

crossing. The installation of a crossbuck, yield or stop sign, flashing lights, or gates that will be in place for less than six months does not constitute a “change in warning device” for purposes of this subpart.

■ 8. The heading of § 234.413 is revised to read as follows:

**§ 234.413 Recordkeeping.**  
\* \* \* \* \*

■ 9. In Appendix A to Part 234, place the entry for subpart F in alphabetical order, and revise the entries under subpart F to read as follows:

APPENDIX A TO PART 234—SCHEDULE OF CIVIL PENALTIES <sup>1</sup>

Section	Violation	Willful violation
<b>Subpart F—Highway-Rail and Pathway Crossing Inventory Reporting</b>		
§ 234.403 Submission of data to the Crossing Inventory:		
(b) Failure to complete Inventory Form (or electronic equivalent) in accordance with the Inventory Guide ...	\$1,000	\$2,000
(c) Class I railroad failure to submit crossing data to the Crossing Inventory electronically .....	1,000	2,000
§ 234.405 Submission of initial data to the Crossing Inventory for previously unreported crossings		
(a) Primary operating railroad failure to timely submit an accurate Inventory Form (or electronic equivalent) to the Crossing Inventory for previously unreported crossing .....	2,500	5,000
(b) Operating railroad failure to timely submit accurate partial crossing data to the Crossing Inventory for previously unreported crossing .....	2,500	5,000
(c) Operating railroad failure to provide written notification to FRA that the primary operating railroad failed to timely report previously unreported crossing .....	1,000	2,000
§ 234.407 Submission of initial data to the Crossing Inventory for new crossings:		
(a) Primary operating railroad failure to timely submit an accurate Inventory Form (or electronic equivalent) to the Crossing Inventory for new crossing .....	2,500	5,000
(b) Operating railroad failure to timely submit accurate partial crossing data to the Crossing Inventory for new crossing .....	2,500	5,000
(c) Operating railroad failure to provide written notification to FRA that the primary operating railroad failed to timely report new crossing .....	1,000	2,000
§ 234.409 Submission of periodic updates to the Crossing Inventory:		
(a) Primary operating railroad failure to timely submit up-to-date and accurate crossing data to the Crossing Inventory for highway-rail or pathway crossing .....	2,500	5,000
(b) Operating railroad failure to timely submit up-to-date and accurate partial crossing data to the Crossing Inventory for highway-rail or pathway crossing .....	2,500	5,000
§ 234.411 Changes requiring submission of updated information to the Crossing Inventory:		
(a) Failure to timely report crossing sale to the Crossing Inventory .....	2,500	5,000
(b) Primary operating railroad failure to timely report crossing closure to the Crossing Inventory .....	2,500	5,000
(c) Primary operating railroad failure to timely submit up-to-date and accurate crossing data to the Crossing Inventory after change in crossing characteristics .....	2,500	5,000
§ 234.413 Recordkeeping .....	1,000	2,000
§ 234.415 Electronic Recordkeeping .....	1,000	2,000

<sup>1</sup> A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$105,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. To facilitate the assessment of penalty amounts, the specific types of violations of a given section are sometimes designated by the paragraph of the section (e.g., “(a)”) and a code not corresponding to the legal citation for the violation (e.g., “(1)”), so that the complete citation in the penalty schedule is e.g., “(a)(1).” FRA reserves the right to revise the citation of the violation in the Summary of Alleged Violations issued by FRA in the event of litigation.

Issued in Washington, DC, on May 20, 2016, under the authority set forth in 49 CFR 1.89(b).

**Sarah E. Feinberg,**  
Administrator.

[FR Doc. 2016-13516 Filed 6-9-16; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 150629562-6447-02]

RIN 0648-BF25

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

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 110 to the

Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands management area (FMP). Amendment 110 and this final rule improve the management of Chinook and chum salmon bycatch in the Bering Sea pollock fishery by creating a comprehensive salmon bycatch avoidance program. This action is necessary to minimize Chinook and chum salmon bycatch in the Bering Sea pollock fishery to the extent practicable while maintaining the potential for the full harvest of the pollock total allowable catch (TAC) within specified prohibited species catch (PSC) limits. Amendment 110 is intended to promote the goals and objectives of the Magnuson-Stevens Fishery

Conservation and Management Act, the FMP, and other applicable laws.

**DATES:** Effective July 11, 2016.

**ADDRESSES:** Electronic copies of Amendment 110 and the Environmental Assessment (EA)/Regulatory Impact Review (RIR) prepared for this action (collectively the "Analysis"), and the Environmental Impact Statement (EIS) prepared for Amendment 91 to the FMP may be obtained from [www.regulations.gov](http://www.regulations.gov) or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. All public comments submitted during the comment periods may be obtained from [www.regulations.gov](http://www.regulations.gov).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov); or by fax to 202-395-5806.

**FOR FURTHER INFORMATION CONTACT:** Gretchen Harrington or Alicia Miller, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) under the 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.

NMFS published the Notice of Availability for Amendment 110 in the **Federal Register** on January 8, 2016 (81 FR 897), with comments invited through March 8, 2016. NMFS published the proposed rule to implement Amendment 110 on February 3, 2016 (81 FR 5681), with comments invited through March 4, 2016. The Secretary of Commerce approved Amendment 110 on March 29, 2016. NMFS received 15 comment letters containing 27 unique substantive comments on the FMP amendment and proposed rule. A summary of these comments and the responses by NMFS are provided under the heading Response to Comments below.

A detailed review of the provisions of Amendment 110, the proposed regulations to implement Amendment 110, and the rationale for these regulations is provided in the preamble

to the proposed rule (81 FR 5681, February 3, 2016) and is briefly summarized in this final rule. The preamble to the proposed rule describes 1) the Bering Sea pollock fishery, 2) salmon bycatch in the Bering Sea pollock fishery, 3) the importance of salmon in western Alaska, 4) management of salmon bycatch in the BSAI, 5) objectives of and rationale for Amendment 110 and the implementing regulations, 6) proposed salmon bycatch management measures, 7) proposed changes to monitoring and enforcement requirements, and 8) other regulatory changes in the proposed rule.

Amendment 110 and this final rule apply 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 (*Gadus chalcogrammus*) fishery in the Bering Sea. The Bering Sea pollock fishery is managed under the American Fisheries Act (AFA) (16 U.S.C. 1851 note) and the Magnuson-Stevens Act. The AFA defines the sectors of the Bering Sea pollock fishery, determines which vessels and processors are eligible to participate in each sector, establishes allocations of Bering Sea pollock total TAC to each sector as directed fishing allowances, and establishes excessive share limits for harvesting pollock. As required by section 206(b) of the AFA, NMFS allocates a specified percentage of the Bering Sea pollock TAC to each of the three AFA fishery sectors: 1) 50 percent to catcher vessels delivering to inshore processors, called the "inshore sector"; 2) 40 percent to catcher/processors and catcher vessels delivering to those catcher/processors, called the "catcher/processor sector"; and 3) 10 percent to catcher vessels harvesting pollock for processing by motherships, called the "mothership sector."

Pollock is harvested with trawl vessels that tow large nets through the water. Pollock can occur in the same locations as Chinook salmon and chum salmon. Consequently, Chinook salmon and chum salmon are incidentally caught in the nets as fishermen target pollock.

Section 3 of 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 and chum salmon caught in the 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 and section 303(a)(11) of the Magnuson-Stevens Act require the Council to recommend, 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 and chum salmon, which are fully allocated and, in some cases, facing conservation concerns, are categorized as prohibited species under the FMP. They are the most regulated and closely managed category of bycatch in the groundfish fisheries off Alaska, and specifically in the pollock fishery. In addition to Pacific salmon, other species including steelhead trout, Pacific halibut, king crab, Tanner crab, and Pacific herring are also classified as prohibited species in the groundfish fisheries off Alaska. Fishermen must avoid salmon bycatch and any salmon caught must either be donated to the Prohibited Species Donation (PSD) Program (see § 679.26), or returned to Federal waters as soon as practicable, with a minimum of injury, after an observer has determined the amount of salmon bycatch and collected any scientific data or biological samples.

The Council and NMFS have been concerned about the potential impact of Chinook and chum salmon bycatch on returns to western Alaska given the relatively large proportion of bycatch from western Alaska that occurs in the pollock fishery. Chinook salmon and chum salmon destined for western Alaska support commercial, subsistence, sport, and personal use fisheries. The State of Alaska (State) manages the salmon commercial, subsistence, sport, and personal use fisheries. The Alaska Board of Fisheries adopts regulations through a public process to conserve salmon and to allocate salmon to the various users. 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. Salmon is 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. Section 3.4 of the Analysis describes the State and Federal management process. Appendix A-4 of the Analysis provides an overview of the importance of subsistence salmon harvests and commercial salmon harvests.

Over the last 20 years, the Council and NMFS have adopted and

implemented several management measures to limit salmon bycatch in the BSAI trawl fisheries, and particularly in the pollock fishery. Most recently, NMFS implemented Amendment 84 to the FMP to enhance the effectiveness of salmon bycatch measures (72 FR 61070, October 29, 2007) and Amendment 91 to the FMP to provide incentives to minimize Chinook salmon bycatch to the extent practicable (75 FR 53026, August 30, 2010).

Amendment 84 exempted pollock vessels from Chinook Salmon Savings Area and Chum Salmon Savings Area closures in the Bering Sea if they participate in an intercooperative agreement (ICA) to reduce salmon bycatch. Amendment 84 also exempted vessels participating in non-pollock trawl fisheries in the Bering Sea from area closures because these fisheries intercept minimal amounts of salmon. Additional information on the provisions of Amendment 84 is provided in the final rule prepared for that action (72 FR 61070, October 29, 2007).

Amendment 91 was implemented to manage Chinook salmon bycatch in the pollock fishery. Amendment 91 combined 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, while providing the fleet the flexibility to harvest the total allowable catch (TAC) of Bering Sea pollock. Amendment 91 removed Chinook salmon from the Amendment 84 regulations, and established two Chinook salmon PSC limits for the pollock fishery—60,000 and 47,591 Chinook salmon. Under Amendment 91, the PSC limit is 60,000 Chinook salmon if some, or all, of the pollock fishery participates in an industry-developed contractual arrangement, called an incentive plan agreement (IPA). An IPA establishes a program to minimize bycatch at all levels of Chinook salmon abundance. Participation in an IPA is voluntary; however, any vessel or CDQ group that chooses not to participate in an IPA is subject to a restrictive opt-out allocation (also called a backstop cap). Since Amendment 91 was implemented, all AFA vessels (*i.e.*, vessels authorized to directed fish for Bering Sea pollock) have participated in an IPA. Additional information on the provisions of Amendment 91 is provided in the final rule prepared for that action (75 FR 53026, August 30, 2010).

The following sections describe 1) the salmon bycatch management measures implemented with Amendment 110 and

this final rule, 2) the changes from proposed to final rule, and 3) response to comments.

#### **Amendment 110 and This Final Rule**

The objective of Amendment 110 and this final rule is to create a comprehensive salmon bycatch avoidance program that works more effectively than current management to avoid Chinook salmon bycatch and Alaska-origin chum salmon bycatch in the pollock fishery. The Council and NMFS recognize that salmon are an extremely important resource to Alaskans who depend on local fisheries for their sustenance and livelihood.

Amendment 110 and this final rule adjust the existing Chinook salmon bycatch program to incorporate revised chum salmon bycatch measures into the existing IPAs. Amendment 110 and this final rule are designed to consider the importance of continued production of critical chum salmon runs in western Alaska by focusing on bycatch avoidance of Alaskan chum salmon runs. Historically, western Alaska chum salmon run strength has varied substantially and chum salmon are important to the subsistence lifestyle of Alaskans. Amendment 110 and this final rule also provide additional protections to chum salmon stocks other than those from western Alaska, recognizing that most of the non-western Alaska chum salmon are likely from Asian hatcheries.

In addition, the Council and NMFS sought to provide greater incentives to avoid Chinook salmon by strengthening existing incentives during times of historically low Chinook salmon abundance in western Alaska. Thus, the management measures included in Amendment 110 focus on retaining the incentives to avoid Chinook salmon bycatch at all levels of abundance as intended by Amendment 91. Multiple years of historically low Chinook salmon abundance have resulted in significant restrictions for subsistence users in western Alaska and failure to achieve conservation objectives. While Chinook salmon bycatch impact rates have been low under Amendment 91, the Council and NMFS determined that there is evidence that improvements could be made to ensure the program is reducing Chinook salmon bycatch at low levels of salmon abundance. An analysis of the possible improvements is provided in Section 3.5.3 of the Analysis.

Amendment 110 and this final rule—

- incorporate chum salmon avoidance into the IPAs established under Amendment 91 to the FMP, and remove the non-Chinook salmon

bycatch reduction ICA previously established under Amendment 84 to the FMP;

- modify the requirements for the content of the IPAs to increase the incentives for fishermen to avoid Chinook salmon;
- change the seasonal apportionments of the pollock TAC to allow more pollock to be harvested earlier in the year when Chinook salmon PSC use tends to be lower;
- reduce the Chinook salmon PSC limit and performance standard in years with low Chinook salmon abundance in western Alaska; and
- improve the monitoring of salmon bycatch in the pollock fishery.

#### *Incorporate Chum Salmon Avoidance Into the Incentive Plan Agreements (IPAs)*

Amendment 110 and this final rule incorporate chum salmon avoidance, and the important chum salmon avoidance features of the Amendment 84 ICAs, into the IPAs established under Amendment 91. This final rule removes the Amendment 84 implementing regulations at § 679.21(g). However, Amendment 110 and this final rule maintain the current non-Chinook salmon PSC limit of 42,000 fish and the closure of the Chum Salmon Savings Area to the pollock fishery when the 42,000 non-Chinook salmon PSC limit has been reached. Vessels that participate in an IPA are exempt from the Chum Salmon Savings Area closure. The purpose of maintaining the non-Chinook salmon PSC limit and the Chum Salmon Savings Area closure is to provide additional incentives for vessels to join an IPA, and to serve as back-stop chum salmon bycatch management measures for those vessels that choose not to participate in an IPA.

To incorporate chum salmon into the IPAs, this final rule modifies the required contents of the IPAs at § 679.21(f)(12), to include the following eight provisions.

- Incentives for the operator of each vessel to avoid Chinook salmon and chum salmon bycatch under any condition of pollock and Chinook salmon abundance in all years.
- An explanation of how the incentives to avoid chum salmon do not increase Chinook salmon bycatch.
- Rewards for avoiding Chinook salmon, penalties for failure to avoid Chinook salmon at the vessel level, or both.
- An explanation of how the incentive measures in the IPA are expected to promote reductions in a vessel's Chinook salmon and chum salmon bycatch rates relative to what

might have occurred in absence of the incentive program.

- An explanation of how the incentive measures in the IPA promote Chinook salmon savings and chum salmon savings in any condition of pollock abundance or Chinook salmon abundance and influence the vessel operator's decisions to avoid Chinook salmon and chum salmon.

- An explanation of how the IPA ensures that the operator of each vessel governed by the IPA will manage that vessel's Chinook salmon bycatch to keep total bycatch below the performance standard for the sector in which the vessel participates.

- An explanation of how the IPA ensures that the operator of each vessel governed by the IPA will manage that vessel's chum salmon bycatch to avoid areas and times where the chum salmon are likely to return to western Alaska.

- The rolling hot spot program for salmon bycatch avoidance and the agreement to provide notifications of closure areas and any violations of the rolling hot spot program to at least one third party group representing western Alaskans who depend on salmon and do not directly fish in a groundfish fishery.

This final rule also adds reporting requirements to the IPA Annual Report at § 679.21(f)(13) to require the IPA representative to describe how the IPA addresses the goals and objectives in the IPA provisions related to chum salmon. Section 3.5.2 of the Analysis provides more detail on adding elements of chum salmon bycatch management.

#### *Modify the IPAs To Increase the Incentives To Avoid Chinook Salmon*

Amendment 110 and this final rule modify the IPAs to increase the incentives to reduce Chinook salmon bycatch within the IPAs. To incorporate additional incentives for Chinook salmon savings into the IPAs, this final rule modifies the required contents of the IPAs at § 679.21(f)(12) to include the following six provisions.

- Restrictions or penalties targeted at vessels that consistently have significantly higher Chinook salmon PSC rates relative to other vessels fishing at the same time.

- Requirement that vessels enter a fishery-wide in-season salmon PSC data sharing agreement.

- Requirement for a rolling hotspot program that operates throughout the entire pollock A season (January 20 through June 10) and B season (June 10 through November 1).

- Requirement for the use of salmon excluder devices, with recognition of contingencies, from January 20 through

March 31 and from September 1 until the end of the B season.

- For savings-credit-based IPAs, limitation on the salmon savings credits to maximum of three years.

- Restrictions or performance criteria to ensure that Chinook salmon PSC rates in October are not significantly higher than those achieved in the preceding months, thereby avoiding late-season spikes in salmon PSC.

#### *Revise the Bering Sea Pollock Seasonal Allocations*

This final rule changes the allocation of the Bering Sea pollock TAC between the A and B seasons at § 679.20(a)(5)(i)(B)(1). This final rule allocates five percent of the pollock allocation from the B season to the A season, resulting in new seasonal apportionments of 45 percent of the TAC in the A season and 55 percent of the TAC in the B season. This final rule maintains the rollover of any remaining pollock from the A season to the B season. The revised season allocation works in conjunction with the new IPA requirements to shift effort out of the late B season and provide fishery participants more flexibility to avoid Chinook salmon PSC when it tends to be higher in the late B season.

#### *Reduce the Chinook Salmon Performance Standard and PSC Limit in Years of Low Chinook Salmon Abundance in Western Alaska*

Amendment 110 and this final rule add a new lower Chinook salmon performance standard and PSC limit for the pollock fishery in years of low Chinook salmon abundance in western Alaska. The Council and NMFS determined that a lower performance standard and PSC limit would be appropriate at low levels of Chinook salmon abundance in western Alaska because most of the Chinook salmon bycatch comes from western Alaska. These provisions work in conjunction with the changes to the IPA requirements to ensure that Chinook salmon bycatch is avoided at all times, particularly at low abundance levels.

Each year, NMFS will determine whether Chinook salmon is at low abundance based on information provided by the State. By October 1 of each year, the State will provide a Chinook salmon abundance using the 3-System Index for western Alaska based on the post-season in-river Chinook salmon run size for the Kuskokwim, Unalakleet, and Upper Yukon aggregate stock grouping. When this index is less than or equal to 250,000 Chinook salmon, NMFS will apply the new lower

performance standard and low PSC limit for the following year.

If NMFS determines it is a low Chinook salmon abundance year, NMFS will set the performance standard at 33,318 Chinook salmon and the PSC limit at 45,000 Chinook salmon for the following fishing year. NMFS will publish the lower PSC limit and performance standard in the annual harvest specifications. In years with no determination of a low Chinook salmon abundance, NMFS will manage under the current 47,591 Chinook salmon performance standard and 60,000 Chinook salmon PSC limit.

The inclusion of a lower PSC limit and performance standard is based on the need to reduce bycatch when these Chinook salmon stocks are low in order to minimize the impact of the pollock fishery on the stocks. Any additional Chinook salmon returning to Alaska rivers improves the ability to meet the State's spawning escapement goals, which is necessary for long-term sustainability of Chinook salmon and the people reliant on salmon fisheries. While the performance standard is the functional limit in the IPAs, the Council and NMFS determined that the 60,000 PSC limit should also be reduced given the potential for decreased bycatch reduction incentives should a sector exceed its performance standard before the PSC limit is reached. The reduced PSC limit is intended to encourage vessels to avoid bycatch to a greater degree in years of low abundance, and to set a maximum permissible PSC limit that reduces the risk of adverse impact on stocks in western Alaska during periods of low abundance.

#### *Changes to Monitoring and Enforcement Requirements*

This final rule amends the monitoring and enforcement regulations to clarify and strengthen those implemented under Amendment 91. These changes—

- revise salmon retention and handling requirements on catcher vessels;
- improve observer data entry and transmission requirements aboard catcher vessels;
- clarify the requirements applicable to viewing salmon in a storage container; and
- clarify the requirements for the removal of salmon from an observer sampling station at the end of a haul or delivery.

This final rule also makes a number of other revisions to the regulations for clarity and efficiency. All of these regulatory changes are detailed in the preamble to the proposed rule (81 FR 5681, February 3, 2016).

### Change From Proposed to Final Rule

NMFS made no changes to the final rule in response to comments received on the proposed rule.

NMFS made three minor changes in this final rule to reflect final rules published after NMFS published the proposed rule for Amendment 110. First, this final rule removed the definition of prohibited species quota (PSQ) reserve because that definition was corrected in the final rule to implement halibut PSC limit reductions under Amendment 111 to the FMP (81 FR 24714, April 27, 2016). Second, this final rule revises the heading for § 679.21(e) that was modified under regulations that implemented Amendment 111 to the FMP to clarify that paragraph (e) applies to PSC limits for BSAI crab and herring. Third, this final rule adds the parenthetical phrase “(except for a catcher/processor placed in the partial observer coverage category under paragraph (a)(3) of this section)” to § 679.51(e)(1)(iii)(B) to be consistent with the final rule to allow qualifying small catcher/processors to be in the partial observer coverage category under the North Pacific Groundfish and Halibut Observer Program (81 FR 17403, March 29, 2016).

Additionally, this final rule makes a minor editorial clarification to revise § 679.21(f)(2) to clarify that the State will provide to NMFS an estimate of Chinook salmon abundance using a the 3-System Index for western Alaska based on the Kuskokwim, Unalakleet, and Upper Yukon aggregate stock grouping.

### Response to Comments

NMFS received 15 comment letters containing 27 specific comments, which are summarized and responded to below. The commenters consisted of individuals, representatives of the pollock fishery participants, a representative of groundfish fishery participants, Alaska Native organizations, and the State.

*Comment 1:* We support the comprehensive salmon bycatch avoidance program outlined in the proposed rule for Amendment 110 and believe it will be more effective in meeting the Council’s objectives, including minimizing salmon bycatch, responding to changing conditions of abundance, and avoiding Alaska-origin salmon stocks.

*Response:* NMFS acknowledges the comment.

*Comment 2:* Consistent genetic stock composition data show that Alaska-origin stocks continue to comprise a majority of the Chinook salmon bycatch

and almost a quarter of the chum salmon bycatch in the Bering Sea pollock fishery. Recognizing the importance of these stocks to western Alaska commercial and subsistence users, and our increased understanding of the areas and times of year in which Alaska Chinook and chum salmon stocks are more predominate in the bycatch, Amendment 110 provides the necessary flexibility to respond to and incorporate new information in the bycatch avoidance program.

*Response:* NMFS acknowledges the comment.

*Comment 3:* Reducing salmon bycatch in the Bering Sea pollock fishery is critical to the future of Chinook salmon runs. Amendment 110 is urgently needed because of the dire status of Chinook salmon stocks in western Alaska. Amendment 110 and the proposed regulations are an important step in further reducing salmon bycatch in the pollock fishery. Amendment 110 will continue to lower Chinook salmon bycatch, however, constant vigilance is required to ensure that the Chinook salmon PSC limits established in regulation are never actually met.

*Response:* NMFS acknowledges the comment.

*Comment 4:* It is essential to integrate chum salmon bycatch measures into the IPAs and include the accountability and transparency measures.

*Response:* Amendment 110 and this final rule incorporate chum salmon avoidance measures into the IPAs established for Chinook salmon bycatch management under Amendment 91. Incorporating chum salmon into the IPAs provides measures to prevent high chum salmon bycatch, while also giving participants in the pollock fishery the flexibility to use coordinated management under the IPAs to adapt quickly to changing conditions. The Council determined and NMFS agreed that Amendment 110 and this final rule strike an appropriate balance between regulatory requirements and adaptive management necessary for chum salmon bycatch management.

*Comment 5:* Make sure the theoretical salmon avoidance schemes proposed do not make matters worse for Chinook salmon in the attempt to avoid chum salmon.

*Response:* The chum salmon-specific requirements in the Amendment 84 implementing regulations sometimes prevented fishery participants from making decisions to avoid Chinook salmon when vessels encountered both chum salmon and Chinook salmon. Adding chum salmon measures to the IPAs provides vessel operators with the flexibility to respond to changing

conditions and provides greater incentives to reduce bycatch of both salmon species, thereby making salmon bycatch management more effective, comprehensive, and efficient.

*Comment 6:* The measures designed to reduce Chinook salmon bycatch in the proposed rule provide useful tools to fine-tune the IPAs to mandate greater bycatch reduction.

*Response:* NMFS agrees. Amendment 110 and this final rule modify the IPAs to increase the incentives for fishermen to avoid Chinook salmon. The Council and NMFS recognize that the IPAs were effective at providing incentives for each vessel operator to avoid Chinook salmon, but that additional measures were necessary to address higher Chinook salmon PSC rates observed in October (the last month when the pollock fishery is authorized to operate). Amendment 110 and this final rule also address concerns with individual vessels that consistently have significantly higher Chinook salmon PSC rates relative to other vessels fishing at the same time. The Council and NMFS want to ensure the use of salmon excluder devices (*i.e.*, gear modifications that are designed to exclude salmon bycatch while retaining pollock) and a rolling hotspot program. These new provisions increase the incentives to reduce Chinook salmon bycatch within the IPAs, provide an opportunity for IPAs to increase vessels’ responsiveness in October, and improve performance of individual vessels.

*Comment 7:* The entire history of the Bering Sea pollock fishery and its impacts on western Alaska salmon has been a disaster and it is within this context that we remain opposed to the allowance of any salmon bycatch during the pollock fishery. Driving bycatch continuously lower, with an ultimate goal of zero, is essential. NMFS should prioritize its responsibilities based on moral and ethical obligations, in addition to its legal obligations, to those tribal communities whose very survival depends on a future of salmon returning in sufficient numbers to their rivers.

*Response:* The Council recommended and NMFS approved Amendment 110 because it best balances the need to minimize salmon bycatch to the extent practicable while providing the pollock fleet the flexibility to harvest the pollock TAC. NMFS has complied with all applicable laws, executive orders, and international obligations in approving and implementing Amendment 110. Preventing all salmon bycatch would not meet the purpose and need for this action and would not meet NMFS’ obligations under the Magnuson-Stevens Act.

While salmon bycatch in the pollock fishery may be a contributing factor in the decline of salmon, NMFS expects the numbers of the ocean bycatch that would have returned to western Alaska would be relatively small due to ocean mortality and the large number of other river systems contributing to the total Chinook or chum salmon bycatch. For Chinook salmon, Section 3.5.1 of the Analysis explains that the Chinook salmon bycatch expected to have returned to western Alaska rivers is approximately 2.3 percent of coastal western Alaska run size in recent years. For chum salmon, Section 3.5.1 of the Analysis explains that the chum salmon bycatch expected to have returned to western Alaska rivers is approximately 0.5 percent of the coastal western Alaska run size in recent years. Under Amendment 110 and this final rule, these impact rates are anticipated to be further reduced as the pollock fleet improves its ability to avoid salmon at all times.

Although the reasons for the decline of Chinook salmon and some runs of chum salmon are not completely understood, scientists believe they are predominately natural. Changes in ocean and river conditions, including unfavorable shifts in temperatures and food sources, likely cause poor survival of Chinook salmon and some runs of chum salmon. The EIS prepared for Amendment 91 provides more detail on the decline of salmon in western Alaska (see ADDRESSES). Section 3.4 of the Analysis describes the stocks status of Chinook and chum salmon.

*Comment 8:* A key component of Amendment 110 and the proposed rule is to reduce the performance standard and PSC limit in years of low Chinook salmon abundance in western Alaska. The limits set in Amendment 91 were far too high to ensure a healthy future for western Alaska salmon runs. The mechanism to lower these limits in times of low Chinook salmon abundance is the minimum step NMFS must take at this time to fulfill numerous legal responsibilities to reduce the allowable salmon bycatch in the pollock fishery. Taking action now to lower the PSC limit and performance standard in years of extremely low abundance is a critical step to ensure that bycatch is reduced in the years when every source of mortality must be reduced.

*Response:* Amendment 110 and this final rule add a new lower Chinook salmon performance standard and PSC limit for the pollock fishery in years of low Chinook salmon abundance in western Alaska. These provisions work in conjunction with the changes to the

IPA requirements to ensure that Chinook salmon bycatch is avoided at all times, particularly at low abundance levels.

Each year, NMFS will determine whether Chinook salmon is at low abundance based on information provided by the State using the 3-System Index. When this index is less than or equal to 250,000 Chinook salmon, NMFS will apply the new lower performance standard and reduced PSC limit for the following year. If NMFS determines it is a low Chinook salmon abundance year, NMFS will set the performance standard at 33,318 Chinook salmon and the PSC limit at 45,000 Chinook salmon for the following fishing year. The reduced PSC limit is intended to encourage vessels to avoid bycatch to a greater degree in years of low abundance, and to set a maximum permissible PSC limit that reduces the risk of adverse impact on stocks in western Alaska during periods of low abundance.

In years with no determination of low Chinook salmon abundance, NMFS will manage under the current 47,591 Chinook salmon performance standard and 60,000 Chinook salmon PSC limit. The Council determined, and NMFS agrees, that these limits are appropriate given that the IPAs maintain bycatch well below these limits. Average Chinook salmon bycatch has been approximately 16,647 Chinook salmon per year since implementation of Amendment 91 in 2011.

*Comment 9:* Amendment 110 reduces the number of Chinook salmon that can be taken as bycatch in years of very low Chinook salmon abundance in western Alaska, which is critical to maintaining objectives under National Standard 9. In years of very low Chinook salmon abundance, the State struggles to meet salmon escapement goals in important western Alaska systems, and only does so by prohibiting any directed Chinook salmon harvest for subsistence, as well as restricting subsistence harvest of other species, such as chum salmon, to minimize Chinook salmon mortalities.

*Response:* NMFS acknowledges the comment.

*Comment 10:* Amendment 110 links bycatch limits to a broad index of Chinook salmon abundance based on the Kuskokwim, Unalakleet, and Upper Yukon aggregate stock grouping — the 3-System Index. The 3-System Index includes significant river systems for subsistence fisheries in Alaska and provides a broad regional representation of western Alaska Chinook salmon stocks. Any additional fish returning to these rivers in years of very low

abundance improves the State's ability to meet escapement goals.

The Analysis clearly outlined the objectives that proposed indices were evaluated against, and the 3-System Index was identified as the most robust and appropriate index for this purpose. The primary component of the 3-System Index is preliminary escapement information from total run reconstruction using methods outlined in State publications. The State will provide the 3-System Index estimate to NMFS annually by October 1 and is committed to maintaining a transparent and accessible process for stakeholders as the State improves its understanding of these systems. The State will present any substantive changes to the methods used in developing the 3-System Index to the Council and its Scientific and Statistical Committee (SSC).

*Response:* NMFS acknowledges the comment.

*Comment 11:* The provision to reduce the PSC limit and performance standard in years of low Chinook salmon abundance based on the State's 3-System Index is unwarranted, unnecessary, not sound science, and not responsible management. It unfairly targets and penalizes the pollock fishery for circumstances beyond its control. Science has shown that there is not a relationship between Chinook salmon bycatch in the pollock fishery and the size of the runs in coastal western Alaska.

*Response:* NMFS disagrees. The provisions to reduce the Chinook salmon PSC limit and performance standard in years of low abundance are necessary to achieve the program goals. The Council and NMFS determined that a lower performance standard and PSC limit are appropriate at low levels of Chinook salmon abundance in western Alaska because most of the Chinook salmon bycatch in the pollock fishery comes from western Alaska. These provisions work in conjunction with the changes to the IPA requirements to ensure that Chinook salmon bycatch is avoided at all times, particularly at low abundance levels.

The Council and State conducted an extensive analysis about the appropriate index to use to indicate a low Chinook salmon abundance year. Low Chinook salmon abundance years are characterized by difficulty meeting escapement goals and severely restricted or fully closed in-river salmon fisheries. Section 2.6 of the Analysis evaluates various indices and shows that the 3-System Index (Unalakleet, Upper Yukon, and Kuskokwim river systems) meets the objectives. The Analysis also shows a clear natural break in the data

analyzed indicating that when the index is less than 250,000 Chinook salmon, the index is strongly correlated to years with historically low run sizes. These river systems provide a broad regional representation of stocks and signify very important river systems and subsistence fisheries in western Alaska. Subsistence harvests from these three river systems account for up to 87 percent of the statewide subsistence harvest of Chinook salmon. As shown in the Analysis, having more than one system in the index and having broad regional representation makes the index more robust and able to account for changing environmental conditions.

The inclusion of a lower PSC limit and performance standard is based on the need to reduce bycatch when the abundance of Chinook salmon stocks in western Alaska is low, in order to minimize the impact of the pollock fishery on the stocks. Any additional Chinook salmon returning to Alaska rivers improves the ability to meet the State's spawning escapement goals, which is necessary for long-term sustainability of Chinook salmon, and to meet subsistence management objectives for the people reliant on salmon fisheries. While the performance standard is the functional limit in the IPAs, the Council and NMFS determined that the 60,000 PSC limit should also be reduced given the potential for decreased bycatch reduction incentives if a sector exceeds its performance standard before the PSC limit is reached. The reduced PSC limit is intended to encourage vessels to avoid bycatch to a greater degree in years of low Chinook salmon abundance, and to set a maximum permissible PSC limit that reduces the risk of adverse impact on stocks in western Alaska during periods of low abundance.

See the response to Comment 7 for a discussion of the relationship between Chinook salmon bycatch in the pollock fishery and the size of the runs in coastal western Alaska.

*Comment 12:* The dramatic changes the Council made to the Chinook salmon abundance index, Chinook salmon PSC limit, and the performance standard between initial review in December 2014 and final action in April 2015 are hard to track and are not well documented in the final Analysis.

*Response:* Sections 2.6.3 and 2.6.4 of the Analysis discuss the management measures to reduce the PSC limit and performance standard in years of low Chinook salmon abundance (see **ADDRESSES**). Section 2.6.4 explains the history of the 3-System Index and the analysis the State undertook to develop

the appropriate Chinook salmon abundance index for determining low Chinook salmon abundance in western Alaska.

*Comment 13:* There is no discussion in the EA about the methods used to determine a "natural break." The EA identifies 250,000 Chinook as a natural break in the "data". However, the data presented is actually the output of a model used to assess Chinook salmon run size. A formal definition for this threshold is required, as there is no guarantee that future models, or revisions to input data, will result in the same natural break in the model output. Instead of the 250,000 Chinook salmon threshold, NMFS should define (in probabilistic terms) a threshold to set the performance standard and PSC limit, rather than identifying an arbitrary natural break in future model output.

*Response:* Section 2.6.4 of the Analysis provides a description of the methods for use of in-river run reconstructions with the 3-System Index and rationale for this choice of index and for the 250,000 Chinook salmon threshold. The evaluation of the estimated Chinook salmon run size by year is included in the Analysis and represents the best available scientific information.

In-river run reconstructions represent an estimate of all fish harvested in the river and respective coastal areas plus escapement. The relationship upon which the threshold was determined is the relationship between final in-river run abundance of the 3-System Index and the bycatch of adult equivalent Chinook salmon attributed to all western Alaska stocks. In Section 2.6.4.2 of the Analysis, each point in Figure 8 represents a single year showing this relationship during the years analyzed. The years were referred to in the Analysis as data points for purposes of describing the clustering of these years below a breakpoint which falls above 200,486 Chinook salmon and below 286,692 Chinook salmon (see Table 6 in Section 2.6.4.5 of the Analysis).

The clustering of years below 200,486 Chinook salmon also matches years which have been categorized as low abundance years for all three systems due to documented failures to meet escapement goals, restrictions on subsistence harvests, or declarations of Federal fishery resource disasters under the provisions of section 312 of the Magnuson-Stevens Act (Section 2.6.4 of the Analysis). Based on this information, the Council determined that a threshold of 250,000 Chinook salmon was an appropriate value within this range to represent a year when

Chinook salmon were in a low abundance and as a threshold to determine that the lower PSC limit and lower performance standard would be in place for the subsequent year.

This information was also used by the Council to select the 3-System Index. As explained in Section 2.6.4 of the Analysis, the 3-System index is a transparent and annually updated index that relies on easily accessible information from reports published by the State.

The management measure to reduce the PSC limit and performance standard is tied to the selected threshold of 250,000 Chinook salmon based on the 3-System Index. No re-estimation of the threshold is planned on an annual basis or in subsequent years.

*Comment 14:* Many comments expressed concern over a letter the State had sent to NMFS on September 17, 2015, before Amendment 110 was approved and implemented. In this letter, the State provided an index estimate of 252,000 Chinook salmon to provide NMFS, the Council, and the public with a preview of Chinook salmon abundance using the 3-System Index for 2016. Commenters are concerned that this estimate reflected changes the State made in how it modeled abundance from the methods outlined in the Analysis. The State subsequently sent another letter on March 3, 2016, revising the index estimate to 279,000 Chinook salmon. The State made this revision to the index estimate based largely on the public review of the 3-System Index used to inform the State's September 17, 2015, letter.

*Response:* In their March 3, 2016, letter, the State explains that the September 2015 letter's post-season run size estimate for the 3-System Index used a Kuskokwim River run reconstruction estimate that employed a modification to the model that had not yet been reviewed by the Council. As such, the State amended the 2015 post-season run size estimate to reflect the original version of the model and has committed to using the original model in the 3-System Index until the Council determines the modification is appropriate to use.

Further, the State explains in their comment letter submitted on the proposed rule (see **ADDRESSES**) that the primary components of the post-season run index are preliminary escapement information and the total run reconstruction methods outlined in State publications. The State is committed to maintaining a transparent and accessible process for stakeholders, and the State will present any



substantive changes to the methods used in developing the 3-System Index to the Council and its SSC.

*Comment 15:* Clarify in the final rule a transparent public process for ensuring that the State provides the data, assumptions, and methods it uses to generate the 3-System Index to NMFS, the public, and the Council.

*Response:* NMFS agrees that a transparent public process is necessary for ensuring that the 3-System Index represents the best available scientific information. NMFS is committed to working with the Council and the State to define a transparent process to ensure that the data, assumptions, and methods used in the 3-System Index continue to incorporate the best available scientific information and provide a reliable indicator of Chinook salmon abundance necessary to reduce the PSC limit and performance standard. NMFS will work with the State and the Council to refine this process before the State provides the index for the 2017 fishing year on October 1, 2016.

*Comment 16:* The State must use the 3-System Index and associated methods and models described in the Analysis and recommended by the Council in April 2015. Any changes to the 3-System Index and associated methods and models should be vetted through the Council and its SSC. Other models and methods may produce different run size estimates and a different threshold of low abundance. Structural changes to the run-reconstruction model would have resulted in a different “natural break” in the data that was used to determine the threshold for the 3-System Index. There are no provisions in the proposed rule to accommodate changes in the threshold that are associated with future changes to the run-reconstruction model, or revisions to the historical input data.

*Response:* The Council and State conducted an extensive analysis about the appropriate index to indicate a low Chinook salmon abundance year. Low Chinook salmon abundance years are characterized by difficulty meeting escapement goals and in-river salmon fisheries being severely restricted or fully closed. Section 2.6 of the Analysis evaluates various indices and shows that the 3-System Index (Unalakleet, Upper Yukon, and Kuskokwim river systems) meets the objectives. These river systems provide a broad regional representation of stocks and signify very important river systems and subsistence fisheries in western Alaska. Subsistence harvests from these three river systems account for up to 87 percent of the statewide subsistence harvest of Chinook salmon. As shown in the

Analysis, having more than one system in the index and having broad regional representation makes the index more robust. The Analysis also shows a clear natural break in the data such that index sizes less than 250,000 Chinook salmon correspond to years with historically low run sizes.

NMFS agrees that any changes to the 3-System Index or the methods used should have a transparent review process by the Council and its SSC. Scientific methods change over time based on the best available scientific information. NMFS is committed to working with the State and the Council to define a transparent process for review of the State’s 3-System Index and associated scientific methods. However, neither Amendment 110 nor the proposed rule prescribes the process to review the State’s scientific methods on an ongoing basis, or that the State must use the same scientific methods that were used to develop the 3-System Index. NMFS does not prescribe scientific methods for stock assessments in Federal regulations. To do so would preclude NMFS, the Council, and the State from incorporating the best scientific information available into the stock assessment.

In recommending Amendment 110, the Council chose a threshold of 250,000 Chinook salmon on which to determine when Chinook salmon are at low abundance. In order to change that threshold amount, the Council would need to amend the FMP and NMFS would need to amend the regulations. The process for changing the 250,000 Chinook salmon threshold would be the same as for any FMP amendment with implementing regulations.

*Comment 17:* NMFS does not have the latitude to just receive and apply the State’s estimate of Chinook salmon abundance from the 3-System Index without analysis to independently verify the estimates. Applying the State’s estimate would constitute delegation of management to the State of vessels fishing for pollock in the exclusive economic zone, which cannot occur because the FMP does not authorize delegation to the State. The proposed rule grants the State sole authority over the annual run size estimate and does not contemplate independent verification of the estimate by NMFS. NMFS compares the estimate to the low abundance threshold fixed in the regulations to determine whether or not a year is one of low Chinook salmon abundance, which in turn determines the following year’s Chinook salmon PSC limit and performance standard applicable to vessels participating in the Federal pollock fishery. That

determination does not involve any discretion on the part of NMFS.

*Response:* Each year, NMFS will rely on a Chinook salmon abundance estimate from the State using the established 3-System Index as the best available scientific information on Chinook salmon abundance in western Alaska. The 3-System Index was reviewed by the Council’s SSC and recommended by the Council. NMFS relies on the State for this abundance estimate because the State has management authority over salmon in western Alaska and collects and analyzes the scientific data necessary to estimate Chinook salmon abundance. Relying on the State to provide this type of scientific information is not the same as delegating management authority of the pollock fishery to the State. NMFS manages, and will continue to manage, the pollock fishery. In furtherance of that effort, NMFS will use information collected by the State. Specifically, NMFS will use the 3-System Index for Chinook salmon abundance to apply the appropriate PSC limit and performance standard. The PSC limit and performance standard are the measures the Council and NMFS determined were required in low Chinook salmon abundance years to achieve the program goals. NMFS will publish the PSC limit and performance standard in the annual harvest specifications. That is clearly a management action undertaken by NMFS, and not the State.

Under Amendment 110, it is each pollock vessel’s responsibility to avoid salmon bycatch at all times. If fishery participants maintain their bycatch below their PSC limit, then these measures achieve their purpose without closing the pollock fishery.

Alternatively, the Council could have recommended to permanently reduce the performance standard and PSC limit in order to achieve the goals of encouraging vessels to avoid bycatch to a greater degree in years of low abundance and reducing the risk of adverse impact on stocks in western Alaska during periods of low abundance. Instead, by using the 3-System Index, the Council recommended a reduced PSC limit and performance standard only during years of low Chinook salmon abundance.

*Comment 18:* To avoid unauthorized delegation, the proposed rule should be revised to require that NMFS annually confirm that the State estimate was calculated using the Council-approved index and models from April 2015 and reproduce the estimate using the data provided by the State. These standards would address the requirement that, when a core agency function—such as



PSC management—is involved, there must be Federal standards in place and a process for NMFS to review the application of those standards.

*Response:* NMFS did not change this final rule in response to this comment. The Council designed, and this final rule implements, a program where the State provides NMFS an estimate of Chinook salmon abundance using the 3-System Index for western Alaska. Neither Amendment 110 nor the proposed rule constrains the State to use the methods, data sources, and models developed for Council final action in April 2015. To do so would be inconsistent with the manner in which science develops generally, and would result in an index that may fail to incorporate the best scientific information available.

NMFS relies on the State to produce the 3-System Index annually because the State has management authority over salmon and collects and analyzes the scientific data necessary to estimate Chinook salmon abundance. While NMFS will review the 3-System Index provided each October 1, NMFS will not recalculate the State's Chinook salmon abundance estimate each year.

*Comment 19:* What action would NMFS take if the State is unable to provide an estimate of Chinook salmon abundance by October 1? NMFS should not determine low abundance if the State does not timely deliver an estimate, whether because of difficulty obtaining relevant data, budget restrictions, or other reason. The final rule should specify that NMFS will not determine it is a year of low Chinook salmon abundance if the State does not provide a Chinook salmon abundance estimate by October 1. If no such determination is made, the 60,000 Chinook salmon PSC limit and 47,591 Chinook salmon performance standard would apply.

*Response:* Absent a letter from the State showing Chinook salmon abundance under the 3-System Index is equal to or below the 250,000 Chinook salmon threshold, the 60,000 PSC limit and 45,591 performance standard will remain in effect. The State's reporting of the 3-System Index by October 1 is necessary to determine if it is a low Chinook salmon abundance year and to reduce the PSC limit and performance standard in the next fishing year. A change to this final rule is not necessary.

*Comment 20:* Change the text of Amendment 110 to state that NMFS will verify the State's estimate of abundance and that the State must use the index approved by the Council at its April 2015 meeting.

*Response:* NMFS cannot change amendment text after it has been transmitted by the Council and NMFS as published in the Notice of Availability. Under section 304(a) of the Magnuson-Stevens Act, NMFS is limited to approval, disapproval, or partial approval of a fishery management plan amendment. If NMFS disapproves or partially approves an amendment, NMFS has to notify the Council and specify the applicable law with which the amendment is inconsistent, the nature of such inconsistencies, and make recommendations to conform to applicable law. The Council may then submit a revised amendment to the Secretary of Commerce. Amendment 110 and the provision to reduce the PSC limit and performance standard are consistent with applicable law, and the commenter did not recommend disapproval or partial disapproval of Amendment 110.

NMFS responds to the issue of verifying the State's Chinook salmon abundance index in the response to Comment 17. NMFS responds to the issue of requiring the State to use the index approved by the Council at its April 2015 meeting in the response to Comment 16.

*Comment 21:* Commenters made a number of technical comments on the State's 3-System Index and the methods and models that the State used to develop the index and to generate the September 17, 2015, index estimate of 252,000 Chinook salmon.

*Response:* The State can modify the 3-System Index over time to represent the best available scientific information. These comments concerning the intricacies of the State's scientific methods are important for that process. However, they are outside of the scope of Amendment 110 and this final rule.

*Comment 22:* Good fisheries management calls for a reduction in salmon bycatch. The pollock fishery should be managed in a way that rewards those fishermen that successfully avoid salmon and other bycatch and reduces quota and opportunity for those fishermen that have significant salmon or other bycatch.

*Response:* Amendment 110 and this final rule improve the IPAs implemented under Amendment 91 to include chum salmon avoidance measures and to increase the ability for each vessel to avoid Chinook salmon. The IPA component is an innovative approach that is designed to provide incentives for each vessel to avoid bycatch at all times with the goal of bringing bycatch to minimum

achievable levels. 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. The requirements for the IPA are performance based because fishery participants have more tools available to them to create incentives to minimize bycatch at the vessel level than could be prescribed through Federal regulation. As designed, an IPA can be more responsive and adaptive than Federal regulations. IPAs are flexible in allowing the pollock fleet to modify the IPAs as performance information becomes available to ensure that the IPAs meet the goal to provide incentives for each vessel to avoid bycatch at all times in Amendment 91 and Amendment 110.

Additionally, this final rule requires the IPA representative to submit an annual report to the Council that is the primary tool through which the Council will evaluate whether the IPAs meet the goal for each vessel to avoid salmon bycatch at all times.

*Comment 23:* Include a well thought-out plan for this Chinook salmon bycatch avoidance program and outline the possible increased incentives to achieve maximum effectiveness. Without this, the program could have little to no impact on Chinook salmon bycatch. It is ideal to have the IPA incentives visible to the public in order to have complete transparency of industry.

*Response:* The Council analyzed a number of specific incentive measures in Section 3.5.3 of the Analysis. The Analysis describes the new IPA requirements implemented with this final rule and provides examples of ways the fishery participants could modify their IPAs to meet those requirements. Regulations establish the performance based requirements that each IPA must accomplish. Any number of different incentive plans could meet these regulatory requirements. The requirements for the IPA are performance based because fishery participants have more tools available to them to create incentives to minimize bycatch at the vessel level than could be prescribed through Federal regulation. As designed, an IPA can be more responsive and adaptive than Federal regulations and can use tools not available to managers, such as fees and penalties.

Additionally, Federal regulations include a number of provisions to ensure transparency of the IPAs. First, regulations require the IPA representative to submit an annual report so the Council can evaluate

whether its goals for the IPAs are being met (§ 679.21(f)(13)). Second, existing regulations require vessel owners to submit an annual economic data report to provide quantitative information so the Council can evaluate how the IPA influences a vessel's operational decisions to avoid Chinook salmon bycatch (§ 679.65). Third, this final rule adds additional requirements for IPA transparency, including a requirement that IPA representatives notify at least one third party group representing western Alaskans of closure areas and any violations of the rolling hot spot program. Finally, the final rule requires the IPA representative to describe in the IPA annual report how the IPA addresses the goals and objectives in the IPA provisions related to chum salmon (§ 679.21(f)).

*Comment 24:* Research should be done on Chinook salmon bycatch in the pollock fishery to determine which stock they are from since there are some stocks where the State has limited commercial and subsistence harvests. If Chinook salmon from those stocks are being taken by the pollock fishery, then the pollock fishery should have to wait to fish until those Chinook salmon leave the areas in which pollock are taken.

*Response:* NMFS conducts research on the Chinook salmon caught in the pollock fishery. Amendment 91 improved the collection of Chinook salmon information by increasing observer coverage to full coverage for all vessels and shoreside processing facilities and by requiring a census of Chinook salmon in every haul or fishing trip. NMFS also collects and analyzes scientific data and biological samples from the Chinook salmon bycatch. NMFS conducts a genetic analysis of samples from the Chinook salmon bycatch in the pollock fishery to determine the overall stock composition of the bycatch. The most recent analysis is available from the NMFS Alaska Fisheries Science Center (<http://www.afsc.noaa.gov/Publications/AFSC-TM/NOAA-TM-AFSC-310.pdf>).

However, this genetic analysis takes time and the results are not available in time to delay or move the pollock fishery. Instead, the IPAs use a rolling hotspot program to provide real-time Chinook salmon bycatch information so that the fleet can avoid areas of high Chinook salmon bycatch rates. A Chinook salmon rolling hotspot program is a component of the current IPAs, however, it is not a mandatory requirement. The catcher/processor IPA and the mothership IPA have a rolling hotspot program in place throughout the year. The inshore IPA has a rolling hotspot program that can be suspended

during the season. Amendment 110 and this final rule require all IPAs to have a rolling hot spot program throughout the A and B seasons. This provision also requires notifications of closure areas and any violations of the rolling hot spot program to at least one third-party group representing western Alaskans, consistent with the requirement for the chum salmon rolling hotspot program. Section 3.5.3.3 of the Analysis provides more detail on this addition to the IPA requirements (see **ADDRESSES**).

*Comment 25:* The over allocation of pollock has ruined the livelihoods of all that depend on it for a living. A two-thirds reduction in the Bering Sea pollock TAC would increase escapement to the Yukon River system and raise the price of the pollock products. We have been giving pollock away at the expense of traditional Alaskan salmon fisheries. Everything that swims in the Bering Sea eats pollock and every fishery and northern fur seals have declined due to the over allocation of pollock.

*Response:* The process for assessing and specifying the Bering Sea pollock TAC is outside the scope of this action. There is no evidence that a two-thirds reduction in the pollock TAC would measurably increase salmon escapement to the Yukon River system. While salmon bycatch in the pollock fishery may be a contributing factor in the decline of salmon, NMFS expects the numbers of the ocean bycatch that would have returned to western Alaska would be relatively small due to ocean mortality and the large number of other river systems contributing to the total Chinook or chum salmon bycatch. For Chinook salmon, Section 3.5.1 of the Analysis explains that the Chinook salmon bycatch expected to have returned to western Alaska rivers is approximately 2.3 percent of coastal western Alaska run size in recent years. For chum salmon, Section 3.5.1 of the Analysis explains that the chum salmon bycatch expected to have returned to western Alaska rivers is approximately 0.5 percent of the coastal western Alaska run size in recent years. Under Amendment 110 and this final rule, these impact rates will be reduced further as the pollock fleet improves its ability to avoid salmon at all times.

NMFS is actively pursuing research on northern fur seals to help us understand the reasons for the decline and potential threats to the population. A description of past and ongoing research is available on the National Marine Mammal Laboratory's Web site ([http://www.afsc.noaa.gov/nmml/species/species\\_nfs.php](http://www.afsc.noaa.gov/nmml/species/species_nfs.php)). The research projects investigate a broad range of

topics related to fisheries interactions around the Pribilof Islands, including studies to quantify area-specific food habits and animal conditions, describe foraging behavior in different environments, delineate foraging habitats, and model habitat suitability in relation to fur seals and commercial fisheries.

*Comment 25:* The Analysis did not fully describe the potential impacts to the pollock fishery under the lower PSC performance standard and limits in years of low Chinook salmon abundance. The Analysis compared the impacts only to current Chinook salmon bycatch levels and not to potential or historical levels. Little to no forgone pollock harvest was noted under any scenario. Amendment 110 and the proposed rule are a potential threat that could suspend fishing operations in one of the largest fisheries in the world. Large juvenile Chinook salmon year classes persist in the marine environment for multiple years before returning as mature fish to the river systems. Recent unpredictability in the BSAI ecosystem likely only increases the probability of constraining the pollock fishery in future years based on management decisions made today. The Analysis should have attempted to quantify the probability of the limit shutting the fishery down in a given year.

*Response:* The purpose of a RIR is to analyze the potential costs and benefits associated with a regulatory change. To do so, the RIR must compare potential effects of the alternatives being considered with the regulatory status quo condition. In this case, the status quo is defined by the incentive-based Chinook salmon PSC avoidance structure established under Amendment 91. Since Amendment 91, Chinook salmon PSC has been much lower than the "potential or historical" levels the commenter presumably is referring to and these lower levels, as properly considered in the analysis, represent the regulatory status quo condition. Historically higher levels of bycatch occurred under differing regulatory conditions, do not represent status quo conditions, and are not appropriate to consider in the Analysis. Note that historical bycatch was considered in the EIS prepared for Amendment 91 (see **ADDRESSES**).

Amendment 110 and this final rule provide further incentives for industry to avoid Chinook salmon PSC, particularly in years of low Chinook salmon abundance. As explained in Section 4.8.2 of the Analysis, economic analysis has demonstrated the ability of a catcher-processor fleet to adapt their

behavior to reduce PSC when faced with individual vessel caps. The reduced individual vessel caps that could result under this final rule during times of low Chinook abundance in western Alaska are not intended to close the pollock fishery. They are intended to alter fishing behavior to further avoid Chinook PSC. The flexibility given to industry to self-regulate PSC avoidance, provided in Amendment 91, remains and is augmented by this rule. Thus, the probability of the limit shutting down the fishery in a given year is dependent on changes in fishing activity that are not presently known and are dependent on the actions of the fishing fleet.

*Comment 26:* Revise the Regulatory Flexibility Act (RFA) analysis to determine the number of directly regulated entities that are defined as small entities without applying affiliations among directly regulated entities based on their participation in a pollock harvesting cooperative. NMFS considers a vessel owner's membership in a harvesting cooperative to be an affiliation; this shows a misunderstanding of the nature of harvesting cooperatives. Harvesting cooperatives in Alaska are not large vertically or horizontally integrated businesses. Cooperative members are joined by simple rules to help remove the race for fish by coordinating selected fishing activities, but each catcher vessel (or collection of commonly owned catcher vessels) is a distinct business unit. The fact that cooperatives coordinate harvests in a manner that allows for more complete harvest of the quota should not be interpreted as creating a single business unit in the manner intended for defining a small business that is appropriate for protection by the RFA.

*Response:* When NMFS calculates the size of an entity to determine if it is a small entity, NMFS must include the annual receipts and the employees of affiliates. Affiliation is determined by the ability to control. Control may arise through ownership, management, or other relationships or interactions between the parties. When the ability to control exists, even if it is not exercised, affiliation exists. The Small Business Administration (SBA) has a specific set of rules that explain when another person, business, or entity is considered an affiliate for size purposes in its Small Business Size Regulations (13 CFR 121.103). NMFS has applied these rules in the evaluation it conducted in this RFA analysis.

Harvesting cooperatives meet the definition of affiliation because cooperatives have the ability to control member vessels. Cooperatives are

predicated on collective agreements among their members, to abide by the terms and practices set out for membership. That is, the entity formed by creation of the cooperative is, by definition, a third party that controls or has the power to control its members. Cooperatives coordinate harvests, which is operational control of the input side of the business. The small entity standard is "independently owned and operated." Cooperative members may be independently owned but still not be considered small entities because the cooperative has enough operational control that its members are not considered to be independently operated for purposes of the definition of affiliation.

Cooperative membership does not automatically mean an entity is large (not small). A cooperative may be a small entity if the combined annual gross receipts of all cooperative members meet the size standard used by the SBA or, after July 1, 2016, NMFS' small business size standard for RFA compliance at 50 CFR 200.2(a). For more information on NMFS' small business size standard for RFA compliance, see 80 FR 81194 (December 29, 2015). NMFS's RFA analysis to estimate the number of small entities directly regulated by this action is correct.

*Comment 27:* NMFS' aggregation of cooperative member's gross earnings eliminates a fishing business's access to the benefits of SBA review and runs against the intent of the RFA.

*Response:* The RFA is primarily concerned with ensuring that Federal agency decision-makers seriously and systematically consider disproportionate economic impacts on small entities that may result from their actions. To comply with the RFA, NMFS has prepared an IRFA and a FRFA following the required contents specified in the RFA. The IRFA was prepared and summarized in the "Classification" section of the preamble to the proposed rule (81 FR 5681, February 3, 2016). The FRFA is in the "Classification" section of the preamble to this final rule.

If a specific business applies to the SBA to participate in an SBA program, the SBA conducts an independent review of that business to determine if that business qualifies as a small business for purposes of participating in an SBA program. That business must satisfy SBA's definition of a business concern, along with SBA's size standards for small businesses. The SBA does not rely on the analysis conducted by NMFS under the RFA to determine whether a particular entity satisfies

SBA's definition of a small business. See <https://www.sba.gov/> for more information on SBA's assessment of a small business.

#### Classification

The NMFS Assistant Administrator has determined that Amendment 110 to the FMP and this rule are necessary for the conservation and management of the groundfish fishery and that they are consistent with the Magnuson-Stevens Act and other applicable law.

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

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The preambles to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preambles. Copies of the proposed rule and this final rule are available from the NMFS Web site at <http://alaskafisheries.noaa.gov>.

#### Final Regulatory Flexibility Analysis

This FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action.

Section 604 of the Regulatory Flexibility Act requires that, when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA. Section 604 describes the required contents of a FRFA: (1) A statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the SBA in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the

comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

#### Need for, and Objectives of, This Rule

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

#### Public and Chief Counsel for Advocacy Comments on the Proposed Rule

NMFS published a proposed rule on February 3, 2016 (81 FR 5681). An IRFA was prepared and summarized in the "Classification" section of the preamble to the proposed rule. The comment period closed on March 4, 2016. NMFS received 15 letters of public comment on the proposed rule and Amendment 110. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule.

#### Summary of Significant Issues Raised During Public Comment

One comment letter was received with two comments on the IRFA. These are Comment 26 and Comment 27 under Response to Comments, above. No changes were made to this rule or the RFA analysis as a result of these comments on the IRFA.

Comment 26 disagrees with NMFS using affiliation to determine whether a member of a fishery cooperative is a small entity in the IRFA. The comment requests NMFS to revise the analysis to determine whether the vessels that are directly regulated entities under this action are small entities without applying the cooperative affiliations. We disagree because when we calculate the size of an entity to determine if it is a small entity, we must include the annual receipts and the employees of affiliates, per the Small Business Size Regulations (13 CFR 121.103).

Comment 27 is concerned that NMFS' aggregation of a cooperative member's gross earnings eliminates a fishing business's access to the benefits of SBA review and runs against the intent of the RFA. To comply with the RFA, agencies prepare an IRFA and a FRFA following the required contents specified in the RFA. NMFS has complied with the RFA for this action. NMFS has prepared an IRFA and a FRFA following the required contents specified in the RFA. If a specific business applies to the SBA to participate in an SBA program, the SBA conducts an independent review of that business to determine if that business qualifies as a small business for purposes of participating in an SBA program. That business must satisfy SBA's definition of a business concern, along with SBA's size standards for small businesses. The SBA does not rely on the analysis conducted by NMFS under the RFA to determine whether a particular entity satisfies SBA's definition of a small business.

#### Number and Description of Directly Regulated Small Entities

The action directly regulates those entities that participate in the directed pollock trawl fishery in the Bering Sea. These entities include vessels harvesting pollock under the AFA and the six CDQ groups that receive allocations of pollock.

The SBA requires 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 the non-CDQ entities directly regulated by this action are members of AFA cooperatives and, therefore, NMFS considers them "affiliated" large (non-small) entities for RFA purposes. AFA cooperatives have gross annual revenues that are substantially greater than \$20.5 million, the standard used by the SBA to define the annual gross revenue of a large (non-small) business engaged in finfish harvesting, such as pollock. Therefore, all the non-CDQ pollock fishery participants are defined as large (non-small) entities.

Due to their status as non-profit corporations, the six CDQ groups are identified as "small" entities for RFA purposes. This action directly regulates the six CDQ groups. 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.

The six CDQ groups, formed to manage and administer the CDQ allocations, investments, and economic development projects, are the Aleutian Pribilof Island Community Development

Association, the Bristol Bay Economic Development Corporation, the Central Bering Sea Fishermen's Association, the Coastal Villages Region Fund, the Norton Sound Economic Development Corporation, and the Yukon Delta Fisheries Development Association. The 65 communities, with approximately 27,000 total residents, that benefit from participation in the CDQ Program are not directly regulated by this action.

#### Recordkeeping, Reporting, and Other Compliance Requirements

This final rule revises some existing requirements and removes some requirements. The revised requirements are those related to—

- Development and submission of proposed IPAs and amendments to approved IPAs;
- An annual report from the participants in each IPA, documenting information and data relevant to the Bering Sea Chinook salmon bycatch management program; and
- Salmon handling and storage on board a vessel, and obligations to facilitate observer data reporting.

This final rule removes the requirements for an application form for a proposed IPA or amended IPA.

#### Description of Significant Alternatives Considered to the Final Action That Minimize Adverse Impacts on Small Entities

This action is a comprehensive program to minimize Chinook salmon and chum salmon bycatch in a manner that accomplishes the stated objectives and is consistent with applicable statutes. No alternatives were identified in addition to those analyzed in the IRFA that had the potential to further reduce the economic burden on small entities, while achieving the objectives of this action. Section 2.10 of the Analysis discusses alternatives considered and eliminated from detailed analysis (see **ADDRESSES**).

This final rule includes performance standards to minimize Chinook salmon and chum salmon bycatch, while limiting the burden on CDQ groups. A system of transferable PSC allocations and a performance standard, even in years of low Chinook salmon abundance, will 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).

Based on the best available scientific data and information, none of the

alternatives except the preferred alternative have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statutes (as reflected in this action), while minimizing any significant adverse economic impact on small entities.

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

E.O. 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995), and the Tribal Consultation and Coordination Policy of the U.S. Department of Commerce (May 21, 2013), outline the responsibilities of NMFS in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 108–447 (118 Stat. 3267), extends the consultation requirements of E.O. 13175 to Alaska Native corporations. Under the E.O. and agency policies, NMFS must ensure meaningful and timely input by tribal officials and representatives of Alaska Native corporations in the development of regulatory policies that have tribal implications.

Section 5(b)(2)(B) of E.O. 13175 requires NMFS to prepare a tribal summary impact statement 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.

*A Description of the Extent of the Agency's Prior Consultation With Tribal Officials*

The consultation process for this action began during the Council process when the Council started developing Amendment 110 in 2012. 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 110 and at the numerous Council meetings at which Amendment 110 was discussed.

NMFS conducted two tribal consultations, one in December 2014 and one in April 2015, with representatives from the Tanana Chiefs Conference; the Association of Village Council Presidents; the Yukon River Drainage Fisheries Association; the Kawerak, Inc.; and the Bering Sea

Fishermen's Association. These organizations prepared letters for the Council and requested the consultations to discuss the salmon bycatch management measures under consideration by the Council. NMFS posted reports from these consultations on the NMFS Alaska Region Web site at <https://alaskafisheries.noaa.gov/tribal-consultations>.

NMFS continued the consultation process by sending a letter to Alaska tribal governments, Alaska Native corporations, and related organizations ("Alaska Native representatives") when the Notice of Availability for Amendment 110 published in the **Federal Register** in March 2016. The letter included a copy of the Notice of Availability and notified representatives of the opportunity to comment and consult. NMFS received 4 letters of comment on Amendment 110 and the proposed rule from tribal members and representatives of tribal governments, tribal organizations, or Alaska Native corporations. The comment summaries and NMFS' responses are provided in this preamble under Response to Comments and are summarized below.

*A Summary of the Nature of Tribal Concerns*

The concerns expressed in consultations and reflected in written comments from tribal representatives and members center on four themes. First, Chinook salmon is vitally important to tribal members, and they suffer great hardships when Chinook salmon abundance is low. Second, tribal representatives attribute low Chinook salmon in-river returns directly to bycatch in the Bering Sea pollock fishery. Third, tribal members want Chinook salmon bycatch greatly curtailed. Fourth, NMFS should exercise its trust responsibilities by advocating for Alaska native interests on the Council.

The comment letter from Tanana Chiefs Conference; the Association of Village Council Presidents; the Yukon River Drainage Fisheries Association; the Kawerak, Inc.; and the Bering Sea Fishermen's Association supported Amendment 110 and the implementing regulations as an important step in further reducing salmon bycatch but urged NMFS and the pollock industry to continue working towards greater bycatch reduction, with an ultimate goal of zero bycatch. In particular, these comments support the provision to reduce the PSC limit and performance standard in years of low Chinook salmon abundance in western Alaska as critical to ensuring Chinook salmon bycatch is reduced in the years when

every source of mortality must be reduced.

The comment from the Native Village of Kotzebue expressed concern that although Amendment 110 is going in the right direction towards zero salmon bycatch, the bycatch limits are still too high.

The comment from Ahtna, Incorporated, encourages the Secretary of Commerce to take all reasonable measures to reduce Chinook salmon bycatch in the Bering Sea and Gulf of Alaska.

The comment from the Aleut Corporation supports Amendment 110, but is strongly opposed to the provision to reduce the PSC limit and performance standard in low Chinook salmon abundance years because it is unwarranted, unnecessary, not sound science, and not responsible management. The Aleut Corporation believes this provision unfairly restricts the pollock fishery when science has shown that there is not a relationship between salmon bycatch and the size of the salmon runs in coastal western Alaska.

*NMFS' Position Supporting the Need To Issue the Regulation*

This final rule is needed to implement Amendment 110, a complex and innovative program to minimize salmon bycatch to the extent practicable in the pollock fishery. This final rule is also needed to create a comprehensive salmon bycatch avoidance program that works more effectively than the current salmon bycatch programs to avoid Chinook salmon bycatch and Alaska-origin chum salmon bycatch. The Council and NMFS recognize that salmon are an extremely important resource to Native Alaskans who depend on local fisheries for their sustenance and livelihood.

Amendment 110 and this final rule adjust the existing Chinook salmon bycatch program to, among other things, incorporate revised chum salmon bycatch measures into the existing IPAs. Amendment 110 and this final rule are designed to consider the importance of continued production of critical chum salmon runs in western Alaska by focusing on bycatch avoidance of Alaskan chum salmon runs. These runs have substantial variation in run sizes over time, and are of historic importance in the subsistence lifestyle of Native Alaskans. Additional protections to other chum stocks from outside of Alaska are embedded in the objective to avoid the high bycatch of chum salmon overall, recognizing that most non-Alaska chum salmon are likely from Asian hatcheries.

In addition, the Council and NMFS sought to provide greater incentives to avoid Chinook salmon by strengthening incentives during times of historically low Chinook salmon abundance in western Alaska. Thus, the management measures included in Amendment 110 focus on retaining the incentives to avoid Chinook salmon bycatch at all levels of abundance as intended by Amendment 91. Multiple years of historically low Chinook salmon abundance have resulted in significant restrictions for subsistence users in western Alaska and failure to achieve conservation objectives. While Chinook salmon bycatch impact rates have been low under Amendment 91, the Council and NMFS have determined that there is evidence that improvements could be made to ensure the program is reducing Chinook salmon bycatch at low levels of salmon abundance.

#### A Statement of the Extent to Which the Concerns of Tribal Officials Have Been Met

One of the primary factors in initiating this action was concern over the potential impacts of Chinook salmon and chum salmon bycatch in the Bering Sea pollock fishery on the return of these salmon to western Alaska river systems and the recognition of the importance of salmon to the people in western Alaska. While the final program is not as restrictive on the pollock fishery as advocated by some Alaska Native representatives, it will minimize salmon bycatch to the extent practicable.

#### Collection-of-Information Requirements

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB. The collections are listed below by OMB control number.

##### OMB Control Number 0648–0731

Public reporting burden is estimated to average 5 minutes per individual response for use of a vessel's computer, software, and data transmission; 5 minutes per individual response for notification of observer before handling the vessel's Bering Sea pollock catch; and 5 minutes for notification of crew person responsible for ensuring all sorting, retention, and storage of salmon.

##### OMB Control Number 0648–0393

Public reporting burden is estimated to average 8 hours per individual response for the Application to Receive Transferable Chinook Salmon PSC Allocations, including the contract; 4

hours for the amendment to the contract; and 15 minutes for the Application for the Transfer of Chinook Salmon PSC Allocations.

##### OMB Control Number 0648–0401

Public reporting burden is estimated to average 40 hours per individual response for the Salmon Bycatch IPA; and 8 hours for the IPA Annual Report.

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.

Send comments on this data collection, including suggestions for reducing the burden, to NMFS Alaska Region (see **ADDRESSES**), or by email to *OIRA\_Submission@omb.eop.gov*, or fax to (202) 395–5806.

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. All currently approved NOAA collections of information may be viewed at: [http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

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

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: June 2, 2016.

**Samuel D. Rauch III,**

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

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

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

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

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

■ 2. In § 679.2:

■ a. Remove the definitions for “Chinook salmon bycatch incentive plan agreement (IPA)”;

■ b. Revise the definitions for “Chum Salmon Savings Area of the BSAI CVOA”, and paragraph (6) of “Fishing trip”;

■ c. Remove the definition for “Non-Chinook salmon bycatch reduction intercooperative agreement (ICA)”;

■ d. Add a definition for “Salmon bycatch incentive plan agreement (IPA)” in alphabetical order to read as follows:

#### **§ 679.2 Definitions.**

\* \* \* \* \*

*Chum Salmon Savings Area of the BSAI CVOA* (See § 679.21(f)(14) and Figure 9 to this part).

\* \* \* \* \*

*Fishing trip* means: \* \* \*

(6) For purposes of § 679.7(d)(5)(ii)(C)(2) 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.

\* \* \* \* \*

*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 and chum salmon bycatch while directed fishing for pollock in the BS.

\* \* \* \* \*

■ 3. In § 679.7:

■ a. Revise paragraphs (d)(5)(ii)(B), (d)(5)(ii)(C)(5), and the paragraph (k)(8) heading;

■ b. Redesignate paragraph (k)(8)(iv) as (k)(8)(v); and

■ c. Add new paragraph (k)(8)(iv).

The revisions and addition read as follows:

#### **§ 679.7 Prohibitions.**

\* \* \* \* \*

(d) \* \* \*

(5) \* \* \*

(ii) \* \* \*

(B) *Non-Chinook salmon*. For the operator of a 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 an approved IPA under § 679.21(f)(12).

(C) \* \* \*

(5) For the operator of a catcher vessel delivering pollock CDQ catch to a shoreside processor or stationary floating processor to:

(i) Deliver pollock CDQ to a processor that does not have a catch monitoring and control plan approved under § 679.28(g).

(ii) Handle, sort, or discard catch without notifying the observer 15

minutes prior to handling, sorting, or discarding catch as described in § 679.21(f)(15)(ii)(B)(2).

(iii) Fail to secure catch after the completion of catch handling and the collection of scientific data and biological samples as described in § 679.21(f)(15)(ii)(B)(3).

\* \* \* \* \*

(k) \* \* \*

(8) *Salmon PSC.*

\* \* \* \* \*

(iv) *Catcher vessels.* (A) For the operator of a catcher vessel, to handle, sort, or discard catch without notifying the observer 15 minutes prior to handling, sorting, or discarding catch as described in § 679.21(f)(15)(ii)(B)(2).

(B) For the operator of a catcher vessel to fail to secure catch after the completion of catch handling and the collection of scientific data and biological samples as described in § 679.21(f)(15)(ii)(B)(3).

\* \* \* \* \*

■ 4. In § 679.20, revise paragraph (a)(5)(i)(B)(1) to read as follows:

**§ 679.20 General limitations.**

\* \* \* \* \*

(a) \* \* \*

(5) \* \* \*

(i) \* \* \*

(B) \* \* \*

(1) *Inshore, catcher/processor, mothership, and CDQ sectors.* The portions of the BS subarea pollock directed fishing allowances allocated to each sector under sections 206(a) and 206(b) of the AFA and the CDQ allowance in the BSAI will be divided

into two seasonal allowances corresponding to the two fishing seasons set out at § 679.23(e)(2), as follows:

- (i) A Season, 45 percent;
- (ii) B Season, 55 percent.

\* \* \* \* \*

■ 5. In § 679.21:

- a. Remove and reserve paragraph (c);
- b. Revise the paragraph (e) heading;
- c. Remove paragraphs (e)(1)(vi) through (viii), (e)(3)(i)(A)(3), and (e)(7)(vii) through (ix); and
- d. Revise paragraphs (f) and (g).

The revisions read as follows:

**§ 679.21 Prohibited species bycatch management.**

\* \* \* \* \*

(e) *BSAI PSC limits for crab and herring.* \* \* \*

\* \* \* \* \*

(f) *Salmon Bycatch Management in the BS Pollock Fishery—(1)*

*Applicability.* This paragraph contains regulations governing the bycatch of salmon in the BS pollock fishery.

(2) *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 the applicable Chinook salmon PSC limit. NMFS will publish the applicable Chinook salmon PSC limit in the annual harvest specifications after determining if it is a low Chinook salmon abundance year. NMFS will determine that it is a low Chinook salmon abundance year when abundance of Chinook salmon in western Alaska is less than or equal to 250,000 Chinook salmon. By October 1

of each year, the State of Alaska will provide to NMFS an estimate of Chinook salmon abundance using the 3-System Index for western Alaska based on the Kuskokwim, Unalakleet, and Upper Yukon aggregate stock grouping.

(i) An AFA sector will receive a portion of the 47,591 Chinook salmon PSC limit, or, in a low Chinook salmon abundance year, the 33,318 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, or, in a low Chinook salmon abundance year, the 45,000 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 Chinook salmon PSC limits—(i) Seasonal apportionment.* NMFS will apportion the 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).

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

AFA Sector:	Eligible participants are:
(A) Catcher/processor .....	AFA catcher/processors and AFA catcher vessels delivering to AFA catcher/processors, all of which are permitted under § 679.4(l)(2) and (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 (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 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) Catcher/processor .....	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 45,000 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) Catcher/processor .....	32.9	10,363	17.9	2,415	28.4	12,780
(2) Mothership .....	8.0	2,520	7.3	987	7.8	3,510
(3) Inshore .....	49.8	15,687	69.3	9,355	55.6	25,020
(4) CDQ Program .....	9.3	2,930	5.5	743	8.2	3,690

(C) 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) Catcher/processor .....	32.9	10,906	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

(D) If the sector is managed under the 33,318 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) Catcher/processor .....	32.9	7,673	17.9	1,789	28.4	9,462
(2) Mothership .....	8.0	1,866	7.3	730	7.8	2,599
(3) Inshore .....	49.8	11,615	69.3	6,926	55.6	18,525
(4) CDQ Program .....	9.3	2,169	5.5	550	8.2	2,732

(iv) *Allocations to the AFA catcher/processor and mothership sectors.* (A) NMFS will issue transferable Chinook salmon PSC allocations under paragraph (f)(3)(iii) 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) 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) of this section among the six CDQ groups based on each CDQ group's percentage of the CDQ Program pollock allocation. 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 Web site (<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;

(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; and

(F) Tables for each sector that provide the percent of the sector's pollock allocation, numbers of Chinook salmon associated with each vessel in the sector used to calculate the opt-out allocation and annual threshold amounts, and the percent of the pollock allocation associated with each vessel that NMFS will use to calculate IPA minimum participation assigned to each vessel.

(4) *Reduction in allocations of the Chinook salmon PSC limit—(i) Reduction in sector allocations.* NMFS will reduce the seasonal allocation of the 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) or (B) 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. NMFS will subtract the amount of Chinook salmon from each sector's allocation associated with each vessel not participating in an approved IPA.

(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 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 of Chinook salmon associated with 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 of Chinook salmon associated with 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 of Chinook salmon associated with the non-participating sector will not be reallocated among the sectors that have members participating in an approved IPA. This portion of the 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 or the 45,000 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)(5)(ii) of this section.
(iv) How will the opt-out allocation be managed?	All participants under paragraph (f)(5)(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 not 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, except in low Chinook salmon abundance years when that sector will

receive an allocation under the 33,318 Chinook salmon PSC limit.

(j) *Annual threshold amount.* Prior to each 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 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)(C) of this section, or the 33,318 Chinook salmon PSC limit in low Chinook salmon abundance years, as shown in the table in paragraph (f)(3)(iii)(D) 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.

(iii) *Exceeding the performance standard.* 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. In all subsequent years, NMFS will allocate to that sector either the amount of Chinook salmon in the table in paragraph (f)(3)(iii)(C) of this section or, in low Chinook salmon abundance years, the amount of Chinook salmon in the table in paragraph (f)(3)(iii)(D) of this section. All members of the affected sector will fish under this lower PSC 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 is no longer eligible to participate in the BS pollock fishery or if a vessel replaces a currently eligible vessel, NMFS will assign the portion and number of Chinook salmon associated with that vessel to the replacement vessel or distribute it 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.

(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 the applicable requirements of this section.

(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 AFA catcher/processor sector.* NMFS will authorize only one entity to represent the catcher/processor sector for purposes of receiving and managing transferable Chinook salmon PSC allocations on behalf of the catcher/processors eligible to fish under transferable Chinook salmon PSC allocations. NMFS will issue transferable Chinook salmon allocations under the Chinook salmon PSC limit to the entity representing the catcher/processor sector if that entity represents all the owners of AFA-permitted vessels in this sector that are participants in an approved IPA.

(D) *Entity representing the AFA mothership sector.* NMFS will authorize only one entity to represent the mothership sector for purposes of receiving and managing transferable Chinook salmon PSC allocations on behalf of the vessels eligible to fish under transferable Chinook salmon PSC allocations. NMFS will issue transferable Chinook salmon allocations under the Chinook salmon PSC limit to an entity representing the mothership sector if that entity represents all the owners of AFA-permitted vessels in this sector that are participants in an approved IPA.

(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, including the affidavit affirming that each eligible vessel owner, from whom the applicant received written notification requesting to join the sector entity, has been allowed to join the sector entity subject to the same terms and conditions that have been agreed on by, and are applicable to, all other parties to the sector entity. The application form is available on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov/>) or from NMFS at the address 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 vessel owners party 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 vessel owners party to the contract.

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

(C) *Contract duration.* Once submitted, the contract attached to the application form is valid until amended or terminated by the parties to the contract.

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

(E) *Approval.* If more than one entity application form is submitted to NMFS, NMFS will approve the application form for the entity that represents the most eligible vessel owners in the sector.

(F) *Amendments to the sector entity.*

(1) An amendment to the sector entity contract, with no change in entity participants, may be submitted to NMFS at any time and is effective upon written notification of approval by NMFS to the entity representative. To amend a contract, the entity representative must submit a complete application, as described in paragraph (f)(8)(ii) of this section.

(2) To make additions or deletions to the vessel owners represented by the entity for the next year, the entity representative must submit a complete application, as described in paragraph (f)(8)(ii) of this section, by December 1.

(iii) *Entity representative.* (A) 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) of this section.

(B) Any vessel owner that is a member of an inshore cooperative, or a member 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 his or her 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).

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

(A) 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.

(B) 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.

(v) *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 be managed by NMFS under a non-transferable allocation of Chinook salmon PSC 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 45,000 PSC limit may only transfer to and from other entities receiving allocations under the 45,000 PSC limit.

(C) 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.

(D) Entities receiving transferable allocations under the 33,318 PSC limit may only transfer to and from other entities receiving allocations under the 33,318 PSC limit.

(E) 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)(5)(ii)(C)(2) and (k)(8)(v)(B), 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 on behalf of that same entity for the remainder of that season.

(iii) *Application for transfer of Chinook salmon PSC allocation—(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 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 onto the 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 onto 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 or 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) *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*. Parties to an IPA must collectively represent at least 9 percent of the BS pollock quota.

(B) *Minimum number of unaffiliated AFA entities*. 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*. (A) No vessel owner or CDQ group is required to join an IPA.

(B) For a vessel owner in the catcher/processor sector or mothership sector to join an IPA, that vessel owner must be a member of the entity representing that sector under paragraph (f)(8).

(C) For a CDQ group to be a member of an IPA, the CDQ group must sign the IPA and list in that IPA each vessel harvesting BS pollock CDQ, on behalf of

that CDQ group, that will participate in that IPA.

(D) Once a member of an IPA, a vessel owner or CDQ group cannot withdraw from the IPA during a fishing year.

(iii) *Request for approval of a proposed IPA*. The IPA representative must submit a proposed IPA to NMFS at the address in paragraph (b)(6) of this section. The proposed IPA must contain the following information:

(A) *Affidavit*. The IPA must include the affidavit affirming that each eligible vessel owner or CDQ group, from whom the IPA representative received written notification requesting to join the IPA, has been allowed to join the IPA subject to the same terms and conditions that have been agreed on by, and are applicable to, all other parties to the IPA.

(B) *Name of the IPA*.

(C) *Representative*. The IPA must include the name, telephone number, and email 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)(13) of this section.

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

(E) *Description of the incentive plan*. The IPA must contain a description of the following—

(1) The incentive(s) that will be implemented under the IPA for the operator of each vessel participating in the IPA to avoid Chinook salmon and chum salmon bycatch under any condition of pollock and Chinook salmon abundance in all years.

(2) How the incentive(s) to avoid chum salmon do not increase Chinook salmon bycatch.

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

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

(5) How the incentive measures in the IPA promote Chinook salmon and chum 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 chum salmon.

(6) How the IPA ensures that the operator of each vessel governed by the IPA will manage that vessel's 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.

(7) How the IPA ensures that the operator of each vessel governed by the IPA will manage that vessel's chum salmon bycatch to avoid areas and times where the chum salmon are likely to return to western Alaska.

(8) The rolling hot spot program for salmon bycatch avoidance that operates throughout the entire A season and B season and the agreement to provide notifications of closure areas and any violations of the rolling hot spot program to the third party group.

(9) The restrictions or penalties targeted at vessels that consistently have significantly higher Chinook salmon PSC rates relative to other vessels fishing at the same time.

(10) The requirement for vessels to enter a fishery-wide in-season salmon PSC data sharing agreement.

(11) The requirement for the use of salmon excluder devices, with recognition of contingencies, from January 20 to March 31, and from September 1 until the end of the B season.

(12) The requirement that salmon savings credits are limited to a maximum of three years for IPAs with salmon savings credits.

(13) The restrictions or performance criteria used to ensure that Chinook salmon PSC rates in October are not significantly higher than those achieved in the preceding months.

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

(G) *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*. A proposed IPA must be received by NMFS no later than 1700 hours, A.l.t., on October 1 of the year prior to the year for which the IPA is 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 paragraphs (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 identification 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 at any time and will be reviewed under the requirements of this paragraph (f)(12). An amendment to an approved IPA is effective upon written notification of approval by NMFS to the IPA representative.

(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' 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 IPA representative will be provided one 30-day period to address, in writing, the deficiencies identified by NMFS. Additional information or a revised IPA received by NMFS after the expiration of the 30-day period specified by NMFS 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 IPA representative who receives an IAD disapproving a proposed IPA may appeal under the procedures set forth at § 679.43. If the IPA representative 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) *Pending appeal*. 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 will 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)(C) of this section, or, in low Chinook salmon abundance years, allocations of the 33,318 Chinook salmon PSC limit as described in paragraph (f)(3)(iii)(D) 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://alaska.fisheries.noaa.gov/>).

(13) *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.

(i) *Submission deadline*. The IPA Annual Report must be received by the Council no later than March 15.

(ii) *Information requirements*. The IPA Annual Report must contain the following information:

(A) A comprehensive description of the incentive measures, including the rolling hot spot program and salmon excluder use, in effect in the previous year;

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

(C) An evaluation of whether incentive measures were effective in achieving salmon savings beyond levels that would have been achieved in absence of the measures, including the effectiveness of—

(1) Measures to ensure that chum salmon were avoided in areas and at times where chum salmon are likely to return to western Alaska;

(2) Restrictions or penalties that target vessels that consistently have significantly higher Chinook salmon PSC rates relative to other vessels; and

(3) Restrictions or performance criteria used to ensure that Chinook PSC rates in October are not significantly higher than in previous months.

(D) 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.

(E) The sub-allocation to each participating vessel of the number of Chinook salmon PSC and amount of pollock (mt) at the start of each fishing season, and number of Chinook salmon PSC and amount of pollock (mt) caught at the end of each season.

(F) The following information on in-season transfer of Chinook salmon PSC and pollock among AFA cooperatives, entities eligible to receive Chinook salmon PSC allocations, or CDQ groups:

(1) Date of transfer;

(2) Name of transferor;

(3) Name of transferee;

(4) Number of Chinook salmon PSC transferred; and

(5) Amount of pollock (mt) transferred.

(G) The following information on in-season transfers among vessels participating in the IPA:

(1) Date of transfer;

(2) Name of transferor;

(3) Name of transferee;

(4) Number of Chinook salmon PSC transferred; and

(5) Amount pollock (mt) transferred.

(14) *Non-Chinook salmon prohibited species catch (PSC) limit and Chum Salmon Savings Area*. (i) The PSC limit for non-Chinook salmon caught by vessels using trawl gear from August 15 through October 14 in the Catcher Vessel Operational Area, as defined under § 679.22(a)(5) and in Figure 2 to this part, is 42,000 fish.

(ii) 10.7 percent of the non-Chinook PSC limit is allocated to the CDQ Program as a PSQ reserve.

(iii) If the Regional Administrator determines that 42,000 non-Chinook salmon have been caught by vessels using trawl gear during the period August 15 through October 14 in the Catcher Vessel Operational Area, NMFS will prohibit fishing for pollock for the remainder of the period September 1 through October 14 in the Chum Salmon Savings Area as defined in Figure 9 to this part.

(iv) Trawl vessels participating in directed fishing for pollock and operating under an IPA approved by NMFS under paragraph (f)(12) of this section are exempt from closures in the Chum Salmon Savings Area.

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

(i) *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.

(ii) *Salmon retention and storage.* (A) Operators of catcher/processors or motherships must—

(1) Sort and transport all salmon bycatch from each haul to an approved storage container located 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 container must remain in view of the observer from the observer sampling station at all times during the sorting of the haul.

(2) If, at any point during sorting of a haul or delivery, the salmon are too numerous to be contained in the salmon storage container, cease all sorting and give the observer the opportunity to count the salmon in the storage container 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 container and the observer sampling station, in the presence of the observer.

(3) Before sorting of the next haul may begin, give the observer the opportunity to complete the count of salmon and the collection of scientific data or biological samples from the previous haul. When

the observer has completed all counting and sampling duties for a haul or delivery, vessel personnel must remove the salmon, in the presence of the observer, from the salmon storage container and the observer sampling station.

(4) Ensure no salmon of any species pass the observer sample collection point, as identified in the scale drawing of the observer sampling station (see § 679.28(d)(2)(i) and (d)(7)).

(B) Operators of vessels delivering to shoreside processors or stationary floating processors must—

(1) Retain all salmon taken incidental to a directed fishery for pollock in the BS until the salmon are delivered to the processor receiving the vessel's BS pollock catch.

(2) Notify the observer at least 15 minutes before handling catch on board the vessel, including, but not limited to, moving catch from one location to another, sorting, or discard of catch prior to the delivery of catch to the processor receiving the vessel's BS pollock catch. This notification requirement is in addition to the notification requirements in § 679.51(e).

(3) Secure all salmon and catch after the observer has completed the collection of scientific data and biological samples and after the vessel crew has completed handling the catch. All salmon and any other catch retained on board the vessel must be made unavailable for sorting and discard until the delivery of catch to the processor receiving the vessel's BS pollock catch. Methods to make salmon or retained catch unavailable for sorting or discard include but are not limited to securing the catch in a completely enclosed container above or below deck, securing the catch in an enclosed codend, or completely and securely covering the fish on deck.

(4) Comply with the requirements in paragraphs (f)(15)(ii)(B)(2) and (3) of this section, before handling the catch prior to delivery.

(C) Shoreside processors or stationary floating processors must—

(1) 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.

(2) 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 Catch Monitoring Control Plan (CMCP).

(3) Sort and transport all salmon of any species to the salmon storage container identified in the CMCP (see § 679.28 (g)(7)(vi)(C) and (g)(7)(x)(F)). The salmon must remain in that salmon

storage container and within the view of the observer at all times during the offload.

(4) If, at any point during the offload, salmon are too numerous to be contained in the salmon storage container, cease the offload and all sorting and give the observer the opportunity to count the salmon 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.

(5) At the completion of the offload, give the observer the opportunity to count the salmon and collect scientific data or biological samples.

(6) Before sorting of the next offload of catch from the BS pollock fishery may begin, give the observer the opportunity to complete the count of salmon and the collection of scientific data or biological samples from the previous offload of catch from the BS pollock fishery. When the observer has completed all counting and sampling duties for the offload, plant personnel must remove the salmon, in the presence of the observer, from the salmon storage container and location where salmon are counted and biological samples or scientific data are collected.

(iii) *Assignment of crew to assist observer.* Operators of vessels and managers of shoreside processors and SFPs that are required to retain salmon under paragraph (f)(15)(i) 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 (f)(15)(ii) of this section.

(iv) *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.

(g) *Chinook salmon bycatch management in the AI pollock fishery—*  
(1) *Applicability.* This paragraph contains regulations governing the bycatch of Chinook salmon in the AI pollock fishery.

(2) *AI Chinook salmon PSC limit.* (i) The PSC limit for Chinook salmon caught by vessels while harvesting pollock in the AI is 700 fish.

(ii) 7.5 percent of the PSC limit is allocated to the CDQ Program as a PSQ reserve.



(3) *Area closures.* 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 PSC limit, 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:

(i) 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.

(ii) 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.

\* \* \* \* \*

■ 6. In § 679.22, revise paragraph (a)(10) 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(f)(14)). Vessels directed fishing for pollock in the BS, including pollock CDQ, and operating under an approved IPA under § 679.21(f)(12) are exempt from closures in the Chum Salmon Savings Area.

\* \* \* \* \*

■ 7. In § 679.28, revise paragraphs (d)(7)(i) through (iii) to read as follows:

**§ 679.28 Equipment and operational requirements.**

\* \* \* \* \*

(d) \* \* \*

(7) \* \* \*

(i) A salmon storage container must be located adjacent to the observer sampling station;

(ii) The salmon storage 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 salmon storage container must be at least 1.5 cubic meters.

\* \* \* \* \*

■ 8. In § 679.51, revise paragraphs (e)(1)(iii), (e)(2) introductory text, and (e)(2)(iii)(B)(3) to read as follows:

**§ 679.51 Observer requirements for vessels and plants.**

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iii) *Communications and observer data entry—(A) Observer use of equipment.* Allow an observer to use the vessel’s communications equipment and personnel, on request, for the confidential entry, transmission, and receipt of work-related messages, at no cost to the observer or the United States.

(B) The operator of a catcher/processor (except for a catcher/processor placed in the partial observer coverage category under paragraph (a)(3) of this section), mothership, or catcher vessel 125 ft LOA or longer (except for a catcher vessel fishing for groundfish with pot gear) must provide the following equipment, software and data transmission capabilities:

(1) *Observer access to computer.* Make a computer available for use by the observer.

(2) *NMFS-supplied software.* Ensure that the most recent release of NMFS data entry software provided by the Regional Administrator or other approved software is installed on the computer described in paragraph (e)(1)(iii)(B)(1) of this section.

(3) *Data transmission.* The computer and software described in paragraphs (e)(1)(iii)(B)(1) and (2) of this section must be connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(4) *Functional and operational equipment.* Ensure that the required

equipment described in paragraph (e)(1)(iii)(B) of this section and that is used by an observer to enter or transmit data is fully functional and operational. “Functional” means that all the tasks and components of the NMFS-supplied, or other approved, software described in paragraph (e)(1)(iii)(B)(2) of this section and any required data transmissions to NMFS can be executed effectively aboard the vessel by the equipment.

(C) The operator of a catcher vessel participating in the Rockfish Program or a catcher vessel less than 125 ft LOA directed fishing for pollock in the BS must comply with the computer and software requirements described in paragraphs (e)(1)(iii)(B)(1), (2), and (4) of this section.

\* \* \* \* \*

(2) *Shoreside processor and stationary floating processor responsibilities.* A manager of a shoreside processor or a stationary floating processor that is required to maintain observer coverage as specified under paragraph (b) of this section must:

\* \* \* \* \*

(iii) \* \* \*

(B) \* \* \*

(3) *Functional and operational equipment.* Ensuring that the communications equipment required under paragraph (e)(2)(iii)(B) of this section that is used by observers to enter and transmit data is functional and operational. “Functional” means that all the tasks and components of the NMFS-supplied, or other approved, software described at paragraph (e)(2)(iii)(B)(2) of this section and any data transmissions to NMFS can be executed effectively by the communications equipment.

\* \* \* \* \*

**Tables 47a through 47d to Part 679 [Removed]**

■ 9. Remove Tables 47a through 47d to part 679.

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**BILLING CODE 3510–22–P**