DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070430096–7096–01; I.D. 041307D]

RIN 0648–AU68

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

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

ACTION: Proposed rule; request for comments.

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

DATES: Comments must be received no later than June 29, 2007.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Hand Delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.
- *Fax:* 907–586–7557.
- *E-mail: 0648–AU68PR80@noaa.gov.* Include in the subject line of the e-mail the following document identifier: ''Amendment 80 RIN 0648–AU68.'' E-mail comments, with or without attachments, are limited to 5 megabytes.
- *Webform at the Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions at that site for submitting comments.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov* or by fax to 202–395–7285.

Copies of Amendment 80 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region Web site at *http://www.fakr.noaa.gov/sustainablefisheries.htm.*

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228 or *glenn.merrill@noaa.gov.*

SUPPLEMENTARY INFORMATION: The North Pacific Fishery Management Council (Council) has submitted Amendment 80 for review by the Secretary of Commerce (Secretary), and a notice of availability of the FMP amendment was published in the **Federal Register** on April 30, 2007 (72 FR 21198) with comments on the FMP amendment invited through June 29, 2007.

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I. Development of the Program

A. History of Bycatch and Discard Reduction Efforts in the BSAI

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

The Council recommended and NMFS implemented management measures to establish retention and utilization standards for pollock and Pacific cod under Amendment 49 to the FMP (62 FR 63880; January 3, 1998). More recently, in June 2003, the Council recommended Amendment 79 to the FMP to improve retention of groundfish species by implementing a GRS. The GRS applies to catcher/processor vessels using trawl gear that are greater than or equal to 125 ft. (38.1 m) and not specifically defined as catcher/processors listed as eligible to participate in the directed pollock fishery under section 208(e) of the AFA. These catcher/processors are commonly referred to as non-AFA trawl catcher/processors.

The Council's analysis of groundfish retention rates in the BSAI groundfish fishery revealed that vessels in the non-AFA trawl catcher/processor sector had the lowest retained catch rates of any groundfish trawl fishery in the BSAI. This analysis also noted that non-AFA trawl catcher/processors equal to or greater than 125 ft (38.1 m) in length overall (LOA) contributed the majority of the harvest and discarded catch by the non-AFA trawl catcher/processor fleet. Given the smaller, but still considerable, proportion of overall bycatch and discard of groundfish by non-AFA trawl catcher/processors less than 125 ft (38.1 m) LOA to the overall bycatch and discard of groundfish by all non-AFA trawl catcher/processors, and recognizing that compliance costs associated with observers and scale monitoring requirements would be relatively higher for vessels less than 125 ft (38.1 m) LOA, non-AFA trawl catcher/processor vessels that are less than 125 ft (38.1 m) LOA were excluded from the GRS. The GRS requires each non-AFA trawl catcher/processor greater than or equal to125 ft (38.1 m) LOA to retain specific groundfish species at a specified minimum rate. The minimum retention rate is lower for the first year the GRS is effective in 2008 and is gradually increased to a maximum retention rate for 2011 and in all years thereafter. This graduated approach to increasing the minimum GRS rate was designed to facilitate industry compliance with the GRS by providing vessel operators several years to modify and adapt fishing operations.

Amendment 79 was approved by the Secretary on August 31, 2005, and NMFS published regulations to implement the GRS on April 6, 2006 (71 FR 17362). Those regulations will be effective on January 20, 2008. Amendment 79 authorizes groundfish retention standards as a tool for further increasing the retention and utilization of groundfish and responding to bycatch reduction goals described in National Standard 9 of the MSA. The GRS balanced the requirements for conservation and management of the groundfish fisheries under the MSA with the requirements to minimize bycatch under National Standard 9 and minimize economic burdens under National Standard 7 (minimize costs and avoid unnecessary duplication) of the MSA.

The Council took final action to recommend Amendment 80 on June 9, 2006. Amendment 80 and the implementing Program would continue initiatives by the Council and NMFS to reduce bycatch and discard of fish species in the BSAI non-pollock trawl groundfish fisheries. The Program would (1) Extend the application of the GRS to non-AFA trawl catcher/processor vessels of all sizes by including catcher/processor vessels under 125 ft (38.1 m) LOA; and (2) reduce the amount of halibut and crab bycatch known as prohibited species catch (PSC) that may be taken while non-AFA trawl catcher/processors are groundfish fishing in the BSAI. These measures would consider efficiency in utilization of fishery resources, minimize costs, and further minimize bycatch to the extent practicable, thereby meeting the objectives of National Standards 5, 7, and 9 of the MSA.

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

B. The Non-Pollock Trawl Groundfish Fisheries

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

NMFS establishes a total allowable catch (TAC) for each of the non-pollock groundfish fisheries based on the species's annual biomass with the goal of providing a conservatively managed sustainable yield. Harvesters compete for the TAC, resulting in a ''race for

fish,'' wherein vessels attempt to maximize their harvest in as little time as possible, in order to claim a larger share of the available TAC. This race for fish only increases the economic incentive to discard less valuable species in a multi-species harvest, and accelerates the harvest rate for the more valuable species.

Because vessel operators are competing with each other for shares of a common TAC, a vessel operator has little economic incentive to undertake actions to reduce unwanted incidental catch, such as searching for fishing grounds with lower bycatch rates, or using gear modifications that may reduce bycatch but have lower harvest rates, if those actions would limit the ability of that vessel to effectively compete with other vessels. Additionally, a vessel operator has little incentive to process and store less valuable species if by doing so, he loses an opportunity to use that processing or storage capacity for more valuable catch. Therefore, an individual vessel operator has strong incentives to harvest fish as quickly as possible, and discard less valuable species before the TAC limit is reached because all vessel operators are competing for a limited TAC.

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

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

C. LAPPs

The primary method to offset the economic incentives that lead to a race for fish and relatively high discard rates is to reduce the impact of those incentives through a LAPP. LAPPs have been used extensively in the North Pacific as a means to encourage economic efficiency and less wasteful harvest methods, and to resolve allocation disputes among harvesters by providing a group of harvesters with exclusive harvest privileges that can be traded. North Pacific LAPPs include (1) The halibut and sablefish individual fishing quota (IFQ) Program (November 9, 1993, 58 FR 59375); (2) the AFA (December 30, 2002; 67 FR 69692); (3) the BSAI Crab Rationalization Program (March 2, 2005; 70 FR 10174); and (4) the Central GOA Rockfish Program (November 20, 2006; 71 FR 67210). An extensive discussion of LAPPs can be found in the EA/RIR/IRFA prepared for this action and in the National Research Council's publication *Sharing the Fish* which was consulted and considered during the development of the Program.

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

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

LAPPs can increase the costs of entering the fishery substantially because the permits acquire value and must be purchased prior to entry. Consolidation can limit employment opportunities as well. Compliance costs can also increase to ensure that NMFS can monitor the harvesting and processing of fish. Administration of LAPPs typically require greater effort and cost than non-LAPP fisheries due to the greater precision in catch accounting required to track the harvest of fish and proper debiting of accounts. Participants in LAPPs may also use their excess fishing capacity to expand operations into other fisheries that are not managed by LAPPs and increase the race for fish in those fisheries unless they are constrained. These effects and others have been addressed in the design of previous LAPPs by limiting the amount of consolidation in the fishery. Entry costs for any LAPP are likely to be higher than in other non-LAPP fisheries, and those costs limit the ability of those operators without the financial wherewithal to participate in these fisheries. A loan program for entry level participants has been established in the Halibut and Sablefish IFQ Program to assist entry into that LAPP, but fishery participants in other LAPPs must rely on other sources of financing.

Based on extensive experience with past LAPPs, and after weighing potential advantages and disadvantages, the Council recommended the Program to create economic incentives that provide additional opportunities to reduce bycatch while increasing the potential for greater economic returns to those holding the harvest privileges. The Program would provide an incentive for non-AFA trawl catcher/processors to harvest certain species of non-pollock groundfish in a less wasteful manner by granting an exclusive harvest privilege to a limited number of harvesters. The Program would encourage participants to harvest more efficiently and less wastefully by allowing them to choose to (1) Form harvesting cooperatives with other harvesters that would receive an exclusive annual harvest privilege of specific groundfish species; or (2) fish in a limited access fishery comprised of

fishery participants that choose not to join a cooperative. The principal benefits from the Program would be realized by harvesters that choose to join a cooperative.

D. LAPPs, GRS, and Reduced PSC

The Council also recognized that some of the compliance costs associated with the GRS, particularly for non-AFA trawl catcher/processors less than 125 ft (38.1 m) LOA could be reduced under LAPP management. The Council recognized that if harvesters could apply the GRS to a cooperative in the aggregate, by aggregating retention rates by all vessels in a cooperative, owners of non-AFA trawl catcher/processors less than 125 ft (38.1 m) could choose to join a cooperative, assign their harvest privilege to the cooperative, and allow other larger vessels to harvest the cooperative's exclusive allocation of fish without incurring the compliance costs associated with monitoring the GRS. Non-AFA trawl catcher/vessels less than 125 ft (38.1 m) LOA would still receive economic benefits from their harvests but would not need to refit their vessels to meet the additional M&E requirements and pay the additional costs to fish in the BSAI. Those vessels could continue to participate in other fisheries in the GOA. Furthermore, the catch associated with smaller catcher/processor vessels would be subject to the GRS, thereby further improving retention of groundfish and reducing discards of fish.

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

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

E. Overview of the Program

The rationale behind specific aspects of the Program are provided in greater detail later in this preamble. The Council adopted the Program to meet the broad goals of (1) Improving retention and utilization of fishery resources by the non-AFA trawl catcher/processor fleet by extending the GRS to non-AFA trawl catcher/processor vessels of all lengths in that sector; (2) allocating fishery resources among BSAI trawl harvesters in consideration of historic and present harvest patterns and future harvest needs; (3) authorizing the allocation of groundfish species to harvesting cooperatives and establishing a LAPP for the non-AFA trawl catcher/processors to encourage fishing practices with lower discard rates, and improve the opportunity for increasing the value of harvested species while lowering potential costs; and (4) limiting the ability of non-AFA trawl catcher/processors to expand their harvesting capacity into other fisheries not managed under a LAPP.

As with all other LAPPs in the North Pacific, the extensive changes to existing management of BSAI non-pollock trawl fisheries proposed by the Program would affect a wide range of fishing practices and regulations. The Program would affect management of the non-AFA trawl catcher/processors, other BSAI trawl fishery participants, and other harvesters in the North Pacific. As such, the Program proposes a complex suite of measures to ensure the goals of the Program are met and minimize potential adverse impacts on affected fishery participants.

The following section provides an overview of the suite of measures the Program proposes to implement. Each Program element will be addressed in detail in subsequent sections of this preamble.

1. Community Development Quota (CDQ) Program Changes

The Program would incorporate statutory mandates in the MSA as amended by Section 416 of the Coast Guard and Maritime Transportation Act of 2006 (Pub. L. 109–241; July 11, 2006), and the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Pub. L. 109–479, January 12, 2007). The proposed rule would modify the percentage of TAC for directed fisheries that are allocated to the CDQ Program, and the percentage of halibut, crab, and non-Chinook salmon PSC allocated to the CDQ Program as prohibited species quota (PSQ). The proposed rule includes other provisions necessary to bring Amendment 80 and the CDQ Program into compliance with applicable law as described in Section II of this preamble.

2. Amendment 80 Sector and Amendment 80 Vessels

Eligible Program participants would be defined by applicable legislation and the Program. Applicable legislation is described in greater detail in Section II of this preamble. The Program would incorporate statutory mandates in section 219 of the Consolidated Appropriations Act of 2005 (Pub. L. 108–447; December 8, 2004) which defines who is eligible to harvest fish in the non-AFA catcher/processor sector for a defined list of non-pollock groundfish species. The Program would define the ''Amendment 80 sector'' as non-AFA trawl catcher/processor harvesters eligible to fish under this statutory mandate. The defined list of non-AFA trawl catcher/processor vessels that may be used to fish in the Amendment 80 sector are ''Amendment 80 vessels.''

3. Amendment 80 Species

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

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

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

Each year, the Program would allocate an amount of Amendment 80 species

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

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

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

5. BSAI Trawl Limited Access Sector

The Program would provide a specific allocation of Amendment 80 species and crab and halibut PSC to this sector. The Program would modify the calculation of AFA sideboard limits for Amendment 80 species and crab and halibut PSC limits necessary to allow the efficient operation of AFA vessels. The Program would adjust the maximum limit for red king crab bycatch in the Red King Crab Savings Subarea (RKCSS).

6. Amendment 80 Quota Share

The Program would assign Amendment 80 quota share (QS) for Amendment 80 species to the owners of Amendment 80 vessels. The Amendment 80 QS could be used to yield an exclusive harvest privilege for a portion of the Amendment 80 sector ITAC. The Program would establish criteria for harvesters in the Amendment 80 sector to apply for and receive QS, criteria for initially allocating QS, and criteria for the transfer of QS.

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

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

7. Amendment 80 Cooperatives

Persons that receive Amendment 80 QS would be able to join a cooperative to receive an exclusive harvest privilege for a portion of the ITAC. Amendment 80 QS holders would be able to form a cooperative with other Amendment 80 QS holders on an annual basis, provided they meet specific criteria. Each Amendment 80 cooperative would receive an annual cooperative quota (CQ), an amount of Amendment 80 species ITAC that would be for the exclusive use by that cooperative for harvest in a given year. The Program would establish requirements for forming an Amendment 80 cooperative with other Amendment 80 QS holders, the allocation of annual CQ to a cooperative, and transfers of CQ among cooperatives. A cooperative would receive an amount of CQ equivalent to the proportion of QS held by all of the members of the cooperative relative to the total QS held by all Amendment 80 QS holders.

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

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

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

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

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

8. Amendment 80 Limited Access Fishery

Amendment 80 QS holders that choose not to join an Amendment 80 cooperative would be able to participate in the Amendment 80 limited access fishery. The Program would assign the Amendment 80 limited access fishery the amount of the Amendment 80 sector's allocation of Amendment 80

species ITAC and halibut and crab PSC that remains after allocation to all of the Amendment 80 cooperatives. Participants fishing in the Amendment 80 limited access fishery would continue to compete with each other; would not realize the same potential benefits from consolidation and coordination; and would not receive an exclusive harvest privilege that accrues to members of an Amendment 80 cooperative.

9. Use Caps

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

10. Gulf of Alaska (GOA) Sideboard Limits

Catch limits, commonly known as sideboards, would limit the ability of participants eligible for this Program to expand their harvest efforts in the GOA. The Program is designed to provide certain economic advantages to participants. Program participants could use this economic advantage to increase their participation in other fisheries, primarily in the GOA fisheries, adversely affecting the participants in those fisheries. GOA groundfish and halibut PSC sideboards would limit the catch by Amendment 80 vessels to historic levels in the GOA. The Program would limit the total amount of catch in other groundfish fisheries that could be taken by Amendment 80 vessels, including harvests made in the State of Alaska (State) waters which are open during Federal fishing seasons to allow the harvest of fish assigned to the Federal TAC—the ''parallel'' groundfish fisheries.

Sideboards would limit harvest of Pacific cod, pollock, and rockfish fisheries in the GOA, the eligibility of Amendment 80 vessels to participate in GOA flatfish fisheries, and the amount of halibut PSC that Amendment 80 vessels could catch when harvesting groundfish in the GOA. Sideboards would apply to all Amendment 80 vessels and all LLP licenses that can be used on an Amendment 80 vessel.

11. Monitoring and Enforcement (M&E)

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

12. GRS Requirements

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

13. Economic Data Report (EDR)

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

II. Legislation Affecting the Program

Eligibility to participate in the Program and ITAC allocation under the Program are affected by several pieces of recent legislation:

- Section 219 of the Consolidated Appropriations Act of 2005 (Pub. L. 108–447; December 8, 2004), referred to in this proposed rule as the Capacity Reduction Program (CRP), which defined the Amendment 80 sector and implemented a capacity reduction program for several catcher/processor sectors;
- Section 416 of the Coast Guard and Maritime Transportation Act of 2006 (Pub. L. 109–241; July 11, 2006), referred to in this proposed rule as the Coast Guard Act, which amended provisions of the CDQ Program in the MSA; and
- The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Pub. L. 109–479, January 12, 2007), referred to in this proposed rule as the MSRA, which modified provisions related to the CDQ Program and instituted other measures applicable to LAPPs.

The following sections detail the effects of the CRP, Coast Guard Act, and MSRA on the development of the Program and this proposed rule. These pieces of legislation directly dictate specific elements of the Program.

A. The Capacity Reduction Program (CRP)

Among other things, the CRP legislates who may participate in the non-AFA trawl catcher/processor sector in the BSAI for ''non-pollock groundfish fisheries;'' and defines the non-pollock groundfish fisheries in the BSAI as ''target species of Atka mackerel, flathead sole, Pacific cod, Pacific ocean perch, rock sole, turbot, or yellowfin sole harvested in the BSAI.'' Because all of the Amendment 80 species are included in the CRP's definition of non-pollock groundfish fishery, the CRP's eligibility requirements for the non-AFA trawl catcher/processor sector apply to the Program's eligibility criteria for the Amendment 80 sector. Therefore, the Program would incorporate the CRP's definition of a non-AFA trawl catcher/processor.

1. Eligibility To Participate in the Non-AFA Trawl Catcher/Processor Sector (Amendment 80 Sector)

The CRP defines the non-AFA trawl catcher/processor sector as the owner of each trawl catcher/processor that

- Is not an AFA trawl catcher/processor listed in paragraphs (1) through (20) of section 208(e) of the AFA;
- Was issued a valid LLP license endorsed for Bering Sea or Aleutian Islands trawl catcher/processor fishing activity; and
- The Secretary determines has harvested with trawl gear and processed not less than a total of 150 mt of non-

pollock groundfish during the period January 1, 1997, through December 31, 2002.

Based on a review of harvest data from 1997 through 2002, NMFS has identified 28 vessels that appear to meet the requirements of the CRP listed above. Those 28 vessels are identified in the following Table 1.

TABLE 1.—LIST OF AMENDMENT 80 VESSELS

Name of Amendment 80 vessel	USCG documentation number
ALASKA JURIS	569276
ALASKA RANGER	550138
ALASKA SPIRIT	554913
ALASKA VICTORY	569752
ALASKA VOYAGER	536484
ALASKA WARRIOR	590350
ALLIANCE	622750
AMERICAN NO I	610654
ARCTIC ROSE	931446
ARICA	550139
BERING ENTERPRISE	610869
CAPE HORN	653806
CONSTELLATION	640364
DEFENDER	665983
ENTERPRISE	657383
GOLDEN FLEECE	609951
HARVESTER ENTERPRISE	584902
LEGACY	664882
OCEAN ALASKA	623210
OCEAN PEACE	677399
PROSPERITY	615485
REBECCA IRENE	697637
SEAFISHER	575587
SEAFREEZE ALASKA	517242
TREMONT	529154
U.S. INTREPID	604439
UNIMAK	637693
VAERDAL	611225

The Program would define ''Amendment 80 vessel'' as the vessels listed in this table, or because there may be additional eligible vessels that NMFS is unaware of at this time, any vessel that meets the CRP's eligibility criteria for the non-AFA trawl catcher/processor sector. NMFS welcomes comment from members on the accuracy of this list of Amendment 80 vessels.

2. Cooperatives and ITAC Assigned to the Amendment 80 Sector

The CRP does not limit the ability for the Council to recommend, nor the Secretary to approve and implement, management measures that define the amount of ITAC assigned to the Amendment 80 sector, or other management measures for the Amendment 80 sector not in conflict with the CRP or other law. Any such management measures would include: Establishing Amendment 80 cooperatives; allocating only some of the ''non-pollock groundfish species'' to the Amendment 80 sector; or otherwise proposing measures to manage the Amendment 80 sector, or other non-Amendment 80 sector participating in the BSAI trawl fisheries.

B. The Coast Guard Act

The Coast Guard Act amended section 305(i)(1) of the MSA by removing all of the CDQ Program-related requirements in effect at the time the legislation was enacted and replacing them with new requirements. The amendments to section 305(i)(1) addressed all aspects of management and oversight of the CDQ Program including the purpose of the CDQ Program; allocations of groundfish, halibut, and crab to the CDQ Program; allocations of quota among the CDQ groups; management of the CDQ fisheries; eligibility criteria for participation in the CDQ Program; limits on allowable investments; the creation of a CDQ administrative panel; compliance with State reporting requirements; a decennial review and allocation adjustment process; and other aspects of program administration and oversight by the State and NMFS, on behalf of the Secretary.

The elements of the Coast Guard Act relevant to the Program are the species or species groups allocated to the CDQ Program under section 305(i)(1)(B)(i) and the regulation of harvest of these allocations under section 305(i)(1)(B)(iv). Section 305(i)(1)(B)(ii) affects the percentage allocations of all of the groundfish species allocated to the CDQ Program, except pollock and sablefish. Because this section was further amended under the MSRA, it is discussed in more detail in Part C of this section below.

1. Groundfish Species or Species Groups Allocated to the CDQ Program

The first provision from the Coast Guard Act that affects the CDQ Program and the Program is section 305(i)(1)(B)(i), which requires that ''the annual percentage of the total allowable catch, guideline harvest level, or other annual catch limit allocated to the program in each directed fishery of the Bering Sea and Aleutian Islands shall be the percentage approved by the Secretary, or established by Federal law, as of March 1, 2006.'' Prior to this amendment, the MSA stated that ''a percentage of the total allowable catch of any Bering Sea fishery is allocated to the program.'' Since 1998, NMFS has allocated to the CDQ Program a percentage of each groundfish TAC category, except squid. The amended language in the MSA requires that only those species or species groups with a directed fishery in the BSAI be allocated to the CDQ Program. This is a more limited list of species or species groups than has been allocated to the CDQ Program in the past.

Congress did not define the phrase ''directed fishery'' in the Coast Guard Act. However, based on the statutory language and the legislative history, NMFS determined that the phrase directed fishery for purposes of section 305(i)(1) of the MSA means a fishery for which sufficient TAC exists to open a directed fishery, and the species or species group is economically valuable enough for vessel operators to conduct directed fishing for that species or species group. NMFS applied this interpretation in the 2007 and 2008 final harvest specifications for the groundfish of the BSAI (March 2, 2007; 72 FR 9451).

The groundfish species and species groups that meet this definition and those that do not are shown in Table 2.

TABLE 2.—GROUNDFISH SPECIES AND SPECIES GROUPS ALLOCATED AND NOT ALLOCATED TO THE CDQ PROGRAM

Species and species groups allocated to the CDQ Program	
Management area or subarea	Species or species group
Bering Sea (BS) and AI	Pollock.
BSAI	Pacific cod.
BS and AI	Sablefish (from both the hook-and-line and pot gear allocation and the trawl allocation of the sablefish TAC).
Eastern Aleutian Islands/Bering Sea (EAI/BS), Central Aleutian Islands (CAI), Western Aleutian Islands (WAI).	Atka mackerel.
EAI, CAI, WAI	Pacific ocean perch.
BSAI	Flathead sole.
BSAI	Rock sole.

TABLE 2.—GROUNDFISH SPECIES AND SPECIES GROUPS ALLOCATED AND NOT ALLOCATED TO THE CDQ PROGRAM—Continued

Species and species groups allocated to the CDQ Program	
Management area or subarea	Species or species group
BSAI	Yellowfin sole.
BSAI	Arrowtooth flounder.
BS	Greenland turbot.
Species and species groups not allocated to the CDQ Program	
Management area or subarea	Species or species group
Bogoslof	Pollock.
BSAI	Alaska plaice.
BSAI	Other flatfish.
AI	Greenland turbot.
BS	Pacific ocean perch.
BSAI	Northern rockfish.
BSAI	Shortraker rockfish.
BSAI	Rougheye rockfish.
BS and AI	Other rockfish.
BSAI	Other species.
BSAI	Squid.

As described in the 2007 and 2008 final harvest specifications, and proposed under the Program, catch of species and species groups that are not allocated to the CDQ Program would be managed under the regulations and fishery status that applies to that species or species group in the non-CDQ groundfish fisheries. Retention of non-allocated species that are closed to directed fishing would either be limited to maximum retainable amounts or all catch of the species will be required to be discarded. Notices of closures to directed fishing and retention requirements for these species would apply equally to both the CDQ and non-CDQ sectors.

The Program would revise regulations at § 679.20 that govern the annual specifications process for the CDQ Program. The list of species or species groups allocated to the CDQ Program in § 679.20 must be consistent with the definition of directed fishery for purposes of section 305(i)(1) of the MSA. This proposed rule would establish the list of species and species groups allocated to the CDQ Program in regulation. The allocated species or species groups could be revised in the future through rulemaking if circumstances change so that (1) a species or species group that currently is not allocated to the CDQ Program becomes a ''directed fishery'' in the future, or (2) a species or species group currently allocated to the CDQ Program is no longer a ''directed fishery'' in the future.

In addition to the species and species groups allocated to the CDQ Program, the percentage allocation of the TAC for each species or species group in § 679.20 also must be consistent with the MSA. The percentage allocations of pollock and sablefish to the CDQ Program are governed by section 305(i)(1)(B)(i) which was implemented through the Coast Guard Act. Because section 305(i)(1)(B)(i) maintains current percentage allocations of pollock and sablefish to the CDQ Program, the percentage allocations for these species will continue to be those percentage allocations in effect on March 1, 2006. Ten percent of the Bering Sea subarea and Aleutian Islands subarea pollock TACs will continue to be allocated to the CDQ Program as directed fishing allowances. Twenty percent of the hook-and-line and pot gear (fixed gear) allocation of sablefish and 7.5 percent of the trawl allocation of sablefish will continue to be allocated to the CDQ Program. The percentage allocations of all of the other groundfish species allocated to the CDQ Program are addressed under section 305(i)(1)(B)(ii) of the MSA, which was last amended through the MSRA. These allocations are discussed in more detail in *The MSRA* below.

2. Regulation of CDQ Program Harvests

The Coast Guard Act created a new section 305(i)(1)(B)(iv) of the MSA that requires that ''the harvest of allocations under the [CDQ] program for fisheries with individual quotas or fishing cooperatives shall be regulated by the Secretary in a manner no more restrictive than for other participants in the applicable sector, including with respect to the harvest of nontarget species.'' If Amendment 80 is approved, the authorization for allocations of Amendment 80 species to fishing cooperatives triggers the requirements of section 305(i)(1)(B)(iv).

Therefore, the regulation of harvest in a CDQ fishery may be no more restrictive than the regulation of the harvest in the fisheries in which the Amendment 80 cooperatives participate. Consistent with the requirements of section 305(i)(1)(B)(iv), NMFS proposes to apply to any non-AFA trawl catcher/processors harvesting groundfish in the CDQ Program the same M&E and GRS requirements that would apply to Amendment 80 vessels harvesting groundfish in the BSAI. The proposed regulations for harvest by non-AFA trawl catcher/processor vessels in the CDQ Program are detailed in Sections III and XII of this preamble.

C. The MSRA

The MSRA substantially amends the MSA. Pertinent to the Program, the MSRA includes amendments relating to LAPPs, the CDQ Program, and cost recovery and fee collection provisions.

The MSRA includes provisions that affect the Program primarily by (1) adding definitions of a limited access privilege, limited access system, and a new section, 303A—Limited Access Privilege Programs, to the MSRA; (2) specifying the percentage of each TAC, except pollock and sablefish, that will be allocated to the CDQ Program starting January 1, 2008; (3) extending the management costs for which NMFS may collect fees to recover costs related to LAPPs; and (4) expanding the authority and requirements to collect economic data from fishery participants.

1. LAPP Provisions

The MSRA amended the MSA under section 3(26) to define a ''limited access privilege'' as ''a Federal permit, issued as part of a limited access system under section 303A to harvest a quantity of fish expressed by a unit or units representing a portion of the total allowable catch of the fishery that may be received or held for exclusive use by a person; and includes an individual fishing quota; but does not include community development quotas as described in section 305(i).''

The MSRA amended the MSA under section 3(27) to define a ''limited access system'' as ''a system that limits participation in a fishery to those satisfying certain eligibility criteria of requirements contained in a fishery management plan or associated regulation.''

The Program is specifically included as a LAPP under section 303A under the provisions of section 303A(i) which reads as follows:

(i) TRANSITION RULES.—(1) IN GENERAL.—The requirements of this section shall not apply to any quota program, including any individual fishing quota program, cooperative program, or sector allocation for which a Council has taken final action or which has been submitted by a Council to the Secretary, or approved by the Secretary, within 6 months after the enactment of the [MSRA] except that—

(A) The requirements of section 303(d) of this Act [the MSA] in effect on the day before the date of enactment of that Act [the MSRA] shall apply to any such program;

(B) The program shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation; and

(C) Nothing in this subsection precludes a Council from incorporating criteria in this section into any such plans.

The Council took final action to recommend Amendment 80 to the FMP on June 9, 2006. Therefore, section 303(i)(1) would not require the Program to comply with the provisions of section 303A of the MSA, other than a review of the Program five years after implementation under section 303A(i)(1)(B). The review process required under section 303A(i)(1)(B) does not require immediate action by the Council or implementing regulations by the Secretary to ensure compliance with the MSA and those provisions are not incorporated in this proposed rule.

Section 303A(i)(1)(C) would permit the Council to recommend incorporating other provisions of section 303A into the Program. Any such recommendations would be developed through a separate FMP amendment and subject to a separate rule making process in the future.

2. CDQ Provisions

The MSRA amended section 305(i)(1)(B)(ii)(I) of the MSA to require that the allocation of TAC to the CDQ Program ''for each directed fishery of the Bering Sea and Aleutian Islands (other than a fishery for halibut, sablefish, pollock, and crab) shall be a total allocation of 10.7 percent effective January 1, 2008.'' The term ''directed fishery'' for purposes of this requirement is interpreted as described under Part B of this section above. Therefore, this requirement means that 10.7 percent of the TAC for Pacific cod, Atka mackerel, yellowfin sole, rock sole, Bering Sea Greenland turbot, arrowtooth flounder, flathead sole, and AI Pacific ocean perch will be allocated to the CDQ Program annually.

Allocations of these species to the CDQ Program are known as ''CDQ reserves.'' As required by section 305(i)(1)(C) of the MSA, each of these allocations to the CDQ Program are further allocated among the CDQ groups based on the percentage allocations that were in effect on March 1, 2006. A table listing the percentage allocations among the CDQ groups was published in the **Federal Register** on August 31, 2006 (71 FR 51804). All catch of each groundfish species allocated to the CDQ Program will continue to accrue against the CDQ group's allocation regardless of whether that fish was caught while directed fishing for that species or is incidentally caught while fishing for another species.

Current regulations at § 679.7(d)(5) prohibit each CDQ group from exceeding its allocation of any groundfish CDQ species, crab, halibut, or salmon PSQ. Exceeding an allocation of any groundfish CDQ or PSQ is a violation of 50 CFR part 679 and can result in enforcement action. These regulations create what is known as ''hard cap'' management for the groundfish CDQ species allocated under section 305(i)(1)(B)(ii)(I) and (II) of the MSA. Each CDQ group must manage all of their CDQ fisheries to maintain catch within all of these CDQ groundfish and PSQ allocations. Reaching an allocation of one groundfish species limits further CDQ fishing because such fishing likely will result in additional catch of the groundfish species for which the allocation has already been reached.

Section 305(i)(B)(ii) of the MSA was amended by the MSRA to require that the CDQ allocations of the species allocated under section 305(i)(1)(B)(ii)(I) and (II) may not be exceeded. This requirement maintains the existing ''hard cap'' management for these CDQ allocations. NMFS would continue to allocate these CDQ reserves among the CDQ groups based on the percentage allocations required by the MSA. All catch by vessels fishing on behalf of a CDQ group would accrue against that CDQ group's allocation. Each CDQ group would continue to be prohibited from exceeding the amount of each CDQ reserve allocated to it annually. Therefore, no changes to regulations are needed to implement this provision of the MSRA.

Section 305(i)(1)(C) was amended by the MSRA to require that 0.7 percent of the 10.7 percent allocated to the CDQ Program for all of the groundfish species, except pollock and sablefish, shall be allocated among the CDQ groups by the CDQ administrative panel (CDQ Panel). The CDQ Panel was created under the Coast Guard Act in section 305(i)(1)(G) of the MSA. Each CDQ group has a representative on the CDQ Panel and the panel may only make decisions by unanimous vote of all six members. NMFS anticipates that the CDQ Panel will submit its decision about how to allocate the 0.7 percent of each groundfish CDQ reserve, except pollock and sablefish, to NMFS prior to January 1, 2008, so that NMFS can establish quota account balances for each of the CDQ groups. However, if the CDQ Panel does not submit its percentage allocations to NMFS, the MSA requires the Secretary to allocate this portion of the CDQ reserves based on the nontarget needs of the CDQ groups. Regulations to implement this provision of the MSA are not included in this proposed rule because they are outside of the scope of MSA requirements directly necessary to implement Amendment 80.

3. Cost Recovery

The MSRA amended several provisions in the MSA concerning the collection of fees for LAPPs. Section 304(d)(2)(A) of the MSA as amended by the MSRA reads as follows:

(2)(A) Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management, data collection, and enforcement of any—

(i) limited access privilege program; and

(ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.

This provision applies to LAPPs that meet the definitions of a ''limited access privilege'' and a ''limited access system.'' Should NMFS determine that the Program meets these definitions and the MSA does not otherwise prohibit collection of fees in this Program, the Secretary would be authorized to collect fees to recover costs not to exceed three

percent of the exvessel value of fish harvested under Program under section 304(d)(2)(B). NMFS is reviewing these provisions of the MSA. Pending this review, NMFS may develop future rule making to implement fee collection.

4. Economic Data Collection

The MSRA amended several provisions under section 303 of the MSA by expanding the authority and the requirements for the Secretary to collect economic data when developing and implementing FMPs and accompanying regulations. The MSA requires that any FMP, including Amendment 80, which is prepared by any Council or the Secretary, with respect to any fishery, shall—

- Specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, charter fishing, and fish processing in the fishery, including but not limited to economic information necessary to meet the requirements of the MSA (Section 303(a)(5));
- Include a fishery impact statement which shall assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of conservation and management measures (Section 303(a)(9)); and
- Include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery, including its economic impact (Section 303(a)(13)).

The Program would address these statutory mandates through the implementation of an economic data collection program. See Section XIII of this preamble for additional detail.

III. Nonspecified Reserve and CDQ Program

The Program would (1) Modify allocations to the nonspecified reserve and the CDQ reserves; (2) increase PSQ allocations for halibut, crab, and non-Chinook salmon; (3) apply the same M&E requirements applicable to non-AFA trawl catcher/processors while participating in the non-CDQ groundfish fisheries when these vessels participate in the CDQ fisheries; and (4) remove requirements for the CDQ delivery report and the CDQ catch report, and remove prohibitions limiting the retention of species not allocated to the CDQ Program.

A. Nonspecified Reserve

Current regulations allocate 15 percent of the TAC for each groundfish TAC category, except pollock and the hook-and-line and pot gear allocation of sablefish, to the nonspecified reserve before any further allocation of the TACs are made. The nonspecified reserve serves as a buffer to ensure that harvest levels do not exceed the TAC. A portion of the nonspecified reserve is set aside for allocation to the CDQ Program. For most groundfish species, one-half of the nonspecified reserve, or 7.5 percent of the TAC, currently is allocated to the CDQ Program. The remaining amount of the nonspecified reserve, 7.5 percent of the TAC, can be released by NMFS for use in the non-CDQ fisheries to provide additional harvest opportunities.

Because the Program would establish exclusive harvest privileges that are carefully monitored, the Program would provide greater certainty that TAC levels would not be exceeded. Therefore, the allocation of 15 percent of the TAC of the Amendment 80 species to the nonspecified reserve would not be required to ensure harvests are maintained with the TAC. Removing the nonspecified reserve for species managed under a LAPP is consistent with the management of other BSAI groundfish species managed under a LAPP. A nonspecified reserve is not established for pollock managed under the AFA, nor for fixed gear sablefish managed under the CDQ and IFQ Programs.

The Program would not modify the current allocation of 15 percent of the TAC for non-Amendment 80 species to the nonspecified reserve. The total metric tons of biomass that would be assigned to the nonspecified reserve on an annual basis would be expected to be small relative to current allocations to the nonspecified reserve because it would not include a portion of the TAC from Amendment 80 species. The TAC from the Amendment 80 species comprise the majority of the TAC currently assigned to the nonspecified reserve. Because the total amount of the nonspecified reserve would not be expected to be large, and would not include TAC from the Amendment 80 species, the Program would not reassign this nonspecified reserve for use by the Amendment 80 or BSAI trawl limited access sectors for use as Amendment 80 species. Table 3 summarizes the allocation of BSAI groundfish species to the nonspecified reserve.

B. CDQ Reserves

As noted in Section II of this preamble, the Program would allocate 10.7 percent of the TAC for all groundfish species allocated to the CDQ Program, other than pollock and sablefish. This allocation would occur before allocations to the other fishery participants. The specific BSAI groundfish species allocated to the CDQ Program are described in Section II of this preamble. Table 3 summarizes the proposed allocation of BSAI groundfish species and species groups to the nonspecified reserve and the CDQ Program reserve.

TABLE 3.—NONSPECIFIED AND CDQ PROGRAM RESERVES IN THE BSAI

Species or species groups	Allocation to the . . .	
	Nonspecified reserve	CDQ reserves
BS and AI pollock	None	10% of the TAC as a directed fishing allowance.
Fixed gear sablefish (IFQ and CDQ sablefish)	None	20% of the TAC.
Trawl sablefish	15% of the TAC	7.5% of the TAC (7.5% of the TAC remains in the nonspecified reserve).
Amendment 80 species	None	10.7% of the TAC.
Arrowtooth flounder and BS Greenland turbot	15% of the TAC	10.7% of the TAC (4.3% of the TAC remains in the nonspecified reserve).
Species or species groups not allocated to the CDQ Program (See Table 2 for a list).	15% of the TAC	None.

C. PSQ Allocations

1. Halibut PSQ

The Program would increase the allocation of halibut PSQ to the CDQ Program by 50 mt in 2010, the third year after the implementation of the Program. This increase would accommodate projected increases in halibut PSQ needs by the CDQ Program to fully prosecute the increased CDQ allocation of Amendment 80 species. Currently, the CDQ Program is allocated 7.5 percent of the halibut PSC limit under § 679.21(e)(1) for a total of 343 mt. This total is made up of 7.5 percent of the 3,675 mt of halibut PSC allocated to trawl gear, or 276 mt, and 7.5 percent of the 900 mt of halibut PSQ allocated to nontrawl gear, or 67 mt.

Generally, less than half of the halibut PSQ allocation to the CDQ Program has been used in any fishing year. However, CDQ groups have not traditionally harvested their full allocations of species such as rock sole, yellowfin sole, or other Amendment 80 species with higher halibut PSQ use rates. With the implementation of the Program, Amendment 80 vessels may have more flexibility to contract with CDQ groups to fully harvest the CDQ Program groundfish allocations, which may result in higher halibut bycatch. Therefore, the Program would revise § 679.21(e)(1) to continue to allocate 276 mt of the halibut PSC limit allocated to trawl gear to the CDQ Program in 2008 and 2009. This amount would be increased by 50 mt to 326 mt in 2010 and future years. When combined with the 67 mt of halibut PSQ derived from the fixed gear sector, the CDQ Program would receive 343 mt of halibut PSQ in 2008 and 2009, and 393 mt in 2010 and in all future years. Although halibut PSQ is assigned to the CDQ Program from trawl and non-trawl PSC limits, once assigned it is not required to be used in the specific fishery or gear PSC limit from which it is derived.

The amount of trawl halibut PSC for allocation to the Amendment 80 sector and the BSAI trawl limited access sector is described in Section IV of this preamble. The amount of halibut PSC remaining for use by non-trawl gear in non-CDQ Program fisheries would be 833 mt.

2. Non-Chinook Salmon PSQ

The Program would increase the allocation of non-Chinook salmon in proportion to the allocation of Amendment 80 species. Currently, 29,000 non-Chinook salmon are allocated as PSC for use in BSAI trawl fisheries, and 7.5 percent of the total non-Chinook salmon PSC, or 2,175 salmon, is allocated to the CDQ Program as PSQ. The remaining 26,825 non-Chinook salmon are available for use by non-CDQ trawl vessels.

Under the Program, the Council recommended that non-Chinook PSQ be increased to levels proportional to the CDQ allocation of Amendment 80 species. Section 305(i)(1)(B)(ii) of the MSA establishes the allocation of Amendment 80 species to the CDQ Program at 10.7 percent of TAC, therefore the Program would allocate a proportional amount of non-Chinook PSQ equal to 10.7 percent of the trawl PSC limit would be allocated to the CDQ Program. The increase of non-Chinook PSQ would accommodate the larger allocation of BSAI groundfish TAC to the CDQ Program and anticipated increases in PSQ use. The remaining amount of non-Chinook PSC would be assigned to non-CDQ fisheries. The Council did not recommend that the Council increase the Chinook salmon PSQ allocation to the CDQ Program under the Program primarily because Chinook salmon are not typically caught while harvesting Amendment 80 species and an increase in PSQ was not anticipated to be required to accommodate the larger allocation of Amendment 80 species to the CDQ Program.

3. Crab PSQ

Crab PSC for red king crab, *C. bairdi* crab, and *C. opilio* crab is determined during annual harvest specification process based on the biomass of those species. Regulations in § 679.23(e) determine the amount of the crab biomass that may be assigned as a PSC limit. The Program would increase the allocation of crab PSC assigned to the CDQ Program as PSQ in proportion to the allocation of Amendment 80 species. Under the Program, the Council recommended that the CDQ Program's allocation of crab PSQ be increased to levels proportional to the CDQ allocation of Amendment 80 species, which is 10.7 percent of the TAC as established under section 305(i)(1)(B)(ii) of the MSA. Crab species are occasionally caught while fishing for Amendment 80 species and an increase in PSQ would accommodate the increased allocation of Amendment 80 species TAC to the CDQ Program. Therefore, each year, 10.7 percent of each trawl PSC limit for BSAI crab species would be allocated to the CDQ Program and the remaining amount of crab PSC would be apportioned to the Amendment 80 sector and BSAI trawl limited access sector as described in Section IV of this preamble.

D. Monitoring and Enforcement (M&E)

The Program would require that non-AFA trawl catcher/processors participating in the CDQ Program be subject to the same M&E requirements that apply to these vessels while participating in the non-CDQ fisheries in the BSAI. This proposal is consistent with the MSA because it does not result in the regulation of harvest in CDQ fisheries that is more restrictive than the regulation of harvest in the comparable non-CDQ fisheries. The allocation of Amendment 80 species and PSC to the CDQ Program and the Program both require similarly precise management to ensure that the allocations are monitored with sufficient precision to track catch relative to the allocations and assist the management and enforcement of allocations that are exceeded. Allocations to the CDQ Program, and to specific CDQ groups, are similar to allocations to Amendment 80 cooperatives in that the allocations cannot be exceeded. Additionally, it is highly likely many Amendment 80 vessels would be used to fish Amendment 80 species assigned to Amendment 80 cooperatives and the CDQ Program during the same fishing year. Consistent M&E requirements would reduce confusion among industry participants and ensure that Amendment 80 vessels have uniform M&E whenever they are used to fish in the BSAI for both CDQ and non-CDQ fisheries, which simplifies compliance and compliance monitoring.

Current regulations governing harvest by trawl catcher/processors while participating in the CDQ fisheries are found at § 679.32(d)(4) and § 679.50(c)(4)(i)(A). Vessel operators are required to provide (1) at least two level 2 observers, one of whom must be certified as a lead level 2 observer; (2) an observer sampling station; (3) data entry software to transmit observer data to NMFS; and (4) prior notice to the observer of the CDQ group number associated with the catch. In addition, the vessel operator is required to weigh unsorted catch from each CDQ haul on a scale approved by NMFS. Estimates of catch weight by species based on observer data is required to be used to accrue catch against the CDQ group's allocations.

The proposed M&E requirements developed for the Program include additional elements that currently are not in effect for the non-AFA trawl catcher/processors fishing for groundfish CDQ. These additional requirements include special catch handling requirements and a pre-cruise meeting among NMFS staff, the vessel

operator, and the observer(s). The rationale for these additional requirements is described in detail in Section XII of this preamble. Applying these standards to catcher/processor trawl vessels fishing in the CDQ Program would ensure a uniform degree of management precision that NMFS has determined is necessary for the management of multispecies groundfish fisheries and PSC limits with exclusive allocations that cannot be exceeded.

E. Other Revisions

Three other revisions would be made to the CDQ Program regulations. References to the pollock CDQ reserve in § 679.31 would be moved to § 679.20(b) along with specification of all of the other CDQ reserves. This revision would consolidate regulations concerning the groundfish CDQ reserves to one location but would not change the amount of pollock allocated to the CDQ reserves.

Requirements at § 679.5(n)(1) and (2) for the CDQ delivery report and the CDQ catch report would be removed. These reports are required to be submitted by shoreside processors taking deliveries of CDQ groundfish (the CDQ delivery report) or from the CDQ groups (CDQ catch report). All of the information necessary to manage the CDQ fisheries and the individual quota accounts for each CDQ group is already available from the Observer Program or through the Interagency Electronic Reporting System (IERS). Therefore, there reports would no longer be necessary.

Three prohibitions in § 679.7(d) specifically described below would be removed to allow vessels fishing on behalf of the CDQ groups to retain catch of species not allocated to the CDQ Program under the same regulations that apply to the retention of these species in the non-CDQ fisheries. Failure to remove these prohibitions would require vessels fishing on behalf of the CDQ groups to discard all catch of species not allocated to the CDQ Program. In 2006, the CDQ groups caught approximately 3,100 mt of groundfish species that will no longer be allocated to the CDQ Program.

Section 679.7(d)(16) prohibits the operator of a vessel participating in the CDQ fisheries from using any groundfish accruing against a CDQ reserve as a basis species for calculating retainable amounts of non-CDQ species. Species that are not allocated to the CDQ Program are considered ''non-CDQ species.'' This prohibition requires discard of all species not allocated to the CDQ Program, even if retention of this species is allowed in the non-CDQ fisheries. Sections 679.7(d)(13) and (14) prohibit catcher vessels from retaining onboard CDQ species together with license limitation groundfish, and prohibit catcher/processors from catching groundfish CDQ species together with license limitation groundfish in the same haul, set, or pot. The intent of these regulations was to separate CDQ and non-CDQ fishing so that all catch while CDQ fishing accrued against CDQ allocations. Now that some of the groundfish species that would be caught in the CDQ fisheries would no longer be considered CDQ species, these prohibitions require that they be discarded.

Removal of these prohibitions would allow retention of the species not allocated to the CDQ Program to be managed under existing regulations that apply to the retention of these species in the non-CDQ fisheries. If the species is open to directed fishing, vessels CDQ fishing may retain as much of the species as they want under the same regulations that apply to vessels participating in the non-CDQ fisheries. If the species is closed to directed fishing but some retention is allowed, vessels CDQ fishing may use retained catch of the species allocated to the CDQ Program as basis species and apply the retainable percentages in Table 40 to part 679 to determine the maximum retainable amount of the species not allocated to the CDQ Program. If the species not allocated to the CDQ Program is on prohibited status, any vessel CDQ fishing would be required to discard all catch of this species, as are all other vessels in the non-CDQ fisheries.

NMFS also proposes removing specific references to groundfish CDQ reserve allocations in § 679.31. Currently, § 679.31 contains only limited regulation concerning the management of non-pollock groundfish CDQ reserves. Currently, the allocation of non-pollock groundfish species TAC to the CDQ Program is primarily regulated in § 679.20. Section 679.20 contains most of the regulations addressing CDQ reserve management. To reduce redundancy in regulations, and combine the allocation of TAC into one section, NMFS proposes removing specific references to non-pollock groundfish in § 679.31(c) and (f).

IV. Allocations of ITAC and PSC

A. Apportionment of ITAC Between the Sectors

1. Species Allocated

The Council recommended that five species, AI Pacific ocean perch, Atka mackerel, flathead sole, rock sole and yellowfin sole be allocated between the Amendment 80 and BSAI trawl limited access sectors. A large proportion of the TAC of these five species have been caught by Amendment 80 vessels, and those species comprise the majority of the catch by these vessels. A smaller portion of the TAC has been caught by the BSAI trawl limited access sector. The catch of these five species by non-trawl vessels is minimal. Greater detail about the historic and recent catch of these species can be found in the EA/RIR/IRFA prepared for this action (see **ADDRESSES**).

The Council motion recommending the Program did not explicitly refer to Pacific cod as an Amendment 80 species. The Council motion recommended that ''in the event that the [Amendment 80] sector receives an exclusive allocation of Pacific cod, that allocation would be divided between the cooperatives and the [Amendment 80] sector's limited access fishery in the same manner (and based on the same history) as the division of other allocated species within the [Amendment 80] sector.'' Amendment 85 as approved by the Secretary establishes allocations for the non-CDQ fishery sectors and specifically an allocation to the non-AFA trawl catcher/processors (i.e., Amendment 80 sector). The Council's recommendation to allocate a percentage of the Pacific cod TAC to the Amendment 80 sector was provided in Amendment 85 to the FMP. The Secretary approved the portion of Amendment 85 that allocates a portion of the Pacific cod TAC to the Amendment 80 sector on March 7, 2007. As a result of the Secretary's decision on Amendment 85, this proposed rule would include Pacific cod as an Amendment 80 species. The draft EA/RIR/IRFA prepared for the Program notes that Pacific cod would be allocated and largely managed as all other Amendment 80 species pending Secretarial approval of Amendment 85. Specific detail concerning the management of Pacific cod under the Program is provided in Part D of this section of the preamble.

2. ITAC Allocation Process

During the annual harvest specification process, NMFS would establish the TAC for all Amendment 80 species. After accounting for allocations to the CDQ Program as described in Section II to this preamble, and the ICA set aside for the incidental harvests of Amendment 80 species by the non-trawl gear sectors (e.g., pot, and hook-and-line gear) and the BSAI trawl limited access fishery while targeting other groundfish species, the remaining amount of the

TAC, the ITAC, would be apportioned to the Amendment 80 and BSAI trawl limited access sectors in proportions recommended by the Council.

The Council recommended establishing an ICA for the non-trawl and BSAI trawl limited access sector before allocating a portion of the TAC to the Amendment 80 and BSAI trawl limited access sector for several reasons. First, because the Program would allocate a fixed amount of the TAC to the Amendment 80 and BSAI trawl limited access sectors, NMFS would need to account for any ICA in the non-trawl fisheries before those apportionments could be made. Otherwise, incidental catch by non-trawl vessels could reduce the amount of TAC available to the trawl sectors. This would be particularly problematic for Amendment 80 cooperatives that would be allocated a fixed percentage of the TAC as CQ. If that CQ amount were reduced by incidental catch in non-trawl fisheries, an Amendment 80 cooperative theoretically would have its exclusive allocation reduced by persons who are not members of the cooperative. Second, the Council perceived the percentage of the TAC assigned to the BSAI trawl limited access sector as an amount necessary to support directed fishing, not as an amount intended to support both directed and incidental catch. Therefore, the Program would establish an ICA to accommodate incidental catch for non-trawl gear and BSAI trawl limited access fisheries.

For most species, the allocations of ITAC to the Amendment 80 and BSAI trawl limited access sectors would be apportioned as fixed percentages of the ITAC, with the exception of Atka mackerel, AI POP, and yellowfin sole. A portion of the Amendment 80 sector's allocation of Atka mackerel and AI POP ITAC would be gradually increased for the BSAI trawl limited access sector, and decreased for the Amendment 80 sector until a fixed percentage of the ITAC is assigned to each sector after several years. Table 4 details the allocations of Amendment 80 species, except yellowfin sole.

TABLE 4.—ANNUAL APPORTIONMENT OF AMENDMENT 80 SPECIES ITAC BETWEEN THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS (EXCEPT YELLOWFIN SOLE)

Fishery	Management area	Year	Percentage of ITAC allocated to the Amendment 80 sector	Percentage of ITAC allocated to the BSAI trawl limited access sector
Atka mackerel	543	All years	100	0
	542	2008	98	2
		2009	96	4
		2010	94	6
		2011	92	8
		2012 and all future years	90	10
	541/EBS	2008	98	2
		2009	96	4
		2010	94	6
		2011	92	8
		2012 and all future years	90	10
Aleutian Islands	543	All years	98	2
Pacific ocean perch	542	2008	95	5
		2009 and all future years	90	10
	541	2008	95	5
		2009 and all future years	90	10
Pacific cod	BSAI	All years	13.4	N/A
Rock sole	BSAI	All years	100	0
Flathead sole	BSAI	All years	100	0

The proportion of yellowfin sole ITAC allocated between the Amendment 80 and BSAI trawl limited access sectors would fluctuate with the TAC. Table 34 to part 679 in the proposed regulatory text details the incremental increase of reallocation of yellowfin sole ITAC from the Amendment 80 sector to the BSAI trawl limited access sector as ITAC increases. The proportion of the ITAC assigned to the BSAI trawl limited access sector increases as ITAC increases. Section XI of this preamble provides an example of the calculation of the yellowfin sole ITAC and Table 5 describes the calculation process.

TABLE 5.—ANNUAL APPORTIONMENT OF BSAI YELLOWFIN SOLE BETWEEN THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS

Row No.	If the yellowfin sole ITAC is between. . .	and. . .	then the yellowfin sole ITAC rate for the Amendment 80 sector is. . .	and the amount of yellowfin sole ITAC allocated to Amendment 80 Sector is. . .	and the amount of yellowfin sole ITAC allocated to the BSAI trawl limited access sector is. . .
	Column A	Column B	Column C	Column D	Column E
Row 1	0 mt	87,499 mt	0.93	ITAC × Row 1, Column C	ITAC—Row 1, Column E.

TABLE 5.—ANNUAL APPORTIONMENT OF BSAI YELLOWFIN SOLE BETWEEN THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS—Continued

Row No.	If the yellowfin sole ITAC is between. . .	and. . .	then the yellowfin sole ITAC rate for the Amendment 80 sector is. . .	and the amount of yellowfin sole ITAC allocated to Amendment 80 Sector is. . .	and the amount of yellowfin sole ITAC allocated to the BSAI trawl limited access sector is. . .
	Column A	Column B	Column C	Column D	Column E
Row 2	87,500 mt	94,999 mt	0.875	(Amount of ITAC greater than 87,499 mt and less than 95,000 mt × Row 2, Column c) + (Row 1, Column D).	ITAC—Row 2, Column D.
Row 3	95,000 mt	102,499 mt	0.82	(Amount of ITAC greater than 94,999 mt and less than 102,500 mt × Row 3, Column C) + (∑ Column D, Rows 1 and 2).	ITAC—Row 3, Column D.
Row 4	102,500 mt	109,999 mt	0.765	(Amount of ITAC greater than 102,499 mt and less than 110,000 mt × Row 4, Column C) + (∑ Column D, Rows 2 through 3).	ITAC—Row 4, Column D.
Row 5	110,000 mt	117,499 mt	0.71	(Amount of ITAC greater than 109,999 mt and less than 117,500 mt × Row 5, Column C) + (∑ Column D, Rows 2 through 4).	ITAC—Row 5, Column D.
Row 6	117,500 mt	124,999 mt	0.655	(Amount of ITAC greater than 117,499 mt and less than 125,000 mt × Row 6, Column C) + (∑ Column D, Rows 2 through 5).	ITAC—Row 6, Column D.
Row 7	125,000 mt and greater		0.60	(Amount of ITAC greater than 124,999 mt × Row 7, Column C) + (∑ Column D, Rows 2 through 6).	ITAC—Row 7, Column D.

B. PSC Apportionment to the CDQ Program and Between the Sectors

Based on the rationale provided during the development of the Program, and in consideration of the MSRA, PSC would be assigned to the CDQ Program, and apportioned between the Amendment 80 sector and BSAI trawl limited access sector as described in Table 6.

TABLE 6.—APPORTIONMENT OF BSAI CRAB AND HALIBUT PSC

Fishery	Year	Halibut PSC limit in the BSAI	Zone 1 Red king crab PSC limit . . .	*C. opilio* bycatch limitation zone (COBLZ) PSC limit . . .	Zone 1 *C. bairdi* crab PSC limit . . .	Zone 2 *C. bairdi* crab PSC limit . . .
			as a percentage of the total BSAI trawl PSC limit . . .			
CDQ Program	2008 and 2009	343 mt	10.7%	10.7%	10.7%	10.7%
	2010 and future	393 mt				
			as a percentage of the total BSAI trawl PSC limit after subtraction for the allocation to the CDQ Program as PSQ . . .			
Amendment 80 sector	2008	2,525 mt	62.48%	61.44%	52.64%	29.59%
	2009	2,475 mt	59.36%	58.37%	50.01%	28.11%
	2010	2,425 mt	56.23%	55.30%	47.38%	26.63%
	2011	2,375 mt	53.11%	52.22%	44.74%	25.15%
	2012 and future	2,325 mt	49.98%	49.15%	42.11%	23.67%
BSAI trawl limited access sector.	All years	875 mt	30.58%	32.14%	46.99%	46.81%

TABLE 6.—APPORTIONMENT OF BSAI CRAB AND HALIBUT PSC—Continued

Fishery	Year	Halibut PSC limit in the BSAI	Zone 1 Red king crab PSC limit . . .	*C. opilio* by-catch limitation zone (COBLZ) PSC limit . . .	Zone 1 *C. bairdi* crab PSC limit . . .	Zone 2 *C. bairdi* crab PSC limit . . .
			as a percentage of the total BSAI trawl PSC limit . . .			
Unassigned-reduction in PSC.	2008	0 mt	6.94%	6.42%	0.37%	23.60%
	2009	50 mt	10.06%	9.49%	3.00%	25.08%
	2010	50 mt	13.19%	12.56%	5.63%	26.56%
	2011	100 mt	16.31%	15.64%	8.27%	21.66%
	2012 and future	150 mt	19.44%	18.71%	10.90%	29.52%

As is evident from Table 6, a portion of the annual halibut PSC and crab PSC available for use by the Amendment 80 sector would be reduced over time and a portion of this PSC would not be assigned for use. This unassigned halibut and crab PSC is ''left in the water'' and may contribute to the overall halibut and crab biomass available for future recruitment or harvest. The halibut PSC assigned to the CDQ Program as halibut PSQ would increase in third year after implementation of the Program (see Section III for more detail). Overall, the portion of the halibut PSC limit for trawl gear that would not be assigned on an annual basis is shown in the ''Unassigned-Reduction in PSC'' row in Table 6. This unassigned halibut PSC represents an overall savings in the amount of trawl halibut PSC used by the trawl fisheries. Fishing practices by Amendment 80 cooperatives (e.g., avoiding areas of high bycatch through voluntary intercooperative arrangements, modifying fishing gear, etc.) could result in additional reductions in crab PSC or halibut PSC use, but those amounts cannot be predicted at this time.

C. Rationale for Allocations

The Program would allocate a specific proportion of the annual ITAC and PSC to the Amendment 80 sector and BSAI trawl limited access sector. Generally, the Council used historic groundfish catch and PSC use patterns during the 1998 through 2004 time period as the basis for recommended allocations, with modifications made to accommodate specific harvest patterns and fishery dependent communities. The Council also considered more recent harvest patterns (2005 and 2006). Table 7 provides key rationale developed by the Council for the specific allocations of ITAC and PSC to the Amendment 80 and BSAI trawl limited access sectors that would be implemented by the Program. Additional details on the basis for the allocations between the Amendment 80 and BSAI trawl limited access sectors are provided in the draft EA/RIR/IRFA prepared for this action (see **ADDRESSES**).

TABLE 7.— KEY RATIONALE FOR ITAC AND PSC ALLOCATIONS TO THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS

Amendment 80 species	Rationale
Yellowfin sole	(1) Historic (1998 through 2004) and recent (2005 and 2006) catch data indicate that Amendment 80 vessels caught and retained a high proportion (on average in excess of 90 percent during the 1998 through 2004 and 2005 and 2006 time periods) of the yellowfin sole TAC. (2) Prior to 1998, and the current high pollock TAC levels, yellowfin sole comprised a larger proportion of the overall BSAI groundfish biomass. During this time the BSAI trawl limited access sector relied more heavily on yellowfin sole harvests and caught and retained a greater proportion of the yellowfin sole TAC than currently. (3) Apportioning ITAC on a sliding scale between the Amendment 80 and BSAI trawl limited access sectors as yellowfin sole biomass increases would accommodate potential future changes in the relative TACs of pollock and yellowfin sole and would provide greater harvest opportunities to the BSAI trawl limited access sector that are similar to pre-1998 harvest patterns.
Pacific cod	Pacific cod allocations to the Amendment 80 sector are based on the criteria and rationale established under Amendment 85 to the FMP (Notice of Availability of Amendment 85 to the FMP (NOA) published December 7, 2006; 71 FR 70943) and approved by the Secretary on March 7, 2007.
AI POP and Atka mackerel.	(1) Historic (from 1998 through 2004) and more recent (2005 and 2006) catch data indicate that the Amendment 80 sector caught and retained nearly 100 percent of the TAC of these species in all management areas. (2) AI POP in Areas 541 and 542, and Atka mackerel in Areas BS/541 and 542 may be harvested by smaller trawl vessels, primarily operating out of Adak, Alaska. These smaller trawl vessel operators expressed a desire to harvest Atka mackerel during the development of the Program. (3) A specific allocation to the BSAI trawl limited access sector would provide additional opportunities for harvest by smaller trawl vessels. The total allocation to the BSAI trawl limited access sector would increase slightly each year to provide the BSAI trawl limited access sector time to scale operations up to the level of the allocation.
Flathead sole and rock sole.	(1) Historic (from 1998 through 2004) and more current catch data (2005 and 2006) indicate that the Amendment 80 sector caught and retained nearly 100 percent of the TAC of these species. (2) There was no clear indication that non-Amendment 80 sector participants intended to enter these fisheries in the foreseeable future.
Halibut PSC	(1) Halibut PSC would be assigned to the BSAI trawl limited access fishery at a percentage that would accommodate existing halibut PSC rates as well as increased halibut PSC use if the yellowfin sole ITAC increases and a larger proportion of yellowfin sole is assigned to the sector. (2) Halibut PSC would be assigned to the Amendment 80 sector at an amount above current use, therefore accommodating existing and projected halibut PSC needs.

TABLE 7.— KEY RATIONALE FOR ITAC AND PSC ALLOCATIONS TO THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS—Continued

Amendment 80 species	Rationale
	(3) Starting in 2009, the allocation of halibut PSC to the Amendment 80 sector would be reduced in a stepwise manner ultimately resulting in an annual reduction of 200 mt of halibut PSC from the Amendment 80 sector. Combined with all other halibut PSC allocations to the CDQ program and the BSAI trawl limited access sector, the halibut PSC allocation proposed by the Program results in a total reduction of the annual trawl halibut PSC limit by 150 mt after 2011. This reduction would meet a clear goal for the Program to reduce the use of halibut PSC by the Amendment 80 sector. The step-wise reduction would provide the Amendment 80 sector time to adjust fishing operations through more efficient operations (e.g., cooperative management) to offset any additional potential costs. (4) The halibut PSC savings resulting from the reduced trawl halibut limit assigned to the Amendment 80 sector would represent a savings of halibut biomass that could contribute to future halibut recruitment.
Crab PSC	(1) Crab PSC assigned to the BSAI trawl limited access fishery would accommodate existing and projected PSC use. The amount of crab PSC allocated is equal to the sum of the AFA catcher/processor and catcher vessel crab PSC sideboard limits. 2) Crab PSC assigned to the Amendment 80 sector would accommodate existing and projected future PSC use. Starting in 2009, the amount allocated would be reduced by five percent of the initial allocation for four years (until 2012) resulting in a 20 percent reduction in the amount of crab PSC allocated to the Amendment 80 sector. This reduction would meet a clear goal for the Program to reduce the use of crab PSC by the Amendment 80 sector. The step-wise reduction would provide the Amendment 80 sector time to adjust fishing operations through more efficient operations (e.g., cooperative management) to offset any additional potential costs. (3) The crab PSC savings resulting from the reduced trawl crab limit assigned to the Amendment 80 sector would represent a savings of crab biomass that could contribute to future crab recruitment.

D. Integrating Amendment 85 and the Program

1. Overview

During the development of Amendment 80, the Council recommended a separate action, Amendment 85 to the FMP, to revise allocations of Pacific cod among the many BSAI groundfish sectors. The Council took final action to recommend Amendment 85 in April 2006, and final action to recommend the Program in June 2006. NMFS published a NOA for Amendment 85 to the FMP on December 7, 2006 (71 FR 70943). The public comment period for the NOA ended on February 5, 2007. NMFS published a proposed rule to implement Amendment 85 on February 7, 2007 (72 FR 5654). The public comment period for the proposed rule ended on March 26, 2007. Amendment 85 was partially approved by the Secretary on March 7, 2007. The Secretary approved all of the provisions concerning allocation of Pacific cod to the non-CDQ sectors. Public comments on the proposed rule have been received, NMFS is reviewing those comments, and the final rule implementing Amendment 85 is anticipated to be published in July 2007.

The Council and NMFS recognized that specific aspects of Amendment 85 would need to be integrated with the Program if allocations of Pacific cod under Amendment 85 were approved. The following section describes NMFS' attempt to coordinate the proposed implementation of Amendment 85 and the Program to be consistent with the intent of both actions. The five key elements of Amendment 85 that would be addressed in this proposed action are (1) The allocation of Pacific cod to the Amendment 80 sector; (2) the seasonal apportionment of Pacific cod allocated to the Amendment 80 sector; (3) the rollover of unused Pacific cod to the Amendment 80 sector; (4) PSC apportionment; and (5) the AFA sideboard limits that apply to Pacific cod.

2. Allocation of Pacific Cod to the Amendment 80 Sector

Amendment 85 as approved by the Secretary defines the allocations of BSAI Pacific cod to nine harvesting sectors which are listed in Table 8. The non-AFA trawl catcher/processor sector as defined in Amendment 85 is identical to the Amendment 80 sector proposed under the Program.

TABLE 8.—PERCENT SECTOR ALLOCATIONS OF BSAI PACIFIC COD NON-CDQ TAC APPROVED UNDER AMENDMENT 85

Sector	Percent allocation
Jig	1.4
Hook-and-line & pot catcher vessels <60 ft LOA	2.0
Hook-and-line catcher vessels ≥60 ft LOA	0.2
Hook-and-line catcher/processors	48.7
Pot catcher vessels ≥60 ft LOA	8.4
Pot catcher/processors	1.5
AFA trawl catcher/processors	2.3
Non-AFA trawl catcher/processors (Amendment 80 Sector)	13.4
Trawl catcher vessels	22.1

The Program would not modify the allocations of Pacific cod to the Amendment 80 sector or other fishing sectors as approved under Amendment 85. The Program would incorporate Amendment 85's allocation of 13.4 percent of the non-CDQ TAC as the Amendment 80 sector ITAC.

Amendment 85 did not establish an ICA for Pacific cod that is deducted before the allocation of the non-CDQ TAC. The Program does establish an ICA for all Amendment 80 species except Pacific cod that is subtracted from the non-CDQ TAC before it is

assigned to the Amendment 80 and BSAI trawl limited access sectors. The Council did not recommend that the Program establish an ICA for Pacific cod that would be deducted from the TAC before allocation to the Amendment 80 sector. Therefore, the Program would not establish an ICA that would be deducted prior to allocation of Pacific cod among the sectors. Amendment 85 would establish an ICA specific to the pot and hook-and-line sector, but that ICA is derived from the allocation to those sectors and is not deducted from the non-CDQ TAC before allocations to the Amendment 80 sector. The pot and hook-and-line ICA proposed under Amendment 85 would not affect the allocation of Pacific cod TAC to the Amendment 80 sector.

Based on the allocations proposed under Amendment 85 and approved by the Secretary and the lack of any contrary guidance under the Council's recommendation for the Program, NMFS does not propose modifying the allocation of Pacific cod to the non-CDQ sectors as approved under Amendment 85. Further, NMFS would not propose establishing a Pacific cod ICA that would be deducted from the TAC prior to allocation among the trawl sectors under the Program.

3. Seasonal Apportionment of Pacific Cod Allocated to the Amendment 80 Sector

The Program recommended by the Council would not propose changing the current seasonal apportionment of Pacific cod established in regulation at § 679.23(e)(5). Currently, there are three seasons (A, B, and C season) for Pacific cod applicable to non-AFA catcher/processor vessels using trawl gear (i.e., the Amendment 80 sector). However, the proposed rule to implement Amendment 85 would modify the current seasonal apportionment of Pacific cod to establish two seasons (A and B seasons) for non-AFA trawl catcher/processors. This seasonal apportionment would supersede existing regulations. If the proposed rule for Amendment 85 is implemented as proposed, NMFS would modify the seasonal apportionment of Pacific cod for non-AFA trawl catcher/processors (i.e., the Amendment 80 sector) in the final rule for Amendment 80 to ensure compliance with the regulations that may be implemented for Amendment 85. Seasonal apportionment of Pacific cod for all other non-Amendment 80 sectors would not be modified by the Program.

3. Rollover of Unused Pacific Cod to the Amendment 80 Sector

The proposed rule for Amendment 85 would create a complex mechanism to redistribute, or rollover, Pacific cod that is projected to be unharvested by a sector. If the rollover provisions in the proposed rule for Amendment 85 are implemented as proposed, NMFS anticipates that the final rule to implement the Program would modify these rollover provisions in the following manner.

First, Pacific cod would not be rolled over from the Amendment 80 sector to other sectors listed in Table 8 above. This would be consistent with the approach the Council recommended for all other Amendment 80 species. Additionally, as described in more detail in the draft EA/RIR/IRFA prepared for the Program, NMFS has identified the particular difficulties that would arise in determining amounts of Pacific cod that would go unharvested when that Pacific cod is assigned as CQ to an Amendment 80 cooperative. Briefly, NMFS could not easily establish criteria to determine that CQ would not be used. An amount of CQ can be harvested throughout the year and can be traded among cooperatives reducing the likelihood that it would not be harvested.

Second, rollovers of unharvested Pacific cod to the Amendment 80 sector from any of the eight other sectors listed in Table 8 above would be assigned only to Amendment 80 cooperatives. This approach would be consistent with the mechanism to rollover to the Amendment 80 sector other Amendment 80 species that are unharvested in the BSAI trawl limited access sector. The Council did not provide specific guidance to suggest that Pacific cod would be subject to different reallocation procedures than other species. Section VII of this preamble provides additional detail on the reallocation of Amendment 80 species to the Amendment 80 sector.

4. PSC Apportionment

The proposed rule for Amendment 85 would create a complex mechanism for apportioning crab PSC and halibut PSC among the nine sectors listed in Table 8. If the halibut PSC and crab PSC provisions in the proposed rule for Amendment 85 are implemented as proposed, NMFS anticipates that the final rule to implement the Program would modify the PSC apportionments.

During the development of the Program, the Council deliberated extensively on the method to apportion crab PSC and halibut PSC among the trawl sectors. During these deliberations, the Council noted that many of the crab PSC and halibut PSC apportionments proposed under Amendment 85 would be superceded by the Program. The Council motion recommending the Program specifically noted that ''upon implementation of [the Program], no allocation of PSC will be made to the [Amendment 80] sector under Amendment 85.'' Should the PSC apportionments in proposed rule for Amendment 85 be implemented, the final rule to implement the Program would substantially revise those regulations to be consistent with the Council's clear intent for the Program. Additionally, because the Program recommended specific allocations of crab PSC and halibut PSC to the BSAI trawl limited access sector, the PSC apportionments for the trawl fisheries contemplated in the proposed rule for Amendment 85 may need to be revised in the a final rule that would implement the Program.

5. Pacific Cod AFA Sideboard Limits

The Council extensively reviewed Pacific cod AFA sideboard limits during the development of Amendment 85. The proposed rule for Amendment 85 would modify Pacific cod AFA sideboard limits for the AFA catcher/processor sector. The proposed rule for Amendment 85 would not modify existing regulations for AFA catcher vessels.

NMFS does not propose modifying the AFA Pacific cod sideboard limits with this action. Although the Council recommended that the Program would modify the AFA sideboard limits for all Amendment 80 species, it is not clear that the Council considered Pacific cod to be an Amendment 80 species for purposes of applying this provision. Clearly, the Council intended to allocate Pacific cod to the Amendment 80 sector and assign QS pending the Secretarial approval of Amendment 85 that provided an allocation of Pacific cod to the Amendment 80 sector. However, it does not appear the Council intended to apply all of the provisions applicable to other species (i.e., AI POP, Atka mackerel, flathead sole, rock sole, and yellowfin sole) that were clearly identified by the Council during the development of the Program as being ''Amendment 80 species,''including proposing a new method to calculate AFA sideboard limits.

Additionally, it does not appear to be the intent of the Council action recommending the Program in June 2006 to supersede the action recommended by the Council in Amendment 85 in April 2006.

Therefore, AFA sideboard limit calculations for Pacific cod would not be modified under the Program consistent with the apparent intent of the Council. Additionally, this approach would avoid confusion that may arise if a final rule to implement Amendment 85 is published that eliminates AFA catcher/processor sideboards, only to be superseded shortly thereafter by a final rule to implement the Program that would reinstate the AFA catcher/processor sideboard limits and change the means to calculate that limit.

Section XI of this preamble provides an example of the Pacific cod AFA sideboard limits that would apply in 2008 should this aspect of the final rule for Amendment 85 be implemented as proposed.

6. Regulatory Text Contained in This Proposed Rule

To minimize potential confusion and better coordinate Amendment 85 and this proposed action, NMFS proposes the following modifications in this proposed rule: (1) Remove and reserve those sections of the regulations in § 679.20(a)(7)(i), (a)(7)(ii), (a)(7)(iii)(B), and (a)(7)(iv) that are proposed to be modified by the proposed rule for Amendment 85; (2) insert regulatory text to implement the allocation of Pacific cod to the Amendment 80 sector in § 679.20(a)(7)(v); (3) insert regulatory text in § 679.20(a)(7)(v) that references the existing seasonal apportionment of Pacific cod; (4) insert regulatory text in § 679.20(a)(7)(v) addressing the reallocation of unharvested Pacific cod to Amendment 80 cooperatives; and (5) remove references to the apportionment of Pacific cod from the nonspecified reserve in § 679.20(b)(1)(iv) consistent with the management of the nonspecified reserve for all other Amendment 80 species (see Section III of this preamble for more detail). In addition, if the proposed rule for Amendment 85 is implemented as proposed, the changes to Pacific cod seasonal apportionments proposed in the Program would need to be revised.

Regulatory text to allocate Pacific cod QS among Amendment 80 sector participants, assign Pacific cod ITAC to Amendment 80 cooperatives and the Amendment 80 limited access sector, and assign PSC to support Pacific cod fisheries by Amendment 80 sector participants is proposed in § 679.90 and § 679.91 of this proposed rule and would not be affected by the provisions in the final rule for Amendment 85.

7. Summary Table

Table 9 summarizes the proposed integration of key components of Amendment 85 and the Program rule making process.

TABLE 9.—INTEGRATION OF REGULATORY TEXT FOR AMENDMENT 85 AND THE PROGRAM

Issue	Proposed rule for Amendment 85	Proposed rule for the Program (Amendment 80)
Allocation of Pacific cod to the Amendment 80 sector.	Allocations described in Table 8 have been approved by the Secretary. 13.4% of the BSAI TAC after subtraction of the allocation to the CDQ Program would be allocated to the Amendment 80 sector.	The proposed rule would not modify the allocations approved by the Secretary under Amendment 85 described in Table 8.
Seasonal apportionment of Pacific cod.	The proposed rule would change seasonal apportionments for the CDQ Program, Amendment 80 sector, and other participants in the Pacific cod fishery from the status quo. The proposed rule would apportion the Amendment 80 allocation into two seasons: 75 percent to an A season, and 25 percent to a B season. These seasons would be defined in the annual harvest specification process.	The proposed rule would not change the status quo seasonal apportionment of Pacific cod to the Amendment 80 sector. If the proposed rule for Amendment 85 is implemented as proposed, NMFS would modify the seasonal apportionment for Pacific cod for non-AFA trawl catcher/processors (i.e., Amendment 80 sector) in the final rule for Amendment 80. Seasonal apportionment of Pacific cod for all other sectors would not be modified by the Program.
Rollover of unused Pacific cod.	The proposed rule would require that Pacific cod unharvested by the trawl sectors (including the Amendment 80 sector) would be reallocated first to the non-trawl catcher vessel sectors defined in Table 8 above. Any Pacific cod that is unharvested by the non-trawl catcher vessel sectors, or non-trawl catcher/processors sectors could be reassigned to the Amendment 80 sector.	The proposed rule does not modify existing regulations. If the proposed rule for Amendment 85 is implemented as proposed, NMFS would modify the Pacific cod rollover provisions. The final rule for the Program would prohibit the reallocation of Pacific cod to the Amendment 80 sector. In addition, the final rule for the Program would require that any unharvested Pacific cod that is reallocated to the Amendment 80 sector be allocated only to Amendment 80 cooperatives.
Allocations of crab PSC and halibut PSC.	The proposed rule would allocate halibut PSC and crab PSC for specific use by participants in each of the nine sectors defined in Table 8 above.	The proposed rule would allocate halibut and crab PSC to the Amendment 80 and BSAI trawl limited access sectors to support PSC needs in all fisheries for those sectors. The Program would supersede halibut PSC and crab PSC allocations for trawl gear sectors proposed that may be implemented with the final rule for Amendment 85.
AFA sideboard limits for Pacific cod.	The proposed rule would eliminate the Pacific cod sideboard limits applicable to AFA catcher/processors. The proposed rule would not modify existing Pacific cod sideboard limits for AFA catcher vessels.	The proposed rule would not modify AFA sideboard limits for Pacific cod.

V. BSAI Trawl Limited Access Sector

The Program would affect the management of non-Amendment 80 sector trawl fisheries in several ways because it: (1) Allocates a portion of the ICA and ITAC for Amendment 80 species, halibut PSC, and crab PSC limits to the BSAI trawl limited access sector; (2) modifies AFA groundfish

sideboard calculation methods for Amendment 80 species in the BSAI; (3) modifies the AFA sideboard limits for halibut PSC and crab PSC in the BSAI; (4) removes AFA sideboard limits for yellowfin sole at high ITAC levels in the BSAI; (5) modifies the mechanism for reallocating Pacific cod within the trawl sector in the BSAI; and (6) modifies the calculation for determining the maximum crab PSC use in the RKCSS. The Program's proposed allocation of ICA, ITAC, and PSC to the BSAI trawl limited access sector and the proposed changes on AFA sideboard calculations would have specific effects on non-AFA trawl catcher vessels. NMFS notes that AFA sideboard limits for groundfish and PSC in the GOA would not be affected by the Program. Finally, the proposed regulations would limit the ability of Amendment 80 vessels to process fish harvested in the BSAI trawl limited access sector.

A. Allocations to BSAI Trawl Limited Access Sector

1. Amendment 80 Species Allocations

For all Amendment 80 species, NMFS would assign ITAC to the Amendment 80 sector and the BSAI trawl limited access sector. Section IV of this preamble describes the specific allocation and rationale for the allocation of ITAC for each Amendment 80 species to the BSAI trawl limited access sector.

For all Amendment 80 species except Pacific cod, NMFS would allocate a portion of the ICA for use by non-trawl gear and the BSAI trawl limited access sector in the annual harvest specification process. The amount of ICA assigned for use by non-trawl fisheries and the BSAI trawl limited access sector would be based primarily on recent and anticipated incidental catch rates by the non-trawl fisheries and BSAI trawl limited access sector of that Amendment 80 species. To ensure adequate flexibility in managing incidental harvests in the BSAI, NMFS proposes to combine the ICA required for the non-trawl fisheries for each Amendment 80 species, except Pacific cod, into the ICA required for the BSAI trawl limited access sector and establish a single combined trawl and non-trawl ICA in the annual harvest specifications. Given the small incidental harvest rates of Amendment 80 species anticipated in non-trawl fisheries (*e.g.*, yellowfin sole incidentally harvested in the hook-and-line Pacific cod fishery), the portion of the ICA that is required for use in the non-trawl fisheries would be small relative to the total combined ICA.

The portion of the combined ICA not intended for use by non-trawl fisheries would be intended for use by the BSAI trawl limited access sector. The portion of the ICA that is intended for use by the BSAI trawl limited access sector would be subject to rollover to Amendment 80 cooperatives, as discussed in Section VII of this preamble. NMFS would ensure that adequate ICA is available to the non-trawl fisheries and BSAI limited access sector before conducting any rollover of unused ICA to Amendment 80 cooperatives. Section XI of this preamble provides a specific example of assigning an ICA to each Amendment 80 species. As discussed in Section IV of this preamble, NMFS would not establish a Pacific cod ICA for use by trawl gear.

2. Halibut PSC Allocation

The halibut PSC limit for the BSAI trawl limited access sector would be a fixed amount of 875 metric tons (mt). This amount is deemed necessary to support all halibut PSC needs for harvest of pollock, Amendment 80 species and non-Amendment 80 species (*e.g.*, Alaska plaice). The Council recommended that the allocation be based on historic halibut PSC use rates from 1998 through 2004, with an additional amount allocated that would support future increased harvests of Amendment 80 species with higher halibut PSC use rates (*e.g.*, yellowfin sole). The halibut PSC allocated to the BSAI trawl limited access sector under the Program would supercede any halibut trawl PSC allocation mechanism that may be implemented under Amendment 85 as discussed in Section IV of this preamble.

3. Crab PSC Allocations

Crab PSC allocations to the BSAI trawl limited access sector would be based on the sum of the percentage of the trawl crab PSC sideboard limit assigned to the AFA catcher/processor and catcher vessel sectors. Crab PSC use in the BSAI trawl limited access sector, which includes AFA catcher/processors, AFA catcher vessels, and non-AFA catcher vessels, has been small relative to the total crab PSC assigned for use by vessels using trawl gear.

The BSAI trawl limited access sector, which includes non-AFA catcher vessels, has consistently used less crab PSC than the combined percentage of the AFA catcher/processor and catcher vessel crab PSC sideboard limits. Therefore, an allocation of crab PSC to the BSAI trawl limited access sector based on the sum of the AFA crab PSC sideboard limits would be sufficient to accommodate current and future crab PSC use by the BSAI trawl limited access sector. The amount of crab PSC assigned to the BSAI trawl limited access sector would continue to be apportioned to specific trawl fisheries for the BSAI trawl limited access sector (e.g., crab PSC would be assigned for use in yellowfin sole fisheries) as part of the annual harvest specifications process. Section XI of this preamble provides a specific example of crab PSC allocation to the BSAI trawl limited access sector.

B. Calculation of AFA Groundfish Sideboard Limits in the BSAI

The Program would modify the calculation of BSAI groundfish sideboard limits for Amendment 80 species that apply to AFA vessels. AFA catcher/processor and AFA catcher vessel sideboard limits would remain in place to prevent the AFA sectors from exceeding their historical catch history prior to the implementation of the AFA. These limits would constrain AFA vessels participating in the BSAI trawl limited access sector relative to non-AFA catcher vessels. However, the method for calculating those sideboard limits would be modified to accommodate changes in allocations for Amendment 80 species. The Program would not modify the calculation of AFA sideboard limits for non-Amendment 80 species (e.g., arrowtooth flounder).

Currently, NMFS calculates AFA sideboard limits for BSAI groundfish species by multiplying the AFA sideboard ratio for that species by the TAC available for harvest by trawl catcher/processors or catcher vessels in the year in which the harvest limit will be in effect. The exception to this rule is the calculation of the Atka mackerel sideboard limit for AFA catcher/processors, which is set as a fixed percentage of the TAC under regulations at § 679.64(a)(3). The Atka mackerel sideboard limit for AFA catcher/processors would not be modified by the Program. The Program would modify the Atka mackerel sideboard limit for AFA catcher vessels.

The allocation of exclusive harvest privileges to the Amendment 80 sector substantially reduces the amount of ITAC available for harvest by other trawl vessels. The portion of the ITAC assigned to the Amendment 80 sector would not be available to other participants, thereby limiting the ITAC available to the BSAI limited access sector. If NMFS were to calculate the AFA groundfish sideboard limits for Amendment 80 species based only on the portion of the ITAC that would be assigned to the BSAI trawl limited

access fishery, the AFA sideboard limits for Amendment 80 species would constrain the AFA fleet substantially beyond the degree intended under the AFA. Furthermore, this would create the potential for substantial portions of the BSAI trawl limited access sector allocation of Amendment 80 species to remain unharvested because only the limited number of non-AFA trawl catcher vessels would be able to harvest it once the AFA sideboard limits had been reached.

The Council expressed concern over the potential for unharvested catch in the BSAI trawl limited access sector. The Program would address this concern by amending the AFA sideboard regulations. AFA sideboard limits for Amendment 80 species, except Pacific cod and AFA catcher/processor sideboards for Atka mackerel, would be calculated by multiplying the sideboard ratio for a given groundfish species set forth in § 679.64 by the TAC remaining after the allocation of 10.7 percent of the TAC to the CDQ Program has been deducted. Depending on the portion of ITAC allocated to the trawl limited access fishery, the sideboard limits for some of the Amendment 80 species will be greater than the allocation. For example, the combined AFA catcher/processor and AFA catcher vessel yellowfin sole sideboard limit for the AFA sectors is approximately 29 percent of the TAC after allocation to the CDQ Program. Any allocation of yellowfin sole to the BSAI trawl limited access sector less than 29 percent of the ITAC would result in sideboard limit amounts greater than the allocation and would not be constraining. The potential effects of modifying AFA sideboard limits on non-AFA trawl catcher vessels in the BSAI trawl limited access sector is addressed in Part G of this section of the preamble.

C. AFA Sideboard Limits for Halibut and Crab PSC in the BSAI

1. AFA Halibut PSC Sideboard Limits

The Program would modify AFA PSC sideboard limits in the BSAI. Under current regulations, AFA halibut PSC sideboard limits for catcher vessels are assigned to specific fishery complexes. A total of 875 mt of halibut PSC would be assigned to the BSAI trawl limited access sector, which would be further apportioned among specific fishery complexes (e.g., Pacific cod, yellowfin sole).

Currently, AFA halibut PSC sideboard limits are calculated based on a proportion of the halibut PSC available to either catcher/processors or catcher vessels. As noted in the previous section, this calculation method would result in sideboard limits for AFA catcher vessels being set based on a proportion of the 875 mt limit established for the BSAI trawl limited access sector. Computing halibut PSC limits for AFA catcher vessels based on a proportion of 875 mt would result in small sideboard limits that would substantially constrain harvests by AFA catcher vessels. The Program would address this concern by fixing the halibut PSC sideboard limits for AFA catcher/processors and AFA catcher vessels in each fishery complex in the BSAI at the levels established in the 2006 and 2007 final harvest specifications (March 3, 2006; 71 FR 10894) and listed in Table 40 to part 679 in the proposed regulatory text.

Once the overall AFA halibut PSC sideboard limit is established in regulation, NMFS would apportion the amount of halibut PSC sideboard for the yellowfin sole and the rock sole/flathead sole/other flatfish categories by season through the annual specification process, which is the current practice. Setting the AFA catcher vessel halibut PSC sideboard limit at a fixed limit reflective of past AFA sideboard limits would prevent AFA catcher vessels from being unduly constrained relative to PSC limits.

Fixing the AFA catcher/processor sideboard limits at a fixed amount based on the 2006 and 2007 final harvest specifications would prevent AFA catcher/processors from being unduly constrained by halibut PSC sideboard limits. Current regulations in § 679.64(a)(5) compute the AFA catcher/processor halibut PSC sideboard limit as a fixed ratio based on halibut PSC use in 1995 through 1997 multiplied by ''the PSC limit of [halibut] available to catcher/processors in the year in which the harvest limit will be in effect.'' As noted in Table 6 of this preamble, the amount of halibut PSC that is ''available to catcher/processors'' decreases on an annual basis beginning in 2009 because a portion of the halibut PSC limit assigned to the Amendment 80 sector (i.e., catcher/processors) is decreased by 50 mt per year. This would result in a reduction of the AFA catcher/processor sideboard limit. It does not appear that the Council intended to reduce the AFA catcher/processor halibut PSC sideboard limit with this action, and fixing the AFA catcher/processor halibut PSC limit at the amount established in the 2006 and 2007 final harvest specifications would best meet the Council's apparent intent.

2. AFA Crab PSC Sideboard Limits in the BSAI

The Program would also modify AFA crab PSC sideboard limits in the BSAI. The Program would assign each crab PSC to the BSAI trawl limited access fisheries equal to the sum of the AFA catcher/processor and AFA catcher vessel sideboard limits. Currently, crab PSC sideboard limits for the AFA catcher/processors are set at a percentage of the overall trawl crab PSC limit (*e.g.*, a fixed percentage of the total Zone 1 *C. bairdi* trawl PSC limit is assigned as an AFA catcher/processor sideboard limit for that crab PSC). This amount is calculated annually by multiplying the AFA catcher/processor sideboard ratio for a crab PSC species which is described in regulation in § 679.64, by the trawl crab PSC limit ''available to catcher/processors.'' Currently, the amount of trawl crab PSC available to catcher/processors is based on the total crab PSC limit, prior to any allocations to the CDQ Program.

The Program would clarify that the amount of crab PSC ''available to catcher/processors'' is the amount of the trawl PSC limit available after allocation to the CDQ Program as crab PSQ. This change in calculation would slightly reduce the amount of the trawl crab PSC limit that is available to AFA catcher/processors. This clarification would be consistent with the overall intent of the Program to assign AFA sideboard limits, other than halibut PSC, after allocation to the CDQ Program. As described in the draft EA/RIR/IRFA, this change in the method for calculating the AFA catcher/processor crab PSC sideboard limit is not likely to be more constraining on the fleet than the current method for calculating the sideboard limit. Crab PSC has not historically been a limiting factor for AFA trawl catcher/processors.

Unlike the AFA catcher/processor crab PSC sideboard limits, the AFA catcher vessel crab PSC sideboard limits are calculated at the level of specified target fishery categories, with separate crab PSC sideboard amounts for each target fishery (e.g., a specific amount of the trawl red king crab PSC limit is assigned as an AFA catcher vessel red king crab PSC sideboard limit for use in the yellowfin sole fishery). For AFA catcher vessels, the ratio of a crab PSC species assigned as a sideboard limit is based on the proportion of groundfish harvested by AFA catcher vessels in a specific target fishery category. Annually, an AFA catcher vessel crab PSC sideboard amount is determined by multiplying the sideboard ratio for a target fishery category, which is calculated based on criteria specified in

regulation at § 679.64, by the crab PSC limit apportioned to the target fishery category through the annual harvest specification process. The current method of calculating the crab PSC AFA catcher vessel sideboard becomes problematic with the changes proposed under the Program.

The current sideboard calculation method is dependent on the distribution of trawl crab PSC among the target fishery categories, and the AFA catcher vessel sideboard limit cannot be calculated until those amounts are determined in the annual harvest specification process (i.e., the sideboard calculation requires the output of the annual specification process). The annual harvest specification process, however, requires the amount of available limited access trawl PSC as an input, prior to determining that distribution. For the harvest specification process to function effectively, the amount of available crab PSC must be known, as that process distributes crab PSC among fisheries based on their crab PSC demands. Because the AFA catcher vessel sideboard limit calculation requires the output of the harvest specification process, and the harvest specification process requires the output of the sideboard calculation, an alternative approach is needed.

The Program would determine the AFA catcher vessel crab PSC sideboard limit in a manner similar to that used to initially compute the AFA catcher/processor crab PSC sideboard ratio. The proportion of the total trawl crab PSC limit attributed to AFA catcher vessels would be calculated as the sum of the AFA catcher vessel PSC sideboard limits for each crab PSC species in all target fisheries divided by the sum of the total trawl PSC limit for that crab PSC species as described in the annual harvest specification process in each year. The draft EA/RIR/IRFA prepared for this proposed action summarizes the average percentage of the total trawl crab PSC limit that was available to AFA catcher vessels for each crab PSC species. The specific years used to calculate the average amount of the trawl crab PSC limit assigned to AFA catcher vessels are described in the draft EA/RIR/IRFA prepared for this proposed action (see **ADDRESSES**).

The draft EA/RIR/IRFA notes that the average amount of the trawl red king crab AFA sideboard limit in all target fisheries from 2000 through 2002 was used as the basis for determining the total AFA red king crab sideboard limit. These years are the same years used to determine the amount of the trawl red king crab PSC limit assigned to the Amendment 80 sector. Presumably, the Council intended to apply the same baseline years for computing AFA sideboard limits as were used to assign Amendment 80 sector red king crab allocations. Similarly, NMFS assumes that the same years (1995 through 2002) used to assign *C. opilio* crab to the Amendment 80 sector would be used to assign an AFA catcher vessel sideboard limit. However, a trawl specific *C. opilio* PSC limit was not established prior to 1999. Therefore, NMFS would apply the sum of the average *C. opilio* trawl PSC limit that would have been assigned to AFA catcher vessels from 1999 through 2002 as the AFA catcher vessel sideboard limit. NMFS assumes that the same years (1995 through 2002) used to assign Zone 1 and Zone 2 *C. bairdi* crab to the Amendment 80 sector would be used to assign an AFA catcher vessel sideboard limit. Therefore, NMFS would apply the sum of the average *C. bairdi* trawl PSC limit that would have been assigned to AFA catcher vessels from 1995 through 2002 as the AFA catcher vessel sideboard limit for Zone 1 and Zone 2 *C. bairdi*. The results of this change in the AFA crab PSC sideboard limit calculation are shown in Table 41 to part 679 in the proposed regulatory text. This method for assigning the AFA catcher vessel crab PSC sideboard limit would continue to constrain AFA catcher vessels to historic crab PSC use, but the method for computing that limit would be based on the overall trawl crab PSC limit historically used by AFA catcher vessels.

As with the AFA catcher/processors, the ratio of crab PSC assigned to AFA catcher vessels would be multiplied by the amount of crab PSC for use by trawl gear after deduction for allocation of crab PSQ to the CDQ Program, consistent with the approach used for AFA catcher/processors.

D. AFA Yellowfin Sole Sideboard Limit in the BSAI

The Program would relieve AFA sideboard limits for yellowfin sole when the yellowfin sole ITAC reaches or exceeds 125,000 mt. Existing yellowfin sole AFA sideboard harvest limits would constrain the ability of AFA vessels to catch yellowfin sole at higher ITAC levels. Because yellowfin sole would be allocated to the Amendment 80 sector for exclusive harvest, the need for AFA sideboard limits would be greatly reduced because AFA vessels would not be directly competing with the vast majority of harvesters active in the yellowfin sole fishery. A small proportion of the BSAI trawl limited access sector includes non-AFA trawl catcher vessels. However, this group of harvesters would not be expected to be adversely affected by relieving AFA yellowfin sole sideboard limits at high yellowfin sole ITAC levels because non-AFA trawl catcher vessels have not historically harvested yellowfin sole.

E. Reallocating Unused Pacific Cod Among the Trawl Sectors

As discussed in Section IV of this preamble, the Program would, if necessary, modify regulations implemented under Amendment 85 so that unused Pacific cod in the Amendment 80 sector would not be reallocated to either the AFA catcher/processor or trawl catcher vessel sectors, the equivalent of the proposed BSAI trawl limited access sector described under the Program.

Pending the approval and publication of a final rule implementing Amendment 85, the Program would not modify the mechanism for reassigning Pacific cod that is projected to be unharvested from either the AFA catcher/processor or the trawl catcher vessel sectors as those sectors are defined under Amendment 85. The proposed rule to Amendment 85 details a complex suite of measures to reallocate unharvested Pacific cod from the trawl catcher vessel and AFA catcher/processor sectors. The Program would not modify this procedure.

F. Calculation of the Crab PSC Limit in the Red King Crab Savings Subarea (RKCSS)

Current regulations at § 679.21(e)(3)(ii)(B) set a limit on the amount of red king crab that may be taken in a specific area of the southeast Bering Sea known as the RKCSS. The limit is determined during the annual harvest specification process, but may not exceed an amount equal to 35 percent of the red king crab PSC limit assigned to the rock sole, flathead sole, and ''other rockfish'' complex. NMFS would modify this provision to conform with the extensive changes proposed for crab PSC management in general under the Program. Under the Program, NMFS would no longer allocate red king crab PSC to the Amendment 80 sector on a fishery-specific basis. Therefore, it would not be possible to base the RKCSS limit on the amount of red king crab PSC assigned to the rocksole or flathead sole fisheries.

NMFS proposes to resolve this conflict by modifying the RKCSS regulations to set the limit of red king crab PSC that could be used in the RKCSS as a percentage of the historic overall trawl red king crab PSC limit. During the period from 1998 through

2006, the RKCSS red king crab PSC limit has been set at 35 percent of the rock sole, flathead sole, and ''other rockfish'' allocation. This limit has ranged from 26.2 percent to 23.3 percent of the total red king crab PSC limit assigned for trawl gear, and has averaged 24.2 percent during this time period. From 2002 through 2006, the RKCSS limit has consistently been set at an amount equivalent to 23.3 percent of the total trawl red king crab PSC limit for trawl gear.

Based on historic RKCSS limits, NMFS proposes to set the RKCSS maximum limit at 25 percent of the red king crab PSC limit. This limit is slightly greater than the average amount of trawl red king crab PSC assigned to the RKCSS limit in 1998 through 2004, but less than the limit in 1998, 2000, and 2001. The Council and NMFS could choose to set the RKCSS limit at any level lower than or equal to 25 percent of the red king crab PSC limit each year through the annual harvest specification process.

NMFS notes that the RKCSS limit would continue to apply to both the Amendment 80 sector and BSAI trawl limited access sector under the Program. Therefore, it is possible that fishing patterns by Amendment 80 vessels and other trawl vessels in the RKCSS could cause the limit to be reached and the RKCSS to be closed to all trawl vessels.

G. Effects on Non-AFA Trawl Catcher Vessels

The Program would substantially reduce potential competition between AFA participants and the Amendment 80 sector through the allocations provided. Any modifications of AFA sideboard limits would not be expected to affect the Amendment 80 sector. Similarly, although the Program substantially modifies the AFA sideboard limits, it would not be expected to have an adverse effect on current participation patterns by non-AFA catcher vessels that are also participants in the BSAI trawl limited access sector.

Historically, non-AFA trawl catcher vessels have not substantially participated in the harvest of Amendment 80 species other than Pacific cod. Changes in AFA sideboard limits, for all species except Pacific cod, would not be expected to adversely affect the non-AFA trawl catcher vessel fleet due to their already limited participation in these fisheries as described in the draft EA/RIR/IRFA prepared for this action (see **ADDRESSES**).

The allocation of Pacific cod among trawl fishery participants was addressed during the development of Amendment 85 to the FMP and is detailed in the analyses prepared for that action (see the NMFS Web site at *http://www.fakr.noaa.gov* for additional detail on Amendment 85). During the development of Amendment 85, the Council considered allocation measures for the non-AFA trawl catcher vessel sector and recommended an allocation mechanism that would combine AFA and non-AFA catcher vessel allocations. This proposed action would not modify AFA sideboard limits for Pacific cod. Nothing proposed in the Program would modify the effects of Pacific cod allocations and competition among AFA and non-AFA vessels in a manner not previously considered during the development of Amendment 85.

H. Processing and Receiving Catch

The Council clearly recommended that persons who are not participants in the Amendment 80 sector be prohibited from catching Amendment 80 species assigned to the Amendment 80 sector. It is also clear that the Council intended to prohibit Amendment 80 vessels from catching Amendment 80 species assigned to the BSAI trawl limited access sector.

The Council noted that Amendment 80 vessel owners and operators, specifically Amendment 80 vessel owners and operators participating in Amendment 80 cooperatives, could consolidate fishing operations, receive CQ from other cooperatives, and otherwise benefit from the exclusive harvesting privileges this proposed LAPP provides. Because Amendment 80 vessels could also process catch onboard, the allocation of a portion of the ITAC to the Amendment 80 sector would effectively provide exclusive processing opportunities for that amount of the ITAC to Amendment 80 vessels. Conceivably, Amendment 80 vessels in cooperatives could consolidate processing activities. It is not clear that the Council considered or intended that Amendment 80 vessels should serve as processing platforms for multiple cooperatives, harvesters in the Amendment 80 limited access fishery, and the BSAI trawl limited access sector. Processing restrictions for other cooperatives and the Amendment 80 limited access fishery are discussed in Sections VII and VIII of this preamble.

Therefore, the proposed rule would prohibit any Amendment 80 vessel from catching, receiving, or processing fish assigned to the BSAI trawl limited access sector. NMFS has determined that this prohibition would best meet the Council's recommendation to provide an allocation of ITAC to the Amendment 80 sector, but not encourage the consolidation of fishing or processing operations in the BSAI trawl limited access sector. Additionally, allowing Amendment 80 vessels to receive or process fish caught by vessels in the BSAI trawl limited access sector could allow Amendment 80 vessels to serve as motherships (i.e., a processing platform that is not fixed to a single geographic location), or stationary floating processors, for the BSAI trawl limited access sector fleet. This could increase the potential that catch formerly delivered and processed onshore, or at specific facilities onshore, could be delivered and processed offshore. This change in processing operations could have economic effects. The Council did not specifically address these issues at the time of final Council action.

Additionally, combining Amendment 80 and BSAI trawl limited access sector catch could increase the potential recordkeeping and reporting, and M&E complexities, that may arise from tracking catch derived from the Amendment 80 and BSAI trawl limited access sectors onboard one vessel. In particular, monitoring compliance with the GRS may prove problematic if catch is combined onboard a single vessel. NMFS does have some experience tracking catch delivered to a vessel from multiple vessels that are assigned to multiple cooperatives in the AFA. However, in most cases, the vessels receiving catch are not actively engaged in fishing operations at the same time and serve exclusively as a processing platform. Additionally, tracking pollock catch in the AFA and properly assigning it to a specific cooperative, is less difficult than tracking multiple species, halibut PSC, and crab PSC as would be required in the Program. If NMFS were to permit the delivery of catch from the BSAI trawl limited access sector to an Amendment 80 vessel, NMFS would likely have to limit the Amendment 80 vessel so that it could only operate as either a mothership or stationary floating processor or as a fishing vessel on a week-by-week basis consistent with the weekly production report (WPR) reporting period. Additional changes in M&E requirements and recordkeeping and reporting for Amendment 80 vessels receiving catch may also be necessary. NMFS welcomes comment on this proposed prohibition from persons involved in existing and planned harvesting and processing operations for Amendment 80 species in the BSAI.

VI. Amendment 80 QS

NMFS proposes to use the term quota share (QS) to describe the multi-year

privilege that would enable a person to receive exclusive harvest privileges under the Program. QS assigned to a person would confer an opportunity for a person to receive an exclusive harvest privilege if certain conditions are met. QS would provide a harvest privilege, not a right, to its holder. NMFS would allocate QS for each of the Amendment 80 species to a person who is eligible to participate in the Amendment 80 sector as defined in the CRP (see Section II of this preamble for more detail) and who applies to receive Amendment 80 QS in a timely fashion. NMFS would base the amount of QS issued to a person on the amount of legal catch made by an Amendment 80 vessel according to the official record developed by NMFS.

A. Eligibility To Receive Amendment 80 QS

As noted in the discussion of the CRP, participation in the Amendment 80 sector is limited to persons who meet the qualifications under that statute. However, the CRP did not specifically define the criteria that may be used to allocate Amendment 80 QS among eligible participants in the Amendment 80 sector. The Program contains provisions that would allocate Amendment 80 QS in consideration of historic and recent harvest patterns, and would accommodate specific conditions that could adversely affect the ability of an Amendment 80 vessel from being used to harvest fish in the Amendment 80 sector.

B. Method for Allocating Amendment 80 QS—General Provisions

The Council considered a range of alternative methods for allocating QS to participants in the Amendment 80 sector in the development of the Program. These alternatives are addresses in the draft EA/RIR/IRFA developed to support this proposed action (see **ADDRESSES**). The Program would balance allocation among recent and historic participants. As with other QS programs (e.g., BSAI Crab Rationalization, and IFQ halibut and sablefish), the Program would allocate QS based on historic and recent harvests rather than allocating QS to Amendment 80 sector participants based on alternative methods such as allocating equal shares or auctioning off QS. In other North Pacific LAPPs, the Council has recommended, and NMFS has allocated, QS based on landings that occurred during a specific time period as a means of equitably distributing QS to participants based on their relative dependance on the fishery.

1. Species Allocated QS Under the Program (Amendment 80 Species)

The six non-pollock groundfish species that would be subject to an allocation of Amendment 80 QS under the Program are: AI POP, BSAI Atka mackerel, BSAI flathead sole, BSAI Pacific cod, BSAI rock sole, and BSAI yellowfin sole. The Program would allocate Amendment 80 QS only for these non-pollock groundfish species, which have historically been fully used and for which quota-based management is likely to result in reductions in the ''race for fish.''

Historic catch of non-Amendment 80 species would not result in Amendment 80 QS allocated to the Amendment 80 sector. The draft EA/RIR/IRFA prepared for this action details harvest rates and amounts for all of the non-pollock species (see **ADDRESSES**).

Several groundfish species (*e.g.,* Alaska plaice, arrowtooth flounder, and Greenland turbot) are not fully harvested because markets for these species are nascent and economically viable product forms have not been developed. The Council did not recommend allocating these species under the Program while these markets and products are developed by the trawl and non-trawl fisheries. Other species (*e.g.,* squid) have not been historically harvested by Amendment 80 vessels and the Council did not recommend allocating these species to the Amendment 80 sector because there is no clear historic or current fishing dependance on these species. Furthermore, it was not clear that allocation of these species to the Program would result in any clear conservation or management benefit; yet could adversely affect harvest patterns by other fishery participants (*e.g.,* AFA catcher vessels) that are more likely to harvest these species.

Other species (*e.g.,* Aleutian Islands northern rockfish) are not open to directed fishing and are currently harvested incidental to other target species. Allocating those species based on historic catch would include incidental harvests, and in some cases a large percentage of those incidentally harvested fish were discarded. Allocating species such as Aleutian Islands northern rockfish could advantage harvesters who have high bycatch rates relative to harvesters using more selective methods to target catch. Allocating such species to Amendment 80 participants would reward harvesters with high incidental catch, and possibly high discard rates, and frustrate the intent of the Program to encourage lower bycatch and discard rates. The Council did note that if subsequent review indicates that other groundfish species could be more conservatively managed through the LAPP management, those species could be added to the Program through a separate FMP amendment and rulemaking process.

2. Pacific Cod as an Amendment 80 Species

As noted in Section IV of this preamble, Pacific cod would be considered an Amendment 80 species for purposes of Amendment 80 QS allocation. The Program would allocate Pacific cod QS using the same years for determining qualifying harvests as applicable to the other Amendment 80 species (*i.e.,* the highest tonnage of harvests during the five of seven years from 1998 through 2004). The draft EA/RIR/IRFA developed for the Program analyzed the effects of allocating Pacific cod to the Amendment 80 sector as QS (see **ADDRESSES**). As noted earlier, Pacific cod would be subject to the same restrictions applicable to other Amendment 80 species (*e.g.,* cooperatives would be issued TAC, rollover of unused BSAI trawl limited access sector ITAC could be rolled over to Amendment 80 cooperatives).

3. Years of Fishing Activity That Yield QS: 1998 Through 2004

The Program would implement an allocation of QS based on catch for each Amendment 80 species using an Amendment 80 vessel during the period from 1998 through 2004. After reviewing various catch patterns within the fishery, the Council selected this time period to accommodate historically and recently active fishery participants. The Council concluded that catch patterns during this seven-year period were considered to represent a reasonable range of catch and participation patterns in the fishery, and catch by Amendment 80 vessels before 1998 was not representative of the current catch patterns and its inclusion would unduly limit the allocation of QS to more recent participants. Harvest patterns from 1998 until 2004, the most recent available harvest data at the time of final Council action in June 2006, were selected to accommodate recent participants and harvest patterns. Furthermore, the range of harvest patterns reviewed by the Council and used as the basis for allocation of QS included the recommendations made by Amendment 80 participants during the development of the Program.

The Council also recommended allocating QS based on a subset of catch from the seven years from 1998 through

2004. On occasion, a vessel or operator may have been unable to fish due to unforeseen circumstances (*e.g.,* mechanical problems with the vessel, or medical emergencies that affected crew and limited catch), or had poor catch due to the conditions in the fishery for that year (*e.g.,* lower TAC, unusual distribution of catch affecting harvest patterns, closure of the fishery before a vessel could maximize its harvest). The Council recommended accommodating these issues by having NMFS select the best five of seven years of catch, by tonnage, for each Amendment 80 species landed by an Amendment 80 vessel as the basis for allocating Amendment 80 QS. The net effect of this provision is that some years of poor catch would not be included in the calculation for allocating Amendment 80 QS. This provision would moderate the affect of poor harvests in some years and would weight the average catch by an Amendment 80 vessel to favor years with better overall catch. Generally, QS for a given Amendment 80 species would be allocated based on the percentage of the sum of the best five of seven years of harvest from a specific Amendment 80 vessel compared with the sum of the best five of seven years of harvest of that species by all Amendment 80 vessels.

4. Legal Landings that Result in QS

The Program would base the allocation of QS on ''legal landings.'' The Program would define a legal landing as all catch made by an Amendment 80 vessel during the qualifying years (1998 through 2004), and reported in compliance with State and Federal regulations in effect at the time of landing. A legal landing would include only the catch of groundfish from the BSAI that is recorded on a NMFS weekly production report (WPR) during the qualifying years. Catch that was not legally reported or caught would not be considered a legal landing.

Additionally, Amendment 80 species caught under an experimental fishing permit, scientific research permit, or while participating in the CDQ Program would not be considered for allocation of Amendment 80 QS. Fishing opportunities under these permits or the CDQ Program were not available to all participants during the qualifying years and would provide undue advantage to a subset of fishery participants. Excluding catch under these conditions would be consistent with the approach used in other LAPPs (e.g., BSAI Crab Rationalization Program and Central GOA Rockfish Program).

The Program would use WPRs as the basis to assign legal landings because they represent the most complete record of catch by a vessel. Although alternative methods could be used to assign catch to a vessel, such as using data blended from WPRs and observer reports, observer coverage on vessels varied widely. Under such an approach, an Amendment 80 vessel could be assigned a catch rate that could differ substantially from that vessel's WPR records. The most complete source of vessel-specific catch during the qualifying period. comes from WPR records because all vessels are required to submit WPRs.

Unlike other LAPPs that exclude discarded catch as a legal landing, the Council recommended that the Program consider ''total catch'' as the basis for allocating QS for a variety of reasons. Total catch includes fish that are caught and retained, as well as fish that are caught and then discarded. The Program would not exclude catch incidentally caught in other fisheries or by a specific gear types. All legally reported catch on a WPR would be included for purposes of QS allocation. As an example, all of the Amendment 80 vessel operators recorded catch on WPRs using non-pelagic trawl gear. Several Amendment 80 vessels also recorded catch on their WPRs using pelagic trawl gear and hook-and-line gear. Although these catches represent a small proportion of the total catch, that catch would be considered an Amendment 80 legal landing and would be included for purposes of allocating Amendment 80 QS.

A review of total catch versus retained catch data indicated that smaller Amendment 80 vessels (e.g., vessels under 200 ft (61 m) LOA) tended to discard a greater proportion of their catch relative to larger vessels. Most likely, this is due to reduced storage capacity on smaller vessels, particularly for species that were incidentally caught while directed fishing for different Amendment 80 target species (e.g., flathead sole may have been discarded while vessels targeted yellowfin sole). On average, smaller vessels would have a smaller proportion of the total retained landings, and therefore would be issued a smaller percentage of the total QS allocation, if retained catch were used instead of total catch to calculate the distribution of QS.

NMFS would assign legal landings to the Amendment 80 vessel on which those landings were made and not to any other Amendment 80 vessel. Furthermore, NMFS would not consider Amendment 80 legal landings to be directly or indirectly transferrable from one Amendment 80 vessel to another Amendment 80 vessel. As an example, private contractual arrangements to assign legal landings from one Amendment 80 vessel to a specific groundfish vessel moratorium permit (for legal landings prior to 2000), or to a specific LLP license (for legal landings in 2000 through 2004), or any other contract or other legal instrument that might address assigning legal landings from an Amendment 80 vessel to another Amendment 80 vessel would not be considered by NMFS for the purposes of allocating QS. This restriction would (1) Insure that claims for specific legal landings are not in dispute among Amendment 80 vessel owners; (2) reduce the potential for complicated and lengthy appeals; and (3) be consistent with the clear intent of the Program to assign legal landings to specific Amendment 80 vessels based on the catch physically made by an Amendment 80 vessel.

5. Amendment 80 Official Record

As with other LAPPs developed by the Council, such as the BSAI Crab Rationalization Program, NMFS would establish an Amendment 80 official record containing all necessary information concerning Amendment 80 legal landings made by all Amendment 80 vessels during the seven-year qualifying period, Amendment 80 vessel ownership, Amendment 80 LLP license holdings, and any other information needed for assigning QS. NMFS would produce the official record from data including NMFS WPRs, LLP licenses assigned to the Amendment 80 sector, and other relevant information. NMFS would presume the official record is correct and an applicant wishing to amend the official record would have the burden of establishing otherwise through an evidentiary and appeals process. That process is described in Part D of this section below.

The official record would also be used to establish the initial pool of QS that would be distributed to participants in the Amendment 80 sector. There are several methods that have been used in other LAPPs to establish an initial QS pool: Fixing the initial QS pool amounts based on past harvest patterns (e.g., BSAI Crab Rationalization Program), or using a baseline year of harvests and converting those harvests to quota share units (e.g., Central GOA Rockfish Program). Administratively, the simplest and clearest method for establishing the initial QS pool for a given Amendment 80 species is to set the initial QS pool at an amount equal to the sum of the highest five of seven years of legal landings, in metric tons (mt), for all Amendment 80 vessels. This method is similar to that used for

establishing the QS pool in the halibut and sablefish IFQ program.

Each metric ton of legal landing credited to an Amendment 80 vessel would result in one QS unit, with specific modifications for yellowfin sole, flathead sole, and rock sole, as discussed in Part I of this section below. This initial QS pool would be adjusted should the official record be amended through successful claims brought by Amendment 80 sector participants or other corrections to the underlying data. See Part D of this section below for more detail. As with other LAPPs (e.g., Central GOA Rockfish Program), NMFS would establish use caps using this initial QS pool. Use caps are described further under Section IX of this preamble.

C. Application for Amendment 80 QS

A person would be required to submit an application for Amendment 80 QS in order to receive Amendment 80 QS initially. NMFS would require an application to ensure that QS is assigned to the appropriate persons, and to provide a process for resolving claims for legal landings that are contrary to the official record. Once a person submits an application for QS that is approved by NMFS, that person would not need to resubmit an application for QS in future years.

Unlike other LAPPs (e.g., Central GOA Rockfish Program) that provided only a single application period to receive QS after which no additional applications would be accepted by NMFS, NMFS would accept applications for Amendment 80 QS on an annual basis. This change is necessary to accommodate the specific statutory language in the CRP that does not grant NMFS the authority to permanently deny eligibility to participate in the Program for failure to meet an application deadline. NMFS would require that all applications for Amendment 80 QS be received not later than 5 p.m., Alaska local time, on October 15 or postmarked by that date if the application is mailed, to receive QS for use in the following calendar year. Although a person could apply to receive Amendment 80 QS by October 15 of the following year if they missed the application deadline for the previous year(s), once NMFS approves an application for QS, it would not need to be resubmitted annually.

NMFS would mail an application package to all potentially eligible Amendment 80 vessel owners and Amendment 80 LLP holders based on the address on record at the time the application period opens. NMFS would facilitate the application process by making the application form available on the NMFS, Alaska Region Web site at *http://www.fakr.noaa.gov.* Interested persons also could contact NMFS to request an application package. An application could be submitted by mail, fax, or hand delivery. The proposed regulatory text at § 679.90(b) provides addresses and delivery locations.

The proposed regulatory text at § 679.90(b) details the information required in an application. Briefly, the application would contain the following elements:

- Identification and contact information for the applicant;
- Information on the Amendment 80 vessel(s) owned by the applicant;
- Amendment 80 LLP licenses held by the applicant;
- If applicable, clear and unambiguous documentation that an Amendment 80 vessel that has suffered an actual total loss, constructive total loss, or is permanently ineligible to fish in U.S. waters;
- If applicable, a copy of a written contract held by the applicant that clearly and unambiguously provides that the owner of the Amendment 80 vessel has transferred all eligibility to participate in the Program based on the Amendment 80 legal landings from that Amendment 80 vessel to the person holding the Amendment 80 LLP license originally assigned to that Amendment 80 vessel;
- Any other information deemed necessary by NMFS for assigning QS; and
- The applicant's signature and certification. If the application is completed on behalf of the potential QS recipient, authorization for that person to act on behalf of that person.

D. Reviewing and Appealing a QS Application

NMFS would evaluate applications submitted during the specified application period and compare all claims in an application with the information in the official record. NMFS would accept claims in an application it determines to be consistent with information in the official record. NMFS would not accept inconsistent claims in the applications, unless verified by documentation. An applicant who submits inconsistent claims, or an applicant who fails to submit information supporting his or her claims with their application, would be provided a single 30-day evidentiary period to submit the supporting information, evidence to verify his or her inconsistent claims, or a revised application with claims consistent with information in the official record. An applicant who submits claims that are inconsistent with information in the official record would have the burden of proving that the submitted claims are correct.

NMFS would evaluate additional information or evidence to support an applicant's inconsistent claims submitted prior to or within the 30-day evidentiary period. If NMFS determines that the additional information or evidence proves that the applicant's inconsistent claims in his or her application were indeed correct, NMFS would amend the official record with that information or evidence. NMFS would use the amended official record to determine the applicant's eligibility. However, if after the 30-day evidentiary period, NMFS were to determine that the additional information or evidence did not prove that the applicant's inconsistent claims in his or her application were correct, NMFS would deny the appeal. NMFS would notify the applicant that the additional information or evidence did not meet the burden of proof to change the official record through an initial administrative determination (IAD).

NMFS' IAD would indicate the deficiencies and discrepancies in the application, or revised application, including any deficiencies in the information or the evidence submitted in support of the information. NMFS' IAD would indicate which claims could not be approved based on the available information or evidence, and provide information on how an applicant could appeal an IAD. The appeals process is described under 50 CFR 679.43. An applicant who appeals an IAD would not receive any QS based on contested landing data unless and until the appeal was resolved in the applicant's favor. Once NMFS has approved an application for Amendment 80 QS in its entirety, an Amendment 80 QS permit with a specified amount of Amendment 80 QS units derived from the amount of legal landings of each Amendment 80 species attributable to a specific Amendment 80 vessel would be assigned to the applicant.

E. Assigning an Amendment 80 QS Permit to an Amendment 80 Vessel Owner

After reviewing applications for Amendment 80 QS, comparing those applications to the official record, and resolving inconsistencies in claims for legal landings, NMFS would issue an Amendment 80 QS permit that lists the total amount of QS units issued for each Amendment 80 species for each applicant. The legal landings from an

Amendment 80 vessel would give rise to only one Amendment 80 QS permit.

Given existing information, NMFS anticipates issuing 28 Amendment 80 QS permits based on the legal landings of the 28 Amendment 80 vessels that have been identified in NMFS's WPR database. If additional vessels not listed under Table 1 of this preamble are determined to be eligible for the Program, additional Amendment 80 QS permits could be issued to persons based on legal landings from those vessels. Once an Amendment 80 QS permit is issued, the QS units assigned to that QS permit would remain with that QS permit and could not be severed or otherwise be transferred independently from the rest of the QS permit. The Amendment 80 QS permit would be issued to the person identified in an approved application for QS. In most cases, the person receiving the QS would be the Amendment 80 vessel owner.

F. Assigning an Amendment 80 QS Permit to an Amendment 80 LLP License for Lost or Ineligible Vessels

The Program would ensure that an Amendment 80 QS permit resulting from the legal landings of an Amendment 80 vessel could be used even if an Amendment 80 vessel were lost or became permanently ineligible to fish in U.S. waters. Under certain conditions, NMFS would issue an Amendment 80 QS permit to the holder of the Amendment 80 LLP license originally assigned to an Amendment 80 vessel rather than the Amendment 80 vessel owner. The list of Amendment 80 LLP licenses originally assigned to an Amendment 80 vessel is provided in the proposed Table 31 to part 679. An Amendment 80 QS permit would be issued to the Amendment 80 LLP license holder either (1) During the initial allocation of QS; or (2) after the initial issuance of QS as described under the Part G of this section below.

This provision is intended to allow a person to continue participation in the Amendment 80 sector if otherwise qualified. During the development of the Program, this provision was considered as a means for meeting the overall intent of the Program to allow a person to use QS under specific conditions without contravening the intent of the CRP. As an example, the F/V ARCTIC ROSE has sunk, and the F/V BERING ENTERPRISE cannot be documented as a U.S. fishing vessel and that vessel is not eligible for a fishery endorsement under fishing vessel documentation regulations at 46 U.S.C. 12108.

The provision to assign a QS permit to an Amendment 80 LLP license would apply only if an Amendment 80 vessel suffered an actual total loss, constructive total loss, or became permanently ineligible to fish in the BSAI. The terms ''actual total loss'' and ''constructive total loss'' are commonly used in the business of insuring marine vessels. For additional clarity, NMFS is considering defining these terms in a separate rulemaking action that is anticipated to be effective before the Program. NMFS does not propose defining those terms in the regulatory text for the Program. Permanent ineligibility to fish in U.S. waters would apply only if an Amendment 80 vessel's USCG documentation has a permanent restriction prohibiting that vessel from holding a fishery endorsement under 46 U.S.C. 12108.

Temporary conditions that limit the ability of an Amendment 80 vessel to fish would not constitute permanent ineligibility. As an example, an Amendment 80 vessel that is not designated on an LLP license, fails to maintain adequate observer coverage, is undergoing repair, fishes in another fishery outside the BSAI, or any similar temporary condition, would not be considered to be permanently ineligible to fish. All of the examples provided above are temporary and could be resolved. The Amendment 80 vessel could be designated on an LLP license, maintain adequate coverage, complete repair, transit to the BSAI and begin fishing, or otherwise address the temporary condition. NMFS welcomes comment on the proposed interpretation of this specific provision.

NMFS would require that the following conditions be met to assign an Amendment 80 QS permit to an Amendment 80 LLP license:

a. The Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to fish and that fact can be verified by NMFS;

b. The owner of the Amendment 80 vessel that has been lost or is permanently ineligible has transferred the rights to receive QS to the holder of the Amendment 80 LLP license originally assigned to that Amendment 80 vessel through a clear and unambiguous written contract, and a copy of that contract is provided to NMFS; and

c. The holder of the Amendment 80 LLP license originally assigned to that Amendment 80 vessel applies to receive the QS in a timely fashion and provides the necessary information.

Once an Amendment 80 QS permit is assigned to an Amendment 80 LLP license, it is permanently affixed to that LLP license. NMFS proposes to term this modified Amendment 80 LLP license with an affixed Amendment 80 QS permit an ''Amendment 80 LLP/QS license.''

G. Transferring QS

1. Limits on Transferring QS Permits

Once issued, a QS permit assigned to a specific Amendment 80 vessel or to an Amendment 80 LLP license originally assigned to an Amendment 80 vessel could only be transferred in its entirety. The Program would not allow an Amendment 80 QS permit to be subdivided once allocated.

Rather than allowing an Amendment 80 QS permit to be subdivided, participants could form Amendment 80 cooperatives and transfer the annual CQ among the cooperatives (see Section VII of this preamble). Subdivision of QS permits would subvert the clear intent of the Program to maintain a fixed number of Amendment 80 QS permits and to encourage QS holders to form cooperative harvest arrangements to meet specific harvesting goals.

2. Methods for Transferring QS Permits

NMFS would approve all transfers of QS permits to properly track ownership and use cap accounting. Once issued, QS could be transferred in one of three ways:

a. An Amendment 80 vessel owner assigned a QS permit could transfer (i.e., sell) the Amendment 80 vessel and the QS permit assigned to that Amendment 80 vessel to another person eligible to own a U.S. fishing vessel (i.e., document that Amendment 80 vessel under MARAD regulations);

b. Upon the actual total loss, constructive total loss, or permanent ineligibility of an Amendment 80 vessel that is assigned a QS permit, the Amendment 80 vessel owner could transfer the QS permit to the Amendment 80 LLP license originally issued for that Amendment 80 vessel (see Table 31 to part 679 in the proposed regulatory text for a list of those LLP licences); or

c. An Amendment 80 LLP license with a QS permit assigned to it could be transferred to another person through the existing LLP transfer provisions described in regulations at 50 CFR 679.4(k)(7).

3. Assigning an Amendment 80 QS Permit to an Amendment 80 LLP License

During the development of the Program, the Council recommended that QS be permitted to be transferred to the

LLP license originally issued for that vessel, if a vessel were lost or permanently ineligible to fish. NMFS has interpreted this provision to allow a QS permit to be assigned to the permanent fully transferrable LLP license that was originally derived from the Amendment 80 vessel used to originally qualify for the LLP in 2000, with one exception.

All Amendment 80 vessels except the F/V ENTERPRISE had documented landings that resulted in an LLP license being issued in 2000 based on the fishing activities of those vessels. Using the terms in the LLP, all Amendment 80 vessels except the F/V ENTERPRISE were original qualifying vessels that gave rise to LLP licenses endorsed for trawl gear in the BSAI with a catcher/processor designation (see regulations at 50 CFR 679.4(k) for additional detail). The F/V ENTERPRISE did not give rise to an LLP license. Because the F/V ENTERPRISE did not give rise to an LLP license, if NMFS were to permit a QS permit to be transferred only to the LLP license originally issued to an Amendment 80 vessel, the QS permit issued to the owner of the F/V ENTERPRISE could not be assigned to any LLP license. If the F/V ENTERPRISE was lost or became permanently ineligible to fish in U.S. waters, the QS issued to the owner of the F/V ENTERPRISE could be extinguished.

To address this apparently unique situation, NMFS would propose defining the LLP license to which the QS permit issued to the owner of the F/V ENTERPRISE could be transferred in the event that vessel is lost or becomes permanently ineligible to fish. Since the implementation of the LLP in 2000, the F/V ENTERPRISE has apparently fished under the authority of one LLP license (LLP license number LLG 4831). Therefore, NMFS would permit the transfer of an Amendment 80 QS permit assigned to the owner of the F/V ENTERPRISE to LLG 4831 should the F/V ENTERPRISE suffer an actual total loss, constructive total loss, or otherwise become permanently ineligible to fish in U.S. waters. NMFS welcomes comment on this proposed requirement.

Table 31 to part 679 in the proposed regulatory text lists the LLP licenses originally assigned to each Amendment 80 vessel. An Amendment 80 QS permit assigned to an Amendment 80 vessel would only be assigned to these LLP licenses.

4. Application To Transfer Amendment 80 QS

In order to transfer an Amendment 80 QS permit, an Amendment 80 QS holder would have to submit to NMFS an application to transfer Amendment 80 QS. NMFS would require that the following information be submitted as part of a transfer application:

- Transferor identification;
- Type of transfer (i.e., transfer of QS permit and Amendment 80 vessel to another person, transfer of QS to an Amendment 80 LLP license if a vessel has been lost);
- Information for transfers of Amendment 80 QS to another person. If transferring Amendment 80 QS permit assigned to an Amendment 80 vessel to another person, a USCG abstract of title or certificate of documentation which clearly and unambiguously indicates that the Amendment 80 QS permit transferee is named on the abstract of title or USCG documentation as the owner of the Amendment 80 vessel to which that Amendment 80 QS permit is assigned would need to be attached;
- Information for transfers of Amendment 80 QS permits to an Amendment 80 LLP license. If transferring Amendment 80 QS permit assigned to an Amendment 80 vessel to the Amendment 80 LLP license originally assigned to an Amendment 80 vessel, the applicant would need to provide clear and unambiguous written documentation that can be verified by NMFS that the Amendment 80 vessel is no longer able to be used in the Program due to the actual total loss, constructive total loss, or permanent ineligibility of that vessel;
- Certification of transferor. The transferor must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief;
- Transferee information; and
- Certification of transferee. The transferee must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief.

An application to transfer Amendment 80 QS could be submitted by mail, fax or hand delivered (see regulatory text at § 679.90(f) for detailed information). Transfer forms would also be posted on the NMFS Web site at *http://www.fakr.noaa.gov*.

H. Issuance of QS After the Fishing Year Begins

Any Amendment 80 QS permit, or any additional Amendment 80 QS units for an Amendment 80 species that is assigned to an Amendment 80 QS permit after NMFS has issued CQ or ITAC to the Amendment 80 limited access fishery for that calendar year would not result: (1) In any additional CQ being issued to an Amendment 80 cooperative if that person has assigned his Amendment 80 QS to an Amendment 80 cooperative for that calendar year; or (2) ITAC being issued to the Amendment 80 limited access fishery if that person has assigned his Amendment 80 QS to the Amendment 80 limited access fishery for that calendar year.

This requirement would ensure that if an appeal, operation of law, or other fact amends an Amendment 80 QS permit after NMFS has issued CQ or ITAC for the calendar year, NMFS would not be required to remove a portion of the CQ or ITAC issued to other participants in the fishery during the fishing year, to accommodate a change in one person's QS holdings. Any such adjustment could adversely affect all other Amendment 80 sector participants. The following year, the person with the amended Amendment 80 QS permit could assign that permit to an Amendment 80 fishery that would result in either CQ if that QS was assigned to a cooperative, or ITAC if assigned to the Amendment 80 limited access fishery.

I. Method for Allocating QS—Specific Provisions

The Council recommended that the Program consider unique conditions that may exist in each Amendment 80 species fishery or that may apply to specific Amendment 80 vessels in the allocation of QS. In particular, the Program would establish specific mechanisms to (1) Allocate Amendment 80 QS to Amendment 80 vessels that do not have Amendment 80 legal landings during the 1998 through 2004 period; (2) assign legal landings and allocate QS for Amendment 80 species, other than Atka mackerel; and (3) allocate Atka mackerel QS to accommodate the harvest patterns of smaller Amendment 80 vessels.

1. Allocating QS to Amendment 80 Vessels With No Legal Landings

The CRP defines the Amendment 80 vessels eligible participate in the Amendment 80 sector on three criteria, one of which relates to the catch of BSAI non-pollock groundfish between 1997 and 2002. However, the Council recommended using catch during 1998 through 2004 as the qualifying years that would be used to allocate QS. As a result, NMFS has preliminarily identified three Amendment 80 vessels, the F/V BERING ENTERPRISE, F/V HARVESTER ENTERPRISE, and F/V PROSPERITY, that were not used to catch Amendment 80 species during 1998 through 2004. All three vessels are

eligible to participate in the Amendment 80 sector because the vessels were active in 1997 and harvested more than 150 mt of non-pollock groundfish. This circumstance creates the odd condition of these vessels being eligible to be used to fish in the Amendment 80 sector, but not eligible to generate any QS based on their historic catch patterns.

Rather than adjust the qualifying years for receiving QS, the Program would accommodate these Amendment 80 vessels by assigning a small percentage of the legal catch to them that would then result in QS. The amount selected would represent an amount that could still provide a limited economic benefit to the owners of the Amendment 80 vessels, but that would not unduly affect those fishery participants by reducing their QS allocations excessively. The Council selected the specific allocations based on recommendations provided by the affected industry during the development of the Program.

Each of these three Amendment 80 vessels would be assigned legal landings equivalent to 0.5 percent of the total yellowfin sole legal landings, 0.5 percent of the total rock sole legal landings, and 0.1 percent of the flathead sole legal landings. NMFS would make this allocation to the three Amendment 80 vessels by a proportional reduction to the total legal landings of yellowfin sole, rock sole, and flathead sole for the remaining 25 Amendment 80 vessels that have been identified thus far.

2. Assigning Legal Landings and Allocating QS for an Amendment 80 Species

For each Amendment 80 species, NMFS would assign legal landings to each Amendment 80 vessel based on the five of seven years of the greatest tonnage of legal landings for each Amendment 80 species from the official record to derive the ''Highest Five Years'' for that Amendment 80 species. This calculation would be based on all catch in all management areas. (the numerator in the following equation). If an Amendment 80 vessel was not used to make legal landings in at least five of the seven years, NMFS would include years with zero tons of legal landings, if necessary. NMFS would also calculate the five of seven years of the greatest tonnage of legal landings for all Amendment 80 vessels for that Amendment 80 species from the official record and sum that amount to derive the ''Σ All Highest Five Years'' for that Amendment 80 species (the denominator in the following equation). The result of this equation is the percentage of the total legal landings that would be assigned to a specific Amendment 80 vessel:

Highest Five Years for an Amendment 80 vessel/Σ All Highest Five Years for all Amendment 80 vessels x 100 = Percentage of the total legal landings for that Amendment 80 vessel.

To determine the amount of AI Pacific ocean perch and Pacific cod QS units derived from the legal landings made by an Amendment 80 vessel, NMFS would multiply the percentage of the total for an Amendment 80 vessel by the initial QS pool for that species. The amount of QS units derived from this calculation would be assigned to the Amendment 80 QS permit derived from that Amendment 80 vessel.

However, to determine the amount of yellowfin sole, rock sole, and flathead sole QS units derived from the legal landings made by an Amendment 80 vessel, NMFS would first need to accommodate the three Amendment 80 vessels that would be assigned a defined percentage of the legal landings assigned to an Amendment 80 vessel for these species. NMFS would need to adjust the percentage of the total yellowfin sole, rock sole, and flathead sole legal landings for all Amendment 80 vessels that made legal landings from 1998 through 2004. Each of the three vessels without legal landings in 1998 through 2004 would receive 0.5 percent of the yellowfin sole legal landings, 0.5 percent of the rock sole legal landings, 0.1 of the flathead sole legal landings. All other Amendment 80 vessels would have their yellowfin sole and rock sole legal landings reduced by 1.5 percent, and flathead sole legal landings reduced by 0.3 percent to accommodate those three vessels. Once the legal landings for rock sole, yellowfin sole, and flathead sole have been adjusted for an Amendment 80 vessel, NMFS would calculate the initial allocation of QS units for these species by multiplying the Adjusted percentage for an Amendment 80 vessel by the initial QS pool for that species. The amount of QS units derived from this calculation would be assigned to the Amendment 80 QS permit derived from that Amendment 80 vessel.

3. Assigning Atka Mackerel QS

Assigning Atka mackerel QS derived from the legal landings of an Amendment 80 vessel would require several additional steps. After the percentage of Atka mackerel legal landings derived from an Amendment 80 vessel has been determined using the process described above, the Program would accommodate specific harvesting conditions in the Atka mackerel fishery.

NMFS allocates Atka mackerel TAC to three distinct management areas, Area BS/541, Area 542, and Area 543, in consideration of stock abundance, distribution, and dynamics. Generally, most of the Atka mackerel TAC available for harvest is located in the Central Aleutian Islands (Area 542) and the Western Aleutian Islands (Area 543) management areas. During the qualifying years, these Atka mackerel fisheries were typically prosecuted by larger Amendment 80 vessels that specifically targeted Atka mackerel. These vessels are able to harvest and process large quantities of fish in these remote locations without frequent and expensive trips to port facilities.

A smaller proportion of the overall Atka mackerel TAC is available for harvest in the Bering Sea and Eastern Aleutian Islands management area (Area BS/541). During the qualifying years for the Program, a portion of the Atka mackerel TAC in Area BS/541 was harvested by relatively smaller Amendment 80 vessels. These smaller Amendment 80 vessels have not historically harvested Atka mackerel in Areas 542 or 543 due to the higher expenses associated with operating in more remote areas (e.g., increased fuel costs to travel to the Aleutian Islands). Many smaller vessels also targeted Bering Sea flatfish that were open during the same time as the Atka mackerel fishery during the qualifying years. In addition, smaller vessels are less well suited than larger vessels to operate in the adverse weather conditions typical in Areas 542 and 543.

If Atka mackerel QS was allocated such that the CQ or ITAC resulting from that QS was divided proportionally over all three management areas, some smaller Amendment 80 vessels would be assigned Atka mackerel CQ or ITAC that could only be harvested in areas in which they have not historically been active. To address this concern, the Council recommended that the Program allocate Atka mackerel QS to smaller vessels with limited catch of Atka mackerel in proportion to the amount of legal landings made by these smaller vessels in specific management areas.

After reviewing the available catch data in the draft EA/RIR/IRFA prepared for this action (see **ADDRESSES**), the Council noted that Atka mackerel catch patterns indicated that Amendment 80 vessels less than 200 ft (61 m) LOA and with less than 2 percent of the overall ''Atka mackerel history'' caught a substantially greater proportion of their Atka mackerel catch in Area BS/541 and Area 542. For purposes of this proposed

rule, NMFS would interpret the phrase ''Atka mackerel history'' used by the Council to mean an amount of catch of Atka mackerel that would generate less than 2 percent of the total Atka mackerel legal landings. This interpretation is consistent with the phrasing used in the Council's motion supporting this action.

The Council termed Amendment 80 vessels less than 200 ft (61 m) LOA and less than 2 percent of the Atka mackerel legal landings as ''non-mackerel vessels.'' The Council termed Amendment 80 vessels greater than 200 ft (61 m) LOA or with catch resulting in more than two percent of the Atka mackerel legal landings as ''mackerel vessels.'' For purposes of consistency and clarity for the affected industry, these phrases are used in this proposed rule.

To assign Atka mackerel QS, NMFS would first determine the number of Amendment 80 vessels with the size and percentage of Atka mackerel legal landings that would define them as non-mackerel vessels. NMFS would determine which Amendment 80 vessels are non-mackerel vessels based on the official record. If an Amendment 80 vessel is a non-mackerel vessel, NMFS would then determine the percentage of the legal landings from each Atka mackerel management area in each year from 1998 through 2004 for that non-mackerel vessel.

For example, if a non-mackerel vessel were assigned 1 percent of the Atka mackerel QS based on its best five of seven years of legal landings, and during the period from 1998 through 2004, a total of 70 percent of its legal landings (this includes all seven years of legal landings, not only the best five of seven years) were made in Area BS/541 and 30 percent of its legal landings were made in Area 542, then 70 percent of its QS, or 0.7 percent of the total Atka mackerel QS, would be assigned as Area BS/541 QS, and 30 percent of its QS, or 0.3 percent of the total Atka mackerel QS, would be assigned as Area 542 QS. The specific amount of Atka mackerel QS units assigned to each Atka mackerel area would be noted on the Amendment 80 QS permit derived from a non-mackerel vessel. The sum of all Atka mackerel QS units derived from the legal landings of all non-mackerel vessels in all management areas is the non-mackerel QS pool.

After NMFS assigns Atka mackerel QS to all non-mackerel vessels, NMFS would assign the remaining amount of the initial Atka mackerel QS pool to mackerel vessels. Atka mackerel QS derived from the legal landings of mackerel vessels would not be assigned by specific Atka mackerel management area. The sum of all Amendment 80 QS units derived from the legal landings of all mackerel vessels would be the mackerel QS pool. Additional detail on the non-mackerel and mackerel QS pool and the mechanism for allocating a portion of the annual Atka mackerel ITAC to non-mackerel and mackerel QS holders is detailed in Section VII of this preamble. A specific example describing allocation of mackerel and non-mackerel CQ and ITAC using the 2008 Atka mackerel TAC is provided in Section XI of this preamble.

4. The Initial QS pool

The initial QS pool for each Amendment 80 species would be set at an amount equivalent to the sum of All Highest Five Years based on the official record as of December 1, 2007. Because the initial QS pool could be modified by appeal, operation of law, or amendment at a future date, NMFS would set the initial pool at a fixed amount prior to the 2008 fishing year so that NMFS could determine specific QS allocations for the 2008 fishing year. This would permit NMFS to issue QS and issue CQ to Amendment 80 cooperatives and ITAC to the Amendment 80 limited access fishery. An example of establishing an initial QS pool for each Amendment 80 species is provided in Section XI of this preamble. The initial QS pool would also be used as the basis for establishing use caps. Use caps are discussed in greater detail in Section X of this preamble.

VII. Amendment 80 Cooperatives

Once an Amendment 80 QS permit is assigned to a person, it would authorize that QS holder to fish in the Amendment 80 sector. On an annual basis, a QS holder would either have to assign that QS to a harvesting cooperative formed with other eligible QS holders, or assign that QS permit to the Amendment 80 limited access fishery. The QS holder would make this annual selection through an application process. An Amendment 80 cooperative would receive an exclusive privilege to catch a specific amount of Amendment 80 species and crab and halibut PSC. The QS holders who are members of an Amendment 80 cooperative would decide how to catch and who among them could catch the exclusive catch privilege granted to the cooperative. An Amendment 80 cooperative would allow the members of that cooperative to coordinate their fishing operations, potentially reduce operational expenses, possibly increase the quality and revenue from the product, and realize other benefits that a LAPP may provide.

If an Amendment 80 QS permit is assigned to an Amendment 80 cooperative, the sum of the QS units of all of the members assigning QS permits to that cooperative would yield an exclusive annual catch limit of Amendment 80 species and crab and halibut PSC that could be harvested by the members of the Amendment 80 cooperative.

A. Requirements for Forming an Amendment 80 Cooperative

As with other cooperative-based LAPPs (*e.g.*, Central GOA Rockfish Program), specific requirements would have to be met before QS holders could form an Amendment 80 cooperative. These requirements would ensure that the cooperative is comprised of multiple, independently operating businesses; the Program does not result in a level of consolidation that would unduly affect employment opportunities of vessel, crew; and that NMFS would be able to properly account for any amount of CQ assigned and used by a cooperative.

During the development of the Program, the Council considered a range of alternative measures for forming a cooperative and allocating annual harvest privileges. A detailed discussion of the range of allocation and cooperative formation alternatives considered is contained in the draft EA/RIR/IRFA (see **ADDRESSES**) and is not reiterated here.

The following list details the primary requirements that would need to be met to form an Amendment 80 cooperative:

- The cooperative must meet general membership and organizational requirements;
- A minimum of at least three unique persons not affiliated with each other through direct or indirect ownership or control must assign their QS to an Amendment 80 cooperative;
- At least nine QS permits, either assigned to an Amendment 80 vessel or an Amendment 80 LLP license (*i.e.*, an Amendment 80 LLP/QS license) must be assigned to an Amendment 80 cooperative;
- A complete application to join a cooperative must be submitted by November 1 of the year prior to fishing in a cooperative; and
- Effective in 2009, a timely and complete EDR must be submitted by each cooperative member who wishes to assign QS to a cooperative, as discussed in Section XIII of this preamble.

1. Membership in an Amendment 80 Cooperative

Membership in an Amendment 80 cooperative would be voluntary. No

person may be required to join an Amendment 80 cooperative. Amendment 80 cooperatives would be required to allow an eligible person to join that cooperative upon receipt of written notification that a person is eligible and wants to join. All persons who join Amendment 80 cooperatives would be subject to the terms and agreements that apply to the members of the cooperative, as established in the contract governing the conduct of the Amendment 80 cooperative. All persons who wish to join a cooperative would be required to be listed on the annual application for CQ. NMFS proposes a November 1 deadline for the application for CQ so that NMFS could properly assign each person's QS permit and resulting CQ to the cooperative in time for the upcoming fishing year.

Members of an Amendment 80 cooperative would be permitted to leave during a calendar year, but any CQ contributed to the cooperative by that member would remain with that Amendment 80 cooperative for the remainder of the calendar year. If a person becomes the owner of an Amendment 80 vessel or a holder of an Amendment 80 LLP/QS license that has been assigned to an Amendment 80 cooperative, then that person would be permitted to join that Amendment 80 cooperative upon receipt of that Amendment 80 vessel or Amendment 80 LLP/QS license. These provisions would ensure that a cooperative would not be adversely affected by the decisions of a member to end membership in the cooperative, or who is no longer able to maintain membership in the cooperative through the sale of vessels, death, or dissolution. Each cooperative may establish clauses in their cooperative contract that address these issues in specific detail.

2. Organizational Requirements

An Amendment 80 cooperative would have to meet the following requirements before it would be eligible to receive CQ:

a. Each Amendment 80 cooperative must be formed as a partnership, corporation, or other legal business entity that is registered under the laws of one of the 50 states or the District of Columbia; and

b. Each Amendment 80 cooperative must appoint an individual as the designated representative. The designated representative would act on behalf of the Amendment 80 cooperative and serve as a contact for NMFS. The designated representative may be a member of the Amendment 80 cooperative, or some other individual designated by the Amendment 80 cooperative to act on its behalf.

3. Minimum Number of Persons Needed To Form a Cooperative

A minimum number of unique QS holders would be required to ensure that the Amendment 80 cooperatives are truly comprised of multiple entities and not simply one entity with multiple QS permits. To form a cooperative, the Program would require that it be comprised of at least three unique persons (e.g., individuals or corporations) who do not share a 10 percent or greater direct or indirect ownership or control interest. This standard is intended to ensure that the persons are truly distinct and not merely commonly held corporations. The 10 percent common ownership and control standard has been commonly used in North Pacific LAPPs as a reasonable means of defining distinct corporate entities and ownership (i.e, AFA, BSAI Crab Rationalization Program), and is commonly referred to as the ''AFA 10 percent threshold'' after the first LAPP to apply this standard. NMFS would require ownership and control information from each QS holder to be submitted as part of the annual application for CQ to ensure that this standard is met.

4. Minimum Number of QS Permits Needed To Form a Cooperative

As noted earlier, NMFS would issue only one QS permit based on the Amendment 80 legal landings from each Amendment 80 vessel. NMFS has initially identified a total of 28 Amendment 80 vessels with legal landings that would result in 28 unique Amendment 80 QS permits. The Council recommended that a minimum number of QS permits would be required to be assigned to a cooperative in order for it to be allowed to receive CQ. The Council recommended this requirement to ensure that cooperatives are comprised of a substantial number of the total number of the participants in the fishery. The Council wished to encourage economic efficiency in the Amendment 80 sector through cooperative harvesting arrangements, and to minimize the potential for small cooperatives to form, frustrating the goals of creating cooperation among participants in the Amendment 80 sector.

The Council recommended that at least 30 percent of the QS permits issued, which includes Amendment 80 LLP/QS licenses, must be assigned to a cooperative for it to form, be approved by NMFS, and be assigned CQ. Thirty percent of the 28 (i.e., the number of QS permits that NMFS has initially identified that may be issued) is 8.4. In order to ensure that at least 30 percent of the QS permits are assigned to the cooperative, at least nine QS permits would need to be assigned to the cooperative to meet the minimum requirements recommended by the Council. Because QS permits may not be subdivided, eight QS permits would represent only 28.57 percent of all of the QS permits. Nine QS permits represents 32.14 percent of all of the QS permits, and is greater than the 30 percent of the total QS permit requirement recommended by the Council. Therefore, at least nine QS permits would have to be assigned to an Amendment 80 cooperative for it be approved by NMFS to receive CQ.

B. Application for Cooperative Quota (CQ)

NMFS would require that QS holders wishing to form an Amendment 80 cooperative submit an annual application for CQ prior to the start of the fishing year to ensure that NMFS would know how much CQ would be assigned to cooperatives, how much of the Amendment 80 species ITAC would be assigned to the Amendment 80 limited access fishery, and which vessels would need to be tracked to properly account for all catch. As with other LAPPs (*e.g.,* BSAI Crab Rationalization Program, Central GOA Rockfish Program), this application would be used to review ownership and control information for various QS holders to ensure that QS and CQ use caps are not exceeded. (*See* Section IX of this preamble for additional detail on use caps).

The application for CQ would need to be received by NMFS not later 5 p.m., Alaska local time, on November 1 of the year prior to fishing under the CQ permit to be considered timely. The cooperative's designated representative would be responsible for submitting the application for CQ on behalf of all the members. If the designated representative for the cooperative were to fail to submit a timely application for CQ, the members of the cooperative would not be permitted to assign their QS permits, any associated Amendment 80 vessels, or any Amendment 80 LLP licenses, to another Amendment 80 cooperative or the Amendment 80 limited access fishery the following year. This requirement would encourage all participants in the Amendment 80 sector to complete an application, and avoid actions that could delay the issuance of CQ or the Amendment 80 limited access fishery ITAC. NMFS would have limited time to issue CQ

and establish the Amendment 80 limited access fishery ITAC and any delays could adversely affect other fishery participants.

The application for CQ could be submitted by mail, fax, or in person (*see* regulatory text at § 679.91(b) for more details). The information that would be required in the application is detailed in the proposed regulatory text at § 679.91(b). The following list summarizes the proposed information that would be required:

- Applicant's information;
- Amendment 80 Vessel identification;
- Amendment 80 LLP identification;
- Amendment 80 QS information (the Amendment 80 QS permit number(s) held by the members of the cooperative);
- Amendment 80 QS ownership documentation;
- Amendment 80 cooperative identification;
- Members of the Amendment 80 cooperative;
- Vessel identification, including the name(s) and USCG documentation number of vessel(s) on which the CQ issued to the Amendment 80 cooperative will be used;
- Certification that an EDR has been submitted by all cooperative members;
- Designated representative and cooperative members signatures and certification; and
- Authorization for the designated representative to act on behalf of the cooperative to complete the application.

Under the Program, if a person applies to fish for an Amendment 80 cooperative, NMFS would assign all Amendment 80 QS permits, Amendment 80 LLP licenses, and Amendment 80 vessels associated with the Amendment 80 QS permit held by that person to that Amendment 80 cooperative. Based on past experience, this ''all in'' requirement for assigning QS permits, LLP licenses, and vessels to a cooperative would encourage the cooperative behavior the Program is designed to achieve. This requirement would encourage the formation of cooperatives by reducing the incentives for persons with multiple QS permits from applying some QS permits and vessels to one, or several, cooperative(s) and others to the Amendment 80 limited access fishery in an effort to quickly harvest the Amendment 80 limited access fishery ITAC using vessels with greater fishing capacity. The Council recommended the Program specifically to discourage fishing practices that accelerate the race for fish in the Amendment 80 limited access fishery. Requiring a QS holder to fully commit to a cooperative would provide additional incentives to achieve the Program's objectives.

C. Economic Data Report (EDR) Submission and CQ

Effective in 2009, NMFS would not issue CQ to an Amendment 80 cooperative derived from QS permits held by cooperative members who have not submitted a timely and complete EDR for each Amendment 80 QS permit they hold. The specific requirements for submitting an EDR are provided in Section XIII of this preamble. The EDR submission requirement would not penalize members of an Amendment 80 cooperative who have submitted an EDR, but would limit the ability of a cooperative to use CQ derived from a QS holder who fails to comply with this provision.

D. Issuing Amendment 80 Species CQ

Once NMFS has approved an application for CQ, NMFS would issue a CQ permit to the cooperative. The CQ permit would list the metric tons of Amendment 80 species that the cooperative may catch, and the metric tons of halibut PSC and number of crab PSC that the cooperative may use during the fishing year. The following is a brief description of the process NMFS would use for calculating the amount of CQ issued to a cooperative. This description assumes that NMFS has already determined the amount of ITAC that would be assigned to the Amendment 80 sector for the year (see Section IV of this preamble). A more detailed description with an example of CQ allocation to a hypothetical cooperative is provided in Section XI of this preamble.

1. Allocating CQ and ITAC for Amendment 80 Species Other than Atka Mackerel

For each Amendment 80 species except Atka mackerel, the metric tons that the cooperative may harvest in a calendar year would be based on the following general formula:

CQ for that Amendment 80 cooperative = Amendment 80 sector ITAC for a management area × (Σ Amendment 80 QS held by all cooperative members / Amendment 80 QS pool).

Pacific cod, flathead sole, rock sole, or yellowfin sole CQ would be issued for use by the cooperative in the BSAI. These four species re not managed with separate TACs in each management area. AI POP CQ would be assigned to a cooperative for each management area in the Aleutian Islands subarea (*i.e.*, Areas 541, 542, and 543) proportional to the amount of ITAC assigned to that area. For example, if an Amendment 80 cooperative is assigned 10 percent of the AI POP QS pool, that cooperative would receive 10 percent of the ITAC assigned to the AI POP fishery for the Amendment 80 sector in Areas 541, 542, and 543. A detailed example of CQ allocation is provided in Section XI of this preamble.

Once NMFS determines the amount of CQ issued to each cooperative for each Amendment 80 species, the ITAC remaining in a management area would be assigned to the Amendment 80 limited access fishery as follows:

Amendment 80 Limited Access Fishery ITAC in a management area = Amendment 80 Sector ITAC in a management area—(Σ CQ issued to all Amendment 80 cooperatives in a management area).

2. Allocating CQ and ITAC for Atka Mackerel

As noted in Section VI of this preamble, specific provisions are proposed to allocate Atka mackerel QS derived from non-mackerel vessels. If an Amendment 80 QS permit with non-mackerel QS is assigned to a cooperative, NMFS would assign Atka mackerel CQ derived from that non-mackerel QS by management area first. NMFS would determine the amount of CQ for Atka mackerel assigned to each Amendment 80 cooperative in a management area as the sum of the CQ derived from non-mackerel QS and mackerel QS using the following process:

- *Step 1: Assigning the non-mackerel and mackerel QS pools.* NMFS would first determine the total non-mackerel QS pool, and the percentage of the non-mackerel QS pool, and number of QS units that would be assigned to each management area. The remaining amount of Atka mackerel QS units would be assigned to the mackerel QS pool, which would not be designated for specific management areas.
- *Step 2: Allocating CQ to each Amendment 80 cooperative.* For each Amendment 80 cooperative, NMFS would determine the amount of CQ assigned to that cooperative in each management area based on the amount of non-mackerel QS units and mackerel QS units assigned to that cooperative. The series of calculations that follow are shown in a specific example in Section XI of this preamble:

First, NMFS would determine the amount of non-mackerel ITAC in each management area using the following equation:

Non-mackerel ITAC in a management area = (Non-mackerel QS units designated for that management area / Total mackerel and non-mackerel QS pool) × Amendment 80 sector ITAC in all management areas.

Second, NMFS would determine the amount of mackerel ITAC in each management area using the following equation:

Mackerel ITAC in a management area = Amendment 80 sector ITAC in that management area − non-mackerel ITAC in that management area.

Third, NMFS would determine the amount of non-mackerel CQ assigned to an Amendment 80 cooperative in a each Atka mackerel management area (i.e, Area BS/541, Area 542, and Area 543) using the following equation:

Non-mackerel CQ assigned to that Amendment 80 cooperative = (Non-mackerel QS units designated for that management area assigned to that Amendment 80 cooperative / Non-mackerel QS pool in that management area) × Non-mackerel ITAC for that management area.

Fourth, NMFS would determine the amount of mackerel CQ assigned to the Amendment 80 cooperative in each Atka mackerel management area using the following equation:

Mackerel CQ in a management area = (Mackerel QS units assigned to that Amendment 80 cooperative / Mackerel QS pool) × Mackerel ITAC in that management area.

Fifth, the total Atka mackerel CQ (non-mackerel CQ and mackerel CQ combined) assigned to a cooperative would be the sum of calculations presented in the third and fourth steps described above.

Finally, NMFS would allocate the amount of ITAC remaining in a management area after allocation to all of the Amendment 80 cooperatives to the Amendment 80 limited access fishery as follows:

Amendment 80 limited access fishery ITAC in a management area = Amendment 80 sector ITAC − Σ mackerel and non-mackerel CQ issued to all Amendment 80 cooperatives in that management area.

E. Issuing Prohibited Species Catch (PSC) CQ

1. Method for PSC CQ Issuance

The Council considered various alternatives to assign crab and halibut PSC to the Amendment 80 cooperatives in the draft EA/RIR/IRFA (see **ADDRESSES**) prepared for this action. The primary rationale for assigning PSC as proposed in the Program is to ensure that there is adequate PSC available to support existing PSC rates while fishing for non-pollock groundfish, with some reduction in the amount of PSC assigned to accommodate the anticipated improvements in bycatch rates made possible by cooperative management.

The Program would authorize NMFS to issue halibut and crab PSC CQ to each Amendment 80 cooperative based on the following procedure: (1) Determine the historic use of PSC by the Amendment 80 sector during the same period used to allocate Amendment 80 QS (1998 through 2004); (2) determine the amount of halibut and crab PSC that has been historically used during the catch of each Amendment 80 species; (3) assign each Amendment 80 cooperative an amount of PSC based on the proportion of QS assigned to that cooperative for that Amendment 80 species; and (4) sum the result from each Amendment 80 species to derive a total PSC allocation that would be assigned as PSC CQ to Amendment 80 cooperative to support PSC needs for any groundfish fishing conducted by the cooperative in the BSAI. PSC assigned to a cooperative as CQ would be used while the cooperative catches any Amendment 80 species and any non-allocated groundfish species (*e.g.*, Alaska plaice, arrowtooth flounder, and Greenland turbot).

The amount of PSC assigned to the Amendment 80 sector would be based on the Amendment 80 sector's historic PSC use rates during the 1998 through 2004 time period, with adjustments to reduce PSC limits. Section IV of this preamble describes the amount of PSC allocated to the Amendment 80 sector in greater detail. The amount of PSC that is apportioned to each Amendment 80 species would be based on historic PSC use while Amendment 80 vessels were directed fishing for that Amendment 80 species during the 1998 through 2004 time period. The percentage of PSC used in each Amendment 80 fishery is shown in Section XI of this preamble.

Amendment 80 species, such as Pacific cod, that have relatively high rates of halibut PSC use, would be apportioned a relatively greater portion of the total halibut PSC assigned to the Amendment 80 sector. Crab PSC and halibut PSC would be apportioned among cooperatives based on the amount of QS assigned to that cooperative. For example, a cooperative assigned a relatively greater amount of Pacific cod QS would receive a larger proportion of the PSC apportioned to Pacific cod than a cooperative assigned a lesser amount of Pacific cod QS.

For each Amendment 80 species, NMFS would divide the amount of Amendment 80 QS that would be assigned to an Amendment 80 cooperative by the Amendment 80 QS pool for that species. This would yield the percentage of Amendment 80 QS units that would be assigned to that Amendment 80 cooperative. This percentage would be multiplied by the total PSC apportioned to that Amendment 80 species. This calculation would be repeated for each of the six Amendment 80 species. The sum of these calculations would result in an amount in metric tons that would be the total halibut or crab species PSC CQ issued to a specific Amendment 80 cooperative. After allocating PSC to each Amendment 80 cooperative, NMFS would allocate the remaining PSC to the Amendment 80 limited access fishery. A detailed example of this process of assigning PSC to an Amendment 80 cooperative is provided in Section XI of this preamble.

Under this process, Amendment 80 cooperatives would receive an amount of PSC that reflects the aggregate historic use of PSC for each of the Amendment 80 species QS assigned to that cooperative. The PSC CQ that is derived from a specific Amendment 80 species would not be required to be used solely for the prosecution of that Amendment 80 species. As an example, halibut PSC attributed to a specific Amendment 80 species for a specific Amendment 80 cooperative is intended to be used to support the harvest of Amendment 80 species and non-Amendment 80 species (e.g., arrowtooth flounder and Greenland turbot) by that cooperative.

2. Use of Halibut PSC CQ by an Amendment 80 Cooperative

Halibut PSC CQ issued to an Amendment 80 cooperative could only be used by the members of the Amendment 80 cooperative to which it is assigned, unless modified by transfer according to the procedures in the proposed regulatory text in § 679.91(f). (See Part I of this section below for more detail). Halibut PSC CQ would not be subject to seasonal apportionment. This flexibility would aid cooperatives by allowing them to minimize catch with high halibut PSC rates during specific time periods, modify fishing patterns, and fish in areas with lower halibut PSC rates to maximize the benefits derived from their halibut PSC CQ.

3. Use of Crab PSC CQ by an Amendment 80 Cooperative

As with halibut PSC CQ, only cooperative members could use crab

PSC CQ, unless transferred. Crab PSC QS would not be subject to seasonal apportionment. Because crab PSC would be assigned for use in specific to geographic regions, cooperative managers would need to properly track and monitor the use of crab PSC by cooperative vessels to ensure that adequate crab PSC CQ is available. For example, Zone 1 *C. bairdi* PSC CQ would be deducted when *C. bairdi* PSC CQ is used in Zone 1, and the Zone 2 *C. bairdi* PSC CQ would be deducted when *C. bairdi* PSC CQ is used in Zone 2. The specific geographic regions to which these crab PSC limits apply are defined in regulation in § 679.2. Any crab PSC caught by a vessel outside of these geographic areas would not be debited against the crab PSC CQ assigned to a cooperative.

F. Restrictions While Fishing for Amendment 80 Cooperatives

In addition to the M&E requirements described in Section XII of this preamble, several other requirements are proposed for Amendment 80 cooperatives and their members. These requirements would include the following:

- Restrictions on vessels, QS, and LLP licenses assigned to an Amendment 80 cooperative;
- Meeting the GRS at the cooperative level;
- Fishing during the trawl fishing season;
- Compliance with Steller sea lion protection measures; and
- Recordkeeping and reporting requirements.

1. Restrictions on Vessels, QS, and LLP Licenses Assigned to an Amendment 80 Cooperative

NMFS would prohibit the use of an Amendment 80 vessel, Amendment 80 LLP license, or Amendment 80 QS permit assigned to an Amendment 80 cooperative to harvest, process, receive, or use (1) Any CQ assigned to any other Amendment 80 cooperative; or (2) any Amendment 80 species, crab PSC, or halibut PSC assigned to the Amendment 80 limited access fishery. This prohibition would ensure that NMFS could track CQ assigned to a specific cooperative. This would not compromise the ability of an Amendment 80 cooperative to transfer catch to another Amendment 80 cooperative should such an arrangement be more profitable or necessary. Similarly, catch from the Amendment 80 limited access fishery could not be caught, processed, or received by a vessel assigned to an Amendment 80 cooperative to ensure that NMFS can track and assign catch to the appropriate CQ or limited access fishery account.

Any Amendment 80 vessel that is used to catch CQ for a cooperative would have to carry a copy of the valid CQ permit onboard the vessel while the vessel is fishing in the BSAI and adjacent State waters during the parallel fishery. Because some Amendment 80 species, halibut PSC, and crab PSC CQ are likely to be harvested while fishing for non-Amendment 80 species (e.g., halibut PSC is used during the harvest of arrowtooth flounder), a CQ permit would need to be onboard an Amendment 80 vessel fishing for a cooperative whenever that vessel is fishing in the BSAI.

An Amendment 80 cooperative could not catch in excess of the amount of Amendment 80 species, crab PSC CQ, or halibut PSC CQ assigned to the CQ permit for an Amendment 80 cooperative. If an Amendment 80 cooperative wished to catch more CQ than initially issued, additional CQ could be received by transfer.

2. Meeting the GRS at the Cooperative Level

Under the Program, NMFS would apply the GRS to an Amendment 80 cooperative as an aggregate standard, and not as a vessel specific standard. Applying the GRS as an aggregate limit is likely to help reduce operational costs incurred for vessels in the cooperative to meet the GRS, particularly for vessels under 125 ft (38.1 m) LOA while continuing to achieve the goal of the GRS to increase retention and reduce discard of fish. Cooperative managers and members would need to track total and retained catch of all vessels fishing for the cooperative to ensure compliance with the GRS.

NMFS would calculate the GRS based on the aggregate groundfish retention and catch by all vessels in the cooperative. Section 679.28 in the proposed regulatory text describes that calculation. NMFS would monitor the cooperative as a whole, and violations of the GRS applicable to the cooperative would be enforced on the cooperative and individual cooperative members through joint and several liability (see Part G of this section of the preamble below).

Practically, this provision would require the Amendment 80 cooperative manager to monitor total catch by vessels in the cooperative, including Amendment 80 species caught under the CQ permit as well as non-allocated species (e.g., arrowtooth flounder), to ensure that the retention standard applicable for a given year is achieved by the cooperative as a whole. See § 679.27(j)(4) in the proposed rule text for additional detail. The specific method for negotiating and managing retention rates among the members of the cooperative could be addressed through private contractual arrangements. Vessels used by the cooperative that have higher groundfish retention rates in some fisheries (e.g., Atka mackerel) could offset lower retention rates in other fisheries, like rock sole, by the other vessels used by the cooperative.

Because membership in a cooperative is voluntary, if the owner of an Amendment 80 vessel less than 125 ft (38.1 m) LOA chooses not to join a cooperative, that vessel would be subject to the GRS while fishing in the Amendment 80 limited access fishery and would have to comply with GRS requirements without the potential benefits of an aggregate retention rate.

3. Fishing During the Trawl Fishing Season

Current regulations prohibit the use of trawl gear in the BSAI prior to January 20. Vessels harvesting CQ for an Amendment 80 cooperative would continue to be limited to fishing for CQ during the current open periods for vessels using trawl gear (from January 20 through December 31). The rationale for maintaining the current trawl fishing season for Amendment 80 vessels is based on the fact that the vast majority of the legal landings used to generate the QS allocated under the Program were caught during the trawl fishery. Allowing Amendment 80 vessels to harvest prior to January 20 would increase the risk for gear conflicts with existing fisheries (e.g., fixed gear Pacific cod fisheries), run counter to specific protection measures for Steller sea lions, and provide a harvest opportunity that was not previously available to non-AFA trawl catcher/processors.

4. Compliance With Steller Sea Lion Protection Measures

Nothing in the Program would modify existing restrictions to protect Steller sea lions (*Eumetopias jubatus*). Amendment 80 cooperatives and vessels would continue to be subject to area closures and seasonal harvest limits established as part of the Steller sea lion protection measures. Primarily, these measures would continue to affect catch of Atka mackerel and Pacific cod because these species are identified as key prey species for Steller sea lions and are subject to more restrictive management than other groundfish species.

As an example, Steller sea lion protection measures seasonally

apportion the Atka mackerel and Pacific cod ITAC to disperse directed fishery harvests during the fishing year. Temporally dispersing harvests reduces potentially adverse effects on Steller sea lion populations from the groundfish fisheries. NMFS would issue an amount of ''A season CQ'', and ''B season CQ'' for Atka mackerel in proportion to the amount of ITAC assigned to each season. A CQ permit issued for the B season could not be used to catch Atka mackerel in the A season. However, if a cooperative did not fully use it's A season CQ permit during that season, the remaining CQ amount could be used during the B season, subject to the total CQ limit for that cooperative. Similar measures would apply to Pacific cod CQ permits. These provisions would ensure that harvests of Atka mackerel and Pacific cod by Amendment 80 cooperatives do not exceed seasonal harvest limits consistent with the Steller sea lion protection measures. The seasonal and ITAC apportionments are specified in the general limitations at 50 CFR 679.20(a).

Additionally, Amendment 80 vessels wishing to harvest Atka mackerel would continue to be subject to harvest limit area (HLA) regulations under § 679.20(a)(8)(ii)(C). Those regulations require vessels to register to fish for Atka mackerel in either Area 542 or 543 and prohibit those vessels from participating in any groundfish directed fishery until the first HLA fishery is closed. For purposes of applying these restrictions, NMFS would continue to define directed fishing as that term is defined under § 679.2. Amendment 80 vessels harvesting CQ and ITAC in the Atka mackerel fishery in Area 542 or 543 must comply with the existing HLA requirements at § 679.20(a)(8)(iii)(E).

Amendment 80 vessels fishing under a CQ permit could catch and retain Amendment 80 species, including Atka mackerel and Pacific cod during the entire fishing year provided there is adequate CQ. NMFS would not open and close directed fishing for Amendment 80 cooperatives. However, this condition would not alter the method NMFS uses to define directed fishing for purposes of applying Steller sea lion protection measures. Steller sea lion protection measures prohibit a vessel using trawl gear from directed fishing for Atka mackerel, Pacific cod, or pollock after November 1. (See § 679.23(e) for additional detail). For Amendment 80 vessel operators, this requirement would limit the retention of Pacific cod or Atka mackerel greater than an amount that would meet the definition of directed fishing. If an Amendment 80 vessel retains an amount of Atka mackerel or Pacific cod greater than 20 percent of the total groundfish open for directed fishing onboard the vessel, that Amendment 80 vessel would be considered directed fishing for Atka mackerel or Pacific cod for purposes of enforcing Steller sea lion protection measures.

Additionally, Amendment 80 vessels using trawl gear would be restricted from directed fishing for Atka mackerel, Pacific cod, or pollock, as that term is defined in § 679.2, within a specific area during specific times of year. Directed fishing is defined as any fishing that results in retention of any species greater than the maximum retainable amount for that species. Areas subject to directed fishing closures to trawl gear to protect Steller sea lions are described under § 679.22.

5. Recordkeeping and Reporting Requirements

Amendment 80 vessels assigned to Amendment 80 cooperatives would be required to submit catch reports necessary to track catch. In addition to specific M&E requirements detailed under Section XII of this preamble, Amendment 80 vessels would need to submit the following information, which is detailed in the regulatory text in § 679.5 of this proposed rule:

a. Logbook;

b. Check-in/check-out report;

c. Weekly production report (WPR); and

d. Product transfer report (PTR).

NMFS intends to submit a separate proposed rule to require use of an Interagency Electronic Reporting System (IERS) for BSAI groundfish fisheries. If approved, IERS would supersede some of the recordkeeping and reporting requirements proposed in this rule. The IERS is currently required in the BSAI crab fisheries, and is used by processors in the halibut and sablefish IFQ program to report catch electronically in a timely fashion. A detailed description of IERS is available on the NMFS Web site at: *http://www.fakr.noaa.gov/rr/default.htm.*

An Amendment 80 cooperative would be required to submit by March 1 of each year an annual Amendment 80 cooperative report detailing the use of the cooperative's CQ and fishing activities during the prior calendar year. The first annual cooperative report would be due on March 1, 2009, and every March 1 thereafter. Section 679.5 in the proposed regulatory text details the information that would be required in the report. Briefly, this information includes the following:

- The cooperative's actual retained and discarded catch of CQ, and GOA sideboard limited fisheries (if applicable) by statistical area and on a vessel-by-vessel basis;
- A description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated; and
- A description of any actions taken by the cooperative in response to any members that exceeded their catch as allowed under the Amendment 80 cooperative agreement.

G. Joint and Several Liability

As with other cooperative-based LAPPs (e.g., Central GOA Rockfish Program) NMFS would enforce violations of an Amendment 80 cooperative jointly and severally on the members of the cooperative. Each member of an Amendment 80 cooperative would be subject to joint and several liability for any violations of the Program regulations while fishing under authority of a CQ permit. This liability could extend to any persons who are hired to catch or receive CQ assigned to a Amendment 80 cooperative. Each member of an Amendment 80 cooperative would be responsible for ensuring that all members of the cooperative comply with all regulations applicable to fishing under the Program. Joint and several liability encourages better compliance by ensuring that members of an Amendment 80 cooperative would not be immune from legal responsibility from violations of the regulations that would directly benefit them.

H. Rollover of Initial Total Allowable Catch (ITAC), Incidental Catch Allowance (ICA), and PSC From the BSAI Trawl Limited Access Sector

To reduce the possibility that a substantial portion of the ITAC of Amendment 80 species is unharvested, or PSC is unused, NMFS would have the authority to rollover any projected unharvested portion of ITAC or ICA or unused PSC from the BSAI trawl limited access sector to the Amendment 80 sector under specific conditions. Based on historic and current catch patterns analyzed in the draft EA/RIR/IRFA prepared for this action, a portion of the Amendment 80 species ITAC or ICA assigned to the BSAI trawl limited access sector is likely to be unharvested or unused. Similarly, it is possible that a portion of the halibut PSC or crab PSC assigned to the BSAI trawl limited access sector would not be fully used if that sector continues to target species such as pollock that have relatively low PSC use rates. The proposed rule would provide NMFS the flexibility to implement rollovers on a species-by-

species basis, or to rollover different species at different times of the year to accommodate the fishing patterns of Amendment 80 cooperatives.

Although the harvest patterns of non-pollock groundfish by participants in the BSAI trawl limited access sector have varied, the rollover provision would help ensure that fishery resources would be allocated and available for harvest to the extent practicable. Recently, favorable stock abundance and market conditions in other fisheries such as pollock and Pacific cod have encouraged non-Amendment 80 sector participants to target these stocks. These conditions are likely to continue for the foreseeable future and the emphasis on targeting pollock and Pacific cod is unlikely to shift soon.

The Program would maximize the likelihood that a rollover would be used by assigning that rollover only to Amendment 80 cooperatives and not to the Amendment 80 limited access fishery. Amendment 80 cooperatives are likely to be more efficient at harvesting small allocations through their cooperative arrangements, whereas the Amendment 80 limited access fishery is likely to be less efficient as it harvests under a race for fish. The purpose of the rollover is to encourage efficient harvest of allocated resources, and allocating to the Amendment 80 limited access fishery would be unlikely to accomplish that goal.

1. Criteria for Rolling Over ITAC, ICA, or PSC

Before rolling over any portion of ITAC, ICA, or PSC, NMFS would carefully review several criteria to ensure that the BSAI trawl limited access sector would not be adversely affected. Specifically, NMFS would consider the following factors:

- The risk of biological harm to a groundfish species or species group;
- The risk of socioeconomic harm to other domestic fishery participants;
- The impact that the allocation might have on the socioeconomic well-being of Amendment 80 cooperatives;
- Current catch and PSC use in the BSAI trawl limited access sector;
- Historic catch and PSC use in the BSAI trawl limited access sector;
- Harvest capacity and any stated intent on the future harvesting patterns of vessels in the BSAI trawl limited access sector;
- Administrative requirements to reissue CQ permits; and
- Any other relevant biological, socioeconomic, or administrative factors.

NMFS would review the potential of rolling over ITAC, ICA, or PSC periodically during the year. The Council recommended reviews on or before May 1 and August 1 each year, and at other times after August 1 as NMFS deems appropriate. This phrasing used by the Council has been interpreted to give NMFS broad latitude in determining the timing of a rollover. NMFS would consider rollover provisions at its discretion.

2. Rollover Provisions for ITAC and ICA Other Than Pacific Cod

The amount of ITAC or ICA of an Amendment 80 species assigned to the BSAI trawl limited access sector that would be reallocated as CQ to an Amendment 80 cooperative would equal the ratio of CQ initially assigned to the cooperative as a proportion of all CQ initially assigned to all cooperatives for that calendar year. For example, if NMFS rolled over Atka mackerel ICA from the BSAI trawl limited access sector to Amendment 80 cooperatives, a cooperative that was initially issued 10 percent of the Atka mackerel CQ at the start of the fishing year would receive 10 percent of this rollover CQ.

This method for assigning rollover CQ would reduce administrative burdens and speed reissuance of CQ. For example, if an intercooperative transfer is pending at the time a CQ rollover is planned, apportioning the rollover CQ to cooperatives based on the amount of CQ initially issued to that cooperative would avoid potential delays. Otherwise, to ensure that the amount of rollover CQ is properly assigned, NMFS would likely wait until the transfer is reviewed and approved, which could further delay issuance of rollover CQ. The following formula describes the proposed rollover allocation to a cooperative:

Amount of rollover CQ issued to an Amendment 80 cooperative = Amount of Amendment 80 species available for reallocation to Amendment 80 cooperatives × (Amount of CQ for that Amendment 80 species initially assigned to that Amendment 80 cooperative/Σ CQ for that Amendment 80 species initially assigned to all Amendment 80 cooperatives).

3. Rollover Provisions for Pacific Cod

Section IV of this preamble describes in detail the rollover provisions that would apply to Pacific cod should Amendment 85 be implemented. That discussion is not repeated here.

4. Rollover Provisions for Halibut PSC

If, during a fishing year, NMFS reallocates halibut PSC from the BSAI trawl limited access sector to Amendment 80 cooperatives as rollover CQ, NMFS would issue a revised CQ permit to each Amendment 80 cooperative according to the following procedure.

First, NMFS would multiply the amount of halibut PSC limit to be reallocated by 95 percent (0.95). This yields the maximum amount of halibut PSC that may be rolled over to Amendment 80 cooperatives. The rollover amount of halibut PSC would be reduced by five percent as a means of reducing bycatch and leaving some additional halibut PSC unused or ''in the water.''

After this five percent deduction is made, the amount of halibut PSC rolled over to each Amendment 80 cooperative would be calculated using the following formula:

Amount of halibut PSC rollover CQ reallocated to an Amendment 80 cooperative = Amount of halibut PSC CQ available for reallocation to Amendment 80 cooperatives × (Amount of halibut PSC CQ initially assigned to that Amendment 80 cooperative/Σ halibut PSC CQ assigned to all Amendment 80 cooperatives).

5. Rollover Provisions for Crab PSC

If, during a fishing year, NMFS reallocates a crab PSC from the BSAI trawl limited access sector to Amendment 80 cooperatives as CQ, NMFS would issue a revised CQ permit to each Amendment 80 cooperative according to the following procedure:

Amount of crab PSC rollover CQ reallocated to an Amendment 80 cooperative = Amount of crab PSC CQ available for reallocation to Amendment 80 cooperatives × (Amount of that crab PSC CQ initially assigned to that Amendment 80 cooperative / Σ that crab PSC CQ assigned to all Amendment 80 cooperatives).

Because the Program substantially reduces the amount of crab PSC that is available for use by the Amendment 80 sector (see Section IV of this preamble), the Council determined that and additional PSC reductions would not be required when crab PSC is rolled over. Therefore, NMFS would not deduct a portion of the crab PSC that is rolled over to Amendment 80 cooperatives, as is proposed for halibut PSC rollovers (i.e., there is no five percent reduction).

I. CQ Transfers

An Amendment 80 cooperative may transfer all or part of its CQ to another Amendment 80 cooperative. Transfer provisions have been part of all LAPPs adopted by NMFS in the North Pacific, and the Program would provide the same flexibility for Amendment 80 cooperatives to trade species for harvest or PSC for use as required for particular fishing operations or to accommodate unforeseen circumstances.

The CQ intercooperative transfer would require the submission of an application for CQ transfer which would be available on the NMFS Web site at *http://www.fakr.noaa.gov*. NMFS would review and approve the transfer application to ensure proper catch accounting. NMFS would notify the transferor and transferee once the application has been received and approved. A transfer of CQ would not be effective until approved by NMFS. The proposed regulatory text (see § 679.92(g)) details the information that would have to be submitted in an application for CQ transfer. The requirements are briefly summarized here:

- Identification of transferor;
- Identification of transferee;
- Identification of CQ type and amount to be transferred;
- Identification of Amendment 80 cooperative member receiving CQ. NMFS would require the name of the cooperative member(s) and the amount of Amendment 80 species CQ applied to each member, for purposes of applying Amendment 80 species use caps;
- Certification of transferor. The Amendment 80 cooperative transferor's designated representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief; and
- Certification of transferee. The Amendment 80 cooperative transferee's designated representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief.

J. Fishing Non-Allocated Groundfish Species

Non-pollock groundfish species not allocated as Amendment 80 species to the Program (e.g., Greenland turbot) could be harvested by vessels assigned to an Amendment 80 cooperative if NMFS establishes a TAC for those species that would be sufficient to allow directed fishing during the annual harvest specification process. An Amendment 80 cooperative could only directed fish on such non-pollock groundfish species if the cooperative has sufficient Amendment 80 species and PSC CQ to account for any incidental harvest of Amendment 80 species or PSC used while directed fishing for that non-allocated species.

Although NMFS would monitor the use of any CQ assigned to a cooperative, vessel operators in an Amendment 80 cooperative could choose to use some amount of CQ for incidental catch needs while targeting non-allocated species. This could increase the potential for participants in Amendment 80 cooperatives to modify current harvest patterns or the share of harvests of non-allocated groundfish species among vessels using various gear types (e.g., a greater percentage of the Greenland turbot TAC could be harvested by Amendment 80 vessels using trawl gears than is currently the case). This issue was reviewed by the Council during the development of the Program. The Council did not recommend specifically restricting participation of Amendment 80 cooperatives in these non-allocated groundfish fisheries due to the limited percentage of the TAC currently harvested in these fisheries (e.g., Alaska plaice, arrowtooth flounder, Greenland turbot) and the lack of a clear race for fish.

VIII. Amendment 80 Limited Access Fishery

A. Membership in the Amendment 80 Limited Access Fishery

The Amendment 80 limited access fishery would be comprised of Amendment 80 QS holders who are unwilling or unable to form cooperative arrangements with other Amendment 80 QS holders. The Amendment 80 limited access fishery would be assigned the amount of ITAC, crab PSC, and halibut PSC assigned to the Amendment 80 sector that remains after allocations of CQ have been made to Amendment 80 cooperatives. Unlike Amendment 80 cooperatives, participants in the Amendment 80 limited access fishery would not receive an exclusive harvest privilege and would continue to compete for the ITAC and use of crab PSC and halibut PSC. The specific process for issuing ITAC and PSC to cooperatives is described in Section VII of this preamble and is not reiterated here.

Amendment 80 QS holders, vessel owners, and LLP license holders who participate in the Amendment 80 limited access fishery could not assign or otherwise use those QS permits, Amendment 80 vessels, or LLP licenses to fish for an Amendment 80 cooperative during the same calendar year for the remainder of the calendar year.

B. Application for the Amendment 80 Limited Access Fishery

Amendment 80 QS holders wishing to assign their QS to the limited access fishery would need to submit an annual application, by November 1 of the year prior to fishing. The application process and contents are similar to those proposed for the application for CQ described under Section VII of this preamble. Specific proposed requirements are described in § 679.91(b) of the proposed regulatory text. In order to participate in the Amendment 80 limited access fishery, a complete application would have to be submitted in a timely manner. Failure to submit a complete application would prevent the use of any QS permits, Amendment 80 vessels, or LLP licenses from being used to fish in the Amendment 80 sector. This requirement to submit a complete application would encourage compliance and ensure that Amendment 80 sector ITAC is properly allocated for the upcoming fishing season.

C. Management of the Amendment 80 Limited Access Fishery

1. Fishery Openings and Closings

NMFS would manage openings and closings of the Amendment 80 limited access fishery much as it currently manages the existing fisheries. NMFS would open directed fishing for an Amendment 80 species only if there is sufficient ITAC assigned to the Amendment 80 limited access fishery. In addition, halibut PSC and crab PSC assigned to the Amendment 80 limited access fishery would continue to be apportioned among target fishery categories, and halibut PSC would continue to be based on seasonal apportionments as established in § 679.21.

NMFS would close a fishery for an Amendment 80 species if the ITAC assigned to the fishery is taken, or projected to be taken. Similarly, NMFS could close the Amendment 80 limited access fisheries if the halibut PSC or crab PSC limit assigned to a target fishery category within the Amendment 80 limited access fishery is taken, or projected to be taken. Catch or PSC use inside State waters would accrue against the ITAC or PSC limit assigned to an Amendment 80 limited access fishery consistent with the catch accounting procedures for CQ use by Amendment 80 cooperatives and other LAPPs (e.g., Central GOA Rockfish Program).

2. Steller Sea Lion Protection Measures

Steller sea lion protection measures would continue to apply to Amendment 80 vessels assigned to the Amendment 80 limited access fishery, including seasonal harvest limits for Akta mackerel and Pacific cod, Atka mackerel HLA limits, and restrictions on directed fishing for Atka mackerel and Pacific cod using trawl gear after November 1, and in specific areas as described under § 679.22. See Section VII of this preamble for more detail on this issue.

3. GRS Requirements

Amendment 80 vessels assigned to the Amendment 80 limited access fishery would be subject to the GRS on an individual vessel basis, including Amendment 80 vessels that are less than 125 ft (38.1 m) LOA. As noted in the IRFA prepared to support this action (see **ADDRESSES**), under the Program, Amendment 80 vessels that were previously exempted from the GRS (i.e., non-AFA trawl catcher/processor vessels less than 125 ft (38.1 m) LOA) due to the compliance costs for these vessels would have the option of participating in a cooperative to help offset any costs that may be associated with the GRS.

4. Monitoring and Enforcement (M&E) Requirements

The M&E requirements and recordkeeping and reporting provisions that would be applicable to Amendment 80 vessels assigned to an Amendment 80 cooperative also apply to the Amendment 80 limited access fishery. The specific M&E requirements applicable to Amendment 80 vessels fishing in the Amendment 80 limited access fishery are described in greater detail in Section XII of this preamble. NMFS notes that Amendment 80 vessels fishing in the Amendment 80 limited access fishery would be required to submit the same recordkeeping and reporting documents required for Amendment 80 vessels assigned to Amendment 80 cooperatives with one exception, the annual cooperative catch report would not be required. See Section VII of this preamble for a proposed list of recordkeeping and reporting requirements.

D. ITAC and PSC Assigned to the Amendment 80 Limited Access Fishery

1. Amount of ITAC and PSC Assigned

The Amendment 80 limited access fishery would be assigned that amount of Amendment 80 sector ITAC, crab PSC, and halibut PSC not assigned to the Amendment 80 cooperatives. Section VII of this preamble describes the allocation to cooperatives and the Amendment 80 limited access sector. Section IV of this preamble provides a detailed example of the allocation of ITAC and PSC to the Amendment 80 limited access fishery. As noted in Sections IV and VII of this preamble, Amendment 80 vessels assigned to the Amendment 80 limited access fishery would be restricted from processing catch assigned to either the BSAI trawl limited access fishery, or an Amendment 80 cooperative. This requirement would appear to best meet the Council intent of providing clear and distinct allocations, minimize the complexities of tracking multiple quota types onboard a single vessel, and reduce complications that could arise when assessing minimum GRS standards on a vessel that is receiving catch subject to different regulatory requirements. Specifically, Amendment 80 cooperatives are assessed the GRS on an aggregate basis, whereas Amendment 80 vessels in the Amendment 80 limited access fishery do not. NMFS has not proposed a mechanism to assess management of these conflicting GRS standards on the same vessel.

2. Economic Data Report (EDR) Submission

Effective in 2009, an Amendment 80 QS holder wishing to participate in the Amendment 80 limited access fishery would need to submit a timely and complete EDR, as described in Section XIII of this preamble. If an Amendment 80 QS holder failed to submit a timely and complete EDR, NMFS would not issue that person an Amendment 80 limited access fishery permit for that calendar year.

E. Fishing for Non-Allocated Groundfish Species

Non-pollock groundfish species not allocated to the Program would be subject to status quo management for participants in the Amendment 80 limited access fishery. NMFS would establish the TAC for these species during the annual harvest specification process. The Council would also recommend the amount of PSC that is assigned to the Amendment 80 limited access fishery participants while harvesting non-allocated groundfish fisheries through the annual specification process.

IX. Use Caps

A. LAPPs and Use Caps

LAPPs developed in the North Pacific have included specific provisions to establish limits, or use caps, on the amount of consolidation of harvest or processing privileges. Use caps have been incorporated in LAPPs to reduce the risk of excessive consolidation to a few persons, which could unduly restrict the ability of smaller competitors to effectively compete. The Program would include use caps consistent with past practice and consistent with the MSA that requires consideration of use limits to prevent a person from holding an excessive share of any harvest privilege. The levels of the use caps established under the Program were deliberated throughout the Program's development (see draft EA/RIR/IRFA in **ADDRESSES** for additional detail). The specific use cap limits that would be established under the Program were designed with the goal of constraining the Amendment 80 QS holders likely to receive the greatest amount of QS in the initial allocation process from using more than this amount.

The Program would establish use caps that apply to a person, and another use cap that applies to the operation of an Amendment 80 vessel. Specifically, there would be two types of person use caps: one type of person use cap would limit the amount of Amendment 80 QS units that a person could hold on his or her Amendment 80 QS permits; the other type of person use cap would limit the amount of Amendment 80 species CQ that may be used by a person. The vessel use cap would limit the amount of the Amendment 80 sector ITAC that could be harvested on an Amendment 80 vessel.

The regulations would prohibit persons from exceeding the person and vessel use caps. The regulations would provide one exemption to this prohibition in the case of person use caps. A person could exceed a person use cap only if that person received an initial allocation of QS that exceeds the use cap. A provision that allows a person to exceed a person use cap is commonly known as a ''grandfather clause'' in other LAPPs. The Program's grandfather clause would apply only to person use caps, not to the vessel use cap. The Program would not apply a grandfather clause to the Amendment 80 vessel use cap because data reviewed by the Council and NMFS indicate that no Amendment 80 vessel been used to harvest more Amendment 80 species than the proposed vessel use cap historically, and there does not appear to be any need to exempt Amendment 80 vessels from this proposed restriction.

B. Person Use Caps

1. QS Holding Cap—30 Percent Cap

With the exception of person's qualifying under the proposed grandfather clause, a person would not be permitted to individually or collectively hold more than 30 percent of the aggregate Amendment 80 QS units initially assigned to the Amendment 80 sector. As with other LAPPs (e.g., Central GOA Rockfish Program), NMFS would use the Amendment 80 initial QS pool as the basis for calculating the person QS use cap. Because the Amendment 80 initial QS pool would not fluctuate due to appeals, enforcement actions, or other operations of law, it would provide a fixed measure of the maximum amount of QS that could be held by a person.

The number of Amendment 80 QS units for each Amendment 80 species in the Amendment 80 initial QS pool would be based on the Amendment 80 official record as of December 31, 2007. Fixing the initial QS pool by this date would give NMFS time to review applications for QS, resolve those claims, and adjust the Amendment 80 official record accordingly. Once the Amendment 80 initial QS pool is determined, the person QS use cap would be set at 30 percent of the total aggregate QS units for all Amendment 80 species. Section XI of this preamble provides a detailed example of how the Amendment 80 initial QS pool would be established and provides an estimate of the 30 percent cap.

2. QS Holding Cap Exemption—The Grandfather Clause

A person would be allowed to exceed the QS holding cap only if that person receives Amendment 80 QS permits based on Amendment 80 legal landings derived from Amendment 80 vessels owned, or Amendment 80 LLP licenses held by that person prior to June 9, 2006, and at the time of application for Amendment 80 QS. This provision is commonly known as a grandfather clause, and has been applied in all other North Pacific LAPPs to accommodate harvesters likely to receive relatively large harvest shares, but restrict them from increasing their QS holdings beyond the amount initially received.

A person who wishes to acquire an Amendment 80 vessel or Amendment 80 LLP license and any legal landings assigned to that vessel or LLP license after June 9, 2006 (the date of final Council action recommending Amendment 80), would not be allowed to hold Amendment 80 QS in excess of the 30 percent cap. The Council recommended these conditions to prevent speculative purchases of any Amendment 80 vessels or Amendment 80 LLP licenses that could give rise to Amendment 80 QS after the date of final Council action. Prior to June 9, 2006, a person could not have reasonably predicted the precise cap that would apply, and the transfer of purchases of any Amendment 80 vessels or Amendment 80 LLP licenses prior to that date would not be limited.

3. CQ Use Cap—30 Percent Limit

The second type of person use cap would limit the amount of CQ that a person could use. Each year QS could yield either CQ that would be assigned to a cooperative, or ITAC that would be assigned to the Amendment 80 limited access fishery. Because CQ could be used exclusively by one person within a cooperative, the Program would limit the amount of CQ that could be used by a person. The limit on the amount of CQ a person can use would be calculated by summing the total amount of CQ that is derived from 30 percent of the Amendment 80 initial QS pool. A person's CQ use would include the amount of CQ that results from a person's QS holdings, and any amount of CQ assigned to that person through an intercooperative transfer of CQ. Even though a member of a cooperative may not directly harvest the CQ derived from his or her QS allocation, NMFS would consider the act of assigning QS and generating CQ for use by a cooperative as that person's use of CQ.

As part of an intercooperative transfer of CQ, NMFS would require CQ to be assigned to a specific member(s) of the cooperative receiving CQ to meet the overall goal of the CQ use cap—prevention of undue consolidation of harvest privileges. This would allow NMFS to track compliance with the use cap.

Because ITAC can fluctuate, and therefore the amount of CQ derived from each QS unit would fluctuate, the amount of CQ used by a person would need to be scaled to the amount of QS that gave rise to that CQ. For example, 30 percent of the total Amendment 80 QS pool would be a fixed amount of QS units. However, the amount of CQ in metric tons that would be generated from that 30 percent of the Amendment 80 initial QS pool would vary with the total ITAC of all Amendment 80 species, and the relative ITAC among each Amendment 80 species. Determining how much CQ a person is using is particularly problematic in the case of assigning CQ to a person in an intercooperative transfer. The metric tons of CQ derived from one unit of Atka mackerel QS, may differ from the metric tons of CQ derived from one unit of Aleutian Islands POP QS. If a cooperative transferred 10 metric tons of Atka mackerel CQ, that amount of Atka mackerel CQ could have been derived from more QS units than a transfer of 10 metric tons of AI POP CQ.

To ensure that CQ assigned to a cooperative member (i.e., used by that person) is not unduly affected by such fluctuations in ITAC, NMFS would calculate the CQ use cap by determining the amount of Amendment 80 QS units that were necessary to generate that amount of CQ for that Amendment 80 species. This amount of QS units would be added to the amount of aggregate Amendment 80 QS units held by the cooperative members to whom that CQ is assigned. If that summed amount of QS units is greater than 30 percent of the aggregate Amendment 80 initial QS pool for all Amendment 80 species, NMFS would not approve the intercooperative CQ transfer. For example, if the QS holding cap were 100 QS units, 100 QS units being equivalent to 30 percent of the Amendment 80 initial QS pool for all Amendment 80 species, and a cooperative member held 60 QS units, that cooperative member could not be assigned an amount of CQ that is greater than an amount derived from 40 QS units. If 80 Atka mackerel QS units yielded 10 metric tons of CQ, the cooperative member could only be assigned 40 QS units, equivalent to 5 metric tons of Atka mackerel CQ, in order to avoid exceeding the CQ use cap, and receive approval from NMFS for the transfer.

C. Vessel Use Cap

The Program would impose a 20 percent vessel use cap on Amendment 80 vessels. The vessel use cap would prevent consolidation of catch onboard Amendment 80 vessels. Unlimited consolidation could adversely affect harvesting crew through lost employment opportunities. In proposing the vessel use cap, the Council considered historic harvest levels aboard the existing Amendment 80 vessels to balance economic efficiency goals and employment opportunities. Those considerations are detailed in the draft EA/RIR/IRFA prepared for this proposed action (see **ADDRESSES**).

Vessel use caps would apply only to Amendment 80 species and would be calculated using the aggregate ITAC for all Amendment 80 species. An Amendment 80 vessel would be prohibited from catching an amount of Amendment 80 species in an amount greater than 20.0 percent of the aggregate Amendment 80 species ITACs assigned to the Amendment 80 sector.

This amount would include ITAC that is assigned as CQ and to the Amendment 80 limited access fishery. To calculate the vessel use cap, NMFS would use the following procedure:

a. Determine the ITAC assigned to the Amendment 80 sector for each Amendment 80 species;

b. Sum the ITACs for each Amendment 80 species to derive a total Amendment 80 sector ITAC for all Amendment 80 species; and

c. Multiply the total Amendment 80 sector ITAC by 20 percent (0.2). This amount would represent the maximum tonnage of all Amendment 80 species that an Amendment 80 vessel could catch.

A vessel owner and operator would be subject to possible enforcement action if a vessel is used to catch more Amendment 80 species in excess of the vessel use cap in any calendar year. The vessel use cap would not apply to the halibut PSC or crab PSC assigned to the Amendment 80 sector or to non-allocated species in the BSAI, such as arrowtooth flounder.

D. Transfer Limitations

1. QS Transfer Limitations

NMFS would not approve transfers of Amendment 80 QS permits if the transfer would cause a person to exceed the 30 percent QS holding cap. If an Amendment 80 QS holder is grandfathered above the QS holding cap, NMFS would not approve any Amendment 80 QS permit transfers to that person unless and until that person's holdings of aggregate Amendment 80 QS in that sector are reduced to an amount below the QS use cap.

If an Amendment 80 QS holder is grandfathered above the 30 percent QS holding cap and transfers an Amendment 80 QS permit to another person, the transferor could not hold more than the greater of either (1) the amount of Amendment 80 QS units held by the transferor after the transfer if the amount of QS held is still greater than the use cap: or (2) the amount equal to the use cap.

2. CQ Transfer Limitations

NMFS would not approve transfers of CQ to a person if it would cause that person to exceed a CQ use cap. Specifically, NMFS would not approve an application to transfer CQ if that transfer application designated a person who is limited by the CQ use cap to receive that CQ. Any person limited by the CQ use cap could not receive any additional CQ unless and until the CQ assigned to that person is below the CQ use cap.

X. Gulf of Alaska (GOA) Sideboard Limits

A. Need for GOA Sideboard Limits

In the development of North Pacific LAPPs, NMFS and the Council have attempted to mitigate potentially adverse effects on non-LAPP fisheries that could be caused by the increased economic and operational efficiencies that LAPPs can provide participants. Specifically, once a harvest privilege is allocated, QS holders may consolidate their operations through cooperative management and use Amendment 80 vessels in other fisheries. This would increase competition and the race for fish in those fisheries. The Program would establish a suite of protection measures, commonly called sideboard limits, for non-Program participants in other federally managed groundfish fisheries.

The Council identified the GOA as the area most likely to be at risk of increased harvest pressures with implementation of the Program. The GOA would likely be subject to increased fishing pressure from Amendment 80 vessels, without sideboards limiting their harvest, because of (1) the harvest patterns of the Amendment 80 sector, (2) the lack of other fisheries in the BSAI that can be targeted by Amendment 80 vessels (i.e, pollock is managed under the AFA, crab is managed under the BSAI Crab Rationalization Program, and Pacific cod is proposed to be allocated to specific sectors under Amendment 85), and (3) the lack of specific gear or sector allocations for many species in the GOA. Therefore, the Program includes sideboard limit protections for the GOA groundfish fisheries.

B. GOA Sideboard Management

1. Overview

Generally, sideboard limits in other LAPPs, such as the Central GOA Rockfish Program, have been managed so that any vessel or license that gave rise to QS, would be subject to a sideboard limit. A linkage between vessel and LLP license prevents a vessel operator from assigning a license, derived from a vessel subject to sideboard limits, to a different vessel in order to circumvent sideboard restrictions. In most North Pacific fisheries, an LLP license with the necessary endorsement is more difficult to obtain than a vessel and limiting the use of LLP licenses is necessary to reduce the risk for an increased race for fish.

The Program would maintain this method for managing sideboard limits. It is important to note that the number of Amendment 80 LLP licenses would be limited to the LLP licenses originally issued for an Amendment 80 vessel as shown in Table 31 to part 679 in the proposed regulatory text, and any LLP licenses named as Amendment 80 LLP licenses in an application for QS. Additionally, an Amendment 80 vessels would be required to use an Amendment 80 LLP while fishing in the BSAI or GOA.

NMFS would apply GOA groundfish sideboard limits to all catch by Amendment 80 vessels in the GOA. Catch of a GOA sideboard species during a directed fishery as well as incidental catch of a GOA sideboarded species, such as Pacific cod caught during a rex sole fishery, would apply against the GOA sideboard limit for that species. In addition, any catch of a GOA sideboard species or halibut PSC used within State waters during the State parallel fishery would apply against the sideboard limit. State parallel fisheries occur in State waters and are opened at the same time as Federal fisheries in Federal waters. State parallel fishery harvests are considered part of the Federal TAC and federally permitted vessels move between State and Federal waters during the concurrent, or parallel, State and Federal fisheries. The State opens parallel fisheries through emergency order by adopting the groundfish seasons, bycatch limits, and allowable gear types that apply in the adjacent Federal fisheries. Accounting for catch in the State parallel fishery ensures that all catch is debited against a sideboard limit whether that harvest occurs in State or Federal waters.

The Program would establish three types of GOA sideboard limits.

- The GOA groundfish sideboard limit would restrict the maximum amount of pollock, Pacific cod, and rockfish that Amendment 80 vessels could harvest. The GOA groundfish sideboard limits would restrict the catch of Amendment 80 vessels to their average aggregate catch from 1998 through 2004.
- The GOA halibut PSC limit, would restrict the maximum amount of halibut PSC that all Amendment 80 vessels could use based on historic halibut PSC use during 1998 through 2004 with some modification for specific conditions.
- The GOA flatfish fishery prohibition, would restrict the number of Amendment 80 vessels and Amendment 80 LLP licenses that could be used to conduct directed fishing for flatfish.

Detailed information about historic catch and halibut PSC use of the

Amendment 80 sector in the GOA and the basis for these sideboard limits is included in the draft EA/RIR/IRFA prepared for this proposed action (see **ADDRESSSES**).

During the development of the Program, the data reviewed by the Council indicated that at least one Amendment 80 vessel had a unique harvest pattern in the GOA, that could warrant specific GOA sideboard measures for Amendment 80 vessels with similar harvest patterns. NMFS has initially identified one Amendment 80 vessel, the F/V GOLDEN FLEECE that met these criteria. The F/V GOLDEN FLEECE, and any other vessel with similar harvest patterns that has not yet been identified through NMFS's data, would be prohibited from directed fishing for GOA pollock, Pacific cod, and rockfish, but would be exempted from the GOA halibut PSC sideboard limit applicable to all other Amendment 80 vessels. NMFS notes that the proposed regulations refer specifically to the F/V GOLDEN FLEECE whose owner has identified his vessel as meeting these criteria. Should other vessels be determined to meet the criteria recommended by the Council for these specific GOA sideboard measures during the proposed rule comment period, NMFS would modify the regulations to accommodate any such vessel. Additionally, references to the F/V GOLDEN FLEECE in this preamble would apply to any similarly situated vessel that may be identified.

C. GOA Groundfish Sideboard Limits

All Amendment 80 vessels, other than the F/V GOLDEN FLEECE, would be collectively limited to catching an amount of groundfish no greater than the limits shown in Table 37 to part 679 in the proposed regulatory text.

NMFS would manage the GOA groundfish sideboard limits in the aggregate for all Amendment 80 vessels. Once a sideboard limit for a groundfish species is reached, or projected to be reached, NMFS would close that fishery to directed fishing by Amendment 80 vessels. Amendment 80 vessels could retain incidental catch of that sideboard species subject to existing maximum retainable amount (MRA) regulations while targeting other groundfish fisheries that are not closed to directed fishing. If the rate of incidental catch of a GOA groundfish sideboard limited species is expected to be high relative to the sideboard limit, NMFS would limit directed fishing for this species by Amendment 80 vessels to accommodate this incidental catch. NMFS would manage the GOA sideboard limits with the goal of keeping all directed and incidental catch of a sideboard species by Amendment 80 vessels below the sideboard limit.

As noted in Table 37 to part 679 in the proposed regulatory text, catch of Central GOA Pacific ocean perch, pelagic shelf rockfish, and northern rockfish is subject to regulation under the Central GOA Rockfish Program. The Central GOA Rockfish Program limits directed fishing in these fisheries to participants qualified under that program. A number of Amendment 80 participants are qualified to participate in the rockfish program, and would be subject to the regulations in effect for that program when fishing. Amendment 80 participants not qualified under the rockfish program would be excluded from conducting directed fishing for Pacific ocean perch, pelagic shelf rockfish, and northern rockfish in the Central GOA.

Under the Program, The F/V GOLDEN FLEECE would be prohibited from directed fishing for pollock, Pacific cod, Pacific ocean perch, pelagic shelf rockfish, and northern rockfish species in the GOA (see Part F of this section below).

D. GOA Halibut PSC Sideboard Limits

The Program would establish halibut PSC sideboard limits in the GOA for Amendment 80 vessels except the F/V GOLDEN FLEECE. NMFS manages halibut PSC limits in the GOA by setting a limit on halibut PSC use for trawl gear through the annual harvest specification process, currently 2,000 mt. NMFS subdivides this amount of halibut PSC by the number of seasons (currently five), and into two species complexes, the shallow-water and the deep-water fishery species complexes NMFS would establish Amendment 80 halibut PSC sideboard limits that are apportioned among seasons and fishery complexes through the annual specification process.

A shallow-water halibut PSC sideboard limit would limit the use of halibut PSC in the shallow-water fishery complex, which includes pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species.'' A deep-water halibut PSC sideboard limit would limit the use of halibut PSC in the deep-water fishery complex which includes all species not in the shallow-water complex: all rockfish species, rex sole, deep-water flatfish, sablefish, and arrowtooth flounder.

The proposed halibut PSC sideboard limits would be based on the historic use of halibut PSC of all Amendment 80 vessels, except the F/V GOLDEN FLEECE in each season, and by fishery complex during the period from 1998 through 2004. The halibut PSC sideboard limits that would be established are slightly lower than historic halibut PSC use by Amendment 80 vessels in the GOA from 1998 through 2004 to accommodate two factors: allocation of halibut PSC CQ under the Central GOA Rockfish Program; and the exemption of the F/V GOLDEN FLEECE from this restriction. Table 10 lists the proposed halibut PSC sideboard limits by fishery complex and season as a percentage of the GOA trawl halibut PSC limit. Table 10 also computes the metric ton amount of the halibut PSC sideboard limit by season based on the current 2,000 mt trawl halibut PSC limit. Because the annual halibut trawl PSC limit is subject to change through the annual harvest specification process, the metric tons displayed in Table 10 are only provided as an example.

TABLE 10.—GOA AMENDMENT 80 SIDEBOARD LIMIT FOR HALIBUT PSC FOR THE AMENDMENT 80 SECTOR USING THE CURRENT 2,000 METRIC TONS OF TRAWL HALIBUT PSC AS AN EXAMPLE

In the . . .	The maximum percentage, and amount in mt, of the total GOA Pacific halibut PSC limit that may be used by all Amendment 80 qualified vessels subject to the halibut PSC sideboard limit in each season is . . .				
	Season 1	Season 2	Season 3	Season 4	Season 5
Shallow-water species fishery complex in the GOA and State parallel fishery.	0.48% ..... 9.6 mt	1.89% ..... 37.8 mt	1.46% ..... 29.2 mt	0.74% ..... 14.8 mt	2.27% 45.4 mt

TABLE 10.—GOA AMENDMENT 80 SIDEBOARD LIMIT FOR HALIBUT PSC FOR THE AMENDMENT 80 SECTOR USING THE CURRENT 2,000 METRIC TONS OF TRAWL HALIBUT PSC AS AN EXAMPLE—Continued

In the . . .	The maximum percentage, and amount in mt, of the total GOA Pacific halibut PSC limit that may be used by all Amendment 80 qualified vessels subject to the halibut PSC sideboard limit in each season is . . .				
	Season 1	Season 2	Season 3	Season 4	Season 5
Deep-water species fishery complex in the GOA and State parallel fishery.	1.15% ..... 23 mt	10.72% ..... 214.4 mt	5.21% ..... 104.2 mt	0.14% ..... 2.8 mt	3.71% 74.2 mt

Many of the participants in the catcher/processor sector in the Central GOA Rockfish Program would be participants in the Amendment 80 Program. NMFS would need to coordinate catch accounting between the Central GOA Rockfish Program and the Amendment 80 sector to avoid unduly constraining participants in either LAPP. NMFS would coordinate management of the two LAPPs by reducing the third season deep-water halibut PSC sideboard limit under the Program by the amount of halibut PSC that is available for allocation as halibut PSC CQ under the Central GOA Rockfish Program. Deep-water halibut PSC from the third season is specifically assigned to support PSC CQ allocations to the catcher/processor sector under the Central GOA Rockfish Program.

Additionally, NMFS would establish regulations that specify that the use of halibut PSC CQ in the Central GOA Rockfish Program would not be debited from the Amendment 80 halibut PSC sideboard limit. Some of the deep-water halibut PSC in the Central GOA is specifically assigned to support PSC CQ allocations to the catcher/processor sector under the Central GOA Rockfish Program. Much of the halibut PSC that was historically used in the deep-water complex during the third season, which begins on July 1, was used in the Central GOA rockfish fisheries. This adjustment would ensure that a Central GOA Rockfish Program participant fishing under a CQ permit would not be constrained by the GOA sideboard limits established under this Program. Amendment 80 vessels not fishing under a Central GOA Rockfish Program CQ permit would continue to be subject to the halibut PSC sideboard limit proposed under this Program.

The percentages listed in Table 10 also have been modified to remove the historic use of halibut PSC attributed to the F/V GOLDEN FLEECE. The F/V GOLDEN FLEECE would not be subject to the Amendment 80 halibut PSC sideboard limits so the historic halibut PSC used by the F/V GOLDEN FLEECE would not be included in the halibut PSC sideboard limit. As with the GOA groundfish sideboard limits, use of halibut PSC in State parallel fisheries would count against the halibut PSC sideboard limit. NMFS would monitor halibut PSC use by fishery complex and season. If the shallow-water halibut PSC sideboard limit is reached, all directed fishing for all species in the shallow-water complex would be closed in the GOA for that season. Similarly, if the deep-water sideboard limit is met, all directed fishing for all species in the deep-water complex is closed in the GOA for that season. NMFS would reopen a fishery complex in the following season with the halibut PSC sideboard limit applicable for that season.

E. GOA Flatfish Fisheries Prohibition

The Program would limit the number of Amendment 80 vessels and Amendment 80 LLP licenses that could be used for directed fishing in GOA flatfish fisheries. During the development of the Program, the Council and NMFS reviewed historic harvest patterns during the 1998 through 2004 qualifying years. The EA/RIR/IRFA developed for this action clearly indicates that a specific group of Amendment 80 vessels traditionally had been used in GOA flatfish fisheries. Specifically, certain Amendment 80 vessels were clearly active in the GOA flatfish fisheries, with more than 10 weeks of conducting directed fishing in the GOA from 1998 through 2004 as recorded on WPRs, and appeared to be substantially more dependent on those fisheries than other Amendment 80 vessels with more sporadic participation.

The Program would reduce fishing pressure in the GOA by Amendment 80 vessels on non-Amendment 80 sector harvesters with substantial flatfish participation by authorizing only those Amendment 80 vessels: (1) With more than 10 weeks conducting directed fishing for GOA flatfish fisheries during 1998 through 2004; and (2) that are designated on an Amendment 80 LLP license that was originally assigned to one of the Amendment 80 vessels meeting that 10 week minimum requirement to be used to directed fish for flatfish in the GOA. Based on the criteria recommended by the Council and NMFS' WPR records, NMFS would establish a list indicating those Amendment 80 vessels and Amendment 80 LLP licenses that could be used to directed fish for GOA flatfish. Table 11 identifies those Amendment 80 vessels and LLP licenses that meet the proposed criteria. NMFS encourages the public to review this proposed list and provide comments during the public comment period (see DATES) to ensure that the proposed list of Amendment 80 vessels and Amendment 80 LLP licenses eligible to directed fish for GOA flatfish is complete and accurate.

TABLE 11.—AMENDMENT 80 VESSELS AND AMENDMENT 80 LLP LICENSES THAT MAY BE USED TO DIRECTED FISH FOR FLATFISH IN THE GOA

Column A: Name of Amendment 80 vessels qualified to directed fish for GOA flatfish	Column B: Amendment 80 LLP licenses that must be used on an Amendment 80 vessel listed in Column A to directed fish for GOA flatfish
ALLIANCE	LLG 2905.
AMERICAN NO I	LLG 2028.
DEFENDER	LLG 3217.
GOLDEN FLEECE	LLG 2524.
LEGACY	LLG 3714.
OCEAN ALASKA	LLG 4360.
OCEAN PEACE	LLG 2138.
SEAFREEZE ALASKA.	LLG 4692.
U.S. INTREPID	LLG 3662.
UNIMAK	LLG 3957.
VAERDAL	LLG 1402.

If an Amendment 80 vessel listed in Table 11 is not designated on an Amendment 80 LLP license also listed in Table 11, that vessel would be prohibited from directed fishing in GOA flatfish fisheries. Similarly, if an Amendment 80 vessel not listed in Table 11 is designated on an Amendment 80 LLP license also listed in Table 11, that vessel also would be

prohibited from directed fishing in GOA flatfish fisheries.

F. Provisions for the F/V GOLDEN FLEECE

During the development of the Program, the Council analyzed harvest patterns of Amendment 80 vessels in the GOA. These data identified at least one vessel with historic harvest patterns during the 1998 through 2004 qualifying years that differed substantially from all other Amendment 80 vessels. Specifically, the Council reviewed catch data that identified at least one vessel with catch in GOA flatfish fisheries in far greater proportion to its catch in the BSAI. This Amendment 80 vessel fished in GOA flatfish fisheries for at least 80 percent of all weeks that the vessel was used to fish during the 2000 through 2003 time period. The draft EA/RIR/IRFA describes the unique harvest history of this vessel in greater detail.

The Council recognized that any vessel that met the 2000 through 2003 GOA flatfish harvest criteria described above was an Amendment 80 vessel primarily dependent on GOA flatfish fisheries. To reduce the potentially adverse effects that the proposed GOA halibut PSC sideboard measures could have on the ability of such a vessel to continue fishing in GOA flatfish fisheries, the Council recommended an exemption to the GOA halibut PSC sideboard limits for any Amendment 80 vessel that met these criteria. Based on data currently available, NMFS has identified only one Amendment 80 vessel, the F/V GOLDEN FLEECE, with the distinctive harvest pattern that would qualify that vessel to be granted an exemption from the GOA halibut PSC sideboard limit. NMFS requests that the public provide comment during the public comment period if an Amendment 80 vessel other than the F/V GOLDEN FLEECE shares the same harvest pattern in the GOA flatfish fisheries and should be eligible for a similar exemption.

The Program would accommodate the harvest activities of the F/V GOLDEN FLEECE by prohibiting the F/V GOLDEN FLEECE from directed fishing for Pacific cod, pollock, or in any rockfish fishery in the GOA. However, the F/V GOLDEN FLEECE would not be subject to the GOA halibut PSC sideboard limit. These restrictions would allow the F/V GOLDEN FLEECE to continue fishing as it has historically, while limiting the potential for the vessel to expand its effort into other groundfish fisheries in which it has not traditionally participated.

The exemption to the halibut PSC sideboard limit would only apply if the F/V GOLDEN FLEECE used the LLP license originally issued for the F/V GOLDEN FLEECE (LLP license number LLG 2524). This provision would ensure that only the F/V GOLDEN FLEECE would be exempted from the halibut PSC sideboard limits. Exempting the F/V GOLDEN FLEECE from the halibut PSC limits would not be expected to increase the amount of halibut PSC used by Amendment 80 vessels overall. It is anticipated that the F/V GOLDEN FLEECE would maintain its current fishing patterns, including its halibut PSC use rates, and the overall use of PSC by all Amendment 80 vessels would not be expected to be greater than currently. Exempting the F/V GOLDEN FLEECE from the halibut PSC limits would ensure that the F/V GOLDEN FLEECE would not be adversely affected by other Amendment 80 vessels that could choose to fish in the GOA, use halibut PSC, and potentially, cause the GOA halibut PSC sideboard limit to be reached, thereby limiting the ability of the F/V GOLDEN FLEECE to fully harvest its traditional flatfish fisheries.

Additionally the F/V GOLDEN FLEECE would not be subject to the proposed M&E requirements for other Amendment 80 vessels while fishing in the GOA. Many of the M&E requirements established for Amendment 80 vessels would be necessary to properly track halibut PSC use. This same degree of precision would not be required for the F/V GOLDEN FLEECE. The M&E requirements applicable to the F/V GOLDEN FLEECE are described in Section XII of this preamble.

XI. Example of Allocations Under the Program

To aid the reader, the following is an example of the process NMFS would follow to assign ITAC and PSC to the BSAI trawl limited access and Amendment 80 sectors; to allocate Amendment 80 QS permits; and to issue CQ to Amendment 80 cooperatives and ITAC to the Amendment 80 limited access fishery. This section also provides an example of assigning AFA sideboard limits in the BSAI.

A. Example of Annual TAC and PSC Allocations

The following section provides an example of TAC and PSC allocation to the CDQ Program and Amendment 80 and BSAI trawl limited access sectors. The TAC and PSC used in this example are based on the 2008 TACs and PSC limits established in the 2007 and 2008 final harvest specifications for groundfish of the BSAI (March 2, 2007; 72 FR 9451). The 2008 TACs, PSC limits, and ICA used in this example are subject to future regulatory change through the 2008 and 2009 annual harvest specification process.

For purposes of this example, NMFS has assumed that (1) The regulations allocating Pacific cod to specific sectors, Pacific cod ICA management, and seasonal apportionment of the Pacific cod ITAC to the Amendment 80 sector, would be the same as those described in the proposed rule to implement Amendment 85 to the FMP (February 7, 2007; 72 FR 5654), and (2) the final regulations implementing Amendment 85 would be effective prior to the implementation of the Program.

1. Step 1: Allocate TAC to the CDQ Program

First, NMFS would allocate portions of the 2008 TACs to the CDQ Program according to the procedure described in Section III of this preamble. The allocations of the 2008 TACs to the CDQ Program in this example are the same as the allocations in the 2007 and 2008 final harvest specifications. Table 13 below displays the allocation of TAC to the CDQ Program based on the 2008 TACs.

2. Step 2: Assign ICA and the Atka Mackerel Jig Allocation

For all Amendment 80 species except Pacific cod, NMFS would establish, in the annual harvest specifications, an ICA for use by the BSAI trawl limited access sector and non-trawl fisheries. The ICA amounts specified in this example are subject to change through the annual harvest specification process and may not reflect actual ICA requirements or amounts established in subsequent adjustments to the 2008 TAC or PSC limits during the 2008 and 2009 annual harvest specification process.

NMFS would establish the ICA amounts based on projected incidental catch needs in non-target fisheries. For simplicity, the ICA amounts used in this example are calculated based on a percentage of the TAC after allocation to the CDQ Program. The ICA percentages used in this example were based on a review of incidental catch patterns during 2002 through 2006 by the AFA catcher/processor, AFA catcher vessel, non-AFA catcher vessel trawl, and non-trawl sectors in the BSAI.

In this example, NMFS has considered likely changes in ICA needs with the implementation of the Program. As noted in the draft EA/RIR/IRFA prepared for this proposed action (see **ADDRESSES**), NMFS would set ICA amounts in a precautionary fashion during the first year of implementation

of the Program and review future ICA needs during the annual harvest specification process. As described in Section IV of this preamble, NMFS would not establish an ICA amount for Pacific cod before allocating Pacific cod to the Amendment 80 sector and other trawl sectors.

In this example, the Atka mackerel jig allocation required under existing regulations at § 679.20(a)(8)(i) is assigned before the Atka mackerel ITAC for Area BS/541 is allocated to the Amendment 80 and BSAI trawl limited access sectors. Current regulations allow NMFS to allocate up to two percent of the Atka mackerel TAC in Area BS/541 for harvest by jig gear. Based on historic harvest patterns by jig gear vessels and past recommendations by the Council during previous annual harvest specification processes, NMFS is likely to establish an Atka mackerel jig allocation of less than two percent of the TAC in Area BS/541. This example assumes an allocation for harvest by jig gear of one percent of Area BS/541 TAC after subtraction for allocation to the CDQ Program. This allocation is the same percentage of the Area BS/541 ITAC that is recommended for allocation for jig gear in the 2007 and 2008 final harvest specifications.

Table 13 below displays the projected ICA amounts established for each Amendment 80 species except Pacific cod, and the Atka mackerel jig allocation based on the 2008 TACs.

3. Step 3: Apportion ITAC to the Amendment 80 and BSAI Trawl Limited Access Sector

The ITAC for an Amendment 80 species is the amount of the TAC remaining after subtraction for CDQ allocations, ICA requirements for the BSAI trawl limited access sector and non-trawl fisheries, and the Atka mackerel jig allocation. Table 13 displays the allocation of ITAC for each Amendment 80 species based on the 2008 TACs.

TABLE 13.—PROJECTED ALLOCATION OF TAC, CDQ RESERVES, ICA, ATKA MACKEREL JIG ALLOCATION, AND ITAC USING 2008 HARVEST SPECIFICATIONS

Amendment 80 species and area	2008 TAC (mt)	CDQ (10.7% TAC) (mt)	ICA (% of TAC after CDQ allocation) (mt)	ITAC = TAC − (CDQ & ICA) (mt)
Atka Mackerel BS/541	17,600	1,883	1,257 (8%) + 157 jig set-aside (1%) = 1,402.	(A season = 50% of ITAC) 7,151. (B season = 50% of ITAC) 7,151.
Area 542	22,000	2,354	196 (1%)	(A season = 50% of ITAC) 9,725. (B season = 50% of ITAC) 9,725.
Area 543	15,300	1,637	116 (1%)	(A season = 50% of ITAC) 5,749. (B season = 50% of ITAC) 5,749.
AI POP:				
Area 541	4,900	524	175 (4%)	4,201.
Area 542	5,000	535	45 (1%)	4,420.
Area 543	7,620	815	68 (1%)	6,737.
Pacific cod	127,070	13,596	0	113,474.
Flathead sole	45,000	4,815	3,215 (8%)	36,970.
Rock sole	75,000	8,025	3,349 (5%)	63,626.
Yellowfin sole	150,000	16,050	2,679 (2%)	131,271.

Once ITAC is determined for each Amendment 80 species, NMFS would assign the ITAC to the Amendment 80 and BSAI limited access fishery sectors according to the proportions established in Table 33 and Table 34 to part 679 in the proposed regulatory text.

For this example, NMFS has assumed that the seasonal apportionment of Pacific cod described in the proposed rule for Amendment 85 (February 9, 2007; 72 FR 5654) would be effective in 2008.

The ITAC for Atka mackerel would be allocated for use during specific seasons as specified in § 679.20.

Yellowfin sole ITAC would be assigned to the Amendment 80 sector according to the formula established in Table 34 to part 679 in the proposed regulatory text. The remaining ITAC would be assigned to the BSAI trawl limited access sector. The calculation based on the 2008 TAC and the formula set forth in Table 34 to part 679 in the proposed regulatory text is calculated below:

$$\Sigma\,[(87{,}499 * 0.93) + (94{,}999 - 87{,}500) * 0.875 + (102{,}499 - 95{,}000) * 0.82 + (109{,}999 - 102{,}500) * 0.765 + (117{,}499 - 110{,}000) * 0.71 + (124{,}499 - 117{,}500) * 0.655 + (131{,}271 - 125{,}000) * 0.6] = 113{,}493$$

mt to the Amendment 80 sector.

Table 14 summarizes the amount of ITAC for each Amendment 80 species that would be assigned to the Amendment 80 and BSAI trawl limited access sectors.

TABLE 14.—PROJECTED ITAC ASSIGNED TO THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS

Amendment 80 species and management area	2008 ITAC in mt (from Table 13)	Metric tons and % of ITAC assigned to the . . .	
		BSAI trawl limited access sector	Amendment 80 sector
Atka Mackerel	A season = 7,151	143 (2%)	7,008 (98%).
BS/541	B season = 7,151	143 (2%)	7,008 (98%).
Area 542	A season = 9,725	194 (2%)	9,530 (98%).
	B season = 9,725	194 (2%)	9,530 (98%).
Area 543	A season = 5,749	0 (0%)	5,749 (100%)
	B season = 5,749	0 (0%)	5,749 (100%).
AI POP	4,201	210 (5%)	3,991 (95%).
Area 541			

TABLE 14.—PROJECTED ITAC ASSIGNED TO THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS—Continued

Amendment 80 species and management area	2008 ITAC in mt (from Table 13)	Metric tons and % of ITAC assigned to the . . .	
		BSAI trawl limited access sector	Amendment 80 sector
Area 542	4,420	221 (5%)	4,199 (95%).
Area 543	6,737	135 (2%)	6,602 (98%).
Pacific cod (Allocations and seasons based on Amendment 85).	15,205	N/A N/A	A season = 11,404 (75% of allocation). B season = 3,801 (25% of allocation).
Flathead sole	36,970	0 (0%)	36,970 (100%).
Rock sole	63,626	0 (0%)	63,626 (100%).
Yellowfin sole	131,271	17,778 (13.5%)	113,493 (86.5%).
Total mt of ITAC allocated to the Amendment 80 sector.			288,660.
20% of the total mt of ITAC allocated to the Amendment 80 sector: Amendment 80 vessel use cap.			57,732.

For this example, the total Amendment 80 sector ITAC for all Amendment 80 species is 288,660 mt, and 20 percent of that amount, which is the Amendment 80 vessel use cap, is 57,728 mt.

4. Step 4: Assign Halibut PSC and Crab PSC to the CDQ Program and Between the Sectors

NMFS would allocate a portion of the halibut PSC limit to the CDQ Program according to the criteria described under Section III of this preamble. The remaining amount of the trawl halibut PSC limit set forth in regulations in § 679.21(e) would be assigned to the Amendment 80 and BSAI trawl limited access sector based on Table 35 to part 679 in the proposed regulatory text. For this example, the projected apportionment of halibut PSC for 2008 is described in Table 15.

The crab PSC limit for Zone 1 red king crab, Zone 1 *C. bairdi* crab, Zone 2 *C. bairdi* crab, and *C. opilio* is based on a percentage of the crab abundance estimated for each crab species annually, as set forth in regulations in § 679.21(e). Once the crab PSC limit is established, NMFS would allocate a portion of the annual crab PSC limit as PSQ for the CDQ Program according to the criteria described under Section III of this preamble. The remaining amount of crab PSC limit would be assigned to the Amendment 80 and BSAI trawl limited access sectors according to the PSC allocation percentages listed in Table 35 to part 679 in the proposed regulatory text. For this example, the projected apportionment of crab PSC for 2008 is described in Table 15.

TABLE 15.—PROJECTED APPORTIONMENT OF HALIBUT PSC AND CRAB PSC TO THE CDQ PROGRAM AND AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS

PSC species	Total trawl PSC allocation (mt)	CDQ PSQ allocation (mt)	PSC remaining after CDQ PSQ allocation (mt)	Amendment 80 sector allocation (mt)	BSAI trawl limited access fishery allocation (mt)
Halibut	n/a	343	n/a	2,525	875
Red king crab	182,225	19,498 (10.7%)	162,727	101,672 (62.48%)	49,761 (30.58%)
C. opilio (COBLZ) PSC limit	4,023,750	430,541 (10.7%)	3,593,209	2,207,667 (61.44%)	1,154,857 (32.14%)
Zone 1 *C. bairdi* crab PSC limit	906,500	96,996 (10.7%)	809,505	426,123 (52.64%)	380,386 (46.99%)
Zone 2 *C. bairdi* crab PSC limit	2,747,250	293,956 (10.7%)	2,453,294	725,930 (29.59%)	1,148,387 (46.81%)

B. Example of Amendment 80 QS Allocations

NMFS has estimated the Amendment 80 QS pools for each Amendment 80 species to describe the allocation of Amendment 80 QS permits. NMFS has also created hypothetical QS permit holders and a cooperative. NMFS notes that the QS allocation to hypothetical persons is not based on specific Amendment 80 sector participants or actual data from specific persons.

1. Step 1: Determine the Total Legal Landings for All Amendment 80 Vessels

Using the official record, NMFS would sum the best five of seven years of legal landings for all Amendment 80 vessels during the 1998 through 2004 qualifying years for each Amendment 80 species. NMFS's estimate of the best five of seven years of legal landings for all Amendment 80 vessels is detailed in Table 16. The legal landings shown in Table 16 are based on total catch data from WPRs for each Amendment 80 species for all known Amendment 80 vessels in metric tons. This estimate may not reflect an actual initial best five of seven years of legal landings for all Amendment 80 vessels due possible changes in the official record that may

occur if the official record is adjusted based on information provided through the application for QS process.

TABLE 16.—ESTIMATED SUM OF THE BEST FIVE OF SEVEN YEARS OF CATCH FROM 1998 THROUGH 2004 FOR EACH AMENDMENT 80 SPECIES BY ALL KNOWN AMENDMENT 80 VESSELS

Amendment 80 species	Total legal landings (the sum of the best five of seven years) for all Amendment 80 vessels (mt)
Atka mackerel	256,438
AI POP	57,882
Pacific cod	155,280
Flathead sole	84,492
Rock sole	169,023
Yellowfin sole	350,173
Sum of all legal landings	1,073,287

2. Step 2: Assign a Percentage of the Total Legal Landings to Each Amendment 80 Vessel

NMFS would determine the best five of seven years of legal landings for each Amendment 80 species for each Amendment 80 vessel and the percentage of the total legal landings for each Amendment 80 species attributed to each Amendment 80 vessel. This estimate assumes that 28 Amendment 80 vessels are qualified to receive QS, and that three Amendment 80 vessels had no legal landings during the qualifying period of 1998 through 2004. NMFS would assign each of the three Amendment 80 vessels without any legal landings 0.5 percent of the flathead sole and yellowfin sole total legal landings, and 0.1 percent of the rock sole total legal landings. All other Amendment 80 vessels would have their aggregate legal landings reduced by 1.5 percent for rock sole and yellowfin sole, and by 0.3 percent for flathead sole to accommodate these three Amendment 80 vessels.

For legal landings from non-mackerel vessels, NMFS would determine the percentage of legal landings of Atka mackerel from 1998 through 2004 in each Atka mackerel management area made by that Amendment 80 vessel.

3. Step 3: Establish the Initial Amendment 80 QS Pools

NMFS would determine the Amendment 80 initial QS pools based on the legal landings verified through the applications for Amendment 80 QS. NMFS would set the Amendment 80 initial QS pool for each Amendment 80 species equal to the sum of the best five of seven years of legal landings assigned to each Amendment 80 vessel in metric tons as of December 31, 2007. Each metric ton of legal landing in NMFS's official record on this date would yield one QS unit.

For this example, NMFS has assumed that all potentially eligible persons applied, NMFS reviewed the applications, provided an opportunity for each applicant to challenge the official record, the official record was not challenged by any applicant, and NMFS did not amend the official record. Therefore, the initial QS pool would be equal to the amount of legal landings from WPRs for all Amendment 80 vessels from 1998 through 2004 as shown in Table 16 above. For this example, the total initial QS units for all Amendment 80 species is 1,073,287 QS units, and 30 percent of that amount, which is the Amendment 80 QS person use cap, is 321,986 QS units.

4. Step 4: Assign Legal Landings to an Amendment 80 Vessel

This example follows four hypothetical qualified applicants; Andy, Jon, Mark, and Mary, who submitted complete applications for Amendment 80 QS by October 15, 2007. Andy and Mark each own one Amendment 80 vessel. Mary owns seven Amendment 80 vessels. Jon holds the LLP license originally issued to an Amendment 80 vessel that sank, therefore the vessel is an actual total loss. Jon also holds a contract from the owner of sunk Amendment 80 vessel stating that he holds the rights to receive any QS that may be derived from the vessel. All of these persons owned their vessels, and held their LLP licenses prior to June 9, 2006 and at the time of application. Therefore, if any of them receive an initial allocation of QS units in excess of the QS use cap, they would be subject to the grand father clause (see Section XI for more detail on use caps).

NMFS would review each person's applications and determine the amount of legal landings and Amendment 80 QS units that would be derived from the Amendment 80 vessels they own, or, in Jon's case, from the Amendment 80 vessel for which he holds the right to receive QS. The percentage of the QS pool that would be assigned to each applicant is based on the legal landings assigned to each Amendment 80 vessel for which they have applied. For each Amendment 80 species, the five of seven years from 1998 through 2004 with the greatest amount of legal landings for each Amendment 80 vessel is divided by the sum of the best five of seven years from 1998 through 2004 for all Amendment 80 vessels (shown in Table 16 of this preamble). For purposes of this example, the flathead sole, rock sole, and yellowfin sole legal landings assigned to the Amendment 80 vessels for which Andy, Jon, Mark, and Mary have applied are assumed to have been adjusted to account for the three Amendment 80 vessels without any legal landings (see Section VI of this preamble for more detail on this adjustment process).

At this time, NMFS would also determine if any of the Amendment 80 vessels for which Andy, Jon, Mark, or Mary have applied would qualify as non-mackerel vessels. For this example, the Amendment 80 vessels for which Andy, Jon, and Mary have applied are assumed to be mackerel vessels. Mark is assumed to own a non-mackerel vessel—an Amendment 80 vessel less than 200 ft (61 m) LOA that made less than two percent of the total Atka mackerel legal landings. Under this example, all of the Atka mackerel legal landings assigned to Mark's Amendment 80 vessel (1.0 percent of the total Atka mackerel legal landings in this example) would be assumed to be derived from Area BS/541. Mark would receive non-mackerel QS designated for Area BS/541 based on these legal landings.

This example assumes that 6.0 percent of the total Atka mackerel legal landings would be assigned to non-mackerel vessels, of which 4.6 percent would be assigned to Area BS/541, 1.2 percent to Area 542, and the remaining 0.2 percent to Area 543. This estimate of the amount of legal landings assigned to non-mackerel vessels in each management area is consistent with the estimate provided in the draft EA/RIR/IRFA prepared for this action and on NMFS's WPR records.

Once the percentage of the sum of the best five of seven years of legal landings for each Amendment 80 species for each Amendment 80 vessel for which Andy, Jon, Mark, and Mary have applied is known, that amount is multiplied by the initial QS pool. The percentage of the Amendment 80 initial QS pool for each Amendment 80 species and the total amount of Amendment 80 QS units that would be assigned to Andy, Jon, Mark, and Mary is shown in Table 17 of this preamble.

5. Step 5: Assign Amendment 80 QS Permits

NMFS would assign an Amendment 80 QS permit to each person who submits a timely and complete application by October 15. The Amendment 80 QS permit would designate the number of QS units for each Amendment 80 species. Andy, Mark, and Mary would be issued an

Amendment 80 QS permit for each Amendment 80 vessel they own. Jon would be issued an Amendment 80 QS permit that is permanently affixed to the LLP license originally assigned to the Amendment 80 vessel that sank. Jon holds an LLP license was originally assigned to an Amendment 80 vessel with legal landings, Jon submitted a timely and complete application to receive QS based on those legal landings, and Jon holds a contract to receive QS derived from those legal landings. Therefore, Jon's LLP license would be reissued as an Amendment 80 LLP/QS license.

C. Example of Allocations to an Amendment 80 Cooperative and the Amendment 80 Limited Access Fishery

1. Step 1: Form a Cooperative

In this example, Andy, Jon, Mark, and Mary form a corporation for a harvesting cooperative—Cooperative X, establish a membership agreement, and designate an individual to serve as the representative who is responsible for acting on behalf of the cooperative. The representative of Cooperative X submitted a complete application for CQ by November 1, 2007. For simplicity, this example assumes that only one Amendment 80 cooperative (Cooperative X) has formed in the Amendment 80 sector. Any ITAC or PSC allocated to the Amendment 80 sector and not assigned to Cooperative X would be assigned to the Amendment 80 limited access fishery.

Andy, Jon, Mark, and Mary are not linked through a 10 percent or greater common ownership or control. All of the Amendment 80 QS permits, Amendment 80 vessels, and Amendment 80 LLP licenses they hold are assigned to Cooperative X. Andy, Jon, and Mark each hold one Amendment 80 permit. Mary holds seven Amendment 80 QS permits. A total of 10 Amendment 80 QS permits are assigned to the cooperative. This example assumes that no other sanctions or limits would prevent these four people from forming a cooperative.

2. Approve the Application for CQ

NMFS would approve the application for CQ for Cooperative X because it meets the requirements of being a registered corporation with a designated representative, it is comprised of a minimum of three unique members, and more than the minimum of nine Amendment 80 QS permits have been assigned to Cooperative X. Table 17 displays the amount of QS units assigned to each member of Cooperative X, and the total amount of QS units assigned to the cooperative.

Table. 17. Amendment 80 QS issued to Andy, Jon, Mark, and Mary and assigned to Cooperative X.

Amendment 80 Species	Andy	Jon	Mark	Mary	Cooperative X
	Vessel A QS units and (% of QS pool)	Vessel B QS units and (% of QS pool)	Vessel C QS units and (% of QS pool)	Vessels D—I QS units and (% of QS pool)	Total QS units and (% of QS pool) assigned to Cooperative X
Atka mackerel	12,822 (5%)	12,822 (5%)	2,560 (1%)	64,110 (25%)	92,318. 36% of QS pool.
AI POP	2,894 (5%)	579 (1%)	289 (0.5%)	14,760 (25.5%)	18,522. 37% of QS pool.
Pacific cod	3,882 (2.5%)	8,540 (5.5%)	11,646 (7.5%)	44,255 (28.5%)	68,323. 44% of QS pool.
Flathead sole	845 (1%)	3,380 (4%)	2,535 (3%)	31,262 (37%)	38,021. 45% of QS pool.
Rock sole	5,071 (3%)	8,451 (5%)	8,451 (5%)	64,229 (38%)	86,202. 51% of QS pool.
Yellowfin sole	14,007 (4%)	17,509 (5%)	17,50 (5%)	175,087 (50%)	224,111. 64% of QS pool.
Total QS units (% of QS pool)	39,521 3.68%	51,281 4.78%	42,994 4.00%	393,701 36.68%	527,497. 49.15% of total aggregate QS units.

Note that in this example, Mary has been allocated Amendment 80 QS permits with a sum of Amendment 80 QS units that is greater than 30 percent of the aggregate Amendment 80 initial QS pool. The use cap is 321,986 QS units (see Step 3 above for additional detail). NMFS would initially issue Mary more QS units than the QS unit cap because she is subject to the grandfather clause. Mary would not be eligible to receive any additional Amendment 80 QS permits by transfer unless and until she transfers a QS permit, or several QS permits, until she holds an amount of QS units on all of her QS permits that is less than 30 percent of the aggregate QS pool. (See Section IX of this preamble for more detail on use caps).

Cooperative X would receive a specific amount of the Amendment 80 ITAC as CQ for each Amendment 80 species based on the proportion of the aggregate Amendment 80 QS pool assigned to the cooperative.

3. Step 3: Assign Atka Mackerel CQ to Cooperative X

NMFS would need to calculate the allocation of Atka mackerel ITAC to non-mackerel QS holders first and then apportion the remaining amount of the ITAC to mackerel QS holders. For each management area, the Atka mackerel ITAC assigned to non-mackerel QS holders would be determined using the following formula:

Non-mackerel ITAC in a management area = (Non-mackerel QS designated for that management area / Total mackerel and non-mackerel QS pool) x Amendment 80 sector ITAC in all management areas.

Based on the assumed distribution of non-mackerel QS as a percentage of total non-mackerel and mackerel QS described in Step 4 in Part B of this section, and the amount of ITAC in each Atka mackerel management area described in Table 14 above, the result from this formula for this example is shown in Table 18.

TABLE 18.—EXAMPLE OF NON-MACKEREL ITAC ASSIGNED TO EACH MANAGEMENT AREA

Area	Column A Non-mackerel QS in an Area (% of total QS pool)	Column B Total ITAC (mackerel and non-mackerel) in all areas	Column C Non-mackerel ITAC in that area = (Column A × Column B)
BS/541	4.6 %	A season = 22,625 mt	BS/541 A season = 1,041 mt. BS/541 B season = 1,041 mt.
542	1.2 %		542 A season = 271 mt. 542 B season = 271 mt.
543	0.2 %	B season = 22,625 mt	543 A season = 45 mt. 543 B season = 45 mt.

Mark holds Atka mackerel QS derived from a non-mackerel vessel that yielded 1 percent of the total Atka mackerel QS pool. All of Mark's QS units are assigned to Area BS/541. The amount of Area BS/541 CQ derived from Mark's non-mackerel QS and assigned to the cooperative as Area BS/541 CQ is shown in the following formula:

Non-mackerel CQ assigned to that cooperative = (Non-mackerel QS designated for that management area assigned to that Amendment 80 cooperative / Non-mackerel QS pool in that management area) × Non-mackerel ITAC for that management area.

In this example, 21.7 percent of the non-mackerel QS pool in Area BS/541 is assigned to Mark. The percent of the non-mackerel QS pool assigned to the cooperative is equal to one percent of Area BS/541 total QS pool, divided by 4.6 percent, which is the non-mackerel QS pool in management Area BS/541. This would result in 21.7 percent of the A and B season non-mackerel ITAC (1,041 mt × 21.7 percent = 226 mt per season) in Area BS/541 being assigned to Cooperative X as Area BS/541 Atka mackerel CQ based on Mark's non-mackerel QS holdings. Under this example, the remaining non-mackerel ITAC in Areas BS/541, Area 542, and Area 543 would be assigned to the Amendment 80 limited access fishery. The total amount of Area 541/BS ITAC assigned to the Amendment 80 limited access fishery from non-mackerel vessels is shown in the following equation:

Non-mackerel ITAC assigned to the Amendment 80 limited access fishery in a management area = Non-mackerel ITAC in a management area—Σ of non-mackerel CQ assigned to all Amendment 80 cooperatives in that management area.

After deducting the non-mackerel ITAC in Areas BS/541, 542, and 543 the remaining ITAC, the mackerel ITAC, would be assigned to mackerel QS holders in the cooperative (Andy, Jon, and Mary) in proportion to the mackerel QS assigned to the cooperative. The mackerel ITAC from all three management areas would be equally apportioned among these mackerel QS holders based on their percentage of the mackerel QS pool. The amount of Area BS/541, Area 542, and Area 543 mackerel ITAC assigned to the cooperative is computed using the following equation:

Mackerel CQ in a management area = (Amendment 80 sector ITAC in a management area—Non-mackerel ITAC in a management area) × (Mackerel QS units assigned to that cooperative / Mackerel QS pool).

For simplicity, the percentage of the total mackerel QS pool in each area can be shown as a percentage of the total QS pool (i.e, the combined mackerel and non-mackerel QS pools). In this example, the mackerel QS pool comprises 94 percent of the total Atka mackerel QS pool, and the non-mackerel QS pool comprises 6 percent of the total Atka mackerel QS pool. Therefore, if cooperative X is assigned 35 percent of the mackerel QS pool, and the mackerel QS pool is equal to 94 percent of the combined mackerel and non-mackerel QS pool, dividing 35 percent by 94 percent equals 37.2 percent, which is the percent of the mackerel QS pool assigned to Cooperative X. The following Table 19 shows the results of this calculation. In addition, Table 19 shows the total CQ assigned to Cooperative X that would be derived from mackerel Qs held by Andy, Jon, and Mary, and non-mackerel QS held by Mark.

TABLE 19.—EXAMPLE OF ATKA MACKEREL CQ ASSIGNED TO COOPERATIVE X

Area	Column A = Mackerel ITAC in an area	Column B = Percentage of mackerel QS assigned to the cooperative	Atka mackerel CQ = Non-mackerel CQ (Column A x Column B) + mackerel CQ from Mark in Area BS/541
BS/541	A and B seasons = 5,967 mt (7,008 mt—1,041 mt).	37.2% (35% of total QS pool / 94%)	A season = 2,448 mt (2,222 mt + 226 mt from Mark). B season = 2,448 mt (2,222 mt + 226 mt from Mark).
542	A and B seasons = 9,259 mt (9,530 mt—271 mt).	37.2% (35% of total QS pool / 94%)	A season = 3,447 mt. B season = 3,447 mt.
543	A and B seasons = 5,703 mt (5,749 mt—45 mt).	37.2% (35% of total QS pool / 94%)	A season = 2,124 mt. B season = 2,124 mt.

4. Step 4: Assign Atka Mackerel ITAC to the Amendment 80 Limited Access Fishery

After allocating Atka mackerel CQ to all cooperatives (there is only one cooperative, Cooperative X, in this example), the remaining Atka mackerel ITAC in each area, both the non-mackerel and mackerel ITAC would be allocated to the Amendment 80 limited access fisheries. Table 20 shows the amount of Atka mackerel ITAC assigned to the Amendment 80 limited access fishery.

TABLE 20.—TOTAL ATKA MACKEREL ITAC ASSIGNED TO THE AMENDMENT 80 LIMITED ACCESS FISHERY

Area and season	Column A Amendment 80 ITAC (mt)	Column B CQ assigned to Cooperative X (mt)	Column C ITAC for Amendment 80 limited access fishery (mt) (Column A—Column B)
BS/541 A season	7,008	2,448	4,560
B season	7,008	2,448	4,560
542 A season	9,530	3,447	6,083
B season	9,530	3,447	6,083
543 A season	5,749	2,124	2,124
B season	5,749	2,124	2,124

5. Step 5: Assign CQ to Cooperative X and ITAC to the Amendment 80 Limited Access Fishery (All Amendment 80 Species Except Atka Mackerel)

NMFS would assign CQ for each Amendment 80 species, except Atka mackerel, to Cooperative X based on the percentage of that Amendment 80 species QS pool assigned to Cooperative X multiplied by the Amendment 80 sector ITAC. The Amendment 80 ITAC for AI POP in Areas 541, 542, and 543, would be assigned to the cooperative based on the percentage of that AI POP QS pool assigned to the cooperative (shown in Table 17 of this preamble). The ITAC for Pacific cod would be assigned to the cooperative based on the percentage of the Pacific cod QS pool held by the cooperative and assigned on a seasonal basis. Flathead sole, rock sole, and yellowfin sole would be assigned to the cooperative based on the percentage of the Amendment 80 QS held by the cooperative for those species. These three species are not currently subject to seasonal apportionment. The allocation of CQ to cooperative X is shown in Table 21.

TABLE 21.—CQ ASSIGNED TO COOPERATIVE X AND THE AMENDMENT 80 LIMITED ACCESS FISHERY ITAC FOR ALL AMENDMENT 80 SPECIES, EXCEPT ATKA MACKEREL

Amendment 80 species	Amendment 80 Sector ITAC (mt)	CQ assigned to Cooperative X (mt) and (% of Amendment 80 ITAC)	Amendment 80 limited access fishery ITAC (mt) and (% of Amendment 80 ITAC)
AI POP Area 541	3,971	1,477 (37 %)	2,514 (63%).
Area 542	4,194	1,554 (37%)	2,646 (63%).
Area 543	6,594	2,443 (37%)	4,159 (63%).
Pacific cod	A season = 11,404	5,017 (44%)	6,387 (56%) .
	B season = 3,802	1,673 (44%)	2,129 (56%).
Flathead sole	36,970	16,637 (45%)	20,334 (55%).
Rock sole	63,626	32,449 (51%)	31,177 (49%).
Yellowfin sole	113,493	72,635 (64%)	40,857 (36%).

6. Step 6: Attribute PSC to Each Amendment 80 Species

NMFS would attribute the Amendment 80 sector halibut and crab PSC to each Amendment 80 species for purposes of determining how much halibut and crab PSC would be assigned to an Amendment 80 cooperative and the Amendment 80 limited access sector. The process for assigning an amount of halibut and crab PSC has been apportioned to the CDQ Program, Amendment 80 sector, and BSAI trawl limited access sector is described in Section IV of this preamble. The results of that process are shown in Table 15 of this preamble. The amount of the Amendment 80 sector halibut and crab PSC that is attributed to each Amendment 80 species, based on historic use of that PSC species by the Amendment 80 sector, is shown in Table 22.

TABLE 22.—PERCENTAGE OF PSC LIMIT ATTRIBUTED TO EACH AMENDMENT 80 QS SPECIES

For the following PSC species and Amendment 80 sector allocation . . .	The amount (and percentage) of the Amendment 80 sector PSC limit attributed to each Amendment 80 QS species is . . .					
	Atka mackerel	AI POP	Pacific cod	Flathead sole	Rock sole	Yellowfin sole
Row 1: Halibut 2,575 mt	102 mt (3.96%)	48 mt (1.87%)	638 mt (24.79%)	347 mt (13.47%)	623 mt (24.19%)	817 mt. (31.72%).
Row 2: Red king crab Zone 1 101,672 animals.	142 (0.14%)	569 (0.56%)	6,995 (6.88%)	448 (0.48%)	62,823 (61.79 %)	30,664. (30.16%).

TABLE 22.—PERCENTAGE OF PSC LIMIT ATTRIBUTED TO EACH AMENDMENT 80 QS SPECIES—Continued

For the following PSC species and Amendment 80 sector allocation . . .	The amount (and percentage) of the Amendment 80 sector PSC limit attributed to each Amendment 80 QS species is . . .					
	Atka mackerel	AI POP	Pacific cod	Flathead sole	Rock sole	Yellowfin sole
Row 3: *C. opilio* crab (COBLZ) 2,207,667 animals.	0 (0%)	1325 (0.06%)	138,642 (6.28%)	395,393 (17.91%)	217,234 (9.84%)	1,455,074. (65.91%).
Row 4: Zone 1 *C. bairdi* crab 426,123 animals.	0 (0%)	0 (0%)	72,484 (17.01%)	13,338 (3.13%)	239,268 (56.15%)	101,034. (23.71%).
Row 5: Zone 2 *C. bairdi* crab 725,930 animals.	73 (0.01%)	218 (0.03%)	57,494 (7.92%)	270,844 (37.31%)	51,033 (7.03%)	346,269. (47.70%).
Row 6: % of Amendment 80 QS assigned to Cooperative X.	36%	37%	44%	45%	51%	64%.

7. Step 7: Assign PSC to the Cooperative

NMFS would assign halibut and crab PSC to the cooperative in proportion to the amount of Amendment 80 QS held by the cooperative. The steps in this process include (1) multiplying the amount of PSC attributed to each Amendment 80 QS species as shown in Table 22 by the percentage of the Amendment 80 QS assigned to Cooperative X for that Amendment 80 species (i.e., For each PSC species, multiply the amount of PSC listed in Rows 1 through 5 by the percentage of the Amendment 80 QS assigned to Cooperative X in Row 6); and (2) summing the amount of PSC derived from all Amendment 80 species. The result of these calculations is the total PSC assigned to Cooperative X and is described in Table 23.

TABLE 23.—CRAB AND HALIBUT PSC ASSIGNED TO COOPERATIVE X

PSC species	Allocation to Cooperative X
Row 1: Halibut	1,332 mt PSC CQ.
Row 2: Red king crab Zone 1	55,224 animals.
Row 3: *C. opilio* crab (COBLZ)	1,281,456 animals.
Row 4: Zone 1 *C. bairdi* crab	224,583 animals.
Row 5: Zone 2 *C. bairdi* crab	394,922 animals.

NMFS notes that these amounts of PSC CQ would be used by Cooperative X while fishing for all groundfish in the BSAI. This would include Amendment 80 species and other non-pollock groundfish, if there is available TAC (e.g., Greenland turbot).

NMFS would assign the amount of Amendment 80 halibut and crab PSC that remains after allocation to Cooperative X to the Amendment 80 limited access fishery. NMFS would further apportion the PSC assigned to the Amendment 80 limited access fishery by season and fishery according to the annual harvest specification process. PSC apportioned to the Amendment 80 limited access fishery would be managed by NMFS inseason staff. The seasonal and fishery specific apportionment of halibut and crab PSC for the Amendment 80 limited access fishery cannot be predicted at this time because that process is dependent on input from the regulated industry. Therefore, this example does not describe the seasonal or fishery apportionment of PSC to the Amendment 80 limited access fishery.

8. Step 8: Begin Fishing

The members of Cooperative X could fish under its CQ permit beginning January 20, 2008. Cooperative X, would have to ensure that their vessels did not exceed the Amendment 80 vessel use cap of 57,732 mt of Amendment 80 species while catching their CQ. Any Amendment 80 vessels used by the cooperative members would need to meet all of the M&E requirements detailed in Section XII of this preamble. Effective with the 2009 fishing year, each cooperative member would have to submit a timely and complete EDR for the cooperative to receive any CQ derived from the QS permits held by those members (see Section XIII of this preamble for more detail).

D. Example of AFA Sideboard Limits

1. AFA Groundfish Sideboard Limits

The AFA sideboard limits for Amendment 80 species would be calculated based on the amount of TAC remaining after the deduction of 10.7 percent of the TAC for the CDQ Program, but prior to the designation of the ICA. This amount of the TAC is then multiplied by the AFA catcher/processor sideboard ratio and the AFA catcher vessel sideboard ratio established in regulation in § 679.64. The result of this calculation is the AFA groundfish sideboard limit for that Amendment 80 species for that AFA sector. For example, the AFA catcher/processor rock sole sideboard limit would be 2,478 mt: ((75,000 mt TAC − 8,025 mt CDQ Program allocation) × AFA catcher/processor sideboard ratio of 0.037 = 2,478 mt). This calculation method would be used for establishing the AFA catcher/processor and AFA catcher vessel sideboard limits for all Amendment 80 species, except Atka mackerel for the AFA catcher/processor sector, and Pacific cod for the AFA catcher/processor and AFA catcher vessel sectors.

Section V of this preamble notes that the BSAI Atka mackerel sideboard limit for AFA catcher/processors is not modified by the Program and would not be calculated using this method. Section IV of this preamble notes that the Program would not alter the existing method for calculating Pacific cod AFA sideboard limits. The proposed rule for Amendment 85 proposes to remove Pacific cod sideboard limits for the AFA catcher/processors (February 7, 2007; 72 FR 5654). Under this example, NMFS has assumed that a final rule implementing Amendment 85 as proposed has been published and Pacific cod AFA catcher/processor sideboards would not apply.

This example also assumes that pending a final rule implementing Amendment 85, NMFS would calculate the AFA catcher vessel sideboards based on current regulations in § 679.64(b)(3)(ii). These regulations require NMFS to calculate the AFA catcher vessel sideboard limit for Pacific cod by multiplying the AFA catcher vessel Pacific cod sideboard ratio (i.e., 0.8609 based on calculations previously conducted) by the BSAI Pacific cod TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

The amount of BSAI Pacific cod available to catcher vessels could be derived by reviewing the allocation of BSAI Pacific cod approved by the Secretary under Amendment 85 and described in Table 8 in this preamble. Table 8 displays the allocation of TAC among various fishery sectors. Exclusive allocations made for the CDQ Program would not be considered as available to catcher vessels because CDQ Program allocations are exclusive to specific vessels and are not accessible to catcher vessels generally. Based on the allocations detailed in Table 8, 65.9 percent of the BSAI Pacific cod TAC after allocation to the CDQ Program is assigned to catcher/processors (e.g., Amendment 80 sector, pot catcher/processors, etc.), the remaining 34.1 percent of the BSAI Pacific cod TAC may be harvested by catcher vessels (trawl catcher vessels, pot catcher vessels, etc.). Using the 2008 BSAI Pacific cod TAC, the AFA catcher vessel Pacific cod sideboard limit as proposed under Amendment 85 would be 38,695 mt (From Table 13: 113,474 mt of BSAI Pacific cod TAC remains after allocation to the CDQ Program × 34.1 percent = 38,695 mt). This example, assumes that the AFA catcher vessel sideboard limit for Pacific cod in the Program would be the same as that proposed under Amendment 85.

Additionally, under this example, the yellowfin sole ITAC in 2008 would be greater than 125,000 mt. As noted in Section V of the preamble, at that yellowfin sole ITAC level, NMFS would not apply AFA sideboard limits for yellowfin sole. Tables 24 and 25 summarize the AFA groundfish sideboard limits in 2008 for Amendment 80 species based on the assumptions presented here. AFA sideboard limits for Atka mackerel and Pacific cod may be apportioned by season during the annual harvest specification process. For simplicity, Tables 24 and 25 do not apportion the AFA sideboard limits for Atka mackerel or Pacific cod by season. Presumably, the AFA sideboard limits for Atka mackerel and Pacific cod would continue to be apportioned by season. AFA sideboard limits that apply to non-Amendment 80 groundfish species would continue to be calculated under existing regulations. Non-Amendment 80 groundfish species AFA sideboard limits are not displayed in Tables 24 and 25.

TABLE 24.—PROJECTED AFA CATCHER/PROCESSOR SIDEBOARD LIMITS IN THE BSAI

Species or species group	TAC available for AFA catcher/processor sideboards (mt)	AFA catcher/processor sideboard ratio	2008 AFA catcher/processor sideboard limit (mt)
AI POP:			
Area 541	4,376	0.020	88
Area 542	4,465	0.001	4
Area 543	6,805	0.004	27
Flathead sole	40,185	0.036	1,447
Rock sole	66,975	0.037	2,478
Yellowfin sole	133,950	0.230	N/A (See above)
Atka mackerel	Sideboard limits subject to further seasonal apportionment		
Area BS/541	17,600	0	0
Area 542	22,000	0.115	2,530
Area 543	15,300	0.200	3,060
Pacific cod	Sideboard limits subject to further seasonal apportionment		
BSAI	N/A	N/A	N/A (Proposed under Amendment 85).

TABLE 25.—PROJECTED AFA CATCHER/PROCESSOR SIDEBOARD LIMITS IN THE BSAI

Species or species group	TAC available for AFA catcher vessel sideboards	AFA catcher vessel sideboard ratio	2008 AFA catcher vessel sideboard limit (mt)
AI POP:			
Area 541	4,376	0.0077	34
Area 542	4,465	0.0025	11
Area 543	6,805	0	0
Flathead sole(BS trawl gear)	40,185	0.036	2,029
Rock sole	66,975	0.0341	2,284

TABLE 25.—PROJECTED AFA CATCHER/PROCESSOR SIDEBOARD LIMITS IN THE BSAI—Continued

Species or species group	TAC available for AFA catcher vessel sideboards	AFA catcher vessel sideboard ratio	2008 AFA catcher vessel sideboard limit (mt)
Yellowfin sole	133,950	0.0647	N/A (See above).
Atka mackerel	Sideboard limits subject to further seasonal apportionment		
Area BS/541	15,717	0.0032	50
Area 542	19,646	0.0001	2
Area 543	13,663	0	0
Pacific cod (BSAI trawl gear)	Sideboard limits subject to further seasonal apportionment		
	38,695	0.8609	33.313

2. AFA Halibut PSC Sideboard Limits

AFA halibut PSC limits would be fixed in regulation as listed in Table 40 to part 679 in the proposed regulatory text. During the annual harvest specification process, the Council could recommend assigning halibut PSC by season (e.g., halibut PSC in the yellowfin sole fishery), if that is deemed necessary.

3. AFA Crab PSC Sideboard Limits

AFA crab sideboard limits would be based on the AFA ratios as listed in Table 41 to part 679 in the proposed regulatory text multiplied by the amounts of crab PSC listed under the ''PSC remaining after CDQ PSQ allocation'' column in Table 15 of this preamble. The result of that calculation is shown in Table 26 below.

TABLE 26.—PROJECTED AFA CRAB PSC SIDEBOARD LIMITS

[in numbers of animals]

For the following crab species in the following areas . . .	The AFA catcher/processor crab PSC sideboard limit is . . .	The AFA catcher vessel crab PSC sideboard limit is . . .
Red king crab Zone 1	1,140	48,660
C. opilio crab (COBLZ)	549,760	603,660
Zone 1 *C. bairdi* crab	113,330	267,140
Zone 2 *C. bairdi* crab	122,670	455,31

XII. Monitoring and Enforcement (M&E)

As is the case for any LAPP, NMFS must be able to monitor the use of all CQ, catch relative to GOA sideboard limits, and use caps. The primary tools for monitoring the Program would include the following: (1) The use of observers aboard vessels; (2) weighing all catch on NMFS approved scales; and (3) specified procedures when handling catch prior to processing. For purposes of this section, Amendment 80 vessels are referred to as non-AFA trawl catcher/processors when referring to M&E provisions applicable in the BSAI. The term ''non-AFA trawl catcher/processor'' includes all Amendment 80 vessels, and any non-AFA trawl catcher/processors that may enter the fishery, such as those that could be used by CDQ groups to harvest Amendment 80 species. In addition to the requirements listed above, all non-AFA trawl catcher/processors would continue to be subject to existing vessel monitoring system (VMS) requirements described in § 679.28(f).

A. Observers

Observers would be required aboard vessels to adequately account for catch and bycatch in the fishery. Observer coverage would increase from existing coverage levels in most cases to ensure that catch accounting is adequate for a quota based fishery. Because this is a new program, ensuring adequate observer coverage would be particularly important for monitoring the complex suite of allocations and GOA sideboard limits. Adequate observer coverage would be essential to monitor halibut PSC rates in the fishery and ensure that a cooperative does not exceed its halibut PSC CQ allocation. Observer coverage also would be essential for monitoring the use of CQ by the Amendment 80 cooperatives, the amount of ITAC caught and PSC used in Amendment 80 limited access fishery, and to monitor GOA sideboard limits applicable to Amendment 80 vessels.

Observer coverage would be increased from existing requirements on all non-AFA trawl catcher/processors while fishing under a CQ permit for a cooperative, in the Amendment 80 limited access fishery, for the CDQ Program, or when subject to GOA sideboard limits. Observer coverage requirements were discussed and reviewed during the development of the Program, and are described in the EA/RIR/IRFA analysis prepared to support this action (see **ADDRESSES** for more information). Generally, the level and type of observer coverage required under this Program follows models that have been developed for monitoring catcher/processor vessels under the Central GOA Rockfish Program (see § 679.84 for additional detail). Vessels would be required to fish in a manner such that observer workload restrictions are not exceeded.

Additionally, NMFS proposes to revise regulations at § 679.50(a) to clarify observer coverage levels for individual management programs. Generally, observer coverage regulations for individual programs are outlined in § 679.50(c) and (d). As management programs which require additional or separate observer coverage are implemented, regulations governing observer coverage for each of these programs have been added to these sections. To assist the various program participants in finding the appropriate observer coverage, NMFS proposes to add a table to the introductory text of § 679.50 that provides the location of observer coverage regulations for each management program. Vessel owners and operators should note that if a vessel is subject to M&E requirements for more than one LAPP, (e.g., an Amendment 80 vessel is subject to observer requirements under the Central GOA Rockfish Program and the Program), the most restrictive observer coverage and M&E requirements would apply to that vessel.

1. Observer Coverage for All Non-AFA Catcher/Processors Fishing in the BSAI

Observer coverage would differ in Amendment 80 cooperatives from the existing requirements for several reasons. As noted above, increased observer coverage is necessary to account for CQ. All catch of Amendment 80 species, and use of halibut and crab PSC in the BSAI must be debited from an Amendment 80 cooperative's CQ account. Additionally, the Program would provide exclusive harvest privileges for a multiple species fishery where catches generally consist of heterogeneously mixed Amendment 80 species and non-quota species or species groups (e.g., arrowtooth flounder) in the same haul. Under the Program, vessels engaged in fishing for Amendment 80 species may alter their fishing behavior to maximize their non-quota species (e.g., arrowtooth flounder). As the relative TACs and economic value of various groundfish targets change, the value of these non-allocated species could become significant. This could increase the harvest of non-allocated species and the halibut PSC CQ incidentally used during the harvest of non-allocated species.

Because of the magnitude of hauls, diversity of species, and range of vessel characteristics, catch accounting would depend on species composition that is derived from observer samples. NMFS currently bases its calculation of species composition, including halibut and crab PSC, for catcher/processor vessels on basket samples of approximately 300 kg (approximately 660 lb) or less, depending on the time and space available to the observer. Catch composition data are extrapolated (the term commonly used is ''expanded'') to determine species composition, and PSC use for the entire haul. The sampled hauls are expanded to determine the quantity of a given groundfish species and PSC that would be attributed to the unsampled hauls during a trip. NMFS then calculates the species composition and PSC catch rate from the sampled hauls for each directed fishery. These species composition estimates and PSC catch rates are then applied to all unobserved catch to determine total species composition and PSC use. The degree to which a given quantity of groundfish or PSC in a sample is expanded varies enormously depending on the fraction of total observed hauls and the fraction of sampled catch in each of the observed hauls. Increasing observer coverage so that most hauls are observed would decrease the proportion of unobserved hauls and the need to expand observer sample estimates.

Additionally, unobserved vessels may have a strong incentive to under-report PSC. PSC may not be retained by the vessel and thus has no economic value. However, it is quite possible that the lack of sufficient PSC, specifically halibut PSC, could limit the amount of allocated species harvested by Program participants and under-reported halibut PSC could potentially allow the under-reporting vessel or Amendment 80 cooperative to harvest a larger amount of target species. This is particularly true for vessels in Amendment 80 cooperatives because this Program would allocate a share of available halibut PSC to the cooperatives as CQ. Lack of sufficient halibut PSC CQ could limit the ability of Amendment 80 cooperatives to fully harvest their CQ for Amendment 80 and non-Amendment 80 species, (e.g., Greenland turbot), that may be constrained by amount of PSC CQ held by the cooperative. This could create an incentive to under report PSC CQ. This incentive increases the need for monitoring catch composition.

To ensure adequate observation and sampling of hauls for species composition and PSC use, observer coverage for Amendment 80 vessels fishing for Amendment 80 cooperatives would be similar to requirements for catcher/processor vessels fishing under a CQ permit under the Central GOA Rockfish Program. The specific level of observer coverage required for catcher/processor vessels is detailed in Table 27.

Observer coverage requirements in the limited access fishery would be the same as those for vessels assigned to cooperatives. Observer coverage required for non-AFA trawl catcher/processors participating in limited access fisheries is detailed in Table 27. NMFS would require observer coverage adequate to ensure proper management of the TAC and PSC. This would be particularly critical in the limited access fisheries because the TAC assigned is likely to be small and could be prosecuted by relatively few vessels. Limited observer coverage could reduce the ability of NMFS to close fisheries in a timely manner, thereby increasing the potential for Amendment 80 vessels to catch more than the ITAC of Amendment 80 species, or PSC assigned to the Amendment 80 limited access sector. Should Amendment 80 vessels exceed the ITAC assigned to the Amendment 80 limited access fishery, NMFS could be required to limit harvest opportunities in other fisheries, including Amendment 80 cooperatives, should the excess catch approach the overfishing level (OFL) for a given species. Increased observer coverage requirements would reduce that risk by providing more timely and complete data.

Observer coverage requirements in the CDQ fishery would be the same as those for vessels assigned to cooperatives. Vessels fishing in the CDQ fishery are currently subject to these observer coverage requirements. Therefore, there would be no change for these vessels under this proposed action.

The observer requirements for non-AFA trawl catcher/processors proposed for the Program would supercede the observer coverage requirements established under the GRS. The observer coverage requirements for vessels subject to the GRS are essentially the same as those under the Amendment 80 Program, except that under the GRS, both observers onboard non-AFA trawl catcher/processors are required to be level two observers specially trained in catcher/processor operations (i.e. two lead level two observers). That requirement is not necessary to effectively obtain catch data and would be removed under Amendment 80. If this action is approved, only one of the two required observers would be required to be a lead level 2 observer for vessels subject to the GRS. The other observer would not need to be a level two observer.

Additionally, the GRS allows vessels to submit for approval to NMFS an alternative processing plan. An approved alternative processing plan would allow reduced observer coverage

if the plan would allow sampling of all hauls by only one observer. However, according to some members of industry, these vessels must operate 24 hours a day to be profitable, and it is unlikely that they would utilize an alternative processing plan. Additionally, because all vessels subject to Amendment 80 would also be subject to the GRS program, allowing an alternative processing plans under the GRS program, but not Amendment 80, could result in considerable confusion for Amendment 80 participants. Therefore, this provision is removed from observer coverage regulations for non-AFA trawl catcher/processors in the BSAI.

For these reasons and to avoid confusion among Amendment 80 participants, NMFS proposes to apply Amendment 80 observer coverage regulations to vessels subject to the GRS.

2. Observer Coverage for GOA Sideboard Fisheries

With the exception of the F/V GOLDEN FLEECE, NMFS would require observers on all Amendment 80 vessels subject to GOA sideboard limits. Observer requirements applicable to the F/V GOLDEN FLEECE are addressed in Part F of this section. Observer coverage for Amendment 80 vessels fishing in the GOA would help to ensure that vessels do not exceed the GOA sideboard limits. Observer coverage is the only currently available method for gathering data on species composition and halibut PSC rates that are not self-reported. As noted above, NMFS would rely on expanded observer composition sampling to assess species composition and halibut PSC rates.

Under current regulations, vessels under 125 ft (38.1 m) LOA have limited observer coverage which increases the amount of expansion required to estimate species composition and halibut PSC rates. Given the relatively small halibut PSC sideboard limit in the GOA under the Program, NMFS would require more timely and accurate observer data. NMFS proposes to increase the reliability of halibut PSC rates by requiring 100 percent observer coverage aboard the vessels subject to GOA sideboard limits. The level of observer coverage proposed under the Program provides a minimum amount of coverage necessary to track overall groundfish harvests and halibut PSC use by season with enough accuracy to manage the sideboard limits in the GOA for vessels that have substantial harvest and PSC use rates. NMFS notes that the observer coverage levels proposed for Amendment 80 vessels fishing in the GOA are identical to the observer coverage requirements necessary to manage groundfish and halibut PSC sideboard limits applicable to catcher/processor vessels participating in the opt-out fishery in the Central GOA Rockfish Program. An extensive discussion of observer coverage requirements for managing sideboard limits in the Central GOA Rockfish Program is provided in the final rule for that program (November 20, 2006; 71 FR 67210). The rationale for these observer coverage requirements is the same as the rationale for observer coverage levels to manage sideboard limits in the Amendment 80 program.

Non-Amendment 80 trawl catcher/processors would continue to be subject to existing observer coverage levels in the GOA. Any such vessels are not subject to GOA sideboard limits and would not require the same intensive level of halibut PSC monitoring.

Table 27 summarizes the observer monitoring requirements for the various components of the Program.

TABLE 27.—OBSERVER REQUIREMENTS FOR AMENDMENT 80 VESSELS IN THE PROGRAM

Fishing location	Observer coverage requirements
BSAI—All non-AFA trawl catcher/processors	Must have aboard at least two NMFS-certified observers for each day that the vessel is used to harvest, receive, or process fish in the BSAI. At least one of these observers must be endorsed as a lead level 2 observer. More than two observers are required if observer workload restrictions would preclude adequate sampling (i.e., 200% observer coverage).
GOA—All Amendment 80 vessels except for the F/V GOLDEN FLEECE.	Must have aboard at least one NMFS-certified observer for each day that the vessel is used to harvest, receive, or process fish in the GOA or any additional requirements applicable under the Central GOA Rockfish Program (i.e., 100% observer coverage, or other observer requirements applicable when fishing under the Central GOA Rockfish Program).
GOA—F/V GOLDEN FLEECE only	Subject to existing regulations in § 679.50(c)(1)(v) or (c)(7)(i) while fishing in the GOA (i.e., 30% observer coverage, or other requirements when fishing under the Central GOA Rockfish Program).

B. Flow Scales

Non-AFA trawl catcher/processors in the BSAI would be required to install and weigh each haul individually on a motion compensated flow scale. Flow scales are intended to provide accurate records of total catch, and have been used successfully in directed pollock fisheries and CDQ Program groundfish fisheries. NMFS-approved scales would be inspected annually and tested daily when in use to ensure they are accurate within an approved range. Because observer samples would be expanded to the entire haul, catch from each haul would be required to be weighed separately on the scale. To facilitate separate weighing, catch from each haul would be prohibited from being mixed with other hauls at any location prior to the scale and the location at which an observer would collect his or her sample.

C. Observer Sampling Station

Non-AFA trawl catcher/processors in the BSAI would be required to provide an observer work station where an observer can work safely and effectively. Observer sampling stations would need to meet specifications for size and location and be equipped with an observer sampling station scale, a table, adequate lighting, floor grating, and running water. Details of the sampling station requirements are included in § 679.28 of the proposed regulatory text. Each observer sampling station would be inspected and approved by NMFS annually.

D. Special Catch Handling Requirements for Non-AFA Trawl Catcher/Processors

1. Rationale

As discussed earlier, NMFS recognizes that there would be a strong incentive for Program participants to under-report the amount of halibut caught as bycatch. The opportunity to under-report halibut PSC CQ would be great on non-AFA trawl catcher/processors due to the current placement of observer sampling stations and construction of the vessels. These factors reduce the ability of observers to adequately monitor the passage of fish,

particularly halibut PSC, from the codend throughout the processing facilities until that catch is available for sampling.

2. Movement of Fish

In order to ensure proper catch accounting on non-AFA trawl catcher/processors, NMFS has developed a set of special catch handling requirements for these vessels. In brief, these special catch handling requirements would:

a. Prohibit a vessel from having fish remain on deck outside of the codend;

b. Prohibit the mixing of hauls; and

c. Prohibit the use of multiple lines for conveying fish between the bins and the area where unsorted catch is sampled by the observer.

Because the distribution of organisms by size and species often differs among hauls, an aggregation of hauls (i.e., mixing two or more hauls) could create errors in the calculation of total groundfish catch. For example, if a vessel mixes hauls from two different areas or depths, the species catch composition and relative weight of these hauls could differ substantially, and a composite sample taken at specific times as the catch moves through the processing facilities may not be representative of each individual haul. The lack of representative samples would increase the potential for erroneously assigning a specific species composition to a specific amount of fish. Any errors would be exacerbated as the composite sample is expanded to represent the total weight of the mixed hauls.

Adequate accounting of CQ and PSC under the Program would rely heavily on observer species composition samples. NMFS must have confidence that the data collected represent random collections of catch and that potential sources of bias have been minimized. Because the mixing of hauls could create unrepresentative species composition samples as described above, NMFS would prohibit the mixing of hauls.

Additionally, observers face many sampling difficulties when hauls are not kept separate inside fish bins. When multiple hauls are mixed, it is sometimes impossible for the observer to determine which catch is from a particular haul and the observer may not collect a discrete sample from each of the mixed hauls. As noted above, bias introduced into the sample by mixing of hauls is exacerbated when the sample is expanded to the weight of the entire hauls. Observers have several sampling tools available to them to determine the total catch of multiple mixed hauls. However, all of these tools result in reduced accuracy and precision for total catch determinations, especially when each of the mixed hauls has significantly different actual catch compositions.

The prohibition of mixing hauls could be accommodated in a number of ways that would not result in loss of fish quality or affect overall vessel operations. For example, under the Program, vessels could slow fishing effort and the frequency with which gear is deployed. Recent enforcement actions concerning intentional presorting of catch to bias observed halibut PSC use rates document the practice of biasing observer samples to optimize groundfish catch relative to constraining PSC or other groundfish catch. However, NMFS expects that opportunities to bias observer samples would be reduced under the Program in comparison to the status quo because of the enhanced monitoring provisions established under this rule.

The use of more than one operational line could lead to improperly sampled catch because catch could be diverted or otherwise conveyed in a manner that would limit adequate sampling. This could result in inaccurate accounting of CQ and PSC species. Therefore, vessels would be prohibited from the use of multiple lines for conveying fish between the bins and the area where unsorted catch is sampled by the observer.

Unsorted catch could not remain on deck outside of the codend without an observer present, except for fish accidentally spilled from the codend during hauling and dumping. NMFS believes that fish that remain in a codend do not present a large opportunity for presorting activities. However, unsorted catch on deck outside of a codend could easily be presorted.

3. Bin Monitoring

The Program would require observation and monitoring of all crew activities within any bin or tank prior to the observer sampling unsorted catch on all non-AFA trawl catcher/processors. This would reduce the incentive and ability to under-report halibut catch.

Catcher/processors may facilitate observation and monitoring of crew activities within a bin or tank by using at least one of the three following options:

a. Prohibit crew members from entering bins unless the observer is provided an opportunity to monitor all crew activities within the bin;

b. Install viewing ports in the bins; or

c. Install video monitoring system in the bins.

Each vessel operator fishing in the BSAI must choose one of these options. Vessel operators that choose the first option must ensure that crew members do not enter a fish bin when fish are in it, unless the observer has been given a chance to observe the activities of the crew inside the bin. Based on conversations with vessel owners and operators in this sector, a crew member may be required to be inside the bin to facilitate the movement of fish from the bin. Crew members would be allowed inside bins if the flow of fish has been stopped between the tank and the location where the observer collects unsorted catch, all catch has been cleared from all locations between the tank and the location where the observer collects unsorted catch, and the observer has been given notice that the vessel crew must enter the tank.

When informed by an observer that all sampling has been completed for a given haul, crew would be able to enter a tank containing fish from that haul without stopping the flow of fish or clearing catch between the tank and the observer sampling station. Vessel operators may be able to use water to facilitate the movement of fish in some fisheries. However, industry participants have indicated that water may degrade the quality and value of some fish species (e.g., AI POP). Therefore, NMFS developed options to allow an observer to see inside the bin while fish are exiting the bin, and ensure that presorting activities would not occur.

Vessel operators that choose the second option would be required to provide a viewing window into the bin. The observer must be able to see all actions of the crew member inside the bin from the same position they are conducting their normal sampling duties. For example, while the observer is sorting catch at the observer sample station table, crew member activities inside the bin must be viewable by the observer from the sample station table. This option would be acceptable for vessels that may not need a crew member in the bin frequently or have uniformly shaped bins and an observer sampling station in close proximity to the bin area.

Vessel operators that choose the third option would be required to develop and install a digital video monitoring system. The system would include a sufficient number of cameras to view all activities of anyone inside the bin. Video cameras would be required to record images in color and in low light conditions. To ensure that an observer can monitor crew member activities in the bin while sampling, a color monitor

would be required to be located in the observer sampling station. An observer would be given the opportunity to review any video data at any time during a trip. Each video system would be required to provide enough storage capacity to store all video data for an entire trip. Because NMFS may not be aware of potential presorting violations until after an observer disembarks the vessel and is debriefed, the vessel must retain all data for a minimum of 120 days from the beginning of each trip, unless notified by NMFS that the data may be removed. Specific requirements for cameras, resolution, recording formats, and other technical information is detailed in the regulatory text under § 679.28(i)(1)(iii).

If at any time during a trip, the viewing window or video options do not allow an observer to clearly identify and monitor crew activities within the fish bin or do not meet the required specifications, the vessel must revert to the first option and prohibit crew from entering the bin. The use of options two and three would be approved by NMFS during the vessel's annual observer sampling station inspection as described at § 679.28(d).

Regulations governing these bin monitoring options were also implemented for non-AFA trawl catcher/processors participating in the Central GOA Rockfish Program. To avoid redundant regulations for multiple management programs, NMFS proposes to remove bin monitoring regulations from regulations governing the Central GOA Rockfish Program (see § 679.84(c)(9)(i) through (iii)), and add them to § 679.28(i). Section 679.28 has historically contained regulations that describe technical specifications for various equipment and monitoring tools for multiple management programs. Placing regulations that describe bin monitoring standards for non-AFA trawl catcher/processors participating in the Central GOA Rockfish Program or Amendment 80 is consistent with this intent.

In addition to proposing to move bin monitoring regulations from § 679.84(c)(9) to § 679.28(i) and requiring all non-AFA trawl catcher/processors to meet these requirements, NMFS proposes several technical changes to the bin monitoring regulations set forth at § 679.28(i) of the proposed regulatory text. Non-AFA trawl catcher/processors participating in the Central GOA Rockfish Program or while fishing in the BSAI would be subject to these requirements. Proposed revisions to the current bin monitoring standards (currently found at § 679.84(c)(9), but proposed to be moved to § 679.28(i)) include correcting cross references and reorganizing the structure of several paragraphs to improve clarity and consistency with other related regulations. Additionally, regulations describing the process for arranging a bin monitoring inspection are proposed to be revised slightly, and owners would then be able to contact NMFS by e-mail. Because bin monitoring inspections would occur simultaneously with observer sampling sation inspections, regulations at § 679.28(d)(8)(i) would be revised to reflect these changes.

Regulations at § 679.28(i)(1)(iii)(B) would describe minimum standards for video data storage. Currently, regulations governing this standard for the Central GOA Rockfish Program require the video system to include a USB hard drive, and do not allow NMFS to approve an alternate removable storage device. However, since implementation of this regulation, NMFS has found that video systems may not be available that meet this standard. Section 679.28(i)(1)(iii)(B) would be revised to require that the video system include at least one external USB hard drive (1.1 or 2.0), or other removable storage device approved by NMFS. If adopted, NMFS could approve alternative removable storage devices, thereby providing additional flexibility to vessel owners and operators who chose to use video monitoring. Finally, regulations at § 679.28(i)(1)(iii)(A) would be revised to clarify that video systems must record a time/date stamp for each frame in Alaska local time.

4. Pre-Cruise Meeting

Operators of non-AFA trawl catcher/processors fishing in the BSAI would be required to provide the opportunity for a pre-cruise meeting for observers who have not been deployed on that vessel in the last 12 months. A pre-cruise meeting would include at least one NMFS staff member, the vessel operator, and the observer(s). NMFS has offered pre-cruise meetings to vessels on a voluntary basis for the last five years and observer and industry participants in these meetings have found them to be extremely beneficial. Given the new monitoring requirements under the Program, observers and vessel personnel would benefit from a mutual understanding of the observers' role.

For the same reasons described above, pre-cruise meeting requirements were also implemented for non-AFA trawl catcher/processors participating in the Central GOA Rockfish Program. Regulations at § 679.84(c)(7) require non-AFA trawl catcher/processors subject to the Central GOA Rockfish Program to provide the opportunity for a pre-cruise meeting if an observer had never been deployed on that vessel. The proposed monitoring requirements are relatively new to non-AFA trawl catcher/processors participating in the Central GOA Rockfish Program or Amendment 80. A non-AFA trawl catcher/processor participating in the Central GOA Rockfish Program could avoid the pre-cruise meeting requirement if an observer assigned to his or her vessel were deployed on the vessel prior to implementation of the program. However, this would circumvent the intent of this regulation to orient any observers unfamiliar with the bin monitoring requirements on that particular vessel. Additionally, NMFS is striving to maintain consistency between the monitoring requirements for each of the two programs, to avoid confusion among program participants. For these reasons, NMFS proposes to revise regulations at § 679.84(c)(7) so that non-AFA trawl catcher/processors fishing in the Central GOA Rockfish Program would also be required to provide the opportunity for a pre-cruise meeting for observers who have not been deployed on that vessel in the last 12 months.

E. M&E Requirements for Amendment 80 Vessels in the GOA

With the exception of the F/V GOLDEN FLEECE, Amendment 80 vessels participating in GOA groundfish fisheries would be required to meet some of the M&E requirements applicable to non-AFA trawl catcher/processors in the BSAI. Specifically, operators of Amendment 80 vessels participating in GOA groundfish fisheries would be required to maintain 100 percent observer coverage, would be prohibited from mixing hauls inside the bin, would be subject to maintain bin monitoring requirements, may only have one operational line at the point the observer collects his or her samples, and would be prohibited from allowing fish on deck outside the codend.

Maintaining these catch handling requirements for vessels in the GOA would ensure that GOA groundfish and halibut PSC limits are properly monitored. A detailed discussion for the need to maintain these M&E requirements is in the draft EA/RIR/IRFA prepared for this action and is not repeated here (see **ADDRESSES**). NMFS notes that the M&E requirements for Amendment 80 vessels would be consistent with the same M&E requirements applicable to catcher/processor vessels to monitor sideboard limits in the opt-out fishery under the

Central GOA Rockfish Program (November 20, 2006; 71 FR 67210).

Flow scales and observer sample stations would not be required for Amendment 80 vessels to fish in the GOA. Flow scales and observer sampling stations assist observers to obtain accurate haul-by-haul accounting of total catch. However, NMFS would make fishery closure decisions for the entire Amendment 80 sector in the GOA. The high degree of precision that flow scales and observer sampling stations provide, and that is necessary for cooperative, limited access fishery management, fishing under the CDQ Program, or GRS monitoring, would not be required to monitor catch and PSC use by Amendment 80 vessels in the aggregate. Given the other M&E provisions described above, NMFS would be able to rely on observer estimates of total catch for catch accounting in the GOA. Inaccuracies associated with observer estimates, as well as any inaccuracies that result from the observer not having a sample station, would be expanded to all Amendment 80 vessels and averaged over multiple vessels. Because observer sample stations would not be required, Amendment 80 vessels fishing in the GOA would not be required to provide space for at least 10 observer baskets.

F. M&E Requirements for the F/V GOLDEN FLEECE in the GOA

As noted earlier, the Program would recognize the unique fishing patterns of the F/V GOLDEN FLEECE, prohibit the vessel from being used in specific groundfish fisheries that it has not historically fished and that are subject to a GOA sideboard limit, and exempt it from GOA halibut PSC sideboard limits. Because NMFS would not need to monitor catch and halibut PSC use for GOA sideboard limit management, the M&E requirements in the GOA applicable to other Amendment 80 vessels would not apply to the F/V GOLDEN FLEECE when fishing in the GOA. The F/V GOLDEN FLEECE would be managed under existing observer coverage and M&E requirements in the GOA. The Program would not exempt the F/V GOLDEN FLEECE from observer coverage requirements applicable under the Central GOA Rockfish Program which may be more restrictive. Additionally, if the F/V GOLDEN FLEECE chooses to fish in the BSAI, the vessel would have to comply with the monitoring requirements at § 679.93(c).

G. Consistency With Central GOA Rockfish Program M&E Requirements

Many of the Amendment 80 vessels are also qualified to fish under the requirements and restrictions of the Central GOA Rockfish Program. The Program does not relieve or otherwise modify M&E requirements under the Central GOA Rockfish Program (e.g., flow scales, observer sampling station requirements), except to move and revise slightly the bin monitoring standards to § 679.28. NMFS has attempted to conform M&E requirements applicable to non-AFA trawl catcher/processors fishing in the BSAI to the M&E requirements applicable to catcher/processor vessels fishing under a Central GOA Rockfish CQ permit or in the Central GOA Rockfish limited access fishery. Similarly, the M&E requirements applicable to Amendment 80 vessels in the GOA would conform to the M&E requirements applicable to catcher/processors in the Central GOA Rockfish opt-out fishery. Integrating M&E requirements between these LAPPs should reduce compliance costs and potential confusion that may arise with differing standards for the affected catcher/processor vessels.

H. Summary Table

Table 28 summarizes the specific M&E requirements that would apply to non-AFA trawl catcher/processors in the BSAI and GOA.

TABLE 28.—MONITORING REQUIREMENTS IN THE PROGRAM

M&E requirement	Fishing location		
	BSAI (All non-AFA trawl catcher/processors)	GOA—Except F/V GOLDEN FLEECE (Amendment 80 vessels)	GOA—F/V GOLDEN FLEECE
Observer coverage level	200% (Two observers)	100% (One observer)	30% (Status quo).
Flow scale	Yes	No	No.
Observer sampling station	Yes	No	No.
One operational line	Yes	Yes	No
No mixing of hauls	Yes	Yes	No.
No fish on deck outside codend	Yes	Yes	No.
Bin monitoring	Yes	Yes	No.
Pre-cruise meeting required	Yes	No	No.
VMS	Status quo, see regulations at § 679.28(f).		

XIII. Economic Data Report

A. Background

The Council recommended a socioeconomic data program to collect cost, revenue, and other economic data as part of the Program. This information would be used to better understand the economic effects of the Program on vessels or entities regulated by this action, and to assist the development of future management actions. NMFS would collect this information using an annual EDR.

The EDR would help assess whether the Program mitigates the costs associated with bycatch reduction and improved utilization of groundfish. The EDR would provide information to review the Program unavailable through other means. To ensure that the necessary information would be collected, EDR data submission would be mandatory for all Amendment 80 QS holders. Information collected under the EDR would be confidential under the requirements of Section 402(b) of the MSA and would be considered confidential under NOAA Administrative Order 216–100, which sets forth procedures to protect the confidentiality of fishery statistics.

B. Information Collected

Economic data collected under this program include revenue and cost data associated with a specific Amendment 80 vessel owned by an Amendment 80 QS holder, or with an Amendment 80 LLP license in those limited cases when the Amendment 80 QS permit is assigned to an Amendment 80 LLP license. See Section VI of the preamble for more detail on Amendment 80 QS permits assigned to an Amendment 80 LLP license.

The EDR would assist the Council and NMFS when analyzing changes in the use of fishery resources. The Program may change the use of fishery resources. As examples of change, fishery participants could choose to serve different markets with different species and products, or to idle vessels under the provisions of the Program. The EDR would provide necessary data to determine whether fishing and production choices are responses to market forces, and the extent to which increased changes in fishing behavior and resource use have reduced total average costs.

Determining the bycatch reduction costs under the Program requires an examination of the extent to which targeting and production choices affect profitability and the economic performance of participants. The suite of revenue and cost information that would be required is detailed in § 679.94(b) and (c) of the proposed regulatory text and is not repeated here.

C. Who Must Provide an EDR

Amendment 80 QS holders would be required to submit the EDR. An EDR would be required for each Amendment 80 QS permit held by a person. This ensures that a person holding multiple Amendment 80 QS permits would describe the full range of cost and revenue information attributable to a given permit, whether that permit is assigned to a specific vessel or to a cooperative.

The Amendment 80 QS holder would be required to appoint a contact individual, called a ''designated representative,'' who on behalf of the QS holder, would respond to inquiries and NMFS regarding data and the EDR.

Because EDR submission would be mandatory, NMFS would provide compliance incentives. In addition to incentives to avoid enforcement actions, another incentive would be to prohibit an Amendment 80 QS holder who did not submit an EDR from receiving an Amendment 80 limited access fishery permit or CQ derived from their Amendment 80 QS permits.

D. Submission Deadlines for EDRs

NMFS would require an annual EDR be submitted for the previous calendar year of activity no later than June 1 of the year following fishing. This filing deadline would provide the Amendment 80 QS holder at least five months to gather and review records from the previous year. The EDR form would be mailed to Amendment 80 QS holders, and be available on the NMFS Web site at *http://www.fakr.noaa.gov.* The address for EDR submission is provided in § 679.94 of the proposed regulatory text. The first EDR would be required on June 1, 2009, which is after the first year of fishing under the Program. An EDR would be due every June 1 after 2009.

E. Verification of Data

Measures to verify data accuracy of the data would be developed by NMFS economists and analysts. These measures would help NMFS to ascertain anomalies, outliers, and other deviations from averaged variables. NMFS would amend data in the EDR through this audit verification process. The principle means to verify data and resolve questions would be consultation between NMFS and the submitter. NMFS would contact the EDR submitter and request oral or written confirmation of data submissions. Further, NMFS would request copies of or review documents or statements that would substantiate data submissions. The person submitting the EDR would need to respond within 20 days of NMFS's information request. Responses after 20 days could be considered untimely and could result in a violation and enforcement action.

NMFS would audit an EDR either through random selection or when circumstances require more thorough review of the submissions. In instances where a random audit occurs or an audit is otherwise justified, NMFS may retain a professional auditor/accounting specialist who would review the data submitted in the EDR. The auditory could request financial documents substantiating the data submitted in the EDR. An auditor/accounting specialist would be subject to strict confidentiality requirements.

XIV. Classification

At this time, NMFS has not determined that the FMP that this rule would implement, Amendment 80, is consistent with the national standards of the MSA and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

Regulatory Impact Review (RIR)

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. The Program was chosen based on those measures that maximize net benefits to the affected participants in the Amendment 80 sector. Specific aspects of the RIR are discussed below in the IRFA section.

Initial Regulatory Flexibility Analysis (IRFA)

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). Copies of the EA/RIR/IRFA prepared for this proposed rule are available from NMFS (see **ADDRESSES**). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, the reasons why it is being considered, and a statement of the objectives of, and the legal basis for, this action are contained in the **SUMMARY** section of the preamble. A summary of that analysis follows.

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

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

Number of Small Entities to Which the Proposed Rule Would Apply

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

Because the SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, NMFS has in the past applied and continues to apply SBA's fish harvesting criterion for

these businesses because catcher/processors are first and foremost fish harvesting businesses. Therefore, a business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. NMFS currently is reviewing its small entity size classification for all catcher/processors in the United States. However, until new guidance is adopted, NMFS will continue to use the annual receipts standard for catcher/processors. NMFS plans to issue new guidance in the near future. Even if additional catcher/processors would have been identified as small entities under a revised small entity size classification for catcher/processors, NMFS would have analyzed the effect on small entities using the same methods that were used in the IRFA prepared for the proposed Program. NMFS considered the effects of the Program and attempted to reduce costs to all directly regulated entities regardless of the number of small entities.

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

Of the estimated 28 entities owning vessels eligible for fishing under the Program, one is estimated to be a small entity because it generated less than $4.0 million in gross revenue based on participation in 1998 through 2004. All other entities owning eligible catcher/processor vessels are non-small entities as defined by the RFA.

One entity made at least one Amendment 80 landing from 1998 to 2004, but did not appear to qualify as an eligible Amendment 80 vessel. This entity is not a small entity by SBA standards. Moreover, this vessel that the IRFA considers ''non-qualified'' would not be allowed to continue fishing under the requirements imposed by the CRP. Therefore, the non-qualified vessels is not considered impacted by the proposed rule and is not discussed in this IRFA.

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

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

Impacts on Directly Regulated Small Entities

While the proposed action is distributional in nature, the overall impact to small entities is expected to be positive. Impacts from the Program would accrue differentially (i.e., some entities could be negatively affected and others positively affected).

The Council considered an extensive range of alternatives, options, and suboptions as it designed and evaluated the potential for changes to non-pollock groundfish management in the BSAI, including the ''no action'' alternative. The EA/RIR/IRFA presents four alternative programs for management of the non-pollock groundfish fisheries in the BSAI: Alternative 1-Status Quo/No Action; Alternative 2 allowing only multiple cooperatives; Alternative 3 allowing only a single Amendment 80 sector cooperative; and Alternative 4, the preferred alternative, for multiple cooperatives with an option for a limited access fishery. These alternative constitutes the suite of ''significant alternatives'' for the proposed action for the purposes of the RFA.

Under the status quo, non-pollock groundfish fisheries harvested with trawl gear have followed the well known pattern associated with managed open access. These fisheries have been characterized by a ''race-for-fish'' capital stuffing behavior, excessive risk taking, and a dissipation of potential rents. Participants in these fisheries are confronted by significant surplus capacity, and widespread economic instability all contributing to resource conservation and management difficulties.

In response to desires to improve economic, social, and structural conditions in many of the non-pollock trawl fisheries, the Council found that the status quo management structure was causing significant adverse impacts to the participants in these fisheries. As indicated in the IRFA, all the Amendment 80 sector companies and corporations would be considered to be directly regulated by this action. Based on a review of available data, only one of the Amendment 80 sector companies or corporations would be a small entity, as defined under RFA. This small entity and other entities are negatively impacted under current open access regulations. The management tools in the existing FMP (e.g., time, area, and gear restrictions, and LLP license requirements) do not provide managers with the ability to effectively solve these problems, thereby making MSA goals difficult to achieve and forcing reevaluation of the existing FMP.

Bycatch reduction measures proposed under the Program reduce the potential discarding of fish and aid the directly regulated entities in meeting the requirements of the MSA. The costs for complying with these measures are offset by the ability of vessel operators to coordinate fishing operations in a cooperative, designate specific vessels better able to comply with M&E requirements thereby avoiding the costs of compliance for some vessels in the cooperative or sharing the remaining costs among cooperative members, and tailor fishing operations to maximize profit without the need to engage in less efficient practices in a race for fish.

In an effort to alleviate the problems caused by excess capacity, the race for fish, and to reduce discards for commercial fishing vessels using trawl gear in the non-pollock groundfish fisheries in the BSAI, the Council determined that the institution of some form of LAPP was needed to improve fisheries management in accordance with the MSA.

The cooperative alternative would allocate annual harvesting privileges of Amendment 80 species TAC and crab and halibut PSC to harvester cooperatives as CQ, creating a transferable access privilege as a share of the TAC, thus removing the ''common property'' attributes of the status quo on qualifying harvesters. These changes would likely benefit the regulated entities. In recent years, harvesters have competed in the race for fish against larger businesses. The cooperative alternative would allow entities to slow their rate of fishing and give more attention to efficiency and product quality.

The participants would be permitted to form cooperatives that could lease or sell their allocations, and could obtain some return from their allocations. Differences in efficiency implications of the Program cannot be predicted. Some participants believe that smaller vessels could be more efficient than larger vessels under cooperative management because a vessel only needs to be large enough to harvest the cooperative's CQ.

Conversely, under open access, a vessel has to be large enough to outcompete the other fishermen and, hence, contributes to the overcapacity problems under the race for fish.

In addition, Alternative 4 holds promise by providing efficiency gains. Data on cost and operating structure are unavailable, so a quantitative evaluation of the size and distribution of these gains accruing to harvesters under this management regime cannot be provided. Nonetheless, it appears that Alternative 4 offers improvements over the status quo through the institution of a LAPP structure. Alternative 4 also includes provisions for the fishery participants that the Council expressly sought to include—specifically, harvesters that have been both historically and recently active.

Alternative 4, which would be implemented by the Program, offsets compliance costs required to improve retention and utilization of fishery resources in several ways. By implementing a LAPP vessels can increase the value and associated revenue from harvested products through better quality control and developing additional product forms not possible under status quo management. Alternative 4 would also allow the directly regulated entities to join cooperatives, receive value from their catch through cooperative harvesting arrangements, and have other vessels harvest the allocation. Compliance costs for a cooperative member would be eliminated, or greatly reduced if those costs are shared over the entire cooperative.

CDQ groups, which are small entities, would benefit under the Program by increasing the nonspecified reserve and the CDQ reserves, increasing PSQ allocations for halibut, crab, and non-Chinook salmon, reducing M&E requirements for CDQ vessels, and removing some reporting requirements.

Alternative 4 appears to minimize negative economic impacts to the Amendment 80 sector to a greater extent than the status quo (Alternative 1), the multiple cooperative (Alternative 2), or single cooperative (Alternative 3) options.

The Council concluded that the Program best accomplishes the stated objectives articulated in the purpose and need statement and applicable statutes, and minimizes to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

Projected Reporting, Recordkeeping and Other Compliance Requirements

Implementation of the Program would change the overall reporting structure and recordkeeping requirements of the participants in BSAI and GOA groundfish fisheries. All participants would be required to provide additional reporting. Each harvester would be required to track harvests to avoid exceeding his or her allocation.

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

To participate in the Program, persons would be required to complete application forms, transfer forms, reporting requirements, and other collections-of-information. These forms are either required under existing regulations or are required for the administration of the Program. These forms impose costs on small entities in gathering the required information and completing the forms. With the exception of specific equipment tests, which are performed by NMFS employees or other professionals, basic word processing skills are the only skills needed for the preparation of these reports or records.

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

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

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

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

Under this proposed rule, catcher/processors would be required to purchase and install motion-compensated scales (i.e., flow scale) to weigh all fish at-sea. Currently approved flow scales cost approximately $50,000. Equipment to outfit an observer station, including a motion-compensated platform scale to verify the accuracy of the flow scale, costs between $6000 and $12,000. Due to space constraints on many catcher/processors, the need to relocate sorting space and processing equipment, and the wide range of configurations on individual vessels, the installation cost range for the scales and observer sample stations could cost between $20,000 and $250,000 per vessel. Installation costs exceeding $100,000 are expected to be rare. The total cost of purchasing and installing scales and sample stations may range between $76,000 and $300,000 per vessel. Based on discussions with equipment vendors, NMFS estimates that 10 catcher/processors, none of which are small entities, would choose to fish in the BSAI and would be required to have scales. This estimate does not include catcher/processor vessels that have already installed flow scales in compliance with other programs (i.e., CDQ Program and Central GOA Rockfish Program) and is likely to overestimate the total number of entities that will install this equipment based solely on the requirements for the Program.

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

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

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

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

Installation costs will be a function of where the DVR/computer can be located in relation to an available power source, cameras, and the observer sampling station. NMFS estimates that a fairly simple installation will cost approximately $2,000, a complex installation will cost approximately $10,000, per vessel. However, these costs could be considerably lower if the vessel owner chooses to install the equipment while upgrading other wiring. Thus, total system costs, including DVR/computer equipment, cameras, data storage, and installation would be expected to range between $4,050 per vessel for a very simple inexpensive system with low installation costs, and $24,500 per vessel for a complex, sophisticated system with high installation costs.

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

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

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

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

Collection-of-Information

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB. Public reporting burden per response for these requirements is listed by OMB control number.

OMB Control No. 0648–0213

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

OMB Control No. 0648–0330

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

OMB Control No. 0648–0334

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

OMB Control No. 0648–0445

Total public reporting burden for this collection is 13,152 hours. Vessel monitoring system requirements are described in this collection.

OMB Control No. 0648–0515

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

This rule also contains collection-of-information requirements subject to review and approval by OMB under the PRA. These requirements have been submitted to OMB for approval. Public reporting burden per response for these requirements is listed by OMB control number.

OMB Control No. 0648—New (Amendment 80 Permits)

Public reporting burden per response is estimated to average 2 hr for the Application for Amendment 80 QS; 2 hr for the Application for CQ; 2 hr for the

Application for the Amendment 80 limited access fishery; 2 hr for the Application to Transfer Amendment 80 QS; 2 hr for the Application for CQ Transfer; 4 hr for Annual Amendment 80 cooperative report; and 4 hr for a letter of appeal, if denied a permit.

OMB Control No. 0648—New (Amendment 80 EDR)

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

OMB Control No. 0648–0269

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

Response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**), and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Executive Order 12866

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: May 16, 2007.

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 proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 is revised to read as follows:

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

2. In § 679.2 add the following definitions in alphabetical order: ''Amendment 80 cooperative'', ''Amendment 80 fishery'', ''Amendment 80 initial QS pool'', ''Amendment 80 legal landing'', ''Amendment 80 limited access fishery'', ''Amendment 80 LLP license'', ''Amendment 80 LLP license originally assigned to an Amendment 80 vessel'', ''Amendment 80 LLP/QS license '', ''Amendment 80 mackerel QS'', ''Amendment 80 mackerel vessel'', ''Amendment 80 non-mackerel QS'', ''Amendment 80 non-mackerel vessel'', ''Amendment 80 official record'', ''Amendment 80 Program'', ''Amendment 80 PSC'', ''Amendment 80 QS holder'', ''Amendment 80 QS permit'', ''Amendment 80 QS pool'', ''Amendment 80 QS unit'', ''Amendment 80 sector'', ''Amendment 80 species'', ''Amendment 80 vessel'', ''BSAI trawl limited access sector'', ''CQ permit'' ''Economic data report (EDR)'', ''Initial Total Allowable Catch (ITAC)'', and revise the definition of ''Cooperative quota (CQ)'', and the heading of the definition of ''Ten percent or greater direct or indirect ownership interest'' to read as follows:

§ 679.2 Definitions.

* * * * *

Amendment 80 cooperative means a group of Amendment 80 QS holders who have chosen to fish cooperatively for Amendment 80 species under the requirements of subpart H to this part and who have applied for and received a CQ permit issued by NMFS to catch a quantity of fish expressed as a portion of the ITAC and crab and halibut PSC limits.

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

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

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

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

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

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

Amendment 80 limited access fishery means the fishery conducted in the BSAI by persons who have not assigned an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel to an Amendment 80 cooperative, and who have assigned an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel to the Amendment 80 limited access fishery.

Amendment 80 LLP license means:

(1) The LLP licenses listed in Column C of Table 31 to this part; and

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

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

Amendment 80 LLP/QS license means an Amendment 80 LLP license issued to an Amendment 80 LLP holder with the Amendment 80 QS permit assigned to that license.

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

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

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

Amendment 80 non-mackerel vessel means an Amendment 80 vessel that is less than 200 feet in length overall and

that has been used to catch less than 2.0 percent of the total Amendment 80 legal landings of BSAI Atka mackerel.

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

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

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

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

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

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

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

Amendment 80 sector means:

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

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

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

(1) BSAI Atka mackerel;

(2) Aleutian Islands Pacific ocean perch;

(3) BSAI flathead sole;

(4) BSAI Pacific cod;

(5) BSAI rock sole; and

(6) BSAI yellowfin sole.

Amendment 80 vessel means:

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

(2) Any vessel that:

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

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

* * * * *

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

(1) Using an Amendment 80 vessel or an Amendment 80 LLP license; or

(2) Fishing for CDQ groundfish.

* * * * *

Cooperative quota (CQ):

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

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

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

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

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

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

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

* * * * *

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

* * * * *

Initial Total Allowable Catch (ITAC) means the tonnage of a TAC for an Amendment 80 species in a management area that is available for apportionment to the BSAI trawl limited access sector and the Amendment 80 sector in a calendar year after deducting from the TAC the CDQ reserve, the incidental catch allowance the Regional Administrator determines is required on an annual basis, as applicable, to account for projected incidental catch of an Amendment 80 species by non-Amendment 80 vessels engaged in directed fishing for groundfish and, for Atka mackerel, the Atka mackerel jig allocation.

* * * * *

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

* * * * *

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

§ 679.4 Permits.

(a) * * *

(1) * * *

If program permit or card type is:	Permit is in effect from issue date through end of:	For more information, see . . .
* * * * * * *		
(xiii) Amendment 80 Program:		
(A) Amendment 80 QS permit	Indefinite	§ 679.90(b).
(B) CQ permit	Specified fishing year	§ 679.91(b).
(C) Amendment 80 limited access fishery	Specified fishing year	§ 679.91(b).

* * * * *

(b) * * *

(6) * * *

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

* * * * *

(k) * * *

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

* * * * *

(o) *Amendment 80 Program*—(1) *Amendment 80 QS permit.* (i) An Amendment 80 QS permit is issued to

a person who submits a timely and complete application for Amendment 80 QS that is approved by NMFS under § 679.90(b).

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

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

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

(v) Amendment 80 QS units assigned to an Amendment 80 QS permit are non-severable from that Amendment 80 QS permit and if transferred, the Amendment 80 QS permit must be transferred in its entirety to another person under the provisions of § 679.90(e).

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

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

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

(iii) A CQ permit will indicate the amount of Amendment 80 species that may be caught by the Amendment 80 cooperative, and the amount of Amendment 80 crab and halibut PSC that may be used by the Amendment 80 cooperative. The CQ permit will list the members of the Amendment 80 cooperative, Amendment 80 LLP licenses, Amendment 80 QS permits, and Amendment 80 vessels that are assigned to that Amendment 80 cooperative.

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

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

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

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

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

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

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

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

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

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

(B) A timely and complete EDR for all Amendment 80 QS permits held by that person as described under § 679.94.

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

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

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

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

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

§ 679.5 Recordkeeping and Reporting (R&R).

* * * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

5. In § 679.7, remove and reserve paragraphs (d)(13), (d)(14), and (d)(16); revise paragraph (m) published at 71 FR 17381 on April 6, 2006; and add paragraph (o) to read as follows:

§ 679.7 Prohibitions.

* * * * *

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

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

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

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

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

(5) Combine catch from two or more hauls.

(6) Receive deliveries of unsorted catch at any time during a fishing year without complying with § 679.27(j)(5), if the vessel is required to comply with § 679.27(j)(1) at any time during the same fishing year.

* * * * *

(o) *Amendment 80 Program*—(1) *Amendment 80 vessels.* (i) Use any vessel other than an Amendment 80 vessel to catch, process, or receive any amount of Amendment 80 species, crab PSC, or halibut PSC assigned to the Amendment 80 sector.

(ii) Use an Amendment 80 vessel to catch, process, or receive any amount of Amendment 80 species, crab PSC, or halibut PSC assigned to the BSAI trawl limited access sector.

(iii) Use an Amendment 80 vessel to catch, process, or receive any amount of Amendment 80 species, crab PSC, or halibut PSC in the BSAI for a calendar year if that Amendment 80 vessel is not assigned to an Amendment 80 cooperative or the Amendment 80 limited access fishery.

(2) *Amendment 80 LLP license.* Designate an Amendment 80 vessel on any groundfish LLP license other than an Amendment 80 LLP license.

(3) *Amendment 80 QS permit.* (i) Hold an Amendment 80 QS permit if that person does not hold an Amendment 80 LLP license.

(ii) Hold an Amendment 80 QS permit that is assigned to an Amendment 80 vessel under § 679.4(o)(1) if that person is not designated as the owner of that Amendment 80 vessel by an abstract of title or USCG documentation.

(4) *Amendment 80 cooperatives.* (i) Use an Amendment 80 vessel, Amendment 80 LLP license, or Amendment 80 QS permit assigned to an Amendment 80 cooperative for a calendar year to catch, process, or receive any Amendment 80 species, crab PSC, or halibut PSC not assigned to that Amendment 80 cooperative during that calendar year.

(ii) Catch, process, or receive Amendment 80 species assigned to an Amendment 80 cooperative in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season without a copy of a valid Amendment 80 CQ permit onboard.

(iii) Retain an amount of groundfish during a fishing year that is less than the amount of groundfish required to be retained by an Amendment 80 cooperative under the GRS described at § 679.27(j).

(iv) For an Amendment 80 cooperative to catch any Amendment 80 species, crab PSC, or halibut PSC in excess of the CQ permit amounts assigned to that Amendment 80 cooperative.

(5) *Amendment 80 limited access fishery.* (i) Use an Amendment 80 vessel, Amendment 80 LLP license, or Amendment 80 QS permit assigned to the Amendment 80 limited access fishery for a calendar year to catch, process, or receive any Amendment 80 species, crab PSC, or halibut PSC not assigned to the Amendment 80 limited access sector during that calendar year.

(ii) Catch, process, or receive Amendment 80 species assigned to the Amendment 80 limited access fishery in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season without a copy of a valid Amendment 80 limited access fishery permit onboard.

(6) *Catch monitoring.* (i) Operate an Amendment 80 vessel or a catcher/processor not listed in § 679.4(l)(2)(i) and using trawl gear, to catch, process, or receive fish in the BSAI or adjacent waters opened by the State of Alaska for which it adopts a Federal fishing season and fail to follow the catch monitoring requirements detailed at § 679.93(a), (b), and (c).

(ii) Operate an Amendment 80 vessel that is subject to a sideboard limit detailed at § 679.92(b) and (c), as applicable, in the GOA or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, and fail to follow the catch monitoring requirements detailed at § 679.93(a), (b), and (d).

(7) *Use caps.* Exceed the use caps that apply under § 679.92(a).

(8) *Economic data report (EDR):* Fail to submit a timely and complete EDR as described under § 679.94.

6. In § 679.20:

a. Paragraphs (a)(7)(i), (a)(7)(ii), (a)(7)(iii)(B), are removed and reserved;

b. Paragraph (a)(7)(iv) is added and reserved;

c. Paragraphs (a)(7)(v), (a)(7)(vi), (a)(8)(iv), and (a)(8)(v) are added;

d. Paragraph (a)(8)(ii) is revised;

e. Paragraphs (a)(10) and (a)(11) are redesignated as paragraphs (a)(11) and (a)(12), respectively;

f. New paragraph (a)(10) is added;

g. Paragraphs (b)(1)(i) and (ii) are revised and paragraphs (b)(1)(iii) and (iv) are removed; and

h. Paragraphs (d)(1)(v) and (d)(1)(vi) are added.

The additions and revisions read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(7) * * *

(v) *ITAC allocation to the Amendment 80 sector.* A percentage of the Pacific cod TAC, after subtraction of the CDQ reserve, will be allocated as ITAC to the Amendment 80 sector as described in Table 33 to this part. Separate allocations for each Amendment 80 cooperative and the Amendment 80 limited access fishery are described under § 679.91. The allocation of Pacific cod to the Amendment 80 sector will be further divided into seasonal apportionments as described under paragraph (a)(7)(iii)(A)(*1*)(*ii*) of this section.

(A) *Use of seasonal apportionments by Amendment 80 cooperatives.* (1) The

amount of Pacific cod listed on a CQ permit that is assigned for use in the A season may be used in the B or C season.

(*2*) The amount of Pacific cod that is listed on a CQ permit that is assigned for use in the B season may not be used in the A season.

(*3*) The amount of Pacific cod listed on a CQ permit that is assigned for use in the C season may not be used in the A or B season.

(B) *Harvest of seasonal apportionments in the Amendment 80 limited access fishery.* (*1*) Pacific cod ITAC assigned for harvest by the Amendment 80 limited access fishery in the A season may be harvested in the B season.

(*2*) Pacific cod ITAC assigned for harvest by the Amendment 80 limited access fishery in the B season may not be harvested in the A season.

(*3*) Pacific cod ITAC assigned for harvest by the Amendment 80 limited access fishery in the C season may not be harvested in the A or B season.

(vi) *ITAC rollover to Amendment 80 cooperatives.* If during a fishing year, the Regional Administrator determines that a portion of the Pacific cod TAC is unlikely to be harvested, the Regional Administrator may issue inseason notification in the **Federal Register** that reallocates that remaining amount of Pacific cod to Amendment 80 cooperatives, according to the procedures established under § 679.91(f).

(8) * * *

(ii) *ITAC allocation to Amendment 80 and BSAI trawl limited access sectors.* The remainder of the Atka mackerel TAC, after subtraction of the jig gear allocation, CDQ reserve, and incidental catch allowance for the BSAI trawl limited access sector and vessels using non-trawl gear, will be allocated as ITAC to the Amendment 80 and BSAI trawl limited access sectors.

* * * * *

(iv) *Amendment 80 sector allocation.* The allocation of Atka mackerel ITAC to the Amendment 80 sector is established in Table 32 to this part. The allocation of Atka mackerel ITAC to the Amendment 80 sector will be further divided into seasonal apportionments under § 679.23(e)(3), and separate allocations for each Amendment 80 cooperative and the Amendment 80 limited access fishery as described under § 679.91.

(A) *Use of seasonal apportionments by Amendment 80 cooperatives.* (*1*) The amount of Atka mackerel listed on a CQ permit that is assigned for use in the A season may be used in the B season.

(*2*) The amount of Atka mackerel listed on a CQ permit that is assigned for use in the B season may not be used in the A season.

(B) *Harvest of seasonal apportionments in the Amendment 80 limited access fishery.* (*1*) Atka mackerel ITAC assigned for harvest by the Amendment 80 limited access fishery in the A season may be harvested in the B season.

(*2*) Atka mackerel ITAC assigned for harvest by the Amendment 80 limited access fishery in the B season may not be harvested in the A season.

(v) *BSAI trawl limited access sector allocation*—(A) *BSAI trawl limited access sector directed fishing allowance.* The amount of Atka mackerel ITAC assigned as a directed fishing allowance to the BSAI trawl limited access sector is established in Table 32 to this part.

(B) *BSAI trawl limited access sector incidental catch allowance and ITAC rollover.* If, during a fishing year, the Regional Administrator determines that a portion of the Atka mackerel incidental catch allowance or ITAC assigned to the BSAI trawl limited access sector is unlikely to be harvested, the Regional Administrator may issue inseason notification in the **Federal Register** that reallocates that remaining amount of Atka mackerel directed fishing allowance to Amendment 80 cooperatives, according to the procedures established under § 679.91(f).

* * * * *

(10) *Amendment 80 species except Pacific cod and Atka mackerel*—(i) *ITAC allocation to the Amendment 80 and BSAI trawl limited access sectors.* The remainder of the TACs for each Amendment 80 species other than Atka mackerel and Pacific cod, after subtraction of the CDQ reserve and incidental catch allowance for the BSAI trawl limited access sector and vessels using non-trawl gear, will be allocated as ITAC to the Amendment 80 and BSAI trawl limited access sectors.

(ii) *Amendment 80 sector ITAC.* The allocation of ITAC for each Amendment 80 species other than Atka mackerel and Pacific cod to the Amendment 80 sector is established in Tables 33 and 34 to this part. The allocation of these species to the Amendment 80 sector will be further divided into separate allocations for each Amendment 80 cooperative and the Amendment 80 limited access fishery as described under § 679.91.

(iii) *BSAI trawl limited access sector allocation*—(A) *BSAI trawl limited access sector directed fishing allowance.* The amount of ITAC for each Amendment 80 species other than Atka mackerel and Pacific cod assigned as a directed fishing allowance to the BSAI trawl limited access sector is established in Tables 33 and 34 to this part.

(B) *BSAI trawl limited access sector ITAC rollover.* If, during a fishing year, the Regional Administrator determines that a portion of the incidental catch allowance or ITAC assigned to the BSAI trawl limited access sector for each Amendment 80 species other than Atka mackerel and Pacific cod is unlikely to be harvested, the Regional Administrator may issue inseason notification in the **Federal Register** that reallocates that remaining amount to Amendment 80 cooperatives, according to the procedures established under § 679.91(f).

* * * * *

(b) * * *

(1) * * *

(i) *Nonspecified reserve.* Fifteen percent of the BSAI TAC for each target species and the ''other species'' category, except pollock, the hook-and-line and pot gear allocation for sablefish, and the Amendment 80 species, is automatically placed in the nonspecified reserve before allocation to any sector. The remaining 85 percent of each TAC is apportioned to the initial TAC for each target species that contributed to the nonspecified reserve and the ''other species'' category. The nonspecified reserve is not designated by species or species group. Any amount of the nonspecified reserve may be apportioned to target species that contributed to the nonspecified reserve or the ''other species'' category, provided that such apportionments are consistent with paragraph (a)(3) of this section and do not result in overfishing of a target species or the ''other species'' category.

(ii) *CDQ reserves*—(A) *Pollock CDQ reserves*—(*1*) *Bering Sea.* In the annual harvest specifications required by paragraph (c) of this section, 10 percent of the Bering Sea subarea pollock TAC will be allocated to a CDQ reserve as a directed fishing allowance.

(*2*) *Aleutian Islands subarea and Bogoslof District.* In the annual harvest specifications required by paragraph (c) of this section, 10 percent of the Aleutian Islands subarea and Bogoslof District pollock TACs will be allocated to a CDQ reserve as a directed fishing allowance unless the Aleutian Islands subarea or Bogoslof District is closed to directed fishing for pollock by regulation. If the Aleutian Islands subarea and/or Bogoslof District is closed to directed fishing for pollock by regulation, then no pollock CDQ reserve will be established for those areas and

incidental harvest of pollock by CDQ groups will accrue against the incidental catch allowance for pollock established under paragraph (a)(5)(i)(A)(*1*) of this section.

(B) *Fixed gear sablefish CDQ reserves.* Twenty percent of the hook-and-line or pot gear allocation of sablefish established under paragraphs (a)(4)(iii)(A) and (a)(4)(iv)(A) of this section will be allocated to a CDQ reserve for each subarea.

(C) C*DQ reserves for Amendment 80 species.* An amount equal to 10.7 percent of the BSAI TACs for Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod will be allocated to a CDQ reserve for each of these species by management area, subarea, or district.

(D) *CDQ reserves for other groundfish species.* An amount equal to 10.7 percent of the BSAI TACs for Bering Sea Greenland turbot and arrowtooth flounder, and 7.5 percent of the trawl gear allocation of sablefish in the BS and AI is apportioned from the nonspecific reserve established under paragraph (b)(1)(i) of this section to a CDQ reserve for each of these species by management area, subarea, or district.

(E) If the groundfish harvest specifications required by paragraph (c) of this section change a TAC category allocated to a CDQ reserve under paragraphs (b)(ii)(A) through (D) of this section by combining or splitting a species, species group, or management area, then the same percentage of the TAC apportioned to a CDQ reserve in paragraphs (b)(ii) (A) through (D) of this section will apply to the new TAC categories.

* * * * *

(d) * * *

(1) * * *

(v) *Amendment 80 GOA sideboard limits—GOA groundfish.* (A) If the Regional Administrator determines that a GOA sideboard limit for a GOA groundfish species as described under Table 37 to this part is sufficient to support a directed fishing allowance for that species, the Regional Administrator may establish a directed fishing allowance for the species applicable only to Amendment 80 vessels subject to the GOA groundfish sideboard limit.

(B) If the Regional Administrator determines that a GOA groundfish sideboard limit as described under Table 37 to this part is insufficient to support a directed fishing allowance by Amendment 80 vessels for that species, then the Regional Administrator may set the directed fishing allowance to zero for that species for Amendment 80 vessels.

(C) Upon determining that a GOA sideboard limit as described under Table 37 to this part for a species is or will be reached, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for that species by the Amendment 80 vessels to which the GOA sideboard limit applies.

(vi) *Amendment 80 GOA sideboard limits—halibut PSC.* (A) If the Regional Administrator determines that an GOA sideboard limit for halibut PSC is sufficient to support a directed fishery for a species or species group, management area, and season specified in Table 38 to this part, then the Regional Administrator may establish a halibut PSC sideboard limit for that species or species group, management area, and season applicable to the Amendment 80 vessels to which the halibut PSC limit applies.

(B) If the Regional Administrator determines that a halibut PSC sideboard limit is insufficient to support a directed fishery for a species or species group, management area, and season as specified in Table 38 to this part then the Regional Administrator may set the halibut PSC sideboard limit for that species or species group to zero for the Amendment 80 vessels to which the halibut PSC limit applies.

(C) Upon determining that a halibut PSC sideboard limit for a species or species group, management area, and season as specified in Table 38 to this part is or will be reached, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for specific species or species group by the Amendment 80 vessels to which the halibut PSC limit applies as follows:

(*1*) If the halibut PSC sideboard limit is reached for the deep-water species fishery as defined in § 679.21(d)(3)(iii)(B) for a season, then NMFS will close directed fishing in the GOA for all species in the deep-water species fishery except northern rockfish, Pacific ocean perch, and pelagic shelf rockfish in the Central GOA for that season.

(*2*) If the halibut PSC sideboard limit is reached for the shallow-water species fishery as defined in § 679.21(d)(3)(iii)(A) for a season, then NMFS will close directed fishing in the GOA for all species in the shallow-water species fishery for that season.

* * * * *

7. In § 679.21, paragraphs (e)(1)(i), (e)(3)(i), (e)(3)(ii) heading, (e)(3)(ii)(A), (e)(3)(ii)(B)(*2*), and (e)(3)(iv) introductory text are revised, and paragraph (e)(3)(vi) is added to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(1) * * *

(i) *PSQ reserve.* The following allocations of the trawl gear PSC limits are made to the CDQ Program as PSQ reserves. The PSQ reserves are not apportioned by gear or fishery.

(A) *Crab PSQ.* 10.7 percent of each PSC limit set forth in paragraphs (e)(1)(ii) through (iv) of this section.

(B) *Halibut PSQ.* (*1*) 276 mt of the total PSC limit set forth in paragraph (e)(1)(v) of this section in each year for 2008 and 2009.

(*2*) 326 mt of the total PSC limit set forth in paragraph (e)(1)(v) of this section effective in 2010 and each year thereafter.

(C) *Salmon PSQ*—(*1*) *Chinook salmon.* 7.5 percent of the PSC limit set forth in paragraph (e)(1)(vii) of this section.

(*2*) *Non-Chinook salmon.* 10.7 percent of the PSC limit set forth in paragraph (e)(1)(viii) of this section.

* * * * *

(3) * * *

(i) *General.* NMFS, after consultation with the Council and after subtraction of PSQ reserves and PSC CQ assigned to Amendment 80 cooperatives, will apportion each PSC limit set forth in paragraphs (e)(1)(ii) through (viii) of this section into bycatch allowances for fishery categories defined in paragraph (e)(3)(iv) of this section, based on each category's proportional share of the anticipated incidental catch during a fishing year of prohibited species for which a PSC limit is specified and the need to optimize the amount of total groundfish harvested under established PSC limits.

(ii) *Red king crab, C. bairdi, C. opilio, and halibut*—(A) *General.* For vessels engaged in directed fishing for groundfish in the BSAI, other than vessels fishing under a CQ permit assigned to an Amendment 80 cooperative, the PSC limits for red king crab, *C. bairdi, C. opilio,* and halibut will be apportioned to the trawl fishery categories defined in paragraphs (e)(3)(iv)(B) through (F) of this section.

(B) * * *

(*2*) When the RKCSS is open to vessels fishing for groundfish with nonpelagic trawl gear under paragraph (e)(3)(ii)(B)(*1*) of this section, NMFS, after consultation with the Council, will specify an amount of the red king crab bycatch limit annually established under paragraph (e)(1)(ii) of this section for the RKCSS. The amount of the red king crab bycatch limit specified for the

RKCSS will not exceed an amount equivalent to 25 percent of the red king crab PSC allowance and will be based on the need to optimize the groundfish harvest relative to red king crab bycatch.

* * * * *

(iv) *Trawl fishery categories.* For purposes of apportioning trawl PSC limits among fisheries, other than PSC CQ assigned to an Amendment 80 cooperative, the following fishery categories are specified and defined in terms of round-weight equivalents of those groundfish species or species groups for which a TAC has been specified under § 679.20.

* * * * *

(vi) *Amendment 80 sector bycatch limitations.* (A) Halibut and crab bycatch limits for the Amendment 80 sector in the BSAI will be established according to the procedure and formulae set out in § 679.91(d) through (f); and

(B) Halibut and crab PSC assigned to the Amendment 80 limited access fishery will be managed through directed fishing closures for Amendment 80 vessels to which the halibut and crab bycatch limits apply.

* * * * *

8. In § 679.27, paragraph (j) published at 71 FR 17381 on April 6, 2006, is revised to read as follows:

§ 679.27 Improved Retention/Improved Utilization Program.

* * * * *

(j) *Groundfish retention standard.* (Effective January 20, 2008)—(1) *Applicability.* (i) The operator of a catcher/processor not listed in § 679.4(l)(2)(i), not assigned to an Amendment 80 cooperative, and using trawl gear in the BSAI must comply with the GRS set forth under paragraph (j)(4) of this section while fishing for or processing groundfish caught from the BSAI from January 1 through December 31 of each year.

(ii) An Amendment 80 cooperative and the members of an Amendment 80 cooperative must comply with the GRS set forth under paragraph (j)(4) of this section while fishing for or processing groundfish caught from the BSAI from January 1 through December 31 of each year.

(iii) No part of the GRS supersedes minimum retention or utilization requirements for IR/IU species found in this section.

(2) *Percent of groundfish retained calculation for a catcher/processor not in an Amendment 80 cooperative.* For any fishing year, the percent of groundfish retained by each catcher/processor not listed in § 679.4(l)(2)(i), not assigned to an Amendment 80 cooperative, and using trawl gear in the BSAI will be calculated using the following equations:

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

Substituting the value for GFroundweight into the following equation:

GFR% = (GFroundweight / TotalGF) * 100

Where:

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

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

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

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

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

(3) *Percent of groundfish retained calculation for an Amendment 80 cooperative.* For each Amendment 80 cooperative, for any fishing year, the percent of groundfish retained by that Amendment 80 cooperative is based on the aggregate groundfish retained by all Amendment 80 vessels assigned to that Amendment 80 cooperative and will be calculated using the following equations:

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

Substituting the value for GFroundweight into the following equation:

GFR% = (GFroundweight / TotalGF) * 100

Where:

GFroundweight is the total annual round weight equivalent of all retained product weights retained by all Amendment 80 vessels assigned to that Amendment 80 cooperative for each IR/IU groundfish species.

PWspecies_n is the total annual product weight for each groundfish species listed in Table 2a to this part by product type as reported in the vessel's weekly production report for all Amendment 80 vessels assigned to that Amendment 80 cooperative required at § 679.5(i).

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

GFR% is the groundfish retention percentage for an Amendment 80 cooperative calculated as GFroundweight divided by the total weight of groundfish catch.

TotalGF is the total groundfish round catch weight for all Amendment 80 vessels assigned to that Amendment 80 cooperative as measured by the flow scale measurement, less any non-groundfish, PSC species or groundfish species on prohibited species status under § 679.20.

(4) *Minimum groundfish retention standard.* An Amendment 80 cooperative or a catcher/processor not listed in § 679.4(l)(2)(i), not assigned to an Amendment 80 cooperative, and using trawl gear in the BSAI must comply with the annual minimum groundfish retention standard requirements displayed in the following table:

GROUNDFISH RETENTION STANDARD

Year	Annual GRS (percent)
2008	65
2009	75

GROUNDFISH RETENTION STANDARD—Continued

Year	Annual GRS (percent)
2010	80
2011 and each year after	85

(5) *Monitoring requirements*—(i) *Observer coverage requirements.* In addition to complying with minimum observer coverage requirements at § 679.50(c), the owner of an Amendment 80 vessel or any other catcher/processor not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI, must comply with observer coverage requirements as described at §§ 679.50(c)(6), and 679.7(m)(3) at all times the vessel is used to harvest groundfish in the BSAI with trawl gear.

(ii) *Catch weighing.* For each haul, all catch by an Amendment 80 vessel or any other catcher/processor not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI must be weighed on a NMFS-approved scale and made available for sampling by a NMFS certified observer at a single location. The owner or operator of an Amendment 80 vessel or a catcher/processor not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI must ensure that the vessel is in compliance with the scale requirements described at § 679.28(b), that each haul is weighed separately, and that no sorting of catch takes place prior to weighing. All weighed catch must be recorded as required at § 679.5(a)(7)(iv)(C).

(iii) *Observer sampling station.* The owner or operator of an Amendment 80 vessel or any other catcher/processor not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI must provide an observer sampling station as described at § 679.28(d) and the owner of the vessel must ensure that the vessel operator complies with the observer sampling station requirements described at § 679.28(d) at all times the vessel is used to harvest groundfish in the BSAI. In addition to the requirements at § 679.28(d)(7)(ii), observers must be able to sample all catch from a single point along the conveyer belt conveying unsorted catch, and when standing where unsorted catch is collected, the observer must be able to see that no catch has been removed between the bin and the location along the conveyer belt at which the observers collect their samples.

(6) *Requirements for vessels that also harvest groundfish outside of the BSAI.* The operator of an Amendment 80 vessel, or any other vessel required to comply with paragraph (j) of this section, must offload or transfer all fish or fish product prior to harvesting fish outside the BSAI, unless the operator of the vessel is in compliance with the recordkeeping and reporting and monitoring requirements described at § 679.5(a)(7)(iv)(C) and paragraph (j)(5) of this section at all times the vessel harvests or processes groundfish outside the BSAI.

(7) *Requirements for vessels receiving deliveries of unsorted catch.* The owner or operator of an Amendment 80 vessel, or any other vessel required to comply with this paragraph (j) at any time during a fishing year and who also receives deliveries of unsorted catch at any time during a fishing year must comply with this paragraph (j)(5) while processing deliveries of unsorted catch.

9. In § 679.28, paragraph (d)(8)(i) is revised; paragraph (h) is added and reserved; and paragraph (i) is added to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(d) * * *

(8) * * *

(i) *How does a vessel owner arrange for an observer sampling station inspection?* The owner may arrange the inspection time and place by submitting to NMFS by fax (206–526–4066) or e-mail (*station.inspections@noaa.gov*) an Inspection Request for Observer Sampling Station available on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov.* Inspections will be scheduled no later than 10 working days after NMFS receives a complete application for an inspection. The owner must provide the following information:

(A) Name and signature of the person submitting the application, and the date of the application.

(B) Business mailing address, telephone number, and fax number of the person submitting the application.

(C) Whether the vessel or processor has received an observer sampling scale inspection before and, if so, the date of the most recent inspection report.

(D) Vessel name and name of contact person on vessel.

(E) Federal fishery permit number.

(F) Location of vessel where sampling station inspection is requested to occur, including street address and city.

(G) Requested inspection date.

(H) For catcher/processors using trawl gear and motherships, a diagram drawn to scale showing the location(s) where all catch will be weighed, the location where observers will sample unsorted catch, and the location of the observer sampling station including the observer sampling scale, and the name of the manufacturer and model of the observer sampling scale.

(I) For all other vessels, a diagram drawn to scale showing the location(s) where catch comes on board the vessel, the location where observers will sample unsorted catch, the location of the observer sampling station, including the observer sampling scale, and the name of the manufacturer and model of the observer sampling scale.

(J) For all vessels, a copy of the most recent scale inspection report issued under paragraph (b)(2) of this section.

* * * * *

(i) *Bin monitoring*—(1) *Bin monitoring standards.* The vessel owner or operator must comply with the requirements specified in paragraph (i)(1)(i) of this section unless the vessel owner or operator has requested, and NMFS has approved, one of the monitoring options described at paragraph (i)(1)(ii) or (i)(1)(iii) of this section.

(i) *Option 1—No crew in bin or tank.* No crew may enter any bin or tank preceding the point where the observer samples unsorted catch, unless:

(A) The flow of fish has been stopped between the tank and the location where the observer samples unsorted catch;

(B) All catch has been cleared from all locations between the tank and the location where the observer samples unsorted catch;

(C) The observer has been given notice that the vessel crew must enter the tank; and either

(D) The observer is given the opportunity to observe the activities of the person(s) in the tank; or

(E) The observer informs the vessel operator, or his designee, that all sampling has been completed for a given haul, in which case crew may enter a tank containing fish from that haul without stopping the flow of fish or clearing catch between the tank and the observer sampling station.

(ii) *Option 2—Line of sight option.* From the observer sampling station, the location where the observer sorts and weighs samples, and the location from which the observer collects unsorted catch, an observer of average height (between 64 and 74 inches (140 and 160 cm)) must be able to see all areas of the bin or tank where crew could be located preceding the point where the observer samples catch. If clear panels are used to comply with this requirement, those panels must be maintained sufficiently clear to allow an individual with normal vision to read text located two feet inside of the bin or tank. The text must be written in 87 point type (corresponding to line four on a

standard Snellen eye chart) and the text must be readable from the observer sampling station, the location where the observer sorts and weighs samples, and the location from which the observer collects unsorted catch. The observer must be able to view the activities of crew in the bin from these locations.

(iii) *Option 3—Video option.* A vessel must provide and maintain cameras, a monitor, and a digital video recording system for all areas of the bin or tank where crew could be located preceding the point where the observer collects catch. The vessel owner or operator must ensure that:

(A) The system has sufficient data storage capacity to store all video data from an entire trip. Each frame of stored video data must record a time/date stamp in Alaska local time (A.l.t.). At a minimum, all periods of time when fish are inside the bin must be recorded and stored;

(B) The system must include at least one external USB (1.1 or 2.0) hard drive or other removable storage device approved by NMFS;

(C) The system uses commercially available software;

(D) Color cameras must have at a minimum 420 TV lines of resolution, a lux rating of 0.1, and auto-iris capabilities;

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

(F) The system provides sufficient resolution and field of view to see and read a text sample written in 130 point type (corresponding to line two of a standard Snellen eye chart) from any location within the tank where crew could be located;

(G) The system is recording at a speed of no less than 5 frames per second at all times when fish are inside the tank;

(H) A 16-bit or better color monitor, for viewing activities within the tank in real time, is provided within the observer sampling station (or location where the observer sorts and weighs samples, if applicable). The monitor must:

(*1*) Have the capacity to display all cameras simultaneously;

(*2*) Be operating at all times when fish are in the tank;

(*3*) Be securely mounted at or near eye level;

(*4*) Provide the same resolution as specified in paragraph (i)(1)(iii)(F) of this section.

(I) The observer is able to view any earlier footage from any point in the trip and is assisted by crew knowledgeable in the operation of the system in doing so;

(J) The vessel owner has, in writing, provided the Regional Administrator with the specifications of the system. At a minimum, this must include:

(*1*) The length and width (in pixels) of each image;

(*2*) The file type in which the data are recorded;

(*3*) The type and extent of compression;

(*4*) The frame rate at which the data will be recorded;

(*5*) The brand and model number of the cameras used;

(*6*) The brand, model, and specifications of the lenses used;

(*7*) A scale drawing of the location of each camera and its coverage area;

(*8*) The size and type of storage device;

(*9*) The type, speed, and operating system of any computer that is part of the system;

(*10*) The individual or company responsible for installing and maintaining the system;

(*11*) The individual onboard the vessel responsible for maintaining the system and working with the observer on its use; and

(*12*) Any additional information requested by the Regional Administrator.

(K) Any change to the video system that would affect the system's functionality must be submitted to, and approved by, the Regional Administrator in writing before that change is made.

(iv) *Failure of line of sight or video option.* If the observer determines that a monitoring option selected by a vessel owner or operator specified in paragraph (i)(1)(ii) or (i)(1)(iii) of this section fails to provide adequate monitoring of all areas of the bin where crew could be located, then the vessel must use the monitoring option specified in paragraph (i)(1)(i) of this section until the observer determines that adequate monitoring of all areas of the bin where crew could be located is provided by the monitoring option selected by the vessel owner or operator.

(2) *Who must have a bin monitoring option inspection?* A vessel owner or operator choosing to operate under the line of sight option (option 2) in paragraph (i)(1)(ii) of this section or the video option (option 3) in paragraph (i)(1)(iii) of this section must receive an annual bin monitoring option inspection.

(3) *How does a vessel owner arrange for a bin monitoring option inspection?* The owner may arrange the inspection time and place by submitting to NMFS by fax (206–526–4066) or e-mail (*station.inspections@noaa.gov*) an Inspection Request for Bin Monitoring available on the NMFS Alaska Region Web site at (*http://www.fakr.noaa.gov*). Inspections will be scheduled no later than 10 working days after NMFS receives a complete application for an inspection. The owner must provide the following information:

(i) Name and signature of the person submitting the application, and the date of the application;

(ii) Business mailing address, telephone number, and fax number of the person submitting the application;

(iii) Whether the vessel has received a bin monitoring option inspection before, and if so, the date of the most recent inspection report;

(iv) Vessel name;

(v) Federal fishery permit number;

(vi) Location where the inspection is requested to occur, including street address and city; and

(vii) A diagram drawn to scale showing the locations where all catch will be weighed and sorted by the observer, the location where unsorted catch will be collected, and the location of any video equipment or viewing panels or ports.

(4) *Where will bin monitoring option inspections be conducted?* Inspections will be conducted on vessels tied to docks at Dutch Harbor, Alaska, Kodiak, Alaska, and in the Puget Sound area of Washington State.

(5) *Bin monitoring option inspection report.* A bin monitoring option inspection report, valid for 12 months from the date it is signed by NMFS, will be issued to the vessel owner if the bin monitoring option meets the requirements of paragraph (i)(1)(ii) or (i)(1)(iii) of this section. The vessel owner must maintain a current bin option inspection report onboard the vessel at all times the vessel is required to provide an approved bin monitoring option under this paragraph (i)(5). The bin monitoring option inspection report must be made available to the observer, NMFS personnel or to an authorized officer upon request.

10. In § 679.31:

a. Remove paragraphs (a)(2), (c), (f), and (g);

b. Redesignate paragraphs (b), (d), and (e) as paragraphs (a)(2), (3), and (4), respectively;

c. In redesignated paragraph (a)(2), further redesignate paragraphs (1), (2),

and (3) introductory text, and (4) as paragraphs (a)(1)(i), (ii), (iii), and (iv), respectively;

d. In redesignated paragraph (a)(2)(iii), further redesignate paragraphs (i), (ii), (iii) and (iv) as paragraphs (a)(2)(iii)(A), (B), (C), and (D), respectively;

e. Add and reserve paragraph (b); and

f. Revise the section heading, the heading for paragraph (a) and paragraph (a)(1).

The additions and revisions read as follows:

§ 679.31 CDQ and PSQ reserves.

* * * * *

(a) *CDQ and PSQ reserves*—(1) *Groundfish CDQ reserves.* See § 679.20(b)(1)(ii).

* * * * *

11. In § 679.50, paragraphs (a), (c)(4)(i)(A), and paragraph (c)(6) published at 71 FR 17381 on April 6, 2006, are revised to read as follows:

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

(a) *General.* Operators of vessels possessing a Federal fisheries permit under § 679.4(b)(1) and processors that possess a Federal processor permit under § 679.4(f)(1), must comply with this section. The owner of a fishing vessel or a processor subject to this part must ensure that the operator or manager complies with this section and is jointly and severally liable for such compliance. The following table provides a reference to the paragraphs in this section that contain observer coverage requirements for vessels, shoreside processors, and stationary floating processors participating in certain fishery programs or fishing in certain areas. Observer coverage for the CDQ fisheries obtained in compliance with paragraphs (c)(4) and (d)(5) of this section may not be used to comply with observer coverage requirements for non-CDQ groundfish fisheries specified in this section.

Program	Catcher/ processors	Catcher vessels	Motherships	Shoreside and stationary floating processors
(1) CDQ Program	(c)(4)	(c)(4)	(c)(4)	(d)(5).
(2) AFA pollock	(c)(5)(i)(A) and (B)	(c)(1) through (3)	(c)(5)(i)(A)	(d)(6).
(3) Aleutian Islands pollock	(c)(5)(i)(C)	(c)(1) through (3)	(c)(5)(i)(C)	(d)(1) through (4).
(4) Rockfish Program	(c)(7)(i)	(c)(7)(ii)	N/A	(d)(7).
(5) Vessels fishing in the Red King Crab Savings Area	(c)(1)(vii)	(c)(1)(viii)	N/A	N/A.
(6) Vessels fishing in the Nearshore Bristol Bay Trawl Closure Area.	(c)(1)(ix)	(c)(1)(ix)	N/A	N/A.
(7) Vessels fishing in the HLA for Atka mackerel	(c)(1)(x)	(c)(1)(x)	N/A	N/A.
(8) Non-AFA trawl C/Ps fishing in the BSAI	(c)(6)	N/A	N/A	N/A.
(9) Vessels and processors participating in all other BSAI and GOA groundfish fisheries.	(c)(1) through (3), in GOA only.	(c)(1) through (3)	(c)(1) through (3)	(d)(1) through (4).

* * * * *

(c) * * *

(4) * * *

(i) * * *

(A) *CDQ groundfish fisheries (effective January 20, 2008)*—(*1*) *Catcher/processors using trawl gear.* A catcher/processor not listed in § 679.4(l)(2)(i) using trawl gear and groundfish CDQ fishing, except catcher/processors directed fishing for pollock CDQ, must comply with the observer coverage requirements at paragraph (c)(6)(i) of this section and the catch monitoring requirements in § 679.93(c).

(*2*) *Motherships.* A mothership that receives groundfish from catcher vessels using trawl gear and groundfish CDQ fishing, except catcher vessels directed fishing for pollock CDQ, must have at least two level 2 observers as described at paragraphs (j)(1)(v)(D) and (E) of this section onboard the vessel, at least one of whom must be endorsed as a lead level 2 observer.

* * * * *

(6) *Non-AFA trawl catcher/processors (effective January 20, 2008)*—(i) *Catcher/processors not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI.* Catcher/processors not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI must have onboard at least two NMFS-certified observers for each day that the vessel is used to harvest, receive, or process groundfish in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(A) *Observer lead level 2 requirements.* At least one of the observers required under this paragraph (c)(6)(i) must be endorsed as a lead level 2 observer. More than two observers are required if the observer workload restriction at paragraph (c)(6)(i)(B) of this section would otherwise preclude sampling as required.

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

(ii) *Amendment 80 vessels in the GOA.* All Amendment 80 vessels fishing in the GOA, except the F/V GOLDEN FLEECE (USCG Documentation Number 609951) provided the F/V GOLDEN FLEECE is named on LLP license number LLG2524, must have onboard at least one NMFS-certified observer for each day that the vessel is used to harvest, receive, or process groundfish in the GOA management areas or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

* * * * *

12. In § 679.64:

a. Revise section heading;

b. Revise paragraph (a)(2)(i);

c. Redesignate paragraphs (a)(4) through (a)(6) as paragraphs (a)(5) through (a)(7), respectively;

d. Add new paragraph (a)(4);

e. Revise paragraphs (a)(5) and (a)(6);

f. Add paragraph (a)(8);

g. Revise paragraph (b)(3)(i) heading;

h. Redesignate paragraph (b)(3)(iii) as paragraph (b)(3)(iv);

i. Add new paragraph (b)(3)(iii);

j. Revise paragraph (b)(4); and

k. Add new paragraph (b)(6).

The revisions and additions read as follows:

§ 679.64 Harvesting sideboard limits in other fisheries.

(a) * * *

(2) * * *

(i) The Aleutian Islands Pacific ocean perch harvest limit will be equal to the 1996 through 1997 aggregate retained catch of Aleutian Islands Pacific ocean perch by catcher/processors listed in Sections 208(e)(1) through (20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the Aleutian Islands Pacific ocean perch catch in 1996 and 1997 multiplied by

the remainder of the Aleutian Islands Pacific ocean perch TAC after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C) in the year in which the harvest limit will be in effect.

* * * * *

(4) *Flathead sole, rock sole, and yellowfin sole.* The harvest limit for flathead sole, rock sole, and yellowfin sole will be equal to the 1995 through 1997 aggregate retained catch of that species by catcher/processors listed in Sections 208(e)(1) through (e)(20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the catch of that species in 1995 through 1997 multiplied by the remainder of the TAC of that species after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C) in the year in which the harvest limit will be in effect.

(5) *Remaining groundfish species.* (i) Except as provided for in paragraphs (a)(1)(ii) through (a)(4) of this section, the harvest limit for each BSAI groundfish species or species group will be equal to the 1995 through 1997 aggregate retained catch of that species by catcher/processors listed in Sections 208(e)(1) through (e)(20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the catch of that species in 1995 through 1997 multiplied by the TAC of that species available for harvest by catcher/processors in the year in which the harvest limit will be in effect.

(ii) If the amount of a species calculated under paragraph (a)(5)(i) of this section is determined by the Regional Administrator to be insufficient to meet bycatch needs for AFA catcher/processors in other directed fisheries for groundfish, the Regional Administrator will prohibit directed fishing for that species by AFA catcher/processors and establish the sideboard amount equal to the amount of that species caught by AFA catcher/processors incidental to directed fishing for other groundfish species.

(6) *What are the halibut and crab PSC sideboard limits*? The halibut and crab PSC bycatch limits specified for catcher/processors in the BSAI are listed in Tables 40 and 41 to this part.

* * * * *

(8) *Yellowfin sole sideboard limit exemption.* AFA catcher/processors will not be subject to a harvest limit for yellowfin sole in the BSAI during a calendar year if the aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than or equal to 125,000 metric tons.

(b) * * *

(3) * * *

(i) *BSAI groundfish other than Amendment 80 species.*

* * * * *

(iii) *Amendment 80 species other than Pacific cod.* The AFA catcher vessel groundfish harvest limit for each Amendment 80 species other than BSAI Pacific cod will be equal to the aggregate retained catch of that Amendment 80 species from 1995 through 1997 by all AFA catcher vessels, divided by the sum of the TAC available to catcher vessels for that species or species group from 1995 through 1997, and multiplied by the remainder of the TAC after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C) in the year or season in which the harvest limit will be in effect.

(4) *How will halibut and crab PSC limits be calculated*?—(i) *BSAI.* The halibut and crab PSC bycatch limits specified for catcher vessels in the BSAI are listed in Tables 40 and 41 to this part.

(ii) *GOA.* The AFA catcher vessel PSC bycatch limit for halibut in the GOA will be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997.

* * * * *

(6) *Yellowfin sole sideboard limit exemption.* AFA catcher vessels will not be subject to a harvest limit for yellowfin sole in the BSAI during a calendar year if the aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than or equal to 125,000 metric tons.

* * * * *

13. In § 679.84, paragraphs (c)(7) and (c)(9) are revised to read as follows:

§ 679.84 Rockfish Program recordkeeping, permits, monitoring, and catch accounting.

* * * * *

(c) * * *

(7) *Pre-cruise meeting.* The Observer Program Office is notified by phone at 1–907–271–1702 at least 24 hours prior to departure when the vessel will be carrying an observer who had not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager, and any observers assigned to the vessel.

* * * * *

(9) *Vessel crew in tanks or bins.* The vessel owner or operator must comply with the bin monitoring standards specified in § 679.28(i).

* * * * *

14. Subpart H, consisting of §§ 679.90 through 679.94, is added to read as follows:

Subpart H—Amendment 80 Program

Sec.
679.90 Allocation, use, and transfer of Amendment 80 QS permits.
679.91 Amendment 80 Program annual harvester privileges.
679.92 Amendment 80 Program use caps and sideboard limits.
679.93 Amendment 80 Program recordkeeping, permits, monitoring, and catch accounting.
679.94 Economic data report (EDR) for the Amendment 80 sector.

Subpart H—Amendment 80 Program

§ 679.90 Allocation, use, and transfer of Amendment 80 QS permits.

Regulations under this subpart were developed by NMFS to implement the Amendment 80 Program. Additional regulations that implement specific portions of the Amendment 80 Program are set out at § 679.2 Definitions, § 679.4 Permits, § 679.5 Recordkeeping and reporting (R&R), § 679.7 Prohibitions, § 679.20 General limitations, § 679.21 Prohibited species bycatch management, § 679.27 Improved Retention/Improved Utilization Program, § 679.28 Equipment and operational requirements, § 679.31 CDQ and PSQ reserves, § 679.50 Groundfish Observer Program applicable through December 31, 2007, and § 679.64 Harvesting sideboard limits in other fisheries.

(a) *Issuance of Amendment 80 QS permits*—(1) *General.* NMFS will issue an Amendment 80 QS permit to a person who is eligible to receive Amendment 80 QS units as described in paragraph (a)(2) of this section and based on:

(i) The information contained in an approved application for Amendment 80 QS as described in paragraph (b) of this section;

(ii) The information contained in the Amendment 80 official record as described in paragraph (c) of this section;

(iii) The Amendment 80 QS permit allocation procedures as described in paragraph (d) of this section; and

(iv) In consideration of any use caps as described in § 679.92(a).

(2) *Eligibility to receive an Amendment 80 QS permit*—(i) *Owner of an Amendment 80 vessel.* A person may receive an Amendment 80 QS permit if:

(A) That person owns an Amendment 80 vessel at the time of application for

Amendment 80 QS as demonstrated on a title of abstract or USCG documentation;

(B) That person holds an Amendment 80 LLP license at the time of application for Amendment 80 QS;

(C) That person is a U.S. citizen;

(D) That person submits a timely application for Amendment 80 QS that is approved by NMFS as described in paragraph (b) of this section; and

(E) That person is not eligible to receive an Amendment 80 QS permit under the provisions of paragraph (a)(2)(ii) of this section.

(ii) *Holder of an Amendment 80 LLP license*. A person may receive an Amendment 80 QS permit if:

(A) At the time of application for Amendment 80 QS that person holds the Amendment 80 LLP license originally assigned to an Amendment 80 vessel and that Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108;

(B) The actual total loss, constructive total loss, or permanent ineligibility of that Amendment 80 vessel to receive a fishery endorsement under 46 U.S.C. 12108 has been clearly and unambiguously established and documented in written form in the application for Amendment 80 QS and that documentation is accepted by NMFS;

(C) The express terms of a written contract clearly and unambiguously provide that the owner(s) of that Amendment 80 vessel transferred all rights and privileges to use the Amendment 80 legal landings from that Amendment 80 vessel to the person holding the Amendment 80 LLP license originally assigned to that Amendment 80 vessel;

(D) That person is a U.S. citizen; and

(E) That person has submitted a timely application for Amendment 80 QS that is approved by NMFS as described in paragraph (b) of this section.

(b) *Application for Amendment 80 QS*—(1) *Submission*. A person who wishes to receive an Amendment 80 QS permit must submit a timely and complete application for Amendment 80 QS. Once a person submits a timely and complete application for Amendment 80 QS that is approved by NMFS, an application for Amendment 80 QS is not required to be resubmitted. An application for Amendment 80 QS may only be submitted to NMFS using any one of the following methods:

(i) *Mail*: Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802–1668;

(ii) *Fax:* 907–586–7354; or

(iii) *Hand delivery or carrier:* NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(2) *Application forms*. Application forms are available through the internet on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov*, or by contacting NMFS at 800–304–4846, Option 2.

(3) *Deadline*. A completed application for Amendment 80 QS must be received by NMFS no later than 1700 hours A.l.t. on October 15 of the year prior to the fishing year for which the applicant is applying, or if sent by U.S. mail, postmarked by that time. Applications received or postmarked after the deadline will not be eligible to receive an Amendment 80 QS permit for the upcoming fishing year.

(4) *Contents of application*. A completed application must contain the following information:

(i) *Applicant identification*. (A) The applicant's name, NMFS person ID (if applicable), tax ID number, permanent business mailing address, business telephone number, business fax number, and e-mail (if available);

(B) Indicate (YES or NO) if the applicant is a U.S. citizen; if YES, enter his or her date of birth;

(C) Indicate (YES or NO) if the applicant is a U.S. corporation, partnership, association, or other business entity; if YES, enter the date of incorporation;

(D) Indicate (YES or NO) if the applicant is a successor-in-interest to a deceased individual or to a non-individual no longer in existence, if YES attach evidence of death or dissolution;

(E) Indicate whether the applicant is applying as the owner of an Amendment 80 vessel or the holder of an Amendment 80 LLP license originally assigned to an Amendment 80 vessel;

(F) For an applicant claiming Amendment 80 legal landings associated with an Amendment 80 vessel, enter the following information for each Amendment 80 vessel: USCG documentation number of vessel on which Amendment 80 legal landings were caught and processed, vessel name, ADF&G vessel registration number, and LLP license held by that person at the time of application;

(G) If an Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108, provide clear and unambiguous documentation in written form that the Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108; and

(H) If applicable, a copy of the express terms of a written contract held by the applicant that clearly and unambiguously indicates that the owner of the Amendment 80 vessel that has suffered has an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108 has transferred all rights and privileges to use Amendment 80 legal landings and any resulting Amendment 80 QS or exclusive harvest privilege from that Amendment 80 vessel to the person holding the Amendment 80 LLP license originally assigned to that Amendment 80 vessel.

(ii) *Applicant signature and certification*. The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. If the application is completed by a designated representative, then explicit authorization for the designated representative signed by the applicant must accompany the application.

(5) *Application evaluation*. The Regional Administrator will evaluate applications received as specified in this paragraph (b)(5) of this section and compare all claims in an application with the information in the Amendment 80 official record. Application claims that are consistent with information in the Amendment 80 official record will be approved by the Regional Administrator. Application claims that are inconsistent with the Amendment 80 official record, unless verified by documentation, will not be approved. An applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraph (b)(4) of this section, will be provided a single 30-day evidentiary period in which to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the Amendment 80 official record. An applicant who submits claims that are inconsistent with information in the Amendment 80 official record has the burden of proving that the submitted claims are correct. Any claims that remain inconsistent or that are not accepted after the 30-day evidentiary period will be denied, and the applicant will be notified by an IAD of his or her appeal rights under § 679.43.

(6) *Appeals.* If an applicant is notified by an IAD that inconsistent claims made by the applicant have been denied, that applicant may appeal that IAD under the provisions described at § 679.43.

(c) *Amendment 80 official record*—(1) *Use of the Amendment 80 official record.* The Amendment 80 official record will contain all information used by the Regional Administrator to determine eligibility to participate in the Amendment 80 Program, assign QS, and any other privileges or limits for the Amendment 80 Program.

(2) *Amendment 80 official record presumed to be correct.* The Amendment 80 official record is presumed to be correct. An applicant to participate in the Amendment 80 Program has the burden to prove otherwise.

(3) *Documentation is used to establish the amount of Amendment 80 legal landings.* Only Amendment 80 legal landings as defined in § 679.2 will be used to assign Amendment 80 QS units to an Amendment 80 QS permit unless an Amendment 80 vessel has no Amendment 80 legal landings in which case Amendment 80 QS units will be allocated to the Amendment 80 QS permit derived from that Amendment 80 vessel according to the procedures established under paragraphs (d)(1)(iii) and (iv) of this section.

(4) *Assignment of Amendment 80 legal landings.* An Amendment 80 legal landing is assigned only to the Amendment 80 vessel that was used to make that Amendment 80 legal landing.

(d) *Assigning an Amendment 80 QS permit to an Amendment 80 QS holder*—(1) *Amendment 80 QS units derived from an Amendment 80 vessel and issued to an Amendment 80 QS holder.* NMFS will assign a specific amount of Amendment 80 QS units to each Amendment 80 QS permit based on the Amendment 80 legal landings of each Amendment 80 vessel for each Amendment 80 species in each management area for that Amendment 80 species as listed in Table 32 to this part, using information from the Amendment 80 official record according to the following procedures:

(i) *All Amendment 80 species.* (A) For each Amendment 80 species, sum the Amendment 80 legal landings for each Amendment 80 vessel in all management areas for that Amendment 80 species listed in Table 32 to this part for each calendar year from 1998 through 2004.

(B) Select the five calendar years that yield the highest amount of Amendment 80 legal landings of that Amendment 80 species in all management areas for that Amendment 80 species listed in Table 32 to this part, including zero metric tons if necessary.

(C) Sum the Amendment 80 legal landings of the highest five years for an Amendment 80 species. This yields the Highest Five Years for that Amendment 80 species.

(D) Divide the Highest Five Years for an Amendment 80 species in paragraph (d)(1)(i)(C) of this section for an Amendment 80 vessel by the sum of all Highest Five Years for all Amendment 80 vessels for that Amendment 80 species based on the Amendment 80 official record for that Amendment 80 species as presented in the following equation:

Highest Five Years / ∑ All Highest Five Years = Percentage of the Total.

The result (quotient) of this equation is the Percentage of the Total for that Amendment 80 vessel for that Amendment 80 species.

(ii) *Aleutian Islands Pacific ocean perch and BSAI Pacific cod.* Multiply the Percentage of the Total for that Amendment 80 vessel for Aleutian Islands Pacific ocean perch and BSAI Pacific cod as calculated in paragraph (d)(1)(i)(D) of this section by the Amendment 80 initial QS pool for Aleutian Islands Pacific ocean perch and BSAI Pacific cod as set forth in Table 32 to this part. This yields the number of Amendment 80 QS units for that Amendment 80 vessel for Aleutian Islands Pacific ocean perch and BSAI Pacific cod Pacific cod.

(iii) *BSAI rock sole and BSAI yellowfin sole.* (A) If an Amendment 80 vessel did not have any Amendment 80 legal landings during 1998 through 2004, that Amendment 80 vessel will receive 0.5 percent of the Percentage of the Total for BSAI rock sole and BSAI yellowfin sole as calculated in paragraph (d)(1)(i)(D) of this section.

(B) All Amendment 80 vessels that did have Amendment 80 legal landings will have the Percentage of the Total assigned to that Amendment 80 vessel as calculated in paragraph (d)(1)(i)(D) of this section adjusted to account for the assignment of the Percentage of the Total to Amendment 80 vessels under paragraph (d)(1)(iii)(A) of this section for BSAI rock sole and BSAI yellowfin sole as presented in the following equation:

Percentage of the Total for that Amendment 80 vessel x (1 − ∑Percentage of the Total assigned to all Amendment 80 vessels under paragraph (d)(1)(iii)(A) of this section) = Adjusted Percentage of the Total for that Amendment 80 vessel.

(C) Multiply the Adjusted Percentage of the Total for that Amendment 80 vessel by the Amendment 80 initial QS pool for BSAI rock sole and BSAI yellowfin sole as set forth in Table 32 to this part. This yields the number of Amendment 80 QS units for that Amendment 80 vessel for BSAI rock sole or BSAI yellowfin sole.

(iv) *BSAI flathead sole.* (A) If an Amendment 80 vessel did not have any Amendment 80 legal landings during 1998 through 2004, that Amendment 80 vessel will receive 0.1 percent of the Percentage of the Total for BSAI flathead sole as calculated in paragraph (d)(1)(i)(D) of this section.

(B) All Amendment 80 vessels that did have Amendment 80 legal landings during 1998 through 2004 will have the Percentage of the Total assigned to that Amendment 80 vessel as calculated in paragraph (d)(1)(i)(D) of this section adjusted to account for the assignment of the Percentage of the Total to Amendment 80 vessels under paragraph (d)(1)(iv)(A) of this section for BSAI flathead sole as presented in the following equation:

Percentage of the Total for that Amendment 80 vessel x (1 − ∑Percentage of the Total assigned to all Amendment 80 vessels under paragraph (d)(1)(iv)(A) of this section) = Adjusted Percentage of the Total for that Amendment 80 vessel.

(C) Multiply the Adjusted Percentage of the Total for that Amendment 80 vessel by the Amendment 80 initial QS pool for BSAI flathead sole as set forth in Table 32 to this part. This yields the number of Amendment 80 QS units for that Amendment 80 vessel for BSAI flathead sole.

(v) *BSAI Atka mackerel.* (A) Multiply the Percentage of the Total for that Amendment 80 vessel as calculated in paragraph (d)(1)(i)(D) of this section by the Amendment 80 initial QS pool for BSAI Atka mackerel as set forth in Table 32 to this part. This yields the number of Amendment 80 QS units for that Amendment 80 vessel for BSAI Atka mackerel.

(B) If an Amendment 80 vessel is an Amendment 80 non-mackerel vessel, determine the percentage of the Amendment 80 QS pool that is assigned to each Atka mackerel management area listed in Table 32 to this part in each year from 1998 through 2004 for that Amendment 80 non-mackerel vessel based on the percentage of Amendment 80 legal landings in that Atka mackerel management area from 1998 through 2004 for that Amendment 80 non-mackerel vessel.

(C) The sum of the Amendment 80 QS units allocated to all Amendment 80 non-mackerel vessels is the Total Amendment 80 non-mackerel QS pool.

(D) The sum of the Amendment 80 QS units allocated to all Amendment 80 mackerel vessels is the Total Amendment 80 mackerel QS pool.

(2) *Assigning Amendment 80 QS units to an Amendment 80 permit.* Once the Regional Administrator determines the amount of Amendment 80 QS units to be issued for an Amendment 80 species derived from an Amendment 80 vessel based on the criteria described in paragraphs (b) through (d) of this section, NMFS will assign that amount of Amendment 80 QS units for each Amendment 80 species as an Amendment 80 QS permit to the Amendment 80 QS holder as follows:

(i) *Amendment 80 vessel owner.* NMFS will issue an Amendment 80 QS permit for each Amendment 80 vessel to the owner of that Amendment 80 vessel if that person submitted a timely and complete Application for Amendment 80 QS that was approved by NMFS under paragraph (a)(2)(i) of this section; or

(ii) *Amendment 80 LLP/QS license.* NMFS will issue an Amendment 80 QS permit as an endorsement on an Amendment 80 LLP license to the holder of an Amendment 80 LLP license originally assigned to an Amendment 80 vessel if that person submitted a timely and complete Application for Amendment 80 QS that was approved by NMFS under paragraph (a)(2)(ii) of this section.

(e) *Transfers of Amendment 80 QS permits*—(1) *Non-severability of Amendment 80 QS permits.* (i) An Amendment 80 QS holder may not transfer an Amendment 80 QS permit to another person unless all Amendment 80 QS units for all Amendment 80 species on that Amendment 80 QS permit are transferred in their entirety to the same person at the same time; and

(ii) Once an Amendment 80 QS permit is assigned to an Amendment 80 LLP license, that Amendment 80 LLP license is designated as an Amendment 80 LLP/QS license and a person may not separate the Amendment 80 QS permit from that Amendment 80 LLP/QS license.

(2) *Transfer of an Amendment 80 LLP/QS license.* A person holding an Amendment 80 LLP/QS license may transfer that Amendment 80 LLP/QS license to another person only under the provisions of § 679.4(k)(7).

(3) *Transfers of Amendment 80 QS permits.* A person holding an Amendment 80 QS permit assigned to an Amendment 80 vessel may transfer that Amendment 80 QS permit to another person only by submitting an application to transfer Amendment 80 QS permit that is approved by NMFS under the provisions of paragraph (f) of this section.

(4) *Assigning an Amendment 80 QS permit to an Amendment 80 LLP license.* An Amendment 80 vessel owner holding an Amendment 80 QS permit assigned to an Amendment 80 vessel may transfer that Amendment 80 QS permit to the Amendment 80 LLP license originally assigned to that Amendment 80 vessel only by submitting an application to transfer an Amendment 80 QS permit that is approved by NMFS under the provisions of paragraph (f) of this section.

(f) *Application to transfer an Amendment 80 QS permit*—(1) *General.* An Amendment 80 QS holder who wishes to transfer an Amendment 80 QS permit must submit a complete application that is approved by NMFS. This application may only be submitted to NMFS using the any one of the following methods:

(i) *Mail:* Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802–1668;

(ii) *Fax:* 907–586–7354; or

(iii) *Hand delivery or carrier:* NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(2) *Application forms.* Application forms are available through the internet on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov*, or by contacting NMFS at 800–304–4846, Option 2.

(3) *Application*—(i) *Transferor information*—(A) Transferor identification. The transferor's name, NMFS person ID (if applicable), tax ID number, date of incorporation or date of birth, permanent business mailing address, business telephone number, fax number, and e-mail (if available).

(B) *Type of transfer.* (*1*) Indicate whether the transferor is applying to transfer an Amendment 80 QS permit to another person; or

(*2*) Indicate whether the transferor is applying to transfer an Amendment 80 QS permit to the Amendment 80 LLP license originally assigned to that Amendment 80 vessel as listed in Table 31 to this part.

(C) *Amendment 80 QS permit.* Indicate the Amendment 80 QS permit to be transferred.

(D) *Information for transfers of Amendment 80 QS permit to another person.* If transferring an Amendment 80 QS permit assigned to an Amendment 80 vessel owner to another person, attach abstract of title or USCG documentation that clearly and unambiguously indicates that the Amendment 80 QS permit transferee is named on the abstract of title or USCG documentation as the owner of the Amendment 80 vessel to which that Amendment 80 QS permit would be assigned.

(E) *Information for transfers of Amendment 80 QS permits to an Amendment 80 LLP license.* If transferring Amendment 80 QS assigned to an Amendment 80 vessel owner to the Amendment 80 LLP license originally assigned to that Amendment 80 vessel, provide clear and unambiguous written documentation that can be verified by NMFS that the Amendment 80 vessel for which that Amendment 80 LLP license was originally assigned is no longer able to be used in the Amendment 80 Program due to the actual total loss, constructive total loss, or permanent ineligibility of that vessel to receive a fishery endorsement under 46 U.S.C. 12108.

(F) *Certification of transferor.* The transferor must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. If the application is completed by a designated representative, then explicit authorization signed by the applicant must accompany the application.

(ii) *Transferee information*—(A) *Transferee identification.* The transferee's name, NMFS person ID (if applicable), tax ID number, date of incorporation or date of birth, permanent business mailing address, business telephone number, fax number, and e-mail (if available).

(B) *Certification of transferee.* The transferee must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. If the application is completed by an designated representative, then explicit authorization signed by the applicant must accompany the application.

§ 679.91 Amendment 80 Program annual harvester privileges.

(a) *Assigning an Amendment 80 QS permit to an Amendment 80 cooperative or Amendment 80 limited access fishery*—(1) *General.* (i) Each calendar year, an Amendment 80 QS holder must either be designated on a timely and complete application for CQ, or file an application for the Amendment 80 limited access fishery that is approved by the Regional Administrator as described under paragraph (b) of this

section in order to catch, process, or receive Amendment 80 species, crab PSC, or halibut PSC assigned to the Amendment 80 sector.

(ii) NMFS will assign all Amendment 80 QS permit(s), Amendment 80 vessel(s), and Amendment 80 LLP license(s) held by an Amendment 80 QS holder to an Amendment 80 cooperative if that Amendment 80 QS holder is designated as a member of an Amendment 80 cooperative on an application for CQ that is approved by the Regional Administrator as described under paragraph (b) of this section.

(iii) NMFS will assign all Amendment 80 QS permit(s), Amendment 80 vessel(s), and Amendment 80 LLP license(s) held by an Amendment 80 QS holder to the Amendment 80 limited access fishery if that Amendment 80 QS holder is designated on an application for the Amendment 80 limited access fishery that is approved by the Regional Administrator as described under paragraph (b) of this section.

(2) *Amendment 80 QS permits issued after issuance of CQ or ITAC.* Any Amendment 80 QS permits, or Amendment 80 QS units on an Amendment 80 QS permit, assigned to an Amendment 80 QS holder after NMFS has issued CQ or ITAC to the Amendment 80 sector for a calendar year will not result in any additional:

(i) CQ being issued to an Amendment 80 cooperative if that Amendment 80 QS holder has assigned his Amendment 80 QS permit(s) to an Amendment 80 cooperative for that calendar year; or

(ii) ITAC being issued to the Amendment 80 limited access fishery if that Amendment 80 QS holder has assigned his Amendment 80 QS permit(s) to the Amendment 80 limited access fishery for that calendar year.

(3) *Failure to submit an application for an Amendment 80 fishery.* If an Amendment 80 QS holder is not designated on a timely and complete application for CQ or application for an Amendment 80 limited access fishery that is approved by the Regional Administrator as described under paragraph (b) of this section, the Regional Administrator will not assign that Amendment 80 QS holder's Amendment 80 QS permit(s), Amendment 80 vessel(s), or Amendment 80 LLP license(s) to an Amendment 80 cooperative or the Amendment 80 limited access fishery for the applicable calendar year.

(b) Application for CQ and Application for the Amendment 80 limited access fishery—(1) *General.* An application for CQ or an application for the Amendment 80 limited access fishery may only be submitted to NMFS using any one of the following methods:

(i) *Mail:* Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802–1668;

(ii) *Fax:* 907–586–7354; or

(iii) *Hand delivery or carrier:* NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(2) Application forms. Application forms are available through the internet on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov*, or by contacting NMFS at 800–304–4846, Option 2.

(3) *Deadline.* A completed application must be received by NMFS no later than 1700 hours A.l.t. on November 1 of the year prior to the calendar year for which the applicant is applying, or if sent by U.S. mail, the application must be postmarked by that time.

(4) *Application for CQ*—(i) *Amendment 80 cooperative identification.* The Amendment 80 cooperative's legal name; tax ID number, the type of business entity under which the Amendment 80 cooperative is organized; the state in which the Amendment 80 cooperative is legally registered as a business entity; permanent business address; business telephone number; business fax number; e-mail address (if available); and printed name of the Amendment 80 cooperative's designated representative.

(ii) *Identification of Amendment 80 QS permit holders and ownership documentation.* Full name of each Amendment 80 cooperative member; NMFS person ID of each member; Amendment 80 QS permit number(s); the names of all persons, to the individual level, holding an ownership interest in the Amendment 80 QS permit(s) assigned to the Amendment 80 cooperative and the percentage ownership each person and individual holds in the Amendment 80 QS permit(s).

(iii) *Identification of Amendment 80 cooperative member vessels and Amendment 80 LLP licenses.* Vessel name; ADF&G vessel registration number; USCG documentation number; and Amendment 80 LLP license number.

(iv) *Identification of vessels on which the CQ issued to the Amendment 80 cooperative will be used.* Vessel name, ADF&G vessel registration number, and USCG documentation number.

(v) *EDR submission.* For 2009 and thereafter, indicate (YES or NO) whether each member of the Amendment 80 cooperative has submitted a timely and complete EDR for each Amendment 80 QS permit held by that person as required under § 679.94.

(vi) *Certification of cooperative authorized representative.* The cooperative's authorized representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. Explicit authorization to complete the application on behalf of the members of the cooperative must accompany the application.

(vii) *Copy of membership agreement or contract.* Attach a copy of the membership agreement or contract that specifies how the Amendment 80 cooperative intends to catch its CQ.

(5) *Application for the Amendment 80 limited access fishery*—(i) *Applicant identification.* The applicant's name, NMFS Person ID (if applicable), tax ID number (required), permanent business mailing address, business telephone number, fax number, and e-mail (if available).

(ii) *Amendment 80 vessel identification.* The name, ADF&G vessel registration number(s), and USCG documentation number(s) of the Amendment 80 vessel(s) owned by the applicant.

(iii) *Amendment 80 LLP identification.* The Amendment 80 LLP license number(s) held by the applicant.

(iv) *Amendment 80 QS permit information.* The Amendment 80 QS permit number(s) held by the applicant.

(v) *Amendment 80 QS ownership documentation.* The names of all persons, to the individual person level, holding an ownership interest in the Amendment 80 QS permit(s) held by the applicant and the percentage ownership each person and individual holds in the Amendment 80 QS permit(s).

(vi) *EDR submission.* For 2009 and thereafter, indicate (YES or NO) whether the applicant has submitted a timely and complete EDR for each Amendment 80 QS permit held by that person as required under § 679.94.

(vii) *Applicant signature and certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. If the application is completed by a designated representative, then explicit authorization signed by the applicant must accompany the application.

(c) *Allocations of Amendment 80 species*—(1) *General.* Each calendar year, the Regional Administrator will determine the tonnage of Amendment 80 species that will be assigned to the BSAI trawl limited access sector and the Amendment 80 sector. For participants

in the Amendment 80 sector, the tonnage of fish will be further assigned between Amendment 80 cooperatives and the Amendment 80 limited access fishery.

(2) *Calculation*—(i) *Determination of TAC and ITAC.* NMFS will determine the TAC and ITAC for each Amendment 80 species in a calendar year in the annual harvest specification process in § 679.20.

(ii) *Annual apportionment of ITAC.* The annual apportionment of ITAC for each Amendment 80 species between the Amendment 80 sector and the BSAI trawl limited access sector in a given calendar year is established in Tables 33 and 34 to this part.

(3) *Allocation of CQ to Amendment 80 cooperatives*—(i) *General.* The amount of ITAC for each Amendment 80 species assigned to an Amendment 80 cooperative is equal to the amount of Amendment 80 QS units assigned to that Amendment 80 cooperative by Amendment 80 QS holders divided by the total Amendment 80 QS pool multiplied by the ITAC for that Amendment 80 species in that management area. Once ITAC for an Amendment 80 species in a management area is assigned to an Amendment 80 cooperative, it is issued as CQ specific to that Amendment 80 cooperative.

(ii) *CQ allocation for Amendment 80 species except BSAI Atka mackerel.* The amount of CQ for each Amendment 80 species except BSAI Atka mackerel that is assigned to a Amendment 80 cooperative is expressed algebraically as follows:

CQ in a management area = [(Amendment 80 sector ITAC in a management area) x (Amendment 80 QS units assigned to that Amendment 80 cooperative / Amendment 80 QS pool)].

(iii) *CQ allocation for BSAI Atka mackerel.* The amount of CQ for BSAI Atka mackerel that is assigned to each Amendment 80 cooperative in each management area is determined by the following procedure:

(A) Determine the amount of non-mackerel ITAC in each management area using the following equation:

Non-mackerel ITAC in a management area = (Amendment 80 non-mackerel QS units designated for that management area / Total Atka mackerel QS pool) x Amendment 80 sector ITAC in all management areas.

(B) Determine the amount of mackerel ITAC in each management area using the following equation:

Mackerel ITAC in a management area = Amendment 80 sector ITAC in that management area—Non-mackerel ITAC in that management area.

(C) Determine the amount of non-mackerel CQ assigned to the Amendment 80 cooperative using the following equation:

Non-mackerel CQ assigned to that Amendment 80 cooperative = (Amendment 80 non-mackerel QS units designated for that management area assigned to that Amendment 80 cooperative / Amendment 80 non-mackerel QS pool in that management area) x Non-mackerel ITAC for that management area.

(D) Determine the amount of mackerel CQ assigned to the Amendment 80 cooperative using the following equation:

Mackerel CQ in a management area = (Mackerel QS units assigned to that Amendment 80 cooperative / Mackerel QS pool) x Mackerel ITAC in that management area.

(E) The total amount of Atka mackerel CQ assigned to an Amendment 80 cooperative for a management area is equal to the sum of paragraphs (c)(3)(iii)(C) and (D) of this section.

(4) *Amendment 80 limited access fishery.* The amount of ITAC in a management area for each Amendment 80 species assigned to the Amendment 80 limited access fishery is equal to the ITAC remaining after subtracting all CQ issued to all Amendment 80 cooperatives for that Amendment 80 species in that management area.

(d) *Allocations of halibut PSC*—(1) *Amount of Amendment 80 halibut PSC assigned to the Amendment 80 sector.* The amount of halibut PSC assigned to the Amendment 80 sector for each calendar year is specified in Table 35 to this part. That amount of halibut PSC is then assigned to Amendment 80 cooperatives and the Amendment 80 limited access fishery.

(2) *Amount of Amendment 80 halibut PSC assigned to an Amendment 80 cooperative.* For each calendar year, the amount of Amendment 80 halibut PSC assigned as CQ to an Amendment 80 cooperative is determined by the following procedure:

(i) Multiply the amount of halibut PSC established in Table 35 to this part by the percentage of the Amendment 80 halibut PSC apportioned to each Amendment 80 species as established in Table 36 to this part. This yields the halibut PSC apportionment for that Amendment 80 species.

(ii) For each Amendment 80 species, divide the amount of Amendment 80 QS units assigned to an Amendment 80 cooperative by the Amendment 80 QS pool. This yields the percentage of Amendment 80 QS units held by that Amendment 80 cooperative.

(iii) For each Amendment 80 species, multiply the halibut PSC apportionment for that Amendment 80 species established in paragraph (d)(2)(i) of this section by the percentage of the Amendment 80 QS pool assigned to an Amendment 80 cooperative for that Amendment 80 species established in paragraph (d)(2)(ii) of this section. This yields the amount of halibut PSC apportioned to that cooperative for that Amendment 80 species.

(iv) For each Amendment 80 cooperative, sum the results of paragraph (d)(2)(iii) of this section for all Amendment 80 species. This yields the amount of Amendment 80 halibut PSC assigned to that Amendment 80 cooperative as CQ.

(3) *Amount of Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery.* The amount of Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery is equal to the amount of halibut PSC assigned to the Amendment 80 sector specified in Table 35 to this part subtracting the amount of Amendment 80 halibut PSC assigned as CQ to all Amendment 80 cooperatives as determined in paragraph (d)(2)(iv) of this section.

(4) *Use of Amendment 80 halibut PSC in the Amendment 80 sector*—(i) *Amendment 80 halibut PSC assigned to a Amendment 80 cooperative.* An amount of Amendment 80 halibut PSC is assigned to the CQ permit issued to an Amendment 80 cooperative for use while fishing for all groundfish species in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. Any halibut PSC used by an Amendment 80 cooperative must be deducted from the amount of halibut PSC CQ on its CQ permit. Amendment 80 halibut PSC on a CQ permit may only be used by the members of the Amendment 80 cooperative to which it is assigned. Halibut PSC assigned as CQ is not subject to seasonal apportionment under § 679.21.

(ii) *Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery.* An amount of Amendment 80 halibut PSC is assigned to the Amendment 80 limited access fishery for use by all Amendment 80 vessels in the Amendment 80 limited access fishery while fishing for all groundfish species in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal

fishing season. Any halibut PSC used by Amendment 80 vessels assigned to the Amendment 80 limited access fishery must be deducted from the amount of halibut PSC assigned to the Amendment 80 limited access fishery. Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery is subject to seasonal apportionment under § 679.21.

(5) *Halibut PSC assigned to the BSAI trawl limited access sector.* Halibut PSC assigned to the BSAI trawl limited access sector for groundfish fishing in the BSAI may only be used by the members of the BSAI trawl limited access sector unless modified by reallocation to Amendment 80 cooperatives according to the procedures in paragraph (f) of this section. Halibut PSC assigned to the BSAI trawl limited access sector is subject to seasonal apportionment under § 679.21.

(e) *Allocations of crab PSC*—(1) *Amount of Amendment 80 crab PSC assigned to the Amendment 80 sector.* The amount of Amendment 80 crab PSC assigned to the Amendment 80 sector for each Amendment 80 crab PSC in a calendar year is specified in Table 35 to this part. That amount of Amendment 80 crab PSC is then assigned to Amendment 80 cooperatives and the Amendment 80 limited access fishery.

(2) *Amount of Amendment 80 crab PSC assigned to an Amendment 80 cooperative.* For each calendar year, for each Amendment 80 crab PSC, the amount assigned as CQ to an Amendment 80 cooperative is determined by the following procedure:

(i) Multiply the amount of an Amendment 80 crab PSC established in Table 35 to this part by the percentage of the Amendment 80 crab PSC apportioned to each Amendment 80 species as established in Table 36 to this part. This yields the Amendment 80 crab PSC apportionment for that Amendment 80 species.

(ii) For each Amendment 80 species, divide the amount of Amendment 80 QS units assigned to an Amendment 80 cooperative by the Amendment 80 QS pool. This yields the percentage of Amendment 80 QS units held by that Amendment 80 cooperative.

(iii) For each Amendment 80 species, multiply the Amendment 80 crab PSC apportionment to that Amendment 80 species established in paragraph (e)(2)(i) of this section by the percentage of the Amendment 80 QS pool held by an Amendment 80 cooperative as established in paragraph (e)(2)(ii) of this section. This yields the amount of Amendment 80 crab PSC apportioned to that Amendment 80 cooperative for that Amendment 80 species.

(iv) For each Amendment 80 crab PSC, sum the results of paragraph (e)(2)(iii) for all Amendment 80 species. This yields the amount of that Amendment 80 crab PSC assigned to that Amendment 80 cooperative.

(3) *Amount of Amendment 80 crab PSC assigned to the Amendment 80 limited access fishery.* The amount of each Amendment 80 crab PSC assigned to the Amendment 80 limited access fishery is equal to the amount of that Amendment 80 crab PSC assigned to the Amendment 80 sector specified in Table 35 to this part subtracting the amount of that crab PSC that has been assigned as CQ to all Amendment 80 cooperatives as determined in paragraph (e)(2)(iv) of this section.

(4) U*se of Amendment 80 crab PSC in the Amendment 80 sector*—(i) *Amendment 80 crab PSC assigned to an Amendment 80 cooperative.* An amount of Amendment 80 crab PSC is assigned to the CQ permit issued to an Amendment 80 cooperative for use while fishing for all groundfish species in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. Any Amendment 80 crab PSC used by an Amendment 80 cooperative must be deducted from the amount of Amendment 80 crab PSC CQ on its CQ permit. Amendment 80 crab PSC on a CQ permit may only be used by the members of the Amendment 80 cooperative to which it is assigned. Amendment 80 crab PSC assigned as CQ is not subject to seasonal apportionment under § 679.21.

(ii) *Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery.* An amount of Amendment 80 crab PSC is assigned to the Amendment 80 limited access fishery for use by all Amendment 80 vessels in the Amendment 80 limited access fishery while fishing for all groundfish species in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. Any Amendment 80 crab PSC used by Amendment 80 vessels assigned to the Amendment 80 limited access fishery must be deducted from the amount of Amendment 80 crab PSC assigned to the Amendment 80 limited access fishery. Amendment 80 crab PSC assigned to the Amendment 80 limited access fishery is subject to seasonal apportionment under § 679.21.

(5) *Amendment 80 crab PSC assigned to the BSAI trawl limited access sector.* Amendment 80 crab PSC assigned to the BSAI trawl limited access sector for groundfish fishing in the BSAI may only be used by the members of the BSAI trawl limited access sector unless modified by reallocation to Amendment 80 cooperatives according to the procedures in paragraph (f) of this section. Amendment 80 crab PSC assigned to the BSAI trawl limited access sector is subject to seasonal apportionment under § 679.21.

(f) *Rollover—Annual reallocation of an Amendment 80 species ICA or ITAC, crab PSC, and halibut PSC from the BSAI trawl limited access sector to Amendment 80 cooperatives*—(1) *General.* The Regional Administrator may reallocate a portion of an ICA or ITAC of an Amendment 80 species, crab PSC, or halibut PSC amount assigned to the BSAI trawl limited access sector to Amendment 80 cooperatives if the amount assigned to the BSAI trawl limited access sector is projected not to be harvested or used. Any reallocation will result in an amended CQ permit for each Amendment 80 cooperative. The timing of a reallocation will be at the discretion of the Regional Administrator.

(2) *Factors considered.* The Regional Administrator will consider the following factors when reallocating an ICA, a directed fishing allowance of an Amendment 80 species, or crab PSC, or halibut PSC amounts from the BSAI trawl limited access sector to Amendment 80 cooperatives:

(i) The risk of biological harm to a groundfish species or species group;

(ii) The risk of socioeconomic harm to other domestic fishery participants;

(iii) The impact that the allocation might have on the socioeconomic well-being of Amendment 80 cooperatives;

(iv) Current catch and PSC use in the BSAI trawl limited access sector;

(v) Historic catch and PSC use in the BSAI trawl limited access sector;

(vi) Harvest capacity and any stated intent on the future harvesting patterns of vessels in the BSAI trawl limited access sector;

(vii) Administrative requirements to reissue CQ permits; and

(viii) Any other relevant biological, socioeconomic, or administrative factors.

(3) *Rollover of Amendment 80 species.* If, during a fishing year, the Regional Administrator determines that a reallocation of a portion of the ITAC or ICA of an Amendment 80 species assigned to the BSAI trawl limited access sector to Amendment 80 cooperatives is appropriate, the Regional Administrator will issue a revised CQ permit to reallocate that amount of Amendment 80 species to each Amendment 80 cooperative according to the following formula:

Amount of additional CQ issued to an Amendment 80 cooperative = Amount of Amendment 80 species available for reallocation to Amendment 80 cooperatives x (Amount of CQ for that Amendment 80 species initially assigned to that Amendment 80 cooperative / ∑ CQ for that Amendment 80 species initially assigned to all Amendment 80 cooperatives).

(4) Rollover of halibut PSC. If, during a fishing year, the Regional Administrator determines that a reallocation of a portion of the halibut PSC assigned to the BSAI trawl limited access sector to Amendment 80 cooperatives is appropriate, the Regional Administrator will issue a revised CQ permit to reallocate that amount of halibut PSC to each Amendment 80 cooperative according to the following procedure:

(i) Multiply the amount of the halibut PSC limit to be reallocated by 95 percent (0.95). This yields the maximum amount of halibut PSC available for allocation to Amendment 80 cooperatives; and

(ii) Determine the halibut PSC CQ issued to each Amendment 80 cooperative according to the following formula:

Amount of additional CQ issued to an Amendment 80 cooperative = Maximum amount of halibut PSC available for reallocation to Amendment 80 cooperatives × (Amount of halibut PSC CQ initially assigned to that Amendment 80 cooperative / ∑ halibut PSC CQ initially assigned to all Amendment 80 cooperatives).

(5) *Rollover of crab PSC.* If, during a fishing year, the Regional Administrator determines that a reallocation of a portion of a crab PSC assigned to the BSAI trawl limited access sector to Amendment 80 cooperatives is appropriate, the Regional Administrator will issue a revised CQ permit to reallocate that amount of crab PSC to each Amendment 80 cooperative according to the following formula:

Amount of CQ issued to an Amendment 80 cooperative = Amount of that crab PSC available for allocation to Amendment 80 cooperatives × (Amount of that crab PSC CQ initially assigned to that Amendment 80 cooperative / ∑ that crab PSC CQ initially assigned to all Amendment 80 cooperatives).

(g) *CQ transfer applications*—(1) *General.* An Amendment 80 cooperative may transfer all or part of its CQ to another Amendment 80 cooperative. Amendment 80 cooperatives may transfer CQ during a calendar year with the following restrictions:

(i) An Amendment 80 cooperative may only transfer CQ to another Amendment 80 cooperative;

(ii) An Amendment 80 cooperative may only receive CQ from another Amendment 80 cooperative; and

(iii) An Amendment 80 cooperative receiving Amendment 80 species CQ by transfer must assign that Amendment 80 species CQ to a member(s) of the Amendment 80 cooperative for the purposes of use cap calculation as established under § 679.92(a).

(2) *Application for CQ transfer.* NMFS will notify the transferor and transferee once the application for CQ transfer has been received and approved. A transfer of CQ is not effective until approved by NMFS. An application for CQ transfer may only be submitted to NMFS using any one of the following methods:

(i) *Mail:* Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802–1668;

(ii) *Fax:* 907–586–7354; or

(iii) *Hand delivery or carrier:* NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(3) *Application forms.* Application forms are available through the internet on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov,* or by contacting NMFS at 800–304–4846, Option 2.

(4) *Contents of application.* A completed application for CQ transfer requires that the following information be provided:

(i) *Identification of transferor.* Enter the name, NMFS Person ID, name of Amendment 80 cooperative's designated representative; permanent business mailing address, business telephone number, business fax number, and e-mail address (if available) of the Amendment 80 cooperative transferor. A temporary mailing address for each transaction may also be provided.

(ii) *Identification of transferee.* Enter the name, NMFS Person ID, name of Amendment 80 cooperative's designated representative, permanent business mailing address, business telephone number, business fax number, and e-mail address (if available) of the Amendment 80 cooperative transferee. A temporary mailing address for each transaction may also be provided.

(iii) *CQ to be transferred.* Identify the type and amount of Amendment 80 species, or Amendment 80 PSC CQ to be transferred, and the number of QS units from which this CQ is derived.

(iv) *Identification of Amendment 80 cooperative member.* Enter the name and NMFS Person ID of the member(s) of the receiving Amendment 80 cooperative to whose use cap Amendment 80 species CQ will be assigned, and the amount of Amendment 80 species CQ applied to each member, for purposes of applying Amendment 80 species use caps established under the Amendment 80 Program under § 679.92(a).

(v) *Certification of transferor.* The Amendment 80 cooperative transferor's designated representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. The printed name of the Amendment 80 cooperative transferor's designated representative must be entered.

(vi) *Certification of transferee.* The Amendment 80 cooperative transferee's designated representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. The printed name of the Amendment 80 cooperative transferee's designated representative must be entered.

(5) *CQ amounts applied to a member of an Amendment 80 cooperative.* (i) Amendment 80 species CQ must be assigned to a member of the Amendment 80 cooperative receiving the CQ for purposes of use cap calculations. No member of an Amendment 80 cooperative may exceed the CQ use cap applicable to that member.

(ii) For purposes of Amendment 80 species CQ use cap calculations, the total amount of Amendment 80 species CQ held or used by a person is equal to all metric tons of Amendment 80 species CQ derived from all Amendment 80 QS units on all Amendment 80 QS permits held by that person and assigned to the Amendment 80 cooperative and all metric tons of Amendment 80 species CQ assigned to that person by the Amendment 80 cooperative from approved transfers.

(iii) The amount of Amendment 80 QS units held by a person, and CQ derived from those Amendment 80 QS units, is calculated using the individual and collective use cap rule established in § 679.92(a).

(h) *Amendment 80 cooperative*—(1) *General.* This section governs the formation and operation of Amendment 80 cooperatives. The regulations in this section apply only to Amendment 80 cooperatives that have formed for the purpose of applying for and fishing with CQ issued annually by NMFS. Members of Amendment 80 cooperatives should consult legal counsel before commencing any activity if the members

are uncertain about the legality under the antitrust laws of the Amendment 80 cooperative's proposed conduct. Membership in an Amendment 80 cooperative is voluntary. No person may be required to join an Amendment 80 cooperative. Upon receipt of written notification that a person is eligible and wants to join an Amendment 80 cooperative, that Amendment 80 cooperative must allow that person to join subject to the terms and agreements that apply to the members of the cooperative as established in the agreement or contract governing the conduct of the Amendment 80 cooperative. If a person becomes the owner of an Amendment 80 vessel or a holder of an Amendment 80 LLP/QS license that has been assigned to an Amendment 80 cooperative, then that person may join that Amendment 80 cooperative as a member upon receipt of that Amendment 80 vessel or Amendment 80 LLP/QS license. Members may leave an Amendment 80 cooperative, but any CQ contributed by the Amendment 80 QS permit(s) held by that member will remain with that Amendment 80 cooperative for the duration of the calendar year.

(2) *Legal and organizational requirements.* An Amendment 80 cooperative must meet the following legal and organizational requirements before it is eligible to receive CQ:

(i) Each Amendment 80 cooperative must be formed as a partnership, corporation, or other legal business entity that is registered under the laws of one of the 50 states or the District of Columbia;

(ii) Each Amendment 80 cooperative must appoint an individual as the designated representative to act on the Amendment 80 cooperative's behalf and to serve as a contact point for NMFS for questions regarding the operation of the Amendment 80 cooperative. The designated representative may be a member of the Amendment 80 cooperative, or some other individual designated by the Amendment 80 cooperative to act on its behalf;

(iii) Each Amendment 80 cooperative must submit a timely and complete application for CQ; and

(iv) Each Amendment 80 cooperative must meet the mandatory requirements established in paragraphs (h)(3) and (4) of this section applicable to that Amendment 80 cooperative.

(3) *Mandatory requirements.* The following table describes the requirements to form a Amendment 80 cooperative:

(i) Who may join an Amendment 80 cooperative?	Any Amendment 80 QS holder named on a timely and complete application for CQ for that calendar year that is approved by NMFS. Individuals who are not Amendment 80 QS holders may be employed by, or serve as the designated representative of a Amendment 80 cooperative, but are not members of the Amendment 80 cooperative.
(ii) What is the minimum number of Amendment 80 QS permits that must be assigned to an Amendment 80 cooperative to allow it to form?	Any combination of at least nine Amendment 80 QS permits which would include Amendment 80 LLP/QS licenses.
(iii) How many Amendment 80 QS holders are required to form an Amendment 80 cooperative?	At least three Amendment 80 QS holders each of whom may not have a ten percent or greater direct or indirect ownership interest in any of the other Amendment 80 QS holders.
(iv) Is there a minimum amount of Amendment 80 QS units that must be assigned to an Amendment 80 cooperative for it to be allowed to form?	No.
(v) What is allocated to the Amendment 80 cooperative?	CQ for each Amendment 80 species, crab PSC, and halibut PSC, based on the amount of Amendment 80 QS units assigned to the cooperative.
(vi) Is this CQ an exclusive catch and use privilege?	Yes, the members of the Amendment 80 cooperative have an exclusive privilege to collectively catch and use this CQ, or an Amendment 80 cooperative can transfer all or a portion of this CQ to another Amendment 80 cooperative.
(vii) Is there a period in a calendar year during which designated vessels must catch CQ?	Yes, any Amendment 80 vessel designated to catch CQ for an Amendment 80 cooperative is limited to catching CQ during the period beginning on 1200 hours A.l.t. on January 20 through 2400 hours A.l.t. on December 31.
(viii) Can any vessel catch an Amendment 80 cooperative's CQ?	No, only Amendment 80 vessels that are assigned to that Amendment 80 cooperative for that calendar year in the application for CQ may catch and process the CQ assigned to that Amendment 80 cooperative.
(ix) Can a member of an Amendment 80 cooperative transfer CQ individually without the approval of the other members of the Amendment 80 cooperative?	No, only the designated representative of the Amendment 80 cooperative, and not individual members, may transfer its CQ to another Amendment 80 cooperative; and only if that transfer is approved by NMFS as established under paragraph (g) of this section.
(x) Are GOA sideboard limits assigned to specific persons or Amendment 80 cooperatives?	No, GOA sideboard limits are not assigned to specific persons or Amendment 80 cooperatives. GOA sideboard limits are assigned to the Amendment 80 sector.
(xi) Can an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel be assigned to more than one Amendment 80 cooperative in a calendar year?	No, an Amendment 80 QS holder holding multiple Amendment 80 QS permits, Amendment 80 LLP licenses, or Amendment 80 vessels may assign those permits, licenses, or vessels to only one Amendment 80 cooperative in a calendar year.
(xii) Can an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel be assigned to an Amendment 80 cooperative and the Amendment 80 limited access fishery?	No, an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel assigned to an Amendment 80 cooperative may not be assigned to the Amendment 80 limited access fishery for that calendar year.
(xiii) Which members may catch the Amendment 80 cooperative's CQ?	Use of a cooperative's CQ permit is determined by the Amendment 80 cooperative contract signed by its members. Any violations of this contract by a cooperative member may be subject to civil claims by other members of the Amendment 80 cooperative.

(xiv) Does an Amendment 80 cooperative need a membership agreement or contract?	Yes, an Amendment 80 cooperative must have a membership agreement or contract that specifies how the Amendment 80 cooperative intends to catch its CQ. A copy of this agreement or contract must be submitted to NMFS with the application for CQ.
(xv) What happens of the Amendment 80 cooperative membership agreement or contract is modified during the fishing year?	A copy of the amended Amendment 80 membership agreement or contract must be sent to NMFS in accordance with § 679.4(a)(4).
(xvi) What happens if the Amendment 80 cooperative exceeds its CQ amount?	An Amendment 80 cooperative is not authorized to catch Amendment 80 species or use crab PSC or halibut PSC in excess of the amount on its CQ permit. Exceeding a CQ permit is a violation of the regulations. Each member of the Amendment 80 cooperative is jointly and severally liable for any violations of the Amendment 80 Program regulations while fishing under the authority of a CQ permit. This liability extends to any persons who are hired to catch or receive CQ assigned to a Amendment 80 cooperative. Each member of an Amendment 80 cooperative is responsible for ensuring that all members of the cooperative comply with all regulations applicable to fishing under the Amendment 80 Program.
(xvii) Is there a limit on how much CQ a Amendment 80 cooperative may hold or use?	No, but each Amendment 80 QS holder is subject to use caps, and an Amendment 80 vessel may be subject to vessel use caps. See § 679.92(a).
(xviii) Is there a limit on how much CQ a vessel may catch?	Yes, an Amendment 80 vessel may not catch more than 20 percent of the aggregate Amendment 80 species ITAC assigned to the Amendment 80 sector for that calendar year. See § 679.92(a) for use cap provisions.
(xix) Are there any special reporting requirements?	Yes, the designated representative of the Amendment 80 cooperative must submit an annual Amendment 80 cooperative report as described under § 679.5(s). In addition, each member of an Amendment 80 cooperative must submit a timely and complete EDR as described under § 679.94.

(4) *Successors-in-interest.* If a member of an Amendment 80 cooperative dies (in the case of an individual) or dissolves (in the case of a business entity), the CQ derived from the Amendment 80 QS permits assigned to the Amendment 80 cooperative for that year from that person remains under the control of the Amendment 80 cooperative for the duration of that calendar year as specified in the Amendment 80 cooperative contract. Each Amendment 80 cooperative is free to establish its own internal procedures for admitting a successor-in-interest during the fishing season due to the death or dissolution of an Amendment 80 cooperative member.

§ 679.92 Amendment 80 Program use caps and sideboard limits.

(a) *Use caps*—(1) *General.* Use caps limit the amount of Amendment 80 QS units and Amendment 80 species CQ that may be held or used by an Amendment 80 QS holder or Amendment 80 vessel. Use caps may not be exceeded unless the Amendment 80 QS holder or Amendment 80 vessel subject to the use cap is specifically allowed to exceed a cap according to the criteria established under this paragraph (a) or by an operation of law. There are two types of use caps: Person use caps and vessel use caps. All Amendment 80 QS unit use caps are based on the aggregate Amendment 80 species Amendment 80 initial QS pool set forth in Table 32 to this part. The use caps apply as follows:

(2) *Amendment 80 QS holder use cap*—(i) *QS and CQ use cap.* A person may not individually or collectively hold or use more than thirty (30.0) percent of the aggregate Amendment 80 QS units initially assigned to the Amendment 80 sector and resulting CQ unless that person receives those Amendment 80 QS units on an Amendment 80 permit(s) based on Amendment 80 legal landings assigned to Amendment 80 vessel(s) or Amendment 80 LLP license(s) held by that Amendment 80 QS holder:

(A) Prior to June 9, 2006; and

(B) At the time of application for Amendment 80 QS.

(ii) *CQ use cap calculation.* For purposes of calculating and applying the CQ use cap, a person is assigned CQ based on:

(A) The amount of CQ derived from the Amendment 80 QS units held by that person; and

(B) Any CQ assigned to that person in an Application for CQ transfer.

(iii) *Transfer limitations.* (A) An Amendment 80 QS holder that receives an initial allocation of aggregate Amendment 80 QS units that exceeds the use cap listed in paragraph (a)(2)(i) of this section cannot receive any Amendment 80 QS permit by transfer unless and until that person's holdings of aggregate Amendment 80 QS units are reduced to an amount below the use cap specified in paragraph (a)(2)(i) of this section.

(B) If an Amendment 80 QS holder that received an initial allocation of aggregate Amendment 80 QS units on his or her Amendment 80 QS permits that exceeds the use cap listed in paragraph (a)(2)(i) of this section transfers an Amendment 80 QS permit to another person, the transferor may not hold more than the greater of either the amount of Amendment 80 QS units held by the transferor after the transfer if the amount of aggregate Amendment 80 QS units continues to exceed the use cap, or the amount equal to the Amendment 80 QS unit use cap established in paragraph (a)(2)(i) of this section.

(C) An Amendment 80 QS holder that receives an initial allocation of aggregate Amendment 80 QS units on his or her Amendment 80 QS permits that exceeds the use cap listed in paragraph (a)(2)(i) of this section is prohibited from having any CQ assigned to that Amendment 80 QS holder in an application for CQ transfer unless and until that Amendment 80 QS holder's holdings of aggregate Amendment 80 QS units are reduced to an amount below the use cap specified in paragraph (a)(2)(i) of this section.

(3) *ITAC use cap for an Amendment 80 vessel.* An Amendment 80 vessel may not be used to catch an amount of Amendment 80 species greater than twenty (20.0) percent of the aggregate Amendment 80 species ITACs assigned to the Amendment 80 sector. This amount includes ITAC that is assigned as CQ or to the Amendment 80 limited access fishery.

(b) *GOA sideboard limits*—(1) *GOA groundfish sideboard limits.* Amendment 80 vessels may not be used to catch more than the amounts of groundfish in the management areas specified in Table 37 to this part from January 1 through December 31 of each year.

(2) *GOA halibut PSC sideboard limits.* All Amendment 80 vessels, other than the F/V GOLDEN FLEECE using LLG 2524 as specified in paragraph (d) of this section, may not use halibut PSC in the fishery complexes, management areas, and seasons greater than the amounts specified in Table 38 to this part during January 1 through December 31 of each year; except that an Amendment 80 vessel that uses halibut PSC CQ in the Central GOA subject to the regulations established in the Rockfish Program under subpart G to this part is not subject to the halibut PSC sideboard limits in Table 38 to this part.

(c) *Sideboard restrictions applicable to Amendment 80 vessels directed fishing for flatfish in the GOA.* Only an Amendment 80 vessel listed in column A of Table 39 to this part and named on an Amendment 80 LLP license listed in column C of Table 39 to this part may be used to fish in the directed arrowtooth flounder, deep-water flatfish, flathead sole, rex sole, and shallow-water flatfish fisheries in the GOA and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(d) *Sideboard restrictions applicable to the fishing vessel GOLDEN FLEECE.* (1) The fishing vessel GOLDEN FLEECE (USCG documentation number 609951):

(i) May not be used for directed groundfish fishing for northern rockfish, pelagic shelf rockfish, pollock, Pacific cod, or Pacific ocean perch in the GOA and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season; and

(ii) Is not subject to halibut PSC sideboard limits as described in paragraph (b)(2) of this section in the GOA or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season except as provided in paragraphs (d)(2) and (3) of this section.

(2) If any Amendment 80 vessel other than the GOLDEN FLEECE is named on the LLP license number LLG 2524, that vessel is subject to all sideboard restrictions in paragraphs (b) and (c) of this section.

(3) If the GOLDEN FLEECE is named on any LLP license other than LLP license number LLG 2524, the GOLDEN FLEECE is subject to all sideboard restrictions in paragraphs (b) and (c) of this section.

§ 679.93 Amendment 80 Program recordkeeping, permits, monitoring, and catch accounting.

(a) *Recordkeeping and reporting.* See § 679.5(s).

(b) *Permits.* See § 679.4(o).

(c) *Catch monitoring requirements for Amendment 80 vessels and catcher/processors not listed in § 679.4(l)(2)(i) using trawl gear and fishing in the BSAI.* The requirements under paragraphs (c)(1) through (9) of this section apply to Amendment 80 vessels and any other catcher/processor not listed in § 679.4(l)(2)(i) using trawl gear and fishing or receiving fish in the BSAI and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. At all times when a catcher/processor not listed in § 679.4(l)(2)(i) using trawl gear has BSAI groundfish onboard the vessel, the vessel owner or operator must ensure that:

(1) *Catch weighing.* All groundfish are weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b). Each haul must be weighed separately and all catch must be made available for sampling by a NMFS-certified observer.

(2) *Observer sampling station.* An observer sampling station meeting the requirements at § 679.28(d) is available at all times.

(3) *Observer coverage requirements.* The vessel is in compliance with the observer coverage requirements described at § 679.50(c)(6).

(4) *Operational line.* The vessel has no more than one operational line or other conveyance for the mechanized movement of catch between the scale used to weigh total catch and the location where the observer collects species composition samples.

(5) *Fish on deck.* No fish are allowed to remain on deck unless an observer is present, except for fish inside the codend and fish accidentally spilled from the codend during hauling and dumping. Fish accidentally spilled from the codend must be moved to the fish bin.

(6) *Sample storage.* There is sufficient space to accommodate a minimum of 10 observer sampling baskets. This space must be within or adjacent to the observer sample station.

(7) *Pre-cruise meeting.* The Observer Program Office is notified by phone at 1–907–271–1702 at least 24 hours prior to departure when the vessel will be carrying an observer who has not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager, and any observers assigned to the vessel.

(8) *Belt and flow operations.* The vessel operator stops the flow of fish and clears all belts between the bin doors and the area where the observer collects samples of unsorted catch when requested to do so by the observer.

(9) *Vessel crew in tanks or bins.* The vessel owner or operator must comply with the bin monitoring standards specified in § 679.28(i).

(d) *Catch monitoring requirements for Amendment 80 vessels fishing in the GOA.* The requirements under this section apply to any Amendment 80 vessel fishing in the GOA and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. At all times when an Amendment 80 vessel has GOA groundfish onboard the vessel owner or operator must ensure that:

(1) Catch from an individual haul is not mixed with catch from another haul prior to sampling by a NMFS-certified observer, and all catch is made available for sampling by a NMFS-certified observer;

(2) The vessel is in compliance with the observer coverage requirements described at § 679.50(c)(6)(ii); and

(3) The requirements in paragraphs (c)(4), (5), (8), and (9) of this section are met.

(e) *Catch accounting*—(1) *Amendment 80 species*—(i) *Amendment 80 cooperative.* All Amendment 80 species caught in the BSAI, including catch in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, by a vessel that is assigned to an Amendment 80 cooperative will be debited from the CQ permit for that Amendment 80 cooperative for that calendar year.

(ii) *Amendment 80 limited access fishery.* All Amendment 80 species caught in the BSAI, including catch in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, by a vessel that is assigned to the Amendment 80 limited access fishery will be debited against the ITAC for that Amendment 80 species in the Amendment 80 limited access fishery for that calendar year.

(2) *Crab PSC and halibut PSC*—(i) *Amendment 80 cooperative.* All crab PSC or halibut PSC used by an Amendment 80 vessel, including crab PSC or halibut PSC used in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing

season, that is assigned to an Amendment 80 cooperative will be debited against the CQ permit for that Amendment 80 cooperative for that calendar year.

(ii) *Amendment 80 limited access fishery.* All crab PSC or halibut PSC used by an Amendment 80 vessel, including crab PSC or halibut PSC used in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, that is assigned to an Amendment 80 limited access fishery will be debited against the crab PSC or halibut PSC limit assigned to the Amendment 80 limited access fishery for that calendar year.

(3) *GOA groundfish sideboard limits.* All Amendment 80 sideboard species caught in the GOA, including catch in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, by an Amendment 80 vessel will be debited against the Amendment 80 sideboard limit for that Amendment 80 sideboard species for that calendar year.

(4) *GOA halibut sideboard limits.* All halibut PSC used by all Amendment 80 vessels in the GOA, including halibut PSC used in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, will be debited against the sideboard limit established for the Amendment 80 sector, except:

(i) Halibut PSC CQ used by the catcher/processor sector in the Rockfish Program in the Central GOA; and

(ii) Halibut PSC used by the GOLDEN FLEECE (USCG Documentation number 609951) if the GOLDEN FLEECE is named on LLP licence number LLG 2524.

§ 679.94 Economic data report (EDR) for the Amendment 80 sector.

(a) *Amendment 80 EDR*—(1) *Requirement to submit an EDR.* Each year except 2008, a person who held an Amendment 80 QS permit during a calendar year must submit to NMFS an EDR for that calendar year for each Amendment 80 QS permit held by that person. An EDR must be timely and complete.

(2) *Submission of EDR.* An EDR may only be submitted to NMFS using any one of the following methods:

(i) *Mail:* NMFS, Alaska Fisheries Science Center, Economic Data Reports, 7600 Sand Point Way NE, F/AKC2, Seattle, WA 98115; or

(ii) *Fax:* 206–526–6723.

(3) *EDR forms.* EDR forms are available through the Internet on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov,* or by contacting NMFS at 206–526–6414.

(4) *Deadline.* For each calendar year except 2008, a completed EDR must be received by NMFS no later than 1700 hours A.l.t. on June 1 of the year following the calendar year during which the Amendment 80 QS permit was held, or if sent by U.S. mail, postmarked by that date.

(5) *Contents of EDR.* An EDR must contain completed submissions for each data field required under paragraphs (b) and (c) of this section, as applicable, and the following information:

(i) *Calendar year of EDR.* Calendar year for which the EDR is being submitted;

(ii) *Amendment 80 QS holder information.* Name of company, partnership, other business entity, business telephone number, business fax number, e-mail address (if available) and Amendment 80 QS permits held;

(iii) *Designated representative.* An Amendment 80 QS holder must appoint an individual to be his designated representative and must ensure that the designated representative complies with the regulations in this section. The designated representative is the primary contact person for NMFS on issues relating to data required in the EDR. If an individual Amendment 80 QS holder chooses to complete the EDR, then they are the designated representative;

(iv) *Person completing this report.* (A) Indicate whether the person completing this report is the Amendment 80 QS holder, or the designated representative for the Amendment 80 QS holder;

(B) Record the name of the person completing the report, title, business telephone number, fax number, signature of the person submitting the EDR, and e-mail address (if available). If a designated representative is not the Amendment 80 QS holder, written authorization to act on behalf of the Amendment 80 QS holder must accompany the EDR;

(v) *Amendment 80 QS holders who own Amendment 80 vessels.* An Amendment 80 QS holder who is an Amendment 80 vessel owner must submit, or have his designated representative submit, revenue and cost information for each Amendment 80 QS permit held and each Amendment 80 vessel owned by that Amendment 80 QS holder as described under paragraphs (b) and (c) of this section;

(vi) *Amendment 80 QS holders who do not own Amendment 80 vessels.* An Amendment 80 QS holder who is not an Amendment 80 vessel owner must submit, or have his designated representative submit, revenue and cost information for each Amendment 80 QS permit held by that Amendment 80 QS holder as described under paragraph (c) of this section; and

(vii) *Certification.* The Amendment 80 QS holder and his designated representative, if applicable, must certify that all information provided under paragraphs (b) and (c) of this section is accurate and complete.

(b) *Amendment 80 vessel information*—(1) *Ownership of an Amendment 80 vessel.* If a person owned any part of an Amendment 80 vessel during a calendar year, that person must provide the following information for each Amendment 80 vessel owned:

(i) *Amendment 80 vessel owner information.* Vessel name, USCG Documentation number, ADF&G vessel registration number, ADF&G processor code, Amendment 80 LLP license number(s) which designated that vessel during that calendar year, Amendment 80 QS permit assigned to that vessel during that calendar year, Amendment 80 limited access fishery permit number assigned to that vessel during that calendar year, or name of Amendment 80 cooperative to which that Amendment 80 vessel was assigned during that calendar year (if applicable);

(ii) *Amendment 80 vessel operator information.* If a person other than the Amendment 80 QS holder operated an Amendment 80 vessel owned by that Amendment 80 QS holder during a calendar year, provide the following: Name of company, partnership, other business entity, and business telephone number, business fax number, and e-mail address (if available);

(2) *Vessel characteristics.* (i) Home port, U.S. gross registered tonnage, net tonnage, length overall, beam, shaft horsepower, fuel capacity, year built;

(ii) Vessel survey value: Most recent survey value, date of last survey value, did survey reflect value of permits and processing equipment;

(iii) Freezing capacity: Maximum freezing capacity of this vessel in pounds per hour and freezer space (measured in pounds of product);

(iv) Fuel consumption: Total consumption for the calendar year and average fuel consumed per hour from fishing and processing, transiting, and in shipyard.

(v) Vessel activity during calendar year: Number of days the vessel was engaged in fishing, processing, steaming empty, offloading, and inactive or in shipyard. Report separately for Amendment 80 fisheries and all other fisheries; and

(vi) Processing capacity: Record each type of product processed on the line in the Amendment 80 fishery, the number of processing lines of similar type

(equipment and/or product mix), and the vessel's maximum average throughput in pounds (round weight) per hour under normal operating conditions (assuming quantity of raw fish and other inputs is not limiting), totaled over all processing lines of this type.

(3) *Calendar year revenues.*

(i) Total fishery product sales volume and FOB Alaska revenue; and

(ii) All other income derived from vessel operations: tendering, charters, cargo transport, etc.

(4) *Calendar year costs.* (i) Fishing labor expenses (including bonuses and payroll taxes, but excluding benefits and insurance);

(ii) Processing labor expenses (including bonuses and payroll taxes, but excluding benefits and insurance);

(iii) Labor expenses for all other employees aboard the vessel;

(iv) Food and provisions not paid by crew;

(v) Recruitment, travel, benefits, and other employee related costs;

(vi) Lease expense for this vessel and onboard equipment;

(vii) Purchases of fishing gear (nets, net electronics, doors, cables, etc.);

(viii) Expenditures on processing equipment;

(ix) Product storage equipment;

(x) Expenditures on vessel and onboard equipment (other than fishing, processing, or storage equipment);

(xi) Fishing gear leases;

(xii) Repair and maintenance expenses for vessel and processing equipment;

(xiii) Freight storage and other sales costs;

(xiv) Product packaging materials;

(xv) Fuel and lubrication;

(xvi) Observer fees and monitoring costs;

(xvii) General administrative costs;

(xviii) Insurance;

(xix) Fisheries landing taxes;

(xx) Total raw fish purchases; and

(xxi) All other costs related to vessel operations not included in the preceding list.

(5) *Calendar year labor.* Average number and total number of employees for fishing, processing, and other activities on this vessel.

(i) Average number of hours worked per day by processing line employee; and

(ii) Crew revenue share system used for some processing, all processing, some non-processing, and all non-processing crew.

(c) *Permit revenues or expenditures.* An Amendment 80 QS holder or his designated representative will record revenues and expenditures for any tradable fishing or processing privilege. Attribute those revenues or costs to a specific Amendment 80 vessel or Amendment 80 LLP as applicable.

(1) *Permit revenues.* (i) Income from sale or lease of fishery licenses, permits, harvesting or processing rights: Record license or permit number and revenue for each asset sold; and

(ii) Royalties received from leasing allocations including metric tons and dollars for Amendment 80 yellowfin sole, rock sole, flathead sole, Atka mackerel, Pacific ocean perch, Pacific cod, Amendment 80 leased halibut PSC, leased crab PSC, and any other species leased.

(2) *Permit expenditures.* (i) Fishery licenses, permits, harvesting or processing rights: record license or permit number and cost for each asset purchased;

(ii) Royalties paid for leases of catcher/processing quota, including metric tons, and dollars for Amendment 80 yellowfin sole, rock sole, flathead sole, Atka mackerel, Pacific ocean perch, Pacific cod, Amendment 80 leased halibut PSC, leased king crab PSC, and any other species leased;

(iii) Cooperative costs including lawyer and accountant costs, association fees, and other fees charged by harvest cooperative; and

(iv) Any other costs incurred from the use of fishery licenses, permits, harvesting or processing rights not included in the preceding list.

(d) *EDR audit procedures.* (1) NMFS will conduct verification of information with the Amendment 80 QS holder or designated representative, if applicable.

(2) The Amendment 80 QS holder or designated representative, if applicable, must respond to inquiries by NMFS within 20 days of the date of issuance of the inquiry.

(3) The Amendment 80 QS holder or designated representative, if applicable, must provide copies of additional data to facilitate verification by NMFS. The NMFS auditor may review and request copies of additional data provided by the Amendment 80 QS holder or designated representative, including but not limited to, previously audited or reviewed financial statements, worksheets, tax returns, invoices, receipts, and other original documents substantiating the data submitted.

15. Tables 31 through 41 are added to part 679 to read as follows:

* * * * *

TABLE 31 TO PART 679.—LIST OF AMENDMENT 80 VESSELS AND AMENDMENT 80 LLP LICENSES

Column A: Name of Amendment 80 vessel	Column B: USCG Documentation No.	Column C: Amendment 80 LLP license No. originally assigned to the Amendment 80 vessel
ALASKA JURIS	569276	LLG 2082
ALASKA RANGER	550138	LLG 2118
ALASKA SPIRIT	554913	LLG 3043
ALASKA VOYAGER	536484	LLG 2084
ALASKA VICTORY	569752	LLG 2080
ALASKA WARRIOR	590350	LLG 2083
ALLIANCE	622750	LLG 2905
AMERICAN NO I	610654	LLG 2028
ARCTIC ROSE	931446	LLG 3895
ARICA	550139	LLG 2429
BERING ENTERPRISE	610869	LLG 3744
CAPE HORN	653806	LLG 2432
CONSTELLATION	640364	LLG 1147
DEFENDER	665983	LLG 3217
ENTERPRISE	657383	LLG 4831
GOLDEN FLEECE	609951	LLG 2524
HARVESTER ENTERPRISE	584902	LLG 3741

TABLE 31 TO PART 679.—LIST OF AMENDMENT 80 VESSELS AND AMENDMENT 80 LLP LICENSES—Continued

Column A: Name of Amendment 80 vessel	Column B: USCG Documentation No.	Column C: Amendment 80 LLP license No. originally assigned to the Amendment 80 vessel
LEGACY	664882	LLG 3714
OCEAN ALASKA	623210	LLG 4360
OCEAN PEACE	677399	LLG 2138
PROSPERITY	615485	LLG 1802
REBECCA IRENE	697637	LLG 3958
SEAFISHER	575587	LLG 2014
SEAFREEZE ALASKA	517242	LLG 4692
TREMONT	529154	LLG 2785
U.S. INTREPID	604439	LLG 3662
UNIMAK	637693	LLG 3957
VAERDAL	611225	LLG 1402

TABLE 32 TO PART 679.—AMENDMENT 80 INITIAL QS POOL

Amendment 80 species	Management area	Amendment 80 Initial QS pool in units
Atka mackerel	BS/541 542 543	Σ Highest Five Years in metric tons in the Amendment 80 official record as of December 31, 2007, for that Amendment 80 species in that management area.
AI Pacific ocean perch	541 542 543	
Flathead sole	BSAI	
Pacific cod	BSAI	
Rock sole	BSAI	
Yellowfin sole	BSAI	

TABLE 33 TO PART 679.—ANNUAL APPORTIONMENT OF AMENDMENT 80 SPECIES ITAC BETWEEN THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS

[Except yellowfin sole]

Fishery	Management area	Year	Percentage of ITAC allocated to the Amendment 80 sector	Percentage of ITAC allocated to the BSAI trawl limited access sector
Atka mackerel	543	All years	100	0
	542	2008	98	2
		2009	96	4
		2010	94	6
		2011	92	8
		2012 and all future years	90	10
	541/EBS	2008	98	2
		2009	96	4
		2010	94	6
		2011	92	8
		2012 and all future years	90	10
Aleutian Islands Pacific ocean perch	543	All years	98	2
	542	2008	95	5
		2009 and all future years	90	10
	541	2008	95	5
		2009 and all future years	90	10
Pacific cod	BSAI	All years	13.4	N/A
Rock sole	BSAI	All years	100	0

TABLE 33 TO PART 679.—ANNUAL APPORTIONMENT OF AMENDMENT 80 SPECIES ITAC BETWEEN THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS—Continued

[Except yellowfin sole]

Fishery	Management area	Year	Percentage of ITAC allocated to the Amendment 80 sector	Percentage of ITAC allocated to the BSAI trawl limited access sector
Flathead sole	BSAI	All years	100	0

TABLE 34 TO PART 679.—ANNUAL APPORTIONMENT OF BSAI YELLOWFIN SOLE BETWEEN THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS

Row No.	If the yellowfin sole ITAC is between . . .	and . . .	then the yellowfin sole ITAC rate for the Amendment 80 sector is . . .	and the amount of yellowfin sole ITAC allocated to Amendment 80 Sector is . . .	and the amount of yellowfin sole ITAC allocated to the BSAI trawl limited access sector is . . .
	Column A	Column B	Column C	Column D	Column E
Row 1	0 mt	87,499 mt	0.930	ITAC × Row 1, Column C	ITAC − Row 1, Column E.
Row 2	87,500 mt	94,999 mt	0.875	(Amount of ITAC greater than 87,499 mt and less than 95,000 mt × Row 2, Column c) + (Row 1, Column D).	ITAC − Row 2, Column D.
Row 3	95,000 mt	102,499 mt	0.820	(Amount of ITAC greater than 94,999 mt and less than 102,500 mt × Row 3, Column C) + (∑ Column D, Rows 1 and 2).	ITAC − Row 3, Column D.
Row 4	102,500 mt	109,999 mt	0.765	(Amount of ITAC greater than 102,499 mt and less than 110,000 mt × Row 4, Column C) + (∑ Column D, Rows 2 through 3).	ITAC − Row 4, Column D.
Row 5	110,000 mt	117,499 mt	0.710	(Amount of ITAC greater than 109,999 mt and less than 117,500 mt × Row 5, Column C) + (∑ Column D, Rows 2 through 4).	ITAC − Row 5, Column D.
Row 6	117,500 mt	124,999 mt	0.655	(Amount of ITAC greater than 117,499 mt and less than 125,000 mt × Row 6, Column C) + (∑ Column D, Rows 2 through 5).	ITAC − Row 6, Column D.
Row 7	125,000 mt and greater		0.600	(Amount of ITAC greater than 124,999 mt × Row 7, Column C) + (∑ Column D, Rows 2 through 6).	ITAC − Row 7, Column D.

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

Fishery	Year	Halibut PSC limit in the BSAI	Zone 1 Red king crab PSC limit . . .	*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	2008	2,525 mt	62.48	61.44	52.64	29.59
	2009	2,475 mt	59.36	58.37	50.01	28.11
	2010	2,425 mt	56.23	55.30	47.38	26.63
	2011	2,375 mt	53.11	52.22	44.74	25.15
	2012 and all future years	2,325 mt	49.98	49.15	42.11	23.67
BSAI trawl limited access	All years	875 mt	30.58	32.14	46.99	46.81

TABLE 36 TO PART 679.—PERCENTAGE OF CRAB AND HALIBUT PSC LIMIT ASSIGNED TO EACH AMENDMENT 80 SPECIES

For the following PSC species . . .	The percentage of the Amendment 80 sector PSC limit assigned to each Amendment 80 species is . . .					
	Atka mackerel	AI Pacific ocean perch	Pacific cod	Flathead sole	Rock sole	Yellowfin sole
Halibut	3.96	1.87	24.79	13.47	24.19	31.72
Zone 1 Red king crab	0.14	0.56	6.88	0.48	61.79	30.16
C. opilio crab (COBLZ)	0	0.06	6.28	17.91	9.84	65.91
Zone 1 *C. bairdi* crab	0	0	17.01	3.13	56.15	23.71
Zone 2 *C. bairdi* crab	0.01	0.03	7.92	37.31	7.03	47.70

TABLE 37 TO PART 679.—GOA AMENDMENT 80 SIDEBOARD LIMIT FOR GROUNDFISH FOR THE AMENDMENT 80 SECTOR

In the following management areas in the GOA and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season . . .	The sideboard limit for . . .	Is . . .
Area 610	Pollock	0.3 % of the TAC.
Area 620	Pollock	0.2 % of the TAC.
Area 630	Pollock	0.2 % of the TAC.
Area 640	Pollock	0.2 % of the TAC.
West Yakutat District	Pacific cod	3.4 % of the TAC.
	Pacific ocean perch	96.1 % of the TAC.
	Pelagic shelf rockfish	89.6 % of the TAC.
Central GOA	Pacific cod	4.4 % of the TAC.
	Pacific ocean perch	Subject to regulations in subpart G to this part.
	Pelagic shelf rockfish	Subject to regulations in subpart G to this part.
	Northern rockfish	Subject to regulations in subpart G to this part.
Western GOA	Pacific cod	2.0 % of the TAC.
	Pacific ocean perch	99.4 % of the TAC.
	Pelagic shelf rockfish	76.4 % of the TAC.
	Northern rockfish	100 % of the TAC.

TABLE 38 TO PART 679.—GOA AMENDMENT 80 SIDEBOARD LIMIT FOR HALIBUT PSC FOR THE AMENDMENT 80 SECTOR

In the . . .	The maximum percentage of the total GOA halibut PSC limit that may be used by all Amendment 80 qualified vessels subject to the halibut PSC sideboard limit in each season as those seasons are established in the annual harvest specifications is . . .				
	Season 1	Season 2	Season 3	Season 4	Season 5
Shallow-water species fishery as defined in § 679.21(d)(3)(iii)(A) in the GOA or adjacent waters open by the state of Alaska for which it adopts a Federal fishing season.	0.48	1.89	1.46	0.74	2.27

TABLE 38 TO PART 679.—GOA AMENDMENT 80 SIDEBOARD LIMIT FOR HALIBUT PSC FOR THE AMENDMENT 80 SECTOR—Continued

In the . . .	The maximum percentage of the total GOA halibut PSC limit that may be used by all Amendment 80 qualified vessels subject to the halibut PSC sideboard limit in each season as those seasons are established in the annual harvest specifications is . . .				
	Season 1	Season 2	Season 3	Season 4	Season 5
Deep-water species fishery as defined in § 679.21(d)(3)(iii)(B) in the GOA or adjacent waters open by the state of Alaska for which it adopts a Federal fishing season.	1.15	10.72	5.21	0.14	3.71

TABLE 39 TO PART 679.—AMENDMENT 80 VESSELS AND AMENDMENT 80 LLP LICENSES THAT MAY BE USED TO DIRECTED FISH FOR FLATFISH IN THE GOA

Column A: Name of Amendment 80 vessel	*Column B:* USCG documentation No.	*Column C:* Amendment 80 LLP license No.
ALLIANCE	622750	LLG 2905
AMERICAN NO I	610654	LLG 2028
DEFENDER	665983	LLG 3217
GOLDEN FLEECE	609951	LLG 2524
LEGACY	664882	LLG 3714
OCEAN ALASKA	623210	LLG 4360
OCEAN PEACE	677399	LLG 2138
SEAFREEZE ALASKA	517242	LLG 4692
U.S. INTREPID	604439	LLG 3662
UNIMAK	637693	LLG 3957
VAERDAL	611225	LLG 1402

TABLE 40 TO PART 679.—BSAI HALIBUT PSC SIDEBOARD LIMITS FOR AFA CATCHER/PROCESSORS AND AFA CATCHER VESSELS

In the following target species categories as defined in § 679.21(e)(3)(iv) . . .	The AFA catcher/processor halibut PSC sideboard limit in metric tons is . . .	The AFA catcher vessel halibut PSC sideboard limit in metric tons is . . .
All target species categories	286	N/A
Pacific cod trawl	N/A	887
Pacific cod hook-and-line or pot	N/A	2
Yellowfin sole	N/A	101
Rock sole/flathead sole/other flatfish [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.

TABLE 41 TO PART 679.—BSAI CRAB PSC SIDEBOARD LIMITS FOR AFA CATCHER/PROCESSORS AND AFA CATCHER VESSELS

For the following crab species in the following areas . . .	The AFA catcher/processor crab PSC sideboard limit is equal to the following ratio . . .	The AFA catcher vessel crab PSC sideboard limit is equal to the following ratio . . .	Multiplied by . . .
Red king crab Zone 1	0.007	0.299	The PSC amount in number of animals available to trawl vessels in the BSAI after allocation of PSQ established in the annual harvest specifications for that calendar year.
C. opilio crab (COBLZ)	0.153	0.168	
Zone 1 *C. bairdi* crab	0.140	0.330	
Zone 2 *C. bairdi* crab	0.050	0.186	

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