



# Federal Register

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**Tuesday,  
March 23, 2010**

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**Part IV**

**Department of  
Commerce**

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**National Oceanic and Atmospheric  
Administration**

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**50 CFR Part 679  
Fisheries of the Exclusive Economic Zone  
Off Alaska; Chinook Salmon Bycatch  
Management in the Bering Sea Pollock  
Fishery; Proposed Rule**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

[Docket No. 090511911-91132-01]

RIN 0648-AX89

## Fisheries of the Exclusive Economic Zone Off Alaska; Chinook Salmon Bycatch Management in the Bering Sea Pollock Fishery

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 91 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). If approved, Amendment 91 would be a novel approach to managing Chinook salmon bycatch in the Bering Sea pollock fishery that combines a limit on the amount of Chinook salmon that may be caught incidentally with an incentive plan agreement and performance standard designed to minimize bycatch to the extent practicable in all years and prevent bycatch from reaching the limit in most years. This action is necessary to minimize Chinook salmon bycatch in the Bering Sea pollock fishery to the extent practicable while maximizing the potential for the full harvest of the pollock total allowable catch within specified prohibited species catch limits. Amendment 91 is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

**DATES:** Comments must be received no later than May 7, 2010.

**ADDRESSES:** You may submit comments, identified by RIN 0648-AX89, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- **Fax:** (907) 586-7557, Attn: Ellen Sebastian.
- **Mail:** P.O. Box 21668, Juneau, AK 99802.
- **Hand Delivery to the Federal Building:** 709 West 9th Street, Room 420A, Juneau, AK.

**Instructions:** No comments will be posted for public viewing until after the comment period has closed. All

comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of Amendment 91, the Final Environmental Impact Statement (EIS), the Final Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action may be obtained from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address, e-mailed to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or faxed to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:**

Gretchen Harrington or Seanbob Kelly, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands Management Area (BSAI) under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (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.

This proposed rule would implement Amendment 91 to the FMP. The Council has submitted Amendment 91 for review by the Secretary of Commerce, and a Notice of Availability (NOA) of this amendment was published in the **Federal Register** on February 18, 2010 (75 FR 7228) with comments invited through April 19, 2010. Respondents do not need to submit the same comments on both the NOA and this proposed rule. All relevant written comments received by the end of the applicable comment period, whether specifically

directed to the FMP amendment, this proposed rule, or both, will be considered in the approval/disapproval decision for Amendment 91 and addressed in the response to comments in the final decision.

**The Bering Sea Pollock Fishery**

This proposed rule applies to owners and operators of catcher vessels, catcher/processors, motherships, inshore processors, and the six Western Alaska Community Development Quota (CDQ) Program groups participating in the pollock (*Theragra chalcogramma*) fishery in the Bering Sea (BS) subarea of the BSAI. A detailed physical description of the BS subarea is contained in Section 1.3 of the EIS (*see ADDRESSES*). The BS pollock fishery is the largest single species fishery, by volume, in the United States. The first wholesale gross value of this fishery was more than 1.4 billion dollars in 2008.

The BS pollock fishery is managed under the American Fisheries Act (AFA) (16 U.S.C. 1851 note). Currently, pollock in the BSAI is managed as three separate units: the BS subarea, the Aleutian Islands (AI) subarea, and the Bogoslof District of the BS subarea. Separate overfishing limits, acceptable biological catch limits, and total allowable catch (TAC) limits are specified annually for BS pollock, AI pollock, and Bogoslof pollock. In 2009, the BS pollock TAC was 815,000 metric tons (mt), the AI pollock TAC was 19,000 mt, and the Bogoslof pollock TAC was 50 mt. Additional information about the pollock fisheries is in Section 1.4 of the EIS, Section 2.1 of the RIR (*see ADDRESSES*), and in the annual specifications for the BSAI groundfish fisheries (74 FR 7359; February 17, 2009).

Ten percent of the AI pollock TAC is allocated to the CDQ Program while the remaining 90 percent is divided between the Aleut Corporation and the incidental catch allowance (70 FR 9856; March 1, 2005). Under § 679.22(a)(7)(i), directed fishing for pollock is not allowed in the Bogoslof District and the entire TAC is allocated as an incidental catch allowance for pollock harvested in other groundfish directed fisheries that occur in this area. Amendment 91 would not affect the management of pollock fisheries in the AI or the status of pollock fishing in the Bogoslof District. This proposed rule applies only to management of the pollock fishery in the BS. Therefore, in this document, the word "fishery" refers only to the BS pollock fishery, unless otherwise specified.

In October 1998, Congress enacted the AFA, which "rationalized" the BS

pollock fishery by identifying the vessels and processors eligible to participate in the fishery and allocating pollock among those eligible participants. Under the AFA, 10 percent of the BS pollock TAC is allocated to the CDQ Program. After the CDQ Program allocation is subtracted, an amount needed for the incidental catch of pollock in other BS groundfish fisheries is subtracted from the TAC. In 2009, the CDQ allocation was 81,500 mt of pollock and the incidental catch allowance was 29,340 mt. The “directed fishing allowance” is the remaining amount of pollock, after subtraction of the CDQ Program allocation and the incidental catch allowance. The directed fishing allowance is then allocated among the AFA inshore sector (50 percent), the AFA catcher/processor sector (40 percent), and the AFA mothership sector (10 percent). Pollock allocations to the CDQ Program and the other three AFA sectors are further allocated annually between two seasons—40 percent to the A season (January 20 to June 10) and 60 percent to the B season (June 10 to November 1).

The allocation of pollock to the CDQ Program is further allocated among the six non-profit corporations (CDQ groups) that represent the 65 communities eligible for the CDQ Program under section 305(i)(1)(D) of the Magnuson-Stevens Act. The percentage allocations of pollock among the six CDQ groups that currently are in effect were approved by NMFS in 2005 based on recommendations from the State of Alaska (State). These percentage allocations are now the required allocations of pollock among the CDQ groups under section 305(i)(1)(B) of the Magnuson-Stevens Act. More information about the allocations of pollock, other groundfish, crab, and prohibited species (including Chinook salmon) among the six CDQ groups is provided in a **Federal Register** notice that described the effect of the 2006 amendments to the Magnuson-Stevens Act on CDQ Program allocations (71 FR 51804; August 31, 2006). The CDQ Program also is described in more detail in the “Classification” section of this proposed rule.

CDQ groups typically sell or lease their pollock allocations to harvesting partners, including vessels owned, in part, by the CDQ group. Although CDQ groups are not required to partner with AFA-permitted vessels to harvest CDQ pollock, to date, the vessels harvesting CDQ pollock have been AFA permitted vessels. The CDQ pollock allocations have most often been harvested by catcher/processors or catcher vessels delivering to a mothership. However,

some pollock CDQ has been delivered to inshore processing plants in past years.

The AFA allowed for the formation of fishery cooperatives within the non-CDQ sectors. The purpose of these AFA cooperatives is to further subdivide each sector’s or inshore cooperative’s pollock allocation among participants in the sector or cooperative through private contractual agreements. The cooperatives manage these allocations to ensure that individual vessels and companies do not harvest more than their agreed upon share. The cooperatives also facilitate transfers of pollock among the cooperative members, enforce contract provisions, and participate in the intercooperative agreement to reduce salmon bycatch.

Each year, catcher vessels eligible to deliver pollock to the seven eligible AFA inshore processors may form inshore cooperatives associated with a particular inshore processor. NMFS permits the inshore cooperatives, allocates pollock to them, and manages these allocations through a regulatory prohibition against an inshore cooperative exceeding its pollock allocation. The amount of pollock allocated to each inshore cooperative is based on the member vessel’s pollock catch history from 1995 through 1997, as required under section 210(b) of the AFA (16 U.S.C. 1851 note). These catcher vessels are not required to join an inshore cooperative. Those that do not join an inshore cooperative are managed by NMFS under the “inshore open access fishery”. In recent years, all inshore catcher vessels have joined one of seven inshore cooperatives. However, NMFS has been notified that in 2010 one inshore catcher vessel will not join an inshore cooperative and will be fishing in the inshore open access fishery.

The AFA catcher/processor sector is made up of the catcher/processors and catcher vessels eligible under the AFA to deliver to catcher/processors. Owners of the catcher/processors that are listed by name in the AFA and still active in the BS pollock fishery have formed a cooperative called the Pollock Conservation Cooperative (PCC). The remaining catcher/processor, the F/V Ocean Peace, is not listed by name in the AFA, but is eligible to harvest up to 0.5 percent of the allocation of BS pollock to the catcher/processor sector. This portion of the catcher/processor sector’s allocation of BS pollock is reserved for “unlisted” catcher/processors that meet certain requirements, which only the F/V Ocean Peace meets. Owners of the catcher vessels eligible to deliver pollock to the catcher/processors have

formed a cooperative called the High Seas Catcher’s Cooperative (HSCC).

The AFA mothership sector is made up of three motherships and the catcher vessels eligible under the AFA to deliver pollock to these motherships. These catcher vessels have formed a cooperative called the Mothership Fleet Cooperative (MFC). The MFC does not include the owners of the three motherships. The primary purpose of the cooperative is to sub-allocate the mothership sector pollock allocation among the catcher vessels authorized to harvest this pollock and to manage these allocations.

NMFS does not manage the sub-allocations of pollock among members of the PCC, HSCC, or MFC. The cooperatives control the harvest by their member vessels so that the pollock allocation to the sector is not exceeded. However, NMFS monitors pollock harvest by all members of the catcher/processor sector and mothership sector. NMFS retains the authority to close directed fishing for pollock by a sector if vessels in that sector continue to fish once the sector’s seasonal allocation of pollock has been harvested.

#### **Chinook Salmon Bycatch in the Bering Sea Pollock Fishery**

Pollock is harvested with fishing vessels using trawl gear, which are large nets towed through the water by the vessel. Chinook salmon and pollock occur in the same locations in the BS. Consequently, Chinook salmon are accidentally caught in the nets as fishermen target pollock.

The Magnuson-Stevens Act defines bycatch as fish that are harvested in a fishery, which are not sold or kept for personal use. Therefore, Chinook salmon caught in the BS pollock fishery are considered bycatch under the Magnuson-Stevens Act, the FMP, and NMFS regulations at 50 CFR part 679. Bycatch of any species, including discard or other mortality caused by fishing, is a concern of the Council and NMFS. National Standard 9 of the Magnuson-Stevens Act requires the Council to select, and NMFS to implement, conservation and management measures that, to the extent practicable, minimize bycatch and bycatch mortality.

The bycatch of culturally and economically valuable species like Chinook salmon, which are fully allocated and, in some cases, facing conservation concerns, are categorized as prohibited species under the FMP and are the most regulated and closely managed category of bycatch. Chinook salmon, all other species of salmon (a category called “non-Chinook salmon”),

steelhead trout, Pacific halibut, king crab, Tanner crab, and Pacific herring are classified as prohibited species in the groundfish fisheries off Alaska. As a prohibited species, fishermen must avoid salmon bycatch and any salmon caught must either be donated to the Prohibited Species Donation (PSD) Program under § 679.26, or returned to Federal waters as soon as is practicable, with a minimum of injury, after an observer has determined the number of salmon and collected any scientific data or biological samples.

The PSD Program was initiated to reduce the amount of edible protein discarded under prohibited species catch (PSC) regulatory requirements (§ 679.21). One reason for requiring the discard of prohibited species is that some of the fish may live if they are returned to the sea with a minimum of injury and delay. However, salmon caught incidentally in trawl nets always die as a result of that capture. The PSD Program allows enrolled seafood processors to retain salmon bycatch for distribution to economically disadvantaged individuals through tax-exempt hunger relief organizations.

The BS pollock fishery catches up to 95 percent of the Chinook salmon taken incidentally as bycatch in the BSAI groundfish fisheries. From 1992 through 2001, the average Chinook salmon bycatch in the BS pollock fishery was 32,482. Bycatch increased substantially from 2002 through 2007, to an average of 74,067 Chinook salmon per year. A historic high of approximately 122,000 Chinook salmon were taken in the BS pollock fishery in 2007. However, Chinook salmon bycatch has declined in recent years to 20,493 in 2008 and 12,410 in 2009. The causes of the decline in Chinook salmon bycatch in 2008 and 2009 are unknown. The decline is most likely due to a combination of factors, including changes in abundance and distribution of Chinook salmon and pollock, and changes in fleet behavior to avoid salmon bycatch.

Chinook salmon bycatch also varies seasonally and by sector. In most years, the majority of Chinook salmon bycatch occurs during the A season. Since 2002, catcher vessels in the inshore sector typically have caught the highest number of Chinook salmon and had the highest bycatch rates by sector in both the A and B seasons. Since 1999, under the AFA, the inshore sector has been allocated about 45 percent of the pollock TAC (the percentage changes slightly in some years because the amount of pollock subtracted from the TAC for incidental catch varies). However, the inshore sector has always

caught more than 45 percent of Chinook salmon bycatch. For example, in 2007, the inshore sector was allocated 44 percent of the pollock TAC, but caught 63 percent of the Chinook salmon bycatch, and in 2008 it was allocated 43 percent of the TAC, but caught 55 percent of the Chinook salmon bycatch in the BS pollock fishery. Over this same time period, the catcher/processor sector has taken a smaller portion of the Chinook salmon bycatch relative to their 35 percent allocation of pollock TAC (26 percent of the Chinook salmon bycatch in 2007 and 18 percent in 2008). The variation in bycatch rates among sectors and seasons is due, in part, to the different fishing practices and patterns each sector uses to fully harvest their pollock allocations in the A and B seasons.

In years of historically high Chinook salmon bycatch in the BS pollock fishery (2003 through 2007), the rate of Chinook salmon bycatch averaged 52 Chinook salmon per 1,000 tons of pollock harvested. With so few salmon relative to the large amount of pollock harvested, Chinook salmon encounters are difficult to predict or avoid. Development of intercooperative agreements that require vessel-level cooperation to share information about areas of high Chinook salmon encounter rates probably are the best tool that the industry currently has to quickly identify areas of high bycatch and to avoid fishing there. However, it will continue to be difficult to predict when and where large amounts of Chinook salmon bycatch will be encountered by the pollock fleet, primarily because of the current lack of understanding of the biological and oceanographic conditions that influence the distribution and abundance of salmon in the areas where the pollock fishery occurs.

#### **Status of Chinook Salmon Stocks and Fisheries in Western Alaska**

Chinook salmon taken in the BS pollock fishery originate from Alaska, the Pacific Northwest, Canada, and Asian countries along the Pacific Rim. Estimates vary, but more than half of the Chinook salmon bycatch in the BS pollock fishery may be destined for western Alaska. Western Alaska includes the Bristol Bay, Kuskokwim, Yukon, and Norton Sound areas. In general, western Alaska Chinook salmon stocks declined sharply in 2007 and remained depressed in 2008 and 2009. Chapter 5 of the EIS provides additional information about Chinook salmon biology, distribution, and stock assessments by river system or region (*see ADDRESSES*).

Chinook salmon support subsistence, commercial, personal use, and sport fisheries in their regions of origin. The Alaska Board of Fisheries adopts regulations through a public process to conserve fisheries resources and to allocate fisheries resources to the various users. The State of Alaska Department of Fish and Game (ADF&G) manages the salmon commercial, subsistence, sport, and personal use fisheries. The first management priority is to meet spawning escapement goals to sustain salmon resources for future generations. The next priority is for subsistence use under both state and federal law. Chinook salmon serves as a primary subsistence food in some areas. Subsistence fisheries management includes coordination with U.S. federal agencies where federal rules apply under the Alaska National Interest Lands Conservation Act.

In recent years of low Chinook salmon returns, the in-river harvest of western Alaska Chinook salmon has been severely restricted and, in some cases, river systems have not met escapement goals. Surplus fish beyond escapement needs and subsistence use are made available for other uses. Commercial fishing for Chinook salmon may provide the only source of income for many people who live in remote villages. Chapter 3 of the RIR provides an overview of the importance of subsistence harvests and commercial harvests (*see ADDRESSES*).

Yukon River salmon fisheries management includes obligations under an international treaty with Canada. In 2007 and 2008, the United States did not meet the Yukon River Chinook salmon escapement goals established with Canada by the Yukon River Agreement to the Pacific Salmon Treaty (PST) of 2002. As of October 29, 2009, the preliminary estimate of escapement into Canada was approximately 68,400 Chinook salmon, which exceeds the 2009 interim management escapement goal of 45,000 Chinook salmon and provides for harvest sharing under the Yukon River Agreement to the PST.

#### **Current Management of Chinook Salmon Bycatch in the Bering Sea and Aleutian Islands**

Over the past 15 years, the Council and NMFS have implemented several management measures to limit Chinook salmon bycatch in the BSAI trawl fisheries. In 1995, the Council adopted, and NMFS approved, Amendment 21b to the FMP. Based on historic information regarding the location and timing of Chinook salmon bycatch, Amendment 21b established annual PSC limits for Chinook salmon and

specific seasonal no-trawling zones in the Chinook Salmon Savings Area that would close when the limits were reached. These regulations prohibited trawling in the Chinook Salmon Savings Area through April 15, once the PSC limit of 48,000 Chinook salmon was reached (60 FR 31215; November 29, 1995).

In 2000, the Council and NMFS implemented Amendment 58 to the FMP, which reduced the Chinook Salmon Savings Area closure limit to 29,000 Chinook salmon, redefined the Chinook Salmon Savings Area as two non-contiguous areas of the BSAI (Area 1 in the AI subarea and Area 2 in the BS subarea), and established new closure periods (65 FR 60587; October 12, 2000).

Chinook salmon bycatch management measures in the BSAI were most recently revised under Amendments 82 and 84 to the FMP. In 2005, Amendment 82 established the AI Chinook salmon PSC limit of 700 fish, which, when reached, closes the directed pollock fishery in Area 1 (the AI) of the Chinook Salmon Savings Area (70 FR 9856; March 1, 2005).

The Council adopted Amendment 84 in October 2005 to address increases in Chinook and non-Chinook salmon bycatch that were occurring despite PSC limits that triggered closure of the Chinook and Chum Salmon Savings Areas. Amendment 84 established in Federal regulations the salmon bycatch intercooperative agreement (ICA) which allows vessels participating in the BS pollock fishery to use their internal cooperative structure to reduce Chinook and non-Chinook salmon bycatch using a method called the voluntary rolling hotspot system (VRHS). Through the VRHS, industry members provide each other real-time salmon bycatch information so that they can avoid areas of high Chinook or non-Chinook salmon bycatch rates. The VRHS was implemented voluntarily by the fleet in 2002. Amendment 84 exempts vessels participating in the salmon bycatch reduction ICA from salmon savings area closures and revised the Chum Salmon Savings Area closure to only apply to vessels directed fishing for pollock, rather than to all vessels using trawl gear. The exemptions to savings area closures for participants in the VRHS ICA were implemented by NMFS in 2006 and 2007 through an exempted fishing permit. Regulations implementing Amendment 84 were approved in 2007 (72 FR 61070; October 29, 2007), and a salmon bycatch reduction ICA using the VRHS was approved by NMFS in January 2008. Amendment 84 requires that parties to

the ICA be the AFA cooperatives or the CDQ groups. All AFA cooperatives and CDQ groups participate in the VRHS ICA.

Using a system specified in regulations, the VRHS ICA assigns vessels in a cooperative to certain tiers, based on bycatch rates of vessels in that cooperative relative to a base rate, and implements large area closures for vessels in tiers associated with higher bycatch rates. The VRHS ICA managers monitor salmon bycatch in the pollock fisheries and announce area closures for areas with relatively high salmon bycatch rates. Monitoring and enforcement are accomplished through private contractual arrangements. The efficacy of voluntary closures and bycatch reduction measures must be reported to the Council annually.

#### **Objectives of and Rationale for Amendment 91 and this Proposed Rule**

While the annual reports suggest that the VRHS ICA has reduced Chinook salmon bycatch rates compared to what they would have been without the ICA, the highest historical Chinook salmon bycatch occurred in 2007 when the ICA was in effect under an exempted fishing permit. This high level of bycatch illustrated that, while the management measures implemented under Amendment 84 provided the pollock fleet with tools to reduce salmon bycatch, these measures contain no effective upper limit on the amount of salmon bycatch that could occur in the BS pollock fishery.

The principal objective of Chinook salmon bycatch management in the BS pollock fishery is to minimize Chinook salmon bycatch to the extent practicable, while achieving optimum yield. Minimizing Chinook salmon bycatch while achieving optimum yield is necessary to maintain a healthy marine ecosystem, ensure long-term conservation and abundance of Chinook salmon, provide maximum benefit to fishermen and communities that depend on Chinook salmon and pollock resources, and comply with the Magnuson-Stevens Act and other applicable federal law.

In April 2009, the Council adopted Amendment 91 and recommended that NMFS develop regulations to implement that action. In developing Amendment 91, the Council considered consistency with the Magnuson-Stevens Act's 10 National Standards. The Council designed its recommended alternative to balance the competing demands of the National Standards. Specifically, the Council recognized the need to balance and be consistent with both National Standard 9 and National

Standard 1. National Standard 9 requires that conservation and management measures shall, to the extent practicable, minimize bycatch. National Standard 1 requires that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry. The ability to harvest the entire pollock TAC in any given year is not determinative of whether the BSAI groundfish fishery achieves optimum yield. Providing the opportunity for the fleet to harvest its TAC is one aspect of achieving optimum yield in the long term.

Amendment 91 combines a limit on the amount of Chinook salmon that may be caught incidentally with a novel approach designed to minimize bycatch to the extent practicable in all years and prevent bycatch from reaching the limit in most years. In developing this program, the Council recognized that the number of Chinook salmon caught as bycatch in the BS pollock fishery is highly variable from year to year, from sector to sector, and even from vessel to vessel. Current information about Chinook salmon is insufficient to determine the reasons for high or low encounters of Chinook salmon in the pollock fishery or the degree to which encounter rates are related to Chinook salmon abundance or other conditions. The uncertainty and variability in Chinook salmon bycatch led the Council to create a program with a combination of management measures that together achieve its objective to minimize bycatch to the extent practicable in all years while providing the fleet the flexibility to harvest the pollock TAC.

Under Amendment 91, the PSC limit would be 60,000 Chinook salmon if some or all of the pollock industry participates in an industry-developed contractual arrangement, called an incentive plan agreement (IPA), that establishes an incentive program to minimize bycatch at all levels of Chinook salmon abundance. Participation in an IPA would be voluntary; however, any vessel or CDQ group that chooses not to participate in an IPA would be subject to a restrictive opt-out allocation (also called a backstop cap).

To ensure participants develop effective IPAs, participants would demonstrate to the Council through performance and annual reports that the IPA is accomplishing the Council's intent that each vessel does its best to avoid Chinook salmon at all times while fishing for pollock and, that collectively, bycatch is minimized in each year. The Council believed that the addition of an

IPA that could impose rewards for avoiding Chinook salmon bycatch, penalties for failure to avoid Chinook salmon bycatch at the vessel level, or both, would warrant setting the PSC limit at 60,000 Chinook salmon. The Council recognized that while the IPA should minimize bycatch in all years to a level below the limit, a limit of 60,000 Chinook salmon would provide the industry the flexibility to harvest the pollock TAC in high-encounter years when bycatch was extremely difficult to avoid.

A 47,591 Chinook salmon PSC limit would apply fleet-wide if industry does not form any IPAs. This PSC limit of 47,591 Chinook salmon is the approximate 10-year average of Chinook salmon bycatch from 1997 to 2006. The Council determined that the 47,591 PSC limit was an appropriate limit on Chinook salmon bycatch in the BS pollock fishery if no other incentives were operating to minimize bycatch below this level.

Both PSC limits would be divided between the A and B seasons and allocated to AFA sectors, cooperatives, and CDQ groups as transferable PSC allocations. Transferability is expected to mitigate the variation in the encounter rates of salmon bycatch among sectors, CDQ groups, and cooperatives in a given season by allowing eligible participants to obtain a larger portion of the PSC allocation in order to harvest their pollock allocation or to transfer surplus allocation to other entities. When a transferable PSC allocation is reached, the affected sector, inshore cooperative, or CDQ group would have to stop fishing for pollock for the remainder of the season even if its pollock allocation had not been fully harvested.

The Council also recommended a sector-level performance standard as an additional tool to ensure that the IPA is effective and that sectors do not fully harvest the Chinook salmon PSC allocations under the 60,000 Chinook salmon PSC limit in most years. For a sector to continue to receive Chinook salmon PSC allocations under the 60,000 Chinook salmon PSC limit, that sector may not exceed its annual threshold amount in any three years within seven consecutive years. If a sector fails this performance standard, it will permanently be allocated a portion of the 47,591 Chinook salmon PSC limit. The Council believed that the risk of bearing the potential economic impacts of a reduction from the 60,000 PSC limit to the 47,591 PSC limit would create incentives for fishery participants to cooperate in an effective IPA.

In selecting the appropriate Chinook salmon bycatch management program, the Council considered a wide range of alternatives to assess the impacts of minimizing Chinook salmon bycatch to the extent practicable while maximizing the potential for the full harvest of the pollock TAC. The Council considered the trade-offs between the potential Chinook salmon saved and the forgone pollock catch. The EIS and RIR contain a complete description of the alternatives and a comparative analysis of the potential impacts of the alternatives (*see ADDRESSES*).

The Council considered an alternative that would implement a single PSC limit, with no additional measures. However, the Council determined that a single PSC limit alone is not the optimum mechanism to minimize Chinook salmon bycatch at all levels of Chinook salmon abundance and at all rates of Chinook salmon encounters in the pollock fishery.

A relatively high PSC limit alone would not constrain the pollock fishery in most years, so it would not achieve the Council's goal of minimizing Chinook salmon bycatch to the extent practicable. A high PSC limit in years of low Chinook salmon encounters would not provide incentives for the pollock fleet to reduce bycatch at all, even if lower bycatch could have been achieved at minimal expense. If low encounters are due to low Chinook salmon abundance in one or more stocks, a high PSC limit alone would not address biological concerns about the potential impact of bycatch on Chinook salmon stocks.

A low PSC limit would reduce Chinook salmon bycatch below historic high levels. However, it could limit the pollock fishery harvests below the pollock TAC in many years because a low PSC limit would not accommodate the high variability in Chinook salmon encounter rates experienced in the BS pollock fishery, or the unpredictability of these rates. While a low PSC limit alone would ensure bycatch does not exceed that level, it would not provide any incentives or mechanism to further reduce bycatch below that limit. As a result, if low encounters are due to low Chinook salmon abundance in one or more stocks, even a low PSC limit alone would not address biological concerns about the potential impact of bycatch on Chinook salmon stocks. Additionally, if the low PSC limit were allocated to sectors, cooperatives, and CDQ groups, it could result in allocations so small that it could effectively preclude pollock fishing by a vessel or group of vessels. On the other hand, not allocating the PSC limit could result in

a race to fish, which would undermine the rationalized management of the AFA and the current pollock fishery management.

### **Proposed Bering Sea Chinook Salmon Bycatch Management Measures**

This proposed rule to implement the provisions of Amendment 91, as recommended by the Council, includes two Chinook salmon PSC limits (60,000 Chinook salmon and 47,591 Chinook salmon). For each PSC limit, NMFS would issue Chinook salmon PSC allocations to the catcher/processor sector, the mothership sector, the inshore cooperatives, and the CDQ groups. Separate allocations would be issued for the A season and the B season. Chinook salmon remaining from the A season could be used in the B season ("rollover"). Entities could transfer PSC allocations within a season and could also receive transfers of Chinook salmon bycatch to cover overages ("post-delivery transfers").

If NMFS approves an IPA, NMFS would issue transferable allocations of the 60,000 Chinook salmon PSC limit to those sectors that remain in compliance with the performance standard. The performance standard requires each sector to maintain its Chinook salmon bycatch within its portion of 47,591 Chinook salmon in at least five out of every seven consecutive years. Sector and cooperative allocations would be reduced if members of the sector decided not to participate in an IPA. Vessels and CDQ groups that do not participate in an IPA would fish under a restricted opt-out allocation. If a whole sector does not participate in an IPA, all members of that sector would fish under the opt-out allocation.

NMFS would issue transferable allocations of the 47,591 Chinook salmon PSC limit to all sectors, cooperatives, and CDQ groups if no IPA is approved or to the sectors that exceed the performance standard.

Under Amendment 91, NMFS would remove from existing regulations the 29,000 Chinook salmon PSC limit in the BS, the Chinook Salmon Savings Areas in the BS, exemption from Chinook Salmon Savings Area closures for participants in the VRHS ICA, and Chinook salmon as a component of the VRHS ICA. This proposed action would not change any regulations affecting the management of Chinook salmon in the AI or non-Chinook salmon in the BSAI. The Council is currently considering a separate action to modify the non-Chinook salmon management measures to minimize non-Chinook salmon bycatch.

*Allocations of the 60,000 or the 47,591 Chinook Salmon Prohibited Species Catch Limits*

Both the 60,000 and the 47,591 Chinook salmon PSC limits would be allocated among the catcher/processor sector, the mothership sector, inshore

sector, and CDQ Program using a method that recognizes that sectors have different fishing patterns and needs for salmon bycatch in order to harvest their AFA pollock allocation (Table 1). The percentage allocations recommended by the Council are based on an adjusted

five-year (2002 to 2006) historical average proportion of the Chinook salmon bycatch by sector and season, and are shown in Table 1. The basis for these percentage allocations is explained in more detail in section 2.5.2 of the EIS (*see ADDRESSES*).

TABLE 1—PERCENTAGE ALLOCATIONS AND AMOUNTS OF THE CHINOOK SALMON PROHIBITED SPECIES CATCH LIMIT

Percentage allocations to each sector	PSC Limit (#s of Chinook salmon)	
	60,000	47,591
A season allocation: 70.0 .....	42,000	33,314
CDQ Program—9.3 .....	3,906	3,098
Inshore Sector—49.8 .....	20,916	16,591
Mothership Sector—8.0 .....	3,360	2,665
Catcher/Processor Sector—32.9 .....	13,818	10,960
B season allocation: 30.0 .....	18,000	14,277
CDQ Program—5.5 .....	990	785
Inshore Sector—69.3 .....	12,474	9,894
Mothership Sector—7.3 .....	1,314	1,042
Catcher/Processor Sector—17.9 .....	3,222	2,556

Allocations of Chinook salmon PSC to the inshore sector would be further allocated among the inshore cooperatives based on the proportion of the inshore pollock allocation made to each inshore cooperative under § 679.62(a)(1). Pollock allocations to the inshore cooperatives can change from year to year if membership in the cooperatives changes because the cooperative's pollock allocation is determined by the percentage of pollock assigned to each vessel in the sector. Column D of proposed Table 47c to part 679 shows the percentage of the inshore sector's pollock allocation assigned to each catcher vessel. The amount of Chinook salmon PSC that would be allocated to each inshore cooperative would be determined each year after the inshore cooperative permit applications are received on December 1. If the owner of an AFA catcher vessel eligible to deliver pollock to an inshore processor does not join an inshore cooperative in a particular year and fishes in the inshore open access fishery, the portion of Chinook salmon associated with that vessel also would be allocated to the inshore open access fishery.

The CDQ groups would continue to be allocated the same proportion of the CDQ Program allocation of Chinook salmon bycatch that each group has

been allocated since 2005 (71 FR 51804; August 31, 2006). These percentage allocations are described in more detail in the "Classification" section of this preamble and would be published in proposed Table 47d to part 679.

*Transferable and Non-transferable Allocations.* Each year, NMFS would send a letter to each entity receiving a transferable Chinook salmon PSC allocation, notifying them of the amount of the allocation and identifying the vessels fishing under that allocation. Each entity that receives a transferable allocation would be prohibited from exceeding their allocation. Each entity would be required to manage its pollock fishing so that neither its pollock allocation nor its transferable Chinook salmon PSC allocation is exceeded. The Council intended that both the A season allocation and the annual allocation would not be exceeded. Therefore, the A season and B season allocations would be managed separately. Overages for the A season would be evaluated at the end of the A season and overages for the B season would be evaluated the end of the year. NMFS would not close directed fishing for pollock by the sectors, inshore cooperatives, or CDQ groups receiving transferable Chinook salmon PSC allocations when those allocations are reached. Rather, penalties could be assessed against the

entity for an overage of its Chinook salmon PSC allocation.

If members of the catcher/processor or mothership sectors are unable to form their respective sector-level entities to receive transferable Chinook salmon PSC allocations, then these sectors would fish under a non-transferable sector allocation. If some inshore catcher vessels did not join an inshore cooperative, then they would fish under a non-transferable Chinook salmon PSC allocation assigned to the inshore open-access fishery. Similarly, if some vessels or CDQ groups did not participate in an IPA, then they would fish under the non-transferable opt-out allocation. NMFS would manage each non-transferable allocation with a directed fishery closure to prevent the non-transferable allocation being exceeded. The directed fishery closure would apply to all vessels fishing under that non-transferable allocation.

Separate allocations would be made for the A season and the B season for a total of up to 30 transferable PSC allocation accounts (see Table 2). NMFS could establish up to eight non-transferable PSC allocation accounts annually for the inshore open access fishery, the opt-out fishery, and for the mothership sector and catcher/processor sector.

TABLE 2—POTENTIAL NUMBER OF TRANSFERABLE CHINOOK SALMON PSC ALLOCATIONS

Entities that could receive transferable allocations					
	Catcher/processor sector	Mothership sector	Inshore co-ops	CDQ	Total transferable
A Season .....	1	1	7	6	15
B Season .....	1	1	7	6	15
Annual total .....	2	2	14	12	30

*Entities Eligible To Receive Transferable Chinook Salmon Prohibited Species Catch Allocations.* NMFS would issue transferable allocations to eligible entities representing the catcher/processor sector, mothership sector, inshore cooperatives, and CDQ groups. Each entity receiving a transferable allocation of Chinook salmon PSC must identify a “representative” and an “agent for service of process”. The representative would represent all members of the entity with NMFS and would be authorized to transfer all or a portion of the entity’s Chinook salmon PSC allocation to another entity or to receive a transfer from another entity. The agent for service of process is the person authorized and responsible to receive notices or other documents on behalf of all members of the entity. The representative and the agent for service of process could be the same person.

All members of an entity that receives transferable Chinook salmon PSC allocations would be jointly and severally liable for any violation of applicable regulations and for any penalties assessed against that entity for any regulatory violation, including if the Chinook salmon bycatch by the vessels fishing on behalf of that entity exceeded the amount of Chinook salmon allocated to the entity.

NMFS would issue transferable Chinook salmon PSC allocations to the catcher/processor sector or the mothership sector if they form a “sector-level entity” that is authorized by NMFS to receive transferable Chinook salmon PSC allocations. The sector-level entity would be responsible for ensuring that the collective Chinook salmon bycatch by its members does not exceed those allocations. The entity representing the catcher/processor sector and the entity representing the mothership sector would be required to identify their representative and agent for service or process on their application to NMFS to receive transferable Chinook salmon PSC allocations.

The catcher/processor sector and the mothership sector currently are not required to register as entities with

NMFS to receive allocations of BS pollock. Non-transferable allocations of pollock are made to each of these two sectors by NMFS through the annual groundfish harvest specifications process. NMFS issues permits to individual AFA eligible vessels to harvest pollock under these sector allocations, but the catcher/processor sector and mothership sector as a whole do not need to be permitted by NMFS to receive such allocations. No more than one entity may be authorized by NMFS to represent the catcher/processor sector, and no more than one entity may be authorized to represent the mothership sector. Existing contracts forming the PCC, the HSCC, and the MFC could be modified to create the sector-level entities required to receive transferable Chinook salmon PSC allocations, or new entities could be formed by the owners of these same vessels to address only NMFS’s requirements related to Chinook salmon PSC allocations.

The inshore cooperatives and the CDQ groups already are recognized by NMFS as entities eligible to receive allocations on behalf of others. The inshore cooperatives are permitted annually by NMFS under § 679.4(l)(6) and must submit copies of their cooperative contracts to NMFS to be issued a permit. The representative and agent for service of process for the inshore cooperatives would be the same person as named on the cooperative’s annual application for pollock allocations. The CDQ groups are authorized under section 305(i)(1) of the Magnuson-Stevens Act to receive fishery allocations from NMFS. No additional authorizations are needed for the inshore cooperatives or CDQ groups to be eligible to receive transferable allocations of Chinook salmon PSC. The representative and agent for service of process for a CDQ group would be its chief executive officer. In either case, an inshore cooperative or a CDQ group could notify NMFS in writing if its representative or agent for service of process for purposes of Chinook salmon PSC allocations is a different person.

*Assigning Portions of the Chinook Salmon PSC Limit*

The proposed rule includes a series of tables, proposed Tables 47a through 47d to part 679, that show the percent of the pollock allocation, the corresponding amounts of Chinook salmon PSC, and the percent used to calculate the IPA minimum participation, that NMFS has assigned to each vessel in each sector and to each CDQ group. See Table 3, below, for an outline of proposed Tables 47a through 47d to part 679. NMFS would use the numbers in these tables to (1) Calculate adjustments to allocations of the 60,000 PSC limit for any vessels not participating in an IPA, (2) establish the amount of the opt-out allocation, (3) establish the annual threshold amount for the performance standard, and (4) determine if minimum participation requirements have been met for a proposed IPA. The methods NMFS would use to assign a percent of each sector’s pollock allocation to each vessel or CDQ group are described below.

TABLE 3—LOCATION IN THE PROPOSED RULE OF THE TABLES THAT SHOW THE PERCENT OF THE POLLOCK ALLOCATION, THE CORRESPONDING AMOUNTS OF THE CHINOOK SALMON, AND PERCENT USED TO CALCULATE THE IPA MINIMUM PARTICIPATION ASSIGNED TO EACH VESSEL IN EACH SECTOR AND TO EACH CDQ GROUP

Sector	Location in proposed rule
Catcher/processor sector .....	Table 47a to part 679.
Percent of pollock allocation	Column D.
Opt-out allocation .....	Column E and F.
Annual threshold amount .....	Column G.
IPA minimum participation ...	Column H.
Mothership sector ....	Table 47b to part 679.
Percent of pollock allocation	Column D.
Opt-out allocation .....	Column E and F.



TABLE 3—LOCATION IN THE PROPOSED RULE OF THE TABLES THAT SHOW THE PERCENT OF THE POLLOCK ALLOCATION, THE CORRESPONDING AMOUNTS OF THE CHINOOK SALMON, AND PERCENT USED TO CALCULATE THE IPA MINIMUM PARTICIPATION ASSIGNED TO EACH VESSEL IN EACH SECTOR AND TO EACH CDQ GROUP—Continued

Sector	Location in proposed rule
Annual threshold amount .....	Column G.
IPA minimum participation ...	Column H.
Inshore sector .....	Table 47c to part 679.
Percent of pollock allocation	Column D.
Opt-out allocation .....	Column E and F.
Annual threshold amount .....	Column G.
IPA minimum participation ...	Column H.
CDQ Program .....	Table 47d to part 679.
Percent of pollock allocation	Column B.
Opt-out allocation .....	Column C and D.
Annual threshold amount .....	Column E.
IPA minimum participation ...	Column F.

*Catcher/processor sector.* To implement Amendment 91, proportions of the catcher/processor sector's allocations of Chinook salmon must be developed for each AFA eligible catcher/processor and each of the catcher vessels eligible to deliver pollock to these catcher/processors. All but one of the AFA catcher/processors are represented by the PCC, and all catcher vessels are represented by the HSCC. The PCC assigns each vessel a percent of the catcher/processor sector's allocation of pollock. The Council recommended using each vessel's percent of the catcher/processor sector's allocation of pollock as a basis for assigning each vessel a percent of the sector's Chinook salmon PSC allocation. This approach is reasonable because it relies on already agreed upon proportions, so it eliminates the need for the Council or NMFS to develop a different set of proportions that may have unintended impacts on the sector members. In addition, the proportion assigned to each vessel in a sector does not affect the incentives or operation of the elements of Amendment 91 (the PSC limit, the IPA, and the performance standard) that are important to achieve the Council's overall objectives for Chinook salmon bycatch management.

The pollock allocated to the catcher/processor sector is further allocated as follows: 0.5 percent to the F/V Ocean Peace under section 208(e)(21) of the AFA, 8.5 percent to catcher vessels eligible to deliver pollock to AFA catcher/processors, and 91 percent to the catcher/processors listed in section 208(e)(1) through (20) and permitted under § 679.4(l)(2)(i).

The seven catcher vessels that are members of the HSCC are allocated 8.5 percent of the pollock allocated to the AFA catcher/processor sector. Members of the HSCC further allocate this pollock among the seven member vessels based on percentage allocations agreed upon in their HSCC contract. These percentage allocations are used to apportion the Chinook salmon bycatch associated with each of the seven catcher vessels listed at the bottom of proposed Table 47a to part 679. These proportions add up to 8.5 percent.

The 91 percent of the allocation of pollock to the catcher/processor sector is further allocated among the companies owning the AFA eligible catcher/processors that are members of the PCC. These allocations are negotiated among the PCC members and do not stem from any requirement of the AFA or NMFS regulation. The percentage allocations to each company are listed in the annual cooperative report submitted by PCC to the Council under requirements at § 679.61(f). The PCC recommended a method of apportioning Chinook salmon among the catcher/processors based on the catch of pollock by each of these vessels in 2006. This year was chosen as the basis for these proportions because it was the last year that the F/V American Dynasty fished in both the A and B seasons and, therefore, is the year that best represents the relative catching capacity of vessels that are currently members of the AFA catcher/processor sector.

AFA eligible catcher/processors that do not currently participate in the BS pollock fishery are not likely to return to the fishery. Therefore, the PCC board recommended that these vessels receive a proportion of zero for purposes of Amendment 91. Although unlikely, three of the four inactive vessels (F/V Katie Ann, F/V U.S. Enterprise, and F/V American Enterprise) could return to fish for pollock in the BS in the future. However, the owners of these vessels are members of the PCC so its recommendation for a proportion of zero for these three vessels is made at the recommendation and concurrence of the vessel owners. The fourth vessel, F/V Endurance, is listed as eligible in the AFA, but is permanently precluded

from participation in the fishery because it is now a foreign flagged vessel, and, therefore, cannot receive endorsements to fish in the U.S. EEZ. In the unlikely event that a vessel currently assigned a zero proportion would return to the fishery and choose not to participate in an IPA, the portion and number of Chinook salmon associated with that vessel would be assigned within the sector based on revisions to the PCC contract that are made at the time a vessel returns to active fishing, until proposed Table 47a to part 679 could be revised to reflect the new proportions assigned to each vessel.

*Mothership sector.* The proportion associated with each catcher vessel in the mothership sector in proposed Table 47b to part 679 is based on the allocations of pollock made under the MFC contract. The proportions are published annually in the MFC's annual report to the Council, which is available on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov/sustainablefisheries/afa/>). NMFS did not adjust any of these proportions and has published them as agreed upon by the members of the cooperative.

*Inshore sector.* NMFS calculated the proportions associated with each catcher vessel in the inshore sector based on ADF&G fish tickets submitted by the inshore processors for each delivery of pollock by a catcher vessel from 1995 through 1997, adjusted by the procedures described in § 679.62(a). These proportions have been used since 2000 to determine the amount of pollock allocated to the inshore cooperatives based on the catch history of the catcher vessels that are members of each cooperative. NMFS is proposing to publish these proportions in Table 47c to part 679 because they are needed for a number of important calculations under this proposed rule. These calculations must be made in a short period of time at the end of each year, prior to the start of the next year's fishery. Having these proportions available to the public as part of the regulations provides an early opportunity for public comment on these proportions and improves the transparency of how important annual calculations related to the Chinook salmon PSC allocations would be made. Although these proportions were based on ADF&G fish tickets and the information on the fish tickets is confidential, the proportions of the total pollock catch over this three-year period is not confidential because no confidential information from the fish tickets about the amount, location, or value of pollock catch for a specific

vessel can be determined from these proportions.

*Community Development Quota Program.* The proportion of Chinook salmon associated with each CDQ group in Table 47d to part 679 of this proposed rule are the percentage allocations of pollock and Chinook salmon PSC that have been made to each group since 2005 (71 FR 51804; August 31, 2006). These percentage allocations are described in more detail in the Classification section of this proposed rule.

*Replacement vessels.* If an AFA permitted vessel listed in proposed Tables 47a through 47c is no longer eligible to participate in the BS pollock fishery or if a vessel replaces a currently eligible vessel, the portion and number of Chinook salmon associated with that vessel in Tables 47a through 47c would be assigned to the replacement vessel or distributed among other eligible vessels in the sector based on the procedures in the law, regulation, or private contract that accomplishes the vessel removal or replacement action until, Tables 47a through 47c to this part can be revised through subsequent proposed and final rulemaking.

#### *Opt-Out Allocation*

If at least some members of a given sector are participating in an approved IPA, and the sector has not exceeded its performance standard, then the vessels in that sector whose owners do not participate in an IPA, or vessels fishing on behalf of a CDQ group that does not participate in an IPA, would fish for BS pollock under a seasonal opt-out allocation. Vessel owners, inshore cooperatives, or CDQ groups not participating in an IPA do not have to notify NMFS that they are not participating in an IPA because NMFS would know the list of vessels and CDQ groups participating in each approved IPA. NMFS would post on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov>) whether each AFA-permitted vessel is participating or not participating in an IPA and the Chinook salmon PSC allocation under which each vessel would be managed. Vessel owners would be expected to notify NMFS if a vessel they own is incorrectly listed as fishing under the opt-out allocation.

The purpose of the opt-out allocation is to require those not participating in an IPA to fish under a separate allocation that is considerably more restrictive than the transferable Chinook salmon PSC allocations issued to entities representing those who do participate in an IPA. The Council intends the opt-out allocation to be low

enough to provide an incentive to participate in an IPA. The concept of the opt-out allocation was originally developed as a component of the Council's preliminary preferred alternative under which the higher PSC limit was 68,392 Chinook salmon and the maximum amount of the "backstop cap" was 32,482 Chinook salmon. The amount of the backstop cap under the preliminary preferred alternative represented the 1992 through 2001 10-year average Chinook salmon bycatch and is one of the lower and most restrictive of the PSC limits considered by the Council (Alternative 2, Sub-option vii in the EIS (*see ADDRESSES*)). For Amendment 91, the Council reduced the maximum amount of the backstop cap (or opt-out allocation) to 28,496, which is 47.5 percent of 60,000 Chinook salmon, the same percentage that the 32,482 backstop cap is of the 68,392 PSC limit under the Council's preliminary preferred alternative.

The annual opt-out allocation would be some number less than 28,496 Chinook salmon. Before each fishing year, NMFS would calculate the amount of the opt-out allocation for each season based on the number of vessels or CDQ groups that chose not to participate in an approved IPA. NMFS would also reduce the allocation of the 60,000 Chinook salmon PSC limit for sectors or cooperatives with members that participate in the opt-out fishery. To calculate the opt-out allocation for each season, NMFS would take the sum of the number of Chinook salmon associated with each vessel or CDQ group that opted out of an IPA, as shown in Columns E and F in proposed Tables 47a through 47c to part 679, and Column C and D in proposed Table 47d to part 679. NMFS would then subtract this opt-out amount from the seasonal allocation of Chinook salmon PSC to the sector or cooperative in which that vessel is a member or, for a CDQ group, to the CDQ Program. This reduction in the allocations of the 60,000 Chinook salmon PSC limit for vessels and CDQ groups that fish under the opt-out allocation is necessary to ensure that total bycatch does not exceed the 60,000 Chinook salmon PSC limit.

For example, if all vessels in an inshore cooperative (called cooperative A in this example) that collectively represents 31.145 percent of the inshore sector's allocation of pollock do not participate in an IPA and if all of the other inshore cooperatives do participate in an approved IPA, the adjustments that would be made to the number of Chinook salmon allocated to the inshore cooperatives participating in an IPA and the amount of Chinook

salmon that would be allocated to the opt-out allocation are explained below:

(1) The inshore sector's allocation of the 60,000 Chinook salmon PSC limit is 20,916 in the A season and 12,474 in the B season.

(2) If cooperative A would have participated in an IPA, it would have been allocated its portion of the inshore sector's allocation as a transferable Chinook salmon allocation. This allocation would be 31.145 percent of the inshore sector's allocation; 6,514 Chinook salmon in the A season (20,916 \* .31145) and 3,885 Chinook salmon in the B season (12,474 \* .31145).

(3) The inshore sector's proportion of 28,496 Chinook salmon is 9,933 in the A season and 5,925 in the B season.

(4) The portion of 28,496 that is represented by cooperative A is 3,094 Chinook salmon in the A season (9,933 \* .31145) and 1,845 Chinook salmon in the B season (5,925 \* .31145).

(5) This amount of Chinook salmon (3,094 in the A season and 1,845 in the B season) would be added to the opt-out allocation. All of the vessels in cooperative A would fish as a group under this opt-out allocation, along with any other vessels or CDQ groups not participating in an IPA and the additional Chinook salmon allocated to the opt-out allocation associated with those other vessels or CDQ groups.

(6) Chinook salmon allocated to the opt-out allocation would not be available to the remaining inshore cooperatives that are participating in an approved IPA and fishing under their transferable allocations of the inshore sector allocation.

(7) The difference between the amount of Chinook salmon that would have been allocated to the inshore sector for cooperative A and the amount allocated to the opt-out allocation is 3,420 in the A season (6,514 – 3,094) and 2,040 in the B season (3,885 – 1,845). This amount of Chinook salmon is forfeit by cooperative A.

(8) The amount of Chinook salmon forfeit by cooperative A would be redistributed among the inshore cooperatives participating in an IPA in proportion to each cooperative's annual pollock allocation. NMFS would issue each inshore cooperative participating in an IPA a transferable PSC allocation equal to its portion of the inshore sector Chinook salmon PSC allocation plus its portion of Chinook salmon forfeit by the inshore cooperative opting out of an IPA.

Additional examples of calculations of the reductions of sector allocations and the amount added to the opt-out allocation for each AFA sector are

provided in section 2.5.6 of the EIS (*see ADDRESSES*).

If some members of the catcher/processor sector or the mothership sector opt out of an IPA, the proportion of 28,496 Chinook salmon associated with these vessels would be subtracted from the amount of Chinook salmon allocated to the sector under the 60,000 PSC limit and this same amount would be added to the opt-out allocation. The remaining Chinook salmon PSC allocated to the sector would be available to all members of the sector participating in an IPA. Because the catcher/processor and mothership sector receive a single allocation of Chinook salmon, no redistribution by NMFS of the amount of Chinook salmon "forfeit" by the members of these sectors opting out of an IPA would be necessary. This redistribution would be done by private contractual arrangement with the remaining members of the sector that are participating in an IPA.

If an IPA is approved, but all members of a particular sector do not participate in an IPA, then the difference between their sector allocation of the 60,000 PSC limit and the amount of Chinook salmon allocated to the opt-out allocation (their portion of 28,496) is not redistributed among members of the other sectors. NMFS would redistribute the "forfeit" Chinook salmon within the inshore and CDQ sectors so that the process for allocating Chinook salmon PSC between the sectors and the opt-out allocation is consistent among all sectors. However, when an entire sector does not participate in an IPA, all members have chosen to forfeit Chinook salmon and fish under the opt-out allocation. This forfeited Chinook salmon would not be allocated and would be a net savings of Chinook salmon bycatch under the 60,000 Chinook salmon PSC limit.

Each vessel fishing under the opt-out allocation would continue to fish for pollock under the allocation of BS pollock that applies to the vessel under current regulations. An inshore catcher vessel that is a member of an inshore cooperative would fish under the inshore cooperative's allocation of pollock. An inshore catcher vessel that is not a member of an inshore cooperative would fish under the inshore open-access fishery's pollock allocation. The catcher/processor sector, the mothership sector, and the CDQ groups would continue to fish under their seasonal allocations of pollock. Although unlikely, it is possible that some vessels in the catcher/processor sector or mothership sector, or some vessels in an inshore cooperative, would participate in an IPA and other members of the sector or inshore cooperative

would not participate in an IPA. In this case, a group of vessels would be fishing together under the same allocation of pollock, but would be fishing under separate allocations of the Chinook salmon PSC limit. Those participating in an IPA would be fishing under transferable allocations of Chinook salmon PSC issued to the entity that represents them and those not participating in an IPA would be fishing under the opt-out allocation.

All vessels fishing under the opt-out allocation would be managed by NMFS as a group for purposes of Chinook salmon PSC limits, regardless of the sector, inshore cooperative, or CDQ group on whose behalf they were fishing for purposes of their pollock allocations. All Chinook salmon bycatch by these vessels fishing under the opt-out allocation would accrue against the opt-out allocation. Chinook salmon bycatch in the opt-out allocation would be non-transferable, because the salmon are not being allocated to an entity. There would be no rollover of unused Chinook salmon in the A season opt-out allocation to the B season opt-out allocation because, under the 60,000 PSC limit, this flexibility is offered only to those participating in an IPA. The Council specifically intended that more restrictive management measures would apply to the opt-out allocation to increase the incentive to participate in an IPA.

NMFS would close directed fishing for pollock by all vessels fishing under the opt-out allocation when NMFS determines that the seasonal opt-out allocation will be reached. If some vessels in a sector or inshore cooperative were fishing under the opt-out allocation and others were fishing under transferable Chinook salmon PSC allocations, and if the sector or inshore cooperative had not yet reached its seasonal pollock allocation, those vessels fishing under the transferable Chinook salmon PSC allocations could continue to fish for pollock while the vessels fishing under the opt-out allocation would be required to stop fishing for pollock because the opt-out allocation had been reached.

One of the more complicated scenarios that could occur under Amendment 91 would be if a number of inshore catcher vessels did not join an inshore cooperative, and some participated in an IPA but others did not. If an inshore catcher vessel does not join a cooperative, it fishes under an allocation of pollock to the inshore open-access fishery. That pollock allocation is based on the pollock catch history associated with each vessel not joining a cooperative. For this example,

assume that two inshore catcher vessels did not join a cooperative and were fishing under seasonal allocations of pollock to the inshore open access fishery. Regardless of which Chinook salmon PSC allocation they were fishing under or the status of those PSC allocations, both vessels would be required to stop fishing for pollock when their combined catch of pollock reached the amount of pollock allocated to the inshore open-access fishery. If one of these vessels participated in an IPA but the other did not, the vessel participating in an IPA would be fishing under an amount of Chinook salmon allocated to the inshore limited access fishery based on that vessel's proportion of pollock catch history shown in Column D of proposed Table 47c to part 679. Even if pollock remained available to the two vessels fishing in the inshore open-access fishery, once the allocation of Chinook salmon to the inshore open-access fishery was reached, the operator of the vessel participating in an IPA would be required to stop fishing for pollock. The other vessel that did not participate in an IPA would be fishing under the opt-out allocation. As long as Chinook salmon remained available in the opt-out allocation and pollock remained available in the inshore open-access allocation of pollock, this vessel could continue to fish for pollock.

Predicting when a salmon PSC limit will be reached by a group of vessels is difficult for NMFS under any circumstances because of the variability and unpredictability of salmon bycatch. If only a few vessels fished under the opt-out allocation, the amount of Chinook salmon PSC in the opt-out allocation could be very small and it would be difficult for NMFS to accurately project when the opt-out allocation would be reached. If the closure date selected by NMFS resulted in more Chinook salmon caught than the A season opt-out allocation, the amount over the A season allocation would be deducted by NMFS from the B season opt-out allocation. However, if the closure date selected by NMFS in the B season resulted in more Chinook salmon caught in the year than was allocated to the opt-out allocation, NMFS could not reduce the amount of Chinook salmon PSC allocated to other entities or fisheries, because these allocations would have already been made and could not be withdrawn by NMFS due to bycatch by vessels fishing under the opt-out allocation. Based on NMFS's experience with other programs that allocate transferable amounts of groundfish, halibut, crab, or prohibited species, even if one entity or fishery

exceeds its portion of an allocation, generally the overall allocation is not exceeded because other entities do not harvest their full allocations. With all of the restrictions that would be in place under the 60,000 PSC limit, particularly the performance standard, even if the opt-out allocation were exceeded or an entity receiving a transferable allocation exceeded its allocation, it is unlikely that the total amount of Chinook salmon bycatch in the BS pollock fishery will reach even the lower limit of 47,591 in a year.

#### *Chinook Salmon Bycatch Performance Standard for Sectors*

The proposed rule includes a Chinook salmon bycatch performance standard for each sector that has at least some members participating in an IPA. In addition to participation by at least some members in an IPA, for each sector to continue to receive its allocation of the 60,000 Chinook salmon PSC limit, the total annual Chinook salmon bycatch by all members of a sector participating in an IPA could not exceed the sector's "annual threshold amount" in any three years within a consecutive seven-year period. Although Chinook salmon PSC allocations would be made to the inshore cooperatives and the CDQ groups, the performance standard would apply to the sector, not to individual inshore cooperatives or CDQ groups.

Before each fishing year, NMFS would calculate each sector's annual threshold amount. If all members of a sector participate in an IPA that year, a sector's annual threshold amount would be that sector's portion of the 47,591 PSC limit, which is the annual total of the A and B season allocations for that sector under the 47,591 PSC limit shown in Table 1 of this preamble. For example, the mothership sector's annual portion of 47,591 is 3,707 Chinook salmon (2,665 A season + 1,042 B season). If all catcher vessels delivering to motherships participated in an IPA that year, the mothership sector's annual threshold amount for that year would be 3,707 Chinook salmon. If all catcher vessels in the mothership sector participated in an IPA in each of seven consecutive years, the mothership sector would maintain its allocation of 4,674 Chinook salmon PSC under the 60,000 PSC limit as long as the Chinook salmon bycatch by all vessels in the mothership sector was less than or equal to 3,707 Chinook salmon in at least five of those seven years.

If some, but not all, members of a sector participate in an IPA, NMFS would reduce that sector's annual threshold amount by an amount equal to the sum of each of the non-participating

vessel's portion of 47,591. The amount of Chinook salmon associated with each vessel in each sector is shown in Column G of proposed Tables 47a through 47c to part 679 and for each CDQ group in Column E of proposed Table 47d to part 679.

Continuing with the example of the mothership sector, and using the information from Column G of proposed Table 47b to part 679, the annual threshold amount for the mothership sector would be adjusted downward from 3,707 Chinook salmon if any catcher vessels in the sector did not participate in an IPA. For example, if all catcher vessels in the mothership sector except the F/V American Beauty participated in an IPA, the mothership sector's annual threshold amount would be 3,484 Chinook salmon. This amount is determined by subtracting 223, the number of Chinook salmon that represents the F/V American Beauty' portion of 47,591 from Column G of proposed Table 47b, from 3,707. The F/V American Beauty would be fishing under the opt-out allocation and its bycatch would not accrue against the mothership sector's annual threshold amount for that year.

At the end of each fishing year, NMFS would evaluate each sector's annual bycatch against that sector's annual threshold amount. Only the bycatch of vessels or CDQ groups participating in an IPA would accrue against a sector's annual threshold amount. If a sector's annual bycatch exceeds its annual threshold amount in any three years within seven consecutive years, NMFS would reduce that sector's Chinook salmon PSC allocation to that sector's portion of 47,591 Chinook salmon for all future years. A sector's annual threshold amount does not change when vessels from other sectors or entire sectors opt-out of an IPA or if another sector exceeds its performance standard.

If all members of a sector did not participate in an IPA, then the annual threshold amount would be zero because the full amount of the sector's portion of 47,591 would have been subtracted from the initial amount of the annual threshold amount. For example, the mothership sector's share of 47,591 is 3,707 Chinook salmon. If all catcher vessels eligible to deliver to motherships did not participate in an IPA, then the sum of the amount each vessel represented of 3,707 would be subtracted from 3,707. This would leave an annual performance threshold of zero for the mothership sector. However, only bycatch by vessels participating in an IPA accrue against the annual threshold amount, so when no members of a sector participate in an IPA, no

Chinook salmon bycatch accrues against the sector's annual threshold amount and, as long as this continues throughout the seven consecutive years, the sector would not exceed its performance standard and would continue to fish under the opt-out allocation. This outcome is consistent with the intent of the Council for the performance standard because fishing under the opt-out allocation, which is a portion of 28,496 Chinook salmon, is more restrictive than fishing under the 47,591 PSC limit.

#### *Transfers and Rollovers*

Under this proposed rule, NMFS would issue transferable Chinook salmon PSC allocations under either the 60,000 or 47,591 Chinook salmon PSC limits to eligible entities representing the catcher/processor sector, the mothership sector, inshore cooperatives, and CDQ groups. Transferable allocations would provide the pollock fleet the flexibility to maximize the harvest of pollock while maintaining Chinook salmon bycatch at or below the PSC limit. Transfers are requests to NMFS from holders of Chinook salmon PSC allocations to move a specific amount of a Chinook salmon PSC from a transferor's (sender's) account to a transferee's (receiver's) account. NMFS's approval is required for any transfer.

Eligible entities may transfer Chinook salmon PSC allocations to and from any of the other entities representing sectors, cooperatives, or CDQ groups, subject to the following restrictions: (1) Entities receiving transferable allocations under the 60,000 limit would only be allowed to transfer to and from other entities receiving transferable allocations under the 60,000 limit, (2) entities receiving transferable allocations under the 47,591 limit would only be allowed to transfer to and from other entities receiving transferable allocations under the 47,591 limit, and (3) Chinook salmon may not be transferred between seasons.

Under this proposed rule, requests for transfers may be submitted either electronically or non-electronically through a form available on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov/>). Computer programs would be designed to review the transferor's catch account during a transfer request to ensure sufficient Chinook salmon is available to transfer and, if it were, to make that transfer effective immediately.

*Post-delivery Transfers of Chinook Salmon Prohibited Species Catch Allocations.* This proposed rule contains a post-delivery transfer provision similar to the allowances

implemented under Amendment 80 to the FMP and the Central Gulf of Alaska Rockfish Program. If an entity's transferable Chinook salmon PSC allocation account balance falls below zero in a season, the entity would be provided the opportunity to receive transfers of Chinook salmon PSC to bring the entity's account balance back up to zero or above. However, once an account balance falls below zero in each season, vessels participating on behalf of the entity would be prohibited from starting a new fishing trip for the remainder of the season. This requirement would implement the Council's recommendation that "any recipient of a post-delivery transfer during a season may not fish for the remainder of that season."

A new component would be added to the definition of a fishing trip in § 679.2 to define a fishing trip for purposes of post-delivery transfers of Chinook salmon PSC allocations as "the period beginning when a vessel operator commences harvesting any pollock that will accrue against a directed fishing allowance for pollock in the BS or against a pollock CDQ allocation harvested in the BS and ending when the vessel operator offloads or transfers any processed or unprocessed pollock from that vessel." This definition and the associated prohibitions at § 679.7(d)(8)(ii)(C)(2) and § 679.7(k)(8)(iii) related to overages would allow catcher vessels fishing for an entity that had exceeded its Chinook salmon PSC allocation to continue to fish for pollock until the end of the current trip even though additional Chinook salmon caught before the end of that fishing trip would increase the amount of the entity's overage. Similarly, any catcher/processor fishing when the catcher/processor sector exceeded its seasonal Chinook salmon PSC allocation could continue to fish for pollock until pollock was next offloaded from the vessel, even if the sector's overage would continue to increase as a result of a catcher/processor completing its fishing trip.

Overages of Chinook salmon PSC would be evaluated on June 25 for the A season and on December 1 for the B season. This would provide entities 15 days after the end of the A season and 30 days after the end of the B season to obtain post-delivery transfers to reduce or eliminate any overages. NMFS proposes that 15 days after the A season is an appropriate amount of time to provide for post-delivery transfers because most A season pollock fishing is completed well before the end of the season on June 10, and NMFS needs to resolve A season account balances

relatively quickly so that any necessary adjustments can be made to the B season account balances before B season pollock fishing begins. NMFS proposes to allow 30 days after the end of the B season for post-delivery transfers because pollock fishing will cease for the remainder of the year on November 1, and NMFS does not need to make further adjustments to account balances within a specified period of time at the end of the year. If, after allowing for post-delivery transfers to cover an overage, an entity exceeded its Chinook salmon PSC allocation, the entity could be subject to an enforcement action for violating NMFS regulations.

*Rollover of A Season Chinook Salmon Prohibited Species Catch Allocations.* NMFS would add, or "rollover", any Chinook salmon PSC allocation remaining after the A season for an entity receiving a transferable allocation or for vessels fishing under non-transferable allocations, except the opt-out allocation, to the B season allocation for that entity or sector. This action would be done by NMFS automatically on June 26, after the deadline for post-delivery transfers had passed. The combination of transferable Chinook salmon PSC allocations from one entity to another entity in the A season, plus the automatic rollover of unused A season allocations effectively allows one entity to transfer Chinook salmon from its A season allocation to another entity's B season allocation, as long as the transfer was completed by June 25. This would be accomplished by one entity transferring A season Chinook salmon to another entity during the A season and that second entity not using that Chinook salmon in the A season, but allowing it to roll over to its B season allocation.

#### *Incentive Plan Agreement*

An IPA is a private contract among vessel owners or CDQ groups that establishes incentives for participants to reduce Chinook salmon bycatch. The parties to an IPA, or the people who would sign the contract, would be the owners of AFA-eligible catcher vessels, catcher/processors, or motherships, or the representatives of CDQ groups. The proposed rule would allow the representative of an AFA cooperative or a sector-level entity formed under Amendment 91 to sign an IPA on behalf of all vessel owners that are members of that inshore cooperative or sector-level entity.

If NMFS approves at least one IPA, those participating in an IPA would receive an allocation of the 60,000 Chinook salmon PSC limit. Those not participating in an IPA would be

considered to be "opting-out" of an IPA and would fish under the opt-out allocation.

*Incentive Plan Agreement Components.* The IPA concept includes (1) the NMFS approved IPA that contains the elements of the incentive program that all parties to the IPA (vessel owners, CDQ groups, or both) agree to follow and (2) the annual report to the Council about performance under the IPA in the previous year.

The deadline for an application for approval of a proposed IPA is October 1 of the year prior to the year in which the IPA is proposed to be effective. This deadline is necessary to allow enough time for NMFS to review the proposed IPA and to issue a decision on its approval or disapproval prior to the start of the next fishing year.

An IPA would be required to contain a written description of the following:

- (1) The incentive(s) that would be implemented under the IPA to ensure that the operator of each vessel governed by the IPA will avoid Chinook salmon bycatch at all times while directed fishing for pollock in the BS;
- (2) The rewards for avoiding Chinook salmon bycatch, penalties for failure to avoid Chinook salmon bycatch at the vessel level, or both;
- (3) How the incentive measures in the IPA are expected to promote reductions in a vessel's bycatch rates relative to what would have occurred in absence of the incentive program;
- (4) How the incentive measures in the IPA promote Chinook salmon bycatch savings in any condition of pollock abundance or Chinook salmon abundance in a manner that is expected to influence operational decisions by vessel operators to avoid Chinook salmon bycatch; and
- (5) How the IPA ensures that the operator of each vessel governed by the IPA will manage his or her bycatch to keep total bycatch below the performance standard for the sector in which the vessel participates.

An IPA would be required to identify the AFA vessels that are participating in the IPA. However, the IPA would not be required to list all of the vessels that a CDQ group plans to use to harvest its BS pollock allocation. A CDQ group would participate in an IPA on behalf of all vessels directed fishing for pollock for that CDQ group. If a CDQ group representative signs an IPA, all vessels directed fishing for pollock for that CDQ group would be required to participate in the IPA. Information submitted to NMFS on industry observer reports are sufficient for NMFS to identify vessels fishing for pollock CDQ on behalf of a CDQ group.

Vessel and CDQ group participation in an IPA would be voluntary. However, any vessel or CDQ group permitted to receive pollock allocations under the AFA that wants to join an IPA must be allowed to join subject to the terms that have been agreed upon by all parties to that IPA. NMFS would post a copy of any proposed IPA on its website so that the public is informed that a proposed IPA is under review by NMFS. A participant who believed that they were involuntarily excluded from the IPA could submit documentation of the violation with a challenge to NMFS's approval of the proposed IPA. NMFS would have to review this information and determine whether the assertion was valid. If it were, NMFS would disapprove the proposed IPA. Further resolution of the issue could then occur through NMFS's administrative appeal process. However, an appeal on the issue of involuntary exclusion could be difficult and time consuming to resolve, and an on-going appeal would require all participants to fish under the PSC limit that would apply if the IPA under appeal was not in effect.

Each IPA representative would be required to submit an annual report to the Council by April 1 each year after the first full year of operation of an IPA. If an IPA is approved for 2011, the Council would receive the first annual report on this IPA by April 1, 2012.

The IPA annual report would be the primary tool through which the Council would evaluate whether its goals for the IPAs are being met. The IPA annual report would be required to contain: (1) A comprehensive description of the incentive measures in effect in the previous year, (2) a description of how these incentive measures affected individual vessels, (3) an evaluation of whether incentive measures were effective in achieving salmon savings beyond levels that would have been achieved in the absence of the measures, and (4) a description of any amendments to the terms of the IPA that were approved by NMFS since the last annual report, and the reasons that the amendments to the IPA were made.

**Minimum Participation.** To be approved by NMFS, the Council recommended that an IPA must meet a minimum participation requirement of vessel owners or CDQ groups that (1) "represent not less than 9 percent of the pollock quota" and (2) be composed of at least two unaffiliated AFA companies or CDQ groups. The Council intended the minimum participation requirement for the IPA to allow members of different sectors to join together to form an IPA, but not force members of different sectors to join with other

sectors. They expressed this intent through the minimum participation requirement related to the "percent of pollock quota". This method is based on the percentage allocations of pollock associated with each sector in the AFA and not on the actual percent of the annual TAC that is allocated to each sector. Ten percent of the pollock TAC is allocated to the CDQ Program. After subtraction of the incidental catch allowance, the remaining amount of pollock (the "directed fishing allowance") is allocated among the catcher/processor, mothership, and inshore sectors.

In the proposed rule, the proportions for each sector (and for vessels in each sector) that NMFS would use to determine minimum participation are shown in Column H of proposed Table 47a to part 679 for the catcher/processor sector, proposed Table 47b to part 679 for the mothership sector, and proposed Table 47c to part 679 for the inshore sector. The 9 percent associated with the mothership sector for purposes of the minimum participation requirements under this proposed rule derives from multiplying 90 percent, which is 100 percent minus the 10 percent associated with the CDQ Program allocation, by the mothership sector's allocation of 10 percent of the pollock directed fishing allowance. Similarly, the 36 percent associated with the catcher/processor sector is 90 percent multiplied by catcher/processor sector's 40 percent allocation of the directed fishing allowance, and the 45 percent associated with the inshore sector is 90 percent multiplied by the inshore sector's 50 percent allocation of the directed fishing allowance. While these percentages do not represent either the percent of the pollock TAC or the percent of the pollock directed fishing allowance allocated to the non-CDQ sectors each year, they represent a method of expressing the percent of the "pollock quota" associated with each sector that can be used to specify minimum participation requirements for the IPA, which would not change as the incidental catch allowance changes.

If some, but not all, vessel owners in a sector participated in an IPA, then the minimum participation requirements would be evaluated based on the sum of the proportion of the amount of pollock available for directed fishing that is associated with each vessel.

**NMFS Approval of an IPA.** Approval or disapproval of an IPA by NMFS would be an administrative determination. NMFS would review a proposed IPA by comparing the actual content of a proposed IPA with the information requirements in regulations,

and would decide whether the proposed IPA provides the required information. Because the requirements for an IPA are performance based (*i.e.*, they address what an IPA should accomplish), any number of different incentive plans could meet these objectives. As long as a proposed IPA contains all of the information required in NMFS regulations and it generally describes an incentive program that is designed to accomplish the goals specified in regulation, NMFS would approve the IPA. In reviewing the proposed IPAs, NMFS would not judge the expected adequacy of the incentives described. Judgments about the efficacy or outcomes of the proposed incentive plans would be subjective and the regulations would not provide a legal basis for NMFS to disapprove a proposed IPA because NMFS does not believe that the proposed measures would succeed. Minor errors or omissions in the proposed IPA could be resolved by NMFS contacting the IPA representative, in writing, and requesting revisions to the IPA. All approved IPAs would be made available for Council and public review.

If NMFS approves an IPA, the IPA representative would be notified in writing of the approval and a copy of the IPA and the list of participants would be posted on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov/>). Once approved, an IPA would remain in effect unless it contains an expiration date, until the IPA representative notifies NMFS that the IPA is terminated, or until NMFS approves an amendment to the IPA, except that an IPA could not be terminated or expire mid-year. An existing IPA would not have to be re-submitted each year. Representatives of inshore cooperatives or the entities representing the catcher/processor or mothership sectors could sign a proposed IPA on behalf of all members of the cooperative or sector-level entity. Once party to an IPA, a vessel owner, sector-level entity, inshore cooperative, or CDQ group could not withdraw from the IPA or remove a vessel from the IPA until after the close of a fishing year.

Amendments or revisions to the terms and conditions of an IPA could be submitted to NMFS by the IPA representative at any time, except that proposed amendments to change the participants in the IPA mid-year, or to terminate or end an IPA, would not be approved. Mid-year revisions to an incentive plan are not likely because of the cost associated with getting all parties to agree to any changes and the time involved in obtaining the

signatures needed for a contract revision. However, particularly in the first few years of an IPA, the flexibility to adjust the incentive plan mid-year may be necessary, and it is preferable to allow these amendments rather than have necessary adjustments made outside of the contract where they would not be apparent to the Council, the public, or those evaluating the effectiveness of the IPAs. The proposed rule includes a requirement that any amendments to an approved IPA (and the reasons for these amendments) be described by the IPA representative in the annual report to the Council. If an amendment is submitted, NMFS would review whether the IPA, if amended, would continue to comply with all applicable requirements. The original, approved IPA would be effective until NMFS approved an amendment. If an amendment were disapproved, the existing approved IPA would remain in effect.

If NMFS determines that the regulatory requirements for the IPA were not met, it would issue an initial administrative determination (IAD) explaining the reasons that the proposed IPA did not comply with Federal regulations. Examples of reasons for disapproval are a complete lack of information that responds in any way to one or more of the IPA requirements, information that did not make sense in such an obvious way as to be clearly not responsive to the requirements, a component of an IPA that was specifically designed to exceed the performance standard, or a description of a component of the IPA that was in conflict with another regulation or law governing the BS pollock fishery.

If NMFS issued an IAD disapproving a proposed IPA, the IPA representative could either submit a revised IPA that addressed the issues identified in the IAD or file an administrative appeal. While an appeal is pending, participants in the proposed IPA may not receive transferable Chinook salmon allocations under the 60,000 PSC limit. If no other IPA were approved, all AFA participants would receive transferable allocations under the 47,591 PSC limit. If an IPA were approved for other participants in the BS pollock fishery, those participating in the IPA under appeal would fish under the opt-out allocation because, at the beginning of the fishing year, they would not be participants in an approved IPA.

Final agency action on an administrative appeal to approve a proposed IPA that occurred after January 19 of any year would be effective in the year after the administrative appeal is resolved. Once

Chinook salmon PSC allocations are issued at the beginning of the year and computer programs are established to accrue Chinook bycatch from each vessel participating in the BS pollock fishery to the appropriate Chinook salmon PSC allocation, NMFS could not reissue Chinook salmon PSC allocations or reassign vessels or CDQ groups to another allocation account.

#### **Proposed Monitoring and Enforcement Requirements**

This proposed rule would place constraints on the BS pollock fishery that currently do not exist. The only regulatory measure that currently prevents the full harvest of a pollock allocation is the end of a fishing season, and no PSC limits currently prevent pollock fishermen from full harvest of their allocations. Amendment 91 would implement Chinook salmon PSC limits that, if reached, could prevent the full harvest of a pollock allocation by a sector, inshore cooperative, or CDQ group. Each entity receiving a transferable Chinook salmon PSC allocation would be prohibited from exceeding that allocation. Once a Chinook salmon PSC allocation has been reached, the only way to prevent further overages of that allocation is for all vessels fishing on behalf of the entity with the overage to stop fishing for pollock.

The EIS explains why current methods of estimating Chinook salmon bycatch in the BS pollock fishery are not adequate to support monitoring and enforcement of the Chinook salmon PSC limits and must be improved. See sections 2.5.8 and 3.1 of the EIS (see **ADDRESSES**). The following sections describe NMFS's proposed regulatory amendments to accomplish the improvements to Chinook salmon bycatch monitoring in the BS pollock fishery necessary to support the Council's objectives under Amendment 91.

With this proposed rule, NMFS would use the same method of accounting for Chinook salmon bycatch for all AFA sectors. NMFS believes that to accurately count salmon for Chinook salmon PSC allocations, the following requirements must be implemented under this proposed rule: (1) Observer coverage for all vessels and processing plants, (2) retention requirements, (3) specific areas to store and count all salmon, (4) video monitoring on at-sea processors, and (5) electronic reporting of salmon by species by haul or delivery. Prohibitions against the discard of salmon in the BS pollock fishery would be added to prohibitions for the CDQ Program (at

§ 679.7(d)(8)(ii)(A)) and for the AFA (§ 679.7(k)(8)(i)).

#### *Catcher Vessels Delivering to Inshore Processors*

Currently, the Chinook salmon bycatch rates from observed vessels are used to estimate Chinook salmon bycatch by the unobserved vessels delivering pollock to inshore processors. This method of accounting for Chinook salmon bycatch would not be adequate for monitoring and enforcement of transferable PSC allocations under Amendment 91.

Under this proposed rule, catcher vessels delivering pollock, including pollock CDQ, to inshore processors would be required to retain all salmon of any species caught while directed fishing for pollock in the BS, and to deliver that salmon together with its pollock catch to an inshore processor with an approved catch monitoring and control plan (CMCP). Full retention of all salmon regardless of species would be required because it is difficult to differentiate Chinook salmon from other species of salmon without direct identification. NMFS proposes that identification of and counting of salmon would occur at the shoreside processing plant or on the floating processor where conditions for identification and counting of salmon can be better monitored and controlled.

In addition, catcher vessels delivering to inshore processors would be required to carry an observer at all times while directed fishing for pollock in the BS. Currently, observer coverage for these catcher vessels is based on vessel length with one observer required at all times for vessels greater than 125 feet length overall (LOA) and an observer required for 30 percent of the fishing days for vessels between 60 feet and 125 feet LOA (see § 679.50(c)(1)(v)). An observer would be required on every catcher vessel, primarily to monitor compliance with the requirement to retain all salmon to ensure that all salmon bycatch is counted at the processing plant. These duties would not require an observer with prior experience or a "level 2" endorsement as defined at § 679.50(j)(1)(v)(D).

The observer on a catcher vessel is responsible for identifying and counting salmon, and collecting scientific data or biological samples from a delivery. These duties must be completed as soon as possible after the delivery so that information about salmon bycatch from each delivery is available to NMFS, the vessel operator, and the entity responsible for the Chinook salmon bycatch by this vessel. Therefore, this proposed rule would prohibit the



operator of a catcher vessel from starting a new fishing trip for pollock in the BS until the observer assigned to their vessel had completed their duties in the processing plant. The vessel operator could obtain a different observer if he or she needed to start a new trip before the observer from the previous delivery was finished with duties associated with the previous delivery.

#### *Inshore Processors*

Under current regulations, each inshore processor that receives AFA pollock is required to develop and operate under a NMFS-approved CMCP. The procedures established under the AFA for the CMCPs were designed to monitor the weighing of pollock at the inshore processing plants. Proper weighing of large volumes of a target species such as pollock require different conditions than does the proper sorting, identification, and counting of a more infrequently occurring bycatch species such as salmon. Salmon can be difficult to see, identify, and count amid the large volume of pollock. The factory areas of processing plants are large and complex. Preventing observers from seeing salmon that enter the factory area of the processing plant would not be difficult. In addition, observers must examine each salmon to verify the species identification. Therefore, NMFS proposes that the following additions to requirements for the inshore processors are needed to ensure that observers have access to all salmon bycatch prior to the fish being conveyed into the processing area of the plant:

(1) Processors would be prohibited from allowing salmon to pass from the area where catch is sorted and into the factory area of the processing plant;

(2) The observer work station currently described in regulations at § 679.28(g) would be required to be located within the observation area identified in the CMCP;

(3) A location must be designated within the observation area for the storage of salmon; and

(4) All salmon of any species must be stored in the observation area and within view of the observer at all times during the offload.

Because these requirements would be effective for the 2011 fishing year, inshore processors would have to modify their plants to meet these requirements and have these modifications reflected in CMCPs approved by NMFS prior to January 20, 2011.

Observers would identify the species of each salmon, count each salmon, record the number of salmon by species on their data form, and transmit that

information electronically to NMFS. Data submitted by the observer would be used by NMFS to accrue Chinook salmon bycatch against an entity's allocation. The manager of the inshore processor would be provided notice by the observer when he or she will be conducting the salmon count and would be provided an opportunity to witness the count. Information from the observer's salmon count would be made available to the manager of the inshore processor for their use in submitting this information to NMFS on electronic logbooks or landings reports.

Requirements to deliver pollock to inshore processors that have approved CMCPs currently apply only to AFA catcher vessels delivering non-CDQ pollock to inshore processors. These requirements do not apply to catcher vessels directed fishing for pollock on behalf of a CDQ group. With few exceptions, pollock allocated to the CDQ Program since 1992 has been processed at sea on catcher/processors or motherships. Therefore, this requirement would not require any of the CDQ groups to stop delivering pollock CDQ to a currently-contracted processing partner. In the future, if they chose to have pollock CDQ delivered to a shoreside processing plant, the catcher vessel used to harvest the pollock CDQ would be required to comply with the retention and observer coverage requirements described above and the pollock would have to be delivered to a processor with an approved CMCP. This requirement is necessary to ensure that salmon bycatch from the pollock CDQ fisheries are properly counted and reported.

#### *Catcher/Processors and Motherships*

Current methods for estimating salmon bycatch by catcher/processors and catcher vessels delivering to motherships rely on requirements for two observers on each catcher/processor and mothership and using observers' species composition sample data to estimate the number of salmon in each haul. This method has been adequate to estimate Chinook salmon bycatch for management of the current trigger cap that applies to the BS pollock fishery as a whole.

However, in the proposed rule, NMFS proposes to use a census or a full count of Chinook salmon bycatch in each haul by a catcher/processor and delivery by a catcher vessel to a mothership or catcher/processor as a basis for monitoring and enforcing the Chinook salmon PSC allocations under Amendment 91. This would eliminate the uncertainty associated with extrapolating from species composition

samples to estimates of the total number of salmon caught in each haul and support the level of precision and reliability that both the vessel owners and NMFS require to monitor and enforce Chinook salmon PSC limits.

NMFS supports the use of a census on catcher/processors and motherships, as long as conditions exist to properly monitor that all of the salmon bycatch is retained and to provide the observer with the tools needed to identify, count, and report salmon bycatch by haul or delivery by catcher vessels. Current regulations require the retention of salmon "until the number of salmon has been determined by an observer." Observers report the count of salmon for each haul in data submitted to NMFS and vessel operators separately report the count of salmon bycatch each day on their daily production reports.

To ensure accurate counts of salmon on catcher/processors and motherships, NMFS proposes the following requirements:

(1) No salmon of any species would be allowed to pass from the observer sample collection point and into the factory area of the catcher/processor or mothership;

(2) All salmon bycatch of any species must be retained until it is counted by an observer;

(3) Vessel crew must transport all salmon bycatch from each haul to an approved storage location adjacent to the observer sampling station so that the observer has free and unobstructed access to the salmon, and the salmon must remain within view of the observer from the observer sampling station at all times;

(4) The observer must be given the opportunity to count the salmon and take biological samples, even if this requires the vessel crew to stop sorting or processing catch until the counting and sampling is complete;

(5) The vessel owner must install a video system with a monitor in the observer sample station that provides views of all areas where salmon could be sorted from the catch and the secure location where salmon are stored; and

(6) The counts of salmon by species must be reported by the operator of a catcher/processor for each haul, using an electronic logbook that will be provided by NMFS as part of the current eLandings software.

The operator of the catcher/processor or mothership would be provided notice by the observer when he or she will be conducting the count of salmon and would be provided an opportunity to witness the count. Information from the observer's count of salmon would be made available to the vessel operator for



their use in submitting this information to NMFS on electronic logbooks or landings reports.

The video requirements would be similar to those currently in place for monitoring fish bins on non-AFA trawl catcher/processors. An owner of a catcher/processor would be required to provide and maintain cameras, a monitor, and a digital video recording system for all areas where sorting and storage of salmon, prior to being counted by an observer, could occur. The video data must be maintained and made available to NMFS upon request for 120-days after the date the video is recorded. The video systems would also be subject to approval by NMFS at the time of the observer sample station inspection. In order for the video system to be effective and ensure the observer has access to all salmon prior to entering the factory area, no salmon of any species would be allowed to pass the last point where sorting could occur.

These requirements would be effective for the 2011 fishing year so catcher/processors and motherships would have to modify their vessels to meet these requirements and have these modifications approved by NMFS prior to January 20, 2011.

On September 23, 2009, NMFS conducted a workshop on proposed monitoring requirements for catcher/processors and motherships (74 FR 43678, August 27, 2009). At that workshop, participants asked NMFS two main questions about the proposed video requirements.

First, participants asked for clarification about the ownership and confidentiality status of video data recorded to monitor salmon bycatch sorting and storage on catcher/processors and motherships. Video data collected as a requirement of regulations belong to the vessel owner and, under proposed regulations at § 679.28(j)(1)(v), must be retained onboard the vessel for at least 120 days after the date the video is recorded. Similar to logbook requirements the observer may request to view any of the recorded video data at any time, but such a request to view a recording does not require the observer to take custody of the hard drive on which the video data are recorded. Therefore, video data remains in the custody of the vessel owner or operator unless they are submitted to NMFS in response to a request from NMFS under § 679.28(j)(1)(v). When video data are in the custody of the vessel operator, they are not subject to the Freedom of Information Act (FOIA) and NMFS may not require the vessel operator to provide video data to the public in response to a FOIA request. If

video data are submitted to NMFS, they would be covered by the confidentiality laws and regulations that apply to any data or information in NMFS's possession. These laws include the FOIA, the Trade Secrets Act, and the Magnuson-Stevens Act. Under section 402(b) of the Magnuson-Stevens Act, information submitted to NMFS pursuant to a requirement under the Magnuson-Stevens Act is considered confidential. Video data required to be submitted to NMFS under § 679.28(j) are covered by these confidentiality provisions of the Magnuson-Stevens Act because the regulations in 50 CFR part 679 are promulgated under the authority of the Magnuson-Stevens Act. In addition, the FOIA or the Trade Secrets Act may prevent release of certain commercial information, which may include these video data. Finally, NMFS also must comply with regulatory guidelines in 50 CFR 600.415 *et seq.*, which control collection, handling, and disclosure of confidential fisheries information.

Second, participants asked what would happen if the video equipment failed and could not be immediately repaired. Participants wanted to know if NMFS has a contingency plan that would allow the vessel operator to continue to sort and process catch from the BS pollock fishery until the video equipment is repaired. The requirement to record video of all areas in the factory where salmon are sorted from the catch and where salmon are stored until they are counted by an observer is an important component to monitoring compliance with Chinook salmon bycatch management measures under Amendment 91. Therefore, the requirements at § 679.28(j) must be met when the catcher/processor or mothership is sorting or processing catch from the BS pollock fishery. The video systems that will comply with these proposed regulations are relatively simple systems with many easily replaceable components. The vessel operator should carry additional video system components so that the systems may be repaired while at sea with minimal lost time fishing. If some component of the video system fails when this equipment is required to be operational, and if the video system cannot be repaired at sea, the vessel operator should inform the NOAA Office of Law Enforcement (OLE) about the video failure.

Operators of catcher/processors participating in the BS pollock fishery would be required to report the salmon bycatch counts by species for each haul rather than the daily total currently required. This count would be required

to be submitted to NMFS using an electronic logbook so that the data are readily available to NMFS in an electronic format. Reporting the count of all salmon by species for each haul would not change or increase the amount of information that is required to be gathered by vessel operators because, to report the number of salmon by species each day, as they currently are required to do, vessel operators must obtain a count and identification of salmon in each haul and sum that information to get the daily totals.

The electronic logbooks would replace the paper logbooks currently required to be submitted by the operators of catcher/processors under § 679.5(c)(4). Current regulations require recording the following information in paper logbooks: Vessel identifying information and catch-by-haul information including haul number; date, time, and location of gear deployment and retrieval; average sea depth and average gear depth for each haul, target species of the haul, estimate weight of the haul, and information about retention of certain species. All of this information would now be submitted using the electronic logbook.

The electronic logbooks would be an additional component to "eLandings," the program through which the operators of catcher/processors currently submit their daily production reports. The requirement to maintain and submit daily logbook information electronically instead of maintaining and submitting a paper logbook is not expected to increase costs for the catcher/processors. The electronic logbook software would be developed by NMFS and provided to the vessel operator as part of the eLandings software that is updated annually by NMFS. Data entry for the electronic logbooks would be done on the same computer as already is required on the vessel to submit the electronic daily production reports. The same communications hardware and software currently used for eLandings could be used for the electronic logbooks. The vessel operators would be required to print out a copy of the electronic logbook and maintain it onboard the vessel. The additional cost of data entry of information into the electronic logbook should be offset by the reduction in cost associated with maintaining the paper logbook.

AFA catcher/processors required to use an electronic logbook for their participation in the BS pollock fisheries also would be required to use this electronic logbook for the entire year for any other fishery in which they participate. Use of the electronic

logbook all year for all fisheries is necessary to provide logbook information from a vessel to NMFS in a consistent format throughout the year for all fisheries in which that vessel participates. In 2008, 13 of the 17 catcher/processors that fished in the BS pollock fishery also participated in other fisheries, primarily yellowfin sole and Pacific cod. The days fishing in non-pollock fisheries represented 20 percent of the total fishing days for these vessels in 2008.

Electronic logbooks would not be required for the AFA motherships or catcher vessels. Motherships already are required under § 679.5(e)(6) to submit daily an electronic landings report that includes a report of the number of salmon by species in each delivery by a catcher vessel. When NMFS develops the electronic logbook component of eLandings for the AFA catcher/processors, it likely also will develop an electronic logbook for the motherships, which could be used voluntarily in place of the paper logbook. Electronic logbooks also would not be required for catcher vessels delivering to inshore processors because the counting and reporting of the number of salmon by species in each delivery would be done at the processing plant and reported in the inshore processor's electronic logbook.

#### *Release of Information About Chinook Salmon Prohibited Species Catch Allocations and Catch*

Under this proposed rule, the NMFS Alaska Region would post on its Web site (<http://alaskafisheries.noaa.gov/>) (1) The Chinook salmon PSC allocations for each entity receiving a transferable allocation, (2) each entity's Chinook salmon bycatch, and (3) the vessels fishing on behalf of that entity for that year. NMFS would update the Web site to reflect any transfers of Chinook salmon PSC allocations.

For non-transferable allocations, the NMFS Alaska Region would also post on its Web site (1) the amount of each non-transferable allocation, (2) the Chinook salmon bycatch that accrued towards that non-transferable allocation, and (3) the vessels fishing under each non-transferable allocation. NMFS would update the website to reflect any changes to the B season non-transferable allocations from rollovers or deductions for overages in the A season.

Information about Chinook salmon bycatch is based on data collected by observers and data submitted by processors. Section 402(b)(2) of the Magnuson-Stevens Act provides that any observer information is confidential and shall not be disclosed. As a result

of this requirement, NMFS may not release information collected by observers from vessels or processing plants unless it is provided to the public in aggregate or summary form. However, section 210(a)(1)(B) of the AFA requires NMFS "to make available to the public in such manner as the North Pacific Council and Secretary deem appropriate information about the harvest by vessels under a fishery cooperative of all species (including bycatch) in the directed pollock fishery on a vessel-by-vessel basis." Public release of Chinook salmon bycatch information for each entity and vessel fishing on behalf of that entity would provide information valuable to the pollock industry and the public in assessing the efficacy of Amendment 91. It would also reduce the amount of time NMFS staff would need to spend responding to information requests about Chinook salmon bycatch in the BS pollock fishery.

#### *Removal of Salmon Bycatch Retention Requirements in the Bering Sea Aleutian Islands Trawl Fisheries*

NMFS proposes to revise the requirements at § 679.21(c), which currently require the operators of all vessels using trawl gear in the BSAI groundfish fisheries, and all processors taking deliveries from these vessels, to retain all salmon until the salmon have been counted by an observer and the observer has collected biological samples. This allows discard of salmon from a vessel with an observer onboard, after the observer has counted and sampled the salmon. It also requires retention of salmon by vessels without an observer onboard until those salmon are delivered to a processing plant, where an observer is provided the opportunity to count and sample the salmon. Once salmon are counted and sampled at the processing plant, they may either be donated to the PSD Program or they must be put back onboard a catcher vessel and discarded at sea. This proposed rule would apply these regulations only to catcher vessels and processors participating in the BS pollock fishery, because these requirements are needed to obtain an accurate count of all salmon bycatch for Chinook salmon PSC allocations.

NMFS is proposing to remove the retention requirements in § 679.21(c) from participants in other BSAI trawl fisheries and the AI pollock fishery because it is not necessary to count each salmon in these other fisheries. Estimates of salmon bycatch for the other BSAI trawl fisheries, including the AI pollock fishery, would continue to be based on data collected by observers

and extrapolation of bycatch rates derived from observer data to unobserved vessels. Moreover, all vessels and processors would continue to be required to report the number of discarded salmon by species in their landings or production reports. Current methods are adequate to estimate salmon bycatch in these other BSAI fisheries because, under current regulations, the salmon caught in these other fisheries (except AI pollock) does not accrue against the Chinook or non-Chinook PSC limits. Chinook salmon bycatch in the AI pollock fishery would continue to be managed with a trigger cap that closes the AI Chinook Salmon Savings Area. Current methods of estimating Chinook salmon bycatch are adequate to manage this area closure, if it is triggered during any AI pollock fishery in the future. Because the retention requirement would be removed from § 697.21(c), this proposed rule would also remove the prohibition at § 679.7(c)(1) that prohibits the discard of any salmon taken with trawl gear in a BSAI groundfish fishery.

The proposed rule also would standardize language related to the discard of salmon. Current regulations at § 679.21(b) require that, with several exceptions, prohibited species be returned to the sea immediately, with a minimum of injury, regardless of condition. A similar regulation at § 679.21(c)(5) requires that salmon bycatch, with the exception of those donated to the PSD program, be returned to Federal waters (Federal waters are defined in § 679.2 as waters within the EEZ off Alaska). The requirements for discard of salmon bycatch in Federal waters were implemented under the final rule for Amendment 25 to the FMP (59 FR 9492; April 20, 1994). Neither the proposed nor the final rule provided an explanation about why the term "to Federal waters" was applied to the discard of salmon and NMFS cannot identify a reason to have this different language for PSC in general versus salmon bycatch. NMFS proposes to standardize the language so that salmon not required to be retained by other regulations would be required to be returned to the sea and to remove reference to requiring discard of salmon specifically in Federal waters.

#### **Other Proposed Regulatory Amendments**

##### *Revisions to Current Salmon Bycatch Management Measures*

This proposed rule would remove regulations at § 679.21(e)(1)(vi) for the 29,000 Chinook salmon PSC limit that

triggers closure of the Chinook Salmon Savings Area in the BS. It also would revise Figure 8 to part 679 to remove the Chinook Salmon Savings Areas in the BS and rename the figure “the Aleutian Islands Chinook Salmon Savings Area.”

This proposed rule would revise regulations at § 679.21(g) to remove Chinook salmon in the salmon bycatch reduction ICA implemented under Amendment 84 to the FMP. The current ICA regulations apply to Chinook and non-Chinook salmon. Under Amendment 91, all of the regulations for the current ICA that apply to the bycatch of Chinook salmon would be removed from § 679.21(g). The section heading would read “Bering Sea Non-Chinook Salmon Bycatch Management.” Regulations that require the ICA to include VRHS components for Chinook salmon, including the base rates, specification of Chinook Salmon Savings Area closures and notices, and assignment of vessels in cooperatives to tiers based on the cooperative’s Chinook salmon bycatch, would be removed.

One correction would be made to regulations currently at § 679.21(g)(5)(i) that identifies the “parties” to the ICA as “the AFA cooperatives, CDQ groups, and third party groups”. The “parties” to an ICA are the cooperatives and CDQ groups who have a representative sign the ICA and agree to abide by the provisions of the ICA. The “third party groups” are organizations representing western Alaskans who depend on salmon and have an interest in salmon bycatch reduction, but do not directly fish in a groundfish fishery. These groups were consulted in the development of the currently approved ICA and are provided information about activities conducted under the ICA, but representatives of these organizations do not sign the ICA. Therefore, they are not considered “parties” to the ICA.

The proposed rule also would remove the exemptions from the Chinook Salmon Savings Area closures for vessel operators and CDQ groups that participate in the ICA. Although NMFS regulations would no longer require that the ICA include Chinook salmon in a VRHS system, the industry could continue to include Chinook salmon in their program on a voluntary basis.

#### *Revisions to Current AFA Annual Reporting Requirements*

This proposed rule would require that the pollock industry submit three different annual reports to the Council by April 1 of each year.

(1) The AFA cooperative annual reports that have been required since 2002 (§ 679.61(f)); the proposed rule would revise this report by moving two

requirements to a new non-Chinook salmon ICA annual report.

(2) The ICA Annual Report; this proposed rule would add a new report at § 679.21(g)(4) for the non-Chinook salmon ICA that includes two components that are currently required to be submitted in the AFA cooperative annual reports.

(3) The Chinook salmon IPA annual report; this proposed rule would add a new report at § 679.21(f)(12)(vii) that would contain the requirements recommended by the Council under Amendment 91 and described earlier in the preamble to this proposed rule.

Under regulations implementing the AFA (67 FR 79692; December 30, 2002), the AFA cooperatives are required to submit to the Council each year a preliminary and a final report describing their pollock fishing (see § 679.61(f)). The AFA cooperative annual reports are required to provide information about how the cooperative allocated pollock, other groundfish species, and prohibited species among the vessels in the cooperative; the catch of these species by area by each vessel in the cooperative; information about how the cooperative monitored fishing by its members; and a description of any actions taken by the cooperative to penalize vessels that exceeded the catch and PSC allocations made to the vessel by the cooperative. The preliminary AFA cooperative reports are due to the Council by December 1 of the year in which the pollock fishing occurred. The final AFA cooperative reports are due by February 1 of the following year.

Additional information requirements about salmon bycatch were added to the annual AFA cooperative reports under Amendment 84 (72 FR 61070; October 29, 2007). Under that final rule, the AFA cooperatives are required to (1) Report the number of salmon taken by species and season, (2) estimate the number of salmon avoided as demonstrated by the movement of fishing effort away from the salmon savings area, (3) include the results of the compliance audit, and (4) list each vessel’s number of appearances on the weekly “dirty 20” lists for both salmon species.

Since implementation of these requirements in 2007, NMFS has realized that while some of the information required in the annual report is appropriate for the AFA cooperatives to include in their annual reports, some of the information is more appropriately reported in a separate report from the non-Chinook salmon ICA representative. These requirements are to “estimate the number of salmon avoided as demonstrated by the movement of fishing effort away from

the salmon savings area”, and to “include the results of the compliance audit.” These data elements provide information about the performance of the non-Chinook salmon ICA as a whole. The estimated number of all salmon avoided by actions taken under the non-Chinook salmon ICA is information provided by all participants and not for individual vessels or cooperatives. Similarly, the compliance audit is an evaluation of the non-Chinook salmon ICA as a whole. Therefore, the annual report of this information is more appropriately contained in a single report to the Council by the ICA representative for all ICA participants as a whole.

Two components added to the AFA cooperative annual report requirements under Amendment 84 would continue to be required to be submitted in the cooperative annual reports; report the number of salmon taken by species and season, and list each vessel’s number of appearances on the weekly “dirty 20” lists. The requirement for information about each vessel’s number of appearances on the weekly “dirty 20” list would be revised to apply this only to non-Chinook salmon because the requirement is related to performance under what would be the non-Chinook salmon ICAs in the future.

The revision to the annual reporting requirements would reduce the information collection burden on the AFA cooperatives and would not increase the information collection burden on the ICA, because, in 2009, the ICA representative prepared a single annual report about these two elements of the ICA (salmon saved and the compliance audit), and the AFA cooperatives referenced this separate report in their individual annual reports.

This proposed rule would change the deadline for the AFA cooperative annual report from February 1 to April 1. It also would establish the deadline for the receipt of the annual report by the Council for the representative of the non-Chinook salmon ICA as April 1 of the year following the year in which the fishing activity occurred. These deadlines would coincide with the April 1 deadline in this proposed rule for the new annual report that would be submitted to the Council about the Chinook salmon IPAs. Having the same deadline for all three of these reports would allow the Council to discuss any of these annual reports at one time at its April Council meeting.

#### *Revisions to Definitions at 50 CFR 679.2*

This proposed rule would revise the definitions for a “Fishing trip” and

“Observed or observed data” and remove definitions for “Bycatch rate” and “Fishing month.”

Proposed revisions to the definition of “Fishing trip” in § 679.2 would allow for post-delivery transfers of Chinook salmon PSC allocations. In addition to these revisions, NMFS proposes to revise the heading of the first definition of a fishing trip to more accurately describe the circumstances in part 679 under which this definition of a fishing trip applies. Currently, the first definition of a fishing trip applies to retention requirements including maximum retainable amounts, improved retention/improved utilization, and pollock roe stripping. However, this definition of a fishing trip also applies to its use in the recordkeeping and reporting requirements in § 679.5. Under this proposed rule, the heading for the first definition of a fishing trip would be revised to add “R&R requirements under § 679.5” to reflect the full scope of the current application of this definition in part 679.

Paragraph § 679.21(f) has been reserved since regulations implementing the vessel incentive program (VIP) were repealed (73 FR 12898; March 11, 2008); however, there are three definitions in § 679.2 that refer to § 679.21(f): “Bycatch rate”; “Observed or observed data”; and “Fishing month”. Although these references do not conflict with any programs at this time, these definitions would not be consistent with the proposed regulations implementing Amendment 91 at § 679.21(f).

NMFS proposes revising the definition of “Observed or observed data” in § 679.2 because the definition includes two references to the repealed VIP. First, NMFS would remove the

reference to § 679.21(f). Second, NMFS would remove from the paragraph the phrase “observed data”, which refers to components of the VIP and does not appear elsewhere in 50 CFR part 679. This proposed rule would revise the definition for “observed” to more accurately define the term as used in regulations to describe the observations of observers in regard to subpart E of 50 CFR part 679.

This proposed rule would also remove two definitions that were implemented in support of the VIP. The term bycatch rate is used extensively in regulation: § 679.21 (existing), § 679.21 (proposed), and § 679.25; however, the two usages of bycatch rate defined in § 679.2 were specific to the repealed VIP. Likewise, the definition for “Fishing month” would be removed because it was specific to the VIP and does not appear elsewhere in 50 CFR part 679.

**Classification**

Pursuant to sections 304(b) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

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

*Environmental Impact Statement (EIS) and Regulatory Impact Review (RIR)*

A final EIS and RIR were prepared to serve as the central decision-making documents for the Secretary of Commerce to approve, disapprove, or partially approve Amendment 91, and

for NMFS to implement Amendment 91 through Federal regulations. The EIS was prepared to disclose the expected impacts of this action and its alternatives on the human environment. The RIR for this action was prepared to assess the costs and benefits of available regulatory alternatives.

*Initial Regulatory Flexibility Analysis (IRFA)*

An IRFA was prepared for this action, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA for this proposed action describes the reasons why this action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would apply; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; and any significant alternatives to the proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act, and any other applicable statutes, and would minimize any significant adverse economic impacts of the proposed rule on small entities. Descriptions of the proposed action, its purpose, and the legal basis are contained earlier in this preamble and are not repeated here. A summary of the IRFA follows. A copy of the IRFA is available from NMFS (see ADDRESSES).

*Number and Description of Small Entities Regulated by the Proposed Action.* The proposed action applies only to those entities that participate in the directed pollock trawl fishery in the BS. These entities include the AFA-affiliated pollock fleet and the six CDQ groups that receive allocations of BS pollock.

TABLE 4—SUMMARY OF SMALL AND LARGE ENTITIES FOR REGULATORY FLEXIBILITY ACT PURPOSES AND NUMBER OF VESSELS, INSHORE PROCESSORS, AND CDQ GROUPS

Entity class	Units	Directly regulated by action	Small	Non-small
Catcher/processors .....	Vessels .....	Yes	0	16
Motherships .....	Vessels .....	Yes	0	3
Catcher vessels .....	Vessels .....	Yes	0	90
Inshore processors .....	Plants (including fixed floating platforms) .....	Yes	0	7
CDQ groups .....	Non-profit organizations .....	Yes	6	0

The RFA requires a consideration of affiliations among entities for the purpose of assessing if an entity is small. The AFA pollock cooperatives are a type of affiliation. All of the non-CDQ entities directly regulated by the proposed action were members of AFA cooperatives in 2008 and, therefore,

NMFS considers them “affiliated” large (non-small) entities for RFA purposes.

Due to their status as non-profit corporations, the six CDQ groups are identified as “small” entities. This proposed action directly regulates the six CDQ groups and NMFS considers the CDQ groups to be small entities for RFA purposes. As described in

regulations implementing the RFA (13 CFR 121.103) the CDQ groups’ affiliations with other large entities do not define them as large entities. Revenue derived from groundfish allocations and investments in BSAI fisheries enable these non-profit corporations to better comply with the burdens of this action, when compared

to many of the large AFA-affiliated entities. Nevertheless, the only small entities that are directly regulated by this action are the six CDQ groups.

*Description of the CDQ Groups.* The CDQ Program was designed to improve the social and economic conditions in western Alaska communities by facilitating their economic participation in the BSAI fisheries. In aggregate, CDQ groups share a 10 percent allocation of the BSAI pollock TAC. The CDQ Program also receives allocations of other groundfish TAC that range from 10.7 percent for Amendment 80 species, to 7.5 percent for most other species; however, these allocated amounts are not affected by this action. These allocations, in turn, provide an opportunity for residents of these communities to participate in and benefit from the BSAI fisheries through their association with one of the CDQ groups. The 65 communities, with approximately 27,000 total residents, benefit from participation in the CDQ Program, but are not directly regulated by this action. The six non-profit corporations (CDQ groups), formed to manage and administer the CDQ allocations, investments, and economic development projects are the Aleutian Pribilof Island Community Development Association (APICDA), the Bristol Bay Economic Development Corporation (BBEDC), the Central Bering Sea Fishermen's Association (CBSFA), the Coastal Villages Region Fund (CVRF), the Norton Sound Economic Development Corporation (NSEDC), and the Yukon Delta Fisheries Development Association (YDFDA).

The pollock fishery harvest provides millions of dollars in revenue to western Alaska CDQ communities through various channels, including the direct catch and sale or leasing of quota to various harvesting partners. The vessels harvesting CDQ pollock are the same vessels conducting AFA non-CDQ pollock harvesting. In addition to pollock allocations, CDQ groups have made significant investments in the at-sea pollock fleet. In 2007, the six CDQ groups held approximately \$543 million in assets and had invested more than \$140 million in fishery-related projects, including, but not limited to, the pollock industry. Complete descriptions of the CDQ groups, and the impacts of this action, are located in sections 2.5 and 6.10.3 of the RIR (*see ADDRESSES*).

*Duplicate, Overlapping, or Conflicting Federal Rules.* No duplication, overlap, or conflict between this proposed action and existing federal rules has been identified.

*Description of Significant Alternatives that Minimize Adverse Impacts on*

*Small Entities.* The Council considered an extensive and elaborate series of alternatives, options, and suboptions as it designed and evaluated ways to minimize Chinook salmon bycatch in the BS pollock fishery. The EIS presents the five alternative management actions, including combinations of various alternatives and options that emerged from this vetting process: *Alternative 1:* Status quo (no action); *Alternative 2:* hard cap; *Alternative 3:* triggered closures; *Alternative 4:* hard caps with an intercooperative agreement; and *Alternative 5:* the preferred alternative of PSC limits with an incentive plan agreement and performance standard.

As the preferred alternative, Alternative 5 constitutes the "proposed action". The remaining four alternatives (in various combinations of options and suboptions) constitute the suite of significant alternatives, under the proposed action, for RFA purposes. Each is addressed below. For more detail, please refer to section 2.5 of the EIS (*see ADDRESSES*) where the accompanying components are presented with the corresponding impact analyses. Data on cost and operating structure within the CDQ sector are unavailable, so a wholly quantitative evaluation of the size and distribution of burdens cannot be provided. The following is a summary of the contents of those more extensive analyses, specifically focusing on the aspects which pertain to small entities.

Under the status quo alternative (Alternative 1), the Chinook Salmon Savings Areas creates separate non-CDQ and CDQ Chinook salmon PSC limits in the BS. The Chinook Salmon Savings Area triggered closures occur upon attainment of Chinook salmon PSC limits. The CDQ Program receives allocations of 7.5 percent of the Chinook salmon PSC limit (or 2,175 Chinook salmon), as prohibited species quota (PSQ) reserve. NMFS further allocates PSQ reserves among the six CDQ groups, based on a recommendation by the State of Alaska in 2005. The State of Alaska recommended that the percentage allocation of Chinook salmon PSC and non-Chinook salmon PSC among the CDQ groups be the same as the CDQ groups' percentage allocations of pollock. The percentage allocation of Chinook salmon PSC by CDQ group is as follows: APICDA (14 percent), BBEDC (21 percent), CBSFA (5 percent), CVRF (24 percent), NSEDC (22 percent), and YDFDC (14 percent). Allocations of Salmon PSQ to the CDQ groups are made to the specific entities, but are transferable among entities within the CDQ Program. In 2008 and 2009, all CDQ groups were voluntarily

participating in an ICA, so they were exempt from the closure of the Chinook Salmon Savings Area.

Alternative 1 would likely impose the least burden on the CDQ groups, because it does not impose a Chinook salmon PSC limit that could prevent the full harvest of their respective pollock allocations. However, the Council found that the conservation objective that was the basis for approving Amendment 84 had not been achieved, and the Council remains concerned that the status quo management has the potential for high amounts of Chinook salmon bycatch as experienced in 2007.

The hard cap alternative (Alternative 2) would establish an upper limit to Chinook salmon bycatch in the BS pollock fishery. A range of suboption caps, from 29,323 to 87,500 Chinook salmon, were considered, based on various averages of Chinook salmon bycatch in the BS pollock trawl fishery over a range of historical year combinations from 1997 through 2006. All Chinook salmon caught by vessels participating in the directed pollock fishery would accrue toward the cap. Under this alternative, upon reaching a Chinook salmon PSC limit, all directed pollock fishing must stop, regardless of potential forgone pollock harvests.

As described in the EIS section 2.2 (*see ADDRESSES*), this hard cap alternative includes several different options for management of a PSC limit, including separate PSC limits for the CDQ Program and the remaining AFA sectors and hard caps divided by season, by sector, or a combination of both. In addition, the Council included an option to allow small entities (*i.e.*, CDQ groups) and non-CDQ groups to transfer Chinook PSC allocations among sectors, between the A and B seasons, or a combination of both, that would allow small entities more flexibility to harvest the full TAC in high Chinook salmon encounter years.

Regardless of the hard cap level or allocation option chosen, the establishment of an upper limit on the amount of Chinook salmon bycatch in the BS pollock fishery, this prohibition would require participants in the CDQ Program to stop directed fishing for pollock, if a hard cap was reached, because further directed fishing for pollock would likely result in exceeding the Chinook salmon cap. As section 6.10 of the analysis in the RIR demonstrates (*see ADDRESSES*), the lower the hard cap selected, the higher the probability of a fishery closure, and the greater the potential for forgone pollock revenues.

Although this alternative would have established an upper limit to Chinook salmon bycatch, the hard cap alternative

alone would fail to promote Chinook salmon avoidance during years of low salmon encounter rates and could result in a loss of revenues to CDQ groups, due to the closure of the fishery before the TAC has been harvested. Additionally, this alternative could create a race for Chinook salmon bycatch, similar to a race for fish in an open-access fishery, which could increase the likelihood of wasteful fishing practices, a truncated directed fishing season, forgone pollock harvest, and of not achieving optimum yield. This proposed rule includes components of Alternative 2 that would limit the burden on these smaller entities and further increases flexibility for small entities through an IPA to minimize Chinook bycatch at all levels of salmon or pollock abundance, while establishing an upper limit on Chinook salmon bycatch.

During public comment, the Council received varying perspectives from CDQ participants on the costs and benefits of the range of PSC limits under consideration. NMFS received written comments from three of the six CDQ groups. While two CDQ groups (BBEDC and YDFDA) argued for a lower cap than this proposed rule provides, it was asserted by some, (including members of CVRF communities) that a hard cap higher than 68,000 Chinook salmon would increase the possibility that they could both harvest their full pollock allocation, under AFA, and receive full royalty and profit-sharing payments from those allocations. The importance of the pollock resource, as a source of revenue for these small entities, indicates that any loss of pollock catch represents an increased economic burden on the CDQ groups (small entities). Public comment from CDQ members revealed the complexity of the issue for CDQ groups and communities. Although CDQ communities derive revenue from pollock and other BSAI fisheries, many of these CDQ stakeholders also depend on sustainable Chinook salmon runs for subsistence, cultural, and spiritual practices; therefore, this issue is not strictly a matter of finances. The Council ultimately rejected Alternative 2 in recognition that a hard cap alone would not achieve the Council's objectives for this action.

The modified area triggered closure alternative (Alternative 3) is similar to the status quo in that regulatory time and area closures would be invoked when specified Chinook salmon PSC limits are reached, although NMFS would remove the VRHS ICA exemptions to the closed areas. This alternative would incorporate new cap levels for triggered closures, sector

allocations, and transfer provisions and could impose a lower burden on the CDQ groups than the preferred alternative. If triggered, NMFS would only close the seasonal areas to directed pollock fishing. This alternative would not necessarily prevent small entities from the full harvest of their pollock TAC, because fishing effort outside of the closed areas could continue until the fishing season ended.

While Alternative 3 appears to reduce the economic impacts of forgone pollock revenue on small entities, when compared to the hard cap alternative, it does not provide any incentive to minimize Chinook salmon bycatch below the trigger amount. This alternative would not achieve the Council's objective for the proposed action because it shifts the fleets fishing effort to areas that may (or, as experienced in recent seasons, may not) have a lower risk of Chinook salmon encounters, but does not promote Chinook salmon avoidance at the vessel level, establish an upper limit to Chinook salmon bycatch in the BS pollock fishery, or hold the industry accountable for minimizing Chinook salmon bycatch. Therefore, the Council found that Alternative 3 is inferior to the proposed action.

At its June 2008 meeting, the Council developed a preliminary preferred alternative (Alternative 4) that contains components of Alternatives 1 through 3. Alternative 4 would set a PSC limit for all vessels participating in the BS pollock fisheries and includes provisions for a voluntary ICA that must encourage Chinook salmon avoidance, at all levels of pollock and Chinook salmon abundance and encounter rates. This alternative would minimize the burden on small entities by setting a relatively high PSC limit (68,392 Chinook salmon), allowing participants in an ICA to share the burden of reducing Chinook bycatch, and allowing PSC allocation transfers.

PSC allocations under Alternative 4 would have limited the burden on the small entities by increasing their annual allocation of the Chinook salmon PSC limit. Under component 2 of this alternative, a sector's allocation of Chinook salmon bycatch would be calculated at 75 percent historical bycatch and 25 percent AFA pollock quota, with allowances for the CDQ sector. Estimates of historic bycatch in the CDQ sector were based on lower bycatch hauls when compared to non-CDQ sectors, due in part to agreement with the catcher/processor fleet contracted to harvest pollock on behalf of the CDQ sector. These biased historical bycatch estimates would have

resulted in a lower initial allocation of Chinook salmon to CDQ groups, potentially increasing forgone revenue loss for small entities. Therefore, component 2 estimates the historic CDQ bycatch rates by blending CDQ bycatch rates with those of sectors harvesting pollock on behalf of the CDQ groups. The resulting higher PSC allocations would decrease the probability of forgone pollock revenue and the financial burden of this action on the CDQ groups. NMFS provides a further description of the sector allocation in section 2.4 of the EIS (*see ADDRESSES*).

During public comment on the Draft EIS, a different sector allocation was proposed to Alternative 4 component 2. The suggested allocation would further reduce the burden on the small entities by allocating Chinook salmon based on 25 percent history and 75 percent AFA pollock allocation. Such an allocation would further benefit CDQ groups by increasing the Chinook salmon PSC allocations to the CDQ groups above the amount provided under component 2 of Alternative 4. The Council considered and rejected this suggestion because such an allocation would not adequately represent the different fishing practices and patterns each sector uses to fully harvest their pollock allocations.

Despite the advantages of Alternative 4, the Council did not recommend this alternative, noting that it failed to meet the Chinook salmon conservation objective of this action, by setting too high of a PSC limit and by not establishing a performance standard to promote and ensure that the pollock fishery minimized Chinook salmon bycatch. However, the preferred alternative retained component 2 from Alternative 4, which is designed to reduce the economic burden on the CDQ groups.

No additional alternatives were identified to those analyzed in the EIS, RIR, and IRFA that had the potential to further reduce the economic burden on small entities, while achieving the objectives of this action. The EIS contains a detailed discussion of alternatives considered and eliminated from further analysis (*see ADDRESSES*).

This proposed rule includes performance, rather than design standards, to minimize Chinook salmon bycatch, while limiting the burden on CDQ groups. A system of transferable PSC allocations and a performance standard would allow CDQ groups to decide how best to comply with the requirements of this action, given the other constraints imposed on the pollock fishery (*e.g.*, pollock TAC, market conditions, area closures associated with other rules, gear

restrictions, climate and oceanographic change).

*Recordkeeping and reporting requirements.* In addition to revising some existing requirements, this rule would add recordkeeping and reporting requirements needed to implement the preferred alternative including those related to—

- Reporting Chinook salmon bycatch by vessels directed fishing for pollock in the BS;
- Applications to receive transferable Chinook salmon PSC allocations;
- Applications to transfer Chinook salmon PSC allocations to another eligible entity;
- Development and submission of proposed IPAs and amendments to approved IPAs; and
- An annual report from the participants in each IPA, documenting information and data relevant to the BS Chinook salmon bycatch management program.

The CDQ groups enter contracts with partner vessels to harvest their pollock allocations. Many of these vessels are at least partially owned by the CDQ groups. Although the accounting of Chinook salmon bycatch by partner vessels fishing under CDQ allocations would accrue against each respective CDQ group's seasonal PSC limit, most of the recordkeeping, reporting, and compliance requirements necessary to implement the preferred alternative would apply to the vessels harvesting pollock, and to the processors processing pollock delivered by catcher vessels. For example, landings and production reports that include information about Chinook salmon bycatch are required to be submitted by processors, under existing requirements at § 679.5.

The CDQ groups already receive transferable Chinook and non-Chinook salmon PSC allocations and have received such allocations under the CDQ Program since 1999. Therefore, NMFS would not require CDQ groups to apply for recognition as entities eligible to receive transferable PSC allocations of Chinook salmon. The CDQ groups are already authorized to transfer their salmon PSC allocations to and from other CDQ groups, using existing transfer applications submitted to NMFS.

New under this proposed action is the authorization for the CDQ groups to transfer Chinook salmon PSC allocations to and from AFA entities, outside of the CDQ Program, including the AFA inshore cooperatives and the entities representing the AFA catcher/processor sector and the AFA mothership sector. Because of this new

feature, CDQ groups would use a new, different application to transfer Chinook PSC; all other transfers by CDQ groups would continue to be accomplished using the CDQ or PSQ Transfer Application. The existing application would be revised to provide this instruction.

Participation in an IPA to reduce Chinook salmon bycatch is voluntary, but it is necessary to receive transferable allocations of a portion of the higher Chinook salmon PSC limit of 60,000. Therefore, it is likely that the CDQ groups would participate in an IPA. They may participate in an IPA together with members of the other AFA sectors or they may develop an IPA that applies only to vessels while they are fishing on behalf of a CDQ group. In either case, submission and approval of a proposed IPA is necessary. In addition, filing of an annual report by the participants of each IPA also would be necessary. If the CDQ groups participate in an IPA together with members of other sectors, the CDQ groups would share in the costs of developing the IPA. However, the time and cost involved in developing and submitting a proposed IPA, amendments to the IPA, and the annual report would be less per CDQ group than it would be if the CDQ groups developed an IPA that just applied to the CDQ groups.

The professional skills necessary to prepare the reporting and recordkeeping requirements that would apply to the CDQ groups under this proposed rule include the ability to read, write, and understand English; the ability to use a computer and the Internet to submit electronic transfer request applications; and the authority to take actions on behalf of the CDQ group. Each of the six CDQ groups has executive and administrative staff capable of complying with the reporting and recordkeeping requirements of this proposed rule and the financial resources to contract for any additional legal or technical expertise that they require to advise them.

#### *Tribal Summary Impact Statement (E.O. 13175)*

Executive Order 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), and the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995) outline the responsibilities of NMFS in matters affecting tribal interests. Section 161 of Public Law No. 108–199 (188 Stat. 452), as amended by section 518 of Public Law No. 109–447 (118 Stat. 3267), extends the consultation requirements

of Executive Order 13175 to Alaska Native corporations.

NMFS is obligated to consult and coordinate with federally recognized tribal governments and Alaska Native Claims Settlement Act regional and village corporations on a government-to-government basis pursuant to Executive Order 13175 which establishes several requirements for NMFS, including: (1) Regular and meaningful consultation and collaboration with Indian tribal governments and Alaska Native corporations in the development of federal regulatory practices that significantly or uniquely affect their communities; (2) to reduce the imposition of unfunded mandates on Indian tribal governments; (3) and to streamline the applications process for and increase the availability of waivers to Indian tribal governments. This Executive Order requires federal agencies to have an effective process to involve and consult with representatives of Indian tribal governments in developing regulatory policies and prohibits regulations that impose substantial, direct compliance costs on Indian tribal communities.

Section 5(b)(2)(B) of Executive Order 13175 requires NMFS to prepare a tribal summary impact statement as part of the final rule. This statement must contain (1) A description of the extent of the agency's prior consultation with tribal officials, (2) a summary of the nature of their concerns, (3) the agency's position supporting the need to issue the regulation, and (4) a statement of the extent to which the concerns of tribal officials have been met. If the Secretary of Commerce approves Amendment 91, a tribal impact summary statement that summarizes and responds to issues raised in all tribal consultations on the proposed action and describes the extent to which the concerns of tribal officials have been met will be included in the final rule for Amendment 91.

To start the consultation process for this action, NMFS mailed letters to Alaska tribal governments, Alaska Native corporations, and related organizations ("Alaska Native representatives") on December 28, 2007, when NMFS started the EIS scoping process. The letter provided information about the proposed action, the EIS process, and solicited consultation and coordination with Alaska Native representatives. NMFS received 12 letters providing scoping comments from representatives of tribal governments and Alaska Native Corporations, which were summarized and included in the scoping report that can be found on the NMFS Alaska Region Web site (*see ADDRESSES*).



Additionally, a number of tribal representatives and tribal organizations provided written public comments and oral public testimony to the Council during Council outreach meetings on Amendment 91 and at the numerous Council meetings at which Amendment 91 was discussed.

Once the Draft EIS was released on December 5, 2008, NMFS sent another letter to Alaska Native representatives to announce the release of the document and to solicit comments concerning the scope and content of the Draft EIS. The letter included a copy of the executive summary and provided information on how to obtain a printed or electronic copy of the Draft EIS. NMFS also mailed 23 copies of the Draft EIS to the Alaska Native representatives who had requested a copy or provided written comments to NMFS during scoping. NMFS received 14 letters of comment on the Draft EIS from representatives of tribal governments, tribal organizations, or Alaska Native corporations. These comments are summarized and responded to in the Comment Analysis Report (CAR) in Chapter 9 of the EIS and the comment letters are posted on the NMFS Alaska Region Web site (*see ADDRESSES*).

NMFS received requests for tribal consultation on Amendment 91 from representatives of the following eight Federally recognized tribes: the Nome Eskimo Community, Chinik Eskimo Community (representing the village of Golovin), the Stebbins Community Association, the Native Village of Unalakleet, the Native Village of Kwigillingok, the Native Village of Kipnuk, the Alakanuk Tribal Council, and the Emmonak Tribal Council. The Alaska tribal representatives' concerns raised during these consultations were summarized and responded to in the EIS (*see ADDRESSES*).

NMFS held a tribal consultation in Nome, AK, on January 22, 2009, in conjunction with a Council outreach meeting on Chinook salmon bycatch. Consulting in person with NMFS in Nome were representatives of the Nome Eskimo Community, the Chinik Eskimo Community, and the Native Village of Elim. Consulting by telephone were representatives of the Stebbins Community Association and the Native Village of Unalakleet. Council staff provided information on the Draft EIS, the alternatives, and the schedule for Council action. As part of the consultation, NMFS staff provided additional information and then listened to the concerns and issues raised by the tribal representatives. The Nome Eskimo Community submitted a letter to NMFS with its comments on

the Draft EIS during the tribal consultation.

NMFS also held a tribal consultation teleconference on March 17, 2009, with the Native Village of Kwigillingok and the Bering Sea Elders Advisory Group. The Regional Administrator provided information about the upcoming final action by the Council and the Draft EIS comment period. On October 19, 2009, NMFS held a tribal consultation via teleconference with the Alakanuk Tribal Council and the Native Village of Kipnuk. The Regional Administrator provided information on the Chinook and chum salmon bycatch in the Bering Sea in 2009 and listened to the concerns and issues raised by the tribal representatives. NMFS is continuing to engage the Emmonak Tribal Council and anticipates a consultation early in 2010.

Following the releases of the final EIS and RIR on December 7, 2009, NMFS sent another letter to Alaska Native representatives to announce the release of the EIS and provide information on participating in the rulemaking process. The letter included a copy of the EIS and RIR executive summary and provided information on how to obtain a printed or electronic copy of the EIS and RIR. NMFS also mailed 28 copies of the EIS and RIR to the Alaska Native representatives who requested a copy or who had provided written comments to NMFS on the EIS.

NMFS will continue the consultation process by sending another letter to all Alaska Native representatives when the NOA for Amendment 91 and this proposed rule are published in the **Federal Register** notifying them of the opportunity to comment.

#### *Collection-of-Information Requirements*

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. The collections are listed below by OMB control number.

#### *OMB Control No. NEW*

Public reporting burden per response is estimated to average 40 hours for AFA Catch Monitoring and Control Plan (CMCP); 5 minutes for Inspection Request for Inshore CMCP; 8 hours for CMCP Addendum; 1 hour for Electronic Monitoring System; 2 hours for Inspection Request for Electronic Monitoring System.

#### *OMB Control No. NEW*

Public reporting burden per response is estimated to average 30 minutes for CDQ Groundfish or Non-Chinook PSQ

Transfer Request; and 30 minutes for CDQ Chinook Salmon PSQ Transfer Request.

#### *OMB Control No. 0393*

Public reporting burden per response is estimated to average 8 hours for Application for Approval As An Entity to Receive Transferable Chinook Salmon PSC Allocation and 15 minutes for Application for Transfer of Chinook Salmon PSC Allocations.

#### *OMB Control No. NEW*

Public reporting burden per response is estimated to average 40 hours for Application for Proposed (Chinook) Incentive Plan Agreement (IPA), 8 hours for (Chinook) IPA annual report, 40 hours for initial (non-Chinook) Inter-Cooperative Agreement (ICA), 8 hours for (non-Chinook) ICA annual report, 12 hours annual AFA cooperative report, 5 minutes for IPA agent of service (this item will be removed because it is part of the ICA), 5 minutes for ICA agent of service (this item will be removed because it is part of the IPA).

#### *OMB Control No. 0515*

Public reporting burden per response is estimated to average 30 minutes for eLandings Catcher/Processor Trawl Gear Electronic Logbook and 31 minutes for eLandings Mothership Electronic Logbook.

Public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to (NMFS Alaska Region) at the **ADDRESSES** above, and e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless



that collection of information displays a currently valid OMB Control Number.

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

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: March 15, 2010.

**Samuel D. Rauch III,**

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

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

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

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

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

2. In § 679.2,

A. Remove the definitions for “Bycatch rate”, “Chinook Salmon Savings Area of the BSAI”, “Fishing month”, “Observed or observed data”, and “Salmon bycatch reduction intercooperative agreement (ICA)”;

B. In the definition for “Fishing trip” revise paragraph (1) introductory text, paragraph (1)(i) introductory text, and paragraph 1(ii), and add new paragraph (6);

C. Add new definitions for “Agent for service of process”, “Chinook salmon bycatch incentive plan agreement (IPA)”, “Non-Chinook salmon bycatch reduction intercooperative agreement (ICA)”, and “Observed”.

The addition and revisions read as follows:

**§ 679.2 Definitions.**

\* \* \* \* \*

*Agent for service of process* means, for purposes of § 679.21(f), a person appointed by the members of an AFA inshore cooperative, a CDQ group, or an entity representing the AFA catcher/processor sector or the AFA mothership sector, who is authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of the inshore cooperative, the entity representing the catcher/processor sector, the entity representing the mothership sector, or the entity representing the cooperative or a CDQ group and owners of all vessels directed fishing for pollock CDQ on behalf of that CDQ group.

\* \* \* \* \*

*Chinook salmon bycatch incentive plan agreement (IPA)* is a voluntary private contract, approved by NMFS

under § 679.21(f)(12), that establishes incentives for participants to avoid Chinook salmon bycatch while directed fishing for pollock in the Bering Sea subarea.

\* \* \* \* \*

*Fishing trip* means:

(1) *Retention requirements (MRA, IR/IU, and pollock roe stripping) and R&R requirements under § 679.5.*

(i) *Catcher/processors and motherships.* An operator of a catcher/processor or mothership processor vessel is engaged in a fishing trip from the time the harvesting, receiving, or processing of groundfish is begun or resumed in an area until any of the following events occur:

\* \* \* \* \*

(ii) *Catcher vessels.* An operator of a catcher vessel is engaged in a fishing trip from the time the harvesting of groundfish is begun until the offload or transfer of all fish or fish product from that vessel.

\* \* \* \* \*

(6) *For purposes of § 679.7(d)(9) for CDQ groups and § 679.7(k)(8)(ii) for AFA entities,* the period beginning when a vessel operator commences harvesting any pollock that will accrue against a directed fishing allowance for pollock in the BS or against a pollock CDQ allocation harvested in the BS and ending when the vessel operator offloads or transfers any processed or unprocessed pollock from that vessel.

\* \* \* \* \*

*Non-Chinook salmon bycatch reduction intercooperative agreement (ICA)* is a voluntary non-Chinook salmon bycatch avoidance agreement, as described at § 679.21(g) and approved by NMFS, for directed pollock fisheries in the Bering Sea subarea.

\* \* \* \* \*

*Observed* means observed by one or more observers (see subpart E of this part).

\* \* \* \* \*

3. In § 679.5,

A. Revise paragraphs (e)(10)(iii)(M), (f)(1)(iv), (f)(7) introductory text, and paragraph (f)(7)(i); and

B. Add paragraph (f)(1)(vii).

The revisions and additions read as follows:

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

\* \* \* \* \*

(e) \* \* \*  
(10) \* \* \*  
(iii) \* \* \*

(M) *PSC numbers—(1) Non-AFA catcher/processors and all motherships.* Daily number of PSC animals (Pacific salmon, steelhead trout, Pacific halibut,

king crabs, and Tanner crabs) by species codes and discard and disposition codes.

(2) *AFA and CDQ catcher/processors.* The operator of an AFA catcher/processor or any catcher/processor harvesting pollock CDQ must enter daily the number of non-salmon PSC animals (Pacific halibut, king crabs, and Tanner crabs) by species codes and discard and disposition codes. Salmon PSC animals are entered into the electronic logbook as described in paragraphs (f)(1)(iv) and (v) of this section.

\* \* \* \* \*

(f) \* \* \*  
(1) \* \* \*

(iv) *Catcher/processor trawl gear ELB.* Except as described in paragraph (f)(1)(vii) of this section, the operator of a catcher/processor using trawl gear may use a combination of a NMFS-approved catcher/processor trawl gear ELB and eLandings to record and report groundfish information. In the ELB, the operator may enter daily processor identification information and catch-by-haul information. In eLandings, the operator must enter daily processor identification, groundfish production data, and groundfish and prohibited species discard or disposition data.

\* \* \* \* \*

(vii) *AFA and CDQ trawl catcher/processors.* The operator of an AFA catcher/processor or any catcher/processor harvesting pollock CDQ must use a combination of NMFS-approved catcher/processor trawl gear ELB and eLandings to record and report groundfish and PSC information. In the ELB, the operator must enter processor identification information, catch-by-haul information, and prohibited species discard or disposition data for all salmon species in each haul. In eLandings, the operator must enter daily processor identification, groundfish production data, and groundfish and daily prohibited species discard or disposition data for all prohibited species except salmon.

\* \* \* \* \*

(7) *ELB data submission.* The operator must transmit ELB data to NMFS at the specified e-mail address in the following manner:

(i) *Catcher/processor.* Directly to NMFS as an e-mail attachment or other NMFS-approved data transmission mechanism, by midnight each day to record the previous day’s hauls.

\* \* \* \* \*

4. In § 679.7,

A. Remove and reserve paragraph (c)(1);

- B. Remove paragraphs (d)(6) and (d)(9) through (d)(23);
  - C. Redesignate paragraph (d)(24) as (d)(6) and paragraph (d)(25) as (d)(9);
  - D. Revise paragraphs (d)(7), (d)(8);
  - E. Revise paragraph (k)(3)(vi); and
  - F. Add paragraph (k)(8).
- The additions and revisions read as follows:

**§ 679.7 Prohibitions**

\* \* \* \* \*

(c) \* \* \*

(1) [Reserved]

\* \* \* \* \*

(d) \* \* \*

(7) *Catch Accounting*—(i) *General*—(A) For the operator of a catcher/processor using trawl gear or a mothership, to harvest or take deliveries of CDQ or PSQ species without a valid scale inspection report signed by an authorized scale inspector under § 679.28(b)(2) on board the vessel. (B) For the operator of a vessel required to have an observer sampling station described at § 679.28(d), to harvest or take deliveries of CDQ or PSQ species without a valid observer sampling station inspection report issued by NMFS under § 679.28(d)(8) on board the vessel. (C) For the manager of a shoreside processor or stationary floating processor, or the manager or operator of a buying station that is required elsewhere in this part to weigh catch on a scale approved by the State of Alaska under § 679.28(c), to fail to weigh catch on a scale that meets the requirements of § 679.28(c). (D) For the operator of a catcher/processor or a catcher vessel required to carry a level 2 observer, to combine catch from two or more CDQ groups in the same haul or set. (E) For the operator of a catcher vessel using trawl gear or any vessel less than 60 ft (18.3 m) LOA that is groundfish CDQ fishing as defined at § 679.2, to discard any groundfish CDQ species or salmon PSQ before it is delivered to a processor unless discard of the groundfish CDQ is required under other provisions or, in waters within the State of Alaska, discard is required by laws of the State of Alaska. (F) For the operator of a vessel using trawl gear, to release CDQ catch from the codend before it is brought on board the vessel and weighed on a scale approved by NMFS under § 679.28(b) or delivered to a processor. This includes, but is not limited to, “codend dumping” and “codend bleeding.” (G) For the operator of a catcher/processor using trawl gear or a mothership, to sort, process, or discard CDQ or PSQ species before the total

catch is weighed on a scale that meets the requirements of § 679.28(b), including the daily test requirements described at § 679.28(b)(3). (H) For a CDQ representative, to use methods other than those approved by NMFS to determine the catch of CDQ and PSQ reported to NMFS on the CDQ catch report. (ii) *Fixed gear sablefish*—(A) For a CDQ group, to report catch of sablefish CDQ for accrual against the fixed gear sablefish CDQ reserve if that sablefish CDQ was caught with fishing gear other than fixed gear. (B) For any person on a vessel using fixed gear that is fishing for a CDQ group with an allocation of fixed gear sablefish CDQ, to discard sablefish harvested with fixed gear unless retention of sablefish is not authorized under § 679.23(e)(4)(ii) or, in waters within the State of Alaska, discard is required by laws of the State of Alaska. (8) *Prohibited species catch*—(i) *Crab*—(A) *Zone 1*. For the operator of an eligible vessel, to use trawl gear to harvest groundfish CDQ in Zone 1 after the CDQ group’s red king crab PSQ or *C. bairdi* Tanner crab PSQ in Zone 1 is attained. (B) *Zone 2*. For the operator of an eligible vessel, to use trawl gear to harvest groundfish CDQ in Zone 2 after the CDQ group’s PSQ for *C. bairdi* Tanner crab in Zone 2 is attained. (C) *COBLZ*. For the operator of an eligible vessel, to use trawl gear to harvest groundfish CDQ in the *C. opilio* Bycatch Limitation Zone after the CDQ group’s PSQ for *C. opilio* Tanner crab is attained. (ii) *Salmon*—(A) *Discard of salmon*. For any person, to discard salmon from a catcher vessel, catcher/processor, mothership, shoreside processor, or SFP or transfer or process any salmon under the PSD Program at § 679.26, if the salmon were taken incidental to a directed fishery for pollock CDQ in the Bering Sea, until the number of salmon has been determined by an observer and the collection of scientific data or biological samples from the salmon has been completed. (B) *Non-Chinook salmon*. For the operator of an eligible vessel, to use trawl gear to harvest pollock CDQ in the Chum Salmon Savings Area between September 1 and October 14 after the CDQ group’s non-Chinook salmon PSQ is attained, unless the vessel is participating in a non-Chinook salmon bycatch reduction ICA under § 679.21(g). (C) *Chinook salmon*—(1) *Overages of Chinook salmon PSC allocations*. For a CDQ group, to exceed a Chinook salmon PSC allocation issued under § 679.21(f)

as of June 25 for the A season allocation and as of December 1 for the B season allocation. (2) For the operator of a catcher vessel or catcher/processor, to start a new fishing trip for pollock CDQ in the BS in the A season or in the B season, if the CDQ group for which the vessel is fishing has exceeded its Chinook salmon PSC allocation issued under § 679.21(f) for that season. (3) For the operator of a catcher/processor or mothership, to catch or process pollock CDQ in the BS without complying with the applicable requirements of § 679.28(j). (4) For the operator of a catcher/processor or a mothership, to begin sorting catch from a haul from a directed fishery for pollock CDQ in the BS, until the observer has completed counting the salmon and collecting scientific data or biological samples from the previous haul. (5) For the operator of a catcher vessel, to deliver pollock CDQ to a shoreside processor or stationary floating processor that does not have a catch monitoring and control plan approved under § 679.28(g). (6) For the operator of a catcher vessel, to start a new fishing trip for pollock CDQ in the BS if the observer assigned to the catcher vessel for the next fishing trip has not completed counting the salmon and collecting scientific data or biological samples from the previous delivery by that vessel. \* \* \* \* \* (k) \* \* \* (3) \* \* \* (vi) *Catch monitoring and control plan (CMCP)*—(A) Take deliveries or process groundfish delivered by a vessel engaged in directed fishing for BSAI pollock without following an approved CMCP as described at § 679.28(g). A copy of the CMCP must be maintained on the premises and made available to authorized officers or NMFS-authorized personnel upon request. (B) Allow sorting of fish at any location in the processing plant other than those identified in the CMCP under § 678.28(g)(7). (C) Allow salmon of any species to pass beyond the last point where sorting of fish occurs, as identified in the scale drawing of the processing plant in the approved CMCP. \* \* \* \* \* (8) *Salmon bycatch*—(i) *Discard of salmon*. For any person, to discard any salmon from a catcher vessel, catcher/processor, mothership, or inshore processor or transfer or process any salmon under the PSD Program at

§ 679.26, if the salmon were taken incidental to a directed fishery for pollock in the BS, until the number of salmon has been determined by an observer and the collection of scientific data or biological samples from the salmon has been completed.

(ii) *Catcher/processors and motherships.* For the operator of a catcher/processor or a mothership, to begin sorting catch from a haul from a directed fishery for pollock in the BS, until the observer has completed counting the salmon and collecting scientific data or biological samples from the previous haul.

(iii) *Catcher vessels delivering to inshore processors.* For the operator of a catcher vessel, to start a new fishing trip for pollock in the BS if the observer assigned to the catcher vessel for the next fishing trip has not completed counting the salmon and collecting scientific data or biological samples from the previous delivery by that vessel.

(iv) *Overages of Chinook salmon PSC allocations—*(A) For an inshore cooperative, the entity representing the AFA catcher/processor sector, or the entity representing the AFA mothership sector, to exceed a Chinook salmon PSC allocation issued under § 679.21(f) as of June 25 for the A season allocation and as of December 1 for the B season allocation.

(B) For a catcher vessel or catcher/processor, to start a fishing trip for pollock in the BS in the A season or in the B season if the vessel is fishing under a transferable Chinook salmon PSC allocation issued to an inshore cooperative, the entity representing the AFA catcher/processor sector, or the entity representing the AFA mothership sector under § 679.21(f) and the inshore cooperative or entity has exceeded its Chinook salmon PSC allocation for that season.

\* \* \* \* \*

5. In § 679.21,

A. Remove and reserve paragraph (a);

B. Add paragraphs (b)(6) and (f); and

C. Revise paragraphs (b)(2)(ii), (b)(3), (c), (e)(1)(vi), (e)(3)(i)(A)(3)(j), (e)(7)(viii), (e)(7)(ix), and (g).

The revisions and additions read as follows:

#### § 679.21 Prohibited Species Bycatch Management

(a) [Reserved]

(b) \* \* \*

(2) \* \* \*

(ii) After allowing for sampling by an observer, if an observer is aboard, sort its catch immediately after retrieval of the gear and, except for salmon prohibited species catch in the BS

pollock fisheries under paragraph (c) of this section and § 679.26, return all prohibited species, or parts thereof, to the sea immediately, with a minimum of injury, regardless of its condition.

(3) *Rebuttable presumption.* Except as provided under paragraph (c) of this section and § 679.26, there will be a rebuttable presumption that any prohibited species retained on board a fishing vessel regulated under this part was caught and retained in violation of this section.

\* \* \* \* \*

(6) *Addresses.* Unless otherwise specified, submit information required under this section to NMFS as follows: by mail to the Regional Administrator, NMFS, P.O. Box 21668, Juneau, AK 99802; by courier to the Office of the Regional Administrator, 709 West 9th St., Juneau, AK 99801; or by fax to 907-586-7465. Forms are available on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov/>).

(c) *Salmon taken in the BS pollock fisheries.* Regulations in this paragraph apply to vessels directed fishing for pollock in the BS, including pollock CDQ, and processors taking deliveries from these vessels.

(1) *Salmon discard.* The operator of a vessel and the manager of a shoreside processor or SFP must not discard any salmon or transfer or process any salmon under the PSD Program at § 679.26, if the salmon were taken incidental to a directed fishery for pollock in the BS, until the number of salmon has been determined by the observer and the observer's collection of any scientific data or biological samples from the salmon has been completed.

(2) *Salmon retention and storage—*(i) Operators of catcher/processors or motherships must:

(A) Sort and transport all salmon bycatch from each haul to an approved storage location adjacent to the observer sampling station that allows an observer free and unobstructed access to the salmon (*see* § 679.28(d)(2)(i) and (d)(7)). The salmon storage location must remain in view of the observer from the observer sampling station at all times during the sorting of the haul.

(B) If, at any point during sorting of the haul or delivery for salmon, the salmon are too numerous to be contained in the salmon storage location, all sorting must cease and the observer must be given the opportunity to count the salmon in the storage location and collect scientific data or biological samples. Once the observer has completed all counting and sampling duties for the counted salmon, the salmon must be removed by vessel

personnel from the approved storage location, in the presence of the observer.

(C) Before sorting of the next haul may begin, the observer must be given the opportunity to complete the count of salmon and the collection of scientific data or biological samples from the previous haul.

(D) Ensure no salmon of any species pass the observer sample collection point, as identified in the scale drawing of the observer sample station.

(ii) Operators of vessels delivering to shoreside processors or stationary floating processors must:

(A) Store in a refrigerated saltwater tank all salmon taken as bycatch in trawl operations.

(B) Deliver all salmon to the processor receiving the vessel's BS pollock catch.

(C) Before the vessel can begin a new fishing trip, the observer assigned to that vessel for the next fishing trip must be given the opportunity to complete the count of salmon and the collection of scientific data or biological samples from the previous delivery.

(iii) Shoreside processors or stationary floating processors must:

(A) Comply with the requirements in § 679.28(g)(7)(vii) for the receipt, sorting, and storage of salmon from deliveries of catch from the BS pollock fishery.

(B) Ensure no salmon of any species pass beyond the last point where sorting of fish occurs, as identified in the scale drawing of the plant in the CMCP.

(C) Sort and transport all salmon of any species to the observation area by plant personnel and the salmon must remain in that observation area and within the view of the observer at all times during the offload.

(D) If, at any point during the offload, salmon are too numerous to be contained in the observation area, the offload and all sorting must cease and the observer must be given the opportunity to count the salmon in the observation area and collect scientific data or biological samples. The counted salmon then must be removed from the area by plant personnel in the presence of the observer.

(E) At the completion of the offload, the observer must be given the opportunity to count the salmon in the observation area and collect scientific data or biological samples.

(3) *Assignment of crew to assist observer.* Operators of vessels and managers of shoreside processors and SFPs that are required to retain salmon under paragraph (c)(1) of this section must designate and identify to the observer aboard the vessel, or at the shoreside processor or SFP, a crew person or employee responsible for

ensuring all sorting, retention, and storage of salmon occurs according to the requirements of (c)(2) of this section.

(4) *Discard of salmon.* Except for salmon under the PSD Program at § 679.26, all salmon must be returned to the sea as soon as is practicable, following notification by an observer that the number of salmon has been determined and the collection of scientific data or biological samples has been completed.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(vi) *BS Chinook salmon.* See paragraph (f) of this section.

\* \* \* \* \*

(3) \* \* \*

(i) \* \* \*

(A) \* \* \*

(3) \* \* \*

(j) *Chinook salmon.* See paragraph (f) of this section for BS Chinook salmon or paragraph (e)(1)(viii) of this section for AI Chinook salmon.

\* \* \* \* \*

(7) \* \* \*

(viii) *AI Chinook salmon.* If, during the fishing year, the Regional Administrator determines that catch of Chinook salmon, by vessels using trawl gear while directed fishing for pollock in the AI, will reach the annual limit of 700 Chinook salmon, as identified in paragraph (e)(1)(viii) of this section,

NMFS, by notification in the **Federal Register** will close the AI Chinook Salmon Savings Area, as defined in Figure 8 to this part, to directed fishing for pollock with trawl gear on the following dates:

(A) From the effective date of the closure until April 15, and from September 1 through December 31, if the Regional Administrator determines that the annual limit of AI Chinook salmon will be attained before April 15.

(B) From September 1 through December 31, if the Regional Administrator determines that the annual limit of AI Chinook salmon will be attained after April 15.

(ix) *Exemptions.* Trawl vessels participating in directed fishing for pollock and operating under a non-Chinook salmon bycatch reduction ICA approved by NMFS under paragraph (g) of this section are exempt from closures in the Chum Salmon Savings Area described at paragraph (e)(7)(vii) of this section. See also § 679.22(a)(10) and Figure 9 to part 679.

\* \* \* \* \*

(f) *BS Chinook Salmon Bycatch Management—(1) Applicability.* This paragraph contains regulations governing the bycatch of Chinook salmon in the BS pollock fishery.

(2) *BS Chinook salmon prohibited species catch (PSC) limit.* Each year, NMFS will allocate to AFA sectors,

listed in paragraph (f)(3)(ii) of this section, a portion of either the 47,591 Chinook salmon PSC limit or the 60,000 Chinook salmon PSC limit.

(i) An AFA sector will receive a portion of the 47,591 Chinook salmon PSC limit if:

(A) No Chinook salmon bycatch incentive plan agreement (IPA) is approved by NMFS under paragraph (f)(12) of this section; or

(B) That AFA sector has exceeded its performance standard under paragraph (f)(6) of this section.

(ii) An AFA sector will receive a portion of the 60,000 Chinook salmon PSC limit if:

(A) At least one IPA is approved by NMFS under paragraph (f)(12) of this section; and

(B) That AFA sector has not exceeded its performance standard under paragraph (f)(6) of this section.

(3) *Allocations of the BS Chinook salmon PSC limits—(i) Seasonal apportionment.* NMFS will apportion the BS Chinook salmon PSC limits annually 70 percent to the A season and 30 percent to the B season, which are described in § 679.23(e)(2)(i) and (ii).

(ii) *AFA sectors.* Each year, NMFS will make allocations of the applicable BS Chinook salmon PSC limit to the following four AFA sectors:

AFA sector:	Eligible participants are:
(A) Catcher/processor (C/P) .....	AFA catcher/processors and AFA catcher vessels delivering to AFA catcher/processors, all of which are permitted under § 679.4(l)(2) and § 679.4(l)(3)(i)(A), respectively.
(B) Mothership .....	AFA catcher vessels harvesting pollock for processing by AFA motherships, all of which are permitted under § 679.4(l)(3)(i)(B) and § 679.4(l)(4), respectively.
(C) Inshore .....	AFA catcher vessels harvesting pollock for processing by AFA inshore processors, all of which are permitted under § 679.4(l)(3)(i)(C).
(D) CDQ Program .....	The six CDQ groups authorized under section 305(i)(1)(D) of the Magnuson-Stevens Act to participate in the CDQ Program.

(iii) *Allocations to each AFA sector.* NMFS will allocate the BS Chinook

salmon PSC limits to each AFA sector as follows:

(A) If a sector is managed under the 60,000 Chinook salmon PSC limit, the

maximum amount of Chinook salmon PSC allocated to each sector in each season and annually is:

AFA sector	A season		B season		Annual total	
	% Allocation	# of Chinook	% Allocation	# of Chinook	% Allocation	# of Chinook
(1) C/P .....	32.9	13,818	17.9	3,222	28.4	17,040
(2) Mothership .....	8.0	3,360	7.3	1,314	7.8	4,674
(3) Inshore .....	49.8	20,916	69.3	12,474	55.6	33,390
(4) CDQ Program .....	9.3	3,906	5.5	990	8.2	4,896

(B) If the sector is managed under the 47,591 Chinook salmon PSC limit, the sector will be allocated the following

amount of Chinook salmon PSC in each season and annually:

AFA sector	A season		B season		Annual total	
	% Allocation	# of Chinook	% Allocation	# of Chinook	% Allocation	# of Chinook
(1) C/P .....	32.9	10,960	17.9	2,556	28.4	13,516
(2) Mothership .....	8.0	2,665	7.3	1,042	7.8	3,707
(3) Inshore .....	49.8	16,591	69.3	9,894	55.6	26,485
(4) CDQ Program .....	9.3	3,098	5.5	785	8.2	3,883

(iv) *Allocations to the AFA catcher/processor and mothership sectors*—(A) NMFS will issue transferable Chinook salmon PSC allocations under paragraph (f)(3)(iii)(A) or (B) of this section to entities representing the AFA catcher/processor sector and the AFA mothership sector if these sectors meet the requirements of paragraph (f)(8) of this section.

(B) If no entity is approved by NMFS to represent the AFA catcher/processor sector or the AFA mothership sector, then NMFS will manage that sector under a non-transferable Chinook salmon PSC allocation under paragraph (f)(10) of this section.

(v) *Allocations to inshore cooperatives and the AFA inshore open access fishery.* NMFS will further allocate the inshore sector's Chinook salmon PSC allocation under paragraph (f)(3)(iii)(A)(3) or (B)(3) of this section among the inshore cooperatives and the inshore open access fishery based on the percentage allocations of pollock to each inshore cooperative under § 679.62(a). NMFS will issue transferable Chinook salmon PSC allocations to inshore cooperatives. Any Chinook salmon PSC allocated to the inshore open access fishery will be as a non-transferable allocation managed by NMFS under the

requirements of paragraph (f)(10) of this section.

(vi) *Allocations to the CDQ Program.* NMFS will further allocate the Chinook salmon PSC allocation to the CDQ Program under paragraph (f)(3)(iii)(A)(4) or (B)(4) of this section among the six CDQ groups based on each CDQ group's percentage of the CDQ Program pollock allocation in Column B of Table 47d to this part. NMFS will issue transferable Chinook salmon PSC allocations to CDQ groups.

(vii) *Accrual of Chinook salmon bycatch to specific PSC allocations.*

If a Chinook salmon PSC allocation is:	Then all Chinook salmon bycatch:
(A) A transferable allocation to a sector-level entity, inshore cooperative, or CDQ group under paragraph (f)(8) of this section.	by any vessel fishing under a transferable allocation will accrue against the allocation to the entity representing that vessel.
(B) A non-transferable allocation to a sector or the inshore open access fishery under paragraph (f)(10) of this section.	by any vessel fishing under a non-transferable allocation will accrue against the allocation established for the sector or inshore open access fishery, whichever is applicable.
(C) The opt-out allocation under paragraph (f)(5) of this section .....	by any vessel fishing under the opt-out allocation will accrue against the opt-out allocation.

(viii) *Public release of Chinook salmon PSC information.* For each year, NMFS will release to the public and publish on the NMFS Alaska Region website (<http://alaskafisheries.noaa.gov/>):

(A) The Chinook salmon PSC allocations for each entity receiving a transferable allocation;

(B) The non-transferable Chinook salmon PSC allocations;

(C) The vessels fishing under each transferable or non-transferable allocation;

(D) The amount of Chinook salmon bycatch that accrues towards each transferable or non-transferable allocation; and

(E) Any changes to these allocations due to transfers under paragraph (f)(9) of this section, rollovers under paragraph (f)(11) of this section, and deductions from the B season non-transferable allocations under paragraphs (f)(5)(v) or (f)(10)(iii) of this section.

(4) *Reduction in allocations of the 60,000 Chinook salmon PSC limit*—(i) *Reduction in sector allocations.* NMFS

will reduce the seasonal allocation of the 60,000 Chinook salmon PSC limit to the catcher/processor sector, the mothership sector, the inshore sector, or the CDQ Program under paragraph (f)(3)(iii)(A) of this section, if the owner of any permitted AFA vessel in that sector, or any CDQ group, does not participate in an approved IPA under paragraph (f)(12) of this section. The amount of Chinook salmon subtracted from each sector's allocation for those not participating in an approved IPA is calculated as follows:

For each sector:	Reduce the A season allocation by the sum of the amount of Chinook salmon associated with each vessel or CDQ group not participating in an IPA:		Reduce the B season allocation by the sum of the amount of Chinook salmon associated with each vessel or CDQ group not participating in an IPA:		The annual amount of Chinook salmon subtracted from each sector's Chinook salmon PSC allocation listed at paragraph (f)(3)(iii)(A) of this section.
(A) Catcher/processor	From Column E in Table 47a to this part	+	From Column F in Table 47a to this part	=	
(B) Mothership	From column E in Table 47b to this part		From Column F in Table 47b to this part		
(C) Inshore	From column E in Table 47c to this part		From Column F in Table 47c to this part		
(D) CDQ Program	From Column C in Table 47d to this part		From Column D in Table 43d to this part		

(ii) *Adjustments to the inshore sector and inshore cooperative allocations*—  
 (A) If some members of an inshore cooperative do not participate in an approved IPA, NMFS will only reduce the allocation to the cooperative to which those vessels belong, or the inshore open access fishery.

(B) If all members of an inshore cooperative do not participate in an approved IPA, the amount of Chinook salmon that remains in the inshore sector's allocation, after subtracting the amount in paragraph (f)(4)(i)(C) of this section for the non-participating inshore cooperative, will be reallocated among the inshore cooperatives participating in an approved IPA based on the

proportion each participating cooperative represents of the Chinook salmon PSC initially allocated among the participating inshore cooperatives that year.

(iii) *Adjustment to CDQ group allocations*. If a CDQ group does not participate in an approved IPA, the amount of Chinook salmon that remains in the CDQ Program's allocation, after subtracting the amount in paragraph (f)(4)(i)(D) of this section for the non-participating CDQ group, will be reallocated among the CDQ groups participating in an approved IPA based on the proportion each participating CDQ group represents of the Chinook

salmon PSC initially allocated among the participating CDQ groups that year.

(iv) *All members of a sector do not participate in an approved IPA*. If all members of a sector do not participate in an approved IPA, the amount of Chinook salmon that remains after subtracting the amount in paragraph (f)(4)(i) of this section for the non-participating sector will not be reallocated among the sectors that do have members participating in an approved IPA. This portion of the 60,000 PSC limit will remain unallocated for that year.

(5) *Chinook salmon PSC opt-out allocation*. The following table describes requirements for the opt-out allocation:

(i) What is the amount of Chinook salmon PSC that will be allocated to the opt-out allocation in the A season and the B season?	The opt-out allocation will equal the sum of the Chinook salmon PSC deducted under paragraph (f)(4)(i) of this section from the seasonal allocations of each sector with members not participating in an approved IPA.
(ii) Which participants will be managed under the opt-out allocation?	Any AFA permitted vessel or any CDQ group that is a member of a sector eligible under paragraph (f)(2)(ii) of this section to receive allocations of the 60,000 PSC limit, but that is not participating in an approved IPA.
(iii) What Chinook salmon bycatch will accrue against the opt-out allocation?	All Chinook salmon bycatch by participants under paragraph (f)(2)(ii) of this section.
(iv) How will the opt-out allocation be managed?	All participants under paragraph (f)(2)(ii) of this section will be managed as a group under the seasonal opt-out allocations. If the Regional Administrator determines that the seasonal opt-out allocation will be reached, NMFS will publish a notice in the <b>Federal Register</b> closing directed fishing for pollock in the BS, for the remainder of the season, for all vessels fishing under the opt-out allocation.
(v) What will happen if Chinook salmon bycatch by vessels fishing under the opt-out allocation exceeds the amount allocated to the A season opt-out allocation?	NMFS will deduct from the B season opt-out allocation any Chinook salmon bycatch in the A season that exceeds the A season opt-out allocation.
(vi) What will happen if Chinook salmon bycatch by vessels fishing under the opt-out allocation is less than the amount allocated to the A season opt-out allocation?	If Chinook salmon bycatch by vessels fishing under the opt-out allocation in the A season is less than the amount allocated to the opt-out allocation in the A season, this amount of Chinook salmon will <i>not</i> be added to the B season opt-out allocation.
(vii) Is Chinook salmon PSC allocated to the opt-out allocation transferable?	No. Chinook salmon PSC allocated to the opt-out allocation is not transferable.

(6) *Chinook salmon bycatch performance standard*. If the total annual Chinook salmon bycatch by the members of a sector participating in an approved IPA is greater than that sector's annual threshold amount of Chinook salmon in any three of seven consecutive years, that sector will receive an allocation of Chinook salmon under the 47,591 PSC limit in all future years.

(i) *Annual threshold amount*. Prior to each fishing year, NMFS will calculate each sector's annual threshold amount. NMFS will post the annual threshold amount for each sector on the NMFS

Alaska Region Web site (<http://alaskafisheries.noaa.gov/>). At the end of each fishing year, NMFS will evaluate the Chinook salmon bycatch by all IPA participants in each sector against that sector's annual threshold amount.

(ii) *Calculation of the annual threshold amount*. A sector's annual threshold amount is the annual number of Chinook salmon that would be allocated to that sector under the 47,591 Chinook salmon PSC limit, as shown in the table in paragraph (f)(3)(iii)(B) of this section. If any vessels in a sector do not participate in an approved IPA, NMFS will reduce that sector's annual

threshold amount by the number of Chinook salmon associated with each vessel not participating in an approved IPA. If any CDQ groups do not participate in an approved IPA, NMFS will reduce the CDQ Program's annual threshold amount by the number of Chinook salmon associated with each CDQ group not participating in an approved IPA. NMFS will subtract the following numbers of Chinook salmon from each sector's annual threshold amount for vessels or CDQ groups not participating in an approved IPA:

For each sector:	The amount of Chinook salmon associated with each vessel or CDQ group not participating in an IPA:
(A) Catcher/processor .....	From Column G of Table 47a to this part;
(B) Mothership .....	From Column G of Table 47b to this part;
(C) Inshore .....	From Column G of Table 47c to this part;
(D) CDQ Program .....	From Column E of Table 47d to this part.

(iii) If NMFS determines that a sector has exceeded its performance standard by exceeding its annual threshold amount in any three of seven consecutive years, NMFS will issue a notification in the **Federal Register** that the sector has exceeded its performance standard and that NMFS will allocate to that sector the amount of Chinook salmon in the table in paragraph (f)(3)(iii)(B) of this section in all subsequent years. All members of the affected sector will fish under this lower allocation regardless of whether a vessel or CDQ group within that sector participates in an approved IPA.

(7) *Replacement vessels.* If an AFA permitted vessel listed in Tables 47a through 47c to this part is no longer eligible to participate in the BS pollock fishery or if a vessel replaces a currently eligible vessel, the portion and number of Chinook salmon associated with that vessel in Tables 47a through 47c to this part will be assigned to the replacement vessel or distributed among other eligible vessels in the sector based on the procedures in the law, regulation, or private contract that accomplishes the vessel removal or replacement action until Tables 47a through 47c to this part can be revised as necessary.

(8) *Entities eligible to receive transferable Chinook salmon PSC allocations*—(i) NMFS will issue transferable Chinook salmon PSC allocations to the following entities, if these entities meet all of the applicable requirements of this part.

(A) *Inshore cooperatives.* NMFS will issue transferable Chinook salmon PSC allocations to the inshore cooperatives permitted annually under § 679.4(l)(6). The representative and agent for service of process (see definition at § 679.2) for an inshore cooperative is the cooperative representative identified in the application for an inshore cooperative fishing permit issued under § 679.4(l)(6), unless the inshore cooperative representative notifies NMFS in writing that a different person will act as its agent for service of process for purposes of this paragraph (f). An inshore cooperative is not required to submit an application under paragraph (f)(8)(ii) of this section to receive a transferable Chinook salmon PSC allocation.

(B) *CDQ groups.* NMFS will issue transferable Chinook salmon PSC allocations to the CDQ groups. The representative and agent for service of process for a CDQ group is the chief executive officer of the CDQ group, unless the chief executive officer notifies NMFS in writing that a different person will act as its agent for service of process. A CDQ group is not required

to submit an application under paragraph (f)(8)(ii) of this section to receive a transferable Chinook salmon PSC allocation.

(C) *Entity representing the catcher/processor sector.* NMFS will issue transferable Chinook salmon PSC allocations to an entity representing the AFA catcher/processor sector if some or all of the owners of AFA permitted vessels in this sector form a single entity to represent all catcher/processors eligible to fish under transferable Chinook salmon PSC allocations. No more than one entity will be authorized by NMFS to represent the catcher/processor sector for purposes of receiving and managing transferable Chinook salmon PSC allocations on behalf of the catcher/processor sector.

(D) *Entity representing the mothership sector.* NMFS will issue transferable Chinook salmon PSC allocations to an entity representing the AFA mothership sector if some or all of the owners of AFA permitted catcher vessels in this sector form a single entity to represent all catcher vessels in this sector eligible to fish under transferable Chinook salmon PSC allocations. No more than one entity will be authorized by NMFS to represent the mothership sector for purposes of receiving and managing transferable Chinook salmon PSC allocations on behalf of the mothership sector.

(ii) *Request for approval as an entity eligible to receive transferable Chinook salmon PSC allocations.* A representative of an entity representing the catcher/processor sector or the mothership sector may request approval by NMFS to receive transferable Chinook salmon PSC allocations on behalf of the members of the sector. The application must be submitted to NMFS at the address in paragraph (b)(6) of this section. A completed application consists of the application form and a contract, described below.

(A) *Application form.* The applicant must submit a paper copy of the application form with all information fields accurately filled in. The application form is available on the NMFS Alaska Region website (<http://alaskafisheries.noaa.gov/>) or from NMFS at the address or phone number in paragraph (b)(6) of this section.

(B) *Contract.* A contract containing the following information must be attached to the completed application form:

(1) Information that documents that all parties to the contract agree that the entity, the entity's representative, and the entity's agent for service of process named in the application form represent them for purposes of receiving

transferable Chinook salmon PSC allocations.

(2) A statement that the entity's representative and agent for service of process are authorized to act on behalf of the parties to the contract.

(3) *Certification of applicant.* Signatures, printed names, and date of signature for the owners of each AFA permitted vessel identified in the application.

(C) *Contract duration.* Once submitted, the contract attached to the application is valid until amended or terminated by the parties to the contract. Additions or deletions to the vessels represented by the entity may be done one time per year for subsequent years by submitting an amended contract and revised vessel information by the deadline, unless additions or deletions are as a result of a replacement vessel under paragraph (f)(7) of this section. An amendment to the contract related to a replacement vessel may be made at any time upon submission of an amended application and a copy of the AFA permit issued under § 679.4 for the replacement vessel.

(D) *Deadline.* An initial or amended application and contract must be received by NMFS no later than 1700 hours A.l.t. on November 1 of the year prior to the fishing year for which the Chinook salmon PSC allocations are effective.

(iii) *Responsibility.*—(A) *Entity*—(1) Each inshore cooperative and its members are jointly and severally liable for any violation of applicable regulations in this part by a member of the cooperative.

(2) The entity representing the catcher/processor sector and its members are jointly and severally liable for any violation of applicable regulations in this part by a member of the sector.

(3) The entity representing the mothership sector and its members are jointly and severally liable for any violation of applicable regulations in this part by a member of the sector.

(4) The owners of all vessels that are members of an inshore cooperative or members of the entity that represents the catcher/processor sector or the mothership sector may authorize the entity representative to sign a proposed IPA submitted to NMFS under paragraph (f)(12) of this section on their behalf. This authorization must be included in the contract submitted to NMFS under paragraph (f)(8)(ii)(B) of this section for the sector-level entities and in the contract submitted annually to NMFS by inshore cooperatives under § 679.61(d).

(B) *Entity Representative*. The entity's representative must—

(1) Act as the primary contact person for NMFS on issues relating to the operation of the entity;

(2) Submit on behalf of the entity any applications required for the entity to receive a transferable Chinook salmon PSC allocation and to transfer some or all of that allocation to and from other entities eligible to receive transfers of Chinook salmon PSC allocations;

(3) Ensure that an agent for service of process is designated by the entity; and

(4) Ensure that NMFS is notified if a substitute agent for service of process is designated. Notification must include the name, address, and telephone number of the substitute agent in the event the previously designated agent is no longer capable of accepting service on behalf of the entity or its members within the 5-year period from the time the agent is identified in the application to NMFS under paragraph (f)(8)(ii)(B) of this section.

(C) *Agent for service of process*. The entity's agent for service of process must—

(1) Be authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of an entity receiving a transferable allocation of Chinook salmon PSC or with respect to a CDQ group. Service on or notice to the entity's appointed agent constitutes service on or notice to all members of the entity.

(2) Be capable of accepting service on behalf of the entity until December 31 of the year five years after the calendar year for which the entity notified the Regional Administrator of the identity of the agent.

(D) *Absent a catcher/processor sector or mothership sector entity*. If the catcher/processor sector or the mothership sector does not form an entity to receive a transferable allocation of Chinook salmon PSC, the sector will receive non-transferable allocations of Chinook salmon PSC that will be managed by NMFS under paragraph (f)(10) of this section.

(9) *Transfers of Chinook salmon PSC*—(i) A Chinook salmon PSC allocation issued to eligible entities under paragraph (f)(8)(i) of this section may be transferred to any other entity receiving a transferable allocation of Chinook salmon PSC by submitting to NMFS an application for transfer described in paragraph (f)(9)(iii) of this section. Transfers of Chinook salmon PSC allocations among eligible entities are subject to the following restrictions:

(A) Entities receiving transferable allocations under the 60,000 PSC limit may only transfer to and from other entities receiving allocations under the 60,000 PSC limit.

(B) Entities receiving transferable allocations under the 47,591 PSC limit may only transfer to and from other entities receiving allocations under the 47,591 PSC limit.

(C) Chinook salmon PSC allocations may not be transferred between seasons.

(ii) *Post-delivery transfers*. If the Chinook salmon bycatch by an entity exceeds its seasonal allocation, the entity may receive transfers of Chinook salmon PSC to cover overages for that season. An entity may conduct transfers to cover an overage that results from Chinook salmon bycatch from any fishing trip by a vessel fishing on behalf of that entity that was completed or is in progress at the time the entity's allocation is first exceeded. Under § 679.7(d)(8)(ii)(C)(2) and (k)(8)(v), vessels fishing on behalf of an entity that has exceeded its Chinook salmon PSC allocation for a season may not start a new fishing trip for pollock in the BS for the remainder of that season once that overage has occurred.

(iii) *Application for transfer of Chinook salmon PSC allocations*—(A) *Completed application*. NMFS will process a request for transfer of Chinook salmon PSC provided that a paper or electronic application is completed, with all information fields accurately filled in. Application forms are available on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov>) or from NMFS at the address or phone number in paragraph (b)(6) of this section.

(B) *Certification of transferor*—(1) *Non-electronic submittal*. The transferor's designated representative must sign and date the application certifying that all information is true, correct, and complete. The transferor's designated representative must submit the paper application as indicated on the application.

(2) *Electronic submittal*. The transferor's designated entity representative must log into NMFS online services system and create a transfer request as indicated on the computer screen. By using the transferor's NMFS ID, password, and Transfer Key, and submitting the transfer request, the designated representative certifies that all information is true, correct, and complete.

(C) *Certification of transferee*—(1) *Non-electronic submittal*. The transferee's designated representative must sign and date the application

certifying that all information is true, correct, and complete.

(2) *Electronic submittal*. The transferee's designated representative must log into the NMFS online services system and accept the transfer request as indicated on the computer screen. By using the transferee's NMFS ID, password, and Transfer Key, the designated representative certifies that all information is true, correct, and complete.

(D) *Deadline*. NMFS will not approve an application for transfer of Chinook salmon PSC after June 25 for the A season and after December 1 for the B season.

(10) *Non-transferable Chinook salmon PSC allocations*—(i) All vessels belonging to a sector that is ineligible to receive transferable allocations under paragraph (f)(8) of this section, any catcher vessels participating in an inshore open access fishery, and all vessels fishing under the opt-out allocation under paragraph (f)(5) of this section will fish under specific non-transferable Chinook salmon PSC allocations.

(ii) All vessels fishing under a non-transferable Chinook salmon PSC allocation, including vessels fishing on behalf of a CDQ group, will be managed together by NMFS under that non-transferable allocation. If, during the fishing year, the Regional Administrator determines that a seasonal non-transferable Chinook salmon PSC allocation will be reached, NMFS will publish a notice in the **Federal Register** closing the BS to directed fishing for pollock by those vessels fishing under that non-transferable allocation for the remainder of the season or for the remainder of the year.

(iii) For each non-transferable Chinook salmon PSC allocation, NMFS will deduct from the B season allocation any amount of Chinook salmon bycatch in the A season that exceeds the amount available under the A season allocation.

(11) *Rollover of unused A season allocation*—(i) *Rollovers of transferable allocations*. NMFS will add any Chinook salmon PSC allocation remaining at the end of the A season, after any transfers under paragraph (f)(9)(ii) of this section, to an entity's B season allocation.

(ii) *Rollover of non-transferable allocations*. For a non-transferable allocation for the mothership sector, catcher/processor sector, or an inshore open access fishery, NMFS will add any Chinook salmon PSC remaining in that non-transferable allocation at the end of the A season to that B season non-transferable allocation.



(12) *Chinook salmon bycatch incentive plan agreements (IPAs)*—(i) *Minimum participation requirements.* More than one IPA may be approved by NMFS. Each IPA must have participants that represent the following:

(A) *Minimum percent pollock.* Participation by the owners of AFA permitted vessels or CDQ groups that combined represent at least 9 percent of the amount of BS pollock attributed to the sector, inshore cooperative, CDQ

group, or individual vessel is required for purposes of this paragraph (f)(12)(i). The percentage of pollock attributed to each sector, vessel, or CDQ group is as follows:

For each sector:	The percent attributed to each sector:	Percent used to calculate IPA minimum participation is the value in:
(1) Catcher/processor .....	36	Column H in Table 47a to this part.
(2) Mothership .....	9	Column H in Table 47b to this part.
(3) Inshore .....	45	Column H in Table 47c to this part.
(4) CDQ Program .....	10	Column F in Table 47d to this part.

(B) *Minimum number of unaffiliated AFA entities.* The parties to an IPA must represent any combination of two or more CDQ groups or corporations, partnerships, or individuals who own AFA permitted vessels and are not affiliated as affiliation is defined for purposes of AFA entities in § 679.2.

(ii) *Membership in an IPA is voluntary.* No vessel owner or CDQ group may be required to join an IPA. Upon receipt of written notification that a person wants to join an IPA, the IPA representative must allow that vessel owner or CDQ group to join subject to the terms and conditions that have been agreed upon by all other parties to the proposed IPA.

(iii) *Request for approval of a proposed IPA.* The IPA representative must submit an application for approval of a proposed IPA to NMFS at the address in paragraph (b)(6) of this section. A completed application consists of the application form and the proposed IPA, described below.

(A) *Application form.* The applicant must submit a paper copy of the application form with all information fields accurately filled in. The application form is available on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov/>) or from NMFS at the address or phone number in paragraph (b)(6) of this section.

(B) *Proposed IPA.* The proposed IPA must contain the following information:

(1) *Name of the IPA.* The same IPA name submitted on the application form.

(2) *Representative.* The name, telephone number, and e-mail address of the IPA representative who submits the proposed IPA on behalf of the parties and who is responsible for submitting proposed amendments to the IPA and the annual report required under paragraph (f)(12)(vii) of this section.

(3) *Description of the incentive plan.* The IPA must contain a written description of the following:

(i) The incentive(s) that will be implemented under the IPA to ensure that the operator of each vessel participating in the IPA will avoid Chinook salmon at all times while directed fishing for pollock;

(ii) The rewards for avoiding Chinook salmon, penalties for failure to avoid Chinook salmon at the vessel level, or both;

(iii) How the incentive measures in the IPA are expected to promote reductions in a vessel's Chinook salmon bycatch rates relative to what would have occurred in absence of the incentive program;

(iv) How the incentive measures in the IPA promote Chinook salmon savings in any condition of pollock abundance or Chinook salmon abundance in a manner that is expected to influence operational decisions by vessel operators to avoid Chinook salmon; and

(v) How the IPA ensures that the operator of each vessel governed by the IPA will manage his or her Chinook salmon bycatch to keep total bycatch below the performance standard described in paragraph (f)(6) of this section for the sector in which the vessel participates.

(4) *Compliance agreement.* The IPA must include a written statement that all parties to the IPA agree to comply with all provisions of the IPA.

(5) *Signatures.* The names and signatures of the owner or representative for each vessel and CDQ group that is a party to the IPA. The representative of an inshore cooperative, or the representative of the entity formed to represent the AFA catcher/processor sector or the AFA mothership sector under paragraph (f)(8) of this section may sign a proposed IPA on behalf of all vessels that are members of that inshore cooperative or sector level entity.

(iv) *Deadline and duration*—(A) *Deadline for proposed IPA.* An initial or amended application must be received

by NMFS no later than 1700 hours A.l.t. on October 1 of the year prior to the fishing year for which the Chinook salmon PSC allocations are proposed to be effective.

(B) *Duration.* Once approved, an IPA is effective starting January 1 of the year following the year in which NMFS approves the IPA, unless the IPA is approved between January 1 and January 19, in which case the IPA is effective starting in the year in which it is approved. Once approved, an IPA is effective until December 31 of the first year in which it is effective or until December 31 of the year in which the IPA representative notifies NMFS in writing that the IPA is no longer in effect, whichever is later. An IPA may not expire mid-year. No party may join or leave an IPA once it is approved, except as allowed under paragraph (f)(12)(v)(C) of this section.

(v) *NMFS review of a proposed IPA*—(A) *Approval.* An IPA will be approved by NMFS if it meets the following requirements:

(1) Meets the minimum participation requirements in paragraph (f)(12)(i) of this section;

(2) Is submitted in compliance with the requirements of paragraph (f)(12)(ii) and (iv) of this section; and

(3) Contains the information required in paragraph (f)(12)(iii) of this section.

(B) *IPA identification number.* If approved, NMFS will assign an IPA number to the approved IPA. This number must be used by the IPA representative in amendments to the IPA.

(C) *Amendments to an IPA.* Amendments to an approved IPA may be submitted to NMFS and will be reviewed under the requirements of this paragraph (f)(12).

(1) An amendment to an approved IPA with no change in the participants in the IPA may be submitted to NMFS at any time and is effective upon written notification of approval by NMFS to the IPA representative.

(2) Amendments to the list of participants in an IPA, with or without changes to an approved IPA, must be received by NMFS no later than 1700 hours A.L.T. on November 1 of the year prior to the year in which the participants will join or leave the IPA, unless amendments to the list of participants are the result of a replacement vessel under paragraph (f)(7) of this section. The IPA representative must submit an application for approval of a proposed IPA (amended) that includes all of the information required in paragraph (f)(12)(iii) of this section. In addition, for an amendment related to a replacement vessel, the application for approval of an amendment must also include a copy of the AFA permit issued under § 679.4 for the replacement vessel.

(D) *Disapproval*—(1) NMFS will disapprove a proposed IPA or a proposed amendment to an IPA for either of the following reasons;

(i) If the proposed IPA fails to meet any of the requirements of paragraphs (f)(12)(i) through (iii) of this section, or

(ii) If a proposed amendment to an IPA would cause the IPA to no longer be consistent with the requirements of paragraphs (f)(12)(i) through (iv) of this section.

(2) *Initial Administrative Determination (IAD)*. If, in NMFS's review of the proposed IPA, NMFS identifies deficiencies in the proposed IPA that require disapproval of the proposed IPA, NMFS will notify the applicant in writing. The applicant will be provided 30 days to address, in writing, the deficiencies identified by NMFS. An applicant will be limited to one 30-day period to address any deficiencies identified by NMFS. Additional information or a revised IPA received after the 30-day period specified by NMFS has expired will not be considered for purposes of the review of the proposed IPA. NMFS will evaluate any additional information submitted by the applicant within the 30-day period. If the Regional Administrator determines that the additional information addresses deficiencies in the proposed IPA, the Regional Administrator will approve the proposed IPA under paragraphs (f)(12)(iv)(B) and (f)(12)(v)(A) of this section. However, if, after consideration of the original proposed IPA and any additional information submitted during the 30-day period, NMFS determines that the proposed IPA does not comply with the requirements of paragraph (f)(12) of this section, NMFS will issue an initial administrative determination (IAD) providing the reasons for disapproving the proposed IPA.

(3) *Administrative Appeals*. An applicant who receives an IAD disapproving a proposed IPA may appeal under the procedures set forth at § 679.43. If the applicant fails to file an appeal of the IAD pursuant to § 679.43, the IAD will become the final agency action. If the IAD is appealed and the final agency action is a determination to approve the proposed IPA, then the IPA will be effective as described in paragraph (f)(12)(iv)(B) of this section.

(4) While appeal of an IAD disapproving a proposed IPA is pending, proposed members of the IPA subject to the IAD that are not currently members of an approved IPA would fish under the opt-out allocation under paragraph (f)(5) of this section. If no other IPA has been approved by NMFS, NMFS will issue all sectors allocations of the 47,591 Chinook salmon PSC limit as described in paragraph (f)(3)(iii)(B) of this section.

(vi) *Public release of an IPA*. NMFS will make all proposed IPAs and all approved IPAs and the list of participants in each approved IPA available to the public on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov/>).

(vii) *IPA Annual Report*. The representative of each approved IPA must submit a written annual report to the Council at the address specified in § 679.61(f). The Council will make the annual report available to the public.

(A) *Submission deadline*. The annual report must be postmarked or received by the Council no later than April 1 of each year following the year in which the IPA is first effective.

(B) *Information requirements*. The annual report must contain the following information:

(1) A comprehensive description of the incentive measures in effect in the previous year;

(2) A description of how these incentive measures affected individual vessels;

(3) An evaluation of whether incentive measures were effective in achieving salmon savings beyond levels that would have been achieved in absence of the measures; and

(4) A description of any amendments to the terms of the IPA that were approved by NMFS since the last annual report and the reasons that the amendments to the IPA were made.

(g) *BS Non-Chinook Salmon Bycatch Management*—(1) *Requirements for the non-Chinook salmon bycatch reduction intercooperative agreement (ICA)*—(i) *Application*. The ICA representative identified in paragraph (g)(2)(i)(B) of this section must submit a signed copy of the proposed non-Chinook salmon

bycatch reduction ICA, or any proposed amendments to the ICA, to NMFS at the address in paragraph (b)(6) of this section.

(ii) *Deadline*. For any ICA participant to be exempt from closure of the Chum Salmon Savings Area as described at paragraph (e)(7)(ix) of this section and at § 679.22(a)(10), the ICA must be filed in compliance with the requirements of this section, and approved by NMFS. The proposed non-Chinook salmon bycatch reduction ICA or any amendments to an approved ICA must be postmarked or received by NMFS by December 1 of the year before the year in which the ICA is proposed to be effective. Exemptions from closure of the Chum Salmon Savings Area will expire upon termination of the initial ICA, expiration of the initial ICA, or if superseded by a NMFS-approved amended ICA.

(2) *Information requirements*. The ICA must include the following provisions:

(i) *Participants*—(A) The names of the AFA cooperatives and CDQ groups participating in the ICA. Collectively, these groups are known as parties to the ICA. Parties to the ICA must agree to comply with all provisions of the ICA.

(B) The name, business mailing address, business telephone number, business fax number, and business e-mail address of the ICA representative.

(C) The ICA also must identify one entity retained to facilitate vessel bycatch avoidance behavior and information sharing.

(D) The ICA must identify at least one third party group. Third party groups include any organizations representing western Alaskans who depend on non-Chinook salmon and have an interest in non-Chinook salmon bycatch reduction but do not directly fish in a groundfish fishery.

(ii) The names, Federal fisheries permit numbers, and USCG documentation numbers of vessels subject to the ICA.

(iii) Provisions that dictate non-Chinook salmon bycatch avoidance behaviors for vessel operators subject to the ICA, including:

(A) *Initial base rate*. The initial B season non-Chinook salmon base rate shall be 0.19 non-Chinook salmon per metric ton of pollock.

(B) *Inseason adjustments to the non-Chinook base rate calculation*. Beginning July 1 of each fishing year and on each Thursday during the B season, the B season non-Chinook base rate shall be recalculated. The recalculated non-Chinook base rate shall be the three week rolling average of the B season non-Chinook bycatch rate for the current year. The recalculated base

rate shall be used to determine bycatch avoidance areas.

(C) *ICA Chum Salmon Savings Area notices.* On each Thursday and Monday after June 10 of each year for the duration of the pollock "B" season, the entity identified under paragraph (g)(2)(i)(C) of this section must provide notice to the parties to the salmon bycatch reduction ICA and NMFS identifying one or more areas designated "ICA Chum Savings Areas" by a series of latitude and longitude coordinates. The Thursday notice must be effective from 6:00 p.m. A.l.t. the following Friday through 6:00 p.m. A.l.t. the following Tuesday. The Monday notice must be effective from 6:00 p.m. A.l.t. the following Tuesday through 6:00 p.m. A.l.t. the following Friday. For any ICA Salmon Savings Area notice, the maximum total area closed must be at least 3,000 square miles for ICA Chum Savings Area closures.

(D) *Fishing restrictions for vessels assigned to tiers.* For vessels in a cooperative assigned to Tier 3, the ICA Chum Salmon Savings Area closures announced on Thursdays must be closed to directed fishing for pollock, including pollock CDQ, for seven days. For vessels in a cooperative assigned to Tier 2, the ICA Chum Salmon Savings Area closures announced on Thursdays must be closed through 6 p.m. Alaska local time on the following Tuesday. Vessels in a cooperative assigned to Tier 1 may operate in any area designated as an ICA Chum Salmon Savings Area.

(E) *Cooperative tier assignments.* Initial and subsequent base rate calculations must be based on each cooperative's pollock catch for the prior two weeks and the associated bycatch of non-Chinook salmon taken by its members. Base rate calculations shall include non-Chinook salmon bycatch and pollock caught in both the CDQ and non-CDQ pollock directed fisheries. Cooperatives with non-Chinook salmon bycatch rates of less than 75 percent of the base rate shall be assigned to Tier 1. Cooperatives with non-Chinook salmon bycatch rates of equal to or greater than 75 percent, but less than or equal to 125 percent of the base rate shall be assigned to Tier 2. Cooperatives with non-Chinook salmon bycatch rates of greater than 125 percent of the base rate shall be assigned to Tier 3. Bycatch rates for Chinook salmon must be calculated separately from non-Chinook salmon, and cooperatives must be assigned to tiers based on non-Chinook salmon bycatch.

(iv) Internal monitoring and enforcement provisions to ensure compliance of fishing activities with the provisions of the ICA. The ICA must

include provisions allowing any party of the ICA to bring civil suit or initiate a binding arbitration action against another party for breach of the ICA. The ICA must include minimum annual uniform assessments for any violation of savings area closures of \$10,000 for the first offense, \$15,000 for the second offense, and \$20,000 for each offense thereafter.

(v) Provisions requiring the parties to conduct an annual compliance audit, and to cooperate fully in such audit, including providing information required by the auditor. The compliance audit must be conducted by a non-party entity, and each party must have an opportunity to participate in selecting the non-party entity. If the non-party entity hired to conduct a compliance audit discovers a previously undiscovered failure to comply with the terms of the ICA, the non-party entity must notify all parties to the ICA of the failure to comply and must simultaneously distribute to all parties of the ICA the information used to determine the failure to comply occurred and must include such notice(s) in the compliance report.

(vi) Provisions requiring data dissemination in certain circumstances. If the entity retained to facilitate vessel bycatch avoidance behavior and information sharing under paragraph (g)(2)(i)(C) of this section determines that an apparent violation of an ICA Chum Salmon Savings Area closure has occurred, that entity must promptly notify the Board of Directors of the cooperative to which the vessel involved belongs. If this Board of Directors fails to assess a minimum uniform assessment within 180 days of receiving the notice, the information used by the entity to determine if an apparent violation was committed must be disseminated to all parties to the ICA.

(3) *NMFS review of the proposed ICA and amendments.* NMFS will approve the initial or an amended ICA if it meets all the requirements specified in paragraph (g) of this section. If NMFS disapproves a proposed ICA, the ICA representative may resubmit a revised ICA or file an administrative appeal as set forth under the administrative appeals procedures described at § 679.43.

(4) *ICA Annual Report.* The ICA representative must submit a written annual report to the Council at the address specified in § 679.61(f). The Council will make the annual report available to the public.

(i) *Submission deadline.* The ICA annual report must be postmarked or received by the Council by April 1 of

each year following the year in which the ICA is first effective.

(ii) *Information requirements.* The ICA annual report must contain the following information:

(A) An estimate of the number of non-Chinook salmon avoided as demonstrated by the movement of fishing effort away from Chum Salmon Savings Areas, and

(B) The results of the compliance audit required at § 679.21(g)(2)(v).

6. In § 679.22, revise paragraph (a)(10) and (h) to read as follows:

**§ 679.22 Closures.**

(a) \* \* \*

(10) *Chum Salmon Savings Area.* Directed fishing for pollock by vessels using trawl gear is prohibited from August 1 through August 31 in the Chum Salmon Savings Area defined at Figure 9 to this part (see also § 679.21(e)(7)(vii)). Vessels directed fishing for pollock in the BS, including pollock CDQ, and operating under a non-Chinook salmon bycatch reduction ICA approved under § 679.21(g) are exempt from closures in the Chum Salmon Savings Area.

(h) *CDQ fisheries closures.* See § 679.7(d)(8) for time and area closures that apply to the CDQ fisheries once the non-Chinook salmon PSQ and the crab PSQs have been reached.

\* \* \* \* \*

7. In § 679.26,

Revise paragraph (c)(1) to read as follows:

**§ 679.26 Prohibited Species Donation Program.**

\* \* \* \* \*

(c) \* \* \*

(1) A vessel or processor retaining prohibited species under the PSD program must comply with all applicable recordkeeping and reporting requirements. A vessel or processor participating in the BS pollock fishery and PSD program must comply with applicable regulations at §§ 679.7(d) and (k), 679.21(c), and 679.28, including allowing the collection of data and biological sampling by an observer prior to processing any fish under the PSD program.

\* \* \* \* \*

8. In § 679.28,

A. Redesignate paragraphs (d)(7) and (d)(8) as paragraphs (d)(8) and (d)(9), respectively;

B. Add paragraphs (d)(7), (g)(7)(vii)(F), and (g)(7)(x)(F);

C. Revise newly redesignated paragraph (d)(9)(i)(H) and paragraphs (g)(2)(i), (g)(7)(vii)(C), (g)(7)(ix)(A), and (g)(7)(x)(D) and (E);

D. Add paragraph (j); and  
E. Redesignate paragraphs (i)(1)(iii), (iv), and (v) as paragraphs (i)(1)(ii), (iii), and (iv), respectively.

The revisions and additions read as follows:

**§ 679.28 Equipment and operational requirements.**

\* \* \* \* \*

(d) \* \* \*

(7) *Catcher/processors and motherships in the BS pollock fishery, including pollock CDQ.* Catcher/processors directed fishing for pollock in the BS or motherships taking deliveries from vessels directed fishing for pollock in the BS also must meet the following requirements:

- (i) A container to store salmon must be located adjacent to the observer sampling station;
- (ii) All salmon stored in the container must remain in view of the observer at the observer sampling station at all times during the sorting of each haul; and
- (iii) The container to store salmon must be at least 1.5 cubic meters.

\* \* \* \* \*

(9) \* \* \*

(i) \* \* \*

(H) For catcher/processors using trawl gear and motherships, a diagram drawn to scale showing the location(s) where all catch will be weighed, the location where observers will sample unsorted catch, and the location of the observer sampling station including the observer sampling scale. For catcher/processors directed fishing for pollock in the BS or motherships taking deliveries from catcher vessels directed fishing for pollock in the BS, including pollock CDQ, the diagram also must include the location of the last point of sorting in the factory and the location of the salmon storage container required under paragraph (d)(7) of this section.

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

(i) AFA and CDQ pollock,

\* \* \* \* \*

(7) \* \* \*

(vii) \* \* \*

(C) \* \* \*

(1) With the exception of paragraph (g)(7)(vii)(C)(2) of this section, the observer area must be located near the observer work station. The plant liaison must be able to walk between the work station and the observation area in less than 20 seconds without encountering safety hazards.

(2) For shoreside processors or stationary floating processors taking deliveries from vessels directed fishing

for pollock in the BS, including vessels directed fishing for pollock CDQ in the BS, the observer work station must be located within the observation area.

\* \* \* \* \*

(F) For shoreside processors or stationary floating processors taking deliveries from vessels directed fishing for pollock in the BS, including vessels directed fishing for pollock CDQ in the BS, the observation area also must include an area designated to store salmon.

\* \* \* \* \*

(ix) \* \* \*

(A) Orienting new observers to the plant and providing a copy of the approved CMCP;

\* \* \* \* \*

(x) \* \* \*

(D) The location of each scale used to weigh catch;

(E) Each location where catch is sorted including the last location where sorting could occur; and

(F) Location of salmon storage container.

\* \* \* \* \*

(j) *Electronic monitoring on catcher/processors and motherships in the BS pollock fishery, including pollock CDQ.*

The owner or operator of a catcher/processor or a mothership must provide and maintain an electronic monitoring system that includes cameras, a monitor, and a digital video recording system for all areas where sorting of salmon of any species takes place and the location of the salmon storage container described at paragraph (d)(7) of this section. These electronic monitoring system requirements must be met when the catcher/processor is directed fishing for pollock in the BS, including pollock CDQ, and when the mothership is taking deliveries from catcher vessels directed fishing for pollock in the BS, including pollock CDQ.

(1) *What requirements must a vessel owner or operator comply with for an electronic monitoring system?* (i) The system must have sufficient data storage capacity to store all video data from an entire trip. Each frame of stored video data must record a time/date stamp in Alaska local time (A.l.t.). At a minimum, all periods of time when fish are flowing past the sorting area or salmon are in the storage container must be recorded and stored.

(ii) The system must include at least one external USB (1.1 or 2.0) port or other removable storage device approved by NMFS.

(iii) The system must use commercially available software.

(iv) Color cameras must have at a minimum 470 TV lines of resolution, auto-iris capabilities, and output color video to the recording device with the ability to revert to black and white video output when light levels become too low for color recognition.

(v) The video data must be maintained and made available to NMFS staff, or any individual authorized by NMFS, upon request. These data must be retained onboard the vessel for no less than 120 days after the date the video is recorded, unless NMFS has notified the vessel operator that the video data may be retained for less than this 120-day period.

(vi) The system must provide sufficient resolution and field of view to observe all areas where salmon could be sorted from the catch, all crew actions in these areas, and discern individual fish in the salmon storage container.

(vii) The system must record at a speed of no less than 5 frames per second at all times when fish are being sorted or when salmon are stored in the salmon storage location.

(viii) A 16-bit or better color monitor, for viewing activities within the tank in real time, must be provided within the observer sampling station. The monitor must—

(A) Have the capacity to display all cameras simultaneously;

(B) Be operating at all times when fish are flowing past the sorting area and salmon are in the storage container; and

(C) Be securely mounted at or near eye level.

(ix) The observer must be able to view any earlier footage from any point in the trip and be assisted by crew knowledgeable in the operation of the system.

(x) A vessel owner or operator must arrange for NMFS to inspect the electronic monitoring system and maintain a current NMFS-issued electronic monitoring system inspection report onboard the vessel at all times the vessel is required to provide an approved electronic monitoring system.

(2) *How does a vessel owner arrange for NMFS to conduct an electronic monitoring system inspection?* The owner or operator must submit an Inspection Request for an Electronic Monitoring System to NMFS by fax (206-526-4066) or e-mail ([station.inspections@noaa.gov](mailto:station.inspections@noaa.gov)). The request form is available on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov/>) or from NMFS at the address or phone number in paragraph (b)(6) of this section. NMFS will coordinate with the vessel owner to schedule the inspection no

later than 10 working days after NMFS receives a complete request form.

(3) *What additional information is required for an electronic monitoring system inspection?* (i) A diagram drawn to scale showing all locations where salmon will be sorted, the location of the salmon storage container, the location of each camera and its coverage area, and the location of any additional video equipment must be submitted with the request form.

(ii) Any additional information requested by the Regional Administrator.

(4) *How does a vessel owner make a change to the electronic monitoring system?* Any change to the electronic monitoring system that would affect the system's functionality must be submitted to, and approved by, the Regional Administrator in writing before that change is made.

(5) *Where will NMFS conduct electronic monitoring system inspections?* Inspections will be conducted on vessels tied to docks at Dutch Harbor, Alaska; Kodiak, Alaska; and in the Puget Sound area of Washington State.

(6) *What is an electronic monitoring system inspection report?* After an inspection, NMFS will issue an electronic monitoring system inspection report to the vessel owner, if the electronic monitoring system meets the requirements of paragraph (j)(1) of this section. The electronic monitoring system report is valid for 12 months from the date it is issued by NMFS. The electronic monitoring system inspection report must be made available to the observer, NMFS personnel, or to an authorized officer upon request.

9. In § 679.50,  
A. Revise paragraph (c)(1) introductory text, paragraph (c)(4)(iv), and (c)(5) heading; and  
B. Add a new paragraph (c)(5)(i)(D).  
The addition and revisions read as follows:

**§ 679.50 Groundfish Observer Program.**

(c) \* \* \*  
(1) Unless otherwise specified in paragraphs (c)(4) through (7) of this section, observer coverage is required as follows:

(iv) *Catcher vessel using trawl gear—*  
(A) *Groundfish CDQ fishing.* A catcher vessel equal to or greater than 60 ft (18.3 m) LOA using trawl gear, except a catcher vessel that delivers only unsorted codends to a processor or another vessel or a catcher vessel directed fishing for pollock CDQ in the BS, must have at least one level 2 observer as described at paragraph (j)(1)(v)(D) of this section aboard the vessel at all times while it is groundfish CDQ fishing.

(B) *BS pollock CDQ fishery.* A catcher vessel using trawl gear, except a catcher vessel that delivers only unsorted codends to a processor or another vessel, must have at least one observer aboard the vessel at all times while it is directed fishing for pollock CDQ in the BS.

(5) *AFA and AI directed pollock fishery.*

(D) *AFA catcher vessels in the BS pollock fishery.* A catcher vessel using

trawl gear, except a catcher vessel that delivers only unsorted codends to a processor or another vessel, must have at least one observer aboard the vessel at all times while it is directed fishing for pollock in the BS.

10. In § 679.61, revise paragraphs (f)(1), (f)(2) introductory text, and (f)(2)(vi) to read as follows:

**§ 679.61 Formation and operation of fishery cooperatives.**

(1) *What are the submission deadlines?* The fishery cooperative must submit the final report by April 1 of the following year. Annual reports must be postmarked or received by the submission deadline.

(2) *What information must be included?* The annual report must contain, at a minimum:

(vi) The number of salmon taken by species and season, and list each vessel's number of appearances on the weekly "dirty 20" lists for non-Chinook salmon.

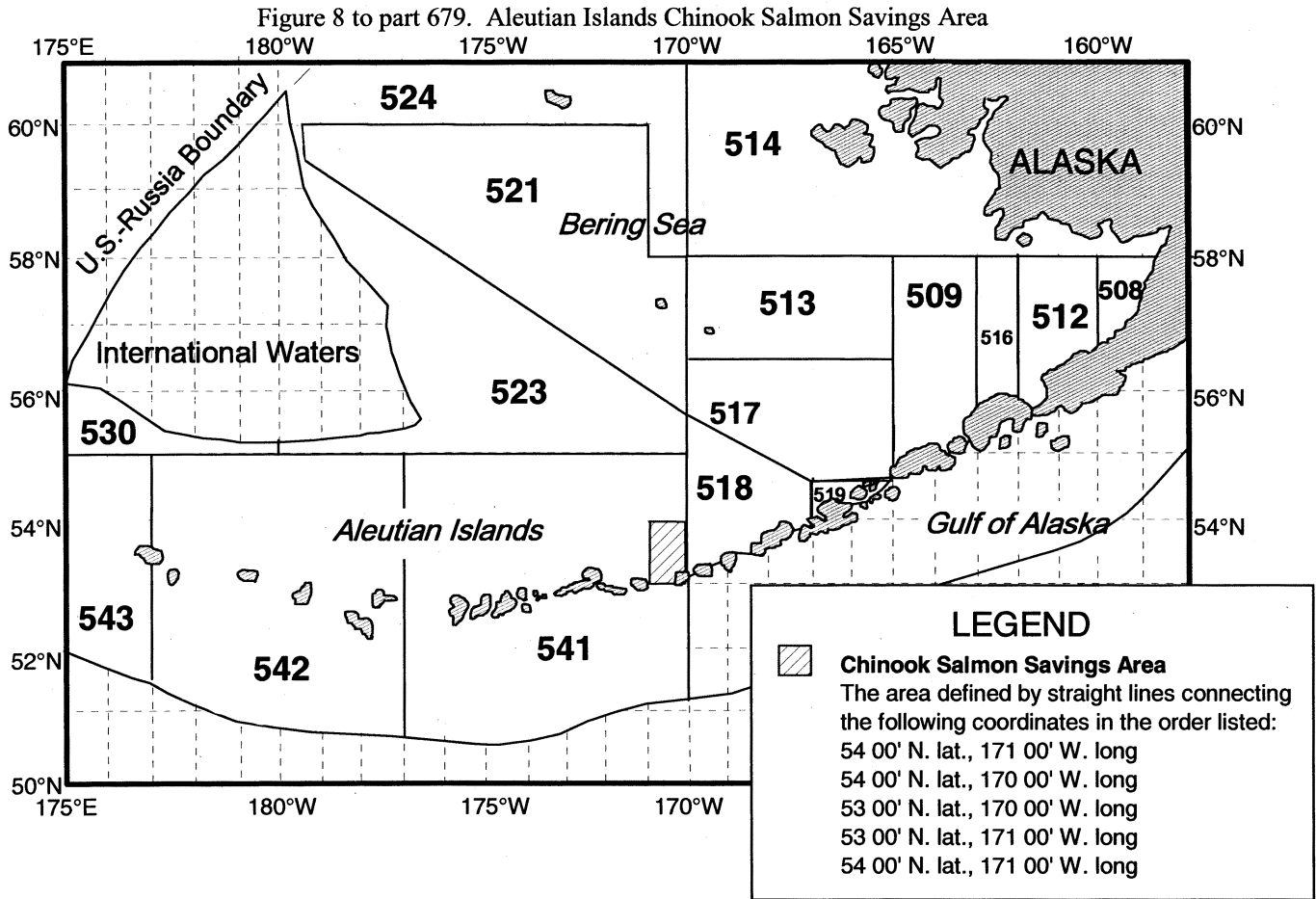
**§§ 679.2, 679.5, 679.7, 679.20, 679.21, 679.26, 679.27, 679.28, and 679.32 [Amended]**

11. At each of the locations shown in the "Location" column of the following table, remove the phrase indicated in the "Remove" column and add in its place the phrase indicated in the "Add" column for the number of times indicated in the "Frequency" column.

Location	Remove	Add	Frequency
§ 679.2 Definition "AFA trawl catcher/processor".	AFA trawl catcher/processor .....	AFA catcher/processor .....	1
§ 679.2 Definition for "Amendment 80 vessel" paragraph (2)(i).	AFA trawl catcher/processor .....	AFA catcher/processor .....	1
§ 679.5(c)(3)(v)(F) and (c)(4)(v)(G) .....	certified observer(s) .....	observer(s) .....	2
§ 679.5(c)(6)(v)(E) .....	certified observer(s) .....	observer(s) .....	1
§ 679.7(d)(18) .....	§ 679.28(d)(8) .....	§ 679.28(d)(9) .....	1
§ 679.20(a)(5)(i)(A)(3)(i) .....	§ 679.62(e) .....	§ 679.62(a) .....	1
§ 679.20(a)(7)(iii)(B) .....	AFA trawl catcher/processor .....	AFA catcher/processor .....	1
§ 679.21(e)(3)(v) .....	AFA trawl catcher/processor .....	AFA catcher/processor .....	2
§ 679.26(c)(1) .....	§ 679.7(c)(1) .....	§ 679.7(c)(2) .....	1
§ 679.27(j)(5)(iii) .....	§ 679.28(d)(7)(i) .....	§ 679.28(d)(8)(i) .....	1
§ 679.28(d)(2)(ii) .....	§ 679.28(d)(7)(ii)(A) .....	paragraph (d)(8)(ii)(A) of this section .....	1
§ 679.28(d)(2)(ii) .....	§ 679.28(d)(7)(ii)(B) .....	paragraph (d)(8)(ii)(B) of this section .....	1
§ 679.32(b) .....	§ 679.7(d)(7) through (10) .....	§ 679.7(d)(8) .....	1
§ 679.32(d)(2)(ii)(B)(7) .....	§ 679.28(d)(8) .....	§ 679.28(d)(9) .....	1
§ 679.32(d)(4)(ii) .....	§ 679.28(d)(8) .....	§ 679.28(d)(9) .....	1
§ 679.93(c)(9) .....	§ 679.28(i) .....	§ 679.28(i)(1) .....	1

12. The title, map, and legend for Figure 8 to part 679 are revised to read as follows:

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14. Tables 47a through 47d to part 679 are added to read as follows:

TABLE—47A TO PART 679

[Percent of the AFA catcher/processor sector's pollock allocation, numbers of Chinook salmon used to calculate the opt-out allocation and annual threshold amount, and percent used to calculate IPA minimum participation assigned to each catcher/processor under § 679.21(f).]

Vessel name	USCG ves- sel docu- mentation No.	AFA permit No.	Percent of C/P sector pol- lock	Number of Chinook salmon for the opt-out allocation (8,093)		Number of Chinook salm- on for the an- nual perfor- mance thresh- old amount (13,516)	Percent used to calculate IPA minimum participation
			Percent	A season	B season		Annual
						Column A	
American Dynasty .....	951307	3681	4.93	324	76	667	1.78
American Triumph .....	646737	4055	7.25	475	111	979	2.61
Northern Eagle .....	506694	3261	6.07	398	93	820	2.19
Northern Hawk .....	643771	4063	8.45	554	129	1,142	3.04
Northern Jaeger .....	521069	3896	7.38	485	113	998	2.66
Ocean Rover .....	552100	3442	6.39	420	98	864	2.30
Alaska Ocean .....	637856	3794	7.30	479	112	985	2.63
Island Enterprise .....	610290	3870	5.60	367	86	756	2.01

TABLE—47A TO PART 679—Continued

[Percent of the AFA catcher/processor sector's pollock allocation, numbers of Chinook salmon used to calculate the opt-out allocation and annual threshold amount, and percent used to calculate IPA minimum participation assigned to each catcher/processor under § 679.21(f).]

Vessel name	USCG ves- sel docu- mentation No.	AFA permit No.	Percent of C/P sector pol- lock	Number of Chinook salmon for the opt-out allocation (8,093)		Number of Chinook salm- on for the an- nual perform- ance thresh- old amount (13,516)	Percent used to calculate IPA minimum participation
			Percent	A season	B season		Percent
						Annual	
Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
Kodiak Enterprise .....	579450	3671	5.90	387	90	798	2.13
Seattle Enterprise .....	904767	3245	5.48	359	84	740	1.97
Arctic Storm .....	903511	2943	4.58	301	70	619	1.65
Arctic Fjord .....	940866	3396	4.46	293	68	603	1.60
Northern Glacier .....	663457	661	3.12	205	48	422	1.12
Pacific Glacier .....	933627	3357	5.06	332	77	684	1.82
Highland Light .....	577044	3348	5.14	337	79	694	1.85
Starbound .....	944658	3414	3.94	259	60	533	1.42
Ocean Peace .....	677399	2134	0.50	33	8	68	0.18
Katie Ann .....	518441	1996	0.00	0	0	0	0.00
U.S. Enterprise .....	921112	3004	0.00	0	0	0	0.00
American Enterprise .....	594803	2760	0.00	0	0	0	0.00
Endurance .....	592206	3360	0.00	0	0	0	0.00
American Challenger .....	633219	4120	0.78	51	12	106	0.28
Forum Star .....	925863	4245	0.61	40	9	82	0.22
Muir Milach .....	611524	480	1.13	74	17	153	0.41
Neahkahnie .....	599534	424	1.66	109	25	225	0.60
Ocean Harvester .....	549892	5130	1.08	71	16	145	0.39
Sea Storm .....	628959	420	2.05	134	31	276	0.74
Tracy Anne .....	904859	2823	1.16	76	18	157	0.42
Total .....			100.00	6,563	1,530	13,516	36.00

TABLE 47B—TO PART 679

[Percent of the AFA mothership sector's pollock allocation, numbers of Chinook salmon used to calculate the opt-out allocation and annual threshold amount, and percent used to calculate IPA minimum participation assigned to each mothership under § 679.21(f).]

Vessel name	USCG ves- sel docu- mentation No.	AFA permit No.	Percent of MS sector pollock	Number of Chinook salmon for the opt-out allocation (2,220)		Number of Chinook salm- on for the an- nual thresh- old amount (3,707)	Percent used to calculate IPA minimum participation
			Percent	A season	B season		Percent
						Annual	
Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
American Beauty .....	613847	1688	6.000	96	37	223	0.54
Pacific Challenger .....	518937	657	9.671	154	60	359	0.87
Nordic Fury .....	542651	1094	6.177	99	39	229	0.55
Pacific Fury .....	561934	421	5.889	94	37	218	0.53
Margaret Lyn .....	615563	723	5.643	90	35	209	0.51
Misty Dawn .....	926647	5946	3.569	57	22	132	0.32
Vanguard .....	617802	519	5.350	85	33	199	0.48
California Horizon .....	590758	412	3.786	61	24	140	0.34
Oceanic .....	602279	1667	7.038	112	44	261	0.63
Mar-Gun .....	525608	524	6.251	100	39	231	0.56
Mark 1 .....	509552	1242	6.251	100	39	231	0.56
Aleutian Challenger .....	603820	1687	4.926	79	31	182	0.44
Ocean Leader .....	561518	1229	6.000	96	37	223	0.54
Papado II .....	536161	2087	2.953	47	18	110	0.27
Morning Star .....	618797	7270	3.601	57	23	134	0.32
Traveler .....	929356	3404	4.272	68	27	158	0.38
Vesteraalen .....	611642	517	6.201	99	39	230	0.56
Alyeska .....	560237	395	2.272	36	14	84	0.20
Western Dawn .....	524423	134	4.150	66	26	154	0.37
Total .....			100.000	1,596	624	3,707	9.00

TABLE—47C TO PART 679

[Percent of the AFA inshore sector's pollock allocation, numbers of Chinook salmon used to calculate the opt-out allocation and annual threshold amount, and percent used to calculate IPA minimum participation assigned to each catcher vessel under § 679.21(f).]

Vessel name	USCG ves- sel docu- mentation No.	AFA permit No.	Percent of sector pollock	Number of Chinook salmon for the opt-out allocation (15,858)		Number of Chinook salm- on for the an- nual threshold amount (26,485)	Percent used to calculate IPA minimum participation
			Percent	A season	B season		Percent
						Annual	
Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
AJ .....	599164	3405	0.70	69	41	185	0.31
Alaska Rose .....	610984	515	1.68	167	100	446	0.76
Alaskan Command .....	599383	3391	0.37	37	22	99	0.17
Aldebaran .....	664363	901	1.47	146	87	388	0.66
Alsea .....	626517	2811	1.66	165	99	441	0.75
Alyeska .....	560237	395	1.22	121	72	323	0.55
American Beauty .....	613847	1688	0.04	4	2	11	0.02
American Eagle .....	558605	434	1.07	106	63	283	0.48
Anita J .....	560532	1913	0.50	50	30	132	0.22
Arctic Explorer .....	936302	3388	1.62	161	96	430	0.73
Arctic Wind .....	608216	5137	1.10	110	65	292	0.50
Arcturus .....	655328	533	1.54	153	91	409	0.70
Argosy .....	611365	2810	1.63	162	97	433	0.73
Auriga .....	639547	2889	3.10	308	184	820	1.39
Aurora .....	636919	2888	3.10	308	184	821	1.39
Bering Rose .....	624325	516	1.72	171	102	457	0.78
Blue Fox .....	979437	4611	0.31	31	19	83	0.14
Bristol Explorer .....	647985	3007	1.54	153	91	408	0.69
Caitlin Ann .....	960836	3800	0.94	93	55	248	0.42
Cape Kiwanda .....	618158	1235	0.23	23	13	61	0.10
Chelsea K .....	976753	4620	4.65	462	275	1231	2.09
Collier Brothers .....	593809	2791	0.15	15	9	41	0.07
Columbia .....	615729	1228	1.44	143	85	382	0.65
Commodore .....	914214	2657	1.26	125	75	334	0.57
Defender .....	554030	3257	3.48	346	206	923	1.57
Destination .....	571879	3988	2.15	214	128	570	0.97
Dominator .....	602309	411	1.75	174	104	463	0.79
Dona Martita .....	651751	2047	2.10	209	125	557	0.95
Elizabeth F .....	526037	823	0.38	38	23	102	0.17
Excalibur II .....	636602	410	0.52	52	31	137	0.23
Exodus Explorer .....	598666	1249	0.30	30	18	80	0.13
Fierce Allegiance .....	588849	4133	0.94	93	56	249	0.42
Flying Cloud .....	598380	1318	1.64	163	97	434	0.74
Gold Rush .....	521106	1868	0.41	40	24	107	0.18
Golden Dawn .....	604315	1292	1.75	174	104	464	0.79
Golden Pisces .....	599585	586	0.27	27	16	72	0.12
Great Pacific .....	608458	511	1.24	123	73	327	0.56
Gun-Mar .....	640130	425	2.22	221	132	588	1.00
Half Moon Bay .....	615796	249	0.59	58	35	155	0.26
Hazel Lorraine .....	592211	523	0.38	38	23	102	0.17
Hickory Wind .....	594154	993	0.31	30	18	81	0.14
Intrepid Explorer .....	988598	4993	1.15	114	68	303	0.52
Leslie Lee .....	584873	1234	0.55	54	32	145	0.25
Lisa Melinda .....	584360	4506	0.22	22	13	58	0.10
Majesty .....	962718	3996	1.00	99	59	263	0.45
Marcy J .....	517024	2142	0.18	18	11	48	0.08
Margaret Lyn .....	615563	723	0.03	3	2	9	0.02
Mar-Gun .....	525608	524	0.10	10	6	27	0.05
Mark I .....	509552	1242	0.05	4	3	12	0.02
Messiah .....	610150	6081	0.23	23	14	61	0.10
Miss Berdie .....	913277	3679	0.61	61	36	161	0.27
Morning Star .....	610393	208	1.70	169	101	450	0.76
Ms Amy .....	920936	2904	0.49	48	29	129	0.22
Nordic Explorer .....	678234	3009	1.10	110	65	292	0.50
Nordic Fury .....	542651	1094	0.02	2	1	5	0.01
Nordic Star .....	584684	428	1.01	100	60	268	0.45
Northern Patriot .....	637744	2769	2.41	240	143	639	1.09
Northwest Explorer .....	609384	3002	0.24	24	14	64	0.11
Ocean Explorer .....	678236	3011	1.37	137	81	364	0.62
Morning Star .....	652395	1640	0.53	53	31	140	0.24
Ocean Hope 3 .....	652397	1623	0.42	41	25	110	0.19
Ocean Leader .....	561518	1229	0.05	5	3	14	0.02



TABLE—47C TO PART 679—Continued

[Percent of the AFA inshore sector's pollock allocation, numbers of Chinook salmon used to calculate the opt-out allocation and annual threshold amount, and percent used to calculate IPA minimum participation assigned to each catcher vessel under § 679.21(f).]

Vessel name	USCG ves- sel docu- mentation No.	AFA permit No.	Percent of sector pollock	Number of Chinook salmon for the opt-out allocation (15,858)		Number of Chinook salm- on for the an- nual threshold amount (26,485)	Percent used to calculate IPA minimum participation
			Percent	A season	B season		Percent
				Annual			
Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
Oceanic .....	602279	1667	0.13	13	8	35	0.06
Pacific Challenger .....	518937	657	0.17	17	10	44	0.08
Pacific Explorer .....	678237	3010	1.29	128	76	342	0.58
Pacific Fury .....	561934	421	0.01	1	1	3	0.01
Pacific Knight .....	561771	2783	2.18	217	129	578	0.98
Pacific Monarch .....	557467	2785	1.60	159	95	423	0.72
Pacific Prince .....	697280	4194	2.41	239	143	638	1.08
Pacific Ram .....	589115	4305	0.20	20	12	54	0.09
Pacific Viking .....	555058	422	1.09	108	65	289	0.49
Pegasus .....	565120	1265	0.69	69	41	184	0.31
Peggy Jo .....	502779	979	0.33	33	20	88	0.15
Perseverance .....	536873	2837	0.30	29	17	78	0.13
Poseidon .....	610436	1164	1.24	123	73	329	0.56
Predator .....	547390	1275	0.20	20	12	52	0.09
Progress .....	565349	512	1.01	100	60	268	0.46
Providian .....	1062183	6308	0.38	38	23	101	0.17
Raven .....	629499	1236	0.71	71	42	188	0.32
Royal American .....	624371	543	0.97	96	57	257	0.44
Royal Atlantic .....	559271	236	1.31	130	78	347	0.59
Sea Wolf .....	609823	1652	1.52	151	90	402	0.68
Seadawn .....	548685	2059	1.41	140	84	374	0.63
Seeker .....	924585	2849	0.37	37	22	98	0.17
Sovereignty .....	651752	2770	2.35	234	139	623	1.06
Star Fish .....	561651	1167	1.51	150	90	400	0.68
Starlite .....	597065	1998	1.23	122	73	324	0.55
Starward .....	617807	417	1.26	125	75	334	0.57
Storm Petrel .....	620769	1641	1.23	123	73	327	0.56
Sunset Bay .....	598484	251	0.56	56	33	148	0.25
Topaz .....	575428	405	0.08	8	5	22	0.04
Traveler .....	929356	3404	0.04	4	2	11	0.02
Vanguard .....	617802	519	0.06	6	3	15	0.03
Viking .....	565017	1222	1.66	165	98	439	0.75
Viking Explorer .....	605228	1116	1.19	118	70	315	0.53
Walter N .....	257365	825	0.40	40	24	107	0.18
Western Dawn .....	524423	134	0.40	39	23	105	0.18
Westward I .....	615165	1650	1.55	154	92	412	0.70
Total .....	.....	.....	100.00	9,933	5,925	26,485	45.00

TABLE—47D TO PART 679

[Percent of the CDQ Program’s pollock allocation, numbers of Chinook salmon used to calculate the opt-out allocation and annual threshold amount, and percent used to calculate IPA minimum participation assigned to each CDQ group under § 679.21(f).]

Column A	Column B	Column C	Column D	Column E	Column F
CDQ group	Percent of CDQ Program pollock	Number of Chinook salmon for the opt-out allocation (2,325)		Number of Chinook salmon for the annual threshold amount (3,883)	Percent used to calculate IPA minimum participation
	Percent	A season	B season	Annual	Percent
APICDA .....	14.00	260	66	544	1.40
BBEDC .....	21.00	389	99	816	2.10
CBSFA .....	5.00	93	23	194	0.50
CVRF .....	24.00	445	113	931	2.40
NSEDC .....	22.00	408	103	854	2.20
YDFDA .....	14.00	260	66	544	1.40
<b>TOTAL .....</b>	<b>100.00</b>	<b>1,855</b>	<b>470</b>	<b>3,883</b>	<b>10.00</b>

[FR Doc. 2010-6082 Filed 3-22-10; 8:45 am]

BILLING CODE 3510-22-P