

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

[Docket No. 061206324-6324-01; I.D. 112006]

RIN 0648-AU48

**Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod Allocations in the Bering Sea and Aleutian Islands Management Area**

**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 that would implement Amendment 85 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) and that would implement recent changes to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). If approved, Amendment 85 would modify the current allocations of Bering Sea and Aleutian Islands management area (BSAI) Pacific cod total allowable catch (TAC) among various harvest sectors and seasonal apportionments thereof. This action also would establish a hierarchy for reallocating projected unharvested amounts of Pacific cod from certain sectors to other sectors, revise catcher/processor sector definitions, modify the management of Pacific cod incidental catch that occurs in other groundfish fisheries, eliminate the Pacific cod nonspecified reserve, adjust the seasonal allowances of Pacific cod, subdivide among sectors the annual prohibited species catch (PSC) limits currently apportioned to the Pacific cod trawl and nontrawl fisheries, and modify the sidebar restrictions for American Fisheries Act (AFA) catcher/processor (CP) vessels. In addition, this proposed rule would increase the percentage of the BSAI Pacific cod TAC apportioned to the Community Development Quota (CDQ) Program. Amendment 85 is necessary to reduce uncertainty about the availability of yearly harvests within sectors caused by reallocations, and to maintain stability among sectors in the BSAI Pacific cod fishery. This would be accomplished by establishing allocations that more closely reflect historical use by sector than do current allocations while considering

socioeconomic and community factors, thus reducing the need for reallocations during the fishing year (inseason). This proposed rule also is necessary to partially implement recent changes to the Magnuson-Stevens Act that require a total allocation of 10.7 percent of the TAC of each directed fishery to the CDQ Program starting January 1, 2008. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable laws.

**DATES:** Comments must be received no later than March 26, 2007.

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

- Hand delivery: 709 West 9th Street, Room 420A, Juneau, AK;
- E-mail: 0648-AU48-PR-AMD85@noaa.gov. Include in the subject line the following document identifier: "Pacific cod RIN 0648 AU48." E-mail comments, with or without attachments, are limited to 5 megabytes;
- Fax: 907-586-7557;
- Mail: P.O. Box 21668, Juneau, AK 99802-1668; or
- Webform at the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions at that site for submitting comments.

Copies of Amendment 85 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from NMFS at the above address or from the NMFS Alaska Region website at <http://www.fakr.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Becky Carls, 907-586-7228 or [becky.carls@noaa.gov](mailto:becky.carls@noaa.gov).

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

The Council has submitted Amendment 85 for review by the Secretary of Commerce, and a notice of availability of the FMP amendment was published in the **Federal Register** on December 7, 2006, (71 FR 70943) with comments on the FMP amendment invited through February 5, 2007.

**Background and Need for Action**

NMFS uses TACs to manage the harvest of groundfish species in the BSAI as one management tool to ensure sustainable fisheries. The FMP and its implementing regulations require NMFS, after consultation with the Council, to annually specify the TAC for each target species and for the "other species" category governed by the FMP. The Council develops TAC recommendations based on the acceptable biological catch (ABC) for each stock of fish and other socioeconomic factors. The ABC is based on the status of the stock, environmental conditions, and other ecological factors.

The FMP requires a TAC to be less than or equal to the ABC for each fish stock. Between 1991 and 1994, between 1998 and 2001, and in 2005, the Pacific cod TACs were set equal to their ABCs. Thus, typically all the BSAI Pacific cod that is available for harvest in a particular fishing year is completely allocated. The Pacific cod TAC allocations and apportionments for 2006 and 2007 are listed in Table 5 of the groundfish specifications published March 3, 2006 (71 FR 10900), and may be changed as necessary during any fishing year pursuant to 50 CFR 679.20(a)(7)(ii) and 679.25(a). Final 2006 and 2007 harvest specifications implemented a 2006 BSAI Pacific cod TAC of 194,000 mt, which equaled the 2006 ABC for Pacific cod. Shortly after publication, this TAC was adjusted downward to 188,180 mt (71 FR 13777, March 17, 2006) to accommodate a new Pacific cod fishery in State of Alaska waters in the Aleutian Islands and to avoid exceeding the ABC.

The current regulations provide for the overall TAC of BSAI Pacific cod, after subtraction of reserves, to be subdivided or allocated among eight non-CDQ fishing industry sectors based on the type of fishing gear used (50 CFR 679.20(a)(7)). Basically, these gear sectors include trawl gear, fixed gear (hook-and-line and pot), and jig gear. These basic allocations are further subdivided between catcher/processor vessels (CPs) that process their catch and catcher vessels (CVs) that catch fish but do not process it. Most allocations are further apportioned between seasons. The purpose of these allocations and apportionments is to prevent one industry sector from unfairly affecting the harvesting opportunities of other sectors and to ensure temporal dispersion of harvest to protect Steller sea lions (SSLs).

Currently, the BSAI Pacific cod non-CDQ TAC is fully distributed among the

following eight competing harvest sectors: jig, fixed gear (pot and hook-and-line gear) CVs less than 60 ft (18.3 m) length overall (hereafter, <60 ft LOA), hook-and-line CVs greater than or equal to 60 ft LOA (hereafter, ≥60 ft

LOA), hook-and-line CPs, pot CVs ≥60 ft LOA, pot CPs, trawl CPs, and trawl CVs. Several FMP amendments, implemented beginning in 1994, have allocated Pacific cod among these sectors. The previous and current

allocations, and those proposed under Amendment 85, are summarized in Table 1. The amendments are described in more detail below.

TABLE 1. PERCENT SECTOR ALLOCATIONS BY AMENDMENT AND YEAR IMPLEMENTED

Sector	Amend. 24 1994	Amend. 46 1997	Amend. 64 2000	Amend. 77 2004 (Current)	Proposed Amend. 85
Jig	2.0	2.0	2.0	2.0	1.4
Hook-and-line/pot CV <60 ft LOA	44.0	51.0	0.7	0.7	2.0
Hook-and-line CV ≥60 ft LOA			0.2	0.2	0.2
Hook-and-line CP			40.8	40.8	48.7
Pot CV ≥60 ft LOA			9.3	7.6	8.4
Pot CP				1.7	1.5
AFA trawl CP	54.0	23.5	23.5	23.5	2.3
Non-AFA trawl CP					13.4
Trawl CV					23.5

#### BSAI Pacific Cod Allocation History

In the early years of the fishery, BSAI Pacific cod was an open access fishery prosecuted primarily by trawl gear. Under open access management, Pacific cod was not allocated among competing fishermen. As the market value of Pacific cod increased with the removal of foreign and joint venture fisheries in 1990, the domestic fixed gear sector (including pot and hook-and-line gear) began to increase its harvest of the TAC. Hook-and-line CPs, in particular, contributed to the growth of the fixed gear sector's use of Pacific cod TAC. Any consideration of rationalizing the Pacific cod fishery during the 1990s through individual fishing quotas (IFQs) or other market-based allocation schemes was strongly opposed by the fixed gear sector as its share of the Pacific cod TAC was growing. At this stage of the industry's development, sector allocations emerged as a policy more acceptable to the Pacific cod fleet than IFQs or similar rationalization policies.

A sector allocation is based on the principle that good fences make good neighbors. The fence in this case is the division of the TAC among competing harvesting sectors. Each sector is allocated its own portion of the TAC that is protected from incursions by other sectors. Federal regulations require a sector to stop conducting directed fishing for Pacific cod when its allocation is exhausted, even if TAC allocated to other sectors remains

unharvested. Although sector allocations do not prevent a race-for-fish by competing fishermen within a sector, they do bring some short-term stability and certainty to fishermen within the sectors as compared to having no sector allocations. This was the policy rationale for the Council's first recommendation for sector allocations of Pacific cod TAC in Amendment 24.

In 1994, NMFS began to allocate the Pacific cod TAC with the implementation of BSAI Amendment 24 to the FMP (59 FR 4009, January 28, 1994). The allocations roughly represented the harvests of the trawl and fixed gear sectors during 1991 through 1993. Although the 2.0 percent jig sector allocation exceeded the historical harvest by this sector, it was intended to allow for growth in the sector. Competition within the trawl and fixed gear sectors eventually led to the Council recommending, in subsequent amendments, further subdivisions of the allocations to these sectors to provide the desired stability within the subdivided sectors.

Amendment 46, implemented in 1997 (61 FR 59029, November 20, 1996), further split the trawl allocation equally between CVs and CPs. The action also included specific authority for NMFS to annually reallocate among the various sectors, if necessary, any portion of the Pacific cod allocations that were projected to remain unused.

After Amendment 46 was implemented, members of the fishing industry asked the Council to further

allocate Pacific cod in the BSAI among the various fixed gear sectors. The Council developed Amendment 64 which further apportioned the 51 percent allocated to the fixed gear sector into four new sectors (see Table 1). NMFS approved Amendment 64 and it was implemented September 1, 2000 (65 FR 51553, August 24, 2000). Because Amendment 64 was scheduled to expire at the end of 2003, Amendment 77 was initiated to continue or modify the fixed gear sectors' allocations beyond 2003.

The current allocations are those that were adopted by the Council and approved by NMFS under Amendment 77 (68 FR 49416, August 18, 2003). Amendment 77 continued the same overall fixed gear sector allocations as under Amendment 64, except for a new apportionment between the pot gear CV and CP sectors. Currently, hook-and-line and pot CVs <60 ft LOA are allowed to fish under the general hook-and-line CV allocation and general pot CV allocation, respectively, when these fisheries are open. When these fisheries are closed, the <60 ft LOA hook-and-line and pot CV allocation.

The harvest on which the percentage allocations were based under Amendments 64 and 77 in the fixed gear sectors excluded the harvest of Pacific cod that was reallocated from other gear sectors. Except for the pot gear sector split, the percentage allocations under Amendment 77 closely represented the harvests for fixed gear in this fishery during 1995 through 1999, with an

additional allocation for CVs <60 ft LOA, to allow for growth in the small boat sector. The pot gear sector allocations were based on harvests from 1998 through 2001.

While the Council was considering adjustments to the Pacific cod allocations to the non-CDQ sectors under what became Amendment 64, the Council adopted and NMFS approved Amendment 39 in 1998 (63 FR 8356, February 19, 1998). Under Amendment 39, a percentage of various groundfish species including Pacific cod was allocated to the CDQ Program. From 1998 onward, 7.5 percent of the BSAI Pacific cod TAC was deducted for the CDQ reserve. The remainder of the TAC after the deduction for the CDQ reserve is referred to as the non-CDQ TAC. When the multispecies CDQ Program was implemented in 1998, the non-CDQ Pacific cod TAC was allocated in accordance with the percentages

established by Amendment 46, and since then as further modified by Amendments 64 and 77.

#### *History of Pacific Cod Reallocations*

Under the existing allocations, one or more sectors are typically unable to harvest their annual allocation of the Pacific cod TAC. Section 301(a)(1) of the Magnuson-Stevens Act, also known as National Standard 1, states, "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry." Thus, to provide an opportunity for the full harvest of the BSAI Pacific cod non-CDQ TAC, existing allocations of Pacific cod that are projected to be unharvested by some sectors are annually reallocated by NMFS to other sectors. Current regulations governing the reallocation of

BSAI Pacific cod are found at § 679.20(a)(7)(ii).

Since BSAI Pacific cod sector allocations have been in effect, NMFS has reallocated Pacific cod each year from the trawl and jig sectors to fixed gear sectors. In 2002 and in 2004, reallocations also were made from the pot gear sectors to the hook-and-line CP sector. Reallocations within gear types (e.g., trawl CPs to trawl CVs, or hook-and-line CVs to hook-and-line CPs) have occurred less frequently and in lower amounts. As shown in Table 2, the majority of reallocations, in terms of metric tons, have been from the trawl sectors to the hook-and-line CPs between 2000 and 2004. The starting point for this table is the year 2000 because that was the first year in which the fixed gear allocation was split among the hook-and-line CP, hook-and-line CV, pot gear, and <60 ft LOA fixed gear sectors.

TABLE 2. AVERAGE BSAI PACIFIC COD REALLOCATION BY SECTOR, 2000–2004

Sector	Initial allocation (mt)	Reallocation (mt)	Reallocation as percent of initial allocation
Jig	3,715	-3,309	-89%
Hook-and-line/pot CV <60 ft LOA	1,312	309	24%
Hook-and-line CV ≥60 ft LOA	283	120	42%
Hook-and-line CP	75,006	16,861	22%
Pot gear	17,244	-739	-4%
Trawl CP	43,649	-8,483	-19%
Trawl CV	43,649	-4,760	-11%

Unused seasonal allowances specified for the jig sector are reallocated during each of its three seasons. All other gear sector reallocations usually occur in the fall because unused seasonal allowances that remain unharvested earlier in the year are rolled over to each sector's subsequent season. Typically, reallocations from trawl to fixed gear sectors occur in October and November, and always during the trawl C season (June 10 to November 1).

NMFS reallocates unused Pacific cod allocations for a variety of reasons. Reallocations from the jig sector are primarily due to insufficient effort in that sector in the BSAI. Several reasons are commonly cited for trawl reallocations including closure of the directed trawl fisheries due to reaching the halibut PSC allowance, relatively high annual allocations in alternative trawl fisheries such as pollock (for AFA vessels), and high value alternative trawl fisheries such as yellowfin sole,

rock sole, and flathead sole (for non-AFA trawl CPs). Additionally, under SSL mitigation measures which started in 2001, the creation of a 20 percent seasonal apportionment in the C season for trawl gear led to trawl reallocations. The trawl sectors' inability to harvest their total allocations resulted from the increased difficulty in catching Pacific cod with trawl gear later in the year when those fish are less aggregated (lower catch per unit effort). Prior to the SSL mitigation measures, the trawl gear sectors were allowed to harvest their total Pacific cod allocation earlier in the year.

The increased difficulty in harvesting Pacific cod in the second half of the year is not unique to the trawl sector. All gear sectors have increased difficulty harvesting Pacific cod later in the year when those fish are less aggregated. Also, weather is a significant factor for the vessels in smaller CV sectors in the fall season. The hook-and-line sectors

are limited by halibut bycatch in the second half of the year. These sectors do not have a halibut bycatch allowance from June 10 to August 15 under the annual harvest specifications which effectively closes directed fishing for Pacific cod during this period. The amount of Pacific cod the fixed gear sectors could harvest in the first half of the year was reduced in 2001 as part of the SSL protection measures. The hook-and-line sector would prefer to harvest its Pacific cod allocation earlier in the year when its incidental take of seabirds is lower.

In developing Amendment 85, the Council determined that current allocations do not correspond with actual dependence and use by the existing sectors, as demonstrated by the need for annual reallocations. Reallocations maintain a level of uncertainty for some sectors regarding the amount of Pacific cod available for harvest. The Council expects that

uncertainty to decrease due to the revisions to the Pacific cod non-CDQ allocations under this proposed rule.

#### *Amendment 85 History*

Amendment 85 is the most recent action by the Council in a long history of actions to allocate BSAI Pacific cod TAC among competing sectors as described above and in Table 1. The development of Amendment 85 began in October 2002 when the Council initiated discussions regarding the allocation of certain BSAI groundfish species to the non-AFA trawl CP sector. In February 2003, the Council considered a vastly expanded program for this sector, known as Amendment 80, to establish a multispecies cooperative intended to facilitate greater retention improvements, allocate PSC, and address a number of sector allocation issues that would arise from a stand-alone allocation and cooperative (for the non-AFA trawl CP sector). In April 2003, the Council further expanded Amendment 80 to include allocations of non-pollock species and PSC to ten sectors operating in the BSAI as a means to minimize potential impacts on sectors that might arise from any direct allocations and cooperatives provided to the non-AFA trawl CP sector alone.

Growing demand for Pacific cod, a fully exploited fishery, and other distributional concerns among sectors led the Council to consider a separate action to revise allocations of Pacific cod among the many BSAI groundfish sectors. After further consideration, public testimony, and preliminary analyses, the Council simplified Amendment 80 in October 2004 to provide allocations only to the non-AFA trawl CP sector and removed allocation of Pacific cod from that proposed program. The intent of the Council was to streamline Amendment 80 and shift it back to its original intent, to provide the non-AFA trawl CP sector with a tool to reduce groundfish and PSC discards and improve retention. The Council then initiated a new plan amendment, which became Amendment 85, to alter the current BSAI Pacific cod allocations.

In December 2004, the Council reviewed a discussion paper outlining prior Council actions regarding BSAI Pacific cod allocations, the relevant problem statements associated with these past actions, and potential decision points related to structuring new alternatives and options for analysis. Upon review of the discussion paper, the Council approved a problem statement and a document outlining draft components and options for the new amendment. The problem

statement and suite of alternatives and options have been revised several times since that initial discussion. The Council's final problem statement focuses on revising the BSAI Pacific cod allocations to all sectors (trawl, jig, hook-and-line, pot, and CDQ):

The BSAI Pacific cod fishery is fully utilized and has been allocated among gear groups and to sectors within gear groups. The current allocations among trawl, jig, and fixed gear were implemented in 1997 (Amendment 46) and the CDQ allocation was implemented in 1998. These allocations are overdue for review. Harvest patterns have varied significantly among the sectors resulting in annual inseason reallocations of TAC. As a result, the current allocations do not correspond with actual dependency and use by sectors.

Participants in the BSAI Pacific cod fishery who have made significant investments and have a long-term dependence on the resource need stability in the allocations to the trawl, jig, fixed gear, and CDQ sectors. To reduce uncertainty and provide stability, allocations should be adjusted to better reflect historic use by sector. The basis for determining sector allocations will be catch history as well as consideration of socio-economic and community factors.

As other fisheries in the BSAI and GOA are incrementally rationalized, historical participants in the BSAI Pacific cod fishery may be put at a disadvantage. Each sector in the BSAI Pacific cod fishery currently has different degrees of license requirements and levels of participation. Allocations to the sector level are a necessary step on the path towards comprehensive rationalization. Prompt action is needed to maintain stability in the BSAI Pacific cod fisheries.

While the FMP does not have a sunset provision nor regulatory requirement to review or modify the sector allocations, the Council's motion on Amendment 46 included a provision to review the overall gear sector allocations four years after implementation. That review, originally intended at the end of 2000, occurred with Amendment 85.

#### **Description of the Proposed Action**

This amendment is intended by the Council to modify the sector allocations currently in place to better reflect actual dependency and use by sector, in part by basing the allocations on each sector's historical retained catch. One of the fundamental issues identified in the Council's problem statement is the need to revise the existing allocations to better reflect actual historical catch by sector, thus reducing the need for frequent and significant reallocations of quota toward the end of the year from sectors that are unable or otherwise do not intend to harvest their entire allocation. Thus, the catch history on which the proposed allocations were

partially based included Pacific cod that was reallocated from one sector to another due to the first sector's projected inability to harvest its entire allocation by the end of the year. The intent of the Council under Amendment 85 is to establish direct allocations for each specified sector in the BSAI Pacific cod fishery, in order to protect the relative historical catch distribution among those sectors.

However, there are noted exceptions to basing the allocations solely on catch history. The problem statement asserts that in addition to catch history, socioeconomic and community concerns should be the basis for determining sector allocations. Amendment 85 would establish BSAI Pacific cod allocations to the jig sector, the <60 ft LOA fixed gear CV sector, and the CDQ sector that are based on identified percentages of the TAC, and not actual catch history. This action would establish allocations to both the jig sector and to the <60 ft LOA fixed gear CV sector that are greater than those sectors' average catch histories. The allocations to the small boat sectors are intended by the Council to expand entry-level, local opportunities in the BSAI Pacific cod fishery. In general, however, the Council's proposed allocations of Pacific cod non-CDQ TAC are intended to formally institutionalize the historical pattern of utilization of this resource.

The Council also considered more refined allocations to the BSAI Pacific cod sectors, by evaluating the potential for establishing separate and distinct allocations for the non-AFA trawl CP and AFA trawl CP sector and the non-AFA trawl CV and AFA trawl CV sectors. The trawl CP sectors currently have a combined BSAI Pacific cod allocation of 23.5 percent of the non-CDQ BSAI Pacific cod TAC, as do the trawl CV sectors. Thus, all trawl gear combined currently receives 47 percent of the non-CDQ BSAI Pacific cod TAC.

The Council adopted Amendment 85 in April 2006. If approved by the Secretary of Commerce, Amendment 85 would modify the following provisions in the FMP: (a) sector allocations of BSAI Pacific cod TAC, (b) TAC deductions for incidental catch allowances of Pacific cod in other target fisheries, (c) the groundfish reserve for Pacific cod, (d) the Pacific cod allocation to the CDQ Program, and (e) the appendices of the FMP by adding a new appendix that summarizes applicable provisions of the Consolidated Appropriations Act of 2005 (Public Law 108-447). Because the Amendment 85 sector allocations cannot be implemented mid-year, the

final rule implementing Amendment 85, if approved, would be effective the following January 1st. Thus, the earliest effective date for the rule implementing Amendment 85 would be January 1, 2008.

This proposed rule would make the following changes in regulations for the management of the BSAI directed Pacific cod fishery:

- Increase the percentage of the BSAI Pacific cod TAC apportioned to the CDQ Program.

- Revise the allocations of BSAI Pacific cod non-CDQ TAC among various gear sectors.

- Modify the management of Pacific cod incidental catch that occurs in other groundfish fisheries.

- Eliminate the Pacific cod unspecified reserve.

- Establish a hierarchy for the reallocation of projected unused sector allocations to other sectors.

- Adjust the seasonal allowances of Pacific cod to various sectors.

- Subdivide among sectors the annual PSC limits apportioned to the Pacific cod trawl and hook-and-line gear fisheries.

- Modify the sideboard restrictions for Pacific cod that are applied to the CP vessels listed as eligible under the AFA.

- Revise the definition for AFA trawl catcher/processor and add definitions for hook-and-line catcher/processor, non-AFA trawl catcher/processor, and pot catcher/processor.

In developing Amendment 85, the Council considered dividing the Pacific cod TAC in the BSAI between the Bering Sea (BS) and Aleutian Islands (AI) subareas. At its April 2006 meeting, the Council voted to remove this action from Amendment 85 and initiate a new analysis that would examine additional alternative approaches to apportioning sector allocations between the two subareas. If conservation of the Pacific cod resource requires separate TACs for the BS and AI subareas before the Council adopts and NMFS approves a different approach to apportioning Pacific cod sector allocations between the two subareas, NMFS would apply the same percentages of the sector allocations to each subarea as in the overall BSAI allocations in existence at that time.

#### *Recent Legislation Affecting the Proposed Rule*

On December 8, 2004, the President signed into law the Consolidated Appropriations Act, 2005 (Public Law 108–447)(Act). With respect to fisheries off Alaska, the Act establishes catcher processor sector definitions for participation in (1) the catcher processor

subsectors of the BSAI non-pollock groundfish fisheries, and (2) the BSAI Catcher Processor Capacity Reduction Program. The following subsectors are defined in section 219(a) of the Act: AFA trawl catcher processor; non-AFA trawl catcher processor; longline catcher processor; and pot catcher processor.

Section 219(a) of the Act also defines the “non-pollock groundfish fishery” as target species of Atka mackerel, flathead sole, Pacific cod, Pacific ocean perch, rock sole, turbot, or yellowfin sole harvested in the BSAI. Thus, the Act provides the qualification criteria that each participant in the CP subsectors must meet in order to operate as a CP in the BSAI non-pollock groundfish fishery, or participate in the BSAI Catcher Processor Capacity Reduction Program, or both.

Because Amendment 85 would allocate Pacific cod (a non-pollock groundfish fishery under the Act) to CPs operating in the BSAI, this proposed rule includes new or revised definitions for AFA trawl CP, hook-and-line CP, non-AFA trawl CP, and pot CP, consistent with the provisions of the Act.

The Act includes numerous provisions that are not related to the management of groundfish and crab fisheries off Alaska. Therefore, this proposed rule includes in regulatory text only those portions of the Act related to eligibility in catcher processor subsectors. The portions of the Act authorizing and governing the development of the BSAI Catcher Processor Capacity Reduction Program are not provided in the proposed rule.

On July 11, 2006, the President signed into law the Coast Guard and Maritime Transportation Act of 2006 (Public Law 109–241), that, among other things, completely revised the CDQ Program statutory text at section 305(i)(1) of the Magnuson-Stevens Act. Specifically, section 305(i)(1)(B)(ii)(I) required that most of the allocations to the CDQ Program, including Pacific cod, increase from 7.5 percent of the TAC to a 10 percent directed fishing allocation upon the establishment of certain types of fishery management programs, including sector allocations in a fishery. Because Amendment 85, if approved, would establish sector allocations in the BSAI Pacific cod fishery, the proposed FMP amendment language and the proposed rule for Amendment 85 submitted to the Secretary by the Council included provisions consistent with the requirements of section 305(i)(1)(B)(ii)(I). As noted earlier, NMFS published the notice of availability for Amendment 85 in the **Federal Register** on December 7, 2006.

On January 12, 2007, the President signed into law the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (Magnuson-Stevens Reauthorization Act) (Public Law 109–479) that, among other things, amended section 305(i)(1)(B)(ii)(I). This section now requires that most of the allocations to the CDQ Program, including Pacific cod, increase to “a total allocation (directed and nontarget combined) of 10.7 percent effective January 1, 2008.” Section 305(i)(1)(B)(ii) also states that the total allocations under section 305(i)(1)(B)(ii)(I) may not be exceeded.

Because of the changes to the CDQ Program allocations brought about by the Magnuson-Stevens Reauthorization Act, NMFS determined that the proposed rule for Amendment 85 as originally submitted by the Council was no longer consistent with the Magnuson-Stevens Act. On January 17, 2006, NMFS notified the Council in writing of the inconsistencies and provided the Council with recommendations on revisions that would make the proposed rule consistent with the new provisions of the Magnuson-Stevens Act. The Council revised the proposed rule and submitted it to NMFS for reevaluation on January 19, 2007. This proposed rule reflects the revisions made by the Council in its January 19, 2007, submission.

Additional information on the proposed changes to the CDQ Program follow.

#### *Allocation of Pacific Cod to the CDQ Program*

The Western Alaska CDQ Program was implemented in November 1992 as part of the inshore/offshore allocations of pollock in the BSAI. Originally, the CDQ Program established a CDQ reserve to which one half of the non-specific reserve of 15 percent of the pollock TAC was allocated. Hence, the original CDQ reserve was 7.5 percent of the BSAI pollock TAC. The CDQ Program has since been amended several times and now, in addition to pollock, the CDQ reserve includes allocations of halibut, crab, and most of the remaining groundfish species in the BSAI, including Pacific cod. The 7.5 percent allocation of BSAI Pacific cod to the CDQ reserve was established when the multispecies CDQ reserves were implemented in 1998. The current percentages of TAC allocated to the CDQ reserves are as follows: 10 percent of pollock; 10 percent of crab species (with the exception of Norton Sound red king crab at 7.5 percent); 20 percent of fixed gear sablefish; a range of 20 percent to 100 percent of halibut,

depending on the area; and 7.5 percent of most groundfish species and species groups, including Pacific cod. Pro-rata shares of prohibited species are also allocated to the prohibited species quota, or PSQ, reserve. Under the adjusted March 2006 Pacific cod TAC, 14,114 mt of Pacific cod, the equivalent of 7.5 percent of the Pacific cod TAC, was allocated to the CDQ reserve.

Six non-profit corporations, known as CDQ groups, were formed by the 65 communities eligible to participate in the CDQ Program to manage and administer the CDQ allocations, investments, and economic development projects. Each of the six CDQ groups is allocated an amount of Pacific cod at the beginning of each year that equals its proportional share of the amount of Pacific cod allocated to the CDQ reserve. Currently, all catch of Pacific cod by any vessel fishing for groundfish CDQ, and by any vessel  $\geq 60$  ft LOA fishing for halibut CDQ, accrues against a CDQ group's allocation of Pacific cod. The CDQ groups are prohibited by regulations at  $\S$  679.7(d)(5) from exceeding any of their CDQ allocations. Therefore, reaching a CDQ allocation for one species constrains the ability of a CDQ group to continue to fish for other groundfish CDQ species, except for reaching the CDQ allocation of pollock, because the CDQ incidental catch of pollock is deducted from the general pollock incidental catch allowance.

When Amendment 85 was adopted in April 2006, the Council recommended that the Pacific cod CDQ reserve remain at 7.5 percent, but recognized that proposed Congressional legislation could change this percentage. As described above, the Magnuson-Stevens Act now requires that 10.7 percent of the annual Pacific cod TAC be allocated to the CDQ reserve for directed and nontarget fishing combined. The 10.7 percent Pacific cod allocation to the CDQ reserve would be established annually in the harvest specifications process required under  $\S$  679.20(c). Currently, the CDQ reserve is deducted from the Pacific cod TAC before the remaining Pacific cod TAC is allocated to the other fishing sectors. As intended by the Council, this would be continued under Amendment 85.

Each CDQ group would decide how to manage its CDQ fisheries and how to allocate its portion of the Pacific cod TAC among its vessels and target fisheries. The CDQ groups must continue to manage their fisheries within the seasonal allowances currently specified to comply with SSL protection measures, as described in more detail under "Seasonal Allowances." All catch of Pacific cod by any vessel groundfish CDQ fishing, and by any vessel  $\geq 60$  ft LOA halibut CDQ fishing, will continue to accrue against the CDQ group's annual allocation of Pacific cod and the CDQ groups will continue to be prohibited from

exceeding their annual allocations of Pacific cod.

#### *Non-CDQ Sector Allocations*

Under Amendment 85, the Council selected nine individual non-CDQ sectors to receive separate BSAI Pacific cod allocations. The allocations to the identified sectors were selected using catch history from 1995 through 2003 and other socioeconomic and community considerations. The Council concluded that the adopted allocations better reflected actual dependency and use by each sector, with specific consideration to allow for additional growth in the small boat, entry-level sectors. The primary objective of the Council in revising the BSAI Pacific cod non-CDQ TAC allocations to each sector was to reduce the level and frequency of annual reallocations, and thus enhance stability so each sector may better plan its fishing year and operate more efficiently.

This action proposes to allocate the BSAI TAC of Pacific cod among the nine non-CDQ sectors, after subtraction of the CDQ reserve. The current and proposed allocations of BSAI Pacific cod non-CDQ TAC compared to average harvest share (average of each sector's percent of the total harvest each year, including harvest of reallocated amounts of Pacific cod) between 1995 and 2003 and between 2000 and 2003 are presented in Table 3.

TABLE 3. CURRENT AND PROPOSED ALLOCATIONS OF BSAI PACIFIC COD NON-CDQ TAC AND AVERAGE HARVEST SHARE BY SECTOR (PERCENT)

Sectors	Amend. 77 (Current)	Amend. 85 (Proposed)	Average share of retained harvest 1995-2003 (average historic harvest)	Average share of retained harvest 2000-2003 (recent average harvest)
Jig	2.0	1.4	0.1	0.1
Hook-and-line/pot CV <60 ft LOA	0.7	2.0	0.4	0.7
Hook-and-line CV $\geq 60$ ft LOA	0.2	0.2	0.1	0.3
Hook-and-line CP	40.8	48.7	49.1	49.4
Pot CV $\geq 60$ ft LOA	7.6	8.4	8.6	9.0
Pot CP	1.7	1.5	2.1	1.4
AFA trawl CP	23.5	2.3	2.2	1.5
Non AFA trawl CP		13.4	13.4	16.0
Trawl CV	23.5	22.1	24.0	21.6

The average harvest shares from 1995 through 2003 shown in Table 3 were calculated using weekly production reports and Alaska Department of Fish and Game fishtickets, and included Pacific cod retained for fishmeal

production. Table 4 shows average harvest share in 2004 to 2005 using data from the NMFS catch accounting database. The NMFS accounting database, which uses observer estimates of retained catch, included Pacific cod

destined for fishmeal production on CPs  $\geq 125$  feet (38.1 m) LOA with 100 percent observer coverage rather than weekly production reports.

TABLE 4. AVERAGE SHARE (PERCENT) OF RETAINED HARVEST 2004-2005

Sector	Average share
Jig	0.1
Hook-and-line/pot CV <60 ft LOA	1.7
Hook-and-line CV ≥60 ft LOA	0.01
Hook-and-line CP	50.6
Pot CV ≥60 ft LOA	6.0
Pot CP	1.7
AFA trawl CP	2.2
Non-AFA trawl CP	17.7
Trawl CV	20.0

While the two data sets in Tables 3 and 4 are not exactly comparable due to the different data sources, the data in Table 4 generally indicate that the overall BSAI harvest shares by sector in 2004 to 2005 are within the range of what occurred during 1995 to 2003, with a few exceptions. The <60 ft LOA fixed gear (pot and hook-and-line gear) share of the BSAI Pacific cod harvest increased in the past two years compared to the 1995 to 2003 average, likely due to additional quota reallocated from the jig sector starting in 2004. Table 4 shows that this sector harvested about 1.7 percent of the BSAI Pacific cod harvest from 2004 to 2005, compared to an average retained harvest share of 0.4 percent during 1995 to 2003.

Another notable exception is the non-AFA trawl CP sector. This sector's average harvest share from 2004 to 2005 was 17.7 percent. While the harvest share of this sector has not been less than 15.3 percent since 2000, its much lower harvest shares during 1995 to 1998 resulted in an overall harvest share during 1995 to 2003 of 13.4 percent.

The ≥60 ft LOA pot CV sector's share of Pacific cod harvest decreased in the past two years compared to all but one year during 1995 - 2003. The pot CP share, while greater in 2004 and 2005 (1.7 percent) than in 2002 and 2003 (1.0 percent), was still lower than the average retained harvest share of 2.1 percent during 1995 to 2003.

All sectors, with the exception of the <60 ft LOA fixed gear CV sector and the non-AFA trawl CP sector, had harvests in 2004 and 2005 that fell within the range of their respective catch shares during 1995 to 2003. Thus, although the data in Table 4 are not truly comparable to the retained harvest data in Table 3

due to the use of a different data set, they provide a general view of the fishery in the two most recent years.

The Council based the proposed allocations on historical catch as adjusted by its decision to increase the harvest opportunities for the fleets delivering shoreside, which include some of the small boat sectors. Therefore, for the most part, proposed changes in allocations represent changes in a sector's opportunity to harvest. Before recommending this action, the Council heard extensive public testimony from members of each sector, indicating their desire to maintain or increase their allocations. In its allocation decision, the Council considered all of the harvest data provided to it by Council staff and comments received from the public.

For most sectors the allocations recommended by the Council under Amendment 85 more closely represent a sector's average harvest share over several years, as opposed to one or two recent years, than do the current allocations, as shown in Table 3. The allocations recommended by the Council were within the range of allocation options presented in the EA/RIR/IRFA for Amendment 85 (see Table 8 below). The Council did not select a specific series of years, but instead selected direct allocation percentages.

The Council examined information on retained harvest history from 1995 to 2005, and information on total catch, which included Pacific cod that was discarded. However, the Council chose from a range of percentage allocations that were based on retained legal harvest of Pacific cod, not total catch. Pacific cod is required to be retained when the directed fishery is open. When the directed Pacific cod fishery is closed, Pacific cod must be retained up to the maximum retainable amount (MRA); the rest of the Pacific cod that is caught must be discarded. For example, about 1.2 percent of the total Pacific cod harvest was discarded in 2004. It was not the Council's intent to "reward" sectors that have high discards of Pacific cod when the directed fishery for Pacific cod is closed.

The proposed allocation to jig vessels and the <60 ft LOA fixed gear CVs is greater than those sectors' catch histories due to socioeconomic and community considerations. The proposed allocations to these two small-boat sectors are intended by the Council to maintain and expand entry-level, local opportunities in the BSAI Pacific cod fishery. These fleets, primarily CVs, typically are comprised of residents of small, coastal communities near the fishing grounds. Public comments

specifically supported allocations of 2.0 percent each to the jig sector and to the <60 ft LOA fixed gear sector, which the Council took into consideration in making the allocations to these two sectors.

The following paragraphs provide additional information on the Council's recommended allocation of Pacific cod to each non-CDQ sector.

#### Jig Gear Sector

The allocation to the jig sector of the BSAI Pacific cod non-CDQ TAC would be reduced from the current 2.0 percent to a proposed allocation of 1.4 percent. The jig sector's average annual share of the retained Pacific cod harvest from 1995 through 2003 (average historic harvest) is only about 0.1 percent, which represents about 5 percent of its current total allocation. The jig sector's more recent average annual share of the retained Pacific cod harvest, from 2000 through 2003 (recent average harvest), also is about 0.1 percent. This same trend continued in 2004 and 2005. As a result of this low harvest percentage, the unused jig sector allocation has been reallocated to other sectors, usually late in the fishing year. The Council determined that, although the proposed allocation is lower than this sector's current allocation, the proposed allocation would still allow for growth in this entry-level sector, while reducing the amount of Pacific cod that may need to be reallocated to other sectors. Any reallocations that would occur would first consider the other small boat sector (<60 ft LOA fixed gear CVs).

The Council's preferred alternative designated the jig sector as "jig CV sector." The Council's intent, however, was that this sector include all vessels using jig gear to harvest BSAI Pacific cod, whether CVs or CPs, as is the case under current regulations. While the jig sector is typically comprised only of CVs, one jig vessel has operated as a CP in the BSAI Pacific cod fishery. All harvest by all jig vessels was included in the jig sector harvest history considered under the allocation determination. Further, the jig sector would continue to include CVs and CPs given the small harvest, relative to their allocation, of Pacific cod by vessels using jig gear and the absence of competition for available Pacific cod between CVs and CPs.

#### Less Than 60 ft LOA Hook-and-line or Pot CV Sector

Under the proposed rule, the allocation to the <60 ft LOA fixed gear CV sector of the BSAI Pacific cod non-CDQ TAC would increase from its current amount of 0.7 percent to a

proposed allocation of 2.0 percent. This sector's average historic harvest is 0.4 percent, and its recent average harvest is 0.7 percent. The <60 ft LOA fixed gear CV sector's percent share of the overall Pacific cod harvest has grown steadily in recent years from 0.2 percent in 2000 to about 1.7 percent in 2004 and in 2005. This sector has harvested its entire allocation of 0.7 percent for several years, and started receiving reallocations from the jig sector in 2004. The Council chose to increase the allocation to this small-boat sector to encourage its increased growth.

Currently, the <60 ft LOA hook-and-line CVs also fish from the general hook-and-line CV sector allocation of 0.2 percent, and the <60 ft LOA pot CVs also fish from the general pot CV sector allocation of 8.4 percent until those fisheries close. Under Amendment 85, the <60 ft LOA fixed gear CV sector would fish only from its own proposed direct allocation of 2.0 percent.

#### Greater Than or Equal to 60 ft LOA Hook-and-line CV Sector

The current allocation of 0.2 percent of the BSAI Pacific cod non-CDQ TAC to the ≥60 ft LOA hook-and-line CV sector would not change under this proposed rule. The ≥60 ft LOA hook-and-line CV sector's average historic harvest is 0.1 percent, and its recent average harvest is 0.3 percent. This sector harvested 0.01 percent of the total retained harvest in 2004 and in 2005. The majority of the overall hook-and-line CV allocation typically has been harvested by the <60 ft LOA hook-and-line CVs. However, as stated above, the <60 ft LOA hook-and-line CV sector would no longer fish from the general hook-and-line CV sector allocation, but would fish only from its proposed direct allocation. The proposed allocation is intended by the Council to represent the historical retained catch of Pacific cod by this sector. The Council also considered socioeconomic and community factors, such as the greater benefit brought to Bering Sea coastal communities by CVs, which deliver shoreside, versus the CPs that provide a smaller benefit to these coastal communities.

#### Hook-and-line CP Sector

The proposed allocation to the hook-and-line CP sector would increase the current allocation from 40.8 percent to 48.7 percent of the BSAI Pacific cod non-CDQ TAC. This sector's average historic harvest is 49.1 percent, and its recent average harvest is 49.4 percent. This sector harvested an average of 50.6 percent of the total retained harvest in 2004 and 2005. The Council chose to

increase the hook-and-line CP sector's allocation to more closely reflect the sector's actual harvest including reallocations. This sector's average retained catch has been nearly 50 percent of the total BSAI non-CDQ Pacific cod harvest since 1995, due to its harvest of Pacific cod that is reallocated from other gear sectors toward the end of the year. By moving this reallocated amount into the sector's initial allocation, the sector is expected to be able to plan its fishing year with more certainty than is currently afforded, and harvest more of its Pacific cod allocation earlier in the second half of the fishing year. The Council also expects this sector to continue to benefit from reallocations from other sectors, so their total yearly catch should be close to their average historic harvest.

#### Greater Than or Equal to 60 ft LOA Pot CV Sector

The proposed allocation to the ≥60 ft LOA pot CV sector would increase the current allocation from 7.6 percent to 8.4 percent of the BSAI Pacific cod non-CDQ TAC. The ≥60 ft LOA pot CV sector's average historic harvest is 8.6 percent, and its recent average harvest is 9.0 percent. This sector harvested an average of 6.0 percent of the total retained harvest in 2004 and 2005. In the past, less than 1.0 percent of the overall pot CV allocation has been harvested by the <60 ft LOA pot CVs. However, as stated above, the <60 ft LOA pot CV sector would no longer fish from the general pot CV sector allocation, but would fish only from its proposed direct allocation. The Council chose to increase the ≥60 ft LOA pot CV sector's allocation to more closely reflect the sector's average historic harvest of Pacific cod including reallocations while considering socioeconomic and community factors, such as the greater benefit brought to Bering Sea coastal communities by CVs, which deliver shoreside, versus the CPs that provide a smaller benefit to these coastal communities. The Council also considered public testimony that supported an increase in the allocation to this pot sector because its catch has generally been increasing and its bycatch rate is very low compared to some other sectors.

#### Pot CP Sector

The pot CP sector is the only fixed gear sector that would receive a reduction in its BSAI Pacific cod allocation, from the current level of 1.7 percent to a proposed allocation of 1.5 percent of the BSAI Pacific cod non-CDQ TAC. This sector's average historic harvest is 2.1 percent, and its recent

average harvest is 1.4 percent. This sector harvested an average of 1.7 percent of the total retained harvest in 2004 and 2005. The number of vessels participating in this sector has declined over the past several years, from 13 in 1999, to 10 in 2000, 5 in 2001 and 2002, 3 in 2003 and 2004, and 2 in 2005. Anecdotal evidence and public testimony suggest that some vessels have focused their efforts on the crab fisheries in recent years, and some vessels have not found it economically viable to fish for Pacific cod. The Council used this information in combination with the data on the historical retained catch of Pacific cod by the pot CP sector in arriving at its proposed allocation. The Council also considered socioeconomic and community factors, such as the greater benefit brought to Bering Sea coastal communities by CVs, which deliver shoreside, versus the CPs that provide a smaller benefit to these coastal communities.

#### Trawl CP Sector

Under this proposed rule, the current single trawl CP sector would be split into AFA and non-AFA trawl CP sectors. The combined trawl CP sector currently has an allocation of 23.5 percent of the BSAI Pacific cod non-CDQ TAC, which would be reduced to a total of 15.7 percent for the two trawl CP sectors. The intent of the Council in dividing the allocation between the two sectors was that each trawl CP sector would be better able to manage its own exclusive Pacific cod allocation under the cooperative systems either in place (for the AFA CP sector) or proposed (for the non-AFA trawl CP sector under Amendment 80 discussed previously).

*AFA trawl CP sector.* The AFA trawl CP sector's proposed allocation is 2.3 percent of the BSAI Pacific cod non-CDQ TAC. This sector's average historic harvest, including Pacific cod retained for fishmeal production, is 2.2 percent. The AFA trawl CP sector's recent average harvest is 1.5 percent, and it harvested an average of 2.2 percent of the total retained harvest in 2004 and 2005. The AFA trawl CPs, unlike the non-AFA trawl CPs, have meal plants onboard. Thus, Pacific cod meal is a primary product for only this sector. The history of nine trawl CPs was extinguished by section 209 of the AFA, and it was excluded by the Council in determining the proposed allocation to the AFA trawl CP sector. The proposed allocation is intended by the Council to represent the historical retained catch of Pacific cod by the AFA trawl CP sector while considering socioeconomic and community factors. Public testimony

concerning the directed fishery and bycatch needs of this sector was also considered by the Council.

About 44 percent of the Pacific cod harvested by the AFA trawl CP sector is taken incidentally when these vessels are targeting BSAI pollock. Only one AFA trawl CP vessel has targeted BSAI Pacific cod in the recent past. All sectors are required to retain all catch of Pacific cod when the directed fishery is open and up to the MRA when the directed Pacific cod fishery is closed. To maximize the opportunity for a directed Pacific cod fishery and to minimize the potential for an increase in discards of Pacific cod if catch exceeds the MRA, the Council determined that this sector should receive an allocation of Pacific cod that closely represents its average historic harvest of Pacific cod.

*Non-AFA trawl CP sector.* The non-AFA trawl CP sector would receive an allocation of 13.4 percent of the BSAI Pacific cod non-CDQ TAC under the proposed rule, its average share of the historic harvest, which is 13.4 percent. This proposed allocation is less than its recent average harvest share of 16.0 percent from 2000 through 2003, and less than its average of 17.7 percent of the total retained harvest in 2004 and 2005. The proposed allocation is intended by the Council to represent the historical retained catch of Pacific cod by the non-AFA trawl CP sector while considering socioeconomic and community factors.

About 46 percent of the Pacific cod harvested by the non-AFA trawl CP sector is taken as incidental catch in non-Pacific cod target fisheries, primarily the flatfish fisheries. Concern has been expressed by this sector that its proposed allocation will be insufficient to support its target fishery. NMFS agrees that this sector may be constrained in its ability to conduct a directed fishery for Pacific cod in order to have sufficient Pacific cod available for incidental catch in its other fisheries.

#### Trawl CV Sector

The proposed allocation to the trawl CV sector of the BSAI Pacific cod non-CDQ TAC would decrease the current allocation of 23.5 percent to 22.1 percent. This proposed allocation is less than this sector's average historic harvest of 24.0 percent. However, the proposed allocation is more than the trawl CV sector's recent average harvest of 21.6 percent, and more than its average of 20.0 percent of the total retained harvest in 2004 and 2005. The proposed allocation is intended by the Council to represent the historical retained catch of Pacific cod by the trawl CV sector while considering

socioeconomic and community factors. In contrast to the trawl CP sectors, the trawl CVs primarily harvest their Pacific cod in the directed fishery, with only 6.9 percent taken as incidental catch in other target fisheries.

The Council chose to maintain the AFA and non-AFA trawl CVs as one sector. Public testimony before the Council advocated to not divide the trawl CVs into AFA and non-AFA sectors, as is proposed for the trawl CP sector. The Council considered this testimony in determining that maintaining the combined trawl CV allocation would allow the AFA trawl CV sector to continue to operate under its cooperative agreement and coordinate prosecution of the Pacific cod fishery with non-AFA trawl CV fishery participants. This approach is favored by AFA and non-AFA participants until such time that more restrictive eligibility criteria for participation in the fishery are implemented. The proposed rule does not change the Pacific cod AFA trawl CV sideboards and exemptions because the Council determined that they should remain to protect the Pacific cod harvest share of the non-AFA trawl CVs and of the AFA trawl CVs that are exempt from the Pacific cod sideboard limitations. Also, some members of the trawl CV sector requested that the Council maintain the AFA trawl CV sideboards to avoid the necessity of renegotiating their inter-cooperative agreement.

#### *Incidental Catch Allowances for Non-CDQ Sectors*

Under existing regulations, NMFS sets aside an amount of Pacific cod from some sectors' allocations as an incidental catch allowance. The incidental catch allowance is used by those sectors when directed fishing for groundfish other than Pacific cod. Under this proposed rule, incidental catch allowances would continue to be based on an estimated amount of Pacific cod that NMFS anticipates will be taken as incidental catch in directed fisheries for groundfish other than Pacific cod. As is the current practice, under the proposed rule, once a sector has harvested an amount of Pacific cod equal to the sector's directed fishing allowance, directed fishing for Pacific cod by vessels in that sector would be closed by NMFS.

Under Amendment 85, incidental catch allowances would continue to be set as they are currently for the fixed gear sectors. An incidental catch allowance for the fixed gear sectors would be established annually by the Regional Administrator during the annual harvest specifications process,

and typically has been 500 mt. This fixed gear incidental catch allowance would be deducted from the aggregate portion of Pacific cod TAC annually allocated to hook-and-line and pot gear sectors before directed fishing allowances are made to each sector.

Under Amendment 85, an incidental catch allowance for each trawl sector would be developed on an inseason basis and would not be listed in the annual specifications. The trawl sectors currently do not have an incidental catch allowance established at the beginning of the year, as the fixed gear sectors do. NMFS currently has the regulatory authority to set directed fishing allowances and incidental catch allowances for Pacific cod within a particular sector during the fishing year. This system allows NMFS to close the directed trawl fishery for Pacific cod but allow other directed trawl fisheries to continue fishing under the incidental catch allowance. NMFS typically has not put the Pacific cod trawl fishery on bycatch status in the recent past, because the trawl sectors are not currently constrained by their Pacific cod allocations. Also, the seasonal apportionments to the trawl sectors have ensured that a sufficient amount of Pacific cod is left for incidental catch in groundfish trawl fisheries other than Pacific cod later in the year. Because of the reductions in the Pacific cod trawl sector allocations under Amendment 85, the Council proposed that an incidental catch allowance be established on an inseason basis for each trawl sector separately, rather than as a group, as the fixed gear sectors are, so that no trawl sector can erode another sector's total allocation, and to allow more flexibility to adjust incidental catch needs for each sector as these trawl fisheries change in the future.

#### *Elimination of Pacific Cod Nonspecified Reserve*

Currently, during the annual harvest specifications process, 15 percent of the BSAI TAC for each target species (except pollock and the hook-and-line and pot gear allocation for sablefish) and for the other species category is automatically placed in the nonspecified reserve as required at § 679.20(b)(1). Half of the nonspecified reserve (7.5 percent of TAC) for most species is then apportioned to the groundfish CDQ reserve. Historically, the half remaining in the reserve for Pacific cod, Atka mackerel, Pacific ocean perch, and several rockfish species is apportioned by NMFS to the non-CDQ TAC for their respective fisheries. This is done because the TAC for these fisheries is already fully

harvested; that is, U.S. fishing vessels have demonstrated the capacity to catch the full TAC allocations. NMFS uses the nonspecified reserve inseason to supplement the non-CDQ TAC for some species so that fishing operations can continue, or to account for catch in excess of allocated amounts.

Under this proposed rule, Pacific cod would be exempt from having 15 percent of the TAC placed in the nonspecified reserve. This deduction from Pacific cod TAC would no longer be needed under this proposed rule because a direct allocation to the CDQ reserve is specified. Additionally, the Pacific cod TAC is fully allocated among CDQ and non-CDQ harvesting sectors, and is fully harvested.

#### *Reallocations of Pacific Cod Among Non-CDQ Sectors*

During the last fishing season of the year, NMFS considers whether one or more non-CDQ sectors will be unlikely to use its remaining BSAI Pacific cod allocation. To obtain optimum yield from the BSAI Pacific cod fishery, NMFS reallocates these projected unused allocations to other sectors. In the case of the jig sector, reallocations are made seasonally. NMFS considers whether a particular sector is still operating on the fishing grounds, and thus capable of harvesting any quota that is reallocated from another sector, when making reallocation decisions. Current regulations at § 679.20(a)(7)(ii) outline the following system for reallocating projected unused allocations:

- Projected unused portions of a jig sector seasonal allowance are reallocated to the <60 ft LOA fixed gear CV sector.
- Projected unused hook-and-line CV sector and <60 ft LOA fixed gear sector allocations are reallocated to the hook-and-line CP sector.
- Projected unused trawl gear sector allocations are considered for reallocation to the other trawl gear sector (e.g., trawl CV to trawl CP) prior to being reallocated to another gear type (e.g. trawl gear to fixed gear).
- Remaining projected unused trawl allocations are reallocated 95 percent to the hook-and-line CP sector; 4.1 percent to the pot CV sector; and 0.9 percent to the pot CP sector.

Although the intent of the Council under Amendment 85 is to revise sector allocations to better reflect actual catch history and thus reduce the frequency and amount of inseason reallocations, the Council and the public noted that some reallocations are likely to continue. Under this proposed rule, if, during a fishing year, the Regional

Administrator determines that a sector would be unable to harvest the entire amount of Pacific cod allocated to that sector, NMFS would reallocate the projected unused amount of Pacific cod to other sectors. Reallocation decisions would be based in part on the hierarchy described below (in the sequence described), but also would take into account the capability of a sector to harvest the reallocated amount of Pacific cod. In general, under the proposed changes, projected unused allocations in any sector delivering inshore, i.e., CV sectors, would be reallocated primarily to other inshore sectors before being reallocated to any offshore, i.e., CP, sector, and, secondarily, within a gear type before being reallocated to another gear type.

Under this proposed rule, the Regional Administrator would reallocate any projected unharvested amounts of Pacific cod TAC from any CV sector, first to the jig sector or to the <60 ft LOA fixed gear CV sector, or to both; then to the ≥60 ft LOA fixed gear CV sectors; and then to the trawl CV sector. Any jig, <60 ft LOA fixed gear, or ≥60 ft LOA hook-and-line CV sector allocation that is unlikely to be harvested through this hierarchy would be reallocated to the hook-and-line CP sector. Any ≥60 ft LOA pot CV sector allocation that is unlikely to be harvested through this hierarchy will be reallocated to the pot CP sector as described below. Any trawl CV sector allocation that is unlikely to be harvested through this hierarchy will be reallocated to the other trawl sectors as described below.

For any trawl CP sector, the Regional Administrator would reallocate any projected unharvested amounts of its Pacific cod TAC allocation to the other trawl CP sector and/or the trawl CV sector before unharvested amounts are reallocated to certain fixed gear sectors. Any reallocation to fixed gear sectors would be proportional to the proposed allocations for three fixed gear sectors as follows: 83.1 percent to the hook-and-line CP sector, 2.6 percent to the pot CP sector, and 14.3 percent to the ≥60 ft LOA pot CV sector.

Any projected unharvested amounts of Pacific cod TAC allocated to the pot CP sector or to the ≥60 ft LOA pot CV sector would be reallocated by the Regional Administrator to the other pot gear sector before it would be reallocated to the hook-and-line CP sector. Current Federal regulations do not explicitly mandate reallocation of Pacific cod between pot gear sectors, but do allow NMFS to reallocate unused pot CP or ≥60 ft LOA pot CV allocations to the other pot gear sector before it is

reallocated to other gear sectors. This action proposes to make pot gear sector reallocations explicit in regulation. This approach is consistent with the way the trawl sectors are addressed by the Council in this proposed rule. That is, Pacific cod would be reallocated within the same gear type before being reallocated to a different gear type.

Two primary differences exist between the status quo and the reallocation hierarchy proposed under Amendment 85. The first difference is that NMFS would be required to consider reallocating within the inshore sectors before reallocating projected unused Pacific cod allocations from the inshore to the offshore sectors. This approach is consistent with the Council's decision to increase the harvest opportunities for the fleets delivering shoreside, which include some of the small boat sectors. The second difference is the relative reduction in the hook-and-line CP sector's share of the trawl reallocations compared to the status quo. The status quo is based on each of the specified fixed gear sector's share of the actual harvest of trawl reallocations between 1996 and 1998. However, under Amendment 85, the Council chose to base the reallocations on each specified fixed gear sector's share of the overall BSAI Pacific cod non-CDQ TAC. Changing the reallocations to be proportional to the new fixed gear allocations is consistent with the problem statement, which states that allocations should be adjusted to better reflect historic use by sector. Because the new fixed gear allocations are based on catch history, with consideration for socioeconomic and community factors, basing reallocations on the same relative allocation among the specified fixed gear sectors is consistent with this objective.

Note that, like the status quo, the Council only intends that NMFS consider the hierarchy proposed by this rule when making reallocation decisions. NMFS would take into account the intent of the rollover hierarchy, and the likelihood of a sector's capability to harvest reallocated quota prior to making the reallocation. The Council noted that it is important that NMFS retain this flexibility to determine how to reallocate projected unused sector allocations in order to avoid intermittent starting and stopping of the fishery and to reduce the risk of foregone harvest.

#### *Seasonal Allowances*

Under existing regulations, Pacific cod allocations are further apportioned by season for most gear sectors to

protect prey availability for Steller sea lions (SSLs). Appendix A of the November 2001 Supplemental Environmental Impact Statement on SSL protection measures included the biological opinion on the effects of the pollock, Pacific cod, and Atka mackerel fisheries on SSLs and their designated critical habitat (2001 Biological Opinion). The 2001 Biological Opinion requires temporal dispersion of harvest so that the overall BSAI Pacific cod fishery is limited to seasonal percentages of TAC of no more than 70 percent between January 1 and June 10, and 30 percent between June 10 and December 31.

Each sector's allocation is currently apportioned seasonally to meet this requirement (§ 679.20(a)(7)(iii)(A)). Currently, the trawl sectors receive 37.6 percent of the non-CDQ TAC in the first half of the year (28.2 percent in the A season and 9.4 percent in the B season) which is 80 percent of their allocations; the fixed gear sectors receive 30.2 percent of the non-CDQ TAC in the first half of the year (60 percent of their allocations), and the jig sector receives about 1.2 percent (about 60 percent of its allocation). In total, about 69 percent of the total non-CDQ BSAI Pacific cod TAC is allowed to be harvested in the first half of the year. The <60 ft LOA fixed gear sector, which does not have its Pacific cod allocation apportioned by season, is excluded from this limitation and this exclusion would be maintained under Amendment 85 and this proposed rule.

Because this proposed rule modifies non-CDQ sector allocations to decrease the amount of rollovers, if the same seasonal allowances were maintained, the fixed gear sectors could potentially harvest more Pacific cod in the first half of the year due to their overall increased share of the non-CDQ Pacific cod TAC. Similarly, the trawl sectors would have less of their Pacific cod allocation available in the first half of the year. However, the intent of the Council is to reflect the current fishery, to the extent possible, by maintaining each sector's current percentage of the non-CDQ TAC

allocated in the first half of the year when fishing for Pacific cod is more advantageous.

Therefore, to maintain the overall 70/30 seasonal split for all gear types combined and to maintain to the extent possible the current percentage of the Pacific cod TAC harvested in the first half of the year by the non-CDQ sectors, the proposed rule adjusts the seasonal allowances for each sector in response to the changes in sector allocations. The Council intent for this approach is to mirror the fishery as it is conducted today, and as it was evaluated in the 2001 Biological Opinion.

As proposed by the Council, the current percentage of the non-CDQ Pacific cod TAC harvested in the A season by trawl gear and by fixed gear would be maintained. The overall trawl allocation reduction would be applied first to the trawl C season, and any remaining reductions would be applied to the trawl B season. The increase in the overall fixed gear allocation would be applied only to its B season.

Under this proposed rule, the jig sector seasonal allowance would change from 40–20–40 to 60–20–20. The jig sector has not successfully harvested its 40 percent allowance in the C season. Therefore, this change would allow for more harvest in the first season. Additionally, much of the jig sector's C season Pacific cod allocation is not available for reallocation to the <60 ft LOA fixed gear sector because this other small boat sector is no longer on the fishing grounds later in the year. Public testimony from the jig sector and coastal community representatives supported the proposed change in the jig gear seasonal allowance to 60–20–20. The Council took this testimony into consideration in making its decision to change the seasonal allowance for the jig sector to 60–20–20. Additionally, with a 60 percent seasonal allowance in the A season, the Council noted that any reallocated amounts of Pacific cod from the jig sector would roll over to the <60 ft LOA fixed gear sector when that small boat sector is still on the fishing grounds. This reallocation from the jig

sector is also intended by the Council to help offset the proposed restriction that would prohibit the <60 ft LOA fixed gear sector from fishing off the allocations for the ≥60 ft LOA pot CVs and the ≥60 ft LOA hook-and-line CVs.

Currently, the Pacific cod CDQ reserve is not apportioned by gear type. Therefore, the Pacific cod CDQ reserve cannot be apportioned seasonally by gear type at the beginning of the fishing year, as is done for the non-CDQ sectors. These seasonal allowances, currently specified at § 679.20(a)(7)(iii)(A), apply to both the CDQ and non-CDQ sectors. The Council did not change the approach for managing the seasonal catch of Pacific cod CDQ under Amendment 85 and the seasonal allowances for the CDQ Program would remain unchanged from the current percentages in this proposed rule (see Table 5). Because nearly all of the Pacific cod CDQ allocation is harvested with hook-and-line gear, the Council further assumed the seasonal apportionment of the Pacific cod CDQ allocation would continue to be 60 percent in the A season and 40 percent in the B season. Additionally, the Magnuson-Stevens Act does not address the issue of seasonal allowances for the CDQ Program. Therefore, the proposed rule maintains the current seasonal allowances under the CDQ Program.

Under this proposed rule, the CDQ groups must continue to manage their fisheries to keep their catch of Pacific cod within the seasonal allowances specified for the gear types they use to catch Pacific cod to comply with SSL protection measures. The proposed rule also would add a prohibition to § 679.7(d) to clarify that the CDQ groups would be prohibited from exceeding the seasonal allowances of Pacific cod that are appropriate for the gear types that they use to catch Pacific cod CDQ.

The proposed BSAI Pacific cod sector allowances for each sector, including CDQ, by season, as those seasons are specified under § 679.23(e)(5), are listed in Table 5.

TABLE 5. SEASONAL ALLOWANCES

Gear type	A season		B season		C season	
	Current	A. 85	Current	A. 85	Current	A. 85
CDQ trawl	60%	60%	20%	20%	20%	20%
Non-CDQ trawl CV	70%	74%	10%	11%	20%	15%
Non-CDQ trawl CP	50%	75%	30%	25%	20%	0%

TABLE 5. SEASONAL ALLOWANCES—Continued

Gear type	A season		B season		C season	
	Current	A. 85	Current	A. 85	Current	A. 85
CDQ hook-and-line processors, hook-and-line $\geq$ 60 ft LOA, pot gear vessels $\geq$ 60 ft LOA	60%	60%	40%	40%	no C season	
Non-CDQ hook-and-line processors, hook-and-line $\geq$ 60 ft LOA, pot gear vessels $\geq$ 60 ft LOA	60%	51%	40%	49%	no C season	
CDQ jig vessels	40%	40%	20%	20%	40%	40%
Non-CDQ jig vessels	40%	60%	20%	20%	40%	20%
All other nontrawl vessels	no seasonal allowance		no seasonal allowance		no seasonal allowance	
Total non-CDQ current percentage	1/1 - 6/10 = 69%			6/10 - 12/31 = 31%		
Total non-CDQ proposed percentage	1/1 - 6/10 = 68%			6/10 - 12/31 = 32%		
Total CDQ and non-CDQ proposed percentage	1/1 - 6/10 = 67%			6/10 - 12/31 = 33%		

To calculate the new seasonal allowance in the A season for a non-CDQ sector, a simple ratio is used. A sector's seasonal percentage of the non-CDQ Pacific cod TAC is calculated by multiplying the current allocation (CA) by the current seasonal allowance (CSA). For a sector's seasonal percentage of the non-CDQ Pacific cod TAC to remain the same under Amendment 85, CA multiplied by CSA would equal the new allocation (NA) multiplied by the new seasonal allowance (NSA) ( $CA \times CSA = NA \times NSA$ ). Solving the equation for NSA (which is unknown) yields  $NSA = (CA \times CSA)/NA$ .

The calculation of seasonal allowances for the trawl CP sectors is the most complicated, and is provided as an example. The current allocation for trawl CPs is 23.5 percent of the BSAI non-CDQ Pacific cod TAC. Multiplying the current allocation by the current A season allowance to the trawl CPs of 50 percent, equals 11.8 percent. Dividing 11.8 percent by the combined new allocation to the trawl CP sectors of 15.7 percent, yields a new A season allowance of 75 percent for the trawl CP sectors. The current seasonal percentages for the trawl CP sectors of the BSAI non-CDQ Pacific cod TAC is 11.8 percent in the A season, 7.1 percent in the B season and 4.7 percent in the C season. The overall allocation to the trawl CP sectors would decrease by 7.8 percent of the non-CDQ Pacific cod TAC under the proposed rule. As proposed by the Council, these decreases would first be applied to the C season, resulting in a zero percent allowance in the C season, and then to the B season. This would result in the remaining 25 percent of the overall allocation to the trawl CP sectors being assigned to the

trawl B season. The 7.8 percent decrease minus 4.7 percent from the C season leaves 3.1 percent which is subtracted from the B season allowance of 7.1 percent. The resulting 4.0 percent is divided by the overall allocation of 15.7 percent which equals 25 percent.

Relative to current seasonal apportionments, less of the BSAI Pacific cod non-CDQ TAC would be allowed to be harvested in the first half of the year because of the proposed reductions in the trawl CP and jig sector allocations. This was determined by multiplying the proposed allocations by the seasonal allowances. The amount of the BSAI Pacific cod non-CDQ TAC that would be allowed to be harvested in the first half of the year (assuming the entire 2 percent allocation to the <60 ft LOA fixed gear sector is harvested in the first half of the year, to be the most conservative) would be 68 percent, which is less than the total current seasonal allowance of 69 percent of the TAC.

Using a CDQ reserve for Pacific cod equal to 10.7 percent of the BSAI Pacific cod TAC, and using the current CDQ general seasonal allowances of 60 and 40 percent in the A and B seasons, respectively, the maximum A season harvest by all sectors (including the total allocation to the <60 ft LOA fixed gear sector allocation in the first half of the year) would be equal to about 67 percent of the BSAI Pacific cod TAC. This level is still below the SSL seasonal harvest limit of 70 percent of the TAC. Trawl gear is the only CDQ gear type that does not have a 60/40 split. However, in 2005 the CDQ groups harvested a total of 273 mt of Pacific cod with trawl gear, which equals 0.1 percent of the BSAI Pacific cod TAC. Therefore, the incidental catch of Pacific

cod by CDQ trawl vessels is expected to have a negligible impact on the harvest of Pacific cod by season under this proposed rule.

#### *Reallocation of Seasonal Allowances*

Any unused portion of a seasonal allowance of Pacific cod from any sector other than the jig sector, would continue to be reallocated to that sector's remaining seasons during the current fishing year. The Regional Administrator would continue to reallocate any projected unused portion of a seasonal allowance of Pacific cod from the jig sector to the <60 ft LOA fixed gear sector. Under this proposed rule, a projected unused portion of the seasonal allowance for the jig sector C season would be reallocated on or about September 1 of each year, if possible. The intent of the Council under this provision is to provide the last rollover from the jig sector when the <60 ft LOA fixed gear sector would still be on the fishing grounds.

#### *Prohibited Species Catch*

Prohibited species catch (PSC) regulations pertain to certain species caught in the process of fishing for groundfish that must be accounted for but cannot be retained, except for halibut and salmon retained under the donation program at § 679.26. Regulations at § 679.21 establish PSC limits for Pacific halibut, three species of crab, salmon, and herring in the BSAI trawl groundfish fisheries, and a separate Pacific halibut PSC limit for nontrawl gear. These regulations also establish allocations of each PSC limit between the CDQ and non-CDQ fisheries and a process for apportioning PSC among non-CDQ fisheries. The halibut PSC limit is set in regulation

and is not tied to population assessment for the halibut resource. The limits for the other PSC species are set to fluctuate as resource abundance fluctuates. Crab PSC limits are tied to PSC limitation zones for red king, bairdi (*Chionoecetes bairdi*), and opilio (*C. opilio*) crab, whereas the PSC limits for the other species are for the entire BSAI.

Initially, 7.5 percent of each PSC limit, with the exception of herring, is set aside for the CDQ Program with the remainder of each PSC limit apportioned among specified fisheries as PSC allowances during the annual harvest specifications process. These PSC allowances are intended to optimize total groundfish harvest under established PSC limits, taking into consideration the anticipated amounts of incidental catch of prohibited species in each fishery. Depending on the prohibited species, reaching a PSC allowance results in closure of an area or a groundfish directed fishery, even if some of the groundfish TAC for that fishery remains unharvested.

Under this proposed action, the Council recommended that the Pacific cod trawl fishery crab and halibut mortality PSC allowances be further apportioned among the trawl sectors. Similarly, the Pacific cod nontrawl halibut PSC allowances would be further apportioned between two hook-and-line sectors. Pot and jig sectors currently are exempt from halibut PSC limits due to very low bycatch rates in these sectors. The proposed rule would not change the process for establishing the annual PSC allowances to the CDQ Program and to the overall Pacific cod trawl and hook-and-line sectors as part of the annual harvest specifications.

#### Trawl Sector Halibut and Crab PSC Apportionments

Currently, the total amount of halibut PSC mortality for trawl gear in the non-CDQ fisheries of 3,400 mt is apportioned in the annual harvest specifications process among the four following fisheries: (1) Pacific cod, (2) yellowfin sole, (3) rock sole/other flatfish/flathead sole, and (4) pollock/Atka mackerel/other fisheries. The current process to apportion the halibut PSC mortality for trawl gear among the

non-CDQ fisheries would continue under the proposed action. Generally, about 1,400 mt of halibut PSC mortality is apportioned to the BSAI Pacific cod trawl fishery, but this amount and actual use can vary annually.

As stated previously, the crab PSC limits fluctuate as resource abundance fluctuates, and limits are set by zone. The PSC limit (expressed in numbers of crab) in 2006 for zone 1 red king crab is 182,225 crab for all trawl fisheries, with the Pacific cod trawl fisheries being allocated 26,563 crab of that total. The PSC limit in 2006 for zone 1 bairdi crab is 906,500 crab for all BSAI trawl fisheries, with the Pacific cod trawl fisheries being allocated 183,112 crab of that total. The 2006 PSC limit for zone 2 bairdi crab is 2,747,250 crab for all BSAI trawl fisheries, with the Pacific cod trawl fisheries being allocated a relatively small proportion, 324,176 crab, of that total. The current PSC limit for opilio within the *C. opilio* bycatch limitation zone (COBLZ) is 4,494,569 crab for all BSAI trawl fisheries, with the Pacific cod trawl fisheries being allocated a relatively small proportion, 139,331 crab, of that total.

In recent years, the trawl CV and trawl CP sectors' directed Pacific cod fisheries have closed most often due to reaching the seasonal TAC, to avoid exceeding the specified halibut PSC mortality limit, or because a fishing season has ended. Reaching a crab PSC limit results in closure of a specific area to directed fishing. Crab PSC typically does not limit the BSAI Pacific cod trawl fisheries, although occasional crab PSC closures have occurred in the past.

The Council recommended that the amount of halibut and crab PSC mortality that would be apportioned to each Pacific cod trawl sector under this action be proportional to each sector's percentage of the Pacific cod harvested in the Pacific cod target fishery from 1999 through 2003, including the Pacific cod retained for meal production. Accordingly, the annual PSC allowance of halibut and crab specified for the Pacific cod trawl fishery category would be divided among the trawl sectors as follows: 70.7 percent for trawl CVs; 4.4 percent for AFA trawl CPs; and 24.9 percent for

non-AFA trawl CPs. Because the AFA and non-AFA trawl CVs would share a Pacific cod allocation, the Council decided that this sector also would receive combined PSC allowances of halibut and crab mortality.

Halibut PSC mortality is attributed to a fishery based upon what the target fishery is. A significant amount of Pacific cod is taken incidentally in trawl fisheries for species other than Pacific cod. However, the halibut PSC mortality associated with that incidental Pacific cod harvest is attributed to a fishery other than the Pacific cod trawl fishery.

The Council's intent for the proposed PSC apportionments among the trawl gear sectors that target Pacific cod was to allow each sector to better plan its operations by being able to manage its PSC use during the fishing year without its PSC being eroded by another sector. However, based on the directed Pacific cod trawl fishery's historical halibut and crab PSC use, the proposed percentage of the total halibut and crab PSC allowances to the Pacific cod trawl CV sector would increase disproportionately relative to the trawl CP sectors as a whole. This is because both trawl CP sectors caught a relatively high percentage of their Pacific cod while targeting on species other than Pacific cod. The trawl CV sector caught 6.9 percent of its Pacific cod in other fisheries, while the non-AFA CP sector caught 45.9 percent of its Pacific cod in other trawl fisheries, and the AFA CP sector caught 44.2 percent of its Pacific cod in other trawl fisheries. The Council noted that the halibut and crab PSC allowances for the trawl fisheries that harvest Pacific cod incidentally would be apportioned under other trawl fishery categories based on the target groundfish species.

Table 6 projects the amount of halibut and crab PSC mortality that would be apportioned to each trawl sector under Amendment 85 using the 2006 PSC apportionments. Table 7 shows each sector's average historical use in the directed Pacific cod fishery from 1995–2003 for halibut and from 1995–2002 for crab. Under the proposed rule, each sector would be limited to using its PSC allowances in its directed Pacific cod fishery.

TABLE 6. PROJECTED PACIFIC COD TRAWL PSC ALLOWANCES FOR EACH TRAWL SECTOR UNDER AMENDMENT 85 USING 2006 TOTAL PACIFIC COD TRAWL FISHERY GROUP PSC APPORTIONMENTS

Sector	Halibut PSC allowance (mt halibut mortality)	Red king crab PSC allowance (# of crab)	Opilio PSC allowance (# of crab)	Zone 1 bairdi PSC allowance (# of crab)	Zone 2 bairdi PSC allowance (# of crab)
AFA Trawl CP	63	1,169	6,131	8,057	14,264

TABLE 6. PROJECTED PACIFIC COD TRAWL PSC ALLOWANCES FOR EACH TRAWL SECTOR UNDER AMENDMENT 85 USING 2006 TOTAL PACIFIC COD TRAWL FISHERY GROUP PSC APPORTIONMENTS—Continued

Sector	Halibut PSC allowance (mt halibut mortality)	Red king crab PSC allowance (# of crab)	Opilio PSC allowance (# of crab)	Zone 1 bairdi PSC allowance (# of crab)	Zone 2 bairdi PSC allowance (# of crab)
Non-AFA Trawl CP	357	6,614	34,693	45,595	80,720
Trawl CV	1,014	18,780	98,507	129,460	229,192
Total 2006 PSC for Pacific cod trawl fishery	1,434	26,563	139,331	183,112	324,176

TABLE 7. PACIFIC COD TRAWL PSC AVERAGE ANNUAL MORTALITY FOR EACH TRAWL SECTOR FROM 1995-2003 FOR HALIBUT AND FROM 1995-2002 FOR CRAB

Sector	Halibut (mt)	Red king crab (# of crab)	Opilio (# of crab)	Zone 1 bairdi (# of crab)	Zone 2 bairdi (# of crab)
AFA Trawl CP	21	166	189	469	1,685
Non-AFA Trawl CP	459	4,730	34,645	72,391	25,546
Trawl CV	737	1,114	6,768	59,810	19,376
Total	1,216	6,010	41,602	132,670	46,607

During its deliberation on adoption of Amendment 85, the Council understood and acknowledged that the potential impact of the percentage of Zone 1 bairdi crab PSC mortality apportioned to the non-AFA trawl CP sector could be constraining compared to historic use, but chose not to modify its decision. The Council determined that the amount of Zone 1 bairdi crab that would be apportioned to the non-AFA trawl CP sector would fall within the range of what this sector has caught historically. NMFS is concerned that the Council's recommendation for Amendment 85 would provide substantially less halibut and Zone 1 bairdi crab PSC mortality to support the non-AFA trawl CP sector Pacific cod fishery than this sector has used historically, and only about the average amount of opilio crab PSC mortality. Thus, the proposed PSC apportionments could limit this sector's directed fishery for Pacific cod. The non-AFA trawl CP sector is concerned that it may already have its directed fishery limited by its proposed Pacific cod allocation under Amendment 85 which is less than its more recent history. Similarly, NMFS is concerned that the trawl CV sector would have greater PSC allowances than it has used historically and that such increases in PSC would not be needed to support this sector's proposed allocation of Pacific cod, which is less than its average historical catch. NMFS also is concerned that setting individual PSC sector percentage allowances in regulations is more constraining to the

trawl sector than the more flexible method used to distribute halibut PSC mortality among the nontrawl gear sectors during the annual harvest specifications process.

NMFS is seeking public comment regarding whether to continue with the status quo method of distributing the PSC allowance among the Pacific cod trawl sectors during the annual harvest specifications process, or to set individual PSC allowances for each trawl sector as proposed under Amendment 85 and this rule. NMFS notes that the Council has developed a separate amendment to the FMP, Amendment 80, to further restructure the trawl PSC apportionments among fishery categories. Amendment 80 would allocate specified groundfish species and PSC to the non-AFA trawl CP sector. That proposed action would supercede the trawl PSC allocations under Amendment 85, but has yet to be forwarded to the Secretary for review and approval.

#### Nontrawl Sector Halibut PSC Apportionment

The total amount of nontrawl halibut PSC for the non-CDQ fisheries currently is 833 mt of mortality. This amount is typically apportioned between the Pacific cod hook-and-line fishery and other nontrawl fisheries during the annual harvest specifications process. Generally, 775 mt is apportioned to the hook-and-line Pacific cod fishery and 58 mt to other nontrawl groundfish fisheries (primarily the Greenland turbot

target fishery). Between 1995 and 2003, the halibut mortality in the hook-and-line CP fishery averaged 684.9 mt per year, and the hook-and-line CV averaged 5.9 mt per year, for a total of about 691 mt per year. This proposed rule would not change the total amount of halibut PSC mortality allocated to the hook-and-line Pacific cod sectors.

Currently, the annual Pacific cod hook-and-line halibut PSC allowance is apportioned among three seasons: 320 mt (January 1 to June 10); 0 mt (June 10 to August 15); and 455 mt (August 15 to December 31). If a seasonal allowance of halibut PSC mortality is reached, directed fishing for BSAI Pacific cod by all vessels using hook-and-line gear is closed for the remainder of the season. A seasonal halibut PSC allowance in the second season has not been specified in recent years because halibut bycatch rates during that season are relatively high. Thus, a hook-and-line directed fishery for Pacific cod has not operated in the summer months.

The hook-and-line CP sector generally supports not providing a halibut PSC limit in the second season, because fishing when the halibut bycatch rates are high could risk closing the directed Pacific cod fishery prior to the allocation being fully harvested. However, the hook-and-line CV sector, which also is constrained by the same PSC limit, is comprised of smaller vessels with slower catch rates and a relatively small Pacific cod allocation compared to the hook-and-line CP sector. While the PSC limit has not been

constraining to these sectors in the recent past, the Council is of the opinion that the hook-and-line CV sector might benefit from a halibut PSC limit separate from the hook-and-line CP sector, and potentially, the ability to fish for Pacific cod in the summer months when the weather is more favorable for smaller vessels. This would be consistent with the Council's concept of establishing separate Pacific cod allocations and separate PSC limits for each trawl and non-trawl sector, such that no sector can impede another sector's Pacific cod fishery.

Therefore, this proposed rule would divide the halibut PSC allowance annually specified for the hook-and-line Pacific cod fishery between two fishery sectors: the hook-and-line CP sector and the hook-and-line CV sector (CVs  $\geq 60$  ft LOA and CVs  $< 60$  ft LOA combined). The non-trawl halibut PSC allowance apportioned to these fishery sectors would be established annually during the harvest specifications process. The apportionment would be based on each sector's proportional share of the anticipated bycatch mortality of halibut during a fishing year, and the need to optimize the amount of total groundfish harvested under the non-trawl halibut PSC mortality limit.

The Council's recommendation was to not fix the amount of halibut PSC apportioned to the hook-and-line BSAI Pacific cod fishery categories in regulation, but to continue making that determination in the annual harvest specifications process. The Council deliberations on this issue indicated that a halibut PSC allowance of 10 mt to the Pacific cod hook-and-line CV sector might be a starting point to guide the specifications process in this determination. The Council's intent was to allow NMFS flexibility to adjust these amounts if necessary in the future, rather than fix the amounts in Federal regulations. Under this action, NMFS could provide varying amounts of halibut PSC by season to each sector, tailoring PSC limits to suit the needs and timing of each sector.

#### *Pacific Cod and PSC Sideboard Limits for AFA Sectors*

Sideboards are harvesting and processing restrictions that were placed on AFA CVs and AFA CPs operating in the BSAI pollock fishery. The basis for the sideboard limits is described in detail in the final rule implementing the AFA that was published December 30, 2002 (67 FR 79692). To protect the interests of other fishermen and processors that did not benefit directly from the AFA, these sideboards restrict the ability of AFA vessels to participate

in directed fisheries for non-pollock groundfish species. For Pacific cod, these sideboards are based on the total amount of Pacific cod retained by the different AFA vessel sectors as a percentage of the non-CDQ TAC in 1997. Currently, the AFA trawl CP sector has a sideboard limit of 6.1 percent of the non-CDQ Pacific cod TAC, and the non-exempt AFA trawl CV sector (see the AFA final rule for an explanation of the non-exempt vessels) has a sideboard limit of 20.2 percent of the non-CDQ Pacific cod TAC.

This action proposes to remove § 679.64(a)(1)(ii) that specifies the sideboard limits of BSAI Pacific cod for the AFA trawl CPs. The establishment of a separate Pacific cod allocation to this sector under § 679.20(a)(7) negates the need for the BSAI Pacific cod sideboard which protects the historic share of the non-AFA trawl CP sector from being eroded by the AFA CP vessels. For the same reason, BSAI Pacific cod would be added to the list of exceptions to the groundfish species or species groups for which sideboard harvest limits would be calculated for AFA listed CPs in the introductory text under § 679.64(a)(1).

The halibut and crab PSC sideboard limits for both AFA sectors would be maintained as set out in § 679.64(a) and (b). These PSC sideboard limits would continue to be managed through directed fishing closures in the groundfish fisheries for which the PSC sideboard limit applies. The PSC sideboards for the AFA trawl CP sector would not be increased by this proposed rule, but a portion of the PSC sideboards would be set aside as an allocation for use in this sector's Pacific cod directed fishery. To continue protection of the non-AFA CVs, the Council proposed under Amendment 85 to continue the Pacific cod sideboards and the halibut and crab PSC sideboards for AFA CVs.

#### *Other Revisions*

Four definitions for CPs would be modified or added to the regulations in accordance with the Consolidated Appropriations Act, 2005, as noted earlier. This proposed rule includes a revised definition for AFA trawl CP and new definitions for hook-and-line CP, non-AFA trawl CP, and pot CP, consistent with the provisions of the Act. The proposed definition for hook-and-line CP is substantively consistent with the Act's definition for longline CP subsector.

The definition for "CDQ reserve" would be revised to change and update terms and to generalize the cross reference. Under current regulations, "CDQ reserve" is defined "as a

percentage of each groundfish TAC apportioned under § 679.20(b)(1)(iii), a percentage of a catch limit for halibut, or a percentage of a guideline harvest level for crab that has been set aside for purposes of the CDQ Program." The proposed definition would change the term "percentage," where it appears, to "amount" to more accurately reflect that the term "CDQ reserve" is used elsewhere in 50 CFR part 679 to refer to the annual amounts of the allocations to the CDQ Program by weight for groundfish and halibut, and by numbers for crab. The term "guideline harvest level" for crab would be replaced with the term "TAC" to be consistent with the term used for annual crab quotas in 50 CFR part 680. The cross reference would be generalized because this is an overall definition of CDQ Program apportionments for various species allocated to the program. Regulations at § 679.20(b)(1)(iii) discuss the establishment of the CDQ reserve from the nonspecified reserve. Amendment 85 would remove Pacific cod from this process and direct that Pacific cod CDQ be allocated directly from the Pacific cod TAC, similar to the way that pollock and sablefish are allocated to the CDQ reserve. Thus, the paragraph cited is no longer an applicable reference for the CDQ reserve for pollock, sablefish, or Pacific cod. Stepping back the reference citation in the current definition from "§ 679.20(b)(1)(iii)" to the more general level of "§ 679.20" would include all the paragraphs that allocate groundfish to the CDQ reserve.

The prohibition at § 679.7(d)(5) would be revised to remove the term "crab PSC." The red king, bairdi, and opilio crab PSCs are managed with area closures under the prohibitions at § 679.7(d)(6), (d)(7), and (d)(8) and should not also have been included in the prohibition at § 679.7(d)(5).

The introductory text of § 679.20 would be revised to clarify that this section applies to vessels engaged in directed fishing for groundfish in the Gulf of Alaska (GOA) or the BSAI. Current text ambiguously states "GOA and BSAI," which could be interpreted as meaning that the sections applies only to vessels that fish in both areas. However, vessels directed fishing for groundfish in either "the GOA or the BSAI" are affected by the regulations in this section.

The information in § 679.21(e)(1)(i) and (e)(2)(ii), concerning the reserves in the BSAI for the CDQ Program, would be moved to § 679.21(e)(3)(i)(A) and (e)(4)(i)(A) respectively. This regulatory text would be moved from the paragraphs allocating PSC by species, to the more appropriate location under the

paragraphs making PSC apportionments to the various fishery categories. The regulatory text from § 679.21(e)(2)(i) would become the new regulatory text for § 679.21(e)(2).

This proposed rule would correct a typographical error in newly redesignated § 679.21(e)(1)(i), which references red king crab, by revising the reference from § 679.21(e)(1)(iii), which applies to tanner crab, to the newly redesignated § 679.21(e)(1)(i), which applies to red king crab.

The proposed rule would revise the heading of the newly redesignated paragraph at § 679.21(e)(2)(vi) from "Chinook salmon" to "BS Chinook salmon." This revision would clarify that only BS Chinook salmon is the subject of this paragraph and would better correlate with the heading of the newly redesignated paragraph at § 679.21(e)(2)(viii) that is "AI Chinook salmon."

For purposes of apportioning the hook-and-line halibut PSC limit among sectors, definitions would be added for the new Pacific cod hook-and-line fishery categories at § 679.21(e)(4)(ii)(A) and (e)(4)(ii)(B). "Nontrawl fishery categories" would be revised to replace "Pacific cod hook-and-line fishery" with "Pacific cod hook-and-line catcher vessel fishery" and "Pacific cod hook-and-line catcher/processor fishery" to complement the previously noted division of this category. The regulations at § 679.21(e)(4)(ii)(C) through (e)(4)(ii)(E) would be unchanged except for their redesignations due to adding a category for the Pacific cod hook-and-line CP fishery. The introductory text at § 679.21(e)(4)(ii) would remain unchanged.

In § 679.23, paragraphs (e)(6) and (e)(7), applicable through December 31, 2002, would be removed because they are no longer in effect.

This proposed rule would correct a typographical error at § 679.32(b), which references the halibut PSC limit for vessels using pot or jig gear, by revising the reference in the paragraph from § 679.21(e)(5), which applies to seasonal apportionments of bycatch allowances, to § 679.21(e)(4), which applies to nontrawl halibut PSC apportionment.

This proposed rule would correct a typographical error at § 679.50(c)(1)(iii), which references the chum salmon savings area, by revising the reference in the paragraph from § 679.21(e)(7)(vi), which applies to Pacific herring, to § 679.21(e)(7)(vii), which applies to chum salmon.

### Classification

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

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

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). 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 at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see ADDRESSES).

The directly regulated entities are the commercial fishing entities operating vessels that participate in the BSAI Pacific cod directed fisheries and the six CDQ groups. Of the 310 vessels participating in 2003, 169 vessels are estimated to be small entities directly regulated by the proposed action, as detailed below.

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 and 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 CPs 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 CPs in the United States. However, until new guidance is adopted, NMFS will continue to use the annual receipts standard for CPs. NMFS plans to issue new guidance in the near future.

This IRFA used the most recent year of data available to conduct this analysis (2003). As stated previously, the commercial entities directly regulated by the proposed action are divided into nine sectors for the purpose of (non-CDQ) BSAI Pacific cod allocations, and the CDQ allocation is considered a separate sector. A description of the participants in, and the eligibility requirements for, each non-CDQ sector is provided in detail above, as is a description of the CDQ sector.

Vessels that were considered large entities, for purposes of the IRFA, were those with individual annual gross receipts greater than \$4.0 million, or those affiliated under owners of multiple vessels, contractual relationships, and/or affiliated through fishing cooperative membership (e.g., AFA) that, when combined with earnings from all such affiliated operations, had aggregate annual gross revenues greater than \$4.0 million. Insufficient documentation of multiple and joint-ownership structures, contractual affiliations, interlocking agreements, etc., among vessels in the various fleets of interest, herein, exist with which to confidently estimate the number of directly regulated small (and large) entities. Recognizing this, the IRFA is understood to likely overestimate the actual number of directly regulated small entities subject to this action.

The majority of the CVs in all gear sectors can be considered small entities under a conservative application of the existing threshold criterion. In 2003, only the AFA trawl CVs were considered large entities, as they are known to be party to a harvest cooperative system. The remaining 138 CVs of all gear types appear to meet the criterion for a small entity, as applied by evaluating the 2003 gross revenue data on a per vessel basis. However, as just noted, little is known about the ownership structure of the vessels in the fleets. Thus, based on the best available data, the following vessels appear to meet the application of the criterion above for a small entity in 2003: 25 hook-and-line and pot CVs <60 ft LOA; 22 non-AFA trawl CVs; 15 jig CVs; 6 hook-and-line CVs ≥60 ft LOA; and 70 pot CVs ≥60 ft LOA.

In the CP sector, the available data indicate that fewer than half meet the threshold for a small entity, as applied by evaluating the 2003 gross revenue on

a per vessel basis. Thirty-one of the 81 participating vessels in 2003 had gross receipts not in excess of \$4.0 million. Again, because little is known about the ownership structure of the vessels in the fleets, it is likely that the IRFA overestimates the number of small entities. Thus, based on the best available data, the following vessels meet the application of the criterion above for a small entity in 2003: 24 hook-and-line CPs; 4 non-AFA trawl CPs; and 3 pot CPs. In sum, of the 310 vessels participating in 2003, 169 vessels are estimated as small entities directly regulated by the proposed action.

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. Thus, under a conservative application of the SBA criterion and the best available data, the total number of small entities directly regulated by the proposed action is estimated as 175.

Within this universe of small entities impacts may accrue differentially; i.e., some small entities could be negatively affected and others positively affected. Therefore, the Council deliberately sought to provide considerable accommodation for the smallest of the small entities under this amendment. Thus, while the proposed action is distributional in nature, the overall impact to the smallest of the small entities is expected to be positive.

This regulation does not impose new record keeping or reporting requirements on the directly regulated small entities.

This proposed action does not duplicate, overlap, or conflict with other Federal rules.

The IRFA analyzed the "no action" alternative (Alternative 1) and the proposed action (Alternative 2). Each of these alternatives was comprised of the same set of eight components, or issues. Alternative 1 would continue the following: (1) the current overall gear allocations in the BSAI Pacific cod fishery that were established under Amendment 46 in 1997; (2) the current CDQ allocation of 7.5 percent of the BSAI Pacific cod TAC; and (3) the

current apportionment of the fixed gear portion of the BSAI Pacific cod non-CDQ TAC established under Amendment 77 in 2004. Alternative 1 also would continue shared halibut and crab PSC allowances to the BSAI Pacific cod trawl fishery category, which would mean that halibut and crab PSC harvest by each trawl sector would accrue to the same PSC allowance. Similarly, Alternative 1 would continue a shared halibut PSC allowance to the BSAI hook-and-line Pacific cod fishery category.

Before the Council made its decisions for Amendment 85, thus forming the proposed action, it considered several options under each of the eight components. These many options are analyzed in the RIR. The combination of these options resulted in the evaluation of a multitude of potential alternatives. For example, Table 8 provides a summary of the component concerning sector allocations, including the range of potential allocations to each non-CDQ sector considered by the Council, the current sector allocations, and the selections made under the preferred alternative.

TABLE 8. PERCENT NON-CDQ SECTOR ALLOCATIONS BY ALTERNATIVE

Sectors	Current (alternative 1)	Range of allocations Council considered	Proposed action (alternative 2)
Jig	2.0	0.1 - 2.0	1.4
Hook-and-line/pot CV <60 ft LOA	0.7	0.1 - 2.0	2.0
Hook-and-line CV ≥60 ft LOA	0.2	0.1 - 0.4	0.2
Hook-and-line CP	40.8	45.8 - 50.3	48.7
Pot CV ≥60 ft (18.3 m) LOA	7.6	7.3 - 9.2	8.4
Pot CP	1.7	1.4 - 2.3	1.5
AFA trawl CP	23.5 (AFA CP sector subject to 6.1% sideboard)	0.9 - 3.7	2.3
Non AFA trawl CP		12.7 - 16.2	13.4
AFA trawl CV	23.5 (non-exempt AFA CV sector subject to 20.2% sideboard)	17.8 - 24.4	22.1
Non-AFA trawl CV		0.5 - 3.1	

Amendment 85 is thus one derivation of many possible options, reflecting an effort to balance the economic and social objectives for the action against the potential burden placed on directly regulated entities (especially those which are "small"). One option was selected under each of the eight components to comprise its final preferred alternative. The preferred

alternative is described in detail in the RIR.

Several measures are included in the proposed rule that would reduce impacts on small entities. A specific means to facilitate economic opportunity and stability for small entities participating in the Pacific cod fisheries would be to establish BSAI Pacific cod allocations for the smallest of the small entities (jig vessels and the

<60 ft LOA hook-and-line and pot CVs) that represent a net increase over their actual catch history. This would provide for potential growth in those sectors. On average during 1995 to 2003, the combined harvest history by these sectors was about 0.5 percent of the retained BSAI Pacific cod harvest. However, in recent years it appears that the <60 ft LOA fixed gear CV sector has increased its participation in the BSAI

Pacific cod fishery and could benefit from additional quota, if it were made available. This specific accommodation for small entities is included in the proposed rule.

The BSAI Pacific cod fisheries are currently managed through a complex series of permits, gear and area endorsements, and licenses. Many are predicated on historical participation and/or performance thresholds (e.g., meeting or exceeding a specific threshold landing in a specific series of seasons, etc.). Many of these requirements result in extremely high entry costs and physical barriers for small vessels and entry level operations. To relieve these burdens and obstacles to participation, an important means of accommodating small entities can be "exemptions" from, for example, requirements to acquire some specific permits, and/or meeting historical catch and participation thresholds, extended to particularly vulnerable or disproportionately burdened classes of smaller vessels.

Recognizing the opportunity to facilitate and sustain small entity participation, the Council incorporated a number of exemptions for small entities in the action. The proposed rule would maintain the current reallocation process whereby any unused jig quota is first considered for reallocation to the <60 ft LOA fixed gear sector before being reallocated to any other sector. The proposed rule also would change the jig sector seasonal allowance such that 20 percent more of the jig allocation is allowed to be harvested in the first half of the year. Thus, more Pacific cod may potentially be harvested by the <60 ft LOA fixed gear sector earlier in the year, when the weather is preferable for this small boat sector. The proposed rule also would specify that the third trimester of the jig allocation, if it is to be reallocated, should be available to the <60 ft LOA fixed gear CV sector on or about September 1. The intent of this provision is to reallocate quota between the small boat CV sectors as early in the year as possible, in order for these sectors to have an opportunity to harvest the quota under better weather conditions.

The proposed action also would increase the BSAI Pacific cod allocation to the CDQ Program. The proposed rule would increase the Pacific cod CDQ allocation from 7.5 percent of the Pacific cod TAC to 10.7 percent, as mandated by the recent amendments to the Magnuson-Stevens Act. Similar to the status quo, this allocation would fund all of the directed and nontarget catch of Pacific cod taken in the CDQ fisheries.

A tradeoff would exist in terms of impacts on the small entities in the non-CDQ sectors whose allocations would be reduced (proportionally by 3.2 percent) by the increase to the CDQ Program.

However, the proposed action represents a positive effect on the six small entities that comprise the CDQ groups in terms of potential revenues resulting from an increased allocation. This increase in royalty payments is estimated as approximately \$1.1 million. Nonetheless, efforts to minimize the burden on the smallest of small entities, as discussed above, by exempting them from the most onerous permit and recency requirements, and by allocating Pacific cod TAC amounts in excess of their recent Pacific cod harvest levels, reflects a sincere effort to address the needs of these small entities.

In sum, many vessels in each sector directly regulated by the proposed action are small entities. Because this action is principally designed to reapportion access to the cod resource among current user groups, by definition, it represents tradeoffs (i.e., some small entities could be negatively affected, while others are positively affected). In addition, the six CDQ groups would receive an increased allocation under the proposed action.

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

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: February 1, 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 part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

2. In § 679.2, remove the definition for "AFA catcher/processor", revise the definition for "CDQ reserve", and add definitions for "AFA trawl catcher/processor", "Hook-and-line catcher/processor", "Non-AFA trawl catcher/processor", and "Pot catcher/processor" in alphabetical order to read as follows:

##### § 679.2 Definitions.

\* \* \* \* \*

*AFA trawl catcher/processor* means:

(1) For purposes of BS pollock and all BSAI groundfish fisheries other than

Atka mackerel, flathead sole, Greenland turbot, Pacific cod, Pacific ocean perch, rock sole, and yellowfin sole, a catcher/processor that is permitted to harvest BS pollock under § 679.4(l)(2).

(2) For purposes of BSAI Atka mackerel, flathead sole, Greenland turbot, Pacific cod, Pacific ocean perch, rock sole, and yellowfin sole, a catcher/processor that is permitted to harvest BS pollock and that is listed under § 679.4(l)(2)(i).

\* \* \* \* \*

*CDQ reserve* means the amount of each groundfish TAC apportioned under § 679.20, the amount of each catch limit for halibut, or the amount of TAC for crab that has been set aside for purposes of the CDQ Program.

\* \* \* \* \*

*Hook-and-line catcher/processor* means a catcher/processor vessel that is named on a valid LLP license that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for Bering Sea or Aleutian Islands catcher/processor fishing activity, catcher/processor, Pacific cod, and hook-and-line gear.

\* \* \* \* \*

*Non-AFA trawl catcher/processor* means, for purposes of BSAI Atka mackerel, flathead sole, Greenland turbot, Pacific cod, Pacific ocean perch, rock sole, and yellowfin sole, a catcher/processor vessel using trawl gear and that:

(1) Is not an AFA trawl catcher/processor listed under § 679.4(l)(2)(i);

(2) Is named on a valid LLP license that is endorsed for Bering Sea or Aleutian Islands trawl catcher/processor fishing activity; and

(3) Was used to harvest with trawl gear in the BSAI and process not less than a total of 150 mt of Atka mackerel, flathead sole, Greenland turbot, Pacific cod, Pacific ocean perch, rock sole, or yellowfin sole between January 1, 1997, and December 31, 2002.

\* \* \* \* \*

*Pot catcher/processor* means a catcher/processor vessel that is named on a valid LLP license that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for Bering Sea or Aleutian Islands catcher/processor fishing activity, catcher/processor, Pacific cod, and pot gear.

\* \* \* \* \*

3. In § 679.7, revise paragraph (d)(5) and add paragraph (d)(25) to read as follows:

**§ 679.7 Prohibitions**

\* \* \* \* \*

(d) \* \* \*

(5) For a CDQ group, exceed a CDQ or a halibut PSQ.

\* \* \* \* \*

(25) For a CDQ group, exceed a seasonal allowance of Pacific cod under § 679.20(a)(7)(i)(B).

\* \* \* \* \*

4. In § 679.20, remove paragraph (b)(1)(iv) and revise the section's introductory text and paragraph (a)(7) to read as follows:

**§ 679.20 General limitations.**

This section applies to vessels engaged in directed fishing for groundfish in the GOA or the BSAI.

(a) \* \* \*

(7) *Pacific cod TAC, BSAI*—(i) *CDQ reserve and seasonal allowances.* (A) A total of 10.7 percent of the annual Pacific cod TAC will be allocated to the CDQ Program in the annual harvest specifications required under paragraph (c) of this section. The Pacific cod CDQ allocation will be deducted from the annual Pacific cod TAC before allocations to the non-CDQ sectors are made under paragraph (a)(7)(ii) of this section.

(B) The BSAI Pacific cod CDQ gear allowances by season, as those seasons are specified under § 679.23(e)(5), are as follows:

Gear Type	A season	B season	C season
(1) Trawl	60%	20%	20%
(2) Hook-and-line CP and hook-and-line CV ≥60 ft (18.3 m) LOA	60%	40%	no C season
(3) Jig	40%	20%	40%
(4) All other non-trawl gear	no seasonal allowance	no seasonal allowance	no seasonal allowance

(ii) *Non-CDQ allocations*—(A) *Sector allocations.* The remainder of the BSAI Pacific cod TAC after subtraction of the CDQ reserve for Pacific cod will be allocated to non-CDQ sectors as follows:

Sector	% Allocation
(1) Jig vessels	1.4
(2) Hook-and-line/pot CV <60 ft (18.3 m) LOA	2.0

Sector	% Allocation
(3) Hook-and-line CV ≥60 ft (18.3 m) LOA	0.2
(4) Hook-and-line CP	48.7
(5) Pot CV ≥60 ft (18.3 m) LOA	8.4
(6) Pot CP	1.5
(7) AFA trawl CP	2.3
(8) Non-AFA trawl CP	13.4
(9) Trawl CV	22.1

(B) *Incidental catch allowance.* During the annual harvest specifications process set forth at paragraph (c) of this section, the Regional Administrator will specify an amount of Pacific cod that NMFS estimates will be taken as incidental catch in directed fisheries for groundfish other than Pacific cod by the hook-and-line and pot gear sectors. This amount will be the incidental catch allowance and will be deducted from the aggregate portion of Pacific cod TAC annually allocated to the hook-and-line and pot gear sectors before the allocations under paragraph (a)(7)(ii)(A) of this section are made to these sectors.

(iii) *Reallocation among non-CDQ sectors.* If, during a fishing year, the Regional Administrator determines that a non-CDQ sector will be unable to harvest the entire amount of Pacific cod allocated to that sector under paragraph (a)(7)(ii)(A) of this section, the Regional Administrator will reallocate the projected unused amount of Pacific cod to other sectors through notification in the **Federal Register**. Any reallocation decision by the Regional Administrator will take into account the capability of a sector to harvest the reallocated amount of Pacific cod, and the following reallocation hierarchy:

(A) *Catcher vessel sectors.* The Regional Administrator will reallocate projected unharvested amounts of Pacific cod TAC from a catcher vessel sector as follows: first to the jig sector, or to the less than 60 ft (18.3 m) LOA hook-and-line or pot catcher vessel sector, or to both of these sectors; second, to the greater than or equal to 60 ft (18.3 m) LOA hook-and-line or to the greater than or equal to 60 ft (18.3 m) LOA pot catcher vessel sectors; and third to the trawl catcher vessel sector. If the Regional Administrator determines that a projected unharvested amount from the jig sector allocation, the less than 60 ft (18.3 m) LOA hook-and-line or pot catcher vessel sector allocation, or the greater than or equal

to 60 ft (18.3 m) LOA hook-and-line catcher vessel sector allocation is unlikely to be harvested through this hierarchy, the Regional Administrator will reallocate that amount to the hook-and-line catcher/processor sector. If the Regional Administrator determines that a projected unharvested amount from a greater than or equal to 60 ft (18.3 m) LOA pot catcher vessel sector allocation is unlikely to be harvested through this hierarchy, the Regional Administrator will reallocate that amount to the pot catcher/processor sector in accordance with the hierarchy set forth in paragraph (a)(7)(iii)(C) of this section. If the Regional Administrator determines that a projected unharvested amount from a trawl catcher vessel sector allocation is unlikely to be harvested through this hierarchy, the Regional Administrator will reallocate that amount to the other trawl sectors in accordance with the hierarchy set forth in paragraph (a)(7)(iii)(B) of this section.

(B) *Trawl catcher/processor sectors.* The Regional Administrator will reallocate any projected unharvested amounts of Pacific cod TAC from a trawl sector (trawl catcher vessel, AFA trawl catcher/processor, and non-AFA trawl catcher/processor sectors) to other trawl sectors before unharvested amounts are reallocated and apportioned to specified gear sectors as follows:

- (1) 83.1 percent to the hook-and-line catcher/processor sector,
- (2) 2.6 percent to the pot catcher/processor sector, and
- (3) 14.3 percent to the greater than or equal to 60 ft (18.3 m) LOA pot catcher vessel sector.

(C) *Pot gear sectors.* The Regional Administrator will reallocate any projected unharvested amounts of Pacific cod TAC from the pot catcher/processor sector to the greater than or equal to 60 ft (18.3 m) LOA pot catcher vessel sector, and from the greater than or equal to 60 ft (18.3 m) LOA pot catcher vessel sector to the pot catcher/processor sector before reallocating it to the hook-and-line catcher/processor sector.

(iv) *Non-CDQ seasonal allowances*—(A) *Seasonal allowances by sector.* The BSAI Pacific cod sector allowances are apportioned by season, as those seasons are specified at § 679.23(e)(5), as follows:

Sector	Seasonal Allowances		
	A season	B season	C season
(1) Trawl			

Sector	Seasonal Allowances		
	A sea-son	B sea-son	C sea-son
(i) Trawl CV	74 %	11 %	15 %
(ii) Trawl CP	75 %	25 %	0 %
(2) Hook-and-line CP, hook-and-line CV ≥60 ft (18.3 m) LOA, and pot gear vessels ≥60 ft (18.3 m) LOA	51 %	49 %	no C season
(3) Jig vessels	60 %	20 %	20 %
(4) All other nontrawl ves-sels	no sea-sonal allow-ance	no sea-sonal allow-ance	no sea-sonal allow-ance

(B) *Unused seasonal allowances.* Any unused portion of a seasonal allowance of Pacific cod from any sector except the jig sector will be reallocated to that sector's next season during the current fishing year unless the Regional Administrator makes a determination under paragraph (a)(7)(iii) of this section that the sector will be unable to harvest its allocation.

(C) *Jig sector.* The Regional Administrator will reallocate any projected unused portion of a seasonal allowance of Pacific cod for the jig sector under this section to the less than 60 ft (18.3 m) LOA hook-and-line or pot catcher vessel sector. The Regional Administrator will reallocate the projected unused portion of the jig sector's C season allowance on or about September 1 of each year.

\* \* \* \* \*

5. Section 679.21 is amended by:

A. Removing paragraph (e)(1)(i).

B. Redesignating paragraphs (e)(1)(ii) through (e)(1)(ix) as (e)(1)(i) through (e)(1)(viii), respectively.

C. Adding paragraph (e)(3)(vi).

D. Revising paragraphs (e)(2), (e)(3)(i), (e)(3)(v), and (e)(4).

The additions and revisions read as follows:

**§ 679.21 Prohibited species bycatch management.**

\* \* \* \* \*

(e) \* \* \*

(2) *Nontrawl gear, halibut.* The PSC limit of halibut caught while conducting any nontrawl fishery for groundfish in the BSAI during any fishing year is the amount of halibut equivalent to 900 mt of halibut mortality.

(3) \* \* \*

(i) *General.* (A) An amount equivalent to 7.5 percent of each PSC limit set forth

in paragraphs (e)(1)(i) through (iv) and paragraphs (e)(1)(vi) through (e)(1)(viii) of this section is allocated to the groundfish CDQ Program as PSQ reserve. The PSQ reserve is not apportioned by gear or fishery.

(B) NMFS, after consultation with the Council and after subtraction of the PSQ reserve, will apportion each PSC limit set forth in paragraphs (e)(1)(i) through (vii) of this section into bycatch allowances for the 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.

\* \* \* \* \*

(v) *PSC apportionment to Pacific cod trawl fisheries.* The apportionment of the PSC allowance of halibut and crab to the Pacific cod trawl fishery category under paragraph (e)(3)(iv) of this section will be divided among the trawl sectors established at § 679.20(a)(7)(ii), as follows: 70.7 percent for the trawl catcher vessel sector; 4.4 percent for the AFA trawl catcher/processor sector; and 24.9 percent for the non-AFA trawl catcher/processor sector.

(vi) *AFA prohibited species catch limitations.* Halibut and crab PSC limits for the AFA trawl catcher/processor sector and the AFA trawl catcher vessel sector will be established according to the procedures and formulas set out in paragraph (e)(3)(v) of this section and in § 679.64(a) and (b) and managed through directed fishing closures for the AFA trawl catcher/processor sector and the AFA trawl catcher vessel sector in the groundfish fisheries for which the PSC limit applies.

(4) *Halibut apportionment to nontrawl fishery categories—(i) General.* (A) An amount equivalent to 7.5 percent of the nontrawl gear halibut PSC limit set forth in paragraph (e)(2) of this section is allocated to the groundfish CDQ Program as PSQ reserve. The PSQ reserve is not apportioned by gear or fishery.

(B) NMFS, after consultation with the Council and after subtraction of the PSQ reserve, will apportion the halibut PSC limit for nontrawl gear set forth under paragraph (e)(2) of this section into bycatch allowances for the nontrawl fishery categories defined under paragraph (e)(4)(ii) of this section.

(C) Apportionment of the nontrawl halibut PSC limit among the nontrawl fishery categories will be based on each category's proportional share of the anticipated bycatch mortality of halibut

during a fishing year and the need to optimize the amount of total groundfish harvested under the nontrawl halibut PSC limit.

(D) The sum of all bycatch allowances of any prohibited species will equal its PSC limit.

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

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

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

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

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

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

(F) *Other nontrawl fisheries.* Fishing for groundfish with nontrawl gear during any weekly reporting period that results in a retained catch of groundfish and does not qualify as a Pacific cod hook-and-line catcher vessel fishery, a Pacific cod hook-and-line catcher/processor fishery, a sablefish hook-and-line fishery, a jig gear fishery, or a groundfish pot gear fishery as defined under this paragraph (e)(4)(ii).

\* \* \* \* \*

**§ 679.23 [Amended]**

6. In § 679.23, remove paragraphs (e)(6) and (e)(7).

7. Section 679.64 is amended by:

A. Removing paragraph (a)(1) introductory text.

B. Redesignating paragraph (a)(1)(i) as paragraph (a)(1) introductory text.

C. Redesignating paragraph (a)(2) introductory text as paragraph (a)(1)(i).

D. Redesignating paragraphs (a)(2)(i) and (ii) as paragraphs (a)(1)(i)(A) and (B), respectively.

E. Redesignating paragraph (a)(3) introductory text as paragraph (a)(1)(ii).

F. Redesignating paragraphs (a)(3)(i) through (iii) as paragraphs (a)(1)(ii)(A) through (C), respectively.

G. Redesignating paragraph (a)(4) introductory text as paragraph (a)(1)(iii).

H. Redesignating paragraphs (a)(4)(i) and (ii) as paragraphs (a)(1)(iii)(A) and (B), respectively.

I. Redesignating paragraph (a)(5) as paragraph (a)(2).

J. Redesignating paragraph (a)(6) as paragraph (a)(3).

K. Revising newly redesignated paragraphs (a)(1) introductory text and (a)(3).

The additions and revisions read as follows:

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

(a) \* \* \*

(1) *How will groundfish sideboard limits for AFA listed catcher/processors be calculated?* Except for Aleutian Islands pollock and BSAI Pacific cod, the Regional Administrator will establish annual AFA catcher/processor harvest limits for each groundfish species or species group in which a TAC is specified for an area or subarea of the BSAI as follows:

\* \* \* \* \*

(3) *How will AFA catcher/processor sideboard limits be managed?* The Regional Administrator will manage

groundfish harvest limits and PSC bycatch limits for AFA catcher/processors through directed fishing closures in fisheries established under paragraph (a)(1) of this section in accordance with the procedures set out in §§ 679.20(d)(1)(iv) and 679.21(e)(3)(vi).

\* \* \* \* \*

**§§ 679.20, 679.21, 679.31, 679.32, 679.50, and 679.64 [Amended]**

8. In the table below, for each of the paragraphs shown under the “Paragraph” column, remove the phrase indicated under the “Remove” column and replace it with the phrase indicated under the “Add” column for the number of times indicated in the “Frequency” column.

Paragraph(s)	Remove	Add	Frequency
§ 679.20(b)(1)(i)	except pollock and the	except pollock, Pacific cod, and the	2
Newly redesignated § 679.21(e)(1)(i) introductory text	paragraphs (e)(1)(iii)(A) through	paragraphs (e)(1)(i)(A) through	1
Newly redesignated § 679.21(e)(1)(ii) introductory text	paragraphs (e)(1)(iii)(A) and	paragraphs (e)(1)(ii)(A) and	1
Paragraph heading of newly redesignated § 679.21(e)(1)(vi)	<i>Chinook salmon</i>	<i>BS Chinook salmon</i>	1
§ 679.21(e)(3)(ii)(B)(2)	paragraph (e)(1)(ii) of	paragraph (e)(1)(i) of	1
§ 679.21(e)(7)(viii) introductory text	paragraphs (e)(1)(vii) and (e)(1)(ix) of	paragraphs (e)(1)(vi) and (e)(1)(viii) of	1
§ 679.21(e)(7)(viii)(A) introductory text	paragraph (e)(1)(vii) of	paragraph (e)(1)(vi) of	1
§ 679.21(e)(7)(viii)(B) introductory text	paragraph (e)(1)(ix) of	paragraph (e)(1)(viii) of	1
§ 679.31(c)	(See § 679.20(b)(1)(iii))	(See § 679.20(a)(7)(i) and (b)(1)(iii))	1
§ 679.31(e)	(See § 679.21(e)(1)(i) and (e)(2)(ii)).	(See § 679.21(e)(3)(i)(A) and (e)(4)(i)(A)).	1
§ 679.32(b)	under § 679.21(e)(5) in	under § 679.21(e)(4) in	1
§ 679.50(c)(1)(iii)	under § 679.21(e)(7)(vi), or	under § 679.21(e)(7)(vii), or	1
Newly redesignated § 679.64(a)(1)(i)(B)	paragraph (a)(2)(i) of	paragraph (a)(1)(i)(A) of	1
Newly redesignated § 679.64(a)(1)(iii)(A)	paragraphs (a)(1)(ii) through (a)(3) of	paragraphs (a)(1)(i) through (a)(1)(ii) of	1
Newly redesignated § 679.64(a)(1)(iii)(B)	paragraph (a)(4)(i) of	paragraph (a)(1)(iii)(A) of	1
§ 679.64(b)(5)	and (e)(3)(v).	and (e)(3)(vi).	1