in the **Federal Register** establish the allowable harvest levels (i.e. annual catch limit/harvest guideline (HG)) for each Pacific sardine fishing season. If during any of the seasonal allocation periods the applicable directed harvest allocation is projected to be taken, and the fishery is closed, only incidental harvest is allowed. For the remainder of the period, any incidental Pacific sardine landings will be counted against that period's incidental set aside. In the event that an incidental set-aside is projected to be attained, all fisheries will be closed to the retention of Pacific sardine for the remainder of the period via appropriate rulemaking.

Under 50 CFR 660.509, if the total allocation or any specific apportionment levels for Pacific sardine are reached at any time, NMFS is required to close the Pacific sardine fishery via appropriate rulemaking and the fishery remains closed until it re-opens either per the allocation scheme or the beginning of the next fishing season. In accordance with § 660.509 the Regional Administrator shall publish a notice in the **Federal Register** announcing the date of the closure of the directed fishery for Pacific sardine.

The above in-season harvest restrictions are not intended to affect the prosecution of the live bait or tribal portions of the Pacific sardine fishery.

Classification

This action is required by 50 CFR 660.509 and is exempt from Office of Management and Budget review under Executive Order 12866.

NMFS finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) for the closure of the directed harvest of Pacific sardine. For the reasons set forth below, notice and comment procedures are impracticable and contrary to the public interest. For the same reasons, NMFS also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this action. This measure responds to the best available information and is necessary for the conservation and management of the Pacific sardine resource. A delay in effectiveness would cause the fishery to exceed the allocated in-season harvest level. These seasonal harvest levels are important mechanisms in preventing overfishing and managing the fishery at optimum yield. The established directed and incidental harvest allocations are designed to allow fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery and to allow access to other profitable CPS fisheries, such as squid and Pacific mackerel. Many of the same fishermen who harvest Pacific sardine rely on these other fisheries for a significant portion of their income.

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

Dated: September 18, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–22570 Filed 9–18–14; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 130424402–4775–02]

RIN 0648–BD23

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; Amendment 105

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

ACTION: Final rule.

SUMMARY: NMFS publishes regulations to implement Amendment 105 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). Amendment 105 and its implementing regulations establish a process for Western Alaska Community Development Quota (CDQ) groups, and cooperatives established under the Amendment 80 Program (Amendment 80 cooperatives), to exchange harvest quota from one of three flatfish species (flathead sole, rock sole, and yellowfin sole) for an equal amount of another of these three flatfish species, while maintaining total catch below acceptable biological catch (ABC) limits. This final rule modifies the annual harvest specifications process to allow the North Pacific Fishery Management Council (Council) to establish the maximum amount of flathead sole, rock sole, and yellowfin sole that may be exchanged based on social, economic, or biological considerations. This action is necessary to mitigate the operational variability, environmental conditions, and economic factors that may constrain the CDQ groups and Amendment 80 cooperatives from achieving, on a continuing basis, the optimum yield in the BSAI groundfish fisheries. This action is intended to promote the goals and objectives of the BSAI FMP, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable law.

DATES: *Effective* October 23, 2014.

ADDRESSES: Electronic copies of the Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the Categorical Exclusion prepared for this action, the supplemental information report prepared for the final 2014 and 2015 harvest specifications (Harvest Specifications Supplemental Information Report (SIR)), and the Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (Harvest Specifications EIS) may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; or by email to *OIRA_submission@omb.eop.gov* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Seanbob Kelly, 907–586–7228

SUPPLEMENTARY INFORMATION:

Regulatory Authority

Here, NMFS establishes regulations to implement Amendment 105 to the BSAI FMP. NMFS manages the U.S. groundfish fisheries of the Exclusive Economic Zone off Alaska under the BSAI FMP and the Fishery Management Plan for Groundfish of the Gulf of Alaska. The Council prepared the BSAI FMP pursuant to the Magnuson-Stevens Act and other applicable law. Regulations implementing the BSAI FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Background

NMFS published the Notice of Availability for Amendment 105 in the **Federal Register** on June 13, 2014 (79 FR 33889), with a 60-day comment period that ended August 12, 2014. NMFS published a proposed rule for Amendment 105 in the **Federal Register** on June 30, 2014 (79 FR 36702). The 30-day comment period on the proposed rule ended July 30, 2014. NMFS received a total of five comment letters from three unique persons during the comment periods. The comment letters

contained 13 substantive comments. The Secretary of Commerce (Secretary) approved Amendment 105 on September 11, 2014, after taking into account all public comments, and determining that Amendment 105 is consistent with the BSAI FMP, the Magnuson-Stevens Act, and other applicable law. A summary of these comments and NMFS' responses are provided in the Comments and Responses section of this preamble.

Amendment 105 amends the BSAI FMP, and this final rule revises Federal regulations to:

- Define an amount of flathead sole, rock sole, and yellowfin sole in the BSAI, that is the difference between each species' annual ABC and annual total allowable catch (TAC), as the ABC surplus for that flatfish species.
- Allow the Council to recommend, and NMFS to specify, that some, none, or all of the ABC surplus for flathead sole, rock sole, or yellowfin sole in the BSAI be set aside each year through the annual harvest specifications process. The amount of ABC surplus set aside for a species is the ABC reserve.
- Allow CDQ groups and Amendment 80 cooperatives to apply to NMFS to receive a portion of the ABC reserve for flathead sole, rock sole, or yellowfin sole in the BSAI if they exchange a portion of their unused annual allocations of one or two flatfish species for an equal amount of another flatfish species (e.g., exchange an amount of unused annual allocation of flathead sole or allocations of flathead sole and rock sole for an equal amount of yellowfin sole ABC reserve). This exchange is defined as a Flatfish Exchange.
- Allow a Flatfish Exchange only if it would not cause a CDQ group or an Amendment 80 cooperative to exceed the ABC or ABC reserve amount for flathead sole, rock sole, or yellowfin sole.
- Limit the number of Flatfish Exchanges that each CDQ group or Amendment 80 cooperative could undertake to no more than three exchanges in a calendar year.

Background

A detailed review of the provisions of Amendment 105, the implementing regulations, and the rationale for these regulations is provided in the preamble to the proposed rule (79 FR 36702, June 30, 2014) and is not repeated here. The proposed rule is available from the NMFS Alaska Region Web site (see **ADDRESSES**). The preamble to this final rule provides a brief review of the regulatory changes made by this final rule to the management of flatfish fisheries in the BSAI.

The BSAI FMP and its implementing regulations require that the Council recommend and NMFS specify an overfishing level (OFL), an ABC, and a TAC for each stock or stock complex (i.e., species or species group) of groundfish on an annual basis. The OFLs, ABCs, and TACs for BSAI groundfish are specified through the annual harvest specifications process. The BSAI FMP defines the OFL as the level above which overfishing is occurring for a species or species group. NMFS manages fisheries in an effort to ensure that no OFLs are exceeded in any year. The BSAI FMP defines the ABC as the level of a species or species group's annual catch that accounts for the scientific uncertainty in the estimate of OFL and any other scientific uncertainty. The ABC cannot exceed the OFL, and NMFS attempts to manage all fisheries so that total catch does not exceed the ABC by monitoring fisheries and imposing necessary closures and other limitations. The TAC is the annual catch target for a species or species group, derived from the ABC by considering social and economic factors and management uncertainty. The BSAI FMP requires that the TAC must be set lower than or equal to the ABC.

Section 3.2.2.2 of the BSAI FMP and regulations at § 679.20(a)(2) require the sum of the TACs in all BSAI groundfish fisheries to be set within a range from 1.4 to 2 million metric tons (mt). This regulation implements the statutory requirement that ''[t]he optimum yield for groundfish in the Bering Sea and Aleutian Islands Management Area shall not exceed 2 million metric tons'' (see section 803(c) of Pub. L. 108–199). The Council may recommend TACs that are lower than the ABCs recommended by its Scientific and Statistical Committee if, among other reasons, setting TACs equal to ABCs would cause TACs to exceed 2 million mt. NMFS adheres to the statutory provision by limiting the sum of the TACs for all BSAI groundfish to 2 million mt. The Secretary will approve the final rule for the annual harvest specifications, which implements the Council's recommended OFLs, ABCs, and TACs, if she finds them consistent with the BSAI FMP, Magnuson-Stevens Act, and other applicable law. The final 2014 and 2015 harvest specifications provide additional detail on this process (79 FR 12108, March 04, 2014).

In the BSAI, flathead sole, rock sole, and yellowfin sole are harvested by vessels primarily using trawl gear. In these multi-species fisheries, operators target certain species of flatfish but also take a variety of species incidentally, including halibut and crab (species that are prohibited for harvest by vessels fishing for groundfish), and other groundfish that typically occupy the same habitat at the same times of year. The composition of groundfish species taken in the BSAI flatfish fisheries varies by season and fishing year.

Although there is a relatively high biomass of flathead sole, rock sole, and yellowfin sole, and relatively high ABCs, compared to most BSAI groundfish species, the TACs set for these three flatfish species have not been fully harvested in recent years. Therefore, the Council has recommended, and NMFS has approved, setting flathead sole, rock sole, and yellowfin sole TACs below the ABCs for those species. Some of the reasons for the relatively limited harvests of flathead sole, rock sole, and yellowfin sole include the uncertain nature of harvest in these multi-species flatfish fisheries, operational factors specific to the fisheries, and economic conditions. Additional detail describing harvests of flathead sole, rock sole, and yellowfin sole is in the preamble of the proposed rule and in Sections 1.5 and 1.6 of the RIR/IRFA prepared for this action.

During the annual harvest specification process, the Council and NMFS must apportion the flathead sole, rock sole, and yellowfin sole TAC according to specific regulatory requirements. Regulations require that the TACs for flathead sole, rock sole, and yellowfin sole be assigned to three broad categories: The CDQ Program, an incidental catch allowance, and the Amendment 80 Program and other non-Amendment 80 Program participants.

First, regulations require that NMFS reserve 10.7 percent of the TAC for each of these species to the CDQ Program (see regulations at §§ 679.20(b)(1)(ii)(C) and 679.31). The CDQ Program is an economic development program associated with federally managed fisheries in the BSAI. The CDQ Program is defined as a catch share program because it provides an exclusive harvest privilege (i.e., a CDQ allocation) to a specific fishery participant (i.e., a CDQ group) for its exclusive use. The CDQ Program allocates a portion of commercially important BSAI groundfish species, including flathead sole, rock sole, and yellowfin sole, to the six non-profit CDQ groups. The preamble to the proposed rule and Section 1.6.1 of the RIR/IRFA prepared for this action provide additional detail on the CDQ allocations of flathead sole, rock sole, and yellowfin sole to the CDQ Program as a whole, and to each CDQ

group. Currently, the six CDQ groups harvest their flathead sole, rock sole, and yellowfin sole CDQ allocations through contracts with Amendment 80 and non-Amendment 80 harvesting partners. Although the CDQ groups vary individually in the degree to which they harvest their flathead sole, rock sole, and yellowfin sole CDQ allocations, the six CDQ groups have not collectively fully harvested their allocations in recent years, as described in the preamble of the proposed rule and in Section 1.6.1 of the RIR/IRFA.

Second, the remaining TAC for each of these species is reduced by an incidental catch allowance (ICA) to account for incidental catch of flathead sole, rock sole and yellowfin sole by non-CDQ and non-Amendment 80 Program participants (see regulations at §§ 679.20(a)(8) and (10)). For the purposes of this proposed action, incidental catch refers to the flatfish caught and retained while targeting another species or species group. For example, NMFS must accommodate incidental catch of yellowfin sole in the Bering Sea pollock fishery by including an amount in the ICA that will accommodate incidental catch in that fishery; NMFS must also add an amount to the yellowfin sole ICA to accommodate incidental catch in all other non-CDQ and non-Amendment 80 fisheries.

Third, the remainder of the TAC is assigned to Amendment 80 Program and non-Amendment 80 Program participants for each species (see Table 33 to part 679). The yellowfin sole TAC remaining after establishing the CDQ reserve and the ICA is apportioned between the Amendment 80 sector and the BSAI trawl limited access sector (i.e., non-Amendment 80 trawl vessels) according to a specific formula that varies with the abundance of yellowfin sole (see Table 34 to part 679 for additional detail). The following section describes the Amendment 80 Program that receives most of the TACs for flathead sole, rock sole, and yellowfin sole and would benefit from this final rule.

Amendment 80 to the BSAI FMP was implemented in 2008 with a final rule published in 2007 (72 FR 52668, September 14, 2007) and is commonly known as the Amendment 80 Program. Among other measures, the Amendment 80 Program authorized the allocation of six BSAI groundfish species to trawl catcher/processors that are not specifically authorized to conduct directed fishing for Bering Sea pollock under the American Fisheries Act of 1998 (Pub. L. 105–227, Title II of Division C). The Amendment 80 Program encourages the formation of cooperatives and the development of cooperative fishing practices to reduce discards, reduce bycatch, and improve the value of Amendment 80 species harvests. The final rule implementing Amendment 80 provides additional detail on the Amendment 80 Program.

Although the Amendment 80 Program has met many of its harvest goals, Amendment 80 cooperatives have found it difficult to predict the amount of flathead sole, rock sole, and yellowfin sole that can be taken when specifically targeting those species, while ensuring adequate cooperative quota (CQ) remains to accommodate incidental catch of these species (e.g., an Amendment 80 cooperative must ensure that it has adequate yellowfin sole CQ to accommodate both a targeted yellowfin sole fishery and all incidental harvest of yellowfin sole in all other BSAI fisheries). The preamble of the proposed rule and Section 1.5.3 of the RIR/IRFA prepared for this action provide additional detail on specific conditions that can constrain the full use of a cooperative's flathead sole, rock sole, and yellowfin sole CQ.

The factors that limit Amendment 80 cooperatives from fully harvesting their allocations also apply to the CDQ groups. Both Amendment 80 vessels and non-Amendment 80 vessels fishing CDQ allocations are affected by the same uncertain operational conditions (e.g., difficultly predicting harvest rates of flatfish in target and non-target fisheries), unpredictable environmental conditions, and market conditions that can limit harvest. Recent harvests of flathead sole, rock sole, and yellowfin sole by CDQ groups and Amendment 80 cooperatives have been substantially below the TACs for those species, as described in the preamble of the proposed rule and Sections 1.5 and 1.6 of the RIR/IRFA. This indicates that existing management measures applicable to Amendment 80 vessels and non-Amendment 80 vessels fishing CDQ allocations may not provide the flexibility needed to allow more complete harvest.

This final rule provides additional flexibility to existing management practices and is appropriate because CDQ groups and Amendment 80 cooperatives are participating in catch share fisheries that are capable of limiting their overall harvests within specific catch limits. In addition, CDQ groups and Amendment 80 cooperatives are subject to strict management controls that prohibit fishing beyond these catch limits (see the preamble of the proposed rule for additional detail).

This action is also intended to preserve the Council's and NMFS' ability to consider a broad range of factors when determining how much flexibility to provide CDQ groups and Amendment 80 cooperatives through the annual harvest specifications process. For example, the Council could recommend, and NMFS could propose, setting the ABC reserve below the ABC surplus for flathead sole, rock sole, and yellowfin sole to account for any management uncertainty as a precautionary measure. Amendment 105 and this final rule promote the Council's and NMFS' ability to ensure a transparent annual harvest specifications process and articulate the criteria by which the Council and NMFS are making those decisions. This action is designed to provide the tools necessary to maximize the sustainable harvest of flathead sole, rock sole, and yellowfin sole, in order to achieve the optimum yield in the BSAI groundfish fisheries.

Implementation of This Action

This final rule establishes an accounting methodology to provide CDQ groups and Amendment 80 cooperatives with additional opportunities to fully harvest flathead sole, rock sole, or yellowfin sole allocations, while ensuring ABCs cannot be exceeded. Amendment 105 and its implementing regulations establish regulatory limits to ensure that the individual ABCs for flathead sole, rock sole, and yellowfin sole will not be exceeded, while creating the opportunity for a more complete harvest of one or more of these flatfish species. Although an individual TAC for these species (not ABC) may be exceeded, this action establishes a regulatory mechanism designed to prevent the sum of all TACs for flathead sole, rock sole, and yellowfin sole from being exceeded, thereby ensuring the sum of BSAI groundfish TACs does not exceed 2 million mt. This final rule defines new terms to provide the flexibility needed to provide more harvest opportunities for flathead sole, rock sole, and yellowfin sole—the ABC surplus, ABC reserve, CDQ ABC reserve, Amendment 80 ABC reserve, and Flatfish Exchange. This final rule also describes the process CDQ groups and Amendment 80 cooperatives would use to access the CDQ or Amendment 80 ABC reserves.

This final rule defines the ABC surplus for flathead sole, rock sole, and yellowfin sole in the BSAI as the difference between each species' annual ABC and TAC. Under this final rule, the ABC surplus would be specified in the annual harvest specifications. Under

this final rule, the Council continues to set the OFLs, ABCs, and TACs, and allocations of flathead sole, rock sole, and yellowfin sole in the annual harvest specifications process. And once those amounts are determined, the annual harvest specifications would also specify an ABC surplus for each flatfish species. The ABC surplus would represent the maximum additional amount of flathead sole, rock sole or yellowfin sole that could be harvested above the TAC. However, the actual amount available for harvest would be the ABC reserve, which can be equal to or less than the ABC surplus.

This final rule defines ABC reserve flathead sole, rock sole, and yellowfin sole in the BSAI as an amount equal to, or less than, the ABC surplus, depending on whether the Council and NMFS reduce the surplus for social, economic, or ecological considerations during the determination of the annual harvest specifications. The ABC reserve would be set after consultation with the Council. Unless the Council recommends otherwise, or NMFS determines there is a need to set the ABC reserve below the ABC surplus, NMFS would set the ABC reserve equal to the ABC surplus for each species. Setting the ABC reserve as a portion of the ABC surplus, or equal to the ABC surplus, would ensure that the total amount of each species that is accessible would not exceed the ABC. The Council or NMFS could choose to establish a precautionary buffer to accommodate uncertainty in harvests, or to address a range of socioeconomic considerations. For example, the Council may be concerned that setting an ABC reserve for a given species at a specific harvest level could increase supply, and thereby reduce demand and reduce the ex-vessel value of that flatfish species. These effects could affect CDQ groups, Amendment 80 cooperatives, and other fishery participants differently. The Council and NMFS may evaluate these socioeconomic considerations when setting the ABC reserve. The specific recommendation to set an ABC reserve below the ABC surplus for a specific flatfish species would be described in the annual harvest specifications. Once the ABC reserve is identified for a flatfish species, the ABC reserve for that flatfish species is then apportioned among CDQ groups and Amendment 80 cooperatives. NMFS publishes the allocation of ABC reserve available to CDQ groups and Amendment 80 cooperatives in the proposed and final harvest specifications.

This final rule defines the CDQ ABC reserve as 10.7 percent of the amount of the flathead sole, rock sole, or yellowfin sole ABC reserve that is allocated among CDQ groups as annually calculated according to the methods described at § 679.31(b)(4). The amount of the ABC reserve assigned as the CDQ ABC reserve is the same as the proportion of the TAC available to the CDQ Program.

This final rule defines the Amendment 80 ABC reserve as the amount of the flathead sole, rock sole, or yellowfin sole ABC reserve that remains for each species after designating the amount assigned to the CDQ ABC reserves. Therefore, the Amendment 80 ABC reserve is 89.3 percent of the amount of the flathead sole, rock sole, or yellowfin sole ABC reserve. The Amendment 80 ABC reserve would be allocated among Amendment 80 cooperatives annually as calculated according to the methods described at § 679.91(i)(2).

This final rule also establishes the method, a Flatfish Exchange, for CDQ groups and Amendment 80 cooperatives to exchange unused CDQ allocations for a proportion of the CDQ ABC reserve, or unused Amendment 80 cooperative CQ for a proportion of the Amendment 80 ABC reserve. This final rule requires that a CDQ group or an Amendment 80 cooperative submit a Flatfish Exchange Application to NMFS. That application must be approved by NMFS, and revised TACs must be published in the **Federal Register**, before unused CDQ or CQ would be exchanged for a portion of its CDQ ABC reserve or Amendment 80 reserve. NMFS' approval of a Flatfish Exchange Application is necessary to ensure that ABCs are not exceeded. NMFS has the authority to disapprove an application if it is likely that an ABC will be exceeded.

This final rule defines a Flatfish Exchange in § 679.2. Each Flatfish Exchange is a transfer of unused CDQ, or Amendment 80 CQ, of flathead sole, rock sole, or yellowfin sole in the BSAI for an equivalent amount (in metric tons) of CDQ ABC reserve or Amendment 80 ABC reserve, respectively, of flathead sole, rock sole, or yellowfin sole in the BSAI, as described in a notice of adjustment or apportionment in the **Federal Register**. This final rule establishes regulations to describe the Flatfish Exchange Application, and application approval process. NMFS will process any completed Flatfish Exchange Application submitted by a CDQ group or Amendment 80 cooperative. The Flatfish Exchange Application must specify the amounts of flathead sole, rock sole, and yellowfin sole to be exchanged, and certify the information submitted is true, correct, and complete. The specific requirements of the Flatfish Exchange Application are provided on the form posted at the Alaska Region Web site: *http://alaskafisheries.noaa.gov.* All Flatfish Exchange Applications must be submitted electronically through the Alaska Region Web site: *http://alaskafisheries.noaa.gov.*

NMFS' approval of a Flatfish Exchange Application is required prior to the use of the CDQ or CQ subject to the Flatfish Exchange. NMFS will approve the Flatfish Exchange Application if: (1) The CDQ group or Amendment 80 cooperative exchanging flathead sole, rock sole, or yellowfin sole has sufficient CDQ ABC reserves or Amendment 80 ABC reserves of the flatfish species for which it is requesting to increase its CDQ or CQ; (2) the CDQ group or Amendment 80 cooperative requesting the exchange of flathead sole, rock sole, yellowfin sole exchanges an equal amount of unused CDQ allocation or unused CQ; and (3) the CDQ group or Amendment 80 cooperative has not already received three Flatfish Exchanges. Any unused CDQ allocation can be exchanged only for CDQ ABC reserve, and unused CQ can be exchanged only for Amendment 80 ABC reserve. Furthermore, a CDQ group can submit a Flatfish Exchange Application only for an amount of CDQ ABC reserve assigned to that CDQ group, and an Amendment 80 cooperative can submit a Flatfish Exchange Application only for an amount of Amendment 80 ABC reserve assigned to that Amendment 80 cooperative.

This final rule requires that no Flatfish Exchange takes effect until notification has been published in the **Federal Register** with a statement of the findings on which the apportionment or adjustment is based. This provision provides clear notification to the public and the affected CDQ group or Amendment 80 cooperative that the Flatfish Exchange Application has been approved and displays the resulting adjustment in CDQ ABC reserve and CDQ allocation for that CDQ group, or the resulting adjustment in Amendment 80 ABC reserve and CQ for that Amendment 80 cooperative. An approved Flatfish Exchange is effective on the date of publication of the notice of adjustment or apportionment in the **Federal Register**.

No Flatfish Exchange can result in an ABC reserve being exceeded because NMFS must consider flathead sole, rock sole, and yellowfin sole catch prior to any Flatfish Exchange approval. This final rule ensures that the ABC for each flatfish species is no more likely to be exceeded than in the absence of Amendment 105. This final rule limits

a CDQ group or Amendment 80 cooperative to no more than three Flatfish Exchanges during a calendar year to limit the administrative burden associated with Flatfish Exchanges, while still providing adequate opportunity for additional harvest opportunities.

Changes From the Proposed Rule

NMFS made one change to this final rule in response to public comments. NMFS removed the proposed regulations at § 679.5(s)(7) to require each Amendment 80 cooperative that receives CQ to submit a Preliminary Amendment 80 Cooperative Flatfish Exchange Report to the Council by December 1 each year. As described on page 36714 of the preamble to the proposed rule (June 30, 2014, 79 FR 36702), NMFS proposed to require Amendment 80 cooperatives to annually submit a report reviewing the cooperative's use of Amendment 80 ABC reserve for flathead sole, rock sole, and yellowfin sole.

As proposed, each Amendment 80 cooperative would have been required to report (1) the number of vessels used to harvest its CQ, (2) the number of Flatfish Exchanges and dates those exchanges were approved, (3) the types of and amounts of CQ and Amendment 80 ABC reserves utilized, and (4) the dates, types, and amounts of inter-cooperative CQ transfers. As described in the response to Comment 8, NMFS already collects each data element of the proposed reporting requirement and could provide the information to the Council and the public. NMFS has removed the requirement for each Amendment 80 cooperative to submit a Preliminary Amendment 80 Cooperative Flatfish Exchange Report in this final rule because it would be an unnecessary reporting burden on Amendment 80 cooperatives.

NMFS will be able to provide the information proposed in the Preliminary Amendment 80 Cooperative Flatfish Exchange Report to the Council at its December Council meeting prior to the Council making recommendations for ABC, ABC surplus, and ABC reserve for flathead sole, rock sole, and yellowfin sole. This information will allow the Council to assess the use of Flatfish Exchanges and CQ, and weigh the potential socioeconomic impact of Flatfish Exchanges before establishing the ABC reserve for flathead sole, rock sole, and yellowfin sole. See the response to Comment 8 for additional detail.

Comments and Responses

During the public comment periods for the Notice of Availability for Amendment 105 and the proposed rule to implement Amendment 105, NMFS received five comment letters from three unique persons (two from different members of the public and three from the same industry representative) that contained thirteen substantive comments. NMFS' responses to these comments are presented below.

Comment 1: One commenter expressed support for this action.

Response: NMFS acknowledges this comment.

Comment 2: The commenter expressed general disapproval with fisheries management.

Response: NMFS acknowledges this comment.

Comment 3: One commenter suggested that this action would result in overfishing in this fishery and adversely affect marine mammals.

Response: NMFS disagrees. Sections 1.5.1 and 1.6.1 of the RIR prepared for this action and the background section of the preamble to the proposed rule note that the flatfish stocks are not overfished and overfishing is not occurring in BSAI groundfish fisheries. The Council typically recommends, and NMFS implements, flatfish TACs that are lower than the ABCs. Moreover, flatfish catch is consistently below TAC for both the Amendment 80 sector and the CDQ fisheries for reasons described in more detail in the RIR/IRFA prepared for this action (See **ADDRESSES**). This final rule will provide CDQ groups and Amendment 80 cooperatives with additional opportunities to fully harvest flathead sole, rock sole, or yellowfin sole allocations, while ensuring ABCs for each of those species cannot be exceeded. This final rule will not affect the sustainability or catch levels of groundfish in the BSAI, because the fishery will continue to be managed under the current harvest specifications process. Similarly, this final action will generally improve the likelihood of achieving and maintaining, on a continuing basis, the optimum yield (OY) of the BSAI groundfish fisheries, to the extent that it provides an opportunity for increased use of available TAC. This action will not increase the likelihood that ABCs or the 2 million mt OY limit for the BSAI groundfish fisheries would be exceeded.

NMFS and the Secretary of Commerce have determined that fishing activities conducted under this rule would have no adverse impact on marine mammals. As described in the Categorical Exclusion (See **ADDRESSES**) prepared for this action, Amendment 105 and its implementing regulations make only minor revisions to the existing regulations which will have no effects on marine mammals beyond those already expected from the BSAI groundfish fisheries as described in the Harvest Specifications EIS and SIR (See **ADDRESSES**).

Comment 4: This action should only be implemented if it is paired with regulations that strengthen accountability and enforcement for the participants that benefit from the flatfish flexibility program.

Response: NMFS disagrees that additional monitoring and enforcement regulations are needed to ensure compliance with Amendment 105. As described in this preamble, NMFS prohibits any CDQ group or Amendment 80 cooperative from exceeding its allocation of CDQ or CQ (see regulations at § 679.7(d)(3) and (o)(4)(iv)). Moreover, vessels harvesting CDQ and CQ are already subject to 100% observer coverage which includes at least two observers for each day that the vessel is used to catch, process, or receive groundfish harvested in a federally managed or parallel groundfish fishery (see regulations at § 679.51(a)(2)(vi)(C)). Vessels harvesting CDQ and CQ are also subject to additional monitoring and enforcement provisions, including the use of vessel monitoring systems, at-sea scales, and daily reporting requirements (see regulations at §§ 679.51(a) and 679.5(n) and (s)).

As noted in this preamble, each Flatfish Exchange must be approved by NMFS and published in the **Federal Register** prior to any transfer (see regulations at § 679.4(p)). NMFS will have the authority to disapprove an application if NMFS determines it is likely that the CDQ group or Amendment 80 cooperative does not have (1) an adequate amount of unused CDQ or CQ remaining, or (2) the CDQ group or Amendment 80 cooperative does not have adequate ABC reserve remaining. NMFS will review each Flatfish Exchange Application and consider approval or disapproval in light of incidental catch levels occurring in other groundfish fisheries. NMFS will not approve any Flatfish Exchange that could result in exceeding an ABC or ABC reserve for a species, though such a situation is highly unlikely given methods in place to track harvest of BSAI groundfish.

Comment 5: The proposed rule states that the ABC reserve would be set after consultation with the Council or could be reduced if NMFS determines there is a need to set the ABC reserve below the

ABC surplus. The Council motion and RIR prepared for this action did not contemplate that NMFS could independently determine ABC reserve levels. While NMFS may have a legitimate need to set the ABC reserve below the ABC surplus, we encourage NMFS to work with Amendment 80 cooperatives to address any concerns it has with setting the ABC reserve.

Response: NMFS intends to coordinate and consult with the Council to determine the appropriate level of the ABC reserve during the annual specifications process. NMFS anticipates that it can effectively communicate with Amendment 80 cooperatives, CDQ groups, and the Council to determine the appropriate ABC reserve. However, NMFS has the authority and responsibility to ensure that ABCs are not exceeded. This authority and responsibility is included in the FMP and regulations at § 679.20. Therefore, NMFS will not modify this final rule to preclude the ability for NMFS to set an ABC reserve at a level that differs from the one recommended by the Council if NMFS determines that a different ABC reserve is necessary and appropriate.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the TAC for each target species category. Regulations at § 679.20(c)(1) further require NMFS to publish proposed harvest specifications in the **Federal Register** and solicit public comments on proposed annual TACs and apportionments thereof, prohibited species catch allowances, prohibited species quota reserves established by § 679.21, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC, American Fisheries Act allocations, Amendment 80 allocations, and CDQ reserve amounts established by § 679.20(b)(1)(ii). Under regulations at § 679.20(c)(3), NMFS publishes the final harvest specifications after (1) considering comments received within the comment period, (2) consulting with the Council at its annual December meeting, and (3) considering information presented in the Supplementary Information Report that assesses the need to prepare a Supplemental Alaska Groundfish Harvest Specifications Final Environmental Impact Statement and the final Stock Assessment and Fishery Evaluation reports prepared for the BSAI groundfish fisheries. NMFS will approve the Council's recommended OFLs, ABCs, and TACs if NMFS finds them consistent with the FMP, MSA, and other applicable law. However, NMFS may determine that a Council recommendation, including a Council recommendation for an ABC reserve, is not consistent with the FMP, MSA, and other applicable law. Therefore, removing a specific regulatory provision that would allow NMFS to establish an ABC reserve that may differ from the one recommended by the Council would be contrary to existing authority established by the MSA, FMP, and regulations. The final 2014 and 2015 harvest specifications provide additional detail on this process (79 FR 12108, March 4, 2014).

Comment 6: A representative for Amendment 80 vessels supported the rule and noted that the rule will provide CDQ groups and Amendment 80 vessels with the same harvesting flexibility, which he believes will result in greater demand for and additional harvesting of CDQ quota.

Response: NMFS agrees that CDQ groups would have the same opportunity as the Amendment 80 cooperatives to access the ABC surplus and ABC reserve, and consequently would also be able to benefit from the flexibility in choice of target flatfish afforded by Amendment 105 and its implementing regulations.

NMFS acknowledges the commenter's assertion that this action will result in greater harvesting of CDQ quota of flatfish. NMFS cannot say, however, whether this will actually occur because, as noted in is section 1.8.2.2 of the RIR/IRFA prepared for this action, it is impossible to quantitatively assess the impacts of the this action on the values of CDQ allocations of flathead sole, rock sole, and yellowfin sole. A qualitative assessment suggests that as the supply of these three species increases for the Amendment 80 sector, the demand for leasing CDQ flatfish quota would decrease, along with the lease rates. The risk of this decline may exist only in the short term because, over the longer term, the demand for CDQ flatfish quota is likely to increase as more efficient vessels specifically designed for participation in the BSAI trawl fisheries replace the aging fleet, and Amendment 80 allocations are fully utilized. As Amendment 80 vessels increase their efficiency, they will continue to seek other fishing opportunities, such as leasing CDQ quota. Further, while the CDQ groups have leased their flatfish quota to Amendment 80 vessels to harvest, other partners have recently entered the market, which may lead to increased competition for CDQ leases.

As noted on page 39708 of the proposed rule, this action is not intended to resolve the complex issues that have constrained the CDQ groups and Amendment 80 cooperatives from fully harvesting their flatfish allocations. This proposed action is intended to provide the flexible management necessary to mitigate a diverse range of conditions that may limit catch of flathead sole, rock sole, and yellowfin sole. The Council and NMFS expect that the regulatory tools implemented in this final rule will promote increased harvest of CDQ and CQ allocations.

Comment 7: The preamble suggests that NMFS is in the process of interpreting Magnuson-Stevens Act confidentiality provisions, but that the current interpretation limits disclosure of certain information. These provisions were implemented by Congress to protect the confidentiality of data submitters so that business or trade secrets are not revealed. We feel that limiting data disclosure to aggregations of three vessels or more adequately protects the interest of submitters and provides information to the Council to assess the effects of this rule.

Response: NMFS acknowledges this comment and notes that this final rule would not require Amendment 80 cooperatives to submit confidential information to the Council or the public. Moreover, NMFS will not disclose data to the Council or the public that would be considered confidential, consistent with section 402(b) of the Magnuson-Stevens Act and applicable agency regulations and policies regarding any confidential information. The scope of Amendment 105 and this rule do not modify existing data disclosure procedures.

Comment 8: All of the information to be submitted in the Preliminary Amendment 80 Flatfish Exchange Report is available to NMFS. NMFS could therefore provide the Council with this information at its December meeting instead of requiring Amendment 80 cooperatives to submit a separate report to the Council by December 1 of each year. The proposed annual reporting requirement creates an unnecessary reporting burden, increases costs for Amendment 80 cooperatives, and should be removed.

Response: NMFS agrees and has removed from the final rule the requirement for Amendment 80 cooperatives to submit a Preliminary Amendment 80 Flatfish Exchange Report to the Council by December 1 every year. See the ''Changes from the Proposed Rule'' section above in this preamble for additional detail.

Comment 9: Proposed regulations at § 679.5(s)(7)(iii) describe information requirements for the Preliminary Amendment 80 Flatfish Exchange Report as all of the information required

on the Preliminary Amendment 80 Flatfish Exchange Report form and all required additional documentation. The form was not available for review, so it is difficult to comment on this proposed regulation. However, the requirements seem vague and we request that the final rule clarify the reporting requirements.

Response: NMFS provided the form to the commenter and the public for review prior to the end of the public comment period on this proposed rule. However, NMFS has removed the Preliminary Amendment 80 Flatfish Exchange Report and the accompanying form from this final rule (see Comment 8). Therefore, this comment is no longer applicable to this final rule.

Comment 10: Block B of the Preliminary Amendment 80 Flatfish Exchange Report form requires information about Amendment 80 Flatfish Exchanges. The headings in Block B are titled: ''Species Exchanged Into Cooperative Quota'' and ''Species Exchanged Out of Reserves''. These headings are asking for the same information. As described in the proposed regulations, an Amendment 80 cooperative would be exchanging CQ of one species for CQ of another species. The current form confuses these two exchanges and should be corrected.

Response: NMFS acknowledges this comment and notes that this final rule does not require Amendment 80 cooperatives to provide a Preliminary Amendment 80 Flatfish Exchange Report, as described in more detail in the response to Comment 8. Therefore, this comment is no longer applicable to this final rule.

Comment 11: Block A of the Flatfish Exchange Application form asks whether the exchange is CDQ or Amendment 80. Block B also asks for the same information in both the ''Species Exchanged In'' and ''Species Exchanged Out'' columns. This suggests that an Amendment 80 cooperative may exchange CDQ for Amendment 80 CQ. We do not believe this was the intent of the proposed rule, and should be corrected. We believe it's only necessary to state whether the exchange is CDQ or Amendment 80 in Block A.

Response: NMFS agrees and has revised Block A and Block B of the Flatfish Exchange Application form accordingly.

Comment 12: The Flatfish Exchange Application form instructions state that the exchange ''will be exchanged as of the date NMFS approves the exchange application''. The instructions also state ''No exchange, adjustment, apportionment of flatfish may take effect until NMFS publishes notification in the **Federal Register**''. NMFS should clarify if the ''date NMFS approves the exchange application'' is the same date that ''NMFS publishes notification in the **Federal Register**.'' Also, NMFS should clarify the process they will follow to ensure there is no delay in reviewing and approving the Flatfish Exchange Application.

Response: NMFS agrees and has revised the Flatfish Exchange Application form instructions to clarify that a Flatfish Exchange is effective on the date that NMFS publishes notification in the **Federal Register**. Flatfish Exchanges are not effective upon approval of a Flatfish Exchange Application. As described on page 36712 of the preamble to the proposed rule, Section 1.4.2 of the RIR/IRFA prepared for this action, and this final rule preamble, each Flatfish Exchange Application received by NMFS must be approved by NMFS, and revised TACs must be published in the **Federal Register**, before unused CDQ or CQ could be exchanged for a portion of its CDQ ABC reserve or Amendment 80 reserve. NMFS' approval of a Flatfish Exchange Application is necessary to ensure that ABC's are not exceeded. NMFS will disapprove any application that could result in exceeding an ABC or ABC reserve for a species. NMFS will make every effort to review each Flatfish Exchange Application as expeditiously as possible while ensuring that it fully considers the requested exchange to ensure an ABC or ABC reserve to be exceeded.

Comment 13: The commenter suggested that the proposed rule did not meet plain English standards for clearly written regulations.

Response: NMFS disagrees. The preamble to proposed rule used plain language to describe the proposed regulatory text. The preamble to the proposed rule includes a *Summary of Regulatory Changes* proposed in a bulleted list on page 36709 that provides a broad overview of the proposed regulatory changes. NMFS provided a thorough description of the rationale for all the relevant components and effects of this action as clearly as possible in light of the complex nature of fishery management programs. The proposed regulations, the preamble to the proposed rule, and this final rule are subject to an extensive review process, including legal review, to ensure that documents are consistent the Magnuson-Stevens Act and other applicable law including Executive Orders (E.O.) 12866 and12988. These two Executive Orders emphasize the need for plain language. For example E.O. 12866 requires that regulations be ''simple and easy to understand, with the goal of minimizing uncertainty and litigation . . .'' (Sec. 1, Par. (b)(12)) and E.O. 12988 requires that each regulation specify its effect ''in clear language''. (Sec. 3 Par. (b)(2)).

Summary of Regulatory Changes

Amendment 105 and this final rule modify existing regulatory text at 50 CFR part 679 as follows:

- Add definitions for ''ABC reserve,'' ''ABC surplus,'' ''Amendment 80 ABC reserve,'' ''CDQ ABC reserve,'' and ''Flatfish Exchange'' to § 679.2.
- Add § 679.4(p) to establish the Flatfish Exchange Application requirements and annual limitations on the number of Flatfish Exchanges.
- Add § 679.20(b)(1)(iii) to establish the ABC reserves, CDQ ABC reserves, and Amendment 80 ABC reserves as part of the general limitations.
- Revise § 679.20(c)(1)(iv) to include Flatfish Exchange specifications in the annual proposed groundfish harvest specifications.
- Revise § 679.20(c)(3)(iii) to include Flatfish Exchange specifications in the annual final groundfish harvest specifications.
- In § 679.31, revise the headings of paragraphs (a) and (b) to be consistent with this Amendment 105.
- Add § 679.31(a)(5) to establish the CDQ ABC reserve as part of the CDQ allocations.
- Add § 679.31(b)(4) to allocate CDQ ABC reserves among CDQ groups.
- Add § 679.31(d) to allow CDQ groups to access the CDQ ABC reserves.
- Add § 679.91(i) to establish the Amendment 80 ABC reserves as annual harvest privileges allocated to Amendment 80 cooperatives, and to allow Amendment 80 cooperatives to access the Amendment 80 ABC reserves.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 105 to the BSAI FMP is necessary for the conservation and management of the BSAI groundfish fishery and that it is consistent with the BSAI FMP, the Magnuson-Stevens Act, and other applicable laws.

Small Entity Compliance Guide

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

explain the actions a small entity is required to take to comply with a rule or group of rules. The preamble to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS at the following Web site: *http://alaskafisheries.noaa.gov.*

Executive Order 12866

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

Final Regulatory Flexibility Analysis

Section 604 of the Regulatory Flexibility Act (RFA) requires that, when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code, after being required by that section, or any other law, to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis.

Section 604 describes the contents of a FRFA: (1) A statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

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

The Small Business Administration (SBA) has established size standards for all major industry sectors in the U.S., including commercial finfish harvesters (NAICS code 114111), commercial shellfish harvesters (NAICS code 114112), other commercial marine harvesters (NAICS code 114119), for-hire businesses (NAICS code 487210), marinas (NAICS code 713930), seafood dealers/wholesalers (NAICS code 424460), and seafood processors (NAICS code 311710). A business primarily involved in finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of $20.5 million, for all its affiliated operations worldwide. For commercial shellfish harvesters, the same qualifiers apply, except the combined annual gross receipts threshold is $5.5 million. For other commercial marine harvesters, for-hire fishing businesses, and marinas, the same qualifiers apply, except the combined annual gross receipts threshold is $7.5 million.

A business primarily involved in seafood processing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual employment, counting all individuals employed on a full-time, part-time, or other basis, not in excess of 500 employees for all its affiliated operations worldwide. For seafood dealers/wholesalers, the same qualifiers apply, except the employment threshold is 100 employees. In determining a concern's number of employees, SBA counts all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employee organization or leasing concern. SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes, in determining whether individuals are employees of a concern. Volunteers (*i.e.,* individuals who receive no compensation, including no in-kind compensation, for work performed) are not considered employees. Where the size standard is number of employees, the method for determining a concern's size includes the following principles: (1) The average number of employees of the concern used (including the employees of its domestic and foreign affiliates) based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months; (2) part-time and temporary employees are counted the same as full-time employees.

Need for and Objectives of This Action

A statement of the need for, and objectives of, the rule is contained in the preamble to this final rule and is not repeated here.

Summary of Significant Issues Raised During Public Comment

NMFS published a proposed rule on June 30, 2014 (79 FR 36702). An initial regulatory flexibility analysis (IRFA) was prepared and summarized in the ''Classification'' section of the preamble to the proposed rule. The comment period closed on July 30, 2014. NMFS received 5 letters of public comment on the proposed rule. These comment letters did not address the IRFA or the economic impacts of the rule generally. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule.

Number and Description of Small Entities Regulated by This Action

CDQ groups and Amendment 80 cooperatives are directly regulated through this final action through their allocations of harvesting privileges for flathead sole, rock sole, and yellowfin sole.

Since 2011, all vessels and companies participating in the Amendment 80 sector have been affiliated with one of two Amendment 80 cooperatives, the Alaska Seafood Cooperative or the Alaska Groundfish Cooperative. The IRFA classified all of the entities participating in Amendment 80 cooperatives as large entities, either by virtue of their own gross revenues or by virtue of their affiliation with other large entities through their cooperative membership. The small entity determinations reported in the IRFA for this action have been reviewed for compliance with recent revisions to Small Business Administration thresholds for identifying small entities (79 FR 33647, June 12, 2014). No changes in the small entity count analysis were necessary for this FRFA.

The six CDQ groups are all small entities by virtue of their non-profit

status. These groups include Aleutian Pribilof Island Community Development Association, Bristol Bay Economic Development Corporation, Central Bering Sea Fishermen's Association, Coastal Villages Region Fund, Norton Sound Economic Development Corporation, and Yukon Delta Fisheries Development Association. Each of these groups is organized as an independently owned and operated not-for-profit entity and none is dominant in its field; consequently, each is a ''small entity'' under the RFA.

All six CDQ groups annually receive groundfish, halibut, and crab CDQ allocations. These groups participate, either directly or indirectly, in the commercial harvest of these allocations. Commercially valuable allocations include (among others) Alaska pollock, Pacific cod, sablefish, Pacific halibut, Greenland turbot, Atka mackerel, various flatfish species, as well as king and Tanner crab. CDQ groups receive royalties from the successful harvest of CDQ by commercial fishing companies, as well as access to employment and training opportunities for their communities' residents. Royalties and income from CDQ harvesting activities are used to fund economic development projects in CDQ communities. In 2011, the six CDQ groups earned approximately $311.5 million in royalties (i.e., gross revenues) from the harvest of CDQ allocations. CDQ Program activities are discussed in detail in Section 1.6 of the RIR/IRFA prepared for this action.

Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action is projected to have a negligible impact on the recordkeeping and reporting requirements of CDQ groups (i.e., the directly regulated small entities) participating in the BSAI groundfish fisheries. The decision to submit a Flatfish Exchange Application is entirely voluntary on the part of all affected entities. If a CDQ group chooses to submit a Flatfish Exchange Application, it will need to submit the information required. The information required in a Flatfish Exchange Application is similar to the information already required by for transfers of CDQ allocations among CDQ groups (see regulations at § 679.5(n)).

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

A FRFA also requires a description of the steps the agency has taken to minimize the significant impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative (Alternative 3 as modified by Option 1, described below) adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency that affect the economic impact on small entities was rejected. The suite of potential actions includes three alternatives and associated options. A detailed description of these alternatives and options is provided in Section 1.4 of the RIR/IRFA prepared for this action.

Alternative 1 is the status quo, and does not provide additional harvesting flexibility for flathead sole, rock sole, or yellowfin sole to CDQ groups. Alternative 2 would establish a CDQ ABC reserve for flathead sole, rock sole, or yellowfin sole that is allocated among CDQ groups equal to 10.7 percent of the ABC surplus for each species. Alternative 3 would allow the Council or NMFS to establish a CDQ ABC reserve for flathead sole, rock sole, or yellowfin sole that is allocated among CDQ groups that may be less than or equal to 10.7 percent of the ABC surplus for each species after considering socioeconomic or biological considerations.

Alternative 2 is less restrictive than the preferred alternative, and thus has fewer adverse impacts on the directly regulated CDQ groups. While Alternative 2 may be less restrictive to CDQ groups, Alternative 3 as modified by Option 1 was adopted because it provides the Council flexibility to address socioeconomic or biological considerations during the annual harvest specifications process. In order to meet the conservation and management objectives of the Magnuson-Stevens Act, the BSAI FMP, and this final action, the Council and NMFS may deem it appropriate to set the ABC reserve below the ABC surplus to accommodate potential harvests of non-target species greater than the incidental catch allowance. Similarly, the Council may recommend establishing an ABC reserve less than the ABC surplus to accommodate market conditions.

The Council also considered three options that could apply to either Alternative 2 or Alternative 3; however, options 2 and 3 are mutually exclusive because Option 2 would not allow participants to receive additional yellowfin sole and Option 3 limits the amount (mt) of additional yellowfin sole that could be accessed by each participant. Option 1 would establish an ABC surplus, ABC reserve, and CDQ ABC reserve for flathead sole, rock sole, and yellowfin sole, but limit the number of Flatfish Exchanges to no more than three Flatfish Exchanges per CDQ group per calendar year. Option 2 would create an ABC surplus, ABC reserve, and CDQ ABC reserve only for flathead sole and rock sole. Option 3 would limit the maximum amount of the ABC surplus, ABC reserve, and CDQ ABC reserve for yellowfin sole available to CDQ groups. Options 2 and 3 are more restrictive than Option 1 and provide fewer opportunities for CDQ groups to use Flatfish Exchanges to maximize their harvests, particularly their harvests of yellowfin sole. Therefore, Options 2 and 3 were rejected because those options would have more adverse impacts on CDQ groups than the preferred alternative, which combines Alternative 3 and Option 1.

Option 1, which limits CDQ groups to three Flatfish Exchanges during a year, is more restrictive than the adoption of Alternative 3 without the option. Alternative 3 without Option 1 would not limit the number of Flatfish Exchanges that a CDQ group could undertake each calendar year. However, Alternative 3 as modified by Option 1 was selected because it met the objectives of this action while establishing limits on the potential administrative burden and costs on NMFS of the final action. As explained in Section 1.8.3 of the RIR/IRFA prepared for this action, the Council determined and NMFS agreed that a maximum of three Flatfish Exchanges per calendar year per CDQ group meets the goals and objectives for the final action, does not unduly constrain CDQ groups, and reduces administrative burden and costs on NMFS. The Flatfish Exchange limits are intended to allow the CDQ groups to make an adequate number of exchanges needed to accommodate uncertain harvesting conditions throughout the year as described earlier in the preamble and in Section 1.6.1 of the RIR/IRFA prepared for this action.

Collection-of-Information Requirements

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648–0565. Public reporting burden is estimated to average 30 minutes for the Flatfish Exchange Application. The estimated response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments on these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**), and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 17, 2014.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

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

■ 2. In § 679.2, add definitions for ''ABC reserve''; ''ABC surplus''; ''Amendment 80 ABC reserve''; ''CDQ ABC reserve''; and ''Flatfish Exchange'' in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

ABC reserve means, for purposes of flathead sole, rock sole, and yellowfin sole in the BSAI, an amount, not to exceed the ABC surplus, that may be reduced for social, economic, or ecological considerations according to § 679.20(b)(1)(iii).

ABC surplus means, for purposes of flathead sole, rock sole, and yellowfin sole in the BSAI, the difference between each species' annual ABC and TAC.

* * * * *

Amendment 80 ABC reserve means the amount of the flathead sole, rock sole, or yellowfin sole ABC reserve that remains after designating the amount assigned to the CDQ ABC reserve and that is allocated among Amendment 80 cooperatives as calculated annually as described at § 679.91(i)(2).

* * * * *

CDQ ABC reserve means 10.7 percent of the amount of the flathead sole, rock sole, or yellowfin sole ABC reserve that is allocated among the CDQ groups as calculated annually as described at § 679.31(b)(4).

* * * * *

Flatfish Exchange means the exchange of unused CDQ, or Amendment 80 CQ, of flathead sole, rock sole, or yellowfin sole in the BSAI for an equivalent amount (in metric tons) of CDQ ABC reserve or Amendment 80 ABC reserve, respectively, for flathead sole, rock sole, or yellowfin sole in the BSAI other than the species listed for exchange on the Flatfish Exchange Application as described in a notice of adjustment or apportionment in the **Federal Register**.

* * * * *

■ 3. In § 679.4, add paragraph (p) to read as follows:

§ 679.4 Permits.

* * * * *

(p) *Flatfish Exchange Application.* (1) *Completed application.* NMFS will process only completed Flatfish Exchange Applications submitted by CDQ groups or Amendment 80 cooperatives.

(2) *Certification.* The designated representative must log into the Alaska Region Online application Web site and complete an exchange application form provided on the Web site. By using the NMFS ID, password, and Transfer Key and submitting the Flatfish Exchange Application, the designated representative certifies that all information submitted is true, correct, and complete.

(3) *Approval.* A CDQ group or Amendment 80 cooperative must receive NMFS' approval of a Flatfish Exchange Application prior to using the CDQ or Amendment 80 CQ subject to the Flatfish Exchange. NMFS will approve the Flatfish Exchange Application if:

(i) The CDQ group has sufficient CDQ ABC reserves of flathead sole, rock sole, or yellowfin sole;

(ii) The Amendment 80 cooperative has sufficient Amendment 80 ABC reserves of flathead sole, rock sole, or yellowfin sole;

(iii) The CDQ group receiving flathead sole, rock sole, or yellowfin sole from its CDQ ABC reserve exchanges an equal amount of unused CDQ of flathead sole, rock sole, or yellowfin sole, other than the species received from its CDQ ABC reserve;

(iv) The Amendment 80 cooperative receiving flathead sole, rock sole, or yellowfin sole from its Amendment 80 ABC reserve exchanges an equal amount of unused Amendment 80 CQ of flathead sole, rock sole, or yellowfin sole, other than the species received from its Amendment 80 ABC reserve;

(v) The CDQ group or Amendment 80 cooperative has not received at least three approved Flatfish Exchanges during that calendar year, as described at paragraph (p)(5) of this section;

(vi) Approval of the Flatfish Exchange Application will not cause flathead sole, rock sole, or yellowfin sole to exceed an ABC or an ABC reserve for that species; and

(vii) NMFS receives a completed Flatfish Exchange Application from a CDQ group or Amendment 80 cooperative during the calendar year for which the Flatfish Exchange would be effective, and NMFS can approve that Flatfish Exchange Application before the end of the calendar year in which the Flatfish Exchange would be effective.

(4) *Notification.* (i) No exchange, adjustment, or apportionment of flathead sole, rock sole, or yellowfin sole may take effect until a notice of adjustment or apportionment has been published in the **Federal Register** with a statement of the findings on which the apportionment or adjustment is based.

(ii) Each NMFS approved Flatfish Exchange is debited as one Flatfish Exchange. An approved Flatfish Exchange is effective on the date of publication of the notice of adjustment or apportionment in the **Federal Register**.

(5) *CDQ ABC reserve and Amendment 80 ABC reserve exchange limitations.* Each CDQ group and each Amendment 80 cooperative is limited to no more than three Flatfish Exchanges per calendar year.

■ 4. In § 679.20:

■ a. Add paragraph (b)(1)(iii); and

■ b. Revise paragraphs (c)(1)(iv) and (c)(3)(iii) to read as follows:

§ 679.20 General limitations.

* * * * *

(b) * * *

(1) * * *

(iii) *ABC reserves.* (A) ABC reserves are annually established for flathead sole, rock sole, and yellowfin sole. For each flatfish species, the ABC reserve is calculated as an amount less than or equal to the ABC surplus. NMFS, after consultation with the Council, may set the ABC reserve for flathead sole, rock sole, or yellowfin sole below the ABC surplus for that species based on social, economic, or ecological considerations.

(B) *CDQ ABC reserves.* An amount equal to 10.7 percent of the ABC reserves for flathead sole, rock sole, and yellowfin sole will be allocated to a

CDQ ABC reserve. The CDQ ABC reserves will be:

(*1*) Calculated during the annual harvest specifications described at paragraph (c) of this section, as allocations to CDQ groups; and

(*2*) Allocated to each CDQ group as described under § 679.31(b)(4).

(C) *Amendment 80 ABC reserves.* Amendment 80 ABC reserves shall be calculated as the ABC reserves described under paragraph (b)(1)(iii)(A) of this section as reduced by the CDQ ABC reserves under paragraph (b)(1)(iii)(B) of this section. The Amendment 80 ABC reserves will be:

(*1*) Calculated during the annual harvest specifications described at paragraph (c) of this section, as allocations to Amendment 80 cooperatives; and

(*2*) Allocated to each Amendment 80 cooperative as described under § 679.91(i)(2).

* * * * *

(c) * * *

(1) * * *

(iv) *BSAI.* (A) The proposed harvest specifications will specify for up to two fishing years the annual TAC for each target species and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC (including pollock, Pacific cod, and Atka mackerel CDQ), and CDQ reserves.

(B) The proposed harvest specifications will specify for up to two fishing years the ABC surpluses, ABC reserves, CDQ ABC reserves, CDQ ABC reserves for each CDQ group, Amendment 80 ABC reserves, and Amendment 80 ABC reserves for each Amendment 80 cooperative for flathead sole, rock sole, and yellowfin sole.

* * * * *

(3) * * *

(iii) *BSAI.* (A) The final harvest specifications will specify for up to two fishing years the annual TAC for each target species and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of pollock (including pollock, Pacific cod, and Atka mackerel CDQ), and CDQ reserves.

(B) The final harvest specifications will specify for up to two fishing years the annual ABC surpluses, ABC reserves, CDQ ABC reserves, CDQ ABC reserves for each CDQ group, Amendment 80 ABC reserves, and Amendment 80 ABC reserves for each Amendment 80 cooperative for flathead sole, rock sole, and yellowfin sole.

* * * * *

■ 5. In § 679.31:

■ a. Revise paragraphs (a) heading and (b) heading; and

■ b. Add paragraphs (a)(5), (b)(4), and (d) to read as follows:

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

(a) *CDQ, PSQ, and CDQ ABC reserves.* * * *

(5) *CDQ ABC reserves.* (See § 679.20(b)(1)(iii)(A))

(b) *Allocations of CDQ, PSQ, and CDQ ABC reserves among the CDQ groups.* * * *

(4) *Annual allocations of CDQ ABC reserves among the CDQ groups.* (i) An amount equivalent to 10 percent of the ABC reserve for flathead sole, rock sole, and yellowfin sole as determined under the annual harvest specifications at § 679.20(c) shall be allocated among the CDQ groups based on the CDQ percentage allocations under 16 U.S.C. 1855(i)(1)(C), unless modified under 16 U.S.C. 1855(i)(1)(H); and

(ii) An amount equivalent to 0.7 percent of the ABC reserve for flathead sole, rock sole, and yellowfin sole as determined under the annual harvest specifications at § 679.20(c) shall be allocated among the CDQ groups by the panel established in section 305(i)(1)(G) of the Magnuson-Stevens Act.

* * * * *

(d) *Accessing CDQ ABC reserves.* Each CDQ group may request that NMFS approve a Flatfish Exchange to add flathead sole, rock sole, or yellowfin sole to its CDQ account in exchange for reducing its CDQ account by an equal amount of flathead sole, rock sole, or yellowfin sole. CDQ groups may request Flatfish Exchanges by submitting a completed Flatfish Exchange Application as described at § 679.4(p).

■ 6. In § 679.91, add paragraph (i) to read as follows:

§ 679.91 Amendment 80 Program annual harvester privileges.

* * * * *

(i) *Amendment 80 ABC reserves.* (1) *General.* The Regional Administrator will determine the Amendment 80 ABC reserves for flathead sole, rock sole, and yellowfin sole that will be assigned to the Amendment 80 sector as part of the annual harvest specifications described at § 679.20(c). Amendment 80 ABC reserves will be further allocated to Amendment 80 cooperative(s), as described in paragraph (i)(2) of this section.

(2) *Allocation of Amendment 80 ABC reserves to Amendment 80 cooperatives.* The amount of Amendment 80 ABC reserve for each species of flathead sole, rock sole, and yellowfin sole assigned to an Amendment 80 cooperative is equal to the amount of Amendment 80 QS units of that species assigned to that Amendment 80 cooperative by Amendment 80 QS holders divided by the total Amendment 80 QS pool for that species multiplied by the Amendment 80 ABC reserve for that species.

(3) *Accessing Amendment 80 ABC reserves.* An Amendment 80 cooperative may request that NMFS approve a Flatfish Exchange to add flathead sole, rock sole, or yellowfin sole CQ to its Amendment 80 CQ account in exchange for reducing its Amendment 80 CQ by an equal amount of flathead sole, rock sole, or yellowfin sole. An Amendment 80 cooperative may request Flatfish Exchanges by submitting a completed Flatfish Exchange Application as described in § 679.4(p).

[FR Doc. 2014–22568 Filed 9–22–14; 8:45 am]

BILLING CODE 3510–22–P