infected with WNS are believed to be less resilient to disturbance and resulting arousal. Furthermore, increased human visitation of hibernacula could intensify the spread of WNS from infected to uninfected sites. We have, therefore, determined in accordance with 50 CFR 424.12(a)(1) that it is not prudent to designate critical habitat for the northern long-eared bat.

### References Cited

A complete list of references cited in this document is available on the Internet at *http://www.regulations.gov* and upon request from the Twin Cities Ecological Services Office (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

### Authors

The primary authors of this document are the staff members of the Twin Cities Ecological Services Office.

### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 12, 2016.

**Michael J. Bean,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2016–09673 Filed 4–26–16; 8:45 am]

**BILLING CODE 4333–15–P**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 150903814–5999–02]**

**RIN 0648–XE564**

## Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

**ACTION:** Temporary rule; quota transfer.

**SUMMARY:** NMFS announces that the Commonwealth of Virginia is transferring a portion of its 2016 commercial summer flounder quota to the Commonwealth of Massachusetts. These quota adjustments are necessary to comply with the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan quota transfer provision. This announcement informs the public of the revised commercial quotas for Virginia and Massachusetts.

**DATES:** Effective April 26, 2016, through December 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Scheimer, Fishery Management Specialist, (978) 281–9236.

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.110. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.102.

The final rule implementing Amendment 5 to the Summer Flounder Fishery Management Plan, as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider the criteria in § 648.102(c)(2)(i)(A) through (C) in the evaluation of requests for quota transfers or combinations.

Virginia is transferring 6,525 lb (2,959 kg) of summer flounder commercial quota to Massachusetts. This transfer was requested by Virginia to repay landings by a Virginia-permitted vessel that landed in Massachusetts under a safe harbor agreement.

The revised summer flounder quotas for calendar year 2016 are now: Virginia, 1,755,829 lb (796,430 kg); and Massachusetts, 577,777 lb (262,075 kg) based on the initial quotas published in the 2016–2018 Summer Flounder, Scup and Black Sea Bass Specifications, (December 28, 2015, 80 FR 80689) and previous 2016 quota transfers (March 8, 2016, 81 FR 12030 and April 14, 2016, 81 FR 22032).

### Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: April 21, 2016.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2016–09726 Filed 4–26–16; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 150817730–6320–02]**

**RIN 0648–BF29**

## Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; American Fisheries Act; Amendment 111

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 111 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). This final rule reduces bycatch limits, also known as prohibited species catch (PSC) limits, for Pacific halibut in the Bering Sea and Aleutian Islands (BSAI) groundfish fisheries by specific amounts in four groundfish sectors: The Amendment 80 sector (non-pollock trawl catcher/processors); the BSAI trawl limited access sector (all non-Amendment 80 trawl fishery participants); the non-trawl sector (primarily hook-and-line catcher/processors); and the Western Alaska Community Development Quota Program (CDQ Program). This final rule establishes the following halibut PSC limits: 1,745 mt for the Amendment 80 sector; 745 mt for the BSAI trawl limited access sector; 710 mt for the BSAI non-trawl sector; and 315 mt for the CDQ Program. This results in an overall BSAI halibut PSC limit of 3,515 mt. This action is necessary to minimize halibut bycatch in the BSAI groundfish fisheries to the extent practicable and to achieve, on a continuing basis, optimum yield from the BSAI groundfish fisheries. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

**DATES:** Effective May 27, 2016.

**ADDRESSES:** Electronic copies of the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Finding of No Significant Impact (FONSI) prepared for this action, collectively ''the Analysis;'' the FMP; and the proposed rule are available from *http://www.regulations.gov* or from the

NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Rachel Baker or Mary Alice McKeen, 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

## Background

NMFS manages the groundfish fisheries in the Exclusive Economic Zone (EEZ) of the BSAI under the FMP. The North Pacific Fishery Management Council (Council) prepared, and the Secretary of Commerce (Secretary) approved, the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws. Regulations implementing the FMP appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at 50 CFR part 600. NMFS manages fishing for Pacific halibut through regulations established under the authority of the Northern Pacific Halibut Act of 1982.

NMFS published the Notice of Availability for Amendment 111 on October 29, 2015 (80 FR 66486) with comments invited through December 28, 2015. NMFS published the proposed rule to implement Amendment 111 on November 16, 2015 (80 FR 71650) with comments invited through December 16, 2015. The Secretary approved Amendment 111 on January 20, 2016. NMFS received 39 unique comments on the FMP and proposed rule from 17 different commenters. A summary of these comments and the responses by NMFS are provided under the heading Response to Comments below. These comments did not result in any change to the proposed rule.

A detailed review of the provisions of Amendment 111, the proposed regulations to implement Amendment 111, and the rationale for these regulations is provided in the preamble to the proposed rule (80 FR 71650, November 16, 2015) and is not repeated here (see **ADDRESSES**). The preamble to this final rule provides a brief review of the regulatory changes made by this final rule. In this preamble, unless otherwise noted, the citations to regulations are to the regulations that will be in place after the effective date of this final rule.

NMFS manages halibut PSC, also known commonly as halibut bycatch, in groundfish fisheries under the authority of the Magnuson-Stevens Act. Under Section 3.6.1 of the FMP, and the implementing regulation at § 679.21(a)(2), prohibited species are Pacific halibut, Pacific herring, Pacific salmon and steelhead, king crab, and Tanner crab. Under the FMP and the regulations, prohibited species must be avoided while fishing for groundfish and must be returned to the sea with a minimum of injury except where retention is required or authorized by law.

Under the Magnuson-Stevens Act, bycatch includes fish that are discarded for any reason, including discards required by regulation, or for economic reasons, such as the fact that the fish might be of an undesirable size, sex, or quality (16 U.S.C. 1802 (3); 16 U.S.C. 1802 (9)). Halibut PSC is one type of bycatch; it is a regulatory discard. Regulations at § 679.21(a)(2) require the discard of all halibut that is caught while directed fishing for groundfish in the BSAI or the Gulf of Alaska. A limited exception to this discard requirement is provided for donations of halibut made under the prohibited species donation program authorized in regulation at § 679.26. In this preamble, when NMFS refers to halibut bycatch, NMFS means halibut PSC.

Pacific halibut (*Hippoglossus stenolepis*) is fully utilized in the waters off Alaska as a target species in subsistence, personal use, recreational (sport), and commercial halibut fisheries. Halibut is also incidentally taken as bycatch in groundfish fisheries. Although participants in the groundfish fisheries are under an obligation to avoid halibut, all halibut cannot be avoided. The groundfish fisheries cannot be prosecuted without some amount of halibut bycatch because groundfish and halibut occur in the same areas at the same times and because no fishing gear or technique has been developed that can avoid all halibut bycatch.

Although halibut is taken as bycatch by vessels using all types of gear (trawl, hook-and-line, pot, and jig gear), halibut bycatch primarily occurs in the trawl and hook-and-line groundfish fisheries. Halibut bycatch occurs in both the Gulf of Alaska and the BSAI. The greatest portion of halibut bycatch occurs in the BSAI. NMFS manages halibut bycatch in the BSAI groundfish fisheries by (1) establishing halibut PSC limits for trawl and non-trawl fisheries; (2) apportioning those halibut PSC limits to groundfish sectors, fishery categories, and seasons; and (3) managing groundfish fisheries to prevent halibut PSC use from exceeding the established limits. The proposed rule contains a detailed explanation of halibut bycatch management in the BSAI groundfish fisheries (80 FR 71650, 71654–71660, November 16, 2015).

Consistent with National Standard 1 and National Standard 9 of the Magnuson-Stevens Act, the Council and NMFS use halibut PSC limits in the BSAI groundfish fisheries to minimize bycatch to the extent practicable as required by National Standard 9, while achieving, on a continuing basis, optimum yield from the groundfish fisheries as required by National Standard 1. With one limited exception, groundfish fishing is prohibited once a halibut PSC limit has been reached for a particular sector, fishery, or season, depending on the particular halibut PSC limit. The limited exception is that groundfish fishing in the pollock/Atka mackerel/''other species'' trawl fishery is not prohibited if that fishery reaches its halibut PSC limit. (80 FR 71650, 71658, November 16, 2015). Although there is no formal regulatory constraint, this fishery (pollock/Atka mackerel/ ''other species'') has not exceeded its halibut PSC limit in recent years (*i.e.,* 2013, 2014 and 2015).

The use of halibut PSC limits in the groundfish fisheries reduces halibut bycatch and promotes conservation of the halibut resource. Halibut bycatch in the groundfish fisheries may affect commercial, sport, and subsistence halibut fishing opportunities by decreasing the amount of halibut available for those fisheries. Therefore, the Council and NMFS establish halibut PSC limits to balance the needs of fishermen, fishing communities, and U.S. consumers that consume halibut and groundfish.

## Actions Implemented by This Rule

This final rule changes the halibut PSC limits for BSAI groundfish fisheries. This table shows the current halibut PSC limits and the halibut PSC limits that will be in effect with this final rule.

| BSAI Groundfish fisheries—sectors | Description of sector | Previous halibut PSC limit (mt) | Halibut PSC limit established under this final rule (mt) | Percentage decrease from the previous halibut PSC limit |
|---|---|---|---|---|
| 1. Amendment 80 | Non-pollock trawl catcher/processors | 2,325 | 1,745 | 25 |
| 2. BSAI trawl limited access | All other trawl catcher/processors | 875 | 745 | 15 |
| 3. BSAI non-trawl | Primarily hook-and-line catcher/processors | 833 | 710 | 15 |
| 4. CDQ Program | Vessels fishing for CDQ groups | 393 | 315 | 20 |
| Overall BSAI limit | | 4,426 | 3,515 | 21 |

PSC limits are stated in metric tons of halibut mortality.
CDQ Program = Western Alaska Community Development Quota Program.

With one exception, this final rule does not change the complex process for apportioning halibut PSC limits among sectors, fisheries, and seasons (see regulations at § 679.21(b)). The exception is that this final rule makes a single process change to halibut PSC apportionment for the CDQ Program. Under current regulations, the allocation of halibut PSC to the CDQ Program is made as a Prohibited Species Quota Reserve (PSQ Reserve) that is derived partly from the halibut PSC limit established for the trawl fisheries and partly from the halibut PSC limit for the non-trawl fisheries. This final rule establishes a separate halibut PSC limit for the CDQ Program. The halibut PSC limit for the CDQ Program will be established specifically in regulation, and will no longer be derived from the halibut PSC limit established for the trawl and non-trawl fisheries.

For a full description of the apportionment of halibut PSC among the BSAI groundfish fisheries, see the section in the preamble to the proposed rule, ''Halibut Bycatch Management in the BSAI Groundfish Fisheries'' (80 FR 71650, 71655–71656, November 16, 2015).

**Summary of Regulatory Changes**

This final rule makes the following changes to regulations at 50 CFR part 679:

- Moves the general provisions on prohibited species bycatch management from § 679.21(b) to § 679.21(a).
- Moves all the provisions on BSAI halibut bycatch management in current § 679.21(e) to a new § 679.21(b) and reorganizes the provisions in the new § 679.21(b) to improve clarity.
- Establishes new BSAI halibut PSC limits in § 679.21(b): 1,745 mt for the Amendment 80 sector; 745 mt for the BSAI trawl limited access sector; 710 mt for the BSAI non-trawl sector; and 315 mt for the CDQ Program.
- Uses the term ''PSC allowance'' rather than ''bycatch allowance'' in § 679.21(b) and uses the term ''PSC'' rather than ''incidental catch'' in § 679.21(b)(1)(ii)(C).
- Changes cross-references from § 679.21(e) to § 679.21(b) where necessary.
- Changes the BSAI halibut PSC limits in Table 35 and Table 40 to the new limits.

**Changes From the Proposed Rule**

This final rule does not change any of the regulations as proposed in the proposed rule (80 FR 71650, November 16, 2015).

**Response to Comments**

NMFS received 39 unique comments on the proposed rule or Amendment 111 from 17 commenters. The 17 commenters consisted of six individuals; three fishing industry groups, one of which represents Amendment 80 participants, one of which represents hook-and-line catcher/processors, one of which represents predominantly hook-and-line catcher vessels; three Alaska Native Tribal Organizations; one Alaska Native Village Corporation; one non-profit corporation engaged in commercial fishing; one for-profit corporation engaged in wilderness marine tours; one conservation organization; and one anonymous comment.

Of the 17 commenters, 14 explicitly supported adoption of the proposed halibut PSC reductions. Most of these commenters (12 out of 14) favored larger halibut PSC limit reductions. The comment from the corporation engaged in wilderness tours was the only comment that recommended that the Secretary disapprove Amendment 111. The comment from the Amendment 80 fishing industry group questioned whether the proposed halibut PSC limit reductions were practicable but did not recommend disapproval of Amendment 111 or rejection of the proposed rule.

In responding to these comments, when NMFS refers to Amendment 111, unless otherwise noted, NMFS means Amendment 111 and this final rule implementing Amendment 111. There were no public comments asserting that the proposed rule is not consistent with Amendment 111, and NMFS did not make any changes from the proposed to this final rule. Therefore, NMFS' responses to comments on Amendment 111 also apply to the proposed and final rules.

*Comments Related to the Magnuson-Stevens Act and National Standards Generally*

*Comment 1:* Amendment 111 should be approved and implemented.

*Response:* The Secretary, through his designee, the Assistant Administrator for Fisheries, approved Amendment 111 on January 20, 2016, and implements Amendment 111 with this final rule. The Secretary concluded that the PSC limit reductions in Amendment 111 are consistent with the Magnuson-Stevens Act including the national standards and other applicable law.

*Comment 2:* Twelve commenters stated they were in favor of the Secretary approving Amendment 111 but would have preferred larger reductions in the PSC limits. Some of these commenters stated that Amendment 111 was a ''first step,'' was ''a step in the right direction,'' and was ''a positive action,'' to reducing BSAI halibut bycatch.

*Response:* Before the Council recommended Amendment 111 for approval and implementation by the Secretary, the Council reviewed an extensive record that included the Analysis, input from Council and NMFS staff, and extensive public testimony. The Council considered a broad range of potential halibut PSC limit reductions, and recommended Amendment 111 only after considering halibut PSC limit reductions that ranged from 10 to 50 percent lower than the current halibut PSC limits in each BSAI groundfish sector. The Council recommended halibut PSC limit reductions within the range of the alternatives considered.

The Council concluded, and the Secretary agreed, that Amendment 111 is consistent with all national standards,

and specifically the directive in National Standard 9 to minimize halibut PSC to the extent practicable while preserving the potential for the harvest of optimum yield in the BSAI fisheries consistent with National Standard 1. The Council also concluded, and the Secretary agreed, that Amendment 111 would take into account the effect of halibut PSC limit reductions on communities dependent on the groundfish fisheries and communities dependent on the halibut fishery consistent with National Standard 8. The Council concluded, and NMFS agrees, that the PSC limits reductions in Amendment 111 met the purpose and need for this action, namely to minimize bycatch to the extent practicable while preserving the potential for optimum yield from the groundfish fisheries. (Section 1.2 of Analysis) The rationale for rejecting larger PSC reductions in each sector is explained in the proposed rule (80 FR 71650, 71663—71668, November 16, 2015) and is summarized in the response to Comment 14.

*Comment 3:* NMFS should adopt the BSAI halibut PSC limits in Amendment 111 by implementing a final rule with those reductions. However, NMFS should reject the part of the proposed rule that asserts that the proposed rule complies with the Magnuson-Stevens Act because Amendment 111 does not represent a proper balancing of the national standards in the Magnuson-Stevens Act.

*Response:* As explained in response to Comments 1 and 2, the Secretary determined that Amendment 111 is consistent with the national standards and other applicable law and approved Amendment 111 on January 20, 2016.

*Comment 4:* The Secretary should disapprove Amendment 111, withdraw the proposed rule, and instruct the Council to expedite the preparation of a new FMP amendment that recommends larger halibut PSC limit reductions.

*Response:* As explained in response to Comments 1 and 2, the Secretary has determined that Amendment 111 is consistent with the national standards and other applicable law and approved Amendment 111 on January 20, 2016. The Council recommended Amendment 111 after considering halibut PSC limit reductions that were 10 to 50 percent lower than the current halibut PSC limits in each BSAI groundfish sector. The Council concluded that larger reductions are not practicable and would reduce the net benefit to the nation. The rationale the Council and NMFS used for concluding that larger reductions in PSC limits are not practicable is described in the preamble to the proposed rule. (80 FR 71650, 71663–71668, November 16, 2015). See also responses to Comments 2 and 14.

*Comment 5:* The proposed rule concluded that the halibut PSC limit reductions for the Amendment 80 sector would provide the greatest benefit to the nation. (80 FR 71650, 71664, November 16, 2015) In reaching this conclusion, NMFS did not consider the high value of the halibut fishery and resource.

*Response:* NMFS agrees that halibut has a high socioeconomic value but disagrees that the Analysis for this action did not take that into account. The Analysis contains numerous sections that describe the value of the commercial halibut fishery and summarize the potential impact of halibut PSC reductions ranging from 10 to 50 percent lower than the current halibut PSC limits in each sector (see Sections 4, 5 and Appendix D in the Analysis). For each level of halibut PSC limit reduction analyzed, the Analysis evaluated possible benefits to the directed halibut fishery by looking at the estimated increase in wholesale revenues in the directed halibut fishery that would occur from each level of reduction. The wholesale revenues in the directed halibut fishery are based on the estimated price per pound for halibut sold (see, *e.g.,* Table ES–4 and ES–5 in the Analysis).

The Analysis also looked at the socioeconomic value of halibut among the various communities that participate in the halibut fisheries. Section 4.5.3 and Appendix C of the Analysis described the socioeconomic impacts of the alternatives analyzed by the Council before it selected a preferred alternative. Appendix C looked at various metrics to measure the value of the directed halibut fisheries to communities including vessel ownership related to the directed commercial halibut fishery and employment related to the directed commercial halibut fishery. Appendix C also evaluated the value of halibut, and the potential impacts from the action alternatives, on the subsistence fisheries, and Section 3.1.4.3 assessed the potential impact of Amendment 111 on sport halibut fisheries.

*Comment 6:* NMFS should take, or commit to taking, the following additional actions to reduce halibut bycatch: Additional reductions in the halibut PSC limits; modifications to the process for annual groundfish total allowable catch (TAC) allocations to better incorporate concerns about halibut bycatch; adopting an abundance-based management for halibut so that PSC limits in some way automatically decrease when halibut is scarce and automatically increase when halibut is abundant; adopting a performance standard for halibut PSC management by the Amendment 80 sector; mandating deck sorting to ensure halibut are returned to sea as soon as possible to reduce the mortality of halibut bycatch; limiting the reallocation of halibut PSC from the BSAI trawl limited access sector to the Amendment 80 sector so that unused halibut PSC in the BSAI trawl limited access sector is not fully used; and adopting area closures for the BSAI groundfish fisheries on a seasonal basis to reduce the potential impacts of groundfish fisheries on halibut habitat.

*Response:* The actions suggested by the commenters are outside the scope of this final rule. NMFS notes that the Council and NMFS, in conjunction with the IPHC, are considering a range of actions to improve the management of halibut PSC. Several of the actions suggested by the commenter are under consideration. A partial list of actions underway or under consideration follows:

- A joint meeting to promote a more collaborative approach to halibut management in February 2015;
- The development of a halibut framework document to further the objective to balance the needs of directed halibut users and halibut bycatch users in the BSAI and Gulf of Alaska. This framework document will be reviewed by the Council in April 2016;
- The establishment of a work group comprised of Council, NMFS, and IPHC staff to evaluate linking halibut PSC limits to a metric or metrics of halibut abundance in December 2015;
- Beginning in December 2015, annual reporting by Amendment 80 cooperatives describing their ongoing efforts to avoid halibut bycatch to ensure halibut PSC use is below the halibut PSC limits that would be established for the Amendment 80 cooperatives under this final rule; and
- NMFS' approval of an expedited exempted fishing permit in 2015 to evaluate halibut deck sorting as a means to reduce halibut bycatch mortalities (Appendix A–7 of the Analysis). NMFS is currently processing an application for an additional exempted fishing permit to test halibut deck sorting methods for 2016.

For a more complete description of the range of actions being considered by the Council, IPHC, and NMFS to address halibut bycatch management, please see the newsletters on the Council's Web site: *http://www.npfmc.org/npfmc-newsletters/.*

*Comments Associated With Specific National Standards*

*Comment 7:* Under National Standard 1, an FMP should prevent overfishing while achieving, on a sustainable basis, the ''optimum yield'' from a fishery. The definition of optimum yield in the Magnuson-Stevens Act states that the optimum yield is the amount of fish that ''will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems.'' (16 U.S.C. 1802(33)) Halibut bycatch is preventing the directed halibut fishery from achieving optimum yield.

*Response:* Halibut does not have an ''optimum yield'' within the Magnuson-Stevens Act definition because halibut is not managed pursuant to the Magnuson-Stevens Act. Halibut is managed under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC on March 29, 1979). The Convention is implemented in the U.S. by the Northern Pacific Halibut Act of 1982 (Halibut Act). Therefore halibut bycatch is not preventing the achieving of optimum yield in the directed halibut fishery because halibut does not have an ''optimum yield'' established under the Magnuson-Stevens Act.

Pursuant to the Convention, the International Pacific Halibut Commission (IPHC) makes stock assessment and catch limit decisions for halibut. Although the IPHC does not establish an ''optimum yield'' for halibut, the IPHC harvest policy includes a harvest control rule that reduces commercial harvest rates linearly if the stock is estimated to have fallen below established thresholds for female spawning biomass. These harvest control rules would severely curtail the commercial halibut fishery during times of particularly poor stock conditions. The current status of the halibut stock has not triggered the application of the IPHC's restrictive harvest control rules. (Proposed Rule, 80 FR 71650, 71652, November 16, 2015). Even without any reduction in halibut PSC limits, the halibut stock is stable or potentially increasing slightly in overall abundance, as measured by the IPHC stock assessment of exploitable halibut biomass and female spawning biomass. (Section 3.1.1 of the Analysis; 80 FR 71650, 71651, November 16, 2015).

Amendment 111 does, however, seek to reduce halibut bycatch in the BSAI groundfish fisheries to the extent practicable as required by National Standard 9. If halibut bycatch is decreased, there will be more halibut available for the IPHC to allocate to the directed halibut fisheries: Commercial, sport and subsistence. NMFS therefore expects that this action will decrease halibut PSC use and will make more halibut available for the directed halibut fisheries.

*Comment 8:* Amendment 111 does not properly balance National Standard 1 and National Standard 9. NMFS has described the purpose of the amendment as limiting ''the use of PSC limits to minimize halibut bycatch in the groundfish fisheries, to the extent practicable, while achieving, on a continuing basis, optimum yield from the groundfish fisheries.'' (*e.g.,* Notice of Availability, 80 FR 66486, 66487, October 29, 2015; Proposed Rule, 80 FR 71650, 71651, November 16, 2015). These statements indicate that halibut PSC limit reductions are only practicable if the reductions allow for optimum yield in the groundfish fishery. National Standard 1 and National Standard 9, read together, require that necessary and practicable bycatch reduction measures must be implemented, even if that results in a downward adjustment in the optimum yield of the BSAI groundfish fishery.

*Response:* The preferred alternative that is implemented by this final rule balances the need to minimize halibut bycatch to the extent practicable, consistent with National Standard 9, with the requirement to achieve optimum yield in the groundfish fishery, consistent with National Standard 1. In developing the preferred alternative, NMFS and the Council have appropriately balanced obligations under National Standard 1 and National Standard 9.

*Section 1.2 of the Analysis states:* ''The purpose of the proposed action is to minimize halibut PSC in the commercial groundfish fisheries to the extent practicable, *while preserving the potential for the optimum harvest of the groundfish TACs assigned to the trawl and non-trawl sectors.''* (emphasis added) The preferred alternative selected by the Council and implemented by this final rule preserves the potential for the BSAI groundfish fisheries to achieve optimum yield by harvesting the TACs assigned to the different BSAI groundfish fisheries. However, this final rule may result in some BSAI groundfish fisheries, in some years, harvesting less than their TACs.

The Council and NMFS did not exclude the preferred alternative implemented by this final rule because it may result in a decrease in groundfish harvests in some groundfish fisheries in some years. The Analysis before the Council and NMFS states that the halibut PSC limit reductions imposed under Amendment 111 may result in decreased harvests by the BSAI groundfish fisheries. The preamble to the proposed rule states that Amendment 111 is likely to result in groundfish harvests below the TACs for several fisheries prosecuted by the Amendment 80 sector. (80 FR 71,650, 71,663, November 16, 2015)

The Analysis estimates that Amendment 111 could result in groundfish harvest reductions in the Amendment 80 sector between 9,500 mt and 25,700 mt each year during the 10-year period considered (2014 to 2023) in the Analysis, for a total possible reduction of 95,000 mt to 257,000 mt over this 10-year period. As described in the Analysis, this could translate to a reduction in wholesale revenues for groundfish fishery participants between $6.2 million and $18.7 million for each year during this 10-year period, for a total of $62 million to $187 million throughout this 10-year period (Table ES–4 of Analysis; 80 FR 71650, 71663, November 16, 2015).

This rule provides the flexibility for participants in the groundfish fisheries to potentially harvest the TAC assigned to their fisheries. This rule minimizes bycatch to the extent practicable by recognizing that different sectors of the groundfish fisheries have available different tools to minimize halibut bycatch (see also responses to Comments 14 and 15). The fact that this rule will reduce halibut PSC limits, and likely result in reductions in groundfish harvests, supports the conclusion that Amendment 111 reflects a well-reasoned and articulated balance between National Standards 1 and 9.

*Comment 9:* Social and economic factors must be considered when establishing optimum yield under National Standard 1. The proposed rule does not discuss this requirement.

*Response:* The commenter is correct that social and economic factors are considered when establishing the optimum yield for a fishery. Optimum yield, as defined in the Magnuson-Stevens Act, is that amount of fish which ''will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems'' and the amount of fish which ''is prescribed as such on the

basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor'' (16 U.S.C. 1802(33)(A); 16 U.S.C. 1802(33)(B)). Amendment 111 and the proposed rule did not propose to change the optimum yield of the BSAI groundfish fisheries, which is specified in regulations as a range from 1.4 million to 2.0 million metric tons. (§ 679.20(a)(1)(i)(A)) Therefore NMFS did not elaborate on the factors that go into establishing optimum yield. As noted in the response to Comment 7, the requirement to establish an optimum yield does not apply to halibut.

Although Amendment 111 does not change the optimum yield established for the BSAI groundfish fisheries, fishery regulations require that the total of the TACs for the BSAI groundfish fisheries must come within the optimum yield range. (§ 679.20(a)(2)) As noted also in the response to Comment 8, the proposed rule acknowledged that Amendment 111 would likely decrease groundfish harvests below TAC for the Amendment 80 sector (80 FR 71650, 71663, November 16, 2015). The Council concluded, and NMFS agrees, that the likely economic loss from foregone harvests under this final rule is outweighed by the potential decrease in halibut bycatch and the potential increase in halibut available for the directed halibut fisheries.

*Comment 10:* Amendment 111 is not fair and equitable under National Standard 4. A fundamental flaw in the proposed rule and the Analysis is that the Analysis uses the status quo halibut PSC limits as the baseline for analysis. That is not fair because the directed halibut fishery has declined 63 percent in Area 4 and 67 percent in Area 4CDE from 2003 through 2013.

*Response:* The Analysis does evaluate a ''no action'' or ''Status Quo'' alternative. When taking action, NMFS is under an obligation to analyze a ''no action'' alternative in the Environmental Assessment portion of the Analysis. (Section 5.03b, NOAA Administrative Order 216–6, May 20, 1999, available at *http://www.nepa.noaa.gov/*) The Environmental Assessment would have been deficient if it did not analyze a ''no action'' or ''Status Quo'' alternative. Whether Amendment 111 is consistent with National Standard 4 is a separate question.

The Council and NMFS determined, and the Secretary concluded, that Amendment 111 is consistent with National Standard 4 (see Section 6.1 of Analysis). National Standard 4 provides that ''conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be A) fair and equitable to all such fishermen, B) reasonably calculated to promote conservation, and C) 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).

Amendment 111 does not discriminate between residents of specific states. Amendment 111 does not use residency of any fishermen, or group of fishermen, as a criterion for reduction of a PSC limit in any sector.

Amendment 111 is fair and equitable to the fishermen affected by Amendment 111. Amendment 111 reduces the PSC limits for a legitimate objective. Amendment 111 seeks to minimize halibut PSC to the extent practicable while maintaining, on a continuing basis, the potential to achieve optimum yield from the groundfish fishery. Amendment 111 achieves that objective fairly and equitably by decreasing halibut PSC limits by sector and by establishing the PSC reduction for each sector based on an evaluation of what is practicable for that sector.

The Council recommended Amendment 111 after analyzing a status quo alternative (no reductions in the halibut PSC limits for each sector) and alternatives with reductions ranging from 10 to 50 percent lower than the current halibut PSC limits in each sector. The Analysis showed that residents of various states, including Alaska and states of the Pacific Northwest, participate in the directed groundfish fisheries and the directed halibut fisheries and may be affected by this final rule. For each groundfish sector in the groundfish fisheries and for the directed halibut fisheries, the Analysis describes the participants in each fishery (Section 4.4 and 4.5 of Analysis) and the effects of each alternative, including the status quo alternative, on the groundfish fisheries and the directed halibut fisheries (Section 4.7 through 4.14 of Analysis).

In developing Amendment 111, the Council and NMFS recognized that under the status quo, the directed halibut fisheries have experienced reductions in catch limits as the halibut stock has declined (Section 4.5. of Analysis). The Analysis sets out the percentage declines cited in the comment (see text associated with Table 4–85 and Table 4–86 in Section 4.5.1 of Analysis). The Council and NMFS recognize that the reductions in halibut PSC limits in Amendment 111 will likely increase the halibut available for the directed fisheries and, in some years, may reduce groundfish harvests and therefore revenues for participants in the directed groundfish fisheries (Table ES–4 of Analysis; 80 FR 71650, 71663, November 16, 2015).

Amendment 111 is reasonably calculated to promote conservation consistent with National Standard 4. The Council and NMFS do not anticipate that Amendment 111 will have a significant effect on overall halibut mortality but do expect it to have a limited conservation benefit. The IPHC's current measure for a juvenile halibut is a halibut that is 26 inches and under or ''U26 halibut.'' (Section 3.1.2.1 of Analysis) In response to this rule, the IPHC may increase the catch limits for the directed commercial halibut fishery. Even if the IPHC does that, U26 halibut still may not be retained by any fishery. This rule is expected to have a limited conservation benefit because decreasing bycatch overall will decrease bycatch of U26 halibut. Some of those U26 halibut will mature and, of those, some will reproduce.

The preamble to the proposed rule described the estimated limited conservation benefit from this action. (80 FR 71650, 71662, November 16, 2015). The Council determined, and NMFS agrees, that the reduction in U26 mortality from this action ranges from 188,000 to 210,000 pounds annually compared to the status quo. (Section 3.1.5.3 of Analysis) This conservation benefit is limited because this number of U26 halibut comprises a small proportion of the total female spawning biomass of halibut. This number of U26 halibut (188,000 to 210,000 pounds) is substantially less than 1 percent of the total female spawning biomass which, in 2015, was estimated to be 215.10 million pounds (Table 3–1 of Analysis).

Finally, consistent with National Standard 4, Amendment 111 does not result in any particular individual, corporation, or other entity acquiring an excessive share of the PSC reductions in Amendment 111. The reductions in PSC limits are spread across the individuals within each sector. The reductions in PSC limits do not change the amount of PSC that each participant in a sector has relative to other participants in the sector.

*Comment 11:* National Standard 5 requires that ''conservation and management measures consider efficiency; except no such measure shall have economic allocation as its sole purpose.'' (16 U.S.C. 1851) The guideline in Federal regulation for applying National Standard 5 states that ''efficiency'' refers to the wise use of all resources involved in the fishery,

including ecological resources (50 CFR 600.330(e)). Reducing halibut bycatch reduces waste and constitutes wise and efficient use of the resource.

*Response:* NMFS agrees that reducing halibut bycatch constitutes a wise and efficient use of the resource, but accepts that some level of halibut bycatch is inevitable in the prosecution of the BSAI groundfish fisheries. Halibut bycatch is a function of the overlapping distribution of groundfish and halibut as well as regulatory requirements established by NMFS and the IPHC that require the discard of halibut harvested with trawl gear or in fisheries other than defined commercial, sport, and subsistence fisheries. Therefore, the current regulatory structure ensures that some degree of halibut bycatch must occur. The Council concluded, and NMFS agrees, that Amendment 111 reduces halibut PSC, or halibut bycatch, by the BSAI groundfish fisheries to the extent practicable consistent with National Standard 9.

*Comment 12:* Amendment 111 is not consistent with National Standard 8. The Analysis does not adequately evaluate the cultural and socioeconomic benefits of the halibut resource to the isolated communities of the Bering Sea, especially St. Paul and St. George, and the dozens of coastal communities throughout Alaska and the entire Pacific Coast that depend on the halibut resource for subsistence, sport, and commercial fishing and that are negatively affected by halibut bycatch.

*Response:* National Standard 8 provides: ''Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2), in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.'' (16 U.S.C. 1851(a)(8)). The reference to paragraph (2) is to National Standard 2: ''Conservation and management measures shall be based upon the best scientific information'' (16 U.S.C. 1851(a)(8)).

The Council and NMFS used the best available scientific information to assess the importance of the directed halibut fishery to various communities. For example, Appendix C to the Analysis is devoted solely to the impacts of this action on communities that are dependent on and engaged in the BSAI groundfish fisheries and communities that are dependent on and engaged in the directed halibut fisheries. Appendix C identified 15 halibut-dependent communities in the BSAI based on a variety of metrics. These communities include St. Paul and St. George (Table 1–1). Appendix C presented qualitative and quantitative information to assist the Council and NMFS in assessing the effects of this action on halibut-dependent communities and other communities by examining metrics such as the ownership of halibut catcher vessels by community (Table 2–6a); ex-vessel gross revenues from halibut catcher vessels by community (Table 2–6b); number of BSAI subsistence halibut fishermen, halibut caught, and pounds of halibut caught in Area 4 (Table 2–8); and estimated annual halibut crew and halibut crew payments by community (Table 3–10). In addition to the Analysis, the Council and NMFS had the benefit of extensive public testimony on the importance of subsistence and commercial fisheries to the residents of St. Paul and St. George and other communities engaged in the directed halibut fisheries.

Amendment 111 minimizes bycatch to the extent practicable as determined by the Council based on the best available information. Amendment 111 is expected to provide additional harvest opportunities to residents of St. George and St. Paul, based on the assumption that the IPHC will respond to the decreased bycatch resulting from Amendment 111 by increasing the commercial catch limit. Appendix C estimated the distribution of the expected increase in harvests in the directed halibut fishery in Area 4 from Amendment 111 among communities in Northwest Alaska; communities in Bristol Bay, the Aleutians and the Pribilof Islands (including St. Paul and St. George); communities in other parts of Alaska; and communities in other states (Table 4–4; Table 4–5). Appendix C also examined the potential impacts of the PSC limit reductions in Amendment 111 on BSAI communities engaged in the halibut subsistence fishery (Section 4.2.4 of Appendix C of Analysis) and the sport halibut fishery (Section 4.2.5 of Appendix C of Analysis). The Analysis also discussed the potential long-term impacts of Amendment 111 on directed halibut fishery participants and communities reliant on the halibut resource outside of the BSAI (Section 4.14.1.2 of Analysis).

Appendix C also described the adverse impacts that Amendment 111 would likely have on communities that are substantially engaged in the directed groundfish fisheries (Table 2–1a through Table 2–5f). In selecting Amendment 111, the Council weighed the potential benefits to fishing communities against the potential adverse impacts to fishing communities that could result under each halibut PSC limit reduction alternative.

*Comment 13:* St. Paul and St. George are much more dependent on the halibut fisheries than Seattle, Washington and Newport, Oregon are dependent on the BSAI groundfish fisheries. The interests of St. Paul and St. George are not properly weighed in the Analysis.

*Response:* Under National Standard 8, conservation and management measures shall take into account the importance of fishery resources to ''fishing communities.'' The term ''fishing community'' in the Magnuson-Stevens Act means ''a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such communities'' (16 U.S.C. 1802(17)). An analysis of conservation and management measures should examine the effect of a proposed action on communities that are substantially dependent on the fishery resource in question and on communities that are substantially engaged with the fishery resource in question (50 CFR. 600.345(c)).

In approving Amendment 111, the Council was aware that communities such as St. Paul and St. George are substantially dependent on halibut. Appendix C of the Analysis specifically identified 15 communities that are considered to be halibut-dependent (Table ES–2 in Appendix C to Analysis). The Analysis considered the best available data on the importance of the directed halibut fisheries to halibut-dependent communities such as St. Paul and St. George. The Council and NMFS considered this information, in addition to public testimony from residents of these communities.

The Council and NMFS reviewed the Analysis and considered the impacts of Amendment 111 on communities engaged in the BSAI groundfish fishery, including Seattle and Newport. The Analysis notes that Seattle and Newport are substantially engaged in the BSAI groundfish fisheries but, because of the size of those communities, the availability of other employment and other factors, Seattle and Newport were not substantially dependent on the BSAI groundfish fisheries. The Analysis noted: ''While community-level

dependence is not a salient issue for the Seattle MSA, potential adverse impacts of some of the Alternative 2 options and suboptions would be profound in terms of potential loss of revenues to individual operations and sectors and potential loss of income and/or employment to relatively large numbers of individuals.'' (ES–5 in Appendix C to Analysis). Seattle MSA stands for Seattle Metropolitan Statistical Area.

In recommending Amendment 111, the Council weighed the benefits to halibut-dependent fishing communities from different levels of PSC reductions against the adverse impacts to communities that are substantially engaged in the BSAI groundfish fisheries.

*Comment 14:* Amendment 111 does not decrease bycatch to the extent practicable. Larger PSC reductions are practicable and therefore must be adopted to be consistent with National Standard 9.

*Response:* The Council approved Amendment 111 after considering halibut PSC limit reductions that were 10 to 50 percent lower than the current halibut PSC limits in each BSAI groundfish sector. The Council and NMFS considered the practicability of each sector to meet these revised PSC limits. The preamble to the proposed rule contains a description of the specific factors considered in the section titled ''Rationale and Impacts of Amendment 111 and the Proposed Rule'' (80 FR 71650, 71661—71668, November 16, 2015).

For each sector, the Council and NMFS considered the relative amount of halibut PSC for that sector compared to the total amount of halibut PSC in the BSAI; whether the sector had been able to harvest groundfish TACs with lower amounts of halibut PSC than the sector's current PSC limit; what ''tools'' or changes in fishery operations were available to the sector to adapt to reductions in the halibut PSC limit for that sector; and the potential socioeconomic impacts of reduced halibut PSC limits for each sector. As part of the last consideration, the Council and NMFS considered the potential adverse socioeconomic impacts of halibut PSC limit reductions from reduced groundfish harvests on harvesters of BSAI groundfish and on fishing communities that participate in the groundfish fisheries, as well the potential benefits to the harvesters of halibut and to fishing communities that participate in the halibut fishery. (Proposed Rule, 80 FR 71650, 71663, November 16, 2015).

Based on these factors and the information described in the Analysis and the preamble to the proposed rule, the Council recommended and NMFS implemented the halibut PSC limits described in this final rule. A brief summary for each of the sectors follows.

For the Amendment 80 sector, Amendment 111 reduces the PSC limit by 25 percent: from 2,325 to 1,745 mt. The Amendment 80 sector is the sector that uses the largest amount of halibut PSC. The Amendment 80 sector is responsible for about 60 percent of halibut PSC use, based on average PSC usage from 2008 through 2014 (Table 1, Proposed Rule, 80 FR 71650, 71660, November 16, 2015). This final rule imposes the largest halibut PSC limit reduction on the sector which is most able to decrease bycatch through behavioral changes. The Amendment 80 sector is prosecuted by Amendment 80 cooperatives. Amendment 80 cooperatives have the power to coordinate the responses of their members to reduced PSC limits. Amendment 80 cooperatives are also more able to adopt tools to decrease bycatch as compared to a sector where individual fishery participants engage in a ''race for fish'' against other participants in a sector. The tools to decrease bycatch are behavior changes such as expanding the use of gear modifications known as excluders to reduce bycatch; improving communication on the fishing grounds within and between the Amendment 80 cooperatives; using test hauls to gauge halibut rates and considering the use of night-time hauls that tend to have lower halibut PSC. The tools to reduce PSC—those just mentioned and others—are described in the proposed rule (80 FR 71650, 71664, November 16, 2015) and in further detail in Section 3.1.3.6 and Appendix B of the Analysis.

The Council considered, and rejected, alternatives that would have adopted greater reductions in the PSC limit for the Amendment 80 sector. The proposed rule summarizes the Council and NMFS' reasoning for concluding that greater reductions were not practicable for the Amendment 80 sector (80 FR 71650, 71664, November 16, 2015). The Council and NMFS concluded that alternatives that would have reduced the halibut PSC limit by 30, 35, 40, 45, or 50 percent in the Amendment 80 sector would have come at significant economic cost to the Amendment 80 sector and fishing communities participating in the Amendment 80 fisheries. Based on the best available information, the Council and NMFS concluded that it was not clear that the Amendment 80 sector could make additional changes in fishery operations to accommodate higher PSC limit reductions other than foregoing substantial harvests and revenue. The Council and NMFS concluded that greater PSC reductions in the Amendment 80 sector would have reduced net benefits to the Nation ''because the socioeconomic benefits from the potential increase in harvest opportunities would be less than the negative socioeconomic impacts from foregone BSAI groundfish harvests.'' (Proposed Rule, 80 FR 71650, 71664, November 16, 2015).

For the BSAI trawl limited access sector, Amendment 111 reduces the PSC limit by 15 percent: from 875 mt to 745 mt. This sector has used, on average from 2008 through 2014, 710 mt; in all of those years, it used less than 745 mt except in 2012, when it used 960 mt of halibut PSC (Table 1 in Proposed Rule, 80 FR 71650, 71660, November 16, 2015; Table 3–12 of Analysis).

Unlike the Amendment 80 sector, the ''race for fish'' still exists in large parts of the BSAI trawl limited access sector, specifically in the Pacific cod and yellowfin sole fisheries (Section 4.9 of Analysis; Proposed Rule, 80 FR 71650, 71666, November 16, 2015.) This affects what bycatch reduction is practicable for this sector. The Council recommended, and NMFS proposed, a 15 percent reduction in the halibut PSC limit for the BSAI trawl limited access sector after considering the relatively limited amount of halibut PSC in this sector; the more limited tools available to the sector to reduce its halibut PSC use; the overall socioeconomic cost to the sector, communities participating in the sector, and the Nation from larger reductions in the PSC limit for this sector; and the limited benefits that larger reductions in the PSC limit for this sector might provide to the halibut fisheries and communities participating in the halibut fisheries. The Council and NMFS also determined that the reduced halibut PSC limit in this final rule is likely to provide incentives for the BSAI trawl limited access sector to more fully develop and use tools that could improve on the relatively low PSC use that this sector achieved in 2010 and 2011. (Table 4–209 of Analysis; Proposed Rule, 80 FR 71650, 71666, November 16, 2015)

For the BSAI non-trawl limited access sector, Amendment 111 reduces the halibut PSC limit by 15 percent: from 833 mt to 710 mt. This sector has used, on average, 505 mt of halibut PSC from 2008 through 2014 (Table 1 in Proposed Rule, 80 FR 71659, 71660, November 16, 2015). The Council and NMFS did not consider greater reductions in halibut PSC limits to be practicable. Therefore, the Council did not recommend, and

NMFS does not propose, larger reductions in the PSC limit for the non-trawl sector given this sector's relatively limited use of halibut PSC; this sector's consistent pattern of halibut PSC use well below its PSC limit; and the limited benefit that larger PSC reductions would likely provide to the halibut fishery and communities participating in the halibut fishery relative to the negative impacts on participants in the non-trawl sector. (Proposed Rule, 80 FR 71650, 71667, November 16, 2015)

For the CDQ Program, Amendment 111 reduces the PSC limit by 20 percent: from 393 mt to 315 mt. The CDQ Program has used, on average, 215 mt of halibut PSC from 2008 through 2014. The Council and NMFS considered greater reductions in the PSC limit for this sector also but concluded that greater reductions were not practicable. The Analysis shows that the halibut PSC limit reductions for the CDQ Program would have to be extremely high to yield actual reductions. A 50 percent reduction in the PSC limit for the CDQ Program would reduce the PSC limit from 393 mt to 197 mt. A PSC limit of 197 mt for the CDQ Program would yield only 18 mt of halibut savings compared to the CDQ Program's average use of halibut PSC of 215 mt from 2008 through 2014 (Table 1 in Proposed Rule, 80 FR 71650, 71660, November 16, 2915). A PSC limit of 197 mt for the CDQ Program would yield only 47 mt of halibut savings relative to the CDQ Program's use of halibut PSC of 244 mt in 2014. (Table 4–209 of Analysis) Neither the Analysis nor public testimony suggests that halibut PSC use in the CDQ Program will increase relative to current use. Therefore, the Council and NMFS determined that it is impracticable to adopt a PSC limit that would substantially constrain the vessels participating in the CDQ Program, given the limited amount of PSC by the CDQ Program and the limited potential harvest opportunity for the commercial halibut fishery that a more restrictive halibut PSC limit for the CDQ Program would provide. (Proposed Rule, 80 FR 71650, 71667, November 16, 2015)

*Comment 15:* Amendment 111 does not minimize bycatch to the extent practicable as required under National Standard 9 because the BSAI groundfish fisheries do not use the maximum amount of their halibut PSC limits every year. Other management approaches should be tried.

*Response:* The commenter is correct that most sectors in the BSAI groundfish fisheries have been using less halibut PSC than their current PSC limit (Table 1 in Proposed Rule, 80 FR 71650, 71660, November 16, 2015). However, the halibut PSC limits established by this final rule are expected to limit halibut PSC use for the Amendment 80 sector relative to current use. The halibut PSC limit established for the Amendment 80 sector in this final rule is 1,745 mt. From 2008 through 2014, the Amendment 80 sector used more than 1,745 mt of halibut PSC every year. In 2015, for the first time, the Amendment 80 sector used 1,636 mt of halibut PSC, which is less than the new PSC limit of 1,745 mt. In establishing the new halibut PSC limit for the Amendment 80 sector, the Council and NMFS took into account the sector's history of PSC use and information that the Amendment 80 sector could make behavioral changes to decrease PSC levels below its PSC levels from 2008 through 2014 (Section 3.1.3.6 of Analysis; Section 14.4.2.2 of Analysis; Appendix B of Analysis; Proposed Rule, 80 FR 71650, 71664, November 16, 2015).

For the BSAI trawl limited access, BSAI non-trawl, and CDQ sectors, the Council and NMFS were aware that these sectors generally used less halibut PSC than their PSC limit (Table 1 to Proposed Rule, 80 FR 71650, 71660, November 16, 2015). The response to Comment 14 explains why the Council and NMFS concluded that greater reductions than implemented in this final rule are not practicable.

Other management approaches to manage halibut bycatch are outside of the scope of this proposed rule. NMFS lists some of the suggestions it has received for alternative halibut bycatch management measures in Comment 6 and describes some actions that are underway or under consideration in the response to Comment 6.

*Comment 16:* The halibut PSC limit reductions mandated in Amendment 111 will be very difficult for the Amendment 80 sector to achieve. The halibut PSC limits imposed on the Amendment 80 sector strain, and probably exceed, the limits of practicability under National Standard 9.

*Response:* The Council determined that the PSC limit reductions in Amendment 111 were practicable and were consistent with National Standard 9 by considering the factors summarized in the response to Comment 14 and detailed in the Analysis and the preamble to the proposed rule. NMFS notes that the use of halibut PSC in the Amendment 80 sector during 2015 supports the conclusion that the halibut PSC limit established by this final rule is practicable. In 2015, the Amendment 80 sector used 1,636 mt of halibut PSC. That amount of halibut PSC is less than the new halibut PSC limit in this rule of 1,745 mt. The Amendment 80 sector achieved this even though no regulatory provisions were in place during 2015 requiring such a substantial reduction in halibut PSC use relative to the recent average use of halibut PSC of 2,047 mt. from 2008 through 2014.

*Comment 17:* Technologies exist that can further decrease halibut bycatch in the Amendment 80 fleet. These include 1) the use of wide mesh nets to allow juvenile halibut to escape; 2) an underwater camera system that allows vessel operators to detect and release net-loads containing disproportionately high amounts of halibut bycatch underwater; and 3) other gear modifications to reduce halibut bycatch.

*Response:* The ability of the Amendment 80 fleet to develop and use new technologies to decrease halibut bycatch was one of the reasons that the Council and NMFS concluded that the PSC reductions in Amendment 111 were practicable. Amendment 111 establishes an incentive for the Amendment 80 fleet to experiment with, and use, technologies such as the ones described by the commenter.

*Comment 18:* Mandatory deck sorting of halibut (returning halibut to sea as quickly as possible after the harvest comes onboard) should be required so that halibut to be returned swiftly to the water. This would decrease the mortality of halibut bycatch.

*Response:* Mandatory deck sorting of halibut bycatch is outside of the scope of Amendment 111and is not allowed under current regulations. To conduct deck sorting, a vessel operator must have an exemption from current regulations that prevent deck sorting. In 2015, NMFS granted an exempted fishing permit for vessels in the Amendment 80 sector to test the conditions necessary to effectively conduct deck sorting and evaluate whether deck sorting decreased mortality of halibut bycatch (Appendix A–7 of the Analysis). The results from this exempted fishing permit, and other research, indicates that deck sorting can reduce the discard mortality of halibut under some conditions. In 2016, NMFS received an application for another exempted fishing permit for deck sorting, including participants in the Amendment 80 sector and the BSAI trawl limited access sector (Notice, 81 FR 4018, January 25, 2016). After reviewing the results from these exempted fishing permits and other research, the Council and NMFS may choose to begin the analytic process necessary to consider changing

regulations to allow or require halibut deck sorting.

*Comment 19:* Hook-and-line catcher/processors have successfully decreased their halibut bycatch mortality. From 1994 to 2014, hook-and-line catcher/processors reduced their use of halibut PSC by 58 percent; reduced their halibut discard mortality rate by 47 percent; and reduced the encounter rate of halibut bycatch by 41 percent. It is possible to decrease halibut mortality through voluntary efforts rather than through regulations that implement lower halibut PSC limits.

*Response:* NMFS acknowledges that hook-and-line catcher/processors have taken a number of steps to reduce halibut PSC use during the period described by the commenter. Table 3–14 of the Analysis provides a description of the use of halibut PSC by hook-and-line catcher/processors from 2008 through 2014.

*Comment 20:* Amendment 111 does not adequately take into account the effect of halibut bycatch on the recreational (sport) halibut fishery.

*Response:* Under the current IPHC policy, for those IPHC management areas that occur in the BSAI (Areas 4A, 4B, and 4CDE), the IPHC deducts bycatch, sport, and subsistence halibut removals before establishing the commercial catch limit (Section 3.1.2.1 of Analysis). The IPHC does not deduct halibut used as bycatch from the amount that would otherwise be available for harvest in the Area 4 sport fishery. Therefore, unlike the case for the commercial halibut fishery, a reduction in halibut PSC limits would not directly affect the Area 4 sport fishery by making more halibut directly available for allocation to the sport fishery (Section 4.5.2 to Appendix C of Analysis). The response to Comment 21 describes how this final rule may provide a limited but long-term benefit to the sport fishery in Area 4 as well as sport fisheries in other IPHC areas.

*Comment 21:* Amendment 111 will not only benefit the directed commercial halibut fishery. It will also benefit sport and subsistence fisheries.

*Response:* The primary benefit of Amendment 111 will be to reduce the total amount of halibut bycatch removals in the BSAI (Area 4) before commercial catch limits are established, thereby increasing the amount of halibut available for commercial fishery harvests in Area 4. NMFS agrees with the commenter that Amendment 111 has the potential to provide a modest benefit to recreational and subsistence halibut fisheries as well as commercial halibut fisheries. This final rule would be expected to provide a modest long-term benefit to sport and subsistence fisheries by decreasing the bycatch of U26 halibut (the IPHC's current measure for juvenile halibut). U26 halibut are expected to grow over time and become available for harvest in sport and subsistence fisheries. (Table 3–1 in Section 3.1.1 of Analysis; 80 FR 71650, 71662, November 16, 2015). NMFS stated in the proposed rule that the specific long-term impacts of reduced U26 bycatch on potential long-term commercial, personal use, sport or subsistence harvests of halibut in specific IPHC areas ''cannot be predicted with certainty given the available information.'' (80 FR 71650, 71662, November 16, 2015)

*Comments Associated With Halibut Biology and Conservation*

*Comment 22:* Amendment 111 does not adhere to a precautionary approach of management by protecting the halibut resource from the effects of halibut PSC use in the BSAI groundfish fisheries.

*Response:* This final rule follows the precautionary principle by implementing conservation measures to reduce overall halibut PSC in the groundfish fisheries even though there is limited data and information to determine the impact of halibut PSC on halibut stocks. Although the effects of halibut PSC in the groundfish fishery on the halibut fishery are uncertain, this action reduces the overall potential impacts by reducing existing halibut PSC limits in the groundfish fisheries. The halibut PSC limit reductions in the groundfish fisheries minimize bycatch to the extent practicable given the tools currently available to the sectors, the prosecution of the fishery, the uncertainty about the overall adverse effects of bycatch on the halibut stocks, and the need to ensure that the trawl and hook-and-line fisheries contribute to the achievement of optimum yield in the groundfish fisheries.

The preamble to the proposed rule and Section 3.1.1 of the Analysis presents a summary of the current condition of the Pacific halibut stock. (80 FR 71650, 71651–71652, November 16, 2015) The preamble to the proposed rule concludes that, based on the best available information, the current status of exploitable halibut biomass and female halibut spawning biomass is ''that the halibut stock is stable or potentially increasing slightly in overall abundance.'' (80 FR 71650, 71651, November 16, 2015) The preamble to the proposed rule also notes that ''even under the greatest PSC limit reduction alternatives considered, this reduction would represent less than 1 percent of the 2015 coastwide female spawning halibut biomass (see Table 3–2 in Section 3.1.1 of the Analysis).'' (80 FR 71650, 71662, November 16, 2015). The halibut PSC limits established by this final rule are appropriately precautionary given the status of the halibut resource.

*Comment 23:* Amendment 111 does not protect juvenile halibut.

*Response:* By reducing halibut bycatch, Amendment 111 will decrease the amount of halibut taken by the groundfish fisheries; this reduces bycatch of juvenile halibut. The best available information shows that the halibut PSC limit reductions established in Amendment 111 will decrease U26 halibut bycatch (a size of halibut considered by the IPHC to represent juvenile halibut) by 188,000 to 210,000 pounds annually relative to recent halibut PSC use. (Proposed Rule, 80 FR 71650, 71662, November 16, 2015)

*Comment 24:* The Closed Area in the Bering Sea was established by the IPHC to protect juvenile halibut. The Closed Area was formerly closed to both the directed halibut fisheries and the BSAI groundfish fisheries. The reopening of the Closed Area to trawl fisheries removed a significant protection to juvenile halibut.

*Response:* NMFS responds in two ways. First, the commenter is correct in that the Closed Area was established by the IPHC in 1967 to protect juvenile halibut in response to severe declines in halibut abundance. Whether the Closed Area should be open to the directed halibut fishery is a matter for the IPHC to decide and is outside the scope of this rule. The IPHC assessed the impact of the Closed Area recently. An IPHC staff report prepared in 2012 concluded that ''from a halibut assessment and management perspective, there was no continued purpose in maintaining the current Closed Area to the commercial halibut fishery in the eastern Bering Sea'' (Section 3.1.2.4 of Analysis). Second, as described in the preamble to the proposed rule and section 3.1.1 of the Analysis, the current status of the halibut stock as measured by exploitable biomass and female spawning biomass is stable or potentially increasing slightly in abundance. (80 FR 71650, 71651–71652, November 16, 2015) The fact that the Closed Area is open to the directed groundfish fisheries does not appear to have had a deleterious effect on the halibut stock. In any event, a prohibition on fishing for groundfish in the Closed Area is outside the scope of this action.

*Comment 25:* The IPHC's assumption that natural mortality is the same for all age classes of halibut is not realistic and

overestimates the future contribution of smaller age classes to the halibut stock.

*Response:* The IPHC makes assumptions about several variables in its annual assessment of the halibut stock. Section 3.1.5.1 of the Analysis describes areas of uncertainty in the IPHC's stock assessment process, including uncertainties about the natural mortality rates for halibut for various age classes. Regardless of the effect of the IPHC's assumptions about halibut natural mortality, National Standard 9 requires conservation and management measures to minimize halibut bycatch in the BSAI groundfish fisheries to the extent practicable.

*Comments Associated With Fisheries Management*

*Comment 26:* The current management of halibut PSC is not abundance-based. The current management system allows the proportion of halibut removals taken as halibut bycatch to increase as halibut abundance decreases. NMFS should set halibut PSC limits based on the abundance of halibut. An abundance-based PSC limit would protect the Bering Sea ecosystem.

*Response:* The commenter is correct that the current management of halibut PSC is not abundance-based. Halibut PSC limits are established in regulation as specific amounts of halibut mortality. These halibut PSC limits are not scaled to changes in halibut abundance. The change from fixed halibut PSC limits to halibut PSC limits that change with the abundance of the halibut resource is outside of the scope of this rule. The Council, in conjunction with NMFS and the IPHC, is evaluating whether it would be feasible to establish halibut PSC limits that vary with abundance (see response to comment 6).

*Comment 27:* The preamble to the proposed rule states that the IPHC can adopt harvest control rules to protect the halibut stock during times of low abundance and that these harvest control rules have not been triggered even during the most recent years of low exploitable halibut biomass (80 FR 71650, 71652 (November 16, 2015). This ignores the fact that the IPHC cannot curtail the PSC take of halibut bycatch in the groundfish fisheries and does not excuse inaction by the Council and NMFS.

*Response:* The statement cited by the commenter was in a section of the preamble to the proposed rule titled ''The Status of the Halibut Stock.'' The conclusion in that section of the preamble was that ''[t]he best available data indicate that at current levels of removals, the halibut biomass would be expected to be stable, and well above the thresholds established by the IPHC'' for imposing the harvest control rules. (80 FR 71650, 71652, November 16, 2015). The Council and NMFS used this information, and other information, to understand the status of the halibut resource and the potential impact of this final rule on the halibut resource.

NMFS agrees that the IPHC does not manage the use of halibut PSC in the BSAI groundfish fisheries. The Council and NMFS have the authority to manage halibut PSC in the groundfish fisheries. NMFS agrees that the current status of the halibut resource does not preclude action by the Council or NMFS, and it has not precluded the action taken in this final rule, to reduce halibut PSC.

*Comment 28:* The IPHC has consistently overestimated halibut biomass and therefore has set commercial catch limits too high in the recent past. The decline in commercial catch limits from 2013 through 2015 is due in part to more accurate information about the status of halibut biomass.

*Response:* The commenter is correct that in 2012, IPHC staff reported that the IPHC had consistently overestimated halibut biomass and underestimated halibut harvest rates due to a retrospective bias in the IPHC's stock assessments (Section 3.1.1.1 of Analysis). The commenter is also correct that the IPHC's efforts to correct this bias is one reason that commercial catch limits declined from 2013 through 2015 compared to prior years. Although these factors have contributed to recent declines in commercial catch limits, these factors do not preclude NMFS from reviewing and undertaking actions, such as this final rule, to minimize halibut bycatch to the extent practicable consistent with National Standard 9.

*Comments Associated With the Analysis (Not Discussed Under Other Comments)*

*Comment 29:* The Analysis states that larger halibut PSC limit reductions would not significantly conserve the halibut resource by protecting more juvenile halibut. This conclusion strains reason and credibility.

*Response:* The conclusion of the Analysis is credible and reasonable and is based on the best available information. The IPHC's current measure for a juvenile halibut is a halibut that is 26 inches and under or ''U26 halibut.'' (Section 3.1.2.1 of Analysis) The best available information is that approximately 36 percent of halibut PSC mortality in the BSAI is U26 halibut. (Table 4–210 in Section 4.14.1.4 of Analysis; Proposed Rule, 80 FR 71650, 71662, November 16, 2015) Ultimately, reductions in U26 bycatch could provide an opportunity for additional halibut to grow, reproduce, and eventually recruit to the halibut fishery (*i.e.,* be available for harvest). The extent to which a decrease in U26 halibut PSC may affect the coastwide female spawning biomass is not well-known based on the best available information. (Section 3.1.1.2 of the Analysis) However, the best available information suggests that reductions in U26 halibut PSC under this rule are unlikely to impact the long-term abundance of the halibut stock. Even with a 50 percent reduction in PSC limits, the largest PSC reduction considered by the Council and NMFS, the reduction in the amount of U26 halibut PSC used relative to current use would likely range from 690,000 pounds to 740,000 pounds. (Proposed Rule, 80 FR 71650, 71662, November 16, 2015) This amount would represent less than 1 percent of the 2015 coastwide female spawning biomass, which was 215.1 million pounds in 2015 (Table 3–1 of Analysis). Under the halibut PSC limit reductions established in this final rule, the reduction in U26 halibut PSC use is expected to range from 188,000 to 210,000 pounds. (Proposed Rule, 80 FR 71650, 71662, November 16, 2015) This amount represents substantially less than 1 percent of the 2015 coastwide female spawning biomass of 215.1 million pounds.

*Comment 30:* The Analysis focused on the economic costs of reducing halibut PSC limits on the BSAI groundfish fisheries without discussing the practicability for the groundfish fleet to make greater reductions. The Iterative Multi-year Simulation Model (IMS) in the Analysis presented two scenarios to describe potential economic impacts. Under one of those scenarios, the IMS predicted that bycatch could not be reduced without closing groundfish fisheries, an assumption that the SSC identified as unrealistic in its June 2015 Report to the Council meeting (at *http://www.npfmc.org/bsai-halibut-bycatch/).*

*Response:* The commenter is referring to a simulation model that was used, along with other information, to provide a quantitative estimate of the economic impacts of different levels of PSC reductions on the BSAI groundfish fisheries. Section 4.6 of the Analysis describes the simulation model.

The commenter is correct that the SSC identified that a deficiency in the model was the assumption that halibut PSC mortality could not be reduced without some decrease in groundfish harvests. This assumption is explicitly identified as Assumption 34 of the simulation model. Assumption 34 states that there

are no ''cost-free behavioral changes'' by which vessels in the BSAI groundfish fisheries could decrease halibut PSC mortality. (Section 4.6.3 of Analysis)

However, the Analysis did not limit its discussion of potential economic impacts on the BSAI groundfish fisheries to the quantitative results of the model. The Analysis describes behavioral and operational changes that are being made, or that could be expanded or improved, in response to a decrease in PSC limits. Section 3.1.3.6 of the Analysis describes ''PSC reduction tools'' in the BSAI groundfish fisheries. Section 4.14.2.2 describes the ''Response to PSC limit reductions.'' Appendix B of the Analysis describes ''Mitigation of PSC Reduction Impacts.''

Finally, despite this and some other limitations in the model noted by the SSC, the SSC concluded the estimates of foregone revenues provided by the analytic model ''likely provides an upper bound'' of impacts on the groundfish fleet ''as harvesters can mitigate their foregone revenue by fishing in other fisheries, in cleaner areas, or changing gear deployment of fishing practices'' (June 2015 SSC Report: *http://www.npfmc.org/bsai-halibut-bycatch/* at page 10).

The Council received the SSC Report and considered it, along with all the information in the record, when it approved Amendment 111. Neither the Council nor NMFS limited review or consideration of the potential social or economic impacts of Amendment 111 on the BSAI groundfish fisheries to this specific assumption in the IMS.

*Comment 31:* The Analysis does not describe the directed halibut fisheries and the BSAI groundfish fisheries equitably, as noted by the SSC in its June 2015 SSC Report: ''The uneven treatment between sectors (*e.g.,* income plurality only for halibut permit holders and demographics of employment only for trawl CPs) further confounds the ability to evaluate impacts.''

*Response:* NMFS assumes that the commenter is referring to demographic data on employment of minority employees that was used in the environmental justice discussion. This data is provided in Attachment 4 to Appendix C of the Analysis. Appendix C in the Analysis reviewed by the SSC did not use employment as a measure of community engagement for trawl catcher/processors. Section 2.2 examined data such as trawl catcher/processors by community of vessel owner; first wholesale gross revenue by community of vessel owner; an estimate of first wholesale gross revenue diversification by community of vessel owner (what percentage of the catcher/processor's revenues came from BSAI groundfish trawl fisheries) (Table 2–2a, 2–2b, 2–2c to Appendix C in the Council Draft Analysis, May 2015, available at Archive of Council Meetings, June 2015, *www.npfmc.org/council-meeting-archive/*).

In response to the SSC comment, Appendix C in the Analysis was expanded to include estimated crew employment and payments for the directed halibut fishery for the BSAI halibut-dependent communities. This new data is shown in Tables 3–3, 3–7, 3–10, and 3–13.

The Council and NMFS used the best available information consistent with National Standard 2 in the Magnuson-Stevens Act to evaluate the impacts of this action on all the communities affected by this action. The SSC found that the Analysis provided scientific support for two general statements ''around which the Council can frame a policy decision,'' namely, that the Analysis provided an upper bound for adverse impacts on the groundfish fisheries and that the Analysis showed that the economic and cultural footprint of the directed halibut fishery is larger than that of the groundfish fishery in many small communities (June 2015 SSC Report: *http://www.npfmc.org/bsai-halibut-bycatch/* at page 10).

*Comment 32:* The commenter asserts that the SSC Report in June 2015 stated that the Analysis has flaws in the ''upper bound'' estimate on impacts on groundfish sectors provided in the IMS.

*Response:* The June 2015 SSC Report stated that the upper bound estimate of potential economic impacts of Amendment 111 on the BSAI groundfish fisheries was one of the general statements ''around which the Council can frame a policy decision.'' The ''upper bound'' estimate is the same as the ''high impact scenario'' (Scenario B) used in IMS, the results of which are described in the Analysis and summarized in Table ES–4 of the Analysis. The simulation model reported the results of two scenarios: A low impact scenario (Scenario A) and a high impact scenario (Scenario B). In the low impact scenario, fishery participants are assumed to be able to coordinate harvesting activities with other participants in the sector to achieve almost optimal efficiency in avoiding halibut PSC. In the high impact scenario, fishery participants are assumed to act individually to decrease their own PSC but not cooperatively with other participants in the sector and do not achieve optimal efficiency in avoiding halibut PSC.

The Council and NMFS considered both of these scenarios. Based on the Analysis and extensive public testimony before the Council, NMFS determined that the BSAI groundfish sectors have varying abilities to optimize efficient use of halibut PSC and ''it is likely that the actual economic impacts of the proposed rule will fall within the range between the low impact and high impact scenarios presented in the Analysis.'' (Proposed Rule, 80 FR 71650, 71661, November 16, 2015)

*Comment 33:* The Council's Draft Analysis states that the revisions in the IMS described in the Analysis are based on ''discussions with industry.'' This is not the best available science as required by National Standard 2.

*Response:* The reference to ''discussions with industry'' is in note 51 in section 4.8 of the Council's Draft Analysis of May 2015, which states: ''In the initial draft of the analysis, the IMS did, in fact, make assumptions about which vessels operations would be cut under the PSC limit reductions. After further discussions with industry, there was not a clear consensus among managers on how they might proceed. Much would depend on vessels' specific operating characteristics and the demands of the market.'' (available at Archive of Council Meetings, June 2015, *www.npfmc.org/council-meeting-archive*).

The Council's Draft Analysis in section 4.6.2.3 at pages 253–254 describes these discussions in detail. These discussions were with ''industry and fishery managers,'' and were not limited to industry participants. These discussions were used to help define which of the four BSAI groundfish sectors should be described as catch share fisheries (and therefore more likely to be subject to economic impacts described under the low impact scenario) and which fisheries should be described as ''race for fish'' fisheries (and therefore more likely to be subject to economic impacts described under the high impact scenario). The final Analysis repeats the description of these discussions from the Council Draft Analysis and repeats in two places the footnote cited by the commenter (Section 4.6.2.3; Section 4.8 at note 48; Section 4.13.2.1 at note 55).

The result of the discussions was noted in the description of Assumption 42b in Section 4.6.3 of the Analysis. Assumption 42b describes the assumptions used in the model about how participants in catch share sectors (the Amendment 80 and the BSAI non-trawl sector) would respond to decreases in PSC limits. Based on these discussions, Assumption 42b was changed so that the model ''[did] not make any assumptions regarding the de-

activation of individual vessels'' in response to reductions in PSC limits. Previously, ''[i]n the initial draft of the analysis, the IMS model did in fact make assumptions about which vessel's operations would be cut under the PSC limits reductions'' (Section 4.6.3 of Analysis at note 45).

Thus, the discussions with industry [1] were not just with industry but also with fishery managers, [2] resulted in a change of one assumption in the model, not a new model, [3] were an appropriate subject for gathering information from industry, namely how a company with a number of vessels would react to PSC limit reductions, and [4] resulted in a valid change in the model. This is an example of the use of best available information consistent with National Standard 2.

*Comment 34:* Halibut is primarily consumed domestically while groundfish with its high halibut bycatch rates is primarily exported. These values are not adequately evaluated in the Analysis.

*Response:* The Analysis describes the range of ex-vessel and wholesale values of halibut and groundfish fisheries. Although halibut and many groundfish species may have different markets, the impact of domestic and foreign markets is reflected in the ex-vessel and wholesale values of the fisheries described in the Analysis.

*Comment 35:* The Analysis overlooks the fact that the number of halibut caught, not the poundage, is the key to evaluating the population effects on the halibut stock of halibut bycatch.

*Response:* This action reduces the BSAI halibut PSC limits which are set as a limit on the total weight of halibut mortality that may be taken as bycatch. The Analysis appropriately assessed the impacts of the management alternatives based on the regulatory mechanism used to establish halibut PSC limits. Changing halibut PSC limits so that these limits restrict the number of halibut caught as bycatch is beyond the scope of Amendment 111. As noted in response to Comment 6, the Council, NMFS, and the IPHC are considering the potential for establishing halibut PSC limits based on the number of halibut. Any evaluation about the potential impacts of this alternative management approach would have to be considered under a separate action.

*Other Issues*

*Comment 36:* Worldwide, the rate at which fish are being taken from the oceans is unsustainable. Amendment 111 represents a scratch on the surface of what we need to do worldwide.

*Response:* It is beyond the scope of this final rule, and the Analysis prepared for this rule, to evaluate the worldwide management of fisheries. NMFS appreciates that the commenter believes that Amendment 111 is a step in furtherance of sustainable fisheries.

*Comment 37:* Establishing a separate PSC limit for CDQ groups is a good idea. The commenter criticized CDQ groups concerning their non-profit status and other aspects of their fishing operations.

*Response:* NMFS acknowledges the commenter's support for the part of this rule that establishes a separate BSAI halibut PSC limit for CDQ Program. Comments on other aspects of the CDQ Program are beyond the scope of this final rule.

*Comment 38:* As federally recognized tribal communities, protection of fishing rights in St. Paul and St. George is a shared role of both NOAA and the Department of the Interior. One commenter stated that halibut PSC limit reductions of 40 percent are necessary to protect the federally recognized fishing rights of these tribes. One tribal government passed a resolution supporting a 50 percent reduction in all halibut PSC limits in BSAI, but also requested implementation of Amendment 111.

*Response:* The Council recommended, and NMFS implements, Amendment 111 under the authority of the Magnuson-Stevens Act. Amendment 111 reduces halibut PSC limits in a manner that could provide additional halibut harvest opportunities for residents of St. George and St. Paul and for the tribal governments of St. George and St. Paul. The three tribal governments that submitted comments, including the tribal government that passed a resolution supporting a 50 percent reduction in BSAI halibut PSC limits, supported adoption and implementation of Amendment 111.

*Comment 39:* The commenter requested a description of the standard for determining conflicts of interest for the IPHC.

*Response:* This rule deals with conservation and management measures developed by the Council and approved and implemented by the Secretary under the Magnuson-Stevens Act. The provisions for U.S. Commissioners to participate in issues before the IPHC are beyond the scope of this rule.

## Additional Action Accompanying This Rule

With this rule, NMFS also publishes revised Groundfish Harvest Specification tables with revised apportionments of BSAI halibut PSC limits. At its December 2015 Council meeting, the Council approved two sets of tables that apportion the BSAI halibut PSC limits for the 2016 and 2017 annual harvest specifications: One apportionment based on the PSC limits in effect before this final rule and one apportionment based on the PSC limits that would be in effect if this final rule were approved. (*http://www.npfmc.org/council-meeting-archive/*). The Council approved both sets of apportionments of the BSAI halibut PSC limits so that the apportionments based on the new PSC limits would go into effect when this final rule establishing the new PSC limits went into effect. Therefore, with this final rule, NMFS publishes revised Tables 14, 16, 17, and 18 for the BSAI Groundfish Harvest Specification tables. These tables supersede the prior tables of the same number that were published in the **Federal Register** on March 18, 2016 (80 FR 14773, 14787–14788). The revised Tables 14, 16, 17, and 18 are printed below.

TABLE 14—FINAL 2016 AND 2017 APPORTIONMENT OF PROHIBITED SPECIES CATCH ALLOWANCES TO NON-TRAWL GEAR, THE CDQ PROGRAM, AMENDMENT 80, AND THE BSAI TRAWL LIMITED ACCESS SECTORS

| PSC species and area [1] | Non-trawl PSC remaining after CDQ PSQ [2] | Total trawl PSC | Trawl PSC remaining after CDQ PSQ [2] | CDQ PSQ reserve [2] | Amendment 80 sector [3] | BSAI trawl limited access fishery |
|---|---|---|---|---|---|---|
| Halibut mortality (mt) BSAI | 710 | 2,805 | n/a | 315 | 1,745 | 745 |
| Herring (mt) BSAI | n/a | 2,631 | n/a | n/a | n/a | n/a |
| Red king crab (animals) Zone 1 | n/a | 97,000 | 86,621 | 10,379 | 43,293 | 26,489 |
| C. *opilio* (animals) COBLZ | n/a | 4,708,314 | 4,204,524 | 503,790 | 2,066,524 | 1,351,334 |
| C. *bairdi* crab (animals) Zone 1 | n/a | 830,000 | 741,190 | 88,810 | 312,115 | 348,285 |

TABLE 14—FINAL 2016 AND 2017 APPORTIONMENT OF PROHIBITED SPECIES CATCH ALLOWANCES TO NON-TRAWL GEAR, THE CDQ PROGRAM, AMENDMENT 80, AND THE BSAI TRAWL LIMITED ACCESS SECTORS—Continued

| PSC species and area [1] | Non-trawl PSC remaining after CDQ PSQ [2] | Total trawl PSC | Trawl PSC remaining after CDQ PSQ [2] | CDQ PSQ reserve [2] | Amendment 80 sector [3] | BSAI trawl limited access fishery |
|---|---|---|---|---|---|---|
| C. *bairdi* crab (animals) Zone 2 | n/a | 2,520,000 | 2,250,360 | 269,640 | 532,660 | 1,053,394 |

[1] Refer to § 679.2 for definitions of zones.
[2] Section 679.21(e)(3)(i)(A)(*2*) allocates 326 mt of the trawl halibut mortality limit and § 679.21(e)(4)(i)(A) allocates 7.5 percent, or 67 mt, of the non-trawl halibut mortality limit as the PSQ reserve for use by the groundfish CDQ program. The PSQ reserve for crab species is 10.7 percent of each crab PSC limit.
[3] The Amendment 80 program reduced apportionment of the trawl PSC limits by 150 mt for halibut mortality and 20 percent for crab. These reductions are not apportioned to other gear types or sectors.
**Note:** Sector apportionments may not total precisely due to rounding.

TABLE 16—FINAL 2016 AND 2017 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL LIMITED ACCESS SECTOR

| BSAI trawl limited access fisheries | Prohibited species and area [1] | | | | |
|---|---|---|---|---|---|
| | Halibut mortality (mt) BSAI | Red king crab (animals) Zone 1 | *C. opilio* (animals) COBLZ | *C. bairdi* (animals) | |
| | | | | Zone 1 | Zone 2 |
| Yellowfin sole | 150 | 23,338 | 1,273,886 | 293,234 | 1,005,879 |
| Rock sole/flathead sole/other flatfish [2] | 0 | 0 | 0 | 0 | 0 |
| Greenland turbot/arrowtooth flounder/Kamchatka flounder/sablefish | 0 | 0 | 0 | 0 | 0 |
| Rockfish April 15–December 31 | 4 | 0 | 2,104 | 0 | 849 |
| Pacific cod | 391 | 2,954 | 54,298 | 50,816 | 42,424 |
| Pollock/Atka mackerel/other species [3] | 200 | 197 | 21,046 | 4,235 | 4,242 |
| Total BSAI trawl limited access PSC | 745 | 26,489 | 1,351,334 | 348,285 | 1,053,394 |

[1] Refer to § 679.2 for definitions of areas.
[2] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, Kamchatka flounder, and arrowtooth flounder.
[3] "Other species" for PSC monitoring includes skates, sculpins, sharks, squids, and octopuses.
**Note:** Seasonal or sector apportionments may not total precisely due to rounding.

TABLE 17—FINAL 2016 AND 2017 HALIBUT PROHIBITED SPECIES BYCATCH ALLOWANCES FOR NON-TRAWL FISHERIES

| Halibut mortality (mt) BSAI | | | | |
|---|---|---|---|---|
| Non-trawl fisheries | Seasons | Catcher/processor | Catcher vessel | All non-trawl |
| Pacific cod | Total Pacific cod | 648 | 13 | n/a. |
| | January 1–June 10 | 388 | 9 | n/a. |
| | June 10–August 15 | 162 | 2 | n/a. |
| | August 15–December 31 | 98 | 2 | n/a. |
| Non-Pacific cod non-trawl-Total | May 1–December 31 | n/a | n/a | 49. |
| Groundfish pot and jig | n/a | n/a | n/a | Exempt. |
| Sablefish hook-and-line | n/a | n/a | n/a | Exempt. |
| Total for all non-trawl PSC | n/a | n/a | n/a | 710 |

**Note:** Seasonal or sector apportionments may not total precisely due to rounding.

TABLE 18—FINAL 2016 PROHIBITED SPECIES BYCATCH ALLOWANCE FOR THE BSAI AMENDMENT 80 COOPERATIVES

| Cooperative | Prohibited species and zones [1] | | | | |
|---|---|---|---|---|---|
| | Halibut mortality (mt) BSAI | Red king crab (animals) Zone 1 | *C. opilio* (animals) COBLZ | *C. bairdi* (animals) | |
| | | | | Zone 1 | Zone 2 |
| Alaska Groundfish Cooperative | 474 | 12,459 | 650,551 | 82,136 | 137,369 |
| Alaska Seafood Cooperative | 1,271 | 30,834 | 1,415,973 | 229,979 | 395,291 |

[1] Refer to § 679.2 for definitions of zones.
**Note:** Sector apportionments may not total precisely due to rounding.

**Classification**

The NMFS Assistant Administrator has determined that Amendment 111 to the FMP and this rule are necessary for the conservation and management of the groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable law.

This rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

*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 Final Regulatory Flexibility Analysis, 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 preambles to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preambles. Copies of the proposed rule and this final rule are available from the NMFS Web site at *http://alaskafisheries.noaa.gov.*

*Final Regulatory Flexibility Analysis*

This final regulatory flexibility analysis (FRFA) incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. NMFS published the proposed rule on November 16, 2015 (80 FR 71650), with comments invited through December 16, 2015. An IRFA was prepared and summarized in the Classification section of the preamble to the proposed rule. The FRFA describes the impacts on small entities, which are defined in the IRFA for this action and not repeated here. Analytical requirements for the FRFA are described in Regulatory Flexibility Act, section 304(a)(1) through (5), and summarized below.

The FRFA must contain:

1. A succinct statement of the need for, and objectives of, the rule;

2. A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

3. A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available;

4. A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

5. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The ''universe'' of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (*e.g.,* user group, gear type, geographic area), that segment would be considered the universe for purposes of this analysis.

In preparing a FRFA, an agency may provide either a quantifiable or numerical description of the effects of a rule (and alternatives to the rule), or more general descriptive statements, if quantification is not practicable or reliable.

Need for and Objectives of This Final Rule

The objective of this final rule is to decrease BSAI halibut PSC to the extent practicable by the BSAI groundfish fisheries while achieving, on a continuing basis, optimum yield from the BSAI groundfish fisheries. This rule achieves that objective by reducing the BSAI halibut PSC limits in four sectors of the BSAI groundfish fisheries and adopting the following new BSAI halibut PSC limits: 1,745 mt for the Amendment 80 sector; 745 mt for the BSAI trawl limited access sector; 710 mt for the BSAI non-trawl sector; and 315 mt for the CDQ Program. These new limits result in an overall BSAI halibut PSC limit of 3,515 mt. By reducing halibut PSC, this final rule may increase harvest opportunities for the directed halibut fisheries if the IPHC responds to this final rule by increasing catch limits for the directed halibut fisheries.

Summary of Significant Issues Raised During Public Comment

No comments were received that raised significant issues in response to the IRFA specifically; therefore, no changes were made to the rule as a result of comments on the IRFA. However, several comments were received on the economic impacts of Amendment 111 on different sectors of the groundfish and halibut fisheries and on fishing communities. For a summary of the comments received and the agency's responses, refer to the section above titled ''Response to Comments,'' particularly the sections titled ''Comments Associated with Specific National Standards'' and ''Comments Associated with the Analysis.''

Number and Description of Directly Regulated Small Entities

This action directly regulates those entities that participate in harvesting groundfish from the Federal or parallel groundfish fisheries of the BSAI subject to a halibut PSC limit. The Regulatory Flexibility Act (RFA) recognizes and defines three kinds of small entities that could be regulated by this action: (1) small businesses, (2) small non-profit organizations, and (3) small government jurisdictions. This action directly regulates small businesses that participate in the harvesting of groundfish, and small non-profit organizations.

In this FRFA, NMFS estimates the number of directly regulated small entities based on size criteria established for industry sectors defined by the Small Business Administration (SBA). According to the SBA criteria, the groundfish fishery is defined as a finfish harvesting sector. An entity primarily involved in finfish harvesting is a small entity if it is independently owned and operated and not dominant in its field of operation (including its affiliates), and if it has combined annual gross receipts not in excess of $20.5 million for all its affiliated operations worldwide. Based on the best available and most recent data from 2014, a maximum of up to 178 vessels could be directly regulated by this action. This FRFA assumes that each vessel is a unique entity. Because of that, this FRFA likely overestimates the total number of directly regulated entities because some vessels are likely affiliated through common ownership. However, these potential affiliations are not known with the best available data and cannot be predicted.

Only 19 of these directly regulated entities are estimated to be small entities based on the best available data

on the gross receipts from these entities and their known affiliates. Seventeen of these small entities are hook-and-line catcher vessels that participate in the non-trawl sector, and two are trawl catcher vessels that participate in the BSAI trawl limited access sector, specifically the Pacific cod target fishery.

This final rule directly regulates all six of the CDQ groups: the Aleutian Pribilof Island Community Development Association, the Bristol Bay Economic Development Corporation, the Central Bering Sea Fishermen's Association, the Coastal Villages Region Fund, the Norton Sound Economic Development Corporation, and the Yukon Delta Fisheries Development Association. Each of the six CDQ groups receives an exclusive allocation of halibut PSC that will be reduced (*i.e.,* regulated) under this action. The six CDQ groups are non-profit organizations and none is dominant in its field; consequently each is defined as a small entity under the RFA.

Recordkeeping and Reporting Requirements

This action does not modify recordkeeping or reporting requirements.

Description of Significant Alternatives Considered

The Council considered an extensive series of alternatives, options, and suboptions to reduce halibut PSC limits in the BSAI, including the ''no action'' alternative. The RIR presents the complete set of alternatives (see **ADDRESSES**). Alternative 1 is the status quo/no action alternative, which would retain the current BSAI halibut PSC limits in the FMP and in regulations. Alternative 2 would have amended the FMP and regulations to reduce BSAI halibut PSC limits for six groundfish sectors. Alternative 2 includes six options. Each of the options under Alternative 2 contained seven suboptions analyzing halibut PSC limit reductions ranging from 10 percent to 50 percent for each sector. Option 1 would have reduced halibut PSC limits for the Amendment 80 sector. The reductions ranged from 232 mt to 1,162 mt. Option 2 would have reduced halibut PSC limits for the BSAI trawl limited access sector. The reductions ranged from 87 mt to 437 mt. Option 3 would have reduced halibut PSC limits for the Pacific cod hook-and-line catcher/processor sector. The reductions ranged from 76 mt to 380 mt. Option 4 would have reduced halibut PSC limits for hook-and-line vessels participating in target fisheries other than Pacific cod or sablefish. The reductions ranged from 6 mt to 29 mt. Option 5 would have reduced halibut PSC limits for the Pacific cod hook-and-line catcher vessel sector. The reductions ranged from 1 mt to 7 mt. Option 6 would have reduced halibut PSC limits for the CDQ Program. The reductions ranged from 39 mt to 196 mt. The variety of options and suboptions under Alternative 2 provided dozens of different combinations of halibut PSC limit reductions and allowed the Council and NMFS to consider a broad range of potential alternative actions.

After carefully considering these alternatives, the Council concluded that the preferred alternative represented the proper balance between achieving optimum yield by the groundfish fisheries and reducing bycatch by the groundfish fisheries to the extent practicable, taking into account the importance of the groundfish fisheries and the halibut fisheries to fishing communities. The other alternatives would have decreased bycatch by the groundfish fisheries either too much (going beyond what was practicable) or too little (falling short of what was practicable).

Section 2.5 of the Analysis describes other significant alternatives to the rule that the Council considered but did not advance for further analysis: (1) Apportioning the halibut PSC limit for the BSAI trawl limited access sector between American Fisheries Act (AFA) trawl catcher vessels and non-AFA trawl catcher vessels based on the halibut PSC by these vessel categories from 2009 through 2013; (2) implementing permanent measures in the Amendment 80 sector for deck sorting of halibut; and (3) establishing a seasonal apportionment of the halibut PSC limit for the BSAI trawl limited access sector. Each of these alternatives would have changed the current management structure for regulating halibut PSC limits in BSAI. The Council's preferred alternative is a straightforward reduction in halibut PSC limits by sector. The Council's preferred alternative leaves the current management structure intact and most expeditiously achieves the Council's objective of reducing halibut PSC limit to the extent practicable in accord with National Standard 9 and other national standards. The alternatives that were not advanced for further analysis would have taken substantially longer to develop and implement than the preferred alternative.

Based on the best available scientific data and information, none of the alternatives except the preferred alternative appear to have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statutes (as reflected in this action), while minimizing any significant adverse economic impact on small entities beyond those achieved under this action. This action will minimize bycatch to the extent practicable with existing management tools. Thus, this action will minimize the impacts on small entities in the BSAI groundfish fisheries and promote more efficient use of the available halibut PSC limits.

*Tribal Consultation*

Executive Order (E.O.) 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995), and the Department of Commerce Tribal Consultation and Coordination policy (78 FR 33331, June 4, 2013) outline the responsibilities of NMFS for Federal policies that have tribal implications. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 109–447 (118 Stat. 3267), extends the consultation requirements of E.O. 13175 to Alaska Native corporations. Under the E.O. and agency policies, NMFS must ensure meaningful and timely input by tribal officials and representatives of Alaska Native corporations in the development of regulatory policies that have tribal implications.

Section 5(b)(2)(B) of E.O. 13175 requires NMFS to prepare a ''tribal summary impact statement'' for any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and is not required by statute. The tribal summary impact statement must contain (1) a description of the extent of the agency's prior consultation with tribal officials, (2) a summary of the nature of their concerns, (3) the agency's position supporting the need to issue the regulation, and (4) a statement of the extent to which the concerns of tribal officials have been met.

NMFS provided a copy of the Notice of Availability (80 FR 66486, October 29, 2015) and the proposed rule (80 FR 71650, November 16, 2015) to all federally recognized tribal governments and Alaska Native corporations to notify them of the opportunity to comment or request a consultation on this action. NMFS received no requests for consultation.

NMFS received comment on this action from three federally recognized

tribes in Alaska and one Alaska Native corporation. All four entities supported adoption of Amendment 111. Three of the four entities favored larger PSC reductions than contained in Amendment 111. The preference for these commenters and other commenters for larger PSC reductions is addressed in the response to Comment 2. Even though three of these commenters favored larger PSC reductions, if the Secretary disapproved this action, there would be no reductions in the PSC limit for 2016 and no reductions in the PSC limit unless, and until, the Council and NMFS proposed a new rule adopting different PSC reductions. This would be against the interests of these four commenters, as they described those interests, in their comments because they supported adoption of the PSC reductions in Amendment 111.

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 20, 2016.

**Samuel D. Rauch III,**

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

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

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

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

**Authority:** 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.2, revise the definitions for paragraph (5) of ''Directed fishing'', ''Herring Savings Area'', ''PSQ reserve'', and ''Sablefish (black cod)'' to read as follows:

**§ 679.2 Definitions.**

* * * * *

*Directed fishing* means:

* * * * *

(5) *With respect to the harvest of flatfish in the Bering Sea subarea,* for purposes of nonpelagic trawl restrictions under § 679.22(a) and modified nonpelagic trawl gear requirements under §§ 679.7(c)(5) and 679.24(f), fishing with nonpelagic trawl gear during any fishing trip that results in a retained aggregate amount of yellowfin sole, rock sole, Greenland turbot, arrowtooth flounder, flathead sole, Alaska plaice, and other flatfish that is greater than the retained amount of any other fishery category defined under § 679.21(b)(1)(ii) or of sablefish.

* * * * *

*Herring Savings Area* means any of three areas in the BSAI presented in Figure 4 to this part (see also § 679.21(b)(4) for additional closure information).

* * * * *

*PSQ reserve* means the amount of a prohibited species catch limit established under § 679.21 that has been allocated to the CDQ Program under § 679.21.

* * * * *

*Sablefish (black cod)* means *Anoplopoma fimbria.* (See also *IFQ sablefish; sablefish as a prohibited species* at § 679.21(a)(5); and *sablefish as a prohibited species* at § 679.24(c)(2)(ii)).

* * * * *

■ 3. In § 679.7, revise paragraphs (a)(12), (k)(1)(v), and (k)(4)(iii) to read as follows:

**§ 679.7 Prohibitions.**

* * * * *

(a) * * *

(12) *Prohibited species donation program.* Retain or possess prohibited species, defined at § 679.21(a)(1), except as permitted to do so under the PSD program as provided by § 679.26, or as authorized by other applicable law.

* * * * *

(k) * * *

(1) * * *

(v) *Directed fishing after a sideboard closure.* Use a listed AFA catcher/processor or a catcher/processor designated on a listed AFA catcher/processor permit to engage in directed fishing for a groundfish species or species group in the BSAI after the Regional Administrator has issued an AFA catcher/processor sideboard directed fishing closure for that groundfish species or species group under §§ 679.20(d)(1)(iv), 679.21(b)(4)(iii), or 679.21(e)(3)(v).

* * * * *

(4) * * *

(iii) *Groundfish sideboard closures.* Use an AFA catcher vessel to engage in directed fishing for a groundfish species or species group in the BSAI or GOA after the Regional Administrator has issued an AFA catcher vessel sideboard directed fishing closure for that groundfish species or species group under §§ 679.20(d)(1)(iv), 679.21(b)(4)(iii), or 679.21(e)(3)(iv), if the vessel's AFA permit does not contain a sideboard exemption for that groundfish species or species group.

* * * * *

■ 4. In § 679.21,

■ a. Redesignate paragraph (b) as paragraph (a);

■ b. Revise newly redesignated paragraph (a)(4);

■ c. Add a new paragraph (b);

■ d. Revise paragraph (e) heading;

■ e. Remove and reserve paragraphs (e)(1)(iv), (e)(2), and (e)(3)(i)(A)(*2*);

■ f. Revise paragraph (e)(3)(ii) heading, paragraphs (e)(3)(ii)(A) and (C), (e)(3)(iv) introductory text, paragraph (e)(3)(iv)(B)(*2*) heading, (e)(3)(v), and (e)(3)(vi)(A) and (B);

■ g. Remove and reserve paragraph (e)(4);

■ h. Remove paragraph (e)(5)(iv);

■ i. Revise paragraphs (e)(6)(i) and (ii), and (e)(7)(i);

■ j. Remove and reserve paragraph (e)(7)(v); and

■ k. Remove paragraph (e)(8).

The revisions and additions read as follows:

**§ 679.21 Prohibited species bycatch management.**

(a) * * *

(4) *Prohibited species taken seaward of the EEZ off Alaska.* No vessel fishing for groundfish in the GOA or BSAI may have on board any species listed in this paragraph (a) that was taken in waters seaward of these management areas, regardless of whether retention of such species was authorized by other applicable laws.

* * * * *

(b) *BSAI halibut PSC limits*—(1) *Establishment of BSAI halibut PSC limits.* Subject to the provisions in paragraphs (b)(1)(i) through (iv) of this section, the following four BSAI halibut PSC limits are established, which total 3,515 mt: Amendment 80 sector—1,745 mt; BSAI trawl limited access sector—745 mt; BSAI non-trawl sector—710 mt; and CDQ Program—315 mt (established as a PSQ reserve).

(i) *Amendment 80 sector.* The PSC limit of halibut caught while conducting any fishery in the Amendment 80 sector is an amount of halibut equivalent to 1,745 mt of halibut mortality. Halibut PSC limits within the Amendment 80 sector will be established for Amendment 80 cooperatives and the Amendment 80 limited access fishery according to the procedure and formulae in § 679.91(d) and (f). If halibut PSC is assigned to the Amendment 80 limited access fishery, it will be apportioned into PSC allowances for trawl fishery categories according to the procedure in paragraphs (b)(1)(ii)(A)(*2*) and (*3*) of this section.

(ii) *BSAI trawl limited access sector*—(A) *General.* (*1*) The PSC limit of halibut

caught while conducting any fishery in the BSAI trawl limited access sector is an amount of halibut equivalent to 745 mt of halibut mortality.

(*2*) NMFS, after consultation with the Council, will apportion the PSC limit set forth under paragraph (b)(1)(ii)(A)(*1*) of this section into PSC allowances for the trawl fishery categories defined in paragraphs (b)(1)(ii)(B)(*1*) through (*6*) of this section.

(*3*) Apportionment of the trawl halibut PSC limit set forth under paragraph (b)(1)(ii)(A)(*1*) of this section among the trawl fishery categories will be based on each category's proportional share of the anticipated halibut PSC during a fishing year and the need to optimize the amount of total groundfish harvested under the halibut PSC limit for this sector.

(*4*) The sum of all PSC allowances for this sector will equal the PSC limit set forth under paragraph (b)(1)(ii)(A)(*1*) of this section.

(B) *Trawl fishery categories.* For purposes of apportioning the trawl PSC limit set forth under paragraph (b)(1)(ii)(A)(*1*) of this section among trawl fisheries, 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.

(*1*) *Midwater pollock fishery.* Fishing with trawl gear during any weekly reporting period that results in a catch of pollock that is 95 percent or more of the total amount of groundfish caught during the week.

(*2*) *Flatfish fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of rock sole, ''other flatfish,'' and yellowfin sole that is greater than the retained amount of any other fishery category defined under this paragraph (b)(1)(ii)(B).

(*i*) *Yellowfin sole fishery.* Fishing with trawl gear during any weekly reporting period that is defined as a flatfish fishery under this paragraph (b)(1)(ii)(B)(*2*) and results in a retained amount of yellowfin sole that is 70 percent or more of the retained aggregate amount of rock sole, ''other flatfish,'' and yellowfin sole.

(*ii*) *Rock sole/flathead sole/Alaska plaice/''other flatfish'' fishery.* Fishing with trawl gear during any weekly reporting period that is defined as a flatfish fishery under this paragraph (b)(1)(ii)(B)(*2*) and is not a yellowfin sole fishery as defined under paragraph (b)(1)(ii)(B)(*2*)(*i*) of this section.

(*3*) *Greenland turbot/arrowtooth flounder/Kamchatka flounder/sablefish fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of Greenland turbot, arrowtooth flounder, Kamchatka flounder, and sablefish that is greater than the retained amount of any other fishery category defined under this paragraph (b)(1)(ii)(B).

(*4*) *Rockfish fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of rockfish species that is greater than the retained amount of any other fishery category defined under this paragraph (b)(1)(ii)(B).

(*5*) *Pacific cod fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of Pacific cod that is greater than the retained amount of any other groundfish fishery category defined under this paragraph (b)(1)(ii)(B).

(*6*) *Pollock/Atka mackerel/''other species.''* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of pollock other than pollock harvested in the midwater pollock fishery defined under paragraph (b)(1)(ii)(B)(*1*) of this section, Atka mackerel, and ''other species'' that is greater than the retained amount of any other fishery category defined under this paragraph (b)(1)(ii)(B).

(C) *Halibut PSC in midwater pollock fishery.* Any amount of halibut that is incidentally taken in the midwater pollock fishery, as defined in paragraph (b)(1)(ii)(B)(*1*) of this section, will be counted against the halibut PSC allowance specified for the pollock/Atka mackerel/''other species'' category, as defined in paragraph (b)(1)(ii)(B)(*6*) of this section.

(iii) *BSAI Non-trawl Sector*—(A) *General.* (*1*) The PSC limit of halibut caught while conducting any fishery in the BSAI non-trawl sector is an amount of halibut equivalent to 710 mt of halibut mortality.

(*2*) NMFS, after consultation with the Council, will apportion the PSC limit set forth under paragraph (b)(1)(iii)(A)(*1*) into PSC allowances for the non-trawl fishery categories defined under paragraph (b)(1)(iii)(B) of this section.

(*3*) Apportionment of the non-trawl halibut PSC limit of 710 mt among the non-trawl fishery categories will be based on each category's proportional share of the anticipated halibut PSC during a fishing year and the need to optimize the amount of total groundfish harvested under the halibut PSC limit for this sector.

(*4*) The sum of all PSC allowances for this sector will equal the PSC limit set forth under paragraph (b)(1)(iii)(A)(*1*) of this section.

(B) *Non-trawl fishery categories.* For purposes of apportioning the non-trawl halibut PSC limit among fisheries, the following fishery categories are specified and defined in terms of round-weight equivalents of those BSAI groundfish species for which a TAC has been specified under § 679.20.

(*1*) *Pacific cod hook-and-line catcher vessel fishery.* Catcher vessels fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of Pacific cod that is greater than the retained amount of any other groundfish species.

(*2*) *Pacific cod hook-and-line catcher/processor fishery.* Catcher/processors fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of Pacific cod that is greater than the retained amount of any other groundfish species.

(*3*) *Sablefish hook-and-line fishery.* Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of sablefish that is greater than the retained amount of any other groundfish species.

(*4*) *Groundfish jig gear fishery.* Fishing with jig gear during any weekly reporting period that results in a retained catch of groundfish.

(*5*) *Groundfish pot gear fishery.* Fishing with pot gear under restrictions set forth in § 679.24(b) during any weekly reporting period that results in a retained catch of groundfish.

(*6*) *Other non-trawl fisheries.* Fishing for groundfish with non-trawl gear during any weekly reporting period that results in a retained catch of groundfish and does not qualify as a Pacific cod hook-and-line catcher vessel fishery, a Pacific cod hook-and-line catcher/processor fishery, a sablefish hook-and-line fishery, a jig gear fishery, or a groundfish pot gear fishery as defined under paragraphs (b)(1)(iii)(B)(*1*) through (*5*) of this section.

(iv) *CDQ Program.* The PSC limit of halibut caught while conducting any fishery in the CDQ Program is an amount of halibut equivalent to 315 mt of halibut mortality. The PSC limit to the CDQ Program will be treated as a Prohibited Species Quota (PSQ) reserve to the CDQ Program for all purposes under 50 CFR part 679 including §§ 679.31 and 679.7(d)(3). The PSQ limit is not apportioned by gear, fishery, or season.

(2) *Seasonal apportionments of BSAI halibut PSC allowances*—(i) *General.* NMFS, after consultation with the Council, may apportion a halibut PSC allowance on a seasonal basis.

(ii) *Factors to be considered.* NMFS will base any seasonal apportionment of a PSC allowance on the following types of information:

(A) Seasonal distribution of prohibited species;

(B) Seasonal distribution of target groundfish species relative to prohibited species distribution;

(C) Expected PSC needs on a seasonal basis relevant to change in prohibited species biomass and expected catches of target groundfish species;

(D) Expected variations in PSC rates throughout the fishing year;

(E) Expected changes in directed groundfish fishing seasons;

(F) Expected start of fishing effort; or

(G) Economic effects of establishing seasonal prohibited species apportionments on segments of the target groundfish industry.

(iii) *Seasonal trawl fishery PSC allowances*—(A) *Unused seasonal apportionments.* Unused seasonal apportionments of trawl fishery PSC allowances made under paragraph (b)(2) of this section will be added to its respective fishery PSC allowance for the next season during a current fishing year.

(B) *Seasonal apportionment exceeded.* If a seasonal apportionment of a trawl fishery PSC allowance made under paragraph (b)(2) of this section is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from its respective apportionment for the next season during a current fishing year.

(iv) *Seasonal non-trawl fishery PSC allowances*—(A) *Unused seasonal apportionments.* Any unused portion of a seasonal non-trawl fishery PSC allowance made under paragraph (b)(2) of this section will be reapportioned to the fishery's remaining seasonal PSC allowances during a current fishing year in a manner determined by NMFS, after consultation with the Council, based on the types of information listed under paragraph (b)(2)(ii) of this section.

(B) *Seasonal apportionment exceeded.* If a seasonal apportionment of a non-trawl fishery PSC allowance made under paragraph (b)(2) of this section is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from the fishery's remaining seasonal PSC allowances during a current fishing year in a manner determined by NMFS, after consultation with the Council, based on the types of information listed under paragraph (b)(2)(ii) of this section.

(3) *Notification of allowances*—(i) *General.* NMFS will publish in the **Federal Register,** for up to two fishing years, the proposed and final BSAI halibut PSC allowances, the seasonal apportionments thereof, and the manner in which seasonal apportionments of non-trawl fishery PSC allowances will be managed.

(ii) *Public comment.* Public comment will be accepted by NMFS on the proposed PSC allowances seasonal apportionments thereof, and the manner in which seasonal apportionments of non-trawl fishery PSC allowances will be managed, for a period specified in the notice of proposed specifications published in the **Federal Register.**

(4) *Management of BSAI halibut PSC allowances*—(i) *Trawl sector—Amendment 80 limited access fishery and BSAI trawl limited access sector: closures*—(A) *Exception.* When a PSC allowance, or seasonal apportionment thereof, specified for the pollock/Atka mackerel/''other species'' fishery category, as defined in paragraph (b)(1)(ii)(B)(*6*) of this section is reached, only directed fishing for pollock is closed to trawl vessels using nonpelagic trawl gear.

(B) *Closures.* Except as provided in paragraph (b)(4)(i)(A) of this section, if, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the trawl fishery categories listed in paragraphs (b)(1)(ii)(B)(*2*) through (*6*) of this section will catch the halibut PSC allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (b)(1)(i) or (b)(1)(ii) of this section, NMFS will publish in the **Federal Register** the closure of the entire BSAI to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

(ii) *BSAI non-trawl sector: closures.* If, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the non-trawl fishery categories listed under paragraph (b)(1)(iii) of this section will catch the halibut PSC allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (b)(1)(iii) of this section, NMFS will publish in the **Federal Register** the closure of the entire BSAI to directed fishing with the relevant gear type for each species and/or species group in that fishery category.

(iii) *AFA PSC sideboard limits.* Halibut PSC limits for the AFA catcher/processor sector and the AFA trawl catcher vessel sector will be established pursuant to § 679.64(a) and (b) and managed through directed fishing closures for the AFA catcher/processor sector and the AFA trawl catcher vessel sector in the groundfish fisheries for which the PSC limit applies.

* * * * *

(e) *BSAI PSC limits for crab, salmon, herring*—

* * * * *

(3) * * *

(ii) *Red king crab, C. bairdi, and C. opilio*—(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,* and *C. opilio* will be apportioned to the trawl fishery categories defined in paragraphs (e)(3)(iv)(B) through (F) of this section.

* * * * *

(C) *Incidental catch in midwater pollock fishery.* Any amount of red king crab, *C. bairdi,* or *C. opilio* that is incidentally taken in the midwater pollock fishery as defined in paragraph (e)(3)(iv)(A) of this section will be counted against the bycatch allowances specified for the pollock/Atka mackerel/''other species'' category defined in paragraph (e)(3)(iv)(F) of this section.

* * * * *

(iv) *Trawl fishery categories.* For purposes of apportioning trawl PSC limits for crab and herring among fisheries, other than crab 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.

* * * * *

(B) * * *

(*2*) *Rock sole/flathead sole/Alaska plaice/''other flatfish'' fishery.* * * *

* * * * *

(v) *AFA prohibited species catch limitations.* Crab PSC limits for the AFA catcher/processor sector and the AFA trawl catcher vessel sector will be established according to the procedures and formulas set out in § 679.64(a) and (b) and managed through directed fishing closures for the AFA catcher/processor sector and the AFA trawl catcher vessel sector in the groundfish fisheries for which the PSC limit applies.

(vi) * * *

(A) Crab PSC 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) Crab PSC assigned to the Amendment 80 limited access fishery will be managed through directed fishing closures for Amendment 80

vessels to which the crab bycatch limits apply.

* * * * *

(6) * * *

(i) *General.* NMFS will publish in the **Federal Register**, for up to two fishing years, the annual red king crab PSC limit, and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual *C. bairdi* PSC limit, the annual *C. opilio* PSC limit, the proposed and final PSQ reserve amounts, the proposed and final bycatch allowances, and the seasonal apportionments thereof, as required by paragraph (e) of this section.

(ii) *Public comment.* Public comment will be accepted by NMFS on the proposed annual red king crab PSC limit and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual *C. bairdi* PSC limit, the annual *C. opilio* PSC limit, the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of non-trawl fishery bycatch allowances will be managed, for a period specified in the notice of proposed specifications published in the **Federal Register.**

(7) * * *

(i) *Exception.* When a bycatch allowance, or seasonal apportionment thereof, specified for the pollock/Atka mackerel/''other species'' fishery category is reached, only directed fishing for pollock is closed to trawl vessels using nonpelagic trawl gear.

* * * * *

■ 5. In § 679.31, revise paragraph (a)(4) to read as follows:

**§ 679.31 CDQ and PSQ reserves, allocations, and transfers.**

(a) * * *

(4) *PSQ reserve.* (See § 679.21(e)(3)(i)(A) and (b)(1)(iv))

* * * * *

■ 6. In § 679.64, revise paragraph (a)(3) to read as follows:

**§ 679.64 Harvesting sideboard limits in other fisheries.**

(a) * * *

(3) *How will AFA catcher/processor sideboard limits be managed?* The Regional Administrator will manage groundfish harvest limits and PSC bycatch limits for AFA catcher/processors through directed fishing closures in fisheries established under paragraph (a)(1) of this section in accordance with the procedures set out in §§ 679.20(d)(1)(iv) and 679.21(b)(4)(iii).

* * * * *

■ 7. In § 679.91, revise paragraphs (d)(1) and (3) to read as follows:

**§ 679.91 Amendment 80 Program annual harvester privileges.**

* * * * *

(d) * * *

(1) *Amount of Amendment 80 halibut PSC for the Amendment 80 sector.* The amount of halibut PSC limit for the Amendment 80 sector for each calendar year is specified in Table 35 to this part. That halibut PSC is then assigned to Amendment 80 cooperatives and the Amendment 80 limited access fishery pursuant to paragraphs (d)(2) and (3) of this section. If one or more Amendment 80 vessels participate in the Amendment 80 limited access fishery, the halibut PSC limit assigned to the Amendment 80 sector will be reduced pursuant to paragraph (d)(3) of this section.

* * * * *

(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, as 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, multiplied by 80 percent.

* * * * *

**§§ 679.20, 679.23, 679.24, 679.25, and 679.26 [Amended]**

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

| Location | Remove | Add | Frequency |
|---|---|---|---|
| § 679.20(d)(2) | § 679.21(b) | § 679.21(a) | 1 |
| § 679.23(f) | § 679.21(b) | § 679.21(a) | 1 |
| § 679.23(g)(3) | § 679.21(b) | § 679.21(a) | 1 |
| § 679.24(c)(2)(ii)(A) | § 679.21(b) | § 679.21(a) | 1 |
| § 679.24(c)(2)(ii)(B) | § 679.21(b) | § 679.21(a) | 1 |
| § 679.24(c)(3) | § 679.21(b) | § 679.21(a) | 1 |
| § 679.24(c)(4) | § 679.21(b) | § 679.21(a) | 1 |
| § 679.25(a)(2)(ii)(A) | § 679.21(b) | § 679.21(a) | 1 |
| § 679.26(d)(2) | § 679.21(b) | § 679.21(a) | 1 |

■ 9. Revise table 35 to part 679 to read as follows:

TABLE 35 TO PART 679—APPORTIONMENT OF CRAB PSC AND HALIBUT PSC BETWEEN THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS

| Fishery | Halibut PSC limit in the BSAI (mt) | Zone 1 Red king crab PSC limit . . . | *C. opilio* crab PSC limit (COBLZ) . . . | Zone 1 *C. bairdi* crab PSC limit . . . | Zone 2 *C. bairdi* crab PSC limit . . . |
|---|---|---|---|---|---|
| | | as a percentage of the total BSAI trawl PSC limit after allocation as PSQ. | | | |
| Amendment 80 sector | 1,745 | 49.98 | 49.15 | 42.11 | 23.67 |
| BSAI trawl limited access. | 745 | 30.58 | 32.14 | 46.99 | 46.81 |

■ 10. Revise table 40 to part 679 to read as follows:

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(b)(1)(iii) and (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" [1] | N/A | 228 |
| Turbot/Arrowtooth/Sablefish | N/A | 0 |
| Rockfish [2] | N/A | 2 |
| Pollock/Atka mackerel/"other species" | N/A | 5 |

[1] "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.
[2] Applicable from July 1 through December 31.

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