska. Furthermore, most participants in the scallop fishery have established an industry-based private contractual agreement to coordinate fishing operations. It is reasonable to assume that fishing effort would not increase should the F/V ALLIANCE replace a vessel currently operating in the scallop fishery. Additionally, other non-Amendment 80 vessels could be used to replace vessels in the scallop fishery, therefore the specific use of the F/V ALLIANCE in the scallop fishery should not have any effect on the scallop fishery that would differ from the use of any other replacement vessel. It is reasonable to assume that relieving an Amendment 80 vessel of specific M&E and catch accounting provisions applicable under the Program when that vessel is used for scallop fishing would not have any effect on either the scallop fishery or the Amendment 80 fishery which is not already considered and analyzed.

However, the commenter also proposes relieving M&E and catch accounting standards on an Amendment 80 vessel when it is not "directed groundfish fishing." By using this term, the commenter seems to suggest that M&E and catch accounting requirements should be relieved for any Amendment 80 vessel participating in any non-groundfish fishery such as the BSAI crab fishery, the halibut IFQ fishery, or while fishing for non-groundfish species such as grenadiers. NMFS determined that providing a general exemption from M&E, catch accounting, and sideboard limitations applicable under the Program for Amendment 80 vessels when not engaged in directed groundfish fishing could create the potential for Amendment 80 vessels to be used in non-groundfish fisheries in ways that cannot be easily anticipated. Furthermore, the commenter has specifically identified only one vessel and one fishery for which relief from Amendment 80 M&E and catch accounting regulations is specifically sought.

Based on these factors, and the lack of any other comments from any other Amendment 80 vessel owners supporting a broad relief from M&E and catch accounting standards for other non-groundfish fisheries, NMFS relieved these restrictions only when an Amendment 80 vessel is using dredge gear while directed fishing for scallops. Because dredge gear is the authorized gear for scallop fishing, and is not used in other non-groundfish fisheries, this regulatory construction narrows the



applicability of this M&E and catch accounting exemption. In the future, if other Amendment 80 vessel owners identify specific non-groundfish fisheries in which they wish to use their vessels, the Council can review and consider such requests through the Council process.

NMFS made the following changes to the regulatory text:

- Revised § 679.7(o)(4)(iii) as renumbered based on the response to comment 5 to clarify that an Amendment 80 vessel assigned to a cooperative must maintain a CQ permit onboard unless that Amendment 80 vessel is using dredge gear while directed fishing for scallops.
- Revised § 679.7(o)(5)(iii) as renumbered based on the response to comment 5 to clarify that an Amendment 80 vessel assigned to the Amendment 80 limited access fishery must maintain an Amendment 80 limited access fishery permit onboard unless that Amendment 80 vessel is using dredge gear while directed fishing for scallops.
- Modified § 679.7(o)(6)(i) to clarify that an Amendment 80 vessel is prohibited from failing to follow catch monitoring standards in the BSAI under § 679.93(a), (b), and (c) if the Amendment 80 vessels is using any gear but dredge gear while directed fishing for scallops.
- Modified § 679.7(o)(6)(ii) to clarify that an Amendment 80 vessel subject to a GOA sideboard limit under § 679.92(b) and (c) is prohibited from failing to follow catch monitoring standards in the GOA under § 679.93(a), (b), and (d) if the Amendment 80 vessel is using any gear but dredge gear while directed fishing for scallops.
- Modified § 679.92(b)(1) to clarify that GOA groundfish sideboard limits specified in Table 37 to this part do not apply when an Amendment 80 vessel is using dredge gear while directed fishing for scallops in the GOA.
- Modified § 679.92(b)(2) by renumbering part of (b)(2) as (b)(2)(i) and inserting a new paragraph, (b)(2)(ii), to clarify that halibut PSC sideboard limits in Table 38 to this part do not apply when an Amendment 80 vessel is using dredge gear while directed fishing for scallops in the GOA.
- Modified the introductory text to § 679.93(c) to note that catch monitoring requirements for Amendment 80 vessels in the BSAI apply to all Amendment 80 vessels except Amendment 80 vessels using dredge gear while directed fishing for scallops.
- Modified the introductory text to § 679.93(d) to note that catch monitoring requirements for Amendment 80 vessels

in the GOA apply to all Amendment 80 vessels except Amendment 80 vessels using dredge gear while directed fishing for scallops.

- Modified § 679.93(e)(1)(i) to note that catch of Amendment 80 species by an Amendment 80 vessel assigned to an Amendment 80 cooperative is debited from that cooperative's CQ permit unless that Amendment 80 vessels is using dredge gear while directed fishing for scallops.
  - Modified § 679.93(e)(1)(ii) to note that catch of Amendment 80 species by an Amendment 80 vessel assigned to the Amendment 80 limited access fishery is debited from that ITAC for the Amendment 80 limited access fishery unless that Amendment 80 vessels is using dredge gear while directed fishing for scallops.
  - Modified § 679.93(e)(2)(i) to note that use of crab and halibut PSC by an Amendment 80 vessel assigned to an Amendment 80 cooperative is debited from that cooperative's CQ permit unless that Amendment 80 vessels is using dredge gear while directed fishing for scallops.
  - Modified § 679.93(e)(2)(ii) to note that use of crab and halibut PSC by an Amendment 80 vessel assigned to the Amendment 80 limited access fishery is debited from the crab and halibut PSC limit for the Amendment 80 limited access fishery unless that Amendment 80 vessels is using dredge gear while directed fishing for scallops.
  - Modified § 679.93(e)(3) to note that catch of Amendment 80 GOA sideboard species by an Amendment 80 vessel in the GOA is debited from the Amendment 80 sideboard limit except Amendment 80 sideboard species caught by Amendment 80 vessels using dredge gear while directed fishing for scallops.
  - Modified § 679.93(e)(4)(iii) to note that use of halibut PSC by an Amendment 80 vessel in the GOA is debited from the Amendment 80 sideboard limit except halibut PSC used by Amendment 80 vessels using dredge gear while directed fishing for scallops.
- Additionally, NMFS modified the observer coverage regulations based on the comments concerning the potential for an Amendment 80 vessel to use non-trawl gear in the BSAI and thereby avoid observer coverage requirements that are intended to ensure adequate catch accounting. NMFS did not anticipate, or intend, that an Amendment 80 vessel could avoid required observer coverage by choosing not to use trawl gear in the BSAI. NMFS had assumed that Amendment 80 vessels would continue to use trawl gear in the BSAI, and therefore applied

observer coverage based on the use of that gear type. The commenter is correct in noting that nothing in the regulations would require an Amendment 80 vessel to use trawl gear to catch fish in the BSAI. NMFS notes that the commenter does not advocate relieving observer coverage requirements applicable to Amendment 80 vessels that may choose to use non-trawl gear, other than specifically for Amendment 80 vessels fishing in the scallop fishery.

Section 1.10.6 of the final EA/RIR/FRFA prepared for this action notes that NMFS must be able to ensure adequate catch accounting, particularly when monitoring at-sea discards and use of PSC, and notes the particular advantages offered by expanding observer coverage to ensure that all catch is properly observed. NMFS has modified section 1.10.6 of the final EA/RIR/FRFA to clarify that observer coverage requirements are applicable to Amendment 80 vessels regardless of the specific gear type used, with the specific exemption made for an Amendment 80 vessel using dredge gear while directed fishing for scallops.

Based on these factors, NMFS made several modifications in observer coverage regulations at § 679.50 to apply observer coverage standards to Amendment 80 vessels as necessary for adequate catch accounting, and clarify that specific observer coverage does not apply to Amendment 80 vessels that may be fishing in the scallop fishery. Specifically, NMFS made the following changes:

- Modified § 679.50(a)(8) to specify that observer regulations applicable to Amendment 80 vessels are found in § 679.50(c)(6).
- Modified § 679.50(c)(6)(i) to clarify that the observer standards in the BSAI apply to all Amendment 80 vessels using any gear but dredge gear while directed fishing for scallops and to catcher/processors not listed in § 679.4(l)(2)(i) and using trawl gear. This modification extends observer coverage to Amendment 80 vessels using any gear, such as longline gear in the Pacific cod fishery.
- Modified § 679.50(c)(6)(ii) to clarify that the observer standards in the GOA apply to all Amendment 80 vessels using any gear but dredge gear while directed fishing for scallops, except for the F/V GOLDEN FLEECE.

#### Section 679.21

*Comment 9:* Section 679.21 of the proposed rule establishes halibut PSQ for the CDQ sector. No rationale exists in either the draft EA/RIR/IRFA or the proposed rule that justifies increasing CDQ halibut PSQ under the Program

while at the same time decreasing the halibut PSQ over time for the Amendment 80 sector. It is not clear why the CDQ Program should be granted this additional benefit of increased halibut PSQ. If the goal of the Program is, as stated, to reduce bycatch, then reducing halibut bycatch for the CDQ Program and the Amendment 80 sector is the only alternative consistent with that goal. There is no biological or practical rationale for this double standard. Failure to treat the two sectors equally without a sound scientific basis potentially violates MSA National Standards 2 and 9.

*Response:* The preamble to the proposed rule specifically addresses the rationale for increasing the allocation of halibut PSQ (72 FR 30062), and this rationale is further described in section 1.10.3 of the draft EA/RIR/IRFA prepared for the proposed rule. Generally, less than half of the halibut PSQ allocation to the CDQ Program has been used in any fishing year. However, CDQ groups have not traditionally harvested their full allocations of species such as rock sole, yellowfin sole, or other Amendment 80 species with higher halibut PSQ use rates. With the implementation of the Program, Amendment 80 vessels may have more flexibility to contract with CDQ groups to fully harvest the CDQ Program groundfish allocations, which may result in higher halibut bycatch.

The biological rationale for the increase in the halibut PSQ is to accommodate anticipated increased harvest of Amendment 80 species by the CDQ Program and the attendant increase in halibut PSC use. The adjustment to the halibut PSQ allocation does not increase the total amount of halibut PSC that is used in the BSAI, it merely reapportions the amount of halibut PSC that is available to accommodate anticipated halibut PSC use by the CDQ Program. The commenter's assertion that this reapportionment of halibut PSC somehow increases the overall bycatch of halibut is incorrect.

NMFS is not applying a "double standard" to halibut PSC use between the Amendment 80 sector and the CDQ Program. The Council considered that by increasing the allocation of Amendment 80 species to CDQ groups, it became increasingly likely that CDQ groups would have a greater economic incentive to harvest a greater proportion of their Amendment 80 species CDQ allocations. NMFS notes that the increase of halibut PSQ to the CDQ Program is roughly proportional to the increase in the allocation of groundfish species TACs to the CDQ Program overall. The amount of certain

groundfish TACs allocated to the CDQ Program has increased from 7.5 percent to 10.7 percent excluding fixed gear sablefish, pollock, and other species not subject to allocation. Overall, the total amount of groundfish allocated to the CDQ Program has increased.

NMFS notes that halibut PSC is assigned to the CDQ Program for use in fixed gear fisheries and trawl fisheries. As described in the preamble to the proposed rule, the amount of halibut PSQ assigned to the CDQ Program that is derived from the allocation to trawl gear under the Program would increase from 276 mt to 326 mt. The Program does not increase the allocation of halibut PSQ that is derived from the allocation to fixed gear. This is consistent with the fact that the increase in groundfish allocations to the CDQ Program are likely to be harvested using trawl gear, and any PSC needed to harvest the increased allocations should be derived from the overall amount of PSC available for use by trawl gear. Overall, the amount of the total trawl PSC limit assigned to the CDQ Program will increase from 7.5 percent to 8.9 percent under the Program. This increase is relative, but not directly proportional to the increase in the amount of the groundfish allocations made to the CDQ Program.

As noted in the preamble to the proposed rule, NMFS anticipates that with the improved efficiencies that cooperative management could provide the Amendment 80 sector, it is likely that CDQ groups could more effectively partner with participants in the Amendment 80 sector to harvest the CDQ allocations. The increase in halibut PSQ is anticipated to provide adequate amounts of PSC for the CDQ Program without adversely affecting existing fishery participants. Specifically, section 1.11.5 provides a detailed description of current and historic PSC use and the use of PSC that would be anticipated as necessary to fully harvest allocations provided to the Amendment 80 and BSAI trawl limited access sectors given the allocation of PSC to the CDQ Program. These data do not indicate that PSC allocations are likely to constrain Amendment 80 or BSAI trawl limited access sector participants. Further, the Council recommended phasing in the increase in halibut PSQ in recognition of the fact that the CDQ groups may require several years before they develop harvesting capacity and markets necessary to fully harvest their increased allocation of Amendment 80 species, and therefore would not require an increased allocation of halibut PSQ immediately.

The allocations of halibut PSC to the Amendment 80 sector were reviewed in detail by the Council and are proportionate to the allocations of groundfish species, and were determined to be sufficient to allow the Amendment 80 sector to fully harvest its allocation of groundfish species. Furthermore, NMFS anticipates that vessel operators will be able to tailor their fishing operations to reduce the use of halibut PSC under cooperative management.

The commenter's assertion that increasing halibut PSQ violates MSA National Standard 2 "Conservation and management measures shall be based upon the best available information" (16 U.S.C. 1851(a)(2)), or National Standard 9 "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" (16 U.S.C. 1851(a)(9)), is not valid. The increased allocation of halibut PSC to the CDQ Program as halibut PSQ is based on a review of projected use of halibut PSQ by CDQ groups using the best available information on past and potential future harvest patterns and bycatch rates. As noted earlier, increasing the amount of halibut PSQ assigned to the CDQ Program does not increase the total amount of halibut bycatch used in the BSAI. However, overall the Program does minimize bycatch of halibut. NMFS did not modify the regulations based on this comment.

*Comment 10:* Under the Council's recommendation for Amendment 85 to the FMP, it was understood that the catcher vessel trawl sector would be assigned a specific amount of halibut PSC distinct from the AFA trawl catcher/processor or Amendment 80 sectors. Under the proposed PSC allocations in Amendment 80, it appears that the AFA catcher vessel, non-AFA catcher vessel, and the AFA catcher/processor sectors will operate on the same halibut and crab PSC limits. Given the restrictions applicable to AFA catcher/processors this may not result in difficulties. However, during the annual specification process, the Council may find it difficult to apportion halibut and crab PSC among the participants within the BSAI trawl limited access sector. It is not yet clear how the annual specifications process will be altered to accommodate PSC apportionment in the BSAI trawl limited access sector.

*Response:* The final rule implementing Amendment 85, published September 4, 2007, did not change how PSC is allocated among trawl sectors; the Council's

recommended modifications to PSC allocations were not approved by NMFS. The preamble to the proposed rule for Amendment 80 notes that the allocation of PSC under Amendment 80 would supersede the allocation of PSC established by the final rule for under Amendment 85 (see 72 FR 30068). This final rule continues the use of the harvest specification process as the mechanism for apportioning halibut and crab PSC among the BSAI trawl limited access sector participants. NMFS notes that the Council did not envision or recommend that the Program retain any aspect of the apportionment of halibut and crab PSC recommended under Amendment 85 as the basis for apportioning PSC among participants in the BSAI trawl limited access sector. NMFS did not modify the regulations based on this comment.

In order to be consistent with the rule implementing Amendment 85, and the fact that the preamble to the proposed rule for the Program explicitly noted that trawl PSC apportionments within the BSAI trawl limited access sector would not be affected by this action, NMFS does not intend to implement regulations that would apportion PSC in that sector. The annual specification process would continue to be used as the basis for assigning PSC. If the Council experiences difficulties with the allocation of halibut PSC during the annual specification process as the commenter suggests, the Council can initiate an action to address those difficulties.

*Comment 11:* Segregate the crab and halibut PSC allocations to the BSAI trawl limited access sector between the AFA catcher/processors and the catcher vessel sector (i.e., AFA and non-AFA catcher vessels), as was contemplated under Amendment 85.

*Response:* As noted in the response to comment 10, the Program is not intended to implement PSC apportionments among the participants in the BSAI trawl limited access sector. The final rule implementing Amendment 85, published on September 4, 2007, did not change the process for apportioning PSC limits among trawl fisheries and sectors. The annual specification process is the mechanism available to determine allocations of crab and halibut PSC among participants in the BSAI trawl limited access sector. NMFS did not modify the regulations based on this comment.

#### Section 679.27

*Comment 12:* Section 679.27(j)(3) sets forth proposed GRS regulations for improved retention and use of fishery

resources. These proposed regulations would allow NMFS to calculate the GRS on either a vessel-specific basis for vessels in the Amendment 80 limited access fishery, or as an aggregate based on the activities of all Amendment 80 vessels assigned to an Amendment 80 cooperative. The proposed regulations allow Amendment 80 vessels that cannot meet the GRS on a vessel-specific basis to "hide their discards" when they participate in an Amendment 80 cooperative. These vessels will simply join a cooperative and be able to conceal the fact that they discard fish at a rate that would normally be a violation of the GRS. This is a form of smoke and mirrors that should not be sanctioned in these regulations. Moreover, such an approach raises questions of fundamental fairness and equality when the GRS is not applied to all Amendment 80 vessels. Allowing vessels to effectively hide discards in excess of the vessel-specific GRS by joining a cooperative would also appear to violate the MSA National Standard 9, which calls for true bycatch reductions.

*Response:* The goal of the GRS regulations originally implemented under Amendment 79 to the FMP (71 FR 17362) is to improve retention overall for the Amendment 80 sector. As noted in the preamble to the proposed rule to Amendment 80, the Program extends the GRS to vessels less than 125 ft (36.1 m) length overall (LOA). The Program also provides an opportunity for vessel operators to choose to form cooperatives for which NMFS will calculate the GRS on an aggregate basis for all Amendment 80 vessels assigned to that Amendment 80 cooperative. These provisions are explicitly intended to provide all Amendment 80 vessel operators with a mechanism to combine catch, including discarded catch, with other Amendment 80 vessel operators to catch and process groundfish with the greatest efficiency and likelihood that as much groundfish as practicable is retained.

This provision is not unfair and would not increase the discard of groundfish or allow Amendment 80 vessels in a cooperative to hide their discards. Because the Program extends the GRS requirements to Amendment 80 vessels of all sizes, a greater proportion of the total groundfish allocated to the Amendment 80 sector must be retained, thereby reducing groundfish bycatch and clearly meeting the objectives of National Standard 9. Furthermore, the choice of a vessel operator to join a cooperative and apply the GRS to all vessels in that Amendment 80 cooperative is an option available to all Program participants. The Council

specifically noted that once the GRS is extended to Amendment 80 vessels of all length classes, some vessels may have difficulty meeting the GRS on a vessel-specific basis in a cost-effective manner. The Council recommended applying the GRS on an aggregate basis so that vessel operators could choose to form an Amendment 80 cooperative so that the overall retention of all of the Amendment 80 vessels in the Amendment 80 cooperative meets or exceeds the GRS. Groundfish catch on all Amendment 80 vessels fishing for an Amendment 80 cooperative will be accounted to ensure that the catch by the cooperative in the aggregate is not less than the GRS. The net effect of this provision is that all catch by Amendment 80 vessels in the cooperative is counted and the amount of that catch retained is determined, just not an individual vessel-by-vessel basis if an Amendment 80 vessel is participating in a cooperative. This provision is incorporated in the rule and reduces bycatch for the Amendment 80 sector overall while reducing some of the potential costs and complexities associated with GRS compliance. NMFS did not modify the regulations based on this comment.

#### Section 679.28

*Comment 13:* Section 679.28(i) addresses bin monitoring standards and options. It is not clear under § 679.28(i)(1)(ii) whether vessel owners have the responsibility to ensure that only observers who are of average height between 64 and 74 inches (140 to 160 cm) will be permitted on the vessel when utilizing the line of sight option. What is a vessel owner to do if an observer of less than (or greater than) average height is assigned to the vessel?

*Response:* Section 679.28(i)(1)(ii) requires that vessel owners and operators ensure the line of sight option allows observers between 64 and 74 inches (140 to 160 cm) tall be able to see all areas of the bin or tank where crew could be located. This standard is used to inspect and approve the line of sight option for bin monitoring. If an observer outside the average height range boards a vessel, reasonable accommodations will be discussed between the vessel owner, the observer, and NMFS during the precruise meeting. NMFS did not modify the regulations based on this comment.

*Comment 14:* The line of sight option (§ 679.28(i)(1)(ii)) does not address the issue of what standards, if any, must be met for a crew member to enter the tank if bin boards are removed to expose the bin to the observer's view.

*Response:* The standard is clearly described in § 679.28(i)(1)(ii) and requires that from the observer sample station, or the location where the observer sorts and weighs samples, an observer of average height (between 64 and 74 in (140 and 160 cm)) must be able to see all areas of the bin or tank where crew could be located preceding the point where the observer samples catch. Bin boards are used by vessel personnel to change the bin shape and configuration to maximize space or alter the flow of fish. However, bin boards between the catch and the location an observer samples could obstruct his or her view of crew activity inside the bin. If bin boards obstruct an observer's view of these activities, then the line of sight standard is not being met. Therefore, the line of sight option is only available when the bin boards have been removed. If bin boards that obstruct an observer's view are in place, the vessel operator must ensure that no crew enter the bin or tank unless the observer has been given notice someone will be entering the bin, the observer is given the chance to view the activities of the crew in the tank, the flow of fish has been stopped, and all fish have been removed between the tank and the location the observer collects their samples. NMFS did not modify the regulations based on this comment.

*Comment 15:* Section 679.28(i) provides that a bin monitoring option inspection report will be valid for 12 months from the date it is signed by NMFS. There is no stated or apparent basis for limiting the validity of such a report to a 12-month period, effectively requiring annual inspections. Once an inspection has been performed, the inspection report should remain valid until changes are made to the bin or observer area onboard the vessel. An annual inspection for a vessel that utilizes the line of sight option should remain valid until changes are made to the factory or until such time as an observer indicates that he or she cannot view the bin via line of sight. Absent such changes, annual inspections are not warranted, and the cost associated with them is unduly burdensome and in violation of MSA National Standard 7, which requires minimization of costs and avoidance of unnecessary duplication.

*Response:* NMFS disagrees with the commenter's assertion that annual inspections are not warranted or are in violation of National Standard 7. Annual inspections for the bin monitoring option are required to ensure no changes have been made since the last inspection. Even minor modifications to the factory or the bin

may change the flow of fish that can affect monitoring protocols, and require reapproval of a bin monitoring option. NMFS has made efforts to minimize costs and avoid unnecessary duplication. As an example, the bin monitoring inspections can occur simultaneously with the annual observer sample station inspection. Furthermore, NMFS notes that the bin monitoring inspection process established in the rule is the same process used for catcher/processor vessels that are operating under the Central GOA Rockfish Program, thereby further reducing costs for any Amendment 80 vessel participating in both LAPPs. These measures explicitly ensure consistent application of regulations, and minimize costs and avoid unnecessary duplication as much as possible, thereby meeting the requirements of National Standard 7. NMFS did not modify the regulations based on this comment.

*Comment 16:* Section 679.28(i)(1)(iii)(F) requires an owner or operator of a vessel that selects the video option to ensure that the video system has sufficient resolution to see and read a text sample in 130 point type from any location within the tank where crew could be located. The purpose of this regulation is to ensure that cameras will be able to capture images of sufficient quality for the observer to monitor crew activity in the tank. Being able to see and read text in 130 point type characters (about the size of a half dollar coin) goes well beyond being able to monitor what crew are doing in the tank.

NMFS needs a standard with which to judge performance, but this standard is too constraining. Either double the font size to 260 point type or substitute another more suitable standard such as removing the font specification and require that cameras have adequate resolution for general fish identification. Font size has little bearing on whether the observer can differentiate categories of limiting species.

*Response:* In order to provide NMFS staff with a means of objectively approving video options, and give observers a method to articulate visibility concerns with vessel personnel, an objective standard is required. Font size was selected as the objective standard because of the general availability of a specific font size to the public. NMFS staff has approved three vessels selecting the video option (§ 679.28(i)(1)(iii)) under the Central GOA Rockfish Program using the same standards in this rule and has found the standard may be met with available, reasonably priced

technology. While the NMFS continues to investigate improved standards for determining the adequacy of video installations, NMFS is unable to specify a better standard at this time. NMFS did not modify the regulations based on this comment.

#### Section 679.50

*Comment 17:* In §§ 679.50(c)(6) and 679.93(c), the observer and flow scale requirements are particularly burdensome to the smaller operators. While the range of costs are discussed, there appears to be little justification for these costs when weighed against the marginal increase in information that will be made available to NMFS as a result, especially when dealing with smaller vessels.

*Response:* NMFS disagrees with the commenter's conclusion that the increase in information from observer coverage and flow scale requirements do not justify the costs. NMFS has attempted to balance the monitoring and enforcement requirements to be cost-effective, manageable, and effective. The final EA/RIR/FRFA prepared for this action does identify the benefits of the increased monitoring requirements.

Section 2.3.7 notes that "[b]ecause Amendment 80 monitoring requirements would include flow scales, observer stations, observation of every haul, and additional requirements described above; some improvements to management [of] catch accounting may also occur. For example, direct measurement of weight on a flow scale is likely to be more reliable than observer measurements based on volumetrics and density." More accurate catch accounting ensures that CQ and Amendment 80 limited access ITAC amounts are properly debited based on the best available information.

Section 1.10.6 of the final EA/RIR/FRFA notes that "[p]resently, many vessels in the H&G fleet [Amendment 80 sector] are required to carry only one observer. Generally, this results in less than 100 percent of the hauls being sampled. Under the Amendment 80 requirement for two observers, all hauls would be sampled. NMFS would no longer need to rely on secondary sources, such as the skipper's estimates or total weekly production figures, as the basis for calculating catch weight for H&G vessels. This would decrease the number of hauls NMFS would need to extrapolate for this fleet."

For example, if a vessel operates on the fishing grounds for several weeks and has less than 100 percent of its hauls observed, some of the bycatch calculations for that vessel are based on bycatch rates derived from other

observed hauls and applied to the total catch determination. If NMFS has haul-specific information from observer sampling, improved information on actual bycatch amounts would supplant the use of data based on a rate from other observed hauls. The extension of coverage to two observers per vessel would allow every haul to be sampled and could reduce risks associated with the timing of openings and closings for some groundfish fisheries (i.e., decrease the probability that stocks would be overfished or underharvested). Higher levels of observer coverage ensure adequate catch accounting for vessels assigned to cooperatives. The benefits of additional observer coverage apply to both larger and smaller vessels. Currently, vessels 125 feet (38.1 m) LOA or longer must carry an observer at all times. However, smaller vessels less than 125 feet (38.1 m) LOA are only required to carry an observer for 30 percent of their fishing days. The incremental increase in the amount of management data associated with increased observer coverage on vessels less than 125 feet (38.1 m) LOA is far greater than with larger vessels. NMFS will no longer be required to extrapolate data to unsampled hauls on smaller vessels, thereby resulting in better management decisions. NMFS did not modify the regulations based on this comment.

#### Section 679.90

*Comment 18:* Section 679.90(d)(1) notes that Amendment 80 QS units will be assigned based on the Amendment 80 vessel's legal landings for each Amendment 80 species in each management area. For purposes of calculating legal landings, § 679.90(d)(i)(B) of the proposed rule states that the five calendar years between 1998–2004 with the highest amount of legal landings are to be used. This calculation method gives an unfair and disproportionate advantage to companies who have an erratic catch history or no catch at all for some years. As such, this is not a fair and equitable distribution method as required by the MSA.

*Response:* As noted in the preamble to the proposed rule, this calculation method was selected to accommodate harvesters who may have been active in the fishery, but who may have had reduced catch, or no catch during a specific year due to factors beyond their control such as mechanical problems, weather conditions, poor harvests, or unanticipated closures in the fishery. Using this weighted average calculation method for all participants, including those with consistent harvest patterns,

will result in QS allocations that reduce the effects of years with reduced harvests relative to other years. This method for computing QS is applied equally to all Amendment 80 sector participants with legal landings. Because the same calculation method is applied to all participants, the argument that this calculation method is somehow disproportionately advantageous or disadvantageous to any one participant, or group of participants is not valid. As an example, a vessel that had consistent, but poorer catch in several years, would yield QS that is based on a weighted average of the best five of seven years of catch from that vessel. Vessels with limited or sporadic catch would likewise yield QS based on a weighted average of catch, but the QS derived from such a vessel would still reflect the relatively limited participation of that vessel. NMFS did not modify the regulations based on this comment.

*Comment 19:* Eliminate the provision in section 679.90(d)(1)(iii) that states that Amendment 80 vessels that did not have any legal landings between 1998–2004 will be assigned 0.5 percent of the total QS issued for BSAI rock sole and BSAI yellowfin sole. This provision would result in three vessels being granted an allocation of rock sole and yellowfin sole despite the fact that they failed to meet the legal landing requirements imposed on all other vessels in the Program. Two of these three vessels no longer exist and have not participated in the fishery for over a decade. This provision creates a double standard by which some vessels are required to satisfy the legal landing requirements while others are not. This provision violates the fair and equitable distribution requirements of the MSA.

*Response:* As noted in the preamble to the proposed rule, the three vessels referred to in the comment meet the statutory participation criteria in the Amendment 80 sector as an Amendment 80 vessel according to the CRP. However, the years recommended by the Council to allocate QS, and incorporated in the rule, would foreclose the ability of QS to be issued based on the historic catch history of these vessels, even though Congress clearly intended that those vessels would be eligible to participate in the Amendment 80 sector. The Council recommended, with the input of the Amendment 80 sector participants, to provide a relatively small and fixed allocation of Amendment 80 QS based on the eligibility of these vessels according to the CRP instead of readjusting the years used to allocate QS. The rule implements that recommendation.

The allocation of QS to these vessels is specifically intended to provide a fair and equitable opportunity to participate for all eligible Amendment 80 vessels, while considering and accommodating those participants with unique harvest patterns. Although the method of allocating QS to these Amendment 80 vessels differs from the method used for other vessels, the EA/RIR/FRFA (see ADDRESSES) and proposed rule provided the rationale for this decision. The preamble to the proposed rule indicates that although the Council considered alternative methods to allocate QS that would accommodate the historic catch patterns of these three vessels, the Council recommended an allocation that would provide a minimal but measurable amount of QS that may be used to allow these vessel operators to continue to participate in the Amendment 80 sector. NMFS did not modify the regulations based on this comment.

*Comment 20:* Three Amendment 80 vessels without legal landings during the 1998 through 2004 qualifying years will be issued a specific amount of QS. Assign all Amendment 80 vessels a minimum amount of QS in addition to historic legal landings.

*Response:* The Council considered a range of criteria when determining the minimum amount of QS to be issued based on the catch history of a specific vessel. The Council did not recommend and the rule does not implement a minimum QS issuance for all Amendment 80 vessels. The purpose of the allocation to the three Amendment 80 vessels described by the comment is provided in the preamble to the proposed rule and in response to comment 19. NMFS did not modify the regulations based on this comment.

*Comment 21:* Modify § 679.90(d)(i) to incorporate the entire catch history for all vessels that qualify under the Program. Limiting the allocation to the years 1998–2004 unfairly penalizes long-term participants in the fishery, while rewarding short-term speculative participants. Failure to consider the full catch history of all participants in the Program violates principles of fundamental fairness. The choice of the years 1998–2004 appears to give a much greater emphasis, and thus a greater allocation, to new or more recent participants in the fishery, at the expense of those who have an established presence in this fishery.

Both the MSA and the Amendment 80 draft EA/RIR/IRFA indicate that recent catch history shall be considered in allocation programs. However, the selection of the years 1998–2004 for this Program severely slants the allocations

in favor of recent entrants. Cutting off consideration of all catch history prior to 1998 ignores the investments made by companies pioneering these fisheries. Participants took a substantial risk in building ships and developing markets to replace the foreign ships operating off the coast of Alaska at that time. Limiting catch history to the years 1998–2004 effectively negates the effort and commitment of early entrants, and there is no justification in the Amendment's analysis for ignoring the complete catch history in making species allocations under the Program. This is contrary to MSA National Standard 4, which requires fair and equitable allocation of fishing privileges.

*Response:* The Council spent considerable time reviewing catch patterns in the fishery. The Council considered a wide range of factors that have been described in the final EA/RIR/FRFA, the Council record, and in the preamble to the proposed rule. Section 303(b)(6) of MSA requires that both historic and current participation patterns be considered when allocating fishery resources. Both recent and historic harvest patterns were considered and numerous opportunities were provided to Amendment 80 sector participants to recommend the specific methods used to allocate QS.

The Council and NMFS examined historic and recent catch patterns before recommending the allocation ultimately selected. The final EA/RIR/FRFA prepared for this action notes that harvest patterns from 1995 through 2004 were considered in various combinations. There are several factors that were considered in determining allocations to the Amendment 80 sector.

First, the CRP notes that only vessels that were active from 1997 through 2001 are eligible to participate in the Amendment 80 sector. Including years prior to 1997 could potentially include the legal landings of vessels that are not eligible to participate in the Amendment 80 sector. Including the legal landings for those vessels would provide QS allocations based on the activities of vessels that Congress specifically determined should not be able to continue to participate.

Second, including legal landings prior to 1998 only for Amendment 80 vessels would likely shift the allocation of QS from more recent participants to more historic participants. As with all QS allocations, the Council endeavored to balance historic and recent participants. Including legal landings prior to 1998 would likely have the effect of increasing the QS allocations to longer term participants but would provide less QS to Amendment 80 vessels that

are currently active. The net effect of such a change would be to allocate an amount of QS to current participants that is not representative of current participation patterns. The Council attempted to ensure that vessels that are currently active in the fishery are able to continue to operate in a fashion representative of their dependence and use of the fishery. Shifting the allocation of QS to favor vessels active more than ten years before the Program would defeat that goal. Section 303(b)(6) of the MSA notes that in developing a limited access system, such as the Program, the Council and NMFS take into account present participation in the fishery, historical fishing practices, and dependence on the fishery. The MSA does not define these terms, or require that the Council or NMFS weight one measure over another. The Council and NMFS did consider historic and recent participation and dependence. The Council determined that allocating QS based on legal landings some eight years prior to Council action, and likely ten years prior to the implementation of the Program reasonably considered historic participation and dependence.

Third, NMFS also notes that allocating QS based on legal landings during the time period prior to 1998 could result in relatively few long-term participants receiving a relatively large proportion of the overall QS allocated to the Amendment 80 sector. Depending on the way in which catch prior to 1998 would be considered this could result in a particular individual or corporation receiving a much larger share of QS relative to their current fishery patterns. This raises a concern that such an allocation method would not be fair and equitable to other fishery participants, could result in such an individual or corporation acquiring an excessive share of QS, and would contravene National Standard 4.

Fourth, a review of catch patterns in the final EA/RIR/FRFA of Amendment 80 vessels indicates that the number of non-AFA trawl catcher/processors, and amount of Amendment 80 species TAC taken by those vessels is relatively consistent throughout the 1998 through 2004 time period. This suggests that participation patterns during this time period are most reflective of a reasonable range of historic and recent participation. For example, in the yellowfin sole fishery, during the 1995 through 1997 time period an average of 28 non-AFA trawl catcher/processors retained 64 percent of the total TAC. During the 1998 through 2004 time period an average of 22 non-AFA trawl catcher/processors retained 90 percent of the TAC, indicating a fewer number

of non-AFA trawl catcher/processors retained a greater proportion of the total TAC. The Council and NMFS observed similar catch and participation patterns for the other Amendment 80 species. Catch and participation patterns prior to 1998 do not appear reflective of long term trends after 1998.

Fifth, the Council noted that there have been substantial changes in the fishery due to the implementation of the AFA beginning in 1998. The AFA effectively excludes almost all non-AFA trawl catcher/processors from participating in the directed pollock fishery, and limited those vessels eligible in the AFA to specific sideboard limits. This change in fishery management shifted catch patterns dramatically. Amendment 80 vessels increased their harvests of Amendment 80 species, and AFA vessels focused their catch on pollock. Management prior to 1998 is not representative of management changes that resulted from the enactment of the AFA.

The seven year time frame used to allocate QS included the most recent year of participation for which records were available at the time of Council action (2004) as well catch as early as 1998, which was best thought to represent the traditional harvest patterns of the Amendment 80 sector. The Council's recommendation does not violate principles of fundamental fairness. NMFS did not modify the regulations based on this comment.

*Comment 22:* An Amendment 80 LLP license is assigned QS (*i.e.*, an Amendment 80 QS/LLP license) if an Amendment 80 vessel is lost or becomes permanently ineligible to fish. The regulations allow the CQ derived from an Amendment 80 QS/LLP license to be fished on an existing Amendment 80 vessel. That Amendment 80 QS/LLP license will be assigned to a cooperative. This would allow a vessel owner to "stack" Amendment 80 QS/LLP licenses on a vessel so long as that vessel owner did not exceed the 30 percent use cap. This stacking of Amendment 80 QS/LLP licenses on a vessel could be used to leverage others who are seeking to form a cooperative. This goes against the Council's intent to limit the amount of consolidation in the industry.

*Response:* The Council spent considerable time attempting to balance cooperative formation standards so that the interests of single and multiple QS permit holders were balanced. In particular, the Council adopted measures to ensure that holders of single QS permit would have the ability to reasonably negotiate with multiple QS permit holders to ensure an

equitable distribution of costs and revenues in a cooperative arrangement. The ability to purchase Amendment 80 QS/LLP licenses and use the resulting CQ or ITAC does not necessarily result in any greater ability to form a cooperative. A minimum number of unique entities and QS permits must be assigned to form a cooperative. Cooperative formation would be limited if consolidation occurred that made meeting these requirements difficult. It is not clear how consolidation of permits would necessarily provide a greater advantage to a person holding multiple QS permits because other persons holding QS permits must choose to form a cooperative with that person. If the minimum requirements cannot be met to form a cooperative, Amendment 80 QS permit holders can assign those permits to the Amendment 80 limited access fishery.

The Program provides an opportunity for persons to hold and transfer QS permits, subject to specific limits, but within those limits the choice to consolidate permits is made by the potential transferor and the transferee. There is no requirement that an Amendment 80 QS/LLP license holder has to transfer that license to another person. The Council did not recommend and the rule does not implement a requirement that an Amendment 80 LLP/QS license be assigned only to an Amendment 80 cooperative, and the comment provides no rationale why it would need to be. As an example, the holder of an Amendment 80 QS/LLP license could choose to enter into a contract with participants in the Amendment 80 limited access fishery and receive compensation for the ITAC derived from that Amendment 80 QS/LLP license. NMFS did not modify the regulations based on this comment.

*Comment 23:* For no discernable reason, replacement vessel provisions are absent from the proposed rule. This is a serious omission that was not addressed or explained anywhere in the proposed rule even though Section 1.11.13.4 in the draft EA/RIR/IRFA assumes that replacement vessels will be allowed. There is no explanation for the rationale of such a drastic and unprecedented step.

NMFS has indicated that section 219(a)(7) of the CRP limits the vessels that can participate in the Amendment 80 sector. NMFS has incorrectly interpreted this provision of the CRP. Section 219 of the CRP should not be interpreted to create a defined class of vessels. Had Congress wished to limit participation by a group of vessels, they would have used the same language as was used in the AFA. A clear

distinction needs to be made between qualifying participants, which is what the CRP addresses, and the vessels used to qualify.

*Response:* The proposed rule does not address, or create provisions for replacement vessels in the event an Amendment 80 vessel suffers an actual total loss or constructive total loss, because Congress did not provide for such a provision in the CRP. The preamble to the proposed rule clearly describes the criteria that Congress established for allowing a person to fish in the Amendment 80 sector under the CRP (72 FR 30057). In addition, NOAA General Counsel provided a series of memoranda to guide the Council in the development of the Program that specifically address this issue. Those memoranda are appended to the final EA/RIR/FRFA prepared for this action (see **ADDRESSES**).

The criteria to participate in the Amendment 80 sector are clearly established in the CRP. For purposes of participation in the catcher/processor sector of the BSAI non-pollock groundfish fishery, section 219(a)(7) of the CRP states:

(7) Non-AFA Trawl Catcher Processor Subsector.—The term “non-AFA trawl catcher processor subsector” means the owner of each trawl catcher processor—

(A) That is not an AFA trawl catcher processor;

(B) To whom a valid LLP license that is endorsed for Bering Sea or Aleutian Islands trawl catcher processor fishing activity has been issued; and

(C) That the Secretary determines has harvested with trawl gear and processed not less than a total of 150 metric tons of non-pollock groundfish during the period January 1, 1997 through December 31, 2002.

It is quite clear from the language used in the definition of the non-AFA trawl catcher/processor subsector (i.e., Amendment 80 sector) that there are three criteria for eligibility in the sector. Additionally, it is clear from the language used that all the criteria must be met by the owner of a trawl catcher/processor in order to be eligible for the Amendment 80 sector given Congress' use of the word “and” at the end of subsection 219(a)(7)(B).

The statutory language used in § 219(a)(7) or in other sections of the CRP does not include words that permit the Council or NMFS to amend Congress' enumerated qualification criteria. Additionally, there is no statutory language in § 219(a)(7) or elsewhere in the CRP that would permit the application of more restrictive, or more lenient, qualification criteria by

the Council or NMFS. Congress did not provide the Council or NMFS with any ability to make adjustments to the specific statutory criteria addressing eligibility in the Amendment 80 sector. The criteria as to who is eligible to be a member of the Amendment 80 sector has been decided by Congress, and the Council and NMFS cannot select or impose different eligibility requirements for entrance to the Amendment 80 sector.

Persons who are eligible to participate in the Amendment 80 sector are those persons who, at the time of participation, own a trawl catcher/processor that meets the statutory criteria at § 219(a)(7)(A) and (C), and who has been issued a valid LLP license is endorsed for Bering Sea or Aleutian Islands trawl catcher/processor fishing activity for the trawl catcher/processor that meets the criteria in § 219(a)(7)(A) and (C). The criteria for trawl catcher/processors at § 219(a)(7)(A) and (C) will qualify a finite number of vessels for the Amendment 80 sector.

NOAA provided the Council and the public with a review of the CRP that addressed the inability for vessels not meeting the criteria of the CRP to be used to participate in the fishery. The Council clearly understood that no vessels other than those that meet the criteria established in the CRP could be used to fish in the Amendment 80 sector and that there was not a provision in the CRP to allow vessels not meeting the criteria established by Congress to replace those that did.

Throughout the draft EA/RIR/IRFA the terms “qualified vessel” or “eligible vessel” are used to describe the 28 vessels that have been identified in Table 31 to Part 679 that meet the criteria established in sections 219(a)(7)(A) and (C) of the CRP. Other than Section 1.11.13.4 of the draft EA/RIR/IRFA, there is no suggestion that any vessels other than the 28 defined “qualified vessels” or “eligible vessels” could be used to fish in the Amendment 80 sector. Section 1.11.13.4 in the draft EA/RIR/IRFA prepared for the proposed rule is misleading and has been corrected in the final EA/RIR/FRFA to make it clear that this section does not describe the potential use of replacement vessels to fish in the Amendment 80 sector.

Section 1.11.13.4 is intended to describe the requirement that Amendment 80 vessel holders must meet any time a person designates a vessel on an LLP license if that vessel wasn't previously designated on that LLP license. Specifically, this section notes that the existing maximum length overall (MLOA) requirements of the LLP



license continue to apply to any vessel designated on an LLP license. The use of the term "replacement vessel" is intended to refer to a vessel that is newly designated on an LLP license. Although the use of this term may have caused confusion, this section does not describe a process for replacing an Amendment 80 vessel. NMFS has revised this section of the analysis to make it clear that it is intended to describe the use of LLP licenses on specific vessels, and not to suggest that vessels other than those vessels meeting the clear criteria established by Congress in sections 219(a)(7)(A) and (C) of the CRP can participate in the Amendment 80 sector. NMFS did not modify the regulations based on this comment.

*Comment 24:* If a person is eligible to receive QS and decides not to participate in the Amendment 80 sector, then his share of the amount of the "resource" derived from his QS should be allowed to be used in the BSAI trawl limited access fishery. This provision would be particularly important in those cases where the QS holder decides that the advantages offered by Amendment 80 are outweighed by the disadvantages.

*Response:* The Council did not recommend, and this rule does not implement, a provision that allows Amendment 80 QS and the ITAC that could be derived from that Amendment 80 QS to be reassigned to the BSAI trawl limited access sector. The Council explicitly considered and rejected a provision that would have allowed ITAC to be reallocated from the Amendment 80 sector to the BSAI trawl limited access sector during the development of the Program. The Council rejected this provision due to the difficulty in reassigning catch, specifically CQ from the Amendment 80 sector to the BSAI trawl limited access sector.

NMFS agrees that a person who is eligible to receive QS may choose not to apply for that QS, not become a participant of the Amendment 80 sector, and therefore choose to participate in another sector, such as the BSAI trawl limited access sector, subject to the limitations on participation in that sector. The decision to do so would be made on a case-by-case basis. NMFS did not modify the regulations based on this comment.

*Comment 25:* Provide a greater allocation to the Amendment 80 sector based on both historic and recent catch and PSC use patterns. The allocations provided to the BSAI trawl limited access sector are more than adequate to support the needs of that sector and

should not be increased. An increase in allocations to the Amendment 80 sector is supported by comparing the allocations made under the Program to the historic current use of Amendment 80 species and PSC by the Amendment 80 and BSAI trawl limited access sectors.

*Response:* The Council considered a range of alternatives when making the allocations to the Amendment 80 and BSAI trawl limited access sectors. The rule implements allocations among fishery participants in accordance with the MSA and in consideration of a range of factors summarized in the final EA/RIR/FRFA prepared for this action (see **ADDRESSES**). See response to comment 21 for additional detail on the years selected for determining catch history allocation. NMFS did not modify the regulations based on this comment.

#### Section 679.91

*Comment 26:* Remove from § 679.91(a)(1) the requirement that a person assign all Amendment 80 vessels, QS permits, and LLP licenses to only one Amendment 80 cooperative or the limited access fishery. This provision was never discussed by the Council, which opted to provide the sector with the flexibility to form multiple cooperatives. Given the total number of companies and the varying number of vessels that each entity controls, some companies may need to have the flexibility to split their vessels, LLP licenses, and QS permits among more than one cooperative. In order to maximize the possibility that all vessels find like-minded operations with which to form up to three effective cooperatives, the "all in" rule should be eliminated to allow an Amendment 80 vessel owner the opportunity to determine how to best structure his or her operation to maximize the benefits that may be derived from cooperative management. The "all in" rule coupled with the other cooperative formation requirements would hinder, rather than enhance, the sector's ability to form cooperatives.

*Response:* As noted in the preamble to the proposed rule, consistent with the FMP, NMFS proposed this provision to encourage participants in the Amendment 80 Program to form cooperatives. NMFS proposed similar provisions in other LAPPs to facilitate administrative oversight by limiting the number of cooperative arrangements that need to be tracked, and to provide an incentive to participants to either join a cooperative or the limited access fishery with all QS permits, thereby making a decision to join a cooperative more attractive. However, as indicated

in the comment, members of the Amendment 80 sector indicate that due to the particular structure of their business arrangements, this provision would frustrate, rather than encourage cooperative formation. NMFS has therefore made the following changes:

- Modified § 679.91(a)(1)(i) to require that each calendar year, an Amendment 80 QS holder must designate those Amendment 80 QS permits, associated Amendment 80 vessels, and Amendment 80 LLP licenses that the Amendment 80 QS holder wants to be in the cooperative or Amendment 80 limited access fishery on a timely and complete application for CQ or application for the Amendment 80 limited access fishery. This modification provides a person the opportunity to choose which Amendment 80 QS permit held by the person to assign to an Amendment 80 cooperative or to the limited access fishery;

- Modified § 679.91(a)(1)(ii) to state that NMFS will assign the Amendment 80 QS permit(s), associated Amendment 80 vessel(s) and Amendment 80 LLP license(s) held by an Amendment 80 QS holder to either the Amendment 80 cooperative(s) or Amendment 80 limited access fishery as designated by the Amendment 80 QS holder;

- Modified § 679.91(a)(1)(iii) to remove references regarding the assignment of all Amendment 80 QS permits, associated Amendment 80 vessels, and Amendment 80 LLP licenses held by a person to a specific Amendment 80 cooperative or the Amendment 80 limited access fishery; and

- Modified § 679.91(h)(3)(xi) and (h)(3)(xii) to clarify that a person holding multiple Amendment 80 QS permits, Amendment 80 LLP licenses, or owning multiple Amendment 80 vessels is not required to assign all Amendment 80 QS permits, Amendment 80 LLP licenses, or Amendment 80 vessels to the same Amendment 80 cooperative or the Amendment 80 limited access fishery.

*Comment 27:* The provision in § 679.91(h)(3)(xi), that requires a holder of multiple Amendment 80 QS permits, LLP licenses or vessels to assign all such permits, licenses or vessels to a single cooperative for a given calendar year, is an unnecessary and unwarranted infringement upon the companies' ability to form effective working cooperatives. Multi-vessel companies may have good reasons for assigning different vessels to different cooperatives, based on vessel configuration or other concerns. Denying companies the opportunity to

assign their various permits, licenses, and vessels in the ways that best meet their needs, in keeping with historical practices and economic considerations, unfairly limits their ability to effectively participate and compete in the industry. The risk of an unfair competitive advantage is negligible.

*Response:* This comment has been addressed in response to comment 26.

*Comment 28:* Add a new paragraph to § 679.91(a)(3)(ii) that states that if a person fails to submit a timely and complete application for CQ or the Amendment 80 limited access fishery for an Amendment 80 QS permit, associated Amendment 80 vessel, and Amendment 80 LLP license, NMFS will assign that Amendment 80 QS permit, associated Amendment 80 vessel, and Amendment 80 LLP license to the Amendment 80 limited access fishery. This would allow for a default opportunity to fish in the limited access fishery, even if a deadline for an annual application declaring the intent to fish in the limited access fishery was missed.

Vessels need to be designated on each CQ application annually; however, it is “draconian” to prohibit a vessel owner from fishing in the limited access fishery if he forgets to meet an Amendment 80 limited access fishery application deadline. If this change is not possible, then the disposition of the ITAC derived from the Amendment 80 QS from a person not meeting a limited access fishery application deadline should be allocated among Amendment 80 cooperatives. Alternatively, the unused QS could be allocated on a *pro rata* basis between each cooperative and the Amendment 80 limited access fishery.

*Response:* NMFS proposed this provision to encourage persons to submit timely information indicating the use of QS permits, Amendment 80 vessels, and LLP licenses for each year. NMFS needs to know which QS permits, vessels, and licenses are used in each cooperative and the limited access fishery. A similar provision is used in the BSAI crab LAPP. However, in the unlikely event that a person fails to submit a timely application for a QS permit, NMFS can assign any ITAC derived from that QS permit, and the associated Amendment 80 vessels and LLP licenses, to the Amendment 80 limited access fishery. This would still provide that Amendment 80 sector participant with an opportunity to fish. NMFS has modified § 679.91(a)(3) by renumbering existing § 679.91(a)(3) as (a)(3)(i) and editing that paragraph to remove reference to the application for an Amendment 80 limited access

fishery, and inserting a new paragraph (a)(3)(ii) to clarify that if an application is not submitted to NMFS for an Amendment 80 QS permit, that permit, and the associated Amendment 80 vessel and LLP license will be assigned to the Amendment 80 limited access fishery. NMFS notes that with this change, NMFS will not need to modify the mechanism for allocating ITAC or halibut or crab PSC within the Amendment 80 sector as described at § 679.91(c), (d), and (e).

*Comment 29:* Section 679.91(a)(2) provides that any QS permits or units assigned to an Amendment 80 QS holder after NMFS has issued CQ or ITAC to the Amendment 80 sector for the calendar year will not result in any additional CQ or ITAC being issued. While the proposed regulations comply with constitutional due process requirements by providing an appeals process, there is no way for a QS holder who prevails in such an appeal to be made whole. When NMFS makes an error in the allocation of CQ or ITAC, issuance of the correct amount the following calendar year does not correct the damage done in the previous year. If NMFS is shown to have made an error in allocation, it should be liable to the QS holder for lost income during the calendar year at issue. Assuming nothing could be done to make the correction during the year in question, the most logical way to correct such an error would be to give the QS holder additional quota for the following year. Without such a provision in the event of an allocation error, the proposed rule does not guarantee due process.

*Response:* The comment reflects an incorrect interpretation of this provision. Section 679.91(a)(2) addresses the situation that could arise should a successful appeal or operation of law result in NMFS issuing QS after NMFS has issued CQ or ITAC for a calendar year. This provision states that NMFS will not reissue CQ or ITAC to accommodate QS issued after this date. As noted in the preamble to the proposed rule, this provision is necessary to ensure that all other fishing operations are not disrupted with the addition of new QS that would require reissuing a smaller amount of CQ and ITAC to all other Amendment 80 sector participants. As an example, reducing CQ allocations mid-year to accommodate new QS holdings could create a situation where a cooperative has fully harvested its CQ, but readjustment by NMFS to reallocate CQ could cause that cooperative to exceed its CQ and violate regulations due to factors beyond its control. Reallocating CQ away from existing participants

could severely impact the reasonable expectations of industry. NMFS issues CQ and ITAC based on the amount of QS held by a person at the time of application for CQ or application for the Amendment 80 limited access fishery and is not required to readjust CQ or ITAC allocations mid-year.

Concerns regarding the potential for NMFS to err in the issuance of CQ or ITAC to a QS holder and the recommendation that NMFS provide compensation to a QS holder are not warranted. First, it is highly unlikely that such an error would occur given the limited number of QS holders and the review mechanisms for issuing ITAC and CQ. Second, even if such an error did occur, it would likely be evident before fishing began and NMFS could reissue CQ or ITAC prior to fishing. Third, Section 303A(i)(1) of the MSA notes that any LAPP “for which a Council has taken final action \* \* \* within 6 months after the date of enactment of the [MSRA]” is subject to the provisions of section 303(d) of the MSA prior to amendment by the MSRA. Section 303(d)(3)(B) prior to amendment by the MSRA clarifies that a limited access system authorization such as the Program “may be revoked or limited at any time in accordance with [the MSA].” Section 303(d)(3)(C) prior to amendment by the MSRA notes that a limited access system authorization “shall not confer any right of compensation to the holder of such individual fishing quota or other such limited access system authorization if it is revoked or limited.” NMFS made no changes to the regulations based on this comment.

*Comment 30:* Section 679.91(c) describes the process by which Amendment 80 species would be allocated to the BSAI trawl limited access sector and the Amendment 80 sector. The rule proposes using total catch rather than retained catch to determine the allocations. This is a fundamentally flawed methodology that rewards those who have historically had the highest discards and does nothing to reward those who have diligently worked to retain more fish onboard their vessels. This allocation method unduly benefits the smaller vessels in the BSAI, who have been high-grading for years due to smaller factory size, and penalizes larger vessels. The MSA National Standard 9 specifically addresses the issue of lowering discards and increasing retention. The proposed allocation method runs contrary to the MSA’s mandate, and as such, would appear to be in violation of the statute.

*Response:* The Council and NMFS considered a variety of methods and

factors to allocate QS including differential catch patterns among larger and smaller vessels, historic and current participation, and fishery-specific characteristics. The Council considered these factors before recommending the specific QS allocation method implemented in the rule. Among the factors considered was that smaller Amendment 80 vessels typically are less able to fully retain all catch due to the limited space for processing machinery and product storage, and the need to race for fish with larger vessels that have a greater harvesting and processing capacity. The race for fish may have encouraged smaller vessels to discard more fish relative to larger vessels to ensure more valuable product was processed before the fishery closed. Consistent with section 303(b)(6) of the MSA, the Council considered these historical fishing practices when allocating fishing privileges and determined that allocating QS based on total catch would provide a fair and equitable distribution of QS.

Allocating QS is not inconsistent with National Standard 9 that requires NMFS to minimize bycatch and reduce the mortality of that bycatch to the extent practicable. The method used to allocate QS under the Program does not in any way increase bycatch or the mortality of such bycatch. Quota share allocated to a person allows a person an opportunity to catch a portion of the annual TAC either through assigning that QS to an Amendment 80 cooperative or participating in the Amendment 80 limited access fishery. The percentage of catch retained by a person is not determined by the amount of QS allocated to that person, but by the specific operations of a given vessel and crew. NMFS made no changes to the regulations based on this comment.

*Comment 32:* Section 679.91(c) states that each calendar year NMFS will determine the tonnage of Amendment 80 species to be assigned to an Amendment 80 cooperative or limited access fishery, but does not provide a deadline when NMFS will make those assignments. If these assignments are not made by the end of September of each year, companies will be unable to plan accordingly and make sound business decisions for the coming season.

*Response:* Under the current harvest specification process, NMFS establishes the BSAI and GOA TACs well in advance of fishing. As noted in the preamble to the proposed rule, TACs have already been established for 2008 and are published in the **Federal Register** (72 FR 9451; March 2, 2007). While it is true that these TAC

allocations may be changed through the annual harvest specification process, adjustments to the 2008 harvest specifications would be recommended by the Council in December 2007, and would likely not supersede existing harvest specifications until March 2008. The industry does have substantial certainty about the amount of TAC available for harvest. In addition, NMFS notes that even though the 2008 harvest specifications may be adjusted by the Council in December 2007, the industry will have several months to review the scientific data, participate in the Council process, and modify fishing operations before those final specifications become effective.

NMFS notes that the process for establishing and adjusting annual harvest specifications is well-established. Participants have long been making sound business decisions within the constraints imposed by this process. The Program does not alter the timing of the annual harvest specification process that defines the TAC. Participants in LAPPs such as the AFA, and the halibut and sablefish IFQ, have demonstrated a consistent ability to operate under these constraints. Additionally, once QS is issued to a person, QS permit(s) clearly indicate the percentage of the total QS pool, and therefore the percentage of the ITAC that may be assigned based on that QS, which further facilitates business planning. NMFS made no changes to the regulations based on this comment.

*Comment 33:* Section 679.91(c)(3)(iii) describes the procedure by which the CQ for BSAI Atka mackerel will be assigned to Amendment 80 cooperatives under the proposed rule. This provision allocates Atka mackerel to vessels that are not economically dependent upon the resource. These vessels predominantly harvested Atka mackerel in Management Area 541/BS as bycatch while fishing in other fisheries. Historically, most of the Atka mackerel caught in Area 541/BS was caught by large catcher/processors. Vessels with no directed fishing history in the mackerel fishery should receive mackerel QS based strictly on their bycatch history.

Atka mackerel from Area 541/BS has traditionally been larger and of higher value than mackerel from Areas 542 or 543. As a result, this allocation method takes Area 541 mackerel away from those who have a directed fishing history in the fishery and causes more economic harm than "taking away" allocations of Atka mackerel in Areas 542 or 543. If an allocation is needed to meet the bycatch needs of these smaller "non-mackerel vessels," it should be

made in the form of an incidental bycatch allocation managed by NMFS.

*Response:* As noted in the preamble to the proposed rule, the Council considered a range of options when allocating Atka mackerel ITAC between the Amendment 80 and BSAI trawl limited access sectors. Historic and recent catch patterns and opportunities for new entrants and fishery dependent communities were among the factors considered. The Council is not obligated to recommend, and NMFS is not obligated to make, allocations based solely on one criterion. The Council considered the traditional catch patterns of vessels when making its recommendations to allocate Atka mackerel QS. As the commenter notes, many smaller Amendment 80 vessels historically participated in Area 541/BS. Rather than allocate Atka mackerel QS in a manner that would require these relatively smaller vessels to move into areas not historically fished (i.e., Areas 542 and 543), the Council recommended allocating Atka mackerel QS proportional to the areas in which harvests occurred. As noted in the final EA/RIR/FRFA prepared for this action, this allocation method would not be expected to shift fishing effort substantially for larger vessels that have historically harvested a greater proportion of Atka mackerel in Areas 542 and 543.

Additionally, the commenter suggests that the allocation of Atka mackerel to smaller vessels should be based only on their non-directed fishery harvests, or incidental catch, whereas larger vessels should be allocated QS based on their total catch. The commenter does not provide a rationale for using a different allocation method for non-mackerel vessels. As noted in the response to comment 31, the Council chose to allocate QS based on total catch rather than retained catch. The commenter's suggestion would apply a different standard to smaller vessels than larger vessels, with the net effect being that smaller vessels would receive a smaller allocation of QS relative to larger vessels.

The Council considered all applicable National Standards when recommending allocations under the Program (see section 4 in the final EA/RIR/FRFA for additional detail). As an example, National Standard 5 requires that NMFS consider economic efficiency, "except that no measure shall have economic allocation as its sole purpose" (16 U.S.C. 1851(a)(5)). National Standard 6 of the MSA requires that NMFS "take into account and allow for variations among, and contingencies in, fisheries, fishery

resources, and catches" (16 U.S.C. 1851(a)(6)). National Standard 8 also requires that NMFS "provide for the sustained participation of such communities" (16 U.S.C. 1851(a)(8)(A)). NMFS did not modify the regulations based on this comment.

*Comment 34:* Allow Amendment 80 and PSC species that are projected to be unused by the Amendment 80 limited access fishery to be reallocated or "rolled over" to Amendment 80 cooperatives ensures that the TAC is utilized to the fullest extent possible. This could be accomplished by adding a new paragraph (f) to § 679.91 that mirrors the mechanism for rolling over unused ITAC from the BSAI trawl limited access fishery and renumber the following paragraphs accordingly.

Amendment 80 provides for rollovers of Amendment 80 species and PSC species from the BSAI limited access fishery. The draft EA/RIR prepared for the proposed rule states that "the purpose of the rollover program is to ensure that the TAC is utilized, to the fullest extent possible." This is consistent with Council policy as well as with MSA National Standard 1. The Council specifically authorized the rollover only to the Amendment 80 cooperatives as an additional incentive for eligible sector participants to join a cooperative.

The proposed rule as currently written does not allow rollovers of unutilized fish from the Amendment 80 limited access fishery to Amendment 80 cooperatives. Even though we anticipate that most companies will join cooperatives, the potential exists for stranding fish in the limited access fishery. This is particularly true if a company with a relatively large QS allocation were to decide to fish in the limited access fishery without the flexibility of the cooperative system. Not allowing a mechanism to access underutilized ITAC runs counter to National Standard 1, as well as general Council policy.

*Response:* The Council did not recommend a provision to allow rollover of potentially unused catch from the Amendment 80 trawl limited access sector to Amendment 80 cooperatives. NMFS assumes that because the Council explicitly recommended a rollover only from the BSAI trawl limited access sector to Amendment 80 cooperatives, and not from the Amendment 80 limited access fishery, it did not intend to provide such a provision. Amendment 80 to the FMP specifically describes the rollover process from the BSAI trawl limited access sector to Amendment 80 cooperatives and this FMP provision is

implemented by the final rule (see Section 3.7.5.3 of the FMP as amended by Amendment 80). Amendment 80 to the FMP does not contain a similar provision for rolling over catch from the Amendment 80 limited access sector to Amendment 80 cooperatives.

NMFS discussed the lack of this rollover provision at two public workshops, one on May 23, 2007 (72 FR 27798), and another on June 18, 2007 (72 FR 31548), both of which were attended by numerous participants in the directly regulated industry and a member of the Council. Further, NMFS provided a review of the proposed rule to the Council at its June 2007 meeting (72 FR 26606) and specifically highlighted this issue and requested that the Council provide comments if the proposed rule contravened Council intent.

The Council did not indicate at that meeting that it intended to allow catch from the Amendment 80 limited access fishery to be rolled over to the Amendment 80 cooperatives and the Council did not submit comments to NMFS during the public comment period suggesting that NMFS include that provision in the FMP amendment and final rule. If the Council had intended such a provision, the Council could have provided NMFS with comments specifically stating so.

NMFS determined that allowing a rollover from the BSAI trawl limited access sector and not the Amendment 80 limited access fishery is reasonable. The BSAI trawl limited access sector has not historically harvested Amendment 80 species to the same degree as the Amendment 80 sector and it is more likely that the BSAI trawl limited access sector will not fully harvest its allocations of Amendment 80 species. However, participants in the Amendment 80 sector, including any participants in the Amendment 80 limited access fishery, have traditionally participated in these fisheries and have the ability and expertise to fully harvest Amendment 80 species. This makes it much less likely that there will be unharvested ITAC in the Amendment 80 limited access fishery. Furthermore, given the fact that participants in the Amendment 80 limited access fishery are likely to be able to fully harvest their allocations of ITAC, NMFS may have difficulty determining when participants in the Amendment 80 limited access fishery are finished, and that could put NMFS in a position of prematurely closing the limited access fishery.

Given these factors, the lack of a rollover provision does not prevent the ability of the Amendment 80 sector to

maximize catch and achieve optimum yield on a continuing basis. National Standard 1 states that "Conservation and management measures shall prevent overfishing while achieving on a continuing basis, the optimum yield from each fishery for the United States fishing industry" (16 U.S.C. 1851(a)(1)). The absence of a rollover mechanism from the Amendment 80 limited access fishery to Amendment 80 cooperatives would not encourage overfishing. NMFS will monitor catch by the Amendment 80 limited access fishery using the same M&E standard applicable to Amendment 80 cooperatives and will close the Amendment 80 limited access fishery to avoid overfishing. Participants may choose not to join a cooperative and efficiently harvest the allocation in the Amendment 80 limited access fishery.

Because the CRP and the Program limit the number of participants in the Amendment 80 sector, it is likely that some participants will form cooperatives, and some will not. Because the number of participants is limited, the possibility of private contractual arrangements among participants in the Amendment 80 limited access sector increases. Participants in the Amendment 80 limited access fishery could voluntarily develop methods to coordinate fishing operations and ensure even more efficient harvests. Even if such voluntary arrangements are not entered into, the management of the Amendment 80 limited access fishery is expected to be very similar to fishery management prior to the Program. Fishery management prior to this rule is in full compliance with the MSA, including National Standard 1. NMFS did not modify the regulations based on this comment.

*Comment 35:* Section 679.91(f) provides certain provisions for the rollover of Amendment 80 species allocations, crab PSC, and halibut PSC from the BSAI trawl limited access sector to Amendment 80 cooperatives. There is no such provision for rollover from the Amendment 80 limited access fishery. The concept of rollover from the Amendment 80 limited access fishery was not addressed in the Council motion and was not made part of the Amendment's analysis. It is inappropriate and unwarranted to introduce such a notion until it has been proven that such a rollover provision is needed. The Amendment 80 limited access fishery will be a relatively small portion of the overall Amendment 80 Program, and as such, under NMFS resource management, it should have little or no unharvested allocations.

Moreover, it would be extremely difficult for NMFS Inseason Management to effectively manage the rollover process. In particular, the difficulty in determining when participants in the Amendment 80 limited access fishery are “done” could put NMFS in a position of prematurely closing the limited access fishery. In short, this type of rollover provision is both unwarranted and unworkable, and should not be introduced into the final rule.

*Response:* NMFS agrees that a provision for a rollover from the Amendment 80 limited access fishery is not warranted, as discussed in response to comment 34.

*Comment 36:* Section 679.91(f)(2) provides a list of factors to be considered by NMFS when reallocating or “rolling over” Amendment 80 species or PSC from the BSAI trawl limited access sector to Amendment 80 cooperatives. Among the factors to be considered are risk of biological harm, socioeconomic well-being of Amendment 80 cooperatives, administrative requirements to reissue CQ permits and any other relevant biological, socioeconomic, or administrative factors.

It is unclear how NMFS will apply or interpret these factors. What standards will be used to assess the risk of biological harm? How will the “socioeconomic well-being” of the Amendment 80 cooperatives be evaluated? How will the risk of socioeconomic harm to other domestic fishery participants be measured? How will each of these factors be weighed and prioritized?

In short, these questions and the many others raised by this provision are another example of how the proposed rule fails to thoroughly consider and address the details of how this Program will be administered. This particular provision could have significant ramifications for the Amendment 80 cooperatives if rollover allocations were to be challenged by the BSAI trawl limited access sector. The factors presented in this provision are extremely subjective and ambiguous in nature, which could invite litigation on the issue of rollover allocations. The lack of clarity in this provision is yet another reason for delaying implementation of the Program until details such as this have been fully addressed.

*Response:* Under § 679.91(f)(1), the term “may” allows the Regional Administrator the discretion to reallocate a portion of an ICA or ITAC of an Amendment 80 species, crab PSC, or halibut PSC amount assigned to the

BSAI trawl limited access sector to Amendment 80 cooperatives if the amount assigned to the BSAI trawl limited access sector is projected not to be harvested or used. As proposed, § 679.91(f)(2) would have required that the Regional Administrator “will” consider specific factors when deciding whether he “may” rollover ITAC or PSC. As noted by the commenter, the requirement to consider all the proposed listed factors could increase the amount of time required to initiate a rollover. Should the Regional Administrator decide to reallocate catch, it needs to be done in a timely fashion to prevent disruption the industry, potential economic harm, or unnecessary discards. Also, the fishing industry benefits from the earliest possible notification of a rollover to plan its fishing operations.

As the commenter notes, requiring the Regional Administrator to consider all the factors under § 679.91(f)(2) through a formal analysis could delay a reallocation. NMFS does not intend to prepare a formal analysis of all of the listed criteria. Such an analysis would substantially increase the amount of time required to reallocate fishery resources within a fishing season and would undermine the ability of NMFS to ensure the effective harvest of fishery resources. Therefore, NMFS has changed the requirement to consider these factors in § 679.91(f)(2) to an indication that NMFS may consider the factors listed in § 679.92(f)(2) when reallocating an ICA, a directed fishing allowance of an Amendment 80 species, or crab PSC, or halibut PSC amounts from the BSAI trawl limited access sector to Amendment 80 cooperatives. This change better meets with the intent of this provision, which is to ensure that NMFS can reallocate fishery resources during the fishing year to ensure the TAC is harvested. This change does not limit NMFS to consider only existing harvest and processing patterns before making any reallocation. This change is also consistent with the discretionary authority of NMFS to manage fishery resources for the net national benefit.

*Comment 37:* Remove from § 679.91(h)(1) the requirement to admit members to a cooperative subject to the terms and agreements that apply to the members of the cooperative as established in the agreement or contract governing the conduct of an Amendment 80 cooperative. Under the multiple cooperative structure in Amendment 80, the mandatory admission provision is not necessary and cooperatives should be able to determine their membership without mandatory admission requirements. The

proposed rule language requiring mandatory admission into a cooperative had its origins in other cooperative LAPPs, which operate either under a single cooperative model or have other limiting characteristics such as processor linkages.

Amendment 80 allows up to three voluntary cooperatives to form, providing eligible persons multiple opportunities to form alliances with other eligible and like-minded entities. The Council deliberately did not choose a single cooperative model. Instead, recognizing the diversity in company size, vessel size, and targeting strategies of the Amendment 80 fleet, the Council provided for up to three cooperatives (i.e., each cooperative having at least three unique non-affiliated entities and assigned at least nine QS permits). Cooperative membership is voluntary, and every eligible entity has multiple opportunities to form alliances that balance the members’ needs while assuring that the responsibilities of the cooperatives are met.

*Response:* NMFS agrees that this requirement is not required under the Program and has removed it from § 679.91(h)(1). This requirement was inserted into the proposed rule based on the regulations for the Central GOA Rockfish Program. The Central GOA Rockfish Program allows catcher vessel operators to form cooperatives only in association with specific processors. As a condition of this requirement in the Central GOA Rockfish Program, the cooperatives were structured to ensure that any person that was eligible to form a cooperative in association with a specific processor could do so. No similar requirement for linkage with a specific processor exists in the Program.

Inserting this provision in the Program based on the requirements of another LAPP with different characteristics is an oversight, is not necessary, and would adversely affect the ability of Amendment 80 sector participants to form cooperatives as intended by the Program. NMFS notes that this requirement was not recommended by the Council during the development of the Program. Amendment 80 sector participants can form cooperative relationships with any other participant in the Amendment 80 sector. As such, there is no need to require a person be accepted by a cooperative.

*Comment 38:* Do not remove the provision in § 679.91(h)(1) that states that an Amendment 80 cooperative must allow an eligible person to join the cooperative subject to the terms and agreements that apply to the members of the cooperative as established in the

agreement or contract governing the cooperative.

This provision should not be removed because of the potential for the relatively small number of QS holders to use this provision to conduct unfair business practices and manipulate the cooperative program for their own financial gain. If a cooperative were able to exclude otherwise eligible persons from joining the cooperative, then a group of like-minded people could gain an unfair competitive advantage. Otherwise qualified persons who are denied entry to a cooperative would be forced into the limited access fishery, depriving them of millions of dollars worth of rollover fish from the BSAI trawl limited access fishery.

*Response:* NMFS determined that this provision is not necessary and is inconsistent with the intent of the Program for the reasons provided in response to comment 37. Furthermore, NMFS notes that each participant has the ability to form a cooperative with other Amendment 80 QS holders without a provision requiring that other cooperative members accept that participant. The Council specifically designed the Program to encourage fishery participants to negotiate and cooperate in order to receive an exclusive harvest privilege of CQ. It is not clear how fishery participants would receive a competitive advantage from being able to exclude members. There are numerous fishery participants with whom to form voluntary cooperatives and receive the potential benefits of cooperative management. Numerous comments noted that requiring cooperatives to accept members who are otherwise unable or unwilling to reach agreement with other fishery participants would frustrate the intent of the Program.

Furthermore, NMFS notes that although unharvested catch from the BSAI trawl limited access sector may be reallocated to participants in Amendment 80 cooperatives, that reallocation is not guaranteed to occur, and will not occur if the catch is harvested by participants in the BSAI trawl limited access sector. NMFS also notes that with the change in the regulations concerning the delivery of unsorted catch to Amendment 80 vessels in response to comment 5, any participant in the Amendment 80 sector, whether in an Amendment 80 cooperative or the Amendment 80 limited access fishery, may receive unsorted catch from the BSAI trawl limited access sector and benefit economically from the receipt and processing of that catch. The regulations do not limit any participant in the

Amendment 80 sector from offering processing markets to participants in the BSAI trawl limited access fishery and deriving economic benefit from that sector. For these reasons, NMFS made no changes to the regulations based on this comment.

*Comment 39:* Section 679.91(h)(1) provides that members may leave an Amendment 80 cooperative, but if they choose to do so, any CQ contributed by the Amendment 80 permit(s) held by that member will remain with the cooperative for the duration of the calendar year. Under this provision, a cooperative member who finds the cooperative relationship is not working or is financially detrimental to the company has no choice but to remain in the cooperative or forego its quota for the year. There is no apparent reason for this measure, and no apparent reason why members should not be allowed to transfer from one cooperative to another or be allowed to withdraw from the cooperative and enter the Amendment 80 limited access fishery.

Section 679.91(h)(3)(xv) contemplates modification of cooperative agreements or contracts during the fishing year. Thus it would appear that a modification allowing for the exit of a cooperative member would be possible. Forcing a member to remain in a cooperative that is detrimental to its own interests or surrender its quota would appear to violate constitutional due process protections and prohibitions on the taking of property without compensation.

*Response:* As explained in the preamble to the proposed rule, the Program is structured so that exclusive harvest allocations are made to cooperatives, not to the Amendment 80 QS permit holder. This allocation method has been used in other LAPP programs such as the Central GOA Rockfish Program. This method ensures that once made, cooperative allocations cannot be adversely affected by the actions of one member of the cooperative. As an example, once NMFS makes an allocation to a cooperative, it would undermine the ability of a cooperative to effectively operate if one member of the cooperative unilaterally chose to withdraw CQ midseason. This could result in the cooperative exceeding its CQ amount and adversely affect all other members of the cooperative.

Cooperatives can transfer CQ between one another using the transfer provisions at § 679.91(g). The Council did not recommend and the rule does not implement, provisions to allow a person to withdraw CQ once issued to a cooperative. Persons joining

cooperatives can establish private contractual arrangements to compensate members if certain conditions are not met by the cooperative or specific members of the cooperative. These private contractual arrangements can adequately address specific issues of compensation or other factors without revising the cooperative management structure in a manner not intended by the Program. Cooperative members freely enter into the cooperative. Requiring the CQ that is issued to that cooperative to remain assigned to the cooperative does not violate due process. NMFS issues CQ permits to cooperatives, not individuals. The issue of compensating permit holders has been addressed in response to comment 29. NMFS made no changes to the regulations based on this comment.

*Comment 40:* Section 679.91(h)(3)(ii) requires that a minimum of nine Amendment 80 QS permits is needed to form a cooperative. This standard is unrealistic and unworkable. A minimum of four permits would be more realistic, especially in light of the fact that while there is a quota use cap of 30 percent, there is no limit to the number of permits that can be consolidated under one vessel owner, as long as the use cap is not exceeded. This consolidation of permits under one or two owners would allow them to control the formation of cooperatives and extort unfair compensation from companies who may not want to do business with them, but are forced to pay them in order to conduct business under the Program.

*Response:* NMFS disagrees with the assertion that this standard is unreasonable and unworkable. The Council chose the minimum number of permits required after reviewing options available to allow cooperatives to form using lower standards. The Council reviewed the complexity of multispecies groundfish management under cooperative management, the effect of the size of a cooperative on quota management, negotiating strategies that may arise under certain cooperative formation criteria, and other factors before recommending the standard incorporated in this rule (see Section 1.11.7 of the final EA/RIR/FRFA). The Council recommended a minimum number of QS permits that is intended to encourage cooperative formation, yet minimize the complexities that arise with smaller allocations in multispecies fisheries.

The commenter's concern that QS permits could be consolidated by a small number of harvesters and disadvantage other QS permit holders appears unlikely given the anticipated

costs and complexity of completing such a transaction. It is not clear how a lower minimum standard of QS permits necessary to form a cooperative would alleviate the commenter's concern about consolidation. In addition to a minimum number of QS permits, at least three unique non-affiliated entities must be members of a cooperative for it to be allowed to form. Reducing the number of QS permits necessary to form a cooperative does not modify this standard.

NMFS notes that cooperative formation is not required to effectively participate in the Amendment 80 sector. If a QS holder is not willing or able to meet the demands of cooperative formation, the Amendment 80 limited access fishery remains a viable option for that QS holder. NMFS made no changes to the regulations based on this comment.

*Comment 41:* Allow formation of cooperatives by any single company that has two or more vessels, as in the Central GOA Rockfish Program. Section 679.91(h)(3)(iii) requires a minimum of three unrelated Amendment 80 QS holders to form a cooperative. There are only 13 unique entities that will qualify as Amendment 80 QS holders.

Assuming two cooperatives have four or more QS holders in them, this suggests that three cooperatives will form. If one assumes, as the Amendment 80 analysis suggests, that one result of the Program will be consolidation of companies, the total number of separate entities could drop to six or fewer, resulting in only one or two cooperatives. Asking this fiercely competitive industry to form only three or four, or perhaps even fewer, cooperatives is impractical, and could give rise to unscrupulous business practices. This would present a company with no choice but to join an unfriendly cooperative or be forced into the limited access fishery.

Under the Central GOA Rockfish Program, any single company that has two or more vessels is allowed to form a cooperative. As noted earlier, even with these more liberal rules regarding cooperative formation, only two cooperatives were formed in the Central GOA Rockfish Program in 2007. Had the Council and the drafters of the proposed rule been able to see what transpired in the Central GOA Rockfish Program with respect to the formation of cooperatives, they would almost certainly have allowed single companies to form their own cooperatives in Amendment 80.

As written, the proposed rule will inhibit the formation of cooperatives and promote skulduggery within the industry to the point where some participants may be the victim of unfair

business practices. Participants may exclude selected participants from joining all cooperatives and force them into the Amendment 80 limited access fishery so that all of the rollover of PSC and Amendment 80 species from the BSAI trawl limited access fishery would go directly to the cooperatives. These rollovers could amount to millions of dollars worth of fish. Such large financial incentives are certainly more than enough motive for the other companies to "freeze out" selected participants.

*Response:* The Council recommended and the rule implements a minimum number of unique entities for cooperative formation in order to encourage participants in the Amendment 80 sector to work collectively to efficiently harvest resources, minimize bycatch, and provide an opportunity for smaller vessel operators to coordinate with larger vessel operators to minimize the potential costs of GRS compliance. The final EA/RIR/FRFA describes the criteria considered by the Council in recommending three unique entities be required to form a cooperative. The Council sought to balance the desire of smaller vessel operators to form alliances with larger operators. The fewer the number of persons required to form a cooperative, the more likely that larger numbers of cooperative would form, increasing management and administrative costs, and potentially creating situations in which smaller operators cannot effectively negotiate with larger operators to form cooperative arrangements. Conversely, requiring a large number of unique persons to form a cooperative could reduce the likelihood of cooperative formation significantly because a larger number of persons would need to agree on a range of operational issues. The Council considered a minimum of three unique entities as a reasonable number to encourage collaborative arrangements.

Some participants may engage in a series of negotiating strategies to form cooperatives, and nothing in the rule prevents a participant from likewise forming alliances and establishing cooperatives with similarly situated and interested entities. Cooperative formation is intended to result in parties reaching mutual consensus on a host of factors to encourage efficiencies of scale. No participant is precluded from that process by the rule. If other participants in the Amendment 80 sector choose not to form cooperative relationships with a specific participant, the limited access fishery provides an option for that participant. If only that participant is

assigned to the limited access fishery, that participant could effectively coordinate his own operations within the limited access fishery and *de facto* receive many of the benefits likely to accrue to cooperative members.

Amendment 80 was not directly patterned after the Central GOA Rockfish Program. The conditions that either encourage or inhibit cooperative formation in the Central GOA Rockfish Program are not necessarily applicable to the Program. NMFS made no changes to the regulations based on this comment.

*Comment 42:* Section 679.91(h)(3)(viii) states that only Amendment 80 vessels can catch an Amendment 80 cooperative's CQ. It is conceivable that Amendment 80 QS could be issued to an Amendment 80 LLP license that is not associated with an Amendment 80 vessel (where, for instance, the Amendment 80 vessel has sunk and is considered a total loss). If the Amendment 80 QS holder in such a case does not meet the requirements set forth in the proposed rule for joining a cooperative, or for whatever reason does not wish to join a cooperative or is otherwise unable to join a cooperative, it is unclear what will happen to any ITAC that could be derived from that QS permit. The only alternative to joining a cooperative is to participate in the Amendment 80 limited access fishery. However, only Amendment 80 vessels are allowed to fish in the Amendment 80 limited access fishery. Without an Amendment 80 vessel to fish the QS, an Amendment 80 QS/LLP license is effectively worthless. This deprivation of such an Amendment 80 QS/LLP license holder's significant property right raises serious questions about due process and unconstitutional takings.

*Response:* NMFS disagrees that the holder of an Amendment 80 QS/LLP license would not assign that license to the Amendment 80 limited access fishery. NMFS agrees that only Amendment 80 vessels can participate in the Amendment 80 sector in accordance with the CRP. If the holder of an Amendment 80 QS/LLP license is unable to make some arrangement with the owner of an Amendment 80 vessel participating in an Amendment 80 cooperative or the limited access fishery, then the Amendment 80 QS/LLP license holder could not harvest the fish derived from that license. However, nothing would preclude the holder of an Amendment 80 QS/LLP license from establishing a private contractual arrangement with a harvester in an Amendment 80 cooperative or in the limited access fishery to harvest the



ITAC derived from that Amendment 80 QS/LLP license. As noted in the response to comment 29, QS confers a privilege, not a property right, and is not subject to compensation. NMFS made no changes to the regulations based on this comment.

*Comment 43:* Section 679.91(h)(3)(xvi) does not allow for "balancing out" the CQ account of a cooperative if or when the cooperative has exceeded its CQ allocation. The lack of such a mechanism, commonly called a post-delivery transfer mechanism, does not allow for maximum sustainable yield (MSY) and is therefore counterproductive to the MSA (16 U.S.C. 1851(a)(1)).

*Response:* NMFS disagrees that the lack of a post-delivery transfer mechanism to balance out a CQ account prevents achievement of MSY and therefore the Program is inconsistent with National Standard 1. Cooperatives are able to tailor their fishing operations to harvest their CQ allocation with a great deal of precision. Given that the current management system is consistent with National Standard 1, and the fact that the Program is likely to confer an increased likelihood that vessels can harvest a greater proportion of the TAC, it is reasonable to conclude that the Program, even without a post-delivery transfer mechanism, is consistent with National Standard 1. As noted in the preamble to the proposed rule, this precision is evident in other cooperative-based LAPPs in which participants in cooperatives have consistently demonstrated the ability to maintain catch within their allocation (e.g., BSAI crab rationalization program). Cooperative managers have demonstrated an ability to coordinate their operations to ensure that these CQ accounts are not exceeded. Furthermore, should a cooperative anticipate that additional CQ may be required, that cooperative can initiate an intercooperative transfer. NMFS made no changes to the regulations based on this comment.

*Comment 44:* Eliminate the "open-ended" joint and several liability provision in § 679.91(h)(3)(xvi), or at the very least limit joint and several liability among cooperative members to circumstances directly related to cooperative participation. As written, the proposed rule states that cooperative members are responsible for ensuring that all members of the cooperative comply with all regulations. Insurance underwriters will no doubt balk at writing coverage that exposes them for actions taken by persons or companies other than those they insure, or they will charge exorbitant premiums for

doing so. In the face of potentially limitless liability for the acts or omissions of other companies, industry members would be unable to participate in a cooperative.

*Response:* As explained in the preamble to the proposed rule, joint and several liability is established to ensure that cooperatives and the members of the cooperative adhere to regulations necessary to manage the fishery. Regulations establishing joint and several liability for cooperative members have been explicit components of the last three LAPPs implemented by NMFS (i.e., AFA, BSAI Crab Rationalization Program, and Central GOA Rockfish Program). NMFS is not aware that these provisions have adversely affected the ability of industry participants to receive insurance or constrained the formation of cooperatives in these LAPPs, and does not expect such a result under the Program. The determination of joint and several liability for a specific violation would be determined on a case-by-case basis by the NOAA OLE in conjunction with NOAA General Counsel for Enforcement and Litigation (GCEL). NMFS does not intend to foreclose the ability of NOAA OLE/GCEL to pursue joint and several liability for a given action by predetermining those actions which could be subject to this provision. NMFS made no changes to the regulations based on this comment.

*Comment 45:* Section 679.91(h)(3)(vii) notes that Amendment 80 vessels are limited to fishing CQ between January 20 and December 31. Although this reflects current regulations, it would be more prudent to limit catch of CQ by the regulations that determine when trawling for a species is allowed.

*Response:* NMFS agrees and has modified § 679.91(h)(3)(vii) to clarify that an Amendment 80 cooperative is prohibited from catching CQ during the season closure for trawl gear in the BSAI specified at § 679.23(c), unless regulations at § 679.23 applicable to an Amendment 80 species in the BSAI are more restrictive than those established in § 679.23(c), in which case the more restrictive regulations will apply. This modification would ensure that should trawl seasons for a given Amendment 80 species be modified, those season dates would apply to Amendment 80 cooperatives as well.

*Comment 46:* Section 211 of the AFA requires the Council to mitigate the adverse effects caused by the AFA on non-AFA participants such as the Amendment 80 sector. Based on these criteria, the Council should have elected to revise AFA sideboards to reflect the post-AFA history of the pollock fleet

rather than allow a substantial portion of the yellowfin sole ITAC to be allocated to the BSAI trawl limited access sector.

*Response:* Section 211 of the AFA specifically instructs the Council to recommend "management measures as it deems necessary to protect other fisheries under its jurisdiction \* \* \* from the adverse impacts caused by [the AFA] or fishery cooperatives in the directed pollock fishery." The Program allocates ITAC of Amendment 80 species. In all but a few limited cases (i.e., AFA sideboard limits for Aleutian Islands Pacific ocean perch and halibut PSC sideboard limits for the AFA catcher/processor sector), ITAC or PSC allocated to the BSAI trawl limited access sector is less than the AFA sideboard limits. Compared to the AFA sideboard limits in place prior to the implementation of the Program, the allocations of ITAC and PSC under the Program are more restrictive than the AFA sideboard limits. The Council did consider and recommend the management measures applicable to the AFA sector that it determined necessary to protect other fisheries during the development of the Program. NMFS did not modify the regulations based on this comment.

*Comment 47:* The proposed rule appears to eliminate AFA sideboard limits for yellowfin sole, and otherwise modifies AFA sideboards. In accordance with the AFA, ensure that no rule is adopted that would have the effect of allowing AFA vessels to exceed in aggregate their traditional harvest levels in non-pollock fisheries.

*Response:* NMFS acknowledges that the Program does modify existing AFA sideboard limits, and in some cases the new limits under the Program may be less than those currently established. However, NMFS notes that in the case of yellowfin sole, the AFA sideboard limit is relieved only when the yellowfin sole TAC is relatively high. As noted in response to comment 46, the ITAC allocated to the BSAI trawl limited access fishery is more constraining on the fishing activities of the AFA fleet than the AFA sideboard limits as modified under the Program. The Program effectively constrains the AFA fleet overall to catch a smaller proportion of the overall TAC than possible under the AFA sideboard limits prior to modification by the Program in all but the limited case of yellowfin sole at relatively high ITAC levels. The effect of the Program on AFA sideboard limits is discussed extensively in the preamble to the proposed rule. NMFS made no changes to the regulations based on this comment.

*Comment 48:* The Council's recommendations for allocation of ITAC and crab and halibut PSC to the BSAI trawl limited access sectors are more than fair in accommodating access to fisheries by vessels that have not shown dependence on the fisheries. Requests by representatives of the BSAI trawl limited access sector for larger allocations of ITAC or crab or halibut PSC are unjustified and should be denied.

*Response:* NMFS did not receive any requests to increase allocations of ITAC, crab PSC, or halibut PSC to the BSAI trawl limited access sector during the public comment periods on Amendment 80 and the proposed rule. NMFS approved the allocations recommended by the Council in Amendment 80 to the FMP, and this final rule implements those allocations.

#### Section 679.92

*Comment 49:* Section 679.92(a)(2) imposes a use cap of 30 percent on Amendment 80 QS holders. This 30 percent QS use cap is arbitrary and capricious by virtue of the fact that it does not take into consideration the consolidation that has already occurred in the fishery over the past 18 years. This arbitrary limit also prevents a company that is limited by the cap from participating in the anticipated future consolidation of the sector that is expected to result from the cooperative program. Because there are currently only 13 companies and 25 actively fishing Amendment 80 vessels, this aspect of the proposed rule will limit the sales market. QS holders who wish to sell may not get the highest and best value from the sale, while the very companies who are likely to be in the best financial position to pay the best price will be prohibited from competing in the sale.

*Response:* The 30 percent use cap was recommended by the Council after considering the catch patterns of participants in the Amendment 80 sector and the potential for increased consolidation in the fishery (Section 1.11.10 of the final EA/RIR/FRFA; see **ADDRESSES**). As with other LAPPs developed and recommended by the Council, the Program implements a limit on the amount of QS that any one entity may obtain and hold. MSA National Standard 4 specifically requires that when allocating fishing privileges among fishermen, that allocation shall "be carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges" (16 U.S.C. 1851(a)(4)).

The QS use cap recommended by the Council would limit only a few entities, and more likely only one entity, to the amount of QS that it would receive in the initial allocation of QS. The Council recommended, and the Program provides at § 679.92(a)(2), that any person initially issued QS in excess of the 30 percent use cap would be allowed to continue to hold QS at that initial level. Participants can choose to participate in a cooperative with other members of the Amendment 80 sector and achieve efficiencies of scale that may result from such arrangements, or otherwise enter into business arrangements that improve the efficient use of fishery resources. The 30 percent QS use cap does not affect those arrangements, it merely restricts the consolidation of fishing privileges within one or a single entity consistent with MSA National Standard 4. NMFS determined that the Council's recommendation is consistent with the MSA and other applicable law. NMFS made no changes to the regulations based on this comment.

*Comment 50:* Industry representatives should have the ability to assign LLP licenses to an Amendment 80 vessel at the time of Amendment 80 QS application, rather than having the LLP originally assigned to the vessel automatically become an Amendment 80 LLP license. This logic applies to Table 39 to part 679 which lists LLP licenses that must be used onboard Amendment 80 vessels that are designated as eligible to directed fish for flatfish in the GOA. The proposed rule as written results in a perverse situation where at least one otherwise qualified vessel cannot fish in the GOA flatfish fisheries because the vessel owner does not hold an LLP license specified under Table 39 to part 679. Change the regulation so that the Amendment 80 QS holder can designate LLP licenses for an Amendment 80 vessel rather than specifying a list of predetermined LLP licenses, as presented in Table 39 to part 679, that must be used. Make the following changes to the final rule:

1. Revise § 679.92(c) to remove the reference to a specific LLP license defined in Column C of Table 39 to part 679;

2. Remove Column C in Table 39 to part 679 which lists specific LLP licenses that must be used while directed fishing for flatfish in the GOA;

3. Add a new paragraph to § 679.4(o)(1) which would define any LLP license assigned to any Amendment 80 vessel at any time that the Amendment 80 vessel made a legal landing in the GOA as being an Amendment 80 LLP license for

purposes of applying GOA sideboard restrictions under § 679.93(e)(3) and (4); and

4. Add a new table to identify all Amendment 80 LLP licenses with GOA endorsements that are subject to sideboard restrictions under § 679.93(e)(3) and (4).

These changes are consistent with the arguments presented under the issue of defining what constitutes an Amendment 80 LLP in this vessel-based program. In one case, the F/V LEGACY is eligible to fish flatfish in the GOA under sideboard regulations at § 679.92(c), and is one of the most GOA groundfish-dependent vessels in the Amendment 80 fleet. However, that vessel does not use an LLP license listed in Column C in Table 39 to part 679 and therefore would be ineligible to fish in the GOA using the LLP license currently designated for that vessel. By requiring that an Amendment 80 vessel use the LLP license originally assigned to it, this vessel could not fish in the Gulf because (1) the LLP is no longer assigned to the vessel, and (2) even if it was, that LLP is not endorsed for fishing in the GOA under existing LLP endorsement regulations at § 679.4(k). Clearly, this is not what the Council intended when requiring that vessels meet a participation threshold to continue to operate in the GOA.

At the same time, the Council did intend to limit the ability for Amendment 80 vessel-associated LLPs to bring additional catcher/processor effort into the GOA. The Council's motion for Amendment 80, in Component 12.4.6, states that "sideboards apply to vessels (actual boats) and LLPs used to generate harvest shares that resulted in allocating a percentage of the Amendment 80 species TACs to the [Amendment 80] sector. The intent is to prevent double-dipping with respect to GOA history related to sideboards." No LLP license assigned to an Amendment 80 vessel during the qualifying period should be allowed to bring additional catcher/processor effort into the GOA that is not subject to the Amendment 80 sector's sideboard limits. In short, any LLP that was assigned to an Amendment 80 vessel during the qualifying period, and has a GOA endorsement should be subject, for catcher/processor operations, to the Amendment 80 sector's GOA sideboards regardless of whether it is designated as an Amendment 80 LLP.

*Response:* NMFS agrees in part and has modified the regulations in response to recommended changes (1) and (2). NMFS revised § 679.92(c) to remove the reference to a specific LLP license

defined in Column C of Table 39 to part 679. NMFS removed Column C in Table 39 to part 679 which lists specific LLP licenses that must be used while directed fishing for flatfish in the GOA. NMFS did not make recommended changes (3) and (4), given the changes made in response to this comment and in response to comment 1.

After reviewing the final EA/RIR/FRFA, Amendment 80, and Council records, NMFS agrees that specific LLP licenses do not need to be defined and required to be used by Amendment 80 vessels eligible to fish for flatfish in the GOA. The Council intended to limit the Amendment 80 vessels that could be used to fish flatfish in the GOA. It is also apparent that the Council wished to minimize the risk that LLP licenses with trawl catcher/processor endorsements in the GOA and traditionally used on Amendment 80 vessels could be designated on non-Amendment 80 vessels and increase the overall harvest rate in the GOA groundfish fisheries. However, it is not clear that the Council intended to require that a specific list of LLP licenses with specific catch history would be considered to be Amendment 80 LLP licenses for purposes of applying sideboard limitations in the GOA.

The commenter's recommendation that NMFS define a list of LLP licenses subject to GOA sideboard limits does not appear to be necessary given the changes made in response to comment 1. Specifically, the regulations require that each Amendment 80 vessel be designated on an LLP license, and define any LLP license that designates an Amendment 80 vessel as an Amendment 80 LLP license. Therefore, if an Amendment 80 vessel is qualified to fish in the GOA flatfish fisheries, it will be required to have an LLP license endorsed for activity in the GOA on the vessel, and that LLP license would automatically be defined as an Amendment 80 LLP license. NMFS anticipates that most of the Amendment 80 vessels will continue to operate as catcher/processors in the GOA, and will need to be designated on an LLP license endorsed for trawl catcher/processor activity in the GOA.

Given the limited number of LLP licenses with trawl catcher/processor endorsements for the GOA (22 according to section 1.10.1 of the final EA/RIR; see ADDRESSES), it is highly likely that most, if not all, of the LLP licenses with trawl catcher/processor endorsements for the GOA will designate Amendment 80 vessels, be limited for use within the Amendment 80 sector, and therefore, be subject to the sideboard measures applicable under § 679.92(b) and (c).

*Comment 51:* All of the smaller vessels should have the benefit of the provisions provided to the F/V GOLDEN FLEECE, if they are fishing in the GOA.

*Response:* NMFS disagrees. The Council recommended and the rule implements regulations applicable to the F/V GOLDEN FLEECE based on a review of fishing activities of all Amendment 80 vessels in the GOA. The Council established criteria that would allow any vessel meeting specific participation criteria to be exempted from certain M&E and sideboard restrictions. As noted in the preamble to the proposed rule, only the F/V GOLDEN FLEECE appears to meet those criteria (72 FR 30093). The Council did not recommend extending these measures to all Amendment 80 vessels, but only those with a clear and consistent dependence on GOA groundfish fisheries over a specific period of time. The criteria selected for granting the exemption to the F/V GOLDEN FLEECE were not intended to extend to all Amendment 80 vessels but only to those Amendment 80 vessels that meet the criteria. Only the F/V GOLDEN FLEECE met those criteria. NMFS did not modify the regulations based on this comment.

#### Section 679.93

*Comment 52:* Allow catcher/processors to install two flow scales off existing conveyors, just forward of each fish bin to allow the flow of fish to move over the scales onto the sorters on both sides of the bins. This will remove potential constraints on production that one operational line may cause. The observer could monitor the flow of catch opposite from the side from where the observer samples through the installation of video monitoring equipment, giving the observer 100 percent visual coverage of all fish prior to its entering onto the scales. Observer random samples could be taken from either conveyor.

*Response:* NMFS agrees that two flow scales are acceptable under certain circumstances. Regulations at § 679.93(c)(4) only require that a vessel not have more than one operational line for the passage of all unsorted catch between the scale used to weigh total catch and the single location where the observer collects samples and multiple scales may not be used simultaneously except when using the configuration described below. The vessel may divide those lines both upstream of the flow scale and downstream of the single location where the observer collects samples in order to increase processing capacity or flexibility. This requirement will only result in a production

reducing constraint in the event that the speed with which fish could pass over the scale was a limiting factor.

NMFS notes that a reduction in throughput resulting from the use of a single scale is highly unlikely in these fisheries. Given that NMFS-approved flow scales are capable of weighing catch at rates of 60–80 metric tons per hour, NMFS does not believe that such a bottleneck would be created. NMFS also notes that all the catcher/processors and motherships participating in the AFA pollock fishery are able to effectively pass fish across a single point despite the fact that factory throughput in these vessels is often considerably greater than the throughput of any of the catcher/processors regulated under the Program.

Regulations at § 679.93(c)(4) do not limit the ability of a vessel to use multiple scales simultaneously, but only if each scale is used to weigh separate hauls and the live bin configuration keeps each haul flowing over the scale separately. If two hauls were kept separate and two scales were in use at the same time, by regulation, a separate observer and sample station that met the requirements described at § 679.28(d) would be required. Allowing a single observer to monitor both lines in conjunction with video monitoring is not feasible because hauls are stratified to an unknown extent inside the live bin, the samples taken from different flow scales also would not be representative of the catch for the entire haul, and the samples taken from the different sides would thus not be representative of the total catch.

*Comment 53:* The commenter strenuously objects to the unprecedented data collection provisions to be imposed upon Amendment 80 Program participants in § 679.94.

*Response:* Mandatory economic data collection in federally regulated fisheries is not unprecedented. The BSAI Crab Rationalization Program included a significantly more detailed economic data collection program, and NMFS Southeast Region maintains mandatory economic data reporting requirements on several fisheries under its jurisdiction.

*Comment 54:* First and foremost, much of the economic data contemplated by this provision is proprietary and confidential in nature. Companies can maintain their position in the groundfish fleet by actively guarding information about the corporation, its internal organization and its key personnel. In complying with Federal and state laws compelling submission of certain information,

companies do so with the understanding that such information is treated confidentially by the agencies receiving it, and that it is not to be released to the public.

Detailed information regarding a company's revenues, costs, expenditures, and compensation practices is highly confidential and is arguably the most sensitive information a business maintains. In the hands of a company's competitors, such information could be used to gain an unfair competitive advantage, and would be extremely detrimental to that company.

*Response:* NMFS recognizes the sensitive nature of the required information. However, confidential and trade secret information is routinely collected by agencies of the Federal government under statutory authority. Such information is protected from disclosure under numerous statutes, regulations, and administrative rules and will not be released to a firm's competitors or the public. Only individuals who have signed a nondisclosure agreement under the terms of NOAA Administrative Order 216-100 and who require access to the data for official purposes associated with fishery management plan development will have access to the submitted data.

*Comment 55:* As the D.C. Circuit Court noted in *Judicial Watch, Inc. v. Food & Drug Admin.*, 449 F.3d 141, 148 (D.C. Cir. 2006), government agencies that require or request confidential commercial information from parties outside the government have an incentive to act as good stewards of that information, since disclosure could result in competitive harm to the submitter (449 F.3d at 148). However, there is no indication in the proposed rule that the confidential information collected would be protected from release to competitors under the Freedom of Information Act (FOIA). While the FOIA does contain a provision exempting "trade secrets and commercial or financial information obtained from a person and privileged or confidential," the existence of such a provision does not ensure that such information will not be disclosed, nor does it guarantee that a company submitting the data will not be subject to costly and burdensome disputes over whether such information falls within the aforementioned exemption (See 5 U.S.C. 552(b)(4)).

*Response:* All public requests for statistics submitted pursuant to a requirement under the MSA will be processed consistent with Department of Commerce (DOC) FOIA regulations

found at 15 CFR part 903, NAO 205-13, Department of Commerce Administrative Orders 205-12 and 205-14, and 15 CFR part 4. In addition to the DOC guidance for FOIA requests, NMFS will comply with its NAO 216-100 regulations at 50 CFR 600.405 addressing the confidentiality of fisheries information, and § 402(b)(1) of the MSA. NAO 216-100 and regulations at 50 CFR 600.405 follow § 402(b)(1) of the MSA, which states that any information submitted to the Secretary in compliance with a requirement under the Act, is confidential and shall not be disclosed. Section 402(b)(1) of the MSA, in addition to FOIA Exemption 4 that was described by the commenter, deems information submitted under the Program to be confidential and not disclosable. Disclosure under a FOIA request would not be permitted under the MSA or NMFS guidance. NMFS officials are directed to deny FOIA requests for information considered confidential under § 402(b)(1) of the MSA. Thus, NMFS would consider at least two FOIA exemptions applicable to a request for economic information submitted to the Secretary under this Program. If a requestor is dissatisfied with NMFS' denial of the FOIA request, they can appeal the determination to the DOC. If the DOC were to determine that the data were not confidential, it would provide notice to the submitter and an opportunity for the submitter to commence an action in United States District Court to stop disclosure.

*Comment 56:* In a briefing paper entitled "Confidentiality and Data Quality Protocols for BSAI Crab Economic Data: A Discussion and Proposal," authored by the Economics and Social Sciences Research Program at the Alaska Fisheries Science Center (Paper), confidentiality issues were addressed with respect to the collection of EDR data for participants in the Crab Rationalization Program, which has very similar requirements in terms of the nature and extent of data to be collected under the Program. The Paper outlines a number of existing statutory and regulatory protections that would apply to the type of data that are to be collected under the BSAI crab rationalization program, including 50 CFR 600.405, which governs the agency's access to confidential information; FOIA (in particular, the exemption from the FOIA for trade secrets); and the Trade Secrets Act, 18 U.S.C. 1905. The Paper goes on to note that additional protocols may be developed specifically for the handling of confidential information submitted by Crab Rationalization Program

participants after conducting hearings and soliciting input from industry, agency leadership, the Council and the public at large.

NMFS should make a similar commitment to the protection of confidential information submitted under the Amendment 80 Program, to address the need for additional security protocols, and to conduct public hearings or invite comments on such measures.

*Response:* Development of protocols for the prevention of statistical disclosure of individual submitters' information is necessary in order to effectively implement nondisclosure policy under existing statutory, regulatory and administrative authority. To the extent that input from industry and the public is necessary to develop data handling protocols to effectively implement existing nondisclosure policies in the case of the economic data collection program, formal public input procedures will be followed.

*Comment 57:* Even if there were some protection in place to prevent the agency's release of proprietary financial data to competitors or others requesting it under the FOIA, the mere gathering and maintaining of such data poses risks in and of itself. While it is true that there are criminal and civil laws and rules in place to prevent security breaches by government employees and others with access to confidential data, nonetheless there have been a number of recent instances of personal and corporate data being lost or stolen from government agencies that were entrusted with its protection. A very real market exists for the sale of such information, and there are no foolproof methods for guarding against the loss or theft of data. The commenter is exceedingly concerned about the security of any confidential information it might be required to provide.

*Response:* Amendment 80 EDR data will be housed on a secure server, encrypted, protected by firewall, password protected, and will be accessible by a small number of authorized individuals. The risk of accidental disclosure is minimal.

*Comment 58:* The proposed rule lacks any scientific or other justification for the collection of these economic data. The MSA requires that fisheries management measures be based upon the best scientific information available (See 16 U.S.C. 1851(a)(2)). There is no stated reason or justification for the gathering of this proprietary information. Indeed, it is difficult to imagine how such economic data about a company's revenues and expenses

would be relevant to the management of the fisheries at issue.

*Response:* The final EA/RIR/FRFA prepared for this action (see **ADDRESSES**) discusses the need and justification for the ownership, employment, cost, and earnings data proposed for collection under the proposed rule. The analysis states that the program will collect cost, revenue, ownership, and employment data on a periodic basis. The purpose of the data collection is to fully understand the socioeconomic impacts of the action, to inform future management actions, and to assure that this action serves its intended purpose and meets the goals set forth in the problem statement. As the commenter notes, conservation and management measures shall be based upon the best available information available. The data collected through the EDR will provide the best available information on the specific costs and revenues from industry participants and will be considered in reviewing the effects of the Program. Data will be used by Council and agency staff, recognizing that confidentiality is of extreme importance. The ownership data will be collected by vessel for enforcement of the ownership cap regulations; ownership data collection is essential to ensure that ownership caps are not exceeded. Employment data will be collected for monitoring of the community impacts of this program.

Because an objective of this Program is to offer sector participants the opportunity to mitigate, to some degree, the costs associated with bycatch reduction, revenue and cost data by vessel and sector are essential to identify/estimate the costs associated with bycatch reduction and estimate the revenues generated to the sector. Revenue, cost, and employment data will be used to monitor the program benefits to present generations of fishermen, associated fishing sectors, including the CDQ sector, communities, and the nation as a whole.

*Comment 59:* The proposed data collection measures also raise questions under the Paperwork Reduction Act (PRA). The procedural requirements of the PRA apply anytime an agency seeks to obtain or solicit facts or opinions from 10 or more persons (See Guidelines, Appendix 2.f). The preamble to the proposed rule indicates that the rule's collection-of-information requirements make it subject to the PRA (72 FR 30111; May 30, 2007). As such, the agency is required to estimate the reporting burden imposed by the proposed data collection. In the case of the proposed rule, NMFS has estimated that preparation of the EDRs is

estimated to average 7.5 hours for preparation of a report and 3 hours for verification of the data contained therein (72 FR 30112).

Even assuming the Program participants already maintain the type of data sought by § 679.94, this estimate is very conservative, given the nature and extent of information required. Moreover, at least some if not many of the Program participants do not already maintain such data, which means that they will have to implement new accounting systems and other recordkeeping procedures to generate the data required. Creation of the required data from scratch in such instances will clearly take more than the 7.5 hours estimated. The actual burden imposed by these data collection requirements is difficult if not impossible to estimate with any accuracy, but it is safe to say it will be an onerous task for companies in an already heavily regulated industry.

*Response:* The information required in the proposed data collection is almost entirely either simple descriptive information about the vessel and equipment or standard cash flow information that data submitters already track for tax filing purposes. Other information included in the data collection, such as types of product produced, number of processing lines and throughput per hour, average fuel consumption per hour under different operating conditions, and number of days of fishing, processing, transiting/offloading, and in shipyard in the Amendment 80 and other fisheries, may require additional monitoring. While it is not the purpose or mandate of the data collection to improve the business management of individual fishing operations in the Amendment 80 fishery, it is likely that data submitters will find this information useful for purposes other than EDR filing. The principal data element that most data submitters are likely to find entirely novel and requiring new accounting and recordkeeping systems are the elements associated with reporting of transactions in QS shares. However, the novelty arises not from the economic data reporting requirement, but from the granting of tradeable assets which the QS represents. Transactions in these assets are reportable under federal tax filing requirements as well and as such the accounting and reporting burden is not attributable solely to the EDR requirement.

Experience with the economic data collection under the Crab Rationalization Program suggests that 40 hours represents an upper bound of the amount of time required to complete the

Annual Catcher Processor EDR, which is 40 pages long, compared to the nine pages of questions included in the draft Amendment 80 EDR. Assuming that similar accounting practices are followed in both the crab and groundfish fisheries, an upper bound estimate on the burden hours for the Amendment 80 EDR would be approximately 25 percent that of the crab Annual Catcher Processor EDR, or 10 hours. The estimate of 7.5 hours represents an estimated average reporting burden, not an upper bound.

*Comment 60:* Companies are concerned that inadvertent failures to disclose certain information—which is not unlikely given the scope of the information required—or miscalculations could be discovered in an audit, potentially subjecting them to civil or criminal penalties, even when the omission or error was merely an oversight.

*Response:* While correct and verified information is always expected from those required to submit certain information, NMFS understands that whenever information is required, such submitted information may at times contain inadvertent errors. Prior to submission, there is no practical way for NMFS to anticipate every possible submission error, its significance and the proper corrective or deterrent response. However, NMFS Sustainable Fisheries, NMFS Alaska Fishery Science Center, NMFS OLE, and NOAA General Counsel have ample experience with data/information collection programs. That experience teaches that some errors will have little or no significance, some could have immediate and significant impact, some could be easily corrected, some may be correctable only at great cost and effort, some will be made by submitters who have no history of such errors, and some will be made by submitters who have made many prior errors.

Although far from exhaustive, these are some of the types of considerations looked to by NMFS in determining the appropriate level of response to an error in required information submissions. Not every error requires submission to NMFS OLE for investigation and disposition. However, if an error is referred to NMFS OLE for investigation, it is also important to note that there is a wide variety of dispositions available to NMFS OLE to respond to an infraction. These include a “fix-it” citation, verbal warning, written warning, summary settlement offer, referral to NOAA General Counsel for civil penalties, or Department of Justice for criminal penalties.

*Comment 61:* The proposed data collection program is in direct violation of the MSA. Section 1881a(a) of the MSA dealing with Council requests for information explicitly excludes "information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations" from the type of information that can be sought in an information collection program for a fishery (16 U.S.C. 1881a(a)). The statutory prohibition on the collection of exactly the type of information sought by the proposed rule could not be clearer.

While other sections in the MSA provide the Council and NMFS with authority to gather certain information, detailed financial, cost or other data of the type sought by the proposed rule are not among the permissible categories of data that can be collected under those provisions (16 U.S.C. 1853(a)(5)).

The information sought to be collected by the proposed rule is unprecedented, with the exception of the data collection required of the crab fishery. However, it is critical to note that the only reason the Council and NMFS were able to impose such onerous data collection requirements on the crab fishery was because the MSA's prohibition on the collection of proprietary and confidential data was waived by statutory amendment (See Pub. L. 108–199, Section 801(j)(2)). Without this waiver, the data collection program for the crab fishery would have been illegal. Absent a similar waiver for the EDR requirements of the proposed rule, Amendment 80's data collection requirements are similarly illegal, not to mention costly and intrusive.

*Response:* NMFS determined that the MSA in effect at the time the Council took final action on Amendment 80 provided statutory authority under section 303(a)(5) to collect the information included in the EDR. Prior to the Council's submission of Amendment 80 for Secretarial review, Congress amended the MSA to provide explicit authority to support the collection of economic data included in the Program. Among other amendments to the MSA, the MSRA amends section 402 of the MSA (16 U.S.C. 1881a) by deleting the clause "(other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations)." As such, Congress explicitly clarified the MSA authority to collect the type of financial and commercial information specified in the proposed rule, and renders the

requirement for a specific statutory waiver unnecessary. Tables to Part 679.

*Comment 62:* Table 31 to Part 679 lists the 28 vessels that are to be considered Amendment 80 vessels and identifies the 28 LLP licenses that are to be considered Amendment 80 LLP licenses under the Program. Some participants in the Amendment 80 sector would like to see Table 31 modified to allow an Amendment 80 LLP license to be assigned to any Amendment 80 listed vessel or to any other non-Amendment 80 vessel. Specifically, these members of the Amendment 80 sector contend that the F/Vs ARCTIC ROSE, PROSPERITY, and BERING ENTERPRISE, which are lost or permanently ineligible to fish, should be able to assign the QS derived from the legal landings of those vessels to the Amendment 80 LLP license originally assigned to those Amendment 80 vessels and hold the resulting Amendment 80/LLP licenses.

This change in the proposed regulation is not acceptable for the commenter. The commenter notes an inability to acquire additional QS permits as a result of the 30 percent QS use cap. As such, none of these Amendment 80 LLP/QS licenses could be held by the commenter. The commenter states that the proposed rule as written accurately reflects the Council's intent, and any proposed change to Table 31 would require further analysis, deliberation, and approval by the Council.

*Response:* The commenter appears to argue two points. First, that the Council neither considered nor intended that LLP licenses originally issued to an Amendment 80 vessel could be used outside of the Amendment 80 sector. This argument is not supported based on comment and information provided by other comments, NMFS' review of supporting documentation such as the final EA/RIR/FRFA prepared for this action, and Amendment 80 to the FMP (see ADDRESSES). This issue is specifically addressed in the response to comment 1.

Second, the commenter appears to be arguing that because an individual is not able to hold additional QS due to the 30 percent use cap, and therefore cannot hold an additional Amendment 80 QS/LLP license, the practice of assigning QS to an LLP license should not be permitted. This argument appears to be mere dissatisfaction about the inability of the commenter to increase QS holdings due to the limits of the QS use cap and need not be addressed further. It is not clear as to how the practice of transferring QS to an LLP license disadvantages any individual

participant. In the unlikely and unfortunate event that a vessel owned by the commenter was lost, the commenter could transfer his QS assigned to that vessel to the LLP license originally assigned to that vessel, and realize the same benefits as the three vessel owners cited in the comment. NMFS made no changes to the regulations based on this comment.

*Comment 63:* Table 33 to Part 679 sets forth the proposed allocations of Amendment 80 species between the Amendment 80 sector and the BSAI trawl limited access sector. For management areas 541 and 542, the percentage of Atka mackerel assigned to the Amendment 80 sector decreases from 98 percent in 2008 to 90 percent in 2012 and all future years.

At this time, all Atka mackerel is fully utilized by existing Amendment 80 vessels. Any vessel wishing to participate in this fishery during the past 15 years has not been limited in any way from doing so. The proposed reduction in the percentage of ITAC allocated to the Amendment 80 sector is not warranted now or in the future. The proposed reduction cannot be justified and certainly is not in line with the MSA's requirement that allocations be fair and equitable, calling into question the provision's validity under National Standards 2 and 4. This provision appears to be a blatant fish grab from those who have historically harvested it.

*Response:* NMFS has addressed this comment in its responses to comments 18, 19, and 21.

*Comment 64:* In Table 33 to Part 679, the rule proposed a decrease in the percentage of Pacific ocean perch apportioned to the Amendment 80 sector for management areas 541 and 542. In 2008 the percentage would be reduced to 95 percent, and in 2009 and all future years it would be further reduced to 90 percent.

At this time, Pacific ocean perch is fully utilized by existing Amendment 80 vessels. For the past 15 years there have been no barriers to participation in this fishery by non-Amendment 80 vessels. The proposed reduction is neither justified nor warranted, and is not in keeping with the MSA's requirement that distributions be fair and equitable.

If user groups exist in the BSAI trawl limited access section that warrant an allocation of Pacific ocean perch, they should be identified and a thorough and sound justification for such an allocation should be demonstrated in the regulatory analysis. Absent such evidence of the need for such an allocation, this provision appears to be nothing more than a blatant fish grab

from those who have historically harvested it.

*Response:* As noted in the preamble to the proposed rule, the Council considered a range of options when allocating ITAC between the Amendment 80 and BSAI trawl limited access sectors. Historic and recent catch patterns and opportunities for new entrants and fishery dependent communities were among the factors considered. Specifically, the Council considered future needs of fishing communities in the Aleutian Islands and the opportunity that allocating a portion of the ITAC for use in the BSAI trawl limited access sector could provide to smaller vessels operating out of these communities. The Council is not obligated to recommend, and NMFS is not obligated to make, allocations based solely on one criterion.

As an example, National Standard 5 requires that NMFS consider economic efficiency, "except that no measure shall have economic allocation as its sole purpose" (16 U.S.C. 1851(a)(5)). National Standard 6 of the MSA requires that NMFS "take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches" (16 U.S.C. 1851(a)(6)). National Standard 8 also requires that NMFS "provide for the sustained participation of such communities" (16 U.S.C. 1851(a)(8)(A)). NMFS did not modify the regulations based on this comment.

*Comment 65:* Table 35 to Part 679 establishes progressive reductions in the amount of halibut PSC apportioned to the Amendment 80 sector, beginning with an allocation of 2,525 mt in 2008 and ending with an allocation of 2,325 mt in 2012 and all future years. Such a reduction is unwarranted, and goes against the most fundamental principles of the MSA.

The proposed reductions in PSC to the Amendment 80 sector will severely limit the ability of the Amendment 80 QS holders to harvest the full BSAI flatfish TACs. At the present time, the largest unharvested biomass in the BSAI is the flatfish. This underutilization of the resource is caused by the limitations imposed by existing PSC allocations. The rule proposes to further reduce the allocations of PSC, which will further exacerbate the difficulties in maximizing the harvest of flatfish.

There is no biological rationale for limiting the Amendment 80 halibut PSC allocation. The International Pacific Halibut Commission that establishes catch limits for halibut harvests has indicated that this reduction in bycatch will have no impact on the halibut biomass or the halibut harvesting sector.

This same group has reported that there is an abundance of halibut in the BSAI, with BSAI halibut levels at an all-time high. Without any biological or other scientific justification for these reductions in halibut PSC, one has to wonder whether the proposed reductions are being sought purely for political reasons. The halibut and the flatfish harvested by the Amendment 80 sector swim in and around the same area, making it almost impossible to avoid bycatch. The result of the reduction in halibut PSC will be to limit the targeted harvest of non-halibut species. The biomass of these non-halibut species continues to grow, even to the extent that failure to harvest sufficient quantities could result in disruption of the food chain, alteration of established predator-prey relationships, and other negative biological consequences. It is therefore imperative not only for economic reasons but also for biological reasons that the harvest of flatfish by the Amendment 80 sector not be constrained by the proposed reductions in halibut PSC.

*Response:* The Council considered a range of options to reduce bycatch under the Program. The apportionment of halibut PSC was considered during the development of the Program and, although modest, the Council did recommend, and the Program implements measures that will reduce bycatch of halibut. NMFS acknowledges that the reduction in the amount of halibut PSC apportioned to the Amendment 80 sector is limited. However, bycatch reduction measures need not bear a direct relationship between the measures taken and specific biological goals.

National Standard 9 specifically 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" (16 U.S.C. 1851(a)(9)). Guidelines to implement National Standard 9 at 50 CFR 600.350 include, among other things, a requirement that "[i]n the absence of quantitative estimates of the impacts of each alternative, Councils may use qualitative measures" when assessing the impacts of bycatch reduction measures. Additionally, 50 CFR 600.350 states that "The Councils should adhere to the precautionary approach found in the Food and Agriculture Organization of the United Nations (FAO) Code of Conduct for Responsible Fisheries (Article 6.5)" when faced with uncertainty concerning the effects of bycatch reduction measures. The Council considered

quantitative data where available and applicable, and qualitative data when establishing the bycatch reduction measures implemented in this rule. Additionally, the Council applied a precautionary approach when implementing these bycatch reduction measures.

NMFS agrees that ideally bycatch reduction measures would have a directly measurable impact on the stock abundance of a given bycatch species, but National Standard 9 specifically provides that NMFS should minimize bycatch and reduce the mortality of bycatch without specific reference to the amounts reduced or the effect on stock abundance.

NMFS disagrees with the commenter's argument that the amount of halibut PSC reduced will significantly curtail the ability of the Amendment 80 sector to harvest specific flatfish species due to a reduced amount of halibut PSC. First, general experience with cooperative-based LAPPs, such as the AFA and most recently in the catcher vessel sector of the Central GOA Rockfish Program, indicate that fleets can effectively adopt fishing strategies that reduce bycatch rates on certain species. Participants in the Amendment 80 sector noted this advantage during the development of the Program. As halibut bycatch rates are lowered, more halibut PSC is available for use when harvesting Amendment 80 species and other species such as arrowtooth flounder or Greenland turbot.

NMFS also disagrees with the commenter's assertion that reduction in the amount of halibut PSC will somehow prevent harvests of certain species that will have an adverse biological effect on BSAI fishery resources. Such an assertion is not supported by current biological information. The complex nature of ecosystem interactions in the BSAI do not support the assertion that due to a slightly reduced halibut PSC allocation to one group of fishermen, fewer flatfish species will be harvested, and ecosystem "food webs" will be disrupted to the overall detriment of the BSAI. The commenter does not provide any scientific information to support this contention. NMFS did not modify the regulations based on this comment.

*Comment 66:* Table 35 to Part 679 indicates that the BSAI trawl limited access sector will be allocated 875 mt of halibut PSC in the BSAI. This amount is higher than this sector has historically utilized.

There is no justification in the Council motion or the amendment analysis for this increased halibut PSC



allocation to the BSAI trawl limited access sector. There is no apparent reason or plausible justification for ratcheting down the halibut PSC allocated to the Amendment 80 sector while at the same time increasing the halibut PSC allocated to the BSAI trawl limited access sector. The same principles used to justify the reduction in Amendment 80 halibut PSC should apply to the BSAI trawl limited access sector.

In the preamble to the proposed rule, NMFS states that "fixing the AFA catcher/processor sideboard limits at a fixed amount based on the 2006 and 2007 final harvest specifications would prevent AFA catcher/processors from being unduly constrained by halibut PSC sideboard limits" (72 FR 30071). The same holds true for the Amendment 80 sector. NMFS' creation or endorsement of different halibut PSC allocations for these two sectors smacks of preferential treatment for one sector at the expense of the other.

*Response:* The preamble to the proposed rule notes that the allocation of halibut PSC to the BSAI trawl limited access sector is intended to accommodate future potential growth of harvests by that sector, especially if the proportion of the ITAC of yellowfin sole allocated to that sector increase. The commenter is correct that the amount of halibut PSC allocated to the BSAI trawl limited access sector is higher than the recent average use of halibut PSC by that sector. The preamble to the proposed rule, final EA/RIR/FRFA, and Council deliberations note that this increase is appropriate to accommodate future ITAC allocations to the BSAI trawl limited access sector that may require additional halibut PSC to be fully harvested.

Statements cited in the comment describing the AFA sideboard limit are taken out of context. The preamble to the proposed rule describes in detail the relationship between the AFA sideboard limits for halibut PSC and the total amount of halibut PSC that is assigned to the BSAI trawl limited access sector (72 FR 30071; May 30, 2007). Fixing the AFA sideboard limits allows AFA vessels to use a greater proportion of the 875 mt of halibut PSC assigned to the BSAI trawl limited access sector, but does not otherwise provide additional halibut PSC to the BSAI trawl limited access sector. NMFS did not modify the regulations based on this comment.

*Comment 67:* The F/V ENTERPRISE is an Amendment 80 vessel that was not originally issued an LLP license in 2000 based on the harvest activities of that vessel. This limits the ability of the owners of the F/V ENTERPRISE to

transfer QS assigned to the vessel to an LLP license in the event of the actual total loss, constructive total loss, or permanent ineligibility of the F/V ENTERPRISE. The proposed rule provides a resolution to this situation by identifying the LLP license that has been used on the F/V ENTERPRISE since 2000 as the LLP license that is originally assigned to the F/V ENTERPRISE (LLG 4831). This LLP license is designated in Table 31 to Part 679, but there is no further reference to the F/V ENTERPRISE in regulation. Insert a footnote in Table 31 to Part 679 stating that LLG 4831 shall be treated as the LLP license originally assigned to the F/V ENTERPRISE, USCG Documentation Number 657383, for all relevant purposes of this part.

*Response:* NMFS agrees and has added a footnote to Table 3 of Part 679 to clarify that LLG 4831 is the LLP license originally assigned to the F/V ENTERPRISE, USCG Documentation Number 657383 for all relevant purposes of this part.

#### *General Program Comments*

*Comment 68:* The tools offered by the Program are vital to maintain economic viability. Thanks for the efforts to implement the Program effective for 2008. The Program is essential for allowing participants to meet the GRS requirements that will be in effect as of January 20, 2008.

*Response:* NMFS notes and appreciates the support. However, NMFS disagrees with the commenter's assertion that the Program is essential for allowing participants to meet the requirements of the GRS. NMFS notes that this rule meets four broad goals established by the Program: (1) Improving retention and utilization of fishery resources by the non-AFA trawl catcher/processor fleet by extending the groundfish retention standard (GRS) to all non-AFA trawl catcher/processor vessels; (2) allocating fishery resources among BSAI trawl harvesters in consideration of historic and present harvest patterns and future harvest needs; (3) establishing a LAPP for the non-AFA trawl catcher/processors and authorizing the allocation of groundfish species to harvesting cooperatives to encourage fishing practices with lower discard rates and to improve the opportunity for increasing the value of harvested species while lowering costs; and (4) limiting the ability of non-AFA trawl catcher/processors to expand their harvesting capacity into other fisheries not managed under a LAPP.

*Comment 69:* Delay implementation of the Program until 2009, at the earliest. It is unreasonable and

unrealistic to expect the Program to be implemented for 2008. The problems similar to those encountered during the first year of implementation in the Central GOA Rockfish Program are likely to occur if the Program is implemented by 2008. There is absolutely no compelling reason why implementation must occur by 2008. The rush to implementation is not in the best interests of the fishing community at large and reflects poorly on the motives of the Council. Assembling a workable cooperative that meets all the requirements set forth in the proposed rule is not a simple task. The guidelines governing the FMP and amendment process clearly state that successful implementation of new management and conservation measures requires adequate time for development and review.

*Response:* NMFS does not see a need to delay Program implementation until 2009. The Council recommended the Program in June 2006 with the clear expectation that the Program be implemented and effective for 2008. NMFS has regularly updated the Council and members of the industry about the proposed implementation of the Program and has consistently informed the public that if NMFS approves Amendment 80 to the FMP, it would be implemented for the 2008 fishing year. The Council has encouraged NMFS to meet the proposed 2008 implementation schedule. Most of the participants in the Amendment 80 sector have encouraged NMFS to meet a 2008 implementation schedule. The benefits provided by the Program through LAPP management are the primary reasons for the strong support of the Program, and a 2008 implementation is favored by most participants in the Amendment 80 sector.

The perceived difficulties in the first year of implementation in the Central GOA Rockfish Program are not necessarily applicable to this Program. These two LAPPs differ in their structure, official record data, and complexity. However, NMFS is aware of confusion that resulted during the implementation of the Central GOA Rockfish Program and is working to improve the implementation process for the Program. To aid fishery participants, NMFS anticipates holding public workshops with the Amendment 80 sector to aid compliance after the publication of the final rule. Given the direction of the Council and the strong preference of most participants in the Amendment 80 sector to implement the Program by 2008, NMFS did not modify

the effective date of the final rule based on this comment.

*Comment 70:* The cooperative structure seems to be widely favored in many of the fisheries in Alaska. However, there appears to be no practical benefit to the public in requiring that cooperatives form. The halibut and sablefish IFQ fishery is not saddled with these requirements. The cooperative structure provides some relief for participants dealing with GRS compliance, but this should be an option, not a requirement. Alternatively, the required number of participants should be reduced.

*Response:* The Council considered and rejected a range of options before ultimately selecting the alternative that has developed into the Program. The final EA/RIR/FRFA notes that cooperative management offers several distinct advantages over IFQs. Specifically, multispecies quotas for both target and bycatch species are difficult to manage when not managed on an aggregate basis. The likelihood that any person would exceed a given allocation is likely to increase under IFQ management. Managing and monitoring individual quota accounts is more costly and complex than cooperative-based allocations. NMFS also notes that another goal of the Program was to reduce bycatch, improve the retention of bycatch, and reduce the potential costs associated with bycatch reduction compliance. Applying the GRS on an aggregate basis to vessels in cooperatives meets that goal, whereas an IFQ program would not.

The Council reviewed and rejected options that would have required fewer persons to reduce the number of persons required to form a cooperative. The Council recommended and the rule implements minimum standards for cooperative formation that were deemed to best meet the goals of encouraging cooperation and consolidation, minimizing costs, and providing adequate opportunity for individual participants to establish relationships with similarly situated harvesters. NMFS did not modify the regulations based on this comment.

*Comment 71:* The Program has been before the Council for a long time, but the very short public comment period on the proposed rule was a serious handicap to fully responding to the very detailed and lengthy regulations.

*Response:* NMFS determined that a 30-day public comment period on the proposed rule was legally sufficient under the MSA and the Administrative Procedure Act. Section 304(b)(1)(A) of the MSA requires a public comment period of 15 to 60 days on proposed

regulations. A 30-day public comment period on the proposed rule was consistent with this requirement of the MSA. NMFS also determined that the Amendment 80 sector was capable of providing meaningful comment on the proposed rule within a 30-day public comment period. The Amendment 80 sector was actively involved in the development of Amendment 80 and was well aware of the regulatory components that would be necessary to implement Amendment 80. The proposed rule, while lengthy, was written in a manner to facilitate public review, including a table of contents for the preamble and clear examples of management provisions under Amendment 80. NMFS also held two public workshops, one on May 23, 2007 (72 FR 27798), and one on June 18, 2007 (72 FR 31548), to facilitate the public's understanding of specific proposed regulatory components. Both workshops were attended by numerous participants in the Amendment 80 and BSAI trawl limited access sectors. Finally, several representatives from the directly regulated industry (i.e., the Amendment 80 sector) requested a shorter public comment period to ensure that a decision on Amendment 80 and implementation of a final rule if Amendment 80 was approved could be effective in time for fishing to begin under Amendment 80 by 2008.

*Comment 72:* Prohibit Amendment 80 vessels from processing fish in non-LAPP fisheries to protect non-Amendment 80 processors from the potential rush of Amendment 80 vessels entering into fisheries such as salmon and herring and offering processing services that directly compete with existing processors. The advantage of the revenue that participants in the Amendment 80 sector receive from their ability to form cooperatives will increase the competition and reduce economic incentives for other processors. Amendment 80 sector participants could choose not to fish in the summer and use their vessels as processing platforms to compete with existing salmon processors.

*Response:* Neither the CRP nor the Program provide NMFS with the specific regulatory authority to limit the ability of a specific vessel to be used in processing activities for specific fisheries such as salmon and herring. Regulations for salmon and herring processing within State waters could be established by the State of Alaska. NMFS does not have the authority to specifically prohibit fishing for species such as salmon or herring that are exclusively harvested within the waters of the State of Alaska.

The potential that Amendment 80 vessels could be used as processing platforms for salmon and herring was not explicitly addressed in the draft EA/RIR/IRFA for the proposed rule. NMFS has revised section 1.10.2 of the final EA/RIR/FRFA to include a description of the existing and potential effects of the Program on existing processing operations, specifically salmon and herring processing operations. Based on the information available to NMFS, it does not appear that Amendment 80 vessels currently process salmon and herring. It is not clear that Amendment 80 vessels would choose to do so given the costs required to refit vessels, coordinate fishing operations, and establish new markets.

*Comment 73:* Section 4.1.1 of the draft EA/RIR/IRFA prepared for the proposed rule indicates that yellowfin sole could be reallocated from the Amendment 80 sector to the BSAI trawl limited access sector. This provision was considered and rejected by the Council. Remove this reference from the final EA/RIR/FRFA prepared for the final rule.

*Response:* NMFS agrees. This reference is an error and has been removed from section 4.1.1 in the final EA/RIR/FRFA.

*Comment 74:* NMFS indicates that it is maintaining the current Steller sea lion protection measures with the implementation of Amendment 80, including the management of the harvest limit area (HLA) for the Atka mackerel fishery. This includes maintaining the "platoon system" to subdivide fishing within Steller sea lion critical habitat in Atka mackerel management areas 542 and 543. NMFS should consider implementing existing Steller sea lion protection measures in a manner that would assign separate HLA harvest limits for Amendment 80 cooperatives and the Amendment 80 limited access fishery. Under such an arrangement, the total limit on the amount of Atka mackerel that may be taken within the HLA is maintained, but cooperative participants would not be forced to race to harvest fish within the HLA.

*Response:* The commenter is correct that NMFS did not propose regulations that would have modified existing regulations concerning management of Atka mackerel in the HLA as part of the Program. NMFS will manage the HLA fisheries in compliance with existing regulations. Those regulations are found primarily at § 679.20(a)(8)(iii) and § 679.22(a)(8)(iv). In response to this comment, NMFS is providing the following explanation of how it will apply the existing HLA management program in the context of the Program.

Atka mackerel are apportioned into three TACs, the Western AI District (Area 543), Central AI District (Area 542) and Eastern AI District (Area 541)/BS. A portion of each TAC is allocated to the CDQ Program and an ICA. In the case of Area 541/BS, an allocation of TAC is made to jig gear. In each of the three areas the remaining ITAC is apportioned into two seasonal apportionments; 50 percent of the ITAC is assigned to the A season, and 50 percent of the ITAC is assigned to the B season. This allocation process is described in detail in the preamble to the proposed rule.

In addition, no more than 60 percent of each seasonal allocation of ITAC may be taken inside the HLA of Areas 542 and 543. With the implementation of the Program, each of the three fishery categories will receive a specific allocation of TAC (after subtraction of the CDQ, ICA, and jig apportionments) in the three Atka mackerel management areas.

To participate in the A and/or B season fisheries for Atka mackerel in the HLA in either Areas 542 or 543, vessels are required to register with NMFS. NMFS randomly assigns vessels through a lottery to one of two HLA fisheries. HLA fisheries are designed to distribute Atka mackerel catch over a broader area and time.

Each year, NMFS will establish HLA limits in the annual specification process. Under this description, NMFS is assuming that Amendment 80 cooperatives and an Amendment 80 limited access fishery will be established to fully illustrate the management of the HLA limit. Additionally, NMFS notes that there is no allocation of Atka mackerel in Area 543 to the BSAI trawl limited access sector, therefore an HLA limit is not established for the BSAI trawl limited access sector in that area. In summary, these HLA limits will be managed as follows:

5. NMFS will establish HLA limits for each of the three fishery categories: The BSAI trawl limited access sector; the Amendment 80 limited access fishery; and an aggregate HLA limit applicable to all Amendment 80 cooperatives.

6. NMFS will assign vessels in each of those three fishery categories that apply to fish for Atka mackerel in the HLA to an HLA fishery based on a random lottery of the vessels that apply. Vessels in each fishery category will then be assigned to either the first or second HLA fishery in Area 542 or Area 543 according to the regulations. Vessels in the BSAI trawl limited access sector will be assigned a single HLA fishery that may operate only in Area 542. The

Amendment 80 cooperative and limited access fishery categories will be assigned to one of two initial HLA fisheries in either Area 542 or 543. For the Amendment 80 cooperative and Amendment 80 limited access fishery categories, the first HLA fishery will begin fishing in either Area 542 or Area 543, and the second HLA fishery will fish in the management area not fished by the first platoon. After a specified amount of time, the vessels assigned to an HLA fishery for a fishery category will switch areas and begin fishing in the second HLA fishery.

7. A maximum of two HLA fisheries will be established in Area 542 for the BSAI trawl limited access sector; A maximum of four HLA fisheries will be established for vessels assigned to Amendment 80 cooperatives, a first and second HLA fishery in Area 542, and a first and second HLA fishery in Area 543; and a maximum of four HLA fisheries will be established for vessels assigned to the Amendment 80 limited access fishery, a first and second HLA fishery in Area 542, and a first and second HLA fishery in Area 543.

8. NMFS will initially open fishing in the HLA for the first HLA fishery in all three fishery categories at the same time. The initial opening of fishing in the HLA will be based on the first directed fishing closure of Atka mackerel in Area 541/BS for any one of the three fishery categories allocated Atka mackerel ITAC. The first closure of Atka mackerel in Area 541/BS would likely be for the BSAI trawl limited access sector given the relatively small amount of ITAC assigned to that fishery category.

9. The amount of time that each HLA fishery in each fishery category may fish in the HLA will be based on the amount of harvest effort of the vessels in that HLA fishery and the amount of the HLA limit available to that fishery category. Existing regulations at § 679.20(a)(8)(iii) limit any HLA fishery to a period of fishing in the HLA not greater than 14 days, therefore no HLA fishery in any fishery category could be open more than 14 days.

10. Once an HLA fishery for a fishery category is closed, the vessels in that HLA fishery may transit to the management area in which they have not been fishing. Vessels in the BSAI trawl limited access HLA fishery do not need to transit because those vessels are limited to fishing only in Area 542. NMFS will provide a limited amount of time for vessels in the Amendment 80 cooperative and limited access HLA fisheries to transit between management areas.

11. NMFS will open the second HLA fishery for each fishery category

consistent with the closure of the first HLA fisheries. Some fishery categories may complete fishing in the HLA before other fishery categories depending on the amount of ITAC and the harvest rate within the platoons in that fishery category.

12. According to existing regulations at § 679.20(a)(8)(iii)(F), vessels registered for an HLA fishery are prohibited from participating in any groundfish directed fishery, other than Atka mackerel, during the opening of the first HLA directed fishery assigned to the vessel in a season.

13. According to existing regulations at § 679.22(a)(8)(iv), no vessel may use trawl gear to directed fish for Pacific cod in Areas 542 or 543 while vessels are directed fishing in the HLA. At any time an HLA fishery is open to fishing for any platoon in any fishery category, trawling for Pacific cod in Areas 542 and 543 is prohibited. Once all fishery categories have completed fishing in the HLA, or the maximum time for an HLA fishery has been met, NMFS will close all HLA fishing. At that point, vessels may use trawl gear to directed fish for Pacific cod in Areas 542 and 543.

The following section provides the rationale for integrating the Program and HLA management as summarized. As noted in the preamble to the proposed rule, NMFS will specify the amount of ITAC assigned to the BSAI trawl limited access sector; the Amendment 80 limited access fishery; and an aggregate ITAC applicable to all Amendment 80 cooperatives in the annual harvest specifications. This amount of ITAC assigned to each of these three fishery categories will be subject to the HLA limits. The regulations at § 679.20(a)(8) describe the mechanisms for establishing HLA limits and HLA fisheries. These regulations do not preclude NMFS from assigning HLA limits to fishery categories that are established in the annual harvest specifications. Because each fishery category will be assigned its own HLA limit, each fishery category will have its own HLA fisheries.

This structure will facilitate management of the HLA by ensuring that vessels in each fishery category will be limited in the HLA based on the proportion of the ITAC assigned to that fishery category. Assigning an HLA limit in the aggregate for all fishery categories could encourage vessels in the HLA fisheries to compete with one another for this limit and thereby create incentives for vessels to rapidly harvest the HLA. A highly competitive fishery in the HLA would result in NMFS restricting the amount of time allowed for fishing.

Regulations at § 679.20(a)(8)(iii)(C) state “48 hours after prohibiting directed fishing for Atka mackerel in area 541, the Regional Administrator will allow directed fishing within the HLA in areas 542 and 543.” The current regulations do not address management of the Area 541/BS seasonal fishery for the three fishery category allocations and the implication of the management of these three fishery categories for the initiation of the HLA fisheries. The regulations do not explicitly state that closures of Atka mackerel for all three fishery categories in Area 541/BS is required to initiate the HLA fisheries.

The directed fishery for Atka mackerel assigned to the cooperatives as CQ will be managed by each cooperative. NMFS does not anticipate closing cooperatives from fishing. Expected dates for closing the directed fishery by the Amendment 80 limited access sector will depend on the amount allocated, number of vessels participating, the harvest rates of those vessels, and the fishing plans of those vessels. NMFS will directly manage the Amendment 80 limited access fishery through inseason management action. However, the Amendment 80 limited access fishery participants may choose not to fish the Area 541/BS allocation and never trigger a closure, or may delay fishing and therefore closure of the Amendment 80 limited access fishery in Area 541/BS may not occur until late in the Atka mackerel A or B season. The BSAI trawl limited access sector is expected to have the smallest allocation of the three fishery categories. In 2008, its allocation under this rule will be two percent of the Area 541/BS TAC, after deduction for the CDQ allocation, and projected jig gear and ICA deductions. Using the current 2008 Area 541/BS TAC of 17,600 mt, NMFS calculates the allocation for the BSAI trawl limited access sector allocation to be 143 mt for each season. Since 2003, vessels in the BSAI trawl limited access sector have not participated in a directed Atka mackerel fishery in Area 541/BS. The Regional Administrator may prohibit directed fishing for Area 541/BS Atka mackerel by the trawl limited access sector at the beginning of the trawl season (January 20) since the BSAI trawl limited access sector allocation is expected to be small relative to the amount of potential fishing effort in this fishery.

For simplicity, NMFS will base the initiation of the HLA fisheries on the first closure of any of one of the three fishery categories allocated seasonal Atka mackerel TAC in Area 541/BS. Clearly defined dates for the initiation of the HLA fisheries is important for the

efficient operation of the participating vessels. As explained above, the first closure would likely be for the BSAI trawl limited access fishery.

Regulations at § 679.20(a)(8) governing the management of the lottery for participation in the HLA fishery state, “[t]he Regional Administrator \* \* \* will randomly assign each vessel to one of two directed fisheries for each statistical area in which the vessel is registered.” Similar to the described case of managing the initiation of the HLA fisheries, regulations governing the creation of the HLA platoons envision one HLA limit to be managed among two platoons in each of the two areas in each season. However, the regulations allow NMFS to apportion the ITAC among fishery categories by season with the attendant HLA limit applied to each seasonal apportionment.

A single lottery in which all three fishery categories are combined in a single HLA fishery would not be an effective implementation of the existing HLA regulations. Each HLA fishery in each fishery category is likely to require varying amounts of time to efficiently attain the HLA limits associated with their seasonal TAC allocations. Vessels associated with a fishery with limited time requirements (e.g., the BSAI trawl limited access fishery) would be restricted from participating in other groundfish fisheries until the first HLA fisheries for all sectors ended. For vessel's in the cooperative sector's HLA, catch will be limited by their own activity under the regulations, not by active NMFS management. Vessels in those fisheries may be unnecessarily restricted to short time requirements under a single lottery for all HLA fishery participants. Constructing separate lotteries and therefore separate HLA fisheries for each of the fishery categories allows efficient conduct of the fishery and distributes catch across time within the HLA.

*Comment 75:* Revise the Amendment 80 rule to divide the HLA harvesting between cooperative and limited access sectors. The HLA fishery is limited to a maximum of 14 days. This prevents the cooperatives from spreading Atka mackerel harvest over a longer time period with a smaller fleet without losing harvesting potential in the HLA. Dividing the HLA harvesting between cooperative and limited access sectors would prevent the use of a smaller number of vessels with a lower catch per day within the HLA and would allow the cooperative to harvest its allocation within the HLA without engaging in a race for fish with the limited access sector. NMFS may adjust the duration of the HLA fishery for each

sector based on vessel capacity to harvest the Atka mackerel.

*Response:* The portion of this comment addressing the management of HLA fishing by fishery categories is addressed in the response to comment 74. The 14-day limit for an HLA fishery was established to limit the duration of HLA fishing and provide for a date-certain opening of Areas 542 and 543 to Pacific cod trawl fishing. In the recent past, the Atka mackerel HLA fisheries have closed well before the 14-day maximum time limit. This rule provides an opportunity for vessels in platoons to coordinate their fishing operations within their fishery category and harvest their allocation more slowly compared to current HLA fishing patterns. Until it is determined that the 14-day time limit on the HLA fishery is not needed, this aspect of the regulations will remain unchanged.

*Comment 76:* NMFS should consider providing for a Pacific cod trawl fishery in the HLA concurrent with the Atka mackerel HLA fishery. The Pacific cod trawl fishery could occur during a window in which either the Amendment 80 cooperative or limited access fishery HLA fisheries are closed. Alternatively, the Pacific cod fishery in the HLA in Areas 542 and 543 could occur concurrent with the Atka mackerel HLA fisheries if the daily catch rates are sufficiently low as to not be likely to adversely affect the ability of Steller sea lions to forage.

*Response:* NMFS notes that concurrent directed fishing using trawl gear for Atka mackerel and Pacific cod in the HLA in Areas 542 and 543 is prohibited by existing regulations at § 679.22(a)(8)(iv). The proposed rule notes that no changes in regulations for Steller sea lion protection were proposed. Allowing for the concurrent removal of two important prey species for Steller sea lions within critical habitat was not addressed in the proposed rule, and was not specifically analyzed in the final EA/RIR/FRFA developed for this action. The suggested changes may have an effect on the prey availability for Steller sea lions and would require Endangered Species Act Section 7 consultation before further consideration. The approach to HLA management under the Program as described in response to comment 74 maintains existing regulations for Steller sea lion protection so that no effects on Steller sea lions beyond those already analyzed in previous consultations are likely to occur. NMFS did not modify the regulations based on this comment.

*Comment 77:* If the change in regulations recommended in comment 5 is adopted, then Section 3.3.1.1 of the

FMP as modified by Amendment 80 should be corrected to strike the reference to an LLP license that "was originally assigned to" an Amendment 80 vessel and revise this section to state that "A license that designates a non-AFA trawl catcher/processor may only be used on a non-AFA trawl catcher/processor." This change in the FMP would be consistent with the intent of this provision and is consistent with the change recommended under response to comment 5.

*Response:* The change in regulation in response to comment 5 does not require a revision to the FMP text. The FMP text provides a broad description of the limitations on the use of an LLP license that is "originally assigned to" an Amendment 80 vessel. The regulations at § 679.2 and at § 679.7(o) define an LLP license that is "originally assigned to" an Amendment 80 vessel and the criteria that must be met so that an LLP license that is originally assigned to an Amendment 80 LLP license is limited for use within the Amendment 80 sector. The regulations as amended are not inconsistent with the FMP text and merely clarify the definition and application of this FMP text. The Secretary did not disapprove this portion of the FMP text.

*Comment 78:* The preamble to the proposed rule states that Pacific cod could be reallocated to the Amendment 80 sector, but could not be reallocated from the Amendment 80 sector to other sectors. Correct the typographical error in Table 9 of the preamble to the proposed rule which indicates that Pacific cod can be reallocated from the Amendment 80 sector.

*Response:* NMFS agrees that Table 9 in the preamble text to the proposed rule is in error and inconsistent with the description in the remaining portions of the preamble and the proposed regulatory text. However, because the error is in the preamble text and not the regulatory text, no change is required in the regulatory text.

*Comment 79:* NMFS should review the cost/benefit and practicability language contained in National Standard 9, and consider the definition of "practicability" offered by Representative Don Young in the Congressional Record (House) from September 27, 1996: "'Practicable' requires an analysis of the cost of imposing a management action; the Congress does not intend that this provision will be used to allocate among fishing gear groups, nor to impose costs on fishermen and processors that cannot reasonably be met."

*Response:* NMFS has reviewed the costs of imposing the Program in the

final EA/RIR/FRFA prepared for this action (see **ADDRESSES**). Section 4.1 of the final EA/RIR/FRFA prepared for this action describes the effect of the Program toward meeting the goals of National Standard 9. This analysis details the significant economic benefits likely to be received by participants in the Program through LAPP management, the additional costs of M&E requirements, and the potential economic effects of the allocations considered and ultimately recommended by the Council in the development of the Program. The bycatch reduction measures implemented by the Program do not serve to allocate fishery resources among fishing gear groups. Bycatch reduction measures are not expected to adversely affect the ability of the Amendment 80 sector to effectively and fully harvest the fishery resources it has been assigned under the Program, particularly given the ability of participants in the Amendment 80 sector to form cooperative arrangements with other fishery participants and reduce bycatch rates using improved fishing techniques.

The regulations implementing the Program do not result in costs that cannot be reasonably met by the Amendment 80 sector. These costs are extensively analyzed in the final EA/RIR/FRFA prepared for this action. NMFS notes that many of the compliance measures, and the costs associated with those measures, are required for compliance with other programs such as Amendment 79 to the FMP (71 FR 17362; April 6, 2006) and the Central GOA Rockfish Program (71 FR 67210; November 20, 2006). The Amendment 80 vessels subject to the provisions of those regulations may have already borne many of the costs anticipated under this Program. NMFS did not modify the regulations based on this comment.

*Comment 80:* National Standard 6 requires FMPs to "take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches" (16 U.S.C. 1851(a)(6)). NMFS has not seriously considered and allowed the variations in the methods and means of the participants. National Standard 7 requires FMPs to "where practicable, minimize costs" (16 U.S.C. 1851(a)(7)). There has been little or no consideration of the alternatives, nor any weighing of the benefits against the expense. The Regulatory Flexibility Act requires more analysis by the agency.

*Response:* NMFS has determined that the Program and this final rule are consistent with National Standards 6

and 7. The final EA/RIR/FRFA contains an extensive discussion of the alternatives considered, the nature of the fisheries, the operations of the fleet, and the catch patterns of various participants.

The Council chose to recommend, and the rule implements measures that address specific variations among the Amendment 80 sector that address National Standard 6. Some examples of measures to address variations and contingencies in fishery resources and catch patterns include allocating QS based on the best five of seven years of catch history from 1998 through 2004, applying GOA sideboard limits to vessels to accommodate variations in catch patterns of Amendment 80 sector participants, and assigning a minimum amount of QS to eligible Amendment 80 sector participants who would not otherwise receive QS. The final EA/RIR/FRFA and Council deliberations provide additional detail on the application of National Standard 6.

The Council chose to recommend, and the rule implements measures that minimize costs and avoid unnecessary duplication where practicable, consistent with National Standard 7. As an example, M&E measures applicable to this Program mirror those required in the Central GOA Rockfish Program to reduce compliance costs and minimize duplication of regulations. The final EA/RIR/FRFA and Council deliberations provide additional detail on the application of National Standard 7.

The IRFA and FRFA prepared for the proposed rule and final rule respectively address those issues required to be examined by the RFA. The RFA requires the agency to conduct an analysis to determine the potential effects of the Program on directly regulated entities. The costs that are likely to accrue under the Program are described in the IRFA, FRFA, and associated RIR and the rationale for the costs imposed by the Program are described in those analyses.

*Comment 81:* National Standard 8 requires that FMPs consider the effects of management measures on fishing communities. As a member of one such fishing community, there is little evidence of consideration having been given to minimize the adverse economic impacts that will surely follow the rule. Conservation has little, if anything, to do with many of these changes, yet the avoidance of economic harm has been given little attention. The cumulative effect of these changes is to drive the smaller operators out of business and consolidate the fleet.

*Response:* NMFS determined that Amendment 80 and this rule are

consistent with National Standard 8. The final EA/RIR/FRFA prepared for this action describes the importance of fishery resources to fishing communities. Responses to comments 33 and 64 provide additional clarification on how the Council and NMFS took into account the importance of fishery resources to communities, provided for the sustained participation of those communities, and to the extent practicable minimized adverse economic impacts on those communities. As an example, the Council reviewed participation patterns of harvesters and processors for various communities, ensured that participation could continue, and provided harvest opportunities to specific communities, such as Adak, Alaska, that would facilitate that participation and to the extent practicable minimize possible adverse economic impacts of the Program on the sustained participation of these communities. The rule does not restrict the continued participation of fishing communities even if limits are placed on specific members of those communities.

NMFS disagrees that conservation of fishery resources is not addressed by this rule. The Program this rule implements accomplishes a range of objectives such as extending GRS to all Amendment 80 vessels, ensuring more efficient harvests such as through LAPP management, and reducing bycatch, all of which are intended to directly provide conservation benefits.

NMFS also disagrees that the potential economic impacts, and consideration of measures that may minimize adverse economic impacts to the extent practicable has not been addressed. The final EA/RIR/FRFA considers the economic effects of the Program in detail. The allocation of fishery resources, efforts to reduce costs associated with M&E compliance, and mechanisms to encourage more economically efficient fishery operations have been extensively analyzed, considered, and where practicable incorporated into this rule.

*Comment 82:* Trawlers must be totally banned from all use. It is clear that overfishing allowed in this area is killing and stressing the marine mammals that need fish to stay alive in these waters. Cut all TACs by 50 percent this year and 10 percent each year thereafter. NMFS is doing a lousy job of protecting all marine life, has presided over the raping of the seas for commercial fish profiteering, and has failed to enforce the laws passed to protect fish. A new agency should replace NMFS. Corruption in

Washington DC, where profiteers rule, is the root of the problem.

*Response:* NMFS disagrees. The goal of this action is to improve the use of fishery resources, reduce discards of fish, reduce bycatch, and encourage improved economic efficiency through LAPP management. Banning trawling and reducing the TACs allocated are not components of this action, and would need to be addressed in a different rulemaking process. Groundfish species in the North Pacific are widely regarded as well-managed by the Council and NMFS and under national and international standards. None of the groundfish fisheries in the North Pacific are overfished. NMFS reviewed the potential effects of this action on marine mammals and concluded it would not adversely affect marine mammal populations. The remaining accusations are unfounded.

#### IV. Additional Changes From the Proposed Rule

NMFS made several changes to the proposed regulatory text in this final rule to integrate the Program with Amendment 85, clarify regulatory language, or correct minor mistakes in the proposed rule.

##### A. Integration of the Program with Amendment 85

This final rule makes several changes to regulations published in the final rule for Amendment 85, published September 4, 2007, to the FMP that modified the allocation of Pacific cod in the BSAI. These changes integrate the Program and Amendment 85, consistent with the revisions anticipated and described in the preamble to the proposed rule for the Program (72 FR 30052; May 30, 2007).

14. In § 679.2 as published September 4, 2007, NMFS deleted the definition of “non-AFA trawl catcher/processor.” This definition is consistent with, and duplicates the definition of “Amendment 80 vessels” provided in this final rule.

15. In § 679.20(a)(7)(ii)(A)(8) as published September 4, 2007, NMFS deleted the term “Non-AFA trawl CP” and inserted the term “Amendment 80 sector.” This change does not alter the intent of this paragraph to allocate Pacific cod, but uses the nomenclature established in the Program.

16. In § 679.20(a)(7)(iii)(B) as published September 4, 2007, NMFS revised the process of reallocating Pacific cod in the trawl sectors consistent with the changes described in the preamble of the proposed rule for the Program. NMFS revised this paragraph so that references to

reallocating Pacific cod from the “Non-AFA trawl catcher/processor sector” (i.e., “Amendment 80 sector”) have been removed. NMFS notes that the preamble to the proposed rule for the Program clearly indicated that there would not be a reallocation of Pacific cod from the Amendment 80 sector as envisioned under Amendment 85, and that NMFS would be revising the regulations established under Amendment 85 pending the approval of Amendment 80 and the publication of a final rule.

In addition, NMFS made several changes to the proposed rule implementing the Program to conform to regulations implemented with Amendment 85, published September 4, 2007.

17. NMFS changed the citation in § 679.20(a)(7)(v) from § 679.20(a)(7)(iii)(A)(1)(ii) to § 679.20(a)(7)(iv)(A)(1)(ii). This is a technical correction to ensure proper citation to the seasonal apportionment of Pacific cod to the Amendment 80 sector.

18. In § 679.20(a)(7)(vi), NMFS referenced the procedure for determining if Pacific cod is available for reallocation in the regulations established in § 679.20(a)(7)(iii) as modified by Amendment 85. This reference is to ensure that the process for determining if Pacific cod may be reallocated to the Amendment 80 sector established in Amendment 85 is applied.

19. In § 679.64(a), NMFS redesignated the paragraphs that are revised in this section to conform to changes in the designation of paragraphs made under Amendment 85. These are housekeeping changes.

##### B. Other Changes, Corrections, and Clarifications

NMFS made several changes to the rule to establish a consistent application of GOA sideboard limits to the F/V GOLDEN FLEECE. Sections 679.50, 679.92, and 679.93 contain requirements that the F/V GOLDEN FLEECE must be designated on a specific LLP license (LLG 2524) so that the F/V GOLDEN FLEECE can be exempted from specific halibut PSC sideboard measures and catch accounting procedures in the GOA. NMFS deleted the requirement that the F/V GOLDEN FLEECE must be designated on LLP license LLG 2524 to receive these exemptions. These changes are applicable in §§ 679.50(c)(6)(ii); 679.92(b)(2); 679.92(d)(2); 679.92(d)(3), and 679.93(d)(4)(ii).

These changes are consistent with the changes made in response to comment 1. In response to that comment, NMFS removed the requirement that a specific LLP license must be used on a specific list of Amendment 80 vessels that are allowed to fish in the GOA flatfish fisheries as defined in Table 39 to Part 679. The same rationale applicable to remove the requirement to use a specific LLP license is also applicable to the F/V GOLDEN FLEECE. A review of the FMP amendment, the Council motion supporting the FMP amendment, and the final EA/RIR/FRFA prepared for this action do not explicitly indicate that the F/V GOLDEN FLEECE must use a specific LLP license while fishing in the GOA. NMFS made this change to consistently apply sideboard measures in the GOA.

NMFS also made several editorial corrections to the regulatory text for improved readability and accuracy. These changes clarify or correct minor errors in the phrasing of particular provisions.

20. The response to comment 1 notes that NMFS changed the definition of an "Amendment 80 LLP license originally assigned to an Amendment 80 vessel" to "LLP license originally assigned to an Amendment 80 vessel" at § 679.2. With this change references throughout the regulatory text to an "Amendment 80 LLP license originally assigned to an Amendment 80 vessel" have been changed to "LLP license originally assigned to an Amendment 80 vessel." This change is required for consistency.

21. The term "title of abstract" is referred to several times in the rule. The correct term is "abstract of title" This correction has been made throughout the regulatory text. This change does not alter the intent of the term.

22. Section 679.2 includes the term "Amendment 80 limited access fishery." That term is defined as "the fishery conducted in the BSAI by persons who have not assigned an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel to an Amendment 80 cooperative, and who have assigned an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel to the Amendment 80 limited access fishery." This definition is inconsistent with the changes made in response to comment 26 that allows NMFS to assign Amendment 80 QS permits, Amendment 80 LLP licenses, or Amendment 80 vessels to the Amendment 80 limited access fishery in the event that a person fails to apply in a timely fashion. NMFS modified the definition to ensure consistency by defining the Amendment 80 limited

access fishery as the fishery conducted in the BSAI by persons with Amendment 80 QS permits, Amendment 80 LLP licenses, or Amendment 80 vessels assigned to the Amendment 80 limited access fishery. This change does not alter the intent of this definition.

23. Section 679.2 defines the term "Amendment 80 sector." The proposed definition stated that this term is defined as "Amendment 80 QS holders" who "own Amendment 80 vessels and hold Amendment 80 permit." This definition is circular. By definition, an Amendment 80 QS holder holds an Amendment 80 permit. To correct redundancy in this term, NMFS deleted the phrase "Amendment 80 permit holder." Additionally, the second part of the proposed definition stated that "Amendment 80 QS holders who hold Amendment 80 LLP/QS licenses" are also members of the Amendment 80 sector. By definition, a person who holds an Amendment 80 QS/LLP license holds the Amendment 80 QS permit affixed to that LLP license. Therefore, NMFS is correcting this circular reference by replacing the term "Amendment 80 QS holders" with "persons" so that the second part of this definition reads "those persons who hold Amendment 80 QS/LLP licenses."

24. Section 679.2 includes the term "Amendment 80 QS/LLP license." That term is defined as "an LLP license originally assigned to an Amendment 80 vessel issued to an Amendment 80 LLP holder with the Amendment 80 QS permit assigned to that LLP license." The reference to the LLP license "issued to an Amendment 80 LLP holder" is not necessary. The inclusion of this term confuses the intent of this definition, which is to define an Amendment 80 QS/LLP license as "an LLP license originally assigned to an Amendment 80 vessel with an Amendment 80 QS permit assigned to that LLP license." This clarification does not alter the intent of the definition.

25. Section 679.4(o)(1)(ii) notes that an Amendment 80 QS permit is assigned to the owner of an Amendment 80 vessel unless an Amendment 80 QS permit is assigned to the holder of an LLP license originally assigned to an Amendment 80 vessel under the provisions of § 679.90(d). In § 679.4(o)(1)(ii), NMFS included a reference to § 679.90(e) which allows an Amendment 80 QS permit to be assigned to an LLP license through a transfer of QS. This clarification does not alter the intent of the provision.

26. Section 679.4 (o)(3)(i) notes that NMFS will issue a person an Amendment 80 limited access fishery

permit if they have submitted a timely and complete application and an EDR for all Amendment 80 QS permits held by that person. With the change in response to comment 26, NMFS may issue an Amendment 80 limited access fishery permit to a person if they fail to apply by the annual application deadline. To accommodate this change, NMFS will change this permitting requirement to note that NMFS will issue an Amendment 80 limited access fishery permit to a person who has submitted an application or is assigned to the fishery by NMFS. This change is required for consistency.

27. Section 679.5(a)(1)(i)(C) includes a reference to paragraphs (n)(1) and (n)(2) of this section. Paragraphs (n)(1) and (n)(2) have been deleted from this section, and the reference to them in paragraph (a)(1)(i)(C) of this section is a miscitation that needs to be removed. This change is a housekeeping measure and does not affect the intent of this provision.

28. Section 679.20(a)(8)(iv) contains a reference to Table 32 to this part. It should reference Table 33 to this part. This change corrects the reference.

29. Section 679.20(a)(8)(v) contains a reference to Table 32 to this part that should be a reference to Table 33 to this part. This change corrects the reference.

30. Section 679.27(j)(1)(ii) states that "[a]n Amendment 80 cooperative and the member of an Amendment 80 cooperative must comply with the GRS \* \* \*". The reference to the members of the Amendment 80 cooperative is not required and has been deleted because the Amendment 80 cooperative is subject to the GRS and failure of the cooperative to meet that GRS would be applicable to the cooperative. NMFS notes that Amendment 80 cooperative members may still be subject to joint and several liability for violations under regulations at § 679.91(h)(3)(xvi).

31. Section 679.28(d)(8)(iii)(B) notes that a person using a video monitoring system to monitor catch in fish bins must have a computer with "at least one external USB (1.1 or 2.0) hard drive." Technically, this requirement should require that a person have at least one USB "port" that can be used to transfer data. This change is necessary to clarify that a separate USB hard drive is not required. This change does not affect the costs of compliance.

32. The instructions to § 679.31 contained a reference to a paragraph (g) that does not exist. This reference was an error and has been removed. In addition, the instructions refer to modifications to paragraph (a)(1)(i). This reference is a miscitation, and has been corrected to refer to paragraph (a)(2)(i).



33. Section 679.90(a)(2) states that a person may receive an Amendment 80 QS permit if they own an Amendment 80 vessel, hold an Amendment 80 LLP license, is a U.S. citizen, and submits a timely application for Amendment 80 QS. NMFS is clarifying that a person may receive an Amendment 80 QS permit "based on the legal landings of an Amendment 80 vessel." This change makes it clear that each Amendment 80 QS permit is issued to a person based on the activities of the vessel that gave rise to that permit. This change provides additional clarity, but does not change the intent of the provision.

34. Section 679.91(a)(1)(ii) and (iii) note that NMFS will assign all Amendment 80 QS permits, associated vessels, and LLP licenses to either a cooperative, or the Amendment 80 limited access fishery depending on which fishery a person applies to fish. With the change in response to comment 26 to remove the requirement that all Amendment 80 QS permits must be assigned to a specific Amendment 80 cooperative or the limited access fishery in their entirety, this regulation must be amended for consistency to note that NMFS will assign "an" Amendment 80 QS permit, vessel, or LLP license to either an Amendment 80 cooperative or limited access fishery depending on how that Amendment 80 QS permit, vessel, or LLP license is designated by a person. In addition, paragraph (a)(1)(iii) of this section must be amended to be consistent with response to comment 26 that allows NMFS to assign an Amendment 80 QS permit, vessel, or LLP license to the Amendment 80 limited access fishery should a person fail to apply by the November 1 annual deadline. These changes ensure consistency with changes made in responses to comments.

35. Section 679.91(c)(3) states that "[t]he amount of ITAC for each Amendment 80 species assigned to an Amendment 80 cooperative is equal to the amount of Amendment 80 QS units assigned to that Amendment 80 cooperative by Amendment 80 QS holders divided by the total Amendment 80 QS pool multiplied by the ITAC for that Amendment 80 species in that management area. For clarity, the phrase "Amendment 80 sector" is added after the phrase "the total Amendment 80 QS pool multiplied by the." This change clarifies that the amount of CQ issued is determined based solely on the amount of the Amendment 80 sector ITAC and not the combined Amendment 80 and BSAI trawl limited access sector ITAC. This

clarification does not alter the intent of the provision.

36. Section 679.91(c)(4) states that "[t]he amount of ITAC in a management area for each Amendment 80 species assigned to the Amendment 80 limited access fishery is equal to the ITAC remaining after subtracting all CQ issued to all Amendment 80 cooperatives for that Amendment 80 species in that management area." For clarity, the phrase "Amendment 80 sector" is added after the phrase "is equal to the." This change clarifies that the amount of Amendment 80 limited access fishery ITAC issued is determined based solely on the amount of the Amendment 80 sector ITAC and not the combined Amendment 80 and BSAI trawl limited access sector ITAC. This clarification does not alter the intent of the provision.

37. Section 679.92(b)(2)(i) states that an "Amendment 80 vessel that uses halibut PSC CQ in the Central GOA subject to the regulations established in the Rockfish Program under subpart G to this part is not subject to the halibut PSC sideboard limits in Table 38 to this part." NMFS is adding the phrase "while fishing under a Rockfish CQ permit" at the end of this paragraph to clarify that the exemption applies only while an Amendment 80 vessel is actively fishing under the authority of the Central GOA Rockfish Program and not if an Amendment 80 vessel has fished under the authority of that program, but is not currently fishing under a Central GOA Rockfish Program CQ permit. This clarification does not alter the intent of the provision.

38. NMFS revised § 679.93(d) by (1) renumbering § 679.93(d)(3) and (d)(4) as § 679.93(d)(4) and (d)(5), respectively; (2) inserting a new § 679.93(d)(3) to clarify that the owner or operator of an Amendment 80 vessel fishing in the GOA is required to ensure that the vessel has no more than one operational line or other conveyance for the mechanized movement of catch at the location where the observer collects species composition sample; (3) removing a reference to a requirement that the vessel has no more than one operational line or other conveyance for the mechanized movement of catch between the scale used to weigh total catch and the location where the observer collects species composition samples; and (4) clarifying that the references in the renumbered § 679.93(d)(4) apply to § 679.93(c). These clarifications are necessary to meet the clear intent of the Program and to avoid confusion for vessels that are not subject to scale requirements.

Section 679.93(d)(3) would have required Amendment 80 vessels fishing in the GOA to meet certain monitoring provisions also applicable to Amendment 80 vessels fishing in the BSAI. One of these requirements stated that the owner or operator of an Amendment 80 vessel fishing in the GOA would be required to ensure that the vessel has no more than one operational line or other conveyance for the mechanized movement of catch between the scale used to weigh total catch and the location where the observer collects species composition samples. However, Amendment 80 vessels fishing in the GOA will not be required to carry a scale used to weight total catch. Therefore, NMFS is inserting a paragraph to clarify that vessels must have only one operational line or other conveyance for the mechanized movement of catch between the scale used to weigh total catch and the location where the observer collects species composition samples. The intent of this provision is to ensure that all catch passes through the point at which the observer collects samples to ensure proper catch sampling.

This change is consistent with the description of the need for one operational line provided in the preamble to the proposed rule which states "[t]he use of more than one operational line could lead to improperly sampled catch because catch could be diverted or otherwise conveyed in a manner that would limit adequate sampling \* \* \*". Therefore, vessels would be prohibited from the use of multiple lines for conveying fish between the bins and the area where unsorted catch is sampled by the observer" (72 FR 30105). This is also consistent with the analysis of M&E provisions in section 1.10.6 in the final EA/RIR/FRFA (see **ADDRESSES**).

The clarification that the references in the renumbered § 679.93(d)(4) apply to § 679.93(c) is a technical correction to ensure proper reference to M&E provisions contained in the previous paragraph.

39. Section 679.93(e)(3) contains the phrase "Amendment 80 sideboard species." This phrase is not explicitly defined in § 679.2, but refers to those species that are described in Table 37 to part 679. NMFS is including a reference to Table 37 to part 679 in this paragraph for clarity. This clarification does not alter the intent of the provision.

40. Rows 3 through 7 in Column C of Table 34 to part 679 incorrectly calculate the allocation of yellowfin sole ITAC allocated to the Amendment 80 sector. The equation in each row of column C of the table does not need to

sum the results of all previous rows in column C. The correct formula for the calculation in rows 2 through 7 in column C is to add the sum of each row to the results of the previous row in column C. The summation sign is not necessary nor is the reference to all previous rows in rows 3 through 7 in column C. These references are deleted. This change corrects an error in the notation of the algorithm and does not alter the intent of this provision.

Other editorial changes were made throughout the rule that NMFS determined had no substantive effect.

#### Classification

NMFS has determined that Amendment 80 and the provisions in this rule that implement Amendment 80 are consistent with the MSA National Standards and other applicable laws. NMFS made the determination that this rule is consistent after taking into account the data, views, and comments received during the comment period.

#### Final Regulatory Flexibility Analysis (FRFA)

A FRFA was prepared for this rule, as required by section 604 of the Regulatory Flexibility Act (RFA). Copies of the FRFA prepared for this final rule are available from NMFS (see **ADDRESSES**). The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. A summary of the FRFA follows.

#### Why Action by the Agency Is Being Considered and Objectives of, and Legal Basis for, the Rule

The FRFA describes in detail the reasons why this action is being proposed, describes the objectives and legal basis for the rule, and discusses both small and non-small regulated entities to adequately characterize the fishery participants. The MSA, CRP, Coast Guard Act, and MSRA provide the legal basis for the rule, as discussed in Section II of this preamble. The objectives of the rule are to reduce excessive fishing capacity, end the race for fish under the current management strategy, reduce bycatch, and reduce discards for commercial fishing vessels using trawl gear in the non-pollock groundfish fisheries in the BSAI. By ending the race for fish, NMFS expects the action to increase resource conservation, improve economic efficiency, and address social concerns.

#### Number of Small Entities to Which the Final Rule would Apply

For purposes of a FRFA, the Small Business Administration (SBA) has established that a business involved in fish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and if it has combined annual gross receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

Because the SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, NMFS has in the past applied and continues to apply SBA's fish harvesting criterion for these businesses because catcher/processors are first and foremost fish harvesting businesses. Therefore, a business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations. NMFS currently is reviewing its small entity size classification for all catcher/processors in the United States. However, until new guidance is adopted, NMFS will continue to use the annual receipts standard for catcher/processors. NMFS plans to issue new guidance in the near future.

The FRFA contains a description and estimate of the number of small entities to which the rule would apply. The FRFA estimates that as many as 28 entities, that own approximately 28 catcher/processor vessels, would be eligible to receive QS under the Program.

Of the estimated 28 entities owning vessels eligible for fishing under the Program, one is estimated to be a small entity because it generated less than \$4.0 million in gross revenue based on participation in 1998 through 2004. All other entities owning eligible catcher/processor vessels are not small entities as defined by the RFA.

One entity made at least one landing as a non-AFA trawl catcher/processor from 1998 to 2004, but did not appear to qualify as an eligible Amendment 80 vessel. This entity is not a small entity by SBA standards. Moreover, this vessel that the FRFA considers "non-qualified" would not be allowed to continue fishing under the requirements imposed by the CRP. Therefore, the non-

qualified vessels is not considered impacted by the rule and is not discussed in this FRFA.

The six CDQ groups participating in the CDQ Program are not-for-profit entities that are not dominant in the overall BSAI fishing industry. Thus, the six CDQ groups directly regulated by the rule would be considered small entities or "small organizations" under the RFA.

Several communities (e.g., Dutch Harbor, Seattle) could be indirectly impacted by the Program. Most of the Amendment 80 vessels have home ports in Seattle, Washington, but operate throughout Alaska and rely on other communities for support services. The specific impacts on these communities cannot be determined until NMFS issues QS and eligible harvesters begin fishing under the Program. Other supporting businesses may also be indirectly affected by this action if it leads to fewer vessels participating in the fishery. These impacts are analyzed in the RIR prepared for this action (see **ADDRESSES**).

#### Public Comments Received on the IRFA

Proposed regulations were published in the **Federal Register** on May 30, 2007 (72 FR 30052). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule, and was described in the classification section of the preamble to the proposed rule. The public comment period ended on June 29, 2007. Two comments were received that commented directly or indirectly on the IRFA. These comments and NMFS' responses are found under comments 5 and 79 in the Response to Comments Section, above.

#### Projected Reporting, Recordkeeping, and Other Compliance Requirements

Implementation of the Program changes the overall reporting structure and recordkeeping requirements of the participants in BSAI and GOA groundfish fisheries. All directly regulated entities are required to provide additional reporting. Each harvester is required to track harvests to avoid exceeding his or her allocation.

NMFS must develop new databases to issue QS and CQ and monitor harvesting and processing allocations. These changes require the development of new reporting systems.

To participate in the Program, persons must complete application forms, transfer forms, reporting requirements, and other collections-of-information. These forms are either required under existing regulations or are required for the administration of the Program. These forms impose costs on small entities in gathering the required

information and completing the forms. With the exception of specific equipment tests, which are performed by NMFS employees or other professionals, basic word processing skills are the only skills needed for the preparation of these reports or records.

NMFS has estimated the costs of complying with the reporting requirements based on the burden hours per response, number of responses per year, and a standard estimate of \$25 per burden hour. Persons must submit an application for Amendment 80 QS the start of the Program. Persons must complete additional forms every year, such as the applications to fish for an Amendment 80 cooperative or Amendment 80 limited access fishery. Additionally, reporting for purposes of catch accounting or transfer of CQ among Amendment 80 cooperatives will be completed more frequently.

It will cost participants in the Program an estimated \$56 to complete applications to participate in the Program, \$55 for the annual application to participate in an Amendment 80 cooperative or limited access fishery, and \$61 to complete a transfer of CQ.

NMFS considered multiple alternatives to effectively implement specific provisions within the Program through regulation. In each instance, NMFS attempted to impose the least burden on the public, including the small entities subject to the Program.

The groundfish landing report (Internet version and optional fax version) will be used to debit CQ and track catch in the Amendment 80 limited access fishery. All retained catch must be weighed, reported, and debited from the appropriate account under which the catch was harvested. NMFS considered the options of a paper-based or an electronic recordkeeping and reporting system. NMFS chose to implement an electronic reporting system as a more convenient, accurate, and timely method. Additionally, the electronic reporting system would provide continuous access to accounts. These provisions would make recordkeeping and reporting requirements less burdensome on participants by allowing participants to more efficiently monitor their accounts and fishing activities. NMFS believes that the added benefits of the electronic reporting system outweigh any benefits of the paper-based system. However, NMFS will also provide an optional backup using existing telecommunication and paper-based methods, which would reduce the burden on small entities in more remote areas with limited electronic infrastructure.

Under this rule, catcher/processors may be required to purchase and install motion-compensated scales (i.e., flow scale) to weigh all fish at-sea. Approved flow scales cost approximately \$50,000. Equipment to outfit an observer station, including a motion-compensated platform scale to verify the accuracy of the flow scale, costs between \$6000 and \$12,000. Due to space constraints on many catcher/processors, the need to relocate sorting space and processing equipment, and the wide range of configurations on individual vessels, the installation cost range for the scales and observer sample stations could cost between \$20,000 and \$250,000 per vessel. Installation costs exceeding \$100,000 are expected to be rare. The total cost of purchasing and installing scales and sample stations may range between \$76,000 and \$300,000 per vessel. Based on discussions with equipment vendors, NMFS estimates that 10 catcher/processors, none of which are small entities, would choose to fish in the BSAI and would be required to have scales. This estimate includes catcher/processor vessels that have already installed flow scales in compliance with other programs (i.e., CDQ Program and Central GOA Rockfish Program) and is likely to overestimate the total number of entities that will install this equipment based solely on the requirements for the Program.

The Program will increase observer coverage for Program participants in most cases. In similar NMFS-managed quota fisheries, NMFS requires that all fishing activity be observed. NMFS must maintain timely and accurate records of harvests in fisheries with small allocations that are harvested by a fleet with a potentially high harvest rate. Additionally, halibut PSC and crab PSC rates must be monitored. Such monitoring can only be accomplished through the use of onboard observers. Although this imposes additional costs, participants in the fishery can form cooperatives, which would limit the number of vessels required to harvest a cooperative's CQ, and organize fishing operations to limit the amount of time when additional observer coverage would be required to offset additional costs. The exact overall additional observer costs per vessel cannot be predicted because costs will vary with the specific fishing operations of that vessel. NMFS estimates that a requirement for increased observer coverage would cost approximately \$355 per day. Additional costs may be incurred by owners of catcher/processors that reconfigure their vessels

to ensure that adequate space is available for the additional observer. These costs cannot be predicted and will vary depending on specific conditions of each vessel.

NMFS determined that a vessel monitoring system (VMS) is essential to properly enforce of the Program. Therefore, owners and operators of vessels participating in the Program would be required to use a VMS. Depending on which brand of VMS a vessel owner or operator chooses to purchase, NMFS estimates that this requirement would impose a cost of \$2,000 per vessel for equipment purchase, \$780 for installation and maintenance, and \$5 per day for data transmission costs. NMFS does not estimate that any additional vessel owners or operators would incur these costs if they choose to participate in the Program. Those vessels that would be likely to participate in the Program are already subject to VMS requirements under existing regulations.

NMFS has determined that special catch handling requirements for catcher/processors may subject vessel owners and operators to additional costs depending on the monitoring option chosen. The costs for providing line of sight for observer monitoring are highly variable depending on bin modifications the vessel may make, the location of the observer sampling station, and the type of viewing port installed. These costs cannot be estimated with existing information. Some vessel owners and operators that are eligible to participate in this Program may modify some of their vessels to meet these requirements in the Central GOA Rockfish Program and would not be expected to incur any additional costs for those vessels under the Program.

Because NMFS would allow vessel owners and operators to select the video option using performance standards, the costs for a vessel to implement this option could be quite variable, depending on the nature of the system chosen. In most cases, the system would consist of one digital video recorder (DVR)/computer system and between two and eight cameras. DVR systems range in price from \$1,500 to \$10,000, and cameras cost from \$75 to \$300 each. Data storage costs will vary depending on the frame rate, color density, amount of compression, image size, and need for redundant storage capacity. NMFS estimates data storage will cost between \$400 and \$3,000 per vessel.

Installation costs will be a function of where the DVR/computer can be located in relation to an available power source, cameras, and the observer sampling station. NMFS estimates that a fairly

simple installation will cost approximately \$2,000, and a complex installation will cost approximately \$10,000, per vessel. However, these costs could be considerably lower if the vessel owner chooses to install the equipment while upgrading other wiring. Thus, total system costs, including DVR/computer equipment, cameras, data storage, and installation would be expected to range between \$4,050 per vessel for a very simple inexpensive system with low installation costs, and \$24,500 per vessel for a complex, sophisticated system with high installation costs.

Annual system maintenance costs are difficult to estimate because much of this technology has not been extensively used at-sea in the United States. However, NMFS estimates an annual cost of \$680 to \$4,100 per year based on a hard disk failure rate of 20 percent per year, and a DVR/computer lifespan of three years.

Vessel owners and operators that are eligible to participate in the Central GOA Rockfish Program and the Amendment 80 Program may modify their vessels to meet these requirements in the Central GOA Rockfish Program and would not be expected to incur any additional installation costs under the Program. Annual system maintenance costs are anticipated to be partially borne by the requirements in the Central GOA Rockfish Program.

#### Comparison of Alternatives

The preferred alternative, Alternative 4 (described in this rule), implements new TAC allocations to CDQ groups in compliance with recent amendments to the MSA. CDQ groups will receive 10.7 percent of allocated species. One non-AFA trawl catcher/processor in this fishery is a small entity. The opportunity for non-AFA trawl catcher/processors to form cooperatives offers the potential for reduced costs and increased revenues for all affected firms, including the small entity. It is not clear how the small entity's bargaining position relative to other firms would be affected by the conditions for forming a cooperative under this alternative compared to other alternatives. TAC allocations are similar to historical allocations for yellowfin sole, rock sole, and flathead sole, and slightly smaller for Atka mackerel, and Aleutian Islands Pacific ocean perch. Operations would face some additional monitoring costs associated with Amendment 80.

Alternative 1 is the no action/status quo alternative. Under the status quo, the fishery would continue competitive fishing within the confines of the license limitation restrictions on the

vessels that may participate. This alternative would not implement new TAC allocations to the CDQ Program for relevant species at 10 percent of the TAC, an option that was consistent with the MSA at the time the Council took final action on Amendment 80. Costs are believed to be higher than under other alternatives, and revenues are believed to be lower. The costs of meeting GRS requirements are believed to be higher than under the other alternatives due to the inability of vessel participants to form cooperatives and meet GRS requirements on an aggregate basis. The preferred alternative has smaller adverse impacts than the status quo, and better meets the objectives of this action to reduce bycatch, improve utilization of fishery resources, and encourage cooperative management to end the race for fish and reduce costs associated with GRS compliance.

Alternative 2 is a multiple cooperatives alternative. Cooperatives may be formed if they have 15 percent of the eligible participants and at least two separate entities. CDQ allocations for relevant species would be established at 15 percent of the TAC, an option that was consistent with the MSA at the time the Council took final action on Amendment 80. The opportunity to form cooperatives offers the potential for reduced costs and increased revenues for all affected firms, including the small entity. It is not clear how the small entity's bargaining position relative to other firms would be affected by the conditions for forming a cooperative under this alternative compared to other alternatives. TAC allocations are similar to historical allocations for yellowfin sole, rock sole, and flathead sole, Atka mackerel, and Aleutian Island Pacific ocean perch. The threshold to cooperative formation in this alternative is lower than Alternatives 3 and 4 (only unique entities with a minimum of 15 percent of the Amendment 80 QS permits is needed to form a cooperative). Therefore, cooperative formation may be more likely under this alternative than the other alternatives considered. Bargaining power of the small entity, compared to that of larger entities, may or may not be greater than under the preferred alternative. Allocations for yellowfin sole, rock sole, and flathead sole are similar to those under the preferred alternative, and slightly greater for Atka mackerel and Aleutian Islands Pacific ocean perch. Additional monitoring costs would be similar to those under the preferred alternative.

Alternative 2 is very similar to Alternative 4. The Amendment 80 sector receives a somewhat smaller

allocation of Atka mackerel and Aleutian Islands Pacific ocean perch under Alternative 4 than Alternative 2. It is not clear whether cooperative rules would be better for the small entity under Alternative 2 or 4. Alternative 4 provides greater entry level fishing opportunities for non-non-AFA catcher/processors, and catcher vessels including vessels fishing out of Adak, vessels that are not directly regulated by this action, because of the reduced Atka mackerel and Aleutian Islands Pacific ocean perch allocations.

Alternative 3 is the single cooperative alternative. This alternative allows the formation of a cooperative if it has 67 percent of the eligible participants, and is comprised of at least three separate entities. CDQ allocations for relevant species would be established at 10.7 percent of the TAC consistent with the MSA. This alternative would implement new TAC allocations to CDQ groups, in compliance with recent amendments to the MSA. The opportunity to form cooperatives offers the potential for reduced costs and increased revenues for all affected firms, including the small entity.

The difficulties of forming a cooperative under this alternative are expected to be greater than those under Alternatives 2 and 4. It is not clear how the small entity's bargaining position relative to other firms would be affected by the conditions for forming a cooperative under this alternative compared to other alternatives. TAC allocations to the Amendment 80 sector are smaller under this alternative than under the preferred alternative. Operations would face some additional monitoring costs associated with Amendment 80.

Challenges to cooperative formation are greater, increasing the risk that a cooperative might not form, or that some operations will not be able to take advantage of the benefits of the cooperative. Bargaining power of the small entity within the cooperative may be smaller (only one cooperative can form, and it only needs three members to form; a small operation would contribute fewer vessels to meeting the vessel count threshold for cooperative formation, and would contribute less fishing history to the cooperative). Additional monitoring costs would be similar to those under the preferred alternative.

The standards for cooperative formation under Alternative 3 raised serious concerns among industry participants over the ability of the Amendment 80 sector to organize the single cooperative and provide benefits to most of the fleet. Failure to form a

cooperative would make it difficult for Alternative 3 to address the important objective of enabling the industry to improve economic efficiency through cooperative arrangements, including the ability to reduce the costs required to comply with GRS requirements.

Alternative 4 is preferable to Alternative 3 because it reduces the threshold for cooperative formation, thereby encouraging the formation of more efficient operations. Additionally, Alternative 4 is preferable to Alternative 2 in that the number of cooperatives that may form is more limited, which is expected to reduce administrative costs of compliance possible under multiple cooperative arrangements.

#### Federal Rules Which May Duplicate, Overlap or Conflict With the Rule

No federal rules that may duplicate, overlap, or conflict with this action have been identified.

#### Collection-of-Information

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and that have been approved by the OMB under the control numbers listed below. Public reporting burdens per response for these requirements are listed by OMB control number.

##### OMB Control No. 0648-0213

Total public reporting burden for this collection is 36,705 hours. Recordkeeping and reporting requirements are described in this collection.

##### OMB Control No. 0648-0269

Public reporting burden per response is estimated to average 1 hr for a CDQ delivery report and 15 minutes for a CDQ catch report.

##### OMB Control No. 0648-0330

Public reporting burden per response is estimated to average 0.1 hr per at-sea scale inspection request; 0.17 hr for observer sampling station inspection request; 0.17 hr for bin monitoring inspection request; 1 hr for video monitoring system; 2 hr for at-sea scale approval report/sticker; 0.03 hr for observer notification of scale tests; 0.75 hr for records of at-sea scale tests; and 0.02 hr for printed output, at-sea scales.

##### OMB Control No. 0648-0334

Total public reporting burden for this collection is 544 hours. License Limitation Program (LLP) applications are described in this collection.

##### OMB Control No. 0648-0445

Total public reporting burden for this collection is 13,152 hours. Vessel

monitoring system requirements are described in this collection.

##### OMB Control No. 0648-0515

Total public reporting burden for this collection is 3,343 hours. Interagency electronic reporting system (IERS) requirements are described in this collection.

##### OMB Control No. 0648-0565 (Amendment 80 Permits)

Public reporting burden per response is estimated to average 2 hr for the Application for Amendment 80 QS; 2 hr for the Application for CQ; 2 hr for the Application for the Amendment 80 limited access fishery; 2 hr for the Application to Transfer Amendment 80 QS; 2 hr for the Application for CQ Transfer; 4 hr for Annual Amendment 80 cooperative report; and 4 hr for a letter of appeal, if denied a permit.

##### OMB Control No. 0648-0564 (Amendment 80 EDR)

Public reporting burden per response is estimated to average 7.5 hr for an Economic Data Report and 3 hr for verification of data.

Response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSEES**) and by e-mail to: [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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.

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule, or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS Alaska Region has developed an Internet site that provides easy access to details of

this final rule, including links to the final rule, and frequently asked questions regarding Program. The Small Entity Compliance Guide for the Program is available on the Internet at <http://www.fakr.noaa.gov>. Copies of this final rule are available upon request from the NMFS, Alaska Regional Office (see **ADDRESSES**).

#### Executive Order 12866

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

#### List of Subjects

##### 15 CFR Part 902

Reporting and recordkeeping requirements.

##### 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 30, 2007.

**John Oliver,**

*Deputy Assistant Administrator for Operations, 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:

#### 15 CFR Chapter IX [Amended]

#### 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, the table in paragraph (b) under "50 CFR" is amended by:

- a. Removing the existing entry for "679.4(g) and (k)"; and
- b. Adding new entries for "679.4(g)", "679.4(k)", "679.4(o)", "679.5(s)", "679.90", "679.91", "679.93", and "679.94" in alphanumeric order to read as follows:

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

*	*	*	*	*
(b) * * *				
CFR part or section where the information collection requirement is located			Current OMB control number (all numbers begin with 0648-)	
*	*	*	*	*
50 CFR				
*	*	*	*	*
679.4(g) .....			-0334.	
679.4(k) .....			-0334, -0545, -0565.	

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * *	
679.4(o) .....	-0565.
* * * *	
679.5(s) .....	-0565.
* * * *	
679.90 .....	-0565.
679.91 .....	-0565.
679.93 .....	-0213, -0330, -0565.
679.94 .....	-0564.

## 50 CFR Chapter VI [Amended]

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

■ 3. The authority citation for 50 CFR part 679 is revised 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 definition of “Non-AFA trawl catcher/processor.”

■ b. Add the following definitions in alphabetical order: “Amendment 80 cooperative”, “Amendment 80 fishery”, “Amendment 80 initial QS pool”, “Amendment 80 legal landing”, “Amendment 80 limited access fishery”, “Amendment 80 LLP license”, “Amendment 80 LLP/QS license”, “Amendment 80 mackerel QS”, “Amendment 80 mackerel vessel”, “Amendment 80 non-mackerel QS”, “Amendment 80 non-mackerel vessel”, “Amendment 80 official record”, “Amendment 80 Program”, “Amendment 80 PSC”, “Amendment 80 QS holder”, “Amendment 80 QS permit”, “Amendment 80 QS pool”, “Amendment 80 QS unit”, “Amendment 80 sector”, “Amendment 80 species”, “Amendment 80 vessel”, “BSAI trawl limited access sector”, “CQ permit”, “Economic data report (EDR)”, “Initial Total Allowable Catch (ITAC)”, “LLP license originally assigned to an Amendment 80 vessel”, and revise the definition of “Cooperative quota (CQ)”, and the heading of the definition of “Ten percent or greater direct or indirect ownership interest for purposes of the Rockfish Program” to read as follows:

#### § 679.2 Definitions.

\* \* \* \*

*Amendment 80 cooperative* means a group of Amendment 80 QS holders who have chosen to fish cooperatively for Amendment 80 species under the requirements of subpart H to this part

and who have applied for and received a CQ permit issued by NMFS to catch a quantity of fish expressed as a portion of the ITAC and crab and halibut PSC limits.

*Amendment 80 fishery* means an Amendment 80 cooperative or the Amendment 80 limited access fishery.

*Amendment 80 initial QS pool* means the sum of Amendment 80 QS units established for an Amendment 80 species in a management area based on the Amendment 80 official record and used for the initial allocation of Amendment 80 QS units and use cap calculations as described in § 679.92(a).

*Amendment 80 legal landing* means the total catch of Amendment 80 species in a management area in the BSAI by an Amendment 80 vessel that:

(1) Was made in compliance with state and Federal regulations in effect at that time; and

(2) Is recorded on a Weekly Production Report from January 20, 1998, through December 31, 2004; and

(3) Amendment 80 species caught while test fishing, fishing under an experimental, exploratory, or scientific activity permit, or fishing under the Western Alaska CDQ Program are not considered Amendment 80 legal landings.

*Amendment 80 limited access fishery* means the fishery conducted in the BSAI by persons with Amendment 80 QS permits, Amendment 80 LLP licenses, or Amendment 80 vessels assigned to the Amendment 80 limited access fishery.

*Amendment 80 LLP license* means:

(1) Any LLP license that is endorsed for groundfish in the Bering Sea subarea or Aleutian Islands subarea with a catcher/processor designation and that designates an Amendment 80 vessel in an approved application for Amendment 80 QS;

(2) Any LLP license that designates an Amendment 80 vessel at any time after the effective date of the Amendment 80 Program; and

(3) Any Amendment 80 LLP/QS license.

*Amendment 80 LLP/QS license* means an LLP license originally assigned to an Amendment 80 vessel with an Amendment 80 QS permit assigned to that LLP license.

*Amendment 80 mackerel QS* means Atka mackerel QS derived from Amendment 80 legal landings assigned to an Amendment 80 mackerel vessel.

*Amendment 80 mackerel vessel* means an Amendment 80 vessel that is not an Amendment 80 non-mackerel vessel.

*Amendment 80 non-mackerel QS* means Atka mackerel QS derived from

Amendment 80 legal landings assigned to an Amendment 80 non-mackerel vessel.

*Amendment 80 non-mackerel vessel* means an Amendment 80 vessel that is less than 200 feet in length overall and that has been used to catch less than 2.0 percent of the total Amendment 80 legal landings of BSAI Atka mackerel.

*Amendment 80 official record* means information used by NMFS to determine eligibility to participate in the Amendment 80 Program and to assign specific catch privileges to Amendment 80 QS holders.

*Amendment 80 Program* means the Program implemented under subpart H of this part to manage Amendment 80 species fisheries by limiting participation in these fisheries to eligible participants.

*Amendment 80 PSC* means halibut and crab PSC as described in Table 35 to this part that are allocated to the Amendment 80 sector.

*Amendment 80 QS holder* means a person who is issued an Amendment 80 QS permit by NMFS.

*Amendment 80 QS permit* means a permit issued by NMFS that designates the amount of Amendment 80 QS units derived from the Amendment 80 legal landings assigned to an Amendment 80 vessel for each Amendment 80 species in a management area.

*Amendment 80 QS pool* means the sum of Amendment 80 QS units established for each Amendment 80 species in a management area based on the Amendment 80 official record.

*Amendment 80 QS unit* means a measure of the Amendment 80 QS pool based on Amendment 80 legal landings.

*Amendment 80 sector* means:

(1) Those Amendment 80 QS holders who own Amendment 80 vessels and hold Amendment 80 LLP licenses; or

(2) Those persons who hold Amendment 80 LLP/QS licenses.

*Amendment 80 species* means the following species in the following regulatory areas:

(1) BSAI Atka mackerel;

(2) Aleutian Islands Pacific ocean perch;

(3) BSAI flathead sole;

(4) BSAI Pacific cod;

(5) BSAI rock sole; and

(6) BSAI yellowfin sole.

*Amendment 80 vessel* means:

(1) The vessels listed in Column A of Table 31 to this part with the corresponding USCG Documentation Number listed in Column B of Table 31 to this part; or

(2) Any vessel that:

(i) Is not listed as an AFA trawl catcher/processor under sections 208(e)(1) through (20) of the American Fisheries Act; and

(ii) Has been used to harvest with trawl gear and process not less than 150 mt of Atka mackerel, flathead sole, Pacific cod, Pacific ocean perch, rock sole, turbot, or yellowfin sole in the aggregate in the BSAI during the period from January 1, 1997, through December 31, 2002.

\* \* \* \* \*

*BSAI trawl limited access sector* means fisheries conducted in the BSAI by persons using trawl gear and who are not:

- (1) Using an Amendment 80 vessel or an Amendment 80 LLP license; or
- (2) Fishing for CDQ groundfish.

\* \* \* \* \*

*Cooperative quota (CQ):*

(1) *For purposes of the Amendment 80 Program* means:

(i) The annual catch limit of an Amendment 80 species that may be caught by an Amendment 80 cooperative while fishing under a CQ permit;

(ii) The amount of annual halibut and crab PSC that may be used by an Amendment 80 cooperative while fishing under a CQ permit.

(2) *For purposes of the Rockfish Program* means:

(i) The annual catch limit of a primary rockfish species or secondary species that may be harvested by a rockfish cooperative while fishing under a CQ permit;

(2) The amount of annual halibut PSC that may be used by a rockfish cooperative in the Central GOA while fishing under a CQ permit (see rockfish halibut PSC in this section).

*CQ permit* means a permit issued to an Amendment 80 cooperative under § 679.4(o)(2) or to a rockfish cooperative under § 679.4(n)(1).

\* \* \* \* \*

*Economic data report (EDR)* means the report of cost, labor, earnings, and revenue data required under § 679.94.

\* \* \* \* \*

*Initial Total Allowable Catch (ITAC)* means the tonnage of a TAC for an Amendment 80 species in a management area that is available for apportionment to the BSAI trawl limited access sector and the Amendment 80 sector in a calendar year after deducting from the TAC the CDQ reserve, the incidental catch allowance the Regional Administrator determines is required on an annual basis, as applicable, to

account for projected incidental catch of an Amendment 80 species by non-Amendment 80 vessels engaged in directed fishing for groundfish and, for Atka mackerel, the Atka mackerel jig allocation.

\* \* \* \* \*

*LLP license originally assigned to an Amendment 80 vessel* means the LLP license listed in Column C of Table 31 to this part that corresponds to the vessel listed in Column A of Table 31 to this part with the USCG Documentation Number listed in Column B of Table 31 to this part.

\* \* \* \* \*

*Ten percent or greater direct or indirect ownership interest for purposes of the Amendment 80 Program and Rockfish Program* \* \* \*

\* \* \* \* \*

■ 5. In § 679.4, paragraphs (a)(1)(xiii), (b)(6)(iv), (k)(12), and (o) are added to read as follows:

#### § 679.4 Permits.

(a) \* \* \*

(1) \* \* \*

If program permit or card type is:

Permit is in effect from issue date through end of:

For more information, see. . .

(xiii) Amendment 80 Program:

(A) Amendment 80 QS permit .....	Indefinite .....	§ 679.90(b).
(B) CQ permit .....	Specified fishing year .....	§ 679.91(b).
(C) Amendment 80 limited access fishery .....	Specified fishing year .....	§ 679.91(b).

\* \* \* \* \*

(b) \* \* \*

(6) \* \* \*

(iv) NMFS will reissue a Federal fisheries permit to any person who holds a Federal fisheries permit issued to an Amendment 80 vessel.

\* \* \* \* \*

(k) \* \* \*

(12) *Amendment 80 Program*. In addition to other requirements of this part, a license holder must have an Amendment 80 LLP license to conduct fishing for an Amendment 80 species assigned to the Amendment 80 sector.

\* \* \* \* \*

(o) *Amendment 80 Program*—(1) *Amendment 80 QS permit*. (i) An Amendment 80 QS permit is issued to a person who submits a timely and complete application for Amendment 80 QS that is approved by NMFS under § 679.90(b).

(ii) An Amendment 80 QS permit is assigned to the owner of an Amendment

80 vessel that gave rise to that permit under the provisions of § 679.90(b), unless the Amendment 80 QS permit is assigned to the holder of an LLP license originally assigned to an Amendment 80 vessel under the provisions of § 679.90(d) or § 679.90(e).

(iii) If an Amendment 80 QS permit is assigned to the owner of an Amendment 80 vessel the Amendment 80 QS permit will designate the Amendment 80 vessel to which that permit is assigned.

(iv) If an Amendment 80 QS permit is assigned to the holder of an LLP license originally assigned to an Amendment 80 vessel under the provisions of § 679.90(d)(2)(ii) or § 679.90(e)(4), the Amendment 80 QS permit will be permanently affixed to the LLP license originally assigned to an Amendment 80 vessel which will be designated as an Amendment 80 LLP/QS license.

(v) Amendment 80 QS units assigned to an Amendment 80 QS permit are non-severable from that Amendment 80

QS permit and if transferred, the Amendment 80 QS permit must be transferred in its entirety to another person under the provisions of § 679.90(e).

(vi) A person must hold an Amendment 80 LLP license to hold an Amendment 80 QS permit.

(2) *Amendment 80 Cooperative quota (CQ) permit*. (i) A CQ permit is issued annually to an Amendment 80 cooperative that submits a timely and complete application for CQ that is approved by NMFS as described at § 679.91(b)(4).

(ii) A CQ permit authorizes an Amendment 80 cooperative to catch a quantity of fish expressed as a portion of the ITAC and halibut and crab PSC that may be held for exclusive use by that Amendment 80 cooperative.

(iii) A CQ permit will indicate the amount of Amendment 80 species that may be caught by the Amendment 80 cooperative, and the amount of Amendment 80 crab and halibut PSC



that may be used by the Amendment 80 cooperative. The CQ permit will list the members of the Amendment 80 cooperative, Amendment 80 LLP licenses, Amendment 80 QS permits, and Amendment 80 vessels that are assigned to that Amendment 80 cooperative.

(iv) The amount of CQ listed on the CQ permit will be based on:

(A) The amount of Amendment 80 QS units held by all members of the Amendment 80 cooperative designated on a timely and complete application for CQ as described under § 679.91(b) that is approved by NMFS;

(B) The Amendment 80 QS units derived from Amendment 80 QS permits held by members of the Amendment 80 cooperative who have submitted a timely and complete EDR for all Amendment 80 QS permits held by that member as described under § 679.94; and

(C) The amount of CQ as modified by an application for CQ transfer as described under § 679.91(g) that is approved by NMFS.

(v) A CQ permit is valid until whichever of the following occurs first:

(A) Until the end of the year for which the CQ permit is issued; or

(B) Until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(vi) A legible copy of the CQ permit must be carried onboard an Amendment 80 vessel assigned to an Amendment 80 cooperative when fishing in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(3) *Amendment 80 limited access fishery permit.* (i) An Amendment 80 limited access fishery permit is required for an Amendment 80 QS holder to catch, process, and receive Amendment 80 species assigned to the Amendment 80 limited access fishery, or use halibut and crab PSC assigned to the Amendment 80 limited access fishery. An Amendment 80 limited access fishery permit is issued annually to an Amendment 80 QS holder who:

(A) Has submitted a timely and complete application for the Amendment 80 limited access fishery as described at § 679.91(b)(4) that is approved by NMFS, or

(B) Is assigned to the Amendment 80 limited access fishery by NMFS as described at § 679.91(a)(3)(ii); and

(C) Has submitted a timely and complete EDR for all Amendment 80 QS permits held by that person as described under § 679.94.

(ii) An Amendment 80 limited access fishery permit is valid until whichever of the following occurs first:

(A) Until the end of the year for which the Amendment 80 limited access fishery permit is issued; or

(B) Until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(iii) A legible copy of the Amendment 80 limited access fishery permit must be carried onboard an Amendment 80 vessel assigned to the Amendment 80 limited access fishery when fishing in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

6. In § 679.5, paragraph (a)(1)(i)(C) is revised; paragraphs (n)(1) and (n)(2) are removed; paragraphs (n)(3) and (n)(4) are redesignated as paragraphs (n)(1) and (n)(2), respectively; and paragraph (s) is added to read as follows:

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

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(C) *CDQ halibut.* The CDQ permit holder, CDQ cardholder, or Registered Buyer must comply with the R&R requirements provided in paragraphs (g), (k), and (l)(1) through (6) of this section.

\* \* \* \* \*

(s) *Amendment 80 Program—(1) General.* The owners and operators of Amendment 80 vessels must comply with the applicable recordkeeping and reporting requirements of this section. All owners of Amendment 80 vessels must ensure that their designated representatives or employees comply with all applicable recordkeeping and reporting requirements.

(2) *Logbook-DCPL.* Operators of Amendment 80 vessels must use a daily cumulative production logbook for trawl gear as described in paragraph (a) of this section to record Amendment 80 Program landings and production.

(3) *Check-in/check-out report, processors.* Operators or managers of an Amendment 80 vessel must submit check-in/check-out reports as described in paragraph (h) of this section.

(4) *Weekly production report (WPR).* Operators of Amendment 80 vessels that use a DCPL must submit a WPR as described in paragraph (i) of this section.

(5) *Product transfer report (PTR), processors.* Operators of Amendment 80 vessels must submit a PTR as described in paragraph (g) of this section.

(6) *Annual Amendment 80 cooperative report—(i) Applicability.* An Amendment 80 cooperative issued a CQ permit must submit annually to the Regional Administrator an Amendment

80 cooperative report detailing the use of the cooperative's CQ.

(ii) *Time limits and submittal.* (A) The annual Amendment 80 cooperative report must be submitted to the Regional Administrator by an electronic data file in a NMFS-approved format; by fax: 907-586-7557; or by mail sent to the Regional Administrator, NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668; and

(B) The annual Amendment 80 cooperative report for fishing activities under a CQ permit issued for the prior calendar year must be received by the Regional Administrator not later than 1700 hours A.l.t. on March 1 of each year.

(iii) *Information required.* The annual Amendment 80 cooperative report must include at a minimum:

(A) The cooperative's actual retained and discarded catch of CQ and GOA sideboard limited fisheries (if applicable) by statistical area and on a vessel-by-vessel basis;

(B) A description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated; and

(C) A description of any actions taken by the cooperative against specific members in response to a member that exceeded the amount of CQ that the member was assigned to catch for the Amendment 80 cooperative.

(7) *Vessel monitoring system (VMS) requirements* (see § 679.28(f)).

7. In § 679.7, remove and reserve paragraphs (d)(13), (d)(14), and (d)(16); revise paragraph (m); and add paragraph (o) to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(m) *Prohibitions specific to GRS.*

(Effective January 20, 2008). It is unlawful for either the owner or operator of a catcher/processor not listed in § 679.4(l)(2)(i) not assigned to an Amendment 80 cooperative and using trawl gear in the BSAI, or an Amendment 80 cooperative to:

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

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

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

be available to be sampled by an observer for species composition.

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

(5) Combine catch from two or more hauls.

(6) Receive deliveries of unsorted catch at any time during a fishing year without complying with § 679.27(j)(5), if the vessel is required to comply with § 679.27(j)(1) at any time during the same fishing year.

\* \* \* \*

(o) *Amendment 80 Program*—(1) *Amendment 80 vessels.* (i) Use any vessel other than an Amendment 80 vessel to catch any amount of Amendment 80 species, crab PSC, or halibut PSC assigned to the Amendment 80 sector.

(ii) Use an Amendment 80 vessel to catch any amount of Amendment 80 species, crab PSC, or halibut PSC assigned to the BSAI trawl limited access sector.

(2) *Amendment 80 LLP license.* (i) Designate any vessel other than an Amendment 80 vessel on an Amendment 80 LLP license;

(ii) Fail to designate an Amendment 80 vessel on an Amendment 80 LLP license that is endorsed for groundfish in the Bering Sea subarea or Aleutian Islands subarea with a catcher/processor designation at all times during a calendar year unless that Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108.

(3) *Amendment 80 QS permit.* (i) Hold an Amendment 80 QS permit assigned to an Amendment 80 vessel if that person does not hold an Amendment 80 LLP license that designates that Amendment 80 vessel.

(ii) Hold an Amendment 80 QS permit that is assigned to an Amendment 80 vessel under § 679.4(o)(1) if that person is not designated as the owner of that Amendment 80 vessel by an abstract of title or USCG documentation.

(iii) Hold an Amendment 80 QS permit assigned to an Amendment 80 vessel if that Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108 after October 15 in the calendar year following the date of that actual total loss, constructive total loss, or permanent ineligibility to receive a fishery endorsement under 46 U.S.C. 12108.

(4) *Amendment 80 cooperatives.* (i) Use an Amendment 80 vessel,

Amendment 80 LLP license, or Amendment 80 QS permit not assigned to an Amendment 80 cooperative for a calendar year to catch any Amendment 80 species, crab PSC, or halibut PSC assigned to that Amendment 80 cooperative during that calendar year;

(ii) Use an Amendment 80 vessel assigned to an Amendment 80 cooperative for a calendar year to receive or process catch from any Amendment 80 vessel not assigned to that Amendment 80 cooperative for that calendar year.

(iii) Catch, process, or receive Amendment 80 species assigned to an Amendment 80 cooperative in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season without a copy of a valid Amendment 80 CQ permit onboard unless that Amendment 80 vessel is using dredge gear while directed fishing for scallops.

(iv) Retain an amount of groundfish during a fishing year that is less than the amount of groundfish required to be retained by an Amendment 80 cooperative under the GRS described at § 679.27(j).

(v) For an Amendment 80 cooperative to catch any Amendment 80 species, crab PSC, or halibut PSC in excess of the CQ permit amounts assigned to that Amendment 80 cooperative.

(5) *Amendment 80 limited access fishery.* (i) Use an Amendment 80 vessel, Amendment 80 LLP license, or Amendment 80 QS permit not assigned to the Amendment 80 limited access fishery for a calendar year to catch any Amendment 80 species, crab PSC, or halibut PSC assigned to the Amendment 80 limited access sector during that calendar year;

(ii) Use an Amendment 80 vessel assigned to the Amendment 80 limited access fishery for a calendar year to receive or process catch from any Amendment 80 vessel not assigned to the Amendment 80 limited access fishery for that calendar year;

(iii) Catch, process, or receive Amendment 80 species assigned to the Amendment 80 limited access fishery in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season without a copy of a valid Amendment 80 limited access fishery permit onboard unless that Amendment 80 vessel is using dredge gear while directed fishing for scallops.

(6) *Catch monitoring.* (i) Operate an Amendment 80 vessel using any gear but dredge gear while directed fishing for scallops or a catcher/processor not listed in § 679.4(l)(2)(i) and using trawl gear, to catch, process, or receive fish in the BSAI or adjacent waters opened by

the State of Alaska for which it adopts a Federal fishing season and fail to follow the catch monitoring requirements detailed at § 679.93(a), (b), and (c).

(ii) Operate an Amendment 80 vessel using any gear but dredge gear while directed fishing for scallops that is subject to a sideboard limit detailed at § 679.92(b) and (c), as applicable, in the GOA or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, and fail to follow the catch monitoring requirements detailed at § 679.93(a), (b), and (d).

(7) *Use caps.* Exceed the use caps that apply under § 679.92(a).

(8) *Economic data report (EDR):* Fail to submit a timely and complete EDR as described under § 679.94.

■ 8. In § 679.20:

■ a. Paragraph (a)(7)(ii)(A)(8) is revised;

■ b. Paragraph (a)(7)(iii)(B) is revised.

■ c. Paragraphs (a)(7)(v), (a)(7)(vi), (a)(8)(iv), and (a)(8)(v) are added;

■ d. Paragraph (a)(8)(ii) is revised;

■ e. Paragraphs (a)(10) and (a)(11) are redesignated as paragraphs (a)(11) and (a)(12), respectively;

■ f. New paragraph (a)(10) is added;

■ g. Paragraphs (b)(1)(i) and (ii) are revised and paragraph (b)(1)(iii) is removed; and

■ h. Paragraphs (d)(1)(v) and (d)(1)(vi) are added.

The additions and revisions read as follows:

#### § 679.20 General limitations.

\* \* \* \*

(a) \* \* \*

(7) \* \* \*

(ii) \* \* \*

(A) \* \* \*

(8) Amendment 80 sector—13.4

\* \* \* \*

(iii) \* \* \*

(B) *Trawl gear sectors.* The Regional Administrator will reallocate any projected unharvested amounts of Pacific cod TAC from the trawl catcher vessel or AFA trawl catcher/processor sectors to other trawl sectors before unharvested amounts are reallocated and apportioned to specified gear sectors as follows:

(1) 83.1 percent to the hook-and-line catcher/processor sector,

(2) 2.6 percent to the pot catcher/processor sector, and

(3) 14.3 percent to the greater than or equal to 60 ft (18.3 m) LOA pot catcher vessel sector.

\* \* \* \*

(v) *ITAC allocation to the Amendment 80 sector.* A percentage of the Pacific cod TAC, after subtraction of the CDQ reserve, will be allocated as ITAC to the

Amendment 80 sector as described in Table 33 to this part. Separate allocations for each Amendment 80 cooperative and the Amendment 80 limited access fishery are described under § 679.91. The allocation of Pacific cod to the Amendment 80 sector will be further divided into seasonal apportionments as described under paragraph (a)(7)(iv)(A)(1)(ii) of this section.

(A) *Use of seasonal apportionments by Amendment 80 cooperatives.* (1) The amount of Pacific cod listed on a CQ permit that is assigned for use in the A season may be used in the B or C season.

(2) The amount of Pacific cod that is listed on a CQ permit that is assigned for use in the B season may not be used in the A season.

(3) The amount of Pacific cod listed on a CQ permit that is assigned for use in the C season may not be used in the A or B seasons.

(B) *Harvest of seasonal apportionments in the Amendment 80 limited access fishery.* (1) Pacific cod ITAC assigned for harvest by the Amendment 80 limited access fishery in the A season may be harvested in the B season.

(2) Pacific cod ITAC assigned for harvest by the Amendment 80 limited access fishery in the B season may not be harvested in the A season.

(3) Pacific cod ITAC assigned for harvest by the Amendment 80 limited access fishery in the C season may not be harvested in the A or B seasons.

(vi) *ITAC rollover to Amendment 80 cooperatives.* If during a fishing year, the Regional Administrator determines that a portion of the Pacific cod TAC is unlikely to be harvested and is made available for reallocation to the Amendment 80 sector according to the provisions under paragraph (a)(7)(iii) of this section, the Regional Administrator may issue inseason notification in the **Federal Register** that reallocates that remaining amount of Pacific cod to Amendment 80 cooperatives, according to the procedures established under § 679.91(f).

(8) \* \* \*

(ii) *ITAC allocation to Amendment 80 and BSAI trawl limited access sectors.* The remainder of the Atka mackerel TAC, after subtraction of the jig gear allocation, CDQ reserve, and incidental catch allowance for the BSAI trawl limited access sector and vessels using non-trawl gear, will be allocated as ITAC to the Amendment 80 and BSAI trawl limited access sectors.

\* \* \* \* \*

(iv) *Amendment 80 sector allocation.* The allocation of Atka mackerel ITAC to

the Amendment 80 sector is established in Table 33 to this part. The allocation of Atka mackerel ITAC to the Amendment 80 sector will be further divided into seasonal apportionments under § 679.23(e)(3), and separate allocations for each Amendment 80 cooperative and the Amendment 80 limited access fishery as described under § 679.91.

(A) *Use of seasonal apportionments by Amendment 80 cooperatives.* (1) The amount of Atka mackerel listed on a CQ permit that is assigned for use in the A season may be used in the B season.

(2) The amount of Atka mackerel listed on a CQ permit that is assigned for use in the B season may not be used in the A season.

(B) *Harvest of seasonal apportionments in the Amendment 80 limited access fishery.* (1) Atka mackerel ITAC assigned for harvest by the Amendment 80 limited access fishery in the A season may be harvested in the B season.

(2) Atka mackerel ITAC assigned for harvest by the Amendment 80 limited access fishery in the B season may not be harvested in the A season.

(v) *BSAI trawl limited access sector allocation—(A) BSAI trawl limited access sector directed fishing allowance.* The amount of Atka mackerel ITAC assigned as a directed fishing allowance to the BSAI trawl limited access sector is established in Table 33 to this part.

(B) *BSAI trawl limited access sector incidental catch allowance and ITAC rollover.* If, during a fishing year, the Regional Administrator determines that a portion of the Atka mackerel incidental catch allowance or ITAC assigned to the BSAI trawl limited access sector is unlikely to be harvested, the Regional Administrator may issue inseason notification in the **Federal Register** that reallocates that remaining amount of Atka mackerel directed fishing allowance to Amendment 80 cooperatives, according to the procedures established under § 679.91(f).

\* \* \* \* \*

(10) *Amendment 80 species except Pacific cod and Atka mackerel—(i) ITAC allocation to the Amendment 80 and BSAI trawl limited access sectors.* The remainder of the TACs for each Amendment 80 species other than Atka mackerel and Pacific cod, after subtraction of the CDQ reserve and incidental catch allowance for the BSAI trawl limited access sector and vessels using non-trawl gear, will be allocated as ITAC to the Amendment 80 and BSAI trawl limited access sectors.

(ii) *Amendment 80 sector ITAC.* The allocation of ITAC for each Amendment

80 species other than Atka mackerel and Pacific cod to the Amendment 80 sector is established in Tables 33 and 34 to this part. The allocation of these species to the Amendment 80 sector will be further divided into separate allocations for each Amendment 80 cooperative and the Amendment 80 limited access fishery as described under § 679.91.

(iii) *BSAI trawl limited access sector allocation—(A) BSAI trawl limited access sector directed fishing allowance.* The amount of ITAC for each Amendment 80 species other than Atka mackerel and Pacific cod assigned as a directed fishing allowance to the BSAI trawl limited access sector is established in Tables 33 and 34 to this part.

(B) *BSAI trawl limited access sector ITAC rollover.* If, during a fishing year, the Regional Administrator determines that a portion of the incidental catch allowance or ITAC assigned to the BSAI trawl limited access sector for each Amendment 80 species other than Atka mackerel and Pacific cod is unlikely to be harvested, the Regional Administrator may issue inseason notification in the **Federal Register** that reallocates that remaining amount to Amendment 80 cooperatives, according to the procedures established under § 679.91(f).

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) *Nonspecified reserve.* Fifteen percent of the BSAI TAC for each target species and the “other species” category, except pollock, the hook-and-line and pot gear allocation for sablefish, and the Amendment 80 species, is automatically placed in the nonspecified reserve before allocation to any sector. The remaining 85 percent of each TAC is apportioned to the initial TAC for each target species that contributed to the nonspecified reserve and the “other species” category. The nonspecified reserve is not designated by species or species group. Any amount of the nonspecified reserve may be apportioned to target species that contributed to the nonspecified reserve or the “other species” category, provided that such apportionments are consistent with paragraph (a)(3) of this section and do not result in overfishing of a target species or the “other species” category.

(ii) *CDQ reserves—(A) Pollock CDQ reserves—(1) Bering Sea.* In the annual harvest specifications required by paragraph (c) of this section, 10 percent of the Bering Sea subarea pollock TAC will be allocated to a CDQ reserve as a directed fishing allowance.

(2) *Aleutian Islands subarea and Bogoslof District.* In the annual harvest

specifications required by paragraph (c) of this section, 10 percent of the Aleutian Islands subarea and Bogoslof District pollock TACs will be allocated to a CDQ reserve as a directed fishing allowance unless the Aleutian Islands subarea or Bogoslof District is closed to directed fishing for pollock by regulation. If the Aleutian Islands subarea and/or Bogoslof District is closed to directed fishing for pollock by regulation, then no pollock CDQ reserve will be established for those areas and incidental harvest of pollock by CDQ groups will accrue against the incidental catch allowance for pollock established under paragraph (a)(5)(i)(A)(1) of this section.

(B) *Fixed gear sablefish CDQ reserves.* Twenty percent of the hook-and-line or pot gear allocation of sablefish established under paragraphs (a)(4)(iii)(A) and (a)(4)(iv)(A) of this section will be allocated to a CDQ reserve for each subarea.

(C) *CDQ reserves for Amendment 80 species.* An amount equal to 10.7 percent of the BSAI TACs for Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod will be allocated to a CDQ reserve for each of these species by management area, subarea, or district.

(D) *CDQ reserves for other groundfish species.* An amount equal to 10.7 percent of the BSAI TACs for Bering Sea Greenland turbot and arrowtooth flounder, and 7.5 percent of the trawl gear allocation of sablefish in the BS and AI is apportioned from the nonspecified reserve established under paragraph (b)(1)(i) of this section to a CDQ reserve for each of these species by management area, subarea, or district.

(E) If the groundfish harvest specifications required by paragraph (c) of this section change a TAC category allocated to a CDQ reserve under paragraphs (b)(1)(ii)(A) through (D) of this section by combining or splitting a species, species group, or management area, then the same percentage of the TAC apportioned to a CDQ reserve in paragraphs (b)(1)(ii)(A) through (D) of this section will apply to the new TAC categories.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(v) *Amendment 80 GOA sideboard limits—GOA groundfish.* (A) If the Regional Administrator determines that a GOA sideboard limit for a GOA groundfish species as described under Table 37 to this part is sufficient to support a directed fishing allowance for that species, the Regional Administrator

may establish a directed fishing allowance for the species applicable only to Amendment 80 vessels subject to the GOA groundfish sideboard limit.

(B) If the Regional Administrator determines that a GOA groundfish sideboard limit as described under Table 37 to this part is insufficient to support a directed fishing allowance by Amendment 80 vessels for that species, then the Regional Administrator may set the directed fishing allowance to zero for that species for Amendment 80 vessels.

(C) Upon determining that a GOA sideboard limit as described under Table 37 to this part for a species is or will be reached, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for that species by the Amendment 80 vessels to which the GOA sideboard limit applies.

(vi) *Amendment 80 GOA sideboard limits—halibut PSC.* (A) If the Regional Administrator determines that a GOA sideboard limit for halibut PSC is sufficient to support a directed fishery for a species or species group, management area, and season specified in Table 38 to this part, then the Regional Administrator may establish a halibut PSC sideboard limit for that species or species group, management area, and season applicable to the Amendment 80 vessels to which the halibut PSC limit applies.

(B) If the Regional Administrator determines that a halibut PSC sideboard limit is insufficient to support a directed fishery for a species or species group, management area, and season as specified in Table 38 to this part then the Regional Administrator may set the halibut PSC sideboard limit for that species or species group to zero for the Amendment 80 vessels to which the halibut PSC limit applies.

(C) Upon determining that a halibut PSC sideboard limit for a species or species group, management area, and season as specified in Table 38 to this part is or will be reached, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for a specific species or species group by the Amendment 80 vessels to which the halibut PSC limit applies as follows:

(1) If the halibut PSC sideboard limit is reached for the deep-water species fishery as defined in § 679.21(d)(3)(iii)(B) for a season, then NMFS will close directed fishing in the GOA for all species in the deep-water species fishery except northern rockfish, Pacific ocean perch, and pelagic shelf rockfish in the Central GOA for that season.

(2) If the halibut PSC sideboard limit is reached for the shallow-water species fishery as defined in § 679.21(d)(3)(iii)(A) for a season, then NMFS will close directed fishing in the GOA for all species in the shallow-water species fishery for that season.

\* \* \* \* \*

■ 9. In § 679.21, paragraphs (e)(1)(i), (e)(3)(i), (e)(3)(ii) heading, (e)(3)(ii)(A), (e)(3)(ii)(B)(2), and (e)(3)(iv) introductory text are revised, and paragraph (e)(3)(vi) is added to read as follows:

**§ 679.21 Prohibited species bycatch management.**

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(i) *PSQ reserve.* The following allocations of the trawl gear PSC limits are made to the CDQ Program as PSQ reserves. The PSQ reserves are not apportioned by gear or fishery.

(A) *Crab PSQ.* 10.7 percent of each PSC limit set forth in paragraphs (e)(1)(ii) through (iv) of this section.

(B) *Halibut PSQ.* (1) 276 mt of the total PSC limit set forth in paragraph (e)(1)(v) of this section in each year for 2008 and 2009.

(2) 326 mt of the total PSC limit set forth in paragraph (e)(1)(v) of this section effective in 2010 and each year thereafter.

(C) *Salmon PSQ—*(1) Chinook salmon. 7.5 percent of the PSC limit set forth in paragraph (e)(1)(vii) of this section.

(2) *Non-Chinook salmon.* 10.7 percent of the PSC limit set forth in paragraph (e)(1)(viii) of this section.

\* \* \* \* \*

(3) \* \* \*

(i) *General.* NMFS, after consultation with the Council and after subtraction of PSQ reserves and PSC CQ assigned to Amendment 80 cooperatives, will apportion each PSC limit set forth in paragraphs (e)(1)(ii) through (viii) of this section into bycatch allowances for fishery categories defined in paragraph (e)(3)(iv) of this section, based on each category's proportional share of the anticipated incidental catch during a fishing year of prohibited species for which a PSC limit is specified and the need to optimize the amount of total groundfish harvested under established PSC limits.

(ii) *Red king crab, C. bairdi, C. opilio, and halibut—*(A) *General.* For vessels engaged in directed fishing for groundfish in the BSAI, other than vessels fishing under a CQ permit assigned to an Amendment 80 cooperative, the PSC limits for red king

crab, *C. bairdi*, *C. opilio*, and halibut will be apportioned to the trawl fishery categories defined in paragraphs (e)(3)(iv)(B) through (F) of this section.

(B) \* \* \* (2) When the RKCSS is open to vessels fishing for groundfish with nonpelagic trawl gear under paragraph (e)(3)(ii)(B)(1) of this section, NMFS, after consultation with the Council, will specify an amount of the red king crab bycatch limit annually established under paragraph (e)(1)(ii) of this section for the RKCSS. The amount of the red king crab bycatch limit specified for the RKCSS will not exceed an amount equivalent to 25 percent of the red king crab PSC allowance and will be based on the need to optimize the groundfish harvest relative to red king crab bycatch.

(iv) *Trawl fishery categories.* For purposes of apportioning trawl PSC limits among fisheries, other than PSC CQ assigned to an Amendment 80 cooperative, the following fishery categories are specified and defined in terms of round-weight equivalents of those groundfish species or species

groups for which a TAC has been specified under § 679.20.

\* \* \* \* \* (vi) *Amendment 80 sector bycatch limitations.* (A) Halibut and crab bycatch limits for the Amendment 80 sector in the BSAI will be established according to the procedure and formulae set out in § 679.91(d) through (f); and

(B) Halibut and crab PSC assigned to the Amendment 80 limited access fishery will be managed through directed fishing closures for Amendment 80 vessels to which the halibut and crab bycatch limits apply.

\* \* \* \* \* ■ 10. In § 679.27, paragraph (j) is revised to read as follows:

**§ 679.27 Improved Retention/Improved Utilization Program.**

\* \* \* \* \* (j) *Groundfish retention standard.* (Effective January 20, 2008)—(1) *Applicability.* (i) The operator of a catcher/processor not listed in § 679.4(1)(2)(i), not assigned to an Amendment 80 cooperative, and using

trawl gear in the BSAI must comply with the GRS set forth under paragraph (j)(4) of this section while fishing for or processing groundfish caught from the BSAI from January 1 through December 31 of each year.

(ii) An Amendment 80 cooperative and the members of an Amendment 80 cooperative must comply with the GRS set forth under paragraph (j)(4) of this section while fishing for or processing groundfish caught from the BSAI from January 1 through December 31 of each year.

(iii) No part of the GRS supersedes minimum retention or utilization requirements for IR/IU species found in this section.

(2) *Percent of groundfish retained calculation for a catcher/processor not in an Amendment 80 cooperative.* For any fishing year, the percent of groundfish retained by each catcher/processor not listed in § 679.4(1)(2)(i), not assigned to an Amendment 80 cooperative, and using trawl gear in the BSAI will be calculated using the following equations:

$$\text{GFRoundweight} = \sum_{i=1}^n (\text{PWspecies}_n / \text{PRRspecies}_n)$$

Substituting the value for GFRoundweight into the following equation:

$$\text{GFR}\% = (\text{GFRoundweight} / \text{TotalGF}) * 100$$

Where:

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

PWspecies<sub>n</sub> is the total annual product weight for each groundfish species listed in Table 2a to this part by product type

as reported in the vessel's weekly production report required at § 679.5(i). PRRspecies<sub>n</sub> is the standard product recovery rate for each groundfish species and product combination listed in Table 3 to this part.

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

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

(3) *Percent of groundfish retained calculation for an Amendment 80 cooperative.* For each Amendment 80 cooperative, for any fishing year, the percent of groundfish retained by that Amendment 80 cooperative is based on the aggregate groundfish retained by all Amendment 80 vessels assigned to that Amendment 80 cooperative and will be calculated using the following equations:

$$\text{GFRoundweight} = \sum_{i=1}^n (\text{PWspecies}_n / \text{PRRspecies}_n)$$

Substituting the value for GFRoundweight into the following equation:

$$\text{GFR}\% = (\text{GFRoundweight} / \text{TotalGF}) * 100$$

Where:

GFRoundweight is the total annual round weight equivalent of all retained product weights retained by all Amendment 80 vessels assigned to that Amendment 80 cooperative for each IR/IU groundfish species.

PWspecies<sub>n</sub> is the total annual product weight for each groundfish species listed in Table 2a to this part by product type as reported in the vessel's weekly production report for all Amendment 80 vessels assigned to that Amendment 80 cooperative required at § 679.5(i).

PRRspecies<sub>n</sub> is the standard product recovery rate for each groundfish species and product combination listed in Table 3 to this part.

GFR% is the groundfish retention percentage for an Amendment 80 cooperative

calculated as GFRoundweight divided by the total weight of groundfish catch. TotalGF is the total groundfish round catch weight for all Amendment 80 vessels assigned to that Amendment 80 cooperative as measured by the flow scale measurement, less any non-groundfish, PSC species or groundfish species on prohibited species status under § 679.20.

(4) *Minimum groundfish retention standard.* An Amendment 80 cooperative or a catcher/processor not

listed in § 679.4(l)(2)(i), not assigned to an Amendment 80 cooperative, and using trawl gear in the BSAI must comply with the annual minimum groundfish retention standard requirements displayed in the following table:

GROUNDFISH RETENTION STANDARD

Year	Annual GRS (percent)
2008 .....	65
2009 .....	75
2010 .....	80
2011 and each year after .....	85

(5) *Monitoring requirements—(i) Observer coverage requirements.* In addition to complying with minimum observer coverage requirements at § 679.50(c), the owner of an Amendment 80 vessel or any other catcher/processor not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI, must comply with observer coverage requirements as described at §§ 679.50(c)(6), and 679.7(m)(3) at all times the vessel is used to harvest groundfish in the BSAI with trawl gear.

(ii) *Catch weighing.* For each haul, all catch by an Amendment 80 vessel or any other catcher/processor not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI must be weighed on a NMFS-approved scale and made available for sampling by a NMFS certified observer at a single location. The owner or operator of an Amendment 80 vessel or a catcher/processor not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI must ensure that the vessel is in compliance with the scale requirements described at § 679.28(b), that each haul is weighed separately, and that no sorting of catch takes place prior to weighing. All weighed catch must be recorded as required at § 679.5(a)(7)(iv)(C).

(iii) *Observer sampling station.* The owner or operator of an Amendment 80 vessel or any other catcher/processor not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI must provide an observer sampling station as described at § 679.28(d) and the owner of the vessel must ensure that the vessel operator complies with the observer sampling station requirements described at § 679.28(d) at all times the vessel is used to harvest groundfish in the BSAI. In addition to the requirements at § 679.28(d)(7)(ii), observers must be able to sample all catch from a single point along the conveyer belt conveying unsorted catch, and when standing where unsorted catch is collected, the observer must be able to see that no

catch has been removed between the bin and the location along the conveyer belt at which the observers collect their samples.

(6) *Requirements for vessels that also harvest groundfish outside of the BSAI.* The operator of an Amendment 80 vessel, or any other vessel required to comply with paragraph (j) of this section, must offload or transfer all fish or fish product prior to harvesting fish outside the BSAI, unless the operator of the vessel is in compliance with the recordkeeping and reporting and monitoring requirements described at § 679.5(a)(7)(iv)(C) and paragraph (j)(5) of this section at all times the vessel harvests or processes groundfish outside the BSAI.

(7) *Requirements for vessels receiving deliveries of unsorted catch.* The owner or operator of an Amendment 80 vessel, or any other vessel required to comply with this paragraph (j) at any time during a fishing year and who also receives deliveries of unsorted catch at any time during a fishing year must comply with paragraph (j)(5) of this section while processing deliveries of unsorted catch.

■ 11. In § 679.28, paragraph (d)(8)(i) is revised; paragraph (h) is added and reserved; and paragraph (i) is added to read as follows:

**§ 679.28 Equipment and operational requirements.**

\* \* \* \* \*

(d) \* \* \*

(8) \* \* \*

(i) *How does a vessel owner arrange for an observer sampling station inspection?* The owner may arrange the inspection time and place by submitting to NMFS by fax (206–526–4066) or e-mailing ([station.inspections@noaa.gov](mailto:station.inspections@noaa.gov)) an Inspection Request for Observer Sampling Station available on the NMFS Alaska Region Web site at <http://www.fakr.noaa.gov>. Inspections will be scheduled no later than 10 working days after NMFS receives a complete application for an inspection. The owner must provide the following information:

(A) Name and signature of the person submitting the application, and the date of the application.

(B) Business mailing address, telephone number, and fax number of the person submitting the application.

(C) Whether the vessel or processor has received an observer sampling scale inspection before and, if so, the date of the most recent inspection report.

(D) Vessel name and name of contact person on vessel.

(E) Federal fishery permit number.

(F) Location of vessel where sampling station inspection is requested to occur, including street address and city.

(G) Requested inspection date.

(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, and the name of the manufacturer and model of the observer sampling scale.

(I) For all other vessels, a diagram drawn to scale showing the location(s) where catch comes on board the vessel, the location where observers will sample unsorted catch, the location of the observer sampling station, including the observer sampling scale, and the name of the manufacturer and model of the observer sampling scale.

(J) For all vessels, a copy of the most recent scale inspection report issued under paragraph (b)(2) of this section.

\* \* \* \* \*

(h) [Reserved]

(i) *Bin monitoring—(1) Bin monitoring standards.* The vessel owner or operator must comply with the requirements specified in paragraph (i)(1)(i) of this section unless the vessel owner or operator has requested, and NMFS has approved, one of the monitoring options described at paragraph (i)(1)(ii) or (i)(1)(iii) of this section.

(i) *Option 1—No crew in bin or tank.* No crew may enter any bin or tank preceding the point where the observer samples unsorted catch, unless:

(A) The flow of fish has been stopped between the tank and the location where the observer samples unsorted catch;

(B) All catch has been cleared from all locations between the tank and the location where the observer samples unsorted catch;

(C) The observer has been given notice that the vessel crew must enter the tank; and either

(D) The observer is given the opportunity to observe the activities of the person(s) in the tank; or

(E) The observer informs the vessel operator, or his designee, that all sampling has been completed for a given haul, in which case crew may enter a tank containing fish from that haul without stopping the flow of fish or clearing catch between the tank and the observer sampling station.

(iii) *Option 2—Line of sight option.* From the observer sampling station, the location where the observer sorts and weighs samples, and the location from which the observer collects unsorted catch, an observer of average height

(between 64 and 74 inches (140 and 160 cm)) must be able to see all areas of the bin or tank where crew could be located preceding the point where the observer samples catch. If clear panels are used to comply with this requirement, those panels must be maintained sufficiently clear to allow an individual with normal vision to read text located two feet inside of the bin or tank. The text must be written in 87 point type (corresponding to line four on a standard Snellen eye chart) and the text must be readable from the observer sampling station, the location where the observer sorts and weighs samples, and the location from which the observer collects unsorted catch. The observer must be able to view the activities of crew in the bin from these locations.

(iv) *Option 3—Video option.* A vessel must provide and maintain cameras, a monitor, and a digital video recording system for all areas of the bin or tank where crew could be located preceding the point where the observer collects catch. The vessel owner or operator must ensure that:

(A) The system has 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 inside the bin must be recorded and stored;

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

(C) The system uses commercially available software;

(D) Color cameras must have at a minimum 420 TV lines of resolution, a lux rating of 0.1, and auto-iris capabilities;

(E) 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 beginning of a trip, unless NMFS has notified the vessel operator that the video data may be retained for less than this 120-day period;

(F) The system provides sufficient resolution and field of view to see and read a text sample written in 130 point type (corresponding to line two of a standard Snellen eye chart) from any location within the tank where crew could be located;

(G) The system is recording at a speed of no less than 5 frames per second at all times when fish are inside the tank;

(H) A 16-bit or better color monitor, for viewing activities within the tank in real time, is provided within the

observer sampling station (or location where the observer sorts and weighs samples, if applicable). The monitor must:

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

(2) Be operating at all times when fish are in the tank;

(3) Be securely mounted at or near eye level;

(4) Provide the same resolution as specified in paragraph (i)(1)(iii)(F) of this section.

(I) The observer is able to view any earlier footage from any point in the trip and is assisted by crew knowledgeable in the operation of the system in doing so;

(J) The vessel owner has, in writing, provided the Regional Administrator with the specifications of the system. At a minimum, this must include:

(1) The length and width (in pixels) of each image;

(2) The file type in which the data are recorded;

(3) The type and extent of compression;

(4) The frame rate at which the data will be recorded;

(5) The brand and model number of the cameras used;

(6) The brand, model, and specifications of the lenses used;

(7) A scale drawing of the location of each camera and its coverage area;

(8) The size and type of storage device;

(9) The type, speed, and operating system of any computer that is part of the system;

(10) The individual or company responsible for installing and maintaining the system;

(11) The individual onboard the vessel responsible for maintaining the system and working with the observer on its use; and

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

(K) Any change to the video 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.

(v) *Failure of line of sight or video option.* If the observer determines that a monitoring option selected by a vessel owner or operator specified in paragraph (i)(1)(ii) or (i)(1)(iii) of this section fails to provide adequate monitoring of all areas of the bin where crew could be located, then the vessel must use the monitoring option specified in paragraph (i)(1)(i) of this section until the observer determines that adequate monitoring of all areas of

the bin where crew could be located is provided by the monitoring option selected by the vessel owner or operator.

(2) *Who must have a bin monitoring option inspection?* A vessel owner or operator choosing to operate under the line of sight option (option 2) in paragraph (i)(1)(ii) of this section or the video option (option 3) in paragraph (i)(1)(iii) of this section must receive an annual bin monitoring option inspection.

(3) *How does a vessel owner arrange for a bin monitoring option inspection?*

The owner may arrange the inspection time and place by submitting to NMFS by fax (206-526-4066) or e-mail ([station.inspections@noaa.gov](mailto:station.inspections@noaa.gov)) an Inspection Request for Bin Monitoring available on the NMFS Alaska Region Web site at (<http://www.fakr.noaa.gov>). Inspections will be scheduled no later than 10 working days after NMFS receives a complete application for an inspection. The owner must provide the following information:

(i) Name and signature of the person submitting the application, and the date of the application;

(ii) Business mailing address, telephone number, and fax number of the person submitting the application;

(iii) Whether the vessel has received a bin monitoring option inspection before, and if so, the date of the most recent inspection report;

(iv) Vessel name;

(v) Federal fishery permit number;

(vi) Location where the inspection is requested to occur, including street address and city; and

(vii) A diagram drawn to scale showing the locations where all catch will be weighed and sorted by the observer, the location where unsorted catch will be collected, and the location of any video equipment or viewing panels or ports.

(4) *Where will bin monitoring option inspections be conducted?* Inspections will be conducted on vessels tied to docks at Dutch Harbor, Alaska, Kodiak, Alaska, and in the Puget Sound area of Washington State.

(5) *Bin monitoring option inspection report.* A bin monitoring option inspection report, valid for 12 months from the date it is signed by NMFS, will be issued to the vessel owner if the bin monitoring option meets the requirements of paragraph (i)(1)(ii) or (i)(1)(iii) of this section. The vessel owner must maintain a current bin option inspection report onboard the vessel at all times the vessel is required to provide an approved bin monitoring option under this paragraph (i)(5). The bin monitoring option inspection report must be made available to the observer,



NMFS personnel or to an authorized officer upon request.

■ 12. In § 679.31:

■ a. Remove paragraphs (a)(2), (c), and (f);

■ b. Redesignate paragraphs (b), (d), and (e) as paragraphs (a)(2), (3), and (4), respectively;

■ c. In redesignated paragraph (a)(2), further redesignate paragraphs (1), (2), and (3) introductory text, and (4) as paragraphs (a)(2)(i), (ii), (iii), and (iv), respectively;

■ d. In redesignated paragraph (a)(2)(iii), further redesignate paragraphs (i), (ii), (iii) and (iv) as paragraphs (a)(2)(iii)(A), (B), (C), and (D), respectively;

■ e. Add and reserve paragraph (b); and

■ f. Revise the section heading, the heading for paragraph (a) and paragraph (a)(1).

The additions and revisions read as follows:

**§ 679.31 CDQ and PSQ reserves.**

\* \* \* \* \*

(a) *CDQ and PSQ reserves.*—(1) *Groundfish CDQ reserves.* See § 679.20(b)(1)(ii).

\* \* \* \* \*

■ 13. In § 679.50, paragraphs (a), (c)(4)(i)(A), and paragraph (c)(6) are revised to read as follows:

**§ 679.50 Groundfish Observer Program.**

(a) *General.* Operators of vessels possessing a Federal fisheries permit under § 679.4(b)(1) and processors that possess a Federal processor permit

under § 679.4(f)(1), must comply with this section. The owner of a fishing vessel or a processor subject to this part must ensure that the operator or manager complies with this section and is jointly and severally liable for such compliance. The following table provides a reference to the paragraphs in this section that contain observer coverage requirements for vessels, shoreside processors, and stationary floating processors participating in certain fishery programs or fishing in certain areas. Observer coverage for the CDQ fisheries obtained in compliance with paragraphs (c)(4) and (d)(5) of this section may not be used to comply with observer coverage requirements for non-CDQ groundfish fisheries specified in this section.

Program	Catcher/processors	Catcher vessels	Motherships	Shoreside and stationary floating processors
(1) CDQ Program .....	(c)(4) .....	(c)(4) .....	(c)(4) .....	(d)(5).
(2) AFA pollock .....	(c)(5)(i)(A) and (B) .....	(c)(1) through (3) .....	(c)(5)(i)(A) .....	(d)(6).
(3) Aleutian Islands pollock .....	(c)(5)(i)(C) .....	(c)(1) through (3) .....	(c)(5)(i)(C) .....	(d)(1) through (4).
(4) Rockfish Program .....	(c)(7)(i) .....	(c)(7)(ii) .....	N/A .....	(d)(7).
(5) Vessels fishing in the Red King Crab Savings Area.	(c)(1)(vii) .....	(c)(1)(viii) .....	N/A .....	N/A.
(6) Vessels fishing in the Nearshore Bristol Bay Trawl Closure Area.	(c)(1)(ix) .....	(c)(1)(ix) .....	N/A .....	N/A.
(7) Vessels fishing in the HLA for Atka mackerel.	(c)(1)(x) .....	(c)(1)(x) .....	N/A .....	N/A.
(8) Amendment 80 vessels and Non-AFA trawl C/Ps fishing in the BSAI.	(c)(6) .....	N/A .....	N/A .....	N/A.
(9) Vessels and processors participating in all other BSAI and GOA groundfish fisheries.	(c)(1) through (3), in GOA only.	(c)(1) through (3) .....	(c)(1) through (3) .....	(d)(1) through (4).

\* \* \* \* \*

(c) \* \* \*  
(4) \* \* \*  
(i) \* \* \*

(A) *CDQ groundfish fisheries (effective January 20, 2008)*—(1) *Catcher/processors using trawl gear.* A catcher/processor not listed in § 679.4(1)(2)(i) using trawl gear and groundfish CDQ fishing, except catcher/processors directed fishing for pollock CDQ, must comply with the observer coverage requirements at paragraph (c)(6)(i) of this section and the catch monitoring requirements in § 679.93(c).

(2) *Motherships.* A mothership that receives groundfish from catcher vessels using trawl gear and groundfish CDQ fishing, except catcher vessels directed fishing for pollock CDQ, must have at least two level 2 observers as described at paragraphs (j)(1)(v)(D) and (E) of this section onboard the vessel, at least one of whom must be endorsed as a lead level 2 observer.

\* \* \* \* \*

(6) *Amendment 80 vessels and non-AFA trawl catcher/processors (effective*

*January 20, 2008)*—(i) *Amendment 80 vessels and catcher/processors not listed in § 679.4(1)(2)(i) and using trawl gear in the BSAI.* All Amendment 80 vessels using any gear but dredge gear while directed fishing for scallops and catcher/processors not listed in § 679.4(1)(2)(i) and using trawl gear in the BSAI must have onboard at least two NMFS-certified observers for each day that the vessel is used to harvest, receive, or process groundfish in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(A) *Observer lead level 2 requirements.* At least one of the observers required under this paragraph (c)(6)(i) must be endorsed as a lead level 2 observer. More than two observers are required if the observer workload restriction at paragraph (c)(6)(i)(B) of this section would otherwise preclude sampling as required.

(B) *Observer workload.* The time required for the observer to complete sampling, data recording, and data

communication duties must not exceed 12 consecutive hours in each 24-hour period.

(ii) *Amendment 80 vessels in the GOA.* Except for the F/V GOLDEN FLEECE (USCG Documentation Number 609951), all Amendment 80 vessels, except when directed fishing for scallops using dredge gear, in the GOA must have onboard at least one NMFS-certified observer for each day that the vessel is used to harvest, receive, or process groundfish in the GOA management areas or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

\* \* \* \* \*

■ 14. In 679.64:

■ a. Revise section heading;

■ b. Revise paragraph (a)(1)(i)(A);

■ c. Redesignate paragraph (a)(1)(iii) as (a)(1)(iv);

■ d. Add paragraph (a)(1)(iii);

■ e. Add paragraph (a)(1)(v);

■ f. Revise paragraphs (a)(2) and (a)(3);

■ g. Revise paragraph (b)(3)(i) heading;

■ h. Redesignate paragraph (b)(3)(iii) as paragraph (b)(3)(iv);

- i. Add new paragraph (b)(3)(iii);
- j. Revise paragraph (b)(4); and
- k. Add new paragraph (b)(6).

The revisions and additions read as follows:

**§ 679.64 Harvesting sideboard limits in other fisheries.**

- (a) \* \* \*
- (1) \* \* \*
- (i) \* \* \*

(A) The Aleutian Islands Pacific ocean perch harvest limit will be equal to the 1996 through 1997 aggregate retained catch of Aleutian Islands Pacific ocean perch by catcher/processors listed in Sections 208(e)(1) through (20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the Aleutian Islands Pacific ocean perch catch in 1996 and 1997 multiplied by the remainder of the Aleutian Islands Pacific ocean perch TAC after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C) in the year in which the harvest limit will be in effect.

\* \* \* \* \*

(iii) *Flathead sole, rock sole, and yellowfin sole.* The harvest limit for flathead sole, rock sole, and yellowfin sole will be equal to the 1995 through 1997 aggregate retained catch of that species by catcher/processors listed in Sections 208(e)(1) through (e)(20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the catch of that species in 1995 through 1997 multiplied by the remainder of the TAC of that species after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C) in the year in which the harvest limit will be in effect.

(iv) *Remaining groundfish species.* (A) Except as provided for in paragraphs (a)(1)(i) through (a)(1)(iii) of this section, the harvest limit for each BSAI groundfish species or species group will be equal to the 1995 through 1997 aggregate retained catch of that species by catcher/processors listed in Sections 208 (e)(1) through (e)(20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the catch of that species in 1995 through 1997 multiplied by the TAC of that species available for harvest by catcher/processors in the year in which the harvest limit will be in effect.

(B) If the amount of a species calculated under paragraph (a)(1)(iv)(A) of this section is determined by the Regional Administrator to be insufficient to meet bycatch needs for AFA catcher/processors in other directed fisheries for groundfish, the Regional Administrator will prohibit directed fishing for that species by AFA catcher/processors and establish the sideboard amount equal to the amount

of that species caught by AFA catcher/processors incidental to directed fishing for other groundfish species.

(v) *Yellowfin sole sideboard limit exemption.* AFA catcher/processors will not be subject to a harvest limit for yellowfin sole in the BSAI during a calendar year if the aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than or equal to 125,000 metric tons.

(2) *What are the halibut and crab PSC sideboard limits?* The halibut and crab PSC bycatch limits specified for catcher/processors in the BSAI are listed in Tables 40 and 41 to this part.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) *BSAI groundfish other than Amendment 80 species.* \* \* \*

\* \* \* \* \*

(iii) *Amendment 80 species other than Pacific cod.* The AFA catcher vessel groundfish harvest limit for each Amendment 80 species other than BSAI Pacific cod will be equal to the aggregate retained catch of that Amendment 80 species from 1995 through 1997 by all AFA catcher vessels, divided by the sum of the TAC available to catcher vessels for that species or species group from 1995 through 1997, and multiplied by the remainder of the TAC after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C) in the year or season in which the harvest limit will be in effect.

(4) *How will halibut and crab PSC limits be calculated?*—(i) *BSAI.* The halibut and crab PSC bycatch limits specified for catcher vessels in the BSAI are listed in Tables 40 and 41 to this part.

(ii) *GOA.* The AFA catcher vessel PSC bycatch limit for halibut in the GOA will be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997.

\* \* \* \* \*

(6) *Yellowfin sole sideboard limit exemption.* AFA catcher vessels will not be subject to a harvest limit for yellowfin sole in the BSAI during a calendar year if the aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than or equal to 125,000 metric tons.

\* \* \* \* \*

- 15. In § 679.84, paragraphs (c)(7) and (c)(9) are revised to read as follows:

**§ 679.84 Rockfish Program recordkeeping, permits, monitoring, and catch accounting.**

\* \* \* \* \*

(c) \* \* \*

(7) *Pre-cruise meeting.* The Observer Program Office is notified by phone at 1-907-271-1702 at least 24 hours prior to departure when the vessel will be carrying an observer who had not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager, and any observers assigned to the vessel.

\* \* \* \* \*

(9) *Vessel crew in tanks or bins.* The vessel owner or operator must comply with the bin monitoring standards specified in § 679.28(i).

\* \* \* \* \*

- 16. Subpart H, consisting of §§ 679.90 through 679.94, is added to read as follows:

**Subpart H—Amendment 80 Program**

Sec.

- 679.90 Allocation, use, and transfer of Amendment 80 QS permits.
- 679.91 Amendment 80 Program annual harvester privileges.
- 679.92 Amendment 80 Program use caps and sideboard limits.
- 679.93 Amendment 80 Program recordkeeping, permits, monitoring, and catch accounting.
- 679.94 Economic data report (EDR) for the Amendment 80 sector.

**Subpart H—Amendment 80 Program**

**§ 679.90 Allocation, use, and transfer of Amendment 80 QS permits.**

Regulations under this subpart were developed by NMFS to implement the Amendment 80 Program. Additional regulations that implement specific portions of the Amendment 80 Program are set out at § 679.2 Definitions, § 679.4 Permits, § 679.5 Recordkeeping and reporting (R&R), § 679.7 Prohibitions, § 679.20 General limitations, § 679.21 Prohibited species bycatch management, § 679.27 Improved Retention/Improved Utilization Program, § 679.28 Equipment and operational requirements, § 679.31 CDQ and PSQ reserves, § 679.50 Groundfish Observer Program applicable through December 31, 2007, and § 679.64 Harvesting sideboard limits in other fisheries.

(a) *Issuance of Amendment 80 QS permits*—(1) *General.* NMFS will issue an Amendment 80 QS permit to a person who is eligible to receive Amendment 80 QS units as described in paragraph (a)(2) of this section and based on:

(i) The information contained in an approved application for Amendment 80 QS as described in paragraph (b) of this section;

(ii) The information contained in the Amendment 80 official record as described in paragraph (c) of this section;

(iii) The Amendment 80 QS permit allocation procedures as described in paragraph (d) of this section; and

(iv) In consideration of any use caps as described in § 679.92(a).

(2) *Eligibility to receive an Amendment 80 QS permit*—(i) *Owner of an Amendment 80 vessel.* A person may receive an Amendment 80 QS permit based on the legal landings of an Amendment 80 vessel if:

(A) That person owns that Amendment 80 vessel at the time of application for Amendment 80 QS as demonstrated on an abstract of title or USCG documentation;

(B) That person holds an Amendment 80 LLP license at the time of application for Amendment 80 QS;

(C) That person is a U.S. citizen;

(D) That person submits a timely application for Amendment 80 QS that is approved by NMFS as described in paragraph (b) of this section; and

(E) A person is not eligible to receive an Amendment 80 QS permit based on the legal landings of that Amendment 80 vessel under the provisions of paragraph (a)(2)(ii) of this section.

(ii) *Holder of an Amendment 80 LLP license.* A person may receive an Amendment 80 QS permit based on the legal landings of an Amendment 80 vessel if:

(A) At the time of application for Amendment 80 QS that person holds the LLP license originally assigned to that Amendment 80 vessel and that Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108;

(B) The actual total loss, constructive total loss, or permanent ineligibility of that Amendment 80 vessel to receive a fishery endorsement under 46 U.S.C. 12108 has been clearly and unambiguously established and documented in written form in the application for Amendment 80 QS and that documentation is accepted by NMFS;

(C) The express terms of a written contract clearly and unambiguously provide that the owner(s) of that Amendment 80 vessel transferred all rights and privileges to use the Amendment 80 legal landings from that Amendment 80 vessel to the person

holding the LLP license originally assigned to that Amendment 80 vessel;

(D) That person is a U.S. citizen; and

(E) That person has submitted a timely application for Amendment 80 QS that is approved by NMFS as described in paragraph (b) of this section.

(b) *Application for Amendment 80 QS*—(1) *Submission.* A person who wishes to receive an Amendment 80 QS permit must submit a timely and complete application for Amendment 80 QS. Once a person submits a timely and complete application for Amendment 80 QS that is approved by NMFS, an application for Amendment 80 QS is not required to be resubmitted. An application for Amendment 80 QS may only be submitted to NMFS using any one of the following methods:

(i) *Mail:* Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802-1668;

(ii) *Fax:* 907-586-7354; or

(iii) *Hand delivery or carrier:* NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(2) *Application forms.* Application forms are available through the internet on the NMFS Alaska Region Web site at <http://www.fakr.noaa.gov>, or by contacting NMFS at 800-304-4846, Option 2.

(3) *Deadline.* A completed application for Amendment 80 QS must be received by NMFS no later than 1700 hours A.L.T. on October 15 of the year prior to the fishing year for which the applicant is applying, or if sent by U.S. mail, postmarked by that time. Applications received or postmarked after the deadline will not be eligible to receive an Amendment 80 QS permit for the upcoming fishing year.

(4) *Contents of application.* A completed application must contain the following information:

(i) *Applicant identification.* (A) The applicant's name, NMFS person ID (if applicable), tax ID number, permanent business mailing address, business telephone number, business fax number, and e-mail (if available);

(B) Indicate (YES or NO) if the applicant is a U.S. citizen; if YES, enter his or her date of birth;

(C) Indicate (YES or NO) if the applicant is a U.S. corporation, partnership, association, or other business entity; if YES, enter the date of incorporation;

(D) Indicate (YES or NO) if the applicant is a successor-in-interest to a deceased individual or to a non-individual no longer in existence, if YES attach evidence of death or dissolution;

(E) Indicate whether the applicant is applying as the owner of an Amendment 80 vessel or the holder of an LLP license originally assigned to an Amendment 80 vessel;

(F) For an applicant claiming Amendment 80 legal landings associated with an Amendment 80 vessel, enter the following information for each Amendment 80 vessel: USCG documentation number of vessel on which Amendment 80 legal landings were caught and processed, vessel name, ADF&G vessel registration number, and LLP license held by that person at the time of application;

(G) If an Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108, provide clear and unambiguous documentation in written form that the Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108; and

(H) If applicable, a copy of the express terms of a written contract held by the applicant that clearly and unambiguously indicates that the owner of the Amendment 80 vessel that has suffered has an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108 has transferred all rights and privileges to use Amendment 80 legal landings and any resulting Amendment 80 QS or exclusive harvest privilege from that Amendment 80 vessel to the person holding the LLP license originally assigned to that Amendment 80 vessel.

(ii) *Applicant signature and certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. If the application is completed by a designated representative, then explicit authorization for the designated representative signed by the applicant must accompany the application.

(5) *Application evaluation.* The Regional Administrator will evaluate applications received as specified in this paragraph (b)(5) of this section and compare all claims in an application with the information in the Amendment 80 official record. Application claims that are consistent with information in the Amendment 80 official record will be approved by the Regional Administrator. Application claims that are inconsistent with the Amendment 80 official record, unless verified by

documentation, will not be approved. An applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraph (b)(4) of this section, will be provided a single 30-day evidentiary period in which to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the Amendment 80 official record. An applicant who submits claims that are inconsistent with information in the Amendment 80 official record has the burden of proving that the submitted claims are correct. Any claims that remain inconsistent or that are not accepted after the 30-day evidentiary period will be denied, and the applicant will be notified by an IAD of his or her appeal rights under § 679.43.

(6) *Appeals.* If an applicant is notified by an IAD that inconsistent claims made by the applicant have been denied, that applicant may appeal that IAD under the provisions described at § 679.43.

(c) *Amendment 80 official record*—(1) *Use of the Amendment 80 official record.* The Amendment 80 official record will contain all information used by the Regional Administrator to determine eligibility to participate in the Amendment 80 Program, assign QS, and any other privileges or limits for the Amendment 80 Program.

(2) *Amendment 80 official record presumed to be correct.* The Amendment 80 official record is presumed to be correct. An applicant to participate in the Amendment 80 Program has the burden to prove otherwise.

(3) *Documentation is used to establish the amount of Amendment 80 legal landings.* Only Amendment 80 legal landings as defined in § 679.2 will be used to assign Amendment 80 QS units to an Amendment 80 QS permit unless an Amendment 80 vessel has no Amendment 80 legal landings, in which case Amendment 80 QS units will be allocated to the Amendment 80 QS permit derived from that Amendment 80 vessel according to the procedures established under paragraphs (d)(1)(iii) and (iv) of this section.

(4) *Assignment of Amendment 80 legal landings.* An Amendment 80 legal landing is assigned only to the Amendment 80 vessel that was used to make that Amendment 80 legal landing.

(d) *Assigning an Amendment 80 QS permit to an Amendment 80 QS holder*—(1) Amendment 80 QS units derived from an Amendment 80 vessel and issued to an Amendment 80 QS holder. NMFS will assign a specific amount of Amendment 80 QS units to

each Amendment 80 QS permit based on the Amendment 80 legal landings of each Amendment 80 vessel for each Amendment 80 species in each management area for that Amendment 80 species as listed in Table 32 to this part, using information from the Amendment 80 official record according to the following procedures:

(i) *All Amendment 80 species.* (A) For each Amendment 80 species, sum the Amendment 80 legal landings for each Amendment 80 vessel in all management areas for that Amendment 80 species listed in Table 32 to this part for each calendar year from 1998 through 2004.

(B) Select the five calendar years that yield the highest amount of Amendment 80 legal landings of that Amendment 80 species in all management areas for that Amendment 80 species listed in Table 32 to this part, including zero metric tons if necessary.

(C) Sum the Amendment 80 legal landings of the highest five years for an Amendment 80 species. This yields the Highest Five Years for that Amendment 80 species.

(D) Divide the Highest Five Years for an Amendment 80 species in paragraph (d)(1)(i)(C) of this section for an Amendment 80 vessel by the sum of all Highest Five Years for all Amendment 80 vessels for that Amendment 80 species based on the Amendment 80 official record for that Amendment 80 species as presented in the following equation:

$$\frac{\text{Highest Five Years}}{\Sigma \text{ All Highest Five Years}} \times 100 = \text{Percentage of the Total.}$$

The result (quotient) of this equation is the Percentage of the Total for that Amendment 80 vessel for that Amendment 80 species.

(ii) *Aleutian Islands Pacific ocean perch and BSAI Pacific cod.* Multiply the Percentage of the Total for that Amendment 80 vessel for Aleutian Islands Pacific ocean perch and BSAI Pacific cod as calculated in paragraph (d)(1)(i)(D) of this section by the Amendment 80 initial QS pool for Aleutian Islands Pacific ocean perch and BSAI Pacific cod as set forth in Table 32 to this part. This yields the number of Amendment 80 QS units for that Amendment 80 vessel for Aleutian Islands Pacific ocean perch and BSAI Pacific cod Pacific cod.

(iii) *BSAI rock sole and BSAI yellowfin sole.* (A) If an Amendment 80 vessel did not have any Amendment 80 legal landings during 1998 through 2004, that Amendment 80 vessel will receive 0.5 percent of the Percentage of the Total for BSAI rock sole and BSAI

yellowfin sole as calculated in paragraph (d)(1)(i)(D) of this section.

(B) All Amendment 80 vessels that did have Amendment 80 legal landings will have the Percentage of the Total assigned to that Amendment 80 vessel as calculated in paragraph (d)(1)(i)(D) of this section adjusted to account for the assignment of the Percentage of the Total to Amendment 80 vessels under paragraph (d)(1)(iii)(A) of this section for BSAI rock sole and BSAI yellowfin sole as presented in the following equation:

$$\frac{\text{Percentage of the Total for that Amendment 80 vessel} \times (100 - \Sigma \text{ Percentage of the Total assigned to all Amendment 80 vessels under paragraph (d)(1)(iii)(A) of this section})}{\text{Total for that Amendment 80 vessel}} = \text{Adjusted Percentage of the Total for that Amendment 80 vessel.}$$

(C) Multiply the Adjusted Percentage of the Total for that Amendment 80 vessel by the Amendment 80 initial QS pool for BSAI rock sole and BSAI yellowfin sole as set forth in Table 32 to this part. This yields the number of Amendment 80 QS units for that Amendment 80 vessel for BSAI rock sole or BSAI yellowfin sole.

(iv) *BSAI flathead sole.* (A) If an Amendment 80 vessel did not have any Amendment 80 legal landings during 1998 through 2004, that Amendment 80 vessel will receive 0.1 percent of the Percentage of the Total for BSAI flathead sole as calculated in paragraph (d)(1)(i)(D) of this section.

(B) All Amendment 80 vessels that did have Amendment 80 legal landings during 1998 through 2004 will have the Percentage of the Total assigned to that Amendment 80 vessel as calculated in paragraph (d)(1)(i)(D) of this section adjusted to account for the assignment of the Percentage of the Total to Amendment 80 vessels under paragraph (d)(1)(iv)(A) of this section for BSAI flathead sole as presented in the following equation:

$$\frac{\text{Percentage of the Total for that Amendment 80 vessel} \times (100 - \Sigma \text{ Percentage of the Total assigned to all Amendment 80 vessels under paragraph (d)(1)(iv)(A) of this section})}{\text{Amendment 80 vessel}} = \text{Adjusted Percentage of the Total for that Amendment 80 vessel.}$$

(C) Multiply the Adjusted Percentage of the Total for that Amendment 80 vessel by the Amendment 80 initial QS pool for BSAI flathead sole as set forth in Table 32 to this part. This yields the number of Amendment 80 QS units for that Amendment 80 vessel for BSAI flathead sole.

(v) *BSAI Atka mackerel.* (A) Multiply the Percentage of the Total for that Amendment 80 vessel as calculated in paragraph (d)(1)(i)(D) of this section by the Amendment 80 initial QS pool for

BSAI Atka mackerel as set forth in Table 32 to this part. This yields the number of Amendment 80 QS units for that Amendment 80 vessel for BSAI Atka mackerel.

(B) If an Amendment 80 vessel is an Amendment 80 non-mackerel vessel, determine the percentage of the Amendment 80 QS pool that is assigned to each Atka mackerel management area listed in Table 32 to this part in each year from 1998 through 2004 for that Amendment 80 non-mackerel vessel based on the percentage of Amendment 80 legal landings in that Atka mackerel management area from 1998 through 2004 for that Amendment 80 non-mackerel vessel.

(C) The sum of the Amendment 80 QS units allocated to all Amendment 80 non-mackerel vessels is the Total Amendment 80 non-mackerel QS pool.

(D) The sum of the Amendment 80 QS units allocated to all Amendment 80 mackerel vessels is the Total Amendment 80 mackerel QS pool.

(2) *Assigning Amendment 80 QS units to an Amendment 80 permit.* Once the Regional Administrator determines the amount of Amendment 80 QS units to be issued for an Amendment 80 species derived from an Amendment 80 vessel based on the criteria described in paragraphs (b) through (d) of this section, NMFS will assign that amount of Amendment 80 QS units for each Amendment 80 species as an Amendment 80 QS permit to the Amendment 80 QS holder as follows:

(i) *Amendment 80 vessel owner.* NMFS will issue an Amendment 80 QS permit for each Amendment 80 vessel to the owner of that Amendment 80 vessel if that person submitted a timely and complete Application for Amendment 80 QS that was approved by NMFS under paragraph (a)(2)(i) of this section; or

(ii) *Amendment 80 LLP/QS license.* NMFS will issue an Amendment 80 QS permit as an endorsement on an Amendment 80 LLP license to the holder of an LLP license originally assigned to an Amendment 80 vessel if that person submitted a timely and complete Application for Amendment 80 QS that was approved by NMFS under paragraph (a)(2)(ii) of this section.

(e) *Transfers of Amendment 80 QS permits—(1) Non-severability of Amendment 80 QS permits.* (i) An Amendment 80 QS holder may not transfer an Amendment 80 QS permit to another person unless all Amendment 80 QS units for all Amendment 80 species on that Amendment 80 QS permit are transferred in their entirety to the same person at the same time; and

(ii) Once an Amendment 80 QS permit is assigned to an Amendment 80 LLP license, that Amendment 80 LLP license is designated as an Amendment 80 LLP/QS license and a person may not separate the Amendment 80 QS permit from that Amendment 80 LLP/QS license.

(2) *Transfer of an Amendment 80 LLP/QS license.* A person holding an Amendment 80 LLP/QS license may transfer that Amendment 80 LLP/QS license to another person only under the provisions of § 679.4(k)(7).

(3) *Transfers of Amendment 80 QS permits.* A person holding an Amendment 80 QS permit assigned to an Amendment 80 vessel may transfer that Amendment 80 QS permit to another person only by submitting an application to transfer Amendment 80 QS permit that is approved by NMFS under the provisions of paragraph (f) of this section.

(4) *Assigning an Amendment 80 QS permit to an Amendment 80 LLP license.* An Amendment 80 vessel owner holding an Amendment 80 QS permit assigned to an Amendment 80 vessel may transfer that Amendment 80 QS permit to the LLP license originally assigned to that Amendment 80 vessel only by submitting an application to transfer an Amendment 80 QS permit that is approved by NMFS under the provisions of paragraph (f) of this section.

(f) *Application to transfer an Amendment 80 QS permit—(1) General.* An Amendment 80 QS holder who wishes to transfer an Amendment 80 QS permit must submit a complete application that is approved by NMFS. This application may only be submitted to NMFS using any one of the following methods:

(i) *Mail:* Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802-1668;

(ii) *Fax:* 907-586-7354; or

(iii) *Hand delivery or carrier:* NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(2) *Application forms.* Application forms are available through the internet on the NMFS Alaska Region Web site at <http://www.fakr.noaa.gov>, or by contacting NMFS at 800-304-4846, Option 2.

(3) *Application—(i) Transferor information—(A) Transferor identification.* The transferor's name, NMFS person ID (if applicable), tax ID number, date of incorporation or date of birth, permanent business mailing address, business telephone number, fax number, and e-mail (if available).

(B) *Type of transfer.* (1) Indicate whether the transferor is applying to transfer an Amendment 80 QS permit to another person; or

(2) Indicate whether the transferor is applying to transfer an Amendment 80 QS permit to the LLP license originally assigned to that Amendment 80 vessel as listed in Table 31 to this part.

(C) *Amendment 80 QS permit.* Indicate the Amendment 80 QS permit to be transferred.

(D) *Information for transfers of Amendment 80 QS permit to another person.* If transferring an Amendment 80 QS permit assigned to an Amendment 80 vessel owner to another person, attach abstract of title or USCG documentation that clearly and unambiguously indicates that the Amendment 80 QS permit transferee is named on the abstract of title or USCG documentation as the owner of the Amendment 80 vessel to which that Amendment 80 QS permit would be assigned.

(E) *Information for transfers of Amendment 80 QS permits to an Amendment 80 LLP license.* If transferring Amendment 80 QS assigned to an Amendment 80 vessel owner to the LLP license originally assigned to that Amendment 80 vessel, provide clear and unambiguous written documentation that can be verified by NMFS that the Amendment 80 vessel for which that Amendment 80 LLP license was originally assigned is no longer able to be used in the Amendment 80 Program due to the actual total loss, constructive total loss, or permanent ineligibility of that vessel to receive a fishery endorsement under 46 U.S.C. 12108.

(F) *Certification of transferor.* The transferor must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. If the application is completed by a designated representative, then explicit authorization signed by the applicant must accompany the application.

(ii) *Transferee information—(A) Transferee identification.* The transferee's name, NMFS person ID (if applicable), tax ID number, date of incorporation or date of birth, permanent business mailing address, business telephone number, fax number, and e-mail (if available).

(B) *Certification of transferee.* The transferee must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. If the application is completed by a designated

representative, then explicit authorization signed by the applicant must accompany the application.

**§ 679.91 Amendment 80 Program annual harvester privileges.**

(a) *Assigning an Amendment 80 QS permit to an Amendment 80 cooperative or Amendment 80 limited access fishery*—

(1) *General.* (i) Each calendar year, each Amendment 80 QS permit, associated Amendment 80 vessel, and Amendment 80 LLP license must be assigned to an Amendment 80 cooperative or the Amendment 80 limited access fishery in order to use that Amendment 80 QS permit, associated Amendment 80 vessel, and Amendment 80 LLP license to catch, process, or receive Amendment 80 species, crab PSC, or halibut PSC assigned to the Amendment 80 sector.

(ii) NMFS will assign an Amendment 80 QS permit(s), associated Amendment 80 vessel(s), and Amendment 80 LLP license(s) held by an Amendment 80 QS holder to an Amendment 80 cooperative if that Amendment 80 QS permit(s), associated Amendment 80 vessel(s), and Amendment 80 LLP license(s) is designated on an application for CQ that is approved by the Regional Administrator as described under paragraph (b) of this section.

(iii) NMFS will assign an Amendment 80 QS permit(s), associated Amendment 80 vessel(s), and Amendment 80 LLP license(s) held by an Amendment 80 QS holder to the Amendment 80 limited access fishery if that Amendment 80 QS permit(s), associated Amendment 80 vessel(s), and Amendment 80 LLP license(s) is assigned to the Amendment 80 limited access fishery.

(2) *Amendment 80 QS permits issued after issuance of CQ or ITAC.* Any Amendment 80 QS permits, or Amendment 80 QS units on an Amendment 80 QS permit, assigned to an Amendment 80 QS holder after NMFS has issued CQ or ITAC to the Amendment 80 sector for a calendar year will not result in any additional:

(i) CQ being issued to an Amendment 80 cooperative if that Amendment 80 QS holder has assigned his Amendment 80 QS permit(s) to an Amendment 80 cooperative for that calendar year; or

(ii) ITAC being issued to the Amendment 80 limited access fishery if that Amendment 80 QS holder has assigned his Amendment 80 QS permit(s) to the Amendment 80 limited access fishery for that calendar year.

(3) *Failure to submit an application for an Amendment 80 fishery.* (i) If an Amendment 80 QS permit is not designated on a timely and complete application for CQ that is approved by

the Regional Administrator as described under paragraph (b) of this section, the Regional Administrator will not assign that Amendment 80 QS permit, associated Amendment 80 vessel, or Amendment 80 LLP license to an Amendment 80 cooperative for the applicable calendar year.

(ii) The Regional Administrator will assign an Amendment 80 QS permit, associated Amendment 80 vessel, or Amendment 80 LLP license to the Amendment 80 limited access fishery for the applicable calendar year if that Amendment 80 QS permit, associated Amendment 80 vessel, or Amendment 80 LLP license is designated on a timely and complete application for an Amendment 80 limited access fishery, or if that Amendment 80 QS permit, associated Amendment 80 vessel, or Amendment 80 LLP license is not designated on a timely and complete application for CQ that is approved by the Regional Administrator as described under paragraph (b) of this section.

(b) *Application for CQ and Application for the Amendment 80 limited access fishery*—(1) *General.* An application for CQ or an application for the Amendment 80 limited access fishery may only be submitted to NMFS using any one of the following methods:

(i) *Mail:* Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802-1668;

(ii) *Fax:* 907-586-7354; or

(iii) *Hand delivery or carrier:* NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(2) *Application forms.* Application forms are available through the internet on the NMFS Alaska Region Web site at <http://www.fakr.noaa.gov>, or by contacting NMFS at 800-304-4846, Option 2.

(3) *Deadline.* A completed application must be received by NMFS no later than 1700 hours A.l.t. on November 1 of the year prior to the calendar year for which the applicant is applying, or if sent by U.S. mail, the application must be postmarked by that time.

(4) *Application for CQ*—(i) *Amendment 80 cooperative identification.* The Amendment 80 cooperative's legal name; tax ID number, the type of business entity under which the Amendment 80 cooperative is organized; the state in which the Amendment 80 cooperative is legally registered as a business entity; permanent business address; business telephone number; business fax number; e-mail address (if available); and printed name of the Amendment 80 cooperative's designated representative.

(ii) *Identification of Amendment 80 QS permit holders and ownership documentation.* Full name of each Amendment 80 cooperative member; NMFS person ID of each member; Amendment 80 QS permit number(s), the names of all persons, to the individual level, holding an ownership interest in the Amendment 80 QS permit(s) assigned to the Amendment 80 cooperative and the percentage ownership each person and individual holds in the Amendment 80 QS permit(s).

(iii) *Identification of Amendment 80 cooperative member vessels and Amendment 80 LLP licenses.* Vessel name; ADF&G vessel registration number; USCG documentation number; and Amendment 80 LLP license number.

(iv) *Identification of vessels on which the CQ issued to the Amendment 80 cooperative will be used.* Vessel name, ADF&G vessel registration number, and USCG documentation number.

(v) *EDR submission.* For 2009 and thereafter, indicate (YES or NO) whether each member of the Amendment 80 cooperative has submitted a timely and complete EDR for each Amendment 80 QS permit held by that person as required under § 679.94.

(vi) *Certification of cooperative authorized representative.* The cooperative's authorized representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. Explicit authorization to complete the application on behalf of the members of the cooperative must accompany the application.

(vii) *Copy of membership agreement or contract.* Attach a copy of the membership agreement or contract that specifies how the Amendment 80 cooperative intends to catch its CQ.

(5) *Application for the Amendment 80 limited access fishery*—(i) *Applicant identification.* The applicant's name, NMFS Person ID (if applicable), tax ID number (required), permanent business mailing address, business telephone number, fax number, and e-mail (if available).

(ii) *Amendment 80 vessel identification.* The name, ADF&G vessel registration number(s), and USCG documentation number(s) of the Amendment 80 vessel(s) owned by the applicant.

(iii) *Amendment 80 LLP identification.* The Amendment 80 LLP license number(s) held by the applicant.

(iv) *Amendment 80 QS permit information.* The Amendment 80 QS permit number(s) held by the applicant.

(v) *Amendment 80 QS ownership documentation.* The names of all persons, to the individual person level, holding an ownership interest in the Amendment 80 QS permit(s) held by the applicant and the percentage ownership each person and individual holds in the Amendment 80 QS permit(s).

(vi) *EDR submission.* For 2009 and thereafter, indicate (YES or NO) whether the applicant has submitted a timely and complete EDR for each Amendment 80 QS permit held by that person as required under § 679.94.

(vii) *Applicant signature and certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. If the application is completed by a designated representative, then explicit authorization signed by the applicant must accompany the application.

(c) *Allocations of Amendment 80 species—(1) General.* Each calendar year, the Regional Administrator will determine the tonnage of Amendment 80 species that will be assigned to the BSAI trawl limited access sector and the Amendment 80 sector. For participants in the Amendment 80 sector, the tonnage of fish will be further assigned between Amendment 80 cooperatives and the Amendment 80 limited access fishery.

(2) *Calculation—(i) Determination of TAC and ITAC.* NMFS will determine the TAC and ITAC for each Amendment 80 species in a calendar year in the annual harvest specification process in § 679.20.

(ii) *Annual apportionment of ITAC.* The annual apportionment of ITAC for each Amendment 80 species between the Amendment 80 sector and the BSAI trawl limited access sector in a given calendar year is established in Tables 33 and 34 to this part.

(3) *Allocation of CQ to Amendment 80 cooperatives—(i) General.* The amount of ITAC for each Amendment 80 species assigned to an Amendment 80 cooperative is equal to the amount of Amendment 80 QS units assigned to that Amendment 80 cooperative by Amendment 80 QS holders divided by the total Amendment 80 QS pool multiplied by the Amendment 80 sector ITAC for that Amendment 80 species in that management area. Once ITAC for an Amendment 80 species in a management area is assigned to an Amendment 80 cooperative, it is issued as CQ specific to that Amendment 80 cooperative.

(ii) *CQ allocation for Amendment 80 species except BSAI Atka mackerel.* The amount of CQ for each Amendment 80

species except BSAI Atka mackerel that is assigned to a Amendment 80 cooperative is expressed algebraically as follows:

$$\text{CQ in a management area} = [(\text{Amendment 80 sector ITAC in a management area}) \times (\text{Amendment 80 QS units assigned to that Amendment 80 cooperative/Amendment 80 QS pool})]$$

(iii) *CQ allocation for BSAI Atka mackerel.* The amount of CQ for BSAI Atka mackerel that is assigned to each Amendment 80 cooperative in each management area is determined by the following procedure:

(A) Determine the amount of non-mackerel ITAC in each management area using the following equation:

$$\text{Non-mackerel ITAC in a management area} = (\text{Amendment 80 non-mackerel QS units designated for that management area/Total Atka mackerel QS pool}) \times \text{Amendment 80 sector ITAC in all management areas.}$$

(B) Determine the amount of mackerel ITAC in each management area using the following equation:

$$\text{Mackerel ITAC in a management area} = \text{Amendment 80 sector ITAC in that management area} - \text{Non-mackerel ITAC in that management area.}$$

(C) Determine the amount of non-mackerel CQ assigned to the Amendment 80 cooperative using the following equation:

$$\text{Non-mackerel CQ assigned to that Amendment 80 cooperative} = (\text{Amendment 80 non-mackerel QS units designated for that management area assigned to that Amendment 80 cooperative/Amendment 80 non-mackerel QS pool in that management area}) \times \text{Non-mackerel ITAC for that management area.}$$

(D) Determine the amount of mackerel CQ assigned to the Amendment 80 cooperative using the following equation:

$$\text{Mackerel CQ in a management area} = (\text{Mackerel QS units assigned to that Amendment 80 cooperative/Mackerel QS pool}) \times \text{Mackerel ITAC in that management area.}$$

(E) The total amount of Atka mackerel CQ assigned to an Amendment 80 cooperative for a management area is equal to the sum of paragraphs (c)(3)(iii)(C) and (D) of this section.

(4) *Amendment 80 limited access fishery.* The amount of ITAC in a management area for each Amendment 80 species assigned to the Amendment 80 limited access fishery is equal to the Amendment 80 sector ITAC remaining after subtracting all CQ issued to all Amendment 80 cooperatives for that Amendment 80 species in that management area.

(d) *Allocations of halibut PSC—(1) Amount of Amendment 80 halibut PSC assigned to the Amendment 80 sector.* The amount of halibut PSC assigned to the Amendment 80 sector for each calendar year is specified in Table 35 to this part. That amount of halibut PSC is then assigned to Amendment 80 cooperatives and the Amendment 80 limited access fishery.

(2) *Amount of Amendment 80 halibut PSC assigned to an Amendment 80 cooperative.* For each calendar year, the amount of Amendment 80 halibut PSC assigned as CQ to an Amendment 80 cooperative is determined by the following procedure:

(i) Multiply the amount of halibut PSC established in Table 35 to this part by the percentage of the Amendment 80 halibut PSC apportioned to each Amendment 80 species as established in Table 36 to this part. This yields the halibut PSC apportionment for that Amendment 80 species.

(ii) For each Amendment 80 species, divide the amount of Amendment 80 QS units assigned to an Amendment 80 cooperative by the Amendment 80 QS pool. This yields the percentage of Amendment 80 QS units held by that Amendment 80 cooperative.

(iii) For each Amendment 80 species, multiply the halibut PSC apportionment for that Amendment 80 species established in paragraph (d)(2)(i) of this section by the percentage of the Amendment 80 QS pool assigned to an Amendment 80 cooperative for that Amendment 80 species established in paragraph (d)(2)(ii) of this section. This yields the amount of halibut PSC apportioned to that cooperative for that Amendment 80 species.

(iv) For each Amendment 80 cooperative, sum the results of paragraph (d)(2)(iii) of this section for all Amendment 80 species. This yields the amount of Amendment 80 halibut PSC assigned to that Amendment 80 cooperative as CQ.

(3) *Amount of Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery.* The amount of Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery is equal to the amount of halibut PSC assigned to the Amendment 80 sector specified in Table 35 to this part subtracting the amount of Amendment 80 halibut PSC assigned as CQ to all Amendment 80 cooperatives as determined in paragraph (d)(2)(iv) of this section.

(4) *Use of Amendment 80 halibut PSC in the Amendment 80 sector—(i) Amendment 80 halibut PSC assigned to a Amendment 80 cooperative.* An amount of Amendment 80 halibut PSC



is assigned to the CQ permit issued to an Amendment 80 cooperative for use while fishing for all groundfish species in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. Any halibut PSC used by an Amendment 80 cooperative must be deducted from the amount of halibut PSC CQ on its CQ permit. Amendment 80 halibut PSC on a CQ permit may only be used by the members of the Amendment 80 cooperative to which it is assigned. Halibut PSC assigned as CQ is not subject to seasonal apportionment under § 679.21.

(ii) *Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery.* An amount of Amendment 80 halibut PSC is assigned to the Amendment 80 limited access fishery for use by all Amendment 80 vessels in the Amendment 80 limited access fishery while fishing for all groundfish species in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. Any halibut PSC used by Amendment 80 vessels assigned to the Amendment 80 limited access fishery must be deducted from the amount of halibut PSC assigned to the Amendment 80 limited access fishery. Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery is subject to seasonal apportionment under § 679.21.

(5) *Halibut PSC assigned to the BSAI trawl limited access sector.* Halibut PSC assigned to the BSAI trawl limited access sector for groundfish fishing in the BSAI may only be used by the members of the BSAI trawl limited access sector unless modified by reallocation to Amendment 80 cooperatives according to the procedures in paragraph (f) of this section. Halibut PSC assigned to the BSAI trawl limited access sector is subject to seasonal apportionment under § 679.21.

(e) *Allocations of crab PSC—(1) Amount of Amendment 80 crab PSC assigned to the Amendment 80 sector.* The amount of Amendment 80 crab PSC assigned to the Amendment 80 sector for each Amendment 80 crab PSC in a calendar year is specified in Table 35 to this part. That amount of Amendment 80 crab PSC is then assigned to Amendment 80 cooperatives and the Amendment 80 limited access fishery.

(2) *Amount of Amendment 80 crab PSC assigned to an Amendment 80 cooperative.* For each calendar year, for each Amendment 80 crab PSC, the amount assigned as CQ to an Amendment 80 cooperative is determined by the following procedure:

(i) Multiply the amount of an Amendment 80 crab PSC established in Table 35 to this part by the percentage of the Amendment 80 crab PSC apportioned to each Amendment 80 species as established in Table 36 to this part. This yields the Amendment 80 crab PSC apportionment for that Amendment 80 species.

(ii) For each Amendment 80 species, divide the amount of Amendment 80 QS units assigned to an Amendment 80 cooperative by the Amendment 80 QS pool. This yields the percentage of Amendment 80 QS units held by that Amendment 80 cooperative.

(iii) For each Amendment 80 species, multiply the Amendment 80 crab PSC apportionment to that Amendment 80 species established in paragraph (e)(2)(i) of this section by the percentage of the Amendment 80 QS pool held by an Amendment 80 cooperative as established in paragraph (e)(2)(ii) of this section. This yields the amount of Amendment 80 crab PSC apportioned to that Amendment 80 cooperative for that Amendment 80 species.

(iv) For each Amendment 80 crab PSC, sum the results of paragraph (e)(2)(iii) for all Amendment 80 species. This yields the amount of that Amendment 80 crab PSC assigned to that Amendment 80 cooperative.

(3) *Amount of Amendment 80 crab PSC assigned to the Amendment 80 limited access fishery.* The amount of each Amendment 80 crab PSC assigned to the Amendment 80 limited access fishery is equal to the amount of that Amendment 80 crab PSC assigned to the Amendment 80 sector specified in Table 35 to this part subtracting the amount of that crab PSC that has been assigned as CQ to all Amendment 80 cooperatives as determined in paragraph (e)(2)(iv) of this section.

(4) *Use of Amendment 80 crab PSC in the Amendment 80 sector—(i) Amendment 80 crab PSC assigned to an Amendment 80 cooperative.* An amount of Amendment 80 crab PSC is assigned to the CQ permit issued to an Amendment 80 cooperative for use while fishing for all groundfish species in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. Any Amendment 80 crab PSC used by an Amendment 80 cooperative must be deducted from the amount of Amendment 80 crab PSC CQ on its CQ permit. Amendment 80 crab PSC on a CQ permit may only be used by the members of the Amendment 80 cooperative to which it is assigned. Amendment 80 crab PSC assigned as CQ is not subject to seasonal apportionment under § 679.21.

(ii) *Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery.* An amount of Amendment 80 crab PSC is assigned to the Amendment 80 limited access fishery for use by all Amendment 80 vessels in the Amendment 80 limited access fishery while fishing for all groundfish species in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. Any Amendment 80 crab PSC used by Amendment 80 vessels assigned to the Amendment 80 limited access fishery must be deducted from the amount of Amendment 80 crab PSC assigned to the Amendment 80 limited access fishery. Amendment 80 crab PSC assigned to the Amendment 80 limited access fishery is subject to seasonal apportionment under § 679.21.

(5) *Amendment 80 crab PSC assigned to the BSAI trawl limited access sector.* Amendment 80 crab PSC assigned to the BSAI trawl limited access sector for groundfish fishing in the BSAI may only be used by the members of the BSAI trawl limited access sector unless modified by reallocation to Amendment 80 cooperatives according to the procedures in paragraph (f) of this section. Amendment 80 crab PSC assigned to the BSAI trawl limited access sector is subject to seasonal apportionment under § 679.21.

(f) *Rollover—Annual reallocation of an Amendment 80 species ICA or ITAC, crab PSC, and halibut PSC from the BSAI trawl limited access sector to Amendment 80 cooperatives—(1) General.* The Regional Administrator may reallocate a portion of an ICA or ITAC of an Amendment 80 species, crab PSC, or halibut PSC amount assigned to the BSAI trawl limited access sector to Amendment 80 cooperatives if the amount assigned to the BSAI trawl limited access sector is projected not to be harvested or used. Any reallocation will result in an amended CQ permit for each Amendment 80 cooperative. The timing of a reallocation will be at the discretion of the Regional Administrator.

(2) *Factors considered.* The Regional Administrator may consider the following factors when reallocating an ICA, a directed fishing allowance of an Amendment 80 species, or crab PSC, or halibut PSC amounts from the BSAI trawl limited access sector to Amendment 80 cooperatives:

- (i) The risk of biological harm to a groundfish species or species group;
- (ii) The risk of socioeconomic harm to other domestic fishery participants;
- (iii) The impact that the allocation might have on the socioeconomic well-being of Amendment 80 cooperatives;

(iv) Current catch and PSC use in the BSAI trawl limited access sector;

(v) Historic catch and PSC use in the BSAI trawl limited access sector;

(vi) Harvest capacity and any stated intent on the future harvesting patterns of vessels in the BSAI trawl limited access sector;

(vii) Administrative requirements to reissue CQ permits; and

(viii) Any other relevant biological, socioeconomic, or administrative factors.

(3) *Rollover of Amendment 80 species.* If, during a fishing year, the Regional Administrator determines that a reallocation of a portion of the ITAC or ICA of an Amendment 80 species assigned to the BSAI trawl limited access sector to Amendment 80 cooperatives is appropriate, the Regional Administrator will issue a revised CQ permit to reallocate that amount of Amendment 80 species to each Amendment 80 cooperative according to the following formula:

Amount of additional CQ issued to an Amendment 80 cooperative = Amount of Amendment 80 species available for reallocation to Amendment 80 cooperatives  $\times$  (Amount of CQ for that Amendment 80 species initially assigned to that Amendment 80 cooperative /  $\Sigma$  CQ for that Amendment 80 species initially assigned to all Amendment 80 cooperatives).

(4) *Rollover of halibut PSC.* If, during a fishing year, the Regional Administrator determines that a reallocation of a portion of the halibut PSC assigned to the BSAI trawl limited access sector to Amendment 80 cooperatives is appropriate, the Regional Administrator will issue a revised CQ permit to reallocate that amount of halibut PSC to each Amendment 80 cooperative according to the following procedure:

(i) Multiply the amount of the halibut PSC limit to be reallocated by 95 percent (0.95). This yields the maximum amount of halibut PSC available for allocation to Amendment 80 cooperatives; and

(ii) Determine the halibut PSC CQ issued to each Amendment 80 cooperative according to the following formula:

Amount of additional CQ issued to an Amendment 80 cooperative = Maximum amount of halibut PSC available for reallocation to Amendment 80 cooperatives  $\times$  (Amount of halibut PSC CQ initially assigned to that Amendment 80 cooperative /  $\Sigma$  halibut PSC CQ initially assigned to all Amendment 80 cooperatives).

(5) *Rollover of crab PSC.* If, during a fishing year, the Regional Administrator

determines that a reallocation of a portion of a crab PSC assigned to the BSAI trawl limited access sector to Amendment 80 cooperatives is appropriate, the Regional Administrator will issue a revised CQ permit to reallocate that amount of crab PSC to each Amendment 80 cooperative according to the following formula:

Amount of CQ issued to an Amendment 80 cooperative = Amount of that crab PSC available for allocation to Amendment 80 cooperatives  $\times$  (Amount of that crab PSC CQ initially assigned to that Amendment 80 cooperative /  $\Sigma$  that crab PSC CQ initially assigned to all Amendment 80 cooperatives).

(g) *CQ transfer applications—(1) General.* An Amendment 80 cooperative may transfer all or part of its CQ to another Amendment 80 cooperative. Amendment 80 cooperatives may transfer CQ during a calendar year with the following restrictions:

(i) An Amendment 80 cooperative may only transfer CQ to another Amendment 80 cooperative;

(ii) An Amendment 80 cooperative may only receive CQ from another Amendment 80 cooperative; and

(iii) An Amendment 80 cooperative receiving Amendment 80 species CQ by transfer must assign that Amendment 80 species CQ to a member(s) of the Amendment 80 cooperative for the purposes of use cap calculation as established under § 679.92(a).

(2) *Application for CQ transfer.* NMFS will notify the transferor and transferee once the application for CQ transfer has been received and approved. A transfer of CQ is not effective until approved by NMFS. An application for CQ transfer may only be submitted to NMFS using any one of the following methods:

(i) *Mail:* Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802-1668;

(ii) *Fax:* 907-586-7354; or

(iii) *Hand delivery or carrier:* NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(3) *Application forms.* Application forms are available through the internet on the NMFS Alaska Region Web site at <http://www.fakr.noaa.gov>, or by contacting NMFS at 800-304-4846, Option 2.

(4) *Contents of application.* A completed application for CQ transfer requires that the following information be provided:

(i) *Identification of transferor.* Enter the name, NMFS Person ID, name of Amendment 80 cooperative's designated representative; permanent business mailing address, business telephone number, business fax number, and e-

mail address (if available) of the Amendment 80 cooperative transferor. A temporary mailing address for each transaction may also be provided.

(ii) *Identification of transferee.* Enter the name, NMFS Person ID, name of Amendment 80 cooperative's designated representative, permanent business mailing address, business telephone number, business fax number, and e-mail address (if available) of the Amendment 80 cooperative transferee. A temporary mailing address for each transaction may also be provided.

(iii) *CQ to be transferred.* Identify the type and amount of Amendment 80 species, or Amendment 80 PSC CQ to be transferred, and the number of QS units from which this CQ is derived.

(iv) *Identification of Amendment 80 cooperative member.* Enter the name and NMFS Person ID of the member(s) of the receiving Amendment 80 cooperative to whose use cap Amendment 80 species CQ will be assigned, and the amount of Amendment 80 species CQ applied to each member, for purposes of applying Amendment 80 species use caps established under the Amendment 80 Program under § 679.92(a).

(v) *Certification of transferor.* The Amendment 80 cooperative transferor's designated representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. The printed name of the Amendment 80 cooperative transferor's designated representative must be entered.

(vi) *Certification of transferee.* The Amendment 80 cooperative transferee's designated representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. The printed name of the Amendment 80 cooperative transferee's designated representative must be entered.

(5) *CQ amounts applied to a member of an Amendment 80 cooperative.* (i) Amendment 80 species CQ must be assigned to a member of the Amendment 80 cooperative receiving the CQ for purposes of use cap calculations. No member of an Amendment 80 cooperative may exceed the CQ use cap applicable to that member.

(ii) For purposes of Amendment 80 species CQ use cap calculations, the total amount of Amendment 80 species CQ held or used by a person is equal to all metric tons of Amendment 80 species CQ derived from all Amendment 80 QS units on all Amendment 80 QS permits held by that

person and assigned to the Amendment 80 cooperative and all metric tons of Amendment 80 species CQ assigned to that person by the Amendment 80 cooperative from approved transfers.

(iii) The amount of Amendment 80 QS units held by a person, and CQ derived from those Amendment 80 QS units, is calculated using the individual and collective use cap rule established in § 679.92(a).

(h) *Amendment 80 cooperative*—(1) *General.* This section governs the formation and operation of Amendment 80 cooperatives. The regulations in this section apply only to Amendment 80 cooperatives that have formed for the purpose of applying for and fishing with CQ issued annually by NMFS. Members of Amendment 80 cooperatives should consult legal counsel before commencing any activity if the members are uncertain about the legality under the antitrust laws of the Amendment 80 cooperative's proposed conduct. Membership in an Amendment 80

cooperative is voluntary. No person may be required to join an Amendment 80 cooperative. If a person becomes the owner of an Amendment 80 vessel or a holder of an Amendment 80 LLP/QS license that has been assigned to an Amendment 80 cooperative, then that person may join that Amendment 80 cooperative as a member upon receipt of that Amendment 80 vessel or Amendment 80 LLP/QS license.

Members may leave an Amendment 80 cooperative, but any CQ contributed by the Amendment 80 QS permit(s) held by that member will remain with that Amendment 80 cooperative for the duration of the calendar year.

(2) *Legal and organizational requirements.* An Amendment 80 cooperative must meet the following legal and organizational requirements before it is eligible to receive CQ:

(i) Each Amendment 80 cooperative must be formed as a partnership, corporation, or other legal business entity that is registered under the laws

of one of the 50 states or the District of Columbia;

(ii) Each Amendment 80 cooperative must appoint an individual as the designated representative to act on the Amendment 80 cooperative's behalf and to serve as a contact point for NMFS for questions regarding the operation of the Amendment 80 cooperative. The designated representative may be a member of the Amendment 80 cooperative, or some other individual designated by the Amendment 80 cooperative to act on its behalf;

(iii) Each Amendment 80 cooperative must submit a timely and complete application for CQ; and

(iv) Each Amendment 80 cooperative must meet the mandatory requirements established in paragraphs (h)(3) and (4) of this section applicable to that Amendment 80 cooperative.

(3) *Mandatory requirements.* The following table describes the requirements to form an Amendment 80 cooperative:

(i) Who may join an Amendment 80 cooperative? .....	Any Amendment 80 QS holder named on a timely and complete application for CQ for that calendar year that is approved by NMFS. Individuals who are not Amendment 80 QS holders may be employed by, or serve as the designated representative of an Amendment 80 cooperative, but are not members of the Amendment 80 cooperative.
(ii) What is the minimum number of Amendment 80 QS permits that must be assigned to an Amendment 80 cooperative to allow it to form?	Any combination of at least nine Amendment 80 QS permits which would include Amendment 80 LLP/QS licenses.
(iii) How many Amendment 80 QS holders are required to form an Amendment 80 cooperative?	At least three Amendment 80 QS holders each of whom may not have a ten percent or greater direct or indirect ownership interest in any of the other Amendment 80 QS holders.
(iv) Is there a minimum amount of Amendment 80 QS units that must be assigned to an Amendment 80 cooperative for it to be allowed to form?	No.
(v) What is allocated to the Amendment 80 cooperative?	CQ for each Amendment 80 species, crab PSC, and halibut PSC, based on the amount of Amendment 80 QS units assigned to the cooperative.
(vi) Is this CQ an exclusive catch and use privilege?	Yes, the members of the Amendment 80 cooperative have an exclusive privilege to collectively catch and use this CQ, or an Amendment 80 cooperative can transfer all or a portion of this CQ to another Amendment 80 cooperative.
(vii) Is there a period in a calendar year during which designated vessels must catch CQ?	Yes, any Amendment 80 vessel designated to catch CQ for an Amendment 80 cooperative is prohibited from catching CQ during the season closure for trawl gear in the BSAI specified at § 679.23(c) unless regulations at § 679.23 applicable to an Amendment 80 species in the BSAI are more restrictive than those established in § 679.23(c), in which case the more restrictive regulations will apply.
(viii) Can any vessel catch an Amendment 80 cooperative's CQ? .....	No, only Amendment 80 vessels that are assigned to that Amendment 80 cooperative for that calendar year in the application for CQ may catch and process the CQ assigned to that Amendment 80 cooperative.
(ix) Can a member of an Amendment 80 cooperative transfer CQ individually without the approval of the other members of the Amendment 80 cooperative?	No, only the designated representative of the Amendment 80 cooperative, and not individual members, may transfer its CQ to another Amendment 80 cooperative; and only if that transfer is approved by NMFS as established under paragraph (g) of this section.
(x) Are GOA sideboard limits assigned to specific persons or Amendment 80 cooperatives?	No, GOA sideboard limits are not assigned to specific persons or Amendment 80 cooperatives. GOA sideboard limits are assigned to the Amendment 80 sector.

(xi) Can an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel be assigned to more than one Amendment 80 cooperative in a calendar year?	No, an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel may be assigned to only one Amendment 80 cooperative in a calendar year. A person holding multiple Amendment 80 QS permits, Amendment 80 LLP licenses, or owning multiple Amendment 80 vessels is not required to assign all Amendment 80 QS permits, Amendment 80 LLP licenses, or Amendment 80 vessels to the same Amendment 80 cooperative or the Amendment 80 limited access fishery.
(xii) Can an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel be assigned to an Amendment 80 cooperative and the Amendment 80 limited access fishery?	No, an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel assigned to an Amendment 80 cooperative may not be assigned to the Amendment 80 limited access fishery for that calendar year. A person holding multiple Amendment 80 QS permits, Amendment 80 LLP licenses, or owning multiple Amendment 80 vessels is not required to assign all Amendment 80 QS permits, Amendment 80 LLP licenses, or Amendment 80 vessels to the same Amendment 80 cooperative or the Amendment 80 limited access fishery.
(xiii) Which members may catch the Amendment 80 cooperative's CQ?	Use of a cooperative's CQ permit is determined by the Amendment 80 cooperative contract signed by its members. Any violations of this contract by a cooperative member may be subject to civil claims by other members of the Amendment 80 cooperative.
(xiv) Does an Amendment 80 cooperative need a membership agreement or contract?	Yes, an Amendment 80 cooperative must have a membership agreement or contract that specifies how the Amendment 80 cooperative intends to catch its CQ. A copy of this agreement or contract must be submitted to NMFS with the application for CQ.
(xv) What happens if the Amendment 80 cooperative membership agreement or contract is modified during the fishing year?	A copy of the amended Amendment 80 membership agreement or contract must be sent to NMFS in accordance with § 679.4(a)(4).
(xvi) What happens if the Amendment 80 cooperative exceeds its CQ amount?	An Amendment 80 cooperative is not authorized to catch Amendment 80 species or use crab PSC or halibut PSC in excess of the amount on its CQ permit. Exceeding a CQ permit is a violation of the regulations. Each member of the Amendment 80 cooperative is jointly and severally liable for any violations of the Amendment 80 Program regulations while fishing under the authority of a CQ permit. This liability extends to any persons who are hired to catch or receive CQ assigned to an Amendment 80 cooperative. Each member of an Amendment 80 cooperative is responsible for ensuring that all members of the cooperative comply with all regulations applicable to fishing under the Amendment 80 Program.
(xvii) Is there a limit on how much CQ an Amendment 80 cooperative may hold or use?	No, but each Amendment 80 QS holder is subject to use caps, and an Amendment 80 vessel may be subject to vessel use caps. See § 679.92(a).
(xviii) Is there a limit on how much CQ a vessel may catch? .....	Yes, an Amendment 80 vessel may not catch more than 20 percent of the aggregate Amendment 80 species ITAC assigned to the Amendment 80 sector for that calendar year. See § 679.92(a) for use cap provisions.
(xix) Are there any special reporting requirements? .....	Yes, the designated representative of the Amendment 80 cooperative must submit an annual Amendment 80 cooperative report as described under § 679.5(s). In addition, each member of an Amendment 80 cooperative must submit a timely and complete EDR as described under § 679.94.

(4) *Successors-in-interest.* If a member of an Amendment 80 cooperative dies (in the case of an individual) or dissolves (in the case of a business entity), the CQ derived from the Amendment 80 QS permits assigned to the Amendment 80 cooperative for that year from that person remains under the control of the Amendment 80 cooperative for the duration of that calendar year as specified in the Amendment 80 cooperative contract. Each Amendment 80 cooperative is free to establish its own internal procedures for admitting a successor-in-interest during the fishing season due to the death or dissolution of an Amendment 80 cooperative member.

**§ 679.92 Amendment 80 Program use caps and sideboard limits.**

(a) *Use caps*—(1) *General.* Use caps limit the amount of Amendment 80 QS units and Amendment 80 species CQ that may be held or used by an Amendment 80 QS holder or Amendment 80 vessel. Use caps may not be exceeded unless the Amendment 80 QS holder or Amendment 80 vessel subject to the use cap is specifically allowed to exceed a cap according to the criteria established under this paragraph (a) or by an operation of law. There are two types of use caps: Person use caps and vessel use caps. All Amendment 80 QS unit use caps are based on the aggregate Amendment 80 species Amendment 80 initial QS pool set forth in Table 32 to this part. The use caps apply as follows:

(2) *Amendment 80 QS holder use cap*—(i) *QS and CQ use cap.* A person may not individually or collectively hold or use more than thirty (30.0) percent of the aggregate Amendment 80 QS units initially assigned to the Amendment 80 sector and resulting CQ unless that person receives those Amendment 80 QS units on an Amendment 80 permit(s) based on Amendment 80 legal landings assigned to Amendment 80 vessel(s) or Amendment 80 LLP license(s) held by that Amendment 80 QS holder:

(A) Prior to June 9, 2006; and

(B) At the time of application for Amendment 80 QS.

(ii) *CQ use cap calculation.* For purposes of calculating and applying the CQ use cap, a person is assigned CQ based on:

(A) The amount of CQ derived from the Amendment 80 QS units held by that person; and

(B) Any CQ assigned to that person in an Application for CQ transfer.

(iii) *Transfer limitations.* (A) An Amendment 80 QS holder that receives an initial allocation of aggregate Amendment 80 QS units that exceeds the use cap listed in paragraph (a)(2)(i) of this section cannot receive any Amendment 80 QS permit by transfer unless and until that person's holdings of aggregate Amendment 80 QS units are reduced to an amount below the use cap specified in paragraph (a)(2)(i) of this section.

(B) If an Amendment 80 QS holder that received an initial allocation of aggregate Amendment 80 QS units on his or her Amendment 80 QS permits that exceeds the use cap listed in paragraph (a)(2)(i) of this section transfers an Amendment 80 QS permit to another person, the transferor may not hold more than the greater of either the amount of Amendment 80 QS units held by the transferor after the transfer if the amount of aggregate Amendment 80 QS units continues to exceed the use cap, or the amount equal to the Amendment 80 QS unit use cap established in paragraph (a)(2)(i) of this section.

(C) An Amendment 80 QS holder that receives an initial allocation of aggregate Amendment 80 QS units on his or her Amendment 80 QS permits that exceeds the use cap listed in paragraph (a)(2)(i) of this section is prohibited from having any CQ assigned to that Amendment 80 QS holder in an application for CQ transfer unless and until that Amendment 80 QS holder's holdings of aggregate Amendment 80 QS units are reduced to an amount below the use cap specified in paragraph (a)(2)(i) of this section.

(3) *ITAC use cap for an Amendment 80 vessel.* An Amendment 80 vessel may not be used to catch an amount of Amendment 80 species greater than twenty (20.0) percent of the aggregate Amendment 80 species ITACs assigned to the Amendment 80 sector. This amount includes ITAC that is assigned as CQ or to the Amendment 80 limited access fishery.

(b) *GOA sideboard limits—(1) GOA groundfish sideboard limits.* Amendment 80 vessels may not be used to catch more than the amounts of groundfish in the management areas specified in Table 37 to this part from January 1 through December 31 of each year, except that GOA groundfish sideboard limits specified in Table 37 to this part do not apply when an Amendment 80 vessel is using dredge

gear while directed fishing for scallops in the GOA.

(2) *GOA halibut PSC sideboard limits.* All Amendment 80 vessels, other than the fishing vessel GOLDEN FLEECE as specified in paragraph (d) of this section, may not use halibut PSC in the fishery complexes, management areas, and seasons greater than the amounts specified in Table 38 to this part during January 1 through December 31 of each year; except that:

(i) An Amendment 80 vessel that uses halibut PSC CQ in the Central GOA subject to the regulations established in the Rockfish Program under subpart G to this part is not subject to the halibut PSC sideboard limits in Table 38 to this part while fishing under a Rockfish CQ permit; and

(ii) Halibut PSC sideboard limits in Table 38 to this part do not apply when an Amendment 80 vessel is using dredge gear while directed fishing for scallops in the GOA.

(c) *Sideboard restrictions applicable to Amendment 80 vessels directed fishing for flatfish in the GOA.* Only an Amendment 80 vessel listed in column A of Table 39 to this part may be used to fish in the directed arrowtooth flounder, deep-water flatfish, flathead sole, rex sole, and shallow-water flatfish fisheries in the GOA and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(d) *Sideboard restrictions applicable to the fishing vessel GOLDEN FLEECE.*

(1) The fishing vessel GOLDEN FLEECE (USCG documentation number 609951):

(i) May not be used for directed groundfish fishing for northern rockfish, pelagic shelf rockfish, pollock, Pacific cod, or Pacific ocean perch in the GOA and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season; and

(ii) Is not subject to halibut PSC sideboard limits as described in paragraph (b)(2) of this section in the GOA or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

#### **§ 679.93 Amendment 80 Program recordkeeping, permits, monitoring, and catch accounting.**

(a) *Recordkeeping and reporting.* See § 679.5(s).

(b) *Permits.* See § 679.4(o).

(c) *Catch monitoring requirements for Amendment 80 vessels and catcher/processors not listed in § 679.4(l)(2)(i) using trawl gear and fishing in the BSAI.* The requirements under paragraphs (c)(1) through (9) of this section apply to all Amendment 80 vessels except Amendment 80 vessels using dredge

gear while directed fishing for scallops, and any other catcher/processor not listed in § 679.4(l)(2)(i) using trawl gear and fishing or receiving fish in the BSAI and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. Except when using dredge gear while directed fishing for scallops, at all times when an Amendment 80 vessel or a catcher/processor not listed in § 679.4(l)(2)(i) using trawl gear has BSAI groundfish onboard the vessel, the vessel owner or operator must ensure that:

(1) *Catch weighing.* All groundfish are weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b). Each haul must be weighed separately and all catch must be made available for sampling by a NMFS-certified observer.

(2) *Observer sampling station.* An observer sampling station meeting the requirements at § 679.28(d) is available at all times.

(3) *Observer coverage requirements.* The vessel is in compliance with the observer coverage requirements described at § 679.50(c)(6).

(4) *Operational line.* The vessel has no more than one operational line or other conveyance for the mechanized movement of catch between the scale used to weigh total catch and the location where the observer collects species composition samples.

(5) *Fish on deck.* No fish are allowed to remain on deck unless an observer is present, except for fish inside the codend and fish accidentally spilled from the codend during hauling and dumping. Fish accidentally spilled from the codend must be moved to the fish bin.

(6) *Sample storage.* There is sufficient space to accommodate a minimum of 10 observer sampling baskets. This space must be within or adjacent to the observer sample station.

(7) *Pre-cruise meeting.* The Observer Program Office is notified by phone at 1-907-271-1702 at least 24 hours prior to departure when the vessel will be carrying an observer who has not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager, and any observers assigned to the vessel.

(8) *Belt and flow operations.* The vessel operator stops the flow of fish and clears all belts between the bin doors and the area where the observer collects samples of unsorted catch when requested to do so by the observer.

(9) *Vessel crew in tanks or bins.* The vessel owner or operator must comply with the bin monitoring standards specified in § 679.28(i).

(d) *Catch monitoring requirements for Amendment 80 vessels fishing in the GOA.* The requirements under this section apply to any Amendment 80 vessel fishing in the GOA and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season except Amendment 80 vessels using dredge gear while directed fishing for scallops. At all times when an Amendment 80 vessel is not using dredge gear while directed fishing for scallops and has GOA groundfish onboard the vessel owner or operator must ensure that:

(1) Catch from an individual haul is not mixed with catch from another haul prior to sampling by a NMFS-certified observer, and all catch is made available for sampling by a NMFS-certified observer;

(2) The vessel is in compliance with the observer coverage requirements described at § 679.50(c)(6)(ii);

(3) *Operational Line.* The vessel has no more than one operational line or other conveyance for the mechanized movement of catch at the location where the observer collects species composition samples; and

(4) The requirements in § 679.93(c)(5), (8), and (9) are met.

(e) *Catch accounting—(1) Amendment 80 species—(i) Amendment 80 cooperative.* All Amendment 80 species caught in the BSAI, including catch in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, by an Amendment 80 vessel assigned to an Amendment 80 cooperative will be debited from the CQ permit for that Amendment 80 cooperative for that calendar year unless that Amendment 80 vessel is using dredge gear while directed fishing for scallops.

(ii) *Amendment 80 limited access fishery.* All Amendment 80 species caught in the BSAI, including catch in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, by an Amendment 80 vessel assigned to the Amendment 80 limited access fishery will be debited against the ITAC for that Amendment 80 species in the Amendment 80 limited access fishery for that calendar year unless that Amendment 80 vessel is using dredge gear while directed fishing for scallops.

(2) *Crab PSC and halibut PSC—(i) Amendment 80 cooperative.* All crab PSC or halibut PSC used by an Amendment 80 vessel assigned to an Amendment 80 cooperative in the BSAI,

including crab PSC or halibut PSC used in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, will be debited against the CQ permit for that Amendment 80 cooperative for that calendar year unless that Amendment 80 vessel is using dredge gear while directed fishing for scallops.

(ii) *Amendment 80 limited access fishery.* All crab PSC or halibut PSC used by an Amendment 80 vessel assigned to the Amendment 80 limited access fishery in the BSAI, including crab PSC or halibut PSC used in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, will be debited against the crab PSC or halibut PSC limit assigned to the Amendment 80 limited access fishery for that calendar year, unless that Amendment 80 vessels is using dredge gear while directed fishing for scallops.

(3) *GOA groundfish sideboard limits.* All Amendment 80 sideboard species defined in Table 37 to this part caught in the GOA, including catch in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, by an Amendment 80 vessel will be debited against the Amendment 80 sideboard limit for that Amendment 80 sideboard species for that calendar year except Amendment 80 sideboard species caught by Amendment 80 vessel using dredge gear while directed fishing for scallops.

(4) *GOA halibut sideboard limits.* All halibut PSC used by all Amendment 80 vessels in the GOA, including halibut PSC used in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, will be debited against the sideboard limit established for the Amendment 80 sector, except:

(i) Halibut PSC CQ used by the catcher/processor sector in the Rockfish Program in the Central GOA;

(ii) Halibut PSC used by the fishing vessel GOLDEN FLEECE (USCG Documentation number 609951); and

(iii) Halibut PSC used by an Amendment 80 vessel using dredge gear while directed fishing for scallops.

#### **§ 679.94 Economic data report (EDR) for the Amendment 80 sector.**

(a) *Amendment 80 EDR—(1) Requirement to submit an EDR.* Each year except 2008, a person who held an Amendment 80 QS permit during a calendar year must submit to NMFS an EDR for that calendar year for each Amendment 80 QS permit held by that person. An EDR must be timely and complete.

(2) *Submission of EDR.* An EDR may only be submitted to NMFS using any one of the following methods:

(i) *Mail:* NMFS, Alaska Fisheries Science Center, Economic Data Reports, 7600 Sand Point Way NE, F/AKC2, Seattle, WA 98115; or

(ii) *Fax:* 206–526–6723

(3) *EDR forms.* EDR forms are available through the Internet on the NMFS Alaska Region Web site at <http://www.fakr.noaa.gov>, or by contacting NMFS at 206–526–6414.

(4) *Deadline.* For each calendar year except 2008, a completed EDR must be received by NMFS no later than 1700 hours A.l.t. on June 1 of the year following the calendar year during which the Amendment 80 QS permit was held, or if sent by U.S. mail, postmarked by that date.

(5) *Contents of EDR.* An EDR must contain completed submissions for each data field required under paragraphs (b) and (c) of this section, as applicable, and the following information:

(i) *Calendar year of EDR.* Calendar year for which the EDR is being submitted;

(ii) *Amendment 80 QS holder information.* Name of company, partnership, other business entity, business telephone number, business fax number, e-mail address (if available) and Amendment 80 QS permits held;

(iii) *Designated representative.* An Amendment 80 QS holder must appoint an individual to be his designated representative and must ensure that the designated representative complies with the regulations in this section. The designated representative is the primary contact person for NMFS on issues relating to data required in the EDR. If an individual Amendment 80 QS holder chooses to complete the EDR, then they are the designated representative;

(iv) *Person completing this report.* (A) Indicate whether the person completing this report is the Amendment 80 QS holder, or the designated representative for the Amendment 80 QS holder;

(B) Record the name of the person completing the report, title, business telephone number, fax number, signature of the person submitting the EDR, and e-mail address (if available). If a designated representative is not the Amendment 80 QS holder, written authorization to act on behalf of the Amendment 80 QS holder must accompany the EDR;

(v) *Amendment 80 QS holders who own Amendment 80 vessels.* An Amendment 80 QS holder who is an Amendment 80 vessel owner must submit, or have his designated representative submit, revenue and cost information for each Amendment 80 QS

permit held and each Amendment 80 vessel owned by that Amendment 80 QS holder as described under paragraphs (b) and (c) of this section;

(vi) *Amendment 80 QS holders who do not own Amendment 80 vessels.* An Amendment 80 QS holder who is not an Amendment 80 vessel owner must submit, or have his designated representative submit, revenue and cost information for each Amendment 80 QS permit held by that Amendment 80 QS holder as described under paragraph (c) of this section; and

(vii) *Certification.* The Amendment 80 QS holder and his designated representative, if applicable, must certify that all information provided under paragraphs (b) and (c) of this section is accurate and complete.

(b) *Amendment 80 vessel information—(1) Ownership of an Amendment 80 vessel.* If a person owned any part of an Amendment 80 vessel during a calendar year, that person must provide the following information for each Amendment 80 vessel owned:

(i) *Amendment 80 vessel owner information.* Vessel name, USCG Documentation number, ADF&G vessel registration number, ADF&G processor code, Amendment 80 LLP license number(s) which designated that vessel during that calendar year, Amendment 80 QS permit assigned to that vessel during that calendar year, Amendment 80 limited access fishery permit number assigned to that vessel during that calendar year, or name of Amendment 80 cooperative to which that Amendment 80 vessel was assigned during that calendar year (if applicable);

(ii) *Amendment 80 vessel operator information.* If a person other than the Amendment 80 QS holder operated an Amendment 80 vessel owned by that Amendment 80 QS holder during a calendar year, provide the following: Name of company, partnership, other business entity, and business telephone number, business fax number, and e-mail address (if available);

(2) *Vessel characteristics.* (i) Home port, U.S. gross registered tonnage, net tonnage, length overall, beam, shaft horsepower, fuel capacity, year built;

(ii) Vessel survey value: most recent survey value, date of last survey value, did survey reflect value of permits and processing equipment;

(iii) Freezing capacity: maximum freezing capacity of this vessel in pounds per hour and freezer space (measured in pounds of product);

(iv) Fuel consumption: total consumption for the calendar year and average fuel consumed per hour from

fishing and processing, transiting, and in shipyard.

(v) Vessel activity during calendar year: number of days the vessel was engaged in fishing, processing, steaming empty, offloading, and inactive or in shipyard. Report separately for Amendment 80 fisheries and all other fisheries; and

(vi) Processing capacity: Record each type of product processed on the line in the Amendment 80 fishery, the number of processing lines of similar type (equipment and/or product mix), and the vessel's maximum average throughput in pounds (round weight) per hour under normal operating conditions (assuming quantity of raw fish and other inputs is not limiting), totaled over all processing lines of this type.

(3) *Calendar year revenues.*

(i) Total fishery product sales volume and FOB Alaska revenue; and

(ii) All other income derived from vessel operations: tendering, charters, cargo transport, etc.

(4) *Calendar year costs.* (i) Fishing labor expenses (including bonuses and payroll taxes, but excluding benefits and insurance);

(ii) Processing labor expenses (including bonuses and payroll taxes, but excluding benefits and insurance);

(iii) Labor expenses for all other employees aboard the vessel;

(iv) Food and provisions not paid by crew;

(v) Recruitment, travel, benefits, and other employee related costs;

(vi) Lease expense for this vessel and onboard equipment;

(vii) Purchases of fishing gear (nets, net electronics, doors, cables, etc.);

(viii) Expenditures on processing equipment;

(ix) Product storage equipment;

(x) Expenditures on vessel and onboard equipment (other than fishing, processing, or storage equipment);

(xi) Fishing gear leases;

(xii) Repair and maintenance expenses for vessel and processing equipment;

(xiii) Freight storage and other sales costs;

(xiv) Product packaging materials;

(xv) Fuel and lubrication;

(xvi) Observer fees and monitoring costs;

(xvii) General administrative costs;

(xviii) Insurance;

(xix) Fisheries landing taxes;

(xx) Total raw fish purchases; and

(xxi) All other costs related to vessel operations not included in the preceding list.

(5) *Calendar year labor.* Average number and total number of employees

for fishing, processing, and other activities on this vessel.

(i) Average number of hours worked per day by processing line employee; and

(ii) Crew revenue share system used for some processing, all processing, some non-processing, and all non-processing crew.

(c) *Permit revenues or expenditures.*

An Amendment 80 QS holder or his designated representative will record revenues and expenditures for any tradable fishing or processing privilege. Attribute those revenues or costs to a specific Amendment 80 vessel or Amendment 80 LLP as applicable.

(1) *Permit revenues.* (i) Income from sale or lease of fishery licenses, permits, harvesting or processing rights: record license or permit number and revenue for each asset sold; and

(ii) Royalties received from leasing allocations including metric tons and dollars for Amendment 80 yellowfin sole, rock sole, flathead sole, Atka mackerel, Pacific ocean perch, Pacific cod, Amendment 80 leased halibut PSC, leased crab PSC, and any other species leased.

(2) *Permit expenditures.* (i) Fishery licenses, permits, harvesting or processing rights: record license or permit number and cost for each asset purchased;

(ii) Royalties paid for leases of catcher/processing quota, including metric tons, and dollars for Amendment 80 yellowfin sole, rock sole, flathead sole, Atka mackerel, Pacific ocean perch, Pacific cod, Amendment 80 leased halibut PSC, leased king crab PSC, and any other species leased;

(iii) Cooperative costs including lawyer and accountant costs, association fees, and other fees charged by harvest cooperative; and

(iv) Any other costs incurred from the use of fishery licenses, permits, harvesting or processing rights not included in the preceding list.

(d) *EDR audit procedures.* (1) NMFS will conduct verification of information with the Amendment 80 QS holder or designated representative, if applicable.

(2) The Amendment 80 QS holder or designated representative, if applicable, must respond to inquiries by NMFS within 20 days of the date of issuance of the inquiry.

(3) The Amendment 80 QS holder or designated representative, if applicable, must provide copies of additional data to facilitate verification by NMFS. The NMFS auditor may review and request copies of additional data provided by the Amendment 80 QS holder or designated representative, including but not limited to, previously audited or



reviewed financial statements,  
worksheets, tax returns, invoices,

receipts, and other original documents  
substantiating the data submitted.

■ 17. Tables 31 through 41 are added to  
part 679 to read as follows:

TABLE 31 TO PART 679—LIST OF AMENDMENT 80 VESSELS AND LLP LICENSES ORIGINALLY ASSIGNED TO AN  
AMENDMENT 80 VESSEL

<i>Column A:</i> Name of amendment 80 vessel	<i>Column B:</i> USCG Documentation No.	<i>Column C:</i> LLP license number originally assigned to the Amendment 80 vessel
ALASKA JURIS .....	569276	LLG 2082
ALASKA RANGER .....	550138	LLG 2118
ALASKA SPIRIT .....	554913	LLG 3043
ALASKA VOYAGER .....	536484	LLG 2084
ALASKA VICTORY .....	569752	LLG 2080
ALASKA WARRIOR .....	590350	LLG 2083
ALLIANCE .....	622750	LLG 2905
AMERICAN NO I .....	610654	LLG 2028
ARCTIC ROSE .....	931446	LLG 3895
ARICA .....	550139	LLG 2429
BERING ENTERPRISE .....	610869	LLG 3744
CAPE HORN .....	653806	LLG 2432
CONSTELLATION .....	640364	LLG 1147
DEFENDER .....	665983	LLG 3217
ENTERPRISE .....	657383	<sup>1</sup> LLG 4831
GOLDEN FLEECE .....	609951	LLG 2524
HARVESTER ENTERPRISE .....	584902	LLG 3741
LEGACY .....	664882	LLG 3714
OCEAN ALASKA .....	623210	LLG 4360
OCEAN PEACE .....	677399	LLG 2138
PROSPERITY .....	615485	LLG 1802
REBECCA IRENE .....	697637	LLG 3958
SEAFISHER .....	575587	LLG 2014
SEAFREEZE ALASKA .....	517242	LLG 4692
TREMONT .....	529154	LLG 2785
U.S. INTREPID .....	604439	LLG 3662
UNIMAK .....	637693	LLG 3957
VAERDAL .....	611225	LLG 1402

<sup>1</sup> LLG 4831 is the LLP license originally assigned to the F/V ENTERPRISE, USCG Documentation Number 657383 for all relevant purposes of this part.

TABLE 32 TO PART 679.—AMENDMENT 80 INITIAL QS POOL

Amendment 80 species	Management area	Amendment 80 initial QS pool in units
Atka mackerel .....	BS/541 .....	Σ Highest Five Years in metric tons in the Amendment 80 official record as of December 31, 2007, for that Amendment 80 species in that management area.
	542 .....	
	543 .....	
Al Pacific ocean perch .....	541 .....	
	542 .....	
	543 .....	
Flathead sole .....	BSAI.	
Pacific cod .....	BSAI.	
Rock sole .....	BSAI.	
Yellowfin sole .....	BSAI.	

TABLE 33 TO PART 679.—ANNUAL APPORTION OF AMENDMENT 80 SPECIES ITAC BETWEEN THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS (EXCEPT YELLOWFIN SOLE)

Fishery	Management area	Year	Percentage of ITAC allocated to the Amendment 80 sector	Percentage of ITAC allocated to the BSAI trawl limited access sector
Atka Mackerel .....	543 .....	All years .....	100	0
	542 .....	2008 .....	98	2
		2009 .....	96	4
		2010 .....	94	6
		2011 .....	93	8
		2012 and all future years .....	90	10
	541/EBS .....	2008 .....	98	2
		2009 .....	96	4
		2010 .....	94	6
		2011 .....	92	8
		2012 and all future years .....	90	10
Aleutian Islands Pacific ocean perch	543 .....	All years .....	98	2
	542 .....	2008 .....	95	5
		2009 and all future years .....	90	10
Pacific cod .....	541 .....	2008 .....	95	5
Rock sole .....	BSAI .....	All years .....	13.4	N/A
Flathead sole .....	BSAI .....	All years .....	100	0
	BSAI .....	All years .....	100	0

TABLE 34 TO PART 679.—ANNUAL APPORTIONMENT OF BSAI YELLOWFIN SOLE BETWEEN THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS

Row No.	If the yellowfin sole ITAC is between . . .	and . . .	then the yellowfin sole ITAC rate for the Amendment 80 sector is . . .	and the amount of yellowfin sole ITAC allocated to Amendment 80 Sector is . . .	and the amount of yellowfin sole ITAC allocated to the BSAI trawl limited access sector is . . .
	Column A	Column B	Column C	Column D	Column E
Row 1 .....	0 mt .....	87,499 mt .....	0.93	ITAC × Row 1, Column C .....	ITAC—Row 1, Column E.
Row 2 .....	87,500 mt .....	94,999 mt .....	0.875	(Amount of ITAC greater than 87,499 mt and less than 95,000 mt × Row 2, Column C) + Row 1, Column D.	ITAC—Row 2, Column D.
Row 3 .....	95,000 mt .....	102,499 mt .....	0.82	(Amount of ITAC greater than 94,999 mt and less than 102,500 mt × Row 3, Column C) + Column D, Row 2.	ITAC—Row 3, Column D.
Row 4 .....	102,500 mt .....	109,999 mt .....	0.765	(Amount of ITAC greater than 102,499 mt and less than 110,000 mt × Row 4, Column C) + Column D, Row 3.	ITAC—Row 4, Column D.
Row 5 .....	110,000 mt .....	117,499 mt .....	0.71	(Amount of ITAC greater than 109,999 mt and less than 117,500 mt × Row 5, Column C) + Column D, Row 4.	ITAC—Row 5, Column D.
Row 6 .....	117,500 mt .....	124,999 mt .....	0.655	(Amount of ITAC greater than 117,499 mt and less than 125,000 mt × Row 6, Column C) + Column D, Row 5).	ITAC—Row 6, Column D.
Row 7 .....	125,000 mt and greater		0.6	(Amount of ITAC greater than 124,999 mt × Row 7, Column C) + Column D, Row 6.	ITAC—Row 7, Column D.

TABLE 35 TO PART 679.—APPORTIONMENT OF CRAB PSC AND HALIBUT PSC BETWEEN THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS

Fishery	Year	Halibut PSC limit in the BSAI	Zone 1 Red king crab PSC limit . . .	<i>C. opilio</i> crab PSC limit (COBLZ) . . .	Zone 1 <i>C. bairdi</i> crab PSC limit . . .	Zone 2 <i>C. bairdi</i> crab PSC limit . . .
			as a percentage of the total BSAI trawl PSC limit after allocation as PSQ			
Amendment 80 sector .....	2008	2,525 mt	62.48	61.44	52.64	29.59
	2009	2,475 mt	59.36	58.37	50.01	28.11
	2010	2,425 mt	56.23	55.3	47.38	26.63
	2011	2,375 mt	53.11	52.22	44.74	25.15
	2012 and all future years	2,325 mt	49.98	49.15	42.11	23.67
BSAI trawl limited access .....	All years	875 mt	30.58	32.14	46.99	46.81

TABLE 36 TO PART 679.—PERCENTAGE OF CRAB AND HALIBUT PSC LIMIT ASSIGNED TO EACH AMENDMENT 80 SPECIES

For the following PSC species . . .	The percentage of the Amendment 80 sector PSC limit assigned to each Amendment 80 species is . . .					
	Atka mackerel	Al Pacific ocean perch	Pacific cod	Flathead sole	Rock sole	Yellowfin sole
Halibut .....	3.96	1.87	24.79	13.47	24.19	31.72
Zone 1 Red king crab .....	0.14%	0.56%	6.88%	0.48%	61.79%	30.16%
<i>C. opilio</i> crab (COBLZ) ....	0%	0.06%	6.28%	17.91%	9.84%	65.91%
Zone 1 <i>C. bairdi</i> crab .....	0%	0%	17.01%	3.13%	56.15%	23.71%
Zone 2 <i>C. bairdi</i> crab .....	0.01%	0.03%	7.92%	37.31%	7.03%	47.70%

TABLE 37 TO PART 679.—GOA AMENDMENT 80 SIDEBOARD LIMIT FOR GROUND FISH FOR THE AMENDMENT 80 SECTOR

In the following management areas in the GOA and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season . . .	The sideboard limit for . . .	Is . . .
Area 610 .....	Pollock .....	0.3% of the TAC.
Area 620 .....	Pollock .....	0.2% of the TAC.
Area 630 .....	Pollock .....	0.2% of the TAC.
Area 640 .....	Pollock .....	0.2% of the TAC.
West Yakutat District .....	Pacific cod .....	3.4% of the TAC.
	Pacific ocean perch .....	96.1% of the TAC.
	Pelagic shelf rockfish .....	89.6% of the TAC.
Central GOA .....	Pacific cod .....	4.4% of the TAC.
	Pacific ocean perch .....	Subject to regulations in subpart G to this part.
	Pelagic shelf rockfish .....	Subject to regulations in subpart G to this part.
	Northern rockfish .....	Subject to regulations in subpart G to this part.
Western GOA .....	Pacific cod .....	2.0% of the TAC.
	Pacific ocean perch .....	99.4% of the TAC.
	Pelagic shelf rockfish .....	76.4% of the TAC.
	Northern rockfish .....	100% of the TAC.

TABLE 38 TO PART 679.—GOA AMENDMENT 80 SIDEBOARD LIMIT FOR HALIBUT PSC FOR THE AMENDMENT 80 SECTOR

In the . . .	The maximum percentage of the total GOA halibut PSC limit that may be used by all Amendment 80 qualified vessels subject to the halibut PSC sideboard limit in each season as those seasons are established in the annual harvest specifications is . . .				
	Season 1	Season 2	Season 3	Season 4	Season 5
Shallow-water species fishery as defined in § 679.21(d)(3)(iii)(A) in the GOA or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.	0.48% .....	1.89% .....	1.46% .....	0.74% .....	2.27%
Deep-water species fishery as defined in § 679.21(d)(3)(iii)(B) in the GOA or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.	1.15% .....	10.72% ....	5.21% .....	0.14% .....	3.71%

TABLE 39 TO PART 679.—AMENDMENT 80 VESSELS THAT MAY BE USED TO DIRECTED FISH FOR FLATFISH IN THE GOA

Column A: Name of Amendment 80 vessel	Column B: USCG Documentation No.
ALLIANCE .....	622750
AMERICAN NO I .....	610654
DEFENDER .....	665983

TABLE 39 TO PART 679.—AMENDMENT 80 VESSELS THAT MAY BE USED TO DIRECTED FISH FOR FLATFISH IN THE GOA—Continued

<i>Column A:</i> Name of Amendment 80 vessel	<i>Column B:</i> USCG Documentation No.
GOLDEN FLEECE .....	609951
LEGACY .....	664882
OCEAN ALASKA .....	623210
OCEAN PEACE .....	677399
SEAFREEZE ALASKA .....	517242
U.S. INTREPID .....	604439
UNIMAK .....	637693
VAERDAL .....	611225

TABLE 40 TO PART 679.—BSAI HALIBUT PSC SIDEBOARD LIMITS FOR AFA CATCHER/PROCESSORS AND AFA CATCHER VESSELS

In the following target species categories as defined in § 679.21(e)(3)(iv) . . .	The AFA catcher/ processor halibut PSC sideboard limit in metric tons is . . .	The AFA catcher vessel halibut PSC sideboard limit in metric tons is . . .
All target species categories .....	286	N/A
Pacific cod trawl .....	N/A	887
Pacific cod hook-and-line or pot .....	N/A	2
Yellowfin sole .....	N/A	101
Rock sole/flathead sole/other flatfish <sup>1</sup> .....	N/A	228
Turbot/Arrowtooth/Sablefish .....	N/A	0
Rockfish <sup>2</sup> .....	N/A	2
Pollock/Atka mackerel/other species .....	N/A	5

<sup>1</sup> “Other flatfish” for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Greenland turbot, rock sole, flathead sole, yellowfin sole, and arrowtooth flounder.

<sup>2</sup> Applicable from July 1 through December 31.

TABLE 41 TO PART 679.—BSAI CRAB PSC SIDEBOARD LIMITS FOR AFA CATCHER/PROCESSORS AND AFA CATCHER VESSELS

For the following crab species in the following areas . . .	The AFA catcher/ processor crab PSC sideboard limit is equal to the following ratio . . .	The AFA catcher vessel crab PSC sideboard limit is equal to the fol- lowing ratio . . .	Multiplied by . . .
Red king crab Zone 1 .....	0.007	0.299	The PSC amount in number of animals available to trawl vessels in the BSAI after allocation of PSQ established in the annual harvest specifications for that calendar year.
<i>C. opilio</i> crab (COBLZ) .....	0.153	0.168	
Zone 1C. <i>bairdi</i> crab .....	0.14	0.33	
Zone 2C. <i>bairdi</i> crab .....	0.05	0.186	

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